

**CHAPTER 12. MUNICIPAL IMPROVEMENT DISTRICT ACT**

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**4-12-1. Citation of chapter.**

This chapter shall be known and may be cited as the Tooele City Municipal Improvement District Act. (Ord. 88-25, 08-03-88)

**4-12-2. Purpose of chapter.**

The purpose of this chapter is to revise, codify and improve existing laws relating to Tooele City's special improvement districts, to recognize existing practices relating to these districts, and to modernize and improve these laws in the light of these practices and in recognition of new needs of Tooele City and its

inhabitants. (Ord. 88-25, 08-03-88)

#### **4-12-3. Definitions.**

As used in this chapter:

(1) "Assessment" means a special tax levied against property within a special improvement district to pay all or a portion of the costs of making improvements in the district. All references to "assessment" or "assessments" in Subsection 4-12-21(3) and Sections 4-12-22, 4-12-24, 4-12-25, 4-12-26, 4-12-29, 4-12-30, 4-12-34, and 4-12-36, are deemed to include any reduced payment obligations.

(2) "Bonds" or "special improvement bonds" means bonds issued under this chapter payable from assessments and out of the Special Improvement Guaranty Fund established as provided in this chapter. All references to "bonds" or "special improvement bonds" in the following provisions are deemed to include any special improvement refunding bonds:

(a) Subsection 4-12-4(2);

(b) Sections 4-12-21, 4-12-22, 4-12-25, 4-12-26, 4-12-29, and 4-12-30;

(c) Section 4-12-32, except the reference in that section to "bond fund"; and

(d) Sections 4-12-33, 4-12-35, and 4-12-38.

(3) "Connection fee" means a fee charged by the governing body to connect onto the city sewer, water, gas, or electrical system and used for purposes of financing special improvements in a special improvement district or paying for the privilege of using existing improvements of Tooele City and includes a fee charged by the governing body to pay for the costs of connecting onto the city sewer, water, gas, or electrical system even though the improvements are installed on the assessed owner's property.

(4) "Contract price" means the amount payable to one or more contractors for the making of improvements in a special improvement district under any contract duly let to the lowest responsible bidder or bidders as required by this chapter, including amounts payable for extra or additional work when authorized by the governing body or in accordance with the terms of the contract less appropriate credit for work deleted from the contract when authorized by the governing body or in accordance with the contract.

(5) "Governing body" means the Tooele City Council.

(6) "Incidental refunding costs" means any costs of issuing special improvement refunding bonds and of calling, retiring, or paying prior bonds, including, without limitation, legal fees, accounting fees, charges of fiscal agents, escrow agents and trustees, underwriting discount, printing costs, giving of notices, any premium necessary in the calling or retiring of the prior bonds, and any other costs necessary or desirable in connection with

the issuance of special improvement refunding bonds, as determined by the governing body, and any interest on the prior bonds which may be required to be paid in connection with the issuance of the special improvement refunding bonds.

(7) "Municipality" means Tooele City.

(8) "Optional improvements" means improvements in a special improvement district which may be conveniently installed at the same time as other improvements in the district and which the governing body provides may be installed at the option of the property owner on whose property or for whose particular benefit the improvements are made, including, by way of example and not in limitation, private driveways, irrigation ditches, and water turnouts.

(9) "Overhead costs" means the actual costs incurred by a municipality in connection with a special improvement district for engineering, appraisals, legal fees, fiscal agent charges, inspection, publishing and mailing notices, levying assessments, and all other incidental costs relating to the district.

(10) "Prior bonds" means the outstanding special improvement bonds which are refunded by an issue of special improvement refunding bonds.

(11) "Prior ordinance" means the ordinance levying assessments from which the prior bonds and the interest thereon are payable.

(12) "Property" means real property or any interest in real property.

(13) "Property price" means the purchase or condemnation price of property acquired in order to make improvements in a special improvement district.

(14) "Reduced payment obligations" means the reduced amounts of the assessments levied, or the interest thereon established in the prior ordinance, or both, as set forth in the amending ordinance described in Subsection 4-12-27.1(8).

(15) "Special improvement district" or "district" means a district created for the purpose of making improvements under this chapter.

(16) "Special improvement refunding bonds" means any obligations issued to refund any special improvement bonds and payable from the assessments and interest thereon from which the prior bonds are payable, or from any reduced payment obligations and out of the Special Improvement Guaranty Fund as provided in this chapter. (Ord. 88-25, 08-03-88)

#### **4-12-4. Powers of municipality.**

(1) The governing body of Tooele City shall have power to make or cause to be made any one or more or combination of the following improvements:

(a) To establish grades and lay out, establish, open, extend and widen any street, sidewalk, alley or

off-street parking facility;

(b) To improve, repair, light, grade, pave, repave, curb, gutter, sewer, drain, park and beautify any street, sidewalk, alley or off-street parking facility;

(c) To construct, reconstruct, extend, maintain or repair bridges, sidewalks, crosswalks, driveways, culverts, sewers, storm sewers, drains, flood barriers and channels; and to construct, reconstruct, extend, maintain, or repair lines, facilities and equipment (other than generating equipment) for street lighting purposes or for the expansion or improvement of a previously established municipally owned electrical distribution system, to a district within the boundaries of the municipality;

(d) To plant or cause to be planted, set out, cultivate and maintain lawns, shade trees or other landscaping;

(e) To cover, fence, safeguard or enclose reservoirs, canals, ditches and watercourses and to construct, reconstruct, extend, maintain and repair waterworks, reservoirs, canals, ditches, pipes, mains, hydrants, and other water facilities for the purpose of supplying water for domestic and irrigation purposes or either, regulating, controlling or distributing the same and regulating and controlling water and watercourses leading into the municipality;

(f) To acquire, construct, reconstruct, extend, maintain or repair parking lots or other facilities for the parking of vehicles off streets;

(g) To acquire, construct, reconstruct, extend, maintain or repair any of the improvements authorized in this section for use in connection with an industrial or research park except that this act may not be used to pay the cost of buildings or structures used for industry or research;

(h) To acquire, construct, reconstruct, extend, maintain or repair parks and other recreational facilities;

(i) To remove any nonconforming existing improvements in the areas to be improved;

(j) To construct, reconstruct, extend, maintain or repair optional improvements;

(k) To acquire any property necessary or advisable in order to make any of such improvements;

(l) To make any other improvements now or hereafter authorized by any other law, the cost of which in whole or in part can properly be determined to be of particular benefit to a particular area within the municipality;

(m) To construct and install all such structures, equipment and other items and to do all such work as may be necessary or appropriate to complete any of such improvements in a proper manner.

(2) For the purpose of making and paying for all or a part of the cost of any of such improvements (including optional improvements), the governing body of Tooele

City may create special improvement districts within the municipality, levy assessments on the property within such a district which is benefited by the making of the improvements and issue interim warrants and special improvement bonds as provided in this act. (Ord. 88-25, 08-03-88)

#### **4-12-5. Notice of intention to create special improvement district - Contents.**

(1) Before a special improvement district is created, the governing body shall give notice of its intention to make the improvements and to levy assessments to pay all or a part of the cost of them. The notice shall:

(a) State the purpose for which the assessments are to be levied.

(b) State the method or methods under which the assessments are proposed to be levied, that is, according to frontage, according to area, according to assessed valuation, according to lot, according to number of connections, or by any combination of these methods.

(c) Describe the district. The description may be by metes and bounds, by reference to streets or extensions of streets, or by any other means reasonably describing the district so as to permit owners of property therein to ascertain that their property is within the district. All property to be assessed shall be included within the district, but it is not a defect if property which is not to be assessed is included. Different areas which are not connected or contiguous may be included in a single special improvement district and separate boundaries for each of these areas may be established, or all or one or more of these areas may be included within a single boundary.

(d) In a general way, describe the improvements proposed to be made showing the places the improvements are proposed to be made and the general nature of the improvements. The improvements may be described by type or kind and the places these improvements are proposed to be made may be described by reference to streets or portions of streets or extensions of streets or by any other means the governing body may choose which reasonably describes the improvements proposed to be made.

(e) State the estimated cost of the improvements as determined by the engineer of the municipality. If the actual cost of the improvements exceeds the estimated cost, the governing body shall nevertheless have the right to levy assessments in excess of the estimated cost.

(f) State that it is proposed to levy assessments on property in the district to pay all or a portion of the cost of the improvements according to

the benefits to be derived by the property.

(g) Designate the time within which and the place where protests shall be filed and the time and place at which the governing body will conduct a public hearing to consider these protests.

(h) State the method for determining the necessary number of protests required to be filed under Subsection 4-12-7(3).

(2) The notice may contain such other information as the governing body shall determine to be appropriate, including the amount or proportion of the cost of the improvements to be paid for by the municipality or from sources other than assessments, the estimated amount of each type of assessment for the various improvements to be made according to the method of assessment chosen by the governing body and provisions for any optional improvements. The failure to include this information shall in no event be deemed jurisdictional or a defect preventing the municipality from proceeding with the special improvement district. The inclusion of any permitted information shall not be considered a limitation on the municipality from subsequently changing its plans in regard to any of the information so set forth. (Ord. 88-25, 08-03-88)

**4-12-6. Notice of intention to create special improvement district - Publication - Mailing.**

The notice of intention shall be published in a newspaper published in the municipality, or if there is no newspaper published in the municipality, then in a newspaper having general circulation in the municipality, except that in cities of the third class or towns where there is no newspaper published in the city or town, the governing body may provide that the notice of intention be given by posting in lieu of publication of this notice. If the notice is published, it shall be published once during each week for four successive weeks, the last publication to be at least five days and not more than 20 days prior to the time fixed in the notice as the last day for filing of protests. If the notice is posted, it shall be posted in at least three public places in the municipality at least 20 and not more than 35 days prior to the time fixed in the notice as the last day for the filing of protests. In addition, not later than 10 days after the first publication or posting of the notice, it shall be mailed postage prepaid: (1) addressed to each owner of property to be assessed within the special improvement district at the last known address of that owner using for this purpose the names and addresses appearing on the last completed real property assessment rolls of the county in which the property is located; and (2) addressed to "owner" at the street number of each piece of improved property to be assessed. If a street number has not been so assigned, then the post office box, rural route number, or any other mailing address of the

improved property shall be used for the mailing of the notice. (Ord. 88-25, 08-03-88)

**4-12-7. Protests by property owners - Public hearing - Resolution - Number of protests required - Failure to file protest, effect of.**

(1) Any person who is the owner of property to be assessed in the special improvement district described in the notice of intention shall have the right, within the time designated in the notice, to file in writing a protest to the creation of the special improvement district or making any other objections relating to it. The protest shall describe or otherwise identify the property owned by the person or persons making the protest.

(2) On the date and at the time and place specified in the notice of intention, the governing body shall in open and public session consider all protests so filed and hear all objections relating to the proposed special improvement district. The hearing may be adjourned from time to time to a fixed future time and place. After the hearing has been concluded and after all persons desiring to be heard have been heard, the governing body shall consider the arguments put forth and the protests made and may make such deletions and changes in the proposed improvements and in the area to be included in the special improvement district as it may consider desirable or necessary to assure adequate benefits to the property in the district but may not provide for the making of any improvements not stated in the notice of intention nor for adding to the district any property not included within the boundaries of the district unless a new notice of intention is given and a new hearing held.

(3)(a) After this consideration and determination, the governing body shall adopt a resolution either abandoning the district or creating the district either as described in the notice of intention or with deletions and changes made as authorized in subsection (1); but the governing body shall abandon the district and not create the same if the necessary number of protests as provided in this subsection (3) have been filed on or before the time specified in the notice of intention for the filing of protests after eliminating from such filed protests: (i) protests relating to property or relating to a type of improvement which has been deleted from the district and (ii) protests which have been withdrawn in writing prior to the conclusion of the hearing. For purposes of this section, the necessary number of protests shall mean the aggregate of the following:

(b) Protests representing one-half of the property to be assessed in cases where an assessment is proposed to be made according to frontage;

(c) Protests representing one-half of the area of the property to be assessed where an assessment is to be made according to area;

(d) Protests representing one-half of the assessed valuation of the property to be assessed where an assessment is proposed to be made according to assessed valuation;

(e) Protests representing one-half of the lots to be assessed where an assessment is proposed to be made according to lot; or

(f) Protests representing one-half of connections to be assessed where an assessment is proposed to be made according to number of connections.

(4) If less than the necessary number of protests are filed by the owners of the property to be assessed, the governing body shall have jurisdiction to create the special improvement district and proceed with the making of the improvements.

(5) Should the governing body create the special improvement district, it shall, within five days from the date of creating the district, file a copy of the notice of intention and the resolution creating the district, as finally approved, in the county recorder's office in the county in which the district is located. The county recorder shall maintain a public file of all special improvement districts created under this chapter.

(6) Any person who fails to file a protest within the time specified or having filed withdraws this protest, shall be deemed to have waived any objection to the creation of the district, the making of the improvements and the inclusion of his property in the district. The waiver, however, shall not preclude his right to object to the amount of the assessment at the hearing for which provision is made in section 4-12-17. (Ord. 88-25, 08-03-88)

#### **4-12-8. Contracting for improvements - Bids, publication and notice - Improvements for which contracts need not be let.**

(1) Except as otherwise provided in this section, improvements in a special improvement district shall be made only under contract duly let to the lowest responsible bidder for the kind of service or material or form of construction which may be determined upon. The improvements may be divided into parts and separate contracts let for each part or several such parts may be combined in the same contract. A contract may be let on a unit basis. A contract shall not be let until a notice to contractors that sealed bids for the construction of the improvements will be received by the governing body at a specified time and place and such notice has been published at least one time in a newspaper having general circulation in Tooele City at least fifteen days before the date specified for the receipt of bids;

provided, if by inadvertence or oversight, the notice is not published or is not published for a sufficient period of time prior to the receipt of bids, the governing body may still proceed to let a contract for such improvements if at the time specified for the receipt of bids it has received not less than three sealed and bona fide bids from contractors. The notice to contractors may be published simultaneously with the notice of intention. The governing body shall in open session at the time specified in the notice, open, examine and publicly declare the bids and may reject any or all bids when deemed for the public good and, at such or a later meeting, shall reject all bids other than the lowest and best bid of a responsible bidder. If the price bid by the lowest and best responsible bidder exceeds the estimated costs as determined by the engineer of Tooele City, the governing body may nevertheless award a contract for the price so bid. The governing body may in any case refuse to award a contract and may obtain new bids after giving a new notice to contractors or may determine to abandon the district or not to make some of the improvements proposed to be made.

(2) A contract need not be let for any improvement or part of any improvement the cost of which or the making of which is donated or contributed by any individual, corporation, the municipality, the state of Utah or the United States or any political subdivision of the state of Utah or of the United States. All such donations or contributions may be accepted by the municipality, but no assessments shall be levied against the property in the district for the amount of such donations or contributions.

(3) A contract need not be let as provided in this section where the improvements consist of the furnishing of utility services or maintenance of improvements. Such work may be done by the municipality itself. Assessments may be levied for the actual cost incurred by the municipality for the furnishing of such services or maintenance or, in case the work is done by the municipality, to reimburse the municipality for the reasonable cost of supplying such services or maintenance.

(4) A contract need not be let as provided in this section where any labor, materials or equipment to make any of the improvements are supplied by the municipality. Assessments may be levied to reimburse the municipality for the reasonable cost of supplying such labor, materials or equipment. (Ord. 88-25, 08-03-88)

#### **4-12-9. Payment of contracts - Method - Progress payments - Retainage escrow.**

(1) Any contract for work in any special improvement district and any contract for the purchase

of property necessary to acquire in order to make improvements in any special improvement district may provide that the contract price or property price shall be, or, at the option of the municipality, may be paid, in whole or in part by the issuance of special improvement bonds issued against the funds created by assessments levied to pay the costs and expenses of improvements in the special improvement district or by interim warrants issued as authorized by this act at the time such special improvement bonds or interim warrants, as the case may be, can be legally issued and delivered. If any contract is not paid from such sources in whole or in part or, if paid in part, to the extent not so paid from such sources, the municipality shall be responsible for advancing funds for payment of the contract price or property price from the general funds of the municipality or from other funds legally available for such purpose in the manner and at the time provided in the contract. From the proceeds of the sale of interim warrants or special improvement bonds or from funds paid on assessments not pledged for the payment of such bonds or warrants, the municipality may reimburse itself for the amount paid from its general funds or other funds except that the municipality may not reimburse itself for any of the costs of making the improvements properly chargeable to the municipality or for which assessments may not be levied.

(2) Any contract for work in a special improvement district may provide for payments to the contractor as the work progresses. If the contract so provides, payments may be made from time to time to the extent of not to exceed 90% of the value of the work done to the date of payment as determined by estimates of the engineer for the municipality with final payment to be made only after completion of the work by the contractor and acceptance of the work by the municipality. If payments payable to the contractor as the work progresses are retained pursuant to this subsection, they shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis. (Ord. 88-25, 08-03-88)

#### **4-12-10. Interim warrants.**

(1) The governing body, from time to time as work proceeds in a special improvement district, may issue interim warrants against the district (a) for not to exceed ninety percent in value of the work theretofore done upon estimates of the engineer of the municipality, (b) after completion of the work and acceptance thereof by the engineer of the municipality and the governing body, for one hundred percent of the value of the work so completed, and (c) where improvements in the district

require the acquisition of property, for not to exceed the property price. Subject to the provisions of section 1-16-9, the warrants may be issued to a contractor to apply at par value on the contract price for the improvements or to the owner or owners of the property to apply at par value on the property price. The warrants may also be issued and sold at not less than par value in such manner as the governing body may determine and the proceeds used to apply towards payment of the contract price and property price.

(2) Interim warrants shall bear interest from date of issue until paid at such rate or rates as may be fixed by the governing body. Interest accruing on interim warrants shall be included as a cost of the improvements in the special improvement district.

(3) Interim warrants and interest thereon shall be paid by the issuance of or by proceeds from the sale of special improvement bonds issued against the district or in cash received from the payment of assessments not pledged to the payment of the bonds or from any of such sources. (Ord. 88-25, 08-03-88)

#### **4-12-11. Connections of public utilities - Power to regulate - Connection at expense of company - Service owned or provided by municipality, power to assess cost of connection.**

The governing body may require in any special improvement district before paving or repaving is done within it that all water, gas, sewer, and underground electric and telephone connections be made under such regulations and at such distances from the street mains to the line of the property abutting upon the street to be paved or repaved as may be prescribed by resolution. The governing body may require that any waterworks company owning the water pipe main, any gas company owning the gas pipe main, and any electric or telephone company owning any underground electric or telephone main make these connections. Upon the neglect or failure of the company to do the same, the governing body may cause the same to be done; and the cost of this shall be deducted from any indebtedness of the municipality to the company, and no bills shall be paid to the company by the municipality until all such expense for pipe laying shall have been liquidated. The governing body shall also have the power at any time to assess for reasonable connection fees or for the cost of any sewer, water, gas, or electric connections when the municipality owns or supplies these services and owns the mains, to such depth as it shall deem just and equitable, upon the property benefited. (Ord. 88-25, 08-03-88)

#### **4-12-12. When assessments may be levied.**

Assessments for improvements in a special improvement district may be levied:

(1) At any time after all contracts for the making of the improvements have been let, the property price for all property acquired to make the improvements has been finally determined and the reasonable cost of any work to be done by the municipality has been determined; or

(2) For light service or park maintenance, at any time after the light service or park maintenance has commenced; or

(3) At any time after all of the improvements in the special improvement district are entirely completed and accepted. (Ord. 88-25, 08-03-88)

**4-12-13. Maximum amount which can be assessed - Payment from general funds.**

(1) Assessments for improvements in a special improvement district shall not in the aggregate exceed the sum of:

(a) The contract price;

(b) The reasonable cost of utility services, maintenance, labor, materials, or equipment supplied by the municipality;

(c) The property price, if any;

(d) The connection fees, if any;

(e) Interest on interim warrants issued against the special improvement district;

(f) Overhead costs not to exceed 15% of the sum of subsections (1)(a), (1)(b), (1)(c), and (1)(d).

(g) Where the assessment is levied prior to the time all of the improvements in the district are entirely completed and accepted, an amount for contingencies of not to exceed 10% of the sum of subsections (1)(a) and (1)(b).

(2) The municipality shall pay from its general funds or from other sources legally available for such purpose:

(a) That part of the overhead costs for which an assessment cannot be levied;

(b) Where assessments are levied prior to the time all improvements in the district are entirely completed, all costs of making the improvements for which an assessment was not levied; and

(c) The cost of making improvements for the benefit of property against which an assessment may not be levied. (Ord. 88-25, 08-03-88)

**4-12-14. Costs not payable by assessments.**

(1) Nothing in this act shall permit the levy of assessments to pay for the cost of ordinary repairs to pavement, sewers, drains, curbing, gutters or sidewalks, but such levies may be made for extraordinary repairs to such items. The cost of ordinary repairs shall be borne by the municipality. The governing body by ordinance or resolution may define what constitutes ordinary repairs and what constitutes extraordinary repairs.

(2) Where improvements in a special improvement

district involve changing the grade of a street, alley or sidewalk, one-half of the cost of bringing the street, alley or sidewalk to the established grade shall be paid by the municipality.

(3) Where improvements in a special improvement district involve improvements to the intersections of streets or spaces opposite alleys, assessments may be levied for the cost of such improvements. (Ord. 88-25, 08-03-88)

**4-12-15. Property of public agencies not assessable - Charges for services or materials permitted - Property acquired after creation of district.**

(1) Except as provided in subsection (2), a municipality may not levy an assessment against property owned by the federal government, the state of Utah, any county, school district, municipality or other political subdivision of the state of Utah or by any department or division of any such public agency even though such property is benefited by improvements made, but each such public agency is authorized to contract with the municipality for the making of such improvement and for the payment of the cost thereof to the municipality. Nothing in this section shall prevent a municipality from imposing or a public agency from paying reasonable charges for any services or materials actually rendered or supplied by the municipality to the public agency, including, by way of example and not in limitation, charges for water, lighting, or sewer services.

(2) An assessment may be levied and enforced against property acquired by a public agency which is within a special improvement district created prior to the acquisition. Property acquired by a public agency which is subject to the lien of an assessment at the time of acquisition shall continue to be subject to such lien and to enforcement of the same against the property if the assessment and interest accruing thereon is not paid when due. (Ord. 88-25, 08-03-88)

**4-12-16. Areas which may be assessed - Assessment to be equal and uniform - Alternate methods of assessment.**

Assessments shall be levied on all blocks, lots, parts of blocks and lots, tracts or parcels of property bounding, abutting upon or adjacent to the improvements or which may be affected or specially benefited by the improvements to the extent of the benefits to such property by reason of the improvements. Assessments may be to the full depth of such property or to such depth as the governing body may provide. Assessments shall be equal and uniform according to the benefits received. Assessments may be according to area or frontage or assessed valuation or, in the case of water supplied for

irrigation purpose, according to the amount of water used, all as the governing body may consider fair and equitable. Different improvements in a special improvement district may be assessed according to different methods. An allowance shall be made for corner lots so that they are not assessed at full rate on both streets. (Ord. 88-25, 08-03-88)

**4-12-17. Assessment list - Board of equalization and review - Publication and mailing of notice - Hearings - Corrections in assessments - Report of board - Failure to appear at hearing, effect of.**

(1) Before an assessment is levied, an assessment list shall be prepared designating each parcel of property proposed to be assessed and the amount of the assessment apportioned to this property as provided in this chapter. Upon completion of the assessment list, the governing body shall appoint a board of equalization and review consisting of three or more of the members of the governing body or at the obligation of the governing body of the municipality, consisting of the city recorder or designee, city engineer or public works director or a designee from the city attorney's office, and shall give public notice of the completion of the assessment list and of the time and place of the holding of public hearings relating to the proposed assessments. Appeal from a decision of a city board of equalization and review may be taken to the governing body of the city within 60 days.

(2) The notice shall be published in a newspaper published in the municipality or, if there is no newspaper published in the municipality, then in a newspaper having general circulation in the municipality, except that in cities of the third class or towns where there is no newspaper published, the governing body may provide that the notice be given by posting in lieu of publication. The notice shall be published at least one time or, if posted, shall be posted in at least three public places in the municipality and in either case the first publication or posting shall be at least 20 and not more than 35 days prior to the date the board will begin its hearings. In addition, not later than 10 days after the first publication or posting of the notice, the notice shall be mailed, postage prepaid: (a) addressed to each owner of property to be assessed within the special improvement district at the last known address of the owner, using for this purpose the names and addresses appearing on the last completed real property assessment rolls of the county in which the property is located; and (b) addressed to "owner" at the street number of each piece of improved property to be assessed. If a street number has not been assigned, then the post office box, rural route number, or any other mailing address of the improved property shall be used for the mailing of the notice.

(3) The board of equalization and review shall convene at the time and place specified in the notice. Hearings shall be held on not less than three consecutive days for at least one hour between 9:00 a.m. and 9:00 p.m. as specified in the notice. The hearings may be adjourned or recessed from time to time to a specific place and a specific hour and day until the work of the board shall have been completed. At each hearing the board shall hear arguments from any person who believes himself to be aggrieved, including arguments relating to the benefits accruing to any tract, block, lot, or parcel of property in the district or relating to the amount of the proposed assessment against that tract, block, lot or parcel.

(4) After the hearings have been completed, the board shall consider all facts and arguments presented and shall make those corrections in any proposed assessment as it may consider just and equitable. These corrections may eliminate one or more pieces of property or may increase or decrease the amount of the assessment proposed to be levied against any piece of property. In the event the corrections result in an increase of any proposed assessment, before approving the corrected assessment list, the board shall cause to be mailed to each owner of property whose assessment is to be increased a notice stating that the assessment will be increased, the amount of the proposed new assessment, that a hearing will be held at which the owner may appear and make any objections to the increase, and the time and place of the hearing. The notice shall be mailed to the last known address of the owner using for this purpose the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located, and in addition a copy of the notice shall be addressed to "owner" and shall be so mailed addressed to the street number of each piece of improved property to be affected by the increased assessment. If a street number has not been assigned, then the post office box, rural route number, or any other mailing address of the improved property shall be used for the mailing of the notice. The notice shall be mailed at least 15 days prior to the date stated in the notice for the holding of the new hearing.

(5) After all corrections shall have been made and all hearings, including hearings under subsection (4) shall have been held, the board shall report to the governing body its findings that each piece of property within the special improvement district will be benefited in an amount not less than the assessment to be levied against the property and that no piece of property listed on the assessment will bear more than its proportionate share of the cost of the improvement. These findings, when approved by the governing body or after passage of time for appeal and review by the



governing body of the city, shall be final and no appeal may be taken from them. Upon receipt of the report from the board, the governing body may proceed with the levy of the assessments.

(6) Every person whose property is subject to assessment and who fails to appear before the board of equalization and review to raise his objections to the levy of the assessment shall be deemed to have waived all objections to the levy except the objection that the governing body failed to obtain jurisdiction to order the making of the improvements which the assessment is intended to pay. (Ord. 88-25, 08-03-88)

**4-12-18. Ordinance levying assessments - Publication - Description of property - Recording.**

(1) Notwithstanding the provisions of any law concerning the publication, posting or effective date of ordinances, any ordinance levying assessments shall be published one time in a newspaper published in the municipality, or if there is no newspaper published therein, then in a newspaper having general circulation in the municipality and the ordinance shall be effective on the date of such publication or at such later date as may be provided in the ordinance. No other publication and no posting of such an ordinance shall be required nor shall it be necessary to declare that the immediate preservation of the peace, health or safety of the municipality requires the ordinance to be effective on the date of publication or at such later date.

(2) An ordinance levying assessments need not describe each block, lot, part of block or lot, tract or parcel of property to be assessed. It shall be sufficient if the ordinance incorporates by reference the corrected assessment list.

(3) Within five days after adopting the assessment ordinance, the governing body shall file a copy of the ordinance with the county recorder's office in the county in which the assessed property is located. If the assessment ordinance incorporates the assessment list by reference, the governing body shall also file a copy of the final assessment list with the county recorder. The county recorder shall maintain a public file of all assessment ordinances and assessment lists adopted and approved under this chapter. (Ord. 88-25, 08-03-88)

**4-12-19. Supplemental assessment.**

In case of any deficiencies, omissions, errors or mistakes in making any assessment or levy in respect to the total cost of the improvements or in respect to any tract, lot, block or parcel in the special improvement district which has not been fully assessed or which has been assessed in an incorrect amount, the governing body may make a supplemental assessment and levy to supply such deficiencies, omissions, errors, or mistakes after the holding of a hearing and giving notice as

provided in subsection (4) of section 4-12-17. (Ord. 88-25, 08-03-88)

**4-12-20. Payment of assessments in installments - Frequency - Interest.**

(1) An assessment shall be levied at one time upon the property. The governing body may provide in the ordinance levying the assessment that all or such portion of the assessment as is designated in the ordinance may be paid in installments over a period of time not exceeding 20 years from the effective date of the ordinance levying the assessment, except that in any case where the installments are to be payable over a period of time exceeding 10 years from the effective date, the governing body shall find and determine that the improvements for which the assessment are made have a reasonable useful life for the full period during which the installments are payable or that it would otherwise be in the best interests of the municipality and of the owners of property to be assessed to provide for payment of the assessments over a period in excess of 10 years.

(2) Installments shall be payable at least annually but may be payable at more frequent intervals as provided by the ordinance levying the assessment, except that if the ordinance provides for payment of the assessment over a period in excess of 10 years from the effective date of the same, the ordinance may also provide that no installments of these assessments shall be payable during all or any portion of the period ending three years after this effective date.

(3) Where the assessment is payable in installments, the ordinance shall provide that the unpaid balance of the assessment shall bear interest at a rate or rates determined by the governing body from the effective date of the ordinance or from such other date as may be specified in the ordinance until due; except that where the assessment is for light service or park maintenance, interest shall be charged only from the due date of each installment, and the first installment for any assessment shall be due 15 days after the effective date of the ordinance. Interest shall be paid in addition to the amount of each installment annually or at more frequent intervals as provided in the ordinance levying the assessment. (Ord. 88-25, 08-03-88)

**4-12-21. Prepayment of unpaid installments.**

(1) Assessments payable in installments may be paid prior to the due date of any such installment as provided in this section but not otherwise.

(2) The whole or any part of the assessment may be paid without interest within fifteen days after the ordinance levying the assessment becomes effective. If the assessment is paid in part, the unpaid balance shall

be payable in substantially equal installments over the period of time installments are payable as provided in the assessment ordinance.

(3) After such fifteen-day period and if the ordinance levying the assessment so provides, all unpaid installments of assessments levied against any piece of property (but only in their entirety) may be paid prior to the dates on which they become due, but any such prepayment may include an additional amount equal to the interest which would accrue on the assessment to the next succeeding date on which interest is payable on any special improvement bonds issued in anticipation of the collection of the assessments, plus such additional amount as, in the opinion of the governing body or of any officer of the municipality designated by the governing body, is necessary to assure the availability of money to pay interest on the special improvement bonds as interest becomes due and payable or interest may be charged to the date of prepayment plus any premiums which may become payable on redeemable bonds which may be called in order to utilize the assessments thus paid in advance. (Ord. 88-25, 08-03-88)

#### **4-12-22. Default in payment.**

(1) When an assessment is payable in installments and a default occurs in the payment of any installment when due, the governing body may declare the unpaid amount to be delinquent, immediately due, and subject to collection as provided in this chapter. In addition, it may accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and interest then due to be immediately due and payable. Interest shall accrue and be paid on all amounts declared to be delinquent or accelerated and immediately due and payable and shall be paid at such rate as shall be determined by the governing body until the next succeeding date after payment or collection on which interest is payable on any bonds issued. Costs of collection as approved by the governing body or required by law shall be charged and paid on all amounts declared to be delinquent or accelerated and immediately due and payable.

(2) Notwithstanding the provisions of subsection (1), if prior to the final date that payment may be legally made under a final sale or foreclosure of property to collect delinquent assessment installments, the owner pays the amount of all unpaid installments which are past due and delinquent with interest at the rate determined by the governing body to date of payment plus all approved or required costs, the owner shall then be restored to the right to pay in installments in the same manner as if default had not occurred. (Ord. 88-25, 08-03-88)

#### **4-12-23. Lien for assessment - Priority.**

An assessment or any part or installment of it, any

interest accruing, and the penalties and costs of collection as provided in Part 13, Chapter 2, Title 59 of the Utah Code Annotated shall constitute a lien against the property upon which the assessment is levied on the effective date of the ordinance levying the assessment. This lien shall be superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien, or other encumbrance and shall be equal to and on a parity with the lien for general property taxes. The lien shall apply without interruption, change in priority, or alteration in any manner to any reduced payment obligations and shall continue until the assessments, reduced payment obligations, and any interest, penalties, and costs on them are paid, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax, or other assessment or the issuance of a tax deed, an assignment of interest by the county, or a sheriff's certificate of sale or deed. (Ord. 88-25, 08-03-88)

#### **4-12-24. Sale of property to collect assessment.**

(1) All assessments made under this chapter or any part or installment of same shall be paid and collected when due or the property charged with the assessment shall be sold for the amount due, plus interest, penalties, and costs, in such manner as may be provided by ordinance of the municipality or in the manner provided by chapter 10, title 59, Utah Code Annotated, for the sale of property for delinquent general property taxes. All pertinent provisions of chapter 10, title 59, Utah Code Annotated, shall apply under this chapter, including the foreclosure of lien provisions, unless this chapter shall modify these provisions and except that the wording of chapter 10, title 59 shall be changed as appropriate to mean the assessments permitted to be imposed by this chapter rather than general property taxes so as to accomplish the purposes of this chapter.

(2) The governing body may also provide for the summary sale of any property assessed under this chapter after a delinquency shall have occurred in the payment of any assessment or part or installment of it. The sale shall be in the manner provided for actions to foreclose mortgage liens or trust deeds, except that if at the sale no person or entity shall bid and pay the municipality the amount due on the assessment plus interest and costs, the property shall be deemed sold to the municipality for these amounts. The municipality shall be permitted to bid at the sale.

(3) The remedies provided in this chapter for the collection of assessments and the enforcement of liens shall be deemed and construed to be cumulative and the use of any one method or means of collection or enforcement shall not deprive the municipality of the

use of any other method or means. (Ord. 88-25, 08-03-88)

**4-12-25. Sale of property - Redemption - Payments from guaranty fund - Reimbursement from sale proceeds.**

In case any assessment or any part or installment of it becomes delinquent and the property subject to same is sold to the municipality at preliminary tax sale for the collection of the delinquent amount, plus interest, penalties, and costs, redemption and private sales of the property shall be the same as provided in chapter 10, title 59, Utah Code Annotated, relating to general property tax delinquencies. In order to avoid default in the payment of any outstanding bonds or interim warrants issued under this chapter, the municipality may determine to pay any delinquent amounts due, plus the interest, penalties, and costs, or it may pay these amounts and the full balance of the assessment if accelerated or any parts or installments that may become due during the period of redemption. All amounts paid by the municipality for the delinquency may be paid out of the guaranty fund and charged against the delinquent property. Upon the final tax sale of the property so charged, all amounts paid by the municipality shall be included in the sale price of the property recovered in the sale, and the guaranty fund reimbursed for it. If the property so charged is sold to the municipality at final tax sale and additional assessment installments will become due, the municipality shall pay the additional installments out of the guaranty fund, recover their amount in any sale of the property, and reimburse the guaranty fund when the property is sold. (Ord. 88-25, 08-03-88)

**4-12-26. Money received from assessments - Disposition - Investment.**

Where the municipality levies any assessment for making and paying for any local improvements, all monies paid into the municipal treasury in payment of the assessment and interest on it shall be deemed to be part of and constitute a fund for the payment of the costs and expenses of making the local improvements and for the payment of interim warrants and special improvement bonds with interest on them issued against the special improvement district created to make the improvements and for no other purposes. The fund so created shall be held in the custody of the treasurer of the municipality, kept intact and separate from all other funds and monies of the municipality, and shall be paid out only for the purposes specified in this chapter. Any idle money in the fund may be invested appropriately by the treasurer, and any interest received from the same shall be paid into the fund exclusively and shall be used for the same purposes for which the fund was

established. When all bonds or interim warrants or both have been paid or redeemed in full, any money remaining in the fund shall be transferred as provided in section 4-12-32. (Ord. 88-25, 08-03-88)

**4-12-27. Special improvement bonds.**

Fifteen days or more after the effective date of any ordinance levying an assessment in a special improvement district, the governing body of the municipality levying the assessment, by ordinance or resolution, may authorize the issuance of special improvement bonds to pay the costs of the improvements in the district against the funds created by the assessment. Special improvement bonds so authorized shall not exceed the unpaid balance of the assessments at the end of this 15-day period, shall be fully negotiable for all purposes, shall mature at such time or times not exceeding the period of time over which installments of the assessments are due and payable plus one year, shall bear interest at the lowest rate or rates obtainable, shall be payable at such place or places, shall be in such form and generally shall be issued and shall be sold in such manner and with such details as may be provided by ordinance or resolution. All these bonds shall be dated no earlier than the effective date of the ordinance levying the assessment. Except for special improvement bonds issued for lighting service or park maintenance purposes (which bonds shall bear interest only from the due date), interest shall be paid semiannually or annually as determined by the governing body and may be evidenced by interest coupons attached to the bonds. The governing body may provide that the bonds shall be callable for redemption prior to maturity and fix the terms and conditions of redemption, including the notice to be given and the premium, if any, to be paid; but no bonds shall be callable for redemption unless the terms and conditions of redemption are stated on the face of the bonds. The bonds shall be signed and may be countersigned by any officials of the municipality (including a member or members of the governing body) as the governing body of the municipality shall designate; and, if so provided by the governing body, the signatures of the bonds and interest coupons may be by facsimile signature except that at least one of the signatures on the face of the bonds shall be by manual signature. Bonds or interest coupons bearing the signatures (manual or facsimile) of officers in the office on the date of execution of same shall be valid and binding obligations notwithstanding that before the delivery of the bonds any or all of the persons whose signatures appear on them shall have ceased to be officers of the municipality. (Ord. 88-25, 08-03-88)

**4-12-27.1. Refunding of special improvement bonds - Issuance - Payment - Security - Reduced payment obligations.**

Special improvement bonds may be refunded, in whole or in part, at or in advance of their maturity, whether at stated maturity or upon redemption or declaration of maturity, at the option of the municipality, by the issuance of special improvement refunding bonds pursuant to resolution of the governing body under the authority of and in the manner provided by this chapter, Chapter 27, Title 11, the Utah Refunding Bond Act, Utah Code Annotated, as provided in Subsection (10), and upon compliance with the following:

(1) Special improvement refunding bonds shall:

(a) be payable solely from the same funds from which the prior bonds are payable;

(b) mature not later than the date of final maturity of the prior bonds;

(c) not mature or bear interest at any time in amounts which cannot be paid when due from the payments of the assessments and interest thereon, or the reduced payment obligations, as applicable, assuming that payments of these assessments, when due, together with the amounts of any prior payments or prepayments of these assessments, reduced payment obligations, and interest previously made and which remain available for payment of the special improvement refunding bonds; and

(d) bear interest payable semiannually or annually, as determined by the governing body.

(2) Special improvement refunding bonds may:

(a) be issued in bearer form with or without interest coupons attached, or in registered form in accordance with Chapter 7, Title 15, the Registered Public Obligations Act, Utah Code Annotated, as determined by the governing body;

(b)(i) be in a form and contain details consistent with this chapter, (ii) be payable at a place or places, (iii) be delivered in exchange for the prior bonds, or (iv) be sold in a manner, at terms, and with details consistent with this chapter, and at a price or prices above, at, or below par, as determined by the governing body.

(c) be callable for redemption prior to maturity upon terms, conditions, and notice, and premium, if any, to be paid, as the governing body determines, but no special improvement refunding bonds are callable for redemption unless the terms and conditions of redemption are stated on their face;

(d) be issued for the purpose of refunding one or more issues of prior bonds of the municipality and, if issued to refund two or more issues of prior bonds, be issued in a single series, to refund all of the issues of prior bonds to be refunded, or in two or more series to refund one or more of these issues of prior bonds.

(3) The governing body may provide for the payment of incidental refunding costs of the special improvement refunding bonds as follows:

(a) by advancing funds from the general or other funds of the municipality, if the governing body: (i) finds and determines that this advance of municipal funds is in the best interest of the municipality and its citizens, including, without limitation, the owners of property within the district, and (ii) provides that the assessments from which the prior bonds are payable and the interest payable thereon may not be reduced during such period as is necessary to provide funds from the payment of these assessments and interest thereon with which to reimburse the municipality for all funds so advanced by it for the payment of incidental refunding costs, together with interest thereon at a rate or rates equal to the interest rate or rates payable on these assessments;

(b) from any premium received from the sale of the special improvement refunding bonds;

(c) from any earnings on the investment of the proceeds of the special improvement refunding bonds pending their use to redeem the prior bonds;

(d) from any other sources legally available to the municipality for this purpose; or

(e) from any combination of Subsections (3)(a) through (d).

(4) Special improvement refunding bonds and any interest coupons attached to them shall be executed by the municipality by the manual or facsimile signature or signatures of any officials of the municipality, including a member of the governing body, as the governing body designates. Any signatures of such officials may be attested by the manual or facsimile signature of another official of the municipality, including a member of the governing body, as the governing body designates. In addition to these signatures, any special improvement refunding bond may include a certificate or certificates signed by the manual or facsimile signature or an authenticating agent, registrar, transfer agent, or the like. At least one signature of an authorized official or other persons required or permitted to be placed on the special improvement refunding bonds shall be a manual signature. Special improvement refunding bonds and interest coupons bearing the signatures, manual or facsimile, of officers in office on the date of execution of the bonds or coupons shall be valid and binding obligations even if before the delivery of the special improvement refunding bonds or interest coupons any or all of the persons whose signatures appear on them have ceased to be officers of the municipality.

(5) (a) Special improvement refunding bonds and the interest thereon shall be payable from and secured by the same assessments and interest thereon

from which the prior bonds were payable and were secured, as they may be reduced by the amending ordinance described in Subsection (8), and may be payable from and secured by the Special Improvement Guaranty Fund, and shall be payable from and secured by the Special Improvement Guaranty Fund if the prior bonds were payable from and secured by this fund.

(b) The governing body shall:

(i) adopt an ordinance amending the prior ordinance, as provided in Subsection (8); and

(ii) give notice of any reduced payment obligations to the owners of properties assessed in the prior ordinance, as provided in Subsection (9).

(c) Neither the amendment of the prior ordinance nor the issuance of special improvement refunding bonds shall affect the validity of, or, except for the amounts of any reductions to the original or prior assessments or interest thereon, the continued enforceability of the original or any other prior assessments or the interest thereon. Neither this amendment nor the issuance of the special improvement refunding bonds shall affect the validity of, or, except for the amounts of any reductions to the original or prior assessments or interest thereon, the enforceability or priority of the lien thereof on the properties upon which the assessments were levied. All these reductions to the original or prior assessments and the interest thereon shall continue to exist in favor of the special improvement refunding bonds. All these liens and priorities shall continue to exist against these properties to secure the payment of the reduced payment obligations and the special improvement refunding bonds in the same manner and to the same extent, except for the amounts of any reductions to the original or prior assessments or interest thereon, as the original and any other prior assessments, interest thereon, and the prior bonds were secured by the original assessments, interest thereon, and the original liens and priorities.

(d) It is the intent of the governing body that there be no impairment of the validity of, or, except with respect to the amounts of these reductions to the original or prior assessments or interest thereon, of the enforceability or priority of any of these assessments, interest thereon, or liens as a result of the amendment of the prior ordinance or the issuance of the special improvement refunding bonds.

(6) This lien securing any reduced payment obligations from which the special improvement refunding bonds are payable and secured shall be subordinate to the lien securing the original or prior assessments, interest thereon, and the prior bonds until the principal of, interest on, and redemption premium, if any, on the prior bonds are fully paid. Following this payment, this lien shall continue as provided in Section 4-12-23, as security for the payment of the reduced

payment obligations, the penalties and costs of collection thereof, and the payment of the principal of, interest on, and redemption premium, if any, on the special improvement refunding bonds.

(7) Unless the principal of, interest on, and redemption premiums, if any, on the prior bonds are paid simultaneously with the issuance of the special improvement refunding bonds, the municipality shall irrevocably set aside the proceeds of the special improvement refunding bonds in an escrow or other separate account which shall be pledged as security for the payment of the principal of, interest on, and redemption premiums, if any, on the special improvement refunding bonds or the prior bonds, or both.

(8) The amending ordinance referred to in Subsection (5)(b)(i), shall comply with the following:

(a) Subject to the provisions of Subsection (3)(a), the amount by which the principal or interest, or both, payable on the special improvement refunding bonds is less than the amount of principal or interest, or both, payable on the prior bonds shall be applied to reduce the assessments levied by the prior ordinance or the interest payable on those assessments, or both, as determined by the governing body. Any reductions of the assessments levied by the prior ordinance or of interest payable on those assessments, or both, shall be made in such manner that the then unpaid assessments levied against each of the assessed properties and the unpaid interest on these assessments shall receive a proportionate share of the reductions. These reductions do not apply to assessments and interest thereon which have been paid.

(b) The amending ordinance shall state the amounts of the reduced payment obligations for each of the properties assessed in the prior ordinance. It is sufficient if the amending ordinance incorporates by reference a revised assessment list approved by the governing body which contains these reduced payment obligations.

(c) The amending ordinance need not describe each block, lot, part of block or lot, tract, or parcel of property assessed.

(d) The amending ordinance shall be published and shall be effective in accordance with Subsection 4-12-18(1) and, within five days after adopting the amending ordinance, the governing body shall file a copy thereof, together with a copy of the revised assessment list, if it is incorporated by reference in the amending ordinance, with the county recorder's office in the county where the assessed property is located, to be maintained by the county recorder with the public file of assessment ordinances and assessment lists as provided in Subsection 4-12-18(3).

(e) The amending ordinance shall state the date or dates on which any reductions in the assessments and the interest thereon levied in the prior ordinance will be effective. The date or dates may not be prior to the date when all of the principal of, interest on, and any redemption premiums on the prior bonds and any advances of funds made under Subsection (3)(a) are fully paid.

(9) The notice to owners of assessed properties of reductions in their assessments and interest payments, referred to in Subsection (5)(b)(ii): (a) shall identify the property subject to the assessment; (b) shall state the amount or amounts of the reduced payment obligations which will be payable from and after the applicable date stated in the amending ordinance; and (c) may contain any other information which the governing body deems appropriate.

(10) The notice referred to in Subsection (5)(b)(ii) shall be mailed, postage prepaid, not less than 21 days prior to the date the first payment of the reduced assessments becomes due:

(a) addressed to each owner of assessed property within the special improvement district in the names and at the addresses appearing on the final assessment filed with the county recorder pursuant to Section 4-12-18, or any revisions to this list made by the municipality; and

(b) addressed to "owner" at the street number of each piece of improved, assessed property. If a street number has not been assigned, then the post office box, rural route number, or any other mailing address of the improved property shall be used for the mailing of the notice. This notice may be included with or in any other notices regarding the payment of assessments and interest thereon sent to the property owners in the district within the time and addressed as stated above. Neither the failure to give notice nor any defect in its content of the manner or time in which it is given shall affect the validity or enforceability of the amending ordinance or the special improvement refunding bonds or the validity, enforceability, or priority of the reduced payment obligations. Whether or not this notice is given, no other notice is required to be given to the owners of the assessed properties in connection with the issuance of the special improvement refunding bonds.

(11) To the extent it is not inconsistent with this chapter, Chapter 27, Title 11, the Utah Refunding Bond Act, Utah Code Annotated, shall apply to the issuance of special improvement refunding bonds. The provisions of this chapter relating to special improvement refunding bonds apply to all special improvement bonds issued and outstanding or which may hereafter be issued and outstanding. This chapter applies to all special improvement refunding bonds issued under this chapter even though the prior bonds which are refunded thereby

were issued under any other law, including, without limitation, any law which has been repealed. (Ord. 88-25, 08-03-88)

#### **4-12-28. Objection to assessment - Actions to enjoin levy or set aside proceedings.**

(1) No assessment or proceeding in a special improvement district shall be declared void or set aside in whole or in part in consequence of any error or irregularity which does not go to the equity or justice of the assessment or proceeding. However, any party feeling aggrieved by an assessment or proceeding and who has not waived his objections thereto as provided in section 4-12-7 or 4-12-17 shall have the right to commence a civil action against the municipality to enjoin the levy or collection of the assessment or to set aside and declare unlawful the proceedings.

(2) Any such action must be commenced and summons must be served on the municipality not later than thirty days after the effective date of the ordinance levying assessments in the special improvement district. Such action shall be the exclusive remedy of any aggrieved party. No court shall entertain any complaint which the party was authorized to make but did not make in a protest filed pursuant to section 4-12-7 or at hearings held pursuant to section 4-12-17 or any complaint that does not go to the equity or justice of the assessment or proceeding.

(3) After the expiration of such thirty-day period:

(a) The special improvement bonds issued or to be issued against the district and the assessments levied in the district shall become incontestable as to all persons who have not commenced the action provided for in this section, and

(b) No suit to enjoin the issuance or payment of the bonds, the levy, collection or enforcement of the assessments or in any other manner attacking or questioning the legality of the bonds or assessments may be instituted in this state and no court shall have authority to inquire into such matters. (Ord. 88-25, 08-03-88)

#### **4-12-29. Liability of municipality - Payment of bonds - Illegal assessments.**

(1) Special improvement bonds are not a general obligation of the municipality. No municipality shall be held liable for the payment of any special improvement bond except to the extent of the funds created and received by assessments against which the bonds are issued and to the extent of its special improvement guaranty fund; but the municipality shall be held responsible for the lawful levy of all assessments, for the creation and maintenance of the special improvement guaranty fund as provided by law, and for faithful accounting, collection, settlement

and payment of the assessments and for the moneys of said fund.

(2) If any property shall be illegally assessed or any property which is by law exempt from assessment for local purposes shall be so assessed, the municipality so assessing such property shall be liable to the holders of special improvement bonds issued against the funds created by such assessments, which amount shall be paid from the general fund of the municipality. (Ord. 88-25, 08-03-88)

**4-12-30. Total assessments greater than cost of improvements - Surplus to special improvement guaranty fund - Abandonment of improvement - Rebate to property owners.**

Where an assessment is levied prior to the time all improvements in the district are entirely completed and accepted, and, on completion and acceptance, the total cost of the improvements for which assessments were levied is less than the total amount of the assessments, the surplus shall be placed in the special improvement guaranty fund. If special improvement bonds have been issued by the district prior to the time the surplus is determined, the surplus shall be held in the guaranty fund and used for payment of the bonds and interest and any penalties and costs. If an improvement project is abandoned after assessments have been levied but before the improvements have been started, the full amount of the assessments levied, less any damages or costs related to the abandonment, shall be rebated to the property owner at the time the rebate is made of the property assessed at the last known address of the owner, using for this purpose the names and addresses appearing on the last completed real property assessment rolls of the county in which the property is located. If an improvement project is abandoned prior to its completion and acceptance but after assessments have been levied, the amount of the assessments in excess of that required to pay for the improvements to the point of abandonment or termination including any costs and damages, shall be rebated as provided in this section. (Ord. 88-25, 08-03-88)

**4-12-31. Special Improvement Guaranty Fund - Sources - Uses - Investment - Special improvement refunding bonds.**

(1) Any municipality which has issued or may subsequently issue any special improvement bonds or special improvement refunding bonds, by appropriation from the general fund or by the levy of a tax of not to exceed .0002 in any one year or by the issuance of general obligation bonds or by appropriation from such other sources as may be determined by the governing body, shall create a fund for the purpose of guaranteeing, to the extent of this fund, the payment of special

improvement bonds and special improvement refunding bonds and interest accruing on them issued against special improvement districts for the payment of improvements made in the district. This fund shall be designated as the "Special Improvement Guaranty Fund."

(2) The municipality may lawfully covenant for the benefit of the holders of special improvement bonds and special improvement refunding bonds that so long as the bonds and special improvement refunding bonds are outstanding and unpaid:

(a) it will create the fund;

(b) it will, by any of the methods authorized by this section, provide amounts to be transferred to the fund equal each year to such amount as a tax levy of .0002 will produce until the fund is equal to not less than 25% of the amount of all outstanding special improvement bonds and special improvement refunding bonds of all special improvement districts of the municipality, and subsequently, it will transfer to the fund such amounts at least yearly as may be required to maintain or replenish the fund to this percentage; and

(c) the funds on deposit in the guaranty fund shall be invested either in:

(i) demand deposits and time certificates of deposits of federally insured depositories of the state;

(ii) bonds or other evidence or indebtedness of the United States of America or any of its agencies or instrumentalities when these obligations are guaranteed as to principal and interest by the United States of America; or

(iii) repurchase agreements with any federally insured bank or savings and loan association in the state, acting as principal or agent, for securities of the United States of America or other evidences of indebtedness of like quality.

(3) For the purposes of Subsection (2)(b), special improvement refunding bonds are not deemed to be outstanding until the principal of, interest, and any redemption premiums on the special improvement bonds which are refunded by the special improvement refunding bonds are fully paid. (Ord. 88-25, 08-03-88)

**4-12-32. Interest charges, penalties and other collections greater than expenses - Excess transferred to guaranty fund.**

All interest money collected or interest received from the investment of the improvement or bond fund, penalties, costs, and other amounts collected by the municipality for the benefit and credit of any special improvement fund and remaining on hand after all special improvement bonds or interim warrants, together with interest on them, drawn against a special

improvement fund shall have been fully paid and canceled, shall be transferred by the treasurer of the municipality to the special improvement guaranty fund. (Ord. 88-25, 08-03-88)

**4-12-33. Special improvement fund insufficient to pay bond - Payment by warrant against guaranty fund.**

When any special improvement bond drawn against any special improvement fund is presented to the municipality for payment and there is not a sufficient amount in the special improvement fund to pay the same, payment therefor shall be made by warrant drawn against the special improvement guaranty fund. (Ord. 88-25, 08-03-88)

**4-12-34. Purchase by municipality of property sold for delinquent assessments - Assessment installments paid from guaranty fund - Reimbursement of guaranty fund from sale proceeds.**

In the event any property is sold to the municipality at final tax sale conducted to collect delinquent property taxes or delinquent assessments levied under this chapter, the municipality shall, for as long as the municipality retains ownership of the property so sold, pay all annual assessment installments that become due, including the interest on them. The payments shall be made out of the guaranty fund and paid into the special improvement district fund of the district where the property is located. If the municipality sells the property it has received from final tax sale by installments or otherwise, the purchase price for it shall not be less than an amount sufficient to reimburse the guaranty fund for all amounts paid out of the fund on behalf of this property for delinquent assessments or parts or installment of them, plus interest, penalties, and costs. The sales price of the property and any interest on it paid in installments shall be paid into the guaranty fund to the extent of the full reimbursement as required in this section. This section shall be read and interpreted in conjunction with sections 1-16-24 and 1-16-25. (Ord. 88-25, 08-03-88)

**4-12-35. Payment on bonds from guaranty fund - Municipality subrogated to right of holders.**

Whenever a municipality shall have paid under its guaranty any sum on account of principal or interest on the special improvement bonds of any special improvement district, it shall be subrogated to the rights of the holders of such bonds or interest coupons so paid, and such bonds or coupons and the proceeds thereof shall become a part of the special improvement guaranty fund. (Ord. 88-25, 08-03-88)

**4-12-36. Insufficient balance in guaranty fund - Replenishment by municipality - Warrants - Increase**

**in annual tax levy.**

Whenever there is not a sufficient amount of cash in the Special Improvement Guaranty Fund at any time to make all purchases of property bid on by the municipality at sales of property for delinquent assessments, the governing body may replenish this fund by transfer or appropriation from the General Fund of the municipality or from other available sources as may be determined by it. Warrants drawing interest at the rate or rates determined by the governing body may be issued against the fund to meet any financial liabilities accruing against it, but at the time of making its next annual tax levy, the municipality shall provide for the levy of a sum sufficient, with other resources of the fund, to pay warrants so issued and outstanding, the tax for such purpose not to exceed .0002 in any one year. (Ord. 88-25, 08-03-88)

**4-12-37. Excess amount in guaranty fund - Transfers to General Fund - Special improvement refunding bonds.**

Whenever the amount in the special improvement guaranty fund exceeds 25% of the average amount of all special improvement bonds and special improvement districts of the municipality outstanding during the preceding three-year period, the governing body of the municipality may by resolution transfer all amounts in excess of this percentage to the general fund of the municipality, except that the transfer may not be made if the amount in the guaranty fund is less than 25% of the amount of all special improvement bonds and special improvement refunding bonds of all special improvement districts of the municipality which are outstanding at the time of the proposed transfer. For the purpose of this section, special improvement refunding bonds are not deemed to be outstanding until the principal of, interest, and any redemption premiums on the special improvement bonds which are refunded by the special improvement refunding bonds are fully paid. (Ord. 88-25, 08-03-88)

**4-12-38. Municipality's right to make other improvements not restricted - Authority not affected by other laws.**

This act is intended to afford an alternative method for the making of improvements by Tooele City, the creation of special improvement districts, the levy of assessments and the issuance of special improvement bonds by Tooele City and shall not be so construed as to deprive Tooele City of the right to make improvements, create special improvement districts, levy assessments or other special taxes or issue special improvement bonds under authority of any other law of this state now in effect or hereafter enacted, but nevertheless this act shall constitute full



authority for the making of improvements, creation of special improvement districts, levy of assessments and issuance of special improvement bonds by Tooele City. No act hereafter passed by the legislature amending other acts relating to the same subject matter as covered by this act shall be construed to affect the authority to proceed under this act in the manner herein provided unless such future statute amends this act and specifically provides that it is to be applicable to proceedings taken and to special improvement bonds issued under this act. (Ord. 88-25, 08-03-88)

**4-12-39. Proceedings prior to act validated - Exceptions.**

All special improvement bonds issued by Tooele City prior to the effective date of this act and all proceedings had in the authorization and issuance thereof and all proceedings taken prior to or in connection with the levy of assessments out of which such bonds are payable or in the creation, maintenance and use of the special improvement guaranty fund of the municipality issuing such bonds are hereby validated, ratified and confirmed and all such special improvement bonds are declared to constitute legally binding obligations in accordance with their terms and all such assessments are declared to be legal and valid assessments. Nothing in this section shall be construed to affect or validate any bonds, assessments or special improvement guaranty fund, the legality of which is being contested at the time this act takes effect. This act shall apply to all assessments levied and to all special improvement bonds and interim warrants issued after this act takes effect even though proceedings prior to the levy or issue were taken under the provisions of a law repealed by this act and all of such proceedings are validated, ratified and confirmed subject to question only as provided in section 4-12-28. (Ord. 88-25, 08-03-88)