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PUBLIC IMPROVEMENTS

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**ARTICLE I.
IN GENERAL**

Secs. 22-1—22-15. Reserved.

**ARTICLE II.
GENERAL IMPROVEMENT DISTRICTS**

Sec. 22-16. Purpose; intent.

The City Council hereby finds and determines that the organization of local public improvement districts, as authorized herein, will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants and property owners of such districts. The procedure for the creation of such districts, the construction of improvements therein and the issuance of bonds for the payment of the cost of construction of improvements may be accomplished in accordance with Section 31-25-601 et seq., C.R.S., the General Improvement District Act, or may be undertaken as provided herein. It is the purpose of this Article to provide greater flexibility in the methods of creating such districts and constructing such improvements and for the payment of the same to achieve the most efficient and equitable means as possible. This Article shall be broadly construed to accomplish these purposes.
(Code 1972, § 15-1)

Sec. 22-17. Creation of district.

In addition to the organization of a district by petition in accordance with Section 31-25-604, C.R.S., a district may be initiated directly by resolution of the City Council, declaring its intention to create a district and to construct improvements. If initiated by resolution of the City Council, the resolution shall set forth the same information and data required to be included in the petition for the organization of such district, pursuant to Section 31-25-604(2), C.R.S. The resolution shall set a date and time for a hearing on the creation of the district and provide for notice of the hearing to be given in the same time and manner as if the district had been initiated by petition.
(Code 1972, § 15-2)

Sec. 22-18. Hearing on creation of district; objections and protests; creation.

(a) If the district is initiated by a resolution, the City Council shall on the date indicated in the resolution or at any adjournment thereof hear and consider all objections and protests concerning the creation of the district and the construction of improvements. All such objections and protests shall be in writing, filed with the City Clerk on or prior to the date of the hearing and shall be signed by the property owner or owners and shall describe the property in the proposed district owned by such owner. If objections and protests are filed by the owners of the property representing more than forty (40) percent of the total assessed valuation of the property within the proposed district, the City Council except as provided below shall not create the district and all proceedings for the formation of the district shall be terminated.

(b) If the City Council determines that the creation of the district should be approved by the qualified electors of the district, the City Council by resolution shall order the question of organization of the district to be submitted at an election of the qualified electors of the proposed district. If such question is approved by a majority of the qualified electors of the proposed district voting thereon, the City Council shall proceed to create the district in accordance with the provisions of Title 31, Article 25, Part 6, C.R.S.

(c) If there are no objections or protests or if objections and protests have been signed and filed by property owners who own less than forty (40) percent of the total assessed valuation of property within the proposed district, the City Council shall then cause such district to be created in accordance with law.
(Code 1972, § 15-3)

Sec. 22-19. Issuance of bonds.

The Board of Directors of the district may authorize the issuance of negotiable coupon bonds of the district in the manner provided by Section 31-25-620, C.R.S., for the purpose of paying the costs of constructing and installing

local public improvements. Any such bonds authorized by the Board of Directors may be sold on such terms and conditions as determined by the Board of Directors either by public bid or at private sale.

(Code 1972, § 15-4)

Cross-reference—Bonds, § 8-16 et seq.

Sec. 22-20. Limitation of actions.

After thirty (30) days from the effective date of any ordinance creating a district, ordering improvements to be constructed or authorizing the issuance of bonds, no action may be brought in any court contesting the validity of any such ordinance.

(Code 1972, § 15-5)

Secs. 22-21—22-30. Reserved.

**ARTICLE III.
SPECIAL IMPROVEMENTS**

DIVISION 1. GENERALLY

Sec. 22-31. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

District shall mean the geographical division or divisions of the City within which any special improvements may be made or when declared by the City Council, it may include the entire area of the City. One (1) or more noncontiguous parts or sections of the City may be included in one (1) district.

Municipal Treasurer shall mean the Financial Officer.

Owner, in reference to petitions, shall mean persons in whom the record fee is vested although subject to lien or encumbrance. The holder of a bona fide contract of purchase which has been recorded will be considered the owner for the purposes hereof. One (1) joint tenant may represent his cotenants, but may not represent a joint tenant who has actually exercised a right or privilege under such sections.

Property shall mean all land, whether platted or unplatted, regardless of improvements and regardless of lot or land lines. It shall also include in its meaning the franchise of any railroad whose tracks lie either lengthwise or crosswise within any street improved under this Article. Lots may be designated in accordance with any recorded map or plat, unplatted lands by any definite description and franchises by the name of the corporation owning the same.

Street shall mean any street, alley, avenue, boulevard or public thoroughfare.

(Code 1972, § 16-2)

Cross-reference—Definitions and rules of construction generally, § 1-2.

Sec. 22-32. City authorized to make and finance improvements.

The City shall have the power to form special improvement districts and to contract for or make local improvements as hereinafter mentioned, which improvements shall confer special benefits on the real property within districts and general benefits to the City at large and to assess the cost wholly or in part upon the property especially benefited. In consideration of general benefits conferred on the City at large, the City Council may levy taxes and disburse monies for the purpose of paying for such benefits and for the purpose of paying bonds and interest issued for special or local improvement districts created hereunder as by Charter made and provided. All public improvements shall be constructed in accordance with the Charter and the Code and the specifications prescribed by the City Council and shall be authorized by ordinance. All special improvement districts created under the authority of this Article, and all related proceedings, administrative acts and claims for relief pertaining thereto, shall be governed by the provisions of Section 31-25-501 et seq., C.R.S., except to the extent that said statutory provisions are in conflict with the provisions of this Article. In the event of any such conflict, the provisions of this Article shall apply. (Code 1972, § 16-1; Ord. No. 24, 1993, § 1, 3-16-93)

Sec. 22-33. Designation of officers to supervise improvements.

All local improvements shall be constructed under the general direction and control of the City Manager and in the immediate charge, direction and supervision of the Director of Community Planning and Environmental Services and, if applicable, the General Manager of Utility Services or other officer designated for such purpose in accordance with maps, plans and specifications adopted by the City Council. The work of construction may be by independent contract or by the City as determined by the City Council. (Code 1972, § 16-3; Ord. No. 8, 1996, § 5, 2-20-96; Ord. No. 211, 1998, § 1, 12-1-98)

Sec. 22-34. Types of improvements which may be authorized.

Street improvements which may be authorized by the City Council may include grading, paving, curbing, sidewalks, crosswalks, medians and parking lanes. Other district improvements may also include artificial streetlighting, sanitary and storm sewers, water mains, ditches, drains and laterals, as well as any other public works which may be considered necessary by the City and which are properly authorized by the City Council. The improvements may also include the development of plans for the urbanization or renewal of areas within the district. (Code 1972, § 16-4; Ord. No. 19, 1989, § 1, 2-21-89)
Cross-reference—Streets and sidewalks, Ch. 24.

Sec. 22-35. Method of initiating improvements.

(a) A public work or improvement, the cost of which in whole or in part is to be assessed by the City against the property specially benefitted, may be initiated by the City Council on recommendation of the Director of Community Planning and Environmental Services or on petition of the property owners affected.

(b) In improvements to be initiated by the City Council, the City Council after receiving a recommendation from the Director of Community Planning and Environmental Services shall adopt a resolution which shall state the need and the nature and location of the improvements without mentioning minor details and shall describe the area to be assessed for the improvements by boundaries or other brief description. The resolution shall direct the Director to prepare and present to the City Council the following:

- (1) Preliminary plans and specifications of such improvements;
- (2) An estimate of the probable total cost of such improvements including the cost of acquiring rights in land required for the improvements; the cost of planning, constructing or otherwise acquiring the improvements; engineering, legal and advertising costs; interest accruing on the bonds issued to pay the costs of the district from the date of the bonds until the date when the first installment of assessments is to be made payable.
- (3) A map of the district to be assessed for the cost of the improvement or improvements.

(c) In improvements to be initiated by petition of property owners, the petition shall be on a form to be supplied by the City. The petition shall be subscribed by the owners of at least one-third ($\frac{1}{3}$) of the frontage to be assessed for improvements to streets including streetlighting and by the owners of at least one (1) percent of the area of the property to be assessed for any other improvements. The City Council may, by resolution, adopt policies to be used in the review of such petitions. Upon receiving a petition, and after review of the same, the City Council may adopt a resolution which shall state the nature and location of the improvements and describe the area to be assessed for the improvements by boundaries or other brief description, and direct the Director of Community Planning and Environmental Services to prepare and present to the City Council a report as in the case of City Council initiated improvements. Thereafter, the procedures shall be the same as in the case of improvement districts initiated by the City Council provided that the City Council may at any time determine by resolution that the acquisition of the proposed improvements is not feasible or desirable for reasons stated in the resolution. Any such resolution shall terminate the proceedings.

(d) Where the improvements initiated by the City Council or petitioned in different petitions are substantially the same, such improvements may all be included in one (1) district. The City Council may incorporate improvements petitioned into a district initiated by the City Council. In such cases, each separate area shall be considered as a separate area for purpose of remonstrance and assessment.

(e) More than one (1) type of improvement may be installed or acquired in a district. The City Council may provide for a different method of assessing property in the district to pay the cost of different improvements.

(f) The City may charge a fee to petitioning property owners, the amount of which shall be established by administrative regulations approved by the City Manager, to offset costs incurred by the City in administering any district established hereunder.

(Code 1972, § 16-5; Ord. No. 19, 1989, §§ 2—4, 2-21-89)

Sec. 22-36. Maximum cost of improvements.

The total cost of the improvements shall not exceed by more than ten (10) percent the amount of the estimate of the Director of Community Planning and Environmental Services for the cost of the improvement, unless the City Council shall find that the public interest requires the making or acquisition of the improvement or any part at such higher cost. The foregoing limitation on maximum cost for improvements shall not apply when all the owners of property to be assessed in a district expressly waive the limitation in writing.

(Code 1972, § 16-8)

Sec. 22-37. Reserved.

Editor's Note—Former § 22-37, Reimbursement for district improvements, was repealed by Ord. No. 24, 1993, § 2, 3-16-93.

Sec. 22-38. Changes restricted.

(a) All proceedings pertaining to the District may be modified or rescinded wholly or in part by the City Council at any time, subject to the provisions of this Section. If such modification or rescission occurs prior to the first publication or mailing of notice to property owners and prior to the commencement of improvements, the City Council shall act by resolution. If modification or rescission occurs subsequent to either such event, the City Council shall act by ordinance and the following shall apply:

- (1) The notice and hearing procedure described in Subsection 22-61(b) of this Chapter shall be repeated, and all changes in the information referred to therein shall be described with particularity.
- (2) Modification or rescission shall be permitted only upon the written consent of all property owners within or proposed to be included within the District. Additional written consents may be required, in the discretion of the City Engineer or City Attorney, from any lienholders or other persons whose interests may be adversely affected by the proposed modification or rescission.

- (3) No proceedings pertaining to the District shall be modified or rescinded subsequent to the issuance of bonds for the District if, in the judgment of the City, to do so would impair the rights of the City or the bondholders.
 - (4) Changes in District boundaries shall be permitted only under the following circumstances:
 - a. The change will result in the inclusion of additional properties within the District. No change resulting in the exclusion of existing District properties will be permitted.
 - b. Additional properties to be included within the District will be specially benefitted in amounts at least equal to the amounts of the assessments to be levied upon such properties, and the total cost of the improvements will be apportioned among the properties in the District in fair approximation to the special benefits conferred.
 - c. The change will not result in any increase in the amount of any individual property assessment or the amount of any annual installment payment to be made by any property owner within the District.
 - (5) Except as provided in Paragraph (3) of this Section, approval or rejection of any proposed modification or rescission shall be discretionary with the City Council and shall be determined according to the public interest.
 - (6) In the event that any modification or rescission approved by the City Council is invalidated by order of court, the original proceedings as first adopted by the City Council shall be automatically reinstated and shall be deemed to have been continuously in full force and effect as though no modification or rescission thereof had occurred.
- (b) The limitations contained in Subsection (a) of this Section shall not apply to the following kinds of changes and the same shall not be construed as constituting a modifications or rescissions of any district proceeding:
- (1) Minor changes approved by the City Engineer in time, plans and materials pertaining to the improvements to be constructed within the district, provided that any such changes are completed prior to the date that the district improvements are accepted by resolution of the City Council as provided in § 22-85;
 - (2) Changes approved by the City Council, by ordinance, which modify the remedies or modes of procedure available to the City to collect any assessments levied under § 22-89 or to enforce the lien established by the levy of such assessments under § 22-92; or
 - (3) Amending acts or proceedings intended to remedy any delays, errors, defects or irregularities as provided in Subsection 22-92(a).
- (Code 1972, § 16-9; Ord. No. 194, 1987, 1-5-88; Ord. No. 24, 1993, § 3, 3-16-93; Ord. No. 222, 1998, § 3, 12-15-98)

Sec. 22-39. Advertising for bids; letting of contracts.

All contracts for local improvements shall be let by the Purchasing Agent upon the determination of the City Council after the passage of the original ordinance forming the district. All contracts shall be let to the lowest responsible bidder as determined in the sole discretion of the City Council. Contracts shall be let after public advertisement for bids has been published twice in an official newspaper published in the City. The advertisements for bids shall be published at least a week apart. The date for opening of bids shall be not less than ten (10) days after the first publication. In all advertisements, the City Council shall reserve the right to reject all bids. Upon rejecting all bids or receiving no bids, the City Council may again advertise without further ordinance or may order the work done by hiring labor and arranging for purchasing necessary material under the supervision of the Director of Community Planning and Environmental Services. Notwithstanding the foregoing, improvements may be installed by the City utilizing City employees if the City Council so orders.

(Code 1972, § 16-10; Ord. No. 19, 1989, § 6, 2-21-89)

Sec. 22-40. Surety bond required; default in performance.

(a) Except when the City does the work as above provided, no contract for public improvements shall be made without a surety bond conditioned upon the faithful performance of the contract and the paying of all costs and labor and materials. The bond shall have sufficient sureties approved by the Financial Officer.

(b) Upon the default of the performance of any contract, the City Council may readvertise and let a contract for the uncompleted work in like manner and without further ordinance or may order the work done by City employees and may charge the cost to the original contractor upon the contract. When a deficiency shall in such case occur, the City Council may advance the amount out of any available funds of the City and recover it by suit on the original contract and bond.

(Code 1972, § 16-11)

Sec. 22-41. Contents of specifications and contract.

In public improvements, the specifications and contracts for the construction of improvements authorized under this Article shall provide for the posting of a good and sufficient surety bond to guarantee that such construction shall be performed in accordance with the City's specifications shall remain in good order and repair for a period of time to be fixed by the City Council and that the bidders shall make all necessary repairs during such period without further compensation. The contract shall provide that it is subject to the provisions of the Charter, this Article and the ordinance authorizing the improvement.

(Code 1972, § 16-12; Ord. No. 24, 1993, § 4, 3-16-93)

Sec. 22-42. Council may require utility connections.

Before constructing any permanent paving under the provisions of this Article, the City Council may order the owners of abutting property to connect their several premises with sewer, gas or water mains or with any other commodity in the street in front of the several premises. Upon the default of the owners to make such connections thirty (30) days after such order, the City Council may contract and make said connections at such distance under such regulations and in accordance with specifications as may be prescribed by the City Council, and the whole cost of said connections shall be assessed against the premises with which the connection is made. Any number of said connections may be ordered in pursuance of the regulations adopted as recommended by the Director of Community Planning and Environmental Services. The cost shall be assessed and collected in the same manner as provided in this Article for assessment and collection of the cost of other special improvements and shall be included in the assessments made against the particular property in the district proceedings.

(Code 1972, § 16-31)

Sec. 22-43. Responsibility of railway companies to pave.

(a) Whenever any grading or paving district shall be created under this Article, the City Council may include in the area to be paved or graded the entire width of the street from curb to curb including the portion of the streets occupied by or required by franchise obligation to be paved, chargeable or assessable to any railway company whose railway runs through or across any street in the district and shall charge, assess and collect from such railway company in the same manner as herein provided. In the case of abutting property, it shall issue bonds for the same which bonds shall be issued and made payable in like manner as bonds issued for the improvement assessed against the real estate specially benefited. In the absence of a franchise obligation to grade and pave, a railway company shall be held to occupy and shall be liable for the grading and paving of that part of the street lying between the rails for such track and two (2) feet outside of each rail, and every railway company, whether street railway or otherwise, shall be assessed for the cost of the grading or paving of any part of any street or alley occupied by it or required by franchise obligation to be paved by it.

(b) The assessment levied for the cost of the improvement chargeable to a railway company shall be a first and prior lien against the entire franchise and property of the company within and without the district, but within the limits of the City where such improvement is made, subject only to general taxes. All the terms and conditions and provisions of this Article relative to the collection of the amount chargeable against frontage shall be applicable to the enforcement and collection of such assessment against such railway company. In case of default in payment of such assessment, the property of such railway company shall be sold as in cases of default in payment of general taxes levied, and such railway trackage shall not be considered as assessable frontage in determining the sufficiency of petitions as provided in this Article.

(Code 1972, § 16-32)

Sec. 22-44. Grants may be accepted.

The City is hereby authorized and empowered to accept from any federal agency or other public or private source grants in aid of the construction of any local public improvements. Any such aid may be used to carry on the work of constructing the public improvements or defraying the costs so that the cost to be assessed against the property specially benefited or the amount to be paid for by the City at large may be reduced thereby.

(Code 1972, § 16-33)

Sec. 22-45. Time limit for commencing actions for relief.

All actions, legal or equitable, for relief against any proceeding or legislative act provided for under this Article or any administrative act or omission taken under the authority of this Article, whether based upon irregularities, jurisdictional defects or other grounds, shall be commenced within thirty (30) days after the wrongful act complained of or be perpetually barred. Additionally, no action shall be brought on the grounds that the assessment levied exceeds the benefits received by the property assessed unless the objections on which such action is based have been presented to the City Council in writing prior to or at the hearing on the assessing ordinance for the district provided for under § 22-89.

(Code 1972, § 16-35; Ord. No. 24, 1993, § 5, 3-16-93)

Sec. 22-46. Waiver.

(a) Any of the provisions of this Article relating to public hearings, notices, publications, letting of bids or other procedural aspects relating to the initiation or formation of districts may be waived. In order to be effective, such waiver must be in writing, must be signed by the owners of all property in the district which is to be assessed and by the City Manager if the City is to bear any of the costs of the improvements and must state the requirements of this Article which are being waived. No person shall be permitted to withdraw a written waiver once it has been submitted to the City Council for consideration.

(b) Any of the provisions of this Article not expressly waived in writing under this or other sections may be waived through agreement between or among the City and the affected property owners. In order to be effective, such waiver must be in writing, and signed by the owners of all properties in the district which are to be assessed, and by the City Manager. The authorization for such an agreement shall be contained within the ordinance establishing the district.

(Code 1972, § 16-38)

Sec. 22-47. Provisions not exclusive.

The provisions of this Article shall not be construed as the exclusive means of providing for public improvements, but such improvements may be constructed through any other means authorized by appropriate City Council action.

(Code 1972, § 16-39)

Secs. 22-48—22-60. Reserved.

DIVISION 2. DISTRICTS*

Sec. 22-61. Organizing improvement districts.

(a) Before ordering any improvements to be constructed pursuant to this Article, the City Council shall by resolution approve the plans, specifications, map and estimate of the City Engineer. Such resolution or a resolution to be subsequently adopted shall determine the amount or proportion of the total cost, if any, to be paid by a method other than assessments against property in the district, the estimated number of annual installments, not to exceed twenty (20), the rate of interest to be charged on unpaid installments, the property to be assessed for the improvement, the method of making such assessments and the date when the City Council will hold a hearing and consider the ordering by ordinance of the proposed improvement. In establishing the rate of interest on unpaid installments, the City Council

* Cross-reference—Streets and sidewalks, Ch. 24.

cil may provide that the interest rate will be the interest rate payable on bonds to be issued by the district. In such event, a maximum interest rate shall be established by the City Council and the rate of interest charged on unpaid installments shall not exceed such maximum rate.

(b) The City Council shall give notice to the owners of property to be assessed and to all interested persons generally. The notice shall be by publication once each week for two (2) successive weeks in an official newspaper published in the City and by mailing notice, postage prepaid, first class mail to the last known address of each last known owner of property within the proposed district whose property will be assessed for the cost of the improvement. Such owners and addresses shall be those appearing on the real property assessment rolls for general taxes of the County. The notice without naming such owners or persons shall set forth the following:

- (1) The kind of improvement proposed without mentioning minor details or incidentals;
- (2) The manner in which assessments and interest will be payable;
- (3) The rate of interest to be paid on unpaid and deferred installments;
- (4) The boundaries of the proposed district;
- (5) The probable cost as shown by the total estimate of the City Engineer, the maximum cost per front foot where assessments will be for front foot or per square foot where assessment will be made according to area and in case the assessment shall be made otherwise than per front foot or by area, the maximum amount to be assessed according to the method of assessment to be used;
- (6) The time, which shall be not more than sixty (60) days nor less than twenty (20) days after the first publication and mailing, when the City Council will consider establishing the proposed district and hear all complaints and objections that may be made and filed in writing as hereinafter provided;
- (7) That a map of the district, an estimate of costs, a schedule showing the approximate amount per front foot or per square foot or otherwise to be assessed upon the several lots or parcels of land within the district and all proceedings of the City Council in the premises are on file and can be seen and examined in the City Clerk's office during business hours at any time within the period before the hearing.

(Code 1972, § 16-6; Ord. No. 130, 2002, § 28, 9-17-02)

Sec. 22-62. Public hearing; objections and remonstrances.

(a) On the date fixed for the public hearing on the proposed ordinance establishing the district, any property owners affected and any other person interested generally may appear and present their views in respect to the formation of the proposed district, provided that any person who wishes to object to such district shall, prior to the date fixed for the hearing, file the objections in writing with the City Clerk.

(b) At the hearing, the City Council shall also consider all objections in writing filed with the City Clerk prior to the date fixed for the hearing, whether or not the person objecting appears at the hearing. Any objection to the regularity, validity or correctness of the proceedings shall be deemed waived unless presented in writing in the time and manner specified herein.

(c) After the hearing upon the proposed district, the City Council shall determine whether the creation of the district is in the best interests of the City. In making such determination as to any district initiated by petition, the City Council shall consider, without limitation, the City-wide benefits of the proposed improvements; the financial ability of the petitioning property owners to pay the assessments which would be levied in connection with the district; the petitioners' history of payment or nonpayment of any previous assessments; the additional security to be pledged by the petitioners for the payment of assessments, if any, such as bonds or letters of credit; the appraised value of the property in the district, in relation to the estimated value of the proposed improvements to be constructed in the district, as determined by an appraiser selected by the City; and the proposed development plan, if any, for the property in the district. If the City Council determines that the creation of the proposed district is in the public interest, then the City Council shall so find, by ordinance, and a majority vote of the members of the City Council shall be sufficient to

override any objection to the formation of the proposed district on the part of property owners in the district. If the City Council determines that it is not in the public interest that the proposed district be created, then the City Council shall pass a motion to that effect, and the proceedings for the formation of the district shall cease.

(d) No owner or heirs or assigns who shall have signed and not withdrawn from a petition for improvements shall be permitted to sign a remonstrance. Remonstrances may be signed by agents or attorneys which shall be accompanied by a written power of attorney duly acknowledged giving authority to sign the remonstrances. Each subscriber to a remonstrance shall include residence address and the date of signing and an affidavit of an adult that each subscription is the signature of the person whose name it purports to be and that to the best knowledge and belief of the affiant the person signing was at the time the owner of property to be assessed or the agent or attorney for that person.

(e) If the City Council finds and determines that circumstances warrant such action, it may except particular properties in the district from assessments or lower the amount of assessment against any particular property and charge the City at large with the amount excepted or reduced from assessment. It may also condition its approval of the creation of any district upon the pledge of additional security against default in the payment of assessments by the petitioners in the district.

(Code 1972, § 16-7; Ord. 24, 1993, § 6, 3-16-93)

Secs. 22-63—22-75. Reserved.

DIVISION 3. ASSESSMENT PROCEDURE*

Sec. 22-76. Assessment and apportionment of costs for streets.

In the improvement of streets as herein provided, the cost of such improvement or any portion may be assessed upon all the lots and lands abutting on the streets improved in proportion as the frontage of each lot or tract of land is to the frontage of all lots and lands improved. For the purpose of assessment, the sides of corner lots shall be treated as frontage when the street upon which such sides abut is improved. The City Council may provide for any other manner of assessment to pay the cost of the improvements which it determines is equitable and fair.

(Code 1972, § 16-13(A))

Cross-reference—Streets, § 24-91 et seq.

Sec. 22-77. Assessment and apportionment of costs for ditches, laterals or drains.

In the improvement of any ditch, lateral or drain or their removal whether the ditch, lateral or drain is wholly within the streets and alleys of the City or partly in such streets and alleys and partly upon private property, the City Council shall determine what portion of the entire cost, if any, of the improvement shall be borne by the City at large and the remaining cost shall be assessed against the property specially benefited as determined by the City Council.

(Code 1972, § 16-13(B))

Cross-reference—Stormwater, § 26-491.

Sec. 22-78. Assessment and apportionment of costs for sanitary sewers, storm sewers, drains or water mains.

In improvements consisting of constructing sanitary sewers, storm sewers, drains or water mains unless otherwise ordered by the City Council, the cost of such improvements shall be assessed upon all the real estate in the district in proportion as the area of each piece of real estate in the district is to the area of all the real estate in the district, exclusive of streets in the district.

(Code 1972, § 16-13(C))

Cross-reference—Utilities, Ch. 26.

* **Cross-reference**—Finance, Ch. 8.

Sec. 22-79. Assessment and apportionment of costs for artificial streetlighting.

In improvements consisting of construction of artificial streetlighting, the cost shall be assessed upon the property within the district in proportion to the frontage of the properties in the district or by such other method as may be equitable and just as determined by the City Council.

(Code 1972, § 16-13(D))

Sec. 22-80. Assessment and apportionment of costs for other improvements.

In other public improvements, assessments shall be made according to the method which the City Council determines most just and equitable.

(Code 1972, § 16-13(E))

Sec. 22-81. Assessment and apportionment of costs for street intersection improvements.

In the improvement of any street, except as otherwise provided herein, the cost of the improvements in each street intersection or alley intersection except the share to be paid by street or other railway companies and except not less than one-half ($\frac{1}{2}$) and not more than three-fourths ($\frac{3}{4}$) to be paid by the City at large shall be assessed on property in the district in the same manner as all other portions of the street improvement.

(Code 1972, § 16-14)

Sec. 22-82. Inclusion of certain costs and expenses of organization of the district.

If property owners in a district have incurred costs and paid expenses in organizing a district, the City Council may authorize the repayment of such costs and expenses as a part of the improvement cost and the amount authorized may be included as a part of the cost of the improvements in the district and assessed and collected against property in the district as provided in this Chapter.

(Code 1972, § 16-34.1)

Sec. 22-83. Payments from surplus and deficiency fund.

(a) If the City incurs any cost in the course of proceedings for forming a special improvement district, the amount of such cost may initially be paid from the surplus and deficiency fund. If the district is ultimately formed, the amount of such cost shall be included in the cost of the improvements installed in the district and repaid from assessments of the district to the extent assessed.

(b) Any portion of the costs of a district payable by the City at large because of the limitation based on value of property as provided in § 22-90, costs of improvements in excess of the estimate of the Director of Community Planning and Environmental Services as provided in § 22-36 or reductions in assessments made by the City Council, if directed by the City Council, may be paid from the surplus and deficiency fund. If any such portion is later recovered from the owners of property in the district, the amount of such recovery shall be repaid into such surplus and deficiency fund.

(Code 1972, § 16-34; Ord. No. 19, 1989, § 7, 2-21-89)

Sec. 22-84. Costs of contracting with private firms.

The City may upon authorization by the City Council contract with private firms for the performance of engineering, legal, accounting and similar work to be performed by or for a district. The cost of such work may be provided for or paid by the additional amount authorized to be added to the cost of the improvements installed or acquired as set out in § 22-85.

(Code 1972, § 16-34.2)

Sec. 22-85. Statement of cost; preparation of assessment roll.

(a) Upon the completion of any local improvement and acceptance by the City Council, the City Engineer shall prepare a statement showing the total costs of the district, including:

- (1) Actual construction costs, including costs of construction management;
 - (2) Engineering costs;
 - (3) Acquisition costs of existing improvements and rights-of-way;
 - (4) Interest accruing on the bonds issued to pay the costs of the district from the date of the bonds until the date when the first installment of assessments is to be made payable;
 - (5) Legal fees, publication and administration fees, financing costs and other incidentals incurred in connection with the improvements not to exceed twenty (20) percent of actual construction, engineering and acquisition costs;
 - (6) A reserve fund in the amount of ten (10) percent of the principal amount of the bonds not including the amount of the reserve or such maximum amount as may be permitted under federal tax law, whichever is less. The bond ordinance for each district shall specify the extent to which the reserve fund for the district may be reduced, if at all, prior to payment in full of the bonds, as well as the circumstances under which any such release of funds may occur. Any funds so released from the reserve fund prior to payment in full of the bonds shall be proportionally distributed to the assessed property owners as defined in Subsection 22-111(c). The City Council may, by resolution, adopt standards to be applied to all districts for determining the terms and conditions upon which reserve funds may be reduced.
- (b) The Financial Officer shall prepare an assessment roll which shall contain, among other things, the following:
- (1) The names of the last known owners of the property to be assessed or if not known, a statement that such names are unknown;
 - (2) A description of each property to be assessed and in the case of street or other railway companies, a general description of the franchise and property to be assessed;
 - (3) The amount of the assessment of each property.
- (Code 1972, § 16-17; Ord. No. 19, 1989, § 8, 2-21-89; Ord. No. 24, 1993, § 7, 3-16-93; Ord. No. 222, 1998, § 3, 12-15-98)

Sec. 22-86. Allowance on assessments against irregularly shaped real estate.

When any real estate is V-shaped or of any irregular shape, the City Council may make such allowance on the assessment it deems equitable or just or may refuse to make any allowance in its sole discretion.
(Code 1972, § 16-15)

Sec. 22-87. Existing improvements.

(a) If any piece of real estate in the district has existing improvements conforming or approximately conforming to the general plan of the City Council, the City may accept them in whole or in part or make necessary changes so that they shall conform to the general plan. Such conforming improvements shall be excluded from the district without assessment to the property benefited by such improvements.

(b) In a district formed upon the petition of one hundred (100) percent of the property owners, the City may also purchase existing improvements at the owners' costs as verified by the City and include the purchase price in the cost of the district for the purpose of determining the amount of the assessments.
(Code 1972, § 16-16)

Sec. 22-88. Advertisement and notice of proposed assessment.

Upon the filing of the statement and assessment roll provided for in § 22-85, the City Council shall order the City Clerk to notify all interested persons that such improvements have been completed and accepted. Said notice shall be by publication once each week for two (2) successive weeks in an official newspaper published in the City. Addition-

ally, the City Clerk shall, within ten (10) days after the first publication, notify all owners of property to be assessed, which notice shall be sent by certified mail, return receipt requested, to the names and addresses appearing in the real property assessment rolls for general taxes of the County. The notices referred to herein shall specify the following:

- (1) The total cost of the district to be assessed;
 - (2) The portion, if any, to be paid by the City;
 - (3) That the assessment roll showing the share apportioned to each lot or tract of land in the district is on file in the City Clerk's office and can be seen and examined at any time during business hours;
 - (4) That any complaints or objections which may be made in writing by such owner or owners to the City Council and filed in the office of the City Clerk within thirty (30) days from the publication of such notice will be heard and determined by the City Council before the passage of any ordinance assessing the cost of the district.
 - (5) The date when and the place where such complaints or objections will be heard. Such dates shall be not less than thirty (30) days or more than forty-five (45) days after the first publication.
- (Code 1972, § 16-18; Ord. No. 19, 1989, §§ 9, 10, 2-21-89; Ord. No. 24, 1993, § 8, 3-16-93)

Sec. 22-89. Assessing ordinance; hearing and preparation.

(a) The City Council sitting as a Board of Equalization at the date set or an adjournment thereof shall hear and determine all such complaints and objections and may conform the apportionment or make any modifications which may seem equitable and just after consideration of all objections to the apportionment. Prior to approving the apportionment, the City Council shall determine, by findings based upon evidence in the record, whether the costs to be assessed against any property within the district exceed the special benefit derived by such property from the construction of district improvements. No costs exceeding the special benefit shall be assessed. If any change in the proposed apportionment is made by the City Council, it shall be referred to the Financial Officer, who shall cause to be prepared a new apportionment and an assessing ordinance in accordance therewith and shall transmit the same to the City Council.

(b) The assessing ordinance shall assess the costs of the district as described in Subsection 22-85(a) against the property to be assessed in the district in the proportion finally determined. All real property referenced in the assessing ordinance shall be described according to the parcel and schedule numbers assigned to such property in the records of the County Assessor's office. The passage of the assessing ordinance, together with the findings of the City Council, shall be prima facie evidence of the fact that the property assessed is benefitted in the amount of the assessment and that such assessments have been lawfully levied.

(Code 1972, § 16-19; Ord. No. 19, 1989, § 11, 2-21-89; Ord. 24, 1993, § 9, 3-16-93)

Sec. 22-90. Limit on assessments; City to pay certain costs.

(a) No property in the district shall be assessed for any improvements in an amount exceeding the amount of appreciation in the value of such property which will result from the construction of the district improvements. In addition, if the cost of the district improvements is paid by the City, no property in the district shall be assessed for such improvements in an amount exceeding one-half (½) of such property's actual value not including the proposed district improvements, which property value shall be conclusively presumed to be equivalent to such property's actual valuation as computed from the records of the County Assessor in accordance with state statutes for the year preceding the assessing ordinance. However, if the cost of the improvements in the district is paid by one (1) or more property owners to be included in the district, then each property in the district may be assessed for such improvements up to an amount equal to one-half (½) of such property's actual value including the proposed district improvements, and such value may be determined on the basis of an appraisal submitted to the City Council by a certified appraiser at or before the hearing on the assessing ordinance. The foregoing limitation(s) on assessments shall not apply to any property when all of the owners of such property expressly waive the limitation in writing and the City Council has de-

terminated that adequate collateral security exists to ensure the full payment of all assessments in the district so that a proposed waiver should be accepted by the City.

(b) If a street is improved as an arterial or collector street rather than as a residential access street, the City Engineer shall compute the extra expense caused by such streets being improved as arterial or collector streets and for traffic signalization when required because of collector or arterial status. Such cost shall be paid by the City out of the street oversizing fund and shall not be assessed against particular properties in the district. The determination made by the City Engineer and approved by the City Council as to the cost to be apportioned by reason of improving a street as an arterial or collector rather than as a residential access street shall be conclusive. Notwithstanding the foregoing, the City shall not participate in the cost of oversized street improvements required for the special use and benefit of the adjacent development, including by way of example and not by way of limitation, acceleration and deceleration lanes, double left-turn lanes and traffic-control signals, if it is required by the traffic impact study for the development, or in the absence of such study it is required by the traffic engineer to the extent that such improvements are in addition to improvements associated with arterial-arterial intersections and one (1) collector-arterial intersection per mile.

(Code 1972, § 16-20; Ord. No. 19, 1989, § 12, 2-21-89; Ord. No. 24, 1993, § 10, 3-16-93; Ord. No. 222, 1998, § 3, 12-15-98; Ord. No. 124, 2003, 9-16-03)

Sec. 22-91. Responsibility for certain costs.

(a) If it is not possible to assess the full assessment called for in any district against any particular property because of the value of the property and the limitations relating to such value contained in § 22-90, then the excess amount which is not assessable against the property shall be paid by the City at large. In such event, no construction of additional improvements on any such property shall be permitted under the Code until the balance of the amount that would have been assessed against such property, except for the foregoing limitation, has been paid to the City. If the foregoing requirement would cause any undue hardship on the owner of any property, then the City Council after a hearing may waive the requirements of this Section in whole or in part in order to alleviate such hardship. The foregoing requirement shall not apply to the remodeling or reconstruction of existing improvements on any such property. Such remodeling or reconstruction shall be permitted without compliance with this requirement.

(b) If the amount of the assessment against any property is reduced because of the limitation relating to value set forth in § 22-90, the Financial Administration Unit shall cause to be recorded with the County Clerk and Recorder at the time the assessment roll for the district is certified to the City or County Treasurer, a statement which shall contain the amount of the reduction in the assessment, the description of the property or properties involved, the designation of the district, the description of the improvements installed in the district and a statement that no construction of additional improvements may be made on such property until the amount of the reduction made in the assessments has been repaid to the City or such repayment provided for.

(c) At any time after the assessment roll is certified to the City or County Treasurer, the owners of any property where assessments were reduced pursuant to § 22-90 may pay the City an amount equal to the assessment that would have been due under the assessing ordinance had the full assessment been made, less the assessment actually paid, and agree in writing to have the balance of the portion not assessed initially assessed against such owner's property. In such event, the Financial Officer shall certify to the City or County Treasurer an amendment to the assessment roll and the full remaining assessment shall be payable and shall be a lien on the property of such owner as if the full assessment was originally made against such property.

(d) At the time any amount not initially assessed because of the limitation in § 22-90 is repaid or required to be repaid, all interest which would have accrued on such amount had it been assessed shall be due and collected from the property owner.

(Code 1972, § 16-20.1)

Sec. 22-92. Assessments to be a lien; new assessments.

(a) All assessments made pursuant to this Article together with all interest and penalties for default in payment shall be a lien against each property from the date of the publication of the assessing ordinance and shall be a first and

prior lien over all other liens except general taxes in the same manner as general taxes liens are provided by law. No delays, errors, defects or irregularities in any act or proceeding authorized by this Article shall prejudice or invalidate any final assessment, but it may be remedied by subsequent amending acts or proceedings as the case may require and when so remedied it shall take effect as of the date of the original act or proceeding.

(b) If in any court of competent jurisdiction any final assessment made pursuant to this Article is set aside for irregularity in the proceedings, then the City Council upon recommendation and notice as required in the making of an original assessment may make a new assessment in accordance with the provisions of this Article apportioning the cost and expense of the new assessment as may be determined just and equitable by the City Council.
(Code 1972, § 16-21)

Sec. 22-93. Preparation and form of assessment roll.

Immediately upon the adoption of the assessing ordinance, the Financial Officer shall prepare an assessment roll in book form, showing in suitable columns each piece of property assessed, the total amount of the assessment, the amount of each installment of principal and interest, whether the assessment is payable in installments, the date such installments become due and columns for the payment of the whole amount or of any installment or penalty, and shall certify the assessment roll for collection.
(Code 1972, § 16-22)

Sec. 22-94. Payment of assessments.

All assessments made pursuant to this Article shall be due and payable within thirty (30) days after the final publication of the assessing ordinance without demand. All such assessments may at the election of the owners be paid in installments with interest as hereinafter provided. Failure to pay the whole assessment within the thirty-day period shall be conclusively considered and held an election on the part of the persons interested, whether under disability or otherwise, to pay in such installments. All persons electing to pay in installments shall be conclusively held and considered as a waiver of any and all rights to question the power or jurisdiction of the City to construct the improvements, the quality of the work, the irregularity or sufficiency of the proceedings or the validity or correctness of the assessment.
(Code 1972, § 16-23)

Sec. 22-95. Payment of assessments in installments.

(a) In the case of such election to pay in installments, the assessments and interest shall be payable in not less than two (2) nor more than twenty (20) installments. The first installment shall be payable within no less than thirty (30) days nor more than one (1) year from the date of passage of the assessing ordinance. The last such payment shall be within no more than twenty (20) years from the date of passage of said ordinance. Interest on the assessments shall be payable on the unpaid balance from thirty (30) days after the date of final publication of the assessing ordinance until the assessments are paid in full. The amount of each installment, the number of installments, the payment dates, the rate of interest payable, and all other particulars pertaining to payment by installment, including any collection fee to be collected by the Municipal or County Treasurer, shall be established by the City Council in the ordinance making such assessments. The rate of interest on the assessments shall equal the highest interest rate payable on the bonds issued to pay the cost of the improvements.

(b) The owner of any property charged with an assessment payable in installments may at any time, if not then in default on the payment of any sum due on account, prepay the entire remaining principal balance together with interest accruing to the next installment due date. Upon the sale of any property encumbered by an assessment lien established under the provisions of this Chapter, the seller of such property shall prepay the entire remaining principal balance and accrued interest on the assessment.

(c) Failure to pay any installment, whether of principal or interest, when due, shall cause the entire remaining principal balance and accrued interest to become due and collectible immediately. The entire remaining principal balance and accrued interest shall draw penalty interest at the rate of one (1) percent per month. Such penalty interest shall be in addition to the ordinary interest specified in the assessing ordinance and shall accrue from the date of de-

linquency until the date upon which the property in default is sold to enforce the City's special assessment lien. At any time prior to the day of sale, the owner may pay the amount of all unpaid installments together with accrued interest thereon and penalty interest, and shall be restored to the right to pay in installments in the same manner as if default had not occurred. The Financial Officer shall have the discretion to waive or otherwise adjust the amount of penalty interest due hereunder; provided, however, that any such waiver shall not restore to the owner any right which has been waived under the provisions of § 22-94 and shall occur only when:

- (1) prior to the annual sale of property in default, a written protest for waiver has been filed with the Financial Officer stating the amount of the requested waiver and the reasons therefor and, at the time of filing said protest and request for waiver, the property owner has paid all portions of the installment payment of the assessment, excluding only the disputed amount of penalty interest; and
- (2) the Financial Officer finds that the proposed waiver of penalty interest is necessary to avoid a manifest injustice to the property owner, to correct an error in the calculation of the penalty interest or to resolve a good faith dispute regarding the amount of penalty interest due.

Notwithstanding the foregoing, no more than one-third ($\frac{1}{3}$) of the total amount of penalty interest due on a delinquent installment may be waived unless the Financial Officer finds that such waiver is necessary to correct an error in calculation.

In determining whether a requested waiver of penalty interest should be granted to avoid a manifest injustice to the property owner or resolve a good faith dispute, the Financial Officer shall consider the circumstances under which the default occurred, the payment history of the property owner and the best financial interests of the City.

Upon granting any waiver of penalty interest under this Subsection, the Financial Officer shall forthwith inform the City Council of the amount of such waiver and the reasons therefor.

The fact that a payment of penalty interest has been withheld by a defaulting property owner for the purpose of requesting a waiver under this Subsection shall not prevent the City from exercising its right under Subsection (a) of this Section to sell the property in default for the full amount of the City's assessment lien, including principal, interest, penalties and costs of collection.

(d) Upon the application of an assessed property owner and the recommendation of the Financial Officer, the City Council may, by resolution, abate all or any portion of an assessment, including principal, interest or penalty interest, where the following circumstances exist:

- (1) The principal amount of an assessment is greater than the special benefit to the assessed property, or the abatement or cancellation is necessary to prevent a manifest injustice to the property owner because of an irregularity in the proceedings by which the assessment was imposed or collected;
- (2) The abatement or cancellation is considered by the City Council to be necessary to protect the financial interests of the City;
- (3) It is anticipated that adequate funds will be available from the payment of assessments in the district, or such funds have been appropriated by the City Council from other sources, to pay all principal and interest due on any special assessment bonds issued by the City for the construction of improvements in the district; and
- (4) The abatement or cancellation would not contravene any covenant made by the City for the benefit of the holders of such special assessment bonds.

Any abatement or cancellation of assessments under this provision shall be discretionary with the City Council, and the decision whether to submit a property owner's application for abatement or cancellation to the City Council shall be discretionary with the Financial Officer. The right of a property owner to seek such abatement or cancellation shall in no way be construed as extending the applicable period of time, under the relevant provisions of law, within which a legal or equitable action must be commenced to set aside an assessment or to enjoin the collection of an assessment;

nor shall this provision be construed as restoring to a property owner any right which has been waived under the provisions of § 22-94.

(Code 1972, § 16-24; Ord. No. 38, 1988, 4-5-88; Ord. No. 19, 1989, § 13, 2-21-89; Ord. No. 27, 1990, § 1, 4-3-90; Ord. No. 63, 1992, § 1, 6-2-92; Ord. No. 24, 1993, § 11, 3-16-93)

Sec. 22-96. Payments within thirty days; certification to County Treasurer.

(a) Payments may be made to the Financial Officer at any time within thirty (30) days after the final publication of the assessing ordinance and an allowance of five (5) percent for cost of collection and other incidentals will be made on such payments.

(b) Upon the expiration of the thirty-day period, the Financial Officer shall deliver to the Municipal or County Treasurer the local assessment showing all payments and the date of each payment, certified by the Financial Officer under the seal of the City and attested by the City Clerk with the warrant for collection. The Municipal or County Treasurer shall issue a receipt. The Municipal or County Treasurer shall pay to the Financial Officer the amount collected on such assessment roll less his or her fee for collection on the first day of each and every month in the same manner as general taxes are paid by the Municipal or County Treasurer to the City.

(Code 1972, § 16-25; Ord. No. 19, 1989, § 14, 2-21-89)

Sec. 22-97. Receiving of payments; sale of property for default.

(a) The City's Financial Officer or County Treasurer shall receive payment of all assessments on any real estate appearing upon the assessment roll, with interest. If a property owner is in default in the payment of any installment of principal or interest after it becomes due and payable, the County Treasurer shall advertise and sell the real estate in default, either upon his or her own volition if he or she is responsible for collecting the assessments or, if the City's Financial Officer is collecting the assessments, upon certification by the Financial Officer of the whole amount of the unpaid assessments. The advertisement and sale shall be made at the same time, in the same manner and under all of the same conditions and penalties and with the same effects as are now prescribed by the general laws of the State for the sale of real estate in default of the payment of general taxes. At any sale by the County Treasurer of any real estate in the City for the purpose of paying any special assessment for local improvements, the Financial Officer, being duly authorized by the City Council, may purchase any such real estate without paying in cash and shall receive certificates of purchase in the name of the City. No such specific authorization by the City Council shall be required when there is no bid for any property offered for sale by the County Treasurer and such property is stricken off to the City as required by law.

(b) In addition to the right to advertise and sell property in the manner described in Subsection (a) above, and in addition to any other foreclosure remedies specifically applicable to special assessment liens under the general laws of the State, the City Council may elect, in the event of any default in the payment of an installment of principal or interest after it becomes due and payable, to authorize the enforcement of the City's lien against any assessed property according to the procedures established for the foreclosure of a mortgage, trust deed or other lien under Title 38, Article 38, C.R.S. In the event the City elects to foreclose a special assessment lien in the manner herein specified, such proceeding shall be conducted in the same manner and under all the same conditions and penalties and with the same effects as are prescribed by the general laws of the State for such foreclosure proceedings.

(c) Any certificates of purchase received by the City through foreclosure of its liens for special assessments shall be received by the Financial Officer. The certificates may be sold and assigned by the Financial Officer at their face value with all interest and penalties accrued in the name of the City, or for less than their face value if approved by the City Council under the provisions of § 23-111. Such assignment shall be made without recourse upon the City. The sale and assignment shall operate as a lien in favor of the holders of such certificates as provided by law for sales of real estate for default in the payment of general taxes in the State.

(d) The City Council may, by resolution, approve the reduction of the redemption interest rate established by state statute accruing on any certificate of purchase held by the City, provided that: (1) the statutory redemption interest rate is not reduced below the highest rate of interest owed on any of the bonds which are paid with assessments collected from the property described in the certificate of purchase; and (2) the City Council finds that such reduction in

the rate of statutory redemption interest will not impair the full payment of principal and interest owing under the affected bonds and that such reduction in the rate of statutory redemption interest is in the best interests of the City.

(e) The City shall have the right to apply for deeds on any certificates of purchase which are presented to the County Treasurer or other proper officer empowered by law to sell real estate under the particular foreclosure procedure utilized by the City. In order to obtain title to property for which a certificate of purchase has been issued to the City, the Financial Officer may pay from the general fund of the City all general taxes, including all interest and penalties thereon, and any fees and costs associated therewith, which may have become due or past due on such property.

(f) Cumulatively with all other remedies, if the City is the owner of property by virtue of a tax deed or is the owner of property otherwise acquired in satisfaction or discharge of the liens represented by certificates of purchase, it may sell such property for the best price obtainable at public sale or auction or by sealed bids, or by such other method of sale which may be approved by the City Council. In lieu of selling any such property, the City Council may determine by ordinance that the property should be retained by the City for a particular public use, in which event the Financial Officer shall forthwith deposit into the appropriate special assessment fund an amount equal to the remaining principal balance of the unpaid assessment against the property, plus any accrued interest thereon, excluding any penalty interest. In addition, if the City has incurred costs in connection with the enforcement of its assessment lien against the property, the City Council may require that the fund from which such costs were paid be reimbursed. Such costs may include, without limitation, publication costs, title insurance costs, appraisal or marketing costs, fees paid the County Treasurer and any general taxes paid by the City on the subject property.

(g) Cumulatively with all other remedies, if the City is the holder of a certificate of purchase for a parcel of undeveloped real property having a market value less than the total of the City's assessment lien against such property plus all costs incurred by the City in enforcing such lien, then the City Council may at any time authorize the commencement of a civil action to foreclose such certificate of purchase, joining as defendants all persons holding record title, persons having or claiming any interest in the property or in the proceeds of foreclosure sale, all governmental taxing units having taxes or other claims against said property, and all unknown persons having or claiming any interest in said property. Properties shall be considered to be "undeveloped" within the meaning of this provision unless permanent buildings or structures have been constructed thereon, and the value of such buildings or structures is equal to or greater than the value of the unimproved real property described in the tax certificate, including the improvements funded through the creation of the special improvement district. For purposes of this provision, the market value of the property in question, including any buildings or structures thereon, shall be determined on the basis of the records of the Larimer County Assessor's office or such other records or information as the Financial Officer may deem appropriate, and such determination may be made at any time after the date of the tax sale at which the certificate of purchase to be foreclosed was obtained by the City.

Any number of certificates may be foreclosed in the same proceedings. In such proceeding, the City, as plaintiff, shall be entitled to all relief provided by law and actions for an adjudication of rights with respect to real property, including the right to obtain title to such property after the expiration of such period of redemption as is set forth in Part 3 of Article 38 of Title 38, C.R.S.

(h) The proceeds of any sale of certificates of purchase held by the City, and the proceeds of the sale of any real property acquired by the City through the foreclosure of a special assessment lien, shall be credited to the fund created by ordinance for the payment of such assessments respectively. The City shall deduct therefrom all expenses incurred in securing deeds and taking proceedings for the sale or foreclosure, including without limitation: publication costs; costs of sale; service of process fees; attorney's fees; title insurance costs, including costs for foreclosure certificates or litigation guarantee certificates; fees paid to the County Treasurer; and any general taxes due or past due on such property, all interest and penalties thereon, and any fees and costs associated therewith. In the event that the amount to be credited to the special assessment fund, after the deduction of expenses, exceeds the amount of principal and accrued interest remaining to be paid on the bonds issued to pay the cost of constructing the improvements for which the property was assessed, or refunding bonds, the City may transfer such excess proceeds into the City's surplus and deficiency fund, to be expended for the purposes for which such fund is established, or to the general fund of the City to be utilized for any municipal purpose approved by the City Council.

(i) When the City has sold or conveyed at fair market value certificates of purchase or property which it has acquired in satisfaction or discharge of special assessment liens, or has sold certificates of purchase for less than face value according to the procedures provided in § 23-111, such sales and conveyances are hereby validated and confirmed as against all parties having or claiming any interest in such property or the proceeds of such sale.

(Code 1973, § 16-26; Ord. No. 175, 1987, 11-3-87; Ord. No. 27, 1990, § 2, 4-3-90; Ord. No. 134, 1991, § 1, 12-3-91; Ord. No. 63, 1992, § 2, 6-2-92; Ord. No. 138, 1992, § 1, 1-5-93; Ord. No. 139, 1992, 1-5-93; Ord. No. 24, 1993, §§ 12, 13, 3-16-93)

Editor's note—Section 2 of Ord. No. 134, 1991, adopted Dec. 3, 1991, provided for the following:

That nothing herein shall be construed as invalidating any actions or proceedings undertaken by the City in collecting assessments or foreclosing any special assessment lien prior to the effective date of this ordinance (section), and the validity of all certificates of purchase and tax deeds previously acquired by the City by virtue of any such foreclosure proceeding is hereby ratified and affirmed.

Sec. 22-98. Owner of part interest may pay his or her share.

The owner of any divided or undivided interest may pay his or her share of any assessment, which payment shall extinguish the lien as to his or her share.

(Code 1972, § 16-27)

Sec. 22-99. Reallocation of assessments.

(a) In the event that any parcel of land subject to assessment under this article is subdivided, as defined in Article 5 of the Land Use Code, the owner(s) of all parcels constituting the original tract shall immediately propose in writing to the Financial Officer a reallocation of the assessment as to all such smaller parcels. Such proposal shall include the following information as to each parcel within the original tract:

- (1) Name and address of the property owner;
- (2) Parcel and tax schedule number;
- (3) Legal description; and
- (4) Amount of proposed assessment.

(b) The Financial Officer, upon review of such application according to established administrative guidelines, may accept or reject the proposed reallocation.

(c) If the proposed reallocation is rejected by the Financial Officer or if no proposed reallocation is submitted to the City within thirty (30) days after any such subdivision, the City, pursuant to the same notice and hearing process as described in § 22-88 above, may order the reallocation of the remaining assessment among such smaller parcels according to any of the various methods of allocation described in §§ 22-76 through 22-81 above; provided, however, that the hearing provided for herein shall be held before the Financial Officer, who shall have final authority to determine such reallocations, subject to the right of the property owner(s) of the original tract to appeal the decision of the Financial Officer to the City Council under the procedures contained in § 2-46 et seq.

(d) Absent any reallocation of assessment under this Section, the remaining unpaid assessment shall continue as a lien on the entire original tract against which the assessment was initially imposed.

(e) If a reallocation of assessment occurs as provided herein, the Financial Officer shall prepare and certify to the Municipal or County Treasurer an amended assessment roll for all affected parcels which are subject to the reallocated assessment setting forth the reallocation. The assessments as shown by the amended assessment roll shall constitute liens against each such separate parcel as of the date of certification.

(f) Notwithstanding the foregoing, no subdivision or reallocation shall result in an assessment being made against publicly owned lands or rights-of-way or against open areas, green belts or similar lands when such lands are vested in fee ownership separate from that of the adjacent improvements benefited.

(Code 1972, § 16-27; Ord. No. 193, 1987, 1-5-88; Ord. No. 51, 1997, § 11, 3-18-97)

Secs. 22-100—22-110. Reserved.

DIVISION 4. BONDS*

Sec. 22-111. Special assessment bonds and multi-year financial obligations authorized.

(a) For the purpose of paying all costs specified in § 22-85 as may be assessed against the property specially benefited and not paid by the City, special assessment bonds of the City may be issued as of such date and in such form as may be prescribed by the City Council. The bonds shall bear the name of the district and shall be payable in a sufficient period of years after such date to cover the period of payment, but subject to call as soon as hereinafter provided, in such convenient denominations as may be determined by the City Council.

(b) All such bonds shall be issued upon estimates of the Director of Community Planning and Environmental Services or, if applicable, the General Manager of Utility Services, approved by the City Council. The Financial Officer shall preserve a record of the same in a suitable book kept for that purpose. All such bonds shall be subscribed by the Mayor and countersigned by the Financial Officer, with the corporate seal affixed and attested by the City Clerk. Facsimile signatures may be used.

(c) The bonds shall be payable out of the money collected on account of the assessments made for the improvements or from the proceeds of refunding bonds. All money collected from such assessments for any improvements shall be applied to the payment of the bonds issued until payment in full is made of all the bonds, both principal and interest. If a reserve fund has been established for the district and any balance remains in the reserve fund after the bonds have been paid in full and the City has been fully reimbursed for costs associated with the district, any such balance shall be distributed proportionally to the assessed property owners in the district. For the purposes of this provision only, the term *assessed property owners* shall be construed to mean the then current property owners, unless an assessment has previously been paid in full, in which event it shall mean the party having made final payment of the assessment. The bonds may be used in payment of the cost of the district as herein specified or the City Council, in its discretion, may sell the bonds to pay such cost in cash. The bonds shall be negotiable in form and shall be in either registered or bearer form. The bonds shall bear interest at such rate as may be fixed by the City Council and payable semi-annually. If such interest is evidenced by coupons, the coupons shall bear the facsimile signature of the City Clerk.

(d) The City may issue multi-year financial obligations for the purpose of reimbursing the owner of any property within a special improvement district who has elected to pay in advance all or a portion of the costs specified in § 22-85 in order to facilitate the construction of improvements within said district.

(e) In connection with the issuance of bonds or other multiple-fiscal year financial obligations of the City payable solely from special assessments, the City Council may provide by ordinance or resolution for the submission of the question of issuing such bonds to the electors eligible to vote on the question. The City Council may provide by ordinance or resolution that all registered electors of the municipality shall be eligible to vote on the question or that only electors of the district shall be eligible to vote on the question.

(f) In connection with the issuance of bonds or other multiple fiscal year obligations of the City payable from special assessments which are additionally secured by a pledge of any other funds of the City, including the surplus and deficiency fund, the City Council may provide by ordinance or resolution for the submission of the question of issuing the bonds to all registered electors of the municipality.

* Cross-reference—Bonds, § 8-16 et seq.

(g) For the purposes of this Section, an *elector of the district* shall mean a person who, at the designated time or event, is registered to vote in the general election in this State and: (1) who has been a resident of the district or the area to be included in the district for not less than thirty (30) days; or (2) who or whose spouse owns taxable real or personal property within the district or the area to be included in the district, whether or not said person resides within the district. Where the owner of taxable real or personal property within the district is not a natural person, an elector of the district shall include a natural person designated by each such owner to vote for such owner. Such designation shall be filed in writing with the City Clerk. Only one (1) such person may be designated by each owner. (Code 1972, § 16-28; Ord. No. 19, 1989, §§ 15, 16, 2-21-89; Ord. No. 8, 1996, § 5, 1996; Ord. No. 211, 1998, § 2, 12-1-98; Ord. No. 95, 2005, 9-6-05)

Sec. 22-112. Calling of bonds for redemption.

Whenever there are available funds in a district, the Financial Officer may call in and pay a suitable number of district bonds outstanding by giving notice in such a manner as provided in the proceedings authorizing the bonds. On the date designated on the notice of redemption, interest on the bonds so called shall cease. The notice shall specify the number of the bonds called. Such call shall be made in the manner provided in the proceedings authorizing the bonds. The Financial Officer shall call in and pay district bonds in a timely manner so that the available funds would not cause the bonds to be arbitrage bonds under Section 103 of the Internal Revenue Code of 1986 and the regulations prescribed thereunder. (Code 1972, § 16-29)

Sec. 22-113. Guaranty for payment of bonds authorized.

The City Council in the ordinance authorizing the issue of public improvement bonds may provide a guaranty on the part of the City for the payment of all of the bonds issued pursuant to said ordinance to the extent permissible under the Charter. (Code 1972, § 16-30)

Secs. 22-114—22-130. Reserved.

**ARTICLE IV.
DEFERRED PAYMENT OF ASSESSMENTS***

Sec. 22-131. Deferment of payment authorized.

Notwithstanding any other requirement of the Code, a property owner meeting the qualifications set forth in § 22-134 may defer the payment of any special assessment levied against his or her residence pursuant to this Code. Such deferment shall be accomplished as provided in this Article. (Code 1972, § 36-1)

Sec. 22-132. Ownership by more than one person.

If a residence is owned by more than one (1) person, all owners must reside on the property and each must meet the qualifications set forth in § 22-134. (Code 1972, § 36-2)

Sec. 22-133. Deferment only for residence.

No property owner shall be eligible for a deferment of assessments under this Article in connection with any property not occupied as that person's residence at the time of application for such deferment. If an applicant for deferment has previously received a deferment of assessments under this Article in connection with another property, he or she shall not be entitled to a deferment of assessments on the new property until all assessments previously deferred in connection with such other property have been paid in full. (Code 1972, § 36-3)

* Cross-reference—Finance, Ch. 8.

Sec. 22-134. Eligibility for deferment.

In order to be entitled to a deferment of assessments under this Article, an applicant at the time of application must comply with the income limitations as provided by the State for real property tax assistance and heat or fuel expenses assistance as particularly set forth in Sections 39-31-101(3) and 39-31-104(3), C.R.S. (Code 1972, § 36-4; Ord. No. 106, 1989, § 1, 8-1-89)

Sec. 22-135. Application for deferment.

Any person desiring to defer assessments on a residence under this Article shall make application for such deferment to the Financial Officer on forms supplied by the City. The Financial Officer shall determine whether the applicant is eligible for the deferment. If the Financial Officer determines the applicant is eligible, he or she shall certify such determination.

(Code 1972, § 36-5)

Sec. 22-136. Execution of lien.

The Financial Officer shall require the applicant and all other owners of the property to execute a written lien in favor of the City against the property in the amount of the assessment against the property. Such lien shall be recorded in the records of the County Clerk and Recorder.

(Code 1972, § 36-6)

Sec. 22-137. Payment by City.

Upon receiving and recording the lien required in § 22-136, the Financial Officer shall pay to the assessment district from the general fund of the City the amount of the deferred assessment. The Financial Officer shall note on the assessment roll that such assessment has been deferred, and the assessment shall not be payable until the deferment expires as provided in this Article.

(Code 1972, § 36-7)

Sec. 22-138. Deferred assessment a lien against property.

Any assessment deferred pursuant to this Article shall be a lien against the property from the time of passage of the assessing ordinance until fully paid. The assessment shall be totally due and payable at such time as the owner of the property transfers or conveys the property to any other person. For the purpose of this Section, any change in ownership by deed, will, inheritance, operation of law or otherwise shall be considered a change in ownership, and the entire assessment shall become fully due and payable. In the case of transfer of title to the premises by reason of death of the owner, the person to whom the property is so transferred may have the assessments against the property deferred in accordance with this Article.

(Code 1972, § 36-8)

Sec. 22-139. Enforcement.

At such time as the assessment becomes due and payable pursuant to § 22-138, the City may enforce collection of any unpaid assessment by foreclosing the lien given pursuant to § 22-136 or by certifying the amount of such assessment for collection to the County Treasurer as in the case of any other assessment or by any other means available.

(Code 1972, § 36-9)

Sec. 22-140. Lien to continue until payment of assessment.

The deferment of any assessment pursuant to this Article shall not release the lien of such assessment against the property. Such lien shall continue at all times against the property until the amount of such assessment is fully paid.

(Code 1972, § 36-10)

Sec. 22-141. Interest on deferred assessment.

Any assessment deferred shall bear no interest from the date of application for deferment.
(Code 1972, § 36-11)

Sec. 22-142. Rules and regulations.

The Financial Officer is hereby authorized and empowered to make and enforce such rules and regulations not inconsistent with the terms of this Article deemed necessary for the implementation of this Article.
(Code 1972, § 36-12)

Sec. 22-143. Assessments transmitted to County.

If a property owner desires to defer an assessment which has been transmitted by the City to the County Treasurer for collection, the property owner upon making application for deferment and meeting the eligibility criteria set forth in § 22-134 shall be entitled to receive a deferment of the assessment in accordance with the terms and conditions of this Article. In that event the following provisions shall be applicable:

- (1) Upon certification to the Financial Officer of eligibility of an applicant for deferment of assessment, the Financial Officer shall take all necessary steps to have such assessment removed from the county assessment roll and shall further require the applicant to execute a lien against the property in the amount of the assessment against the property, which lien shall be recorded in the records of the County Clerk and Recorder.
- (2) Any assessment deferred shall bear no interest from the date of application for deferment.
(Code 1972, § 36-13)