

FINAL

2/6/90

ORDINANCE NO. 90-1

AN ORDINANCE PROVIDING FOR THE CONSTRUCTION, OWNERSHIP, OPERATION, AND MAINTENANCE OF AN EFFLUENT SEWER COLLECTION SYSTEM AND TREATMENT SITE DISPOSAL FACILITY SERVICING LOCAL IMPROVEMENT DISTRICT NO. 1 OF THE BAYVIEW WATER AND SEWER DISTRICT; PROVIDING FOR ALLOCATION OF CONSTRUCTION, OPERATION, AND MAINTENANCE EXPENSES TO USERS; AND PROVIDING FOR HOOK-UP REQUIREMENTS; PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

BAYVIEW WATER AND SEWER DISTRICT
KOOTENAI COUNTY, IDAHO

BE IT ORDAINED by the Board of Directors of the Bayview Water and Sewer District of Kootenai County, Idaho, as follows:

WHEREAS, the Bayview Water and Sewer District of Kootenai County, Idaho (the "District"), is a water and sewer district organized and existing under and pursuant to the laws of the State of Idaho; and

WHEREAS, the Board of Directors for the District ("Board") has previously created Local Improvement District No. 1, pursuant to Ordinance No. 88-1, adopted on June 8, 1988, for the purpose of acquiring, constructing, and installing the Bayview Sewer System, being an effluent sewer collection system and treatment site disposal facility to service properties located within or utilizing the facilities of the LID; and

WHEREAS, the District desires to provide a comprehensive regulatory scheme relating to waste water services to be provided to Users within Local Improvement District No. 1 or otherwise utilizing the services of the Bayview Sewer System.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Board of Directors of Bayview Water and Sewer District as follows:

PURPOSE AND APPLICABILITY

Section 1: The District hereby determines and declares that a fair regulatory scheme should be implemented to deal with waste water services to be provided by the District to those Users and Parcels in or near the District who shall be benefitted by the construction and operation of the Bayview Sewer System, as defined herein.

DEFINITIONS

Section 2: Unless the context specifically indicates otherwise, the meaning of the terms used in this Ordinance shall be as follows:

Bayview Sewer System (or "System"): The entire sewage collection system being constructed pursuant to the LID, as expanded from time to time, comprising all Building Sewers, the Collector System, and the Treatment Facility, as defined herein. The system includes all real and personal property and equipment and related rights necessary to the collection, transportation, treatment and disposal of raw sewage from areas within the jurisdiction of the LID.

Board or Board of Directors: The Board of Directors of the District, as it may be constituted from time to time.

Boarding House: Any building or portion thereof which includes separate bedrooms for rent and common kitchen and/or bathroom facilities.

BOD₅: Biochemical oxygen demand shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in milligrams per liter (mg/l).

Building Drain: That part of the piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes originating inside the walls of a building or a float house and conveys the discharge to the Building Sewer.

Building Sewer: The septic tank to which a building drain is attached, and all downstream piping, pumps, and other equipment located between the building drain and the service connection of the Collector System.

Capitalization Fee: The fee calculated and collected according to this Ordinance, with respect to Parcels created or otherwise brought under this Ordinance after closure of the LID (and which are therefore not included within the LID confirmation ordinance and not subject to an LID Assessment), representing a fair share of the cost of construction of the Collector System and the Treatment Facility, as allocated to an individual Parcel of land.

Closure of LID: With respect to LID No. 1, the date following completion of initial construction of the Bayview Sewer System, on which the District mails the notices of proposed assessment liens for the LID, as required by the applicable LID statute, which notices shall be used as a basis for confirmation of the final allocation of LID Assessments to Parcels.

Collector System: The system of pipes, pumps, reservoirs, and other sewage collection and conveyance equipment owned by the

District (now or in the future), whether by initial construction or by acquisition, operated for the purpose of collecting sewage effluent from individual Parcels and transporting such effluent to the Treatment Facility. The Collector System shall include all such equipment between the Building Sewers and the Treatment Facility as defined herein.

District: The Bayview Water and Sewer District, as its boundaries may be modified from time to time.

Engineer: The Engineer(s) or engineering firm(s) (or the duly authorized employee or representative thereof) contracted or otherwise designated by the District from time to time to advise the Board with respect to waste water services provided through the Bayview Sewer System.

Equivalent Residence or "ER": The basic unit of measurement utilized by the District to establish relative waste water disposal requirements of various property uses, with one (1) Equivalent Residence or "ER" being defined as one (1) typical single-family residence. The number of ERs attributable to a particular use shall be determined according to Section 3 of this Ordinance.

Float House: A floating residential structure which is designed or intended to accommodate overnight human occupancy, at a substantially fixed location, and which, in exchange for rent or other consideration, receives water service from or is otherwise connected with or appurtenant to a Marina or other Parcel within the LID. The term "float house" shall include, without limitation, all floating structures classified as float houses for purposes of registration, licensing or relocation, according to Idaho state law or any regulatory scheme administered by any state agency having jurisdiction; however, the term is not intended to cover those unplumbed, permanent storage structures commonly known as boat sheds or boat houses, or those motorized and easily movable watercraft commonly known as house boats.

Guest House: A secondary improvement (including a mobile home or trailer) which is designed or intended to accommodate overnight human occupancy, and which is located on a residential Parcel which is also improved with a primary Single Family Residence or a multi-family dwelling. A recreational vehicle ("RV") may also be classified as a guest house in cases where it is fully plumbed and otherwise independently habitable, and where either: (i) the RV is occupied substantially full-time; or (ii) the RV is rented out to a third party. For purposes of this definition, an RV will be deemed to be occupied substantially full-time, if it is occupied for thirty (30) or more days out of any forty-five (45) day period.

LID: Local Improvement District No. 1, established by the District's Ordinance No. 88-1, adopted June 8, 1988.

LID Assessment: The final Assessment levied against each Parcel in existence as of the date of Closure of the LID, in such amount as may be determined by the final LID confirmation ordinance, representing a fair share of the District's cost of construction of the Bayview Sewer System.

Marina: A commercial establishment located on any Parcel or Parcels that provides boat moorage, fueling and/or other services to watercraft, and which is designed to accommodate five (5) or more watercraft.

Mobile Home/Trailer Park: A Parcel on which three (3) or more mobile homes or trailers are situated, where services are provided to the residents thereof in exchange for rent or other consideration, paid to the owner of the Parcel.

Motel and Hotel: A building or group of buildings on the same premises, either detached or connected, containing sleeping or dwelling units, and designed for or occupied with an ordinary rental period not exceeding two (2) weeks.

Multi-Unit Dwelling: A building containing a combination of units with individual sleeping, bath, and kitchen facilities, each unit being designated and intended for individual or single-family occupancy. This definition includes apartments, townhouses, duplexes, triplexes, and the like.

Operation and Maintenance (O&M) Charge: The share of operation and maintenance expense for the Bayview Sewer System which is attributable to and charged to a particular Parcel in accordance with Section 7 of this Ordinance.

Parcel or Legal Parcel: Any legal lot now existing or hereafter created through a division or subdivision process, and any other parcel of real property recognized by the appropriate governmental Planning and Zoning Department or other agency or department as a separate legal parcel, having dimensions which would legally allow such Parcel to be improved with a residence or other structure for human use and/or occupancy, or which otherwise could reasonably be deemed benefitted by the availability of sewer service provided by the District. (However, the Board shall have the right to allow consolidation of two or more adjoining Parcels into a single Parcel for purposes of this Ordinance, pursuant to a recorded instrument or other legal process restricting the resulting Parcel to a use consistent with a single Parcel.)

Additionally, the term "Parcel" shall include a unit in a condominium project for which a condominium plan shall have been recorded, and any unit having final approval as part of a planned unit development, but only where no further platting or other governmental approvals are required as a prerequisite to the issuance of a building permit.

An "improved" Parcel shall include: (i) any Parcel on which a building or other improvement exists, which is designed to accommodate human occupancy and which generates sewage requiring disposal; and (ii) any Parcel providing water, power, or other utilities or services to a float house or to which a float house may otherwise be appurtenant.

However, for purposes of this Ordinance, the term "Parcel" shall only include property which is now or hereafter physically located within the boundaries of the District (or which is outside the District but which is provided with waste water services by connection to the Bayview Sewer System) and which has frontage on the Collector System, or legal access thereto by fee or easement. The term "pre-existing" Parcel shall refer to a Parcel in existence as of Closure of the LID, and "new" Parcel shall refer to a Parcel created or otherwise brought under this Ordinance after Closure of the LID.

Person: Any individual, firm, company, association, partnership, society, corporation, group, or other legal entity.

Single-Family Residence: A building or condominium unit designed and used exclusively for residential purposes by one family. This definition shall also include mobile homes and trailers used for residential purposes. A recreational vehicle ("RV") may also be classified as a single-family residence, in cases where it is fully plumbed and otherwise independently habitable, and where either: (i) the RV is occupied substantially full-time; or (ii) the RV is rented out to a third party. For purposes of this definition, an RV will be deemed to be occupied substantially full-time, if it is occupied for thirty (30) or more days out of any forty-five (45) day period.

Sewage: A combination of the water-carried wastes from residences, business buildings, float houses, institutions, and commercial and industrial establishments, together with such ground, surface, and storm waters as may be present.

Suspended Solids (SS): Solids that either float on the surface of, or are in suspension in, water, sewage or other liquids, and which are removable by laboratory filtering.

Treatment Facility: The land and all improvements, equipment and other personal property located thereon, which is owned, operated and maintained by the District for purposes of receiving, treating and disposing of sewage effluent from the Collector System.

User: Any person owning, controlling, occupying, or otherwise using an improved Parcel which is connected to or is required to be connected to the Bayview Sewer System.

1 ER = \$15.00

Any other term not herein defined shall be given its ordinary meaning or defined according to the "Glossary WATER AND SEWAGE CONTROL ENGINEERING," A.P.H.A., A.S.C.E., and W.P.C.F., latest Edition.

DETERMINATION OF EQUIVALENT
RESIDENCE FACTORS FOR SPECIFIC USES

3.1 Assignment of Equivalent Residence Factors: The Board shall assign to each Parcel an Equivalent Residence, or "ER", factor for purposes of determining that Parcel's LID Assessment (for pre-existing Parcels), Capitalization Fee (for new Parcels), and O&M Charge (for improved Parcels) with one (1) ER corresponding to a single-family residence. The allocation of ERs to a particular Parcel shall be independent of the number of septic tanks located on or servicing such Parcel. The number of ERs attributable to a particular use shall be determined as follows:

- (a) For LID Assessment and Capitalization Fee purposes, an unimproved Parcel shall be one (1) ER;
- (b) A single-family residence shall be one (1) ER;
- (c) A multi-unit dwelling shall be one (1) ER per residential unit;
- (d) A guest house, as defined herein, shall be treated as follows:
 - (i) If the guest house has both toilet/bath and kitchen facilities requiring sewage or waste water disposal, or is otherwise deemed by the Board to be independently habitable, it shall be deemed a separate residence and shall be assigned .7 ER;
 - (ii) If the guest house has no facilities requiring sewage or waste water disposal, or if it has toilet/bath facilities but no kitchen facilities, or vice versa, or if it is otherwise deemed by the Board not to be independently habitable, it shall not be assigned any ERs. However, even though not assessed or charged O&M fees, any guest house requiring sewage or waste water disposal shall be required to hook up to the System according to Section 8 of this Ordinance.

The determination of the number of ERs attributable to a guest house shall be made by reference to the Assessor's records for that Parcel or, at the Board's option, by specific

on-site inspection by the Board or its authorized representative. The ER factor assigned to a guest house shall be in addition to the ER factor assigned to the remaining primary improvements on the subject Parcel.

(e) A float house, as defined herein, shall be .7 ER, with the assessment being attributable to the Marina or other Parcel to which the float house is appurtenant. The ER factor assigned to a float house shall be in addition to the ER factor assigned to the balance of such Marina or other Parcel.

(f) Parcels improved for special uses (other than single-family residences, multi-unit dwellings, guest houses, float houses, and industrial uses as described in subparagraph (g) below) shall be assigned ERs according to the classification of such Parcels under the following schedule (representing generally accepted national averages, established according to relative waste produced, as compared to a single family residence):

EQUIVALENT RESIDENCE (ER) SCHEDULE

Churches	ER = 1
Taverns	ER = 1 + .07 x No. of Seats in excess of 15
Restaurants	ER = 1 + .17 x No. of Seats in excess of 6
Businesses and Offices	ER = 1 + .10 x No. of Equivalent Full-Time Employees in excess of 10
Service Stations	ER = 1 + .50 x No. of Pump Hoses in excess of 2
Hospitals	ER = 1 + .70 x No. of Beds in excess of 1; plus .17 x No. of Employees in excess of 6
Bowling Alleys	ER = 1 + .70 x No. of Lanes in excess of 2
Medical & Dental Offices	ER = 1 + .01 x No. of Hours/Week x No. of Employees in excess of 2
Auto Dealerships	ER = 2
Boarding Houses	ER = 1 + .25 x No. of Occupants in excess of 4
Laundromats	ER = 1 + .56 x No. of Washing Machines in excess of 2
Theaters	ER = 1 + .007 x No. of Seats in excess of 150
Nursing Homes	ER = 1 + .70 x No. of Beds in excess of 2
Mobile Home/Trailer Parks	ER = .70 x No. of Spaces

Marinas	$ER = 1 + .02 \times \text{No. of boat slips in excess of 50 (excluding assessable float houses and other improvements)}$
Motels and Hotels w/Kitchen	$ER = 1 + .50 \times \text{No. of Units in excess of 2}$
w/o Kitchen	$ER = 1 + .25 \times \text{No. of Units in excess of 4}$
High Schools w/o Kitchen or Shower	$ER = 1 + .13 \times \text{No. of Students in excess of 7}$
w/Kitchen or Shower	$ER = 1 + .25 \times \text{No. of Students in excess of 4}$
Elementary Schools w/o Kitchen	$ER = 1 + .065 \times \text{No. of Students in excess of 16}$
w/Kitchen	$ER = 1 + .125 \times \text{No. of Students in excess of 8}$

Notwithstanding the foregoing schedule, the Board shall have the right, where required by considerations of fairness and consistency, to assess ERs based on actual or potential water use on an annualized basis, with 250 gallons per day being deemed equivalent to one (1) ER.

(g) Parcels having improvements discharging industrial wastes or producing a flow, biochemical oxygen demand or suspended solids loading in excess of five percent (5%) of the average dry weather sewage flow measured at the Building Sewer shall have their ER allocation designated by the Board. No quantity discounts shall be allowed, and the District may assess reasonable surcharges on waste flows with biochemical oxygen demand or suspended solids concentrations above 250 milligrams per liter.

3.2 Special Circumstances/Contract Service: Any use not covered by the above classifications shall have its ER factor determined by the Board on an individual basis, in such a manner as to approximate potential sewage or waste water service requirements. Further, the Board shall have the authority, but not the obligation, to adjust ER factors according to particular special circumstances; provided, however, that ER factors will not be reduced based upon claims of seasonal use of a particular Parcel or float house, upon physical size of a Parcel or any building thereon or float house appurtenant thereto, or solely upon the number of toilet facilities within or persons using a particular building or float house.

With respect to land located outside or otherwise not subject to the jurisdiction of the District, the Board shall have the right to negotiate contracts for sewage or wastewater disposal, under terms that approximate the terms applicable to Parcels within the jurisdiction of the District.

3.3 Adjustments: The Board shall have the right to adjust a particular ER factor from time to time (both with respect to collection of additional Capitalization Fees and with respect to assessment of greater or lesser O&M charges) in the case of a substantial change in use of a particular Parcel, as reflected in a substantial change in the sewage or wastewater service requirements.

CONSTRUCTION, OWNERSHIP, OPERATION,
AND MAINTENANCE RESPONSIBILITIES

Section 4: Subject to the terms of this Ordinance, the entire Bayview Sewer System (Building Sewers, Collection System, and Treatment Facility) shall be constructed, acquired, owned, operated and maintained by the District, even though the elements of the Building Sewers shall be located on private property; provided, however, that all power costs to operate a pump or other equipment on private property (which pump services only that property owner's property) shall be paid by the User of the Parcel on which the pump or equipment is located or to which the pump or equipment may be appurtenant.

Following closure of the LID, construction of a Building Sewer to service a new Parcel (or new improvements on a pre-existing Parcel) and extensions of the Collector System to reach a new Parcel, shall be the responsibility of the User, including the cost of any necessary road repair, landscaping, or the like. Once installed and accepted by the District, the new Building Sewer and the extension of the Collector System shall be owned, operated, and maintained by the District; provided, however, that all power costs to operate pumps or other equipment on private property shall be paid by the User of the Parcel on which the pump or equipment is located or to which the pump or equipment may be appurtenant.

Building drains shall be installed, owned, operated and maintained by individual Users.

To the extent located on private property, Building Sewers shall be installed and operated according to easement rights granted to the District. Any Parcel for which an appropriate easement for a Building Sewer is not granted prior to the date scheduled for construction of such Building Sewer, shall be treated in all respects as a new Parcel, and shall be subject to all requirements applicable to new Parcels, including without limitation, the Capitalization Fee requirements of Section 5 of this Ordinance.

COSTS OF CONSTRUCTION AND/OR
ACQUISITION; LID ASSESSMENTS AND
CAPITALIZATION FEES

5.1 Creation of Obligation: The District hereby determines and declares that all Parcels (and all float houses), by definition under this Ordinance, are deemed benefitted by the existence and availability of the Bayview Sewer System, which shall initially be constructed and paid for, in whole or in part, by owners of Parcels in existence as of the Closure of the LID (pre-existing Parcels). There is hereby imposed upon all Parcels (both pre-existing and new), the obligation to pay to the District a fair share of the cost of the Bayview Sewer System, to be paid in such amounts and at such times as required in this Section 5.

5.2 LID Assessments (Pre-Existing Parcels): The entire cost to the District for constructing and/or acquiring the various elements of the Bayview Sewer System shall be borne initially by all pre-existing Parcels by LID Assessment. At Closure of the LID, each pre-existing Parcel shall be assigned an ER factor depending upon existing improvements, uses, and platting status, according to Section 3 of this Ordinance. Payment of the share of the total costs attributable to each pre-existing Parcel shall be made in accordance with the appropriate LID confirmation ordinances and as permitted by Idaho law.

5.3 Capitalization Fees (New Parcels): While the District's share of all construction and acquisition costs shall be paid by Assessment against Parcels in existence as of the Closure of the LID (pre-existing Parcels), the District recognizes and declares that new Parcels created or otherwise brought under this Ordinance after Closure of the LID will similarly be benefitted by the availability of the Bayview Sewer System, and that expanded uses of pre-existing Parcels will realize increased benefits from the availability of such System. Accordingly, a Capitalization Fee is hereby established and shall be charged against such new Parcels and expanded uses as follows:

(a) Allocation of Original Assessment: Recognizing that new Parcels may be created from pre-existing Parcels through a division, subdivision, or special planning process (e.g., by approval of a condominium project or a planned unit development), one (1) of the new Parcels shall be deemed a successor to the pre-existing Parcel (and therefore subject to the original LID Assessment rather than the Capitalization Fee imposed by this Subparagraph), and the remaining new Parcel(s) shall be subject to the Capitalization Fee. The LID Assessment for the pre-existing

Parcel, as determined at the confirmation of the LID, shall be accelerated and paid at the same time the Capitalization Fee(s) for the new Parcel(s) come due; provided, however, that if, in the opinion of counsel for the District, the LID Assessment (and the lien securing payment thereof) may be allocated to one (1) of the new Parcels (as a successor to the original Parcel), then the LID Assessment may continue to be amortized under its original schedule.

(b) Calculation of Capitalization Fee: The Capitalization Fee for a single ER, as defined in this Ordinance, shall be the sum of the following amounts:

(i) An amount equal to the total cost of construction and acquisition of the Collector System and the Treatment Facility (without deduction for governmental grants), divided by the total number of ERs assessed with respect to pre-existing Parcels; less

(ii) Any credit to which the Parcel may be entitled under this Ordinance, as amended from time to time, or as may be negotiated by the Board under separate agreement.

(c) Time of Payment; Reservation of Capacity: The Capitalization Fee determined according to this Subparagraph shall become due at the time of creation of the new Parcel to which it pertains, whether by: (i) recordation of an approved subdivision plat; (ii) final approval of a planned unit development creating multiple Parcels, where no further platting or governmental approval is required as a prerequisite to the issuance of a building permit; (iii) recordation of a record of survey establishing the new Parcel, where no formal subdivision compliance is required; (iv) division of ownership by conveyance of fee or equitable title to a portion of a pre-existing Parcel; (v) agreement by the District to allow property outside the District to connect to the Bayview Sewer System; or (vi) other process resulting in the creation of a new legal Parcel or Parcels recognized by the appropriate governmental Planning and Zoning Department or other agency or department. The amount paid at that time shall be based upon a single ER for each unimproved new Parcel, or upon the appropriate total number of ERs for each new Parcel which may be improved at the time of its creation. Any adjustment required for multiple ERs shall be paid in connection with the application for, and issuance of, a building

permit for the appropriate Parcel(s). At the time a building permit is issued, indicating construction of improvements requiring multiple ERs, the full Capitalization Fee shall be calculated and paid, and credit applied for any amount actually paid when the new Parcel was created. Payment at the time of creation of a new Parcel or at the time of issuance of the building permit shall entitle the land owner to reserve capacity for the number of ERs actually paid for in the Bayview Sewer System.

5.4 Change in Use: The District hereby reserves the right to assess additional Capitalization Fees on any Parcel (whether pre-existing or new), in the case of a substantial change in use of the Parcel (including, for example, expansion of the number of float houses attributable or otherwise appurtenant to a Marina or other Parcel), as provided in Section 3.3 of this Ordinance. In such case, Capitalization Fees shall be calculated in the manner described for new Parcels, but with credit given for the LID Assessment(s) and for Capitalization Fees previously charged and paid based on prior use.

5.5 Existing Community Systems: Certain portions of the Collector System shall be constructed by the District, and certain other portions consisting of existing community systems may be acquired by the District by negotiated purchase, condemnation, or other acquisition. The Board shall negotiate the price and terms of any such acquisition, and any agreed consideration may be paid in cash to the owner(s) thereof, or provided in the form of credits against LID Assessments and/or Capitalization Fees, or Operation and Maintenance charges, according to agreement of the parties.

5.6 New Construction Extending System: Owners of land within the District which will not have frontage or legal access to the Collector System at the time of Closure of the LID, may nevertheless be permitted or required to hook into the system, subject to the following terms and conditions:

(a) The right to hook into the system shall be granted only by written agreement with the Board, which shall have the discretion to accept or deny applications based upon the existing and anticipated availability of capacity at the Treatment Facility and in the Collector System;

(b) All costs of extending the Collector System to the subject property shall be borne by the applicant, with no right to reimbursement or credit for costs except as provided herein;

(c) All construction shall be completed according to detailed plans and specifications submitted to and approved by the Board or the District Engineer, with the terms of construction specifically contemplating periodic inspection and final certification by the Engineer at the applicant's expense;

(d) The applicant shall, prior to commencement of construction, pay the full Capitalization Fee calculated according to this Ordinance, based upon the total number of Parcels and ERs to be serviced by the extension of the System; provided that the applicant shall be entitled to a credit to compensate the applicant for the cost of construction of the extension of the Collector System, such credit to be the lesser of: (a) the actual contract price for construction of the extension of the Collector System; or (b) \$1,000 per ER to be serviced. No credit shall be allowed with respect to any Capitalization Fee which is not paid prior to commencement of construction as provided herein (whether such unpaid Capitalization Fee pertains to new Parcels created after commencement of construction, or to improvement or expanded use of existing Parcels, or otherwise);

(e) Following completion and certification of construction, the extension of the Collector System and the Building Sewer(s) shall be conveyed to the District, along with any necessary easements, and shall thereafter be considered part of the Bayview Sewer System for all purposes.

5.7 Special Circumstances: Upon a showing of special circumstances respecting a particular Parcel or Parcels, the Board shall have the power to negotiate a special arrangement for calculation and payment of Capitalization Fees; provided that the special arrangement shall result in a Capitalization Fee calculation and payment structure which is substantially equivalent to the calculation and payment structure required of other similar Parcels.

(5.8) Advance Reservations: At any time prior to or following Closure of the LID, the owner of any Parcel may purchase additional sewer capacity, attributable to such Parcel, by agreeing to have the Parcel assessed for the desired number of ERs prior to Closure of the LID, or by payment of the appropriate Capitalization Fee following Closure of the LID (without reference to whether the Parcel was included within the LID); provided, however, that: (i) the total amount of any such LID Assessment shall not exceed fifty percent (50%) of the assessed value of the

Parcel; and (ii) the capacity so purchased shall be specifically allocated within such Parcel. Additionally, the Board may impose reasonable conditions and restrictions on the purchase of advance reservations, taking into consideration the availability of capacity within the System, the demand for reservations of capacity, the undesirability of speculation with respect to sewer capacity, and the requirements of financing expansion of the System. (Excess capacity so purchased may not be transferred for the benefit of other property.)

5.9 Use of Capitalization Fees: Capitalization Fees shall be retained by the District in a reserve to pay LID bond indebtedness, to cover operation and maintenance expenses of the District, to reduce O&M charges otherwise assessed to all Users, or to defray any other expenses of operating the District or administering the LID, to the extent allowed by law.

USE OF SEWER SYSTEM

Section 6: The use of the Bayview Sewer System shall be in accordance with ordinances, rules, regulations, and policies promulgated by the District from time to time.

OPERATION AND MAINTENANCE CHARGES

Section 7: Charges for operation, maintenance, repair, replacement, insurance, and administration of the Bayview Sewer System, and a reasonable reserve therefor (O&M charges), shall be estimated by the Board, and a budget shall be adopted on a yearly basis, at the same time and in the same manner as adoption of the General District Budget. The total O&M charges shall be assessed on an equal basis (adjusted for multiple ERs) to all Parcels within the District which are connected to, or which are required to be connected to the Bayview Sewer System. O&M charges shall be billed on a quarterly or more frequent basis, as determined by the Board, and payments shall be due within fifteen (15) days of billing. If payments are not timely made, the Board shall assess penalties in the maximum amount allowed by law, or if no such maximum amount is specified by law, then at the rate of not more than Five Dollars (\$5.00) per ER for each month, or portion thereof, between the payment due date and the date full payment (including all accrued penalties) is made.

The Board shall have the right to delegate administration and collection procedures for O&M charges to a management company or to such other third party as may be deemed appropriate in the discretion of the Board.

The first billings for O&M charges attributable to a particular Parcel shall be delivered as follows:

(a) With respect to all improved preexisting Parcels, immediately following certification by the Board that the Bayview Sewer System is operational; and

(b) With respect to all other Parcels, immediately following the date of actual connection, or the date connection is required, whichever is earlier.

The obligation to pay O&M charges shall be enforced by the District according to the relevant provisions of Idaho Code, as amended or modified from time to time, or as may otherwise be allowed by law.

CONNECTION REQUIREMENTS

8.1 Mandatory Connection: All improved pre-existing Parcels shall, to the extent allowed by law, be required to connect to the Bayview Sewer System within one (1) year following certification by the Board that the System is operational. All other improved Parcels shall, to the extent allowed by law, be required to connect to the System on the earlier of:

(a) The date connection is required by Panhandle Health District under its regulatory authority; or

(b) Sixty (60) days from written notification from the Board.

The obligation to connect shall be enforced by the Board according to the relevant provisions of Idaho Code, as amended or modified from time to time, or by such other method as may be allowed by law.

8.2 Connection Permit: A permit for connection must be obtained from the District, prior to construction of the physical connection. The permit will be issued by the District or its Engineer or other authorized representative upon completion of an Application for Connection and payment of any fees required by Subparagraph 8.3 below; provided that any late connection fee required under subparagraph 8.3(c) below, which may accrue after issuance of the permit, shall be paid as a condition to final approval following inspection. Construction of the sewer connection shall be made according to specifications recommended and maintained by the Engineer, and shall be performed by the User of a specific Parcel, by a journeyman plumber licensed by the Idaho State Plumbing Board, or by a licensed public works contractor, and shall be made at the User's expense.

8.3 Connection Fees: Connection fees shall be paid to the District in connection with the issuance of

a connection permit. Such fees shall be calculated as follows:

(a) A Fifty-five Dollar (^{42.00}~~\$55.00~~) inspection fee, to compensate the District for the cost of inspecting the hook-up (with additional fees not to exceed \$55.00 for each subsequent inspection required to assure compliance with the hook-up requirements); plus

(b) Any unpaid Capitalization Fee based upon the ER factor allocated to the proposed use of the connection, including any applicable surcharge, credit being given for LID assessments imposed and/or Capitalization Fees previously paid for such Parcel; provided, that nothing in this subparagraph shall be construed as accelerating any LID Assessment which is being paid according to an approved amortization schedule; plus

(c) In the case of a permit which is not obtained or a connection which is not completed within the time required under this Ordinance for a particular Parcel, a late charge equal to One Hundred Dollars (\$100.00).

8.4 Inspection: The physical connection must be inspected by the State plumbing inspector, the Engineer, or by such other representative as may be designated by the District, prior to backfill of the excavation. At least forty-eight (48) hours notice of the time requested for the connection must be provided to the inspector. Deviation from the District's design standards must be corrected at the permittee's expense. Connection made without District inspection and approval shall be re-excavated at the permittee's expense to allow inspection by the District's representative.

ENFORCEABILITY CLAUSE

Section 9: The District shall enforce and seek remedies for breaches of the terms of this Ordinance, as provided by the laws of the State of Idaho.

REPEALER CLAUSE

Section 10: All ordinances or resolutions of this District or parts thereof, insofar as they are in conflict with this Ordinance, are hereby repealed and rescinded.

SEVERABILITY CLAUSE

Section 11: If any section, subsection, sentence or provision hereof or the application thereof to any particular

circumstance shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

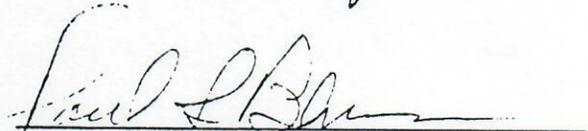
EFFECTIVE DATE

Section 12: This Ordinance shall be in full force and effect upon its publication according to law in the Coeur d'Alene Press, a newspaper of general distribution in the District, and hereby designated as the official newspaper for the publication of this Ordinance.

PASSED AND ADOPTED the 21st day of February, 1990.

ATTEST:


District Secretary


Board Chairman

CERTIFICATE OF ADOPTION OF ORDINANCE

I, the undersigned, as Secretary of the Bayview Water and Sewer District of Kootenai County, Idaho, hereby certify that the foregoing Ordinance is a full, true, and correct copy of an Ordinance duly adopted at a meeting of the Board of Directors of said District, duly and regularly held at the regular meeting place thereof on February 21, 1990, of which meeting all members of said Board had due notice, and at which a majority thereof were present; and that at said meeting said Ordinance was adopted by the following vote:

AYES, and in favor thereof, Directors:

PAUL BLUM
JOE MALNERICH
MARCO PEMBERTON
LEACH ELLIS

NOES, Directors:

NONE

ABSENT, Directors:

BILL SPAULDING

ABSTAINED, Directors:

NONE

I further certify that I have carefully compared the same with the original Ordinance on file and of record in my office; that said Ordinance is a full, true, and correct copy of the original Ordinance adopted at said meeting; and that said

Ordinance has not been amended, modified, or rescinded since the date of its adoption, and is now in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of said District on February 21, 1990.


District Secretary