

## Chapter 66 - SPECIAL ASSESSMENTS

### ARTICLE I. - IN GENERAL

#### Sec. 66-1. - Purpose and intent.

The purpose and intent of this chapter is to serve as a guide for the making of public improvements and the levying of special assessments within the city. The city shall follow the procedures and requirements of Minn. Stat. ch. 429. Specifically but not by way of limitation, the cost of any public improvement may be assessed upon property benefited thereby, whether or not the property abuts on the improvement and whether or not any part of the cost is paid from the county state-aid highway fund, the municipal state-aid street fund, or the trunk highway fund. Where this chapter may be inconsistent with the laws of the state, particularly but not limited to Minn. Stat. ch. 429, such laws shall prevail over this chapter, provided that, to the greatest extent possible, this chapter shall be interpreted and applied in a way that is in harmony with the laws of the state. Where a project includes unusual or extraordinary circumstances or conditions, the council may, in its discretion, vary from the standards of this chapter in order to accommodate such circumstances or conditions in a fair and reasonable manner.

(Ord. No. 896, 7-6-2009)

#### Sec. 66-2. - Definitions.

Definitions adopted in Minn. Stat. § 429.011 shall be used under this chapter and, in addition, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *City engineer* may be a city engineer who is an employee of the city or a consulting engineer who is acting as city engineer for the city on a particular project.
- (b) *Developer* means any and all persons or entities having an ownership interest in or any other right to develop a project on a particular property.
- (c) *Extended area* means any area beyond the immediate project area, which will or may in the future be benefited by a project.
- (d) *Major street* means a major arterial, minor arterial, parkway or collector street as described in section 34-623(c) of this Code.
- (e)

*Project* means construction of public improvements in a particular project area, whether the project involves reconstruction or replacement of existing improvements or construction of new improvements or both.

- (f) *Project area* means the real property included in a new development which involves the construction of public improvements, or real property abutting on or otherwise immediately benefited by any other public improvement project.
- (g) *Public improvements* means all improvements authorized by Minn. Stat. § 429.021, including but not limited to public street, curb and gutter, sidewalk, storm sewer, sanitary sewer, water, street lighting and other improvements.
- (h) *Trunk utilities* include the following public utilities which are intended to serve an extended area:
  - (1) Trunk sanitary sewer means a sanitary sewer pipe ten inches in diameter or greater. A sanitary sewer pipe of less than ten inches in diameter shall be considered a trunk sanitary sewer if, in order to serve an extended area, it is required to be placed at greater depth than it would be if it were meant to serve only the project area. Lift stations, force mains, and metering stations shall be considered to be part of the trunk sanitary sewer system only if they are intended to be permanent as indicated by the city's comprehensive sewer plan.
  - (2) Trunk storm sewer means storm sewer piping and/or ponding areas which serve an area outside of the tributary drainage area of which the project is part. Storm sewer piping that is installed at greater depth than would be necessary to serve a project area shall be considered trunk storm sewer.
  - (3) Trunk water means a water main greater than eight inches in diameter which is meant to deliver high volumes of water to the city's water main system, and the valves, boxes, manholes and fire hydrants associated with the trunk water system. An eight-inch water main shall not be considered part of the trunk water system even if such water serves an extended area.

(Ord. No. 896, 7-6-2009)

#### Sec. 66-3. - Improvement costs eligible for special assessment.

All costs related to public improvements are eligible for special assessment against real property in the city to the greatest extent authorized by Minn. Stat. ch. 429 and other state and local laws and regulations. Costs may include, but are not limited to, the cost of all necessary site preparation, construction, and restoration work, plus engineering, legal, administrative, financing and other contingent costs, including acquisition of right-of-way and other property.

(Ord. No. 896, 7-6-2009)

Sec. 66-4. - Service life of public improvements.

The city shall design public improvements to last for a definite period as stated in this section, or, if different, shall be as stated in the resolution ordering the improvement. Repair or replacement of public improvements within their designated service life generally will not be assessed to benefited properties, except that resurfacing or replacement of streets within 30 years of initial construction generally will be assessed to benefited properties.

- (1) *Sidewalks: 20 years.*
- (2) *Street reconstruction, including sub-base, surfacing and curb and gutter: 30 years.*
- (3) *Street surfacing including mill and overlay and reclamation projects: 15 years.*
- (4) *Ornamental street lighting: 20 years.*
- (5) *Water mains, sanitary sewer and storm sewer: 30 years.*

(Ord. No. 896, 7-6-2009)

Sec. 66-5. - Unpaid special service charges.

Any charges for special services ("special charges") of the types enumerated in Minn. Stat. § 429.101 or as otherwise authorized by law, if not paid when due, may be collected by special assessment against the property benefited. Any special assessment for unpaid special charges shall be payable in a single installment or by up to ten equal annual installments, as the council may provide. With this exception, Minn. Stat. §§ 429.061, 429.071 and 429.081 shall apply to assessments made under this section.

(Ord. No. 896, 7-6-2009)

Secs. 66-6—66-14. - Reserved.

ARTICLE II. - PUBLIC IMPROVEMENT AND ASSESSMENT PROCEDURES

Sec. 66-15. - Two track process.

Under Minn. Stat. ch. 429, there are two legal processes (tracks) related to public improvement projects, one for the initiation and approval of the project itself and one for adoption of assessments to recover all or part of the cost of the improvements, as outlined in this article. If allowed by law and if desirable in order to facilitate the prompt and economical completion of a project, the two tracks may overlap in time.

(Ord. No. 896, 7-6-2009)

Sec. 66-16. - Public improvement track.

Except as otherwise allowed by state law and approved by the city council, the general procedure for approval and construction of public improvement projects which will be paid for in whole or in part by special assessments shall be as follows.

- (1) *Initiation of project.* A public improvement project may be initiated either by a petition from affected property owners or on the city council's own initiative. The council will review any petition and pass and publish a resolution determining whether the petition is legally sufficient or not. Any person directly affected by the resolution may challenge the council's determination as provided by Minn. Stat. § 429.036. If the petition is legally sufficient, the council will determine whether it wishes to proceed with study of the proposed improvement. The council is not required to do so.
- (2) *Planning commission review.* The council will refer the proposed improvement to the planning commission for review under Minn. Stat. § 462.356, subd. 2, unless the council determines by a two-thirds vote of all members that the proposed improvement has no relationship to the comprehensive plan.
- (3) *Feasibility report.* If the council chooses to proceed with a public improvement pursuant to a petition, or if the council has acted on its own initiative in proposing a public improvement, the council will order preparation of a feasibility report.
- (4) *Public hearing.* If a public hearing is required prior to ordering the improvement, the council will order a public hearing. Notice of the public hearing will be published and mailed and the public hearing will be conducted as required by Minn. Stat. § 429.031.
- (5) *Ordering improvement and plans and specifications.* A resolution ordering the improvement may be adopted at any time within six months after the date of the improvement hearing, subject to the voting requirements of Minn. Stat. § 429.031. At the same time as an improvement is ordered, the council will authorize preparation of plans and specifications for the project.
- (6) *Advertising for bids.* When the council has approved the plans and specifications for the project, city staff will advertise for bids as provided by Minn. Stat. § 429.041.
- (7) *Award of contract.* Staff will review bids and make a recommendation to the council for award of a contract for construction of the project. The council may reject all bids or may award a contract based on the bids received within one year of adoption of the resolution ordering the

project, unless a different time is stated in the resolution ordering the project. Contracts will comply with all requirements of state public contracting law including performance and payment bond requirements.

- (8) *Performance of contract.* City staff will supervise construction of the project and oversee payments to the contractor, withholding proper retainages, and will make a recommendation to the council as to final payment when all prerequisites are met.

(Ord. No. 896, 7-6-2009)

#### Sec. 66-17. - Special assessment track.

Except as otherwise allowed by state law and approved by the city council, the general procedure for adoption of special assessments to pay all or part of the cost of public improvement projects shall be as follows.

- (1) *Determination how cost of project will be paid.* At any time after the expense incurred or to be incurred for a public improvement has been calculated, the council will determine by resolution the amount the city will pay, other than the amount the city will pay as a property owner, if any, and the amount to be assessed.
- (2) *Preparation of assessment roll.* City staff will prepare the proposed assessment roll, based upon the benefits received by each parcel as a result of the project, as determined by a preliminary benefits appraisal prepared by a licensed certified general real property appraiser.
- (3) *Assessment hearing.* The council will review the proposed assessment roll and order an assessment hearing. City staff will cause notice of the hearing to be published and mailed as required by Minn. Stat. § 429.061. The council will conduct the assessment hearing and hear and pass upon any objections to the proposed assessments, whether presented orally or in writing. The council may amend the assessment roll as to any parcel. The council may adjourn the hearing from time to time.
- (4) *Adoption of assessment roll.* The council will adopt the assessment roll or amended assessment roll by resolution. If the amount adopted is different from the amount proposed, notice will be mailed to the affected property owner. The council will determine the interest rate on assessments, the number of years over which assessments may be paid, and any deferral of assessments which may be warranted.
- (5) *Certification of assessment roll.* The council will authorize certification of the assessment roll to the county auditor for collection with real property taxes and city staff will so certify the assessment roll.

(Ord. No. 896, 7-6-2009)

Secs. 66-18—66-24. - Reserved.

### ARTICLE III. - DETERMINATION OF BENEFIT AND ASSESSMENT RATES

Sec. 66-25. - Determination of benefit.

Notwithstanding any other provision contained in this chapter, special assessments shall be levied pursuant to M.S.A. Chapter 429. The cost of any improvement, or any part thereof, may be assessed upon property benefited by the improvement, based upon the benefits received, whether or not the property abuts on the improvement and whether or not any part of the cost is paid from the county state-aid highway fund, the municipal state-aid street fund, or the trunk highway fund. No assessment shall exceed the benefits to the property assessed. Unless another method is authorized by law and approved by the city council, the amount to be assessed to properties benefited by an improvement project shall be calculated by the city engineer, subject to approval by the city council, based upon assessment rates adopted by the city council after considering a preliminary benefits appraisal prepared by a licensed certified general real property appraiser. In the event that a preliminary benefits appraisal is used to calculate assessments rates for a category of assessable projects, such benefits appraisal shall be updated at least every three years. Nothing in this section shall preclude the city from commissioning a preliminary benefits appraisal for any specific individual improvement project authorized by law and calculating assessment amounts for such project based on the preliminary benefits appraisal.

(Ord. No. 896, 7-6-2009; Ord. No. 954, § 1, 11-12-2013)

Sec. 66-26. - Assessment of project components.

Unless otherwise authorized by law and approved by the city council, the city will assess or otherwise pay for the following specific types of improvements in the following manner:

- (1) *Street repairs.* Street repairs including but not limited to reconstruction, reclamation, and overlays, shall be assessed to benefited properties based upon a preliminary benefits appraisal.
- (2) *Gravel streets.* Upgrades to an existing gravel street shall be considered new construction and assessed to benefited properties based upon a preliminary benefits appraisal.
- (3) *Seal coats.* Seal coat projects are funded by the city and not assessed.
- (4)

*Frontage roads.* Frontage roads along highways and other arterial streets are deemed to be of benefit to commercial and industrial properties abutting on the frontage roads. The entire cost of any improvements to such frontage roads shall be assessed to the benefited properties, to the extent supported by the city's preliminary benefits appraisal, even if there are only properties abutting one side of such frontage roads.

- (5) *Alleys.* Upgrading existing gravel alleys by adding pavement and reconstructing existing paved alleys will be assessed to all lots abutting on the alley being improved based upon a preliminary benefits appraisal.
- (6) *Sidewalks.* Sidewalks constructed or reconstructed as part of a street project are included in the total project cost to be assessed. New sidewalks not associated with a street project are funded by the city and not assessed. Reconstruction of existing sidewalks not associated with a street project shall be completed by the city in accordance with the city's sidewalk replacement criteria and not assessed. Property owners with sidewalk abutting their property may replace sidewalk at their own expense if they prefer an upgrade from what is allowed by the city's sidewalk replacement criteria, provided that the city shall review and approve the plans and specifications for such sidewalk replacement before any work begins thereon.
- (7) *Trails.* Bituminous trails in developed areas are funded by the city and are not assessed. Bituminous trails that are part of a new development will normally be a part of the developer's project cost unless the city council agrees otherwise.
- (8) *Individual service laterals.* Repair and replacement of an individual service lateral is a private improvement which is the responsibility of the property owner. When a public improvement project requires new service laterals, or new service laterals are otherwise required by ordinance, the property owner is responsible for the work and the cost thereof. However, the city may offer to have service laterals constructed or replaced in association with a public improvement project undertaken by the city, or otherwise, and to assess the cost of the service lateral work to the property served. In this event, property owners shall sign a construction easement, agreement of assessment and waiver of appeal allowing construction of the service laterals and assessment of the entire cost thereof to the property, without possibility of appeal. The agreement of assessment and waiver of appeal will recite the estimated cost of the work, but the estimated cost shall not bar assessment of additional amounts reasonably incurred by the city in completing the work. Any construction of individual service laterals by the city and the levy of assessments for them are done as a convenience to property owners and are not subject to the same statutory requirements as public improvement projects and special assessments for public improvements.

- (9) *Extensions.* To the extent that an improvement benefits non-abutting properties which may be served by the improvement when one or more later extensions or improvements are made but which are not initially assessed, the city may pay such cost and reimburse itself by adding all or any portion of the cost so paid to the assessments levied for any of such later extensions or improvements, provided that notice that such additional amount will be assessed is included in the notice of hearing on the making of such extensions or improvements. As an alternative, the city may assess these costs to the area of future benefit immediately, based upon availability of the subject improvements.
- (10) *Burying electric lines.* The entire cost associated with burying electric lines shall be the responsibility of the benefiting properties.
- (11) *New development projects.* The following provisions shall apply to new development projects.
- a. Except as otherwise approved by the city council, the developer shall be required to construct and pay the full cost of all public improvements within a new development project as provided by section 34-663 of this Code.
  - b. As provided by section 34-663, the developer may petition for construction of certain public improvements to be done by the city, which may be approved in the discretion of the city council.
  - c. In any project which includes a major street or trunk utility, the developer must petition the city if the developer wants the city to construct such improvements pursuant to Minn. Stat. ch. 429; the city will not undertake such construction simply by contractual arrangement with the developer.
  - d. The cost of any such improvements constructed by the city shall be assessed entirely to benefited properties within the project area except to the extent they benefit property outside the project area. Assessments to the project area will normally be allocated by the front foot method, as described below, however other methods may be utilized if conditions warrant as recommended by the city engineer. The developer may be required to sign an agreement of assessment and waiver of appeal rights pertaining to the cost of such improvements.
  - e. As also provided in section 34-663 of this Code, where the developer constructs and generally pays for the public improvements in a project, the city council may agree to pay part of the cost of the improvements where part of the cost is attributable to benefits outside the project area. The city's share of such costs shall come from any available



source as designated by the council. Nothing in this article shall prevent the city from assessing such costs to other properties benefited by the subject improvements at some future time.

- f. The city retains the right to refuse financial participation in any public improvement project if, in the opinion of the city council, the project is not necessary, feasible and cost effective.

(Ord. No. 896, 7-6-2009)

#### Sec. 66-27. - Properties subject to assessment.

The cost of public improvements shall be assessed against all properties benefited thereby, based upon the benefits received.

- (1) *Assessable property.* All property receiving benefit from a public improvement project will be presumed to be assessable property.
- (2) *Publicly owned property.* The city may levy assessments against the property of a governmental unit benefited by an improvement to the same extent as if such property were privately owned, except no such assessments shall be levied against property used or to be used for public street or highway right-of-way. Private right-of-way shall be assessable.
- (3) *Corner lots.*
  - a. For a corner lot with improvements being made along more than one side of the lot, the frontage subject to assessment shall be the entire length of the shorter frontage and ten percent of the longer frontage of the lot. The city shall pay the remaining 90 percent of the assessment on the longer frontage of the corner lot.
  - b. For a corner lot with improvements being made along the longer frontage only, the assessment shall be ten percent of the abutting frontage with the city paying the assessment on the remaining 90 percent of the abutting frontage.
  - c. For a corner lot with improvements being made along the shorter frontage only, the assessment shall be for the entire shorter frontage.
  - d. For corner lots with two or more sides of equal length, the side on which the house fronts or will front shall be considered the shorter frontage.

(Ord. No. 896, 7-6-2009)

Secs. 66-28—66-34. - Reserved.

#### ARTICLE IV. - METHODS OF ASSESSMENT

Sec. 66-35. - [Methods of calculating special assessments.]

Unless otherwise determined by the city council, the city shall use one of two methods of calculating special assessments for public improvement projects, or a combination of those methods, depending on the circumstances of the project: the "front foot method" or the "per lot method." The feasibility report for a project shall recommend one or a combination of these methods for the project, based upon what method or combination of methods will best reflect the special benefit of the project to the properties to be assessed. The city council will approve the selected method(s) of calculating assessments at the time the project is ordered. The front foot method and the per lot method are described as follows:

- (1) *Front foot method.* An assessment rate per front foot of the properties abutting on a public improvement is determined based upon a preliminary benefit appraisal provided to the city by a licensed certified general real property appraiser. Using comparable sales of land with and without public improvements of the type proposed to be built, the appraiser determines the value of one or more typical parcels in the project area before and after the subject improvement project. The difference in these values is the benefit of the project to the property. The benefit is divided by the length of the property's frontage on the improvement project in order to obtain a per front foot value. Based on that appraisal, a total front foot value is assigned to each parcel within the project area using its actual or adjusted front footage abutting the project, as described below, to determine the special assessment against that property.

Because different parcels vary greatly in front footage, back and side footage, area, and configuration, and yet each similar property (for instance, each single family home) uses public improvements approximately equally, the city will adopt and employ a means of adjusting for these variations in size and configuration and arriving at an adjusted front footage, in order to render the allocation of assessments for public improvements reasonable, fair and equitable among all affected properties.

- (2) *Per lot method.* The per lot method of assessment is based on equal assessment of all lots or parcels within the benefited area. This method may be used upon recommendation of city staff and approval of the council when the circumstances of the project and/or the property

benefited by the project warrant. The assessment per lot is the quotient of the total estimated special benefit of the project to the project area divided by the total number of assessable lots or parcels benefiting from the improvement.

(Ord. No. 896, 7-6-2009)

Secs. 66-36—66-44. - Reserved.

## ARTICLE V. - FINANCING AND PAYMENT

Sec. 66-45. - Payment of assessments; prepayment.

Special assessment is one method by which the city finances the cost of public improvement projects which benefit certain properties. Assessments are levied against properties benefited by the project at the start of the project and property owners may pay the assessments back over a period of years (the assessment period). The assessment roll adopted by the council is certified to the county auditor, who collects the assessments, together with real estate taxes, over the assessment period. The city is able to issue bonds to pay for the project at the outset and then pay off the bonds with payments received from property owners over the assessment period.

Property owners may pay special assessments to the county with their real estate taxes over the assessment period. Such payments include equal installments of principal with interest on the declining principal balance.

Alternatively, property owners may prepay assessments using one of the following options:

- (1) They may pay all or part of the assessments to the city within 30 days after the council adopts the assessment roll, in which case the city will not charge any interest on the amount paid.
- (2) They may pay all or part of the assessments to the city after the 30 day period but before the assessment roll has been certified to the county auditor, in which case they must pay interest which has accrued on the amount paid, through the date of payment.
- (3) At any time after certification of the assessment roll to the county auditor, property owners may pay all or part (but not less than \$500.00) of the remaining principal balance of the assessments to the city. Any payment that is made before November 15 of any year will be reported to the county auditor by November 30 of that year and the county auditor will reduce the principal balance owing and recalculate the amount of principal and interest to be paid over the remainder of the assessment period.

(Ord. No. 896, 7-6-2009)

Sec. 66-46. - Interest.

The city will charge interest on special assessments at the rate specified in the resolution adopting the assessment roll. If bonds were sold to finance the improvement project, the interest rate will be two percent more than the average interest rate of the bonds, rounded to the nearest quarter of a percent. If no bonds were sold, the interest rate will be two percent more than the average interest rate of the last bond issue sold by the city.

(Ord. No. 896, 7-6-2009)

Sec. 66-47. - Discretionary deferral of special assessments.

In certain limited circumstances, the council has discretion to defer special assessments for future collection. In these circumstances, assessments are adopted and certified to the county auditor but are not collected until a specified time or until the occurrence of a specified event. All deferred assessments constitute liens on the property assessed until the assessments are paid. The council shall determine, by ordinance or resolution, the amount of interest on deferred assessments and (1) whether it must be paid annually during the period of deferment at the same times as the principal installments would have been payable if not deferred, or (2) whether interest for the period of deferment should be added to the principal amount of the assessment when it becomes payable, or (3) whether, if so provided in the resolution levying the assessment, interest thereon to December 31 of the year before the first installment is payable will be forgiven.

There are two types of discretionary deferrals:

- (1) *Senior citizen, disability, active military service, and other hardship deferrals.* The council may defer special assessments for certain senior citizens, people with disabilities, and members of the military, as allowed by Minn. Stat. §§ 435.193 to 435.195 and subject to the following rules.
  - a. The council may, in its discretion, defer the payment of special assessments against any homestead property if:
    1. It is owned by a person 65 or older; or
    2. It is owned by a person who is retired by virtue of a permanent and total disability;  
or
    3. It is owned by a member of the Minnesota National Guard or other military reserves who has been ordered into active military service; or
    - 4.

There is a hardship on the basis of exceptional and unusual circumstances not covered by other standards and guidelines, where the determination is made in a nondiscriminatory manner and does not give the applicant an unreasonable preference or advantage over other applicants;

provided that, in each such case, the council has determined that it would be a hardship for the owner to make the payments. Under subsection 4. above, the council may limit the deferment to one year or to a limited period of years, and may require regular verification by the applicant of the continuation of the exceptional and unusual circumstances that justify the deferment.

- b. If an applicant for deferral falls into one of the foregoing categories, hardship shall be determined based upon the applicant meeting one or more of the following conditions:
    - 1. Gross household income is at or under United States Department of Housing and Urban Development (HUD) low income limits, adjusted for the year and household size.
    - 2. Unusually high medical expenses relative to income.
    - 3. Other conditions found by the council to justify deferment.
  - c. Except as otherwise expressly determined by the council in the resolution approving deferment, a hardship deferment ends and all accumulated amounts (including applicable interest, if any) become due:
    - 1. Upon the death of the owner if the spouse is not otherwise eligible for deferment;
    - 2. Upon the sale, transfer or subdivision of any part of the property;
    - 3. Upon loss of homestead status; or
    - 4. Upon the council's determination that immediate or partial payment would impose no hardship.
- (2) *Unimproved property.* The council may, in its discretion, defer special assessments against unimproved property as allowed by Minn. Stat. § 429.061, sub. 2. Payment of the first installment of any assessment levied upon unimproved property may, in the council's discretion, be deferred until a designated future year or until the platting of the property or the construction of improvements thereon, upon such terms and conditions and based upon such standards and criteria as may be provided by resolution of the council. When such an assessment becomes payable, it must be divided into a number of installments such that the last installment thereof will be payable not more than 30 years after the levy of the assessment.

- (3) *Review of application for deferral.* The city administrator or his/her designee shall review applications for deferral of special assessments to determine eligibility under this section and shall include his/her recommendation for approval or denial of the application in the context of and as reflected by the assessment roll.
- (4) *Appeal.* Property owners dissatisfied with the decision regarding deferral reflected by the assessment roll may appeal the decision to the city council, by written notice filed with the city clerk at least five business days prior to the assessment hearing. If there is an appeal, the city administrator or his/her designee shall inform the council of the basis of his/her decision prior to the assessment hearing, and the council shall review the matter and, in its sole discretion, either approve the assessment roll as proposed by staff or request further information regarding the application for deferral and adjourn the hearing relative to that assessment and postpone adoption of that assessment.

(Ord. No. 896, 7-6-2009)

Sec. 66-48. - "Green acres" deferral.

Special assessments will be deferred as against agricultural property meeting the requirements of Minn. Stat. § 273.111 (the Minnesota Agricultural Property Tax Law or "green acres" law), and will become payable when and in the manner provided by that law.

(Ord. No. 896, 7-6-2009)