

Chapter 28

SPECIAL ASSESSMENTS*

* **Charter References:** Special assessments, Ch. 10.

Cross References: Any ordinance providing for local improvements and assessing taxes therefor saved from repeal, § 1-6(6); planning, Ch. 25; taxation, Ch. 32.

State Law References: Powers re special assessments, MCL 117.4a, 117.4b, 117.4d, 117.5; MSA 5.2074, 5.2075, 5.2077, 5.2084.

Sec. 28-1. Definitions.

In the interpretation of this chapter, the following definitions shall apply:

Cost, when referring to the cost of any public improvement, shall include the cost of services, plans, condemnation, spreading of rolls, notices, advertising, financing, construction, and legal fees and all other costs incident to the making of such improvement, the special assessments therefor and the financing thereof.

Public improvement shall mean any construction of or improvement which results in special benefit to the real property in the vicinity of such improvement.

(Code 1977, § 1.221)

Cross References: Definitions and rules of construction generally, § 1-2.

Sec. 28-2. Authority to assess.

The entire cost or any part thereof of any public improvement may be defrayed by special assessment upon the lands specially benefited by the improvement in the manner hereinafter provided.

(Code 1977, § 1.222)

Sec. 28-3. To initiate special assessment projects.

(a) Proceedings for the making of public improvements within the city may be commenced by resolution of the council, on its own initiative or by an initiatory petition signed by property owners whose aggregate property in the special assessment district was assessed for more than fifty (50) percent of the total assessed value of the privately owned real property located therein, in accordance with the last preceding general assessment roll; provided, however, that in the case of special assessments for paving or similar improvements which are normally assessed on a frontage basis against abutting property, such petitions shall be signed by the owners of more than fifty (50) percent of the frontage of property to be assessed.

(b) Such petitions shall contain in addition to the signatures of the owners, a brief description of the property owned by the respective signers thereof.

(c) Such petitions shall be verified by the affidavit of one (1) or more of the owners or by some person or persons with knowledge that the signers are such owners and that such signatures are genuine.

(d) Petitions shall be addressed to the council and filed with the city clerk. Petitions shall in no event be mandatory upon the council.

(e) All petitions shall be circulated and signed on blank forms furnished by the city.

(f) All petitions shall be referred by the city clerk to the city manager. The city manager shall check the petitions to determine whether they conform to the foregoing requirements and shall report his or her findings to the council.

(Code 1977, § 1.223)

Sec. 28-4. Survey and report.

Before the council shall consider the making of any public improvement, the same shall be referred by resolution to the city manager directing him or her to prepare a report which shall include necessary plans and detailed estimates of cost, an estimate of the life of the improvement, a description of the assessment district or districts and such other pertinent information as will permit the council to decide the cost, extent, and necessity of the public improvement proposed and what part or proportion thereof should be paid by special assessments upon the property especially benefited and what part, if any, should be paid by the city at large. The council shall not finally determine to proceed with the making of any public improvement until such report of the city manager has been filed, nor until after a public hearing has been held by the council for the purpose of hearing objections to the making of such public improvement.

(Code 1977, § 1.224)

Sec. 28-5. Determination on the project, notice.

(a) After the city manager has presented the report required in section 28-4 for making any public improvement as requested in the resolution of the council, and the council has reviewed the report, a resolution may be passed determining the necessity of the improvement; setting forth the nature thereof; prescribing what part or proportion of the cost of such improvement shall be paid by special assessment upon the property especially benefited, determination of benefits received by affected properties and what part, if any, shall be paid by the city at large; designating the limits of the special assessment district to be affected; designating whether to be assessed according to frontage or other benefits; placing the complete information on file in the office of the clerk where the same may be found for examination; and directing the clerk to give notice of public hearing on the proposed public improvement at which time and place opportunity will be given interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the city at least seven (7) days prior to the date of the hearing, and by first class mail addressed to each person having an interest in property to be assessed as shown by the last general tax assessment roll of the city, the mailing to be made at least ten (10) full days prior to the date of hearing. The hearing required by this section may be held at any regular, adjourned, or special meeting of the council.

(b) Pursuant to the provisions of section 10.2(a)(3) of the Charter, no public hearing shall be required when a petition for a public improvement is signed by all of the owners of property to be assessed therefore and the council may adopt the resolution to proceed with the public improvement as provided in section 28-6 as though a public hearing had been held.

(Code 1977, § 1.225; Ord. No. 624, § 1, 3-3-03)

State Law References: Special assessment notices and hearings, MCL 211.741 et seq., MSA 5.3534(1) et seq.

Sec. 28-6. Hearing on necessity.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which the council may modify the scope of the public improvement in such a manner as they shall deem in the best interest of the city as a whole; provided, that if the amount of work is increased or additions are made to the district, then another hearing shall be held pursuant to notice prescribed in section 28-5. If the determination of the council shall be to proceed, it shall adopt a resolution to proceed with the public improvement, approving the necessary plans and estimate of cost, finally filing the assessment districts, determining the probable life of the public improvement, and directing the assessor to prepare a special assessment roll in accordance with the council's determination and report the same to the council for confirmation.

(Code 1977, § 1.226)

State Law References: Special assessment notices and hearings, MCL 211.741 et seq., MSA 5.3534(1) et seq.

Sec. 28-7. Objections to improvement.

If prior to adoption of the resolution to proceed with the making of the public improvement as provided in section 28-6, written objections to the public improvement have been filed by the owners of property in the district which according to the city manager's report will be required to bear more than fifty (50) percent of the cost thereof or by majority of the owners of property to be assessed, no resolution determining to proceed with the public improvement shall be adopted while such objections remain except by the affirmative vote of five (5) members of the council.

(Code 1977, § 1.227)

Sec. 28-8. Deviation from plans and specifications.

No derivation from original plans or specifications as adopted shall be permitted by any officer or employee of the city without authority of the council by resolution. A copy of the resolution authorizing such changes or deviation shall be certified by the clerk and attached to the original plans and specifications on file in his or her office.

(Code 1977, § 1.228)

Sec. 28-9. Limitations on preliminary expenses.

The council shall specify the provisions and procedures for financing a public improvement. No contract or expenditure, except for the cost of preparing necessary profiles, plans, specifications, and estimates of cost and cost of the special assessment proceedings shall be made for the improvement until special assessments to defray the costs of the same shall have been levied.

(Code 1977, § 1.229)

Sec. 28-10. Special assessment roll.

The assessor shall make a special assessment roll of all lots and parcels of land within the designated district benefited by the proposed improvement and assess to each lot or parcel of land the amount benefited thereby. The amount spread in each case shall be based upon the detailed estimate of the city manager as approved by council.

(Code 1977, § 1.230)

Sec. 28-10.5 Special assessment roll--Hazards and nuisances.

Pursuant to the provisions of section 10.7 of the Charter, the assessor shall make a special assessment roll of all lots and parcels of land within the city upon which hazards and nuisances were found to have existed and for which the city incurred costs associated with altering, repairing, tearing down, abating or removing the hazards and nuisances. The assessment roll shall be prepared annually and shall list for each lot and parcel the amount of such cost that has remained unpaid for at least thirty (30) days.

(Ord. No. 625, § 1, 3-3-03)

Sec. 28-11. Assessor to file assessment roll.

When the assessor shall have completed such assessment roll, he or she shall file the same with the clerk for presentation to the council for review and certification by it.

(Code 1977, § 1.231)

Sec. 28-12. Meeting to review special assessment roll; objections.

Upon receipt of the special assessment roll, the council, by resolution, shall accept such assessment roll and order it to be filed in the office of the clerk for public examination; shall fix the time and place the council will meet to review such special assessment roll, and direct the clerk to give notice of a public hearing for the purpose of affording an opportunity for interested persons to be heard. Such notice shall be given by one (1) publication in a newspaper published or circulated within the city and by first class mail addressed to each person having an interest in property to be assessed as shown by the last general tax assessment roll of the city, the publication and mailing to be made at least ten (10) full days prior to the date of the hearing. The hearing required by this section may be held at any regular, adjourned, or special meeting of the council. At the meeting, all interested persons or parties shall present in writing their objections if any, to the assessments against them. The assessor shall be present at every meeting of the council at which a special assessment is to be reviewed.

(Code 1977, § 1.232)

State Law References: Special assessment notices and hearings, MCL 211.741 et seq., MSA 5.3534(1) et seq.

Sec. 28-13. Changes and corrections in assessment roll.

The council shall meet at the time and place designated for the review of the special assessment roll and, at such meeting, or a proper adjournment thereof, shall consider all objections thereto submitted in writing. The council may correct the roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein; or it may, by resolution annul such assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in making a new roll as in the making of the original roll. If, after hearing all objections and making a record of such changes as the council deems justified, the council determines that it is satisfied with the special assessment roll, and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the clerk and directing the clerk to attach his or her warrant to a certified copy thereof within ten (10) days, therein commanding the assessor to spread the various sums and amounts appearing thereon on a special assessment roll for the full amounts or in annual installments as directed by the council. Such roll shall have the date of confirmation endorsed thereon and shall from that date be final and conclusive for the purpose

of the public improvement to which it applies, subject only to adjustment to conform to the actual cost of the improvement, as provided in section 28-17.
(Code 1977, § 1.233)

Sec. 28-14. When special assessment due.

All special assessments, except such installments thereof as the council shall make payable at a future time as provided in this chapter, shall be due and payable upon confirmation of the special assessment roll.
(Code 1977, § 1.234)

Sec. 28-15. Partial payments.

The council may provide for the payment of special assessments in annual installments. Such annual installments shall not exceed twenty (20) in number. The first and subsequent installments of a special assessment roll shall be due upon such dates as the council shall fix in the resolution confirming the special assessment. The installments of the special assessment rolls shall bear interest at the rate of six (6) percent per annum; provided, however, if the bonds are issued in anticipation of the special assessments, then such unpaid special assessment shall bear interest at a rate of interest equal to one (1) percent above the average rate of interest borne by the bonds. Such interest shall commence on the date of the first installment and shall be paid annually on each installment due date. The full amount of all or any deferred installments, with interest accrued thereon to the date of payment, may be paid in advance of the due dates thereof. Deferred installments shall be collected without penalty until ninety (90) days after the due date thereof, after which time such installments shall be considered as delinquent and such penalties on the installments shall be collected as are provided in the Charter to be collected on delinquent general city taxes.
(Code 1977, § 1.235; Ord. No. 712, § 1, 8-17-09)

Sec. 28-16. Creation of lien.

(a) Upon the confirmation of each special assessment roll, the special assessments thereon shall, until paid, constitute a personal obligation to the city of the owner of the property against which it is assessed and shall be and continue to be a lien upon the property assessed for the amount of such assessment and all interest and collection charges which may accrue thereon. Such lien shall be of the same character and effect as that which is created by the city charter for city taxes. Such special assessments or the installments thereof as the case may be, shall be charged against the owners of the property assessed, according to the records of the assessor's office at the time the special assessment or installment thereof, as the case may be, is due for payment. All special assessments or installments thereof, made in any calendar year which remain unpaid on the first day of March of the succeeding calendar year, together with the collection charges and interest which have accrued thereto, shall be placed upon the delinquent tax roll of the city as required in chapter 9 of the Charter and shall be collected, or the collection thereof enforced, in the same manner as are delinquent taxes of the city.

(b) In addition to the procedures established in subsection (a) hereof for the collection of special assessments levied against property, the city may recover them in a suit in any court of competent jurisdiction. In any such suit, the confirmed special assessment roll upon which the special assessment concerned appears shall be prima facie evidence of the existence of the special assessment, of the regularity of the proceedings in making the special assessment, and of the right of the city to recover judgment therefor.
(Code 1977, § 1.236)

Sec. 28-17. Additional assessments, refunds.

The city manager shall, within sixty (60) days after the completion of each public improvement, compile the actual cost thereof and certify the same to the council. When any special assessment roll shall prove insufficient to meet the cost of the improvement for which it was made, the council may make an additional pro rata assessment; provided, however, that no property shall be assessed in excess of benefits received. No additional assessment for any public improvement which exceeds ten (10) percent of the original assessment shall be made, unless such additional assessment be reviewed at a meeting of the council for which meeting notices shall be published and mailed as provided in the case of the review of the original special assessment roll, as required by section 28-12. Should the entire amount as finally collected on the assessment roll prove larger than necessary by five (5) percent of the total cost of the improvement or more, the council shall make a refund of the entire amount of the excess thereof pro rata according to assessments. Should the entire amount as finally collected on the assessment roll prove larger than necessary by less than five (5) percent of the total cost of the improvement, the council may transfer such excess to the general funds of the city or make a refund thereof pro rata according to assessments.

(Code 1977, § 1.237)

Sec. 28-18. Additional procedures.

In any case where the provisions of this chapter may prove to be insufficient to carry out fully the making of any special assessment, the council shall provide by ordinance any additional steps or procedures required.

(Code 1977, § 1.238)

Sec. 28-19. Special assessment accounts.

Monies raised by special assessment for any public improvement shall be used to pay on the special assessment portion of the cost of the public improvement for which assessment was levied and of expenses incidental thereto, including the repayment of the principal of and interest on money borrowed therefor, and to refund excessive assessments if refunds be authorized.

(Code 1977, § 1.239)

Sec. 28-20. Contested assessments.

No suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of any special assessment or additional special assessment:

- (1) Unless, within thirty (30) days after the confirmation of the special assessment roll, written notice be filed with the clerk of intention to file such suit or action, stating the grounds on which it is claimed such assessment is illegal; and
- (2) Unless such suit or action shall be commenced within ninety (90) days after the confirmation of the roll.

(Code 1977, § 1.240)

Sec. 28-21. Reassessment for benefits.

Whenever the council shall deem any special assessment invalid or defective for any reason whatever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatever, in whole or in part, the council shall have power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the public improvement or any part thereof has been completed and whether any part of the assessment has been collected or not. All proceedings on such reassessment and for collection thereof shall be made in the manner as provided for the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment and the reassessment shall to that extent be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.

(Code 1977, § 1.241)

Sec. 28-22. Combination of projects.

The council may combine several districts into one (1) project for the purpose of effecting a saving in the costs; provided, however, that for each district there shall be established separate accounts to cover the cost of the same.

(Code 1977, § 1.242)

Sec. 28-23. Special assessments for certain sidewalks.

In any case when the main purpose of a sidewalk is to provide travel convenience to and from a school, factory, or other institution, public or private, and not for the benefit of the property in a district except incidentally, the city shall pay not less than one-half of the cost of such sidewalk.

(Code 1977, § 1.243)

Sec. 28-24. Revolving fund.

In the event that funds are on hand or a revolving fund exists to defray the expense of any public improvement prior to the completion thereof, the special assessment roll may be made within sixty (60) days after the improvement is completed and shall be based upon the actual cost thereof.

(Code 1977, § 1.244)

Sec. 28-25. Intergovernmental improvements.

When the city may, by law, participate in intergovernmental improvements, the costs of which may be defrayed in whole or in part by special assessments, the procedure therefor shall be as provided by the law permitting the same. If such procedure is not so provided, the procedure established by and under authority of this chapter shall govern.

(Code 1977, § 1.245)

Sec. 28-26. Reconsideration of petitions.

If the council shall fail to make any public improvement petitioned for under the provisions of this chapter during the calendar year during which any petition is filed, such petition shall be reconsidered by the

council prior to the first day of March of the succeeding calendar year for the purpose of determining whether such public improvement should be made during such calendar year.
(Code 1977, § 1.246)

Sec. 28-27. Condemnation costs.

The cost of condemning or otherwise acquiring property needed for any public improvement shall constitute a part of the cost of the public improvement, but in no case shall the amount of such cost which is included in any special assessment for any public improvement cause the assessment to exceed the amount of the benefit received by any property therefor through the making of the improvement.
(Code 1977, § 1.247)

Sec. 28-28. Certain postponements of payments.

The council may provide that any person who, in the opinion of the assessor and council, by reason of poverty is unable to contribute toward the cost of the making of a public improvement by special assessment, may execute a lien to the city on all or any part of the real property owned by him or her and benefited by any public improvement, which lien will mature and be effective from and after the execution of such instrument, shall be recorded with the register of deeds of the county, and shall not be discharged or released until the terms thereof are met in full. The council shall establish the procedure for making this section effective.
(Code 1977, § 1.248)