

Chapter 32

SPECIAL ASSESSMENTS*

* **Charter References:** Special assessments, § 9.1 et seq.

State Law References: Public improvement or public building, MCL 141.261 et seq.; notices and hearings, MCL 211.741 et seq.; deferment of special assessment for homesteads, MCL 211.761 et seq.

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Sec. 32-1. Definition of public improvement.

The term "public improvement," as used in this chapter, shall include the reconstruction in whole or in part of any structure or work as well as the original construction thereof.

(Code 1972, § 12.201)

Sec. 32-2. Chapter to govern.

The making and financing of public improvements in the city by the special assessment method shall be governed by this chapter and all proceedings therefor shall be taken in accordance with the provisions of this chapter.

(Code 1972, § 12.202)

Sec. 32-3. Determination of cost.

The cost of surveys, maps, drawings, plans and specifications for a public improvement and all expenses incident to the proceedings for the making of such improvement, the making and collecting of the special assessments therefor, and the issuance of bonds in anticipation of such special assessments, shall be deemed a part of the cost of such improvement. Whenever any property is acquired by condemnation, or otherwise, for the purpose of any public improvement, all or any part of the cost thereof may be included as a part of the cost of such improvement.

(Code 1972, § 12.203)

Sec. 32-4. Assessment may be based on estimated cost.

Any assessment may be made upon the basis of the estimated cost of the improvement if the actual cost has not been definitely determined.

(Code 1972, § 12.204)

Sec. 32-5. Petition, filing of.

A petition addressed to the city council may be filed with the city clerk requesting the council to make a public improvement therein described and to assess the cost thereof, or such part of the cost as the council shall decide, to benefited lands comprising a special assessment district to be determined by the city council. Any petition so filed may be in one or more parts and shall be signed by the owners of lands having at least 50 percent of the privately owned frontage abutting upon the proposed improvement. The city clerk shall not present to the city council any petition not so signed. A purchaser of a land contract shall be deemed the owner of such land. Such petition, in addition to the signatures of the owners, shall contain a brief description of the property owned by the respective signers thereof. The genuineness of the signatures on each petition or part thereof shall be verified by the affidavit of the circulator. Any such petition shall not be mandatory upon the council, but shall be advisory only, and in no event shall such petition be deemed jurisdictional.

(Code 1972, § 12.205; Ord. No. 91, § 5, eff. 3-15-1972)

Sec. 32-6. Authority of council; special assessment.

(a) *Maps; plans; estimated cost.* Without regard of whether or not a petition shall have been filed in accordance with section 32-5, the city council may determine to make any public improvement and to defray the whole or any part of the cost thereof by special assessment upon property especially benefited thereby. The city council shall cause to be prepared the following:

- (1) A map or drawing showing the route or location of such proposed improvement and such proposed special assessment district;
- (2) Plans and specifications for such proposed improvement; and
- (3) An estimate of the cost thereof.

(b) *Submission of plans; specifications.* Upon the submission of the map or drawing, plans, specifications and cost estimate required by subsection (a) of this section, the city council shall, if it desires to proceed with the making of the improvements and the special assessments therefor, declare so by resolution. The city council by such resolution shall:

- (1) Order the aforesaid map or drawing, plans, specifications and cost estimate to be filed in the office of the city clerk for public examination;
- (2) Determine the necessity of such improvement;

- (3) State the estimated cost thereof and what part or proportion, if less than all, shall be paid by special assessment and what part or proportion, if any, shall be a general obligation of the city;
- (4) Specify the number of installments in which assessments may be paid;
- (5) Designate the district or lands and premises upon which the special assessments shall be levied; and
- (6) Order the city assessor to prepare a special assessment roll for all or that part of the cost to be so assessed.

(Code 1972, § 12.206; Ord. No. 91, § 6, eff. 3-15-1972)

Sec. 32-7. Hearing.

(a) *Consideration of objections.* Before finally determining to make the improvement and the special assessments therefor, the city council shall hold a public hearing at a time and place to be fixed by the city council in the resolution required in section 32-6(b). At such hearing the council shall hear and consider any objections which may be submitted by any interested person with respect to the making of such improvement and the assessment roll and the assessing to the designated special assessment district of all or that part of the cost of the improvement which the city council has proposed to so assess and review the assessment roll.

(b) *Notice of intent; review of roll.* The city council shall cause notice of such hearing and of the filing of such assessment roll to be given by the city clerk not less than ten days prior to the date of such hearing, by publication thereof at least once in a newspaper having general circulation in the city and by sending by first class U.S. mail, postage thereon fully prepaid, a copy of such notice addressed to each person in whose name any land in the special assessment district is assessed on the last preceding tax assessment roll of the city and/or is assessed on such roll, at his last known address and also (if such address is different from the address of the premises in the district) a copy of such notice addressed to the occupant of each such premises which has an address served by U.S. mail. Such notice shall specify the improvement, describe the district, state the estimated cost and the division thereof as between the district and the city at large, and give notice that the map or drawing, plans, specifications, cost estimate of the improvement and assessment roll are on file with the city clerk for public examination. The notice of hearing shall include a statement that appearance and protest at the hearing in the special assessment proceedings is required in order to appeal the amount of the special assessment to the state tax tribunal and shall describe the manner in which an appearance and protest shall be made. An owner or party in interest, or his agent may appear in person at the hearing to protest the special assessment, or shall be permitted to file his appearance or protest by letter and his personal appearance shall not be required. The city council shall maintain a record of parties who appear to protest at the hearing. If a hearing is terminated or adjourned for the day before a party is provided the opportunity to be heard, a party whose appearance was recorded is considered to have protested the special assessment in person.

(c) *Hearing of objections.* The city council shall meet at the appointed time and place and at such hearing, or any adjournment thereof, (which may be without further notice) the city council shall hear and consider such objections as are submitted and shall review the special assessment roll and hear and consider any objections thereto, and shall record in the minutes of such meeting the names of all persons objecting, the properties owned by them, and the nature of their objections.

(d) *Revisions, corrections, etc.* The city council without further notice, may revise, correct, amend or change the map or drawing, plans, specifications, estimate and/or district; provided, that no property shall be added to the district until notice be given as above provided or by personal service upon the owners thereof and a hearing afforded such owners.

(Code 1972, § 12.207; Ord. No. 91, § 7, eff. 3-15-1972)

Sec. 32-8. Determination of cost; estimated cost.

(a) The cost of surveys, maps, drawings, plans and specifications for a public improvement and all expenses incident to the proceedings for the making of such improvement, the making and collecting of the special assessments therefor, and the issuance of bonds in anticipation of such special assessments, shall be deemed a part of the cost of such improvement. Whenever any property is acquired by condemnation, or otherwise, for the purpose of any public improvement, all or any part of the cost thereof may be included as a part of the cost of such improvement.

(b) Any assessment may be made upon the basis of the estimated cost of the improvement if the actual cost has not been definitely determined.

(Code 1972, § 12.208; Ord. No. 91, § 8, eff. 3-15-1972)

Sec. 32-9. Special assessment roll; preparation; filing; certificate.

(a) *Preparation.* The city assessor shall upon the order of the city council as provided in section 32-6(b) prepare the special assessment roll in which shall be entered and described all the lands and premises to be assessed, with the names of the respective owners thereof, if known, and the amount to be assessed against each parcel of land or premises. Such amount shall be such relative portion of the whole sum to be levied against all the lands and premises in the special assessment district as the benefit to such parcel of land or premises bears to the total benefits to all the lands and premises in the special assessment district. There shall also be entered upon such roll the amount, which has been assumed by the city at large, if any.

(b) *Filing; certification.* When the city assessor shall have completed the assessment roll, he shall file the same in the office of the city clerk, after first having affixed thereto a certificate stating that it was made pursuant to a resolution of the city council adopted on a specified date and that in making such assessment roll he has, according to his best judgment, conformed in all respects to such resolution, this chapter and the charter of the city.

(Code 1972, § 12.209; Ord. No. 91, § 9, eff. 3-15-1972)

Sec. 32-10. Approval by resolution; special assessment roll; contents.

After the hearing provided for in section 32-7, if the city council desires to proceed with the making of the improvement and the special assessment therefor, it shall adopt a resolution approving the map or drawing, plans, specifications and cost estimate as originally presented or as revised, corrected, amended, or changed, determining to make the improvement, designating the lands and premises constituting such special assessment district, specifying the number of installments in which the assessments shall be payable, and shall confirm the special assessment roll, or may correct it as to any matter appearing therein and confirm it as so corrected, or may refer it back to the city assessor for revision, or may annul it and direct a new roll to be made. No special assessment roll shall be confirmed except with the affirmative vote of at least three members of the city council.

If at or prior to final confirmation of any special assessment roll, more than 50 percent of the number of owners of privately owned real property to be assessed thereon, or in the case of paving or similar improvement, more than 50 percent of the number of owners of frontage to be assessed thereon, shall object in writing to the proposed improvement, the special assessment roll shall not be confirmed without a four-fifths vote of the members of the city council. When a special assessment roll shall be confirmed, the city clerk shall endorse thereon the date of confirmation. After such confirmation the special assessment roll and all assessments therein shall be final and conclusive. In cases of a voluntary special assessment where 100 percent of the property owners involved in the special assessment district or where property owners petitioning for a special improvement offer to make available 100 percent of all of the property owners share of the costs related thereto, the hearing, publication and notification as required in section 32-3 shall not be required. (Code 1972, § 12.210; Ord. No. 91, § 10, eff. 3-15-1972)

Sec. 32-11. Special assessments; payment.

(a) *Installments.*

(1) Special assessments may be made payable in one or more installments, as determined by the city council, but such installments may not exceed five in the case of sidewalk improvements, 15 in the case of paving or similar street improvements, and 20 in the case of water, storm sewer, sanitary sewer or other improvements. The first installment shall be due at such time after confirmation as the city council shall provide and the several subsequent installments shall be due at intervals of 12 months from the due date of the first installment.

(2) The amount of each installment (if more than one) need not be extended upon the special assessment roll until after confirmation. All installments not paid by a date to be fixed by the city council shall bear interest thereafter at a rate to be established by resolution by the city council, but in no case may the city council use a rate less than the rate established by the selling of special assessment bonds where said bond money will be used to finance construction of the improvement, or a rate less than one-half of one percent for each month or fraction thereof that the same remain unpaid prior to their transfer to the city tax roll. Such accrued interest on all unpaid installments shall be due and payable annually on the due dates of the respective installments. Any one or more installments may be paid at any time before due together with accrued interest on such installments.

(b) *Failure to pay.* If any installment is not paid when due, then the same shall be deemed to be delinquent, and there shall be collected thereon, in addition to interest as above provided, a penalty of two percent of such installment. In case any assessment or any installment thereof shall remain unpaid on the first Monday of May following the date when the same became delinquent, the same shall be reported unpaid by the city treasurer to the city council, and such delinquent assessments, together with all accrued interest, shall be transferred and reassessed on the next annual city tax roll in a column headed "Special Assessments" with a penalty of four percent upon such total amount added thereto, and when so transferred and reassessed upon such tax roll, shall be collected in all respects as provided for the collection of city taxes.

(Code 1972, § 12.211; Ord. No. 91, § 11, eff. 3-15-1972)

Sec. 32-12. Lien of city upon property assessed.

(a) Special assessments and all interest, charges and penalties thereon, from the date of confirmation of the roll and until paid, shall be and remain a lien upon the property assessed of the same character and effect as the lien created by general law for the state and county taxes and by the city charter for city taxes.

(b) No judgment or decree, nor any act of the city council vacating a special assessment shall destroy or impair the lien of the city upon the property assessed, for such amount of the assessment as may be equitably charged against the same, or as by a regular mode of proceeding might be lawfully assessed thereon. (Code 1972, § 12.212; Ord. No. 91, § 12, eff. 3-15-1972)

Sec. 32-13. Special assessment; collection of.

(a) *Assessment roll.* When any special assessment shall be confirmed, the city council shall direct the assessment so made in the special assessment roll to be collected. The assessor shall thereupon deliver to the city treasurer such special assessment roll to which the mayor shall attach his warrant commanding the city treasurer to collect from each of the persons assessed in such roll the amount of money assessed to and set opposite his name therein. Upon receiving such special assessment roll and warrant, the city treasurer shall proceed to collect the several amounts assessed therein with a one percent collection fee.

(b) *Delinquent; court action.* In addition to any other remedies and without impairing the lien therefor, any delinquent special assessment together with interest and penalties may be collected in an action at law in the name of the city against the person assessed, in any court having jurisdiction. If in any such action it shall appear that by reason of any irregularities or informalities the assessment has not been properly made against the defendant or upon the premises sought to be charged, the court may, nevertheless, on satisfactory proof that expense has been incurred by the city, which is a proper charge against the defendant or the premises in question, render judgment for the amount properly chargeable against such defendant or upon such premises. (Code 1972, § 12.213; Ord. No. 91, § 13, eff. 3-15-1972)

Sec. 32-14. Division; lot or parcel; procedure.

Should any lot or parcel of land be divided after a special assessment thereon has been confirmed and before the collection thereof, the city council may require the city assessor to apportion the uncollected amounts upon the several parts of such lot or parcel of land. The report of such apportionment when confirmed shall be conclusive upon all parties; provided, that before such confirmation, notice of hearing shall be given to all the interested parties by personal service or by publication and mailing as provided in case of an original assessment roll.

(Code 1972, § 12.214; Ord. No. 91, § 14, eff. 3-15-1972)

Sec. 32-15. Additional pro rata assessments.

Additional pro rata assessments may be made when any special assessment roll proves insufficient to pay for the improvement for which it was levied and the expenses incidental thereto, or insufficient to pay the principal and interest on bonds issued in anticipation of such assessment roll; provided, that the additional pro rata assessment shall not exceed ten percent of the assessment as originally confirmed, unless a meeting of the city council be held to review such additional assessment, for which meeting notices shall be published and mailed as provided in the case of review of the original special assessment roll.

(Code 1972, § 12.215; Ord. No. 91, § 15, eff. 3-15-1972)

Sec. 32-16. New assessment; original invalid; power of council.

Whenever any special assessment roll shall, in the opinion of the city council, be invalid by reason of irregularity or informality in the proceedings, or if any court of competent jurisdiction shall adjudge such assessment to be illegal, the city council shall, whether the improvement shall have been made or not, or whether any part of the assessment shall have been paid or not, have power to cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for in original assessment except as to corrections in the proceedings required to make the assessment legal. Whenever any sum or part thereof, levied upon any property in the assessment so set aside, has been paid and not refunded, the payment so made shall be applied upon the reassessment. If the payments exceed the amount of the reassessment, refunds shall be made.

(Code 1972, § 12.216; Ord. No. 91, § 16, eff. 3-15-1972)

State Law References: Invalidation of assessment, reassessment, MCL 211.744.

Sec. 32-17. Special assessment fund.

Moneys raised by special assessments for any public improvement shall be credited to a special assessment fund and shall be used to pay for the costs of the improvement for which the assessment was levied and for expenses incidental thereto, to repay any principal and interest on money borrowed therefor, and to refund excessive assessments. The excess by which any special assessment proves larger than the actual cost of the improvement and expense incidental thereto shall be placed in the special assessment fund of the city if such excess is five percent or less of the assessment, but should the assessment prove larger than necessary by more than five percent of the entire excess shall be refunded on a pro rata basis to the owners of the property assessed. Such refund shall be made by credit against future unpaid installments to the extent such installments then exist and the balance of such refund shall be in cash. No refunds may be made which contravene the provisions of any outstanding evidence of indebtedness secured in whole or in part by such special assessment.

(Code 1972, § 12.217; Ord. No. 91, § 17, eff. 3-15-1972)

Sec. 32-18. Single lot assessment.

When any expense shall have been incurred by the city upon or in respect to any single premises, which expense is chargeable against such premises and the owner thereof under the provisions of the Charter or any ordinance of the city or law of the state, and is not of that class required to be prorated among the several lots and parcels of land in a special assessment district, an account of the labor, material and service for which such expense was incurred, with a description of the premises upon or in respect to which the expense was incurred, and the name of the owner, if known, shall be reported to the city treasurer, who shall immediately charge and bill the owner, if known. In the event that the city treasurer finds that such amount is not otherwise collectible, he shall report the same to the city council, which may direct the city assessor to prepare a special assessment roll covering all such charges reported to it, together with a penalty of ten percent. Such roll shall be filed with the city clerk, who shall present the same to the city council. Thereafter the same proceedings shall be followed in respect to such special assessment roll as are provided in section 32-9 and subsequent sections of this chapter and all the provisions of such sections with reference to special assessments generally shall apply to special assessments under this section, insofar as the same may be applicable.

(Code 1972, § 12.218; Ord. No. 91, § 18, eff. 3-15-1972)

Sec. 32-19. No lands exempted from assessment; exception.

No lands in a special assessment district which are benefited by the improvement therein, shall be exempt from assessment, but if the same are owned by a public or other corporation exempt by law from the payment of special assessments, then the special assessments against such lands, of the installments thereof, may be paid by the city as the same become due or may be paid in advance of their due dates or may be paid by the exempt unit by special agreement.

(Code 1972, § 12.219; Ord. No. 91, § 19, eff. 3-15-1972)

Sec. 32-20. Participation of city in intergovernmental improvements.

When the city may, by law, participate in intergovernmental improvements, the cost 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 this chapter shall govern.

(Code 1972, § 12.220; Ord. No. 91, § 20, eff. 3-15-1972)