



GOVERNING & MANAGING INFORMATION

Special Assessment Guide

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Special Assessment Guide

[Minn. Stat. ch. 429.](#)

Minnesota Statutes Chapter 429 (Chapter 429) gives cities authority to levy special assessments. Court decisions and attorney general opinions have added to the complexity of the issue. This Guide addresses the following:

- I. What are special assessments**
- II. Synopsis of procedure**
- III. Challenges by property owners**
- IV. Levying and collecting assessments**
- V. Tax-exempt and railroad property**
- VI. Corrections**
- VII. Borrowing for special assessment purposes**
- VIII Charter cities**
- IX. Forms**

I. What are special assessments?

Special assessments are a charge imposed on properties for a particular improvement that benefits the owners of those selected properties. The authority to use special assessments originates in the state constitution which allows the state legislature to give cities and other governmental units the authority “to levy and collect assessments for local improvements upon property benefited thereby.” The legislature confers that authority to cities in Minnesota Statutes Chapter 429.

See Section VIII: *Charter cities*.

A charter city may choose to use either Chapter 429 or provisions of the charter to assess for local improvements but even so state law requires that charter cities follow state law in certain steps of the proceedings, as discussed subsequently.

To ensure full protection for property owners, state law and courts applying that law insist on strict compliance with complex procedural requirements. Because these requirements have legal implications, city councils should have the city attorney guide assessment proceedings.

Special assessments have three distinct characteristics:

- They are a levy a city uses to finance, or partially finance, a particular public improvement program.
- The city levies the charge only against those particular parcels of property that receive some special benefit from the program.

- The amount of the charge bears a direct relationship to the value of the benefits the property receives.

A. What do special assessments pay for?

Special assessments have a number of important uses:

- The most typical use is to pay for infrastructure in undeveloped areas of a city, particularly when the city is converting new tracts of land to urban or residential use. Special assessments frequently pay for opening and surfacing streets; installing utility lines and constructing curbs, gutters, and sidewalks.
- Special assessments may partially underwrite the cost of major maintenance programs. Cities often finance large scale repairs and maintenance operations on streets, sidewalks, sewers, and similar facilities in part with special assessments.
- Another use of special assessments is the redevelopment of existing neighborhoods. Cities use special assessments when areas age and the infrastructure needs updating.

B. The special benefit test

Special assessments reflect the influence of a specific local improvement on the value of selected property. **No matter what method the city uses to establish the amount of the assessment, the real measure of benefit is the increase in the market value of the land because of the improvement.**

Under the special benefit test, special assessments are presumptively valid if

Buzick v. City of Blaine, 505 N.W.2d 51 (Minn. 1993).

EHW Properties v. City of Eagan, (Minn. Ct. App. 1993).

Schumacher v. City of Excelsior, 427 N.W.2d 235 (Minn. 1988).

Tri-State Land Co. v. City of Shoreview, 290 N.W.2d 775 (Minn. 1980).

- The land receives a special benefit from the improvement.
- The assessment does not exceed the special benefit measured by the increase in market value due to the improvement.
- The assessment is uniform as applied to the same class of property, in the assessed area.

Because special assessments are appealable to district court, it is important that the city considers the benefit to the property as a result of the specific improvement. Councils often do this by retaining a qualified, licensed appraiser. At the hearings on the assessments the appraiser presents a written or oral report on the increase in market value as a result of the improvement.

Buettner v. City of St. Cloud, 277 N.W.2d 199 (Minn. 1979).

Southview County Club. v. City of Inver Grove Heights, 263 N.W. 2d 385 (Minn. 1978).

Minn. Const. art X, § 1.

Ewert v. City of Winthrop, 278 N.W.2d 545 (Minn. 1979).

Bisbee v. City of Fairmont, 593 N.W.2d 714 (Minn. Ct. App. 1999).

Quality Homes, Inc. v. Village of New Brighton, 289 Minn. 274, 193 N.W.2d 555 (1971).

Anderson v. City of Bemidji, 295 N.W.2d 555 (Minn. 1980).

Village of Edina v. Joseph, 264 Minn. 84, 119 N.W.2d 809 (Minn. 1962).

Roberts v. City of Crystal Lake, 2003 WL 22481335, A03-172 (Minn. Ct. App. Nov. 4, 2003).

Allen v. City of Minneapolis, 2003 WL 1962012, C1-02-1506 (Minn. Ct. App. April 23, 2003).

Haverberg v. City of Madison, 2003 WL 178797, C8-02-1146 (Minn. Ct. App. Jan. 28, 2003).

A special assessment that exceeds the special benefit is a taking of property without fair compensation and violates both the Fourteenth Amendment of the United States Constitution and the Minnesota Constitution. Property assessed must enjoy a corresponding benefit from the local improvement. This is a different concept than property tax valuation. The Minnesota Constitution states: “The Legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation.” As the courts have made clear, the special benefit is the increase in market value of the land as a result of the improvement.

If a city’s assessment is challenged in district court, the assessment roll constitutes *prima facie* (or initial) proof that an assessment does not exceed the special benefit. The party contesting the assessment must introduce evidence sufficient to overcome that presumption. If the evidence as to the special benefit is conflicting it is the responsibility of the district court to determine whether the assessment exceeds the market value increase and, if so, by what amount.

For this reason, the city’s assessment method should approximate market analysis. A formula that does not consider an analysis of the increase in market value of each parcel may be invalid. For instance, a method using only front-footage in calculating assessments for street improvement projects based on costs of street improvement projects from previous years has been found arbitrary and invalid on its face.

Courts often uphold special assessments based on evidence from the city’s qualified and licensed appraiser that the special benefit did not exceed the increase in market value as a result of the improvement.

See *Eagle Creek Townhomes v. City of Shakopee*, 614 N.W.2d 246 (Minn. Ct. App. 2000); *Shorma Family Trust v. Maine Township*, 2002 WL 555323, C9-01-1548 (Minn. Ct. App. April 16, 2002); *Belanger v. City of Long Lake*, 2000 WL 563896, C1-99-1347 (Minn. Ct. App. May 9, 2000); *Reiling v. City of Lino Lakes* 2000 WL 369384, C7-99-1594 (Minn. Ct. App. Apr. 11, 2000); *Anderson v. City of Buffalo*, 2000 WL 31791, C7-99-641 (Minn. Ct. App. Jan. 18, 2000); *Rohling v. City of Champlin*, 1999 WL 71484, C3-98-1209 (Minn. Ct. App. Feb. 16, 1999) (unpublished decision); *Gullard v. City of Lake Park*, 1997 WL 457453, C8-97-207 (Minn. Ct. App. Aug. 12, 1997); *In re Appeal by Eastside Development*, C4-01-582; C6-01-583 2001 WL 1035280 (Minn. Ct. App. 2001)(unpublished decision).

In re Appeal by Eastside Development, 2001 WL 1035280, C4-01-582 (Minn. Ct. App. Sept. 11, 2001).

Blomquist v. City of Eagan, 2001 WL 436187, C2-00-1591 (Minn. Ct. App. May 1, 2001).

Johnson v. City of Eagan, 584 N.W.2d 770 (Minn. 1998).

In re Village of Burnsville, 310 Minn. 32, 245 N.W.2d 445 (1976).

Nordgren v. City of Maplewood 326 N.W.2d 640 (Minn. 1982).

Minn. Stat. § 444.075.

Smith v. Spring Lake Township, 2001 WL 1464455, C0-01-370 (Minn. Ct. App. Nov. 20, 2001).

However, in recent unpublished opinions, the appellate courts have routinely upheld decisions that went against the city because the district court found a lack of adequate evidence of a market value increase equal to or exceeding the amount of the special assessment.

Especially with regard to street improvements, it may be very difficult to demonstrate that there is any significant increase in market value as a result of the resurfacing or reconstruction.

When a court disallows a portion of an assessment because it was in excess of the benefit to the specific property, the city may not try to recoup the disallowed amount through another method—such as by imposing a charge for a utility line on only that property and not on the other properties involved in the assessment. When the cost of an improvement exceeds the benefit, the difference must not be borne by a particular property, but instead by the city as a whole.

The Minnesota Supreme Court has held that connection charges, based on a different state law, are not assessments and may be imposed on top of prior assessments. One unpublished Court of Appeals decision, however, held that the cost of the connection charges should be included with the amount of special assessments in determining the special benefit to the property.

C. Practical points to consider

The following three strategies help avoid the problem of proceeding on estimates that do not equal actual revenue:

1. Coordinating procedures

2008 Minn. Laws ch. 207 § 4
amending Minn. Stat. § 471.345.
Minn. Stat. § 429.041, subd.1.

Chapter 429 allows coordinating the special assessment process with the competitive bidding process – and may protect the city from successful appeals and ensuing budget shortfalls. The city may determine the assessment amount and prepare the assessment roll before work on the local improvement even begins. Effective Aug. 1, 2008, the competitive bidding threshold for all cities, regardless of size, is \$100,000. *However, this new higher bid trigger does not apply to local improvement projects under Chapter 429 because the law governing local improvement contracts was not changed.* Thus, such projects must still be bid if the estimated cost exceeds \$50,000. If needed, the city may advertise for bids and allow sufficient time after the bid closing date to permit the city to prepare the assessment roll based on the lowest responsible bid the city receives and to hold the assessment hearing (the second hearing) based on that low bid. The city then proceeds with the actual work of the project *after* certification of the assessment roll and the 30-day appeal period is over. Using this coordinated procedure means the city knows both important numbers up front -- how much money will be available through special assessments and the cost of the local improvement. Because the time for appeals is over before the contract is issued, the city will not need to cover potential budget shortfalls that may occur if a property owner successfully challenges a special assessment or the lowest bid comes in higher than expected. This Guide and the forms attached track this coordinated procedural format.

For larger projects in particular, city councils should seriously consider having provisions in the specifications that give the city more time to accept or reject bids. Either the city can make the improvement contract conditional on the absence of objections filed within 30 days after the assessment hearing, or the city may specify (in the bid documents, or specifications) that the improvement work will not begin until 90 days after the city receives bids. Under both strategies, the council would not enter into a binding contract, nor would any improvement work start until after the improvement and assessment hearings and the time for appeals elapses.

2. Specially assessing less of the cost

See Section IIA2: *By council.*

The city can also avoid appeals by paying a substantial portion of the cost of all improvements out of general funds. The larger the portion of cost the city assumes, the less the chances that any individual assessment would exceed the benefit from the improvement as measured by the increase in market value. Indeed, the council can proceed with the proposed assessment based on estimates -- and plan to use monies from a reserve fund from general taxes and other uncommitted sources of revenue making up any difference between the assessments and the project cost.

Ruzic v. City of Eden Prairie, 479 N.W.2d 417 (Minn. Ct. App. 1991).

[Minn. Stat. § 429.081](#)

[Minn. Stat. § 462.3531](#).

See Form 2.

3. Waivers

The council might obtain, under certain circumstances, waivers of rights to appeal before entering into the contract and ordering the improvement. Any waiver of rights is effective only for the amount of assessment agreed on by the city and property owners or developers. An effective waiver of rights of appeal is essentially a contract and may contain additional conditions providing for the increases in assessments that will not be subject to appeal; consult the city attorney for specific advice on effective waivers.

D. Pros and cons of special assessments

Following is a summary of the advantages and disadvantages of special assessment financing. The council can avoid many of the disadvantages with adequate plans and a long-range capital improvement program.

Advantages of special assessment financing include:

- Special assessments are generally a dependable source of revenue.
- Special assessments are a means of raising money outside city debt and general property taxes. (Special assessment bonds do not count toward statutory debt limitations.)
- Special assessments provide a means of levying charges for public services against property otherwise exempt from taxation.
- Special assessments lower the cost to the community of bringing undeveloped land into urban use.
- Charging the property owner for the benefit received prevents or minimizes the possibility that a property owner will reap a financial profit from the improvement at the expense of the general taxpayer.

Disadvantages of special assessment financing include:

- The difficulty and expense in establishing the special benefit to the property.
- The difficulties in special assessment administration. The administrative procedures require careful execution in order to avoid litigation.
- Cities have at times used special assessments to pay for premature public improvements. Because the city generally bears some of the cost of every public improvement, land speculators sometimes urge councils to do unjustifiable special assessment programs.
- The availability of special assessment financing often tempts city officials to underwrite the cost of governmental programs that should be an obligation of the entire city.

- Unless special assessments conform to a city’s long-term financial and capital improvement plans, they can subject a city to two serious financial dangers. First, if a city frequently undertakes special assessment bond issues backed by the full faith and credit of a city in an unplanned manner, city credit might be overextended. This leads to higher interest charges on all city and school district borrowing and increases the possibility of default. Second, placing too heavy a burden on individual property owners (with special assessments and regular property taxes) runs the risk of increasing tax delinquencies and potentially jeopardizes a city’s credit and borrowing position.
- From the council’s point of view, the public’s reaction to a proposed special assessment might be the most important determinative factor. While taxpayer resistance is usually minimal, this is not true in every instance. Special assessment programs receive much greater public support if the council adequately informs people of its intentions to make the improvement, the benefit the improvements will provide, and the necessary financial demands.

E. Special assessment policies

See Section IB: *The special benefit test.*

Some cities have attempted to minimize the controversy over special assessment financing by adopting a special assessment policy (not an ordinance). Whatever the policy provides it must adhere to the rule that the amount of a special assessment cannot exceed the special benefit to the property as measured by increase in market value due to the improvement.

With frequent turnover on the council a policy may increase consistency in the use of financing improvements with special assessments. Justifying council decisions in a particular case may also be easier with a policy in place. An updated and current special assessment policy may also facilitate the development of a long-range capital program for public improvements.

A policy should reflect basic procedural decisions on financing local improvements -- decisions that the council must think through carefully, taking into account past practice, equity, revenue productivity, political acceptability, and the rest of the city’s revenue system. Practically speaking, many city special assessment policies provide procedures for city-specific issues, such as assessing oddly shaped lots, corner lots, lots with septic systems and what method of assessment the city uses. (E.g. including but not limited to the area method of assessment, unit method or a per lot assessment). Cities may wish to work with citizens, appraisers, an attorney and city engineers to develop a special assessment policy that fits the unique needs of their city.

F. Programs cities may finance with special assessments

Generally, cities use special assessments to at least partially finance a variety of public improvements. Cities may also use special assessments to collect certain unpaid service charges, discussed in the next section.

1. Local improvements

Minn. Stat. § 429.021.

Cities are statutorily authorized to finance the following public improvements at least partially through special assessments:

Minn. Stat. § 429.021, subd. 1(1).

Streets, sidewalks, alleys, curbs and gutters: Acquiring, opening, and widening streets and alleys; constructing, reconstructing, and maintaining sidewalks, streets, gutters, curbs, and vehicle parking strips. (These projects may include charges for beautification, storm sewers, or other street drainage systems, and installation of connections from utilities to curb lines.)

Minn. Stat. § 429.021, subd. 1(2).

Storm and sanitary sewer systems: Acquisition, development, construction, reconstruction, extension, and maintenance of storm and sanitary sewer systems including outlets, treatment plants, pumps, lift stations, and storm water holding areas and ponds.

Minn. Stat. § 429.021, subd. 1(3).

Steam heating mains: Construction, reconstruction, extension, and maintenance.

Minn. Stat. § 429.021, subd. 1(4).

Street lighting systems: Installation, replacement, extension, and maintenance.

Minn. Stat. § 429.021, subd. 1(5).

See also Minn. Stat. § 444.075.

See A.G. Op. 387-B-10 (Mar. 8, 1993).

Minn. Stat. § 429.091, subd. 7a.

Waterworks systems: Construction, reconstruction, extension, and maintenance. (This includes all appurtenances of a waterworks system, even the treatment plant.) Special assessments may also pay for the infrastructure necessary to maintain water, sewer, and storm sewer systems; and for the payment of any obligations issued to pay the costs of the waterworks facilities and systems or to refund bonds issued for those purposes.

Minn. Stat. § 429.021, subd. 1(6).

Parks, playgrounds, and recreational facilities: To acquire, improve and equip parks, open space areas, playgrounds, and recreational facilities within or without the corporate limits.

Minn. Stat. § 429.021, subd. 1(7).

Street trees: Planting, trimming, care, and removal.

Minn. Stat. § 429.021, subd. 1(8).

Abating nuisances: Includes, but not limited to, draining and filling swamps, marshes, and ponds on public or private property.

Minn. Stat. § 429.021, subd. 1(9).

Dikes and other flood control works: Construction, reconstruction, extension, and maintenance.

Minn. Stat. § 429.021, subd. 1(10).

Retaining and area walls, including highway noise barriers: Construction, reconstruction, extension, and maintenance.

Minn. Stat. § 429.021, subd. 1(11);
See also, Minn. Stat. § 429.031,
subd. 3.

Pedestrian skyway systems: Construction, reconstruction, maintenance, and promotion of bridges, overpasses, hallways, plazas, elevators, and escalators on public or private property. A petition for a pedestrian skyway system must meet unique statutory requirements.

Minn. Stat. § 429.021, subd. 1(12).

Underground pedestrian concourses: Construction, reconstruction, maintenance, and promotion of tunnels, arcades, plazas, elevators, and escalators.

Minn. Stat. § 429.021, subd. 1(13).

Malls: Acquisition, construction, improvement, alteration, extension, operation, maintenance, and promotion of public malls, plazas or courtyards.

Minn. Stat. § 429.021, subd. 1(14).

District heating systems: Construction, reconstruction, extension, and maintenance of district heating systems.

Minn. Stat. § 429.021, subd. 1(15);
See also, Minn. Stat. § 429.031,
subd. 3.

Fire protection systems: Construction in existing buildings upon petition of owners. A petition for a fire protection system, on public or private property, must meet unique statutory requirements.

Minn. Stat. § 429.021, subd. 1(16).

Highway sound barriers: Acquisition, construction, reconstruction, improvement, alteration, extension, and maintenance of highway sound barriers.

Minn. Stat. § 429.021, subd. 1(17).

Gas and electric distribution facilities: Improvement, construction, reconstruction, extension, and maintenance of gas and electric distribution facilities owned by a municipal gas or electric utility.

Minn. Stat. § 429.021, subd. 1(18).

Markers relating to 911 services: Purchase, installation, and maintenance of signs, posts, and other address markers related to the operation of enhanced 911 services.

Minn. Stat. § 429.021, subd. 1(19).

Internet access: Improvements, construction, extension, and maintenance of facilities for Internet access, and other communication purposes, if the council finds that the facilities:

- Are necessary to make Internet access (or other communications services) available that are not and will not be available through other providers or the private market in the reasonably foreseeable future
- Provide services that will not compete with service provided by private entities.

Minn. Stat. § 429.021, subd. 1(20).
Minn. Stat. § 429.031, subd. 3.

Burying overhead utility lines within the public right-of-way: Cities can only finance the burying of overhead utility lines with special assessments in response to a petition from all the abutting landowners. In addition, burying the lines in the public right of way must exceed the utility's design and construction standards, or those set by law, tariff, or franchise. In that situation all or a portion of the costs associated with burying the lines, or altering a new or existing distribution system, can be specially assessed as agreed to with an electric utility, telecommunications carrier, or cable system.

Minn. Stat. § 459.14.

Parking facilities: Acquisition and construction.

Minn. Stat. 429.031, subd. 3.
Minn. Stat. § 429.011, subd. 16.

Joint Indep. Sch. Dist. No. 287 v. City of Brooklyn Park, 256 N.W.2d 512 (Minn. 1977).

In re. Village of Burnsville, 310 Minn. 32, 245 N.W.2d 445 (1976).

Minn. Stat. § 429.101, subd. 1.
See also, Minn. Stat. § 412.221, subd. 6.

2008 Minn. Laws ch. 366 art. 5, § 42 amending Minn. Stat. § 429.101, subd. 1.

Minn. Stat. § 429.101, subd. 2.

Minn. Stat. § 429.101, subd. 1(1).

Minn. Stat. § 429.101, subd. 1(2).

Minn. Stat. § 429.101, subd. 1(3).

Minn. Stat. § 429.101, subd. 1(4).

Minn. Stat. § 429.101, subd. 1(5).

Minn. Stat. § 429.101, subd. 1(6).

Minn. Stat. § 429.101, subd. 1(7).

Minn. Stat. § 429.101, subd. 1(8).

2008 Minn. Laws ch. 366 art. 5 § 42 amending Minn. Stat. § 429.101, subd. 1(9) .

On-site water contaminant systems: Installation of publicly or privately owned pipes, wells, and other devices and equipment in or outside a building for the primary purpose of eliminating water contamination caused by lead or other toxic or health threatening substances in the water. A petition for an on-site water contaminant system must meet unique statutory requirements.

Chapter 429 defines a number of projects as local improvements that may benefit the entire city, such as a sewage disposal plant, interceptor sewer or water treatment plant. The constitutional provision authorizing special assessments for local improvements may allow these kinds of projects as long as they confer a special benefit on assessed property that the improvements do not confer upon the city as a whole.

2. Assessing unpaid special service charges

Cities may, through an ordinance, require that property owners perform certain property-related special services -- or the ordinance can allow that the city performs the special services and sends a bill to property owner for the work. If the property owner fails to pay, the city may assess for all or any part of the unpaid charges as a special assessment against the property benefitted. When assessing unpaid service charges, cities must follow some, but not all, of the special assessment notice, hearing and calculation procedures in Chapter 429.

The law specifically lists the special services that cities can specially assess if not paid by the property owner or occupant. Statutory cities cannot add the following to this list, but charter cities may be able to add to it by charter amendment:

- Snow, ice and rubbish removal from sidewalks.
- Weed elimination from streets and private property.
- Removal or elimination of public health or safety hazards from private property, excluding any hazardous or substandard buildings.
- Installation and repair of water service lines, and sprinkling and dust treatments.
- Trimming and care of trees, and removal of unsound trees.
- Treatment and removal of insect-infested or diseased trees on private property and the repair of sidewalks and alleys.
- Operation of a street lighting system.
- Operation and maintenance of a fire protection or a pedestrian skyway system.
- Inspections related to a municipal housing maintenance code violation.

Minn. Stat. § 429.101, subd. 1(10) .

- Recovery of payments to rehabilitate and/or maintain safe and habitable housing conditions over the useful life of a house or land - including payment of utility bills and other services, even if provided by a third party in rental situations.

Minn. Stat. § 429.101, subd. 1(11) .

- Painting the exterior of a structure to remedy a municipal code violation.

2008 Minn. Laws ch. 366 art. 5 § 42 amending Minn. Stat. § 429.101, subd. 1(12))

- The recovery of delinquent vacant building registration fees under a municipal program designed to identify and register vacant buildings.

Minn. Stat. § 443.015.

- Garbage collection and disposal.

Minn. Stat. § 429.101, subd 1(b).

Again, a city cannot exercise this authority until passing an authorizing ordinance providing that such matters are the responsibility of the property owner. (The ordinance cannot require that property owners perform street sprinkling or other dust treatment, alley repair, tree trimming, care, and removal or the operation of a street lighting system.)

Minn. Stat. § 429.101, subd. 3.

Payments for unpaid special service charges may be made in one installment or ten equal installments, whatever the council decides. Cities may issue bonds or other debt instruments to finance the cost of special services in the same manner as for local improvements, with three modifications:

- These obligations may not run for more than two years.
- The amount of debt a city issues at any one time may not exceed the estimated cost of the work it will do during the next six months.
- The council must set up a separate fund for each of the different services financed through this procedure.

II. Synopsis of procedures

The following discussion is a guide, but not legal advice, as to the proper fulfillment of special assessment procedures. The council should consult an attorney familiar with the individual project to make sure the city follows all legal procedures. If the proper procedures are not followed, a court may set the assessment aside and order a reassessment.

Gadey v. City of Minneapolis, 517 N.W.2d 344 (Minn. Ct. App. 1994).

Minn. Stat. ch. 429.

In general, Chapter 429 proposes the following steps.

A. Initiation of proceedings

Minn. Stat. § 429.031.

Either a petition from affected property owners or the council initiates Chapter 429 proceedings.

1. By petition

Minn. Stat. § 429.031, subd. 1(f)

See Form 3: (Petition for Local Improvement (more than 35% of property owners))

A.G. Op. 396g7 (June 9, 1958.)

A.G. Op. 387-B-10 (June 29, 1954).
A.G. Op. 408-C (October 28, 1954).

If the council chooses to proceed with an improvement based on a petition (they are not required to do so) it must have the signatures of the owners of at least 35 percent in frontage of the property bordering the proposed improvements. Computing the 35 percent is not always easy. According to the Minnesota Attorney General:

- The 35 percent requirement applies to the entire area petitioning for the local improvement so each specific street need not meet it.
- Cities are not owners for purpose of the 35 percent requirement; exclude city-owned property when figuring the number of owners who must sign a petition requesting an improvement.
- The state is not an owner in this context and cities need not consider state-owned land when determining the 35 percent petition requirement.

If the council relies upon the petition as its basis for proceeding, it cannot make a substantial change in the nature of the improvement from that asked for in the petition. For example, it may not order an improvement for water and sewer when the petition has asked for water alone, or add curb and gutter to a petition for blacktop.

See Form 1: (Petition for Local Improvement (100% of property owners))

In some cases, for example buried utility lines, 100 percent of landowners must petition for an improvement.

Minn. Stat. § 429.035.

See Form 4.

Minn. Stat. § 429.036.

The council must 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 to the legal sufficiency of the petition) in district court. The appeal must be made within 30 days and include a bond of \$250.

2. By council

Minn. Stat. § 429.031, subd. 1(f).

See Form 4A.

See Section II D1: *Voting requirements for ordering the improvement.*

The council certainly may act on its own initiative in proposing a local improvement and ordering a feasibility report. As a practical note, an extraordinary majority vote from the council is not necessary to *initiate* the proceedings. (Later in the process, a four-fifths council vote will be required to pass the resolution *ordering* an improvement initiated by council.) The council must calculate the cost of the improvement or direct staff to do so.

B. Feasibility report

Minn. Stat. § 429.031, subd. 1(b).

Minn. Stat. § 429.031, subd. 1(d).

See Form 5.

Whether initiated by petition or by council, Chapter 429 requires that the city engineer, or another person with similar skills, prepare a feasibility report. (Bond attorneys require a certified copy of a feasibility report before issuing bonds to finance a local improvement.) The feasibility report must cover such factors as whether the project is necessary, the availability of money in the general fund to pay the city's share of the cost, an estimate of that cost, whether the improvement is cost effective, and any other information necessary for council consideration. Note: If someone other than a city employee prepares the report, the law prohibits using a percentage of the costs of the proposed improvement as a basis to pay for the report. The feasibility report must also include the estimated cost of the improvement as recommended. Since a reasonable estimate of the total amount to be assessed, and a description of the methodology used to calculate individual assessments for affected parcels, must be available at the hearing, it could be part of the commissioned report. The feasibility report is integral to the assessment process. Best practice suggests that the city council pass a resolution receiving the report and provide preliminary notice of the improvement.

C. Initial considerations

Overall the law requires two public hearings commonly known as an *improvement hearing* and an *assessment hearing*; in between these two public hearings councils may order the improvement, decide how to construct the project and tabulate an assessment roll. This Guide outlines some initial considerations, describes the improvement hearing, discusses ordering and constructing the improvement; and subsequently addresses the assessment hearing.

1. Determining benefit districts

See Section IB: *The special benefit test*.

Determining what area benefits from improvement projects, or the area against which the city will levy assessments, is a major policy decision for the city council. The benefit district (or assessment district) varies with the kind of improvement. For some improvements, such as a new water tank, the area benefited might be very large. In levying an assessment to finance the tank's construction, for example, the council might assess the entire area the tank services. The special benefit test still applies. City staff, city engineers, consultants and attorneys may provide the basis for council to determine what area or district to assess for a specific improvement because that area benefits from the improvement.

2. City's share

Minn. Stat. § 429.061, subd. 1.
See Form 12, 1.

Minn. Stat. § 429.051, applied in *In Re Mackubin St.*, 279 Minn. 193, 155 N.W.2d 905 (Minn. 1968).

See Section IB: *The special benefit test.*

At any time before or after the city actually incurs expenses for the improvement, the council must pass a resolution determining how much the city plans to pay (above and beyond what it may decide to pay for city-owned property in the assessment area) and separate from amounts to be assessed. Cities may assess the cost of an improvement to property benefited whether or not any part of the cost of the improvement is paid from the county state-aid highway fund, the municipal state-aid street fund or the trunk highway fund. Best practice suggests the council work with an appraiser and an attorney to determine the appropriate city share of a particular project.

The council must also decide, with consultation from staff and consultants, which cost allocation methodology most nearly equates costs and benefit. Such methodology is often described as unit or area charges and involves classification of assessed properties. (The third prong of the benefit test requires a uniform assessment applied to the same class of property, in the assessed area.) Methodology may address the treatment of corner and odd-shaped lots. Many cities have adopted a policy of paying for all intersections, crosswalks, curb returns, and similar parts of public improvement projects not immediately fronting on private property. Other communities distribute the same costs over the benefited area.

3. Non-abutting property

Normally, cities assess all properties abutting or bordering on the improvement, but the council may wish to levy assessments against adjacent, non-abutting properties if the properties benefit from the improvement.

4. Service laterals

See Form 8.

Minn. R. 7560.0100, subp. 12.
See also "Utility Marking Rule," *Minnesota Cities* (June-July 2008, p.6).
Minn. R. ch. 7560.

City utility ordinances often require that property owners maintain private water or sewer service laterals. "Service lateral" means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises. When an improvement project requires new service laterals, and the city's ordinance assigns responsibility for service laterals to property owners, the city may require that property owners install or replace them. If the property owner fails to do so, the city may (with notice) install or replace the service lateral and charge the cost to the property owner. Note: under state utility marking rule, cities must locate the portion of the service lateral within the public right-of-way.

5. May omit improvement hearing

Minn. Stat. § 429.031, subd 3.

See Form 1: Petition for Local Improvement (100% of property owners)

The council may omit the improvement hearing if 100 percent of the affected landowners sign the petition requesting the improvement. Cities should be aware that the law is not as clear on omitting a public hearing where the city pays for any portion of the petitioned for local improvement. In that case, where landowners do not pay *all* the costs of the local improvement, cities may still want to hold both public hearings.

6. Two or more simultaneous local improvements

Minn. Stat. § 429.021, subd. 2.

If a city proposes undertaking two or more local improvements simultaneously the city does not need to issue separate notices and hold separate improvement hearings on different dates. However, the notice should describe each improvement separately, stating the estimated cost for each one and noting that there will be a separate hearing, even if held one after the other on each improvement.

7. Local planning agency review

Minn. Stat. § 462.356, subd. 2.

If a city has a comprehensive plan, the council may not approve a capital improvement project until the local planning agency reviews whether the improvement complies with the comprehensive plan and reports its findings to the council in writing. (Capital improvement simply means the basic facilities, services, and installations needed for the functioning of a city, including transportation, water, storm water, wastewater plants and pipes, and so on). The council may -- by resolution adopted by two-thirds vote -- dispense with this requirement to send the capital improvement to the local planning agency for review if, in the council's judgment, it finds that the proposed capital improvement has no relationship to the comprehensive plan.

D. Prepare for the improvement hearing

The purpose of the first hearing is for the council to discuss a specific local improvement before ordering it done. The council considers all the information in the feasibility report and any other information necessary for council deliberation.

1. Publish notice of the improvement hearing

Minn. Stat. § 429.031, subd. 1(a).

See Form 6.

The city must *publish* notice of the initial public hearing (the improvement hearing) on the proposed project twice in the official newspaper, stating the time and place of the hearing, the general nature of the improvement, the estimated cost, and the area proposed to be assessed. The notices must appear at least one week apart. At least three days must elapse between the last publication date and the date of the hearing.

2. Mail notice of improvement hearing

Minn. Stat. § 429.031, subd. 1(a).

The city must *mail* a notice once to each property owner in the proposed assessment area, at least 10 days prior to the improvement hearing that states the time and place of the hearing, the general nature of the improvement, the estimated cost and the proposed assessment area. The notice must also contain a statement that a reasonable estimate of the cost of the assessment will be available at the hearing.

Klapiemier v. Town of Center, 346 N.W.2d 133 (Minn. 1984).

Cities will want to use great care when notifying citizens about assessment proceedings. An accurate description of the assessment area is important. The law requires detailed and careful notification to communicate which property owners face paying assessments for local improvements. According to the statute, failure to give mailed notice of the improvement hearing will not invalidate subsequent assessment proceedings. In spite of this statutory language one case found that failure to include the correct information in mailed notices invalidated the entire special assessment proceeding on that property.

Minn. Stat. § 429.031, subd. 1.
See Section VII : *Exempt property*

Minn. Stat. § 303.10, subd. 1(1).

Minn. Stat. § 435.19, subd. 2.

Tax exempt properties or those not listed on county tax records potentially pose problems for cities when notifying property owners about public hearings regarding special assessments. Cities may use any “practicable means” to determine the owners of such property. This could include mailing notice to the owner’s principal office in the state or the owner’s registered business office. Notice to other governmental entities must be sent out at least two weeks before the improvement hearing, by registered or certified mail to the head of the instrumentality, department or agency having jurisdiction over the property.

E. Improvement hearing

In re Channel Lane, 444 N.W.2d 602 (Minn. Ct. App. 1989).

Minn. Stat. § 429.031, subd. 1.

At the improvement hearing, interested persons may voice their concerns, whether or not they are in the proposed assessment area. A reasonable estimate of the total amount to be assessed and a description of the methodology used to calculate individual assessments for affected parcels must be available at the hearing. If the council rejects the project, it may not reconsider that same project unless another hearing is held following the required notice. The council must prepare a record of the proceedings and make written findings.

Minn. Stat. § 429.031, subd. 1(f).

The council may adjourn and subsequently continue the improvement hearing. To provide proper notice, before the improvement hearing is adjourned, the council must state on the record, the date, time and place of the continuation of the improvement hearing, if any.

F. Ordering the improvement

Minn. Stat. § 429.031, subd. 1(f).

A resolution ordering the improvement may be adopted at any time within six months after the date of the improvement hearing.

1. Vote requirements for ordering the improvement

[Minn. Stat. § 429.031, subd. 1\(f\)](#)

Nastrum v. City of Blaine, 515 N.W.2d 374, (Minn. 1994).

See Form 7A (Alternative Resolution Ordering Improvement and preparation of Plans)

See Form 7 (Resolution Ordering Improvement and Preparation of Plans).

[Minn. Stat. § 462.356](#).

If the improvement is made pursuant to a legally sufficient petition from property owners, the council adopts the resolution by a simple majority vote of all members of the council. If there is not a petition, adoption requires a “super-majority” vote, meaning the council can only adopt the resolution by a four-fifths vote of all members of the council. (If the mayor of a charter city has no vote or votes only in case of a tie, the mayor is not considered a member for the purpose of determining a four-fifths majority vote.)

There is another voting quirk tangentially related to ordering the improvement; as noted above, if a city with a comprehensive plan determines that the improvement has no relationship to the plan, it need not send the proposed capital improvement to the planning agency for review; however, the council must adopt such a resolution by a two thirds vote.

2. Time limits for local improvements

[Minn. Stat. § 429.031, subd. 1\(f\)](#).

[Minn. Stat. § 429.041, subd. 1.](#)

[Minn. Stat. § 435.191.](#)

See Section IC: *Practical points to consider*.

The resolution ordering the improvement may be adopted at any time within six months after the date of the improvement hearing.

Either arrangements for day labor or a contract must be made within one year of adopting the resolution ordering the improvement -- unless the council specifically states a different timeframe in the resolution ordering the improvement.

G. Competitive bidding

See Form 10.

See *Competitive Bidding Requirements in Cities*, LMC Information Memo.

See Form 9.

The law permits the council to carry out, in advance of the assessment hearing, all the steps prior to, but short of, actually issuing of a contract for the improvement. Thus, if the council wishes to provide firm estimates of costs at the hearing, it may, in addition to the required preliminary report, prepare completed plans and specifications, advertise for bids, and open and tabulate them before the assessment (second) hearing.

Once a city council orders a public improvement, staff or consultants prepare the necessary plans and specifications and the council either:

- Contracts for all or part of the work to be performed by outside parties, or
- Orders all or part of the work to be done by day labor (city employees) and merely contracts for any necessary materials and equipment.

In either case, contracting law applies. Consult the city attorney to coordinate the contracting process in combination with the special assessment process and remember to include the city’s right to reject all bids in advertisements and bid specifications.

1. Performance by contract

[Minn. Stat. § 429.041, subd. 2.](#)

See Form 10.

[Minn. Stat. § 429.041, subd. 4.](#)

See *Competitive Bidding Requirements in Cities*, LMC Information Memo.

[Minn. Stat. § 429.041, subd. 1.](#)

See Section IC1: *Coordinating procedure*.

[Minn. Stat. § 429.041, subd. 2.](#)

See Form 20.

[Minn. Stat. § 429.041, subd. 2.](#)

See Form 21.

[Minn. Stat. § 574.26 subd. 2.](#)

See Form 22, 22A and Form 22B

[A.G. memorandum to public officials \(Feb. 22, 1974\).](#)

[Minn. Stat. § 429.041, subd. 6.](#)

See Form 23.

See Form 25.

See Form 26.

[Minn. Stat. § 290.97.](#)

[Minnesota Department of Revenue Form IC-134](#)

The municipal contracting law, or competitive bidding process, applies to most contracts for local improvements. If a contract is likely to exceed \$50,000, cities must use municipal contracting procedures, which include the “best value” alternative in some situations. There is an exception to the competitive bidding requirement; the council may order the use of day labor (city employees) discussed subsequently for grading, graveling or bituminous surfacing of streets and alleys regardless of the estimated cost.

Cities should remember that citizens may challenge special assessments in district court. If a court reduces the amount of a special assessment, the city has less money than anticipated to pay for the work. For this reason, cities may want to coordinate the timing of the competitive bidding process and the special assessment process.

When contracting for an improvement, the council must require the execution of one or more written contracts which comply with relevant public contracting law. Also, contractors must give the city both performance and payment bonds

The council must award the contract to the lowest responsible bidder or it may reject all bids. Note: the attorney general suggests that cities should take great care in specifying the contractual obligations of both parties in bid advertisements. Cities may want to address the city’s right to reject all bids in the bid advertisements and in the bid specifications. If any bidder to whom a contract is awarded fails to enter promptly into a written contract and to furnish the required bond, the defaulting bidder shall forfeit to the municipality the amount of the defaulter's cash deposit, cashier's check, bid bond, or certified check, and the council may then award the contract to the next lowest responsible bidder.

State law governs ongoing payments to contractors performing work on local improvements. Cities may retain 5 percent of the amount the contractor actually earns each month. The percentage retained protects the city’s interest in getting the work done satisfactorily. The city engineer recommends to the council when such retained funds should be released and final payment made to the contractor. The city council may accept the work by resolution. However, if the city fails to pay the amount due within 30 days of a monthly estimate, or 90 days after the final estimate, the city must pay interest on the past due amount as prescribed by law.

Note: Cities may not make final payment to a contractor until the contractor has shown proof of compliance with the state income tax withholding requirements. The Department of Revenue requires all contractors and subcontractors to file a Form IC-134 to show compliance with the withholding requirements. This certificate is the contractor’s proof of compliance. A city should request a copy of this document from contractors before making the final payment on a contract.

Minn. Stat. § 429.041, subd. 2.
See Form 24.
See Forms 27 and 28.

If the contractor improperly constructs or unreasonably delays work on the local improvement, the council may order suspension of the work at any time and re-let the contract, or order reconstruction of any portion of the work improperly done. If the cost of completing or reconstructing the improvement is less than \$50,000, the council may do it by use of day labor.

Minn. Stat. § 429.041, subd. 7.
See Form 11 and 29A.

Chapter 429 provides that once work begins on an improvement involving a unit price contract, the council may, without advertising for bids, authorize changes to include additional units of work at the same unit price. This may be done, however, only if the additional work costs no more than 25 percent of the “original contract price.” To determine the “original contract price” multiply the estimated number of units required by the unit price.

2. Day labor

Minn. Stat. § 429.041, subd. 1 and 2.

See Forms 27, 27A, 28, 29, 29A, 29B.

Using day labor, or city employees, means there is no contract to bid out for labor but there may be a contract to bid for materials and equipment. The city may use day labor in the following situations:

- the estimated contracts are under \$50,000, or
- the improvement is grading, graveling or bituminous surfacing of streets and alleys, or
- there are no bidders on the project, or
- if the only bids the council receives exceed the estimated cost of the project.

Minn. Stat. § 410.01.

Even using day labor, however, the city must get bids for purchases of materials or equipment worth more than \$50,000. If the contract exceeds \$100,000, the city must publish requests for bids at least three weeks before the last day to submit bids. The advertisement must be published at least once in the official newspaper and at least once in either a trade paper or a newspaper that is published in a First Class city.

Minn. Stat. § 429.041, subd. 3.
See Form 28.

When the council orders construction work done by day labor it must require a detailed report indicating that the work was done according to the plans and specifications, or, if there were any deviations from them, an itemized statement of those deviations. This report must be certified by the registered city engineer (or other person in charge if there is no registered engineer). The report must also show:

- the complete cost of the construction;
- final quantities of the various units of work done;
- materials furnished for the project and the cost of each item thereof;
- cost of labor, cost of equipment hired, and supervisory costs.

H. Prepare the proposed assessment rolls

Minn. Stat. § 429.061, subd. 1.
See Section IB: *The special benefit test*.
See Form 12 and 13.

The city clerk, with the assistance of the engineer or other qualified person selected by the council, prepares the proposed assessment rolls. (Cities should seriously consider retaining the services of a qualified and licensed appraiser to help assure that the amount of the special assessment does not exceed the increase in market value accruing to the property as a result of the public improvement project.)

I. Prepare for the assessment hearing

See Form 14.

The purpose of the second hearing, commonly known as the assessment hearing, is to give property owners an opportunity to express concerns about the actual special assessment. Best practice suggests cities pass a resolution setting the date and time of the assessment hearing and directing that the city clerk publish and mail notice about the assessment hearing. This resolution need not be published.

1. Publish notice of the assessment hearing

Minn. Stat. § 429.061, subd. 1.
See Form 15 (modify slightly, see FN 2).

At least once and at least two weeks before the assessment hearing, the city must publish notice of the hearing in the city newspaper or, if no city newspaper exists, in a county seat newspaper. The published notice must include the hearing time, date, place, overall project description, area to be assessed, total cost of the improvement, a description of a landowner's right to appeal the assessment, and any deferment options, if available.

2. Mail notice of the assessment hearing

Minn. Stat. § 429.061, subd. 1.
Klapmier v. Town of Center, 346 N.W.2d 133 (Minn. 1984).
See Form 15.

At least two weeks before the hearing the city must also mail notice of the hearing to each affected property owner. This mailed notice must include the amount of the special assessment against the individual parcels, a description of the landowner's right to appeal the assessment, possible prepayment provisions, and the interest rate on the assessments. (Note: Certain properties (e.g., railroads) may not be reflected on the county's records because these property owners pay no state property tax. To provide notice, cities may need to search other records for such owners.) For the assessment hearing, failure to comply with the requirements for published and mailed notice invalidates the assessments.

Minn. Stat. § 429.061, subd. 1.
See Form 15A.

Because specific mailed notice of the assessment is important at this stage of the process, best practice suggests the clerk execute an affidavit attesting to the mailing to property owners.

J. Assessment hearing

Minn. Stat. § 429.061, subd. 2.

The assessment hearing may be adjourned and continued to another time. If the assessment hearing is adjourned provide proper notice by stating on the record, the date, time and place of the continuation of the hearing.

1. Resolution adopting assessment roll

Minn. Stat. § 429.061, subd. 2.

See Form 16.

Metropolitan Airports Com'ns v. Bearman, 716 N.W.2d 403 (Minn. Ct. App. 2006).

Minn. Stat. § 272.32.

Minn. Stat. § 272.37.

At the assessment hearing the council shall hear and consider all objections to the proposed assessment, whether presented orally or in writing. The council has some flexibility before it adopts the assessment roll and may change, or amend, the proposed assessment as to any parcel. Council must, by resolution, adopt the same as the special assessment against the lands named in the assessment roll. Once the assessment roll is adopted the assessments are set and become liens against the properties listed. The council must prepare a record of the proceedings and written findings as to the amount of the assessment roll at this hearing.

2. Council decides interest on special assessments

Minn. Stat. § 429.061, subd. 2.

Minn. Stat. § 475.55, subd. 3.

Special assessments may bear interest at any rate the council determines, (unless a charter sets limits on interest rates for assessments). In setting the rate, the council should make sure there is a reasonable relationship between the assessment interest rate and the bond interest rate if the city issued bonds to finance the project. If the city finances the project with funds on hand without using bonds, the council will want to look at the interest rate the city would otherwise have earned on the funds.

3. Council decides payment timelines

Minn. Stat. § 429.061, subd. 2.

The council must also decide the number of years over which the property owners may pay the assessment. The statutes permit payment over a period of not more than 30 years. Council may wish to consider the life expectancy of the improvement when selecting the payment period for the assessments.

See Section IIG2: *Mail notice of assessment hearing*.

See Form 17A.

Minn. Stat. § 429.061, subd. 2.

Generally, the law does not require that the city send a final notice of assessment to property owners if the amount assessed is the same as that listed in the previously mailed assessment hearing notice. However, the clerk must notify property owners of any change if the *final* assessment amount differs from the *proposed* assessment as to any particular lot, piece or parcel of land. The clerk must also notify owners by mail of any changes in interest rates or prepayment requirements the council adopts that differ from those contained in the previously mailed notice of the proposed assessment.

III. Challenges by property owners

The law sets out discrete timelines and procedures for challenging a city’s special assessment. For the most part, objections must be raised at or before the assessment hearing. Only those who object at this stage may proceed to appeal an assessment to the district court.

A. Objections

Minn. Stat. § 429.061, subd. 2.
Minn. Stat. § 429.081
See Form 17.

No one can formally object to, or appeal, the amount of an assessment unless the property owner signs a written objection and files it with the city clerk prior to the assessment hearing or presents it to the presiding officer at the hearing. Property owners subject to proposed special assessments must be informed of this requirement in the mailed notice. They should also be reminded of the requirement at the hearing itself.

Habel v. City of Chisago City, 346 N.W.2d 668 (Minn. Ct. App. 1984).

Any objections to the assessments not received at the public assessment hearings in the manner prescribed are waived, unless the failure to object at the assessment hearing is due to a “reasonable cause.” Reasonable cause is not defined in statute and has not received in-depth judicial analysis.

B. Appeals to the district court

Minn. Stat. § 429.081.

Within 30 days after the adoption of the assessment roll, a property owner who has properly objected to the assessment may appeal a special assessment to the district court. The property owner appeals by serving notice upon the mayor or city clerk and then filing the served notice with the district court within 10 days of that service

See Section IB

If a city’s assessment is challenged in district court, the assessment roll constitutes initial proof that an assessment does not exceed the special benefit. The party contesting the assessment must introduce evidence sufficient to overcome that presumption. If the evidence as to the special benefit is conflicting it is the responsibility of the district court to determine whether the assessment exceeds the market value increase and, if so, by what amount.

See Section IC1.

As discussed previously, if the city coordinates the competitive bid process with the special assessment process, the city now proceeds with the actual work of the project *after* certification of the assessment roll and the 30-day appeal period is over. Because the time for appeals is over before the contract is issued, the city will not need to cover potential budget shortfalls that may occur if a property owner successfully challenges a special assessment or the lowest bid comes in higher than expected.

IV. Levying and collecting assessments and interest

Minn. Stat. § 429.061, subd. 3.

Metropolitan Airports Com'ns v. Bearman, 716 N.W.2d 403 (Minn. Ct. App. 2006).

Assessment rolls are lists for each assessment project containing a description of each parcel of property, including the parcel identification number (PID), the name of the property owner, and the amount of the assessment. The clerk should prepare a separate assessment roll for each improvement project prior to the assessment hearing. At or after the assessment hearing, the council must officially adopt the roll by resolution and then the clerk must certify it to the county auditor.

Minn. Stat. § 429.061, subd. 3.

See Form 18.

There are two ways for a city to collect assessments:

- The city clerk, on council direction, certifies a duplicate copy of the assessment roll and sends it to the county auditor who spreads the assessments every year for collection with taxes.
- The city clerk retains the assessment roll in his or her office and annually certifies to the county auditor the total amount of principal and interest due on special assessments from each parcel of property for the following years.

In the first method, the certification of assessments should be filed with the county auditor on or before Nov. 30 if the auditor is to spread the first installment on the books for collection the following year. The auditor is then responsible for spreading the assessment against the properties every year that an installment payment is due. This is the preferred method for two reasons. First, it eliminates the clerk having to do an annual computation and, thus, avoids errors in later years. Second, once all the assessments have been certified, the city may retain the ability to collect the assessments if the land is forfeited due to nonpayment of property taxes, or the owner declares bankruptcy.

Minn. Stat. § 429.061, subd. 3.

See Form 18A.

If the council prefers the second method it may direct the clerk to file all the special assessment rolls in the clerk's office, and to certify annually to the county auditor only the total amount of principal and interest due on special assessments from each parcel of property for the following year. The clerk must certify all assessments to the county auditor on or before Nov. 30 if the auditor is to spread the first installment on the books for collection in the following year.

A. Payment of assessments and interest

Minn. Stat. § 429.061, subd. 3.

Once the clerk has prepared the special assessment roll and the council has approved it, property owners initially have two options

- either pay the total amount of their assessment immediately, or
- pay the assessments in annual installments (with interest) under the terms set by the council.

Minn. Stat. § 429.061, subd. 3.

Alternatively, the property owner can:

- Pay the entire amount of the assessment within 30 days after the council adopts the assessment rolls. In this situation, the city cannot charge any interest.
- Pay the entire amount at any time after 30 days, but before any certification to the county auditor. The property owner pays only the amount of interest accrued as of the date of payment.
- At any time after the certification, the property owner may still pay the entire remaining unpaid amount to the county treasurer. However, the property owner must pay the entire remaining unpaid amount of the assessment before Nov. 15 of any year, and must also pay all interest accrued until the end of that calendar year.

Minn. Stat. § 429.061, subd. 3.

The council may authorize, by ordinance, partial prepayment of assessments prior to certification to the county auditor.

See Section IIG3a: *Council decides interest on special assessments.*

If the property owner elects not to pay the entire amount of the assessment at once, he or she may pay it in annual installments spread over the number of years the council has allowed. As noted previously, postponement of payment may require city borrowing to pay for the improvement so the city must add an interest charge to each year's assessment payment.

Minn. Stat. § 462.353, subd. 5.

As an added collection tool, a city may require payment of all delinquent assessments before granting a building permit, a conditional use permit, variance, or a zoning change. The city must notify residents of this requirement in an ordinance or in the application materials used to request such a change or permit.

B. Postponed assessments

Minn. Stat. § 429.052.

Postponing assessments occurs when a city pays the cost of a local improvement but delays assessing it. Postponed assessments are not generally a good idea as they are not liens against the property and the city may not recoup what has already been spent on a project. When the council certifies the postponed assessments, all the notice and hearing procedures must be followed. A successful appeal of the assessment leaves the city with less money to pay for the completed project. Given that concern, there are certain situations where the council may postpone the assessment of the cost of water, storm sewer, sewer mains, and street construction or road improvements until a later date. Such situations include:

Minn. Stat. § 429.051, subd. 2.

- Property is unplatted and undeveloped; the owner will subdivide or otherwise make it available for building sites in the future.
- The city cannot immediately use a trunk main because of the absence of laterals.

Minn. Stat. § 429.052.

- Street or road improvements are completed outside the city’s jurisdiction with the consent of either the affected township (or if the property is located in unorganized territory, the county). When the property is brought into the city, special assessments may be levied against it. However, notice and hearing procedures must be carefully followed.

C. Deferred assessments

Minn. Stat. § 429.061, subd. 2.

Deferred assessments are certified to the county auditor but collection is deferred. All deferred assessments constitute liens on the property and must be paid within 30 years of the assessment levy. Interest on the assessments discussed subsequently, may be paid or deferred. Cities are authorized to let a property owner defer paying a certified assessment until a later date, provided the property owner or the property meets certain criteria. There are three types of authorized deferrals:

- undeveloped property
- senior citizen and disability deferrals
- green acres

See Form 19A.

Minn. Stat. § 429.061, subd. 2

1. Notice of deferred assessments

The law requires that cities record deferred special assessments with the county recorder. A certificate of the deferred assessment must contain the legal description and the parcel identification number (PID) of the affected property and the amount deferred.

2. Interest on deferred assessments

Minn. Stat. § 429.061, subd. 2

The city also determines, by ordinance or resolution, the amount of interest on deferred assessments. Property owners may pay interest either annually during the period of deferment, or when the assessment becomes payable. In the resolution deferring the assessment, the council may forgive interest for the deferment years through Dec. 31 of the year before the first installment is due. The county auditor records deferred interest as well as deferred assessments.

3. Deferrals for undeveloped property

[Minn. Stat. § 429.061, subd. 2.](#)

For undeveloped property it is better to defer an assessment than to postpone it because the city will eventually recoup costs. The council must include all benefited property in the proceedings. At the meeting where the council approves the assessment, it may levy the assessment but defer the first installment of the assessment for unimproved property until a designated future year, or until the platting of the property or the construction of improvements. The council may set, by resolution, terms, conditions, standards, and criteria for the deferral and future payments. The city must file a certificate with the county recorder stating the legal description of property subject to deferred assessments, and the amount of the deferred assessment.

4. Deferrals for senior citizens, people with disabilities and members of the military

[Minn. Stat. § 435.193 to 435.195.](#)

[2008 Minn. Laws ch. 154, § 28.](#)

[Minn. Stat. § 190.05, subd. 5b or 5c.](#)

When adopting a special assessment, a city council has authority to defer the payment of that assessment for any homestead property owned by a person 65 or older or retired by virtue of a permanent and total disability for whom it would be a hardship to make the payments. Effective March 8th, 2008 cities may defer assessment payments for property owned by a member of the Minnesota National Guard (or other military reserves) ordered into active military service if it would be a hardship for that person to make the payments. If the city grants the deferment, it must notify the register of deeds of the deferment. The council may determine the amount of interest charges on the deferred assessment.

The deferment ends and all accumulated amounts (plus applicable interest, if any) become due upon the death of the owner (if the spouse is not otherwise eligible for the deferment); the sale, transfer or subdivision of any part of the property; loss of homestead status on the property; or the council's determination that immediate or partial payment would impose no hardship.

[Minn. Stat. § 429.061, subd. 1.](#)

[Minn. Stat. § 435.194](#)

The council must adopt an ordinance establishing general rules for granting deferments to senior citizens, people with disabilities or members of the military including guidelines for determining the existence of a hardship. If the council follows a policy of deferring payment of assessments in hardship cases, it must include a notice of that fact in the notice of the proposed assessment.

5. Deferrals for green acres

Minn. Stat. § 273.111, subds. 3, 6 and 11.

2008 Minn. Laws ch. 366 art. 6 §§12-20 amending Minn. Stat. § 273.111.

“Green acres” law requires deferrals for certain agricultural or specialized use property (such as a nursery or a greenhouse). To defer these assessments on agricultural property, a city must file a certificate with the county recorder stating the legal description of property subject to deferred assessments and the amount of the deferred assessment. Agricultural deferrals follow different procedures in addition to those in Chapter 429. In addition, property must meet strict requirements to qualify for tax benefits as agricultural property. Consult the city attorney to ensure the property qualifies.

D. Abandoned improvements

Minn. Stat. § 435.202, subd. 1

If a city abandons a local improvement project before completion the city must notify the collecting agent for the special assessment (either the city treasurer or more likely, the county auditor). Upon notification, the auditor or treasurer must cancel collection of all payments and interest not already collected, or in the process of collection. This law does not preclude a city reassessing the same properties benefitted by the improvement.

Minn. Stat. § 435.202, subd. 2.

Once the city council decides to abandon an improvement project, the clerk must notify citizens of that fact. The notice must describe the local improvement; state that it has been abandoned and may provide information on refunds. The city may, but is not required to, refund payments to any person who files a substantiated claim within six months of the abandonment notice. Claims may be paid from funds collected for the improvement or from the general fund. However, abandoning the improvement does not alleviate the city’s obligation to make bond and bond interest payments related to the project.

Minn. Stat. § 435.202, subd. 3.

Funds collected for the abandoned improvement must be transferred to the general fund if they are not canceled, refunded, or needed to pay the cost of the improvement or needed for bond payments.

See A.G. Op. 480-B (April 26, 1954).

In most cases, if the council abandons the local improvement in the early stages, before any assessments are levied, the city must pay the costs associated with the proceedings, even if a petition initiated them.

V. Tax-exempt property

Minn. Const. Art. X, § 1.

Minn. Stat. § 429.061, subd. 4.

In re Front Street Sewer Assessment, 138 Minn. 67, 163 N.W. 978 (1917).

Ramsey County v. Trustees of Macalester College, 87 Minn. 165, 91 N.W. 484 (1902).

Washburn Mem’l Orphan Asylum v. State, 73 Minn. 343, 76 N.W. 204 (1898).

The tax exemptions the Minnesota Constitution grants to religious, charitable, and educational institutions do not prevent special assessments against these types of property. Most privately owned cemeteries, churches, hospitals, schools, and similar institutions must pay special assessments. Railroads in Minnesota are not exempt from special assessments.

Minn. Stat. § 306.14, subd. 2.

Oakland Cemetery Ass'n v. City of St. Paul, 36 Minn. 529, 32 N.W. 781 (Minn. 1887). State v. Crystal Lake Cemetery Ass'n, 155 Minn. 187, 193 N.W. 170 (Minn. 1923).

Minn. Stat. § 307.09.

Public cemeteries are usually exempt from special assessments but private, for-profit cemetaries must pay them.

Land dedicated as a private cemetery by a private person or a religious corporation is exempt to a certain extent.

A. Other governmental lands

A.G. Op. 408-C (Sept. 21, 1953)

Minn. Stat. § 435.19.

Property owned by the United States government is exempt from assessments for local improvements. Regarding the property of any other governmental unit, cities may levy special assessments against such property to the same extent as if the property were privately owned. For this purpose, “governmental unit” refers to all cities (except First Class cities) towns, school districts, public utility corporations, and counties. If the unit does not pay the amount of an assessment against it, the city may recover the money in a civil action.

Minn. Stat. § 435.19, subds. 2, 3.

In the case of state-owned property, or property owned by First Class cities, the city should determine the amount it would assess the land if it were privately owned. Before making this determination, the city must hold a public hearing on the proposed assessment. The hearing must take place at least two weeks after giving notice by registered or certified mail to the head of the department or agency having jurisdiction over the property. The council’s determination is not binding, however, and if the state agency or the other city decides the measure of benefit is a lesser amount, it may pay the lesser amount.

B. Collecting assessments from tax-exempt or railroad property

See Section VII: *Tax-exempt property*.

Minn. Stat. § 429.061, subd. 4.

See Form 19.

When the council approves an assessment bill, the city mails notice to the owners of tax-exempt or railroad property so long as the property benefits from the improvement. The notice specifies the amount payable under the assessment and the conditions for payment, including the number and the amount of each installment, the rate of interest, and the penalties for default. Interest does not accrue until 30 days after the mailed notice is given.

Minn. Stat. § 429.061, subd. 4.

If the assessment is not paid in a single installment, the law requires that the city annually mail a payment reminder to certain owners. These are:

- the owner of any railroad;
- a utility right-of-way owner, or
- to the owner of any public property (another governmental unit).

Minn. Stat. § 429.061, subd. 4.

Technically the law allows a city to collect the amount due from the owner of any railroad or privately owned public utility by a seizing and selling personal property. Consult the city attorney before using this collection method.

Minn. Stat. § 435.19.

State-owned land, such as state parks and recreational land may be notified of the amount it will be charged for a special assessment. The state, however, cannot be required to pay special assessments against state-owned land, although it may agree to do so.

VI. Corrections

Minn. Stat. § 429.071.

Independent Sch. Dist. No. 254 v. City of Kenyon, 411 N.W.2d 545 (Minn. Ct. App. 1987).

After a city has made special assessments, it is sometimes possible to correct errors or make other changes either by levying supplemental assessments, ordering a reassessment for the entire project or reapportioning an assessment.

A. Supplemental assessments

Minn. Stat. § 429.071, subd. 1.

In re Meyer, 158 Minn. 433, 199 N.W. 746 (1924).

If, because of omissions or errors in the assessment of any improvement, the council wishes to increase the amount of assessments, it may levy supplemental assessments. The council may levy these assessments only after giving property owners notice and a chance to be heard at a public hearing. Requirements are the same as those for the original assessment and owners may appeal the supplemental assessment.

B. Reassessments

Minn. Stat. § 429.071, subd. 2.

The council may order reassessment of all properties affected by special assessment levy for any of the following reasons:

- To reassess property when the courts nullify the original assessment.
- To validate an assessment that the city attorney feels the city may have made improperly or not in compliance with jurisdictional requirements.
- To reduce assessments the city later determined to be excessive.

C. Reapportionment

Minn. Stat. § 429.071, subd. 3.

When a city levies a special assessment against land that is later subdivided, the council may, on its own motion or on application of the owner of any part of the tract, equitably apportion the unpaid portion of the assessment among the lots. The council must determine that the apportionment will not impair collection of the balance due. If the city has pledged the assessment toward payment of bonds, the council must require that the property owners furnish surety bonds.

D. Tax-forfeited land returned to private ownership

Minn. Stat. § 429.071, subd. 4.

Minn. Stat. § 444.076.

Minn. Stat. § 435.23.

Minn. Stat. § 435.19, subd. 2.

Singer v. Minneapolis, 1997 WL 698486, C5-97-1265 (Minn. Ct. App. Nov. 10, 1997).

When tax-forfeited land returns to private ownership, and the parcel benefitted from an improvement for which the city canceled special assessments because of the forfeiture, the city may, with the same notice and hearing as for the original assessment, assess or reassess the parcel. The assessment amount would be equal to the amount remaining unpaid on the original assessment. Any city may reassess or make a new assessment on tax-forfeited land that returns to private ownership. A city can specially assess state-owned tax-forfeited land while it is owned by the state. The state has the option of paying the assessment or not, but the assessment can be collected from someone who acquires title to the property from the state in the future.

VII. Borrowing for special assessment purposes

For more information on bonding, see [Handbook Chapter 24](#).

Cities collect most special assessment revenue over a period of several years. Consequently, cities often obtain funds for public improvement projects from bond issues. The city pays off the bonds as the funds become available through collection of the assessments and any taxes the city levied especially for that purpose.

There are three kinds of debt instruments cities use for special assessment purposes, none of which count in determining the net debt of the city. (Net debt refers to the total outstanding debt of the city subject to the city debt limit.)

Improvement bonds are the first kind of debt instrument cities use for special assessments. Payment of these bonds is backed by the special assessments the city has levied and by the general taxing power of the city.

Improvement warrants are the second kind of debt instrument. These differ from improvement bonds in that they are not backed by the taxation power of the city. Improvement warrants are payable only from the assessments against the affected property owners. Because improvement bonds are more readily marketable at a lower rate of interest than improvement warrants, very few cities issue improvement warrants.

The council may also issue and sell temporary bonds at any time before completion of a public improvement project. These obligations must mature within three years, and are payable from the proceeds of the regular improvement bonds the city must issue by the maturity of the temporary bonds. Temporary bonds are subject to redemption and repayment of any interest due on 30 days mailed notice to registered holders.

Unlike improvement warrants, some cities frequently issue temporary improvement bonds. By issuing these bonds, cities can postpone the issuance of the regular special assessment bonds. There are two other advantages:

- The city may consolidate several improvement projects into a single bond issue.
- The city reduces the chance of excessive borrowing by delaying the long-term bond issue until it knows all the costs of a project.

Frequently, cities will purchase their own temporary improvement bonds with surplus cash available in other funds, such as a liquor or utilities fund. This results in savings of interest and other investment expenses.

[Minn. Stat. § 429.091, subds. 3, 4.](#)

The city may issue regular improvement bonds or warrants after ordering one or more improvements. Generally, cities issue them before the work is complete and before determining the final cost. If the city uses this procedure and the cost estimate turns out to be higher than actual costs the city may use the surplus funds to finance any other improvements it started under Chapter 429, or it may transfer the surplus to the fund used for the repayment of the bonds themselves. If the cost estimate is too low, the city may sell additional bonds.

[Minn. Stat. § 429.091, subd. 1.](#)

If the city is involved with several public improvements at the same time under Chapter 429, it may be advisable to consolidate all necessary financing into a single issue of improvement bonds or warrants, even if the city did not consolidate the assessment proceedings. Such a substantial block of bonds is often more readily marketable than several smaller issues.

[Minn. Stat. § 429.091, subd. 3.](#)
[Minn. Stat. § 475.58, subd. 1\(3\)](#)

Although in most cases the special benefit test limits the percentage of the cost of the improvement that can be assessed, an election is required for bonds if less than 20 percent of the cost is to be assessed against the benefitted property. Put another way, if the city itself is to pay 80 percent or more of the cost through its general funds, the voters must approve the bond issue on the improvement project.

If some funding for an improvement project comes from county or federal sources, the application of the 20 percent is less clear. Consult the city attorney and bond counsel for specific legal advice on this question.

[Minn. Stat. § 429.091, subd. 3.](#)

In a resolution authorizing a bond issue, the council must decide the bond maturity, denominations, interest rate, and form. The factors the council should consider in fixing such terms include the marketability of the bonds, the anticipated collection of the assessments, and the need for future bond issues under the comprehensive city plan and the capital improvement budget.

Before it can deliver the bonds or warrants to the purchaser, the council must levy a general tax for the payment of that portion of the cost not covered by the special assessment levies.

The council must make any tax levy for this purpose irrevocable for as long as the bonds or warrants are outstanding. While the council cannot repeal the levy until after all the principal and interest are paid, it may reduce the tax in any year if a surplus occurs in the sinking fund from which the city pays the improvement bonds.

A. Interest on improvement bonds

Minn. Stat. § 429.091, subd. 3.

Bonds may carry any interest rate the council determines. In effect, the market determines the interest rate cities will pay on bonds.

B. Interest on special assessments

Minn. Stat. § 429.061, subd. 2.

Minn. Stat. § 475.55, subd. 3.

See Section IIG3a: *Council decides interest on special assessment.*

As noted previously special assessments may bear interest at any rate the council determines, unless the charter sets interest limits on the rates for assessments. In setting interest rates on assessments, the council should make sure there is a reasonable relationship between the assessment interest rate and the bond interest rate if the city issued bonds to finance the project. If the city finances the project with funds on hand without using bonds, the council will want to look at the interest rate the city would otherwise have earned on the funds.

VIII. Charter cities

Minn. Stat. § 429.111.

A.G. Op. 59-B-14, (June 26, 1956.)

Minn. Stat. § 429.021, subd. 3.

Generally, any city operating under a home rule charter may proceed either under Chapter 429 or under its charter in making an improvement, unless a home rule charter or amendment taking effect after April 17, 1953 provides for an improvement under Chapter 429 or the charter exclusively. If a city proceeds under its charter, the city council should consult the city attorney to ensure that the charter procedure complies with Chapter 429 where state law so requires. Some specific areas to consider are as follows:

A. Special benefit test

See Section IB: *The special benefit test.*

The special benefit rule applies to charter cities. Again, the special benefit rule requires that the amount of special assessments to a parcel of property cannot exceed the increase in market value of that property because of the improvement.

B. Assessing unpaid charges

Minn. Stat. § 429.101.

See Section IF2: *Assessing unpaid special service charges.*

The law specifically lists the special services that cities can specially assess if not paid by the property owner or occupant. Statutory cities cannot add to this list but charter cities may be able to add to it by charter amendment.

C. Voting requirements

[Minn. Stat. § 429.031, subd.1\(f\).](#)

See Section IID1: *Voting requirements for ordering the improvement.*

If there is no petition for the local improvement, statutory city councils must adopt the resolution ordering an improvement with a “super-majority” vote. This means the council can only adopt the resolution by a four-fifths vote of all members of the council. If the mayor of a charter city has no vote or votes only in case of a tie, the mayor is not considered a member for the purpose of determining a four-fifths majority vote.

D. Notice of right to appeal

[Minn. Stat. § 429.061, subd. 1.](#)

[Minn. Stat. § 429.021, subd. 3.](#)

See Section IIG1: *Publish notice of assessment hearing.*

Even if the city follows charter procedures, state law requires that charter cities send the same notices of proposed assessments to inform property owners of the procedures they must follow under the charter in order to appeal the assessments to district court.

E. Deferrals

[Minn. Stat. § 429.021, subd. 3.](#)

See Section IVC: *Deferred assessments.*

If the city offers deferments, notices of proposed assessments must tell property owners about deferments and how to procure them. Like statutory cities, charter cities may choose to offer deferrals to those who are 65 years of age or older or retired by virtue of a permanent and total disability.

F. Day labor

[Minn. Stat. § 429.021, subd. 3.](#)

State law considers charter provisions as requiring that the council issue the contract for all or part of the work, or order all or part of the work done by day labor, no later than one year after the adoption of the resolution ordering such improvement—unless the council specifically states a different time limit in the resolution ordering the improvement.

IX. Forms

[Special Assessment Forms](#)

The following checklist and sample forms will help cities complete various steps in making special assessments for a local improvement under Chapter 429 of the Minnesota Statutes.

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