**14. Notice of Hearing on Proposed Assessment**

\_\_\_\_\_\_\_\_\_\_\_\_\_, Minnesota (month) (day) , (year) .

TO WHOM IT MAY CONCERN:[[1]](#endnote-2)

Notice is hereby given that the council will meet at \_\_\_\_\_\_\_ a.m. (p.m.) on (month) (day) , (year) at \_\_\_\_\_\_\_ to consider, and possibly adopt, the proposed assessment for Improvement No. \_\_\_\_\_\_\_\_\_, the (nature of improvement, i.e., sewer, water, etc.) improvement of \_\_\_\_\_\_\_ Street between the \_\_\_\_\_\_\_ line of \_\_\_\_\_\_\_ Street and the \_\_\_\_\_\_\_ line of \_\_\_\_\_\_\_ Street by \_\_\_\_\_\_\_. Adoption by the council of the proposed assessment may occur at the hearing. The following is the area proposed to be assessed:[[2]](#endnote-3)

The amount to be specially assessed against your particular lot, piece, or parcel of land is ($\_\_\_\_\_\_\_)(shown in the attachment to this notice).[[3]](#endnote-4) Such assessment is proposed to be payable in equal annual installments extending over a period of \_\_\_\_\_ years, the first of the installments to be payable on or before the first Monday in January (year) , and will bear interest at the rate of \_\_\_\_\_ percent per annum from the date of the adoption of the assessment resolution.[[4]](#endnote-5) To the first installment shall be added interest on the entire assessment from the date of the assessment resolution until December 31, (year) . To each subsequent installment when due shall be added interest for one year on all unpaid installments.

You may at any time prior to certification of the assessment to the county auditor, pay the entire assessment on such property, with interest accrued to the date of payment, to the \_\_\_\_\_\_\_. No interest shall be charged if the entire assessment is paid within 30 days[[5]](#endnote-6) from the adoption of this assessment. You may at any time thereafter, pay to the \_\_\_\_\_ the entire amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the succeeding year. If you decide not to prepay the assessment before the date given above the rate of interest that will apply is \_\_\_\_\_ percent per year. The right to partially prepay the assessment according to Ordinance No. \_\_\_\_\_ is/is not available.[[6]](#endnote-7)

The proposed assessment roll is on file for public inspection at the city clerk’s office. The total amount of the proposed assessment is $\_\_\_\_\_.[[7]](#endnote-8) Written or oral objections will be considered at the meeting. No appeal to district court may be taken as to the amount of an assessment unless a written objection signed by the affected property owner is filed with the municipal clerk prior to the assessment hearing or presented to the presiding officer at the hearing. The council may upon such notice consider any objection to the amount of a proposed individual assessment at an adjourned meeting upon such further notice to the affected property owners as it deems advisable.[[8]](#endnote-9)

Under Minn. Stat. §§ 435.193 to 435.195 and city Ordinance (Resolution) No. \_\_\_\_\_, the council may, in its discretion, defer the payment of this special assessment for any homestead property owned by a person 65 years of age or older, one retired by virtue of a permanent and total disability, or a member of the National Guard or other reserves ordered to active military service for whom it would be a hardship to make the payments. When deferment of the special assessment has been granted and is terminated for any reason provided in that law and Ordinance (Resolution), all amounts accumulated plus applicable interest become due. Any assessed property owner meeting the requirements of this law and Ordinance (Resolution) No. \_\_\_\_\_, may, within 30 days of the confirmation of the assessment, apply to the city clerk for the prescribed form for such deferral of payment of this special assessment on his/her property. [[9]](#endnote-10)

An owner may appeal an assessment to district court pursuant to Minn. Stat. § 429.081 by serving notice of the appeal upon the mayor or clerk of the city within 30 days after the adoption of the assessment and filing such notice with the district court within ten days after service upon the mayor or clerk.[[10]](#endnote-11)

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 City Clerk

**END OF FORM**

1. Under Minn. Stat. § 435.19, subd. 2, state-owned property may be specially assessed provided at least two weeks notice of the hearing has been given by registered or certified mail to the head of the instrumentality, department, or agency having jurisdiction over the property. [↑](#endnote-ref-2)
2. The improvement code requires that the notice state in clear language several things, including the amount to be assessed and that the council may act at the hearing. (Minn. Stat. § 429.061, subd. 1.) The notice must also state the general nature of the improvement and the area proposed to be assessed. If only abutting property is to be assessed, a statement to this effect can easily be incorporated in the previous sentence by including after the phrase, “proposed assessment” the phrase, “against abutting property.” [↑](#endnote-ref-3)
3. This paragraph is repeated in Form 15, Resolution Adopting Assessment. The first line of this paragraph should be deleted for the published notice. If the amount of the assessment or the interest rate printed here differs from the adopted amount of the assessment or the interest rate, the owners must be notified by mail. (Minn. Stat. § 429.061, subd. 2.) It does not appear that the statute intends another notice and hearing. From the assessed property owners standpoint there would seem to be little reason for a repeat hearing if the assessment or interest rate were reduced, but there is likely to be property-owner objection if the assessment or the interest rate is increased. How the courts would react to a challenge in either case has not yet been tested. The courts seem likely to be very sympathetic to the owner in cases of increases. Careful initial calculation of the assessment and required interest to be charged should avoid the need for any increases at this or later stages of the proceedings. [↑](#endnote-ref-4)
4. Alternatively special assessments may be made payable in equal annual installments including principal and interest, each in the amount annually required to pay the principal over such period with interest at such rate as the council determines. [↑](#endnote-ref-5)
5. The number of days is specified by statute. [↑](#endnote-ref-6)
6. The ability to make partial prepayments should be defined by ordinance in order to provide consistency in the handling of assessments and to have the regulations governing assessments in one place. [↑](#endnote-ref-7)
7. The law no longer requires that the notice contain the entire assessment roll. The court, at the end of the decision in *Peterson v. City of Inver Grove Heights*, 345 N.W.2d 274 (Minn. Ct. App. 1984), and again in *Habel v. City of Chisago City*, 346 N.W.2d 668 (Minn. Ct. App. 1984), intimated that assessment notices should be as informational as possible and though sending of the entire roll may not be feasible in all cases, such a notice would be most effective. The Legislature repealed the requirement that published notice contain the entire assessment roll. [↑](#endnote-ref-8)
8. The statute provides for but does not require such an adjourned meeting at which expert evidence may be presented on both sides as to the increase in value attributable to the improvement. (Minn. Stat. § 429.061, subd. 2.)

In *Buettner v. City of St. Cloud*, 277 N.W.2d 100 (Minn. 1979), the Minnesota Supreme Court indicated that in case of an appeal to the district court, the court would be limited to a review upon the record without new testimony if adversary hearings were held and an adequate record made as part of the city's assessment proceedings. See the discussion in the Guide under the heading, “The special benefit test.” Minn. Stat. § 429.061, subd. 2 provides for adjourned hearings at which the city and the landowner may present evidence with reference to the assessment amount is probably a reflection of this statement of the court; however, it is not certain, without further judicial clarification, that the adjourned hearing before the council or a council committee constitutes an adversary proceeding. If the council wishes instead to provide for an impartial hearing body or officer, it may wish to consider adding a paragraph like the following:

“If a property owner at or prior to the hearing files a written objection on the ground that the proposed assessment exceeds the increase in market value occasioned by the improvement, the council, before adopting the final assessment, shall arrange for a hearing before an impartial hearing officer. The hearing shall be in the nature of an adversary proceeding in which the owner and the city may present further written or oral testimony from appropriate city officials and other witnesses as to the amount of the assessment. A record shall be made of the proceedings including written findings as to the amount of the assessment. The amount of the assessment as finally determined by the council shall become a part of the adopted assessment roll.” [↑](#endnote-ref-9)
9. Minn. Stat. § 429.061, read literally, requires that the notice of the assessment hearing inform property owners of the provisions of Minn. Stat. §§ 435.193 to 435.195, even if the city has not passed an ordinance or resolution permitting senior citizen, disability, or military hardship deferments. However, such notice could likely be confusing and useless if a council has made the policy decision not to allow such deferments. In this latter case, the city’s attorney should advise whether keeping this paragraph in the notice is preferable or not.

The form referred to is prescribed by the county auditor. [↑](#endnote-ref-10)
10. The Minnesota Court of Appeals, in *Lydon v. City of North Saint Paul*, 355 N.W.2d 205 (Minn. Ct. App. 1984), decided that a hearing before the council is not adequate to avoid the need for a *de novo* determination (judgment without deference to council’s determination) by a court on appeal because the council is not sufficiently disinterested in the outcome. The implication is that if a city were willing to hire an impartial adjudicator to review a contested assessment in the adjourned hearing, that decision might be entitled to some deference on appeal.

Consequently, the city’s attorney should advise just how much procedure is necessary and how to implement it. One possible procedure is the following which could be added just prior to the last paragraph of this notice.

“If an assessment is contested or there is an adjourned hearing, the following procedure will be followed:

1. The city will present its case first by calling witnesses who may testify by narrative or by examination, and by the introduction of exhibits. After each witness has testified, the contesting party will be allowed to ask questions. This procedure will be repeated with each witness until neither side has further questions.

2. After the city has presented all its evidence, the objector may call witnesses or present such testimony as the objector desires. The same procedure for questioning of the city’s witnesses will be followed with the objector’s witnesses.

3. The objector may be represented by counsel.

4. Minnesota rules of evidence will not be strictly applied; however, they may be considered and argued to the council as to the weight of items of evidence or testimony presented to the council.

5. The entire proceedings will be video- and audio-recorded.

6. At the close of presentation of evidence, the objector may make a final presentation to the council based on the evidence and the law. No new evidence may be presented at this point.

7. The council may adopt the proposed assessment at the hearing and will prepare written findings concerning the amount of the assessment.” [↑](#endnote-ref-11)