**15. Resolution Adopting Assessment**

WHEREAS, pursuant to proper notice duly given as required by law, the council has met and heard and passed upon all objections to the proposed assessment for Improvement No. \_\_\_\_\_\_\_, the improvement of \_\_\_\_\_\_\_ Street between the \_\_\_\_\_\_\_ line of \_\_\_\_\_\_\_ Street and the \_\_\_\_\_\_\_ line of \_\_\_\_\_\_\_ Street by \_\_\_\_\_\_\_,[[1]](#endnote-2)

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF \_\_\_\_\_\_\_, MINNESOTA:

1. Such proposed assessment[[2]](#endnote-3), a copy of which is attached hereto and made a part hereof, is hereby accepted and shall constitute the special assessment against the lands named therein, and each tract of land therein included is hereby found to be benefited by the proposed improvement in the amount of the assessment levied against it.

2. Such assessment shall 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 shall bear interest at the rate of \_\_\_\_\_[[3]](#endnote-4) percent per annum from the date of the adoption of this assessment resolution.[[4]](#endnote-5) To the first installment shall be added interest on the entire assessment from the date of this resolution until December 31, (year) . To each subsequent installment, when due, shall be added interest for one year on all unpaid installments.[[5]](#endnote-6)

3. The owner of any property so assessed may, at any time prior to certification of the assessment to the county auditor, pay the whole of the assessment on such property, with interest accrued to the date of payment, to the city treasurer, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption of this resolution; and he/she may, at any time thereafter, pay to the city treasurer 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 next succeeding year.[[6]](#endnote-7)

4. The clerk shall forthwith transmit a certified duplicate of this assessment to the county auditor to be extended on the property tax lists of the county. Such assessments shall be collected and paid over in the same manner as other municipal taxes.[[7]](#endnote-8)

Adopted by the council this \_\_\_\_\_ day of (month) , (year) .

 Mayor

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

City Clerk

**END OF FORM**

1. If the council has changed the proposed assessment as a result of the hearing, the following clause should be added: “and has amended such proposed assessment as it deems just.” [↑](#endnote-ref-2)
2. If the council has changed the assessment, the phrase “as amended” should be added here. [↑](#endnote-ref-3)
3. This is a repetition of the language contained in Form 14, Notice of Hearing on Proposed Assessment. If the amount of the assessment or the interest rate adopted here differs from the proposed assessment or 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 stage 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, but not to exceed the legal maximum. If this course is followed, prepayments made pursuant to Minn. Stat. § 429.061, subd. 3, must include all installments due to and including December 31 of the year of payment, and the original principal amount reduced only by the amounts of principal included in the installments as computed on an annual amortization basis. [↑](#endnote-ref-5)
5. If the council postpones the assessment for a sewer, storm sewer, or water main in the case of properties which are presently undeveloped or need a lateral before they can make use of the water or sewer main which is the subject of the assessment, the council may wish to state its intention in this resolution and refer to Minn. Stat. § 429.051. The provision could similarly reference Minn. Stat. § 429.052 to address postponed assessments on extra-jurisdictional roads which will later be annexed. Such statements would be for the information of future councils as well as present and future owners of the property concerned. No such statement of intention is necessary under the law and there is no provision for making the future assessment a present lien on the property concerned in any way.

If the council wishes to include some such language with reference to abutting property on which assessments are postponed, it may include a separate paragraph along the following lines, with subsequent paragraphs being renumbered accordingly: “3. It is hereby declared to be the intention of the council to reimburse itself in the future for the portion of the cost of this improvement paid for from municipal funds by levying additional assessments, on notice and hearing as provided for the assessments herein made, upon any properties abutting on the improvement but not herein assessed for the improvement when changed conditions relating to such properties make such assessment feasible in accordance with Minn. Stat. § 429.051 [or 429.052].” If the future assessment awaits construction of laterals to only nonabutting property, the following language may be used instead (if future assessments involve both abutting and nonabutting property, use this language in addition): “To the extent that this improvement benefits nonabutting properties which may be served by the improvement when one or more later extensions or improvements are made, but which are not herein assessed therefor, it is hereby declared to be the intention of the council, as authorized by Minn. Stat. § 429.051, to reimburse the city by adding the portion of the costs so paid to the assessments levied for any such later extensions or improvements.” Where it is feasible to describe specifically the property to which this intention to make future assessments relates, the council may wish to add some such language as this: “This declaration relates to, but is not necessarily limited in its application to, the following property:…”

If payment of assessments against unimproved property is to be deferred, the assessment roll and this paragraph will have to make clear the distinction between the schedule of payments for the unimproved and the improved properties and this resolution must specify terms and conditions for the deferment as well as standards and criteria to be applied in administering the deferment policy.

The local improvement code makes two procedures available for taking account of cases where an improvement abuts or traverses unimproved property and collection of a special assessment from such property on the same basis as from improved property served by the improvement would impose a hardship on the owner. These procedures may be outlined as follows:

A. **Postponement of assessment for water, sanitary sewer, storm sewer improvement, or extra-jurisdictional roads.** (Minn. Stat. §§ 429.051 and 429.052.) If the council utilizes this authority, there is no assessment at all against this property at the time the cost of the project is originally assessed. The city must meet that portion of the cost from other available funds and then levy an assessment later, presumably when the property is platted or improved. When it does so, it must give notice and hearing of the assessment as in any other case of special assessments under local improvement code. There is no lien on the property until the later assessment is made. While there is no provision in these statutes on deferred interest, the interest cost on the bonds attributable to the deferred assessments would seem to be a part of the improvement cost which could be included in calculating the later assessment so long as it (1) does not make the assessment exceed the benefit to the property and (2) does not result in a yield to the city larger than the total cost of the improvement, including all interest paid.

Substantially the same procedure is authorized where property not contiguous to a sewer or water main improvement cannot make use of the improvement until an extension is made to serve it and similar properties. In that case the city may include the proportionate share of the original improvement in the assessment for the extension if notice that such an additional amount is to be assessed is included in the notice and hearing on the assessment for the extension. See Form 6, note 2. This procedure can be used even though the area may not have been included in the notice of hearing on the original improvement.

While this procedure is ordinarily used only in the case of unimproved land, the statute does not restrict its use to those cases. The procedure may be used in any case where the land was not assessed in the first instance.

B. **Deferment of payment of assessments against unimproved property for any type of improvement.** (Minn. Stat. § 429.061, subd. 2.) Under this statute the assessment is made against unimproved property along with the assessment against improved property but the resolution making the assessment will provide for different installments in the two cases. In the case of improved property, payment of the first installment will be due along with the taxes covered in the first tax rolls completed after the resolution is adopted; however, as provided in the assessment resolution, the first installment on the assessment against unimproved land will not be due until (1) some designated future year, (2) upon platting of the property, or (3) upon the construction of improvements on the property. The last installment must be made payable no later than 30 years after the levy of the original assessment.

When payment is to be deferred against unimproved property, the resolution levying the assessment must specify terms and conditions for the deferment as well as standards and criteria to be applied in administering the deferment policy. Thus the council might provide that if unimproved property is later platted or improved by the construction of substantial buildings as defined in the resolution, payment of the assessment would be spread over a number of years commencing with the next tax levy following construction and ending 30 years from the date of levy of the assessment (assuming the 30-year maximum is to be used; it need not be that long). As an example, if property is neither platted nor improved within X number of years from the date of assessment, if platted or improved the next year, payment would be spread over (30 – X) annual installments.

When payment of assessments is deferred against unimproved property under Minn. Stat. § 429.061, subd. 2, the city must record with the county recorder a certificate containing the legal description of the affected property and the amount deferred. Presumably, this duty is performed by the city clerk.

With reference to the interest to be charged on deferred installments, the council has three options: (1) it may require interest to be paid annually at the same times as the principal installments of the assessment would have been payable if not deferred; (2) it may add interest for this period to the principal amount of the assessment when it becomes payable; or (3) it may forgive interest to December 31 of the year before the first deferred installment is payable. What the council does in the resolution levying the assessment will depend on such factors as its conception of fairness among owners of improved property, owners of unimproved property, and taxpayers; its interest obligations on the improvement bonds issued to finance the project; and the number of property owners in the two groups. The council may desire to state its policy in a general ordinance establishing a local improvement policy.

Because the second procedure results in creating a lien against all benefited property when the assessment is levied, and establishes at that time a payment schedule that assures collection of the total assessment, it is desirable to use this procedure, added in 1976, rather than the older and more limited one wherever possible. It should be emphasized, however, that neither procedure is mandatory; the council may prefer not to defer assessments or assessment payment in any case. Thus the court has sustained an assessment against nonabutting property for its proportionate share of the cost of a trunk main even though there was at the time of the assessment no lateral which would make the trunk main available to the property concerned. See *In re Appeal by American Oil Company v. City of St. Cloud*, 295 Minn. 428, 206 N.W.2d 31 (1973). [↑](#endnote-ref-6)
6. Instead of certifying the assessment in installments for all of the years by a single certification, the council may direct the clerk to file all the assessment rolls in his/her office and to certify annually the total amount of principal and interest due the following year. In that case, all collections, except of the installment on the current tax list, are made to the municipal treasurer and only the principal and interest amounts unpaid for the following year are certified when the annual certification is made.

By ordinance the council may authorize the partial prepayment of assessments, in a manner provided by the ordinance, prior to certification of the assessment or the first installment to the county auditor. [↑](#endnote-ref-7)
7. After adoption of the assessment the clerk is required, unless the council decides on the method mentioned in the previous paragraph, to transmit a certified duplicate to the county auditor which shows these amounts. This saves the annual computation by the city clerk and avoids errors in later years. (The county auditor is entitled to a fee for all administrative expenses incurred by the county for each special assessment certified to him/her for collection. Minn. Stat. § 429.061, subd. 5.) [↑](#endnote-ref-8)