

Village of Roscommon

County of Roscommon, State of Michigan

Village of Roscommon Ordinance No. 73

Adopted: 10-10-05

Effective: 10-16-05

SPECIAL ASSESSMENTS ORDINANCE

State law references: Notices and hearings, MCL 211.741 et seq; deferment for older persons, MCL 211.761 et seq; powers re special assessments, MCL 117.4a, 117.4b, 117.4d, 117.5.

- Sec. 1. Definitions
- Sec. 2. Determination by council
- Sec. 3. Petitions
- Sec. 4. Preliminary proceedings
- Sec. 5. Action by council
- Sec. 6. Special assessment roll
- Sec. 7. Attachment of lien
- Sec. 8. Assessing single lots
- Sec. 9. Handling of assessment roll
- Sec. 10. Due date
- Sec. 11. Determining actual cost of improvements
- Sec. 12. Deficiency actual cost of improvements
- Sec. 13. Reassessment in event of illegality
- Sec. 14. Collection by court action

Section 1: Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning;

Cost, when referring to the cost of any improvement, means and includes the cost of surveys, plans, land, rights-of-way, spreading of rolls, notices, advertising, financing and construction and all other costs incident to the making of such improvement, the special assessments therefore and the financing thereof.

Improvement means any public improvement, the whole or any part of the costs of which is to be assessed against one or more lots or parcels of land to be especially benefited thereby, in proportion to the benefit to be derived therefrom.

Section 2: Determination by council.

The village council shall have power to determine that the whole or any part of the costs of any improvement shall be defrayed by special assessments upon the property specially benefited, but such determination shall not be made until the preliminary proceedings provided for in Section 4 shall have been completed.

Section 3:

The village council, in order to ascertain whether or not a reasonable number of property owners to be assessed desire any particular improvement to be made, may request and receive a petition therefore, or may receive such a petition voluntarily presented, but, in either event, such petition shall be advisory only and shall not be jurisdictional, except in cases where such a petition is specifically made jurisdictional by the statutes of the state. Such petition shall be submitted on forms approved by the village manager and shall be furnished by the village. The village shall not be required to construct any improvement petitioned for, and the village may proceed to construct an improvement without a petition having been filed.

Section 4: Preliminary proceedings

(a) Before determining to make any improvement, any part of the costs of which is to be defrayed by special assessment, the council shall, by resolution, require the village manager to prepare, or cause to be prepared, plans and specifications therefore, and estimate of the cost thereof, and to file the same with the village clerk together with his recommendation as to what proportion of the cost should be paid by special assessment and what part, if any, should be a general obligation of the village, the number of installments in which assessments may be paid and the land should be included in the special assessment district. After the report is filed with the clerk it shall be presented to the council, and such report shall be available for public examination.

(b) Whenever any land which should be included in the special assessment district may not be assessed because it is owned by a public agency, a written agreement may be reached providing for the payment of such agency's benefiting share of the cost of the improvement. This agreement, or advice that such agreement cannot be reached, shall be presented to the council prior to the adoption by the council of the resolution provided for by Section 5.

(c) Whenever any property is acquired by condemnation or otherwise for the purpose of any improvement, the cost thereof and the proceedings required to acquire such property may be added to the cost of such improvement.

Section 5: Action by council

(a) After the report prepared pursuant to Section 4 (a) is presented to council, the council may, by resolution, approve the plans and specifications and estimate of cost, and determine to make the improvement and to defray the whole or any part of the cost of the improvement by special assessment upon the property especially benefited in proportion to the benefits thereto. By such resolution the council shall:

- (1) Approve the plans and specifications for the improvement;
- (2) Determine the estimated costs thereof;
- (3) Determine the estimated life of such improvement;
- (4) Determine what proportion of such costs shall be paid by special assessment upon the property especially benefited and what part, if any, shall be a general obligation of the village;
- (5) Designate the district or land and premises upon which special assessments shall be levied;
- (6) Determine the interest to be charged on deferred installments, not to exceed eight percent per annum, except that if bonds are issued in anticipation of such installments, interest may be charged at a rate not in excess of one percent above the average rate borne by the bonds; and
- (7) Direct the assessor to prepare a special assessment roll in accordance with the council's determination.

(b) Notwithstanding any provision of this section, the village council may, in its discretion, delay the preparation of a special assessment roll until after the completion of the improvement, in which case the actual cost thereof shall be reported to the council and a special assessment roll shall then be made, based upon such actual cost, in accordance with the procedure set forth in this section.

Section 6: Special assessment roll:

(a) Preparation of roll. The village assessor shall, upon direction by the council as provided in Section 5(a), prepare a special assessment roll including all lots and parcels of land within the special assessment district designated by the council, and shall assess to each such lot or parcel of land such relative portion of the whole sum to be levied against all the lands in the special assessment district as the benefit to such lot or parcel of land bears to the total benefits to all lands in such district. There shall also be entered upon such roll the amount which has been assessed to the village at large, if any.

(b) Certificate of assessor; filing. When the assessor shall have completed the assessment roll the assessor shall attach thereto or endorse thereon his certificate to the effect that such roll has been made by him pursuant to a resolution of the village council, giving the date of the adoption according to this best judgment, conformed in all respects to the directions contained in such resolution and to general village law statutes and the provisions of this section. Thereupon, the assessor shall file in the office of the village clerk a copy of such certificate, which certificate shall certify that such special assessment roll is on file in the assessor's office and available for public inspection.

(c) Public hearing.

(1) Upon receipt of the assessor's certificate as provided in subsection (b) of this section, the council shall fix a time and place when it will meet and review the assessment roll, and shall direct the village clerk to give notice of such hearing. Such notice shall specify the time and place of such hearing and shall be published once in a newspaper circulated in the village, not less than ten days prior to the date of such hearing. A like ten-day notice shall also be sent by the village clerk to each owner of property subject to assessment, as indicated by the records of the village assessor's office, by first class mail. The hearing required by this subsection may be adjourned from time to time and may be held at any regular, adjourned or special meeting of the village council. At such hearing all interested persons or parties shall be given an opportunity to be heard.

(2) The notice of hearing shall include a statement that appearance and protest at the hearing in the special assessment proceedings is required in order to appeal the amount of the special assessment to the state tax tribunal, and that an owner or party in interest, or his agent, may appear in person at the hearing to protest the special assessment or may file his appearance or protest by letter and his personal appearance shall not be required. The notice shall further include a statement that the owner or any party having an interest in the real property may file a written appeal of the special assessment with the state tax tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

(d) Objections to roll. Persons deeming themselves aggrieved by a special assessment roll shall file their objections thereto in writing with the village clerk prior to the close of the hearing thereon or any adjournments thereof, which written objections shall specify in detail in what respect such persons deem themselves aggrieved. No assessment roll shall be confirmed except by the affirmative vote of five members of the village council if written objections shall specify in detail in what respect such persons deem themselves aggrieved. No assessment roll shall be confirmed except by the affirmative vote of five members of the village council if written objections to the proposed improvement have been filed in accordance with this subsection by the owners of property which will be required to bear over 50 percent of the amount to be specially assessed for such improvement.

(e) Confirmation of roll. The village council shall meet and review the special assessment roll at the time and place appointed as provided in this section, or at an adjourned date therefore, and shall consider any written objections thereto. The council may correct such roll as to any assessment or description of any lot or parcel of land, or other errors appearing therein. Any changes made in such roll shall be noted in the council's minutes. After such hearing and review, the council may confirm such special assessment roll with such corrections as it may have made, if any, or may refer it back to the assessor for revision, or may annul it and any proceedings in connection therewith. Upon confirmation of any special assessment roll the council shall determine the number of installments in which the assessment may be paid, which in no case shall exceed 20 in number, the due date of the first and subsequent installments, and shall finally determine the rate of interest to be charged on unpaid assessments and installments, which shall in no case exceed eight percent per annum, except that if bonds are issued in anticipation of such installments, interest may be charged at a rate not in excess of one percent above the average rate borne by the bonds. The village clerk shall endorse the date of confirmation upon each special

assessment roll.

Section 7: Attachment of lien.

All special assessments contained in any special assessment roll, including any part thereof deferred as to payment, shall, from the date of confirmation of such roll, constitute a lien upon the respective lots or parcels of land assessed and until paid shall be a charge against the respective owners of the several lots and parcels of land. Such lien shall be of the same character and effect as the lien created for village taxes and shall include accrued interest and penalties. No judgment or decree, nor any act of the village council vacating a special assessment, shall destroy or impair the lien of the village upon the premises assessed for such amount of the assessment as may be equitably charged against such premises, or as by a regular mode of proceeding might be lawfully assessed thereon.

Section 8: Assessing single lots.

(a) Procedure. When any expense shall have been incurred by the village upon or in respect to any single premises, which expense is chargeable against such premises and the owner thereof under the provisions of general village law, or any ordinance of the village or law of the state, and is not of that class required to be prorated among several lots and parcels of land in a special assessment district, an account of the labor, material or services for which such expense was incurred, verified by the village manager with a description of the lot and the name of the owner, if known, shall be reported to the village treasurer, who shall immediately charge and bill the owner, if known. Such bill shall be sent by first class mail to the owner of the property to be assessed and such bill notify such owner of the time of the meeting of the council, not sooner than 30 days thereafter, when the council will meet for the purpose of adopting a resolution placing a special assessment upon such property for such charges unless such charges are paid prior to the date of such meeting. At such meeting the council shall adopt a special assessment resolution covering each parcel of land for which such charges have not been theretofore paid in full. As many parcels may be included in a single resolution as shall be convenient. Upon adoption of such resolution, the council may authorize installment payments, and if installment payments are authorized, shall determine the number of installments and the rate of interest to be charged thereon, which shall not exceed six percent per annum. Immediately after the adoption of such resolution, the village treasurer shall give notice of the several amounts so determined to the several persons chargeable therewith. Such notice shall be sent by first class mail to the last known addresses of such persons as shown on the assessment roll of the village, or by publication. Such notice shall state the basis of the assessment, and the amount thereof, and shall give a reasonable time, not less than 30 days, within which payment shall be made to the treasurer. In all cases where payment is not made within the time set, the fact shall be reported by the treasurer to the assessor, who shall charge such amounts against the persons or real property chargeable therewith, on the next tax roll.

(b) General procedure inapplicable. The special assessment resolution referred to in subsection (a) of this section shall be treated as a special assessment roll and the adoption of such resolution shall correspond to the confirmation of a special assessment roll. The provisions of Section 1 through 6 with reference to special assessments generally and proceedings necessary to be had before making improvements shall not apply to assessments made pursuant to subsection (a) of this section. All other sections of this ordinance and provisions for collection of special assessments set forth in this ordinance shall apply to assessments made pursuant to subsection (a) of this section.

Section 9: Handling of assessment roll.

The assessment roll shall be transmitted by the assessor to the village treasurer for collection immediately after its confirmation. The treasurer shall divide the assessments into installments when so ordered by the village council; provided, that if such division operates to make any installment less than \$10.00, then the treasurer shall reduce the number of installments so that each installment shall be above and as near \$10.00, then the treasurer shall reduce the number of installments so that each installment shall be above and as near \$10.00 as possible. The treasurer shall mail statements of the several assessments to the respective owners, as indicated by the records of the treasurer, of the several lots and parcels of land assessed, stating the amount of the assessment and the manner in which it may be paid; provided, however, that failure to mail any such statement shall not invalidate the assessment or entitle the owner to an extension of time within which to pay the assessment.

Section 10. Due date.

Unless otherwise provided in the resolution confirming the assessment roll, the assessment or the first installment thereof, if divided into installments, shall be due and payable on confirmation of the roll. The whole or any part of any special assessment may be paid during the period of 60 days immediately following the date of confirmation of a special assessment without interest or penalty being charged. Upon the expiration of such 60-day period, the village treasurer shall transmit the special assessment roll with all payments upon such assessments noted thereon to the village assessor. The assessor shall spread such assessments, or the first installment thereof if divided into installments, upon either the first or second annual village tax roll which is prepared subsequent to the date of confirmation of such assessment, as shall be provided for in the resolution of the village council confirming such assessment. Thereafter, one installment of each special assessment which has been divided into installments shall be spread upon each annual village tax roll until the full amount of the special assessment has been paid. After expiration of the 60-day period provided in this section, any assessment or installment may be discharged by paying the face amount thereof, plus interest to the date of such payment; provided, however, the village council may, in the resolution confirming any special assessment, provide for a collection fee to be charged which shall not exceed five percent of the amount of any special assessment or, when divided into installments, shall not exceed five percent of the amount of each installment, which collection fee shall be collected by the village treasurer. The village treasurer shall collect all interest and penalties provided for in this section or in any resolution confirming a special assessment, and shall have the same rights and remedies with respect to the collection of special assessments, together with interest thereon and collection fees, as provided for by the statutes of the state for the collection of village taxes.

Section 11. Determining actual cost of improvements.

Upon completion of the improvement and payment of the cost thereof, the village manager shall certify the total cost of such improvement to the council, together with the amount of the original roll for such improvement.

Section 12. Deficiency assessments and refunds.

Should the assessments in any special assessment roll, including the amount assessed to the village at large, prove insufficient for any reason to pay the cost of the improvement for which they were made, then the council may make additional assessments against the village and the several lots and parcels of land within the special assessment district, in the same ratio as the original assessments, to supply the deficiency; or the council may determine that such deficiency shall be paid by the village, but the total amount assessed against any lot or parcel of land shall not exceed the value of the benefits received from the improvement. Should the assessments levied prove to be more than necessary to defray the cost of the improvement, then the council may, by resolution, order the excess to be applied to the unpaid installments of such special assessment against each lot or parcel of land, in the inverse order in which they are payable. Any amount of such excess as to any lot or parcel of land which cannot be applied as aforesaid shall be refunded in cash where such excess exceeds five percent of the amount necessary.

Section 13. Reassessment in event of illegality.

Whenever any special assessment shall, in the opinion of the council, be invalid by reason of irregularity or informality in the proceedings, or if any court of competent jurisdiction shall adjudge such assessment to be illegal, the council shall, whether the improvement has been made or not, or whether any part of the assessment has been paid or not, have power to cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for in the original assessment, and whenever the assessment, or any part thereof, levied upon any premises has been so set aside, if the same has been paid and not refunded, the payment so made shall be applied upon the reassessment and the reassessment shall, to that extent, be deemed satisfied.

Section 14. Collection by court action:

In addition to any other remedies and without impairing the lien therefore, any delinquent special assessment, together with interest and penalties thereon, may be collected in any action in assumpsit in the name of the village against the person assessed, in any court having jurisdiction of the amount. If in any such action it shall appear that by reason of any irregularities or informalities the assessment has not been properly made against the defendant or upon the premises sought to be charged, the court may, nevertheless, on satisfactory proof that expense has been incurred by the village which is a proper charge against the defendant or the premises in question, render judgment for the amount properly chargeable against such defendant or upon such premises.

This ordinance shall take effect immediately upon publication as required by law following adoption by the village council.