

CHAPTER 2

Special Assessments

SEC. 3-2-1 COMMON COUNCIL MAY LEVY SPECIAL ASSESSMENTS.

- (a) The City of Menasha by resolution of its Common Council may levy and collect special assessments upon property in a limited and determinable area under its police powers for any municipal work or improvement and may provide for the payment of all or any part of the cost of the work or improvement. In addition to other methods approved by law, special assessments for any public work or improvement or any special charge for current services may be levied in accordance with the provisions of this Chapter.
- (b) The favored procedure in the City for proceeding with making specially assessable public improvements as generally set forth in this Chapter is not intended in any way to disregard or to bar proceeding under other methods provided by law for making of public improvements and for the levying of assessments therefor. Nor is this Chapter intended to be an exhaustive, detailed recodification of the state law under said statutory section. Detailed requirements still require reference to said statutory section and the subsections there under. The purpose hereof is to generally define and establish local procedures.

State Law Reference: Section 66.62, Wis. Stats.

SEC. 3-2-2 RESOLUTION AND REPORT REQUIRED.

- (a) Prior to making any such special assessments, the Common Council shall declare by preliminary resolution its intention to exercise its police powers for a stated municipal purpose. Such resolution shall describe generally the contemplated purpose, the limits of the proposed assessment district, the number of installments in which the special assessments may be paid or that the number of installments will be determined at the hearing required under Section 3-2-5 of this Chapter and direct the proper municipal officer or employee to make a report thereon. Such resolution may limit the proportion of the cost to be assessed.
- (b) The report required by Subsection (a) shall consist of:
 - (1) Preliminary or final plans and specifications.
 - (2) An estimate of the entire cost of the proposed work or improvement.
 - (3) An estimate, as to each parcel of property affected, of:
 - a. The assessment of benefits to be levied.
 - b. The damages to be awarded for property taken or damages.
 - c. The net amount of such benefits over damages or the net amount of such damages over benefits.
 - (4) A statement that the property against which the assessments are proposed is benefited, where the work or improvements constitute an exercise of the police power. In such case, the estimates required under Subsection (3) shall be replaced by a schedule of the proposed assessments.
 - (5) A copy of the report when completed shall be filed with the City Clerk for public inspection.
- (c) When the Common Council determines by resolution that the hearing on the assessments be held subsequent to the completion of the work or improvement or rendering of the service,

the report required by Sec. 66.60(3), Wis. Stats., and Subsections (a) and (b) above shall contain a statement of the final cost of the work, service or improvement in lieu of an estimate of the cost.

SEC. 3-2-3 COSTS THAT MAY BE PAID BY SPECIAL ASSESSMENT.

The cost of any work or improvement to be paid in whole or in part by special assessment on property may include the direct and indirect cost thereof, the damages occasioned thereby, the interest on bonds or notes issued in anticipation of the collection of the assessments, a reasonable charge for the services of the administrative staff of the City and the cost of any architectural, engineering and legal services, and any other item of direct or indirect cost which may reasonably be attributed to the proposed work or improvement. The amount to be assessed against all property for any such proposed work or improvement shall be apportioned among the individual parcels in the manner designated by the Common Council.

SEC. 3-2-4 EXEMPTIONS; DEDUCTIONS.

- (a) If any property deemed benefited shall by reason of any provision of law be exempt from assessment therefor, such assessment shall be computed and shall be paid by the City.
- (b) A parcel of land against which has been levied a special assessment for the sanitary sewer or water main laid in one of the streets upon which it abuts shall be entitled to such deduction or exemption as the Common Council determines to be reasonable and just under the circumstances of each case when special assessment is levied for the sanitary sewer or water main laid in the other street upon which such corner lot abuts. Under any circumstances the assessment will not be less than the long way of such lot. The Common Council may allow a similar deduction or exemption from special assessments levied for any other public improvement.

SEC. 3-2-5 NOTICE OF PROPOSED OR APPROVED PROJECT.

- (a) **NOTICE REQUIREMENTS.** On the completion and filing of the report and final resolution with the City Clerk required in Section 3-2-5(b)(5) of this Chapter, the City Clerk shall prepare a Notice of Hearing, which notice shall comply with Sec. 66.60(7), Wis. Stats., and state the nature of the proposed or approved work or improvement, the general boundary lines of the proposed assessment district, the place and time at which the report may be inspected and the place and time at which all interested persons, their agents or attorneys may appear before the Common Council or Committee thereof and be heard concerning the matters contained in the preliminary resolution and report. Such notice shall be signed by the City Clerk who shall cause the same to be published at least once in the official newspaper and shall mail a copy of such notice at least ten (10) days before the hearing to every interested person whose post office address is known or can be ascertained with reasonable diligence. The hearing shall commence not less than ten (10) days and not more than forty (40) days after the publication or mailing of said notice.
- (b) **WAIVER OF NOTICE, ASSESSMENTS UNDER.** The Council may, without any notice of hearing, levy and assess the whole or any part of the cost of any municipal work or whole or any part of the cost of any municipal work or improvement as a special assessment

upon the property specifically benefited thereby whenever notice and hearing thereon is in writing waived by all the owners of property affected by such special assessment. In such cases, the procedure shall be the same as hereinbefore provided excepting for the noticing and holding of public hearing thereon.

SEC. 3-2-6 COUNCIL ACTIONS AFTER HEARING.

- (a) After the hearing, the Common Council may:
 - (1) Approve, disapprove, modify or re-refer the report to the Director of Public Works or other designated City official with such directions as it deems necessary to change the plans and specifications as to accomplish a fair and equitable assessment.
 - (2) Continue the public hearing, preliminarily approve plans and specifications and, if the project requires advertising for bids, authorize and direct the advertisement therefor with a date certain for consideration and taking action thereon, inclusive of action on said report and action on final resolution.
- (b) If an assessment be made against any property and an award of compensation or damage be made in favor of the property, the Common Council shall assess only the difference between such assessment of benefits and the award of compensation or damage.
- (c)
 - (1) If the work or improvement has not been previously authorized or approved, the Common Council shall approve the work or improvement and by resolution direct that the same be done and paid for in accordance with the report finally approved.
 - (2) If the work or improvement has been approved by the Common Council or work commenced or completed prior to the filing of the report or prior to the hearing, then the Common Council shall by resolution confirm the report as made or modified and provide for payment in whole or in part by assessment.
- (d) The City Clerk shall publish the final resolution as required in Section 3-2-5 of this Chapter.
- (e) After the publication of the final resolution, any work or improvement provided for and not yet authorized shall be deemed fully authorized and all awards of compensation or damage and all assessments made shall be deemed duly and properly made, subject to the right of appeal by Section 66.60(12), Wis. Stats., or any other applicable provision of law.

SEC. 3-2-7 COMBINED ASSESSMENTS.

If more than a single improvement is undertaken, the Common Council may combine the assessments as a single assessment on each property affected except that the property owner may object to any one or more of said improvements.

SEC. 3-2-8 COUNCIL'S POWER TO AMEND, CANCEL OR CONFIRM SPECIAL ASSESSMENT.

If, after completion or after the receipt of bids, the actual cost of any work or improvement is found to vary materially from the original estimate, or the assessment is void or invalid for any reason, or if the Common Council determines to reconsider an assessment, it is empowered, after giving notice as required in Section 3-2-5 to amend, cancel or confirm any prior assessment; and notice of this amending, canceling or confirming be given by the City Clerk as provided in Section 3-2-6 of this Chapter.

SEC. 3-2-9 WHERE COST OF IMPROVEMENT IS LESS THAN ASSESSMENT.

If the cost of the work or improvement is less than the assessment levied, the Common Council without notice or hearing shall reduce each assessment proportionately. If the assessment has been paid either in part or in full, the City shall refund the property owner such overpayment.

SEC. 3-2-10 APPEALS; APPEALED ASSESSMENTS PAYABLE WHEN DUE.

- (a) Any person against whose property a special assessment is levied under this Chapter may appeal there from in the manner prescribed by Section 66.60(12) of the Wisconsin Statutes, as amended, within forty (40) days of the date of the final determination of the Common Council.
- (b) Pursuant to Section 66.60(f), Wis. Stats., it shall be a condition to the maintenance of any appeal that any assessment appealed shall be paid when due and payable, and upon default in payment any such appeal shall be dismissed.

SEC. 3-2-11 PAYMENT OF SPECIAL ASSESSMENTS; SPECIAL ASSESSMENT A LIEN ON PROPERTY.

Pursuant to Subsection (13) of Section 66.60, Wis. Stats., any special assessment levied under this Chapter shall be a lien on the property against which it is levied on behalf of the City. The Common Council shall provide for the collection of such assessments and may establish penalties for payment after the due date. The Common Council shall provide that all assessments not paid by the date specified shall be extended upon the tax roll as a delinquent tax against the property and all proceedings in relation to the collection of such delinquent taxes shall apply to such assessment, except as otherwise provided by statute.

SEC. 3-2-12 SPECIAL CHARGES PERMISSIBLE.

- (a) In addition to all other methods provided by law, special charges for current services may be imposed by resolution by the Common Council by allocating all or part of the cost of the property served. Such resolution setting forth the property location, the current service rendered by the City and special charge therefor or cost thereof. Such resolution for special charges may include snow and ice removal, weed elimination, street sprinkling oiling or tarring, repair of sidewalks or curb and gutter, garbage and refuse disposal, sewer and water

service and tree care or removal. The provision for notice of such charges shall be optional with the Common Council except that in the case of street, sidewalk, curb or gutter repair, twenty (20) days' notice published in the official City newspaper, or by posting such notice in three (3) places in the City and a copy of such notice mailed to every interested person whose post office address is known, at least ten (10) days before the hearing or proceeding. Such notice shall specify that on a certain date a hearing will be held by the Common Council as to whether the service in question shall be performed.

- (b) Special charges for current services shall not be payable by installments. If not paid within the period fixed by the Common Council in said resolution, such delinquent special charges, pursuant to Section 3-2-11, shall become a lien on said property as of the date of such delinquency and shall automatically be extended upon the current or next tax roll as a delinquent tax against the property, as provided by Section 66.60(16) of the Wisconsin Statutes, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charge. Notice of special charges for current services need not be given except as required by Section 66.60(16) of the Wisconsin Statutes, as amended.
- (c) Section 3-2-2(a) of this Chapter shall not be applicable to proceedings under this Section.

State Law Reference: Section 66.60(16), Wis Stats.

SEC. 3-2-13 MISCELLANEOUS PROVISIONS.

- (a) If any assessment or charge levied under this Chapter is invalid because such Statutes are found to be unconstitutional, the Common Council may thereafter reassess such assessment or charge pursuant to the provisions of any applicable law.
- (b) Notwithstanding any other provision of law, or this or other ordinance or resolution, it is specifically intended and provided by this Chapter that the City may levy special assessments for work or improvement against the property affected either before or after the approval of the work plans and specifications, contracting for the work or completing the work or improvement.

SEC. 3-2-14 INSTALLMENT AND DEFERRED SPECIAL ASSESSMENTS.

(a) INSTALLMENT PAYMENT.

- (1) All special assessments may be paid, at the option of the property owner according to the following:
 - a. Special assessments less than or equal to Five Hundred Dollars (\$500.00) shall be paid to the City Treasurer without interest within thirty (30) days of billing.
 - b. Special assessments greater than Five Hundred Dollars (\$500.00) but less than or equal to Two Thousand Five Hundred Dollars (\$2,500.00) may be paid in five equal installments due and payable on or before November 1 commencing with the year the special assessment is levied and each November 1, thereafter, together with the interest as assigned. Interest shall accrue at the rate the City has borrowed the money plus 1% for administrative expenses. Should the money to pay for the project not be borrowed, interest shall be set at a rate established by the Common Council

in the final resolution required by Sec. 3-2-6.

- c. Special assessments greater than Two Thousand Five Hundred Dollars (\$2,500.00) may be deferred for the initial five years after passage of the final resolution required by Sec. 3.2.6. Thereafter they shall be paid in five equal installments due and payable on or before November 1 commencing with the sixth year after the special assessment is levied and each November 1 thereafter, together with the interest as assigned. Interest shall accrue at the rate the City has borrowed the money plus 1% for administrative expenses. Should the money to pay for the project not be borrowed, interest shall be set at a rate established by the Common Council in the final resolution required by Sec. 3-2-6.
- (2) The City Comptroller shall enter the first installment due on the subsequent year's tax roll as a special tax on the property on which the special assessment was levied, and thereafter this tax shall be treated in all respects as any other city tax, and one of the subsequent installments shall be included in like manner and with like effect in each of the annual tax rolls thereafter until all are collected.
- (3) If any installment so entered in the tax roll shall not be paid to the City Treasurer with the other taxes it shall be returned to the county as delinquent and accepted and collected by the county in the same manner as delinquent general taxes on real estate.
- (4) Whenever the Common Council shall permit any special assessment for any such improvement to be paid in installments, the City Clerk shall cause to be published in the official paper of the City the "Installment Assessment Notice" as provided under Chapter 66.54(7), Wis. Stats.
- (5) After the time for making election as provided in the notice shall have expired, all remaining assessment installments may be paid in full before due by the payment of the installments together with interest to become due at the next installment due date on all of the remaining installments.
- (6) A schedule of the special assessment and all installments thereof shall be recorded in the office of the City Treasurer.
- (b) **DEFERRED SPECIAL ASSESSMENTS.**
 - (1) Deferred Special Assessments Permitted. The Common Council may by motion direct the City Treasurer to pay all or any portion of special assessments or special charges extended upon the current or next tax roll against property owned by or upon which reside worthy, indigent persons in accordance with the provisions of Chapter 74.77, Wis. Stats., with an annual interest rate as established by the Common Council.
 - (2) Who May Apply. Applications for deferment of payment shall be made upon a form provided by the City Clerk, verified by the applicant, and the information only contained therein shall be treated as confidential, privileged information.
 - (3) Who Shall Make Determination. Application shall be reviewed by the Board of Public Works for the Common Council. All the provisions of Section 74.77, Wis. Stats., shall be applicable.
 - (4) Duty of City Attorney. Upon the Common Council granting such application, it shall be the duty of the City Attorney to file the necessary lien on said property.
 - (5) Deferred Assessments (pursuant to Sections 66.60 and 66.605, Wis. Stats.).
 - a. Wetlands. Property designated as protected "wetlands" on the DNR-approved wetlands map shall be assessed, but the assessment deferred. However, upon change from wetland to developable status in the future, for any reason, the assessment shall then immediately become due and payable

as otherwise required by this section. Conclusive evidence of this change to assessment-due status shall be deemed to exist upon the issuance of any building permit on any lot or parcel with a contiguous property parcel held by a single legal entity.

- b. Agricultural. Property used in agriculture for crops or pasture and over five (5) acres in size shall be assessed, but the assessment deferred, upon approval of request for deferment by the Common Council.
- c. Topographically Unbuildable Parcels. If an entire, defined, platted lot is deemed by the Common Council to be unbuildable, any assessment may be deferred by the Common Council. However, upon change from topographically unbuildable parcel to developable status in the future, for any reason, the assessment shall then become due and payable as otherwise required by this section. Conclusive evidence of this change to assessment-due status shall be deemed to exist upon the issuance of any building permit for any lot or parcel within a contiguous property parcel held by a single legal entity.
- d. Under paragraph a. above, the wetlands deferred assessment may remain in force in perpetuity, unless there be the change from wetlands to developable status in the future. Under paragraph c. above, the topographically unbuildable parcel deferred assessment may remain in force i perpetuity, unless there be a change from topographically unbuildable parcel to developable status in the future.

SEC. 3-2-15 STREET ASSESSMENTS.

- (a) It is the policy of the City of Menasha that all property owners shall pay for a road and that all subsequent repair and maintenance shall be borne from the general funds and shall not be assessed against the property of the owner. However, nothing shall prevent the abutting property owners to petition the Council for a higher classification of a road than now exists or the Council from on its own motion ordering such classification. In that event, the provisions of Chapter 66.60, Wis. Stats., of the assessment powers or the police powers permitted by law shall prevail.
- (b) Temporary asphalt mats are determined to be one step in the construction of a permanent finished urbanized road section and may be assessable. When the Director of Public Works determines that a permanent finished, urbanized road section is needed to replace the temporary asphalt mat, the assessment policies of this chapter will apply irrespective of 3-2-15.

SEC. 3-2-16 ASSESSMENT DETERMINATIONS.

- (a) **SCHEDULE**. Special assessments shall be levied against all property fronting or abutting on a proposed improvement at a rate to be determined per project by the Board of Public Works on the basis of a unit cost per foot fronting or abutting in the proposed improvement. Such rates of assessment shall be approved by motion and resolution passed by the Common Council. Should the bids come in lower than the established assessment ratios, credit may be granted.
- (b) **INTERIOR LOTS**. On interior lot road construction and improvements including the

laying of a base course, paving and curb and gutter, said footage shall be determined as shown on the plat or other recorded instrument. This shall also apply to sanitary sewers and water mains.

- (c) **CORNER LOTS.** (All Assessments)
 - (1) If the long side of a corner lot is developed first and any special assessments are levied, then the entire footage shall be assessed. Later when the short side is improved, there shall be no assessment.
 - (2) If the short side of a corner lot is developed first and in which normal assessment procedures shall apply, then the property owner shall be assessed in full for the short side and later when the long side is developed said property owner will be given credit for the footage on the short side.
- (d) **MULTIPLE FRONTAGE LOTS.**
 - (1) If a lot has been developed so that it fronts two parallel streets or two streets travelling in the same general direction, any special assessment to be levied will not exceed the amount subject to assessment if the longest frontage is developed first. Any assessment levied and paid for any shorter side will be credited against the assessment which would normally be levied for the longer side.
 - (2) In the event the lot is also a corner lot, Section 3-2-16(c) will also apply.
- (e) **LIMITED ACCESS LOTS.** If the City improves a street such that there is no benefit to adjoining property owners, no assessment will be levied.
- (f) **STREETS.** All street assessments shall be based upon excavation, graveling, grading, curb and gutter, and finished asphalt. Should the Common Council determine that due to the nature of the affected properties that it is more appropriate to construct streets with concrete, then assessments will be based upon excavation, graveling, grading, curb and gutter and finished concrete.
- (g) **STORM SEWERS.** All storm sewer construction shall be based upon an eighteen (18) inch main in newly developed areas and:
 - (1) Shall be assessed one hundred percent (100%) based upon frontage.
 - (2) All storm sewer mains to newly developed areas shall be assessed one hundred percent (100%).
- (h) **SANITARY SEWER MAINS.** All sanitary sewer mains shall be based upon an eight (8) inch diameter main in newly developed areas and:
 - (1) Shall be assessed one hundred percent (100%) based upon frontage.
 - (2) All sanitary sewer mains to newly developed areas shall be assessed one hundred percent (100%).
- (i) **WATER MAINS.** All water mains shall be based upon an eight (8) inch diameter main in newly developed areas and:
 - (1) Shall be assessed one hundred percent (100%) based upon frontage.
 - (2) All water mains to newly developed areas shall be assessed one hundred percent (100%).
- (j) **SERVICE AND LATERALS.** Property owners will be assessed one hundred percent (100%) for the service laterals from the main to the terminal point on their lots.
- (k) **STREET LIGHTING.** All street lighting in newly developed areas shall be assessed one hundred percent (100%). Any decorative street lighting must be approved by the Common Council. Decorative street lighting shall be assessed such that the annual increased charge above normal street lighting is assessed against benefited property owners.
- (l) **UNPLATTED LANDS.** Where the lands are unplatted and where the property is not to be served in its entirety by sewer and/or water, then only that portion actually served shall be

assessed.

- (m) **NEWLY ANNEXED AND UNDEVELOPED AREAS.** Subdividers and other individuals and corporations bringing into the City of Menasha newly annexed areas with inadequate public improvements, as determined by the Director of Public Works, shall pay one hundred percent (100%) assessments for all streets. The same shall hold true for the undeveloped areas within the City. It shall make no difference whether such road work shall be considered repair or rebuilding. Such assessments shall include excavation, graveling, grading, surfacing, and curb and gutter.
- (n) **DEPRECIATION FACTOR.** For property in newly annexed areas where sewer and water have been previously laid, the owners of the newly annexed lots or parcels not previously served by such water or sewer mains shall pay in proportion to the depreciated value of the sewer or water main. The depreciated value shall be determined by the sewer or water assessments at the time water and sewer mains were laid, less an annual depreciation of 1.25%. The 1.25% shall not be prorated on a monthly basis, but shall commence with January 1 of each and every year. Such assessment shall not be used to reimburse any property owners who have been previously assessed.

SEC. 3-2-17 UNPAID UTILITIES BILLS

- (a) At least once each year the General Manager *or his designee* of the Utilities shall certify to the City Treasurer those utility bills, water, sewer, electric, and *storm water* deemed by him as uncollectible with administrative reasons therefore. An unpaid bill in the hands of a collection agency for more than 120 days without being collected is deemed uncollectible.
- (b) Prior to the General Manager's certifying to the City Treasurer real estate against which utility bills are outstanding, he shall serve such notice on the owners of the real estate as many times as he deems necessary. However, the notice shall contain information to the fact that a penalty assessment will be made in the amount of 10% unless such utility charges are paid by November 1st of each year. The deadline for payment of such bills plus penalty shall be November 15th of each and every year.
- (c) Each and every notice shall contain a provision that the user may appeal the amount owed. In no event will a hearing be granted after November 1st of each and every year.
 - (1) In the event of a dispute involving electric or water bills, the appeal shall be to the Electric & Water Utility Commission who shall conduct a hearing.
 - (2) In the event of a dispute involving sanitary sewer or storm water bills, the appeal shall be to the Board of Public Works who shall conduct a hearing.
 - (3) The results of any hearing shall be communicated to the owner of the real estate pursuant to the notice provisions of sec. 3-2-17(a) and (d).
- (d) Pursuant to Statutes, such notice shall be served by delivery to either the owner or occupant, either personally or by letter addressed to such owner/occupant at the post address of such lot or parcel of real estate. On November 16th of each and every year, the General Manager of the Utility or his designee shall certify and file with the Clerk, pursuant to statute, a list of all lots or parcels of real estate, and state the amount of such arrears, together with any added penalties that may apply.
- (e) Each such delinquent amount, including such penalty, shall thereupon become a lien upon the lot or parcel of real estate to which utility service has been furnished. All proceedings in relation to the collection of general property taxes and to the return of sale of property for delinquent taxes shall apply to said tax if the same is not paid within the time required by law for payment of taxes upon real estate