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# Special Assessment Policy

CITY OF WEST FARGO, NORTH DAKOTA

Adopted: **June 7**, 2021

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I. PURPOSE

Chapter 40 of the North Dakota Century Code authorizes cities in North Dakota to use special assessments as a method to fund public improvements, such as water supply systems, sewerage systems, streets, flood protection, sidewalks, trees, and storm sewers. Special assessments allocate the cost of a project to the properties that benefit as a result of these improvements. According to N.D.C.C. § 40-22-01.2, cities with a population exceeding 10,000 shall adopt written policies which will be applied for cost allocation among properties benefited by a special assessment project.

II. GENERAL PROCEDURE FOR SPECIAL ASSESSMENTS

1. The Mayor (Commission President) of the City appoints three residents of the City to serve as members of a Special Assessment Commission; these appointments are then confirmed by the City Commission. The Special Assessment Commission is responsible for making and returning the special assessments to the City Commission in accordance with this Policy and N.D.C.C. Chapter 40-23.
2. The City Commission then approves the public improvement project, bids the project, and then accepts the lowest, responsible bidder for each improvement project. Once a bid is accepted, the project proceeds to construction. These projects may appear on the City's Capital Improvement Plan.
3. The Special Assessment Commission may meet with the City Engineer after bids are approved to review and estimate the pending special assessments on each individual project. This allows the review of properties within the improvement district to identify anomalies that may affect individual assessments. The estimated special assessments per parcel in the improvement district will then be posted on the City's property information digital database.
4. At any time after the contract and bond have been executed and approved by the City Commission and the total cost of such work is estimated as nearly as practicable, the City Commission may direct assessments to be levied for the payment of all or any part of such cost. The City Commission will pass a resolution to direct the Special Assessment Commission to allocate the special assessments in the improvement district.
5. The City Auditor notifies the chair of the Special Assessment Commission and certifies the total cost to be levied as special assessments by the Special Assessment Commission.
6. Once the Special Assessment Commission receives the total cost of each improvement district, it meets to determine final benefits for all properties in each respective improvement district. The Special Assessment Commission,

with the assistance of City staff and officers, then calculates the just proportion of the total cost of the work for each parcel/lot in the improvement district. This cost is the value of the special assessment which is applied to each parcel/lot. A special assessment for each parcel/lot may not exceed the amount of benefit received by that particular parcel/lot.

### III. SPECIAL ASSESSMENT MEETINGS

After the City Engineer's report is approved, a letter, regardless of project type, is mailed to all property owners within the proposed improvement district boundaries notifying them of the improvement district project and providing an estimated special assessment amount and improvement district boundary map.

#### 1. Preliminary Pre-Construction Special Assessment Commission Public Meeting

*The Special Assessment Commission will meet after bids are approved to review and estimate the pending special assessments on each improvement district project. This allows the review of properties within the improvement district for any anomalies that may affect individual assessments.*

Public meeting? Yes

Public hearing? No

Before the meeting:

- a. Agenda is posted to SAC agenda category, with supporting materials including, but not limited to, list of projects, description of projects, project totals, pending special assessments, and improvement district boundary maps.
- b. News release is provided to media.
- c. News release is posted to website:
  - i. West Fargo News; and
  - ii. SAC alert.
- d. News release is posted to social media:
  - i. Facebook;
  - ii. Twitter; and/or
  - iii. Nextdoor.
- e. Meeting is added to website calendar:
  - i. Special assessment calendar; and
  - ii. West Fargo calendar.

After the meeting:

- a. Post recording to YouTube;
- b. Add recording to SAC agenda center; and
- c. Send preliminary letter to residents within the improvement district boundaries to communicate project is moving forward and provide

directions for checking pending special assessments in the City's property information digital database.

## 2. Post-Construction Special Assessment Commission Public Meeting

*Meeting of SAC to review projects and associated benefits to properties in the improvement district to determine special assessment allocation.*

Public meeting? Yes

Public hearing? No

Before the meeting:

- a. Agenda is posted to SAC agenda category, with supporting materials including, but not limited to, list of projects, descriptions of projects, project totals, pending special assessments, and improvement district boundary maps.
- b. News release is provided to media.
- c. News release is posted to website:
  - i. West Fargo News; and
  - ii. SAC alert.
- d. News release is posted to social media:
  - i. Facebook;
  - ii. Twitter; and/or
  - iii. Nextdoor.
- e. Meeting is added to website calendar:
  - i. Special assessment calendar; and
  - ii. West Fargo calendar.
- f. Meeting notice is added to PEG access channel.

During the meeting:

- a. Prepare draft special assessment list and apportionment to determine allocation of special assessments.
- b. Schedule SAC public hearing date to hear objections from property owners.
- c. Direct City Attorney to publish proposed special assessment list and notice in official newspaper of the public's opportunity to appear before the SAC to object to their proposed special assessment.
- d. Send letter through BSI to property owners in the improvement district notifying them of the upcoming SAC public hearing.

After the meeting:

- a. Post recording to YouTube.
- b. Add recording to SAC agenda center.
- c. Share recording on social media with information regarding opportunity to object to SAC:

- i. Facebook;
    - ii. Twitter; and/or
    - iii. Nextdoor.
  - d. Play recording on PEG channel for second, fourth, and sixth day after the meeting.
  - e. Add opportunity to object to SAC information on City's website:
    - i. Calendar event is the deadline.
    - ii. Add to special assessment website area.
    - iii. City Attorney to publish proposed special assessment list and notice in **official newspaper of the public's opportunity to appear before the SAC to object to their proposed special assessment.**
3. Special Assessment Commission Public Hearing on Objections

*Special Assessment Commission holds a public hearing on the proposed special assessments and hears any objections from interested parties or their agents. After the hearing, the Special Assessment Commission confirms the list of special assessments and files the list with the City Auditor's office.*

Public Meeting? Yes  
Public Hearing? Yes

Actions:

- a. Hear objections during public hearing.
- b. Adjust, if needed, the special assessment allocation and approve final list.
- c. Confirm the list and attach a certificate certifying that the list is correct as confirmed by the Special Assessment Commission.
- d. File the confirmed special assessment list with the City Auditor.

Before the meeting:

- a. Agenda is posted to SAC agenda category, with supporting materials attached.
- b. News release is provided to media.
- c. News release is posted to website:
  - i. West Fargo News; and
  - ii. SAC alert.
- d. News release is posted to social media:
  - i. Facebook;
  - ii. Twitter; and/or
  - iii. Nextdoor.
- e. Meeting added to website calendar:
  - i. Special assessment calendar; and
  - ii. West Fargo calendar.
- f. Meeting notice added to PEG access channel.

After the meeting:

- a. Post recording to YouTube.
- b. Add recording to SAC agenda center.
- c. Share recording on social media with information regarding opportunity to appeal to City Commission:
  - i. Facebook;
  - ii. Twitter; and/or
  - iii. Nextdoor.
- d. Play recording on PEG channel for second, fourth, and sixth day after the meeting.
- e. Add information on opportunity to object to special assessments and appeal the Special Assessment Commission's decision to the City Commission on the City's website:
  - i. Special assessment calendar; and
  - ii. West Fargo calendar.
- f. The City Auditor publishes a notice in the newspaper stating that the Special Assessment Commission has approved a list of special assessments and the list has been filed with the City Auditor and is open for public inspection. The notice will inform property owners that they must file written objections/appeals of the SAC decision. The notice will also include the time and place where the City Commission will act upon the list with the opportunity for property owners to object and appeal the Special Assessment Commission's decision.

#### 4. City Commission Public Hearing on Objections and Appeals

*Before the City Commission meeting, any aggrieved person may file a written appeal from the action of the Special Assessment Commission. The City Commission will hear this appeal and any other objections to the list of special assessments during their meeting. The City Commission will not hear objections or appeals that were not provided in writing prior to the hearing.*

*The City Commission may increase or diminish any special assessments as it may deem just. The City Commission cannot reduce the total assessment of the improvement district as a whole. The City Commission then confirms the list of special assessments and files it with the City Auditor's office.*

Public Meeting: Yes

Public Hearing: Yes

Actions:

- a. Hear appeals from property owners, or their agents, who submitted a written objection/appeal to the City Commission.
- b. May adjust special assessment allocation.
- c. Confirm special assessment list.

Before the meeting:

- a. News release is provided to media.
- b. News release is posted to website:
  - i. West Fargo news; and
  - ii. SAC alert.
- c. News release is posted to social media:
  - i. Facebook;
  - ii. Twitter; and
  - iii. Nextdoor.
- d. Meeting is added to website calendar:
  - i. Special assessment calendar; and
  - ii. West Fargo calendar.
- e. City Commission agenda is posted to SAC agenda category, with supporting materials attached.

After the meeting:

- a. Add recording to SAC agenda center.

5. City Commission Certifies Special Assessments

*All special assessments levied may be paid without interest within 10 days after they have been approved and certified by the City Commission.*

Public meeting? No

Public hearing? No

Action:

- a. Special assessments approved by the City Commission become certified and are payable.

After action:

- a. News release is provided to media.
- b. News release is posted to website:
  - i. West Fargo News; and
  - ii. SAC alert.
- c. News release posted to social media:
  - i. Facebook;
  - ii. Twitter; and/or
  - iii. Nextdoor.
- d. Added to calendar:
  - i. SAC calendar; and
  - ii. West Fargo calendar.
- e. Information is added to special assessment site.



IV. SPECIAL ASSESSMENT ALLOCATION GUIDELINES  
1. DEFINITIONS

Abutting Property: A property directly adjacent to public improvements.

Access Easement: Allows owners of property who do not have direct access to a public street to pass through the adjoining land to access their property.

Adjustment: A change to the area or front footage of a benefited property to more accurately represent the true benefit that property receives from an improvement in comparison to other properties in the assessment area.

Arterial Street: A main roadway or thoroughfare which gathers traffic from collector and local streets in commercial and residential areas.

Assessment Boundary: Defined area for potentially benefitting properties.

Buildable Area: The portion of a lot remaining after required front, rear, and side yards as set forth in the City of West Fargo Zoning Ordinances have been provided.

Collector Street: A street that gathers local traffic and funnels it to arterial streets.

Front Footage: The number of lineal feet a property occupies on the street (measured along the front of a property).

Improvements: Everything required to construct items that are assessed. Includes products and construction cost, city administration cost, engineering cost, legal cost, etc.

Improvement of Boulevards and Other Public Places: Includes those items listed in N.D.C.C. § 40-22-01(3).

Local Street: A street other than an arterial or collector street.

Municipal Street System: Includes those items listed in N.D.C.C. § 40-22-01(2).

Public Hearing: An agenda item during a public meeting for receiving testimony from the public at large on a local issue, or proposed government action.

Public Meeting: Any gathering of a quorum of the members of a governing body of a public entity regarding public business, includes committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of members are participating by phone or any other electronic communication (either at the same time or in a series of individual contacts).

Private Drive: A roadway, whether named or not, that leads from a public street to more than one private property and is owned and maintained by private individuals or organizations rather than the City.

Square Footage: The area in which the property consumes.

Water Supply System or Sewage System: Includes those items listed in N.D.C.C. § 40- 22-01(1).

Unit: A measurement or figure determined by the Special Assessment Commission as a means to divide a special improvement district, e.g., for a specific project all parcels less than 10,000 square feet may be considered one unit or 40,000 square feet may be 4 units, etc.

## 2. SPECIAL ASSESSMENT ALLOCATION BASED ON ZONING DISTRICT

- a. Residential. Special assessments may be allocated based upon front footage, square footage, or a per unit basis as determined by the Special Assessment Commission.
- b. Commercial/Industrial. Special assessments may be allocated based upon front footage, square footage, or a per unit basis as determined by the Special Assessment Commission.
- c. Agricultural.
  - i. Special assessments may be allocated based upon front footage, square footage, or a per unit basis as determined by the Special Assessment Commission.
  - ii. If the Special Assessment Commission selects square footage or units as the allocation method, the total square footage of each parcel/lot may be reduced to account for future right-of-way.

## 3. SPECIAL ASSESSMENT ALLOCATION

- a. Water Supply Systems or Sewage Systems.
  - i. Local Systems.
    - 1) New water and sewage systems: depending on the shape of the lot(s) or plat, cost allocation is typically based on lot front footage.
  - ii. Regional Systems.
    - 1) New water and sewage systems: cost allocation is typically based on a unit basis.
- b. Municipal Street System.
  - i. Local Street Improvements.
    - 1) New pavement/reconstruction: depending on the shape of the lot(s), cost allocation is typically based on lot front footage.

- 2) Resurfacing cost allocation is based on a unit basis.
- ii. Collector Street Improvements.
  - 1) New pavement/reconstruction/resurfacing: cost allocation is based on a unit basis.
  - 2) Lots fronting a collector street (i.e., approved access) may be assessed for both the collector street and the local street costs.
- iii. Arterial Street Improvements.
  - 1) New pavement/reconstruction/resurfacing: cost allocation is based on a unit basis.
  - 2) Lots fronting an arterial street (i.e., approved access) may be assessed for both the arterial street and the local street costs.
- c. Storm Water. Cost allocation is based on lot square footage.
- d. Repairs to Sidewalks, Driveways, etc. Total cost is assessed directly to individual benefitting lots.
- e. Regional Improvements: Streets. For regional street improvements using the "Equivalent Unit (EU)" method to allocate assessments, the following calculation will be used to distribute the number of EU's to residential properties located within a platted boundary:

1 EU will be allocated for the first 2.0 acres of buildable area, plus 0.10 EU's for each 0.10 acres over the 2.0 acres of buildable area (rounding to the nearest tenth). The following table provides an example:

Buildable area (acres)	# of Allocated Equivalent Units (EU's)
0.6	1
1.9	1
2.1	1.1
3.4	2.4
5.0	4.0

- f. Regional Amenities: Parks. Cost allocation is typically based on a unit basis.

V. ADJUSTMENTS

- 1. Adjustments to footage are made by the Special Assessment Commission where warranted and may include the following:
  - a. Adjustments may be made to front footages where the footages are disproportionately larger or smaller than standard lots.
  - b. Adjustments may be made for larger or odd-shaped lots.
  - c. Adjustments to lot square footage may be warranted when assessing storm water costs based on the characteristics of the lot in relation to the project.

VI. REGIONAL COMPONENT THAT INCLUDES ESTABLISHED AREAS

1. At the beginning of the process, after the City Engineer's report is approved, letters are mailed to property owners. This letter is consistent with the timing for protesting the resolution declaring work necessary for street projects.
2. The letter notifies property owners that they are within an improvement district that has been created and provides an estimated project cost, anticipated project schedule, and preliminary estimate of assessment allocation.
3. City staff or the City Commission determines if new development with regional improvement, or one that causes a regional improvement, requires a public meeting to be organized by the developer (e.g., The Wilds 11th Addition).
4. A minimum notice of 10 days is provided to attendees:
  - a. Possible electronic notice in the future.
  - b. Intent of the meeting is to discuss improvements needed, and to estimate future regional improvements that will happen every time an addition is included in the overall development.

VII. DEVELOPER PETITIONED IMPROVEMENTS

*Policy on Infrastructure Allowed within a Special Assessment District*

1. The City has an official Special Assessment Policy (adopted September 19, 2016, and amended \_\_\_\_\_, 2021) and follows state law as outlined in Chapter 40 of the North Dakota Century Code for funding improvements using special assessments.
2. N.D.C.C. § 40-22-01 identifies types of improvements which a municipality can construct and expense with special assessment funds. This policy is written specifically for new development projects that are requested (petitioned) by a developer.
3. City infrastructure shall be located within rights-of-way and/or easements dedicated to the City.
4. Improvements shall be limited to critical infrastructure necessary for the City to provide and maintain services for the proposed development.
5. Critical infrastructure includes the following:
  - a. Wastewater system
    - i. Local sanitary sewer mains and service lines.
    - ii. Regional gravity trunk lines.
    - iii. Lift stations and associated forcemains.
    - iv. Related appurtenances, structures, etc.
  - b. Water distribution
    - i. Local water mains and service lines.
    - ii. Regional transmission lines.
    - iii. Fire hydrants.
    - iv. Meter stations (as needed for large service area).
    - v. Related appurtenances, structures, etc.
  - c. Storm water
    - i. Drainage collection/conveyance systems.
    - ii. Retention/detention basins:
      - 1) Only City standard items for functionality.

- 2) Excludes aesthetic features and amenities.
    - iii. Pumping stations and associated forcemains.
    - iv. Related appurtenances, structures, etc.
  - d. Transportation
    - i. Regional/local roadways and associated systems, excludes private streets/driveways.
    - ii. Multi-use paths, sidewalks, and publicly owned trails, excludes private uses and those required for property frontage.
    - iii. Boulevard establishment.
    - iv. Related appurtenances, structures, etc.
  - e. Miscellaneous
    - i. Fill materials deemed necessary by the City Engineer to establish minimum elevations and functionality, excludes fill for aesthetic purposes or private lot marketability.
- 6. Developers will be afforded the opportunity to present their request for non-critical items to be included with a City improvement to the City Commission. The City Commission will decide whether the item(s) will be:
  - a. Included with the improvement project, but financed privately, in which case an agreement will be required with terms and conditions for construction, financing, etc. prior to inclusion;
  - b. Included with the improvement project and financed with special assessments; or
  - c. Excluded from improvement project, in which case the developer may consider private construction and financing following standard City protocols.

VIII. ADDITIONAL DISCUSSION ITEMS

- 1. Policy discussion: requiring developers to provide a master plan of the total development and planning to construct the regional improvements at the beginning. This allows the City to avoid adding regional improvement projects to existing additions as the rest of the development is developed.
- 2. Deferred special assessments
  - a. E.g., The Ranch at The Wilds development
    - i. Do they capitalize the interest?
    - ii. Deferred is still an estimate
    - iii. We put a fixed term on the deferral and put the deferral in the district so everyone pays for it.
    - iv. How would we carry that debt and make the bond payments?
    - v. Put the deferment on the approval process (not an automatic policy, **but have criteria for determining if it's appropriate**)
    - vi. Any deferment will require a master plan which includes all infrastructure – locations, type of development, density of development, land use, proposed future plat, utilities.
- 3. March 1, 2021, City Commission requests of staff:
  - a. Arterial road special assessment allocations; and
  - b. Special Assessment Commission review.