

CHAPTER 40-23 ASSESSMENT OF BENEFITS

40-23-01. Special assessment commission - Appointment of members - Terms of office.

The executive officer of each municipality, when it shall be found necessary, shall appoint three reputable residents and freeholders of the municipality as members of a commission which shall be known as the special assessment commission. The members appointed to the first special assessment commission in a municipality shall hold office, respectively, for terms designated by the executive officer when the appointments are made, as follows:

1. One member shall hold office until the first meeting of the governing body in April in the first odd-numbered year following that member's appointment.
2. One member shall hold office until the first meeting of the governing body in April in the second odd-numbered year following that member's appointment.
3. One member shall hold office until the first meeting of the governing body in April in the third odd-numbered year following that member's appointment.

At the first meeting of the governing body in April of each odd-numbered year, or as soon thereafter as practicable, the executive officer shall appoint a member of such commission. After the members of the first special assessment commission have been appointed as provided in this section, each appointment shall be made for a term of six years.

40-23-02. Commissioners - Appointments subject to confirmation - Qualifications - Chairman - Compensation.

All appointments made to the special assessment commission shall be subject to the confirmation of the governing body. Upon appointment and confirmation, each commissioner shall file with the city auditor a written acceptance of the appointment and shall take and subscribe the oath required of other municipal officers, which shall be filed with the city auditor. The member of the commission having the shortest term to serve shall act as chairman. No member of the commission shall hold any other municipal office while serving as such member. The appointing authority shall establish the rate of compensation for commissioners and actual expenses incurred by commissioners may be reimbursed at the official reimbursement rates of the appointing authority.

40-23-03. Removal of commissioners - Filling vacancies.

Any member of the commission may be removed by the executive officer, with the consent of a majority of the members of the governing body, for neglect or refusal to perform the duties of the office or for misconduct in office. A vacancy occurring in the commission by removal, resignation, or death shall be filled by appointment by the executive officer as soon as practicable after the vacancy occurs.

40-23-04. Municipal officers and employees to advise commission.

Each officer and employee of the municipality shall give to the special assessment commission such information, advice, and assistance as it may request.

40-23-05. Notice to special assessment commission.

At any time after the contract and bond for any work for which a special assessment is required have been executed and approved by the governing body of the municipality and the total cost of such work shall have been estimated as nearly as practicable, the governing body may direct assessments to be levied for the payment of all or any part of such cost, and the city auditor shall notify the chairman of the special assessment commission and shall certify to the chairman the items of the total cost thereof so far as the same have been ascertained. The chairman immediately shall call a meeting of the commission, which shall proceed as expeditiously as possible to make and return the special assessment as provided in this chapter. The total cost of the improvement which may be certified to the assessment commission shall include the estimated construction cost under the terms of the contract, a

reasonable allowance as determined by the governing body for cost of extra work which may be authorized under the plans and specifications, engineering, fiscal agent's and attorney's fees for any services in connection with the authorization and financing of the improvement, cost of publication of required notices and printing of improvement warrants, and all expenses incurred in the making of the improvement and levy of assessments therefor. If any error is made in estimating the cost, the governing body may direct a supplemental assessment to be made as provided in section 40-26-02.

40-23-06. Assessments in improvement districts before work completed.

If the work consists of improvements on or additions to sewers or water mains already installed or paving already laid, and all bids for such work were rejected and the work done by the municipality, and if, in the opinion of the engineer acting for the municipality, the work can be done in separate sections or work units, it shall not be necessary that all of the work be completed before the special assessments are made. The governing body, by resolution adopted at any time before or after the work has been commenced, may specify what part of the improvements shall constitute a separate section or work unit, and upon completion of the work in one or more of such separate sections or work units, the special assessments may be made in the same manner and with the same force and effect as if all of the work in the entire improvement district had been completed. Failure for any reason to complete the work in any remaining separate section or work unit included within such improvement district shall not affect the validity of the special assessments made or the special assessment warrants issued for the work completed.

40-23-07. Determination of special assessments by commission - Political subdivisions not exempt.

Whenever the commission makes any special assessment, the commission shall determine the particular lots and parcels of land which, in the opinion of the commission, will be especially benefited by the construction of the work for which the assessment is to be made. The commission shall determine the amount in which each of the lots and parcels of land will be especially benefited by the construction of the work for which such special assessment is to be made, and shall assess against each of such lots and parcels of land such sum, not exceeding the benefits, as is necessary to pay its just proportion of the total cost of such work, or of the part thereof which is to be paid by special assessment, including all expenses incurred in making such assessment and publishing necessary notices with reference thereto and the per diem of the commission. However, as an alternative to the procedure provided in this section, the special assessment commission may, in its discretion, determine and allocate the cost of special assessments in accordance with the method provided for in chapter 40-23.1. Property owned by a nonprofit entity and used exclusively as a cemetery is exempt from collection of special assessments for benefits conferred under this title and the city in which such property is located shall provide for the payment of special assessments, installments, and interest against such property by the levy of taxes according to law or by payment from other funds available to the city which are derived from sources other than special assessments. Benefited property belonging to counties, cities, school districts, park districts, and townships is not exempt from such assessment, and such public corporations whose property is so assessed shall provide for the payment of such assessments, installments thereof and interest thereon, by the levy of taxes according to law. Nothing in this section may be deemed to amend other provisions of law with reference to the levy of assessments on property sold for delinquent taxes.

40-23-07.1. Validation of prior assessments.

Repealed by omission from this code.

40-23-07.2. Assessment of common area in townhouse development.

If a townhouse development includes a right in the townhouse owners to use any lot or tract as a common area in connection with the townhouse development, the common area shall not be separately assessed for benefits but each lot or tract whose owner has a right to use the

common area shall be assessed for the benefit to the common area in the proportion that each owner's right in the common area bears to all of the owners' rights in the common area.

40-23-08. Assessments collected by suit from beneficial user of exempt property.

Whenever any real property is exempt from special assessments, or cannot be assessed, as provided in this title, for any improvement for any reason, and such real property otherwise would be assessable for such improvement, an assessment may be levied against the occupant or beneficial user of the property and collected by suit from the occupant or person enjoying the beneficial use thereof.

40-23-09. Assessment list to be prepared - Contents - Certificate attached to assessment list.

The commission shall make or cause to be made a complete list of the benefits and assessments setting forth, by legal description or street address or both, each lot or tract of land assessed, the amount each lot or tract is benefited by the improvement, and the amount assessed against each. There must be attached to the list of assessments a certificate signed by a majority of the members of the commission certifying that the same is a true and correct assessment of the property therein described to the best of their judgment and stating the several items of expense included in the assessment.

40-23-10. Notice of assessments and notice of hearing of objections.

1. Unless otherwise provided under this section, the commission shall cause the assessment list, which list may not include the amount each lot or tract is benefited by the improvement, to be published once each week for two consecutive weeks in the official newspaper of the municipality.
2. If the assessment list includes more than five thousand lots or tracts, the commission may cause it to be filed and made available for public inspection at all times after the first publication of the notice, during reasonable business hours, at such place as must be designated in the published notice.
3. As an alternative to the notice procedures provided in subsections 1 and 2, the commission shall send a letter to all property owners of record on the assessment list stating their assessments. The letter may be sent by certified mail or by regular mail attested by an affidavit of mailing signed by the city auditor. When notice is provided under this subsection, the commission shall cause publication of a map outlining the assessment district with a notification stating that if an individual has not yet received a letter regarding that individual's assessment, the individual should furnish the city auditor's office with the individual's present address and the auditor will then mail a copy of the individual's assessments.
4. The date set for such hearing must be not less than fifteen days after the first publication of the notice.
5. A copy of the notice must be mailed to each public utility having property on the assessment list at least ten days before the hearing to its address shown on the tax rolls.
6. Any notice under this section must include the time and place of a commission meeting to hear objections to assessments from an interested party or an interested party's agent or attorney.
7. Any notice under this section must be published on the city's website.

40-23-11. Alteration of assessments at hearing - Limitations.

At the hearing, the commission may make such alterations in the assessments as in its opinion may be just or necessary to correct any error in the assessment list. The commission may increase or diminish any assessment as may be just and necessary to make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which such assessments are made or the part of such cost to be paid by special assessment. No

assessment shall exceed the benefits as determined by the commission to the parcel of land assessed.

40-23-12. Confirmation of assessment list after hearing - Filing list.

The special assessment commission, after the hearing, shall confirm the list and attach thereto its further certificate certifying that the list is correct as confirmed by it. The commission thereafter shall file the assessment list in the office of the city auditor.

40-23-13. Publication of notice of confirmation of assessment list and meeting for action upon assessments.

The city auditor shall publish at least once in the official newspaper of the municipality a notice stating that the assessment list has been confirmed by the special assessment commission and filed in the city auditor's office and is open to public inspection. The notice also shall state the time when and the place where the governing body will act upon such assessment list. The assessment list shall be acted upon by the governing body at a regular or special meeting occurring more than fifteen days after the publication of such notice.

40-23-14. Aggrieved person may file notice of appeal.

Prior to the meeting at which the governing body will act upon the assessment, any aggrieved person may appeal from the action of the special assessment commission by filing with the city auditor a written notice of the appeal, stating therein the grounds upon which the appeal is based.

40-23-15. Governing body to hear and determine appeals and objections to assessments - Altering assessments - Limitations.

At the regular or special meeting of the governing body at which the assessment list is to be acted upon, any person aggrieved by the determination of the special assessment commission in regard to any assessment who has appealed therefrom as provided in section 40-23-14 may appear before the governing body and present the person's reasons why the action of the commission should not be confirmed. The governing body shall hear and determine the appeals and objections and may increase or diminish any of such assessments as it may deem just, except that the aggregate amount of all the assessments returned by the commission shall not be changed and no assessments as adjusted shall exceed the benefits to the parcel of land on which it is assessed as determined by the assessment commission.

40-23-16. Confirmation of assessment list by governing body - Certifying and filing list.

The governing body shall confirm the assessment list. The city auditor shall attach to the list the city auditor's certificate that the list is correct as confirmed by the governing body and then shall file the list in the city auditor's office.

40-23-17. Authority to levy assessments on property not originally assessed.

Any municipality that pays or provides for the payment of part or all of the cost of an improvement may subsequently levy special assessments for the cost of the improvement upon properties benefited by the improvement in the cases and in accordance with the procedure and subject to the conditions set forth in sections 40-23-17 through 40-23-21.

40-23-18. Assessments on property within the corporate limits.

A subsequent assessment may not be levied for any improvement on any property that was within the corporate limits of the municipality on the date of the execution of the first contract for any part of the improvement, unless a special improvement district was originally created for the improvement, and the property on which the subsequent assessment is to be levied was not originally assessed for the improvement but is subsequently included within another improvement district created to finance an improvement that will be connected directly or indirectly with the original improvement. Assessments under this section may be included in a

separate column in the special assessment list prepared for the improvement district and levied upon the properties included in the district at the same time and upon the same notices and hearings as provided by law for the other assessments. A resolution determining the necessity of the improvement must have been adopted in the manner prescribed by law, referring to the designation of the district created for the original improvement and stating that a portion of the cost of the improvement is proposed to be assessed upon property within the improvement district.

40-23-19. Assessments on annexed property for previous benefits.

Any property that was outside the corporate limits of the municipality at the time of contracting for an improvement, which is benefited by the improvement and is subsequently annexed to the municipality, may be assessed for the improvement subject to the same conditions and by the same procedure as provided in section 40-23-18. The property that is benefited may also be assessed for any improvement, within or outside the corporate limits, which is determined by the governing body and the special assessment commission to benefit property that was outside the corporate limits at the time of contracting for the improvement, whether or not an improvement district was previously created for the improvement. For this purpose, the governing body may create one or more improvement districts comprising all or part of the annexed territory. The governing body may provide for the levy of special assessments upon such property in the manner provided in this title, but may dispense with the requirements of this title as to the adoption of a resolution of necessity and the advertisement and award of a contract for the improvement. Assessment proceedings under this section are valid notwithstanding any failure of the previous proceedings to comply with the provisions of law regarding improvements to be financed by special assessments. The governing body may use a reasonable depreciation schedule for the improvement in determining the amount of any special assessment subsequently levied under this section.

40-23-20. Equalization of original assessments.

In any assessment proceedings under sections 40-23-17 through 40-23-21 the governing body of the municipality shall have power to direct the cancellation of uncollected installments of special assessments previously levied for the same improvement, and the refund of installments prepaid, to the extent determined by it to be necessary to make the original assessments and the subsequent assessments bear as nearly as possible the same relation to the total benefits derived from the improvement by the respective properties assessed.

40-23-21. Use of collections of subsequent assessments.

1. All collections of special assessments levied pursuant to sections 40-23-17 through 40-23-21 shall be credited as received to the special fund maintained by the municipality for the payment of any outstanding special improvement warrants, refunding improvement bonds, general obligation bonds, or revenue bonds which were issued to finance the improvement for which the assessments were levied, or, if no such obligations are outstanding, to such fund as the governing body may direct.
2. If a governing body of a municipality levied and collected an infrastructure fee under section 40-22-01.3, the funds generated by the fee must be used for the payment of any outstanding special improvement warrants, refunding improvement bonds, general obligation bonds, or revenue bonds issued to finance the improvement. The governing body of a municipality may not use funds generated by an infrastructure fee imposed after July 1, 2021, for the payment of any outstanding special improvement warrants, refunding improvement bonds, general obligation bonds, or revenue bonds, issued before July 1, 2021, for the purpose of financing green field special assessments, as defined in section 40-05.1-06.

40-23-22. State property subject to special assessments.

Real estate within municipalities of this state owned by the state of North Dakota, other than for highway right-of-way purposes, may be subjected to special assessments for special

improvements when benefited by such improvement and the state agency or department having control thereof is hereby authorized to expend public funds in payment of such special assessments.

40-23-22.1. City flood control special assessment exemption for state property - Limitations.

1. Notwithstanding any other provision of law, property of the state in a city subject to this section is exempt from special assessments levied for flood control purposes. Upon request by the governing body of the city, the exemption under this section may be completely or partially waived by the legislative assembly or the budget section if the legislative assembly is not in session. Any request considered by the budget section must comply with section 54-35-02.9. A city is subject to the exemption under this section in recognition of state financial assistance for flood control provided to the city pursuant to section 61-02.1-01 or other appropriation or commitment of state funds.
2. The exemption under this section does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education. An assessment allowed under this subsection must be based on the square footage or front footage of the land occupied by the structure, fixture, or improvement and made against the structure, fixture, or improvement and not against the land on which it is located.

40-23-23. Assessments for parking improvements.

For any improvement consisting of acquiring or leasing of property and easements and construction of parking lots, ramps, garages, and other facilities for motor vehicles, whether constructed pursuant to chapter 40-22, 40-60, or 40-61 or other law authorizing a municipality to acquire facilities used and usable in connection with the parking and storing of motor vehicles, the governing body of the municipality, on or before October first in any year, may cancel all installments of special assessments theretofore levied for such facilities which are due and payable in the following year and all subsequent years, and may levy a new assessment for such facility in accordance with the law authorizing the initial levy of special assessments therefor, except that the amount to be newly assessed shall not exceed the total principal amount of the installments of assessments so canceled. The new assessment shall follow the same district lines as the original assessment district, and the same method of assessment shall be used as was used in the original assessment. If the new assessment causes any prepaid payment to be refunded, the refund plus four and one-half percent interest per annum on the refunded prepaid payment shall be paid to the person, corporation, or limited liability company who prepaid the original assessment. In determining the special benefit and levying the new assessment against any lot or parcel, the previous determination of special benefit in any previous proceeding shall not be binding upon the assessment commission or governing body, but the new assessment levied on any lot or parcel, together with the principal amount of the installments of special assessments previously paid or to be paid in the current year for that lot or parcel with respect to that facility to be assessed, if any, shall not exceed the total special benefit to the lot or parcel from the facility for which the assessment is levied. In levying new assessments pursuant to this authority, an assessment commission and governing body of a municipality may take into account any changes in conditions affecting the benefits derived and to be derived from the improvement for which the assessments were initially levied against the respective properties assessed. Provided, however, that in canceling any special assessments previously levied and in levying new special assessments, a municipality cannot violate any covenants or agreements which it has made with holders of any obligations issued by the municipality to finance the acquisition of that improvement.

40-23-24. Audit of certain special assessment improvements.

If the costs of an improvement determined and assessed under section 40-23-07 or 40-23.1-04 exceed the costs of the work as contained in the engineer's estimate under section 40-22-10 by seventy percent or more, the governing body of the city shall secure an audit of all costs included in the assessment for the project, prepared in accordance with generally accepted auditing standards. The audit report must include a separate statement of the engineer's estimate of the cost of the work, the actual cost of the work, the cost of extra work, engineering fees, fiscal agent's fees, attorney's fees, publication costs, warrant printing costs, interest costs, and each separate item of expense incurred in making the improvement and levying the assessment for the improvement. The city shall make a copy of the audit report available without charge to any person who requests a copy. The audit report is not required if the costs of an improvement exceed the costs of the work as contained in the engineer's estimate by seventy percent or more because of a petition to enlarge the district under section 40-22-09 or a request for additional work within the district by the owners of a majority of the area of the property in the district. Audit and copying expenses under this section must be paid by the city and may not be paid from special assessment funds.

40-23-25. Future assessments on annexed property.

The special assessment commission shall prepare and file with the city auditor a list of estimated future assessments on property located outside the corporate limits of the city at the time of contracting for an improvement but which the special assessment commission determines is potentially benefited by the improvement and likely to be annexed to the city.