

CHAPTER 40-23.1

ALTERNATIVE ALLOCATION OF SPECIAL ASSESSMENTS

40-23.1-01. Improvement district - All property to be assessed - Basis. All property included within the limits of a local improvement district shall be considered to be the property specially benefited by the local improvement and shall be the property to be assessed to pay the cost and expense thereof or such part thereof as may be chargeable against the property specially benefited. The cost and expense shall be assessed upon all the property in accordance with the special benefits conferred thereon in proportion to area and distance back from the marginal line of the public way or area improved.

40-23.1-02. Improvement district - Zones. For the purpose of ascertaining the amount to be assessed against each separate lot, tract, parcel of land, or other property therein, the local improvement district shall be divided into subdivisions or zones paralleling the margin of the street, avenue, lane, alley, boulevard, park drive, parkway, public place, or public square to be improved, numbered respectively first, second, third, fourth, and fifth.

The first subdivision shall include all lands within the district lying between the street margins and lines drawn parallel therewith and thirty feet [9.14 meters] therefrom.

The second subdivision shall include all lands within the district lying between lines drawn parallel with and thirty and sixty feet [9.14 and 18.29 meters] respectively from the street margins.

The third subdivision shall include all lands within the district lying between lines drawn parallel with and sixty and ninety feet [18.29 and 27.43 meters] respectively from the street margins.

The fourth subdivision shall include all lands, if any, within the district lying between lines drawn parallel with and ninety and one hundred twenty feet [27.43 and 36.58 meters] respectively from the street margins.

The fifth subdivision shall include all lands, if any, within the district lying between a line drawn parallel with and one hundred twenty feet [36.58 meters] from the street margin and the outer limit of the improvement district.

40-23.1-03. Assessment rate per square foot.

1. The rate of assessment per square foot [0.09 square meter] in each subdivision of an improvement district shall be fixed on the basis that the special benefits conferred on a square foot [0.09 square meter] of land in subdivisions first, second, third, fourth, and fifth, respectively, are related to each other as are the numbers forty-five, twenty-five, twenty, ten, and five, respectively, and shall be ascertained in the following manner:
 - a. The products of the number of square feet [0.09 square meter] in subdivisions first, second, third, fourth, and fifth, respectively, and the numbers forty-five, twenty-five, twenty, ten, and five, respectively, shall be ascertained;
 - b. The aggregate sum thereof shall be divided into the total cost and expense of the improvement; and
 - c. The resultant quotient multiplied by forty-five, twenty-five, twenty, ten, and five, respectively, shall be the respective rate of assessment per square foot [0.09 square meter] for subdivisions first, second, third, fourth, and fifth.
2. Provided, that in lieu of the above formula the rate of assessment per square foot [0.09 square meter] in each subdivision of an improvement district may be fixed on the basis that the special benefits conferred on a square foot [0.09 square meter] of land in subdivisions first, second, third, fourth, and fifth, respectively, are related to each other as the numbers 0.015000, 0.008333, 0.006666, 0.003333, and 0.001666, respectively, and the method of determining the assessment on each lot, tract, or parcel of land in the improvement district may be ascertained in the following manner:
 - a. The products of the number of square feet [0.09 square meter] in subdivisions first, second, third, fourth, and fifth, respectively, for each lot, tract, or parcel of land in the improvement district and the numbers 0.015000, 0.008333, 0.006666, 0.003333, and 0.001666, respectively, shall be ascertained. The sum of all such products for each such lot, tract, or parcel of land shall be the number of "assessable units of frontage" therein;
 - b. The rate for each assessable unit of frontage shall be determined by dividing that portion of the total cost of the improvement representing special benefits by the aggregate sum of all assessable units of frontage; and
 - c. The assessment for each lot, tract, or parcel of land in the improvement district shall be the product of the assessable units of frontage therefor, multiplied by the rate per assessable unit of frontage.

40-23.1-04. Levy of assessments - Items included in cost of improvement. 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 ascertain and return, as provided in this chapter, the total assessment against each separate lot, tract, or parcel of land in the improvement district. The total cost of the improvement 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 assessment therefor. In the event that 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.

40-23.1-05. Parking lots - Ascertaining assessments. Notwithstanding any section of chapter 40-23, the city auditor shall determine, on the basis that the special benefit conferred upon a lot, tract, or parcel of land in the improvement district, by the establishment of a parking lot, is proportionate to the need that the business conducted thereon has for a parking lot, the amount which each lot, tract, or parcel 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 lot, tract, or parcel of land such sum, not exceeding the benefits, as shall be 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. Such action shall be subject to the final approval of the governing body which may increase or diminish any of such assessments as it may deem just.

40-23.1-06. Political subdivisions not exempt from special assessments. Benefited property belonging to counties, cities, school districts, park districts, and townships shall not be exempt from assessment and such public corporations whose property is 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 shall be deemed to amend other provisions of law with reference to the levy of assessments on property sold for delinquent taxes.

40-23.1-07. Assessment list to be prepared - Contents - Certificate attached to assessment list. The city auditor 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, tract, or parcel benefited by the improvement, and the amount assessed against each. There must be attached to the list of assessments a certificate signed by the city auditor certifying that the same is a true and correct assessment of the property therein described to the best of just judgment and stating the several items of expense included in the assessment.

40-23.1-08. Publication of assessment list and notice of hearing of objections to list. The city auditor shall cause the assessment list, which list shall not include the amount each lot, tract, or parcel is benefited by the improvement, to be published once each week for two consecutive weeks in the official newspaper of the municipality, together with a notice of the time when and the place where the city auditor will meet to hear objections made to any assessment by any interested party or interested party's agent or attorney. In lieu of publication of an assessment list, if it includes more than five thousand lots, tracts, or parcels, the city auditor 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 shall be designated in the published notice. The date set for such hearing shall be not less than fifteen days after the first publication of the notice.

40-23.1-09. Alteration of assessments at hearing - Limitations. At the hearing, the city auditor may make such alterations in the assessments as in the city auditor's opinion may be just or necessary to correct any error in the assessment list. The city auditor 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 to the parcel of land assessed.

40-23.1-10. Confirmation of assessment list after hearing - Filing list. The city auditor, after the hearing, shall confirm the list and attach thereto its further certificate certifying that the list is correct as confirmed. The city auditor thereafter shall file the assessment list in the city auditor's office.

40-23.1-11. 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 city auditor 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.

40-23.1-12. 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 city auditor by filing with the city auditor a written notice of the appeal, stating therein the grounds upon which the appeal is based.

40-23.1-13. Governing body to hear and determine appeals and objections to assessments - Altering assessments - Limitations. At the regular meeting of the governing body at which the assessment list is to be acted upon, any person aggrieved by the determination of the city auditor in regard to any assessment, who has appealed therefrom as provided in section 40-23.1-12, may appear before the governing body and present that person's reasons why the action of the city auditor 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 the governing body may deem just, in the event that the formula provided for in sections 40-23.1-02 and 40-23.1-03 proves to be inapplicable. The governing body 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 may exceed the benefits as determined, in accordance with this chapter by the city auditor, to the parcel of land assessed.