

South Dakota Municipal League

Guide to Special Assessments

Special Assessments are a financing mechanism that allow payment for improvements by those who benefit, or for specific items, rather than general taxation.

Maintenance Fees (see page 8) are fees that municipalities are allowed to charge for maintenance of improvements. This Guide will deal with both items.

This Guide is intended to provide an overview of special assessments. It is NOT to be considered as, nor substituted for, legal advice. Anyone considering using special assessments or maintenance fees should carefully review the statutes and consult their city attorney.

Special assessments may be used for **local improvements**, which are defined as:

“The process of building, altering, repairing, improving, or demolishing any local infrastructure facility, including any structure, building, or other improvement of any kind to real property...”

Special assessments may be used to assess the amount equal to the special benefit received by property specially benefitting from the local improvements after an investigation by the governing body to determine the amount of benefit from construction of the local improvement to the lots and tracts fronting or abutting the improvement (SDCL 9-43-78 and 9-43-79). Assessments may be used in combination (for example, assessing for the costs associated with the water and sewer facilities, along with the overlying street). Municipalities may create a delayed special assessment for land outside of city limits. Collection of the assessment cannot occur until after annexation occurs. (SDCL 9-43-78)

Special assessments may be used alone to finance a project, or in combination with general funds, bonds, or other financing mechanisms.

A municipality may make the determination that the improvement is necessary, or landowners may petition for local improvements.

If landowners request an improvement be made, a petition of at least 55% of the property owners in the area requesting the construction of a local improvement to be special assessed must be presented to the governing body.

Special Assessment Districts

The governing body of any municipality may establish one or more districts for the construction and maintenance of local improvements. The governing body may establish or modify the boundary of the district, construct improvements or portions of improvements, and assess the amount of the special benefit of the improvement to the property within the district. See the provisions of § 9-43-77 for more information on using special assessment districts.

If any lot is subject to assessment both as fronting and abutting property, and as property within the district or area benefited by the local improvement, the governing body may use the sum of both assessments in the assessment roll against each such lot. (SDCL 9-43-133)

The total **benefit** of an improvement may equal the total **cost** of the improvement, including the contract price and all the engineering, inspection, publication, fiscal, legal, and other expenses associated with the improvement, but the amount of the assessment must be for the special benefit received.

Proposed Resolution of Necessity

The governing body shall cause a draft resolution of necessity to be prepared. The proposed resolution of necessity must include:

- The general nature of the proposed improvement
- The material to be used or materials from which a choice may be made;
- An estimate of the total cost or cost per linear foot;
- A description of the classes of lots to be assessed and of the method of apportioning the benefits to the lots;
- A statement that the details, plans, and specifications may be reviewed at the finance office during regular office hours.

The proposed resolution of necessity may include:

- A provision that the municipality will assume and pay any portion of the cost of the improvement (this may also be provided by a subsequent resolution)
- A provision that the municipality will pay any definite, specified portion or all of the cost of the improvements in street and alley intersections;
- A provision that the municipality will pay any definite, specified portion or all of the cost of improvement fronting or abutting the side of a corner lot; or that that portion of the cost may be spread as an area tax on the properties benefitting from the improvement;
- A provisions stating whether the assessments and installments are payable under Plan One or Plan Two (see pages 7-8). (this step MUST be done before any contracts are let, (SDCL 9-43-102) but may be done by separate resolution or ordinance.) This step may also provide for the assessment to be divided into any number of annual installments, not exceeding forty.

Multiple improvements may be included in one resolution of necessity if the general nature of each improvement is stated.

Notice of Hearing – Proposed Resolution of Necessity

Notice of hearing on the proposed resolution of necessity is published once in the official newspaper, not less than ten nor more than twenty days prior to the hearing. The notice of hearing shall include the time and place of the hearing and a statement that the governing body will consider any objections to the proposed resolution of necessity by owners of the property liable to be assessed.

Mailing to Property Owners – Proposed Resolution of Necessity

The Governing body must mail a copy of the notice of hearing and the proposed resolution of necessity to each person owning property liable to be assessed. This mailing must be not less than ten nor more than twenty days before the hearing on the adoption of the proposed resolution of necessity, and is sent by either first class or certified mail.

Hearing - Proposed Resolution of Necessity

A hearing is held where the governing body considers objections to the proposed resolution of necessity, and may adopt the resolution, with or without amendment. No amendment may be made affecting property of any class not included in the original proposed resolution unless the owner of the property has been given the same notice and opportunity for hearing as were the classes originally included. If the resolution of necessity is adopted, and is not referred to a vote or suspended by written petition by owners of more than 55% of the property to be assessed, it becomes effective twenty days after publication of the adopted resolution.

Once the resolution of necessity is effective, the governing body may contract for the improvement and levy the assessments.

Plans and Specifications

Once a municipality determines improvements are necessary and will be financed in whole or in part by special assessments, plans and specifications must be developed by the city engineer or other competent person. The plans and specs are filed in the office of the finance officer, and must show the location, arrangement, form, size, and materials to be used in the construction.

The plans and specifications are to be filed in the office of the finance officer and must be available for inspection by any interested person.

Bid Project; Award Contract; Construct Project

Follow all bid and procedures before awarding the contract.

Bonding

The governing body may provide for the issuance of negotiable bonds without a vote of the public in an amount not to exceed the entire cost of the local improvement. The bonds shall be issued and sold in accordance with state law, except that all bonds shall mature not later than one year after the maturity of the last assessment installment. A single issue may be sold to finance several improvements. See the provisions of § 9-43; § 6-8B and consult your city attorney for more information on bonding with special assessments.

The interest rate to be charged on the special assessment is set by the governing body in a separate resolution and usually done after the bonds are issued.

Filing of the Special Assessment Roll with the Finance Officer

Although the special assessment roll does not need to be created until construction is complete and all construction change orders are determined, at any time after the contracts are let, the governing body may file the special assessment roll with the finance officer. The special assessment roll must show:

- The name of the owner of each lot to be assessed;
- The legal description of each parcel of land to be assessed; and
- The amount assessed against each lot.

If the special assessment is payable in installments, the special assessment roll shall specify:

- The number of installments;
- The rate of interest that deferred installments will bear;
- A statement that the whole assessment or any installment may be paid at any time; and
- A statement that all installments paid before their respective due dates are deemed paid in inverse order of their due dates.

Notice of Hearing – Special Assessment Roll

After filing the special assessment roll with the finance officer, the governing body shall set a time and place for hearing on the special assessment roll.

Notice of hearing on the special assessment roll is published once, not less than 10 nor more than 20 days prior to the hearing, and must include:

- A general description of the improvement for which the special assessment is being levied;
- The time and place of the hearing;

- A statement that the special assessment roll will be open for public inspection at the office of the finance officer; and
- A statement that refers to the special assessment roll for further particulars.

Mailing to Property Owners – Special Assessment Roll

A copy of the notice of hearing on the special assessment roll and a copy of the special assessment roll must be mailed to the property owners to be assessed for the improvement. This mailing shall be made not less than 10 nor more than 20 days prior to the hearing.

Hearing – Special Assessment Roll

A hearing is held, and the governing body may approve, equalize, amend, or reject the assessment roll.

If the special assessment roll is rejected, the governing body may file a new one, and notice and hearing provisions are repeated as with the original.

If the special assessment roll is equalized or amended, a list of all items of assessment changed or amended shall be published, and notice and hearing shall be held as with the original special assessment roll.

If the special assessment roll is approved, or after any corrections have been made, the governing body must adopt a resolution to approve and levy the assessment. This resolution must include:

- An amount and type of the assessment;
- A description of the local improvement;
- The date of the official approval of the special assessment roll;
- A statement specifying under which plan the assessment and installments shall be paid – Plan One (collection by the county treasurer) or Plan Two (collection by the municipal finance officer). **THIS DECISION MUST BE MADE BEFORE CONTRACTS ARE LET.** See pages 7-8.

The resolution adopting the special assessment roll is published, and becomes effective 20 days after publication, unless suspended by appeal to circuit court.

Within twenty days of the publication of the resolution adopting the special assessment roll, that resolution may be appealed to circuit court.

Preparing the Special Record

Once effective, the assessment roll is recorded by the finance officer in a special record, and notice is mailed to each affected landowner.

The finance office must number each item of assessment consecutively, without regard to date, character of improvement, or description of property. No number may be duplicated.

The special record shall contain:

- A record of all special assessments;
- The consecutive number of the item;
- The date the assessment is due;
- The name of the property owner;
- The legal description of the property;
- The amount assessed against each lot;
- The character of the improvement for which the assessment is made;
- The date of payment of each assessment or installment that is made to the municipality; and
- A suitable index to the real property against which special assessments have been levied.

Mailing to Property Owners – Notice of Special Assessment

The finance officer shall mail to the owners of each lot, parcel, or piece of land as shown by the special assessment roll, a notice specifying:

- The amount of the assessment;
- The number of installments;
- The date of the approval of the assessment roll; and
- A statement that any number of the installments may be paid without interest at the office of the finance officer within thirty days from the date of the approval of the roll, after which the unpaid balance will draw interest at the rate fixed by the governing body from the date of the approval of the assessment roll.

Collection of the Assessments

Special assessments may be collected under Plan One (collection by the county treasurer) or Plan Two (collection by the municipal finance officer.)

| Plan One - Collection by County | Plan Two - Collection by Municipality |
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Any assessment or installment may be paid without interest to the municipal finance officer at any time within thirty days after the approval of the assessment roll. Thereafter, and before the due date of the first installment, the entire assessment remaining, or any number of installments, plus interest from the approval date of to the date of payment may be paid to the municipal finance officer.

Installments are due and payable on January 1st of each year until the entire assessment is paid. The first payment is due on January 1st following the date of approval of the assessment roll.

After the due date of the first installment, if the installments that are due, together with the interest have been paid, any of the remaining installments not yet due may be paid without additional interest to the municipal finance officer.

All installments paid before their respective due dates shall be paid in inverse order of their due dates.

The assessment roll shall be delivered no later than November 1 following the date of approval of the special assessment roll, or at the expiration of the thirty-day period for prepayment without interest, whichever is later.

No later than November 1, the finance officer shall deliver to the county auditor all special assessments remaining unpaid that have become delinquent on or before October 1. The county auditor shall include the delinquent installment and accrued interest in the following year at the time the real property tax is paid, and shall certify the installment and interest, together with the general taxes, to the county treasurer for collection.

Before delivering the assessment roll to the county auditor, the finance officer shall cancel in inverse order of their due dates all installments of any assessment previously paid.

No installment may be paid to the municipal finance officer on or after January 1 after certification to the county auditor.

| Plan One - Collection by County | Plan Two - Collection by Municipality |
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| <p>The county auditor shall include each installment, including interest upon that installment and all subsequent unpaid installments, in the taxes collectible in the year in which the installment is due.</p> | |

The first installment shall include interest from the date of approval of the special assessment roll to May 1 of the year in which the first installment is due. Each subsequent installment shall include one year's interest. Each installment, including interest, becomes delinquent on May 1 of the year in which it becomes due, and shall have interest and penalty added each month at the same rate as provided for delinquent real estate taxes.

All proceeds of special assessments shall be paid to the finance officer of the municipality with the proceeds of other taxes.

If the combined taxes and special assessment installments under Plan One, or delinquent assessments under Plan Two are not paid, the parcel may be sold for all such taxes and assessments in the manner for delinquent real estate taxes.

Maintenance Fees

The governing body may annually, by resolution, levy a special maintenance fee for the purpose of maintaining or repairing any public improvements within the municipality, which are maintained by the municipality. The governing body may designate the lot or portion of lots against which a maintenance fee is to be assessed. The maintenance fee may be directly billed by the municipality to the property owners, or may be collected by the county with real estate tax assessments.

Special Assessment Checklist

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| 1. | Determination or petition | Governing body determines improvements are needed, and will be paid in whole or in part by special assessments |
| 2. | Proposed resolution of necessity | Includes the general nature of the improvement, material or materials from which a choice may be made, estimate of the total cost or cost per linear foot; description of the classes of lots to be assessed; an investigation to determine the special benefits to each lot or tract; the method of apportioning the special benefits to the lots; and the fact that the details, plans and specifications may be reviewed during regular office hours at the finance office. |
| 3. | Notice of Hearing on proposed resolution of necessity | Published once, not less than 10 nor more than 20 days prior to the hearing; contains time and place of the hearing, and statement that the governing body will consider any objections by owners of property liable to be assessed. |
| 3A. | Mailing to property owners, notice of hearing on proposed resolution of necessity | Not less than 10 nor more than 20 days prior to the hearing, a copy of the notice of hearing and the proposed resolution of necessity must be mailed to each person owning property liable to be assessed. |
| 3B. | Agenda | Place hearing on proposed resolution of necessity on the hearing agenda and post not less than 24 hours prior to the hearing. |
| 4. | Hearing | Governing body holds hearing, considers objections, and may adopt the proposed resolution of necessity with or without amendment. No amendment may be made affecting property of any class not included in the original proposed resolution of necessity unless the owner of that property has been given the notice and opportunity to be heard. |
| 4A. | Publication | The adopted resolution of necessity is published, and becomes effective 20 days after publication unless brought to a vote, suspended by resolution, or petition by owners of more than 55% of the property to be assessed. |
| 5. | Plans and Specifications | Plans and specifications are developed by the city engineer, showing location, arrangement, form, size, and materials to be used. |
| 6. | Bidding the Project | After resolution of necessity becomes effective, the governing body may contract for the improvement. |
| 7. | Award the Bid(s) | |
| 8. | Bond Resolution (if any) | |
| 9. | Proposed Assessment Roll | At any time after execution of any contract for local improvements, the governing body may file with the finance officer an assessment roll showing the name of the owner of each lot to be assessed; the legal description of each parcel of land to be assessed; the amount to be assessed against each lot; installments (if any); rate of interest on installments; statement on due dates of installments (if any). Upon filing with the finance officer, the governing body shall set a time and place for hearing on the assessment roll. |
| 10. | Notice of hearing on assessment roll | Published once, not less than 10 nor more than 20 days prior to the hearing, and describing the general nature of the improvement, the time and place of the hearing, and statement that the assessment roll is open for public inspection at the office of the finance officer. |
| 10A. | Mailing to property owners, notice of hearing on assessment roll | Not less than 10 nor more than 20 days prior to the hearing, a copy of the notice of hearing on the assessment roll is mailed to each owner of property to be assessed. |

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| 10B. | Agenda | Place hearing on the assessment roll on the hearing agenda and post not less than 24 hours prior to the hearing. |
| 11. | Hearing | The governing body may approve, equalize, or reject the assessment roll. |
| 11A. | Publication of Resolution adopting assessment roll | Resolution adopting the assessment roll is published and becomes effective 20 days after publication. This resolution must state under which plan the assessment roll and installments shall be paid. |
| 12. | Prepare special record of assessments | The finance officer prepares a special record containing a record of all special assessments, the consecutive number of the item; the date the assessment is due; the name of the property owner; the legal description of the property; the amount assessed against each lot; the character of the improvement for which the assessment is made; and the date of payment of each assessment or installment that is paid to the municipality. The finance officer must also include a suitable index to the real property against which special assessments have been levied. |
| 13. | Mailing to property owners | The finance officer must mail to the owners of each lot, parcel, or piece of land to be assessed, a notice specifying the amount of the assessment, the number of installments, the date of approval of the assessment roll, and a statement that any number of the installments may be paid without interest at the office of the finance officer within thirty days from the date of approval of the roll, after which date the unpaid balance will draw interest from the date of the approval of the assessment roll. |
| 14. | Collection | Assessments are collected under Plan One (collection by county) or Plan Two (collection by municipal finance officer). |

Ad Valorem vs Special Assessment

- Ad Valorem is according to value
 - For every \$1000, a person must pay \$1.00 in taxes
- Special Assessment is per unit
 - For every front foot on a lot, the taxpayer must pay \$50 in special assessment
 - For every homestead, the property sees a special assessment of \$250

It is the governing board's responsibility to determine if they have legal authority to pursue a Special Assessment – not the County Auditor!

Payment – Municipalities

9-43-102 Resolution to specify payment under Plan One or Plan Two. All special assessments are payable under Plan One or Plan Two.

Plan One--Collection by county treasurer.

Plan Two--Collection by municipal finance officer.

Before any contract is let or before bonds are issued for any local improvement for which special assessments are to be levied, the governing body shall provide by resolution or ordinance whether the assessments and installments are payable under Plan One or under Plan Two. The resolution or ordinance may provide for the assessment to be divided into any number of annual installments not exceeding forty.

Assessment roll shall be delivered to the County Auditor not later than November 1. (SDCL 9-43-105 & 106)

Nuisances – Municipalities, County, or Township

21-10-6 Abatement of nuisance--Notice required--Taxing cost of abatement--Civil action.

A public nuisance may be abated without civil action by any public body or officer as authorized by law. Any municipality, county, or township may defray the cost of abating a public nuisance by taxing the cost thereof by special assessment against the real property on which the nuisance occurred. If the nuisance abated is an unsafe or dilapidated building, junk, trash, debris, or similar nuisance arising from the condition of the property, the municipality, county, or township may commence a civil action against the owner of the real property for its costs of abatement in lieu of taxing the cost by special assessment. [...]

Weeds – Municipalities

9-38-29 Destruction of weeds by park board--Special assessment against property to cover cost.

Should the owner of any lot fail to cause such weeds to be destroyed within two days after the last publication, the board may cause the same to be done. The expense thereof shall be paid out of the fund appropriated for the board and shall be certified to the auditor, and the same shall be levied as a special assessment against the property upon which such weeds were destroyed and when collected shall be covered into the park fund and be subject to the order of the park board.

Weeds, Trees, Mowing – Townships

31-31-5 Failure of abutting landowner to remove weeds--Removal by board of supervisors--Compensation for removal.

If the owner or occupant of land abutting upon or adjoining township roads does not cut, remove, or destroy, or cause to be cut, removed, or destroyed, the grass, weeds, trees, or brush in the right-of-way of such roads between the first day of September and the first day of October, or between the dates annually fixed by the board, the board of supervisors of the township in which the land is located may employ a person or persons to immediately cut and remove the grass, weeds, trees, and brush on or in the right-of-way of such township roads with compensation at a rate to be fixed and paid by the board.

31-31-6 Payment for cleanup by landowner or township--Election to determine.

The voters at each annual township election shall by majority vote determine whether the amount paid for the cleanup of township roads pursuant to 31-31-5 shall be paid for by the landowner or the township. If the vote is to have the landowner pay, the amount shall be certified by the township clerk to the county auditor not later than November first of the same year. The amount shall be extended on the tax list in a separate column headed "Removal or destruction of grass, weeds, and brush on highways" and shall become a tax on the land adjoining the highway where the grass, weeds, and brush were cut or removed and shall be collected as other taxes. If the vote is to have the township pay, the cost of cutting and removal of grass, weeds, and brush shall be paid out of township funds without extending such cutting and removal costs on the tax lists as tax on the land of the adjoining township landowner.

MUNICIPALITIES

- Nuisances – SDCL 21-10-6
- Sewer Systems – SDCL 9-48-15
- Sidewalks – SDCL 9-46-4.1
- Solid Waste Management – SDCL 34A-6-29
- Street and Alley – Chapter 9-45
- Water Supply System – Chapter 9-47
- Weeds – SDCL 9-38-29

TOWNSHIPS

- Drainage – SDCL 46A-11-4, 46A-11-5
- Irrigation Districts – Chapter 46A-4
- Mowing – SDCL 31-31-5, 31-31-6
- Nuisances – SDCL 21-10-6
- Sanitary Districts – Chapter 34A-5
- Tree Removal – SDCL 31-31-5, 31-31-6
- Water User District – Chapter 46A-9
- Watershed – Chapter 46A-14

***These statutes represent only a selected few that pertain to special assessments. Always discuss your situation with your attorney, as they will be defending your actions in a court of law.**

The County Auditor and Treasurer are not bill collectors for delinquent utilities (unless statute specifically allows)!!