

Chapter 5

ASSESSMENTS

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[HISTORY: Adopted by the Village Council of the Village of Bellaire as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Special Assessment for Local Improvements
[Adopted 5-21-2003 by Ord. No. 10-2003]

§ 5-1. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

COST — The expense of any local public improvement, including but not limited to the cost of services, plans, condemnation, spreading of rolls, notices, advertising, financing, construction, legal fees, interest on special assessment bonds (not to exceed one year), and all other costs incidental to the making of such improvement, the special assessments thereof and the financing thereof.

LOCAL PUBLIC IMPROVEMENT — An improvement intended to benefit specific real property within a designated district, including but not limited to constructing bridges over natural or artificial waterways; grading, paving, curbing, stoning, graveling, macadamizing, or cinderizing streets; treating the streets with chloride or other suitable dust laying process or material; laying storm sewers to care for surface water in the streets; destroying weeds; providing street markers and lighting; contracting for public transportation facilities; providing police protection or contracting for police protection; establishing and maintaining garbage and mixed refuse systems or plants for the collection and disposal of garbage and mixed refuse or contracting for such collection and disposal for not to exceed 30 years; constructing or acquiring and maintaining sanitary sewers and sewage disposal plants or equipment; constructing filtration plants; constructing sidewalks; purchasing or constructing waterworks; purchasing fire apparatus and equipment; constructing and maintaining housing facilities for fire apparatus and equipment; making extensions of water mains to provide water for fire protection and domestic uses; trimming and spraying trees and shrubbery; providing and maintaining soil and beach erosion control measures, including, but not limited to the construction of breakwaters, retaining walls, and sea walls, in or for Village lands or waters adjacent or contiguous to Village lands; and establishing and conducting chemical beach treatment service necessary for the control of aquatic nuisances such as swimmers' itch or contracting with others to provide the services.

§ 5-2. Authority.

The legal authority to levy special assessments for local public improvements is authorized under Section 31 of Chapter VIII of the General Law Village Act (1895 PA 3, MCL 68.31 et seq.) and the Township and Village Public Improvement and Public Service Act (1923 PA 116, MCL 41.411 et. seq.).

§ 5-3. Authority to assess.

The whole cost or any part of such cost of any local public improvement may be defrayed by special assessment upon the lands specially benefited by the improvement in the manner provided in this article.

§ 5-4. Initiation of special assessment projects.

Proceedings for the making of local public improvements within the Village of Bellaire, the tentative necessity of such improvements, and the determination that the whole or any part of the expense of such improvement shall be defrayed by special assessment upon property especially benefited, provided that all special assessments levied shall be in proportion to the benefits derived from the improvements, may be commenced by resolution of the Village Council, with or without a petition, by the affirmative vote of not less than 2/3 of the members of the entire of the Village Council.

§ 5-5. Initiation by petition.

Local public improvements may be initiated by petition signed by the record owners of not less than 51% of the total land to be included in the special assessment district. Such petition shall contain a brief description of the property owned by the respective signatories thereof, and if it shall appear that the petition is signed by no less 51% of the property owners within the proposed district, the Village Clerk shall certify such fact to the Village Council. The petition shall be addressed to the Village Council and filed with the Village Clerk and shall in no event be considered directory but is advisory only.

§ 5-6. Survey and report.

Before the Village Council shall consider the making of any local improvement, the Village Council shall cause to be prepared a report, which shall include necessary plans, profiles, specifications, and detailed estimates of cost, an estimate of the life of the improvement, a description of the assessment district, and such other pertinent information as will permit the Village Council to decide the cost, extent and necessity of the improvement proposed and what part or proportion of such improvement should be paid by special assessments upon the property especially benefited and what part, if any, should be paid by the Village of Bellaire at large. The Village Council shall not finally determine to proceed with the making of any local public improvement until such report has been filed, nor until after a public hearing has been held by the Village Council for the purpose of hearing objections to the making of such improvement.

§ 5-7. Determination of the project; notice.

After receiving and reviewing the report required in § 5-6, the Village Council may adopt a resolution tentatively determining the necessity of the improvement. The resolution shall set forth the nature of the improvement, the boundaries of the proposed special assessment district, what proportion of the cost of such improvement shall be paid by special assessment upon the property especially benefited, the proposed method of spreading the proposed special assessments, and what proportion of the cost of such improvement, if any, shall be paid by the Village at large. The resolution shall also schedule a public hearing before the Village Council concerning the necessity of the improvement, as required in § 5-8. A copy of this resolution shall be filed with the Village Clerk for public inspection. The Village Clerk shall give notice of the public hearing on the proposed improvement as provided in § 5-14.

§ 5-8. Hearing on necessity.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which the Village Council may modify the scope of the local public improvement in such a manner as it shall deem to be in the best interest of the Village of Bellaire as a whole; provided, however, if the amount of work is increased or additions are made to the district boundaries, then another public hearing shall be held pursuant to notice prescribed in § 5-14. If the Village Council determines to proceed with the improvement, it shall adopt a resolution approving the necessary profiles, plans, specifications, assessment district boundaries and detailed estimates of cost. The resolution shall also direct the Assessor to prepare a special assessment roll in accordance with the Village Council's determination and to report the assessment roll to the Village Council for confirmation.

§ 5-9. Deviation from plans and specifications.

No deviation from the original plans or specifications for the improvement as adopted shall be permitted by any officer or employee of the Village of Bellaire without a resolution of the Village Council authorizing such deviation. A copy of the resolution authorizing such changes or deviation shall be certified by the Village Clerk and attached to the original plans and specifications on file in the office of the Village Clerk.

§ 5-10. Limitations on preliminary expenses.

The Village Council shall specify the provisions and procedures for financing a local public improvement. No contract or expenditure, except for the cost of preparing the necessary profiles, plans, specifications, and estimates of cost, shall be made for the improvement, nor shall any improvement be commenced until the special assessment roll to defray the costs of the improvement shall have been made and confirmed.

§ 5-11. Special assessment roll.

The assessor shall make a special assessment roll of all lots and parcels of land within the designated district benefited by the proposed improvement, and shall assess to each lot or parcel of land the proportionate amount of the cost of the improvement based on the proportionate benefit derived by the improvement. The amount spread in each case shall be based upon the detailed estimated cost as approved by the Village Council.

§ 5-12. Assessor to file assessment roll.

When the Assessor shall have completed such assessment roll, the Assessor shall file the roll with the Village Clerk for presentation to the Village Council for review and certification by it.

§ 5-13. Public hearing to review special assessment roll; objections in writing.

Upon receipt of the special assessment roll, the Village Council, by resolution, shall accept the proposed assessment roll and order it to be filed in the office of the Village Clerk for public examination. The Village Council will hold a public hearing for the

purpose of public comments on the proposed special assessment roll. Notice of the public hearing shall be given as specified in § 5-14. After the public hearing, the Village Council shall confirm the assessment roll as presented, confirm the assessment roll as modified, or refer the assessment roll back to the Assessor for revisions. If the assessment roll is referred back to the Assessor, then another public hearing concerning the assessment roll shall be held pursuant to notice prescribed in § 5-14.

§ 5-14. Notice of public hearings.

Notice of any public hearing required by this article shall be given as provided in this section. The notice of the public hearing shall specify the time, date, and place for the public hearing, shall contain a description of the proposed improvement and the estimated costs of the improvement, shall describe the boundaries of the special assessment district, shall indicate when and where the plans and estimated cost for the improvement can be inspected by the public, shall indicate that appearance and protest at the public hearing is required in order to appeal the amount of the special assessment to the State Tax Tribunal, if an appeal should be desired, and shall include a statement that the owner or any person having an interest in the real property may file a written appeal of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll. The notice of the public hearing shall be sent by first-class mail to all owners of record or other parties in interest whose names and mailing addresses appear on the assessment records no less than 10 days before the public hearing. For the purposes of this section, the “last local tax assessment records” means the last assessment roll for ad valorem tax purposes which has been reviewed by the local board of review, as supplemented by any subsequent changes in the names or the addresses of such owners or parties listed on that roll. Notice of the public hearing shall also be published twice in a newspaper of general circulation within the Village, the first being publication no less than 10 days before the public hearing. If a published notice includes a list of the property identification numbers of the property to be assessed, that list may provide either the individual property identification number for each parcel of property to be assessed or one or more sequential sets of property identification numbers, which include each parcel of property to be assessed. If a published notice includes a list of the property identification numbers of the property to be assessed, that published notice shall also include either a map depicting the area of the proposed special assessment district or a written description of the proposed special assessment district.

§ 5-15. Review of special assessment; changes and corrections.

- A. The public hearings required by this article may be held at any regular or special meeting of the Village Council. The Assessor shall be present at every meeting of the Village Council at which a special assessment is to be reviewed.
- B. The Village Council shall meet at the time and place designated for the review of such special assessment roll, and at such public hearing, shall consider all objections thereto. An owner or party in interest, or their agent, may appear in person at the hearing to protest the special assessment, or shall be permitted to file their appearance or protest by letter, and their personal appearance shall not be required. The Village Council shall maintain a record of parties who appear to

protest at the public hearing. If a public hearing is terminated or adjourned for the day before a party is provided the opportunity to be heard, a party whose appearance was recorded is considered to have protested the special assessment in person.

- C. The Village Council may correct the roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein; or it may, by resolution, annul the assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in making a new roll as in the making of the original roll.
- D. If after hearing all objections and making a record of such changes as the Village Council deems justified, the Village Council determines that it is satisfied with the special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the Village Clerk and directing the Village Clerk to attach his or her warrant to a certified copy of such roll within 10 days, therein commanding the Assessor to spread and the Treasurer to collect the various sums and amounts appearing thereon as directed by the Village Council. The roll shall have the date of confirmation endorsed thereon and shall from that date be final and conclusive for the purpose of the improvement to which it applies unless contested in the manner provided in Section 34 of Public Act No. 4 of 1974 (MCL 68.34, as amended), and subject to adjustment to conform to the actual cost of the improvement, as provided in § 5-20.

§ 5-16. When special assessments are due.

All special assessments, except such installments of special assessments as the Village Council shall make payable at a future time as provided in this article, shall be due and payable upon confirmation of the special assessment roll.

§ 5-17. Partial payments; due date.

The Village Council may provide for the payment of special assessments in annual installments. Such annual installments shall not exceed 30 in number, the first installment being due upon confirmation of the roll or on such date as the Village Council may determine, and deferred installments being due annually thereafter, or in the discretion of the Village Council, may be spread upon and made a part of each annual Village tax roll thereafter until all are paid. Interest shall be charged on all deferred installments at a rate not to exceed 7% per annum, commencing on the due date of the first installment, or 60 days after the date of confirmation if the first installment is not due upon confirmation and payable on the due date of each subsequent installment. The full amount of all or any deferred installments, with interest accrued thereon to the date of payment, may be paid in advance of the due dates of such installments. If the full assessment or the first installment of such assessment shall be due upon confirmation, each property owner shall have 60 days from the date of confirmation to pay the full amount of such assessment, or the full amount of any installments, without interest or penalty. Following such sixty-day period, the assessment or first installment of the assessment shall, if unpaid, be

considered as delinquent, and the same penalties shall be collected on such unpaid assessments or first installments of such assessments as are provided by law to be collected on delinquent general Village taxes. Deferred installments shall be collected without penalty until 60 days after the due date of such installments, after which time such installments shall be considered as delinquent, and such penalties on such installments shall be collected as are provided by law to be collected on delinquent general Village taxes. After the Village Council has confirmed the roll, the Village Treasurer shall notify by mail each property owner on such roll that such roll has been filed, stating the amount assessed and the terms of payment. Failure on the part of the Village Treasurer to give such notice or of such owner to receive such notice shall not invalidate any special assessment roll of the Village of Bellaire or any assessment thereon, nor excuse the payment of interest or penalties.

§ 5-18. Delinquent special assessments.

Any assessment, or part of such assessment, remaining unpaid on the first Monday of March following the date when the assessment became delinquent shall be reported as unpaid by the Village Treasurer to the Village Council. Any such delinquent assessment, together with all accrued interest, shall be transferred and reassessed on the next annual Village tax roll in a column headed "Special Assessments" with a penalty of 4% upon such total amount added thereto and, when so transferred and reassessed upon such tax roll, shall be collected in all respects as provided for the collection of Village taxes.

§ 5-19. Creation of lien.

Special assessments and all interest, penalties, and charges thereon from the date of confirmation of the roll shall become a debt to the Village of Bellaire from the persons to whom they are assessed and, until paid, shall be and remain a lien upon the property assessed, of the same character and effect as the lien created by general law for state, county, and Village taxes, and the lands upon which the same are a lien shall be subject to sale therefore the same as are lands upon which delinquent Village taxes constitute a lien.

§ 5-20. Additional assessments; refunds.

The Village Clerk shall, within 60 days after the completion of each local public improvement that was subject to a special assessment, compile the actual cost of such improvement and certify the cost to the Assessor who shall adjust the special assessment roll to correspond therewith. If the actual cost exceeds the amount of the special assessments, then an additional assessment sufficient to cover the shortfall shall be levied against the land within the special assessment district on the same pro rata basis as the original assessments. If the assessment exceeds the amount of the actual cost by 5% or more, the Village shall refund the difference on the same pro rata basis as the original assessments. If the assessment exceeds the amount of the actual cost by less than 5%, the Village Council may place the excess in the Village treasury or make a refund pro rata according to the assessment. No refunds of special assessments may be made which impair or contravene the provision of any outstanding obligation or bond secured in

whole or part by such special assessments. In the case of assessments due in installments, the Village Council may order the refund given by credit against the installments last coming due. When any special assessment roll shall prove insufficient to meet the cost of the improvement for which it was made, the Village Council may make an additional pro rata assessment, but the total amount assessed against any one parcel of land shall not exceed the benefits received by such lot or parcel of land.

§ 5-21. Additional procedures.

In any case where the provisions of this article may prove to be insufficient to carry out fully the making of any special assessment, the Village Council shall provide by ordinance any additional steps or procedures required.

§ 5-22. Collection of special assessments.

If bonds are issued in anticipation of the collection of special assessments as provided in this article, all collections on each special assessment roll or combination of rolls shall be set in a separate fund for the payment of the principal and interest on the bonds so issued in anticipation of the payment of such special assessments and shall be used for no other purpose.

§ 5-23. Special assessment accounts.

Moneys raised by special assessment to pay the cost of any local improvement shall be held in a special fund to pay such cost or to repay any money borrowed therefore. Each special assessment account must be used only for the improvement project for which the assessment was levied, expenses incidental thereto, including the repayment of the principal and interest on money borrowed therefore, and to refund excessive assessments, if refunds are authorized.

§ 5-24. Contested assessments.

An action to contest or enjoin the collection of a special assessment shall be instituted under the Tax Tribunal Act, Public Act No. 186 of 1973 (MCL 205.701 et seq.).

§ 5-25. Reassessment for benefits.

Whenever the Village Council shall deem any special assessment invalid or defective for any reason whatever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatever, in whole or in part, the Village Council shall have the power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement or any part of such improvement has been completed, and whether any part of the assessment has been collected or not. All proceedings on such reassessment and for its collection shall be made in the manner as provided for the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment, and the reassessment shall to that extent be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the

person making such payment.

§ 5-26. Combination of projects.

The Village Council may combine several districts into one project for the purpose of effecting a saving in the costs. There shall be established for each district separate funds and accounts to cover the cost of the same.

§ 5-27. Division of parcels.

Should any lots or lands be divided after a special assessment thereon has been confirmed and divided into installments, the Assessor shall apportion the uncollected amounts upon the several lots and lands so divided, and shall enter the several amounts as amendments upon the special assessment roll. The Village Treasurer shall, within 10 days after such apportionment, send notice of such action to the persons concerned at their last known address by first-class mail. Such apportionment shall be final and conclusive on all parties unless protest in writing is received by the Village Treasurer within 20 days of the mailing of such notice.

§ 5-28. Deferred payments of special assessments.

The Village Council may provide for the deferred payment of special assessments from persons who, in the opinion of the Village Council and the Assessor, by reason of poverty, are unable to contribute toward the cost of such assessment. In all such cases, as a condition to the granting of such deferred payments, the Village of Bellaire shall require mortgage security on the real property of the beneficiary payable on or before his death, or, in any event, on the sale or transfer of the property. For purposes of this section, a person shall be eligible for deferred payment of special assessments if he or she meets the federal poverty guidelines updated annually in the federal register by the United States Department of Health and Human Services under authority of Section 673 of Subtitle B of Title VI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, 42 U.S.C. 9902.

§ 5-29. Reconsideration of petitions.

If the Village Council shall fail to make any public improvement petitioned for under the provisions of § 5-5 during the calendar year during which any petition is filed, such petition shall be reconsidered by the Village Council prior to March 1 of the succeeding calendar year for the purpose of determining whether such improvement should be made during such calendar year.