

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

ORDINANCE NO. 2022-17

AN ORDINANCE OF WELLINGTON, FLORIDA’S COUNCIL AMENDING THE CODE OF ORDINANCES BY REPEALING CHAPTER 3 TITLED “SPECIAL ASSESSMENT” IN ITS ENTIRETY, AND AMENDING AND RENUMBERING IT AS CHAPTER 18 TITLED “SPECIAL ASSESSMENT,” AS CONTAINED HEREIN, TO SIMPLIFY THE CODE, REMOVE UNECESSARY AND OBSOLETE PROVISIONS, AND ADOPT THE HOME RULE SPECIAL ASSESSMENT ORDINANCE OUTLINING THE PROCEDURE FOR SPECIAL ASSESSMENT PUBLIC SERVICE PROGRAMS AND PUBLIC WORKS PROJECTS; PROVIDING A REPEALER CLAUSE; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Wellington Council, as the governing body, pursuant to the authority vested in it by Chapter 166, Florida Statutes, and Article VIII, Section 2 of the Florida Constitution, is authorized and empowered to adopt legislation to govern the affairs of its citizens; and

WHEREAS, Wellington adopted its first Code of Ordinances in 1997, shortly after incorporation, and since that time has adopted revisions as necessary to protect the health, safety, and welfare of its citizens; and

WHEREAS, Wellington believes that it is in the best interest of the community to make additional modifications to the Code of Ordinances to remove outdated and unnecessary provisions and to simplify the provisions set forth therein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF WELLINGTON, FLORIDA, THAT:

SECTION 1: Chapter 3 of Wellington’s Code of Ordinances is hereby repealed in its entirety, and is amended and renumbered as Chapter 18, titled “Special Assessment,” and is hereby adopted as specifically provided in Exhibit A attached to this Ordinance.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: Should any section, paragraph, sentence, clause, or phrase of this Ordinance conflict with any section, paragraph, clause, or phrase of any prior Wellington Ordinance, Resolution, or Municipal Code provision, then in that event the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 4: Should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision

47 shall not affect the validity of this Ordinance as a whole or any portion or part thereof,
48 other than the part so declared to be invalid.

49
50 **SECTION 5:** This Ordinance shall become effective immediately upon adoption
51 of the Wellington Council following second reading.

52
53 **PASSED** this _____ day of _____, 2022 upon first reading.

54
55 **PASSED AND ADOPTED** this _____ day of _____, 20__ on second and
56 final reading.

57
58 **WELLINGTON**

	FOR	AGAINST
59 BY: _____	_____	_____
60 Anne Gerwig, Mayor		
61		
62 _____	_____	_____
63 Michael Drahos, Vice Mayor		
64		
65 _____	_____	_____
66 John McGovern, Councilman		
67		
68 _____	_____	_____
69 Michael Napoleone, Councilman		
70		
71 _____	_____	_____
72 Tanya Siskind, Councilwoman		
73		
74		

75
76 **ATTEST:**

77
78 BY: _____

79 Chevelle D. Addie Village Clerk

80

81
82 **APPROVED AS TO FORM AND**

83 **LEGAL SUFFICIENCY**

84

85

86 BY: _____

87 Laurie S. Cohen, Village Attorney

88

89
90

EXHIBIT A

~~Chapter 3 SPECIAL ASSESSMENT¹~~

~~Sec. 3-1. Scope.~~

- ~~(a) The provisions of this chapter shall apply to special assessment public service programs and public works projects, and may be referred to as the "home rule special assessment ordinance." Public service programs ("service(s)") and public works projects ("project(s)") may be made or undertaken in accordance with the home rule special assessment ordinance whenever the village determines that such services or projects should be undertaken and completed and the costs collected, in whole or in part, as a special assessment. The authority granted to the village pursuant to the home rule special assessment ordinance shall be supplemental to other provisions of law, including F.S. Ch. 170, and shall not be construed as limiting, or being limited by, such other provisions of law. To the extent provisions of this chapter conflict with special assessment procedures and powers related to the Acme Improvement District and the Pine Tree Water Control District the procedures and powers previously in affect shall control with respect to assessments levied by those entities.~~
- ~~(b) Special assessments made pursuant to this chapter shall be levied only for the purposes enumerated in this chapter and at a rate of assessment based upon the special benefit accruing to the property assessed from such service or project undertaken by the village. The reasonably estimated value of such special benefit must equal or exceed the amount of each assessment. Adoption of the assessment resolution, as hereinafter defined and provided, shall constitute a legislative finding that these standards have been met.~~

~~(Ord. No. 2005-12, § 1, 5-10-05)~~

~~Sec. 3-2. Definitions.~~

~~For the purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~*Assessable area* means the area of real property that will receive a special benefit from a special assessment service or project.~~

~~*Assessable front footage* means the length of property abutting a special assessment service or project that will receive a special benefit from that service or project.~~

~~*Assessable value of real property* means the value of real property that will receive a special benefit from a special assessment improvement. For the purposes of this chapter, the value shall be determined by reference to the assessed value according to~~

¹Editor's note(s) — Ord. No. 2005-12, § 1, adopted May 10, 2005, repealed the former Ch. 3, §§ 3-1—3-8, and enacted a new Ch. 3 as set out herein. The former Ch. 3 pertained to similar subject matter and derived from Ord. No. 2003-27, § 1, adopted Oct. 28, 2003.

~~the latest final assessment roll prepared by the property appraiser for Palm Beach County, including improvements located thereon but without regard to exemptions.~~

~~*Basis for assessment* means the assessable area; assessable front footage; or assessable value of real property, deriving a special benefit from a special assessment service or project, as determined by the village in accordance with the provisions of this chapter. When appropriate, the village may use a basis other than assessable area, assessable front footage, or assessable value of real property in allocating service or project costs among properties specially benefited by a special assessment service or project, including, but not limited to, the amount of any impact or concurrency fees, or other similar governmental charges levied in connection with the development of the properties, for which the property in the assessable area would be liable and for which the special assessment is levied in lieu thereof.~~

~~*Project(s)* means a valuable addition made to real property or an amelioration in its condition. For the purposes of this chapter, the term shall include but not be limited to repairs and replacement.~~

~~*Service(s)* means a valuable public service provided to owners of real property which provides a special benefit to the real property serviced.~~

~~*Special assessment public service program ("service") or public works project ("project")* means a public service program or public works project which adds to or extends the capability of a municipal service (including another governmental unit's service pursuant to an interlocal agreement between the village and such other governmental unit or units) and which specially benefits properties within the assessable area in which the special benefits of the service or project may be determined, by increasing the safety, utility, accessibility or value of the properties involved or by levying a special assessment in lieu of an impact fee, concurrency fee or other similar governmental charge levied in connection with the development of the properties. The term includes, but is not necessarily limited to:~~

- ~~(1) Construction, reconstruction, repair, maintenance, paving, repaving, widening, guttering or draining of streets, alleys and sidewalks;~~
- ~~(2) Construction, reconstruction, repair or maintenance of permanent pedestrian canopies over public sidewalks and ways;~~
- ~~(3) Construction, reconstruction, repair or maintenance of lighting, landscaping, street furniture, signage, bike paths, horse trails, subdivision or neighborhood boundary walls, trails and other amenities associated with streets, sidewalks, or public ways;~~
- ~~(4) Construction, reconstruction, repair, maintenance, renovation, excavation, grading, stabilization, relocation and upgrading of greenbelts, swales, culverts, sanitary sewers, water lines, storm sewers, outfalls, canals, primary, secondary, and tertiary drains, water bodies, marshlands, and natural areas, separately or as part of a comprehensive stormwater management system, including the necessary appurtenances and structures thereto and including, but not limited to, dams, weirs, and pumps and underdrains, retention and detention ponds;~~

- ~~(5) Construction, reconstruction, repair or maintenance of sanitary sewers, gravity lines, force mains, lift stations, telemetry systems, water mains, water laterals and other potable and reuse water distribution and storage facilities, including the necessary appurtenances thereto;~~
- ~~(6) Construction, reconstruction, repair or maintenance of bridges and culverts;~~
- ~~(7) Construction, reconstruction, repair or maintenance of parks and other public recreational facilities and improvements, including appurtenances thereto;~~
- ~~(8) Construction, reconstruction, repair or maintenance of public schools and other public educational facilities and improvements, including appurtenances thereto;~~
- ~~(9) Creation, restoration, drainage or reclamation of wet, low, or overflowed lands;~~
- ~~(10) Construction, reconstruction, repair or maintenance of off street parking facilities, parking garages, or similar facilities;~~
- ~~(11) Construction, reconstruction, repair or maintenance of mass transportation facilities;~~
- ~~(12) Provision for commercial projects in an enterprise zone as defined in F.S. § 159.27(19);~~
- ~~(13) Construction, rehabilitation, revitalization and beautification of village neighborhoods and low, moderate and affordable housing;~~
- ~~(14) Burial of overhead utility lines, including without limitation acquisition of necessary or convenient easements or rights-of-way;~~
- ~~(15) Provision for landscaping and green spaces;~~
- ~~(16) Provision of all other public improvements and services as designated by the village council;~~
- ~~(17) Stabilization and improvement of:
 - ~~a. Retail business districts;~~
 - ~~b. Wholesale business districts;~~
 - ~~c. Nationally recognized historic districts;~~
 - ~~d. Industrial districts;~~
 - ~~e. Educational districts;~~
 - ~~f. Commercial districts; or~~
 - ~~g. Office and newly developing districts;~~
 - ~~h. And such other areas as the village council may desire from time to time, or any combination of such districts, through promotion, management, marketing, security, maintenance and other similar services in the municipality.~~~~

~~(18) Provision of public service programs including but not limited to the village's fire and emergency medical services program and all costs associated therewith and the village's solid waste collection services and all costs associated therein.~~

~~(19) Provision of engineering, surveys, designs, documents, plans and specifications, legal services and all services related to the feasibility or practicability of such service or project.~~

~~The term includes any service or project of general and special benefit to the public which the village council determines to serve a proper public purpose, and may include services or projects conducted jointly with any other public agency or publicly regulated utility.~~

~~*Special benefit* shall mean a logical relationship between the service or project and the benefit to real property.~~

~~*Street* includes but is not limited to a road, highway, boulevard, alley, street or other public thoroughfare.~~

~~*Total cost for service or project* means the sum of all expenses chargeable to a service or project, including all costs incurred from inception to final acceptance, if applicable, including by way of example and not limitation, engineering, field, design, and overhead costs; acquisition and construction costs; operating and equipment costs; direct village labor and material costs; general village administrative and overhead costs as a fixed percentage of the other total costs; attorneys fees; and other necessary or incidental expenses. Such costs may include the cost of construction or reconstruction, repair, or maintenance, the cost of all labor and materials, the cost of all lands, property, rights, easements, and franchises acquired, financing charges, interest, discount on the sale of special assessment bonds or anticipation certificates, cost of plans and specifications, surveys, environmental assessments, remediation or mitigation, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of providing such service or project or the construction or reconstruction, repair or maintenance of such service or project, administrative expense, and such other expense as may be necessary or incident to the service or project and financing authorized.~~

~~*Uniform Assessment Collection Act (Uniform Method)* refers to F.S. § 197.3632 or any successor statute authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.~~

~~(Ord. No. 2005-12, § 1, 5-10-05)~~

Sec. 3-3. Declaration of intent; notice.

~~(a) Whenever the village shall decide that a special assessment service or project needs to be provided or accomplished, the village council shall by resolution (the "intent resolution") declare the village's intention to have such work performed or services provided, designating the nature of the work or services; the location of the work or services; the part or portion of the cost to be paid by special assessment; the manner in which special assessments shall be made; when such assessments are to be paid; and what part, if any, shall be apportioned to be paid from other funds of the village~~

~~or another participating governmental unit(s). Such intent resolution shall also describe the lands on which the special assessment is to be levied and it shall be sufficient to describe such lands as all lots and lands located within the assessable area receiving special benefit from the service or project. Such intent resolution shall also state the estimated costs of the service or project. The resolution may be adopted prior to or within one year of the completion of construction of the assessment or service or project and if the work is completed, the actual costs of the service or project shall be stated within the body of the resolution.~~

- ~~(b) At the time of the adoption of the intent resolution there shall be on file with the village clerk an assessment plat showing the area to be assessed, together with preliminary plans and specifications and an estimate of the total or annual cost for the service or project, which assessment plat, preliminary plans and specifications, and estimate shall be open to the inspection of the public.~~
- ~~(c) Upon adoption of the intent resolution, if not done previously, the village may advertise for bids, provide in-house or provide pursuant to an agreement with a third party or another public agency or a publicly regulated utility agency to provide the service or for the construction of the project. If bid, the bid shall be advertised in a newspaper of general circulation in the municipality and include in such advertisement the intent resolution number and title. All such bids shall conform to the village bid procedures then in effect.~~
- ~~(d) Promptly after adoption of the intent resolution, the village clerk shall cause said intent resolution to be published by title once a week for a period of two weeks in a newspaper of general circulation in the village and in Palm Beach County, Florida. The notice of the intent resolution shall provide that the complete resolution is available for review and copying at the office of the village clerk during normal business hours.~~
- ~~(e) Whenever it is necessary for the village to adopt an assessment roll on an annual basis, it shall not be necessary to adopt an intent resolution each year. Instead, in subsequent years, the village shall adopt a preliminary assessment resolution, which shall provide for the purpose of the special assessment and the preliminary amount of such assessment. The preliminary assessment resolution may also provide for the date, time and place of the public hearing required by section 3-5, and any other information the village deems necessary. The preliminary assessment resolution need not be published subsequent to adoption. If the original assessment resolution provided for payments over a period of years and there is no change to the amount or period of assessment from the original resolution, no subsequent annual resolution is necessary.~~

~~(Ord. No. 2005-12, § 1, 5-10-05)~~

~~Sec. 3-4. Setting assessments for special assessment improvements or service program.~~

- ~~(a) *Determining basis for assessment.* The village shall determine the assessable area; assessable front footage; or assessable value, for each special assessment service or project and shall prepare an assessment roll (the "preliminary assessment roll") in~~

~~accordance with the method of assessment set out in the intent resolution. Such preliminary assessment roll shall show the lots and lands to be assessed and, after taken into consideration the limitations contained in subsection (b) of this section, the amount of each assessment and the total assessment.~~

- ~~(b) *Determining assessable cost per property owner for property located in the assessable area.* The estimated annual cost or total cost, which ever is applicable, for the service or project shall be used to develop a formula to determine the basis for assessment in order to attribute cost per property owner for property located within the assessable area. The assessable cost for each property owner for property located in the assessable area shall then be added together to arrive at the total assessment.~~
- ~~(c) *Annual determination of cost for a service.* The estimated cost of a service funded by a special assessment levied pursuant to this chapter shall be set annually by resolution of the village council after notice and public hearing, if the estimated annual cost for the upcoming year exceeds the current annual assessment amount. If the estimated annual cost for the upcoming year does not exceed the current annual assessment amount then notice and public hearing shall not be required but the village council will set the amount of the annual assessment by resolution at a public meeting. Whenever a public hearing is required by this section, the public hearing held by the village pursuant to section 3-5 shall satisfy the requirements of this section.~~

~~(Ord. No. 2005-12, § 1, 5-10-05)~~

Sec. 3-5. Levying special assessment.

- ~~(a) Upon completion of the preliminary assessment roll, the village shall by resolution or motion fix a time and place at which the owners of property to be assessed, or any other persons interested therein, may appear before the village and be heard with respect to the propriety and advisability of providing the service or project and funding them with special assessments, the cost of the service or project, and the amount to be assessed against each property so improved or serviced. The village clerk shall provide written notice of such hearing to each of the property owners whose property is subject to being assessed. Such notice shall be provided by first class U.S. mail, postage prepaid, or through the annual TRIM Notices forwarded by the Palm Beach County Property Appraiser, not less than 20 days in advance of the hearing. The notice by mail shall include the following information: the purpose of the assessment; the total amount to be levied against each parcel; the unit of measurement to be applied against each parcel to determine the assessment; the number of such units contained within each parcel; the total revenue the local government will collect by the assessment; a statement that failure to pay the assessment will cause a tax certificate to be issued against the property which may result in a loss of title; a statement that all affected property owners have a right to appear at the hearing and to file written objections with the village within 20 days of the notice; and the date, time, and place of the hearing. In addition, notice of the time and place of such hearing shall be given by publication in a newspaper of general circulation in the village not less than 20 days in advance of the hearing; provided however, that any~~

~~mistake in such advertised notice or in any mailed notice shall not void any assessment levied in accordance with the provisions of this chapter. The published notice shall contain at least the following information: the name of the village; a geographic depiction of the property subject to the assessment; the proposed schedule of the assessment; the fact that the assessment will be collected by the tax collector or the village directly; and a statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice. The resolution or motion shall contain the date, time, and place of the hearing, describe the assessable area, and advise persons interested that the description of the properties located within the assessable area and the amount of the assessment can be ascertained at the office of the village clerk.~~

- ~~(b) At such public hearing, the village council shall consider all objections relating to the assessments and shall make a final decision on whether to levy the special assessments. Thereafter, if the decision is to levy the special assessments, the village council shall equalize or adjust such assessments where justice and right so dictate, and shall approve and confirm the assessment roll by resolution (the "assessment resolution"). When so equalized and approved, a final assessment roll shall be filed in the office of the village clerk of the village and such assessments shall stand confirmed and remain legal, valid, and binding first liens upon the property against which such assessments are made until paid. The annual assessment amount for a service shall be determined by village in accordance with section 3-4 (c) shall be filed in the office of the village clerk of the village, and such assessments shall stand confirmed and remain legal, valid and binding first liens upon the property against which such assessments are made until paid.~~
- ~~(c) A statement of the confirmed assessment shall be provided to each property owner listed on the roll. The property owner shall have such time as may be provided in the assessment within which to pay the total or annual assessment.~~
- ~~(d) The village shall determine in the assessment resolution when the payment of any special assessment levied pursuant to this chapter shall commence, and the frequency and amount of any scheduled collections of such assessments upon determination of the confirmed assessment roll.~~
- ~~(e) Upon completion of a project or termination of a service, any excess in the special assessment as originally made, approved and confirmed over the actual cost of the improvement to be paid by such special assessment, shall be credited proportionately against each special assessment against each parcel in the manner set forth in the assessment resolution, or used for any lawful purpose.~~
- ~~(f) The village council shall be authorized to revise and correct errors and omissions in the assessment roll if:
 - ~~(1) Any assessment made under this chapter is annulled, vacated, or set aside, in whole or in part, by the judgment of any court. In such a case, the village council may revise the assessment to comport with the guidelines of any such judgment until such time as a valid assessment is imposed.~~~~

- ~~(2) The village council is satisfied that any assessment is so defective that it can not be enforced or collected.~~
- ~~(3) The village council has omitted any property from the assessment roll which should have been assessed for the service or project funded by the assessment.~~
- ~~(g) Prior to the delivery of the assessment roll to the tax collector, the mayor, or his or her designee, shall be authorized to reclassify any property subject to the assessment based upon competent substantial evidence, or to correct any error in applying the assessment upon any particular parcel, either on his or her own initiative or upon receipt of a timely filed written petition by a property owner.~~
- ~~(h) No error or omission by the village council, mayor or any of his or her designees, village administrator, property appraiser, tax collector, or their deputies or employees, shall operate to release or discharge any obligation for payment of an assessment imposed by the village council under the provisions of this chapter.~~
- ~~(Ord. No. 2005-12, § 1, 5-10-05)~~

~~Sec. 3-6. Partial year assessments.~~

~~A partial year assessment shall be imposed against all property for which a certificate of occupancy is issued after adoption of the assessment resolution for any special assessment levied pursuant to this chapter. The amount of the partial year assessment shall be calculated upon a monthly rate, which shall be one-twelfth of the annual rate for such property computed in accordance with the assessment resolution for the calendar year in which the certificate of occupancy is issued. Such monthly rate shall be imposed for each full calendar month remaining in the calendar year. In addition to the monthly rate, the partial year assessment shall also include an estimate of the subsequent calendar year's assessment. No certificate of occupancy shall be issued until full payment of the partial year assessment is received by the village. Issuance of the certificate of occupancy by mistake or inadvertence, and without the payment in full of the partial year assessment, shall not relieve the owner of such property of the obligation of full payment. For the purpose of this provision, such partial year assessment shall be deemed due and payable on the date the certificate of occupancy was issued and shall constitute a lien against such property as of that date. Said lien shall be equal in rank and dignity with the liens of all state, county, district or municipal taxes and special assessments, and superior in rank and dignity to all other liens, encumbrances, titles and claims in and to or against the real property involved and shall be deemed perfected upon the issuance of the certificate of occupancy.~~

~~(Ord. No. 2005-12, § 1, 5-10-05)~~

~~Sec. 3-7. Collection of payments; installment payments; certificate of indebtedness.~~

- ~~(a) *Notice of assessment.* Promptly after adoption of the assessment resolution, a statement of the confirmed assessment shall be provided to each property owner listed on the confirmed roll. The special assessments shall bear interest and be payable at the time and in the manner stipulated in the assessment resolution, and~~

~~shall remain liens, co-equal with the lien of all state, county, district, and municipal taxes, other non-ad valorem assessments which are duly levied, superior in dignity to all other liens, titles, and claims, until paid. The village may elect to collect its own assessments, retain a third party to collect, use the uniform method or use any other legally available mechanism for collection.~~

~~(b) *Installment payments.* The assessment, subject to the interest provided in this section, may be satisfied through weekly, monthly or annual installments as provided for in the assessment resolution. All assessments, together with interest accrued thereon to the date of payment, may be paid in full at any time and the property owner shall not incur any penalty for prepayment.~~

~~(c) *Certificate issued for failure to pay assessment.* Where assessments are not paid within the time provided in the assessment resolution, a certificate of indebtedness shall be issued. The certificate shall contain a description of the assessed property, the amount of the assessment, a description of the service or project, and shall identify the assessment resolution under which the assessment was made. Such certificate shall be recorded in the public records of Palm Beach County and shall constitute a lien coequal with the lien of all state, county, district and other municipal taxes, superior in dignity to all other liens, titles and claims, until paid, and shall bear interest at a rate to be set forth in the assessment resolution.~~

~~(d) *Enforcement of certificate.* Upon failure of the property owner to pay any assessment installment due, any part thereof, or any interest, the procedures and remedies of the uniform method shall apply if used by village, if not then the village, or its agent, may cause the necessary proceedings to be brought to enforce payment of either the assessment or the certificate issued under section 2-76(c), together with all accrued interest. As a part of such proceeding, the village shall be entitled to recover all costs and a reasonable attorney's fee. Default in the payment of any installment of the assessment or accrued interest shall result in the entire or annual assessment, if applicable, plus interest becoming immediately due. Such foreclosure proceeding shall be instituted and prosecuted under F.S. Chs. 43 and 173, or as otherwise provided by law.~~

~~(e) *Validity.* In no event shall the amount or validity of the lien or certificate of indebtedness as provided for by this chapter be questioned in any direct or collateral proceeding instituted more than 30 days after the issuance of such certificate of indebtedness by the village, or such shorter time as may result from the filing of bond validation proceedings.~~

~~(Ord. No. 2005-12, § 1, 5-10-05)~~

~~**Sec. 3-8. Issuance of bonds.**~~

~~The village may at any time without an election being held therefore borrow money and issue bonds therefore in anticipation of the collection of unpaid special assessments levied or to be levied for the purpose of paying the cost of special assessment service or project.~~

~~(Ord. No. 2005-12, § 1, 5-10-05)~~

~~Sec. 3-9. Prepayment of special assessments.~~

~~Notwithstanding the provisions of F.S. § 170.09, section 3-7(b) of this chapter or any other provision of law pertaining to the prepayment of special assessments, the village council may, in its discretion, by enabling resolution(s), provide for restrictions or limitations on the prepayment of special assessments levied by the village.~~

~~(Ord. No. 2015-03, § 1, 2-10-15)~~

Chapter 18 - SPECIAL ASSESSMENT

Sec. 18-1: Scope

- (a) The provisions of this chapter shall apply to special assessment public service programs and public works projects, and may be referred to as the "home rule special assessment ordinance." Public service programs ("service(s)") and public works projects ("project(s)") may be made or undertaken in accordance with the home rule special assessment ordinance whenever Wellington determines that such services or projects should be undertaken and completed and the costs collected, in whole or in part, as a special assessment. The authority granted to Wellington pursuant to the home rule special assessment ordinance shall be supplemental to other provisions of law, including F.S. Ch. 170, and shall not be construed as limiting, or being limited by, such other provisions of law. To the extent provisions of this chapter conflict with special assessment procedures and powers related to the Acme Improvement District, the procedures and powers previously in effect by such entity shall control with respect to assessments levied by it.
- (b) Special assessments made pursuant to this chapter shall be levied only for the purposes enumerated in this chapter and at a rate of assessment based upon the special benefit accruing to the property assessed from such service or project undertaken by Wellington. The reasonably estimated value of such special benefit must equal or exceed the amount of each assessment. Adoption of the assessment resolution, as hereinafter defined and provided, shall constitute a legislative finding that these standards have been met.

Sec. 18-2: Definitions

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. If a definition is not provided in this chapter, the term shall be understood as having its ordinary, everyday meaning unless the context indicates it bears a technical sense.

Assessable Area: the real property that will receive a special benefit from a special assessment service or project.

Assessable Front Footage: the length of real property abutting a special assessment service or project that will receive a special benefit from that service or project.

Assessable Value of Real Property: the value of real property that will receive a special benefit from a special assessment service or project. For the purposes of this chapter, the value shall be determined by reference to the assessed value according to the latest final assessment roll prepared by the property appraiser for Palm Beach County, including improvements located thereon, but without regard to exemptions.

Basis for Assessment: the assessable area; assessable front footage; or assessable value of real property, deriving a special benefit from a special assessment service or project, as determined by Wellington in accordance with the provisions of this chapter. When appropriate, Wellington may use a basis other than assessable area, assessable front footage, or assessable value of real property in allocating the special benefits being derived by a special assessment service or project, including, but not limited to, the amount of any impact or concurrency fees, or other similar governmental charges levied in connection with the development of the properties, for which the property in the assessable area would be liable and for which the special assessment is levied in lieu thereof.

Project: the provision of public improvements that benefit real property or provide amelioration of its condition. For the purposes of this chapter, the term shall include but not be limited to the installation, construction, upgrade, repair, and replacement of improvements, works, and facilities.

Service: a public service that provides a special benefit to the real property receiving or benefitting from the service.

Special Assessment Public Service Program ("Service") or Public Works Project ("Project"): a public service program or public works project that adds to or extends the capability of a municipal service, function, or activity (including another governmental unit's service pursuant to an interlocal agreement between Wellington and such other governmental unit) and which specially benefits properties within the assessable area in which the special benefits of the service or project may be determined by increasing the use, development, safety, utility, accessibility or value of the real property involved or is in lieu of an impact fee, concurrency fee, or other similar governmental charge levied in connection with the development of the real property being provided such service or project benefit. The terms include, but are not necessarily limited to:

- (1) Construction, reconstruction, upgrade, repair, removal, maintenance, paving, repaving, widening, guttering, or draining of streets, alleys, and sidewalks;
- (2) Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of permanent pedestrian canopies over public sidewalks and ways;
- (3) Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of lighting, landscaping, street furniture, signage, bike paths, horse trails, subdivision or neighborhood boundary walls, trails, and other amenities associated with streets, sidewalks, or public ways;

- (4) Construction, reconstruction, repair, replacement, removal, maintenance, renovation, excavation, grading, stabilization, relocation and upgrading of greenbelts, preserves, wetlands, uplands, swales, culverts, sanitary sewers, water lines, storm sewers, pumps, telemetry systems, weirs, outfalls, canals, primary, secondary, and tertiary drains, water bodies, marshlands, and natural areas, separately or as part of a comprehensive stormwater management system, including the necessary appurtenances and structures thereto and including, but not limited to, dams, weirs, and pumps and underdrains, retention and detention ponds;
- (5) Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of sanitary sewers, gravity lines, force mains, lift stations, telemetry systems, water mains, water laterals, and other potable and reuse water distribution and storage facilities, including the necessary appurtenances thereto;
- (6) Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of bridges and culverts;
- (7) Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of parks, pathways, and public recreational works, facilities, and improvements, including appurtenances and facilities thereto and therefor;
- (8) Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of public schools and other public educational facilities and improvements, including appurtenances thereto;
- (9) Creation, restoration, drainage, or reclamation of wet, low, flooded, or overflowed lands;
- (10) Construction, reconstruction, upgrade, repair, replacement, removal, or maintenance of off street parking facilities, parking garages, or similar facilities;
- (11) Construction, reconstruction, repair, or maintenance of mass transportation facilities;
- (12) Provision for commercial projects in an enterprise zone as defined in F.S. § 159.27(19);
- (13) Construction, rehabilitation, revitalization, and beautification of Wellington neighborhoods and low, moderate, and affordable housing;
- (14) Burial of overhead utility lines, including without limitation acquisition of necessary or convenient licenses, easements, rights-of-way, and property interests;
- (15) Provision for landscaping and green spaces;
- (16) Provision of all other public improvements and services as designated by Wellington's Council;
- (17) Stabilization and improvement of:
 - a. Retail business districts;
 - b. Wholesale business districts;
 - c. Nationally recognized historic districts;
 - d. Industrial districts;
 - e. Educational districts;

- f. Commercial districts;
 - g. Office and newly developing districts, or;
 - h. Such other areas as the Wellington Council may desire from time to time, or any combination of such districts, through promotion, management, marketing, security, maintenance, and other similar services in Wellington.
- (18) Provision of public service programs including but not limited to Wellington's fire and emergency medical services program and all costs associated therewith and Wellington's solid waste collection services and all costs associated therein.
- (19) Provision of engineering, surveys, designs, documents, plans and specifications, legal services, and all services related to the feasibility or practicability of such public services or projects.

The term includes any service or project of special benefit to the public which the Wellington Council determines to serve a proper public purpose, and may include services or projects conducted jointly with any other public agency or publicly regulated utility.

Special Benefit: a logical relationship between a service or project and its benefit to real property.

Street: includes but is not limited to a road, highway, boulevard, alley, street, or other public thoroughfare.

Total Cost for Service or Project: the sum of all costs appertaining, applicable, or chargeable to a service or project, including all costs incurred from inception to final acceptance, if applicable, including by way of example and not limitation, the following: engineering, field design, and overhead costs; acquisition and construction costs; operating and equipment costs; direct Wellington labor and material costs; general Wellington administrative and overhead costs as a fixed percentage of the other total costs; attorney's fees; and other necessary or incidental expenses. Such costs may include the cost of construction or reconstruction, repair, or maintenance, the cost of all labor and materials, the cost of all lands, property, rights, easements, and franchises acquired, financing charges, interest, creation of initial reserve and debt service funds, costs of issuance, including advertising and printing, discount on the sale of special assessment bonds or anticipation certificates; cost of plans and specifications, surveys, environmental assessments, permitting, governmental compliance, government approvals, remediation or mitigation; surveys of estimates of costs and of revenues, and all other expenses necessary or incident to determining the feasibility or practicability of providing such service or project or the construction or reconstruction, repair, or maintenance of such service or project, administrative expense, and such other expense as may be necessary or incident to the service or project and financing authorized.

Uniform Assessment Collection Act (Uniform Method) refers to F.S. § 197.3632 or any successor statute authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

Sec. 18-3: Declaration of Intent; Notice

- (a) Whenever Wellington shall decide that a special assessment service or project needs to be provided or accomplished, the Wellington Council shall by resolution (the "intent resolution") declare Wellington's intention to have such work performed or services provided, designating the nature of the work or services; the location of the work or services; the part or portion of the cost to be paid by special assessment; the manner in which special assessments shall be made; when such assessments are to be paid; and what part, if any, shall be apportioned to be paid from other funds of Wellington or another participating governmental unit. Such intent resolution shall also describe the lands on which the special assessment is to be levied and it shall be sufficient to describe such lands as all lots and lands located within the assessable area receiving special benefit from the service or project. Such intent resolution shall also state the estimated costs of the service or project.
- (b) At the time of the adoption of the intent resolution there shall be on file with the Wellington Clerk an assessment map showing the area to be assessed, together with preliminary plans and specifications and an estimate of the total or annual cost for the service or project, which assessment map, preliminary plans and specifications, and estimate shall be open to the inspection of the public.
- (c) Upon adoption of the intent resolution, Wellington may advertise for bids, provide in-house or provide pursuant to an agreement with a third party or another public agency or a publicly regulated utility agency to provide the service or for the construction of the project. If bid, the bid shall be advertised in a newspaper of general circulation in Wellington and include in such advertisement the intent resolution number, and title. All such bids shall conform to Wellington or other statutorily required bid procedures then in effect.
- (d) Promptly after adoption of the intent resolution, the Wellington Clerk shall cause a notice of said intent resolution to be published by title once a week for a period of two consecutive weeks in a newspaper of general circulation in Wellington and the county. The notice of the intent resolution shall provide that the resolution is available for review and copying at the office of the Wellington Clerk during normal business hours.
- (e) Should Wellington choose to adopt an assessment roll on an annual basis, such assessment roll shall be adopted pursuant to applicable law.

Sec. 18-4: Setting Assessments for Special Assessment Improvements or Service Program

- (a) *Determining basis for assessment.* Following adoption of the intent resolution, Wellington shall thereafter determine the assessable area; assessable front footage; or assessable value, for each special assessment service or project and shall prepare

a preliminary assessment roll (the "preliminary assessment roll") in accordance with the method of assessment set forth in the intent resolution. Such preliminary assessment roll shall show the tracts, parcels, lots and lands to be assessed and, after taking into consideration the requirements set forth in paragraph (b) of this section, the amount of each tract, parcel, or lot assessment and the combined total annual assessment.

- (b) *Determining assessable cost for property located in the assessable area.* The estimated annual cost or total cost, whichever is applicable, for the service or project shall be used to develop a formula to determine the basis for assessment in order to allocate such cost to assessable property located within the assessable area. The allocated assessable cost to all property located in the assessable area shall then be added together to arrive at the total assessment.
- (c) *Annual determination of cost for a service.* The estimated cost for provision of a service funded by a special assessment levied pursuant to this chapter shall be set annually according to law by the Wellington Council after notice and public hearing thereon, if the estimated annual service cost for the upcoming year exceeds the current annual service cost. If the estimated annual service cost for the upcoming year does not exceed the current annual service cost, then notice and public hearing shall not be required but the Council shall set the amount of the annual assessment by resolution at a public meeting. Whenever a public hearing is required by this section, the public hearing held by Wellington pursuant to section 18-5 shall satisfy the requirements of this section.

Sec. 18-5: Levying Special Assessment

- (a) Upon completion of the preliminary assessment roll, Wellington shall, by resolution or motion, fix a time and place at which the owners of property to be assessed, or any other persons interested therein, may appear before the Wellington Council and be heard with respect to the propriety and advisability of providing the service or project and funding them with special assessments, the cost of the service or project, and the amount to be assessed against each property to be benefitted. The Wellington Clerk shall provide written notice of such hearing to each of the property owners as shown on the current tax roll whose property is subject to being assessed. Such notice shall be provided by first class U.S. mail, postage prepaid, or through the annual TRIM Notices sent by the county property appraiser, not less than 30 days in advance of the hearing. The notice by mail shall include the following information: the purpose of the assessment; the total amount to be levied against each parcel; the unit of measurement to be applied against each parcel to determine the assessment; the number of such units contained within each parcel; the total revenue the local government will collect by the assessment; a statement that failure to pay the assessment will cause a tax certificate to be issued against the property which may result in a loss of title; the date, time, and place of the hearing; and a statement that all affected property owners have a right to appear at the hearing and to file written objections with Wellington prior to or at the hearing. In addition, notice of the time and place of such hearing shall be given once a week for two consecutive weeks by publication in a newspaper of general circulation in Wellington with the first publication

date to be not less than 20 days in advance of the hearing; provided however, that any mistake in such advertised notice or in any mailed notice shall not void any assessment levied in accordance with the provisions of this chapter. The published notice shall contain at least the following information: the name Wellington; a geographic depiction of the property subject to the assessment; the proposed schedule of the assessment; the fact that the assessment will be collected by the tax collector or Wellington directly; and a statement that all affected property owners have the right to appear at the public hearing and the right to file written objections with Wellington prior to or at the hearing. The resolution or motion shall contain the date, time, and place of the hearing, describe the assessable area, and advise that the description of the properties located within the assessable area and the amount of the assessment can be ascertained at the office of the Wellington Clerk.

- (b) At such public hearing, the Wellington Council shall consider all objections relating to the assessments and shall make a final decision on whether to levy some or all of the special assessments. Thereafter, if the decision is to levy some or all of the special assessments, the Council shall thereupon proceed to equalize or adjust such assessments where justice and right so dictate, and shall approve, confirm, and levy the assessment roll (the "confirmed assessment roll") by resolution (the "assessment resolution"). When so equalized and approved, the confirmed assessment roll shall be filed in the office of the Wellington Clerk and the assessments shown thereon shall remain legal, valid, and binding first liens upon the property against which such assessments are made until paid. The annual assessment amount for a service if subject to annual adjustment shall be determined by Wellington in accordance with section 18-4(c) and filed in the office of the Wellington Clerk, and such assessments shall remain legal, valid, and binding first liens upon the property against which such assessments are made until paid.
- (c) A statement showing the approved assessment amount for a parcel shall be provided to the property owner of such parcel. The property owner shall have such time, if any, as may be set forth in the assessment resolution within which to pay the total assessment applicable to the owner's assessed parcel.
- (d) Wellington shall specify in the assessment resolution when the payment of any special assessment levied pursuant to this chapter shall commence, its frequency of assessment, the amount of each scheduled collection of such assessment, and that all such assessments shall vest on January 1 in the same manner as ad valorem taxes.
- (e) Upon completion of a project or termination of a service, any excess in the special assessment as originally made, approved, and confirmed over the actual cost of the improvement to be paid by such special assessment, shall be credited proportionately to each special assessment against each parcel in the manner set forth in the assessment resolution, or used for any lawful purpose.
- (f) The Wellington Council shall be authorized to revise and correct errors and omissions in the assessment roll if:

 - (1) Any assessment made under this chapter is annulled, vacated, or set aside, in whole or in part, by the judgment of any court. In such a case, the Wellington Council may revise the assessment to comport with the guidelines of any such judgment until such time as a valid assessment is imposed.

- (2) The Wellington Council is satisfied that any assessment is so defective that it cannot be enforced or collected.
- (3) he Wellington Council has omitted any property from the assessment roll which should have been assessed for the service or project funded by the assessment.
- (4) A material error is determined to have occurred in the calculation or allocation of either the benefits or assessments.
- (g) Prior to the delivery of an annual assessment roll to the tax collector, the, Wellington Clerk, to the extent authorized in the assessment resolution, may correct the classification of any property subject to an assessment based upon competent substantial evidence, or correct any error in applying or omitting the assessment upon any particular parcel. Such correction may be made, either on the Wellington Clerk's initiative or by written petition by a property owner received by Wellington prior to delivery of an annual assessment roll to the tax collector and found by the Wellington Clerk to correctly identify an error.
- (h) No error or omission by the Wellington Council, mayor, Wellington Clerk, Village Manager or their designees, property appraiser, tax collector, or their deputies or employees, shall operate to release or discharge any obligation for payment of an assessment imposed by the Wellington Council under the provisions of this chapter.

Sec. 18-6: Partial Year Assessments

A partial year assessment shall be imposed against all real property for which a certificate of occupancy is issued following the adoption of either the assessment resolution or an annual assessment roll for any special assessment levied pursuant to this chapter which, as a result of the issuance of the certificate, requires a reclassification of the real property for assessment purposes or a change to its assessment rate. The amount of the partial year assessment shall be calculated on a monthly rate, which shall be one-twelfth of the annual assessment rate difference between the prior assessment rate and the new assessment rate for such property computed in accordance with the assessment resolution for the calendar year in which the certificate of occupancy is issued. The dollar amount resulting from the application of monthly assessment rate difference to the current assessment amount for the real property shall be imposed for each full calendar month remaining, if any, until the new assessment rate is levied and applied to the real property in an annual assessment roll. No certificate of occupancy shall be issued until full payment of the partial year assessment is received by Wellington. Issuance of the certificate of occupancy by mistake or inadvertence, and without the payment in full of the partial year assessment, shall not relieve the owner of such property of the obligation of full payment of the partial year assessment. For the purpose of this provision, such partial year assessment shall be deemed due and payable on the date the certificate of occupancy is issued and shall constitute a lien against such property as of that date. To the extent permitted by law, including but not limited to F.S. 170.09, 197.363, 197.3631 and 197.3632, such lien shall be perfected upon the issuance of the certificate of occupancy and co-equal with the lien of all state, county, district, municipal taxes and other non-ad valorem assessments which are duly levied, and superior in rank and dignity to all other liens, encumbrances, titles and claims in and to the real property involved until paid.

Sec. 18-7: Collection of Payments; Installment Payments; Certificate of Indebtedness

- (a) Notice of assessment. After adoption of the assessment resolution, a statement of the confirmed assessment for a parcel of real property shall be provided in a timely fashion to each parcel's owner as shown on the confirmed assessment roll. Special assessments shall bear interest and be payable at the time and in the manner stipulated in the assessment resolution, and to the extent permitted by law, including but not limited to F.S. §§ 170.09, 197.363, 197.3631 and 197.3632, shall remain liens, co-equal with the lien of all state, county, district, and municipal taxes, and other non-ad valorem assessments which are duly levied, superior in dignity to all other liens, titles, and claims, until paid. Wellington may elect to collect its own assessments, retain a third party to collect them, use the uniform method provided in F.S. § 197.3632, or use any other legally available mechanism for collection.
- (b) Installment payments. The assessment, subject to the interest provided in this section, may be satisfied through weekly, monthly, or annual installments as is authorized in the assessment resolution. To the extent authorized in the assessment resolution, all assessments, together with interest accrued thereon to the date of payment, may be prepaid in full at any time and the property owner shall not incur any penalty for prepayment.
- (c) Certificate issued for failure to pay assessment. For assessments not collected pursuant to F.S. § 197.3262 and which are not paid within the time provided in the assessment resolution, a certificate of indebtedness shall be issued. The certificate shall contain a description of the assessed property, the amount of the assessment, a description of the service or project, and shall identify the assessment resolution under which the assessment was made. Such certificate shall be recorded in the public records of the county and, to the extent permitted by law, constitute a lien coequal with the lien of all state, county, district, and other municipal taxes, superior in dignity to all other liens, titles, and claims, until paid, and shall bear interest at a rate to be set forth in the assessment resolution.
- (d) Enforcement of certificate. Upon failure of the property owner to pay any assessment installment due, any part thereof, or any interest due thereon, the procedures and remedies of the uniform method of F.S. § 197.3632 shall apply if used by Wellington. If the uniform method is not used, then Wellington, or its agent, may cause the necessary proceedings to be brought to enforce payment of either the assessment or the certificate issued under section 18-7(c), together with all accrued interest. As a part of such proceeding, Wellington shall be entitled to recover all costs and a reasonable attorney's fee. Default in the payment of any installment of the assessment or accrued interest shall result in the entire or annual assessment, if applicable, plus interest becoming immediately due. Such foreclosure proceeding may be instituted and prosecuted under F.S. Chs. 43 and 173, or as otherwise provided by law.
- (e) Validity. In no event shall the amount or validity of the lien or certificate of indebtedness as provided for by this chapter be questioned in any direct or collateral proceeding instituted more than 30 days after the issuance of such certificate of

indebtedness by Wellington, or such shorter time as may result from the filing of bond validation proceedings.

Sec. 18-8: Issuance of Bonds

- (a) Wellington may at any time without an election being held therefore borrow money and issue bonds therefore in anticipation of the collection of unpaid special assessments levied or to be levied for the purpose of paying the cost of a special assessment service or project.
- (b) Wellington shall not be required to validate bonded debt or issue certificates of debt that are secured by special assessments.

Sec. 18-9: Prepayment of Special Assessments

Notwithstanding the provisions of F.S. § 170.09, section 18-7(b) of this chapter or any other provision of law pertaining to waiver of interest or the prepayment of special assessments, the Wellington Council may, in its discretion, by its intent or assessment resolutions, provide for restrictions, limitations, or prohibitions as to the waiver of interest and the prepayment of special assessments levied by Wellington.