

Chapter 3 - SPECIAL ASSESSMENT

FOOTNOTE(S):

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Editor's note— 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 No. 2005-12, § 1, adopted May 10, 2005, repealed the former Ch. 3, §§ 3-1—3-8, and enacted a new Ch. 3 as set out herein.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.

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 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, whichever 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)