

CITY OF MONTGOMERY

ORDINANCE NO. 3-2013

**AN ORDINANCE ADOPTING SECTION 726 OF THE MONTGOMERY CITY CODE:
SPECIAL ASSESSMENT POLICY.**

The City Council of the City of Montgomery, Minnesota, hereby ordains: that the City adopts Section 726 of the Montgomery City Code as follows:

Section 726 – SPECIAL ASSESSMENT POLICY

726.01 Policy Goals. The goals of Montgomery's special assessment policies and procedures are to:

Subd. 1 Provide a stable, cost effective, and continuing source of funding within the financial capacity of the City to accommodate infrastructure needs for new development, redevelopment and maintenance within the community.

Subd. 2 To be responsive to community needs and desires for health, safety, welfare, accessibility, and mobility provided by new infrastructure and the maintenance of existing assets.

Subd. 3 Provide for and ensure the consistent, uniform, fair, and equitable treatment, insofar as is practical, lawful and possible, of all property owners in regard to the assessment of cost for benefits to properties for the qualifying improvements listed in Chapter 429, Minnesota Statutes.

Subd. 4 Provide the City Council and staff with guidelines and methods to efficiently distribute infrastructure costs to benefitting properties in an equitable and consistent manner thereby enhancing the value of property by assigning a proportionate value of the improvements to the properties deriving from the improvements.

Subd. 5 Provide a comprehensive, well-constructed and well-maintained infrastructure which services individual properties and takes advantage of economies of regional scale and flexibility in the timing of infrastructure development.

Subd. 6 To provide an effective tool for the management of municipal resources and to support a highly functional and well-maintained system of infrastructure which promotes economic development and growth, fosters a sense of pride throughout the community, and facilitates the development and adoption of short and long-range capital improvement plans by identifying the magnitude and sources of funding available.

Subd. 7 Special assessments provide a means of levying charges for public services against property otherwise exempt from taxation.

726.02 Introduction. A special assessment is a levy on a property to defray the cost of public improvements. Chapter 429 of the Minnesota State Statutes grants cities the authority to use special assessments as a mechanism to finance a broad range of public improvements. The special assessments exist to assign as much cost as reasonable to those properties receiving a direct benefit from a public improvement project, thereby reducing the reliance on the general tax levy.

Assessing the property owner for the benefit(s) received from the public improvement prevents or minimizes the possibility that a property owner will reap a financial profit from the improvement at the expense of taxpayers. Special assessments are a valuable tool to cities in that the public improvement costs are assigned to benefiting properties.

While the special assessment goals, policies, and procedures have been identified herein, the City Council has the authority to deviate from this policy when such rationale in equity arises or when the law or statutes require such deviation.

726.03 Definitions. The following definitions apply to this Section of the code.

Subd. 1 “Adjacent or Abutting Property” means a property directly adjacent to public improvements.

Subd. 2 “Access” means a vehicular or pedestrian approach or entry to or exit from property. Properties shall be considered to have access to underground utility improvements when they directly abut and there is reasonable access available.

Subd. 3 “Adjusted Area” means an area of a benefited property that has been modified by an adjustment factor to more accurately represent the actual benefit the property receives from an improvement compared to other properties in the assessment area. Any adjustment must be approved by the Council. Design parameters which may be applied to determine the adjustment factor include, but are not limited to: trip generation; storm water runoff coefficients; water or sanitary sewer use; needed fire flow; or zoning or future land use.

Subd. 4 “Adjusted Frontage” means the assessable front footage of a benefited property modified by an adjustment factor to more accurately represent the true benefits that property receives from an improvement when compared to other properties in the assessment area. The adjustment will be based on the improvement design parameters applicable to that parcel, as approved by the City Council. This is useful for flag lots or other improved properties that have little direct frontage adjacent to the improvement and access is available directly to and from the improvement area. Design parameters which may be used to determine the adjustment factor include, but are not limited to: lot area comparison to surrounding lots to calculate equivalent front footage, trip generation, storm water runoff coefficients, water or sanitary sewer use, needed fire flow, or zoning or future land use.

Subd. 5 “Assessed Cost” means those costs of public improvements which have been determined to benefit specific properties. The assessed cost will be equal to the project cost minus the City cost. Project costs eligible for assessment include all costs

associated with the improvements, including, but not limited to, land acquisition, demolition, construction, administration, engineering, legal, financing and other costs. The financing charges include, but are not limited to, financial consultant's fees, bond counsel attorney's fees and capitalized interest.

Subd. 6 "Assessable Area" means the total area of the benefited properties, when using an area based assessment.

Subd. 7 "Assessable Footage" means the total front footage of all of the benefited properties, calculated by using the front footage method.

Subd. 8 "The Assessment Rate" is determined and annually adopted by the City Council. The Council adopts a unit rate which is associated with a single building lot as defined by City Code. The industrial rate is calculated by multiplying the residential unit rate by 1.2 then dividing by 75, which is the minimum frontage of a residential lot defined by City Code. Commercial and multi-family properties are assessed on a front footage basis, while residential is assessed on a unit basis. If a residential property has frontage allowing for a future lot split, then the second lot would be assessed. The Commercial rates are 1.0 times greater than Residential rates due to the increased use of the improvement.

Subd. 9 "Assessment Unit" means front footage, area, or unit.

Subd. 10 "Benefit" means the increase in property value as a result of a public improvement including, but not limited to, a street, sidewalk, trail, curb and gutter, water main, sanitary sewer, storm sewer, park, or street landscaping.

Subd. 11 "Commercial Property" means property located within the city limits that is zoned B-1, B-2, or B-3 and identified as such on the City's official Zoning Map.

Subd. 12 "Deferment" means a process of postponing the collection of the cost of public improvements and funding them as a system cost with the intention of collecting at a later date.

Subd. 13 "Driveway Approach" means that area which lies between the existing pavement and the right-of-way line, curb cut to curb cut.

Subd. 14 "Front Footage" means the distance measured along the right-of-way line directly abutting an improvement.

Subd. 15 "Industrial Property" means property located within the city limits that is zoned I-1 or I-2 and identified as such on the City's official Zoning Map.

Subd. 16 "Lot" means a separate parcel, tract, or area of land undivided by any public street or private road, which has been established by plat, metes and bounds subdivision, or as otherwise permitted by law, and which is occupied by or intended to be developed for and occupied by a principal building or group of buildings and accessory buildings, or utilized for a principal use and uses accessory thereof,

including such open spaces and yards as are designed and arranged or required by the City's Zoning Code for the building, use or development.

Subd. 17 "Corner Lot" means a lot situated at the junction of, and abutting on two or more intersecting streets.

Subd. 18 "Double Frontage Lot" means if a parcel, other than a corner lot, comprises frontage on two or more streets and is eligible for subdivision, then an adjusted front frontage assessment will be charged along each street. For double frontage lots lacking the necessary depth for subdivision, only a single adjusted front frontage will be computed.

Subd. 19 "Irregularly Shaped Lot" means those lots abutting curved streets, cul-de-sacs, or other lots where there is more than five feet of difference in length between the front and back lot lines.

Subd. 20 "Rectangular Lot" means a lot with less than five feet difference in length between the front and back lot lines.

Subd. 21 "Special Case Lot Residential" means a lot which may not directly abut the improvement shall be assessed on a per unit basis if the improvement can be assessed.

Subd. 22 "Special Case Lot Commercial" means a lot which accesses the improvement but may have little or no real properties fronting the improvement. Adjusted frontage shall be considered.

Subd. 23 "Public Improvement" means improvements as allowed by State statute that provides a special benefit to properties, including but not limited to streets, sidewalks, trails, curb, gutter, sanitary sewer systems, storm sewer systems, water treatment and distribution systems.

Subd. 24 "Residential Property" means real property located within the city limits which is identified as such on the City's official Zoning Map as R-R, R-1, R-2, R-3, or as a PUD.

Subd. 25 "Special Assessment" means a legal process whereby the benefited property is charged back all or a portion of the cost of public improvements.

Subd. 26 "Standards for Surface Improvements" means those standards for surface improvements which have been established in the City's Engineering Standards.

Subd. 27 "Street" means a public right of way which affords primary means of access to abutting property, and shall also include avenue, highway, road, or boulevard.

Subd. 28 "Street, Arterial" means a street which serves, or is designed to serve, heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

Subd. 29 “Street, Collector” means a street which serves or is designed to serve as a traffic way for a neighborhood or as a feeder to an arterial street.

Subd. 30 “Street, Cul-De-Sac” means a minor street with only one outlet and having an appropriate turn-around for the safe and convenient reversal of traffic movement.

Subd. 31 “Street, Local” means a street intended to serve primarily as an access to abutting properties.

Subd. 32 “Street, Pavement” means the wearing or exposed surface of the roadway used by vehicular traffic.

Subd. 33 “Street, Width” means the width of the right-of-way, measured at right angles to the centerline of the street. The distance between the right-of-way lines of a street.

Subd. 34 “Street Treatments” are defined as follows:

A. Crack Seal and Seal Coat: Crack sealing involves patching and sealing cracks in the roadway this followed by seal coating, which involves spraying the road with oil and covering it with a layer of small rock. Crack sealing and seal coating generally considered routine roadway maintenance. The recommended interval is 4-8 years with the first application about 5-10 years after new roadway construction.

B. Mill and Overlay: Milling and overlaying consists of grinding off the upper layer off asphalt (typically 1”-3”) and replacing it with a new layer of asphalt. This is generally done on roadways that have a fair amount of cracking and other surface distress, usually at about 60% of the street’s life cycle. This is considered a structural improvement which will renew the street surface and extended its useful life.

C. Rehabilitate/Pavement Replacement: Rehabilitating a roadway consists of grinding up the existing asphalt and mixing it with a portion of the underlying gravel base (typically 4”-8”). This combination of bituminous and gravel is then used as the new road base, and a new asphalt surface is paved over this. This is generally done on roadways that have a significant amount of distress. This can be a good alternative to reconstructing a road if the existing road base appears to be structurally sufficient.

D. Partial Reconstruction: Partial Reconstruction of a roadway consists of completely removing the existing road and underlying gravel and sand base material, and construction of a new road section. This may also include correcting any poor base material beneath the section, or updating the road to meet design standards such as width and drainage. Partial reconstruction is often done in conjunction with utility repairs/replacement, and generally done on roadways exhibiting signs of major distress such as rutting, cracking, and

potholes. To be considered a partial reconstruct under this policy, a majority of existing concrete curb and gutter must be salvaged.

E. Full Reconstruction: Reconstructing a roadway consists of completely removing the existing road, underlying gravel and sand base material beneath the section, or updating the road to meet design standards such as width and drainage. This is often done in conjunction with utility repairs/replacement, and is generally done on roadways that exhibit signs of major distress, such as rutting, cracking, and potholes.

Subd. 35 “System Cost” means that portion of the assessable cost that benefits properties whose assessments are deferred because they qualify for green acres status, are located outside of the City limits, or are unable to make use of the improvements due to factors beyond the property owner's control. The City may reimburse itself for such system costs from the benefitted properties when the basis for the deferral is no longer valid.

Subd. 36 “Unit” may include, but is not limited to: a household; a parcel/lot; water or sewer main length and size, sidewalk or trail length, width and depth, or infiltration area per parcel/lot.

726.04 Methods of Assessment. All single-dwelling residential properties will be assessed by unit. Multiple-dwelling and commercial properties will be assessed by front-foot.

Subd. 1 Residential Unit Method: This method is used for single dwelling residential properties. A unit shall be defined as one buildable lot consistent with the City of Montgomery's building ordinances.

A. Corner Lots: A lot located at a street intersection having both front and side-lot footage shall be assessed per unit. If a property abuts both streets and only one street is being improved then the lot will be assessed 50% of the per unit basis.

B. Double Frontage Lots: A lot with access to two separate non-intersecting streets but not a corner lot may be assessed for any street improvement to which it has direct access.

C. Irregularly Shaped Lots: Shall be assessed per unit.

D. Rectangular Lot: Shall be assessed per unit.

E. Special Case Lot Residential: Shall be assessed on a per unit basis if the improvement can be reasonably accessed.

Subd. 2 Commercial/Multi-Family Front Footage Method. This method is used for multi-family and commercial properties. The commercial rates are computed by taking the residential unit rate, dividing it by 75 (minimum residential lot width) and multiplying it by 1.0 (commercial properties are assessed at 1.0 times the residential rate).

A. Corner Lots: Lots located at a street intersection having both front and side-lot footage adjacent to improvements shall be assessed for both sides. No assessment would occur for an unimproved side.

B. Double Frontage Lot: A lot with access to two separate non-intersecting or intersecting streets but not a corner lot may be assessed for any street improvement to which it has direct access.

C. Irregularly Shaped Lots: Cul-de-sacs, or other lots where there is more than five feet of difference in length, the front footage shall be calculated using an average or other equitable means such as adjusted frontage.

D. Rectangular Lots: Lots with less than five feet of difference in length between the front and back lot lines shall be assessed based on front feet.

E. Special Case Lot Commercial: A lot which accesses the improvement but may have little or no real property fronting the improvement shall be assessed in a fair and equitable manner consistent with surrounding properties fronting the improvement. Adjusted frontage shall be considered.

Subd. 3 Industrial Front Footage Method. This method is used for industrial properties. The industrial rates are computed by taking the residential unit rate, dividing it by 75 (minimum residential lot width) and multiplying it by 1.2 (industrial properties are assessed at 1.2 times the residential rate).

A. Corner Lot: Lots located at a street intersection having both front and side-lot footage adjacent to improvements shall be assessed for both sides. No assessment would occur for an unimproved side.

B. Double Frontage Lot: A lot with access to two separate non-intersecting or intersecting streets, but not a corner lot may be assessed for any street improvement which it has direct access.

C. Irregularly Shaped Lots: Cul-de-sacs, or other lots where there is more than five feet of difference in length, the front footage shall be calculated using an average or other equitable means such as adjusted frontage.

D. Rectangular Lots: Lots with less than five feet of difference in length between the front and back lot lines shall be assessed based on front feet.

E. Special Case Lot Industrial: A lot which accesses the improvement but may have little or no real property fronting the improvement shall be assessed in a fair and equitable manner consistent with surrounding properties fronting the improvement. Adjusted frontage shall be considered.

726.05 Assessment Rates.

Public Street Improvement Assessments:

	<u>Residential Per Unit</u>	<u>Commercial / Multi-Family / Institutional Per Front Foot</u>	<u>Industrial Per Front Foot</u>
Mill and overlay:	\$1,500.00	\$20.00	\$24.00
Rehabilitate/Pavement Replacement	\$4,000.00	\$53.33	\$64.00
Partial Reconstruction	\$5,000.00	\$66.67	\$80.00
Full Reconstruction	\$6,500.00	\$86.67	\$104.00
Storm Drainage	\$1,500.00	Case by Case	Case by Case

Utility Improvement Assessments:

	<u>Residential/Domestic</u>	<u>Larger Services</u>
Water service w/new main construction	\$1,200.00	Case by Case
Sewer service w/new main construction	\$1,000.00	Case by Case
	<u>Residential/Domestic</u>	<u>Larger Services</u>
Water service w/tap to existing main	Case by Case	Case by Case
Sewer service w/tap to existing main	Case by Case	Case by Case

* Residential is assumed 1" to 1 1/2" water service line and all others will be assessed based on actual construction.

** Sewer services are assumed 4" or 6" service line and all others will be assessed based on actual construction.

*** Storm drainage assessment may be considered if a storm water utility has not been previously established. Assessments for storm drainage will be based on a residential base rate. All other land uses are to be assessed on a case by case basis and based on their storm water runoff contribution attributed to land area and impervious surface.

726.06 Payment of Special Assessments.

Subd. 1 All Properties. Special assessments for all classifications of properties shall be paid over a term set by the City Council not to exceed fifteen (15) years through certification to property taxes. Interest rates may vary, but shall be set no more than 2% above the average interest rate on the bond sale for the project. If there is no bond sale the interest rate will be fixed by resolution of the City Council. The increased rate covers administration and collection of the assessments over the life of the repayment period.

Subd. 2 Timing of Payments. Property owners may elect to make a payment to the City within 30 days of the Assessment Hearing. Property owners may choose to make a full or partial payment. No interest will be applied to payments received within 30 days of the Assessment Hearing. Payments received more than 30 days after the Assessment Hearing but before certification to Le Sueur County (December 1) shall accrue interest from the day of Council adoption of the Assessment. The City will accept no more than two (2) payments before the December 1 certification deadline. Unpaid balances will be certified to Le Sueur County for payment with property taxes after December 1 of the year in which the Assessment Hearing was conducted.

Subd. 3 Partial Payment. It should be noted that if only a partial payment is made before certification to Le Sueur County then the remaining assessment balance shall be paid with interest over the term as established by the City Council.

726.07 Deferred or Delayed Assessments.

Subd. 1 Scope. Chapter 429 of the Minnesota Statute allows for deferred and delayed assessments. This section is only meant to cover the most frequent cases encountered by the City in past years. Minnesota Statutes shall govern in all cases.

Subd. 2 Senior Citizen, Disability, Military, and Other Deferrals. Minnesota Statutes 435.193 authorizes the City Council to enact certain deferrals. Therefore the City Council shall, at its discretion, defer the payment of a special assessment for any homestead property owned by a person for who it would be a hardship to make the payment if the owner is one of the following:

A person 65 years of age or older.

A person retired by virtue of a permanent and total disability.

A member of the Minnesota National Guard or other military reserves ordered into active military service, as defined in Minnesota Statutes Section 190.05, subdivision 5b or 5c, as stated in the person's military orders, for whom it would be a hardship to make the payments.

A person that is unable to meet payment obligations due to proven financial hardship.

Minnesota Statutes Section 273.111, known as the “Green Acres Law”, requires deferrals for certain agricultural or specialized use property.

Minnesota Statutes Section 429.061, subdivision 2, allows the City Council to defer special assessments for unimproved property until a designated future year, or until the platting of the property, or the construction of improvements.

In order to determine financial hardship the City Administrator shall review the applicant’s income statement. As a general guideline, a financial hardship deferral is automatically met if household adjusted gross income is at or below 125% of the most recently published Federal Poverty Line issued by the Department of Health and Human Services. This financial hardship guideline is intended to make clear the standard basis for financial hardship and remain non-discriminatory in financial hardship reviews. The City Council may approve deferrals where extenuating circumstances exist. A deferred assessment shall accrue interest and payment of such shall be determined in accordance with Section 726.07, Subd. 5 of this Ordinance.

Subd. 3 Deferral of Special Assessments. The City Administrator may record the deferment of special assessments where the following conditions are met:

- A. The applicant must be the owner of the property;
- B. The applicant must occupy the property as a principal place of residence;
- C. The applicant’s income from all sources does not exceed the low income as established by the U.S. Department Housing and Urban Development as used in determining the eligibility for Section VIII housing;
- D. As to a deferment based upon age or disability, the applicant must apply for the deferment not later than fourteen (14) calendar days after the assessment is adopted by the City Council;
- E. As to a deferment based upon age or disability, the applicant must be 65 years of age or older, or retired by virtue of permanent disability.

Subd. 4 Deferment Period. The deferment will be granted for as long as the hardship exists and the conditions aforementioned have been met. The applicant must notify the City Administrator of any change in his/her status that would affect eligibility for deferment.

Subd. 5 Loss of Deferment Eligibility. The entire amount of deferred special assessment is due within 60 days after loss of eligibility by the applicant. If the special assessment is not paid within 60 days, the City Administrator shall add thereto interest at the applicable rate for the bond issue for the project. If there is no bond issue for the project, interest will be fixed by resolution of the City Council. The total amount of principal and interest from the due date through December 31 of the following year must be certified to the Le Sueur County Auditor for collection with taxes the following year. If the applicant demonstrates to the satisfaction of the City Council

that full repayment of the deferred special assessment would cause the applicant particular undue financial hardship, the City Council may order that the applicant pay within 60 days a sum equal to the number of installments of deferred special assessments outstanding and unpaid to date (including principal and interest) with the balance thereafter paid according to the terms and conditions of the original special assessment.

Subd. 6 Termination of Deferment of Special Assessments. The option to defer the payment of special assessments terminates and all amounts accumulated plus applicable interest becomes due upon the occurrence of any one of the following:

- A. The death of the owner when there is no spouse who is eligible for the deferment;
- B. The sale, transfer, or subdivision of all or any part of the property;
- C. Loss of homestead status on the property; or
- D. Determination by the City Council for any reason that there would be no hardship to require immediate or partial payment.

726.08 Deferment Interest. The City Council shall indicate by resolution whether interest will accrue and be added to the principal, will be paid annually, or will be forgiven while the assessment is deferred, and the number of installments in which assessments are to be paid when the deferral terminates. However, in no event shall the last installment be paid more than thirty (30) years after the assessment was levied.

726.09 Assessment Considerations. The Council shall take into account the following additional considerations in determining the special assessment:

- A. Developers proposing projects that will be public infrastructure upon completion shall be competed as a Public Improvement Project and require the Developer to petition the City for said improvement as in accordance with the Chapter 429 of the Minnesota Statute process. 100% of the total project cost shall be paid by the petitioner(s) unless stipulated otherwise in a Developer Agreement approved by the City Council.
- B. All properties benefitted from improvements are subject to the special assessment.
- C. The assessment rates listed in Section 726.05 will change year to year depending on Council rate adjustments. Special assessments can be made for improvements listed in Chapter 429 of the Minnesota Statutes and are not limited to those listed in this policy.
- D. The special assessment methods described in the policy statement cannot be considered as all inclusive. Unique or unusual circumstances may, at times, justify special consideration. In such situations, the City Council may, from time to time, establish by resolution or as part of a Feasibility Study, amendments to

the assessment policy to cover situations that may have been contemplated in this policy.

E. Prior to assessment role adoption, the special assessment levy shall be certified to be at or below that of the benefit received by subject properties. The City Council may consider assessing up to 100% of total project costs or proven benefit whichever is less when such cases are warranted.

Effective Date: This ordinance was adopted by the City Council on April 1, 2013. The ordinance becomes effective on the day following the publication of the ordinance, or summary thereof, in the City's legal newspaper.

Jean M. Keogh, Mayor

ATTEST:

Steven Helget, City Administrator

(S E A L)