

## **CHAPTER 11-6 SPECIAL ASSESSMENTS**

### **11-6-1 GENERAL POLICY STATEMENT**

The purpose of this Special Assessment Ordinance is to establish the policies and procedures in accordance with the South Dakota Codified Laws, Chapter 9-43, for the construction and financing of local improvement projects through assessment of benefitted properties by the City of Brandon.

The ordinance is intended to serve as a guide for the special assessments on local improvement to ensure consistent, fair, and equitable treatment of all property owners sharing in the special benefit of the street and utility improvements as determined by the City.

Local improvements are defined as the process of building, altering, repairing, improving, or demolishing any local infrastructure facility, including any structure, building, or other improvement of any kind to real property as defined in the South Dakota Codified Laws Chapter 9-43-75. The following types of local improvements which part or all the cost of the improvements is to be assessed to benefitting properties includes street grading, base course and pavement, curb and gutter, driveway pavement, sidewalks, retaining walls, sanitary sewer mains and services, water main and water services, storm sewer trunk lines and laterals. The type of assessable costs shall include but not be limited to construction costs, engineering costs, and property acquired for infrastructure including but not limited purchase and closing costs and legal and other fees.

**Authority:**  
SDCL 9-43

### **11-6-2 DEFINITIONS**

In the application of this Special Assessment Policy, the rules and definitions contained in this section shall be observed and applied, except when the context clearly indicates otherwise.

*Abutting* - Contiguous or having a common boundary.

*Adjusted Front Footage* - The number of feet used in calculating an Assessment applied for each individual property based on the methods described in the Ordinance.

*City* - The City of Brandon, South Dakota

*Deferred Assessment* - A dollar amount applied for improvements or services provided to selected properties receiving special benefit that the City elects to not collect until a specific time or event as defined by the South Dakota Codified Laws and the Special Assessment Ordinance.

*Driveway* - A private road that gives access to a house or property from a public roadway.

*Larger Lot or Parcel* - One or more separate parcels of land that are under the same ownership that collectively are greater than 160 acres in size and that are unimproved in terms of infrastructure.

*Local Improvement* - The process of building, altering, repairing, improving, or demolishing any local infrastructure facility, including any structure, building, or other improvement of any kind to real property as defined in the South Dakota Codified Laws.

*Lot* - Land occupied or intended for occupancy by a use or uses permitted by the City of Brandon. It shall have its principal footage upon a street or an officially approved access. The terms *parcel* and *tract* may be used with the same definition within this Ordinance.

*Oversizing* - A pipe or pavement surface that is designed and constructed larger or wider than what is needed to adequately service a specific project area abutting the improvement.

*Property Line* - A line of record bounding a lot that divides one (1) lot from another lot or from a public or private street or any other public space.

*Reconstruction* - Infrastructure which currently exists and will be replaced for a similar use.

*Special Assessment* - A dollar amount applied for improvements or services provided to selected properties receiving special benefit.

*Service Line* - A water or sanitary sewer pipe that is installed between the main line to the property line to service individual properties.

*Trunk Line* - Water and sewer pipes that serve as large capacity mains to service larger areas and multiple basins outside of the areas adjacent to the main.

### 11-6-3

#### **METHODS OF ASSESSMENT**

There are a number of methods of assessment that may be used: adjusted front footage, area, per lot, per each, zone, fair market value before and after improvements, use of improvements, and block by block. The City shall determine one method for each project or improvement, based upon which method would best reflect the special benefit received for the area to be assessed.

The assessment rate determined for each property receiving special benefit shall be equal to the assessable cost of the project divided by the total number of assessable units benefitted by the improvements.

The following methods of assessment, as described and defined below, are hereby established as methods of assessment in the City of Brandon.

### 11-6-3.1

#### **Adjusted Front Footage Method of Assessment**

The cost for adjusted front footage method of assessment shall be based on the quotient of the assessable cost divided by the total assessable frontage receiving special benefit from the improvement. To determine the assessable frontage, all properties, including governmental agencies, shall have their frontages included in such calculation.

The actual physical dimensions of a parcel abutting an improvement (i.e., street, sewer, water, etc.) shall not be construed as the frontage utilized to calculate the assessment for a particular parcel. Rather, an adjusted front footage will be determined. The purpose of this method is to equalize assessment calculations for lots of similar size. The following procedures will apply when calculating adjusted front footage. The appropriate procedure will be determined by the layout of the lot.

- A. *Interior rectangular lots.* The adjusted front footage shall be equal to the dimension of the front of the lot. The front of the lot shall be defined based on the current City of Brandon Zoning Ordinance at the time of the assessment.
- B. *Rectangular corner lots.* The adjusted front footage shall be equal to the dimension of the front of the lot. The front of the lot shall be defined based on the current City of Brandon Zoning Ordinances at the time of the assessment.

Sanitary sewer and water main adjusted front footage shall be equal to the dimension of the side of the lot that is determined to be considered the front based on the current City of Brandon Zoning Ordinances at the time of assessment.

- C. *Interior irregularly shaped lots.* The adjusted front footage shall be equal to the dimension of the front of the lot. The front of the lot shall be defined based on the current City of Brandon Zoning Ordinance at the time of the assessment.
- D. *Irregularly shaped corner lots.* The adjusted front footage shall be equal to the dimension of the front of the lot. The front of the lot shall be defined based on the current City of Brandon Zoning Ordinances at the time of the assessment. Sanitary sewer and water main adjusted front footage shall be equal to the dimension of the side of the lot that is determined to be considered the front based on the current City of Brandon Zoning Ordinances at the time of assessment.
- E. *Double Frontage Lots.* A double frontage lot is defined as a lot that has frontage on two non-adjointing sides. The adjusted front footage shall be equal to the dimension of the front of the lot. The front of the lot shall be defined based on the current City of Brandon Zoning Ordinances at the time of the assessment. Sanitary sewer and water main adjusted front footage shall be equal to the dimension of the side of the lot that is determined to be considered the front based on the current City of Brandon Zoning Ordinances at the time of assessment.
- F. *Corner lots which abut three streets.* The adjusted front footage for a given type of surface improvement shall be calculated on the same basis as if such lot was a corner lot abutting the improvement on two sides only.
- H. *Large parcels.* For large platted or unplatted lots, the lot shall be assessed based on the type of large lot as defined above with the front of the lot being defined based on the current City of Brandon Zoning Ordinance at the time of assessment. For the large lots that abut an improvement that assessments are being applied but is not considered the front of the lot as defined in the City of Brandon Zoning Ordinances at the time of assessment, the lot will have a deferred assessment applied against any future lots which may be subdivided from the larger parcel and the future lots subdivided would meet the definition as the front of the lot for the assessed improvements in the future. The City shall determine the potential for large lots to be subject to a deferred assessment.

### 11-6-3.2

#### **Area Method of Assessment**

The area method of assessment shall be based on the number of square feet or acres within the boundaries of the appropriate property lines of the areas receiving special benefit from the project. The assessment rate (i.e., cost per square foot) shall be calculated by dividing the total assessable cost by the total assessable area. On large lots, the City Engineer may determine that only a portion of the lot(s) receives the special benefit and may select a lot depth for the calculations equal to the special benefit received.

All properties included in the area receiving special benefit, including governmental agencies, shall be assessable. The following items may not be included in area calculations: public right-of-way, and natural waterways, swamps and lakes and other wetlands designated by the State of South Dakota or the City. The City Engineer will make a recommendation on the boundaries or parameters of the area receiving special benefit.

**11-6-3.3 Per Lot Method of Assessment**

The per lot method of assessment shall be based on equal assessment of all lots within the area receiving special benefit. The assessment per lot shall be the quotient of the assessable cost divided by the total assessable lots or parcels receiving special benefit from the improvement. For the purpose of determining the lots or parcels, all parcels, including governmental agencies, shall be included in such calculations.

**11-6-3.4 Per Each Method of Assessment**

The per each method of assessment shall be utilized when a property receives the sole special benefit of the improvement (example: a water service).

**11-6-3.5 Zone Formula**

Assessments may be levied by using the “zone” formula when benefits are equal and uniform among all of the parcels of the property within each zone. A “zone” or “zone and termini” system is one in which the improvement district is divided into zones, with a decrease of the percentage of the cost of the improvement assigned to each of the zones as the distance from the improvement increases.

**11-6-3.6 Fair Market Value Before and After Improvements**

The assessment may be done according to the proportionate increase in the fair market value of the property after the installation of the improvements.

**11-6-3.7 Use of Improvement**

The assessment may be done based on the nature and extent of the owner’s use of the improvement. The assessment is distinguished from any fees the owner may pay for the continuing use of the service provided by the improvement. The assessment is the charge for the improvement of the property and when determining whether a charge for connecting with a municipal water or other service is a fee or an assessment.

**11-6-3.8 Block-by-Block**

The “block-by-block” method of apportionment is the assessment of individual properties in each “block” of property of a portion of the cost of acquiring the land in that block. The size and configuration of a “block” is determined on a case-by-case basis, depending on the existing facts and circumstances.

**11-6-4 ASSESSMENT DETERMINATION & STANDARDS FOR IMPROVEMENT**

The following shall be used for determinations and standards for improvement.

**11-6-4.1 Street and Curb and Gutter Improvements**

- A. *New Construction:* All new streets (including gravel to asphalt) will be assessed 100% to the benefited properties. Street and curb and gutter improvements will normally be assessed by the adjusted front foot method, however other methods may be utilized if conditions warrant. Cost of construction of streets shall be assessed based on the City of Brandon Engineering Design Standards for residential streets at the time of the assessment. Oversizing costs which are incurred more than the above may be paid by: City funds, State funds, larger Assessment rates to benefitted properties, general obligation funds, or any other method or combination of methods authorized by the City.

- B. *Reconstruction and Overlays:* Except as for streets that were constructed and failed to meet a reasonable life expectancy, street reconstruction and overlays will be assessed 0% to the benefited properties. Reconstruction of existing paved streets without curb and gutter to an urban section with curb & gutter shall be assessed 100% to the benefitting property owners.
- C. *Gravel Streets:* Existing gravel streets improved to a paved street shall be assessed 100% to the benefitting properties for construction and surfacing and installing curb and gutter as if it were a new construction.
- D. *Driveway Approaches:* All driveway approaches constructed with new development shall be assessed at 100% to the benefitting property owners. Existing driveway approaches that are reconstructed will be assessed 0% to the benefitting property owner. The driveway approach consists of the area from the back of curb to the front edge of the sidewalk across the property or property line if there is no sidewalk.
- E. *Maintenance:* All maintenance on existing streets will not be assessed to the benefitting property owners and shall be paid for in accordance with the City of Brandon policy on maintenance fees.

#### 11-6-4.2

##### **Sidewalks and Trails**

- A. *New Development:* All sidewalk installed in newly developed areas shall be paid 100% by the property owner. Notwithstanding, should the City install the sidewalk then the sidewalk improvements will normally be assessed against the owner by the front foot method, however other methods may be utilized if conditions warrant. Cost of construction of sidewalks and trails shall be assessed based on the City of Brandon Engineering Design Standards for residential streets at the time of the assessment.
- B. *New Sidewalk in Developed areas or Sidewalk Reconstruction:* All new sidewalk installed in development areas shall be assessed 0% to the properties abutting the improvements. Sidewalk replaced as part of a reconstruction project shall be assessed 0% to the properties abutting the improvements.
- C. *Overwidth Sidewalk and Trails:* For sidewalk or trails installed at a width wider than the minimum width for sidewalk based on the City of Brandon Engineering Design Standards for residential streets, the benefitting property owners shall pay for the equivalent width as stated in the current City of Brandon Engineering Design Standards for residential streets at the time of the assessment. The remaining costs for wider sidewalk or trail construction shall be unassessed and funded through the City.

#### 11-6-4.3

##### **Storm Sewer Improvements**

Storm sewer improvements shall include the storm sewer piping, outlets, structures, pumping stations, stormwater management ponds, ditches, culverts, and all other appurtenances required for the collection and management of stormwater.

For New Construction, all new storm sewer installed may be assessed 100% to the benefited properties. Storm sewer improvements will normally be assessed using the area method; however, other methods may be utilized if conditions warrant it. If new storm sewer to be installed is receiving drainage from areas outside of the assessed area causing storm sewer to be oversized, the oversizing of the storm sewer shall be unassessed and funded through the City. The area of drainage from the assessed area and the required storm sewer sizing will be used to determine the oversizing of the storm sewer. Storm sewer reconstruction projects may involve improvements that upsize or construct a new stormwater infrastructure system in areas that have inadequate drainage or developed areas without existing storm sewer infrastructure. With reconstruction

projects that include work other than replacement of the existing storm sewer infrastructure system, the City shall determine the benefit to the adjacent property owners and the percentage of the reconstruction to be assessed depending on the scope and need of the improvement.

The cost for upsizing storm sewer systems to provide adequate service and capacity for areas beyond the adjacent area, the benefitting properties will be assessed at the estimate cost of an equivalent storm sewer system that would be sufficient for the drainage area of the assessment area.

#### **11-6-4.4 Sanitary Sewer Improvements**

Sanitary sewer improvements shall include the sanitary sewer piping, sanitary sewer service lines, manholes, lift stations, and all other appurtenances required for the collection and management of wastewater.

- A. *New Construction:* All new sanitary sewer mains and sewer service connections shall be assessed 100% to the benefited properties. Sanitary sewer main improvements will normally be assessed by the adjusted front footage basis; however, other methods may be utilized if conditions warrant it. Properties with City existing sanitary services, but which do not have mainline sewer adjacent to, across or up to their property lines will not be assessed as they are considered to already be receiving the benefit of the service connection.
- B. *Oversized mains or upsizing:* When new oversized mains or trunk lines (larger than 8") or existing sanitary sewer mains are required to be upsized to provide adequate service and capacity for areas beyond the adjacent area, the benefitting properties will be assessed at the estimated cost of an equivalent 8" with all oversizing costs to remain unassessed and funding through the City. The City shall dictate the location and size of oversized mains. Oversizing costs shall be determined by the mean price of pipe and appurtenances at the time of construction.
- C. *Grinder Pumps:* Where, in the opinion of the engineers, it is necessary to install an individual grinder pump lifting device for purposes of securing adequate flow from a property to the adjacent public sewer service, a property owner must provide the necessary grinder pump and related lines to transmit sewage to the adjacent public sewer system. The pump must be approved by the City Engineer and installation of said grinder pump lifting device shall be done at the property owner's expense. The lifting device and discharge line shall be owned, maintained, and operated at the expense of the property owner unless the City Council determines that it is in the best interest of the City to own, operate or maintain these systems.

#### **11-6-4.5 Water Main Improvements**

Water main improvements shall include the water main piping, water service lines, fire hydrants, valves, fittings, and all other appurtenances required for the water distribution system.

- A. *New Construction:* All new water main lines and water services connections will be assessed 100% to the benefitting properties. Water main improvements will normally be assessed by the adjust front footage basis: however, other methods may be utilized if conditions warrant it. Properties which have existing City water service, but not have mainline water mains adjacent to, across, or up to the property lines will not be assessed as they are considered to already be receiving the benefit of the service connection.
- B. *Oversized or looping:* When new oversized mains or trunk lines (larger than 8") or existing water mains are required to be upsized to provide adequate service and capacity for areas beyond the adjacent area, the benefitting properties will be assessed at the

estimated cost of an equivalent 8" with all oversizing costs to remain unassessed and funding through the City. The City shall dictate the location and size of oversized mains. Oversizing costs shall be determined by the mean price of pipe and appurtenances at the time of construction.

**11-6-5 SPECIAL ASSESSMENT PROCEDURES**

The following is the general procedure for special assessments that the City shall follow for all local improvements projects which the City determines shall be assessed to benefitting property owners in accordance with the South Dakota Codified Laws Chapter 9-43.

**Authority:**  
SDCL 9-43

**11-6-5.1 INITIATION OF LOCAL IMPROVEMENTS**

- A. *By Petition:* A public improvement project may be initiated by affected property owners to be assessed.
- B. *By City:* The City may initiate public improvement projects as it determines necessary with approval of the City Council.

**11-6-5.2 PROPOSED RESOLUTION OF NECESSITY**

The City shall develop a proposed resolution of necessity as defined in the South Dakota Codified Laws Chapter 9-43. The proposed resolution of necessity shall include the general nature of the proposed improvement, the material to be used, an estimate of the total cost or cost per linear foot, a description of the classes of lots to be assessed and of the method of apportioning the special benefits to the lots, if applicable. The City may define which portions of the proposed improvement costs that will be assessed to special benefitted properties and which portions may be covered partially or in full by the City or through the City from various funding sources, if any. The City may define which methods of determining special benefit will be used as determined to be the most consistent, fair, and equitable treatment to each of the property owners sharing in the special benefit of the street and utility improvements to be assessed. The City proposed resolution shall state that the details, plans, and specifications are available for review during regular office hours at the City finance office.

**Authority:**  
SDCL 9-43-82

**11-6-5.3 NOTICE OF HEARING ON PROPOSED RESOLUTION OF NECESSITY**

The City will publish a notice of hearing on the proposed resolution of necessity once, not less than ten (10) nor more than twenty (20) days before the hearing on the resolution of necessity. The notice of hearing shall contain the time and place of the hearing and shall state that the City will consider any objections to the proposed resolution by owners of the affected properties.

The City shall provide a mailing, by first class or certified mail to each of the affected property owners as shown by the records kept by the County Director of Equalization, not less than ten (10) days nor more than twenty (20) days before the hearing. The mailing shall include a copy of the notice of hearing and the proposed resolution of necessity to each property owner of the affected properties.

At the hearing, the City will consider any objections to the proposed resolution. The City reserves the right to adopt the proposed resolution with or without amendments to the original resolution. If

the City amends any portion of the resolution affecting the properties not included in the original proposal, the City will give notice and the opportunity to be heard to the affected property owner per the South Dakota Codified Laws provided by Chapter 9-43-82 to Chapter 9-43-84.

After adoption of the resolution of necessity by the City, the City will publish the adopted resolution of necessity. The adopted resolution of necessity becomes effective twenty (20) days after publication unless brought to a vote by referendum, suspended by a resolution of the Council, or a petition is filed with the City finance officer that is signed by at least fifty-five percent (55%) of the affected property owners to be assessed. The City has the ability to deny the petition through a two-thirds vote by the City Council.

If the resolution of necessity becomes effective after the conditions listed above are met, the City shall move forward with contracting for the proposed improvements.

**Authority:**

SDCL 9-43-82 through 9-43-86

**11-6-5.4**

**NOTICE OF HEARING ON ASSESSMENT ROLL**

Any project for which special assessments is to be done shall be bid no later than by a date for bids to be opened no later than mid-April. Any contract for the improvements shall contain a suspension and/or termination provision providing for termination at no cost to the City if the special assessment roll is appealed to Circuit Court. After the contract is signed, the City shall file an assessment roll with the City finance officer. The assessment roll shall include the legal description of each parcel or property, the property owner's name as shown by the assessment roll of the County's Director of Equalization, and the amount of assessment against each lot or parcel that is to be assessed as part of the proposed improvement. The assessment roll shall contain information on the installments (if any), rates of interest on installations and the statement on due dates of installments (if any). The statement shall include that any number of the installments may be paid without interest at the office of the finance officer within thirty (30) days from the date of approval of the roll as per the South Dakota Codified Laws Chapter 9-43.

Upon filing of the assessment roll in the finance office, the City will publish a notice of hearing on the assessment roll, not less than ten (10) days nor more than twenty (20) days before the hearing. the notice of hearing shall disclose the nature of improvements for which the assessment is to be levied and shall contain the time and place of the hearing. It shall also state that the assessment roll is open for public inspection at the office of the finance officer, and shall refer to the special assessment role for further particulars.

The City shall provide a mailing, by first class or certified mail to each of the affected property owners as shown by the records kept by the County Director of Equalization, with the mailing being provided not less than ten (10) days nor more than twenty (20) days before the hearing. The mailing shall include a copy of the assessment roll for each of the affected property owners to be assessed.

At the hearing, the City will consider the assessment roll and any objections thereto, and determine whether to approve, equalize, or reject the assessment roll. After the assessment roll is adopted by the City, the City shall publish the resolution which will become effective twenty (20) days after the date of publication. The City will publish the plan for which the assessment roll and installments shall be paid and follow the timeline for appeal as stated in the South Dakota Codified Laws Chapter 9-43.

If the Council equalizes or amends the assessment roll, a list of all items of assessment changed or amended shall be published and notice and hearing shall be held as provided in SDCL § 9-43-90. After any corrections in the assessment roll have been made, the Council by resolution shall approve and levy the assessment, describing the assessment and the local improvement, and providing the



dates of the official approval of the assessment roll. The resolution approving the assessment roll shall also state under which plan the assessment and installments thereof shall be paid as provided by SDCL § 9-43-102.

The City finance officer will prepare a special record containing the following information as stated in the South Dakota Codified Laws Chapter 9-43-98:

- 1. A record of all special assessments;
- 2. The consecutive number of the item;
- 3. The date the assessment is due;
- 4. The name of the property owner as provided by the director of equalization;
- 5. The legal description of the property;
- 6. The amount assessed against each lot;
- 7. The character of the improvement for which the assessment is made;
- 8. The date of payment of each assessment or installment that is paid to the municipality.

The City finance officer will include a suitable index to the real property against which special assessments have been levied.

The City shall immediately mail to each of the property owners assessed by the improvement notice. The notice shall specify the amount of the assessment, the number of installments, the date of approval of the assessment roll, and a statement that any number of the installments may be paid without interest at the office of the finance officer within thirty (30) days from the date of the approval roll. The City will define the dates in the adopted assessment roll resolution.

Any appeal of a special assessment roll must be made within twenty (20) days after publication of a notice that the resolution confirming the special assessment roll has been adopted and as otherwise set forth by SDCL 9-43-96. Should the special assessment roll be appealed, the City Council at its discretion may move forward with the proposed improvements or may suspend the project until after any challenge is complete and appeal time has been exhausted.

**Authority:**  
SDCL 9-43-87 through 9-43-99

**11-6-5.5 PAYMENT OPTIONS**

The City shall define by resolution, or ordinance, per the South Dakota Codified Laws, Chapter 9-43, whether the special assessments are payable under Plan One (Collection by county treasurer) or Plan Two (collection by municipal finance officer) and comply with South Dakota Codified Laws 9-43 as to delivery to the County Auditor. The City will follow all South Dakota Codified Laws on payments, interest, dates of effective interest and payments, notices of delinquent installments and other related payments of assessments.

**Authority:**  
SDCL 9-43

**11-6-5.6 DEFERRED ASSESSMENTS**

This special assessment ordinance applies to any project which includes properties subject to special benefit by local improvements outside of the City limits as determined by the City. The special benefit and cost accruing to the land outside of the City limits shall be included in the original public hearing. The City shall assume the temporary responsibility for payment of the allocable cost of such property or land. The City shall maintain a register on that property outside the City limits, and when the property is annexed in the City limits, the City shall file and certify the assessment to the County Auditor for collection after the annexation occurs.

A deferred assessment may also be applied against a large parcel that has the ability to be subdivided in the future and the frontage of the new lot, as defined in the City of Brandon Zoning Ordinances at the time of assessment, abuts an improvement that has had a special assessment applied. The City shall decide at the time of assessment of the feasibility of a large parcel to be subdivided and meet the specified deferred assessment for the frontage determined. The special benefit and cost accruing to the frontage shall be included in the original public hearing. The City shall assume the temporary responsibility for payment of the allocable cost of such property(ies). The City shall maintain a register on that property, and if the property is subdivided into small parcels in the future, the City shall file and certify the assessment to the County Auditor for collection after the plat is filed with the County.

**Legislative History:**  
Ordinance #644, 12/1/21

**Authority:**  
SDCL 9-43-78