

# Village of Lake Isabella - Codified Ordinances

## Article II – Village Administration

### **Chapter 212 - Special Assessments**

Ordinance 2011-13; September 27, 2011

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Chapter 212.01	Definitions
Chapter 212.03	Authority to Assess
Chapter 212.05	Initiation of Project or Special Assessment District
Chapter 212.07	Engineer/Staff Report
Chapter 212.09	Tentative Project Approval
Chapter 212.11	Public Hearing Notice
Chapter 212.13	Hearing on Necessity
Chapter 212.15	Preparation of Special Assessment Roll
Chapter 212.17	Tentative Approval of the Roll
Chapter 212.19	Hearing on Special Assessment Roll
Chapter 212.21	Creation of Lien
Chapter 212.23	Collection
Chapter 212.25	Certification of Total Cost
Chapter 212.27	Excessive Assessment Collections; Additional Assessments
Chapter 212.29	Division of Parcels after Assessment
Chapter 212.31	Invalidity of Assessment or Roll
Chapter 212.33	Actions to Contest Collection
Chapter 212.35	Certain Postponements of Payment

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#### **212.01 DEFINITIONS**

For the purposes of Chapter 212 of the codified ordinances of the Village of Lake Isabella the following definitions shall apply;

A Cost: The term “cost” as used in this chapter, when referring to the cost of any public improvement, shall include the cost of service and publication of notices, preparation of plans, condemnation, spreading of rolls, advertising, financing, construction, and engineering, legal and other professional fees, interest on bonds for up to one year and all other costs incident to the making of such improvement, the special assessment therefore and the financing thereof.

B Public Improvement: The term “public improvement as used in this chapter shall mean any municipal improvement which is of such a nature as to result in special benefit to the real property in the vicinity of such improvement. This shall include, but is not limited, to the following activities and/or improvements:

- The construction, improvement, and maintenance of storm or sanitary sewers.
- The construction, improvement, and maintenance of sanitary sewer treatment facilities.
- The construction, improvement, and maintenance of potable water systems.

## Chapter 212 – Special Assessments

- The construction, improvement, and maintenance of public roads, streets, and bridges.
- The treatment of gravel streets for dust control.
- The construction, improvement, and maintenance of public parks.
- The construction, improvement, and maintenance of elevated structures and bridges for pedestrian and foot traffic.
- The construction, improvement, and maintenance of bike paths.
- The construction, improvement, and maintenance of pedestrian paths and trails, including sidewalks.
- The collection and disposal of garbage and rubbish.
- The construction, improvement, and maintenance of erosion control structures, breakwaters, seawalls, or dikes.
- The planting, maintenance, or removal of trees.
- The installation, improvement, or maintenance of lighting systems.
- The eradication or control of aquatic weeds and plants.
- The chemical treatment of beaches to control aquatic nuisances such as swimmer's itch.
- The improvement or maintenance of Lake Isabella, the Chippewa River, or other body of water by dredging.
- The improvement or maintenance of the Lake Isabella dam and berm or other structures that retain the waters of Lake Isabella.
- Providing public safety service either directly or via contract which may include law enforcement, fire protection, or rescue response.
- The purchase of public safety equipment and facilities to house public safety equipment.

C Report: The term “report” shall refer to the report prepared by the Village staff or by the Village Engineer in accordance with chapter 212.07 hereof.

### **212.03 AUTHORITY TO ASSESS**

The Village Council shall have the power to determine the necessity of any public improvement or service and to determine that the whole or only part of the expense shall be defrayed by special assessment upon the property especially benefited in the manner hereinafter provided.

### **212.05 INITIATION OF PROJECT OR SPECIAL ASSESSMENT DISTRICT**

Proceedings for making public improvements or service and defraying all of the costs or any part thereof by special assessment shall be initiated by the Village Council. The Village Council shall direct the Village staff or Village Engineer to make an investigation of the proposed public improvement or service and to submit a report to the Village Council and to file a copy with the Village Clerk.

Special Assessment proceedings may be requested by the filing, with the Village Clerk, petitions signed by at least fifty percent (50%) of the owners of the property to be assessed for the cost of the improvement or service, requesting that the improvement or service be made

## Chapter 212 – Special Assessments

and that the cost thereof be defrayed by special assessment upon the property benefited. Such petition may be considered by the Village Council, but shall be advisory only.

### **212.07 ENGINEERING/STAFF REPORT**

Upon request of the Village Council, The Village staff or Village Engineer shall investigate the proposed public improvement and prepare a report; which shall include:

- A. The concept of the proposed project;
- B. Cost estimates of the proposed project;
- C. Proposed special assessment district boundaries;
- D. Recommendations as to the portion of the cost to be borne by the special assessment district and the portion, if any, to be borne by the Village at large.

The report shall be submitted to the Village Council and filed with the Village Clerk. The Village Council shall not finally determine to proceed with the making of any public improvement or service funded via special assessment until such report has been filed nor until after a public hearing has been held by the Village Council for the purpose of hearing objections to the making of such improvement or service.

### **212.09 TENTATIVE PROJECT APPROVAL**

The Village Council, after review of the report, may pass a resolution tentatively determining the necessity of the improvement or service, setting forth the nature thereof, prescribing what part or portion of the cost of such improvement shall be paid by special assessment upon the property benefited, and what part, if any, shall be paid by the Village at large, designating the limits of the special assessment district to be affected, placing the complete information concerning the proposed public improvement or service on file in the office of the Village Clerk, for public examination, and directing the Village Clerk to give notice, pursuant to Section 7, of a public hearing on the proposed improvement or service, at which time and place an opportunity will be given to interested persons to be heard.

### **212.11 PUBLIC HEARING NOTICE**

The Village Clerk shall schedule a public hearing to be held at a meeting of the Village Council, and shall give at least ten (10) days notice, which notice shall be given by publication in a newspaper circulated in the Village and by first-class mail to all property owners in the proposed special assessment district as shown by the last general tax assessment rolls of the Village.

### **212.13 HEARING ON NECESSITY**

At the time of the public hearing pursuant to chapter 212.09, or any adjournment thereof, which may be without further notice, the Village Council shall hear any objections to the proposed public improvement or service and to the special assessment district, and may, without further notice, revise, correct, amend or change the plans, estimates and/or district; provided that if the amount of work is increased or additions are made to the district, then another hearing shall be held pursuant to notice as provided in chapter 212.11.

## Chapter 212 – Special Assessments

If the Village Council determines to proceed with the project, a resolution shall be passed approving the concept and cost estimates of the proposed project, the proposed assessment district, the recommendations as to the portion to the cost to be borne by the special assessment district and the portion, if any, to be borne by the Village at large, and directing the Village Clerk to prepare a special assessment roll and submit the same to the Village Council. Provided that if prior to the adoption of the resolution to proceed with the making of the public improvement or service, written objection thereto have been filed by the owners of the property in the district, which, according to the report will be required to bear more than fifty percent (50%) of the cost thereof, or by a majority of the owners of property to be assessed, no resolution determining to proceed with the project shall be adopted while such objections remain, except by the affirmative vote of five of the seven members of the Village Council.

### **212.15 PREPARATION OF SPECIAL ASSESSMENT ROLL**

The Village Clerk shall make a special assessment roll of all lots and parcels of land within the designated district benefited by the proposed improvement or service and assess to each lot or parcel of land the proportionate amount benefited thereby. The amount of each case shall be based upon the cost estimates of the Village staff or Village Engineer as approved by the Village Council. When the assessment roll is complete, the Village Clerk shall submit and file the roll with the Village Council.

### **212.17 TENTATIVE APPROVAL OF THE ROLL**

The Village Council shall review the special assessment roll and may pass a resolution to tentatively approve the assessment roll, direct that the roll be open for examination in the office of the Village Clerk and direct the Village Clerk to give notice, pursuant to chapter 212.11, of a public hearing on the proposed special assessment roll, at which time and place the Village Council will meet to review the roll and provide an opportunity to interested persons to be heard.

### **212.19 HEARING ON SPECIAL ASSESSMENT ROLL**

At the time of the public hearing pursuant to chapter 212.17, or any adjournment thereof, which may be without further notice, the Village council shall hear any objections to the proposed assessment roll, and may, without further notice, correct the proposed assessment roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein or it may, by resolution, confirm the assessment roll or annul the assessment roll and direct that new proceedings be instituted.

No special assessment roll shall be confirmed by resolution of the Village Council except by affirmative vote of a majority of the Village Council members present at the hearing where the roll is presented. Any person objecting to the proposed assessment roll shall file his objections thereto in writing with the Village Clerk before the close of such hearing. Should there be written objections so filed by the owners of more than one-half of the property to be assessed, the assessment shall not be confirmed except by the affirmative vote of five of the seven members of the Village Council. Upon resolution confirming the special assessment roll, it shall become binding and conclusive. If the special assessment roll is annulled, the same proceeding shall be followed in making a new roll as in the making of the original roll.

## Chapter 212 – Special Assessments

### **212.21 CREATION OF LIEN**

Special assessments and all interest and charges thereon, shall, from the date of the confirmation of such roll, constitute a lien upon the respective lots or parcels of land assessed and until paid shall be a charge against the respective owners of the several lots and parcels of land. Such lien shall be of the same character and effect as the lien created for Village taxes and shall include accrued interest and penalty. All delinquencies settled with Isabella County shall be due in full to the Village at the time of settlement with Isabella County.

### **212.23 COLLECTION**

Following approval of the special assessment roll, the Village Treasurer shall collect the same. Special assessments shall be payable in one (1) installment or in such number of approximately equal annual installments, not exceeding twenty (20) as the Village Council may determine. The first installment of a special assessment shall be due on or before such time after confirmation as the Village Council shall fix, and the subsequent installments shall be due at intervals of twelve (12) months from the due date of the first installment or from such other dates as the Village Council shall fix.

All unpaid installments prior to the transfer to the Village tax roll shall bear interest payable annually at a rate to be fixed by the Village Council not exceeding eight percent (8%) per annum, such interest to commence at such time as shall be fixed by the Village Council. The whole assessment against any lot or parcel of land may be paid to the Village Treasurer at any time in full with interest and penalties accrued to the date of the payment of the next installment. If any installment of a special assessment is not paid when due, then the same shall be deemed to be delinquent and there shall be collected thereon, in addition to the interest as provided above, a penalty at a rate of one percent (1%) for each month or a fraction thereof if the same remains unpaid before being reported to the Village Council for reassessment upon the Village tax roll. Statements of the several assessments to the respective owners of the several lots and parcels of land assessed, as indicated by the records by the Village Assessor, stating the amount of the assessment and the manner in which it may be paid shall be mailed by the Village Treasurer provided, however, that the failure to mail any such statement shall not invalidate the assessment or entitle the owner to an extension of time within which to pay the assessment.

### **212.25 CERTIFICATION OF TOTAL COST**

Upon completion of the improvement, the financing thereof and the payment of the cost thereof, the Village Clerk shall certify to the Village Council the total cost of said improvement, together with the amount of the original roll for said improvement.

### **212.27 EXCESSIVE ASSESSMENT COLLECTIONS; ADDITIONAL ASSESSMENTS**

Should the assessments in any special assessment roll prove insufficient for any reason to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection of such assessments, then the Village Council shall make additional pro-rata assessments to supply the deficiency.

Should the amount collected on assessments prove larger than necessary by ten percent (10%) or less of the amount of the original roll, the Village Council may place the excess in

## Chapter 212 – Special Assessments

any of the funds of the Village, but if such excess shall exceed ten percent (10%), then the same shall be refunded pro-rata on the assessments against the several parcels of land according to the amounts thereof. Such refund shall be made by credit against future unpaid installments to the extent such installments then exist and the balance of such refund shall be applied towards the payment of the next Village tax levied against such property.

### **212.29 DIVISION OF PARCELS AFTER ASSESSMENT**

Should any lots or parcels be divided after confirmation of the special assessment roll, the Village Clerk shall apportion the uncollected amounts upon the several lots and land so divided, and shall enter the several amounts as amendments upon the special assessment roll. The Village treasurer shall, within ten (10) days after such apportionment, send notice of such action to the persons concerned at the address shown on the last general tax assessment roll by first-class mail. The apportionment shall be final and conclusive on all parties, unless protest in writing is received by the Village Treasurer within twenty (20) days of the mailing of the aforesaid notice.

### **212.31 INVALIDITY OF SPECIAL ASSESSMENT ROLL**

Whenever any special assessment shall, in the opinion of the Village Council, be invalid by reason of irregularity or informality in the proceedings, or if any court of competent jurisdiction shall adjudge such assessment to be illegal, the Village Council shall, whether the improvement has been made or not, have the power to cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for the original assessment. Payments already made and not refunded on premises included in the reassessment shall be applied upon the reassessment on said premises.

If the Village Attorney submits a written opinion finding the assessment roll illegal, in whole or in part, the Village Council may revoke its confirmation, or correct the illegality if possible, and reconfirm the roll as amended, provided that no property which is not involved in the illegality shall be assessed more than was imposed upon the original confirmation without further notice and hearing thereon.

### **212.33 ACTIONS TO CONTEST COLLECTION**

No suit or action or any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of any special assessment or reassessment.

- A. Unless, within fifteen (15) days after the confirmation of the special assessment roll, written notice is given to the Village Clerk for the attention of the Village Council indicating an intention to file such suit or action and stating the grounds on which it is claimed such assessment or reassessment is illegal and
- B. Unless such suit or action shall be commenced within thirty (30) days after the confirmation of the special assessment roll.

### **212.35 CERTAIN POSTPONEMENT OF PAYMENTS**

The Village Council may provide that any person who, in the opinion of the Village Council, because of an inability to pay the special assessments, may execute to the Village an instrument creating a lien of the benefit for the Village on all or any part of the real property

## Chapter 212 – Special Assessments

owned by such person, which lien will mature and be effective from and after the execution of such instrument; shall be recorded with the Register of Deeds of Isabella County, and shall not be discharged or released until the terms thereof are met in full. The Village Council shall establish the Procedure for making this section effective.