

VILLAGE OF FAIRGROVE
TUSCOLA COUNTY, MICHIGAN

ORDINANCE NO. 53

SPECIAL ASSESSMENTS

An ordinance prescribing the complete special assessment procedure concerning the initiation of projects, plans and specifications, estimate of costs, notice and hearing, the making and confirming of the assessment roll and correction of errors, the collection of special assessments, and any other matters concerning the making of improvements by special assessment.

THE VILLAGE OF FAIRGROVE ORDAINS:

Section 1. Definitions:

- A. Cost. The term “cost” is used in this Ordinance when referring to the cost of any local public improvement shall include the cost of services, plans, condemnation, spreading of rolls, notices, advertising, financing, construction, legal fees, interest on special assessment bonds for not to exceed one year, and all other costs incident of the making of such improvement, the special assessments therefore and the financing thereof.
- B. Local Public Improvement. The term “local public improvement” as used in this Ordinance shall mean any public improvement which is of such a nature as to benefit especially any real property or properties within a district in the vicinity of such improvement.

Section 2. Authority to Assess.

The whole cost or any part thereof of any local public improvement may be defrayed by special assessment upon the lands specially benefited by the improvement in the manner hereinafter provided.

Section 3. Initiation of Special Assessment Projects.

The Council may commence proceedings, with or without petition, for the making of local public improvements within the Village, the tentative necessity thereof, and the determination that the whole or any part of the expense thereof shall be defrayed by special assessment upon the property especially benefited, provided that all special assessments levied shall be in proportion to the benefits derived from the improvements.

Section 4. Initiation by Petition.

Local public improvements may be initiated by petition signed by record owners of land constituting more than 50% of the total assessed value of the land in the proposed district, all shown by the last preceding general tax records of the Village. Such petition shall contain a brief description of the property owned by the respective signatories thereof, and it if shall appear that the petition is signed by owners of more than 50% of the aggregate assessed value of the proposed district, the Clerk shall certify same to the Council. The petition shall be addressed to the Council and filed with the Clerk and shall in no event be considered directory but is advisory only.

Section 5. Survey and Report.

Before the Council shall consider the making of any local improvement, the Council shall cause a report to be prepared which shall include necessary plans, profiles, specifications and detailed estimates of cost, an estimate of the life of the improvement, a description of the assessment district or districts, and such other pertinent information as will permit the Council to decide the cost, extent and necessity of the improvement proposed and what part or proportion thereof should be paid by special assessments upon the property especially benefited, and what part, if any, should be paid by the Village at-large. The Council shall not finally determine to proceed with the making of any local public improvement until such report has been filed nor until after a public hearing has been held by the Council for the purpose of hearing objections to the making of such improvement.

Section 6. Tentative Determination: Assessment Roll.

Upon receipt of the report required in Section 5, if the Council shall decide to proceed with the improvement, it shall, by resolution, order the report filed with the Clerk. In addition, by that resolution, the Council should tentatively determine the necessity thereof, set forth the nature thereof, designate the limits of the special assessment district to be affected and describe the lands to be assessed, the part or portion of the cost of the public improvement to be paid by the lands specially benefited thereby and the part or portion, if any, to be paid by the Village at-large for benefit to the Village at-large, and shall direct the Assessor to make a special assessment roll of the part or proportion of the cost to be borne by the lands specially benefited according to the benefits received and to report the same to the Council.

Section 7. Deviation from Plans and Specifications.

No deviation from original plans or specifications as adopted shall be permitted by any officer or employee of the Village without authority of the Council by resolution. A copy of the resolution authorizing such changes or deviation shall be certified by the Clerk and attached to the original plans and specifications on file in the Clerk's office.

Section 8. Limitations on Preliminary Expenses.

The Council shall specify the provisions and procedures for financing a local public improvement. No contract or expenditure, except for the cost of preparing necessary profiles, plans, specifications and estimates of cost, shall be made for the improvement, nor shall any improvement be commenced until the special assessment roll to defray the costs of the same shall have been made and confirmed.

Section 9. Special Assessment Roll.

The Assessor shall make a special assessment roll of all lots and parcels of land within the designated district benefited by the proposed improvement and assess to each lot or parcel of land the proportionate amount benefited thereby. The amount spread in each case shall be based upon the detailed estimate of cost as approved by the Council.

Section 10. Assessor to File Assessment Roll.

The Assessor shall file the completed assessment roll with the Village clerk for presentation to the Council for review and certification by it.

Section 11. Hearing to Determine Necessity and Review Special Assessment Roll; Objections in Writing.

Upon receipt of the special assessment roll, the Council, by resolution, shall accept the assessment roll and order it to be filed in the office of the Clerk for public examination, shall fix the time and place the Council will meet to hear objections to the improvement and to review the special assessment roll, and shall direct the Clerk to give notice of a public hearing for the purpose of affording an opportunity for interested persons to be heard. The notice shall be given by publication once at least ten (10) full days prior to the date of the hearing in a newspaper published or circulated within the Village and by first-class mail addressed to each owner of or person in interest in property to be assessed, as shown by the last general tax assessment roll of the Village, mailed at least ten (10) days prior to the date of the hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the Council. At the hearing, all interested persons or parties shall present, in person or in writing, their objections, if any, to the improvement and the assessments against them. The Assessor shall be present at every meeting of the Council at which a special assessment is to be reviewed.

Section 12. Changes and Corrections in Assessment Roll.

The Council shall meet at the time and place designated for the hearing on the improvements and review of such special assessment roll, and at such meeting, or a proper adjournment thereof, shall consider all objections thereto submitted in writing. The Council may correct the 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, annul the assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in making a new roll as in the making of the original roll. After hearing all objections and making a record of such changes as the Council deems justified, the Council may, by resolution, determine to proceed with the public improvement, determine the necessity thereof and set forth the nature thereof, designate the limits of the special assessment district to be affected and describe the lands to be assessed, and finally determine the part or proportion of the cost of the public improvement to be paid by the lands specially benefited thereby and the part or portion, if any, to be paid by the Village at-large for benefit to the Village at-large. If the Council determines that it is satisfied with the special assessment roll and that assessments are in proportion to benefits received, it shall pass a resolution which recites such determinations, confirms such roll, places it on file in the office of the Clerk and directs the Clerk to attach the Clerk's warrant to a certified copy thereof within ten (10) days, and directs the Assessor to spread and the Treasurer to collect the various sums and amounts appearing thereon as directed by the Council. The roll shall have the date of confirmation endorsed thereon and shall from that date be final and conclusive for the purpose of the improvement to which it applies unless contested in the manner provided by law, and subject to adjustment to conform to the actual cost of the improvement, as provided in Section 18 of this Ordinance.

Section 13. Objection to Assessment.

If at or prior to the final confirmation of any special assessment, the owners of privately owned real property to be assessed for more than fifty percent (50%) of the costs of an improvement or in the case of paving or similar improvements the owners of more than fifty percent (50%) of the frontage to be assessed for any such improvement shall object in writing to the proposed improvement, the improvement shall not be made by proceedings delineated

by this Ordinance without a five-sevenths (5/7) vote of the members-elect of the Council. This section shall not apply to sidewalk construction.

Section 14. Special Assessment – When Due.

All special assessments, except such installments thereof as the Council shall make payable at a future time as provided in this Ordinance, shall be due and payable upon confirmation of the special assessment roll.

Section 15. Partial Payments – When Due.

The Council may provide for the payment of special assessments in installments. Such installments shall not exceed thirty (30) in number, the first installment being due upon confirmation of the roll or on such date as the Council may determine and the deferred installments shall be due annually thereafter, or, in the discretion of the Council, shall be due annually on such other date as the Council may fix or may be spread upon and made a part of each annual Village tax roll thereafter until all are paid. Interest shall be charged on all deferred installments at a rate not to exceed seven percent (7%) per annum or such higher rate of interest as may be permitted by general laws of the State of Michigan, commencing on such date on or after confirmation as may be fixed by the Council and payable with each installment. The full amount of all or any deferred installments, with interest accrued thereon to the date of payment, may be paid in advance of the due dates thereof. If the full assessment or the first installment thereof shall be due upon confirmation, each property owner shall have sixty (60) days from the date of confirmation to pay the full amount of said assessment or the full amount of any installments thereof, without interest or penalty. Following said thirty-day period, the assessment or first installment thereof shall, if unpaid, be considered as delinquent and the same penalties shall be collected on such unpaid assessments or first installments thereof as are provided by law to be collected on delinquent general Village taxes. Deferred installments shall be collected without penalty until sixty (60) days after the due date thereof, after which time such installments shall be considered as delinquent and such penalties on said installments shall be collected as are provided by law to be collected on delinquent general Village taxes. After the Council has confirmed the roll, the Village treasurer shall notify by mail each property owner on said roll that said roll has been filed, stating the amount assessed and the terms of payment. Failure on the part of the Village Treasurer to give said notice or of such owner to receive said notice shall not invalidate any special assessment roll of the Village or any assessment thereon, nor excuse the payment of interest or penalties.

Section 16. Delinquent Special Assessments.

Any assessment, or part thereof, remaining unpaid on the first Monday of March following the date when the same became delinquent shall be reported as unpaid by the Treasurer to the Council. Any such delinquent assessment, together with all accrued interest, shall be transferred and reassessed on the next annual Village tax roll in a column headed "Special Assessments," with a penalty of four percent (4%) upon such total amount added thereto, and when so transferred and reassessed upon said tax roll shall be collected in all respects as provided for the collection of Village taxes.

Section 17. Creation of Lien.

Special assessments and all interest, penalties and charges thereon from the date of confirmation of the roll shall become a debt to the Village from the persons to whom they are assessed, and, until paid shall be and remain a lien upon the property assessed, of the same character and effect as the lien created by general law for state, county and village taxes, and the lands upon which the same are a lien shall be subject to sale therefore the same as are lands upon which delinquent village taxes constitute a lien.

Section 18. Additional Assessments; Refunds.

The Clerk shall, within sixty (60) days after the completion of each local or special public improvement, compile the actual cost thereof and certify the same to the Assessor, who shall adjust the special assessment roll to correspond therewith. Should the assessment prove larger than necessary by less than five percent (5%), the same shall be reported to the Council, which may place the excess in the Village treasury or make a refund thereof pro rate according to the assessment. If the assessment exceeds the amount necessary by five percent (5%) or more, the entire excess shall be credited to owners of property as shown by the Village assessment roll upon which such assessment has been levied, pro rate according to the assessment. No refunds of special assessments may be made which impair or contravene the provision of any outstanding obligation or bond secured, in whole or in part, by such special assessments. In the case of assessments due in installments, the Council may order the refund given by credit against the installments last coming due. When any special assessment roll shall prove insufficient to meet the cost of the improvement for which it was made, the Council may make an additional pro rate assessment, but the total amount assessed against any one parcel of land shall not exceed the benefits received by said lot or parcel of land.

Purpose. This Ordinance is to preserve and protect public health, safety and general welfare of the residents of the Village of Fairgrove by prohibiting certain burnings within the village limits.

Section 19. Additional Procedures.

In any case where the provisions of this Ordinance may prove to be insufficient to carry out fully the making of any special assessment, the Council shall provide by ordinance any additional steps or procedures required.

Section 20. Collection of Special Assessments.

In the event bonds are issued in anticipation of the collection of special assessments as hereinbefore provided, all collections on each special assessment roll, or combination of rolls, shall be set in a separate fund for the payment of the principal and interest on the bonds so issued in anticipation of the payment of such special assessments, and shall be used for no other purpose.

Section 21. Special Assessment Accounts.

Moneys raise by special assessment to pay the cost of any local improvements shall be held in a special fund to pay such cost or to repay any money borrowed therefor. Each special assessment account may be used only for the improvement project for which the assessment was levied, expenses incidental thereto, including the repayment of the principal and interest on money borrowed therefore, and to refund excessive assessments if refunds be authorized.

Section 22. Reassessment for Benefits.

Whenever the Council shall deem any special assessment invalid or defective for any reason whatever or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatever, in whole or in part, the Council shall have the power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement or any part thereof has been completed and whether any part of the assessment has been collected or not. All proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment, and the reassessment shall to that extent be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.

Section 23. Combination of Projects.

The Council may combine several districts into one project for the purpose of effecting a saving in the costs. There shall be established for each district separate funds and accounts to cover the cost of the same.

Section 24. Division of Parcels.

Should any lots or lands be divided after a special assessment thereon has been confirmed and divided into installments, the Assessor shall apportion the uncollected amounts upon the several lots and lands 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 their last known address by first-class mail. Said 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.

Section 25. Deferred Payments of Special Assessments.

The Council may provide for the deferred payment of special assessments from persons who, in the opinion of the Council and Assessor, by reason of poverty are unable to contribute toward the cost thereof. In all such cases, as a condition to the granting of such deferred payments, the Village shall require mortgage security on the real property of the beneficiary payable on or before his death, or, in any event, on the sale or transfer of the property.

Section 26. Reconsideration of Petitions.

In the event that the Council shall fail to make any public improvement petitioned for under the provisions of Section 4 hereof during the calendar year during which any petition is filed, such petition shall be reconsidered by the Council prior to the first day of March of the succeeding calendar year for the purpose of determining whether such improvement should be made during such calendar year.

Section 27. Hazards and Nuisances.

When any lot, building or structure within the Village, because of the accumulation of refuse or debris, the uncontrolled growing of weeds, or age or dilapidation, or because of any other condition or happening, becomes, in the opinion of the Council, a public hazard or nuisance which is dangerous to the health and safety of the inhabitants of the Village or those of them residing or habitually going near such lot, building or structure, the Council may, after investigation, give notice to the owner of the land upon which such hazard or nuisance exists or the owner of the building or structure itself, specifying the nature of the hazard or nuisance and requiring such owner to alter, repair, tear down, or remove same promptly and within a time to be specified by the Council, which shall be commensurate with the nature of the hazard or nuisance. If at the expiration of the time limit in said notice said owner has not complied with the requirements thereof, or in any case where the owner of the land or of the building or structure itself is not known, the Council may order such a hazard or nuisance abated by the proper department or

agency of the Village which is qualified to do the work required and the costs of such abatement assessed against the lot, premises or description of real property upon which said hazard or nuisance was located.

Section 28. Savings Clause.

All special assessment proceedings commenced prior to the effective date of this Ordinance and conducted in conformity with the provisions of Act No. 3, Public Acts of Michigan, 1895, as in effect prior to the effective date of Act No. 4, Public Acts of Michigan of 1974, are hereby validated, ratified and confirmed. Any special assessment roll confirmed after the effective date of Act No. 4, Public Acts of Michigan of 1974, but prior to the effective date hereof, shall be conclusive, except that the period for contesting such assessment roll as provided by law shall commence upon the effective date of this Ordinance. All incomplete special assessment proceedings shall be continued under the applicable provisions hereof.

Section 29. Severability; Repealer; Headings.

Should any section, clause or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

All ordinances or resolutions and parts of ordinances or resolutions inconsistent with this Ordinance are hereby repealed. Section headings are furnished for convenience only and shall not be construed as a part of the ordinance.

Section 30. Title.

This Ordinance shall be known and may be cited as the "Special Assessment Ordinance" of the Village of Fairgrove, Michigan.

Section 31. Publication and Effective Date.

The full text or a summary of this Ordinance, as provided by law, shall be published promptly after final enactment and shall take effect immediately upon such publication and shall be recorded as provided by law.

Motion by Council Member Adams, supported by Council Member Streeter, that Ordinance No. 53 be accepted for second reading and ordered adopted.

YES: Council Members: Ahrens, Eurich, Streeter, Prusi, Bohn, Adams

NO: Council Members: None

ABSENT: Council Members: One Vacancy

ROBERT E AHRENS, PRESIDENT

ADOPTED May 3, 2004

BEVERLY J PARSELL, CLERK

I hereby certify that the foregoing constitutes a true and complete copy of Ordinance No. 53 adopted by the Village of Fairgrove, Tuscola County, Michigan, at a regular meeting held on May 3, 2004 and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that minutes of said meeting were kept and will be or have been made available as required by said Act; and I further certify that it was published in the *Tuscola County Advertiser*, Caro, Michigan, a newspaper of general circulation in the Village of Fairgrove, State of Michigan.

Beverly J. Parsell, Village Clerk