

Part 2 Designating an Assessment Area

11-42-201 Resolution or ordinance designating an assessment area -- Classifications within an assessment area -- Preconditions to adoption of a resolution or ordinance.

- (1)
 - (a) Subject to the requirements of this part, a governing body of a local entity intending to levy an assessment on property to pay some or all of the cost of providing improvements benefitting the property, performing operation and maintenance benefitting the property, or conducting economic promotion activities benefitting the property shall adopt a resolution or ordinance designating an assessment area.
 - (b) A designation resolution or designation ordinance described in Subsection (1)(a) may divide the assessment area into multiple classifications to allow the governing body to:
 - (i) levy a different level of assessment; or
 - (ii) use a different assessment method in each classification to reflect more fairly the benefits that property within the different classifications is expected to receive because of the proposed improvement, operation and maintenance, or economic promotion activities.
 - (c) The boundaries of a proposed assessment area:
 - (i) may include property that is not intended to be assessed; and
 - (ii) may not be coextensive or substantially coterminous with the boundaries of the local entity.
- (2) Before adopting a designation resolution or designation ordinance described in Subsection (1)
 - (a), the governing body of the local entity shall:
 - (a) give notice as provided in Section 11-42-202;
 - (b) receive and consider all protests filed under Section 11-42-203; and
 - (c) hold a public hearing as provided in Section 11-42-204.

Amended by Chapter 396, 2015 General Session

11-42-202 Requirements applicable to a notice of a proposed assessment area designation.

- (1) Each notice required under Subsection 11-42-201(2)(a) shall:
 - (a) state that the local entity proposes to:
 - (i) designate one or more areas within the local entity's jurisdictional boundaries as an assessment area;
 - (ii) provide an improvement to property within the proposed assessment area; and
 - (iii) finance some or all of the cost of improvements by an assessment on benefitted property within the assessment area;
 - (b) describe the proposed assessment area by any reasonable method that allows an owner of property in the proposed assessment area to determine that the owner's property is within the proposed assessment area;
 - (c) describe, in a general and reasonably accurate way, the improvements to be provided to the assessment area, including:
 - (i) the nature of the improvements; and
 - (ii) the location of the improvements, by reference to streets or portions or extensions of streets or by any other means that the governing body chooses that reasonably describes the general location of the improvements;
 - (d) state the estimated cost of the improvements as determined by a project engineer;

- (e) for the version of notice mailed in accordance with Subsection (4)(b), state the estimated total assessment specific to the benefitted property for which the notice is mailed;
- (f) state that the local entity proposes to levy an assessment on benefitted property within the assessment area to pay some or all of the cost of the improvements according to the estimated benefits to the property from the improvements;
- (g) if applicable, state that an unassessed benefitted government property will receive improvements for which the cost will be allocated proportionately to the remaining benefitted properties within the proposed assessment area and that a description of each unassessed benefitted government property is available for public review at the location or website described in Subsection (6);
- (h) state the assessment method by which the governing body proposes to levy the assessment, including, if the local entity is a municipality or county, whether the assessment will be collected:
 - (i) by directly billing a property owner; or
 - (ii) by inclusion on a property tax notice issued in accordance with Section 59-2-1317 and in compliance with Section 11-42-401;
- (i) state:
 - (i) the date described in Section 11-42-203 and the location at which protests against designation of the proposed assessment area or of the proposed improvements are required to be filed;
 - (ii) the method by which the governing body will determine the number of protests required to defeat the designation of the proposed assessment area or acquisition or construction of the proposed improvements; and
 - (iii) in large, boldface, and conspicuous type that a property owner must protest the designation of the assessment area in writing if the owner objects to the area designation or being assessed for the proposed improvements, operation and maintenance costs, or economic promotion activities;
- (j) state the date, time, and place of the public hearing required in Section 11-42-204;
- (k) if the governing body elects to create and fund a reserve fund under Section 11-42-702, include a description of:
 - (i) how the reserve fund will be funded and replenished; and
 - (ii) how remaining money in the reserve fund is to be disbursed upon full payment of the bonds;
- (l) if the governing body intends to designate a voluntary assessment area, include a property owner consent form that:
 - (i) estimates the total assessment to be levied against the particular parcel of property;
 - (ii) describes any additional benefits that the governing body expects the assessed property to receive from the improvements;
 - (iii) designates the date and time by which the fully executed consent form is required to be submitted to the governing body; and
 - (iv) if the governing body intends to enforce an assessment lien on the property in accordance with Subsection 11-42-502.1(2)(c):
 - (A) appoints a trustee that satisfies the requirements described in Section 57-1-21;
 - (B) gives the trustee the power of sale; and
 - (C) explains that if an assessment or an installment of an assessment is not paid when due, the local entity may sell the property owner's property to satisfy the amount due plus interest, penalties, and costs, in the manner described in Title 57, Chapter 1, Conveyances;

- (m) if the local entity intends to levy an assessment to pay operation and maintenance costs or for economic promotion activities, include:
 - (i) a description of the operation and maintenance costs or economic promotion activities to be paid by assessments and the initial estimated annual assessment to be levied;
 - (ii) a description of how the estimated assessment will be determined;
 - (iii) a description of how and when the governing body will adjust the assessment to reflect the costs of:
 - (A) in accordance with Section 11-42-406, current economic promotion activities; or
 - (B) current operation and maintenance costs;
 - (iv) a description of the method of assessment if different from the method of assessment to be used for financing any improvement; and
 - (v) a statement of the maximum number of years over which the assessment will be levied for:
 - (A) operation and maintenance costs; or
 - (B) economic promotion activities;
 - (n) if the governing body intends to divide the proposed assessment area into classifications under Subsection 11-42-201(1)(b), include a description of the proposed classifications;
 - (o) if applicable, state the portion and value of the improvement that will be increased in size or capacity to serve property outside of the assessment area and how the increases will be financed; and
 - (p) state whether the improvements will be financed with a bond and, if so, the currently estimated interest rate and term of financing, subject to Subsection (2), for which the benefitted properties within the assessment area may be obligated.
- (2) The estimated interest rate and term of financing in Subsection (1)(p) may not be interpreted as a limitation to the actual interest rate incurred or the actual term of financing as subject to the market rate at the time of the issuance of the bond.
- (3) A notice required under Subsection 11-42-201(2)(a) may contain other information that the governing body considers to be appropriate, including:
- (a) the amount or proportion of the cost of the improvement to be paid by the local entity or from sources other than an assessment;
 - (b) the estimated total amount of each type of assessment for the various improvements to be financed according to the method of assessment that the governing body chooses; and
 - (c) provisions for any improvements described in Subsection 11-42-102(26)(a)(ii).
- (4) Each notice required under Subsection 11-42-201(2)(a) shall:
- (a)
 - (i)
 - (A) be published in a newspaper of general circulation within the local entity's jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at least five but not more than 20 days before the day of the hearing required in Section 11-42-204; or
 - (B) if there is no newspaper of general circulation within the local entity's jurisdictional boundaries, be posted in at least three public places within the local entity's jurisdictional boundaries at least 20 but not more than 35 days before the day of the hearing required in Section 11-42-204; and
 - (ii) be published on the Utah Public Notice Website described in Section 63F-1-701 for four weeks before the deadline for filing protests specified in the notice under Subsection (1)(i); and
 - (b) be mailed, postage prepaid, within 10 days after the first publication or posting of the notice under Subsection (4)(a) to each owner of property to be assessed within the proposed assessment area at the property owner's mailing address.

- (5)
 - (a) The local entity may record the version of the notice that is published or posted in accordance with Subsection (4)(a) with the office of the county recorder, by legal description and tax identification number as identified in county records, against the property proposed to be assessed.
 - (b) The notice recorded under Subsection (5)(a) expires and is no longer valid one year after the day on which the local entity records the notice if the local entity has failed to adopt the designation ordinance or resolution under Section 11-42-201 designating the assessment area for which the notice was recorded.
- (6) A local entity shall make available on the local entity's website, or, if no website is available, at the local entity's place of business, the address and type of use of each unassessed benefitted government property described in Subsection (1)(g).
- (7) If a governing body fails to provide actual or constructive notice under this section, the local entity may not assess a levy against a benefitted property omitted from the notice unless:
 - (a) the property owner gives written consent;
 - (b) the property owner received notice under Subsection 11-42-401(2)(a)(iii) and did not object to the levy of the assessment before the final hearing of the board of equalization; or
 - (c) the benefitted property is conveyed to a subsequent purchaser and, before the date of conveyance, the requirements of Subsections 11-42-206(3)(a)(i) and (ii), or, if applicable, Subsection 11-42-207(1)(d)(i) are met.

Amended by Chapter 85, 2016 General Session
Amended by Chapter 371, 2016 General Session

11-42-203 Protests.

- (1) An owner of property that is proposed to be assessed and who does not want the property to be included in an assessment area may, within 60 days after the day of the hearing described in Subsection 11-42-204(1), file a written protest:
 - (a) against:
 - (i) the designation of the assessment area;
 - (ii) the inclusion of the owner's property in the proposed assessment area;
 - (iii) the proposed improvements to be acquired or constructed; or
 - (iv) if applicable, the inclusion of an unassessed benefitted government property, the benefit for which the other assessed properties will collectively pay; or
 - (b) protesting:
 - (i) whether the assessment meets the requirements of Section 11-42-409; or
 - (ii) any other aspect of the proposed designation of an assessment area.
- (2) Each protest under Subsection (1) shall:
 - (a) describe or otherwise identify the property owned by the person filing the protest; and
 - (b) include the signature of the owner of the property.
- (3) An owner may withdraw a protest at any time before the expiration of the 60-day period described in Subsection (1) by filing a written withdrawal with the governing body.
- (4) If the governing body intends to assess property within the proposed assessment area by type of improvement or classification, as described in Section 11-42-201, and the governing body has clearly noticed its intent, the governing body shall:
 - (a) in determining whether adequate protests have been filed, aggregate the protests by the type of improvement or by classification; and

- (b) apply to and calculate for each type of improvement or classification the threshold requirements of adequate protests.
- (5) The failure of an owner of property within the proposed assessment area to file a timely written protest constitutes a waiver of any objection to:
 - (a) the designation of the assessment area;
 - (b) any improvement to be provided to property within the assessment area;
 - (c) the inclusion of the owner's property within the assessment area;
 - (d) the fact, but not amount, of benefit to the owner's property; and
 - (e) the inclusion of an unassessed benefitted government property in the assessment area.
- (6) The local entity shall post the total and percentage of the written protests it has received on the local entity's website, or, if no website is available, at the local entity's place of business at least five days before the public meeting described in Section 11-42-206.

Amended by Chapter 396, 2015 General Session

11-42-204 Hearing.

- (1) On the date and at the time and place specified in the notice under Section 11-42-202, the governing body shall hold a public hearing.
- (2)
 - (a) The governing body:
 - (i) subject to Subsection (2)(a)(ii), may continue the public hearing from time to time to a fixed future date and time; and
 - (ii) may not hold a public hearing that is a continuance less than five days before the deadline for filing protests described in Section 11-42-203.
 - (b) The continuance of a public hearing does not restart or extend the protest period described in Subsection 11-42-203(1).
- (3) At the public hearing, the governing body shall hear all:
 - (a) objections to the designation of the proposed assessment area or the improvements proposed to be provided in the assessment area;
 - (b) objections to whether the assessment will meet the requirements of Section 11-42-409;
 - (c) objections to the inclusion within the assessment area of an unassessed benefitted government property, the benefit for which the other assessed properties will collectively pay; and
 - (d) persons desiring to be heard.

Amended by Chapter 396, 2015 General Session

11-42-205 Unimproved property.

- (1)
 - (a) Before a local entity may designate an assessment area in which more than 75% of the property proposed to be assessed consists of unimproved property, and designation of the assessment area would require that the local entity issue bonds, the local entity shall obtain:
 - (i) an appraisal:
 - (A) of the unimproved property;
 - (B) from an appraiser who is a member of the Appraisal Institute;
 - (C) addressed to the local entity or a financial institution; and

- (D) verifying that the market value of the property, after completion of the proposed improvements, is at least three times the amount of the assessments proposed to be levied against the unimproved property; or
- (ii) the most recent taxable value of the unimproved property from the assessor of the county in which the unimproved property is located, verifying that the taxable value of the property, after completion of the proposed improvements, is at least three times the amount of the assessments proposed to be levied against the unimproved property.
- (b) If the owner of the unimproved property has entered into a construction loan acceptable to the local entity to finance the facilities to be constructed or installed on the unimproved property, the market value of the unimproved property, as determined under Subsection (1)(a)(i), may include, at the local entity's option:
 - (i) the principal amount of the construction loan; or
 - (ii) the value of the unimproved property with the facilities to be financed by the construction loan, as determined by an appraisal of:
 - (A) the unimproved property; and
 - (B) the facilities proposed to be constructed.
- (2) With respect to the designation of an assessment area described in Subsection (1)(a), the local entity may require:
 - (a) financial information acceptable to the governing body with respect to the owner's ability to pay the proposed assessments;
 - (b) a financial institution's commitment securing, to the governing body's satisfaction, the owners' obligation to pay the proposed assessments; or
 - (c) a development plan, approved by a qualified, independent third party, describing the plan of development and the financial feasibility of the plan, taking into account growth trends, absorption studies, and other demographic information applicable to the unimproved property.
- (3) Information that an owner provides to a local entity under Subsection (2)(a) is not a record for purposes of Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 388, 2011 General Session

11-42-206 Public meeting -- Adoption of a resolution or ordinance regarding a proposed assessment area -- Designation prohibited if adequate protests filed -- Recording of resolution or ordinance and notice of proposed assessment.

- (1)
 - (a) After holding a public hearing under Section 11-42-204 and within 15 days after the day that the protest period expires in accordance with Subsection 11-42-203(1), the governing body shall:
 - (i) count the written protests filed or withdrawn in accordance with Section 11-42-203 and calculate whether adequate protests have been filed; and
 - (ii) hold a public meeting to announce the protest tally and whether adequate protests have been filed.
 - (b) If adequate protests are not filed, the governing body at the public meeting may adopt a resolution or ordinance:
 - (i) abandoning the proposal to designate an assessment area; or
 - (ii) designating an assessment area as described in the notice under Section 11-42-202 or with the changes made as authorized under Subsection (1)(d).
 - (c) If adequate protests are filed, the governing body at the public meeting:
 - (i) may not adopt a resolution or ordinance designating the assessment area; and

- (ii) may adopt a resolution or ordinance to abandon the proposal to designate the assessment area.
- (d)
 - (i) In the absence of adequate protests upon the expiration of the protest period and subject to Subsection (1)(d)(ii), the governing body may make changes to:
 - (A) an improvement proposed to be provided to the proposed assessment area; or
 - (B) the area or areas proposed to be included within the proposed assessment area.
 - (ii) A governing body may not make a change in accordance with Subsection (1)(d)(i) if the change would result in:
 - (A) a change in the nature of an improvement or reduction in the estimated amount of benefit to a benefitted property, whether in size, quality, or otherwise, than that described in the notice under Subsection 11-42-202(1)(c);
 - (B) an estimated total assessment to any benefitted property within the proposed assessment area that exceeds the estimate stated in the notice under Subsection 11-42-202(1)(e) or 11-42-202(1)(l); or
 - (C) a financing term that extends beyond the estimated term of financing described in Subsection 11-42-202(1)(p).
- (2) If the notice under Section 11-42-202 indicates that the proposed assessment area is a voluntary assessment area, the governing body shall:
 - (a) delete from the proposed assessment area all property whose owners have not submitted an executed consent form consenting to inclusion of the owner's property in the proposed assessment area;
 - (b) delete all improvements that solely benefit the property whose owners did not consent; and
 - (c) determine whether to designate a voluntary assessment area, after considering:
 - (i) the extent of the improvements required to benefit property owners who consented;
 - (ii) the amount of the proposed assessment to be levied on the property within the voluntary assessment area;
 - (iii) the value of the benefits that property within the voluntary assessment area will receive from improvements proposed to be financed by assessments on the property; and
 - (iv) the extent to which the improvements may be scaled to benefit only the assessed properties.
- (3)
 - (a) If the governing body adopts a designation resolution or ordinance designating an assessment area, the governing body shall, within 15 days after adopting the designation resolution or ordinance:
 - (i) record the original or certified copy of the designation resolution or ordinance in the office of the recorder of the county in which property within the assessment area is located; and
 - (ii) file with the recorder of the county in which property within the assessment area is located a notice of proposed assessment that:
 - (A) states that the local entity has designated an assessment area; and
 - (B) lists, by legal description and tax identification number as identified on county records, the property proposed to be assessed.
 - (b) If a governing body fails to comply with the requirements of Subsection (3)(a):
 - (i) the failure does not invalidate the designation of an assessment area; and
 - (ii) the local entity may not assess a levy against a subsequent purchaser of a benefitted property that lacked recorded notice unless:
 - (A) the subsequent purchaser gives written consent;
 - (B) the subsequent purchaser has actual notice of the assessment levy; or

- (C) the subsequent purchaser purchased the property after a corrected notice was filed under Subsection (3)(c).
- (c) The governing body may file a corrected notice under Subsection (3)(a)(i) or (ii) if it failed to comply with the date or other requirements for recording notice of the designation resolution or ordinance.
- (d) If a governing body has filed a corrected notice under Subsection (3)(c), the local entity may not retroactively collect or adjust the amount of the levy to recapture lost funds for a levy that the local entity was prohibited from collecting, if applicable, under Subsection (3)(b).
- (e) A local entity shall pay for a shortfall in assessment funds created under Subsection (3)(b) or (d) from the local entity's general fund and not by increasing or adjusting the assessment of any other property within the assessment area.
- (4) After the adoption of a designation resolution or ordinance under Subsection (1)(b)(ii), the local entity may begin providing the specified improvements.

Amended by Chapter 396, 2015 General Session

11-42-207 Adding property to an assessment area.

- (1) A local entity may add to a designated assessment area property to be benefitted and assessed if the governing body:
 - (a) finds that the inclusion of the property will not adversely affect the owners of property already in the assessment area;
 - (b) obtains from each owner of property to be added and benefitted a written consent that contains:
 - (i) the owner's consent to:
 - (A) the owner's property being added to the assessment area; and
 - (B) the making of the proposed improvements with respect to the owner's property;
 - (ii) if the assessment area to which the local entity seeks to add property is a voluntary assessment area, the items described in Subsection 11-42-202(1)(l);
 - (iii) the legal description and tax identification number of the property to be added; and
 - (iv) the owner's waiver of any right to protest the creation of the assessment area;
 - (c) amends the designation resolution or ordinance to include the added property; and
 - (d) within 15 days after amending the designation resolution or ordinance:
 - (i) records in the office of the recorder of the county in which the added property is located the original or certified copy of the amended designation resolution or ordinance containing the legal description and tax identification number as identified on county records of each additional parcel of property added to the assessment area and proposed to be assessed; and
 - (ii) gives written notice to the property owner of the inclusion of the owner's property in the assessment area.
- (2)
 - (a) If a governing body fails to comply with the requirements of Subsection (1)(d)(i):
 - (i) the failure does not invalidate the amended designation resolution or ordinance; and
 - (ii) the local entity may not assess a levy against a subsequent purchaser of a benefitted property that lacked recorded notice unless:
 - (A) the subsequent purchaser gives written consent;
 - (B) the subsequent purchaser has actual notice of the assessment levy; or
 - (C) the subsequent purchaser purchased the property after a corrected notice was filed under Subsection (2)(c).

- (b) The governing body may file a corrected notice under Subsection (1)(d)(i) if it failed to comply with the date or other requirements for recording notice of the amended designation resolution or ordinance.
 - (c) If a governing body has filed a corrected notice under Subsection (2)(b), the local entity may not retroactively collect or adjust the amount of the levy to recapture lost funds for a levy that the local entity was prohibited from collecting, if applicable, under Subsection (2)(a).
 - (d) A local entity shall pay for a shortfall in assessment funds created under Subsection (2)(a) or (c) from the local entity's general fund and not by increasing or adjusting the assessment of any other property within the assessment area.
- (3) Except as provided in this section, a local entity may not add to an assessment area property not included in a notice under Section 11-42-202, or provide for making improvements that are not stated in the notice, unless the local entity gives notice as provided in Section 11-42-202 and holds a hearing as required under Section 11-42-204 as to the added property or additional improvements.

Amended by Chapter 85, 2016 General Session

11-42-208 Recording notice of deletion if property is deleted from an assessment area.

If, after adoption of a designation resolution or ordinance under Section 11-42-206, a local entity deletes property from the assessment area, the local entity shall record a notice of deletion in a form that includes the legal description and tax identification number of the property and otherwise complies with applicable recording statutes.

Enacted by Chapter 329, 2007 General Session

11-42-209 Designation of assessment area for an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure -- Requirements.

- (1) A governing body may not adopt a designation ordinance or resolution to designate an assessment area for an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure unless the assessment area is a voluntary assessment area.
- (2) A local entity may not include property in a voluntary assessment area described in Subsection (1) unless an owner of property located in the assessment area provides to the local entity:
 - (a) the written consent of each person or institution holding a lien on the property; and
 - (b) evidence:
 - (i) that there are no delinquent taxes, special assessments, or water or sewer charges on the property;
 - (ii) that the property is not subject to a trust deed or other lien on which there is a recorded notice of default, foreclosure, or delinquency that has not been cured; and
 - (iii) that there are no involuntary liens, including a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property.

Amended by Chapter 371, 2016 General Session