

Effective 5/12/2015

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 - (i) count the written protests filed or withdrawn in accordance with Section 11-42-203 and calculate whether adequate protests have been filed; and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