

**CHAPTER 40-22.1**  
**SPECIAL ASSESSMENTS FOR PROMOTION OF BUSINESS ACTIVITY**

**40-22.1-01. Improvements by special assessments for business promotion.**

A municipality may defray the expense of improvements by special assessments for the promotion of business activity and new business development through any means not inconsistent with the purposes of this chapter, including advertising, public information, marketing, maintenance and decoration of public places, promotion of public events, furnishing of music in any public place, providing professional management, planning, and promotion, and the general promotion of trade activities. The governing body of the municipality may make and execute necessary or convenient agreements to exercise the powers and functions under this chapter, including contracts with any entity. In planning an improvement project under this chapter the governing body may include any work and materials which are deemed necessary or reasonably incidental to the project. A municipality may not issue warrants, bonds, or any other form of indebtedness in anticipation of the levy and collection of assessments under this chapter.

**40-22.1-02. Improvement districts to be created.**

For an improvement project under section 40-22.1-01 and defraying the costs of the project by special assessments, a municipality may create and alter a business improvement district by ordinance or resolution. The governing body of the municipality shall designate the district by an appropriate name and by a number distinguishing it from other improvement districts. A municipality may make and finance any improvement and levy special assessments for the improvement under any alternate procedure in this title. If the proposal for creation of an improvement project under this chapter is made by any person, group, or entity that is not an officer, board, or agency of the municipality, the person, group, or entity shall file a bond or other sufficient security, payable to the municipality, to defray all costs incurred if the improvement project is later barred under section 40-22.1-08. The bond or other sufficient security must be filed with the city auditor prior to the initiation of any further proceedings under this chapter. The governing body of the municipality shall determine the amount and form of the bond or other sufficient security.

**40-22.1-03. Size and form of improvement district - Regulations governing.**

Any business improvement district created by a municipality may embrace two or more separate property areas. A business improvement district must include all properties which in the judgment of the governing body, after consultation with the city auditor or city auditor's designee planning the improvement, will be benefited by the creation of all or a portion of the business improvement project. A district may be created without uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the district. The jurisdiction of a municipality to make, finance, and assess the cost of any improvement project may not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the district is subsequently determined not to be benefited by the improvement, or by a particular portion of the improvement. Upon receipt of a petition signed by the owners of three-fourths of the area to be added to a business improvement district in which an improvement is proposed or created, the governing body may enlarge the district. Any district created under this chapter shall include only property devoted, in whole or in part, to commercial or business use.

**40-22.1-04. Auditor's report required - Contents.**

After a business improvement district has been created, the governing body of a municipality, to make any of the improvements set out in section 40-22.1-01 in the manner provided in this chapter, shall direct the city auditor for the municipality or some other person, group, or entity to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement and an estimate of the probable cost of the work.

**40-22.1-05. Approval of plans, specifications, and estimates.**

At any time after receiving the report required by section 40-22.1-04, the governing body may direct the city auditor or other person, group, or other entity preparing the report to prepare detailed plans and specifications concerning the improvement. The plans and specifications must be approved by a resolution of the governing body of the municipality. The plans, specifications, and estimates are the property of the municipality and must be filed in the office of the city auditor and shall remain on file in that office subject to inspection by the public.

**40-22.1-06. Resolution declaring improvements necessary - Contents of resolution - Publication of resolution.**

After the report required by section 40-22.1-04 has been filed and approved, the governing body of the municipality shall declare by resolution that it is necessary to make the improvements. A resolution is not required if the governing body determines by resolution that a written petition for the improvement, signed by the owners of a majority of the area of the property included within a district, has been received. The resolution must refer intelligibly to the report and must include a map of the municipality showing the proposed business improvement district. The resolution must be published once each week for two consecutive weeks in the official newspaper of the municipality.

**40-22.1-07. Protest against resolution of necessity - Meeting to hear protest.**

If, within thirty days after the first publication of the resolution declaring the necessity of a business improvement project, the owners of any property within the improvement district file written protest with the city auditor against the adoption of the resolution and describing the property which is the subject of the protest, the governing body of the municipality, at its next meeting after the expiration of the time for filing protests, shall hear and determine the sufficiency of the protests.

**40-22.1-08. Protest bar to proceeding - Invalid or insufficient protest - Payment of costs - Tax levy.**

If the governing body finds the protest to contain the names of the owners of one-third or more of the area of the property included within the business improvement district, the protest bars proceeding further with the improvement project described in the plans and specifications. If the governing body finds the protest to contain the names of the owners of one-third or more of any separate property area included within the district, the protest bars proceeding with the applicable portion of the improvement project, but does not bar proceeding with the remainder of the improvement project or assessing the cost of the improvement project against other areas within the district, unless the protest represents one-third or more of the area of the entire district. Termination of proceedings does not relieve the municipality of responsibility for payment of costs incurred. The municipality is not responsible for payment of costs incurred if the improvement project is proposed by any person, group, or entity that is not an officer, board, or agency of the municipality. Payment of the costs incurred for such a barred improvement project must be as provided in section 40-22.1-02. For payment of costs incurred for a barred improvement project proposed by a municipality, the municipality may, if available funds are insufficient, issue its certificates of indebtedness or warrants, or levy a tax which shall be considered a tax for a portion of the costs of a special improvement project by general taxation within the meaning of section 57-15-10. If the protests are found to be insufficient or invalid, the governing body may cause the improvement to be made, levy and collect necessary assessments, and contract for the improvement and acquisition of necessary property or services.

**40-22.1-09. Execution and filing of contracts.**

All contracts under this chapter must be entered into in the name of the municipality and must be executed for the municipality by the executive officer and countersigned by the auditor. After the contract is signed by the other party, it must be filed in the office of the city auditor.

#### **40-22.1-10. Contracts - Conditions and terms.**

A contract executed under this chapter must require the work to be done pursuant to the plans and specifications on file in the office of the city auditor, subject to the approval of the city auditor acting for the municipality, and must provide:

1. The governing body may suspend the work at any time for improper performance and relet the contract or order reperformance of all or any of the work improperly done.
2. The time within which the work is to be completed.
3. The period of time for which the work must be guaranteed or warranted.
4. The fund from which the contract price is to be paid by the municipality.
5. That the consideration expressed in the contract is payable only in warrants drawn on the fund described in the contract.
6. That the municipality assumes and incurs no general liability under the contract.
7. That the failure of the city auditor to reject work and materials which are not up to specifications and acceptance of the job by the city auditor does not release the party from liability for any failure to perform work or furnish materials in accordance with the plans and specifications.

The city auditor acting for the municipality shall supervise and inspect the work during its progress. In addition to any rights which a municipality may have under its contract for establishment and operation of part or all of a business improvement after a contract has been awarded and before contract work has been completed, a municipality may, with the consent of the other party and without advertising for bids, order additional work done by that party of the same character as that which was contracted for, whether within or without the improvement district for which the original contract was made, and upon the same terms and conditions specified in the original contract except as to time of performance, and at the same prices for the additional work; provided, that the total price payable to said party for such additional work may not exceed twenty percent of the amount estimated by the city auditor for the municipality to be payable for that character of work under the original contract.

#### **40-22.1-11. Abbreviations, letters, and figures may be used in proceedings for levy and collection of special assessments.**

In all proceedings for the levy and collection of special assessments abbreviations, letters, and figures may be used to denote full or partial additions, lots, blocks, sections, townships, and ranges or years, days of the month, and amounts of money.

#### **40-22.1-12. City auditor to keep complete record of improvements - Record as evidence.**

The city auditor shall keep a complete record of all the proceedings in the matter of making any improvements under this chapter. The records must include all reports and confirmations, all petitions, orders, appointments of commissioners, notices and proofs of publication, and resolutions of the governing body. The records, a certified transcript of the records, or the original papers, proofs, publications, orders, or resolutions on file in the auditor's office may be admitted in evidence in any court or place in this state without further proof as evidence of the facts they contain.

#### **40-22.1-13. Defects and irregularities in improvement proceedings are not fatal.**

If the proceedings are for a lawful purpose, unaffected by fraud, and do not violate any constitutional limitation or restriction, defects or irregularities in proceedings under this chapter do not invalidate the proceedings. No action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any defects or irregularities in proceedings under this chapter, unless commenced within thirty days of the adoption of the resolution of the governing body awarding the sale of warrants to finance the improvement.

**40-22.1-14. City auditor's statement of estimated cost required - Governing body to enter into contracts.**

Before adopting or rejecting any contract proposed under this chapter, the governing body shall require the city auditor for the municipality to make a careful and detailed statement of the estimated cost of the work. The governing body may not award the contract if the city auditor's estimate prepared under this section exceeds the estimate prepared under section 40-22.1-04. If all proposals are not rejected, the governing body shall award the contract to that person, firm, corporation, limited liability company, or other entity best able to perform the work, upon the basis of cash payment for the work.