

ORDINANCE NO. 2010-02
AN ORDINANCE TO PROVIDE FOR THE MANNER AND PROCEDURE
BY WHICH LANDS WITHIN THE VILLAGE OF ASHLEY MAY
BE SPECIALLY ASSESSED IN ORDER TO DEFER THE COST
OF PUBLIC IMPROVEMENTS

THE VILLAGE OF ASHLEY ORDAINS:

1. DEFINITIONS.

As used in this chapter:

(A) The term "cost", 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 to the making of such improvement, the special assessments therefore and the financing thereof.

(B) Local Public Improvement. The term "local public improvement" 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.

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.

3. INITIATION OF IMPROVEMENTS BY RESOLUTION.

Proceedings 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, may be commenced by resolution of the Council, with or without a petition.

4. INITIATION OF IMPROVEMENTS BY PETITION.

Local public improvements may be initiated by petition signed by property owners whose aggregate property in the proposed district was assessed for not less than fifty-one percent of the total assessed value of the privately-owned real property located therein, 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, if it shall appear that the petition is signed by at least fifty-one percent as aforesaid, the Clerk shall certify the 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.

5. SURVEY AND REPORT.

Before the Council shall consider the making of any local improvement, the Council shall cause to be prepared a report 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.

6. TENTATIVE DETERMINATION OF NECESSITY; NOTICE OF PUBLIC HEARING.

After the Council has received the report required in Section 4 for making any local public improvement as requested in the resolution of the Council, and after the Council has reviewed said report, a resolution may be passed tentatively determining the necessity of the improvement, setting forth the nature thereof, prescribing what part or proportion of the cost of such improvement shall be paid by special assessment upon the property especially benefited, determining benefits received by affected properties, and what part, if any, shall be paid by the Village at large, designating the limits of the special assessment district to be affected, designating whether the improvement is to be assessed according to frontage or other benefits, placing the complete information on file in the office of the Village Clerk, where the same may be found for examination, and directing the Village Clerk to give notice of public hearing on the proposed improvement, at which time and place opportunity will be given interested persons to be heard. Such notice shall be given in accordance with Section 12. The hearing required by this section may be held at any regular, adjourned, or special meeting of the Council.

7. HEARING ON NECESSITY.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which the Council may modify the scope of the local public improvement in such a manner as the Council shall deem to be in the best interest of the Village as a whole; 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 prescribed in Section 5. If the determination of the Council shall be to proceed with the improvement, a resolution shall be passed approving the necessary profiles, plans, specifications, assessment district and detailed estimates of cost, and directing the Assessor to prepare a special assessment roll in accordance with the Council's determination and report the same to the Council for confirmation.

8. 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 Village Clerk and attached to the original plans and specifications on file in the office of the Village Clerk.

9. 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.

10. 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.

11. ASSESSOR TO FILE ASSESSMENT ROLL.

When the Assessor shall have completed the assessment roll the Assessor shall file the same with the Village Clerk for presentation to the Council for review and certification by it.

12. MEETING TO 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 Village Clerk for public examination, fix the time and place the Council will meet to review such special assessment roll and direct the Village 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 in accordance with Section 12. The hearing required by this section may be held at any regular, adjourned or special meeting of the Council. At this meeting all interested persons or parties shall present in writing their objections, if any, to the assessments against them. The notice of hearing shall include a statement that appearance and protest at the hearing in the special assessment proceedings are required in order to appeal the amount of the special assessment to the State **tax** tribunal and shall describe the manner in which an appearance and protest shall be made. Such notice of special assessment shall also include a statement that the owner of, or any person having an interest in, the real property may file a written appeal of the special assessment with the State tax tribunal within thirty days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

13. NOTICE OF HEARINGS; APPEARANCE AT HEARING; RECORD OF PARTIES.

Notice of hearings required by this chapter; shall be given to each owner of, or party in interest in, property to be assessed whose name appears upon the last Village **tax** assessment records by mailing by first class mail addressed to that owner or party at the address shown on the last general **tax** assessment roll of the Village at least ten days before the date of the hearing and by publication at least seven days before the date of the hearing in a newspaper published or circulated within the Village.

The last general tax assessment roll of the Village shall mean the last general tax assessment roll for ad valorem tax purposes that has been reviewed by the Board of Review, as supplemented by any subsequent changes in the names or the addresses of the owners or parties listed on that roll. An owner or party in interest, or his or her agent, may appear in person at the hearing to protest the special assessment, or shall be permitted to file an appearance or protest by letter and a personal appearance shall not be required. The Village Clerk shall maintain a record of parties who appear to protest at any hearing held hereunder. If a hearing is terminated or adjourned before a party is provided the opportunity to be heard, a party whose appearance is recorded shall be considered to have protested the special assessment in person.

14. CHANGES AND CORRECTIONS IN ASSESSMENT ROLL.

The Village Council shall meet at the time and place designated for the review of the 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. If, after hearing all objections and making a record of such changes as the Council deems justified, the Council determines that it is satisfied with the special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the Village Clerk and directing the Village Clerk to attach his or her warrant to a certified copy thereof within ten days, therein commanding 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 in Chapter 8, Section 34 of Act 3, Public Acts of Michigan, 1895, as amended, and subject to adjustment to conform to the actual cost of the improvement, as provided in Section 18.

15. 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 chapter, shall be due and payable upon confirmation of the special assessment roll.

16. ANNUAL INSTALLMENT PAYMENTS.

The Village Council may provide for the payment of special assessments in annual installments. Such annual installments shall not exceed thirty in number, the first installment being due upon confirmation of the roll or on such date as the Council may determine and deferred installments being due annually thereafter, or, in the discretion of the Council, they 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 per annum, commencing thirty days after the date of confirmation, and payable on the due date of each subsequent 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 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 sixty-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 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.

17. 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 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

18. 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.

19. ADDITIONAL ASSESSMENTS; REFUNDS.

The Village Clerk shall, within sixty 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, the same shall be reported to the Council which may place the excess in the Village treasury or make a refund thereof pro rata according to the assessment. If the assessment exceeds the amount necessary by five percent 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 rata 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 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 rata 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.

20. ADDITIONAL PROCEDURES.

In any case where the provisions of this chapter 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.

21. 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 aside 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.

22. SPECIAL, ASSESSMENT ACCOUNTS.

Moneys raised 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 therefore. Each special assessment account must 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 are authorized.

23. CONTESTED ASSESSMENTS.

An action may not be instituted for the purpose of contesting or enjoining the collection of a special assessment unless: (a) Within forty-five days after the confirmation of the special assessment roll, written notice is given to the Council indicating an intention to file such an action and stating the grounds on which it is claimed that the assessment is illegal; and (b) the action is commenced within ninety days after the confirmation of the roll.

24. REASSESSMENTS.

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 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.

25. 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.

26. APPORTIONMENT OF COSTS.

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 days after such apportionment, send notice of such action to the persons concerned at their last known addresses 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 days of the mailing of the aforesaid notice.

27. 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 the 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 or her death, or, in any event, on the sale or transfer of the property.

28. RECONSIDERATION OF PETITIONS.

In the event that the Council shall fail to make any public improvement petitioned for under the provisions of Section 3 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.

29. HAZARDS AND NUISANCES.

When any lot, building, or structure within the Village, because of the accumulation of trash, rubbish 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 or 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 the 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.

30. SEPARABILITY.

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

31. ORDINANCES REPEALED. All ordinances and/or parts of ordinances inconsistent with this ordinance are hereby repealed.

32. EFFECTIVE DATE. This ordinance shall take effect and be in force fifteen days from and after its enactment as provided by the Village council.

Passed and approved by the Village Council of the Village of Ashley, Gratiot County, Michigan, in regular session, held **July 13, 2010**.

We, the undersigned President and Clerk of the Village of Ashley, Michigan, do hereby certify that the above and foregoing Ordinance, known as Ordinance # **2010-02** of the Village of Ashley, Michigan was adopted at a regular meeting of the Village Council, held on **July 13, 2010** and published in a newspaper circulated within the Village on **July 25, 2010**, not less than fifteen days having elapsed between adoption and publication.

Dated at Ashley, Michigan, this **13th** day of **July**, 2010.

Steve Moffit, Village President

Shelly Moffit, Village Clerk