

**AGENDA
CITY OF LINDEN
CITY COUNCIL SPECIAL MEETING**

Monday, January 31, 2022

7:00 P.M.

I. CALL TO ORDER

II. ROLL CALL AND INTRODUCTION

III. CITIZENS' COMMENTS – NON-AGENDA ITEMS ONLY

Persons wishing to address the Council on non-agenda items only are asked to state their name and address and limit their comments to five minutes or ten minutes if representing a group of persons. Opportunity will be given to address the Council on agenda items as they are called on the agenda.

IV. NEW BUSINESS

(A) Discussion and Consideration of Public Safety Millage or Assessment

- Resolution No. 06-22 Resolution to Approve and Submit the Question of Whether to Amend Section 8.2 Of Chapter Viii of The City Charter to Authorize an Additional, Permanent Millage for Police and Fire Protection Services.

IX. ADJOURNMENT

Minutes of the City Council Meeting, once approved, are available on the City's web-site at <http://www.lindenmi.us>.

CHAPTER VIII

TAXATION

SECTION 8.1 POWER TO TAX.

The city shall have power to assess, levy and collect taxes, rents, tolls and excises. The ad valorem taxation subject shall be the same as for state, county and school purposes under general law. Except as otherwise provided by this Charter, city taxes and special assessments shall be levied, collected and returned in the manner provided by statute.

SECTION 8.2 TAX LIMITS.

Excluding any levy for paying principal and interest on outstanding general obligation bonds, and excluding any other levies authorized by law to be made beyond Charter tax rate limitations, an ad valorem tax levy for general municipal purposes shall not exceed 13.5 mills on all real and personal assessed property values in the city.

SECTION 8.3 EXEMPTIONS.

No exemptions from taxation shall be allowed except as expressly required or permitted by law.

SECTION 8.4 TAX DAY.

Subject to the exceptions provided or permitted by statute, the taxable status of persons and property shall be determined by December 31, or such other day as may subsequently be required by law, which shall be deemed Tax Day.

SECTION 8.5 PERSONAL PROPERTY - JEOPARDY ASSESSMENT.

If the treasurer finds, or reasonably believes that a person who is or may be liable for taxes upon personal property, the taxable situs of which was in the city on the tax day, intends to depart from the city, or to remove therefrom personal property, which is or may be, liable for taxation, or to conceal themselves or their property, or to do any act tending to prejudice, or to render wholly or partially ineffective the proceeding to collect such tax, unless proceedings therefore be brought without delay, the treasurer shall proceed to collect the same as jeopardy assessment in the manner provided by law.

Section 4: Finance

Chapter 21: Special Assessments and User Charges

Municipalities often raise funds for special purposes by imposing special assessments or user charges as an alternative to imposing a tax. All three financing mechanisms have elements in common, and distinguishing one from the other is not always a simple matter. Any assessment or user charge not properly imposed, however, MAY be construed as a tax, which must satisfy different requirements for validity.

While a *special assessment* bears some of the characteristics of a tax, it differs in that a special assessment may be levied only on land and may be imposed only to pay the cost of an improvement or service by which the assessed land is specially (as opposed to generally) benefited.

In contrast, a broadly imposed *tax* yields a general benefit to the community with no particular benefit to any person or parcel.

Generally, a *user charge* is the price paid for a service provided based directly on the value of the individual use of the service or benefit. Although a municipality may impose a *tax* whether or not the taxpayer particularly benefits from the purposes served by the tax, and may *specially assess* parcels which do particularly benefit from an improvement, it may impose a *user charge* only on individuals actually served. While the improvements made with a special assessment generally must increase or maintain the value of the lands specially benefited, the services which are the subjects of rates and charges do not necessarily have that effect. The value to one user may be greater than another depending on individual needs and consumption.

In *Bolt v City of Lansing*, the Michigan Supreme Court developed a test for user

charges. In order to avoid classification as a tax, a user charge must “serve a regulatory purpose rather than a revenue-raising purpose.”

Rates and charges must also bear a direct relation to the cost of providing the service to the ratepayer. A fee designed to raise revenue for general public services in addition to covering the cost of providing the service which is the subject of the fee is actually a tax. A fee designed to raise revenue from a broad range of users of a system to pay the cost of an improvement to a discrete part of the system which will benefit only a smaller group of users may also be considered a tax.

Revenues derived from user charges (or assessments) must be segregated from other municipal funds and applied solely to the expenses of providing the service or the improvement. The expenses of providing the service may include some indirect costs of providing the service.

Special Assessments

Authority

To impose a special assessment, a municipality must first have the statutory authority to make the improvement or provide the service for which the assessment will be imposed. Second, the municipality must have the statutory authority to assess for that type of improvement or service.

Special assessments may be imposed for many types of improvements and even services for which specific statutory and other local implementing authority is found. Typical subjects of special assessments are street improvements, including paving, curb, gutter and sidewalk improvements, and water and sewer improvements. In addition

to statutory authorities, city and village charters and special assessment ordinances, if any, should be reviewed as sources of authority.

Where statutory authority exists, municipalities will often finance an improvement through the issuance of bonds in anticipation of special assessments, secured primarily by the assessments and secondarily by the general fund of the municipality.

Basic Requirements

The lands proposed to be specifically assessed comprise a special assessment district. The assessments are apportioned among the landowners in the district. Assessments may be required to be paid in a single payment or in multiple installments. Interest may be charged on unpaid installments.

An improvement which reduces property value may not be specially assessed. Further, the benefit conferred by the improvement may not be disproportionate to the cost of the improvement, i.e. the cost of the improvements may not exceed the anticipated increase in the value of the property resulting from the improvement. Although this proportionality may “not require a rigid dollar-for-dollar balance,” the cost of the improvement must reasonably relate to the increase in value in order to avoid an unconstitutional taking of property.

No specific method of apportioning the cost of an improvement is required, provided that the method selected is fair, just, equal, and proportionate to the benefits conferred.

Key procedures

Procedural requirements vary widely depending on the particular statute, charter or ordinance involved. The following are key elements to any assessment process:

1. petitions,
2. hearings on necessity and the apportionment of the assessment, and
3. notice
content

nature, location, cost of improvements
apportionment of cost
opportunity to object and appeal
dissemination
publication and mailing
timing.

Enforcement

Once confirmed, assessments may become a lien on the assessed property.

User Charges

Subjects and statutory authority

The Revenue Bond Act of 1933, provides the principal statutory authority for the imposition of rates and charges for the “service, facilities and commodities furnished by...public improvements.” It authorizes any public corporation to purchase and acquire one or more public improvements; to own, operate and maintain the same; to furnish the services of such public improvement to users within or without its corporate limits; to establish by ordinance such rates for services furnished by the public improvement as are necessary to provide for the payment of administration, operation and maintenance of the public improvement so as to preserve it in good repair and working order; and to provide for the debt service, if any, on bonds issued to finance the improvement providing the service.

Other statutes and local charters provide additional authority. Municipalities regularly impose rates and charges for a variety of services.

Rate Ordinances

Municipalities impose user charges by adopting a rate ordinance governing a particular service or range of services. The ordinance should set forth the purpose of the ordinance, the service provided, the rates to be imposed and the various classifications of users, the timing and method of billing and payment, penalties for nonpayment and other enforcement provisions. To meet the *Bolt* standard described below, the ordinance should make a serious attempt, to relate the

user charge to a regulatory scheme.

Ordinances may also address a broader and more detailed range of subjects, including regulations governing the use or provision of the service and licensing issues. Various grant making and regulatory authorities may require the use of a particular form of rate ordinance as a condition for approval.

Standards in Ratemaking: The Bolt Test

The Michigan Supreme Court's decision in *Bolt* turned ratemaking on its head. The court articulated a new three-part test for determining whether a charge is validly characterized as a fee:

1. it must serve a regulatory purpose,
2. it must be proportionate to the necessary costs of the service, and
3. the user must be able to refuse or limit use of the commodity or the service for which the charge is imposed.

These three criteria are not to be considered in isolation "but rather in their totality, such that a weakness in one area would not necessarily mandate a finding that the charge at issue is not a fee." *Graham v Township of Kochville*.

As indicated in *Graham*, voluntariness may be less significant where the elements of regulation and proportionality are strong. Conversely, where the regulatory aspect of the fee is less obvious, the voluntary use of the system may assume more importance.

The method selected for calculating rates and charges must be reasonable and may not be arbitrary and capricious. Substantial evidence preferably set forth in the rate ordinance itself should justify the charges made and the method used.

The *Bolt* court held that user charges must reflect "the actual costs of use, metered with relative precision in accordance with available technology...."

The rates and charges for municipal services must be applied to similarly situated users in a similar way. It is appropriate to distinguish among different classes of users and to apply different rate schedules to each class.

Selected GLV Act Special Assessment Provisions

Resolution required

The council, by resolution, may determine that the whole or a part of the expense of a local public improvement or repair shall be defrayed by special assessment. (MCL 68.31)

Voting

It takes a 2/3 majority vote of council to impose a special assessment. (MCL 65.5 (2))

Ordinance

The complete special assessment procedure to be used shall be provided by ordinance. (MCL 68.32)

Ordinance requirements

The ordinance shall include the time when special assessments may be levied; the kinds of improvements for which a hearing is required on the resolution levying the assessments; the preparing of plans and specifications; estimated costs; the preparation, hearing, and correction of the special assessment roll; collection; the assessment of single lots or parcels; and any other matters concerning the making of improvements by the special assessment method. (MCL 68.32)

Bonds

The village may borrow money and issue bonds in anticipation of the payment of special assessments in 1 or more special assessment districts. (MCL 68.35)

Proceeds

The council may specially assess lands in sewer districts and special assessment districts, for the expense of grading, paving, and graveling streets, for constructing drains and sewers, and for making other local improvements charged in proportion to frontage or benefits, such sums as they consider necessary to defray the cost of the improvements. (MCL 69.5)

The requirement that rates be uniformly applied is an extension of the overall

requirement that charges be proportional to the value of the services rendered and the cost of providing the service. *Alexander v Detroit*.

Enforcement and Collection

In general, statutes authorizing user charges for services provide that the charges become a lien on premises served. Statutes also

commonly allow the municipality to discontinue service for non-payment of the charges.

Materials for this chapter provided by Amanda Van Dusen, a principal in the law firm of Miller Canfield.

**CITY OF LINDEN
RESOLUTION NO. 06-22**

**RESOLUTION TO APPROVE AND SUBMIT THE QUESTION OF WHETHER TO
AMEND SECTION 8.2 OF CHAPTER VIII OF THE CITY CHARTER TO AUTHORIZE
AN ADDITIONAL, PERMANENT MILLAGE FOR POLICE AND FIRE PROTECTION
SERVICES**

WHEREAS, Act No. 279 of the Public Acts of 1909 (“the Act”), as amended, provides that a home rule city may amend its charter in accordance with the provisions of that Act; and

WHEREAS, Section 8.2 of Chapter VIII of the City Charter presently limits the City’s ad valorem tax levy to 13.5 mills on all real and personal assessed property values in the City; and

WHEREAS, the City provides police and fire protection services within the City and wishes to provide the voters with the opportunity to approve a permanent, dedicated millage to fund police and fire protection services;

WHEREAS, the City Council believes it is in the best interests of the City to authorize a permanent levy of 5.0 mills to take effect in 2022, which fixed amount would be dedicated solely for the purpose of providing police and fire protection operations, equipment and services; and

WHEREAS, Section 21 of Act 279 requires that the legislative body determine by resolution the form in which the proposed amendment to the City Charter shall appear on the ballot.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Council proposes that Section 8.2 of Chapter VIII of the City Charter be amended to read as follows:

SECTION 8.2 TAX LIMITS

~~Excluding any levy for paying principal and interest on outstanding general obligation bonds, and excluding any other levies authorized by law to be made beyond Charter tax rate limitations, an ad valorem tax levy for general municipal purposes shall not exceed 13.5 mills on all real and personal assessed property values in the city.~~

An ad valorem tax levy for general municipal purposes shall not exceed 13.5 mills on all real and personal assessed property values in the city, excluding:

- (a) any levy for paying principal and interest on outstanding general obligation bonds;
- (b) any other levies authorized by law to be made beyond charter tax rate limitations; or
- (c) an additional levy of 5 mills upon the taxable value of all real and personal property in the city to be used solely for the purpose of providing police and fire protection operations, equipment and services.

2. The City Attorney shall submit a certified copy of this resolution to the Governor of the State of Michigan for approval or disapproval of this amendment, and to the Attorney General, for review and approval of the ballot language, and is further authorized to make non-substantive changes to the proposed ballot language to meet all legal requirements.

3. The above charter amendment shall be submitted to the electors for their adoption or rejection at a special election to held on May ___, 2022, in accordance with Section 11.6 of Chapter XI of the City Charter. The City Clerk and City Attorney are authorized to take all actions necessary to format the ballot proposal in a manner consistent with the Governor and Attorney General's reviews and to schedule and conduct the election including, without limitation, certifying the ballot proposal in accordance with state law.

4. The proposed charter amendment shall be placed upon the ballot in the following form:

**CHARTER AMENDMENT PROPOSAL TO AUTHORIZE A NEW AND PERMANENT
ADDITIONAL MILLAGE FOR POLICE AND FIRE PROTECTION SERVICES**

Shall Section 8.2 of Chapter VIII of the City of Linden Charter be amended to authorize a permanent additional millage of 5.0 mill (\$1.00 per \$1,000.00 of taxable value) to be levied solely for providing police and fire protection operations, equipment and services, beginning with the levy made on July 1, 2022? If levied, the additional mills are estimated to raise \$621,085 in the first year of levy.

YES ☐

NO ☐

5. Be it further resolved that the election shall be held in accordance with Chapter XXVII, the General Election Law of the State of Michigan.

At a regular meeting of the Linden City Council held on February __, 2022,
_____ moved for adoption of the foregoing resolution and
_____ supported the motion.

Voting for:

Voting against:

The Mayor declared the resolution adopted.

Danielle Cusson, Mayor

Tessa Sweeney, Clerk