

MINUTES
CHARTER REVIEW COMMISSION
MARCH 18, 2015 MEETING

CALL TO ORDER

Chair Dubey called the meeting to order at 6:06 p.m. with the following present:

Commissioners Present:

Bob Dubey, Chair
Ron Taylor, Vice Chair
Gerald Bright, Commissioner
Marta Frey, Commissioner
Helene Lee, Commissioner
Bill McCalpin, Commissioner
John Murphy, Commissioner
Kim Quirk, Commissioner (arrived at 6:35 p.m.)
Nancy Wilson, Commissioner
Erica Yaeger, Commissioner

City Staff Present:

Shanna Sims-Bradish, Asst. City Manager
Pete Smith, City Attorney

Commissioners Absent:

Jason Lemons, Commissioner

1. Consider approval of the March 4, 2015 Charter Review Commission Meeting Minutes.

Commission Action

Commissioner Murphy moved to approve the Minutes with the following corrections, seconded by Commissioner Bright and approved unanimously.

Corrections: Remove Commissioner McCalpin from the list of Commissioners present. Add a period to the end of Mr. Tanner's public comments. Correct the spelling of Mr. Chenoweth. Correct "State" to "Stated" in Mr. Chenoweth's public comment.

2. Review Richardson City Charter, Article 17, *Street and Sidewalk Improvements* and consider any recommendations for amendments thereto.

Commission Action

The Commission considered Agenda Items 2 and 3 with the same motion. See action below.

3. Review Richardson City Charter, Article 18, *Condemnation and Special Assessments* and consider any recommendations for amendments thereto.

Commission Action

The Commission considered Agenda Items 2 and 3 with the same motion. Commissioner Frey moved to approve the deletion of Articles 17 and 18 as presented and recommended. Commissioner Murphy seconded the motion. A vote was taken and passed 10-0 with Commissioner Lemons absent.

Commissioner Bright moved to add Section 2.04 as presented and recommended to Article 2:

Section 2.04. Streets and public improvements.

The city shall have the full power, authority and right to exercise in any manner authorized or permitted by the Constitution and the laws of the State of Texas when necessary or desirable to construct, develop, improve, expand, widen and maintain or cause to be

constructed, developed, improved, expanded, widened and maintained, within or outside the city limits any public streets, sidewalks, alleys, drainage facilities, sanitary sewer facilities, water and storm drainage facilities and other public improvements and to impose, levy and collect assessments or other charges for the costs of such development and improvements in any manner not prohibited by state law.

Commissioner Frey seconded the motion. A vote was taken and passed, 10-0 with Commissioner Lemons absent.

4. Review Richardson City Charter, Article 22, *Effective Dates and Effects of Adoption* and consider any recommendations for amendments thereto.

Commission Action

Commissioner Murphy moved to approve Section 22.01, 22.02, 22.03, and 22.04 as presented with no recommended changes. Commissioner Wilson seconded the motion. A vote was taken and passed 10-0 with Commissioner Lemons absent.

Commission Action

The Commission reviewed the proposed language regarding reviewing the charter and discussed options for both the frequency and method of review. Commissioner McCalpin moved to add the following to Article 22. Commissioner Frey seconded the motion. A vote was taken and passed, 10-0 with Commissioner Lemons absent.

22.05 – The city council shall appoint a commission at least every ten years to review the charter. The commission shall be made up of qualified voters from all districts of the city.

5. Discuss the following Articles and any additional recommendations:

- ARTICLE 1 Incorporation and Territory**
- ARTICLE 2 Powers of the City of Richardson**
- ARTICLE 3 City Council**
- ARTICLE 4 Nomination and Election of City Council Members**
- ARTICLE 5 Recall of City Council Members**
- ARTICLE 6 City Manager**
- ARTICLE 7 City Attorney - Municipal Court**
- ARTICLE 8 Administrative Department**
- ARTICLE 9 Boards and Commissions**
- ARTICLE 10 Civil Service**
- ARTICLE 11 Budget and Financial Procedures**
- ARTICLE 12 Franchises**
- ARTICLE 13 Ordinances**
- ARTICLE 14 Initiative and Referendum**
- ARTICLE 15 Publications**
- ARTICLE 16 Collection of Taxes**
- ARTICLE 19 Issuance and Sale of Bonds**
- ARTICLE 20 Prohibitions**
- ARTICLE 21 General Provisions**

Commission Action

The Commission reviewed all of the submitted public comments and determined that all comments have been reviewed and discussed.

1. Charles Pratt - oral comments
2. Jean Richards with League of Women Voters - oral comments
3. Charlie Newton - oral comments
4. Rick Shamblin - written comments
5. Joan Pasqual - written comment
6. Marcos Fernandez - written comment
7. David Chenowith - oral and written comments
8. Richard Tanner - oral comments

6. Discuss global changes to words, phrases, and capitalization within the charter.

Commission Action

The Commission discussed global changes and the need to be consistent throughout the document. They also discussed the need for consistency regarding listing a visitors section on advisory board agendas. The Commissioner agreed on the following global changes.

- “city” should be lowercase
- “charter” should be lowercase
- “City of Richardson” should be uppercase
- “city council” should be lowercase
- “mayor” should be lowercase
- “council” should be lowercase
- “council member” should be lowercase
- “city manager” should be lowercase
- “city secretary” should be lowercase
- “therefore” should be spelled with an “e”
- Numbers should be spelled out followed by digits in parenthesis
- All references should be gender neutral
- Use consistency in writing references to state law, federal law, and constitution

7. As necessary discuss planned review of Richardson Charter for next scheduled meeting.

Chair Dubey reminded the Commission of the next meeting date of April 8, 2015. City Attorney Smith agreed to provide a full red-line version of the proposed changes to be reviewed and discussed at the April 8th meeting. The Commission discussed preliminary plans for the June 1st joint meeting with City Council.

ADJOURN

With no further business, the meeting was adjourned at 7:59 p.m. with a motion by Commissioner Quirk, seconded by Commissioner Wilson, and approved unanimously.

Bob Dubey, Chair

ATTEST:

CITY SECRETARY

There are several statutes that apply to condemnation, street assessments and public improvements none of which require the city to adopt such provisions in the home rule charter. The city wants to ensure that it has full authority to exercise eminent domain (condemnation), impose assessments for street and other public improvements (the procedure and process of which is set forth in the statutes. We recommend that articles 17 and 18 be deleted since there is no need for separate articles for street assessments and condemnation and special assessments. Condemnation is already included among the powers of the city in article 2. A broad provision could be added to article 2 to provide for full authority for street and other public improvements.

Article 22 regarding the charter does not require any amendments as a result of state law. There was some misunderstanding by certain citizens and claims that this charter commission was not properly created or appointed. This charter review commission was not created pursuant to Section 9.002 to consider a new charter but rather as a body or committee to review and make recommendations to the city council as to any necessary amendments pursuant to the city council charge to the charter review commission.

There has been some interest in adding a provision to require a review on some periodic basis. The review can be accomplished by the city council or following a review by a committee such as this charter commission. The periodic review does not need to be a statutory created commission under Chapter 9 of the Texas Local Government Code.

Suggested changes are set forth below.

**RICHARDSON CHARTER
(Articles 17, 18 & 22)**

~~ARTICLE 17. STREET AND SIDEWALK IMPROVEMENTS~~

Comment [p1]: Articles 17 and 18 could be deleted for the reasons set forth above.

~~Section 17.01. Adoption of Texas Civil Statutes.~~

~~All the terms, powers and provisions of Articles 1056 to 1096, both inclusive, and Articles 1104, 1105, and 1105b of the Revised Civil Statutes of the State of Texas, Revision of 1925, relating to street improvements and assessments therefor, and other matters, together with all amendments to said articles, are hereby adopted as a part of this article as an alternative and cumulative method of improving streets, alleys, and public places and levying assessments therefor.~~

~~Section 17.02. Improvement ordered by resolution.~~

~~The city council shall have power, by resolution, to order the making of the public improvements mentioned in this article, or any of them, by majority vote, and the passage of such resolution shall be conclusive of the public necessity and benefits thereof, and no notice of such action by the city council shall be requisite to its validity. Such resolution shall, in general terms, set forth the nature and extent of the improvements or improvement to be made, the~~

~~section or sections of any highway, street or other property to be improved, the material or materials with which the improvements are to be constructed and the method or methods under which the cost of such improvements are to be paid. It shall be the duty of the city secretary immediately upon the passage of such resolution to furnish a copy of the same to the officer of the city designated therein who shall indicate upon any tax statement thereafter issued covering property abutting upon that part of the highway, street or other property to be improved that said proceeding is pending. Any failure upon the part of the city secretary to furnish a copy of such resolution to the officer of the city designated in the resolution, or any failure upon the part of the designated officer of the city to indicate the pendency of such proceeding upon tax statements issued shall, however, not affect the validity of the proceeding hereunder, nor of any assessment thereafter levied in pursuance to the provisions of this article. The city council by resolution may specify that said improvement may be constructed from different materials, and may specify different or alternative methods of making such improvements, and provide for the payment of the cost thereof.~~

~~**Section 17.03. — Lien liability.**~~

~~The lien of such assessments shall revert back and take effect as of the date of the original resolution ordering the improvement, and the passage of such resolution shall operate as notice of such lien to all persons. Any error or mistake in such ordinance in the name of the owner of property assessed shall not invalidate the lien or personal liability thereby created, but the same shall nevertheless exist against the real and true owner of such property as if correctly described.~~

~~**Section 17.04. — Property exemptions.**~~

~~When the city council shall have reason to believe that the owner or owners of any property may successfully claim the same as exempted from special assessment, the city council may order that the improvement shall not be made in front of or abutting on said property unless the owner or owners shall first make satisfactory provision for or satisfactorily secure the payment of the amount of the costs which would be assessed against said property except for such exemption. In any case where the cost, or any part thereof, is to be paid by such property owners or assessed against their property and the contractor to whom their work is let is required to look primarily or wholly to such property or owners thereof for payment of the proportion of the cost for such improvement assessed against them, and the city is relieved from the payment of such proportion of the cost, such contractor shall not be obliged to make such improvement in front of any property which is exempt from the enforcement of a lien for such improvement, but may omit the construction thereof.~~

~~**Section 17.05. — City liability.**~~

~~The City of Richardson shall never be liable to any contractor or other person, firm or corporation doing work in connection with any street paving, or the opening and widening of streets, or the building of any drains or storm sewers, or the laying of sanitary sewers or any other character of public improvement, whereby a part or the whole of the cost thereof is to be paid for by special assessment, on account of the failure of any officer of the government or the~~

~~members of the council to pass suitable ordinances or resolutions to take necessary steps to fix liens, or to make said assessments, or to issue certificates therefor, or to provide for reassessments on account of the invalidity of any lien attempted to be fixed, or any failure or omission with respect thereto.~~

~~ARTICLE 18.— CONDEMNATION AND SPECIAL ASSESSMENTS~~

~~Section 18.01.— Purpose.~~

~~The City of Richardson shall have the power, whenever deemed necessary by the city council for public purposes, to appropriate private property, including rights-of-way of railways and transit systems, in order to open, widen, narrow, straighten, change or extend any public street, avenue or alley within the city limits.~~

~~Section 18.02.— Proceedings by ordinance or resolution.~~

~~When the city council shall determine to proceed hereunder, it shall so declare by resolution or ordinance, in which it shall state the nature and the extent of the improvement to be made and the limits thereof and describe the parcel or parcels of land proposed to be taken or condemned by any description substantially identifying the same or by lot and block number or number of front feet, or by the name of the owner, or, if owned by an estate[,] the name thereof. No mistake or omission of said resolution or ordinance shall invalidate it, and its passage shall be conclusive of the public use and necessity of the proposed improvement.~~

~~Section 18.03.— State law on assessments.~~

~~The provisions of Chapter 17 of Title 28 of the Revised Civil Statutes of 1925 relative to condemnation for highways and the levying of special assessments to defray the cost thereof are hereby adopted, and the method therein prescribed may be followed by the city in any proceeding.~~

~~Section 18.04.— Building lines.~~

~~The city shall have the power, for the purpose of promoting the public health, safety, order, convenience, prosperity and general welfare, acting through its city council, under the police power, to provide by suitable ordinances building lines on any street or any block of any street, and to require their observance by suitable penalties.~~

~~Section 18.05.— Improvement districts.~~

~~All of powers conferred by Section 372.041 of the Local Government Code of the State of Texas and by any other general law of the state relating to improvement districts are hereby adopted and made a part of this Charter, and the power is conferred upon the city in connection therewith to issue assignable certificates and to appoint special commissioners for the making or levying of special assessments and the city council may make such rules and regulations~~

~~concerning the same as may be deemed advisable. Power is further conferred upon the city for the condemnation of lands to effectuate the law hereby adopted, which condemnation proceedings, as well as the assessment proceedings, shall be held as nearly as is practicable in accordance with the foregoing provisions of this article governing the opening, widening, narrowing, straightening, changing or extending of public streets, avenues or alleys and the issuance of certificates therefor, or in accordance with any other law applicable thereto.~~

~~**Section 18.06.—Assessment period.**~~

~~In all proceedings providing for assessments against property and the owners thereof for special benefits received under the provisions of this article, the city council is hereby authorized to provide, wherever the same is practicable, or wherever the same may be done under the law, for the payment of said assessments in annual installments extending over a period not to exceed fifteen (15) years.~~

~~**Section 18.07.—Alternate method.**~~

~~As an alternate method of paving and improving streets, alleys and sidewalks, the City of Richardson shall have the power and authority to adopt plans and specifications for such improvements in accordance with the procedure prescribed in Chapter 106, Acts of the Fortieth Legislature, First Called Session and also known as Article 1105b, Vernon's Texas Civil Statutes, and shall have the power to pay to the contractor, the successful bidder, that part of the cost that may be assessed against the owners and their property abutting on such improvements in cash and the city may reimburse itself for the amount by levying an assessment against the abutting owners and their property, after a hearing and notice, as provided in the above statutes, up to the amount of the enhancement in value represented by the benefits and permitted by said statutes, and issue assignable certificates in favor of the City of Richardson for the assessment. The certificates shall be enforceable in the same manner as provided by the above mentioned statutes. The city shall likewise have the power to do the improvement by its own forces if, in the opinion of the city council, the work can be done more expeditiously or economically.~~

The following could be added to article 2

Section 2.04. Streets and public improvements.

The city shall have the full power, authority and right to exercise in any manner authorized or permitted by the Constitution and the laws of the State of Texas when necessary or desirable to construct, develop, improve, expand, widen and maintain or cause to be constructed, developed, improved, expanded, widened and maintained, within or outside the city limits any public streets, sidewalks, alleys, drainage facilities, sanitary sewer facilities, water and storm drainage facilities and other public improvements and to impose, levy and collect assessments or other charges for the costs of such development and improvements in any manner not prohibited by state law.

ARTICLE 22. - EFFECTIVE DATE AND EFFECTS OF ADOPTION

Section 22.01. - Effective date.

The provisions of this Charter and any amendments thereto shall be in effect from and after their approval by the electors of the city and the entering of an official order upon the records of the city by the city council declaring the same adopted.

Section 22.02. - Effect on present city council.

The duly elected city council serving at the time of the adoption of this Charter or amendment thereto shall continue to be, serve as, and to constitute the city council of the city until the next regular election.

Section 22.03. - Charter amendment.

This Charter may be amended no more than once every two (2) years. Amendments to this Charter may be proposed:

- (a) By action of the city council submitting a proposed amendment to the voters for approval; or
- (b) By report of a Charter Commission created by ordinance; or
- (c) By the voters, consistent with state law. Proposal of an amendment by the voters of the city shall be by petition containing the full text of the proposed amendment and shall be governed by state law. There shall be no limitation as to the subject matter.

Section 22.04. - Separability.

If any provision of this Charter is held invalid, the other provisions of the Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstances is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby.

Section 22.05. – Charter review.

The charter shall be reviewed at least every five years, beginning in 2015.

Comment [p2]: This just an example of what could be added.

LOCAL GOVERNMENT CODE
TITLE 12. PLANNING AND DEVELOPMENT
SUBTITLE A. MUNICIPAL PLANNING AND DEVELOPMENT
CHAPTER 372. IMPROVEMENT DISTRICTS IN MUNICIPALITIES AND
COUNTIES

SUBCHAPTER B. IMPROVEMENT DISTRICTS IN HOME-RULE MUNICIPALITIES

Sec. 372.041. AUTHORITY OF HOME-RULE MUNICIPALITY. (a) A home-rule municipality may create improvement districts for the purposes of:

(1) levying, straightening, widening, enclosing, or otherwise improving a river, creek, bayou, stream, other body of water, street, or alley;

(2) draining, grading, filling, and otherwise protecting and improving the territory within the municipality's limits;

(3) issuing bonds to finance improvements listed in this subsection; and

(4) financing an improvement described in Subchapter A.

(b) If a home-rule municipality creates an improvement district in order to make improvements authorized by this subsection, the municipality must comply with the general law of the state relating to the creation of improvement districts. Bonds issued for improvements under this section must be issued in a manner that complies with the general authority of a home-rule municipality to issue bonds.

(c) A home-rule municipality may require the owners of property in the territory specially benefitted in enhanced value by improvements made under this section to pay the costs of the improvement. If a municipality finances an improvement under this subsection, the municipality shall make a personal charge against those property owners and fix a lien against that property by special assessment. The municipality may issue assignable or negotiable certificates to pay for the costs of improvements and require the property owners to make deferred

payments to retire the certificates. Interest on deferred payments may not exceed eight percent. The municipality may appoint special commissioners or provide otherwise for the making and levying of special assessments under this subsection, or may provide that the making and levying of the assessment be performed by the governing body of the municipality, in compliance with requirements for hearings and other procedures as may be adopted under or required by the municipal charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 970 (H.B. [1400](#)), Sec. 5, eff. September 1, 2011.

TRANSPORTATION CODE

TITLE 6. ROADWAYS

SUBTITLE E. MUNICIPAL STREETS

CHAPTER 311. GENERAL PROVISIONS RELATING TO MUNICIPAL STREETS

SUBCHAPTER A. GENERAL AUTHORITY

Sec. 311.001. GENERAL AUTHORITY OF HOME-RULE MUNICIPALITY.

(a) A home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality.

(b) The municipality may:

(1) control, regulate, or remove an encroachment or obstruction on a public street or alley of the municipality;

(2) open or change a public street or alley of the municipality; or

(3) improve a public highway, street, or alley of the municipality.

(c) Notwithstanding Subsection (a) or (b) or Section 311.007, before a municipality with a population of 1.9 million or more may install traffic calming measures within the municipality, the governing body of the municipality must:

(1) publish standards and criteria, which must include sufficient notice to allow the governing body to receive and consider public comments from residents within one-half mile of the proposed traffic calming measure;

(2) on request of affected residents, schedule and hold a public meeting before implementation of the measure; and

(3) if the measure involves the closure of a street to motor vehicular traffic, before the closure:

(A) hold a public hearing on the issue of the closure; and

(B) approve the closure by a majority vote.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1321 (H.B. 3082), Sec. 1, eff. June 19, 2009.

Sec. 311.004. AUTHORITY OVER SIDEWALK IN HOME-RULE MUNICIPALITY. A home-rule municipality may:

- (1) construct a sidewalk;
- (2) provide for the improvement of a sidewalk or the construction of a curb under an ordinance enforced by a penal provision; or
- (3) declare a defective sidewalk to be a public nuisance.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER D. FRANCHISE TO USE STREETS IN HOME-RULE MUNICIPALITY

Sec. 311.071. AUTHORITY TO GRANT FRANCHISE. (a) The governing body of a home-rule municipality by ordinance may grant to a person a franchise to use or occupy a public street or alley of the municipality.

(b) The authority to grant a franchise is the exclusive authority of the governing body.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 311.072. PROHIBITION OF GRANT BY CHARTER. The charter of the municipality may not grant to a person a franchise described by Section 311.071.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 311.073. ELECTION AFTER PETITION. (a) The governing body shall submit to the voters of the municipality the question of granting a franchise to a person if, before the effective date of the ordinance granting the franchise, the governing body

receives a petition that requests the election and is signed by 10 percent of the registered voters of the municipality.

(b) In a municipality with a population of more than 1.9 million, the number of registered voters who must sign the petition may be set at a lower number by the municipal charter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 2001, 77th Leg., ch. 669, Sec. 133, eff. Sept. 1, 2001.

Sec. 311.074. ELECTION DATE. After receipt of a petition under Section 311.073, the election shall be held on the first uniform election date prescribed by Section 41.001, Election Code, that allows sufficient time to comply with other requirements of law.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 311.075. ELECTION NOTICE. (a) Notice of the election must be published in a daily newspaper in the municipality for at least 20 successive days before the date of the election.

(b) This notice requirement supersedes the notice requirements prescribed by Section 4.003, Election Code, except as provided by that section.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 311.076. BALLOT PROPOSITION. The ballot at the election shall be printed to provide for voting for or against the proposition: "Granting of a franchise (brief description of the franchise and its terms)."

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 311.077. EFFECTIVE DATE OF FRANCHISE. If a majority of the votes cast at the election favor the proposition:

(1) the governing body shall declare that result on canvassing the election returns; and

(2) the franchise takes effect according to its terms.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 311.078. DURATION OF FRANCHISE. A franchise under this subchapter may not extend beyond the period set for its termination.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER E. FINANCING IMPROVEMENTS

Sec. 311.091. ASSESSMENT FOR STREET IMPROVEMENT IN HOME-RULE MUNICIPALITY. (a) A home-rule municipality may assess a landowner for the cost of improving a public highway, street, or alley abutting the owner's land, if the municipal charter provides for apportioning the cost between the municipality and the landowner. The assessment may not exceed the amount by which the improvement specially benefits the owner's abutting land by enhancing the land's value.

(b) The municipality may issue assignable certificates for the payment of the assessed cost.

(c) The assessment creates a lien on the owner's abutting land for the assessed cost.

(d) Regardless of Subsection (a), a railway company shall pay the cost of a street improvement made between the rails or tracks of the company or made in the area extending two feet from a rail or track of the company.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 311.092. ASSESSMENT FOR OPENING, EXTENDING, OR WIDENING OF STREET OR ALLEY IN HOME-RULE MUNICIPALITY. (a) A home-rule municipality may:

(1) acquire land necessary for opening, extending, or widening a public street or alley by the exercise of the right of eminent domain under Section 251.001, Local Government Code; and

(2) assess the owners of land located in the territory of the improvement and specially benefitted by the improvement for the cost of the improvement.

(b) The special commissioners appointed under Chapter 21, Property Code, as part of the eminent domain proceeding shall apportion the cost of the improvement between the municipality and the landowners. The municipality's share of the cost may not exceed one-third of the cost. The municipality shall pay its share of the cost, and the landowners shall pay the balance.

(c) The special commissioners shall determine the land that is located in the territory of the improvement and is specially benefitted in enhanced value.

(d) The assessment creates a lien on the owner's land for the assessed cost.

(e) The municipality may issue assignable certificates for the payment of the assessed cost and may provide for the payment of the cost in deferred payments, which bear interest at a rate determined by the municipal charter but not to exceed eight percent.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 311.093. ASSESSMENT FOR SIDEWALK IN HOME-RULE MUNICIPALITY. (a) A home-rule municipality may assess a landowner for the entire cost of constructing a sidewalk, including a curb, abutting the owner's land.

(b) The assessment creates a lien on the owner's abutting land for the assessed cost.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 311.094. OTHER FINANCING METHODS IN CHARTER OF HOME-RULE MUNICIPALITY. (a) A home-rule municipality by charter may adopt any other method of financing an improvement described by Section 311.091, 311.092, or 311.093.

(b) Another method adopted by charter for financing an improvement described by Section 311.092 must:

(1) charge the cost of the improvement to the property and to the owner of the property specially benefitted in enhanced value by the improvement and located in the territory in which the improvement is made; and

(2) describe the manner of:

(A) appointing commissioners;

(B) giving notice; and

(C) fixing assessments or otherwise providing for the payment of the improvement.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

TRANSPORTATION CODE

TITLE 6. ROADWAYS

SUBTITLE E. MUNICIPAL STREETS

CHAPTER 313. STREET IMPROVEMENTS AND ASSESSMENTS IN CERTAIN MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 313.001. DEFINITIONS. In this chapter:

(1) "Cost" includes an expense of engineering and other expense incident to construction of an improvement.

(2) "Governing body" means the governing body of a municipality.

(3) "Highway" includes any part of a street, alley, public place, or square, including a part left wholly or partly unimproved in connection with another street improvement.

(4) "Improvement" includes the following, liberally construed:

(A) filling, grading, raising, paving, or repairing a highway in a permanent manner;

(B) constructing, realigning, or repairing a curb, gutter, or sidewalk;

(C) widening, narrowing, or straightening a highway; and

(D) an appurtenance or incidental to an improvement, including a drain or culvert.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.002. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality that has a population of more than 1,000.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.003. GENERAL POWERS OF GOVERNING BODY. (a) The governing body of a municipality may:

(1) determine the necessity for and order the improvement of a highway in the municipality;

(2) contract for the construction of the improvement in the name of the municipality; and

(3) provide for the payment of the cost of the improvement by the municipality or partly by the municipality and partly by assessments as provided by this chapter.

(b) The governing body by resolution, motion, order, or ordinance may exercise a power granted by this chapter unless this chapter specifically prescribes that the governing body act by ordinance.

(c) The governing body by resolution or ordinance may adopt rules appropriate to:

- (1) the exercise of a power granted by this chapter;
- (2) the method and manner of ordering or holding a hearing; and
- (3) giving notice of a hearing.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. IMPROVEMENTS

Sec. 313.021. HIGHWAY IMPROVEMENTS AUTHORIZED. (a) A municipality may improve a highway within its limits.

(b) A municipality that has a population of more than 285,000 may make an improvement on a highway outside the municipality's limits if the improvement does not extend more than 150 feet from the municipal limits.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.022. CONTRACT FOR IMPROVEMENT OF BOUNDARY HIGHWAY. (a) A municipality may contract with another municipality for one municipality to make an improvement to a part of a highway as provided by this chapter and for the other to pay a part of the cost of the improvement if:

- (1) the boundary between the municipalities is on or along the highway or the edge of the highway; and
- (2) the governing bodies of the municipalities determine the improvement is necessary.

(b) Either municipality may use its money for the improvement under the contract without regard to whether the highway is within the municipality's limits.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.023. PAYMENT FOR IMPROVEMENT. Payment for an improvement under this chapter may be paid entirely by the municipality or may be paid partly by the municipality and partly by property abutting the part of the highway ordered to be improved and the owners of that property.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.024. ESTIMATE OF COST. If part of the cost of an improvement is to be paid by the property abutting the part of the highway to be improved and the owner of the property, the governing body shall prepare an estimate of the cost of the improvement before the improvement is constructed and before the hearing provided by Section 313.048 is held.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER C. ASSESSMENTS

Sec. 313.041. DEFINITION. In this subchapter, "railway" includes a street railway and an interurban.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.042. ASSESSMENT ORDINANCE. (a) The governing body of a municipality by ordinance may assess the cost of an improvement under this chapter against property that abuts the highway or part of the highway the municipality orders to be improved and against the owner of the property.

(b) Except as provided by Subsection (c), the governing body may not assess more than nine-tenths of the estimated cost of an improvement against properties or their owners.

(c) The entire cost of constructing, repairing, or realigning a curb, gutter, or sidewalk may be assessed against the property and its owner.

(d) The ordinance may:

(1) prescribe the terms of payment and default of the assessment; and

(2) prescribe the rate of interest to be paid on the assessment, not to exceed the greater of:

(A) eight percent a year; or

(B) the rate payable by the municipality on its most recently issued general obligation bonds, determined as of the date of the notice provided by Section 313.047.

(e) An assessment against abutting property is:

(1) a lien on the property that is superior to any other lien or claim except a lien or claim for ad valorem taxes; and

(2) a personal liability and charge against the owner of the property, regardless of whether the owner is named.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 2001, 77th Leg., ch. 827, Sec. 2, eff. Sept. 1, 2001.

Sec. 313.043. ASSESSMENT AGAINST PARCELS OWNED JOINTLY.

(a) A single assessment may be made against multiple parcels of property owned by the same person.

(b) Property owned jointly may be assessed jointly.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.044. ASSESSMENT APPORTIONED UNDER FRONT FOOT RULE UNLESS INEQUITABLE. (a) A cost of an improvement that is assessed against abutting property and the owners of the property shall be apportioned among the parcels of abutting property and the owners of the property in accordance with the front foot rule.

(b) If, in the opinion of the governing body, the application of the front foot rule in a particular case would result in injustice or inequality, the governing body shall

apportion and assess the costs in the proportion it determines just and equitable, considering:

- (1) the special benefit the property and the owner receive in enhanced value to the property;
- (2) the equities of the owners; and
- (3) the adjustment of the apportionment so as to produce a substantial equality of benefits received and burdens imposed.

(c) The entirety of a parcel of real property abutting the highway proposed for assessment is subject to the assessment irrespective of subdivision or partial sale after the date on which the notice was mailed if:

- (1) an assessment is imposed by ordinance; and
- (2) the municipality has delivered to the county clerk for recording a notice of the proposed assessment that describes, or describes by reference, each abutting parcel.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.045. ASSESSMENT OR TAX ON RAILWAYS FOR CERTAIN IMPROVEMENTS. (a) The governing body of a municipality may assess against a railway that uses, occupies, or crosses a highway the cost of a highway improvement in the area between, under, or in the area extending two feet outside of the railway's rails, tracks, double tracks, turn outs, or switches.

(b) The governing body by ordinance may impose a special tax on the railway and its roadbed, ties, rails, fixtures, rights, and franchises.

(c) The tax imposed under Subsection (b) is a lien on the railway and its roadbed, ties, rails, fixtures, rights, and franchises that is superior to any other lien or claim except county or municipal ad valorem taxes.

(d) A tax lien imposed under Subsection (c) may be enforced by:

(1) sale of the property in the manner provided by law for the collection of ad valorem taxes by the municipality; or

(2) suit.

(e) The ordinance imposing the special tax must prescribe the terms of payment of the tax.

(f) The rate of interest may not exceed the greater of:

(1) eight percent a year; or

(2) the rate payable by the municipality on its most recently issued general obligation bonds, determined as of the date of the notice provided by Section 313.047.

(g) If the special tax imposed under Subsection (b) is not paid when due, the municipality may collect the tax, interest, expenses of collection, and reasonable attorney's fees, if incurred.

(h) The governing body may issue assignable certificates in evidence of an assessment as provided by Section 313.052.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.046. ASSESSMENT FOR IMPROVEMENT OF BOUNDARY HIGHWAY. (a) If part of the boundary of a municipality is on or along a highway, the municipality may improve that part of the highway and assess a part of the cost of the improvement against the abutting property on both sides of the highway as provided by Section 313.048.

(b) If the highway is wholly or partly in another municipality, the improvement and assessments are subject to consent of the governing body of the other municipality.

(c) An assessment imposed under Section 313.048 against abutting property that is in a municipality other than the municipality initiating the improvement is valid only if the governing body of the other municipality by ordinance or resolution ratifies the assessment.

(d) A person who owns or claims the abutting property has, in addition to the right of appeal provided by Section 313.049,

the right of appeal from an assessment for 15 days after the date the ratifying ordinance or resolution is adopted by the governing body of the other municipality.

(e) If the governing body of the other municipality does not ratify the assessment within 30 days after the date of the ordinance or resolution imposing the assessment, the municipality that initiated the improvement may repeal and annul all of the assessment proceedings, including a contract for the improvement.

(f) The failure of the governing body of the other municipality to ratify an assessment does not affect the validity of an assessment imposed against property that is in the municipality that initiated the improvement.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.047. NOTICE OF HEARING ON ASSESSMENT. (a) An assessment may be made against an abutting property or its owner or against a railway or its owner only after notice and opportunity for hearing as provided by this section and Section [313.048](#).

(b) Notice of the hearing shall be published at least three times in a newspaper published in the municipality in which the assessment tax is to be imposed. If the municipality does not have a newspaper, the notice shall be published in the newspaper that is published nearest to the municipality and that is of general circulation in the county in which the municipality is located.

(c) The first publication of the notice shall be made not later than the 21st day before the date of the hearing.

(d) In addition to the notice required by Subsection (c), written notice of the hearing shall be given by mail, postage prepaid, deposited at least 14 days before the date of the hearing, and addressed to the owners of the properties abutting the part of the highway to be improved, as the names and addresses of the owners are shown on the rendered tax roll of

the municipality. If the names of the respective owners do not appear on the rendered tax roll, the notice shall be addressed to the owners as their names and addresses are shown on the unrendered tax roll of the municipality.

(e) If a special tax is proposed to be imposed against a railway that uses, occupies, or crosses a part of a highway to be improved, the additional notice shall be given by mail, postage prepaid, deposited at least 14 days before the date of the hearing, and addressed to the railway as shown on the rendered tax roll of the municipality. If the name of the railway does not appear on the rendered tax roll of the municipality, the notice shall be addressed to the railway as its name and address are shown on the unrendered tax roll of the municipality.

(f) The notice is sufficient, valid, and binding on each person who owns or claims an interest in the property or the railway if the notice:

(1) describes in general terms the nature of the improvement for which the proposed assessment is to be imposed;

(2) states the part of the highway to be improved;

(3) states the estimated amount per front foot proposed to be assessed against the owners of abutting property and the property on which the hearing is to be held;

(4) states the estimated total cost of the improvement on each part of the highway;

(5) states the amount proposed to be assessed for the improvements proposed to be constructed in part of the area between, under, and two feet outside of rails, tracks, double tracks, turnouts, or switches of a railway; and

(6) states the time and place of the hearing.

(g) The mailed notice may consist of a copy of the published notice.

(h) If an owner of property abutting a part of a highway proposed to be improved is listed as "unknown" on the municipal tax roll or if the name of an owner is shown on the municipal tax roll but no address for the owner is shown, it is not

necessary to mail a notice. If the owner is shown as an estate, the notice may be mailed to the address of the estate.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.048. HEARING. (a) A hearing under this subchapter shall be before the governing body of the municipality.

(b) The owner of property abutting a proposed improvement or the owner of an affected railway is entitled to:

(1) be heard on any matter for which a hearing is a constitutional prerequisite to the validity of an assessment under this chapter; and

(2) contest:

(A) the amount of the proposed assessment;

(B) the lien and liability for the assessment;

(C) the special benefit of the proposed improvement to the abutting property and the owner of the abutting property; and

(D) the accuracy, sufficiency, regularity, or validity of the proceedings or contract for the improvement and proposed assessment.

(c) The governing body may:

(1) correct an error, inaccuracy, irregularity, or invalidity;

(2) supply a deficiency;

(3) determine the amount of an assessment;

(4) determine any other necessary matter; and

(5) by ordinance, end the hearing and impose the assessment before, during, or after the construction of the improvement.

(d) An assessment may not:

(1) exceed the enhanced value to the property as determined at the hearing; or

(2) be made to mature before the municipality accepts the improvement for which the assessment is imposed.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.049. APPEAL OF ASSESSMENT. (a) A person who owns or claims an interest in assessed property or in an assessed railway may bring suit to contest:

- (1) the amount of the assessment;
- (2) an inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract relating to the assessment or the improvements; or
- (3) any matter or thing not in the discretion of the governing body.

(b) The suit must be brought not later than the 15th day after the date the assessment is imposed.

(c) After the period provided by Subsection (b), a person who fails to bring suit:

- (1) waives every matter the hearing might have addressed; and
- (2) is barred from contesting or questioning in any manner or for any reason:
 - (A) the assessment;
 - (B) the amount, accuracy, validity, regularity, or sufficiency of the assessment;
 - (C) the assessment proceedings; or
 - (D) a contract relating to the assessment or the improvement.

(d) This section applies to an assessment made under Section [313.048](#) or [313.050](#).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.050. CORRECTION OF ASSESSMENTS. If an assessment is determined to be invalid or unenforceable, the governing body of the municipality may:

- (1) supply any deficiency in the assessment proceedings;

(2) correct any mistake or irregularity in connection with the assessment; and

(3) at any time, make and impose a subsequent assessment after notice and hearing as nearly as possible in the manner this chapter provides for an original assessment and subject to the provisions of this chapter regarding special benefits.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.051. NO LIEN ON EXEMPT PROPERTY; LIABILITY OF OWNER. (a) This chapter does not authorize a lien against an interest in property that, at the time an improvement is ordered, is exempt from any lien created by an assessment for a street improvement.

(b) Notwithstanding Subsection (a), the owner of exempt property is personally liable for an assessment in connection with the property.

(c) The omission of an improvement fronting exempt property does not invalidate the lien or liability for an assessment made against nonexempt property.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.052. ASSESSMENT CERTIFICATES. (a) The governing body may issue in the name of the municipality an assignable certificate to evidence an assessment imposed. The certificate may declare the lien on the property and the liability of the owner of the property regardless of whether the owner is correctly named. The governing body may determine the terms of the certificate.

(b) A recital in a certificate that states substantially that the procedure for making the improvement was in compliance with law and that all prerequisites to creating the assessment lien on the property the certificate describes and to creating

the personal liability of the property owner were performed is prima facie evidence of those matters.

(c) Subsection (b) applies to a recital in a certificate that evidences an assessment under Section 313.048 or 313.050.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.053. CHANGES IN PROCEEDINGS; PROCEDURE. (a) The governing body of a municipality may change a plan, method, or contract for an improvement or other proceeding related to a plan, method, or contract for an improvement.

(b) A change that substantially affects the nature or quality of an improvement may not be made unless the governing body determines, by a two-thirds vote, that it is impractical to proceed with the improvement.

(c) If a substantial change is made after a hearing has been ordered or held, the governing body, in the same manner and with the same effect as provided for an original notice and hearing, shall:

- (1) make a new estimate of cost;
- (2) order and hold a new hearing; and
- (3) give new notices.

(d) If an improvement is abandoned, the new estimate, hearing, and notices are not required.

(e) A change in or abandonment of an improvement must be with the consent of the person who contracted with the municipality for the construction of the improvement.

(f) If an improvement is abandoned, a municipality shall adopt an ordinance that has the effect of canceling:

- (1) any assessment imposed for the abandoned improvement; and
- (2) all other proceedings relating to the abandoned improvement.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.054. ENFORCEMENT OF ASSESSMENT; PRIORITY OF LIEN; DEFENSES. (a) An assessment under this subchapter:

(1) is collectible with interest, expense of collection, and reasonable attorney's fees, if incurred;

(2) is a first and prior lien on the property on which the lien is created from the date the municipality orders the improvement; and

(3) is superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes.

(b) A lien against property or the personal liability of a property owner that arises from an assessment made under this subchapter may be enforced by:

(1) suit; or

(2) sale of the property assessed in the manner provided by law for sale of property for municipal ad valorem taxes.

(c) In a suit on an assessment for which a certificate has been issued, it is sufficient to allege the substance of the recitals in the certificate and that the recitals are true. Additional allegations about the assessment proceedings are not necessary in the suit.

(d) In a suit to enforce an assessment, the only defenses are that:

(1) the notice of the hearing:

(A) was not mailed as required;

(B) was not published; or

(C) did not contain the substance of a requirement prescribed for the notice; or

(2) the assessment exceeded the amount of the estimate.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 313.055. CHAPTER NOT AFFECTED BY STATEMENTS OR ACTIONS OF MUNICIPAL OFFICERS OR EMPLOYEES. Nothing said or

done by an employee or officer of a municipality, including a member of the governing body of the municipality, as shown in the municipality's written proceedings and other records, affects this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

TRANSPORTATION CODE
TITLE 6. ROADWAYS
SUBTITLE E. MUNICIPAL STREETS
CHAPTER 314. PURCHASE OR CONDEMNATION OF PROPERTY FOR HIGHWAYS
BY CERTAIN MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 314.001. **APPLICABILITY.** This chapter applies only to a municipality with a population of more than 1,000.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. AUTHORITY TO PURCHASE OR CONDEMN PROPERTY

Sec. 314.011. **ACQUISITION OF PROPERTY FOR HIGHWAY IMPROVEMENTS BY MUNICIPALITY.** (a) The governing body of a municipality may purchase or condemn property to lay out, construct, improve, or extend any highway within its boundaries.

(b) Costs incurred in making improvements, including the costs of purchase or condemnation of or damage to property and the costs of making assessments or issuing certificates under this chapter, may be paid from any municipal fund available for that purpose.

(c) A municipality may sell property originally purchased for improvements but not used for the improvements on the terms it considers appropriate. The proceeds from the sale shall be deposited in a fund that may be used only to pay for costs described by Subsection (b).

(d) In this section, "highway" includes any street, alley, public place, or square dedicated to public use.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.012. RESOLUTION. (a) A governing body that determines to proceed under this chapter shall declare its determination by resolution that may:

(1) state the nature, extent, and limits of the improvement to be made; and

(2) describe the real property proposed to be condemned by:

(A) the lot or block number;

(B) the number of front feet;

(C) the name of the owner; or

(D) any other description that substantially identifies the property.

(b) A mistake or omission in the resolution does not invalidate it.

(c) Passage of the resolution is conclusive evidence of the public use and necessity of the proposed improvement.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.013. SURVEY. (a) On passage of the resolution, the municipal engineer or engineer designated by the governing body shall prepare and submit to the governing body:

(1) a plat showing:

(A) the nature and limits of the proposed improvements;

(B) the location of the proposed improvements; and

(C) the property through which the improvements are to be extended and that is to be condemned for the improvements; and

(2) a written estimate of the total cost of:

- (A) the improvements; and
- (B) each parcel of property to be condemned.

(b) The governing body shall examine the plat and report and correct any errors. An error or omission does not invalidate the plat or report or a subsequent proceeding held under the plat or report.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER C. PROCEDURE

Sec. 314.021. APPOINTMENT OF CONDEMNATION COMMISSION. (a) In addition to qualifying under Section 21.014(a), Property Code, a member of a condemnation commission must be a qualified voter.

(b) If a commissioner dies, becomes disabled, refuses to act, becomes incapacitated, or is absent for more than 30 days from the county, the judge shall promptly, in term time or vacation, appoint a new commissioner having the qualifications prescribed by Subsection (a). An action of the commission taken before the vacancy is valid. After the vacancy is filled, the commission shall proceed and take all actions provided by this chapter as if a vacancy had not occurred.

(c) A commissioner is entitled to receive as compensation not more than \$10 for each day the commissioner is employed in the performance of the commissioner's duties.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.022. NOTICE OF CONDEMNATION. (a) The commission or the clerk, secretary, or recording officer of a municipality shall give written notice of a hearing before the commission to:

- (1) each owner of property proposed to be condemned or damaged; and
- (2) each person with an interest in or lien on the property.

(b) In addition to the requirements of Section 21.016(a), Property Code, the notice may contain:

(1) a brief statement of the nature and extent of the proposed improvement; and

(2) a description of the property proposed to be condemned.

(c) The description provided by Subsection (b)(2) may be by:

(1) lot and block number;

(2) front feet;

(3) the name of each owner; or

(4) any other description that substantially identifies the property.

(d) Notice of the hearing shall be given by publication for not less than three days in a newspaper of general circulation in the county in which the property is located beginning not later than the 10th day before the date of the hearing.

(e) Notice by publication is valid and binding on each owner or other person with an interest in or lien on the property if it generally notifies the person to appear and be heard without specifically designating the person by name. An error in the name of a person to whom the notice is directed does not invalidate the notice.

(f) A copy of the notice shall be delivered to:

(1) each owner, lienholder, or interested party who is a resident of the county where the property is located;

(2) the agent or attorney of a person described by Paragraph (1); or

(3) the guardian of the owner if the owner is a minor.

(g) The person serving the notice shall make a written return on the notice stating when and how the person served the notice.

(h) The governing body may provide for additional notice, but notice by publication is valid and binding regardless of whether any other notice is given.

(i) The governing body may provide for as many hearings in the course of condemnation proceedings as it determines necessary for whatever purposes it determines necessary.

(j) A notice and a return of a notice shall be filed with the municipality.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.023. HEARING ON CONDEMNATION. (a) Each owner, lienholder, or other interested party is entitled to appear at the hearing in person or by agent and be heard regarding:

- (1) the value of the property proposed to be condemned;
- (2) the damages to property not condemned resulting from the improvement;
- (3) the legality of the proceedings; or
- (4) any right of the owner or other party.

(b) An objection must be in writing and filed with the commission.

(c) The commission may not close the hearing until all interested parties appearing have been heard. At the conclusion of the hearing, the commission shall:

- (1) determine the damages due the owners, lienholders, or other interested parties for property taken or damaged;
 - (2) apportion the damages determined under Subdivision (1) among the owners, lienholders, or other interested parties;
 - (3) date and sign two copies of a written report;
- and
- (4) file one copy of the report with the clerk, secretary, or recording officer of the municipality and the

second copy with the clerk of the court that appointed the commission.

(d) The governing body may record in its minutes the following items relating to a condemnation proceeding:

- (1) proceedings of the governing body;
- (2) notices issued and returns of the notices;
- (3) orders, reports, and other proceedings of the commission; and
- (4) certified copies of all orders or proceedings of a court.

(e) A record made under Subsection (d) or a certified copy of the record is prima facie evidence of the facts in the record.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.024. OBJECTIONS. (a) Not later than the 10th day after the date the commission files a report under Section [314.023](#) with the court, a party affected by the decision of the commission may file with the court an objection to the decision.

(b) If an objection is not timely filed:

(1) the determinations of the commission become final and binding on the parties and their heirs, successors, and assigns and may not subsequently be questioned in any proceeding; and

(2) the judge shall enter the report in the records of the court and adopt the report as the court's.

(c) The judge may issue process as necessary to enforce a judgment under Subsection (b)(2).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.025. LAW APPLICABLE. Except as otherwise provided by this chapter, Chapter 21, Property Code, applies to proceedings under this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.026. ERRORS. The governing body, the condemnation commission, and the judge before whom a condemnation proceeding is pending shall take all appropriate actions to correct any error or invalidity in the proceeding. An error or omission in a proceeding does not invalidate the proceeding, but a proceeding may be corrected, repeated, or adjourned until the correction is made or omission supplied.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER D. ASSESSMENTS

Sec. 314.041. ASSESSMENTS. (a) Except as provided by this section, the governing body may by resolution order an assessment to pay all or part of the costs of making an improvement as described by Section 314.011(b), with reasonable attorney's fees and the costs incurred in making the assessment, against the owner and property if the property is:

(1) adjacent to or in the vicinity of an improvement;
and

(2) specially benefited by the improvement.

(b) In its resolution, the governing body may designate:

(1) the property to be assessed; or

(2) a district containing property to be assessed.

(c) The governing body may apportion the costs of the assessment among the owners of the property assessed.

(d) In making an assessment, the governing body may not include the cost of property purchased but not actually used for making the improvement.

(e) An assessment may not be made against:

(1) property or its owner in excess of the special benefit to the property in the enhanced value of the property resulting from the improvement; or

(2) property that is exempt from execution.

(f) The owner of property exempt from assessment under Subsection (e)(2):

(1) shall be assessed an amount equal to the amount the assessment would have been if the property were not exempt; and

(2) is personally liable for the assessment.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.042. NOTICE TO OWNER OF ASSESSMENT. (a) An assessment may not be made against the property benefited or the owners of the property until after the owners, lienholders, and other interested parties are given a reasonable opportunity to be heard before the governing body or before the commission as provided by Section [314.047](#).

(b) The governing body or commission shall publish three times before the hearing reasonable notice of the hearing in a newspaper of general circulation in the municipality beginning not later than the 10th day before the date of the hearing.

(c) If an owner is a railway or street railway, the governing body or commission shall also give, not later than the 10th day before the date of the hearing, written notice:

(1) in person to the owner's local agent; or

(2) by mailing the notice through the post office in the municipality to the address of the office of the railway or street railway as it appears on the most recent tax roll of the municipality.

(d) The name of an owner, lienholder, or other interested party need not be specifically set out in the notice required by Subsection (b) or (c), but the real property proposed to be assessed shall be briefly described in the notice by:

(1) lot and block;

(2) number;

(3) front feet;

(4) reference to a plat, report, or record filed in connection with the proceedings; or

(5) any other description reasonably identifying the property.

(e) The governing body or commission may give notice in addition to the notice required by Subsections (b) and (c), but the notice required by those subsections is sufficient.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.043. NOTICE TO COUNTY CLERK OF ASSESSMENT. (a) A governing body that proposes to assess property abutting an improvement shall file notice with the county clerk of each county in which the property is located. The notice must be signed in the name of the municipality by its clerk, secretary, or mayor or the officer performing the duties of the clerk, secretary, or mayor.

(b) The notice required by Subsection (a) must:

(1) show substantially that the governing body has determined it necessary that the street be improved;

(2) give the name of:

(A) the street and the names of the two cross streets or other approximate lengthwise limits between which the street is to be or has been improved or otherwise identify or designate the street and the portion of the street to be improved; and

(B) the subdivision and affected blocks if the street abuts a subdivision for which a plat has been recorded in the county clerk's office; and

(3) state that a portion of the cost of the improvement is to be or has been specifically assessed as a lien on property abutting the street.

(c) A notice filed under Subsection (a) may include one or more streets or improvements.

(d) A governing body that proposes to assess property not abutting the improvement shall file a notice signed as required by Subsection (a) with the clerk of each county where the property is located.

(e) The notice required by Subsection (d) must:

(1) designate the property proposed to be assessed or the district within which assessments have been or may be made; or

(2) otherwise identify the property against which a lien is proposed to be assessed.

(f) A notice required by Subsection (a) or (d) need not give details or be sworn to or acknowledged. The notice may be filed at any time, and the county clerk with whom the notice is filed shall:

(1) record the notice in the same class of records as a mortgage or deed of trust; and

(2) index the notice in the name of the municipality and in the name or other designation of the street to which the notice relates.

(g) Substantial compliance with this section is sufficient.

(h) In this section, "street" includes any part of a street, alley, highway, public place, or square.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 827, Sec. 3, eff. Sept. 1, 2001.

Sec. 314.044. HEARING ON ASSESSMENT. (a) At a hearing under Section [314.042\(a\)](#), an owner, lienholder, or other interested party may:

(1) object in writing to an assessment, special benefit to the property, invalidity of the assessment, or any prerequisite to the assessment; and

(2) present testimony in support of the objection.

(b) The governing body or the commission shall determine the amounts, if any, to be assessed.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.045. LIEN. (a) An assessment creates a lien on property prior to all other liens except a lien for ad valorem taxes.

(b) The lien takes effect on the filing of the notice provided by Section 314.043(a) or (d).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.046. ASSESSMENTS LEVIED. (a) The governing body may make an assessment only by ordinance.

(b) An assessment may:

(1) be made payable in not more than 16 installments maturing within 15 years; and

(2) bear interest at not more than eight percent a year.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.047. HEARING ON ASSESSMENT BEFORE CONDEMNATION COMMISSION. (a) The governing body may provide that the condemnation commissioners hold the hearing required under Section 314.042(a).

(b) The commission that holds the hearing:

(1) shall give notice as required by Section 314.042; and

(2) has the powers and duties conferred by this chapter on the governing body except as otherwise provided by this chapter.

(c) At the conclusion of the hearing, the commission shall report in writing its findings to the governing body. The governing body shall:

(1) examine the report and, if it finds the report to be correct, approve the report; and

(2) make an assessment in the proper amount against property and the owner of property found to be benefited by the improvement.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.048. CERTIFICATES. The municipality may:

(1) issue assignable certificates payable to the municipality or the purchaser of the certificates stating the liability of the property and the owner of the property for the payment of assessments; and

(2) set the terms of the certificates, including the time of payment, conditions of default, and date of maturity.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.049. ENFORCEMENT OF ASSESSMENT. An assessment may be enforced by:

(1) suit brought by the municipality for the benefit of a holder and owner of an assessment or a certificate issued on the assessment;

(2) suit brought by a holder and owner of an assessment or a certificate issued on the assessment; or

(3) sale of the assessed property in the same manner as nearly as possible as the sale of real property for municipal taxes.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.050. SUIT ON CERTIFICATE. In a suit to enforce a certificate issued under Section 314.048, the recitals of the certificate are sufficient to allege the proceedings of the governing body in making the improvements, the assessment for the improvements, and all prerequisites to the assessment. The allegations contained in the recitals need not be stated in the pleadings.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.051. REASSESSMENTS. (a) An error in a proceeding under this chapter, the description of property, or the name of the owner does not invalidate an assessment, and an assessment is in effect against the property and the owner of the property.

(b) A governing body that is advised of an error shall correct the error.

(c) At the request of an interested party, the governing body shall, after notice and hearing that comply with this chapter, reassess an owner or property erroneously assessed in accordance with special benefits as provided by this chapter as to original assessments. The governing body may set the terms of payment of a reassessment and may issue assignable certificates evidencing the reassessment in the same manner as for an original assessment.

(d) The governing body may not make a reassessment later than six years after the date of the ordinance making the original assessment. If the reassessment is contested in an action at law, the time consumed in the action is not included in computing the six years.

(e) In making a reassessment, the governing body is not required to repeat an action relating to the original assessment, except as required by Subsection (c).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.052. DEFICIENCY ASSESSMENTS. (a) If, after an assessment is made under this chapter, the amount assessed and apportioned is insufficient to defray all the costs of an improvement:

(1) the governing body may assess the deficiency against property specially benefited and the owners of the property and apportion the deficiency among them, after notice and hearing as provided by this chapter and after complying with each provision of this chapter applicable to original assessments; or

(2) a deficiency assessment may be made after notice and hearing before the commission in the manner provided by Section 314.047.

(b) A municipality may issue assignable certificates evidencing the deficiency assessment.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.053. SUIT TO SET ASIDE OR CORRECT ASSESSMENT OR REASSESSMENT. (a) A suit to set aside or correct an assessment or reassessment or a proceeding relating to the assessment or reassessment because of an error or invalidity in the assessment or reassessment must be brought by a property owner against whom or whose property an assessment or reassessment has been made not later than the 10th day after the date of the assessment or reassessment.

(b) After the deadline prescribed by Subsection (a), the owner and the owner's heirs, successors, and assigns are barred from bringing an action described by that subsection or objecting to the validity of an assessment, reassessment, or proceeding.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 314.054. VALIDITY OF ASSESSMENT. An assessment or reassessment is valid and binding without regard to:

(1) an error, omission, or invalidity in a proceeding of the municipality under this chapter with reference to:

(A) the making of an improvement provided by this chapter;

(B) the taking or condemnation of property for an improvement; or

(C) the determination and payment of damages for property taken or damaged; or

(2) whether as of the date of the assessments the improvement was completed.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.