



Roll Call Number

12-1337

Agenda Item Number

11

Date August 27, 2012

**APPROVING REFUND OF UNUSED
SPECIAL ASSESSMENT DEFAULT FUND;
REFUND SCHEDULE NO. 2012-01**

WHEREAS, on October 17, 1988, under Roll Call No. 88-4663, the City Council approved the final reading of Ordinance No. 11,230 that added new subchapters to the Municipal Code (Section 94, Articles IV, V, and VI) relating to the default fund, which were applicable only to special assessments levied under Chapter 384 of the Code of Iowa after the effective date of the ordinance. Said Ordinance No. 11,230 authorized refund of the unused portion of the default funds on assessment schedules that are beyond ten years and seven months from the date of certification of the final assessment to the County Treasurer and created administrative rules for the default fund including rules to determine which property owners are due a refund and how the refund is to be calculated and made; and

WHEREAS, the Municipal Code of the City of Des Moines under Section 94, Articles IV, V, and VI, provides for the collection and administration of a default fund to be collected by the City Treasurer, which consists of not more than 10% of assessable costs for special assessments associated with public improvements, and shall be used to pay unpaid assessments.

WHEREAS, Section 94-159 provides for refund of the unused portion of the default fund on assessment schedules that are beyond ten years and seven months from the date of certification of these final schedules to the treasurer under the following conditions:

- (1) The property owner named in the original schedule of assessments must have made payments in full.
- (2) All payments were made by such named property owner on time or, if sold for taxes, were redeemed by the named property owner within the allowable time to pay.
- (3) If all payments were not paid by the named property owner but were paid by someone else, no refund is allowed.
- (4) If all payments were not paid, the unpaid amounts shall be recorded and deducted, including interest, from the default funds collected for the assessment schedule.

WHEREAS, Section 94-160 provides that the refund of the unused portion of the default fund shall be calculated as follows:

- (1) All unpaid installments and/or payments, associated interest on such unpaid installments and/or payments, and all costs associated with preparation of the refund schedule and preparation of and mailing of notices of the refund shall be deducted from the amount of default funds actually collected to determine the default funds available for refund.



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- (2) The default funds available for refund shall be divided among or spread over all parcels originally shown on each individual assessment schedule in the same ratio as the default funds each parcel theoretically paid was to the total default fund shown on the original assessment schedule.
- (3) If the amount of the assessment for any parcel was adjusted by decree of the district court, the refund as calculated shall be based upon the amount of the assessment under the district court decree.
- (4) Refund shall not be made to the property owner on that portion of default funds available for refund which was paid as part of any assessment subsidy program nor to those portions of default funds which relate to deficiency assessments or agriculturally deferred assessments not actually paid at the time the schedule required by Section 94-158 of this article is prepared.

WHEREAS, Section 94-164. Time to file for refund states:

To claim a refund, a property owner must file for refund with the City Treasurer within 180 days after the City Council approval of the refund schedule. The claim for refund must show that the property owners fulfill the requirements of Section 95-159 of this article. The City Treasurer shall make payment in accordance with standard city procedures.

WHEREAS, Section 94-165. Transfer of funds states:

All default fund balances that are not refundable and/or that are not claimed under the policy shall be transferred to the consolidated improvement fund and shall become the property of the city, subject to the rights of holders of special assessments bonds as provided in state law.

WHEREAS, Section 94-168. Payment of refunds states:

Refunds made pursuant to this article shall be paid by the City Treasurer in accordance with a schedule prepared by the City Engineer and approved by the City Council. Refunds shall be payable only to the owner who was originally assessed and then only upon an affidavit being filed by each property owner giving his or her name, address, legal description of the property assessed, and setting forth a sworn statement that the property owner has paid all the special assessment upon the property upon which a refund from the default and deficiency fund is demanded. The right of any person to any refund under this article shall not be transferable or assignable, at law or in equity. The facts alleged in the affidavit shall be verified by the City Engineer and the City Treasurer and upon their joint approval shall be confirmed by the City Council. Upon confirmation the City Treasurer shall have authority to rebate or refund the amount approved within 30 days after confirmation.



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WHEREAS, the Engineering Department has researched the records of the County Treasurer during preparation of this refund schedule and collected information to determine which property owners are due a refund based upon the above guidelines; and after paying all proper charges against the default funds received from said special assessments, there remains default funds which are due certain property owners who have paid their assessments in full in accordance with the provisions of the above referenced Municipal Code Sections, and

WHEREAS, upon approval of this refund schedule by the City Council, the Engineering Department shall mail notices by ordinary mail addressed to the last known addresses of such property owners as best determined from county or city records relevant to the payment of such special assessments, notifying such property owners that a refund schedule has been approved and instructing the property owners how to file for such refund in accordance with Section 94-162.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the attached Refund Schedule No. 2012-01 refunding that portion of the unused cash balance of the default fund, not used to pay proper charges as levied in the original assessment schedule listed below and as provided in Section 94-99 of the Municipal Code of the City of Des Moines for the following projects:

	IMPROVEMENT DESCRIPTION, ACTIVITY ID, AND ASSESSMENT SCHEDULE NUMBER	UNUSED DEFAULT FUNDS
1.	SE 22 nd and East Park Avenue Sidewalk, Activity ID 09-2000-001, Schedule No. 2000-01	\$ 520.41
2.	Seneca Avenue Paving from 11 th to 12 th Streets, Activity ID 06-1998-014, Schedule No. 1998-01	\$ 4,526.76
3.	Birch Lane Paving from SW 12 th to SW 14 th Streets, Activity ID 06-1998-011, Schedule No. 1998-01	\$ 9,841.73
	TOTAL	\$14,888.90

be and the same is hereby approved and the City Engineer and City Treasurer are hereby authorized and directed to accept claims for refunds in accordance with said refund schedule, and to pay said claims as soon as practical after eligible claimants have been determined in accordance with the Refund Schedule.

BE IT FURTHER RESOLVED: That of the \$14,888.90 refundable unused Default Fund, \$11,155.00 is that portion that was paid by property owners and is available for refund to property owners; and \$3,733.90 is that portion that was paid by the Des Moines Special Assessment Subsidy Program on behalf of qualifying applicants, and in accordance with Section 94-165, shall be transferred by the City Treasurer to the Consolidated Improvement Fund and shall become the property of the City, subject to the rights of holders of special assessments bonds as provided in state law.



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BE IT FURTHER RESOLVED: That the Engineering Department is hereby authorized and directed to mail notices to property owners due a refund, that a refund is available to those who qualify to receive same, and that unless affidavits are filed by those entitled to receive refunds, within 180 days after Council approval of the Refund Schedule (August 27, 2012), then all rights to said refunds will be deemed to have expired, and that any balance remaining unpaid hereby ordered refunded to the property owners who have qualified to receive the same shall be transferred by the City Treasurer to the Consolidated Improvement Fund and used for any purpose for which such fund may legally be used.

Activity ID 20-2013-008

Moved by Meyer to adopt.

FORM APPROVED: Kathleen Vanderpool
Kathleen Vanderpool
Deputy City Attorney

JB

COUNCIL ACTION	YEAS	NAYS	Pass	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Diane Rauh City Clerk

MOTION CARRIED APPROVED
T. M. Franklin Council