

Dear Council Members,

At the City Council meeting last Wednesday, the Council held over the final vote on the remaining Mill & Overlay assessments by one week to allow time to clarify the legal questions raised by Mr. Hoeschler.

It was concerning to us that the Council did not appear to have been fully briefed by the City Attorney on this issue.

To that end, I've enclosed a one-page executive summary which we hope will provide Council Members with some much-needed context on the current state of the law.

I would also draw your attention again to Judge Millenacker's written opinion from August 9th, which Mr. Hoeschler forwarded to you after the meeting. It is highly relevant but was not available to the Council when this matter was originally under discussion in May and June.

We hope these documents will give members of the Council the relevant context they need to ask probative questions of the City Attorney before the City Council votes on August 28th.

Please feel free to reach out if we can be of any further assistance.

Kind regards,

Simon Taghioff

Fair Streets St. Paul

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## Mill & Overlay - Executive Summary

- The City of Saint Paul moved to the Right of Way (ROW) system in 2003, which funded a wide range of street services through an annual, city-wide assessment.
- This system was challenged in 2011, and in 2016 the Minnesota Supreme Court ruled in *First Baptist Church v. City of St. Paul*, that the ROW “fees” were in fact taxes.
- As a result of the ruling, the city changed the ROW system, moving services comprising approx ⅔ of the budget to the general fund, which left just 4 services (street lighting, sweeping, seal coating, mill & overlay) as assessments.
- A new *First Baptist* case in 2018 challenged the current SMSP program on the basis that, despite the changes made to the ROW system for 2017, the assessed charges were still taxes, not fees.
- On August 9th, Judge Millenacker handed down the opinion you’ve been sent in that case, agreeing with the plaintiffs that the new SMSP program was no different, legally speaking, to the discredited ROW program. The SMSP charges were still taxes.
- As taxes, the ROW / SMSP charges are not legal because they do not pass the ‘special benefit’ test. Special assessments can only be levied if they generate a special benefit to the property being assessed, as measured by an increase in market value. Regular street maintenance etc. does not increase the market value of the assessed properties.
- The 2018 mill & overlay assessments passed on June 19th are currently subject to an appeal on this basis. The assessments now due to be voted upon on August 28th, if passed will also be appealed.
- The city attorney’s statement at the Council Meeting on August 21st that the city was simply ‘proceeding’ under the fee power and not the tax power is not credible and not in line with Minnesota law on this issue.
- Mr. Hoeschler is requesting that, before proceeding to a vote on August 28th, the City Council obtain a written legal opinion which answers the following questions:
  1. Under what legal authority is the city asserting that the mill & overlay charges are fees and not taxes?
  2. On what basis does the city contend that Judge Millenacker’s opinion is flawed?
  3. If the city is now prepared to accept that these charges are indeed taxes, on what basis does the city believe that these charges meet the ‘special benefit’ test?
- We would urge the City Council to obtain a formal, written legal opinion from the City Attorney that addresses these questions. If the City Attorney is not able to provide such an opinion, we would respectfully request that these assessments are set aside.