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Date: June 12, 2019

To: City Council, City of Saint Paul MN



(via email)

From: Eric Lein, 361 Summit Ave, St. Paul, MN 55102



RE: Objection to Ratification of Assessments for Collection of Delinquent Garbage Bills for services during October to December 2018 – Council Agenda Items #30 through #104, June 12, 2019

Dear Council President Brendmoen and Members of the City Council,

I am writing to object to the Assessments that are listed as Item Numbers 30 through 104 on the City Council agenda for Wednesday, June 12, 2019. I own two of the thousands of affected properties and request that you do NOT ratify the assessments for my properties (RLH TA 19-365 & RLH TA 19-366), or for any of the other properties.

I believe that significant errors exist, none of which have been acknowledged or addressed by the Legislative Hearing Officer or by the Department of Public Works. Exhibit A (attached) includes excerpts from statutes, ordinances, and City Charter. Exhibit B (attached) expands on the following abbreviated list.

- ORD 18-39 (Chapter 220) was not effective until October 10, 2018. Pending assessments charge for days before Ord 18-39 was effective.
- ORD 18-39 (Chapter 220) should have been “suspended in its operation” (per City Charter Sec. 8.05) when the City Council adopted Resolution 18-1922 on November 14, 2018. All collection activities and pending assessments should be put on hold and/or laid over until:
 - The lawsuit, Clark vs. City of St. Paul, is decided pursuant to any and all appeals; and
 - Ord 18-39 is approved by voters in a referendum.
- ORD 18-40 has been suspended since October 2018 and is to be repealed. Restored (original) language no longer precludes “sharing” or other arrangements for reasonable interruption of service. Pending assessments presume that sharing and reasonable interruption, etc., have been disallowed since October 2018 which conflicts with the repeal of Ord 18-40.
- The City and haulers have not complied with MN Stat. Chapter 443 when setting rates and sending invoices.
- Charges and assessments for one, two, three or four unnecessary empty trash carts exceed the benefits to many properties in violation of MN Stat. Chapter 429 and City Charter Chapter 14.
 - MN Stat. 429.051 – Cost may be assessed “...based upon the benefits received...”
 - City Charter 14.01 – “...in no case shall the amounts assessed exceed the benefits to the property.”
- The City/Haulers’ Garbage Contract was signed after the deadline imposed by the City Council. If the Contract is found to be invalid, this detail will expose the haulers’ invoices to disputes by the City and by affected property owners.

While waiting for “final answers” and/or “fixes,” please do NOT ratify these pending garbage assessments.

CHAPTER 220.06 e – St. Paul Legislative Code – Assessment of delinquent accounts. “...unpaid costs shall be collected by special assessment under the authority of **MN Stat. 443.29** and the **St. Paul City Charter** by the procedure outlined in **Chapter 60** of the St. Paul Administrative Code...”

Chapter 443 – Rubbish Removal.

443.26 – Rates for rubbish disposal. The city is “...hereby authorized to establish rates for the removal, collection, and disposal from public or private property of rubbish, and to collect the same in the manner set forth in sections 443.26 to 443.35.

443.27 – Definitions. “...The words ‘rubbish disposal’ mean the removal, collection, and disposal of ‘rubbish’ from public or private property within any such city.”

443.28 – Powers of Council. “The council of any such city is authorized to employ present facilities, and to provide additional facilities, for rubbish disposal. Rates for such rubbish disposal, together with regulations incident thereto, shall be established by ordinance. Such rates shall be as nearly as possible just and reasonable, taking into account the character, kind, and quality of service, of rubbish and method of disposition, the number of people served at each place of collection, and all other factors that enter into cost of service, including interest on principal, investments, amortization of principal, depreciation, and other overhead charges upon facilities now owned and operated by any such city, or hereafter acquired for such use.”

443.29 – Rates Charged Against Premises. “The rates for rubbish disposal shall be a charge against the premises from which rubbish is collected...”

RLH AR 19-62 – Ratifying the assessment for the city’s cost of providing collection of garbage bills...

“Pursuant to **Chapter 429** of MN Statutes and **Chapter 60** of the St. Paul Administrative Code, assessments are hereby ratified...except...RLH TA 19-365, RLH TA 19-366, ...”

Chapter 429 – Local Improvements, Special Assessments

429.061 Subd 1 – Calculation. “...the clerk...shall calculate the proper amount to be specially assessed...in accordance with the provisions of section 429.051...”

429.051 – Apportionment of Cost. “The cost of any improvement...may be assessed upon property benefited by the improvement based upon the benefits received...”

Chapter 60 – Property Services Cost Assessment.

60.03 – Procedure. Subd g – Appeal. “...any person aggrieved may appeal to the district court in the manner set forth in **Chapter 14** of the City Charter.”

RLH TA 19-365 & RLH TA 19-366 – Ratifying the appealed special tax assessment...

“Pursuant to **Chapter 14** of the Saint Paul City Charter, said assessment is hereby ratified...”

Chapter 14 St. Paul City Charter – Special Assessments:

14.01 – Power to levy assessments. The city shall have the power to levy assessments to pay all or any part of the cost of improvements as are of a local character, but in no case shall the amounts assessed exceed the benefits to the property.

14.01.4 – Appeal. (2) The only defense to an assessment shall be that the assessment is fraudulent, or that it is made upon a demonstrable mistake of fact or law, or that the assessment is in an amount in excess of the actual benefits to the property. The jurisdiction of the court shall not be affected by an error, act or omission not affecting the substantial rights of any person.

Mistakes & Amounts in excess of actual benefits to the properties

- **ORD 18-39** (Chapter 220) was not effective until **October 10, 2018**, thirty (30) days following its passage, approval and publication. The City should not assess for charges that arose before October 10, 2018.
- **ORD 18-39** (Chapter 220) should have been “suspended in its operation” (per City Charter Sec. 8.05) when the City Council adopted Resolution 18-1922 on November 14, 2018, “Finding the Petition for a referendum of ORD 18-39 is legally sufficient...” No trash bills are owed at this time in light of the properly-submitted and legally sufficient Petition. The city must legislate in good faith and carry out its obligations under the Charter. Petitioners filed a lawsuit in district court on February 7, 2019. On May 30, 2019, Judge Castro ruled that, “**THE CITY COUNCIL DID NOT PROPERLY EXERCISE ITS AUTHORITY IN REFUSING TO HAVE ORDINANCE 18-39 PLACED ON THE BALLOT.**”
 - All collection activities and pending assessments must be put on hold and/or laid over until:
 - The lawsuit, Clark vs. City of St. Paul, is decided pursuant to any and all appeals; and
 - Ord 18-39 is approved by voters in a referendum.
- **ORD 18-40** has been suspended since October 2018 and is to be repealed. Language in force says:
 - 357.05(g)(1) – “...This section shall not preclude abutting property owners from cooperating for arranging for collection services from a licensed hauler, nor other arrangements for reasonable interruption of service.”
 - Property owners who have been “sharing” or who made other reasonable arrangements must not be assessed for unpaid trash bills issued by haulers who did not remove, collect and dispose of rubbish from the property. The Legislative Hearing Officer improperly recommended denial of appeals that should be allowed.
- **The City and haulers have not complied with MN Stat. Chapter 443.** Rates are not just and reasonable. Rates fail to take into account the character, kind & quality of service, of rubbish & method of disposition. Rates fail to take into account the number of people served. The City must issue the original invoice before exercising its assessment authority under MN Stat 443.29. Haulers are independent contractors and not “agents, representatives or employees of the City.” Charges by haulers have not been properly billed for assessment purposes and must NOT be certified to the county or levied against the property.
- **Charges and assessments for one, two, three or four unnecessary empty trash carts exceed the benefits to the property and violate MN Stat. Chapter 429 and City Charter Chapter 14.**
 - MN Stat. 429.051 – Cost may be assessed “...based upon the benefits received...”
 - Charter 14.01 – “...in no case shall the amounts assessed exceed the benefits to the property.”
 - Many 2-, 3- and 4-unit properties need just ONE trash cart (not 2, 3 or 4).
 - Some single-family “low-wasters” generate little or no rubbish and do not need trash service.
 - A 1-family house with 7 people is allowed to have just one cart. A 4-unit building with 7 people is told to pay for four carts, although just ONE cart is needed. Rates do not account for the number of people (MN Stat 443.28) and the 4-unit’s 4x assessment exceeds actual benefits to the property.
 - Unused carts do not benefit a property and charges for unnecessary carts exceed benefits.
 - Haulers demand \$243 per year for an unused lowest-priced cart that is assigned two “free” bulky items. Thus, one bulky item costs \$121 – which greatly exceeds any benefit to the property.
 - Assume a 4-unit building is directly across the alley from a 1-family house; each property uses only ONE 95-gallon trash cart. The hauler’s “fixed cost” to “put the truck at the site” (one stop, two properties) is the same for each property. The hauler’s cost to “service” the 4-unit’s single cart is NOT four times higher than the cost to “service” the adjacent 1-family single cart – the City’s proposed 4x assessment greatly exceeds the benefit to the 4-unit property.
 - Actual comparisons – City-mandated charges for two adjacent 4-unit buildings exceed benefits:

▪ 5-Unit	\$ 413/year
▪ 8-Units (2 adjacent 4-unit bldgs) – “Free-market”	\$ 957/year
▪ 34-Units	\$ 1,588/year
▪ 20-Units	\$ 1,818/year
▪ 8-Units (2 adjacent 4-unit bldgs) – “City mandate”	\$ 2,859/year (cost exceeds benefits)
▪ 65-Units	\$ 3,157/year
- **Invalid Garbage Contract?** The haulers’ LLC signed 1-day late. Missed the Council’s deadline which clearly states that the contract “...shall be signed by the LLC no later than November 13, 2017.” (See documents filed in district court by the City Attorney on May 6, 2019, 16:29 [re-filed with correct signatures on May 20, 2019, 16:07]. Exhibit H – RES 17-1776.)