

Date: November 13, 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 April to June 2019. Property at: 93 N. Milton, 99 N. Milton, 361 Summit, 547 Grand Hill.
RLH AR 19-118 & RLH AR 19-119 – Agenda Items #94 and #95, November 13, 2019

Dear Council President Brendmoen and Members of the City Council,

I write to object to the Assessments for Collection of Delinquent Garbage Bills that are listed as Item Numbers 94 through 113 on the City Council Agenda for Wednesday, November 13, 2019. I own four of the affected properties and request that you do NOT ratify the assessments for my four properties (included in **RLH AR 19-118** and **RLH AR 19-119**), or for any of the more than 5,500 other properties.

SIGNIFICANT ERRORS EXIST. Exhibit A (attached) includes excerpts from statutes, ordinances, and City Charter. Exhibit B (attached) expands on the following abbreviated list of issues.

- ZERO trash was collected from my properties by the City's assigned haulers in 4Q-2018, 1Q-2019 & 2Q-2019. Bills to collect and haul non-existent garbage are unreasonable.
- ORD 18-40 was suspended in October 2018 and repealed in June 2019. Restored (original) language does not preclude "sharing" or other arrangements for reasonable interruption of service. Reasonable arrangements have been made, neighbors are content, and trash has not been piling up or attracting vermin.
- In November 2018, the City Council adopted RES 18-1922 and found the Petition for referendum on ORD 18-39 to be legally sufficient. But, the City refused to comply with City Charter requirements and instead argued that the Petition is preempted by MN Statutes, will be an unconstitutional interference with the trash Contract, and conflicts with state public policy. The MN Supreme Court disagrees. Therefore, along with putting the referendum on the ballot, ORD 18-39 should have been suspended per City Charter Sec. 8.05, and trash collection fees that accrued from November 14, 2018, to November 5, 2019, have been and continue to be billed and enforced in error. Customers should not be forced to pay for so-called "service" of unused empty trash carts.
- 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."

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 19-118, RLH AR 19-119 – Ratifying the assessment for the city’s cost of providing collection of garbage bills... [93 N. Milton; 99 N. Milton; 361 Summit; 547 Grand Hill]
“Pursuant to **Chapter 429** of MN Statutes and **Chapter 60** of the St. Paul Administrative Code, assessments are hereby ratified...”

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.”

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

- ZERO trash was collected from my properties by the City’s assigned haulers in 4Q-2018, 1Q-2019 and 2Q-2019.
- **ORD 18-39** (Chapter 220) **should have been “suspended in its operation”** (per City Charter Sec. 8.05) **as soon as the City Council adopted Resolution 18-1922 on November 14, 2018, “Finding the Petition for a referendum of ORD 18-39 is legally sufficient....”** In addition to placing the referendum on the ballot (per MN Supreme Court Order in August 2019), charges for unnecessary, unused empty trash carts are NOT owed in light of the timely-filed and legally sufficient Petition. The city must legislate in good faith and carry out its obligations under the Charter. The MN Supreme Court confirmed that a referendum would NOT conflict with state law governing municipal waste collection, and would NOT unconstitutionally impair the City’s contract with waste haulers. To temporarily ward off mountains of garbage in city streets, trash collection continues for many customers. However, fees imposed on thousands of unwilling customers after November 14, 2018, have been and continue to be billed and enforced in error. **Customers should not be forced to pay for 4Q-2018, 1Q-2019, 2Q-2019, and 3Q-2019 so-called “service” of unused empty trash carts.**
- **ORD 18-40 was suspended in October 2018 and repealed in June 2019.**
 - 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 while ORD 18-39 should have been suspended must not be assessed for trash bills issued by haulers who did not remove, collect and dispose of rubbish from the property. The City is demanding and enforcing payment in error.
- **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:

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| ▪ 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 |