

MEMORANDUM

TO: Ramsey Charter Commission

FROM: Joseph J. Langel, City Attorney
Bruce Westby, City Engineer

DATE: October 16, 2013

RE: Franchise Fees

The City Council held a public hearing on October 8, 2013, to obtain public comments on proposed franchise fees. On October 10th, Chairman Field submitted a memorandum to City staff requesting information on a number of issues related to those fees. This memorandum is staff's response to Chairman Field's requests, which are set forth below in bold.

1. Minnesota statutory authority for franchise fees complete with dates of enactment and copies of same.

Minnesota Statutes section 216B.36 authorizes the adoption of franchise fees. The full statute is attached, but the relevant language is as follows:

Under the... franchise, the utility may be obligated by any municipality to pay to the municipality fees to raise revenue or defray increased municipal costs accruing as a result of utility operations, or both. The fee may include but is not limited to a sum of money based upon gross operating revenues or gross earnings from its operations in the municipality...

This statute was enacted in 1974 and was amended four times after that, most recently in 1991.

2. A synopsis of present City Charter provisions perceived to pertain to franchise fees.

Chapter 10 of the Charter regulates the use of franchises. Within that Chapter, only section 10.4 directly relates to franchise fees. That section contains the following language:

Subject to any applicable state statutes, the council may by ordinance reasonably regulate and control the exercise of any franchise, including the maximum rates, fares, or prices to be charged by the grantee.

This sentence authorizes the Council to set franchise fee rates. More generally, section 7.1 of the Charter grants the Council “full authority” over the City’s financial affairs. Note also that section 1.2 grants the City all statutory powers unless otherwise indicated in the Charter, and as stated above, the City has statutory authority to enact franchise fees. There are no provisions in the Charter that prevent or restrict the Council from imposing such fees.

3. A reference to any present City ordinances pertaining to franchise fees.

We are not aware of any current City ordinances that directly pertain to franchise fees.

4. A summary of metro area and a few outstate charter provisions and ordinances that pertain to the establishment or amendment of franchise fees.

5. Indicate whether there are any distinctions between charter cities and other cities when it comes to enacting franchise fees upon its residents.

The only distinction would be if a city’s charter contained some sort of limitation or regulation of franchise fees. Absent such provisions, there are no differences between charter and non-charter cities.

6. Please address the effect of the Charter Commission amending the Charter on October 21, 2013, on the present ordinance proposal by the City pertaining to franchise fees.

The Charter Commission cannot amend the Charter on October 21st. Almost all charter amendments must be approved by the voters at an election. The exception is if the Commission proposes an amendment and the Council enacts it by ordinance by unanimous vote. Even then, due to notice and hearing requirements and a 90-day delay for the effective date, it takes months for the amendment to take effect. *See Minn. Stat. § 410.12*. In the meantime, any franchise fee ordinance approved by the Council will remain in effect.

7. Address whether there has been any legal challenges to franchise fees established for repairing roadways. Does there have to be any correlation between the fee and the right-of-way use by a utility? Could a franchise fee exceed the cost of road repair?

The franchise statute, section 216B.36, does not mandate any correlation between the amount of the fee and the utility’s use of the right-of-way. The statute

specifically allows the imposition of franchise fees for the sole purpose of raising revenue, without having to tie those fees to any particular costs or any particular use of the revenue. The revenue generated by the fees can exceed the costs of road repair and maintenance; there are no statutory limits. We are not aware of any legal challenges of the nature you describe.

8. Address what sections of the Charter would be impacted by eliminating special assessments and whether any Minnesota statute would limit the Charter Commission's ability to eliminate or limit special assessments via a Charter amendment.

The proposed franchise fee ordinance language provides that if fees are adopted, those people with existing assessments will have the assessments rebated to the extent that franchise fees are paid. This provision does not impact the existing Charter language on assessments.

If the existing process for imposing assessments is to be modified, that would require changes to Chapter 8 of the Charter. I am not aware of any statute that would limit the Commission's ability to eliminate or limit special assessments.