



MEMORANDUM

OVERVIEW

The Charter Revision Workgroup plan requires this office to review the proposed revisions and provide an overview as to specific changes in the Charter that would affect various City departments. The Proposed Revisions make major changes to the Department of Public Works. This office has met with the Workgroup members from the Public Works department, and this memorandum reflects that discussion.

There are several issues that arise for Public Works if the proposed language were to be adopted:

- 1) Whether the City properly retains its ability to do special assessments?
- 2) Whether moving certain provisions to ordinance diminishes the City's authority over rights of way?
- 3) Whether the Proposed Charter Revision's language regarding transfer of unused funds in capital projects changes City policy and presents a problem for Public Works?
- 4) Whether certain changes relating to the Park Board adversely affect Public Works?

ANALYSIS

I. OVERVIEW OF PUBLIC WORKS PROVISIONS GENERALLY

There is no discrete chapter in the existing Charter that deals with Public Works. Instead, Public Works relies upon a number of Charter chapters for its authority. Most of the language in the current Charter regarding Public Works can be found in Chapter 8 – Public Highways and Bridges; Chapter 9 – Water



Works; and Chapter 10 – Local Improvements – Assessments. In addition, Public Works relies upon a great deal of statutory special laws for much of their authority. The Proposed Revised Charter removes almost everything related to Public Works to ordinance, leaving only §1.4(a)(2):

Infrastructure. The City may establish, plan, build, maintain, regulate, and otherwise provide for public ways and works and any other infrastructure necessary or convenient for its residential and economic development; for the comfort, convenience, health, safety, or welfare of its citizens; or for the efficient delivery of municipal services.

Removing most of the functions of Public Works to ordinance (or simply relying upon existing state power) is very much in keeping with the philosophy of the model charter, which concerns itself only with broad sweeping powers and organizational structures of cities.

II. SPECIAL ASSESSMENT ISSUES

There are many different Charter provisions that Public Works relies upon in order to do special assessments. For example, authority regarding assessments relating to the removal of snow and ice is found in Charter ch. 4 § 5, in the list of general powers of the City:

Nineteenth.--To compel the owner or occupant of buildings or grounds to remove snow, ice, dirt or rubbish from the sidewalk, street or alley opposite thereto, and compel such occupant or owner to remove from the lot owned or occupied by such person, all such substances as the city council or its designee shall direct; and in the person's default to authorize the removal or destruction thereof by some officer of the City, at the expense of such owner or occupant. Also to compel the owners of low grounds where water is liable to collect and become stagnant to fill or drain such low places, and in their default to authorize such filling or draining at the expense of such owner or owners.

Provided, That said Council may require snow and ice to be removed, as aforesaid, throughout such districts in said City as it shall direct, and may make the expense of any removal or destruction of any such substances which it or its designee may direct to be removed, and the expense of filling or draining any such low place, a lien upon the property from which said substances are removed or on which destroyed, or on which said low grounds are filled or drained, and may make a special assessment for the same to be collected as other special assessments are collected.

Additional authority appears in Charter ch. 5, § 18, which states that portions of repaving costs may be defrayed by a special assessment on the abutting properties.

The City Council shall have authority to determine in and by any resolution duly passed directing that any arterial street in the City of Minneapolis, or any part thereof which may be paved, what portion of the cost of such paving shall be defrayed by a special assessment upon the real property fronting thereon. Such proportions, however, shall in

no case be less than one-half of the cost to the City of Minneapolis of paving that part of the arterial street lying between the center line thereof and such abutting property.

Whenever the proportions to be so assessed are determined in the manner aforesaid, the assessment shall be levied accordingly and the remaining cost of such paving shall be paid by the City out of any funds in its treasury not derived from such special assessment available for paving purposes.

In all such cases the City Council may levy with the other City taxes, a tax sufficient to pay the amount not so assessed upon abutting land on property within the City subject to general taxation, and may direct into what fund the proceeds of such tax shall be paid.

In addition, authority for assessments for water mains and sewers is found in Charter ch. 9 §§ 3-4. The Proposed Revised Charter moves all of the above provisions to ordinance, along with the whole of current Charter Chapter 10, which deals with local improvements and assessments.

In the event that these provisions are removed, the City would need to use the authority granted by Minnesota Statutes chapter 429 to perform special assessments. Minn. Stat. § 429.021 subd. 3 states:

When any portion of the cost of an improvement is defrayed by special assessments, the procedure prescribed in this chapter shall be followed unless the council determines to proceed under charter provisions; but this chapter does not prescribe the procedure to be followed by a municipality in making improvements financed without the use of special assessments.

If the council determines to proceed under charter provisions for special assessments, such provisions shall be deemed to include a requirement that notices of proposed assessments inform property owners of the procedures they must follow under the charter in order to appeal the assessments to district court. The notices shall also inform property owners of the provisions of sections 435.193 to 435.195 and the existence of any deferment procedure established pursuant thereto in the municipality.

Charter provisions shall also be deemed to require that when the council determines to make any improvement, it shall let the contract for all or part of the work, or order all or part of the work done by day labor or otherwise as may be authorized by the charter, no later than one year after the adoption of the resolution ordering such improvement, unless a different time limit is specifically stated in the resolution ordering the improvement.

By removing assessment provisions from the Charter, the City will no longer retain the authority to conduct assessments and relating proceedings pursuant to our own methods. Instead, Public Works will be required to follow the procedures laid out in Minn. Stat. § 429. Public Works personnel indicate that the statutory framework, in some cases, requires additional hearings and notices that the City does not require, and that is a significant reason that the City has sought to use its own procedures rather than that of the state. Those additional steps would require the City to expend additional funds. In addition,



should the state change its policies and procedures, the City would have to change as well. Finally, the City would not be able to reinstate the authority to perform assessments under its own procedures without an additional charter change at a later date.

III. RIGHTS OF WAY/CITY ENGINEER ISSUES

The proposed Charter revision eliminates the provisions that govern the City Engineer’s duties and powers. *See* Minneapolis Charter ch. 3 § 9. The current provisions give the City Engineer broad powers with regard to street and bridge works, including the power to suspend work and enforce contracts. Eliminating these provisions and removing them to ordinance would make it possible for City Council action, rather than a Charter change, to modify or eliminate the duties and powers of the City Engineer. It does not appear, however, that there is any risk that the City’s general ability to regulate rights of way would be compromised by elimination of this provision.

IV. TRANSFER OF FUNDS

The Proposed Revised Charter seems to change the way that the City deals with certain unused funds:

<p>§ 13. Transfer of Unused Funds [current charter]</p> <p>In addition to the aforesaid levy of three mills the City Council shall have the power and authority, in its discretion, to transfer and cause to be transferred, by resolution duly passed, to the credit of such sinking fund, any or all unused balances of moneys and funds which are the proceeds of bonds heretofore or hereafter issued and sold by the city for any municipal purpose whatever, including bonds issued for public schools, public libraries and public parks and parkways, whenever the improvement or purpose for which the bonds were or shall be issued has been completed or abandoned, and any and all unused balances of moneys and funds now or hereafter existing in the permanent improvement fund and permanent improvement revolving fund of the city, and any or all unused moneys and funds now or hereafter raised by general taxation in the city for any purpose whatsoever, and to invest and cause to be invested all said moneys and funds in the same manner as the sinking fund of the city is now or may be invested, or in such manner as the City Council may in its discretion deem best, and to use and cause to be used said moneys and funds for the payment and redemption of the bonds and other indebtedness and obligations of the city as they mature and become payable.</p>	<p>[§ 10.4(b)(1)] [proposed charter]</p> <p>Fund. The City Council must maintain a sinking fund sufficient at least for paying off the City’s debt as it comes due. Any tax collected for interest or principal on any such debt goes into the sinking fund, and may not be diverted to any other purpose. Any other revenue not otherwise appropriated, and any proceeds from bonds whose purpose has been discharged or abandoned, go into the sinking fund.</p>
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The language of the Proposed Revised Charter would greatly alter how Public Works is able to handle unused funds for capital projects.



Public Works budgets for capital projects based on estimates. Bonds are sold to fund the capital projects. Ultimately, however, every capital project comes in over or under budget to some degree. Since bonds are already sold, Public Works is unable to reallocate funds unless they close the project. Typically, Public Works closes a number of projects—both over- and under-budget—at the same time so that it can transfer appropriations between the projects and “zero out” each project. The proposed Charter revision would require Public Works to transfer all “unused funds” to the City’s sinking fund instead. This would be a substantial change for Public Works and would make it difficult for that department to easily balance the city’s capital program.

V. PARK BOARD CHANGES

As discussed at length in the Park Board memorandum to this workgroup, the Proposed Revised Charter makes significant changes to the structure of the Park Board. Currently, the Charter provides the following:

The City Council of said City of Minneapolis shall have the same power and jurisdiction in respect to laying water mains and sewers along parkways in the said City as it now has in respect to laying the same along the public streets; and the same proceedings for levying and collecting special assessments for water mains and sewers along such streets shall apply to levying and collecting the same for water main laid along the parkways.

Charter ch. 16 § 15. This provision is omitted in the proposed charter, with a recommendation that it be removed to ordinance. It appears that the drafters of the proposed charter eliminated this provision with an eye to streamlining Park Board provisions. However, this provision does not relate to the parks as such, but instead affects the entire City. The City is entitled to lay water mains and sewers in parkways because those water mains and sewers benefit the entire City, and form a part of the City’s water and sewer network. Removing this provision to ordinance may have the effect of weakening the City’s ability to maintain its water and sewer network.

CONCLUSION

This memo exists only to provide a guide as to the suggested changes contained in the Proposed Revised Charter and to assist the Workgroup in its discussion of those changes.

Please feel free to contact me if you have further questions or concerns.