

CHARTER COMMISSION

**Brainerd, Minnesota
October 13th, 2021
5:00 P.M.**

City Hall Council Chambers

1. Call to Order

2. Roll Call

3. Approval/Amendment of Agenda

4. Approval of Minutes

- Meeting Held on September 8th, 2021

5. Old Business

- Discussion on Chapter 6, Public Utilities Commission

6. New Business

- Consider Request from Evergreen Cemetery

7. Adjourn

___ K. Bevans
___ J. Czczok
___ J. Burton
___ K. Yeager
___ M. O'Day
___ C. Marohn
___ A. Shipe
___ J. Lambert

Any individual needing special accommodations, please call 828-2307

**Brainerd, Minnesota
September 8, 2021**

Pursuant to due call and notice thereof, the meeting of the Brainerd Charter Commission was called to order at 5:00 P.M. by Charter Commission Chair Czeczok.

Upon roll call, the following members were noted present: Commissioners Bevans, Czeczok, Burton, Yeager, O'Day, Shipe, and Lambert. Todd Wicklund, BPU Finance Director, Scott Magnuson, BPU Superintendent, City Administrator Bergman, Human Resources Director Schubert, Attorney Langel, City Engineer/ Interim Public Works Director Sandy, and Finance Director Hillman were also noted as present. Commissioner Marohn was noted as absent.

Approval/Amendment of Agenda

MOVED AND SECONDED BY COMMISSIONERS YEAGER AND O'DAY, DULY CARRIED, TO APPROVE THE AGENDA.

Approval of the Minutes

MOVED AND SECONDED BY COMMISSIONERS YEAGER AND O'DAY, DULY CARRIED, TO APPROVE THE MINUTES OF THE MEETING HELD ON AUGUST 11TH, 2021.

New Business

Discussion of Chapter 6- Public Utilities Committee

Administrator Bergman gave an overview of the process the commission has taken to update the Charter. Ms. Bergman spoke about the antiquated language and financial processes from decades passed that needed to be updated in the Public Utilities Commission chapter. She introduced Todd Wicklund, BPU Finance Director/ Commission Secretary, and Scott Magnuson, BPU Superintendent.

Superintendent Magnuson stated the functions that the Public Utilities Commission and Brainerd Public Utilities oversee regarding staff, operations, and services.

Finance Director for BPU/ Commission Secretary Wicklund reiterated that the language in the current Charter is antiquated and inaccurate. He reviewed the various functions of the finance team at Brainerd Public Utilities and his duties as Commission Secretary in comparison to the current language. He submitted a redlined version to the Charter committee previous to the meeting to review. The language used in this version of the Charter is language he found appropriate from the American Public Power Associations guidelines for chartered cities. He stated that this requested update to the Charter regarding the Public Utilities Commission should layout the relationship between the City of Brainerd and its Brainerd Public Utilities in its reality.

City Engineer/ Interim Public Works Director Sandy discussed the work that the Streets and Engineering Departments do for new projects by BPU and how the City and BPU work together to provide utilities to the City and how each of these utilities are assigned as assets.

Commissioner O'Day sees this process as an opportunity to adopt the current process language or make changes staff see necessary in regards to public utilities in the City of Brainerd.

MOVED AND SECONDED BY COMMISSIONER YEAGER AND LAMBERT, DULY CARRIED, TO HAVE STAFF WORK WITH THE CITY ATTORNEY TO DRAFT A REDLINED VERSION OF THE PUBLIC UTILITIES CHAPTER FOR THE CHARTER COMMISSION TO REVIEW.

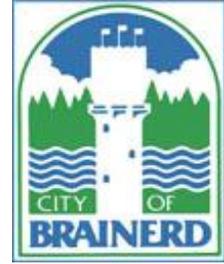
Adjourn

MOVED AND SECONDED BY COMMISSIONERS BURTON AND O'DAY, DULY CARRIED, TO ADJOURN THE CHARTER COMMISSION MEETING.

Commission Chair Czeczok adjourned the meeting 5:43 p.m.

Secretary

MEMO



TO: Charter Commission Members

FROM: City Administrator, Jennifer Bergman

DATE: October 8, 2021

RE: Consider Redline Version of the Public Utilities Commission Chapter

After the discussion at the September 8th Charter Commission, staff was directed to prepare a red-lined version of Chapter 6, Public Utilities Commission, of the Charter.

Attached is the draft revision. Attorney Langel will review the recommended changes.

CHAPTER SIX

PUBLIC UTILITIES COMMISSION

1. ~~The Public Utilities Commission shall control, operate and manage the following utilities of the City: water works plant and business, and the electric light plant and business, and all other public utilities which are now or may hereafter be owned by and operated within said City.~~
 - a. Water works, including the filtration plant, water towers and distribution system.
 - b. Wastewater system, including the wastewater treatment facility, force mains and lift stations, but not including the gravity fed wastewater collection system, which is operated by the Public Works Department.
 - a-c. Electric business, including the hydroelectric dam and distribution system.
2. Such ~~commission~~Commission shall upon the appointment and qualification of its members, and at such times as it may see fit organize and re-organize such ~~commission~~Commission, and in such organization and re-organization, shall appoint from its members a President and Vice-President and shall also appoint a Secretary who shall not be a member of the ~~commission~~Commission.
3. The Secretary of the ~~commission~~Commission or his/her designee shall attend all meetings of the Commission and keep a record of all proceedings. ~~The Secretary shall be the collector of all moneys which may be due or coming to said Commission or the City, on account of water rentals, light rentals, power rentals and otherwise on account of water, light or power furnished. The Secretary shall be the bookkeeper of said commission and shall keep books fully showing the names of all patrons consumers of water, light and power, and the amounts from them severally due, also all moneys collected, from whom collected and the several amounts thereof; and also all purchases made by the Commission and all labor employed, and all money due and paid on account thereof. Said Secretary shall from day to day pay into the City Treasury all moneys so received, and shall receive from the City Treasury receipts therefor, which receipts shall be in duplicate, one copy of which shall be filed with the Commission and the other filed with the City Administrator. Said secretary shall at the end of each month, or within three days thereafter, make a report fully showing the receipts and disbursements during the last month, which report shall be in duplicate, one copy of which shall be filed with said commission and the other filed with the City Administrator.~~

~~The said Secretary shall give such bond as the board may require and approve, such bond to run to the City of Brainerd and to be conditioned that the Secretary will faithfully perform all the duties of the office as Secretary of the Public Utilities Commission, and that the Secretary will account for and pay over all money and~~

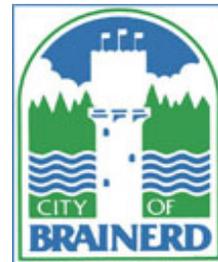
~~property coming into the Secretary's possession.~~ The Secretary shall perform such other and further duties as may be prescribed or directed by said Commission.

4. ~~The Commission shall have power to appoint and employ all necessary help to properly perform its duties and to fix their compensation subject to the approval of the City Council as provided for in Section 109 of the City Charter.~~ The City Council shall employ all necessary help for the Commission to properly perform its duties and approve all terms and conditions of employment. All Commission personnel are subject to the City's personnel policies.
5. Subject to state law, the Commission shall have power to fix all rates ~~and compensation~~ to be paid by consumers of water, wastewater and ~~electric light and~~ power, and to make and enforce such rules, regulations and penalties as they may deem proper to affect such collections and to protect all property and rights pertaining to the said departments.
6. The Public Utilities Commission shall have power to institute, prosecute and defend, in the name of the City of Brainerd, all actions which they may deem proper to carry out and enforce their authority as such board; but no real estate or easement shall be acquired by purchase or condemnation proceedings; nor shall any ~~water utility listed in Paragraph 1~~ main be ~~ordered or~~ extended unless the City Council shall so order the same by a resolution passed by a majority vote of all its members.
7. The Commission shall, at the first meeting of the City Council, in December of each year, present a budget for the following year as well as a five year capital improvement plan outlining anticipated future capital expenditures. The, ~~which~~ budget shall set forth all expenditures that can be anticipated for the operation of the ~~commission~~ Commission, during said fiscal year, and when approved, in whole or such part as may be approved by the City Council, shall constitute the authority for ~~such commission~~ the Commission to make such expenditures, subject to the provisions of this Charter. The ~~commission~~ Commission shall have the power to purchase and pay for all supplies necessary for the management of said business, when so approved by the City Council either as a part of said budget or by resolution of the City Council authorizing same, except that the ~~commission~~ Commission shall have the power to purchase supplies and machinery in case of sudden and extraordinary injury to said plants, making such purchases and contracts necessary to repair the same.
- 7.8. The Commission shall make financial transfers to the City in amounts as specified in Brainerd Public Utilities Policy 2003-01, as amended.
8. ~~It is hereby made the duty of the Commission to furnish water to all private consumers, by water meter measurement so far as practicable, and so far as practicable to furnish electric light and power to all consumers by electric meters. And it is made the duty of the Commission to furnish and place reliable water and electric meters for the said purposes, which meters shall be the property of the City and shall be considered in the possession and under the control of the commission, but the Commission shall have power to charge the consumers such reasonable~~

~~rent for the use of such meters as they may deem proper, which rental charge may be added to and made a part of the charges made for water and electricity.~~

9. ~~All water rentals and electric light and power rentals, together with meter rentals which are not paid as due, are hereby made a charge against and lien upon the real estate for the use of which, or the occupants of which water and electricity is furnished; and it is made the duty of the Secretary of the Public Utilities Commission, on or before the first day of November of each year to furnish to and file with the Auditor of Crow Wing County, an itemized statement showing the amounts of such delinquencies and the property to be charged, and it shall be the duty of the County Auditor to extend the same upon the tax roll of the property as a tax and a charge against the property, and the same shall be collected by the County Treasurer as other taxes and paid to the City Administrator, who shall turn it into the water and light fund.~~

MEMO



TO: Charter Commission Members
FROM: City Administrator, Jennifer Bergman
DATE: October 8, 2021
RE: Presentation by Evergreen Cemetery

Evergreen Cemetery made a request to the City of Brainerd for financial support in the amount of \$20,000 (see attached).

Staff was going to include the \$20,000 in the 2022 budget; however, we discovered that only fourth-class charter cities and statutory cities were given appropriation authority. Charter cities do not have the authority to providing funding to any organization give any amount of funds to Evergreen Cemetery unless it is specifically authorized in the Charter.

The statute is written in a manner that only conveys authority to appropriate to certain cities. Specifically, (1) fourth class charter cities and (2) statutory cities. As a third class charter city, Brainerd does not fall within either group (see email from Attorney Joe Langel).

Therefore, in order for the City of Brainerd to provide funding to Evergreen Cemetery, it must be specifically addressed in the Charter. Evergreen Cemetery has requested to meet with the Charter Commission to provide some background and request a Charter amendment.

From: [Duane Blanck](#)
To: [Jennifer Bergman](#)
Cc: [Dede Tollefson - Executive Director](#)
Subject: 2022 Financial Support - Evergreen Cemetery Association
Date: Wednesday, August 11, 2021 10:44:36 AM
Attachments: [President's Annual Mtg Report 2021.docx](#)
[Annual Treasurer's Report 2020 and 2019.docx](#)

Morning Jennifer:

The Evergreen Cemetery Association Board of Trustees is looking forward to continuing our discussions with the City of Brainerd related to financial assistance for Evergreen Cemetery. Our discussions last year were intended to be a means to inform and educate the City Council and staff about the overall operations of the Evergreen Cemetery Association, a 501(c)13 Non-Profit Public Cemetery. I recall that the Mayor expressed strong interest in and support of Evergreen Cemetery, as you did in our discussions with County Administrator Tm Houle.

You no doubt are aware that the County Board did make a donation of \$20,000 for fiscal year 2021 to be used specifically for Memorial Gardens which is located in the First Assessment District outside the Brainerd city limits. The Trustees are grateful to the County Board for this assistance, and have made a similar request for 2022. We look forward to the City joining with the County in providing sustainable funding for the future.

Knowing that the local government budgeting process begins in August, the Evergreen Cemetery Association Board of Trustees requests that the Brainerd City Council seriously considers providing financial support to the Association for 2022 in the amount of \$20,000, specifically for Evergreen Cemetery.

For your information I am attaching a copy of the President's Report and the Treasurer's Report provided at our annual meeting in July which marked 142 years of service to the Brainerd community. Should you desire any other information about Evergreen Cemetery Association please don't hesitate to contact me.

Regards, Duane

PRESIDENT'S REPORT

Annual Meeting, July 20, 2021
Evergreen Cemetery Association

The past year has been yet another year filled with challenges for the Board of Trustees along with continued changes to our Association. Dede Tollefson, our current Executive Director, is the “new” face of the Association as she maintains regular office hours in providing cemetery services to our community. We thank Karen Lentz for her nearly 10 years of dedicated service and appreciate that she is available to assist as may be necessary as a volunteer. A significant change that occurred was the retirement of Rusty Billman, our long time Superintendent with over 30 years of service; in many respects he has been the glue that has kept the Association together. We are particularly grateful for Rusty’s service and his efforts during this transition time. After some effort in hiring a replacement for Rusty, the Board has engaged Dan Bisek as our new Superintendent. Dan is excited in his new job and the Board looks forward to him being a successful part of the Association.

A major challenge for the Board is the bleak financial future we are facing due to the reduced number of burials occurring at Evergreen and Memorial Gardens. As a result, the Board put together information that clearly shows the decline in burials (along with grave lot sales) and related financial projections. Formal presentations were made to the Brainerd City Council and the Crow Wing County Board; the information presented is available to the Association members and the public upon request. We look forward to continuing our discussions with both units of government and we are grateful to the County Board providing \$20,000 in 2021 specifically for maintenance and use at Memorial Gardens. We look forward to the City joining with the County in providing sustainable funding for the future. We are hopeful that we will be able to reach agreement that not only results in regular financial support but a better understanding of the importance of what well maintained cemeteries mean to the community – and one managed by a dedicated Board of Trustees who are volunteers.

Another challenge this past year included significant vandalism that occurred in the older (southerly) section of Evergreen. Several monuments including some that weighed over a ton were toppled but fortunately none were seriously damaged. However, the cost to upright and reset the monuments along with repairs exceeded \$3,000. Due to the newspaper coverage additional donations were received which covered most of the cost and Little Falls Granite did the work at a discount.

On a positive note, major improvements were made to the Office building located at 1105 Third Avenue N.E. in Brainerd with new siding and roofing along with an attractive sign with appropriate information; similar signs will be placed at the gates of both Evergreen and Memorial Gardens. Additional major road work was accomplished at Memorial Gardens with the resurfacing of the circular drive. Erosion repairs were also accomplished at Evergreen. All of these improvements and other operating expenses are able to be accomplished by the generous donations of Association members and the community we serve. Be reminded we are a 501(c)13 (tax deductible) non-profit public cemetery managed by a volunteer 9-member Board of Trustees. The Evergreen Cemetery Association does not receive regular funding from the City of the County.

The Board of Trustees welcomes feedback from Association members and comments from the Public. Should you have any questions or desire information related to our cemeteries, please don't hesitate to contact any of the Trustees or our Executive Director. Our website: www.evergreencemeterybrainerd.com contains valuable information about the Evergreen Cemetery Association including the important Directory of the Dead along with how to contact us for any reason.

Submitted by Duane A. Blanck
President, Evergreen Cemetery Association
Brainerd, Minnesota

EVERGREEN CEMETERY ASSOCIATION
STATEMENT OF FINANCIAL POSITION
AS OF DECEMBER 31, 2020 & 2019

	<u>12/31/20</u>	<u>12/31/19</u>
ASSETS		
Cash-on hand & checking	\$ 3,295	\$ 9,695
Cash-Savings	59,770	104,529
Invested Earnings (Note 1)	68,864	59,905
Property & Equipment, net	145,636	107,515
Perpetual Care Funds @market value (Note 2)	<u>669,926</u>	<u>620,500</u>
TOTAL ASSETS	<u>\$947,491</u>	<u>\$902,144</u>
NET ASSETS		
Unrestricted	\$277,565	\$281,644
Permanently Restricted	<u>669,926</u>	<u>620,500</u>
TOTAL NET ASSETS	<u>\$947,491</u>	<u>\$902,144</u>

STATEMENT OF ACTIVITIES
FOR YEAR ENDED DECEMBER 31, 2020 & 2019

	<u>12/31/20</u>	<u>12/31/19</u>
REVENUE AND OTHER SUPPORT		
Association Revenues-Grave Fees, Lot Sales, etc	\$ 87,150	\$127,793
Donations and Bequests	44,101	30,213
Dividend and Interest Income	21,017	22,571
Other Income	<u>405</u>	<u>892</u>
TOTAL REVENUE AND OTHER SUPPORT	<u>\$152,673</u>	<u>\$181,469</u>
EXPENSES		
Wages & Salaries & Related Expense	\$ 97,878	\$114,321
Other Operating Expenses	<u>60,469</u>	<u>48,445</u>
TOTAL EXPENSES	<u>\$158,347</u>	<u>\$162,766</u>
CHANGE IN NET ASSETS	<u>(\$ 5,674)</u>	<u>\$ 18,703</u>

Note 1 –Wells Fargo/Edward Jones Invested Earnings represents accumulated earnings that are available to offset Association expenses.

Note 2 –Perpetual Care Funds include a bank savings account and mutual fund investments with Wells Fargo Bank in 2019 & Edward Jones in 2020. These funds are permanently restricted with the exception of dividends and interest earned as stated in Note 1.

These financial statements have not been subjected to an audit, review, or compilation engagement, and no assurance is provided on them.

FINANCE COMMITTEE ANNUAL REPORT

July 20, 2021

The Finance Committee met periodically throughout the year to deal with issues relating to the annual budget and to review and monitor the Perpetual Care Funds. Because of the lack of a local investment advisor from Wells Fargo, the Board took action and moved the invested Perpetual Care Funds held by Wells Fargo to Edward Jones at the latter part of 2020.

A copy of the Association's financial statements for the years ended December 31, 2020 & 2019 are attached for your review. Evergreen Cemetery experienced many of the same issues and difficulties of other businesses because of Covid-19. Because of the many restrictions placed on business operations, Evergreen's Association Revenues decreased significantly in 2020. Fortunately, through the generosity of the general public, donations and bequests helped alleviate much of the financial stress in the past year. Meetings have also been held with the City of Brainerd and Crow Wing County in an effort to acquire funding from these local units of government. To date, Evergreen did receive \$20,000 from Crow Wing County in January, 2021. Hopefully similar funding will be forthcoming from the City of Brainerd in the near future.

Respectfully submitted,

Gary Bluth, Treasurer

From: [Joseph J. Langel](#)
To: [Connie Hillman](#)
Cc: [Jennifer Bergman](#)
Subject: RE: Cemetery
Date: Tuesday, August 31, 2021 2:03:22 PM
Attachments: [image002.png](#)
[image004.png](#)
[image001.png](#)

Connie,

Interesting issue. The [statute](#), which is parroted in the LMC materials, is written in a manner that only conveys authority to appropriate to certain cities. Specifically, (1) fourth class charter cities and (2) statutory cities. As a third class charter city, Brainerd does not fall within either group.

When this statute was initially passed in 1951, only statutory cities were granted appropriation authority. In 1953, all fourth class cities (statutory or charter) were granted authority, but no change was made for non-fourth class cities, so authority remained restricted to statutory cities in the first, second and third class. This legislative history indicates that the legislature did not intend for charter cities, except those of the fourth class, to have such authority. I do not know the rationale behind this distinction.

[Minn. Stat. § 410.33](#) is a savings clause that generally allows charter cities to apply general law on statutory cities if a charter is silent on an issue and general law does not prohibit a charter from addressing the matter. This savings clause, however, does not apply here because the effect of Minn. Stat. § 471.84 is to prohibit first, second and third class charter cities from appropriating money to cemeteries, so that statute cannot be applied in a way that helps Brainerd.

Given these statutes, Brainerd does not have authority to give any amount of money to Evergreen Cemetery.

Let me know if you have any questions.

Joe

Joseph J. Langel

Ratwik, Roszak & Maloney, P.A.

730 Second Ave. South, Suite 300

Minneapolis, MN 55402

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From: Connie Hillman <chillman@ci.brainerd.mn.us>
Sent: Tuesday, August 31, 2021 12:45 PM
To: Joseph J. Langel <jjl@ratwiklaw.com>
Cc: Jennifer Bergman <jbergman@ci.brainerd.mn.us>
Subject: Cemetery

We received a request from the Cemetery Board for a contribution of \$20,000 for the operations of the Evergreen Cemetery that is located within the City limits. The Cemetery Board is a 501(3)c organization. Council was fine with putting into the budget. However, I was looking on the LMC website at a public purpose document and found this:

F. Cemeteries

Statutory cities may acquire, hold, and manage cemetery grounds. These cities may acquire cemeteries by purchase, gift, devise, condemnation, or otherwise.

Any statutory city, town, or fourth class home rule charter city may appropriate up to \$10,000 per year to any public or privately owned cemetery located within or outside the city's boundaries. The cemetery must be used for burial of the dead without restriction. The statute does not specify a particular use of the money by the cemetery. Alternatively, a city may enter a joint powers agreement with another governmental entity for the operation of a cemetery. In addition to the joint powers agreement, neighboring cities and towns may jointly agree to maintain a cemetery, with the same \$10,000-per-year restriction for each.

We can only contribute \$10,000 a year? We are a 3rd class charter city I believe.

Connie

Connie Hillman, CPA
Finance Director
City of Brainerd
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Brainerd, MN 56401
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Fax: 218-828-2316

E-mail: chillman@ci.brainerd.mn.us

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