



# MEMO

**TO:** Brainerd Charter Commission

**FROM:** Paul Sandy, City Engineer/Public Works Director

**DATE:** 03/21/2022

**SUBJECT:** Changes to Brainerd City Charter Chapter 5 – Streets

City staff have taken some time to review Chapter 5 of the Charter in its entirety and have reviewed the section with the City Attorney. These changes to this section are recommended by Staff as we move forward in the Charter revision process.

1. The City Council may by a vote of two-thirds of the members thereof, vacate any highway, street, lane, or alley, or portion of either, and such power of vacating highways, streets, lanes, and alleys within the City of Brainerd is vested exclusively in the City Council and no court or other body or authority shall have any power to vacate any such highway, street, lane or alley.

**Recommendation:** This section of the Charter speaks to vacating streets, highways, lanes, and alleys and special voting requirements. Minnesota Statute § 412.851 covers, in detail, the Council process in vacating streets. The section of statute also requires that a 4/5 vote of the Council for a proposed vacation without a petition, in which is one difference between the statute (requires simple majority) and the Charter. In staff's opinion, that alone does not warrant retaining this section of the Charter, and that the statutory process makes more sense. Also, to the contrary of the charter language, courts can vacate streets under Minnesota Statute § 505.14, but is rarely done.

It is staff's recommendation that this section of the Charter be struck in its entirety.

2. The City Council shall have power to designate districts or portions of the streets and alleys of the City for the purpose of cleaning the same and may provide for the cleaning of such districts by a contract on such terms as shall be deemed advisable.

**Recommendation:** This section of the Charter speaks to the city setting aside districts for street cleaning. The city's current practice is sweeping the entirety of the city at least twice per year. The district language in the Charter is old and is not in practice by city maintenance forces.

It is staff's recommendation that this section of the Charter be struck in its entirety.

3. It is hereby made the duty of all owners of land adjoining any street, lane or alley in said City, to construct, reconstruct and maintain in good repair such sidewalks along the side of the street, lane or alley next to the lands of such owners respectively, as may have been heretofore constructed, or shall hereafter be constructed, or directed by the City Council to be built, and of such material and width, and upon such places and grades as the City Council may by ordinance or otherwise prescribe. Whenever the City Council shall deem it necessary

that any sidewalk in the City of Brainerd shall be constructed or re-constructed, it shall by resolution direct such construction or re-construction, specifying the width thereof, and the material of which the same is to be constructed. The publication of such resolution once in the official paper of the City shall be sufficient notice to the owners of the land along which said sidewalk is to be built to construct the same, and unless such owners shall each along each owner's respective land, construct and fully complete such sidewalks within two (2) weeks after the publication of such resolution as aforesaid, the City Council shall forthwith proceed to ascertain the expense of constructing the same and assess and levy such expense upon and against each lot and parcel of land upon which such sidewalk shall front. Such assessment shall be collected in the same way in all things as provided for the collection of special assessments under the provisions of Section 75 of this Charter. And the City Council may either before or after making such assessment cause such portion of such sidewalks as have not been built by the owners of such land fronting on the same and all street crossings to be built by the City, or upon contract or by any other person as the council may determine.

**Recommendation:** This section of the Charter gets into sidewalk maintenance and adjacent owners being responsible for constructing, reconstructing, and maintaining walks when they fall into disrepair. The city currently constructs and reconstructs walks in line with capital improvement projects but does not assess for any of the sidewalk improvement costs. Being that this is the current practice, and staff does not see homeowners constructing or reconstructing walks in the future, any reference to constructing or reconstructing walks should be removed from the Charter. It is also staff's recommendation that we continue to not assess for constructing or reconstructing walks in the future.

When it comes to maintenance of said walks or keeping walks in a state of good repair, the current practice is to enforce this section on a complaint driven basis. This has long been a discussion point within the engineering department and will likely need to be re-worked in its entirety, dependent on the discussions by the Commission.

Chair Czeczok brought forward something that occurred in 2010 related to a Charter amendment that was passed by the voters in Brainerd. The question was as follows:

Shall Sections 76 and 77 of the Charter of the City of Brainerd pertaining to the construction, reconstruction and repair of sidewalks be amended to state that a property owner who is required to make such sidewalk improvements will be assessed for such expense based on the actual benefit to the property with any excess costs that exceed the benefit paid as a current expense of the City?

This Charter amendment basically references that they city would follow our Street Assessment Policy for making repairs to city walks and would assess based on the actual benefit to the owner for the repairs thereto. Some cities do rely on homeowners to repair sidewalks, and some do assess for sidewalk repair and replacement per Minnesota Statute § 429.021, subd. 1(1). The issue with assessing for anything related to sidewalks is that which there is some benefit, but it is typically relatively small. People are appealing assessments at a higher rate than they used to, and it is a challenge to demonstrate benefit.

It is staff's recommendation that this section of the Charter be struck in its entirety. This would mean that the city would solely be responsible for repair, constructing, and reconstructing walkways at its expense. There would need to be funding allocated annually for a project such as this, that would fall in line with our annual maintenance projects such as crack sealing, seal coating, large patches, and street striping. Staff recommends that a future line item be added to the 5-Year Street and Sewer Capital plan for sidewalk repairs, such as trippers, heaves, and other areas of non-compliance with ADA standards.

It is also important to note that, if the Charter Commission and Council elect to move this direction, that City Code § 805.11 should also be changed if this section is deleted, as it requires property owners to maintain sidewalks (and alleys?), and if they do not, the City can perform the improvement and assess the costs.

4. If the owner of any lot or parcel of land shall suffer any sidewalk along the same to become broken, rotten or out of repair, it shall be the duty of the City Engineer to immediately repair the same in a good, substantial and thorough manner, and to report to the City Council the cost of such repairs in each case, and a description of the lot or parcel of land abutting which such repairs are made, and such report shall be filed and carefully preserved by the City Administrator. And the City Council shall once in each year, at, or as near as conveniently may be, the time of levying the yearly City taxes, assess and levy upon each of the parcels of land fronting or abutting upon sidewalks which have been repaired by the City, the cost of making such repairs. In each case such assessment for all such repairs within the year may be combined in one assessment roll and be collected as provided for in other special assessments in this Charter. In case any such sidewalk shall become so out of repair as to become dangerous and cannot be made safe without being rebuilt, and there are no funds to defray the expense of such rebuilding, it shall be the duty of the City Engineer to remove the same entirely, and the expense of such removal shall be added to the cost of rebuilding when the same shall be reconstructed and collected with the assessment for such reconstruction.

**Recommendation:** This section gets to process and procedure for identifying issues with existing walks, repairing them promptly, and assessing for the costs of the repair to the property owner. It also talks to that, if there is not enough money to defray the costs of repairs to the walks, that they be removed in their entirety and reconstructed. When a complaint is received, the engineering department will typically work directly with the adjacent owners on making the repair. We have not assessed for a repair in some time, and typically, the homeowner or business owner has paid these costs up front. Follow up on these issues, admittedly, has not been that great in the past. If the Commission and Council move forward with the recommendations in this memo, then this would be a non-issue moving forward.

It is staff's recommendation that this section of the Charter be struck in its entirety.

5. It shall be the duty of the City Council, before ordering the construction of any new sidewalk, to cause ground on which is to be built to be properly graded.

**Recommendation:** Staff suspects this is an old provision enacted to prevent property owners from constructing a sidewalk without a proper base. Being that sidewalks are being constructed and reconstructed by the city, and if the Commission and Council move forward with repairs being a part of the city's duties, this section becomes obsolete.

It is staff's recommendation that this section of the Charter be struck in its entirety.

6. No railway company or street company shall have any right in cleaning their tracks through any part of the City or otherwise, to pile up snow or other material and leave the same piled upon any traveled portion of any street in the City. Any such company shall be liable to any person who shall be injured by means of any obstruction caused by the company or its servants for all damages sustained.

**Recommendation:** There is not a good way to enforce this provision of the Charter effectively but through complaints or by city staff visually seeing this take place. No one should be dumping snow on city streets, whether it is a property owner or the railroad. Staff feels this section can be handled by ordinance in city code.

It is staff's recommendation that this section of the Charter be struck in its entirety.

7. It shall require a two-thirds (2/3) vote of the members elect of the City Council to determine, in the first instance to make any improvement for which a special assessment may be levied, except in respect to sidewalks, when a majority shall suffice. But this restriction shall not apply to any subsequent act of the Council touching such improvement, or the special assessment to provide means therefor.

**Recommendation:** This section of Chapter 5 deals with voting requirements for assessments. State law does specifically allow cities to alter assessment process via Charter, however, staff follows Minnesota Statute § 429 for assessment proceedings. The only real difference between this statute and the Charter is the 2/3 vote requirement rather than a simple majority. If this is not a significant issue for the Charter Commission or Council, then staff would recommend this section be deleted.

It is staff's recommendation that this section of the Charter be struck in its entirety.

1. The City Council may at its discretion defer payment of certain special assessments for street improvements as defined in Chapter 429 of the Minnesota Statutes where a financial hardship exists. The Council shall by Ordinance define the circumstances wherein such deferments may be made.

The City Council does endorse the principal of deferment of special assessments for those citizens where the payment of said special assessments constitute a financial hardship. The Council, in accordance therewith, may defer the payment of a special assessment on homestead property owned by a person who has a financial hardship, and the payment of the assessment would create a further financial hardship.

The deferment may be granted upon an application by the owner on a form prescribed by the County Auditor supplemented by the City Administrator to establish the qualification of the owner for said deferment. All deferments shall be subject to renewal each following year upon the filing of a similar application not later than August 15. The Council shall either grant or deny the deferment, and if it grants the deferment, the deferred assessment shall bear interest at the rate established in the Resolution adopting the assessment. If the Council grants the deferment, the Administrator shall notify the County Auditor who shall record a notice of the deferment with the County Recorder setting forth the amount of the assessment.

A hardship shall be deemed prima facie to exist when all of the following apply:

- A. The applicant, his spouse and family combined shall not have an annual gross income in excess of the low-income limits established by the Housing and Redevelopment Authority of the City of Brainerd in effect at the time of application. All data necessary to confirm applicant's income shall be furnished to the City Administrator.
- B. The total special assessments to be deferred exceed the sum specified in the most current Resolution adopted by the City Council setting this amount.
- C. The applicant certifies that the total assets of the applicant and spouse, exclusive of the homestead, do not exceed the sum specified in the most current Resolution adopted by the City Council setting this amount.
- D. The Crow Wing County Assessor's estimated market value of the applicant's homestead is less than the sum specified in the most current Resolution adopted by the City Council setting this amount.

Notwithstanding the foregoing provisions of this paragraph, the City Council may consider exceptional and unusual circumstances pertaining to an applicant not covered by the above standards; but any determination shall be made in a non-discriminatory manner and shall not give the applicant an unreasonable preference or advantage over other applicants.

The option to defer payment of special assessments shall terminate and all amounts accumulated plus applicable interest shall become due upon the occurrence of any one of the following events:

- A. The death of the owner when there is no spouse who is eligible for deferment;
- B. The sale, transfer, or subdivision of all or any part of the property;
- C. Loss of homestead status on the property;
- D. Determination by the Council for any reason that there would be no hardship to require immediate or partial payment; or
- E. Failure to file a renewal application within the time prescribed in this section.

**Recommendation:** This Charter section allows for deferrals for financial hardship cases. This is a Charter issue as this kind of deferral is not reflected in state law, so it needs to remain in the charter somewhere, either in Streets (because it is limited to street improvements, or perhaps in Finance. This language also requires an ordinance on the subject. Ordinance 974 was an ordinance amending the Charter and adding in the language you see, and Resolution 49:88 specifically addresses deferment of assessment for senior citizens. Both of which can be seen attached.

There needs to be some discussion from the Commission on this section as it relates to the Streets section of the Charter. If the Commission elects to follow staff's recommendations, much of this section would be deleted and the only thing outstanding would-be deferrals of assessments. This could stay in the streets section or be moved to another location.

Staff does not recommend any additions to the streets section of the Charter or issues the Streets section should address. With the recommended deletions, the only section left related to Streets in the charter would be the deferment of assessments, unless this section were removed, then Section 5 of the Charter could be deleted in its entirety.

Staff will be available at the Charter Commission meeting to answer any questions from the Commission about this section.

## CHAPTER FIVE

### STREETS

1. ~~The City Council may by a vote of two-thirds of the members thereof, vacate any highway, street, lane, or alley, or portion of either, and such power of vacating highways, streets, lanes, and alleys within the City of Brainerd is vested exclusively in the City Council and no court or other body or authority shall have any power to vacate any such highway, street, lane or alley.~~
2. ~~The City Council shall have power to designate districts or portions of the streets and alleys of the City for the purpose of cleaning the same and may provide for the cleaning of such districts by a contract on such terms as shall be deemed advisable.~~
3. ~~It is hereby made the duty of all owners of land adjoining any street, lane or alley in said City, to construct, reconstruct and maintain in good repair such sidewalks along the side of the street, lane or alley next to the lands of such owners respectively, as may have been heretofore constructed, or shall hereafter be constructed, or directed by the City Council to be built, and of such material and width, and upon such places and grades as the City Council may by ordinance or otherwise prescribe. Whenever the City Council shall deem it necessary that any sidewalk in the City of Brainerd shall be constructed or re-constructed, it shall by resolution direct such construction or re-construction, specifying the width thereof, and the material of which the same is to be constructed. The publication of such resolution once in the official paper of the City shall be sufficient notice to the owners of the land along which said sidewalk is to be built to construct the same, and unless such owners shall each along each owner's respective land, construct and fully complete such sidewalks within two (2) weeks after the publication of such resolution as aforesaid, the City Council shall forthwith proceed to ascertain the expense of constructing the same and assess and levy such expense upon and against each lot and parcel of land upon which such sidewalk shall front. Such assessment shall be collected in the same way in all things as provided for the collection of special assessments under the provisions of Section 75 of this Charter. And the City Council may either before or after making such assessment cause such portion of such sidewalks as have not been built by the owners of such land fronting on the same and all street crossings to be built by the City, or upon contract or by any other person as the council may determine.~~
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**Commented [PS1]:** There is statute for this. To simplify, we should just follow the statute.

**Commented [PS2]:** This is not done anymore. We street sweep and clean all streets.

**Commented [PS3]:** This puts the onus of constructing, reconstructing, and maintaining sidewalks on adjacent properties. Constructing and reconstructing is currently performed by the City. Maintenance is complaint driven and handled by property owners, but minimally enforced for items such as trippers, etc. This is hard to enforce.

~~the time of levying the yearly City taxes, assess and levy upon each of the parcels of land fronting or abutting upon sidewalks which have been repaired by the City, the cost of making such repairs. In each case such assessment for all such repairs within the year may be combined in one assessment roll and be collected as provided for in other special assessments in this Charter. In case any such sidewalk shall become so out of repair as to become dangerous and cannot be made safe without being rebuilt, and there are no funds to defray the expense of such rebuilding, it shall be the duty of the City Engineer to remove the same entirely, and the expense of such removal shall be added to the cost of rebuilding when the same shall be reconstructed and collected with the assessment for such reconstruction.~~

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notice of the deferment with the County Recorder setting forth the amount of the assessment.

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