

Memorandum of Recommended Direction to the Bismarck City Commission

From: Bismarck Special Assessment Task Force Sub-Committee
To: Bismarck City Commissioners

Commissioners,

Attached you will find our suggested language for a Home Rule Charter Amendment enabling the City Commission to pursue a policy to replace the use of special assessments for street maintenance with a monthly street maintenance utility fee. This proposal is now five years in the making, and the details of the actual ordinance must be worked out before we can expect 60% of Bismarck's electors to approve such a change.

The Home Rule Charter Amendment contents are designed to allow this and future commissions the flexibility to transition away from special assessments for street maintenance and provide guardrails to protect property owners, taxpayers, and all residents in general. Our genuine hope is that this can be the first step to proving that city infrastructure can be financed with a more stable and sustainable monthly fee rather than the long-time practice of special assessments. With that said, we do understand no system is perfect, and the need to modify or even reverse this transition may be desired if economic conditions fluctuate such that the fee would exceed what an average person would call reasonable.

In addition to the proposed language for the actual amendment, which we have consensus agreement is a minimum level of detail and protection for both the city government and its citizens, we would like to make the following statements for the record as to the direction of the city commission should go in this process:

1. A draft ordinance and policy outline should be developed before asking voters to approve this Home Rule Charter Amendment. The city should be able to provide a well-defined model of what the voters can expect if they vote to approve this amendment.
2. There has been some ambiguity as to whether property owners could see special assessments for Arterial/Collector Roadways in addition to the Monthly Street Utility Infrastructure Fee. It is our strong preference that city policies be modified to eliminate the need for any future special assessments for street projects that would be considered "maintenance". Special consideration to widening or other work that may create a different designation. If Greenfield Specials are eliminated, and Street Maintenance Specials are replaced, it makes no sense to leave the possibility for specials for "Area Wide" Arterial/Collector Roads. If this is not possible, the city must develop a way to explain why this is ahead of time to avoid "bait and switch" complaints.
3. Upon approval by the voters, the city commission must facilitate public communications and public input beyond the bare minimum required by law. We would encourage the city to develop a calendar showing the public what they can expect as far as the timeline for development, discussion, debate, and implementation. We request that you as a commission commit to holding several stand-alone meetings (in addition to the legally required public hearings) where the public gets to have their voices heard and that serious and informed public input be incorporated into the revision process.

4. Expedite the discussion and decision on ending the policy of using the city's debt capacity for facilitating the financing of new "greenfield development." We believe that an approved plan, prior to a public vote on the home rule charter amendment, to phase out "greenfield" special assessments will be seen by the public as an act of good faith on the city's part.
5. The sub-committee was divided on how specific the policy regarding minimum and maximum ending fund balances should be addressed. We had a consensus on requiring that the city commission have some sort of policy in the ordinance. One discussed approach was as follows:

Alternative Subsection D.

Minimum and Maximum Ending Fund Balances: To ensure adequate funding and limit excess funding, the street utility fee shall be adjusted annually within the defined rate framework. A three-year projection of income and outflow will be calculated, and fees adjusted so the projected balance at the end of year three does not exceed 100% of the projected average annual outflow.

6. Work with city staff to facilitate a Citizen Inquiry process for residents to request a re-evaluation of street conditions in their neighborhood. The general consensus among subcommittee members was that this was a good idea, while staff indicated they essentially already do this. Legal counsel indicated there were dangers in placing such a process in the home rule charter as it created a new "right." A process greater than the current but less than a new "right" is desirable.
7. When determining how to assume the annual payments of existing specials, we recommend earmarking the ~\$8 million in sales tax revenue currently used to reduce special assessments generally. This way, the new street maintenance utility fee is not used to pay down existing balances. (No one's new fee should pay for other people's existing balances, having those dollars come from existing sales tax dollars is more tolerable.) As existing debt is retired and sales tax revenue is freed up, those unrestricted dollars should be used to offset increases commiserate with the minimum/maximum ending fund balance policy.

Sub-Committee Proposed Home Rule Charter Amendment (As Approved on May 23, 2022)

17. To levy and collect an infrastructure fee for street maintenance purposes.

- a. For the purposes of this fee, "street maintenance" shall be defined as "needed street maintenance projects" determined by the city commission and adopted "industry-accepted pavement management system." The city commission may temporarily expand this scope only with a unanimous roll call vote during the annual budget process.
- b. Upon implementation, the city commission shall remove street maintenance and arterial road reconstruction special assessment balances from the accounts of property owners.
- c. The city commission shall annually approve a non-binding preliminary draft outlining expected street projects for the next five (5) years as defined by the city commission's capital improvement plan criteria.
- d. Before full implementation, the city commission shall approve an ordinance defining the minimum ending fund balance and maximum ending fund balance.
- e. Implementation will commence upon the earlier of:
 - a) North Dakota Century Code allows the exemption of the infrastructure fee from tax-levy limitations for political subdivisions, or
 - b) Receipt of letters of support from both the Bismarck Public School District and Bismarck Parks and Recreation District.

Home Rule Charter Language "Footnotes of Intent"

The following is a brief line-by-line description of intent for the sub-committee approved Home Rule Charter language.

17. Enables the city to utilize statutory powers granted to Home Rule Charter cities.
 - a. After in-depth discussions, it was agreed to minimally define in the Home Rule Charter what would be covered by the new "street maintenance fee." The subcommittee intends that the ordinance list very specifically defines what the new fee would cover and requires annual unanimous approval of the city commission to go beyond that. The sub-committee will not oppose placing detail lists in the Home Rule Charter if the commission wishes to go that route.
 - b. This line assumes the city commission wishes to assume the existing street maintenance special assessment balances. This line can be redacted if the commission decides not to go down that road. The subcommittee would not oppose such action, but would like to make it clear that it would require even more transitional planning. There are no easy or right solutions to this particular piece of the equation.
 - c. The sub-committee placed this requirement in the Home Rule Language to ensure the public has a general idea of what to expect from the city on street maintenance in the near and mid-term.
 - d. The sub-committee agreed that there should be a requirement for policies limiting both minimum ending fund balance and maximum ending fund balance. We did not agree on approach or language but gave further suggestions in the attached "Memo."
 - e. To address concerns by the park district and school district, we recommend the city will advocate amending state law that affects them on implementing this new fee, OR that the city will negotiate with the schools and parks to find a solution. Burleigh County indicated impact can be absorbed by the general fund.