

Finance Committee Meeting Tuesday 02.28.2023

✓ The meeting commenced at 1930 hrs.

Committee members in attendance: Chairman David W. Voss, John Hardig, Lindsey Jones and Brian Smyth.

Other council members in attendance: Kathleen Zech, Amy Richter, Stefanie Hawk and President of Council Kerry Smyth.

City officials: Mayor Sam Keller, SSD Tom Braun, and Clerk of Council Jenny Eilermann .

Others: None

Meeting Objectives: To continue the discussion relative increasing revenue for the city.

Discussion:

The chair advised that tonight's meeting is the fifth finance committee meeting to deal with increasing revenue for the City. The chair mentioned it was the time to reach a conclusion on garbage fees, the property tax increase and an income tax increase.

During the finance committee meeting on 02.21.2023 , the chair was directed to send a request for a legal opinion from the law director relative increasing trash collection service fees that grossly exceeded the actual cost of trash collection services after he raised the issue at the meeting. The letter for the legal opinion is attached as exhibit A.

On 02.28.2023 prior to the finance committee meeting, the opinion was received from the law director. In summation, the law directors opinion stated that the charge to residents for the garbage fee must be reasonable and must correlate to the cost of the city to provide the garbage service. See attached exhibit B for the complete opinion.

Council was presented with an updated spreadsheet (Trash Collection Information) from the administration. It was more detailed than the previous version. It provided numbers for council to adjust the amounts to be increased for the trash fee to be in compliance with the recommendation of the law director. Time was spent trying to make the required adjustments to the fees during the meeting. The administration will provide an updated accurate spreadsheet with the new numbers to council asap. The law director will be tasked with drafting an ordinance incorporating the updated numbers when provided by the administration. It will be presented at the council meeting on 03.07.2023 for a first reading. Second reading to be on March 21 and the third reading on April 4, 2023. Three readings will allow residents and businesses to bring any concerns before council prior to adoption.

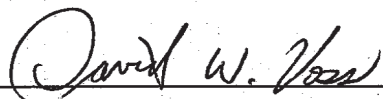
In closing,

The chair advised everyone that the 2023 appropriations are available and need to be passed by March 31st.

The next Finance Committee meeting will be on Tuesday, 03.07.2023 following the regular council meeting.

The meeting concluded at 2151 hrs.

Respectfully submitted,



David W. Voss, Finance Chairman



John Hardig

Lindsey Jones



Brian Smyth

Exhibit A

To: Law Director Kim Erdman-Rohr
From: Finance Chairman David W. Voss
Date: February 24, 2023
Subject: Request for Legal Opinion re Trash Fees.

I am writing to request a legal opinion relative the following ordinances; # 12-38 To Enact A Fee For The Provision Of Trash Collection Services, # 13-27 To Enact A Fee For the Provision Of Trash Collection Services Beginning January 1, 2014; And To Declare An Emergency and # 14-12 To Enact A Corrected Schedule of Trash Collection Rates And Fees; And To Declare An Emergency.

Prior to December 18, 2012, the City provided trash collection services to the residents and businesses at no charge. No charge is a misnomer as taxes paid by the citizens and businesses covered the cost of trash collection services. With the adoption of ordinance 12-38, the City began feeing residents and businesses for trash collection to offset a budget deficit that required the City to seek an additional source of revenue.

Ordinance 13-27 mirrored ordinance 12-38 and was adopted in response to a referendum petition that placed the issue before the electors and the voters approved Ordinance 12-38 during the general election on November 5, 2013. There was an added provision in this new ordinance under section 6 allowing council to may from time to time review the rate schedule and modify it as it becomes necessary.

Ordinance 14-12 was adopted on or about May 6, 2014 to correct clerical errors in the 13-27 fee schedule and to correct the previous errors by substituting a new fee schedule.

The request for a legal opinion is based on the fact that the fees enacted in the previously listed ordinances were the enactment of fees for the provision of trash collection services. The administration wishes to increase the fees by an amount of \$490,344.00. The total cost of trash collection for year 2022 totaled \$564,485.20 (from SSD – Trash Collection Information) versus the fee income of \$527,668.00 (from Budget Worksheet 2023 updated for council 01.31.23-1), a deficit of \$36,817.20. Estimates for year 2023 total \$608,052.11 (appears inflated). Based on the 2022 collection rate if used for 2023, the deficit would be approximately \$80,384.11.

The requested increase of \$490,334.00 in garbage fees **grossly** exceeds the amount required for trash collection costs. The proposed new total amount of fees to be collected will be \$1,014,3212.00 versus the current collection of \$527,668.00; a 92% increase. It doesn't appear that the trash ordinances were adopted with the intention for the administration to increase fees beyond what is needed to cover the cost of trash collection.

Dave Voss

From: Kimberlee Erdman Rohr
Sent: Tuesday, February 28, 2023 11:16 AM
To: Dave Voss
Cc: Sam Keller
Subject: Re: Legal Opinion Request
Attachments: Request for Legal Opinon re Trash Fees 02232023.docx
Importance: High

Good morning, Councilman Voss,

I am providing an informal response to your request for legal opinion due to the time constraints and my understanding that there is a meeting to discuss this issue tonight.

I reviewed some of the statements from your request with the Mayor, since you stated that the Administration seeks to increase the fees by 92%. My understanding is that the increase to which you referred was requested by certain members of Council and not by the Administration. Nonetheless, my opinion applies to the increase proposed by the Mayor as well as the increase proposed by Council.

After my brief research of this issue, my initial opinion is that the charge to residents for garbage fee must be reasonable and must correlate to the cost to the City to provide the garbage service. This differs from other amounts charged by the City for various things, such as building rental, admission fees/pool passes, etc., because the garbage fee is not voluntary. It is a mandatory fee for which the residents cannot opt out.

The reasonableness of the fee is related to the cost to the City. The cost should include all amounts that are related to running the garbage program, and I believe it would be reasonable to include estimated or surplus amounts that would cover unforeseen or estimated costs. For example, certain amounts each year to go toward purchase of new truck every 10 years.

If the estimated cost to run the garbage program in 2023 is \$608k, I do not believe that it would be unreasonable to charge a fee that results in collection that is \$20k or more than the estimated cost if that is needed as a buffer to cover unforeseen costs for the program. Additionally, all costs that are connected to the garbage collection could be included in that amount, including the City's cost to provide benefits to the employees for example. I did not review the SSD's figures for the 2022 and estimated 2023 costs, so I do not know if these were included.

Regarding the language of the ordinances, the ability of Council to change the rates as needed was included in the enacting legislation and the codified ordinances. There were also statements in the enacting legislation that the intent of Council in adopting the ordinance was that Council foresaw and deficit and was required to seek additional sources of revenue. Despite these statements, I do not believe that Council can seek to create sources of revenue from trash collection so long as the charge to residents is mandatory.

Please note my research and opinion of this issue is limited to the current situation where the trash collection is a mandatory charge that residents cannot opt out of. If the charge was voluntary where residents could opt

out and obtain their own trash collection services from outside vendors, my analysis may change. However, I have not looked into that issue.

Thank you,

Kimberlee Erdman Rohr, Esq.
Law Director
City of Cheviot

From: Dave Voss <dvoss@cheviot.org>
Sent: Friday, February 24, 2023 2:28 PM
To: Kimberlee Erdman Rohr <krohr@cheviot.org>
Subject: Legal Opinion Request