
**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
*KENNETH J. ROHLF
◦STEPHEN H. FOCHLER
△JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
*KORINE L. LAND
□*DONALD L. HOEFT
DARCY M. ERICKSON
DAVID S. KENDALL
*BRIDGET McCAULEY NASON
TONA T. DOVE
BRADLEY R. HUTTER
ARIEL A. PITTMER
•
HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
ROGER C. MILLER
1924-2009

MEMO

*ALSO ADMITTED IN WISCONSIN
◊ALSO ADMITTED IN NORTH DAKOTA
◊ALSO ADMITTED IN MASSACHUSETTS
□ALSO ADMITTED IN OKLAHOMA
△ALSO ADMITTED IN ARIZONA

TO: Ryan Schroeder, City Manager
FROM: Kori Land, City Attorney
DATE: August 14, 2019
RE: Special Service Districts

Overview

A City may fund local improvements or provide an increased level of services in business areas by creating a special service district (“SSD”). Minnesota Statutes Chapter 428 gives all statutory and charter cities the authority to create SSDs. The statutory authority expires on June 30, 2028, unless extended by the legislature.

An SSD is a “defined area within a City where special services are rendered and the costs of the special services are paid from revenues collected from services charges imposed within that area.”¹ An SSD may be established anywhere in a City but only *business* properties (i.e., commercial, industrial, or land zoned for commercial or industrial use) will be subject to the service charge.²

Covered Services

“Special services” has the meaning given in the City’s ordinance, but special services may include a service that is:

1. Not ordinarily provided throughout the City from general fund revenues of the City, or
2. Provided at an increased level of the service for the SSD.³

¹ Minn. Stat. 428A.01 Subd. 4

² Minn. Stat. 428A.02 Subd. 1

³ Minn. Stat. 428A.01 Subd. 3

Examples of special services include street and sidewalk cleaning, snow and ice removal, lighting, signage, parking, parking enforcement, marketing and promotion, landscaping, security, or capital improvements authorized in the special assessment statute.⁴

Creation of SSD

Landowners or businesses, *not the City*, initiate establishment of an SSD. In fact, an SSD may only be established if a petition by a certain percentage of affected property owners is filed and the City adopts an ordinance. To begin the creation of an SSD, owners of at least 25% of the land area that would be subject to the charges and either (i) owners of 25% or more of the net tax capacity of the property that would be subject to the charges, *or* (ii) owners, individuals, and business organizations that would be subject to 25% or more of a proposed charge based other than on net tax capacity must file a petition with the City clerk calling for a public hearing.⁵ Because the process is not City-initiated, it is not advisable that members of the City Council sit on a subcommittee that is created to introduce an SSD. The City Council will later consider the petition and may be voting on it after a public hearing. Advocating for or against the petition prior to voting on it is potentially violating the property owners' or businesses' due process rights.⁶

If a petition is filed, the City may prepare an ordinance that describes the specific area and lists the services to be provided. However, the City is not required to act on the petition. If the City elects to prepare an ordinance, the City must hold a public hearing on the proposed ordinance.⁷ The City must notify all property owners/businesses in the district (including tax exempt properties) via U.S. mail at least 10 days prior to the hearing.⁸ Notice of the hearing must also be given by publication at least twice in the official newspaper at least two weeks apart. All notices must include the time and place of the hearing, a map showing the boundaries of the proposed district, and a statement that all persons owning property in the proposed district that would be subject to a service charge will be given an opportunity to be heard at the hearing.⁹ The hearing must be at least three days after the last publication.¹⁰

Potentially affected property owners/businesses may testify at the hearing. They may also object in writing, and if the City agrees, the property may be excluded from the district or the services charges or the ordinance itself may be delayed. If the City does not agree, the property owner has 30 days to appeal to district court, which may affirm, modify, or cancel the City's determination.¹¹ The proposal can be effectively vetoed if owners of 35% or more of the land area that would be subject to the charges *or* owners, individuals, or business organizations subject to 35% or more of the charges file an objection to establishing the district before its effective date.¹² The ordinance establishing the district may be adopted at any time within six months after the date of the conclusion of the hearing by a vote of the majority of the governing body of the City.¹³

⁴ Information Brief, Research Department Minnesota House of Representatives. "City Special Service Districts"

⁵ Minn. Stat. 428A.08

⁶ In addition, any Council member who owns property that could be impacted by the creation of an SSD would have a conflict of interest and would be prevented from voting on the ordinance creating the SSD.

⁷ Minn. Stat. 428A.03 Subd. 1

⁸ Minn. Stat. 428A.02

⁹ Minn. Stat. 428A.02 Subd. 1

¹⁰ Minn. Stat. 428A.01 Subd. 2

¹¹ Minn. Stat. 428A.02 Subd. 5

¹² Minn. Stat. 428A.09

¹³ Minn. Stat. 428A.02 Subd. 2

Advisory board

The City Council may create an advisory board for each special service district in the City to advise the governing body in connection with the construction, maintenance, and operation of the improvements, and the furnishing of special services in a district.¹⁴

Charges

Only the land zoned for business purposes in the service district pays for the service charges.¹⁵ Residential property is exempt from charges as are any tax-exempt properties such as schools and churches. The charges must be “reasonably related” to the services provided and “as nearly as possible proportionate” to the actual cost of furnishing the services.¹⁶

Frequently Asked Questions:

1. Does the City have to assess every property in the district or can some be excluded?

Minn. Stat. 428A.02 Subd. 4 lists possible bases upon which landowners may object to the inclusion of their property in the district and/or to the service charges. These reasons include that the property would not receive services to the same degree as the rest of the district, the property is exempt under the special law under which the district was created, or the property is not benefited by the proposed special service. Therefore, it’s reasonable that the City can elect not to assess certain properties if they fall into one of the above categories. It is unclear whether the City can just choose to exclude properties for any other reason.

2. Can the City assess properties differently or must it be uniformly assessed?

Services charges are based on the net tax capacity of the property.¹⁷

3. If the City needs 25% of the property owners in the district to consent to the creation of the district, is that 25% of *all* of the properties, or does it exclude exempt properties (churches, gov’t, schools) from the math before the City starts counting the number of properties?

Exempt properties are excluded from the 25%. The language of Minn. Stat. 428A.08 states that the petition must be filed by the required number of owners that would be subject to the charges. Since exempt properties are not subject to the charges, those properties are not counted for purposes of determining the appropriate percentage of property owners required for the petition.

¹⁴ Minn. Stat. 428A.07

¹⁵ Minn. Stat. 428A.02 Subd. 3; 428A.05

¹⁶ Minn. Stat. 428A.02 Subd. 3

¹⁷ Information Brief, Research Department Minnesota House of Representatives. “City Special Service Districts”; 428A.03