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To: Shakopee City Council and City Administrator

From: Jim Thomson, City Attorney 

Re: SPUC Issues

Date: July 2, 2019

BACKGROUND

At its June 17th meeting, the City Council asked for information regarding the process that would need to be followed for bringing the Shakopee Public Utilities Commission (“SPUC”) under the control of the City Council. Since that meeting, a question relating to the process for removing SPUC commissioners has also been raised.

SHORT ANSWERS

1. A vote of the electorate is required in order to abolish SPUC or to transfer jurisdiction over any of its utility functions to the City Council. The procedure for submitting the abolishment question to the voters differs slightly from the procedure for submitting the transfer of jurisdiction question.
2. The City Council may on its own initiative submit to the voters the question of whether SPUC should be abolished. Alternatively, if the City Council receives a petition signed by the requisite number of voters, the City Council *must* submit to the voters the question of whether SPUC should be abolished.
3. The City Council cannot on its own initiative submit to the voters the question of whether jurisdiction over SPUC’s water or electric utility function (or both) should be transferred to the City Council. Before submitting that question to the voters, the City Council must first receive a petition signed by the requisite number of voters requesting such a vote.
4. If a majority of the voters on either the abolishment or transfer of jurisdiction question vote in the affirmative, the change is effective 30 days after the election.
5. SPUC members can be removed from office only for good cause.

ANALYSIS

SPUC's Creation

On December 12, 1950, the Shakopee City Council adopted a Resolution creating a "Water, Light, Power and Public Building Commission." The Resolution gave the Commission "full, absolute and exclusive control of and power over the water, light, power plants." The Mayor approved the Resolution on December 14, 1950. The Resolution was adopted pursuant to the authority created by Minnesota Statutes, Sections 453.01- 453.14. The legislature later repealed those sections. Minnesota Statutes, Sections 412.321-412.391 now govern municipal utilities. Section 412.331 states that a previously established "water, light, power and building commission" shall continue to operate as "a public utilities commission." SPUC therefore currently operates pursuant to the provisions in Minnesota Statutes, Sections 412.321- 412.391.

In 2002, the legislature passed a special law expanding SPUC's membership from three to five commissioners. Nothing in that legislation modified anything else with respect to SPUC.

SPUC Abolishment/Transfer of Jurisdiction

Minnesota Statutes, Section 412.391 governs the process for either abolishing a public utilities commission or for transferring jurisdiction of one or more of the utilities under a commission's jurisdiction to a city council.

With respect to the process for abolishing a public utilities commission, Section 412.391, Subdivision 2 states that a city council may on its own initiative put before the voters the question: "Shall the public utilities commission be abolished?" Alternatively, upon receiving a petition signed by voters equal to at least 15% of the electorate voting at the last previous city election, a city council *must* put that question to the voters.

With respect to the process for transferring jurisdiction to a city council over any or all utility functions previously placed under the jurisdiction of a public utilities commission, Section

412.391, Subdivision 3 states that upon receiving a petition signed by at least 15% of the electorate voting at the last previous city election, a city council must put the following question to the voters: "Shall jurisdiction over (name of public utility) be transferred from the public utilities commission to the council?" Unlike the provision in Subdivision 2 for abolishing a public utilities commission, Subdivision 3 does not give authority to a city council to directly submit to the voters the question of transferring jurisdiction over utility functions that were previously placed under the jurisdiction of a public utilities commission.

The vote on either abolishing a public utilities commission or transferring jurisdiction over one or more utility function to the city council can take place at either a regular or special election. If a majority of the voters on either question vote in the affirmative, the abolition or transfer of jurisdiction takes place 30 days after the election.

Removal of SPUC Commissioners

State law and the City Code are silent with respect to the basis for removing a SPUC member. The Minnesota Supreme Court has held that, absent a provision to the contrary, appointees to a Water, Light, and Power Commission cannot be removed from office except based on good cause. *Village of Chisholm v. Bergeron*, 156 Minn. 276 (1923). The Minnesota Supreme Court has also applied that rule to situations where an appointee holds office for a definite term. *Todd v. Essling*, 268 Minn. 151 (1964); *Rockwell v. State Board of Education*, 213 Minn. 184 (1942).

Because SPUC commissioners are appointed for definite terms and because the law is silent with respect to the basis for removing them from office, the City Council can remove them from office only for good cause.

