

City of Lake Elmo
3800 Laverne Avenue North

WEDNESDAY, November 5, 2008
(November 4, 2008 was the General Election)

7:00 p.m.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE:
- C. ATTENDANCE: ___ Johnston ___ DeLapp ___ Johnson ___ Park ___ Smith
- D. APPROVAL OF AGENDA: (The approved agenda is the order in which the City Council will do its business.)
- E. ORDER OF BUSINESS: (This is the way that the City Council runs its meetings so everyone attending the meeting or watching the meeting understands how the City Council does its public business.)
- F. GROUND RULES: (These are the rules of behavior that the City Council adopted for doing its public business.)
- G. APPROVE MINUTES:
 - 1. October 21, 2008
- H. PUBLIC COMMENTS/INQUIRIES: In order to be sure that anyone wishing to speak to the City Council is treated the same way, meeting attendees wishing to address the City Council on any items NOT on the regular agenda may speak for up to three minutes.
- I. CONSENT AGENDA: (Items are placed on the consent agenda by city staff and the Mayor because they are not anticipated to generate discussion. Items may be removed at City Council's request.)
 - 2. Approve payment of disbursements and payroll
 - 3. Approve and agreement for Community Development Block Grant Funds with Washington County for continuing the Cimarron gas line replacement project
 - 4. Approve a request to establish a hearing date before the Board of Adjustment of Appeals for Mr. and Mrs. Sessing of 5699 Keats Avenue

J. REGULAR AGENDA:

5. Adopt resolution no. 2008-050 canvassing the returns and declaring the winners of the 2008 local elections
6. Consider approving minor modifications to the accessory structure ordinance based upon planning commission recommendations; Resolution no 2008-049, Ordinance no. 08-010

K. REPORTS AND ANNOUNCEMENTS:

Mayor and Council members
Administrator

L. UPCOMING DATES OF NOTE:

- November 11 – Veteran’s Day-No City Council workshop
- November 13 – Washington County Open House on Hwy 36 and Lake Elmo Avenue (17), 4-7 p.m. Rockpoint Church
- December 1 – Hearing on budget
- December 2 – Cancel City Council meeting (tentative)
- December 9 – Adopt budget at City Council workshop

M. Adjourn

City of Lake Elmo
City Council Minutes

October 21, 2008

Mayor Johnston called the meeting to order at 7:00 p.m.

Present: Mayor Johnston and Council Members DeLapp, Johnson, Park and Smith

Also present: Planning Director Klatt, City Attorney Filla, Project Assistant Kriegler, Finance Director Bouthilet and City Clerk Lumby.

APPROVAL OF AGENDA:

MOTION: Council Member Johnson moved to approve the October 21, 2008 agenda as presented. Council Member Park seconded the motion. The motion passed unanimously.

ORDER OF BUSINESS:

GROUND RULES:

APPROVED MINUTES:

The minutes of October 7, 2008 were approved by consensus.

PUBLIC COMMENTS/INQUIRIES:

Ann-O Suckow, Lake Elmo Jaycees community development VP 2008 (1945 Polaris Place, North St. Paul), updated the council on future Halloween events.

Susan Dunn, 11018 Upper 33rd Street N., pointed out an error in an article in the Stillwater Gazette, written by Andrew Wallmeyer, in regard to Mayor Dean Johnston being a retired 3M Company executive, but she expressed the belief he was 38 years old when he left 3M.

CONSENT AGENDA:

MOTION: Council Member DeLapp moved to approve the consent agenda. Council Member Johnson seconded the motion. The motion passed unanimously.

- Approval of disbursements in the amount of \$325,581.28

REGULAR AGENDA:

Consider approval of a conservation easement to the Minnesota Land Trust for Sunfish Lake Park and authorize the Park Commission to develop a park concept plan for Area 2 of Sunfish Lake Park.

Project Assistant Carol Kriegler reported that the park commission was requesting the City Council approve 1) a conservation easement (256 acres) to the Minnesota Land Trust for Sunfish Lake Park including that expenditure of \$10,000 to the Land Trust for this transaction. The intent of the conservation easement over Sunfish Lake Park is to ensure its permanency as a natural area to be enjoyed by citizens into perpetuity by preserving and protecting it through an easement to the Land Trust.

David Steele, Parks Commission Chair, explained the commission has been working on this since 2006 and considers its work on this conservation easement to be some of the most important work the commission has done. He said the commission hasn't worked out all of the specifics of their plan for the park but expects to have them ready for council approval by fall of 2009.

Sarah Strommen, central region conservation director with the Minnesota Land Trust, said Lake Elmo is adhering with the feel of the rural character of its community by approving the conservation easement. The Land Trust wants to provide opportunities for low impact recreation and nature observation in contrast to some of the more active recreation that other parks provide.

Park commission member Rolf Larson, 11720 Little Bluestem Ct. and Jim Blackford, 9765 45th St. N., spoke in support of adopting the conservation easement.

The city attorney and Minnesota Land Trust attorney are authorized to edit the easement document for grammar, miscellaneous corrections and incidental language changes.

MOTION: Council Member Johnson moved to approve Resolution No. 08-048, approving a conservation easement with the Minnesota Land Trust for Sunfish Lake Park with latitude for incidental attorney edits and the expenditure of \$10,000 from the park fund to the Minnesota Land Trust for its execution. Council Member Smith seconded the motion. The motion passed unanimously.

REPORTS:

Mayor Johnston participated in the Green Growth meeting and suggested as a workshop topic incorporating green growth in plans for the old village

The meeting was adjourned at 8:00 p.m.

Respectfully submitted by Sharon Lumby, City Clerk.

DRAFT

City Council
Date: 11/05/2008
CONSENT
Item: 2

ITEM: Approve disbursements in the amount of \$225,367.22

SUBMITTED BY: Tom Bouthilet, Finance Director

<u>Claim #</u>	<u>Amount</u>	<u>Description</u>
ACH	\$ 10,012.74	Payroll Taxes to IRS
ACH	\$ 1,655.68	Payroll Taxes to Mn Dept. of Revenue
DD1881-DD1895	\$ 24,283.14	Payroll Dated 10/23/2008 (Direct Deposit)
33352-33353	\$ 12,946.65	Accounts Payable Dated 10/21/2008
33354-33360	\$ 8,443.11	Payroll Dated 10/23/2008 (Payroll & Benefits)
33361-33403	\$168,025.90	Accounts Payable Dated 11/05/2008

Total: \$ 225,367.22

SUMMARY AND ACTION REQUESTED: The City Council is being asked to approve disbursements in the amount of \$ 225,367.22

Accounts Payable Checks for Approval

User: Administrator
Printed: 10/30/2008 - 3:07 PM

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33352	10/20/2008	Escrow Fund	Deposits Payable	J.P. Bush Homes, Inc.	6,450.00
				Check Total:	6,450.00
33353	10/21/2008	Water	Water Utility	City of Oakdale	12,786.52
				Check Total:	12,786.52
				Report Total:	19,236.52

Accounts Payable Checks for Approval

User: Administrator
Printed: 10/30/2008 - 3:02 PM

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33361	11/05/2008	General Fund	Repairs/Maint Contractual Eqpt	Alex Air Apparatus, Inc	610.00
				Check Total:	610.00
33362	11/05/2008	General Fund	Contract Services	Animal Control Services	961.76
				Check Total:	961.76
33363	11/05/2008	General Fund	Repairs/Maint Contractual Bldg	Aramark	37.89
33363	11/05/2008	General Fund	Repairs/Maint Contractual Bldg	Aramark	21.85
33363	11/05/2008	General Fund	Uniforms	Aramark	34.47
33363	11/05/2008	General Fund	Uniforms	Aramark	35.06
33363	11/05/2008	General Fund	Repairs/Maint Contractual Bldg	Aramark	55.37
				Check Total:	184.64
33364	11/05/2008	General Fund	Equipment Parts	Aspen Equipment Co.	13.10
				Check Total:	13.10
33365	11/05/2008	Capital Aquisitions	Other Equipment	Emergency Automotive Technology Inc.	101.44
				Check Total:	101.44
33366	11/05/2008	General Fund	Repairs/Maint Contractual Bldg	Batteries Plus Woodbury	168.24
				Check Total:	168.24
33367	11/05/2008	Village	Contract Services	Bonestroo	18,161.76
33367	11/05/2008	General Fund	Contract Services	Bonestroo	1,610.98

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
				Check Total:	19,772.74
33368	11/05/2008	General Fund	Street Maintenance Materials	Bryan Rock Products, Inc.	560.89
33368	11/05/2008	General Fund	Landscaping Materials	Bryan Rock Products, Inc.	566.02
				Check Total:	1,126.91
33369	11/05/2008	General Fund	Repairs/Maint Contractual Eqpt	Car Quest Auto Parts	26.07
				Check Total:	26.07
33370	11/05/2008	Water	Water Utility	City of Oakdale	12,786.52
				Check Total:	12,786.52
33371	11/05/2008	General Fund	Software Support	City of Roseville	1,380.83
				Check Total:	1,380.83
33372	11/05/2008	Park Dedication	Other Park Ded Prof Services	Design Forum	1,200.00
				Check Total:	1,200.00
33373	11/05/2008	General Fund	Clean-up Days	First State Tire Recycling	102.20
				Check Total:	102.20
33374	11/05/2008	General Fund	Assessing Services	FXL, Inc.	2,000.00
				Check Total:	2,000.00
33375	11/05/2008	Water	Small Tools & Minor Equipment	HSBC Business Solutions	47.13
				Check Total:	47.13
33376	11/05/2008	General Fund	Repairs/Maint Contractual Eqpt	Interstate All Battery Ctr	20.10
33376	11/05/2008	General Fund	Use Tax Payable	Interstate All Battery Ctr	-1.23
				Check Total:	18.87
33377	11/05/2008	General Fund	Fire State Aid	Lake Elmo Fire Relief Assn.	39,747.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33378	11/05/2008	General Fund	Travel Expense	Greg Malmquist	39,747.00
Check Total:					598.33
33379	11/05/2008	General Fund	Repairs/Maint Contractual Bldg	Menards - Oakdale	14.77
33379	11/05/2008	General Fund	Repairs/Maint Imp Not Bldgs	Menards - Oakdale	287.82
33379	11/05/2008	General Fund	Repairs/Maint Imp Not Bldgs	Menards - Oakdale	30.20
Check Total:					598.33
33380	11/05/2008	General Fund	Repairs/Maint Imp Not Bldgs	Menards - Stillwater	332.79
Check Total:					46.75
33381	11/05/2008	General Fund	Conferences & Training	MN Fall Maintenance Expo	50.00
Check Total:					50.00
33382	11/05/2008	General Fund	Sand/Salt	North American Salt Company	2,697.96
33382	11/05/2008	General Fund	Use Tax Payable	North American Salt Company	-164.66
33382	11/05/2008	General Fund	Sand/Salt	North American Salt Company	13,340.33
33382	11/05/2008	General Fund	Use Tax Payable	North American Salt Company	-814.20
Check Total:					15,059.43
33383	11/05/2008	General Fund	Travel Expense	Doug Pepin	344.98
Check Total:					344.98
33384	11/05/2008	General Fund	Cable Operation Expense	Steven Press	125.41
33384	11/05/2008	General Fund	Use Tax Payable	Steven Press	-7.65
Check Total:					117.76
33385	11/05/2008	General Fund	Postage	Pimney Bowes Reserve Account	500.00
Check Total:					500.00
33386	11/05/2008	General Fund	Repairs/Maint Contractual Bldg	Diane Rud	255.60
33386	11/05/2008	General Fund	Repairs/Maint Contractual Bldg	Diane Rud	255.60

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33386	11/05/2008	General Fund	Use Tax Payable	Diane Rud	-31.20
				Check Total:	480.00
33387	11/05/2008	General Fund	Contract Services	S & S Specialists	670.95
				Check Total:	670.95
33388	11/05/2008	Sewer	Small Tools & Minor Equipment	Jim Sachs	394.95
				Check Total:	394.95
33389	11/05/2008	General Fund	Telephone	Sprint	119.98
				Check Total:	119.98
33390	11/05/2008	General Fund	Street Maintenance Materials	T.A. Schifsky & Sons	767.74
				Check Total:	767.74
33391	11/05/2008	Infrastructure Reserve	Engineering Services	TKDA, Inc.	1,105.28
33391	11/05/2008	Development Fund	Engineering Services	TKDA, Inc.	8,881.13
33391	11/05/2008	Development Fund	Engineering Services	TKDA, Inc.	1,744.53
33391	11/05/2008	Development Fund	Engineering Services	TKDA, Inc.	1,639.35
33391	11/05/2008	Development Fund	Engineering Services	TKDA, Inc.	3,574.21
33391	11/05/2008	Development Fund	Engineering Services	TKDA, Inc.	7,002.78
33391	11/05/2008	Development Fund	Engineering Services	TKDA, Inc.	1,907.42
33391	11/05/2008	Village	Engineering Services	TKDA, Inc.	276.08
33391	11/05/2008	General Fund	Engineering Services	TKDA, Inc.	7,726.11
33391	11/05/2008	General Fund	Engineering Services	TKDA, Inc.	2,529.81
33391	11/05/2008	Infrastructure Reserve	Engineering Services	TKDA, Inc.	5,592.09
33391	11/05/2008	Surface Water Utility	Engineering Services	TKDA, Inc.	4,657.21
33391	11/05/2008	Water	Engineering Services	TKDA, Inc.	2,678.35
33391	11/05/2008	Sewer	Engineering Services	TKDA, Inc.	949.22
33391	11/05/2008	Water	Engineering Services	TKDA, Inc.	277.53
				Check Total:	50,541.10
33392	11/05/2008	Capital Acquisitions	Other Equipment	United Rentals NW, Inc.	2,315.31
				Check Total:	2,315.31
33393	11/05/2008	Surface Water Utility	Conferences & Training	Washington Conservation Dist.	500.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33394	11/05/2008	General Fund	Miscellaneous	Washington County	500.00
				Check Total:	46.00
33396	11/05/2008	General Fund	Uniforms	ARAMARK	46.00
				Check Total:	58.74
33397	11/05/2008	General Fund	Conferences & Training	Century College	3,599.84
33397	11/05/2008	General Fund	Conferences & Training	Century College	1,800.00
				Check Total:	5,399.84
33398	11/05/2008	General Fund	Legal Services	Jardine, Logan & O'Brien	1,641.00
				Check Total:	1,641.00
33399	11/05/2008	General Fund	Telephone	Nextel Communications	130.12
33399	11/05/2008	General Fund	Telephone	Nextel Communications	165.35
33399	11/05/2008	General Fund	Telephone	Nextel Communications	78.63
33399	11/05/2008	General Fund	Telephone	Nextel Communications	132.86
33399	11/05/2008	General Fund	Telephone	Nextel Communications	112.71
				Check Total:	619.67
33400	11/05/2008	General Fund	Legal Services	Peterson Fram & Bergman	1,393.00
33400	11/05/2008	Water	Miscellaneous	Peterson Fram & Bergman	99.00
33400	11/05/2008	General Fund	Civil Attorney Criminal	Peterson Fram & Bergman	4,821.76
33400	11/05/2008	General Fund	Legal Services	Peterson Fram & Bergman	22.00
33400	11/05/2008	General Fund	Legal Services	Peterson Fram & Bergman	272.00
33400	11/05/2008	Water	Miscellaneous	Peterson Fram & Bergman	40.50
33400	11/05/2008	General Fund	Civil Attorney Criminal	Peterson Fram & Bergman	176.00
				Check Total:	6,824.26
33401	11/05/2008	General Fund	Dues & Subscriptions	Pioneer Press	181.48
				Check Total:	181.48
33402	11/05/2008	General Fund	Uniforms	Titan Apparel & Sportswear	146.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33403	11/05/2008	General Fund	Telephone		
				USA Mobility Wireless, Inc.	
				Check Total:	146.00
				Check Total:	21.39
				Report Total:	168,025.90

City Council
Date: 11/5/08
CONSENT
Item: **3**
Motion

ITEM: Approve an agreement for Community Development Block Grant Funds with Washington County for continuing the Cimarron gasoline replacement project

SUBMITTED BY: Kelli Matzek, City Planner

REVIEWED BY: Susan Hoyt, City Administrator
Kyle Klatt, Director of Planning

SUMMARY AND ACTION REQUESTED:

The City Council is being asked to approve an agreement to receive \$62,924.03 in Community Development Block Grant funding to replace approximately 30 individual unit's gas service lines at the Cimarron neighborhood by December 31, 2009. The City of Lake Elmo has received funding through this grant on three previous occasions for a total of \$130,200 for this project. With that money, 223 gas lines were visually inspected by a third party contractor and 81 gas lines were replaced thus far for eligible low income homeowners. In 2007, the Cimarron management visually inspected the age of the neighborhood homes and the gas lines. From that inspection 123 homes were identified for potential replacement that had no permit history of gas line replacement and will be the target for the 30 replacements being funded for eligible low income homeowners in 2009. The project will get underway in January 2009 with a completion target date set for July 31, 2009. The planning staff is preparing an outreach and communication plan to promote this program that protects the public health and safety of Cimarron residents.

Motion:

Approve entering into an agreement with Washington County for \$62,924.03 to continue the low income gas line replacement project in Cimarron for approximately 30 additional homes.

ATTACHMENTS:

1. Community Development Block Grant Program Subgrantee Agreement between Washington County and the City of Lake Elmo

**Community Development Block Grant Program
Subgrantee Agreement between
Washington County and the City of Lake Elmo**

This Agreement is made and entered into this **July 1, 2008** in furtherance of the requirements of the Federal Community Development Block Grant (CDBG) Program by and between Washington County, 14949 62nd Street North, Stillwater, Minnesota 55082, hereinafter referred to as the "Grantee", and **the City of Lake Elmo, 3800 Laverne Avenue, Lake Elmo, Minnesota 55042**, hereinafter referred to as the "Subgrantee".

WHEREAS, the Grantee is the administering agency for funds received from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383, to Washington County as an Urban Entitlement County under the Community Development Block Grant (CDBG) Program; and

WHEREAS, the Grantee wishes to engage the Subgrantee to assist the Grantee in utilizing such funds; and

WHEREAS, the Subgrantee wishes to implement a project involving **rehabilitation of individual units gas service lines at the Cimarron manufactured home park** utilizing **\$62,924.03** in CDBG funds.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Grantee and Subgrantee agree as follows:

1. **Term.** Services of the Subgrantee shall start **July 1, 2008** and end on the last day of **December 31, 2015**. All funds covered by this contract shall be expended by **December 31, 2009**.
2. **Commencement and Termination of Projects.** Upon release of project-related funds by the U.S. Department of Housing and Urban Development (HUD), pursuant to federal regulations, the Grantee shall furnish the Subgrantee with written notice to proceed. No work on the project shall occur prior to the notice to proceed without written approval from the Grantee. Costs incurred after the termination date will not be reimbursed. The termination date may be changed through amendment of this Agreement.
3. **National Objectives.** The Subgrantee certifies that the activities carried out with funds provided under this Agreement will meet one or more of the CDBG program's national objectives, as defined in 24 CFR part 570.208, including:
 - (1) benefit low and moderate income persons;
 - (2) aid in the prevention or elimination of slums and blight; and
 - (3) meet community development needs having a particular urgency.
4. **Federal and Local Program Compliance.** The Subgrantee agrees to comply with the Housing and Community Development Act of 1974, Public Law 93-383 as amended, and Implementing Regulations at 24 CFR part 570. The Subgrantee agrees to attend scheduled local Department of Housing and Urban Development training as directed by the grantee. The Subgrantee agrees to perform all the tasks enumerated below in a manner that will meet or exceed the terms and conditions imposed upon the Grantee in administering the CDBG program and ensure program compliance with applicable federal regulations:
 - 4.1 **Citizen Participation.** Comply with all HUD citizen participation requirements (24 CFR 570).
 - 4.2 **Procurement Standards.** In awarding contracts pursuant to this Agreement, the Subgrantee shall comply with all applicable requirements of local and state law for awarding contracts, including but not limited to, procedures for competitive bidding, contractor's bonds, and

retained percentages. In addition, the Subgrantee shall comply with the requirements of the U.S. Office of Management and Budget Circular A-102 or A-110 as appropriate, relating to bonding, insurance, and procurement standards; with Executive Order 11246 regarding nondiscrimination bid conditions for projects over Ten Thousand dollars (\$10,000.00); and with HUD procurement requirements, as described in 24 CFR part 85.36. Where federal standards differ from local or state standards, the stricter standards shall apply.

4.3 Environmental Review.

4.3a National Environmental Policy Act. The Grantee retains environmental review responsibility for purposes of fulfilling requirements of the National Environmental Policy Act as implemented by HUD Environmental Review Procedures (24 CFR part 58). The Grantee may require the Subgrantee to furnish data, information, and assistance for the Grantee's review and assessment in determining whether an Environmental Impact Statement must be prepared.

4.3b State Environmental Policy Act. Subgrantees that are branches of government under Minnesota Law retain responsibility for fulfilling the requirement of the state law regarding environmental policy and conservation and regulations and ordinances adopted thereunder. If the agency is not a branch of government under Minnesota Law, the Grantee may require the agency to furnish data, information, and assistance as necessary to enable the Grantee to comply with the State Environmental Policy Act.

4.3c Satisfaction of Environmental Requirements. Project execution under this Agreement by either the Grantee or the Subgrantee shall not proceed until satisfaction of all applicable requirements of the National and State Environmental Policy Acts. A written notice to proceed will not be issued by the Grantee until all such requirements have been met.

4.4 Non-Discrimination. The Subgrantee shall comply with all federal, state, and local laws prohibiting discrimination on the basis of age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap or any other basis now or hereafter prohibited by law. These requirements are specified in Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VI; Civil Rights Act of 1964, Title VII; Executive Orders 11063 and 11246; and Section 3 of the Housing and Urban Development Act of 1968. Specifically, the agency is prohibited from taking any discriminatory actions defined in the HUD Regulations at 24CFR 570.602 Section 109 and shall take such affirmative and corrective actions as are required by the Regulations at CFR 570.602. These requirements are summarized in the following paragraphs:

4.4a Program Benefit. The Subgrantee shall not discriminate against any resident of the project service area by denying benefit from or participation in any block grant funded activity on the basis of race, color, sex, sexual orientation, or national origin. (Civil Rights Act of 1964, Title VI; Civil Rights Act of 1964, Title VII; Section 109, Housing and Community Development Act of 1974.)

4.4b Fair Housing. The Subgrantee shall take necessary and appropriate actions to prevent discrimination in federally assisted housing and lending practices related to loans insured or guaranteed by the federal government. (Civil Rights Act of 1964; Executive Order 11063.)

4.4c Employment. The Subgrantee shall ensure that compliance with Section 3 of the Housing and Community Development Act Women and Minority Business requirements, Federal Equal Employment Opportunity Act, Executive Orders, and Civil Rights Act of 1964, is maintained.

- (1) In all solicitation under this Agreement, the Subgrantee shall state that all qualified applicants will be considered for employment. The words equal opportunity employer in advertisements shall constitute compliance with this section.
- (2) The Subgrantee shall not discriminate against an employee or applicant for employment in connection with this Agreement because of age, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, except when there is a bona fide occupational limitation. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training. (Executive Order 11246, as amended.)
- (3) To the greatest extent feasible, the Subgrantee shall provide training and employment opportunities for lower income residents within the area served by block grant assisted projects. (Section 3, Housing and Community Development Act of 1968, as amended.)

4.4d Contractors and Suppliers.

- (1) No contractor, subcontractor, union, or vendor engaged in any activity under this Agreement shall discriminate in the sale of materials, equipment, or labor on the basis of age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap. Such practices include upgrading, demotion recruiting, transfer, layoff, termination, pay rate, and advertisement for employment. (Executive Order 11246, as amended.)
- (2) All firms and organizations described above shall, upon request, be required to submit to the Subgrantee certificates of compliance demonstrating that they have, in fact, complied with the foregoing provisions, provided that certificates of compliance shall not be required from firms and organizations on contracts and/or yearly sales of less than \$10,000.
- (3) To the greatest extent feasible, the Subgrantee shall purchase supplies and services for activities under this Agreement from vendors and contractors whose businesses are located in the area served by block grant funded activities or owned in substantial part by project area residents. (Section 3, Housing and Community Development Act of 1968, as amended.)

4.4e Notice. The Subgrantee shall include the provisions of the appropriate preceding subsections a, b, c, and d of this section in every contract or purchase order for goods and services under this Agreement and shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the said labor union or worker's representative of the commitments made in these subsections. In advertising for employees, goods or

services for activities under this Agreement, the Subgrantee shall utilize minority publications in addition to publications of general circulation.

4.5 Labor Standards.

4.5a The Subgrantee shall request wage determination from the Grantee or HUD on all projects in which Davis-Bacon requirements apply. The Subgrantee shall require that project construction contractors and subcontractors pay their laborers and mechanics at wage rates in accordance with the Davis-Bacon Act, as amended (40 USC Sections 327-333) and the Regulations at 24 CFR part 42 and 49 CFR part 24, provided that this section shall not apply to rehabilitation or residential property designed for residential use by fewer than eight families.

4.5b A copy of the current Davis-Bacon wage rate and HUD forms 4010 and 92010 must be included in all construction bid specs and contracts over Two Thousand dollars (\$2,000.00).

4.5c The Subgrantee shall conduct all preconstruction conferences to ensure contractors and subcontractors are aware of Davis-Bacon requirements and how to comply.

4.5d The Subgrantee shall review all required reports and forms submitted by contractors in all CDBG projects in the jurisdiction of the Subgrantee.

4.6 Property Management. The Subgrantee agrees that any nonexpendable personal property, purchased wholly or in part with CDBG funds at a cost of Five Hundred dollars (\$500.00) or more per item, is upon its purchase or receipt the property of the Grantee and/or federal government. Final ownership and disposition of such property shall be determined under the provisions of the U.S. Office of Management and Budget Circular A-102 or A-110 as appropriate.

4.7 Acquisition and Relocation.

4.7a Any acquisition of real property for any activity assisted under this Agreement shall comply with Title III of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (hereinafter referred to as the Uniform Act) (42 USC section 4601) and the Regulations at 24 CFR part 42.

4.7b Any displacement of persons, business, nonprofit organizations, or farms as the result of acquisition of real property assisted under this Agreement shall comply with Title II of the Uniform Act as amended by the Uniform Relocation Act as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act as amended (Pub. L. 100-17, 101 Stat. 246-256) and the Regulations at 49 CFR part 24. The Subgrantee shall comply with the Regulations pertaining to costs of relocation and written policies, as specified by 24 CFR 570.606(a) and (b).

4.7c In any activity assisted under this Agreement which results in demolition or conversion to another use of low/moderate income housing, the Subgrantee will follow the requirements set forth in the revised section 104(d) of the Housing and Community Development Act of 1974, as amended and implementing regulations.

4.8 Historic Preservation. The Subgrantee shall comply with the requirements of the National Historic Preservation Act of 1966 (16 USC 470 *et seq.*) as amended, Public Law 89-665, the Archeological and Historic Preservation Act of 1974 (Pub. L. 93-291) and Executive Order

11593, including the procedures prescribed by the Advisory Council on Historic Preservation in the Regulations at 36 CFR part 800 (16 USC 469 *et seq.*). The Subgrantee shall comply with the federal historic preservation regulations including 36 CFR part 800 and the Reservoir Salvage Act of 1960 as amended by the Archaeological and Historic Preservation Act of 1974 (16 USC 469 *et seq.*). Activities affecting property listed in or found to be eligible for inclusion in the National Register of Historic Places will be subject to requirements set forth in HUD Environmental Review Procedures at 24 CFR part 58.

- 4.9 Architectural Barriers. Any facility constructed pursuant to this Agreement shall comply with design requirements of the Architectural Barriers Act of 1968 (42 USC section 4151 *et seq.* and 24 CFR 40 *et seq.*).
- 4.10 Nonparticipation in Political Activities. The federal Hatch Act (5 USC, §§ 1501 *et seq.*) restricts the political activity of local government employees employed in connection with programs financed in whole or in part by federal loans or grants. The Subgrantee shall comply with the provisions of the Hatch Act (5 USC Chapter 15).
- 4.11 Conditions for Religious Organizations. The Subgrantee agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 570.200(j).
- 4.12 Floodplain Management and Wetland Protection. The Subgrantee shall comply with Executive Order 11988 and HUD regulations 24 CFR 55 regarding floodplain management. The Subgrantee shall also comply with Executive Order 11990 and the regulations at 3 CFR, particularly sections 2 and 5, regarding protection of wetlands.
- 4.13 National Flood Insurance. The Subgrantee may not receive CDBG funding for acquisition or construction for use in any area that has been identified as having special flood hazards and is not participating in the National Flood Insurance Program, as provided by Section 3(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and the Regulations thereunder (24 CFR 58.6). The Subgrantee shall comply with the regulations at 24 CFR 570.605.
- 4.14 Air and Water Pollution. The Subgrantee shall comply with the provisions of the Clean Air Act (42 USC section 1857 *et seq.*) as amended, and the Federal Water Pollution Control Act (33 USC sections 1251 *et seq.*) as amended, and the regulations issued thereunder (40 CFR part 15).
- 4.15 Lead-Based Paint Poisoning. The Subgrantee shall comply with the HUD Lead-Based Paint regulations (24 CFR part 35) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 USC Sections 4831 *et seq.*) requiring: (1) prohibition of the use of lead-based paint (whenever funds under this Agreement are used directly or indirectly for construction, rehabilitation, or modernization of residential structures); (2) elimination of immediate lead-based paint hazards in residential structures; and (3) notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978.
- 4.16 Sole Source Aquifers. The Subgrantee shall comply with the Safe Drinking Water Act of 1974 (42 USC 201, 300(f) *et seq.* and 21 USC 349) as amended and Sole Source Aquifers regulations (40 CFR part 149).
- 4.17 Endangered Species. The Subgrantee shall comply with the Endangered Species Act of 1973 (16 USC 1531 *et seq.*) as amended, particularly section 7 (16 USC 1536).

- 4.18 Wild and Scenic Rivers. The Subgrantee shall comply with the Wild and Scenic Rivers Act of 1968 (16 USC 1271 *et seq.*) as amended, particularly sections 7(b) and (c) (16 USC 1278(b) and (c)).
- 4.19 Air Quality. The Subgrantee shall comply with the Clean Air Act (42 USC 7401 *et seq.*) as amended, particularly sections 176(c) and (d) (42 USC 7506(c) and (d)).
- 4.20 Farmlands Protection. The Subgrantee shall comply with the Farmlands Protection Policy Act of 1981 (7 USC 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 USC 4201(b) and 4202), and Farmland Protection Policy regulations (7 CFR part 658).
- 4.21 Noise. The Subgrantee shall comply with HUD Noise regulations (24 CFR part 51).
- 4.22 Coastal Zone Management. The Subgrantee shall comply with the Coastal Zone Management Act of 1972 (16 USC 1451 *et seq.*) as amended.
- 4.23 Non-Discrimination Based on Disability. When and where applicable, the Subgrantee shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794) and Title II of the Americans with Disabilities Act as amended (Pub. L. 101-336, 1990), to ensure that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving financial assistance under this Agreement.
- 4.24 Non-Substitution for Local Funding. The Subgrantee shall not utilize CDBG funds made available under this Agreement to reduce the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.
- 4.25 Public Ownership. For Subgrantees which are not municipal corporations organized under the laws of the state of Minnesota, it may become necessary to provide the Grantee a property interest where the project calls for the acquisition, construction, reconstruction, rehabilitation, or installation of publicly-owned facilities and improvements. The Subgrantee shall comply with current Grantee policy regarding transfer of a property interest sufficient to meet the public ownership requirement.
- 4.26 Public Information. In all news releases and other public notices related to projects funded under this Agreement, the Subgrantee shall include information identifying the source of funds as the Washington County Community Development Block Grant Program.
- 4.27 Applicable Uniform Administrative Requirements.
- 4.27a A Subgrantee which is a governmental entity (including public agencies) shall comply with the requirements and standards of OMB Circular A-87 (Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments), OMB Circular A-133 (Audits of State and Local Governments) and with the following sections of 24 CFR part 85, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:
- (1) Section 85.3 "Definitions"
 - (2) Section 85.6 "Additions and Exceptions"
 - (3) Section 85.12 "Special grant or subgrant conditions for 'high-risk' grantees"

- (4) Section 85.20 "Standards for financial management systems" except paragraph (a)
- (5) Section 85.21 "Payment" except as modified by 24 CFR 570.513
- (6) Section 85.22 "Allowable costs"
- (7) Section 85.26 "Non-federal audits"
- (8) Section 85.32 "Equipment" except in cases in which the equipment is sold, the proceeds shall be program income
- (9) Section 85.33 "Supplies"
- (10) Section 85.34 "Copyrights"
- (11) Section 85.35 "Subawards to debarred and suspended parties"
- (12) Section 85.36 "Procurement" except paragraph (a)
- (13) Section 85.37 "Subgrants"
- (14) Section 85.40 "Monitoring and reporting program performance" except paragraphs (b), (c), (d) and (f)
- (15) Section 85.41 "Financial reporting" except paragraphs (a), (b) and (e)
- (16) Section 85.42 "Retention and access requirements for records"
- (17) Section 85.43 "Enforcement"
- (18) Section 85.44 "Termination for convenience"
- (19) Section 85.51 "Later disallowances and adjustments"
- (20) Section 85.52 "Collection of amounts due"

4.27b A Subgrantee that is not a governmental entity, shall comply with the requirements and standards of OMB Circular A-122 (Cost Principles for Non-Profit Organizations) or OMB Circular A-21 (Cost Principles for Educational Institutions), as applicable, and with OMB Circular A-110, (Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations).

4.28 Section 3 Compliance. The Subgrantee agrees to comply with the requirements 24 CFR 135 (Economic Opportunities for Low and Very Low-Income Persons) to ensure that employment and other economic opportunities generated in connection with this Agreement shall, to the greatest extent possible, consistent with existing federal, state, and local laws and requirements, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing and to business concerns which provide economic opportunities to low- and very low-income persons.

4.28a The Subgrantee agrees to comply with HUD's regulations in 24 CFR 135.38 and to include the section 3 clause in every subcontract subject to compliance with regulations in 24 CFR 135. Housing and community development projects subject to this provision include housing rehabilitation, housing construction, and other public construction projects as defined in 24 CFR 135.5, Section 3 covered assistance.

4.28b The Subgrantee will not subcontract with any contractor where the Subgrantee has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR 135.

4.29 Other Program Requirements. The Subgrantee shall carry out each activity in compliance with all other federal acts, regulations and requirements, including but not limited to Executive Order 11246 prohibiting discrimination in employment contracts and directing government contracts to establish and maintain affirmative action, and all federal laws and regulations described in 24 CFR 570, subpart K except that:

4.29a The Subgrantee does not assume the Grantee's environmental responsibilities (24 CFR 570.604), unless otherwise specified herein; and

- 4.29b The Subgrantee does not assume the Grantee's responsibility for initiating the review process under the provisions of 24 CFR part 52.
- 4.30 Subgrantee must ensure that there is no change in use from the original funded use, as this is a violation of CDBG regulations.

5. **Evaluation and Reports** The Subgrantee agrees to participate with the Grantee in any evaluation project or performance report, as designed by the Grantee or the appropriate federal agency, and to make available all information required by any such evaluation process. Such evaluation reports may include but are not limited to the forms attached and incorporated herein:

- Quarterly Status Reports (due January 15th, April 15th, July 15th, and October 15th) (Exhibit B)
- Project Completion Checklist (due two weeks after the completion of project) (Exhibit G)
- Demographic Information (due two weeks after the completion of project) (Exhibit E & F)
- Women & Minority Business Owner Report (due two weeks after the completion of project) (Exhibit C)
- Contract and Subcontract Activity Report (due October 1 of each calendar year) (Exhibit D)

Additionally, the subgrantee will submit to the grantee, by the deadline set by the grantee, such reports/forms that assist the grantee in fulfilling the grantees "desktop" monitoring responsibilities.

All reports and forms shall be submitted to: Washington County Community Services, 14949 62nd Street North, Stillwater, Minnesota 55082.

6. **Audits and Inspections**. The Subgrantee shall obtain an independent audit for any calendar year during which the agency received at least \$500,000 of federal funds. Such audit shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of federal funds. The audit report shall state that the audit was performed in accordance with the generally accepted governmental audit standards for financial compliance audits of the US General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, and the provisions of OMB Circular A-110. When applicable, the Subgrantee shall also comply with the audit requirements of revised OMB Circular A-133 (June 24, 1997).

7. **Records**.

7.1 The Subgrantee shall compile and maintain records required by HUD regulations (24 CFR 570.506) including:

7.1a **Financial Management**. Financial management records shall identify adequately the source and application of funds for activities within this Agreement, in accordance with the provisions of the U.S. Office of Management and Budget Circular A-102 or A-110 as appropriate. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

7.1b **Citizen Participation**. Narrative and other documentation describing the process used to inform citizens concerning the amount of funds available, the ranges of project activities undertaken, and opportunities to participate in funded block grant projects.

7.1c **Relocation**. Indication of the overall status of the relocation workload and a separate relocation record for each person, business, organization, and farm operation displaced or in the relocation workload.

7.1d **Property Acquisition**. The Subgrantee files must contain:

- (1) Invitation to the property owner to accompany appraiser during inspection;
 - (2) At least one property appraisal;
 - (3) Statement of basis for determination of just compensation;
 - (4) Written offer of just compensation;
 - (5) All documents involving conveyance;
 - (6) Settlement cost reporting statement; and
 - (7) Notice to surrender possession of premises.
- 7.1e Equal Opportunity. Racial, ethnic, and gender data showing the extent to which these categories of persons have participated in, or benefited from, the activities carried out under this Agreement. The Subgrantee shall also maintain data which records its affirmative action in equal opportunity employment, and its good-faith efforts to identify, train, and/or hire lower-income residents of the project area and to utilize business concerns which are located in or owned in substantial part by persons residing in the area of the project.
- 7.1f Labor Standards. Records regarding compliance of all contractors performing construction work under this Agreement with the labor standards made applicable by 24 CFR 570.603.
- 7.1g Determination of Conditions of Slum and Blight. The Subgrantee shall submit:
- (1) An attorney's opinion that an area designated as slum or blighted for the purpose of qualifying a CDBG activity meets the state or local definition of the same;
 - (2) The boundary of the area so designated; and
 - (3) A list of the conditions the CDBG-funded activity is intended to address. In the event that a single property is designated as blighted, the subgrantee must submit a certified building inspectors report on the conditions leading to that determination.
- 7.1h Economic Development. Financial statements that indicate the historical and projected income of any company approved for CDBG assistance. Records will include three years of profit and loss statements, balance statements, and projected income statements. The Subgrantee will also keep records indicating the amount and terms of assistance provided together with an explanation of how the assistance provided meets the "necessary and appropriate" requirements communicated in the June 2, 1987, Stokvis memorandum.
- 7.1i Area Benefit. For activities providing an area benefit (24 CFR 570.208 (a)(1)), the Subgrantee will submit:
- (1) A map showing the location of the CDBG-funded activity and the service area boundary for the activity;
 - (2) An explanation of how the service area boundary was determined, including justification for each individual line segment defining the service area boundary; and
 - (3) The percentage of low and moderate-income persons in the service area and the data used to determine that percentage.
- 7.1j Other. Such other records as may be required by the Grantee and/or HUD.
- 7.2 Retention of Records. Required records shall be retained for a period of five (5) years after project completion, except as follows:

- 7.2a Records that are the subject of audit findings shall be retained for five (5) years after such findings have been resolved;
- 7.2b Records for nonexpendable property shall be retained for five (5) years after its final disposition. Nonexpendable property is defined in the US Office of Management and Budget Circular A-102 or A-110 as appropriate.
- 7.3 Access to Records.
 - 7.3a The Grantee shall have full access to all records relating to performance of this Agreement.
 - 7.3b The Subgrantee shall make all records available for audit or inspection at any time upon request of the U.S. Department of Housing and Urban Development, the Grantee or its authorized representative.
- 8. **Obligations and Responsibilities.** The Subgrantee agrees to assume and carry out the Grantee's obligations and responsibilities under the Cooperation Agreement entered into between the Grantee and the participating cities concerning Washington County's CDBG Program.
- 9. **General Conditions.** The following general conditions shall apply to the Subgrantee.
 - 9.1. Independent Contractor. For the purpose of this Agreement, the Subgrantee shall be deemed an independent contractor, and not an employee of the Grantee. Any and all employees of the Subgrantee or other persons, while engaged in the performance of any work or services required by the Subgrantee under this Agreement, shall not be considered employees of the Grantee; and any and all claims that may or might arise on behalf of said employees or other persons as a consequence of any act or omission on the part of said employee or the Subgrantee shall in no way be the obligation or responsibility of the Grantee.
 - 9.2 Hold Harmless.
 - 9.2a It is agreed that the Subgrantee shall defend, indemnify, and hold harmless the Grantee, its officers and employees against any and all liability, loss, costs, damages, and expenses which the Grantee, its officers or employees may after sustain, incur or be required to pay arising out of the Subgrantee's performance or failure to adequately perform its obligations pursuant to this Agreement.
 - 9.2b It is further agreed that the Subgrantee shall notify the Grantee of any actual or potential claims against the Grantee that may arise as a consequence of any of the work or services performed or furnished by the Subgrantee under the terms of this Agreement.
 - 9.2c The Subgrantee will require in contracts with any subcontractors under this Agreement that the Contractor will indemnify and hold the Grantee and its officers, employees, and agents harmless from any claims, suits or damages arising out of any act or omission of the Contractor, its officers, agents, or volunteer workers in the performance of the services provided for by this Agreement.
 - 9.2d The subgrantee further agrees that in order to protect itself, as well as the County under the indemnity provision set forth above, it will at all times during the term of this Agreement keep in force:

- (1) For the period January 1, 2008 to June 30, 2009 General liability insurance in the amounts of \$400,000 for bodily injury or property damage to any one person and \$1,200,000 for total injuries or damages arising from any one incident are required by the Grantee. Beginning July 1, 2009 General liability insurance in the amounts of \$500,000 for bodily injury or property damage to any one person and \$1,500,000 for total injuries or damages arising from any one incident are required by the Grantee.
- (2) Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty (30) days prior notice thereof to the Grantee. A Certificate of Insurance evidencing this coverage must be provided to the Grantee before this Agreement is effective.

Nothing in this Agreement shall constitute a waiver by the County of any statutory limits upon liability. Certificates of insurance showing the coverage listed above shall be provided to the County prior to the effective date of this Agreement. Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty (30) days prior notice thereof to the Grantee. A Certificate of Insurance evidencing this coverage must be provided to the Grantee before this Agreement is effective.

- 9.2e The Subgrantee agrees that in contracts with any subcontractors under this Agreement, it will require the Contractor at all times during the course of the contract to have and keep in force a general liability policy insuring itself at a level not less than the liability limits set forth above and to provide Certificates of Insurance to the Subgrantee and Grantee.
- 9.3 Transfer. The Subgrantee shall not assign any interest in this Agreement and shall not transfer any interest in the same, whether by assignment or subcontract, without the prior written consent of the Grantee.
- 9.4 Amendments. Any alteration, variation, modification, or waiver of the provision of this Agreement shall be valid only after it has been reduced to writing and duly signed by both parties.
- 9.5 Waiver. The waiver of any of the rights and/or remedies arising under the terms of this Agreement on any one occasion by either party hereto shall not constitute a waiver of any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies provided or referred to under the terms of the Agreement are cumulative and not mutually exclusive.
- 9.6 Liability. Notwithstanding any other provision of this Agreement to the contrary, the Subgrantee shall not be relieved of liability to the Grantee for damages sustained by the Grantee by virtue of any breach of this Agreement by the Subgrantee, and the Grantee may withhold any payments to the Subgrantee for the purpose of set-off until such time as the exact amount of damages due the Grantee from the Subgrantee is determined.
- 9.7 Entire Agreement. This Agreement, as well as Exhibits **B** through **G**, which are attached hereto and incorporated herein by reference, shall constitute the entire Agreement between the parties and shall supersede all prior oral or written negotiations.

- 9.8 HUD Approval. It is expressly understood between the parties that this Agreement is contingent upon the approval of HUD and its authorization of grant monies to the Grantee for the purpose of this Agreement.
- 9.9 Compliance. In performing the provisions of this Contract, the Subgrantee agrees to comply with all federal, state, or local laws and all applicable rules, regulations, or standards established by any agency of such governmental units, which are now or hereafter promulgated.
10. Annual Budget and Billing Procedures.
- 10a It is understood that the Funding Approval/ Agreement (HUD 7082) is based upon a program budget reflecting receipt of \$803,376.00 in CDBG Funds from HUD for Program Year 2008, of which \$62,924.81 is allocated to the Subgrantee as the maximum amount available under this contract.
- 10b The Subgrantee shall submit requests for reimbursement promptly upon completion of each milestone or activity and upon receipt of proper documentation from any contractors used on the project. Requests for reimbursement shall be in a format acceptable to the Grantee and shall be submitted to CDBG c/o Washington County Community Services, 14949 62nd Street North, Stillwater, Minnesota 55082.
11. General Compliance. The Subgrantee shall comply with the following:
- 11.1 Separability. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties unless such invalidity or non-enforceability would cause the agreement to fail its purpose. One or more waivers by either party or any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- 11.2 Discrimination. The Subgrantee agrees to comply with all federal, state, and local laws and ordinances as they pertain to unlawful discrimination on account of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age.
- 11.3 Applicable Laws. The Subgrantee further agrees to comply with all federal, state, and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Subgrantee performance of the provisions of this Agreement.
- 11.4 State Law. This Agreement shall be interpreted and construed according to the laws of the state of Minnesota.
12. Scope of Services. As required in 24 CFR 570.503, the Subgrantee will be responsible for the administration of the following services under this Agreement. No more than 50% of the contracted funds shall be used for non-construction, non-acquisition activities. If there is more than one activity, funds can be reallocated among the specified activities through consultation with the Grantee and followed by a written request to the Grantee. Reallocation of funds must be requested prior to completion of the activities.
- 12.1 Use of CDBG funds. Fiscal year 2008 CDBG funds in the amount of \$62,924.81 will be used for the following purpose(s) and eligible costs:

Rehabilitation of individual units gas service lines at the Cimarron manufactured home park.

Budget:

FY 2008 CDBG funding: \$62,924.81

Of this amount no more than \$31,462.40 can be used for soft costs.

Soft Cost Budget: \$31,462.40

Schedule:

FY 2008 funds will be committed to project activities after July 1st 2008, and will be expended according to the completion dates listed below.

<u>Milestone</u>	<u>Completion date</u>
November 30, 2008	Lake Elmo City Council Approves CDBG Contract
January 5, 2009	Lake Elmo issues RFQ for Income Determination Consultant
February 3, 2009	Lake Elmo City Council Approve Consultant Contract
February 16, 2009	Lake Elmo staff & Consultant start outreach Cimarron Residents
March 2, 2009	Consultant begins interviews and data collection process
March 20, 2009	Consultant wraps up interviews and data collection process
April 6, 2009	Determine the final # of units to be rehabilitated
April 15, 2009	Publish the 1 st Request for Proposals (RFP) for construction work
April 22, 2009	Publish the 2 nd Request for Proposals (RFP) for construction work
May 4, 2009	Open Request for Proposals (RFP)
May 19, 2009	Lake Elmo City Council approves Construction Contract
May 25, 2009	Construction commences
July 17, 2009	Construction completes
July 31, 2009	All project work completed and final bill submitted

- 12.2 Prior Year Activities. Prior fiscal year activities that are not yet completed continue to be covered by the Subgrantee Agreement executed for the CDBG program year in which they were originally funded.
13. Additional Requirements. The following additional requirements shall apply to the Subgrantee:
- 13.1 Program Income. The Subgrantee shall report all program income (as defined at 24 CFR 570.500(a)) generated under this Agreement for the purposes specified herein or generated through the project(s) funded under this Agreement. During the period this Agreement is in effect, program income shall be retained by the Subgrantee and used for eligible CDBG activities, as specified in 24 CFR 570.201 and 570.202, for the project(s) funded under the terms of this Agreement. Any program income on hand when the Agreement expires or received after the Agreement expires shall be paid to the Grantee as required by 24 CFR 570.503(b)(8).
- 13.2 Future Support. The Grantee makes no commitment to future support and assumes no obligation for future support of the activities contracted for herein, except as expressly set forth in this Agreement.
- 13.3 Funds Not Received. Should anticipated sources of revenue not become available to the Grantee for use in the CDBG Program, the Grantee shall immediately notify the Subgrantee in writing and the Grantee will be released from all contracted liability for that portion of the Agreement covered by funds not received by the Grantee.
- 13.4 Suspension and Termination. In accordance with 24 CFR 85.43, suspension or termination may occur if the Subgrantee materially fails to comply with any of the provisions hereof, and the award may be terminated for convenience in accordance with 24 CFR 85.44. Such

termination shall occur thirty (30) days after receipt by the Subgrantee of written notice from the Grantee specifying the grounds therefore, unless, prior to such date, the Subgrantee has cured the alleged nonperformance of the provisions of this Agreement.

13.5 Reversion of Assets. Upon the expiration of this Agreement, the Subgrantee shall transfer to the Grantee any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Subgrantee's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 shall be:

13.5a Used to meet one of the national objectives in 24 CFR 570.208 until five (5) years after the Subgrantee no longer participates in the CDBG Entitlement Program; or

13.5b Disposed of in a manner that results in the Grantee's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. (Reimbursement is not required after the period of time specified in paragraph 13.5.a.)

13.6 Payment Recoupment. The Subgrantee shall reimburse the Grantee upon demand at any time, any amounts paid by the Grantee under this contract for which the U.S. Department of Housing and Urban Development requires repayment due to noncompliance with federal requirements.

14. Certification For Contract, Grants, Loans And Cooperative Agreements. The Subgrantee certifies, to the best of its knowledge and belief, that:

14.1 No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

14.2 If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

14.3 It will require that the language of paragraphs 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subgrantees shall certify and disclose accordingly.

15. Environmental Review. The Grantee shall insure that all Subgrantee projects or activities comply with environmental review requirements. This includes the completion of a study and assessment of each Community Development Block Grant project in conformance with the National Environmental Policy Act of 1967 by the Grantee. The Subgrantee shall furnish the Grantee with a copy of any updated Environmental Review Study.

16. **Delegation of Authority.** The Community Services Department is delegated the authority to amend all provisions of this agreement by execution of the Community Services Director.

17. **Notice.** Written notice to be provided under this Agreement shall be provided as follows:

For the Grantee: Daniel J. Papin, Director
Washington County Community Services
14949 62nd Street North
PO Box 6
Stillwater, MN 55082

For the Subgrantee: _____

IN WITNESS WHEREOF, the Grantee and the Subgrantee have executed this Subgrantee Agreement on the date indicated below.

For the Grantee

For the Subgrantee

Dennis Hegberg Date
Chair, Washington County Board

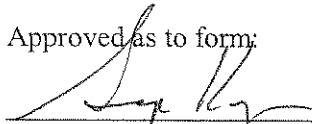
By: _____ Date
Its: _____

James R. Schug Date
County Administrator

By: _____ Date
Its: _____

Daniel J. Papin Date
Director, Community Services

Date

Approved as to form:


Assistant County Attorney Date
9/4/00

**Washington County CDBG Program
Key Contact Designation Form**

Project Manager:

The project manager is the person authorized by the Subgrantee as the primary contact person for this CDBG Agreement.

Name
Title
Organization/Community Name
Address
City, State, Zip Code
Telephone
Cellular Phone/Pager
Fax
E-mail

Other Key Contacts:

Name
Title
Organization/Community Name
Address
City, State, Zip Code
Telephone
Cellular Phone/Pager
Fax
E-mail

Name
Title
Organization/Community Name
Address
City, State, Zip Code
Telephone
Cellular Phone/Pager
Fax
E-mail

Exhibit B

WASHINGTON COUNTY QUARTERLY REPORTING FORM

**Community Development Block Grant Program
Home Investment Partnership Program**

To be submitted by the 15th of April, July, October and January for each quarter until project is complete.

Part One: General Information:

Subrecipient reporting: _____ Reporting Quarter: _____

Contract #: _____ Program Year funds: _____ CDBG/HOME Funds in contract: _____

Brief Description of activity/project included in this report:

Person completing report: _____ Telephone Number: _____ Date submitted: _____

Part Two: Complete for Land Acquisition for Housing

MILESTONE:	Date as Scheduled in Grant Contract	Status of Activity		
		Date Done	Date Anticipated	Notes on Status*

Exhibit C

Washington County Minority/Women Owned Business Enterprises

FY 2007

Part III: Minority Business Enterprises (MBE) and Women Business Enterprises (WBE)

In the table below, indicate the number and dollar value of contracts for CDBG or HOME projects completed during the reporting period.

		Minority Business Enterprises (MBE)					
		Total	Alaskan Native or American Indian	Asian or Pacific Islander	Black Non-Hispanic	Hispanic	White Non-Hispanic
Contracts:							
	Number	0					
	Dollar Amount	0.00					
Subcontracts:							
	Number	0					
	Dollar Amount	0.00					

		Total	Women Business Enterprises (WBE)	Male
Contracts:				
	Number	0		
	Dollar Amount	0.00		
Subcontracts:				
	Number	0		
	Dollar Amount	0.00		

The CDBG and HOME fiscal year (FY) is from July 1, 2007 through June 30, 2008. This form is due to Diane Elias, Washington County Community Services, 14949 62nd Street North, Stillwater, Minnesota 55082, by July 31, 2008.

Contract and Subcontract Activity

U.S. Department of Housing and Urban Development

OMB Approval No. 2570-0083 (Use 1003) (2000)
 OMB Approval No. 2580-0165 (Exp. 12/31/2004)

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and reviewing the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing the burden, to Washington Headquarters Service, Paperwork Project (0182-0002), Washington, DC 20543-0182.

Executive Order dated July 14, 1983, directs the Minority Business Development Bank (MBDB) to be developed by each Federal Agency and the same shall provide such entities minority business development objectives. The information is used by HUD to monitor and evaluate MBDB activities against the national program activity and the designated minority business enterprise (DBE) goals. The Department requires the information to provide guidance and direction for program for the development of minority business enterprise (MBE) development. If the information is not collected HUD would not be able to establish meaningful MBE goals and evaluate MBE performance against such goals.

Privacy Act Notice - The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to collect the information requested in this form by virtue of Title 22, United States Code Section 1701 (a)(1) (a)(2), and (a)(3).

1. Contract/Project Name, Executive Order Number/Agency		2. Location (City, State, Zip, Code)		3. Program/Contract/Agreement/Order Number		4. Reporting Period		5. Program/Contract/Agreement/Order Number		6. Date/Status/Action	
Name of Contract Party		City		Contract/Agreement/Order Number		Start/End Date		Contract/Agreement/Order Number		Status/Action	
Contractor or Subcontractor Name	Contractor or Subcontractor Address	City	State	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Start Date	End Date	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Status/Action	Contract/Agreement/Order Number
Type of Contract (See below)	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number
Amount of Contract (See below)	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number
Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number	Contract/Agreement/Order Number

7. Type of Trade Code		8. Ethnic Code		9. Program Code (Complete for Housing and Public and Indian Housing program only)	
1 - New Construction	1 - Wood Frame	1 - White American	1 - All Ethnic	1 - All Ethnic	1 - All Ethnic
2 - Rehabilitation	2 - Brick/Block	2 - Black American	2 - Hispanic American	2 - Hispanic American	2 - Hispanic American
3 - Repair	3 - Masonry	3 - Native American	3 - Other	3 - Other	3 - Other
4 - Service	4 - Other	4 - Other	4 - Other	4 - Other	4 - Other
5 - Other	5 - Other	5 - Other	5 - Other	5 - Other	5 - Other

HUD Form 2580-0165 (3-85)

Exhibit E

**Demographic and Income Reporting Form for Households
Assisted with Washington County CDBG and HOME Program Funds**

The city/organization providing CDBG or HOME funds, _____, and Washington County are required to obtain the following information pursuant to the regulations of the CDBG and HOME Programs and report this information annually to the U.S. Department of Housing and Urban Development (HUD). All information regarding individuals/households is confidential and protected by data privacy laws. For assistance in completing this form, contact Diane Elias at 651-430-8317.

Name: _____
(New/existing Homeowner)
Address: _____

Please check if work for this property is complete.

Demographic and income information:

1. How many adults and children live in your household? _____
2. What is the total annual income of all adults, eighteen and older, in your household? _____ (use income before taxes)
3. Type of household—please check the box that best applies:
 2-4 persons related
 5 or more persons related
 Elderly
 Other (includes singles who are not elderly, unmarried couples, roommates)
4. Female-headed household:
 Yes No
5. Ethnicity:
 Hispanic or Latino Not Hispanic or Latino
6. Race:
Record the number of persons of each race within the household. Include each person only once.

Single Race:	Multi-Race:
____ White	____ Black/African American and White
____ Black or African American	____ Asian and White
____ Asian	____ American Indian/Alaska Native and White
____ American Indian or Alaska Native	____ American Indian/Alaska Native and Black/African American
____ Native Hawaiian/Pacific Islander	____ Other

Contact

Name of staff person completing this form: _____

Authorization

I hereby authorize _____ to release the above information to appropriate state, local, and federal agencies, including Washington County and the U.S. Department of Housing and Urban Development.

Head of Household Signature: _____ Date _____

Washington County

Home Investment Partnership (HOME) Program
Community Development Block Grant (CDBG) Program

Housing Project Completion Checklist

Type of Funding: CDBG HOME
 Amount of Funding: \$ _____
 Program Year Funding: _____
 Address of Unit(s): _____

- | | | |
|---|--------------------------|-----------------------------|
| 1. Certificate of Project Completion by Developer (Form -3a) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 2. Matching/Leveraged Funds Report (HUD – 40107) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 3. Minority/Women Owned Business Enterprises (exhibit C) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 4. Contract and Subcontract Activity (HUD -- 2516) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 5. Demographic Information Forms (exhibit E, part 1 & 2) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 6. Copy of Certificate of Occupancy | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 7. Copy of recorded Declaration of Covenants & Restrictions (HOME only) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 8. Certification of Cost Allocation between Soft & Hard Costs (Form – 4a) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 9. Final certification of funding sources & uses statement (form 5a) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 10. Copy of initial tenant's income determination (just the worksheet) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 11. Certification of HOME units. (HOME only) (Form -- 2a) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 12. Copy of developments Affirmative Marketing Policy
(Applicable to HOME developments of 5 units or more) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 13. Copy of initial Lease Agreement with tenant
(Applicable to Rental developments only) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 14. Certificate of Rental Project Commencement
(Applicable to Rental developments only) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 15. Copy of Lien Waivers from General and Sub Contractors. | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 16. Certification of Contractor Eligibility Form (Form – 6b) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 17. Copy of the Settlement statement between developer & homebuyer.
(Applicable to Homebuyer project only) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 18. Copy of the recorded Warranty Deed. | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 19. Copy of the notarized homebuyer agreement. | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 20. Copy of after rehab or new construction appraisal. | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 21. Certification of homeowner's ability to pay.
(Applicable to Homebuyer project only) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 22. Certification of Government funding. (Form 8a) | <input type="checkbox"/> | <input type="checkbox"/> NA |
| 23. Washington County staff has inspected completed project. | <input type="checkbox"/> | <input type="checkbox"/> NA |

City Council
Date: 11.5.08
CONSENT
Item: 4
Motion

ITEM: Approve a request to establish a hearing date before the Board of Adjustments and Appeals for Mr. and Mrs. Sessing of 5699 Keats Avenue

SUBMITTED BY: Jerry Filla, City Attorney

SUMMARY AND ACTION REQUESTED: The city council is being asked to schedule a hearing acting as the Board of Adjustment and Appeals under Section 31.10 of the city code at the request of Mr. and Mrs. Sessing, property owners of 5699 Keats Avenue. The next meeting date to hold this appeal is November 18, 2008 and can be scheduled for on or after 7:30 PM due to other city council business on the agenda. Attorney Filla will prepare the notice of the appeal hearing identifying the code items to be appealed. It will be distributed to neighboring property owners and the chair of the planning commission as required by city code.

Motion:

Schedule an appeal hearing before the Board of Adjustment and Appeals for Mr. and Mrs. Sessing, property owners of 5699 Keats Avenue, to appeal the determination of code violations for Tuesday, November 18, 2008 on or after 7:30 PM.

City Council
Date: 11.5.08
CONSENT
Item: 5
Motion

ITEM: A resolution canvassing the returns and declaring the winners of the 2008 local elections

SUBMITTED BY: Sharon Lumby, City Clerk

SUMMARY AND ACTION REQUESTED.

The Lake Elmo City Council must meet within seven days of a City General election to certify the results of the municipal election and declare the results. A draft resolution will be provided at the time of the meeting for your approval.

Motion:

Adopt Resolution no. 2008-050, A resolution canvassing the returns and declaring the winners of the 2008 local elections.

City Council
Date: 11/5/08
Regular Agenda
MOTION
Item: _____

ITEM: Consider Amendments to the Accessory Buildings Section of the Zoning Ordinance: **Ordinance No. 08-010**

SUBMITTED BY: Kyle Klatt, Planning Director



REVIEWED BY: Planning Commission
Susan Hoyt, City Administrator
Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED:

The City Council is being asked to consider amendments to the accessory building provisions of the zoning ordinance. These changes represent minor modifications to specific sections of the ordinance and have been proposed: 1) to improve the consistency between various sections of the current code and 2) to clarify the intent and interpretation of various sections of the code dealing with accessory uses. The proposed amendments do not propose a major departure from the current ordinance and are intended primarily to clean up portions of the code that have been confusing or difficult to administer in the past.

The initial basis for the proposed amendments was the identification of discrepancies between a building department setback handout and the zoning ordinance. As part of the regular review of building permits, staff also found that the requirements for accessory buildings were either difficult to find or inconsistent between various portions of the code. The proposed amendments should help clarify and simplify the review of building permits, especially for accessory buildings. The proposed ordinance was reviewed during the course of several Planning Commission meetings this past summer, and was recommended for approval.

The regulations for accessory buildings may be found in two distinct sections of the Zoning Ordinance: within the development standards for each zoning district and as part of the design and performance standards that apply to all districts. The sections that would be impacted by the proposed changes include Sections 154.030 through 154.066 and Sections 154.092 and 154.093.

REVIEW OF PROPOSED AMENDMENTS:

The proposed changes can be summarized as follows:

- The RE District provisions (Section 154.058) will be amended to add accessory building setbacks to the district table. This table will now include the front, side, street side, rear, and arterial street setbacks for accessory building as well as principal buildings. Since these setbacks were not previously identified elsewhere in the code, the Planning Commission recommended that they follow the OP district requirements with the exception of the front yard setback (set at 100 feet to be consistent with the front yard setback for principal structures).
- Language in all zoning districts will be amended to clearly state whether or not the dimensional requirements apply to principal, accessory buildings, or both. Each zoning district table will include separate headings labeled "Principal Building Setbacks" and "Accessory Building Setbacks". At present, the code either uses these terms interchangeably or just uses "Building Setbacks".

- There are currently two definitions that describe how to measure the height of buildings: “Height of Building” and “Building Height”. The proposed ordinance eliminates one of these terms and adds a diagram to provide additional clarity concerning the interpretation of this measurement.
- The reference to roof height in Section 154.092, Subd. (A,2) will be removed. With this change, all accessory building heights will be calculated in the same manner as principal buildings. Specifically, the definition noted above allows the averaging of the grade around the building and the averaging of the height between the highest ridge and eave line to determine the two points used to calculate height.
- The accessory building height in all districts (except for agricultural buildings) will be amended to 18 feet (from either 14 feet or 20 feet). This figure is recommended as a balance between the previous roof height requirement of 20 feet and the averaging that is allowed for mansard, gable, hip, and gambrel style roofs. The current requirement varies from district to district and there is no apparent reason for these discrepancies.
- The definition for a tool shed has been revised to delete a statement related to roof height. These types of structures will still have a separate height requirement that is lower than other buildings, and in this case, will be reduced from 12 feet to 10 feet (to account for the averaging as noted above).
- Accessory buildings in the Open Space Preservation District are currently allowed to be built to a higher height than in other districts; this provision will be amended to reflect a common height across all residential zoning districts. The current OP district height limit is 25 feet and would be changed to 18 feet under the proposed Ordinance. This change also reflects the definition change noted above.
- The requirements for maximum building height and door height will be included in the residential district tables only. The requirements for accessory buildings in industrial and business districts will therefore match the requirements for principal building in these districts. There are references to the business and industrial district exemptions that can be eliminated from the current ordinance because of these changes.
- All language pertaining to size limits for the parking of passenger automobiles (found in Section 154.092, Subd. D) will be deleted. Rather than specifying a specific size limit of 1,000 square feet, the proposed amendments would limit the size of attached and detached garages to no more than the footprint of the principal structure. This change will help end confusion regarding space marked on building plans as storage, workshop, or miscellaneous useage.
- Clarification will be added to specify that building footprint will be used to calculate the size requirements for an accessory building (not gross floor area). This revision also provides for a blanket statement across all districts that an accessory building cannot exceed the size of a principal structure. The current maximum size allowed for accessory buildings will not change, and previously the size of the principal building was only relevant for parcels larger than 20,000 square feet.
- Section 154.092 Subd. F and G will be amended to clarify that accessory buildings cannot exceed the height of the principal building in any zoning district with the exception of agricultural farm buildings and the exceptions to height listed elsewhere in the City Code. This change does not alter the intent of the current Ordinance.
- The table found in Section 154.093 has been updated to clarify the accessory building requirements for the smallest lot sizes in R-1, RED, and OP districts and to remove existing language that states the size of accessory buildings cannot exceed a principal structure. The revised statement in Section 154.092, Subd. D will now cover this requirement. The Planning Commission could find no reason for a cut-off of 5,000 square feet for the smaller lots in this table, and with the proposed change, all lots less than one acre in size would be grouped together.
- A provision will be added to Section 154.092 that reads as follows: “The footprint of an attached garage shall not be larger than the footprint of the living area within the principal building. All garage space located under a living area or other garage space will not count towards the total attached garage area allowed”. Although this language does not place set limit on the total area that could be used for the parking of cars, the City’s building code, setback requirements, impervious coverage

ordinance, driveway standards, and other similar provisions with the code provide additional regulations that will limit the practicability of building an excessive-sized garage.

The amendments should help simplify the review process for new accessory buildings by standardizing the organization of information and the consistency between each district.

BACKGROUND INFORMATION:

Of the proposed amendments, the changes to regulations concerning the parking of passenger automobiles represent the most significant modifications from the previous Ordinance. Under the current code, space devoted to the parking of automobiles cannot exceed 1,000 square feet, and this limit applies to both detached and attached garages. In practice, this limitation has been very difficult to administer and enforce because the total size allowed for both accessory buildings in all districts exceeds this amount. As part of its review, the Planning Commission determined that the use of space within an accessory building was not as important as the total size and height allowed. The Planning Commission's recommendation; therefore, is that the total size of all accessory buildings be regulated so that they cannot exceed the size of the principal building on a lot (both for attached and detached structures). Under the proposed ordinance, the size of accessory buildings would still be regulated by district and would never be allowed to exceed the size of a principal building.

All other changes are intended to provide consistency and clarity throughout the code, in some instances incorporating revised standards, improved definitions, or updated tables to accomplish this objective.

PLANNING COMMISSION:

The Planning Commission reviewed the proposed ordinance amendments over the course of several meetings earlier this summer, and conducted a public hearing on this matter on July 14, 2008. There were no public comments received and the Commission unanimously recommended approval of the Ordinance amendments as document in the attached Ordinance.

RECOMMENDATION:

The Planning Commission recommends that the City Council approved the proposed amendments to the accessory building provisions of the Zoning Ordinance.

SUGGESTED MOTION FOR CONSIDERATION:

Motion:

Motion to adopt Ordinance No. 08-010 amending the accessory building regulations.

Motion to adopt Resolution No. 08-049 authorizing summary publication of Ordinance No. 08-010 in the official City paper.

ATTACHMENTS:

1. Ordinance No. 08-010
2. Resolution No. 08-049 (Summary Publication)
3. Summary of Proposed Changes (including summary table)

ORDER OF BUSINESS:

- Introduction..... Susan Hoyt, City Administrator
- Report..... Kyle Klatt, Planning Director

- Questions from the CouncilMayor & Council Members
- Questions/Comments from the public Mayor facilitates
- Call for a Motion
(required for further discussion; does not
imply approval of the motion Mayor facilitates
- Discussion Mayor facilitates
- Action on motion..... Council

Accessory Building Ordinance Updates
Summary Table

Proposed Changes to Existing Zoning Ordinance

TABLE 1 – SETBACKS/HEIGHT

Accessory Bldg Setbacks	AG	AG Clustered	RR	RR Arterial	R1	R2	R3	R4	RE	OP Single	OP Townhouse
Front	200	30	30	100	30	30	50	50	100	30	30
Side	200	10	10	100	10	10	20	20	50 15	15*	15*
Side (Street)	200	25	25	100	25	25	50	50	80 30	30	30
Rear	200	40	40	100	40	40	50	50	100 15	40	40
Rear (Garages, Boats, Storage, Tool)	200	10	10	100	10	10	20	20	100 15	15*	15*
Arterial Street	200	50	50	100	50	50	50	50	150 50	50	50
Height (for residential districts)	18	18	18	18	18	18	18	18	18	18	18
Max Door Height (for residential districts)	14	14	14	14	14	14	14	14	14	14	14
Number	2	2	1	1	1	1	1	1	1	1	1

* Or 10% of lot width, whichever is greater

Notes:

- Building height will be calculated in accordance with the definition in the City Code. References to maximum roof height have been eliminated in the accessory building section.

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-010

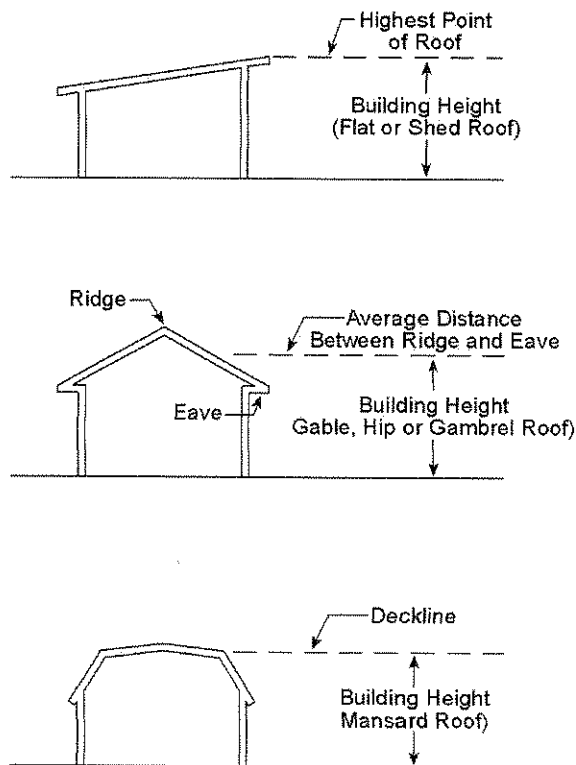
AN ORDINANCE TO AMEND ACCESSORY BUILDING REGULATIONS

Section 1. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 (Definitions) is hereby amended to *remove* the following definition:

HEIGHT OF BUILDING. The vertical distance between the lowest grade level at the building line and the uppermost point on the roof.

and to *add* the following diagram to the definition of **BUILDING HEIGHT** so that it reads as follows:

BUILDING HEIGHT. The vertical distance from the average of the highest and lowest point of grade for that portion of the lot covered by building to the highest point of the roof for flat roofs; to the roof deck line of mansard roofs; and to the mean height between eaves and highest ridge for gable, hip, and gambrel roofs.



Section 2. The City Council of the City of Lake Elmo hereby ordains that the *Minimum District Requirements* tables found in Sections 154.036, Subd. (D); 154.041, Subd. (C); 154.044, Subd. (C); 154.047, Subd. (C); 150.180, Subd. (B, 2, h) are hereby amended in the following manner:

Section 154.033

(D) *Minimum district requirements.*

Agricultural Zoning District	Farm Dwellings and Related Structures and Activities and Non-Farm Dwellings if not Clustered	Non-Farm Dwellings and Activities if Clustered
Lot Size	Nominal 40 acres	1-1/2 acres (if clustered)
	A 40-acre parcel not reduced by more than 10% due to road rights-of-way and survey variations	
Lot Width	300 feet	125 feet
Primary Building setback from property lines: (Also see § 154.082)		
Front:	200 feet	30 feet
Side (Interior):	200 feet	10 feet
Rear:	200 feet	40 feet
Side Corner:	200 feet	25 feet
Arterial Street:	200 feet	50 feet
Primary Building Height (Also see § 154.083)	35 feet	35 feet
Off-Street Parking (Also see § 154.095)	N/A	3 spaces per dwelling unit
Accessory Building or Structure setback from property lines: (Also see §§ 154.092 and 154.093)		
Front:	200 feet	30 feet
Side (Interior):	200 feet	10 feet
Rear:	200 feet	40 feet
Rear (detached residential garages, and storage, boat, and tool sheds)	200 feet	10 feet
Side Corner:	200 feet	25 feet
Arterial Street:	200 feet	50 feet

Section 154.036

(D) *Minimum district requirements.*

Rural Residential Zoning District		
Lot Size	Nominal 10 acres	5 to 7 acres if clustered
	A 10-acre parcel not reduced by more than 10% and/or a 10-acre parcel located on a corner or abutting a street on 2 sides not reduced by more than 15% due to road right-of-way and survey variations	

Lot Width (See § 153.04)	300 feet	125 feet
Primary Building or Structure Setbacks from property lines (Also see § 154.082)		
Front:	30 feet	30 feet
Side (Interior):	10 feet	10 feet
Side (Corner):	25 feet	25 feet
Rear:	40 feet	40 feet
Arterial Street:	50 feet	50 feet
Primary Building Height (Also see § 154.083)	35 feet	-
Off-Street Parking (Also see § 154.095)	3 spaces per unit	same
Accessory Building or Structure setbacks from property lines: (Also see §§ 154.092 and 154.093)		
Front:	30 feet	30 feet
Side (Interior):	10 feet	10 feet
Side Corner:	25 feet	25 feet
Rear:	40 feet	40 feet
Rear (detached residential garages, and storage, boat, and tool sheds)	10 feet	10 feet
Arterial Street:	50 feet	50 feet
Accessory Building Height (Also see § 154.083)	14 feet	14 feet

Section 154.041

(C) Minimum district requirements.

R-1 Zoning District	
Lot Size	1-1/2 acre per unit without sanitary sewer; 24,000 square feet per unit with sanitary sewer
Lot Width	125 Feet
Primary Building or Structure Setbacks from Property Lines (Also see § 154.082)	
Front:	30 Feet
Side (Interior):	10 Feet
Side (Corner):	25 Feet
Rear:	40 Feet
Arterial Street:	50 Feet
Primary Building Height (Also see § 154.083)	35 Feet
Accessory Buildings or Structure Setbacks from Property Lines (Also See §§ 154.092 and 154.093)	
Front:	30 feet
Side (Interior):	10 feet

<u>Side (Street):</u>	<u>25 feet</u>
<u>Rear:</u>	<u>10 feet</u>
<u>Arterial Street:</u>	<u>50 feet</u>
<u>Accessory Building Height (Also see § 154.083)</u>	<u>20 feet</u>

Section 154.044

(C) *Minimum district requirements.*

R-2 Zoning District	
Lot Size	One-Family: 1-1/2 acre per unit without sanitary sewer; 7,500 feet per unit with sanitary sewer
	Two-Family: 1-1/2 acre per unit without sanitary sewer; 6,000 square feet per unit with sanitary sewer
Lot Width	One-Family: 75 feet at front yard setback line with sanitary sewer; 125 feet without sanitary sewer
	Two-Family: 100 feet at front yard setback line with sanitary sewer; 200 feet without sanitary sewer
<u>Principal Building setbacks from property lines (Also see § 154.082)</u>	
Front:	30 Feet
Side (Interior):	10 Feet
Side (Corner):	25 Feet
Rear:	40 Feet
Arterial Street:	50 Feet
Primary Building Height (Also see § 154.083)	35 Feet
<u>Accessory Buildings and Structures setbacks from property lines.</u>	
Front:	<u>30 feet</u>
Side:	<u>10 feet</u>
Side (Street):	<u>25 feet</u>
Rear:	<u>10 feet</u>
Arterial Street:	<u>50 feet</u>
Accessory Building and Structures Height (Also see § 154.083)	14 feet

Section 157.047

(C) *Minimum district requirements.*

R-4 Zoning District	
Lot Size	3,500 Square Feet per Unit

Lot Width	100 Feet at Front Yard Setback Line
<u>Principal Building and Structure Setbacks</u> from property lines (Also see § 154.082)	
Front:	50 Feet
Side (Interior):	20 Feet
Side (Corner):	50 Feet
Rear:	50 Feet
Arterial Street:	50 Feet
Building Height (Also see § 154.083)	35 Feet
<u>Accessory Buildings and Structures Setbacks</u> from property lines. (Also See §§ 154.092 and 154.093)	
Front:	50 feet
Side:	20 feet
Side (Street):	50 feet
Rear:	20 feet
Arterial Street:	50 feet
Accessory Buildings and Structures Height (See § 154.083)	14 feet

Section 150.048

(C) *Minimum district requirements.*

<i>RE Zoning District</i>	
Lot Size	2-1/2 minimum (108,750 square feet) to 10 acres (435,600 square feet)
Subdivision Density	3.33 acre average - No outlots to remain within subdivision
Lot Configuration	Lots must be configured to contain a circle with a diameter of 250 feet minimum; the ratio of lot length to width shall be a maximum of 3:1 – Flag lots are prohibited
Area of Building Site	A minimum of 1.25 acres of land above the flood plain and free of any drainage easements
<u>Principal Building and Structure Setbacks</u> from property lines: (Also see § 154.082)	
Front:	100 Feet Minimum
Side (Interior):	50 Feet Minimum
Side (Corner):	80 Feet Minimum
Rear:	100 Feet Minimum
Collector/Arterial Street:	150 Feet Minimum
Frontage on Public Roadway	150 feet minimum, except 70 feet at the end of culs-de-sac <u>streets</u>
Primary Building Height (Also see § 154.083)	35 Feet
<u>Accessory Buildings and Structures Setbacks</u> (Also see §§ 154.092 and 154.093)	
Front:	100 feet
Side:	15 feet

<u>Side (Street):</u>	30 feet
<u>Rear:</u>	15 feet
<u>Arterial Street:</u>	50 feet
<u>Accessory Buildings and Structures Height (Also see § 154.083)</u>	14 Feet

Section 150.080

(h) Minimum district requirements.

Open Space Preservation District (OP)		
	Single-Family	Townhouse
Maximum Building Height:		
Primary Structure	2 and ½ stories or 35 feet	2 and ½ stories or 35 feet
Accessory Structure	25 feet	1-story or 20 feet, whichever is less
Minimum Lot Width:	NA	NA
½ acre lot; 1 acre lot		
Maximum Impervious Surface Coverage:	No more than 15% for the primary structure and driveway; but up to 17% total when including all other impervious surfaces	
Gross Lot Area		NA
<u>Minimum Principal Building and Structure Setbacks Requirements from property lines (Also see § 154.082):</u>		
Front Yard	30 feet	20 feet
Side Yard	15 feet or 10% of lot width, whichever is greater	15 feet or 10% of lot width, whichever is greater
Corner Lot Front	30 feet	30 feet
Corner Lot Side Yard	30 feet	30 feet
<u>Rear Yard:</u>	<u>40 feet</u>	<u>40 feet</u>
<u>Arterial Street:</u>	<u>50 feet</u>	<u>50 feet</u>
Well From Septic Tank	50 feet	50 feet
<u>Accessory Buildings and Structures Setbacks (Also see §§ 154.092 and 154.093)</u>		
<u>Front:</u>	<u>30 feet</u>	<u>30 feet</u>
<u>Side:</u>	<u>15 feet or 10% of lot width, whichever is greater</u>	<u>15 feet or 10% of lot width, whichever is greater</u>
<u>Side (Street):</u>	<u>30 feet</u>	<u>30 feet</u>
<u>Rear:</u>	<u>15 feet or 10% of lot width, whichever is greater</u>	<u>15 feet or 10% of lot width, whichever is greater</u>
<u>Arterial Street:</u>	<u>50 feet</u>	<u>50 feet</u>

Section 3. The City Council of the City of Lake Elmo hereby ordains that Section 154.092 is hereby amended to read as follows:

§ 154.092 ACCESSORY BUILDINGS AND STRUCTURES.

(A) Types of accessory buildings include storage or tool sheds; detached residential garage; detached rural storage building; detached domesticated farm animal buildings; agricultural farm buildings. The accessory buildings are defined as follows:

(1) STORAGE OR TOOL SHED. A 1-story accessory building of less than 160 square feet gross area with a maximum ~~roof~~ height of ~~12~~ 10 feet and exterior colors or material matching the principal structure or utilizing earthen tones. No door or other access opening in the storage or tool shed shall exceed 28 square feet in area.

(2) DETACHED RESIDENTIAL GARAGE. A 1-story accessory building used or intended for the storage of motor driven passenger vehicles regulated in § 154.093 ~~with a maximum roof height of 20 feet~~. No door or other access opening shall exceed 14 feet in height. The exterior color, design, and materials shall be similar to the principal structure.

(3) DETACHED RURAL STORAGE BUILDING. A 1-story accessory building used or intended for the storage of hobby tools, garden equipment, workshop equipment and the like. Exterior materials shall match the principal structure in exterior color or be of an earthen tone.

(4) DETACHED DOMESTICATED FARM ANIMAL BUILDING. A 1-story accessory building used or intended for the shelter of domestic farm animals and/or related feed or other farm animal supportive materials. The building shall require a Minnesota Pollution Control Agency feedlot permit and site and building plan approval. (Am. Ord. 97-38, passed 11-17-1998)

(5) AGRICULTURAL FARM BUILDING. An accessory building used or intended for use on an active commercial food-producing farm operation of more than 20 acres, a Minnesota Pollution Control Agency permit may be required.

(B) A tool shed as defined in this section may be placed on any lot in addition to the permitted number of accessory buildings.

(C) No accessory building shall be constructed nor accessory use located on a lot until a building permit has been issued for the principal building to which it is accessory.

~~(D) No accessory building used or intended for the storage of passenger automobiles shall exceed 1,000 square feet of gross area, nor shall any access door or other opening exceed the height of 10 feet, nor shall any structure exceed 1 story in height except when the garages are located in business, industrial or planned unit~~

~~developments. On parcels of 20,000 square feet in area or less, no detached accessory building or garage shall exceed the size of the principal building in gross floor area. The footprint of any detached accessory building shall not be larger than the footprint of the principal building.~~

(E) The footprint of an attached garage shall not be larger than the footprint of the living area within the principal building. All garage space located under a living area or other garage space will not count towards the total attached garage area allowed

(F) An accessory building shall be considered as an integral part of the principal building if it is located 6 feet or less from the principal building. The exterior design and color shall be the same as that of the principal building or be of an earthen tone; the height shall not exceed the height of the principal structure unless more restrictive portions of this chapter prevail.

(G) Accessory Building Height.

(1) ~~No accessory building in a commercial or industrial district shall exceed the height of the principal building, except for agricultural farm buildings and the exceptions to building height listed in Section 154.083.~~

(2) No detached building accessory to a residential structure or located in a residential district shall exceed 18 feet in height, except as otherwise permitted as an exemption from the district height requirements under Section 154.083.

~~(G) No accessory buildings in apartment developments shall exceed the height of the principal building.~~

(H) Accessory buildings in the commercial and industrial districts may be located to the rear of the principal building, subject to the Building Code and fire zone regulations.

(I) No detached garages or other accessory buildings in residential districts shall be located nearer the front lot line than the principal building on that lot, except in AG, RR, and R-1 Districts where detached garages may be permitted nearer the front lot line than the principal building by resolution of the City Council, except in planned unit developments or duster developments.
(Ord. 97-107, passed 4-16-2002)

(J) Accessory structures located on lake or stream frontage lots may be located between the public road and the principal structure, provided that the physical conditions of the lot require such a location and a resolution is issued. In no event shall the structure be located closer than 20 feet to the public right-of-way.

(K) All accessory buildings over 35 square feet in area shall have a foundation, concrete slab or wind anchor. Buildings larger than 100 square feet shall

require a building permit regardless of improvement value. Roof loads and wind loads shall conform to requirements as contained in the Building Code.

(L) The required rear yard setbacks for detached residential garages, and storage, boat, and tool sheds shall be a distance equal to the required side yard setback for each zoning district, except on through lots when the required rear yard setback in each zoning district shall apply.

(M) Performance standards for detached agricultural buildings and domesticated farm animal buildings on parcels of less than 20 acres shall include the following:

(1) Setbacks. All animal buildings, feedlots, and manure storage sites shall be set back in accordance with the underlying zoning district regulations.

(2) Slopes. The building, feedlot, or manure storage shall not be placed on slopes which exceed 13%.

(3) Water level. Evidence of the seasonally high groundwater level or mottled soil (as established by 8-1/2 foot borings) shall not be closer than 6-1/2 feet to the natural surface ground grade in any area within 100 feet of the proposed building and/or feedlot.

(4) Wetlands. No marsh or wetland (as established by the predominant wetland vegetation and/or soils) shall be utilized for placement of the proposed structure, feedlot, or grazing area.

Section 4. The City Council of the City of Lake Elmo hereby ordains that Section 154.093 is hereby amended to read as follows:

§ 154.093 NUMBER/SIZE OF ACCESSORY BUILDINGS.

The maximum number and size of accessory buildings permitted in each zoning district shall be as follows. No accessory building shall be constructed unless there is adequate room for the required secondary drainfield site.

Maximum Number and Size of Accessory Buildings	
Residential - R-1, RED, and OP	
Over 5,000 square feet but less than 1 acre	A combined 1,200 square feet total for both attached and detached accessory structures or residential garage; the size of the footprint of the detached structure shall not exceed the size of the footprint of the primary structure

From 1 acre to 2 acres	One 1,200-square foot detached residential, garage or building, in addition to an attached garage
Over 2 acres	One 1,300-square foot detached residential garage or building in addition to an attached garage

Section 5. Adoption Date

This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

This Ordinance No. 08-010 was adopted on this 5th day of November 2008, by a vote of ___ Ayes and ___ Nays.

Mayor Dean Johnston

ATTEST:

Susan Hoyt
City Administrator

This Ordinance No. 08-010 was published on the ___ day of _____, 2008.

CITY OF LAKE ELMO

RESOLUTION NO. 2008-049

**RESOLUTION AUTHORIZING PUBLICATION OF
ORDINANCE NO. 08-010 BY TITLE AND SUMMARY**

WHEREAS, the city council of the city of Lake Elmo has adopted Ordinance No. 08-010, an ordinance to amend certain provisions of the zoning ordinance concerning accessory buildings; and

WHEREAS, the ordinance is lengthy; and

WHEREAS, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

WHEREAS, the city council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Lake Elmo, that the city administrator shall cause the following summary of Ordinance No. 08-010 to be published in the official newspaper in lieu of the entire ordinance:

Public Notice

The City Council of the city of Lake Elmo has adopted Ordinance No. 08-010. The ordinance incorporates the following changes:

- The RE – Residential Estate District provisions (Section 154.058) are amended to add accessory building setbacks to the district table. This table now includes the front, side, street side, rear, and arterial street setbacks for accessory buildings as well as principal buildings, and follows the OP district requirements with the exception of the minimum front yard setback. The front yard setback for accessory building in an RE zoning district is set at 100 feet to be consistent with the front yard setback for principal structures in this district.
- The tables describing the minimum requirements for certain districts are amended to clearly state whether or not the dimensional requirements apply to principal structures, accessory buildings, or both. Each zoning district table includes separate headings labeled “Principal Building Setbacks” and “Accessory Building Setbacks”.

- One of two conflicting definitions for “Building Height” is eliminated and a table added to clarify the interpretation of this measurement.
- The reference to roof height in Section 154.092, Subd. (A,2) is removed. With this change, all accessory building heights will be calculated in the same manner as principal buildings. Specifically, the definition noted above allows the averaging of the grade around the building and the averaging of the height between the highest ridge and eave line to determine the two points used to calculate height.
- The accessory building height in all districts, except for agricultural buildings, is amended to 18 feet (from either 14 feet or 20 feet). This figure serves as a balance between the previous roof height requirement of 20 feet and the averaging that is allowed for mansard, gable, hip, and gambrel style roofs.
- The definition for a tool shed is revised to delete a reference to roof height. These types of structures will still have a separate height requirement that is lower than other buildings, and in this case, will be reduced from 12 feet to 10 feet to comply with the revised definition for building height.
- Accessory buildings in the Open Space Preservation District are currently allowed to be built to a higher height than in other districts; this provision is amended to reflect a common height across all residential zoning districts. The current OP district height limit is 25 feet and is lowered to 18 feet. This change also reflects the revised definition for building height.
- The requirements for maximum building height and door height are deleted from all sections except the residential district tables. With this change, the requirements for accessory buildings in industrial and business districts will therefore match the requirements for principal building in these districts. There are references to the business and industrial district exemptions that are eliminated from the current ordinance with these changes.
- The maximum size of the area devoted to the parking of passenger automobiles (found in Section 154.092, Subd. D) is eliminated. Rather than specifying a specific size limit of 1,000 square feet, the ordinance will limit the size of attached and detached garages to no more than the footprint of the principal structure.
- The ordinance clarifies that building footprint is used to calculate the size requirements for an accessory building (not gross floor area). This revision also provides for a blanket statement across all districts that an accessory building cannot exceed the size of a principal structure. The current maximum size allowed for accessory buildings is not being amended.
- Section 154.092 Subd. F and G are amended to clarify that accessory buildings cannot exceed the height of the principal building in any zoning district with the exception of agricultural farm buildings and the exceptions to height listed elsewhere in the City Code.
- The table found in Section 154.093 is updated to simplify the accessory building requirements for the smallest lot sizes in R-1, RED, and OP districts and to remove existing language that states the size of accessory buildings cannot exceed a principal structure. The revised statement in Section 154.092, Subd. D will now cover this requirement.
- A provision is added to Section 154.092 that reads as follows: “The footprint of an attached

garage shall not be larger than the footprint of the living area within the principal building. All garage space located under a living area or other garage space will not count towards the total attached garage area allowed". Although this language does not place set limit on the total area that could be used for the parking of cars, the City's building code, setback requirements, impervious coverage ordinance, driveway standards, and other similar provisions with the code provide additional regulations that will limit the size of a garage.

The full text of Ordinance No. 08-010 is available for inspection at Lake Elmo city hall during regular business hours.

Mayor Dean Johnston

BE IT FURTHER RESOLVED by the city council of the city of Lake Elmo that the city administrator keep a copy of the ordinance in her office at city hall for public inspection and that she post a full copy of the ordinance in a public place within the city.

Dated: _____, 20____.

Mayor Dean Johnston

ATTEST:

Susan Hoyt
City Administrator

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member

_____ and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against same:

Whereupon said resolution was declared duly passed and adopted.