

FILE

City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, Minnesota

June 7, 2011

7:00 p.m.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE:
- C. ATTENDANCE: ___ Johnston ___ Emmons, ___ Park ___ Pearson ___ 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. ACCEPT MINUTES:
 1. Accept May 17, 2011 City Council Minutes
- 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.

Dave Engstrom, Friends of Washington County – Update on landfill Siting Process
- 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
- J. REGULAR AGENDA:
 3. Draft Amendment to Fence Ordinance – ORD. 08-044 & RES. 2011-021
 4. Kindred Court Drainage Corrections; Approve plan and order design
 5. Public Meeting: Annual Municipal Separate Storm Sewer System (MS4) Report for 2010 and accept MS4 Annual Report
 6. Roles, Responsibilities and Functions of Subcommittees
 7. Yellow Ribbon Network; Resignation of Jennifer Pelletier
 8. Lake Elmo Avenue Infrastructure Project from I-94 to 30th Street; Update on Easement Costs

9. Commercial Water Rate - Discussion

K. REPORTS AND ANNOUNCEMENTS:

(These are verbal updates and do not have to be formally added to the agenda.)

- Mayor and City Council
- Administrator
- City Engineer
- Planning Director

L. Adjourn

A social gathering may or may not be held at the Lake Elmo Inn following the meeting.

DRAFT

City of Lake Elmo
City Council Meeting Minutes

May 17, 2011

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

PRESENT: Mayor Johnston and Council Members Emmons, Park, Pearson, and Smith

Also Present: Administrator Messelt, Attorney Snyder, and City Engineer Griffin, Planning Director Klatt, Finance Director Bouthilet and City Clerk Lumby.

APPROVAL OF AGENDA:

MOTION: Council Member Pearson moved to approve the May 17, 2011 City Council Agenda as amended. Move Agenda Item No 11 to Consent and Item No. 6 to the Regular Agenda. Move Agenda Item No. 13 to workshop. Council Member Park seconded the motion. The motion passed 5-0.

ACCEPTED MINUTES:

The May 3, 2011 City Council minutes, as amended, were accepted by consensus of the City Council.

PUBLIC COMMENTS:

David Moore, 8680 Stillwater Blvd., made Council aware of a vacant house in disrepair located on 10th Street and Inwood Avenue N. Planner Klatt will follow-up on complaint.

CONSENT AGENDA:

MOTION: Council Member Park moved to approve agenda items Nos. 2, 3, 5, 7, 8, 9, 10 & 11 as presented on the Consent Agenda. Council Member Pearson seconded the motion. The motion passed 5-0.

- Approve Payment of Disbursements and Payroll in the amount of \$247,137.15
- Approve Resolution No. 2011-019, Accepting the Bids and Awarding a Contract to Pearson Brothers, Inc. for the 2011 Seal Coat Project per the Engineer Letter of Recommendation for the Award of the Contract
- Approve the one-day temporary liquor license (June 25, 2011) to Michael Swanson, Team Ortho Foundation, Inc. to serve beer at Green Acres located at 8989 55th Street N.
- Approve the hiring of Logan Weir for Temporary Seasonal Employment at the same pay rate as 2010
- Authorize contract with Miller Excavating for the Sunfish Lake Parking Lot Improvements for \$3,060.00

- Approve Easement Encroachment Agreement for 5769 Linden Avenue N. to install a retaining wall within a drainage and utility easement
- Approve Easement Encroachment Agreement for 9590 Whistling Valley Trail to install a fence within a drainage and utility easement
- Authorize the City to enter into a contract with Coverall of the Twin Cities for cleaning services for City Hall and City Hall Annex

REGULAR AGENDA:

Appointment to the Maintenance Advisory Committee

MOTION: Council Member Smith moved to appoint David Moore, 8680 Stillwater Blvd. N. to the Maintenance Advisory Committee. Council Member Emmons seconded the motion. The motion passed 5-0.

- Approve Resolution No. 2011-020 granting a 50' variance to allow a septic system to be built at 8242 Hidden Bay Trail with conditions

The City Council was asked to consider a variance request to allow a septic system to be constructed 25-feet from the Ordinary High Waterline of Olson Lake, where a 75 foot setback is required at 8242 Hidden Bay Trail. The Planning Commission unanimously recommended approval of this variance.

In 2002, a variance was approved for home and garage additions with two conditions. One condition was deletion of the proposed second driveway access for the lower garage stalls. The 2011 proposed septic plan still shows two driveways, but one is gravel. The City Planner will review if there be enough room for a septic system if one driveway was removed.

MOTION: Council Member Smith moved to approve Resolution No. 2011-020 granting a 50-foot variance to allow a septic system to be built at 8242 Hidden Bay Trail. Council Member Park seconded the motion.

MOTION: Council Member Emmons moved to amend the motion contingent on staff verifying past requirements have been addressed. Council Member Smith seconded the motion. The motion passed 5-0.

MOTION: Council Member Smith moved to approve Resolution No. 2011-020 granting a 50-foot variance to allow a septic system to be built at 8242 Hidden Bay Trail contingent on staff verifying past requirements have been addressed. Council Member Park seconded the motion. The motion passed 5-0.

Authorize Contracting for Professional Services for HR/Organizational & Personnel-Related Matters

On April 19th 2011 the City Council directed staff to re-advertize the RFP. The RFP was posted on the League of MN Cities' website. Three additional proposals were received.

The City Council was requested to authorize a contract for Professional Services to address certain organizational and personnel-related matters, as recommended by the Personnel Subcommittee. The project is of limited scope and sufficient budgetary resources exist within the current annual budget to cover the anticipated cost.

The Personnel Committee reviewed and rated the four proposals submitted: Baker Tilly, Springsted, Laumeyer, and Flaherty & Hood. Springsted Inc. was rated the highest.

MOTION: Council Member Smith moved to authorize the Mayor and City Administrator to contract with Springsted, Inc. for Professional Services to address certain organizational and personnel related matters at a cost not to exceed \$7,250 with the initial report from the Springsted study be sent to the City Administrator as well as Council Member Smith, Budget/Finance Subcommittee Member, and Council Member Emmons, Personnel Subcommittee Member. The motion passed 4-1 (Mayor Johnston voting against).

Commercial Water Rate Review

The City Council was asked to discuss staff's evaluation of proposed alternatives to the City's water rate structure to potentially address identified concerns with respect to large commercial water users.

Some of the identified potential alternatives to Conservation Rates include the following:

Seasonal Rates, Individualized Goal Rate (Water Budget Rate), and Excess Use Rates

Of the alternatives identified, staff recommended Council consideration of continuing with a modified existing rate structure, but perhaps capping the gallons used to 150,000 gallons. All domestic water consumed above 150,000 gallons would revert to the City's Bulk water rate of \$3.26/one thousand gallons. Staff suggested that the domestic water customer would have to demonstrate little or no irrigation use or install a separate irrigation meter.

The new commercial structure would be as follows:

0	-	15,000 gallons	\$3.11
15,002	-	30,000 gallons	\$3.26
30,001	-	50,000 gallons	\$3.77
50,001	-	80,000 gallons	\$5.00
80,001	-	150,000 gallons	\$6.63
150,000+			\$3.26 (Domestic, non-irrigation usage only)

Under this scenario, nine customers are identified as potentially benefitting from a domestic cap at 150,000 gallons. The net revenue reduction would be \$5,258.30 to the Utility for the utilized September 2010 billing period, or an approximate 9.7% reduction in revenues for that period.

Moe French, Wildwood Lodge and Machine Shed, provided water rates from surrounding communities and asked Council to consider they are competing with other businesses and implement incentive for irrigation. Ms. French stated Wildwood would like to pay their water bill, but are waiting for somebody to inform them if the lower rates would be retroactive.

John Schiltz, Lake Elmo Inn, stated it's not the commercial businesses' fault the City has not developed and added more water users. He stated commercial business in Lake Elmo pay high enough taxes and asked the Council to look at the rates the surrounding communities charge.

After Council discussion, the Council asked Ms. French to submit her background information to the Council so they can review and discuss it at the May 24th workshop.

MOTION: Council Member Smith moved to table this item until the May 24th City Council Workshop. Council Member Pearson seconded the motion. The motion passed 5-0.

Update on Library Service Considerations

This item has been scheduled at the request of the Council in order to keep the Council and Community abreast of efforts to retain and enhance library services for the City.

On May 9th, City staff met with County and Library representatives to discuss ongoing concerns over likely cuts in State assistance potential repercussions for the Library system and the Rosalie E. Wahl Library.

Council Member Smith had talked to Molly O'Rourke, Deputy Administrator for Washington County, who was willing to come and discuss library services for the City. According to Ms. O'Rourke, funding of boutique libraries is still included in the county budget; however the unknown level of state revenues this year could cause additional cuts in expenditures.

The Council discussed the key timelines to consider:

- July 1st – Notification to Washington County to allow them to create new taxing districts
- September – City must establish levy amounts for preliminary budget
- December – City must adopt final levy and budget

City Attorney Snyder provided information from a legal prospective if the City wants to establish and maintain a public library service.

MOTION: Council Member Emmons moved to explore the City pulling out of the Washington County system and establishing a municipal library authority and direct city staff to work on a business plan for a municipal library that could operate within available funds (\$248,000) from current levy amount. Mayor Johnston seconded the motion. The motion passed 3-2 (Council Member Smith and Pearson voted against library because it was a waste of staff time for pursuing the business model for an independent library because residents rely heavily on other libraries throughout the system.)

Lake Elmo Avenue Infrastructure Project – I-94 to 30th – Resolutions Accepting Bids and Awarding a Contract

The City Council was requested to consider approving a Resolution accepting bids and awarding the contract for the Lake Elmo Avenue Infrastructure Project, I-94 to 30th Street. TKDA provided a bid tabulation worksheet and a letter of recommendation for the award of the contract. The contract documents allow the City to retain these bids together with their bid security for a period of 60 days (June 19, 2011), before the City must either award the project or reject all bids.

Administrator Messelt, reported the City received official notification from the Metropolitan Council stating they have extended the intermediate deadlines for sewer development to December 31, 2014.

Permanent and temporary utility easements are required from nine separate parcels under the ownership of six property owners. City Attorney Snyder and City Engineer Griffin reported that Trans City Investments has no interest in easement dedication without compensation and Cimarron has not agreed to negotiate with the City.

The consensus of the Council was in order to make an informed decision on the proposed project, it needed to know the cost for obtaining utility easements on the impacted properties.

MOTION: Mayor Johnston moved to direct staff to pursue an appraiser at a cost of \$3,000-\$5,000 to estimate the cost for obtaining easements on the impacted properties. Council Member Smith seconded the motion. The motion passed 5-0.

City Council Reports:

Administrator Messelt reported on his meeting with Peter Tiffany regarding five data points on the MPCA/Washington County Landfill Remedial Project. Messelt has asked Ryan Stempski and Carol Kriegler to work with Mr. Tiffany.

Jack Griffin, City Engineer, reported on the outstanding items in the Sanctuary development, plus addressed the decisions that were made in regard to other items that some residents perceived as incomplete, i.e., the park. Griffin also gave a status update on Prairie Hamlet.

City Planner Klatt introduced Nick Johnson, Planning Intern for 2011.

The City Council adjourned the meeting at 9:40 p.m.

Respectfully submitted by Sharon Lumby, City Clerk



MAYOR & COUNCIL COMMUNICATION

DATE: 06/07/2011
CONSENT
ITEM #: 2
MOTION *as part of Consent Agenda*

AGENDA ITEM: Approve Disbursements in the Amount of \$ 230,685.50

SUBMITTED BY: Tom Bouthilet, Finance Director

THROUGH: Bruce Messelt, City Administrator *BAM*

REVIEWED BY: City Staff

SUMMARY AND ACTION REQUESTED: As part of its Consent Agenda, the City Council is asked to approve disbursements in the amount of \$230,685.50 No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

BACKGROUND INFORMATION: The City of Lake Elmo has fiduciary authority and responsibility to conduct normal business operation. Below is a summary of current claims to be disbursed and paid in accordance with State law and City policies and procedures.

Claim #	Amount	Description
ACH	\$ 7,266.61	Payroll Taxes to IRS 05/19/2011
ACH	\$ 1,267.03	Payroll Taxes to MN Dept. of Revenue 05/19/2011
ACH	\$ 3,912.16	Payroll Retirement to PERA 05/19/2011
DD3346 – DD3372	\$ 24,141.43	Payroll Dated 05/19/2011 (Direct Deposit)
37088 – 37095	\$ 3,339.09	Payroll Dated 05/19/2011
37096 – 37097	\$ 159.36	Replace Voided Check # 37026
ACH	\$ 7,935.71	Payroll Taxes to IRS 06/02/2011
ACH	\$ 1,251.09	Payroll Taxes to MN Dept. of Revenue 06/02/2011
ACH	\$ 3,903.41	Payroll Retirement to PERA 06/02/2011
DD3373 – DD3393	\$ 21,036.14	Payroll Dated 06/02/2011 (Direct Deposit)
37098 - 37107	\$ 24,236.79	Payroll Dated 06/02/2011
37108	\$ 115.30	A/P Dated 06/02/2011 Refund P/R Wisc. Tax
37109 – 37161	\$ 132,121.68	Accounts Payable Dated 06/07/2011
TOTAL	\$ 230,685.80	

STAFF REPORT: City staff has complied and reviewed the attached set of claims. All appears to be in order and consistent with City budgetary and fiscal policies and Council direction

RECOMMENDATION: It is recommended that the City Council approve as part of the Consent Agenda proposed disbursements in the amount of 230,685.80

Alternatively, the City Council does have the authority to remove this item from the Consent Agenda or a particular claim from this item and further discuss and deliberate prior to taking action. If done so, the appropriate action of the Council following such discussion would be:

“Move to approve the June 7th, 2011, Disbursements, as presented [and modified] herein.”

ATTACHMENTS:

1. Accounts Payable Dated 06/07/2011

SUGGESTED ORDER OF BUSINESS (if removed from the Consent Agenda):

- Questions from Council to Staff..... Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor Facilitates
- Action on Motion..... Mayor & City Council

Accounts Payable To Be Paid Proof List

User: JOAN Z
 Printed: 06/02/2011 - 12:45 PM
 Batch: 006-05-2011

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
10 STAR 10 Star Home Builder CHK Req 601-000-0000-37150	05/26/2011	3,900.00	0.00	06/07/2011	Refund WAC Charge 8945 27th Street		-	No		0000
Water Connections - Municipal CHK Req Total: 10 STAR Total:		3,900.00 3,900.00								
ABDO Abdo Eick & Meyers, LLP 279721 101-410-1520-43010	05/06/2011	16,550.00	0.00	06/07/2011	Final Payment for Audit Service 2010		-	No		0000
Audit Services 279721 Total: ABDO Total:		16,550.00 16,550.00								
AMPLAN American Planning Association 169915-101107 101-410-1910-44330	02/22/2011	190.00	0.00	06/07/2011	APA and MnAPA Membership - Matzek		-	No		0000
Dues & Subscriptions 169915-101107 Total: 240871-101107 101-410-1910-44330		190.00 325.00								
Dues & Subscriptions 240871-101107 Total: AMPLAN Total:		325.00 515.00								
ANCOM ANCOM COMMUNICATIONS, INC. 22312 101-420-2220-43230	05/13/2011	311.25	0.00	06/07/2011	Radio charger & Antennas		-	No		0000
Radio 22312 Total: 22489 101-420-2220-43230		311.25 2,869.88								
Radio 22489 Total: 22515 101-420-2220-43230		2,869.88 56.64								
Radio 22515 Total:		56.64								

Invoice #	Inv Date	Amount	Quantity	Print Date	Description	Reference	Task	Type	PO #	Close POLine #
ANCOM Total:		3,237.77								
ARAM Aramark, Inc.	06/01/2011									
629-7231984	06/07/2011	21.29	0.00	06/07/2011	Uniforms					0000
101-430-3100-44170	Uniforms									
629-7231984 Total:		21.29								
629-7236780	05/05/2011	21.29	0.00	06/07/2011	Uniforms					0000
101-430-3100-44170	Uniforms									
629-7236780	05/05/2011	26.61	0.00	06/07/2011	Soap					0000
101-430-3100-42150	Shop Materials									
629-7236780 Total:		47.90								
629-7241451	05/12/2011	21.29	0.00	06/07/2011	Uniforms					0000
101-430-3100-44170	Uniforms									
629-7241451 Total:		21.29								
629-7243212	05/16/2011	75.99	0.00	06/07/2011	Monthly Rug Service Station #2					0000
101-420-2220-44010	Repairs/Maint Bldg									
629-7243212 Total:		75.99								
629-7243213	05/16/2011	75.31	0.00	06/07/2011	Monthly Rug Service Station #1					0000
101-420-2220-44010	Repairs/Maint Bldg									
629-7243213 Total:		75.31								
629-7246185	05/19/2011	21.29	0.00	06/07/2011	Uniforms					0000
101-430-3100-44170	Uniforms									
629-7246185 Total:		21.29								
629-7247938	05/23/2011	115.70	0.00	06/07/2011	Lineh City Hall					0000
101-410-1940-44010	Repairs/Maint Contractual Bldg									
629-7247938 Total:		115.70								
629-7247939	05/23/2011	52.40	0.00	06/07/2011	Lineh City Hall Annex					0000
101-410-1940-44010	Repairs/Maint Contractual Bldg									
629-7247939 Total:		52.40								
ARAM Total:		431.17								
ASPENMI Aspen Mills, Inc.										
108230	05/09/2011	132.47	0.00	06/07/2011	Uniform Items; Steve Rutkowski					0000
101-420-2220-44170	Uniforms									
108230 Total:		132.47								
ASPENMI Total:		132.47								
BIFFS Biff's Inc.										
Multiple	05/04/2011	577.98	0.00	06/07/2011	Portable Restrooms					0000
101-450-5200-44120	Rentals - Buildings									
Multiple Total:		577.98								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
BIFFS Total: 577.98										
C&J CONS C & J Consulting Services, LLP										
May 2011	06/02/2011	2,212.50	0.00	06/07/2011	Monthly Acctg Services - May 2011		-	No		0000
101-410-1520-43150	Contract Services	2,212.50								
May 2011 Total: 2,212.50										
C&J CONS Total: 2,212.50										
CATCO Catco										
1-96192	05/16/2011	96.60	0.00	06/07/2011	Repair parts for E1, T1		-	No		0000
101-420-2220-44040	Repairs/Maint Eqpt	96.60								
1-96192 Total: 96.60										
CATCO Total: 96.60										
CENCOLLE Century College										
417225	05/26/2011	641.84	0.00	06/07/2011	FFII, Lairy Cornell & Pete Zierner		-	No		0000
101-420-2220-44370	Conferences & Training	641.84								
417225 Total: 641.84										
CENCOLLE Total: 641.84										
COMPENSA Compensation Consultants, Ltd										
June	05/31/2011	40.00	0.00	06/07/2011	Monthly Admin Fee June 2011		-	No		0000
101-410-1320-44300	Miscellaneous	40.00								
June Total: 40.00										
COMPENSA Total: 40.00										
CTYBLOOM City of Bloomington										
April 2011	04/29/2011	40.00	0.00	06/07/2011	Lab Bacteria Tests		-	No		0000
601-494-9400-42270	Utility System Maintenance	40.00								
April 2011 Total: 40.00										
CTYBLOOM Total: 40.00										
CTYOAKDA City of Oakdale										
10000460-01	05/31/2011	9,835.71	0.00	06/07/2011	Water Service 194		-	No		0000
601-494-9400-43820	Water Utility	9,835.71								
10000460-01 Total: 9,835.71										
CTYOAKDA Total: 9,835.71										

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
ECKBERG Eckberg Lamers Briggs Wolff 04-2011 101-420-2150-43045 Attorney Criminal 04-2011 Total: ECKBERG Total:	04/30/2011	300.00	0.00	06/07/2011	Balance due on 4/30/11 Invoice		-	No		0000
EMERGAUT Emergency Automotive tech, Inc 10370 410-480-8000-45300 Improvements Other Than Bldgs 10370 Total: EMERGAUT Total:	05/19/2011	105.00	0.00	06/07/2011	Repair Siren on B2		-	No		0000
EMMONS A Emmons Alex 05/17/2011 101-410-1450-43620 Cable Operations 05/17/2011 Total: EMMONS A Total:	05/17/2011	55.00	0.00	06/07/2011	City Council Meeting 5/17/11		-	No		0000
FASTENAL Fastenal MNT1125949 101-450-5200-42150 Shop Materials MNT1125949 Total: FASTENAL Total:	04/28/2011	52.04	0.00	06/07/2011	Cable Ties		-	No		0000
FXL FXL, Inc. June 101-410-1320-43100 Assessing Services June Total: FXL Total:	06/01/2011	2,000.00	0.00	06/07/2011	Assessing Services - June 2011		-	No		0000
GOPHER Gopher State One-Call 14731 101-430-3100-43150 Contract Services 14731 Total: GOPHER Total:	06/01/2011	258.20	0.00	06/07/2011	Line Locates - May 2011		-	No		0000
GORMANS GORMANS RESTAURANT 05/07/2011 101-420-2220-44300 Miscellaneous 05/07/2011 Total:	05/07/2011	102.00	0.00	06/07/2011	Meal for overnight standby crew		-	No		0000

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
GORMANS Total:		102.00								
KDV Kern DeWenter Viere Ltd 128614 101-410-1520-43150 Contract Services	04/26/2011	5,886.00	0.00	06/07/2011	Financial Services May 2011		-	No		0000
128614 Total:		5,886.00								
KDV Total:		5,886.00								
KLATT Klatt Kyle 04/19/2011 101-410-1910-42000 Office Supplies	04/19/2011	19.99	0.00	06/07/2011	Reimbursement for Wireless Mouse		-	No		0000
04/19/2011 Total:		19.99								
KLATT Total:		19.99								
Landscap LANDSCAPE ARCHITECTURE INC. Final Invoice 01/08/2011 203-490-9070-43150 Contract Services	01/08/2011	1,153.50	0.00	06/07/2011	Sanctuary Dev Agreement Closeout		-	No		0000
Final Invoice Total:		1,153.50								
Landscap Total:		1,153.50								
LINNER Linner Electric Company, Inc. 21609 101-430-3100-44030 Repairs/Maint Imp Not Bids	05/31/2011	6,100.00	0.00	06/07/2011	Electric Work New Entrance Sign on Keats		-	No		0000
21609 Total:		6,100.00								
LINNER Total:		6,100.00								
MCFOA MCFOA CHK REQ 101-410-1320-44330 Dues & Subscriptions	06/01/2011	35.00	0.00	06/07/2011	Annual Membership Renewal - C. Luczak		-	No		0000
CHK REQ Total:		35.00								
MCFOA Total:		35.00								
MCNAMARA McNamara Meg CHK Req 101-000-0000-32260 Burning Permit	05/26/2011	45.00	0.00	06/07/2011	Refund for Denied Burn Permit		-	No		0000
CHK Req Total:		45.00								
MCNAMARA Total:		45.00								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
McPhilli Mike McPhillips Inc										
38160	05/05/2011	8,768.50	0.00	06/07/2011	Street Sweeping (SW Protection)		-	No		0000
603-496-9500-44010	Street Sweeping	8,768.50								
	38160 Total:	8,768.50								
	McPhilli Total:	8,768.50								
MENARDSO Menards - Oakdale										
71147	05/17/2011	4.14	0.00	06/07/2011	JB Weld		-	No		0000
101-430-3100-42150	Shop Materials	4.14								
	71147 Total:	4.14								
73971	05/25/2011	12.76	0.00	06/07/2011	Weed & Feed		-	No		0000
101-430-3100-42150	Shop Materials	12.76								
	73971 Total:	12.76								
	MENARDSO Total:	16.90								
METROFIR Metro Fire										
41022	05/11/2011	80.91	0.00	06/07/2011	Helmet front X 2		-	No		0000
101-420-2220-42400	Small Tools & Equipment	80.91								
	41022 Total:	80.91								
41064	05/17/2011	825.00	0.00	06/07/2011	Restock Class A Foam, 11 pails		-	No		0000
101-420-2220-42400	Small Tools & Equipment	825.00								
	41064 Total:	825.00								
	METROFIR Total:	905.91								
MILLEREX Miller Excavating, Inc.										
15448	04/29/2011	1,968.48	0.00	06/07/2011	Water Main Excavation		-	No		0000
601-494-9400-44030	Repairs/Maint Imp Not Bldgs	1,968.48								
	15448 Total:	1,968.48								
	MILLEREX Total:	1,968.48								
MNDOH MN Department of Health										
06/01/2011	06/01/2011	1,508.00	0.00	06/07/2011	2nd Qtr Water Connection Service		-	No		0000
601-494-9400-44300	Miscellaneous	1,508.00			Supply					
	06/01/2011 Total:	1,508.00								
	MNDOH Total:	1,508.00								
MSFCB MN Fire Service Cert. Board										
883, 898	05/19/2011	25.00	0.00	06/07/2011	FFI Retest		-	No		0000
101-420-2220-44330	Dues & Subscriptions	25.00								
883, 898	05/19/2011	150.00	0.00	06/07/2011	FFI test x 2		-	No		0000
101-420-2220-44330	Dues & Subscriptions	150.00								

Invoice #	Inv Date	Amount	Quantity	Print Date	Description	Reference	Task	Type	PO #	Close POLine #
883,898 Total:		175.00								
MSFCB Total:		175.00								
NEXTEL Nextel Communications										
761950227-098	05/15/2011	68.58	0.00	06/07/2011	Cell Phone Service - Administration		-	No		0000
101-410-1940-43210	Telephone									
761950227-098	05/15/2011	53.11	0.00	06/07/2011	Cell Phone Service - Fire Department		-	No		0000
101-420-2220-43210	Telephone									
761950227-098	05/15/2011	17.56	0.00	06/07/2011	Cell Phone Service - Building Department		-	No		0000
101-420-2400-43210	Telephone									
761950227-098	05/15/2011	35.12	0.00	06/07/2011	Cell Phone Service - Public Works Dept		-	No		0000
101-430-3100-43210	Telephone									
761950227-098	05/15/2011	53.20	0.00	06/07/2011	Cell Phone Service - Parks Dept		-	No		0000
101-450-5200-43210	Telephone									
761950227-098 Total:		227.57								
NEXTEL Total:		227.57								
NORTH100 HSBC Business Solutions										
563000917	04/26/2011	42.83	0.00	06/07/2011	Tie Downs		-	No		0000
101-430-3100-42400	Small Tools & Minor Equipment									
563000917 Total:		42.83								
NORTH100 Total:		42.83								
NORTHWAY Northway Irrigation										
13055	05/18/2011	214.80	0.00	06/07/2011	Irrigation repair-plow ran off the road		-	No		0000
101-430-3125-43150	Contract Services									
13055 Total:		214.80								
NORTHWAY Total:		214.80								
OAKDRC Oakdale Rental Center										
10075716	05/02/2011	73.73	0.00	06/07/2011	Propane - Patching Trailer		-	No		0000
101-430-3100-42240	Street Maintenance Materials									
10075716 Total:		73.73								
OAKDRC Total:		73.73								
OFFICESU Office Supplies & Equipment										
3249	05/06/2011	24.85	0.00	06/07/2011	Inspection/Daily Call log book		-	No		0000
101-420-2400-42000	Office Supplies									
3249 Total:		24.85								

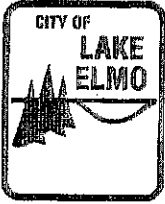
Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
	OFFICESU Total:	24.85								
PIONEERI Pioneer Rim & Wheel Company										
1-106233	04/26/2011	4.02	0.00	06/07/2011	Grease Cap			No		0000
101-430-3100-42210	Equipment Parts	4.02								
	1-106233 Total:	4.02								
	PIONEERI Total:	4.02								
PLANTH PLANT HEALTH ASSOCIATES, INC										
1045-11	06/01/2011	1,750.00	0.00	06/07/2011	Forester Services - May 2011			No		0000
101-430-3250-43150	Contract Services	1,750.00								
	1045-11 Total:	1,750.00								
	PLANTH Total:	1,750.00								
PLUNKETT Plunkett's Pest Control										
2357734	06/01/2011	83.36	0.00	06/07/2011	Pest Control Service - City Hall			No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg	83.36								
	2357734 Total:	83.36								
	PLUNKETT Total:	83.36								
POSTOFFI POSTMASTER										
05/24/2011	05/24/2011	500.00	0.00	06/07/2011	Clean up Flyer			No		0000
101-410-1320-43220	Postage	500.00								
	05/24/2011 Total:	500.00								
	POSTOFFI Total:	500.00								
PRESSA Anastasia Press										
05/23/2011	06/01/2011	55.00	0.00	06/07/2011	Planning Commission Meeting 5/23/11			No		0000
101-410-1450-43620	Cable Operations	55.00								
	05/23/2011 Total:	55.00								
	PRESSA Total:	55.00								
RUD Prince-Rud Diane										
05/19/2011	06/01/2011	160.00	0.00	06/07/2011	Cleaning City Hall & Annex 5/16, 5/23			No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg	160.00								
05/19/2011	06/01/2011	120.00	0.00	06/07/2011	Cleaning Fire Hall 5/16, 5/23			No		0000
101-420-2220-44010	Repairs/Maint Bldg	120.00								
	05/19/2011 Total:	280.00								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close PO Line #
	RUD Total:	280.00								
S&T S&T Office Products, Inc.										
01OP0394	05/09/2011	233.40	0.00	06/07/2011	Office Supplies			No		0000
101-410-1520-42000	Office Supplies									
	01OP0394 Total:	233.40								
01OP7694	05/26/2011	468.31	0.00	06/07/2011	Office Supplies			No		0000
101-410-1320-42000	Office Supplies									
	01OP7694 Total:	468.31								
01OP8148	05/27/2011	4.61	0.00	06/07/2011	Office Supplies			No		0000
101-410-1320-42000	Office Supplies									
	01OP8148 Total:	4.61								
	S&T Total:	706.32								
SAMSCLUB Sam's Club										
1213	05/19/2011	70.70	0.00	06/07/2011	Station Supplies			No		0000
101-420-2220-44010	Repairs/Maint Bldg									
1213	05/19/2011	7.96	0.00	06/07/2011	Planning Dept Mtg Supplies			No		0000
101-410-1910-42000	Office Supplies									
	1213 Total:	78.66								
2244	05/11/2011	135.44	0.00	06/07/2011	Restock Rehab Supplies from Fire			No		0000
101-420-2220-44300	Miscellaneous									
	2244 Total:	135.44								
	SAMSCLUB Total:	214.10								
SENSUS SENSUS USA										
ZA12001267	05/04/2011	1,452.00	0.00	06/07/2011	Annual Water Software Support			No		0000
601-494-9400-43180	Software Support				Renewal					
	ZA12001267 Total:	1,452.00								
	SENSUS Total:	1,452.00								
TASCH T.A. Schifsky & Sons Inc										
51098	04/20/2011	509.59	0.00	06/07/2011	Asphalt			No		0000
101-430-3120-42240	Street Maintenance Materials									
	51098 Total:	509.59								
51224	05/09/2011	256.07	0.00	06/07/2011	Asphalt			No		0000
101-430-3120-42240	Street Maintenance Materials									
	51224 Total:	256.07								
	TASCH Total:	765.66								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
TDS TDS METROCOM - LLC										
651-779-8882	06/02/2011	157.99	0.00	06/07/2011	Analog Lines - Fire		-	No		0000
101-420-2220-43210	Telephone									
651-779-8882	06/02/2011	155.97	0.00	06/07/2011	Analog Lines - Public Works		-	No		0000
101-430-3100-43210	Telephone									
651-779-8882	06/02/2011	104.97	0.00	06/07/2011	Analog Lines - Lift Station Alarms		-	No		0000
602-495-9450-43210	Telephone									
651-779-8882	06/02/2011	42.31	0.00	06/07/2011	Alarm - Well House #2		-	No		0000
601-494-9400-43210	Telephone									
651-779-8882 Total:										
TDS Total:										
TESSMAN Tessman Company Corp										
S143294-IN	05/24/2011	79.64	0.00	06/07/2011	Herbicide		-	No		0000
101-450-5200-42160	Chemicals									
S143294-IN Total:										
TESSMAN Total:										
TKDA TKDA, Inc.										
002011001189	04/30/2011	394.75	0.00	06/07/2011	Development - Whistling Valley III		-	No		0000
203-490-9070-43030	Engineering Services									
002011001189 Total:										
002011001190	04/30/2011	394.75	0.00	06/07/2011	Development - Sanctuary		-	No		0000
203-490-9070-43030	Engineering Services									
002011001190 Total:										
002011001191	04/30/2011	413.68	0.00	06/07/2011	Development - Village Sanitary		-	No		0000
413-480-8000-43030	Engineering Services									
002011001191 Total:										
002011001192	04/30/2011	24,171.44	0.00	06/07/2011	TH 5 & Jamaica Ave Roundabout		-	No		0000
417-480-8000-43030	Engineering Services									
002011001192 Total:										
002011001193	04/30/2011	48.68	0.00	06/07/2011	Lake Elmo Water Systems Strategies		-	No		0000
601-494-9400-43030	Engineering Services									
002011001193 Total:										
002011001194	04/30/2011	1,917.62	0.00	06/07/2011	2011 Street Improvement/Water Quality		-	No		0000
418-480-8000-43030	Engineering Services									
002011001194 Total:										
002011001196	04/30/2011	4,981.39	0.00	06/07/2011	General Engineering - VRA		-	No		0000
101-420-2400-43030	Engineering									
002011001196 Total:										
002011001199	04/30/2011	1,684.82	0.00	06/07/2011	General Engineering - VRA		-	No		0000
101-410-1910-43030	Engineering Services									
002011001199 Total:										
002011001196	04/30/2011	1,558.01	0.00	06/07/2011	General Engineering - VRA		-	No		0000
101-410-1930-43030	Engineering Services									
002011001196 Total:										
002011001196	04/30/2011	1,163.06	0.00	06/07/2011	General Engineering - VRA		-	No		0000
101-410-1930-43030	Engineering Services									

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
002011001196	04/30/2011	3,811.56	0.00	06/07/2011	General Engineering - VRA		-	No		0000
409-480-8000-43030	Engineering Services									
002011001196	04/30/2011	1,465.70	0.00	06/07/2011	General Engineering - VRA		-	No		0000
601-494-9400-43030	Engineering Services									
002011001196	04/30/2011	1,178.62	0.00	06/07/2011	General Engineering - VRA		-	No		0000
602-495-9450-43030	Engineering Services									
002011001196	04/30/2011	4,745.06	0.00	06/07/2011	General Engineering - VRA		-	No		0000
603-496-9500-43030	Engineering Services									
002011001197	04/30/2011	15,606.83	0.00	06/07/2011	2011 Seal Coat Project		-	No		0000
409-480-8000-43030	Engineering Services									
002011001197	04/30/2011	1,059.20	0.00	06/07/2011	General Engineering		-	No		0000
101-430-3100-43030	Engineering Services									
00201101195	04/30/2011	97.33	0.00	06/07/2011	General Engineering		-	No		0000
101-410-1930-43030	Engineering Services									
00201101195	04/30/2011	4,456.00	0.00	06/07/2011	General Engineering		-	No		0000
101-410-1910-43030	Engineering Services									
00201101195	04/30/2011	1,067.85	0.00	06/07/2011	General Engineering		-	No		0000
101-410-1910-43030	Engineering Services									
00201101195	Total:	5,621.18								
TKDA	Total:	54,214.77								
USBANK US Bank Trust										
33402400	07/01/2011	920.00	0.00	06/07/2011	Interest GO Improvement Bond 2002A		-	No		0000
312-480-8000-46110	Bond Interest									
33402400	Total:	920.00								
USBANK	Total:	920.00								
WATERCON Water Conservation Services In										
2491	04/26/2011	225.50	0.00	06/07/2011	Leak Detection Service		-	No		0000
601-494-9400-44300	Miscellaneous									
2491	Total:	225.50								
WATERCON	Total:	225.50								
XCEL Xcel Energy										
51-4572945-7	06/01/2011	25.34	0.00	06/07/2011	Jamely Street Lights		-	No		0000
101-430-3160-43810	Street Lighting									
51-4572945-7	Total:	25.34								
51-4576456-3	06/01/2011	338.37	0.00	06/07/2011	Fire Station #2		-	No		0000
101-420-2220-43810	Electric Utility									
51-4580376-5	06/01/2011	338.37	0.00	06/07/2011	City Hall		-	No		0000
101-410-1940-43810	Electric Utility									

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
51-4580376-5	06/01/2011	219.29	0.00	06/07/2011	Traffic Lights Keats		-			0000
101-430-3160-43810	Street Lighting									
	51-4580376-5 Total:	495.90								
51-4733556-8	06/01/2011	10.16	0.00	06/07/2011	Tennis Courts		-			0000
101-450-5200-43810	Electric Utility									
	51-4733556-8 Total:	10.16								
51-5044219-0	06/01/2011	55.65	0.00	06/07/2011	Parks Building		-			0000
101-450-5200-43810	Electric Utility									
	51-5044219-0 Total:	55.65								
51-522332-2	06/01/2011	38.81	0.00	06/07/2011	Traffic Lights - Inwood		-			0000
101-430-3160-43810	Street Lighting									
	51-522332-2 Total:	38.81								
51-5747685-4	06/01/2011	78.77	0.00	06/07/2011	Arts Center		-			0000
101-450-5200-43810	Electric Utility									
	51-5747685-4 Total:	78.77								
51-5916043-7	06/01/2011	18.25	0.00	06/07/2011	Lift Station		-			0000
602-495-9450-43810	Electric Utility									
	51-5916043-7 Total:	18.25								
51-6429583-8	06/01/2011	16.28	0.00	06/07/2011	Lift Station		-			0000
602-495-9450-43810	Electric Utility									
	51-6429583-8 Total:	16.28								
51-6433976-2	06/01/2011	246.08	0.00	06/07/2011	Fire Station #1		-			0000
101-420-2220-43810	Electric Utility									
	51-6433976-2 Total:	246.08								
51-6625457-1	06/01/2011	41.67	0.00	06/07/2011	Legion Park		-			0000
101-450-5200-43810	Electric Utility									
	51-6625457-1 Total:	41.67								
51-6928283-3	06/01/2011	30.77	0.00	06/07/2011	Traffic Lights - Manning		-			0000
101-430-3160-43810	Street Lighting									
	51-6928283-3 Total:	30.77								
51-7538112-1	06/01/2011	754.51	0.00	06/07/2011	Public Works		-			0000
101-430-3100-43810	Electric Utility									
	51-7538112-1 Total:	754.51								
51-8711719-3	06/01/2011	10.17	0.00	06/07/2011	Speed Sign Hwy 5		-			0000
101-430-3160-43810	Street Lighting									
	51-8711719-3 Total:	10.17								
	XCEL Total:	2,160.73								
	Report Total:	132,121.68								



MAYOR & COUNCIL COMMUNICATION

DATE: 6/7/2011
REGULAR
ITEM #: 3
MOTION Ordinances 08-044 A & B
RESOLUTION 2011-021

AGENDA ITEM: Draft Amendment to Fence Ordinance

SUBMITTED BY: Kelli Matzek, City Planner

THROUGH: Bruce Messelt, City Administrator *BMM*

REVIEWED BY: Lake Elmo Planning Commission
Kyle Klatt, Planning Director

SUMMARY AND ACTION REQUESTED: The City Council is respectfully requested to review the attached ordinance that has been drafted to allow solid fences up to 72 inches in height on residential properties where the rear yard is adjacent to high traffic roadways under certain circumstances. The recommended motion to act on this is as follows:

“Move to approve Ordinance 08-044(B) amending the Fence Ordinance, as recommended by the Planning Commission and Resolution 2011-021 allowing summary publication of the ordinance.”

BACKGROUND INFORMATION: At the May 3, 2011 City Council meeting, the Council directed staff to draft an ordinance amending the fence ordinance to allow solid fences to be constructed up to 72 inches in height for those lot lines abutting major roadways on through (double frontage) lots. The ordinance, as drafted in the Option A, allows solid fences in the rear yards of through lots that abut roads classified as a principal arterial (such as Highway 36), an A minor arterial (such as Manning Avenue south of Highway 5) or a B minor arterial (Lake Elmo Avenue between Highway 5 and 10th Street). A map showing the road classifications is attached.

Staff also used this opportunity to make other corrections and updates to the ordinance. For example, a paragraph was added identifying the need for an Easement Encroachment Agreement when improvements, such as a fence, are proposed to be constructed within an easement held by the City. In addition, Staff has recommended adding some additional provisions to clarify the intent of the section concerning screening fences.

PLANNING COMMISSION REPORT: The Planning Commission reviewed the draft ordinance, held a public hearing and provided a recommendation that included amendments to the draft ordinance allowing a solid fence to be constructed up to 72 inches in height along those same roadways previously identified, but **also** when it is a side or corner yard. The ordinance as recommended by the Planning Commission is attached as Ordinance 08-044(B). The draft Planning Commission minutes are attached for review by the Council.

The Commission generally found that if screening fences were allowed on through lots that abut major roadways, then it should also be acceptable to allow such fences along corner lots that are located adjacent to the same types of roadways.

RECOMMENDATION: Based upon the above background information, Planning Commission recommendation and staff report, it is recommended that the City Council approve an amendment to the fence ordinance by undertaking the following action

“Move to approve Ordinance 08-044 (B) as recommended by the Planning Commission and Resolution 2011-021 allowing summary publication of the ordinance.”

Alternatively, the City Council may approve Ordinance 08-044 (A), as originally recommended by Staff and discussed by the City Council. The Council may also provide alternative language to incorporate, as part of either of the draft Ordinances.

ATTACHMENTS:

1. Ordinance 08-044(A) (City Council Direction)
2. Ordinance 08-044 (B) (Planning Commission recommendation)
3. Resolution 2011-021
4. Figure 2: Existing Functional Classification; Comprehensive Transportation Plan
5. Planning Commission Minutes (Draft)
6. Existing Unchanged Ordinances Related to Fences

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation..... Planning Director
- Questions from Council to Staff Mayor Facilitates
- Public Input, if Appropriate Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor Facilitates
- Action on Motion..... Mayor & City Council

**CITY OF LAKE ELMO
 COUNTY OF WASHINGTON
 STATE OF MINNESOTA**

ORDINANCE NO. 08-044A

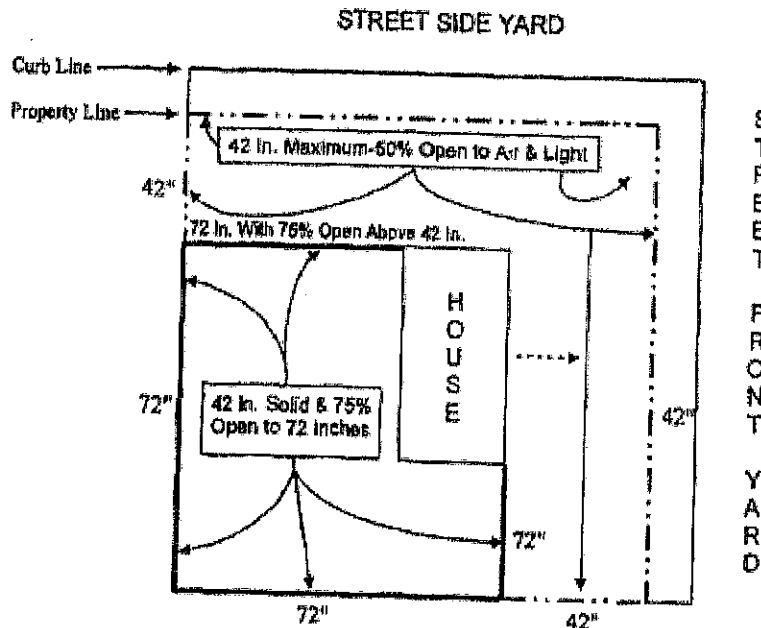
AN ORDINANCE AMENDING THE FENCE REQUIREMENTS OF SECTION 154.120 THROUGH SECTION 154.128 TO ALLOW SOLID FENCES IN CERTAIN SITUATIONS AND TO CLARIFY THE INTENT OF OTHER SECTIONS

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code, by amending the following language:

§ 154.120 FENCE HEIGHT AND LOCATION.

(A) *Fence height in street setbacks.* No fence shall be constructed exceeding 42 inches in height measured from grade within any front, side (corner), or rear street setback. Fences constructed within the prescribed street setback areas shall be at least 50% open to air and light. (See Figure 154.120)

Figure 154.120: Height of Fencing



(B) *Fence height in interior yards.* No fence shall be constructed exceeding 72 inches in height measured from grade in interior yards; and, any portion of such fence

above 42 inches measured from grade shall be open to light and air over 75% of the surface area.

(C) Fences on double front through lots.

(1) Lots with ~~fronting~~ frontage along improved public streets at both the rear yard and the front yard (through lots) may apply the standards of division (B) above for fences paralleling the rear yard.

(2) When the rear property line of a through lot abuts a public street classified as either a principal arterial, A minor arterial, or B minor arterial in the City's Transportation Plan, a fence parallel to that property line may be constructed up to 72 inches in height, but is not required to be open to light and air. A corner lot must continue to meet safety requirements of 96.03 (B) 19 regarding the obstruction of view of traffic.

(D) *Grade defined.* The grade from which fence height measurements are calculated shall only be from either natural grade or grade modified responsive to a grading plan approved by the city; and, shall not include the height of berms or introduced increases in ground elevation that would raise the effective fence height over that which would be otherwise permitted by this subchapter, except that a combination of raised grade and fence that would exceed in sum the fence height permitted by this section may be specifically approved by the City Council as an element of a subdivision plat or commercial site plan approval establishing specific property grading and topography.

(E) Easement encroachment. Where allowed by other divisions of the fence ordinance and other applicable sections, a fence may be constructed up to one foot off a property line unless an easement is present or it is determined a fence would obstruct a drainage area. An Easement Encroachment Agreement, along with a fence permit, allows a fence to be constructed within a city easement after it has been reviewed and approved by the City Engineer and City Council and the applicable fee has been received.

(Ord. 97-137, passed 8-4-2004)

§ 154.121 MATERIALS.

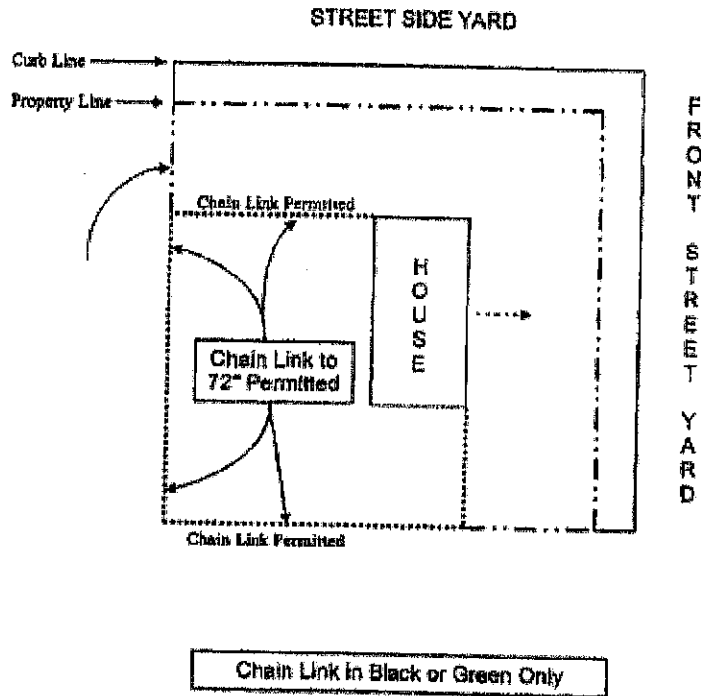
(A) *Permitted fence materials.* Permitted fence materials shall be limited to brick, stone, wood planks, split rail, wrought iron, and as regulated by § 154.123. Vinyl or composite material fences shall also be permitted.

(B) *Finished face of fence.* That side of the fence considered to be the face (finished side as opposed to structural supports and frame) shall face abutting property and public streets.

(C) *Chain link or cyclone fences.* Chain link, and wire mesh fences are permitted to a maximum height of 72 inches measured from grade. No chain link, cyclone or wire

mesh fence shall be permitted in any front, side (corner), or rear street setback. (See Figure 154.121)

Figure 154.121: Cyclone/Chain Link Fencing



(Ord. 97-137, passed 8-4-2004)

§ 154.122 FENCES IN THE SHORELAND OVERLAY DISTRICT.

No fence shall be permitted in the OHW setback of any parcel located in Shoreland, as defined by § 11.01, except where the principal structure is entirely located within the OHW setback. Where the principal structure is at least partially located within the OHW setback, fences complying with the standards of § 154.120(B) may be constructed within the side yard area of the principal structure, but not extending beyond the front and rear exterior walls of the principal structure. Decks, porches and landings of any type shall not be considered a part of the principal structure for the purpose of determining allowable fence.

(Ord. 97-137, passed 8-4-2004)

§ 154.123 TEMPORARY FENCES.

(A) *Defined.* For the purposes of this subchapter temporary fences are those that are installed and removed on a seasonal basis, such as snow fences and garden fences.

Temporary fences shall be open to light and air over not less than 40% of the fence surface area.

(B) *Duration and limitation.* No snow fence shall or posts therefore shall be installed prior to November 1, and must be removed prior to April 15.

(C) *Height and location.* Temporary fences shall comply with the fence and fence location standards of § 154.120, except that snow fences shall be set back at least 50 feet from any south or east property line, or such additional distance as may be required to prevent the accumulation of snow on public streets or adjoining property, as determined by the Building Official.

(Ord. 97-137, passed 8-4-2004)

§ 154.124 AGRICULTURAL EXEMPTION.

Fences constructed on parcels in excess of 5 acres for the keeping of horses; and fences constructed on parcels in excess of 10 acres for the keeping of other livestock, as defined by § 11.01, are specifically exempted from the provisions of this subchapter. Any such agricultural fencing shall be at least 75% open to air and light.

(Ord. 97-137, passed 8-4-2004)

§ 154.125 FENCES AS SCREENING AND SECURITY, AS REQUIRED.

(A) *Generally.* The Lake Elmo City Code and this chapter include prescribed physical circumstances of a site where screening of uses, equipment, and outside storage is required. In those prescribed circumstances, fence not to exceed 72 inches in height measured from grade may be installed, subject to the following standards:

(1) Required fences for screening and security purposes in Agricultural and Residential zoning districts shall be set back from all property lines equal to the required structure set back of the zoning district in which they are located, except where residential zoned lots share a common property line with commercial uses, or commercial zoning districts and only on the common property line between the residential and commercial parcels.

(Am. Ord. 97-169, passed 5-2-2006)

(2) The provisions of § 154.120 regarding fence height measurement from grade shall apply. No combination of earthen berm and fence may exceed the 72-inch maximum height for screening.

(3) Materials used for screening shall be limited to those specified by § 154.121.

- (4) No such screening shall be roofed or covered in any manner.

(Ord. 97-137, passed 8-4-2004)

(5) Solid fence not to exceed 72 inches in height measured from grade may be installed, subject to the following standards:

(a) The total area of any parcel enclosed by solid fencing shall not exceed the maximum allowable area for an accessory structure in the zoning district in which the parcel is located, less the sum of the area of any accessory structures located on the same tax parcel.

(b) The area enclosed by screen fencing shall maintain a ratio of width to length of no greater than 2:1. (See § 154.093).

(c) A screening fence that is not enclosed may be allowed provided the total length of said fence does not exceed the perimeter of the largest accessory building permitted in the zoning district in which the parcel is located, less the sum of the area (or perimeter) of any accessory structures located on the same tax parcel.

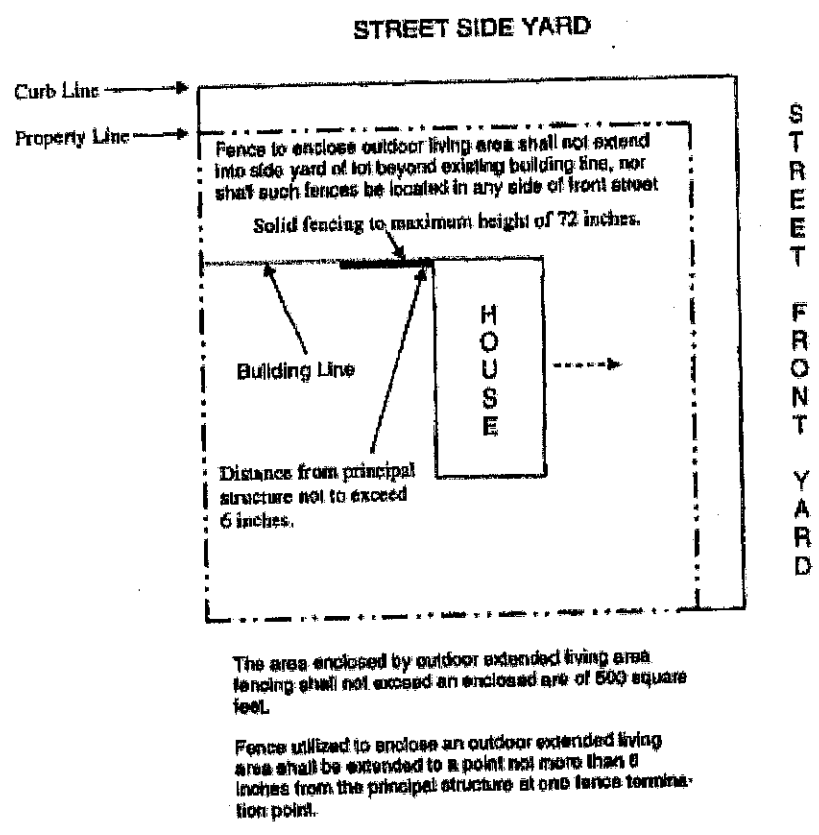
(B) *Outdoor living area extensions.* Solid fencing to a maximum height of 72 inches may be used to enclose outdoor extended living areas of a principal structure, subject to the following standards:

(1) The area enclosed by outdoor extended living area fencing shall not exceed an enclosed area of 500 square feet.

(2) Fence utilized to enclose an outdoor extended living area shall be extended to a point not more than 6 inches from the principal structure at 1 fence termination point.

(3) Fence utilized to enclose an outdoor extended living area shall not extend into side yard of a lot beyond the existing building line of the existing principal structure, nor shall such fences be located in any side or front street yard. (See Figure 154.125)

Figure 154.125: Fencing for Outdoor Living Area



(Am. Ord. 97-155, passed 4-19-2005)

§ 154.126 PERMITS REQUIRED.

(A) Except as noted herein, installation of all fences requires a fence permit issued by the City of Lake Elmo. This permit shall be applied for on such forms, include such documentation, and include such fees to the city for processing as may be prescribed from time to time by the City Council. Fences exempt from requiring an installation permit are limited to the following:

(1) Fences of any type installed for the sole purpose of the keeping of domestic farm animals, as defined by § 11.01, and regulated by § 154.104(E) of this Code. All such fences shall be removed by the property owner within 6 months of the termination of the keeping of domestic farm animals, unless an extension is specifically authorized by City Council action; and

(2) Fences of any type installed by municipal, county or state governments and public utilities for facility security or the delineation and/or protection of public rights-of-way.

(B) Failure to obtain a city fence permit prior to the installation of any fence subject to this regulation shall result in an automatic double permit fee, in addition to any

corrective measures to bring the fence into compliance with the standards for fences prescribed by this chapter.

(Ord. 97-137, passed 8-4-2004)

§ 154.127 FENCES AS NON-CONFORMING/HAZARDOUS STRUCTURES.

Fences shall be considered to be structures for the purposes of applying the terms of the non-conforming structure provisions of this chapter, and the hazardous structures provisions of city code and state statute.

(Ord. 97-137, passed 8-4-2004)

§ 154.128 OTHER PROVISIONS; CONFLICTS.

To the extent that provisions of this chapter may conflict with other provisions of the city code regarding the regulation of fences and screening, the provisions of this chapter only shall apply.

(Ord. 97-137, passed 8-4-2004)

SECTION 3. Effective Date

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

SECTION 4. Adoption Date

This Ordinance No. 08-044 was adopted on this 7th day of June 2011, by a vote of ___ Ayes and ___ Nays.

Mayor Dean A. Johnston

ATTEST:

Bruce Messelt
City Administrator

This Ordinance No 08-044 was published on the ____ day of _____,
2011

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-044B

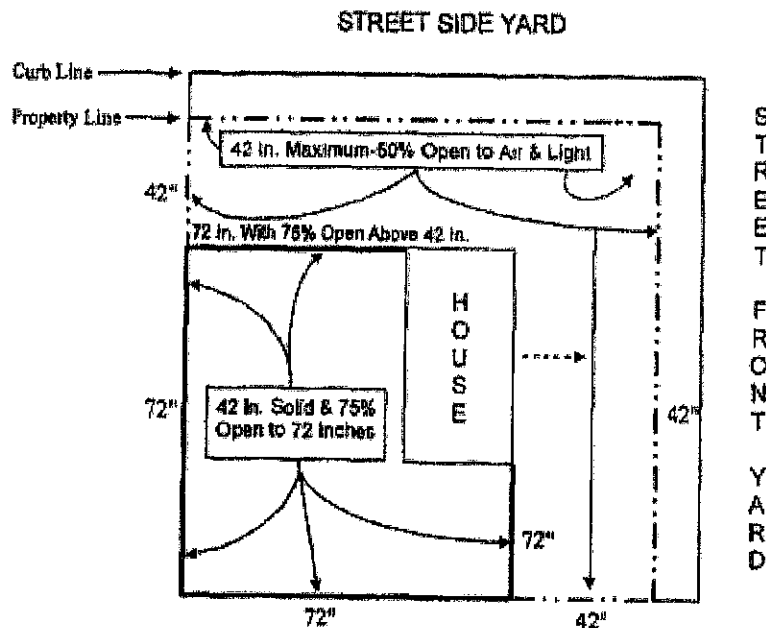
AN ORDINANCE AMENDING THE FENCE REQUIREMENTS OF
SECTION 154.120 THROUGH SECTION 154.128 TO ALLOW
SOLID FENCES IN CERTAIN SITUATIONS AND TO CLARIFY
THE INTENT OF OTHER SECTIONS

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV:
Land Usage; Chapter 154: Zoning Code, by amending the following language:

§ 154.120 FENCE HEIGHT AND LOCATION.

(A) *Fence height in street setbacks.* No fence shall be constructed exceeding 42 inches in height measured from grade within any front, side (corner), or rear street setback. Fences constructed within the prescribed street setback areas shall be at least 50% open to air and light. (See Figure 154.120)

Figure 154.120: Height of Fencing



(B) *Fence height in interior yards.* No fence shall be constructed exceeding 72 inches in height measured from grade in interior yards; and, any portion of such fence

above 42 inches measured from grade shall be open to light and air over 75% of the surface area.

(C) Fences on double front corner and through lots.

(1) Lots with fronting frontage along improved public streets at both the rear yard and the front yard, or along both the side yard and front yard, may apply the standards of division (B) above for fences paralleling the rear or side yards.

(2) When the rear property line of a through lot, or the street-side property line of a corner lot, abuts a public street classified as either a principal arterial, A minor arterial, or B minor arterial in the City's Transportation Plan, a fence parallel to that property line may be constructed up to 72 inches in height, but is not required to be open to light and air. A corner lot must continue to meet safety requirements of 96.03 (B) 19 regarding the obstruction of view of traffic.

(D) *Grade defined.* The grade from which fence height measurements are calculated shall only be from either natural grade or grade modified responsive to a grading plan approved by the city; and, shall not include the height of berms or introduced increases in ground elevation that would raise the effective fence height over that which would be otherwise permitted by this subchapter, except that a combination of raised grade and fence that would exceed in sum the fence height permitted by this section may be specifically approved by the City Council as an element of a subdivision plat or commercial site plan approval establishing specific property grading and topography.

(E) Easement encroachment. Where allowed by other divisions of the fence ordinance and other applicable sections, a fence may be constructed up to one foot off a property line unless an easement is present or it is determined a fence would obstruct a drainage area. An Easement Encroachment Agreement, along with a fence permit, allows a fence to be constructed within a city easement after it has been reviewed and approved by the City Engineer and City Council and the applicable fee has been received.

(Ord. 97-137, passed 8-4-2004)

§ 154.121 MATERIALS.

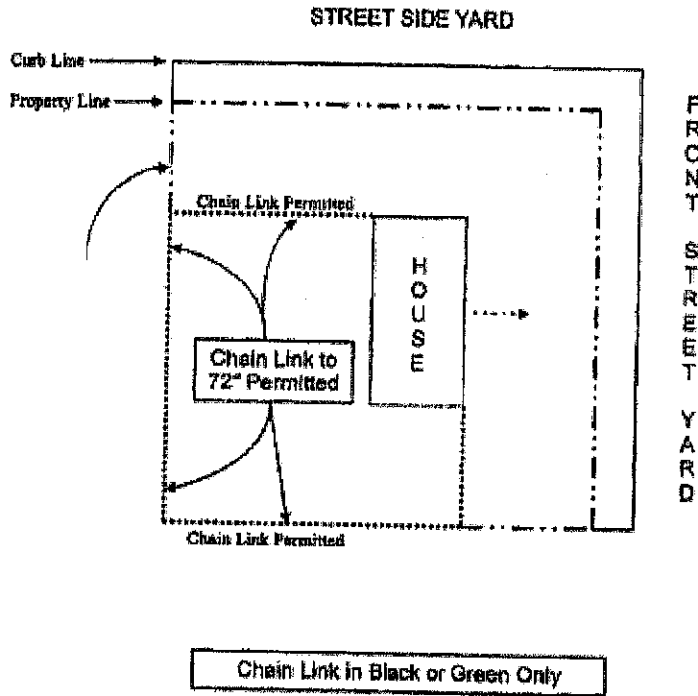
(A) *Permitted fence materials.* Permitted fence materials shall be limited to brick, stone, wood planks, split rail, wrought iron, and as regulated by § 154.123. Vinyl or composite material fences shall also be permitted.

(B) *Finished face of fence.* That side of the fence considered to be the face (finished side as opposed to structural supports and frame) shall face abutting property and public streets.

(C) *Chain link or cyclone fences.* Chain link, and wire mesh fences are permitted to a maximum height of 72 inches measured from grade. No chain link, cyclone or wire

mesh fence shall be permitted in any front, side (corner), or rear street setback. (See Figure 154.121)

Figure 154.121: Cyclone/Chain Link Fencing



(Ord. 97-137, passed 8-4-2004)

§ 154.122 FENCES IN THE SHORELAND OVERLAY DISTRICT.

No fence shall be permitted in the OHW setback of any parcel located in Shoreland, as defined by § 11.01, except where the principal structure is entirely located within the OHW setback. Where the principal structure is at least partially located within the OHW setback, fences complying with the standards of § 154.120(B) may be constructed within the side yard area of the principal structure, but not extending beyond the front and rear exterior walls of the principal structure. Decks, porches and landings of any type shall not be considered a part of the principal structure for the purpose of determining allowable fence.

(Ord. 97-137, passed 8-4-2004)

§ 154.123 TEMPORARY FENCES.

(A) *Defined.* For the purposes of this subchapter temporary fences are those that are installed and removed on a seasonal basis, such as snow fences and garden fences.

Temporary fences shall be open to light and air over not less than 40% of the fence surface area.

(B) *Duration and limitation.* No snow fence shall or posts therefore shall be installed prior to November 1, and must be removed prior to April 15.

(C) *Height and location.* Temporary fences shall comply with the fence and fence location standards of § 154.120, except that snow fences shall be set back at least 50 feet from any south or east property line, or such additional distance as may be required to prevent the accumulation of snow on public streets or adjoining property, as determined by the Building Official.

(Ord. 97-137, passed 8-4-2004)

§ 154.124 AGRICULTURAL EXEMPTION.

Fences constructed on parcels in excess of 5 acres for the keeping of horses; and fences constructed on parcels in excess of 10 acres for the keeping of other livestock, as defined by § 11.01, are specifically exempted from the provisions of this subchapter. Any such agricultural fencing shall be at least 75% open to air and light.

(Ord. 97-137, passed 8-4-2004)

§ 154.125 FENCES AS SCREENING AND SECURITY, AS REQUIRED.

(A) *Generally.* The Lake Elmo City Code and this chapter include prescribed physical circumstances of a site where screening of uses, equipment, and outside storage is required. In those prescribed circumstances, fence not to exceed 72 inches in height measured from grade may be installed, subject to the following standards:

(1) Required fences for screening and security purposes in Agricultural and Residential zoning districts shall be set back from all property lines equal to the required structure set back of the zoning district in which they are located, except where residential zoned lots share a common property line with commercial uses, or commercial zoning districts and only on the common property line between the residential and commercial parcels.

(Am. Ord. 97-169, passed 5-2-2006)

(2) The provisions of § 154.120 regarding fence height measurement from grade shall apply. No combination of earthen berm and fence may exceed the 72-inch maximum height for screening.

(3) Materials used for screening shall be limited to those specified by § 154.121.

- (4) No such screening shall be roofed or covered in any manner.

(Ord. 97-137, passed 8-4-2004)

(5) Solid fence not to exceed 72 inches in height measured from grade may be installed, subject to the following standards:

(a) The total area of any parcel enclosed by solid fencing shall not exceed the maximum allowable area for an accessory structure in the zoning district in which the parcel is located, less the sum of the area of any accessory structures located on the same tax parcel.

(b) The area enclosed by screen fencing shall maintain a ratio of width to length of no greater than 2:1. (See § 154.093).

(c) A screening fence that is not enclosed may be allowed provided the total length of said fence does not exceed the perimeter of the largest accessory building permitted in the zoning district in which the parcel is located, less the sum of the area (or perimeter) of any accessory structures located on the same tax parcel.

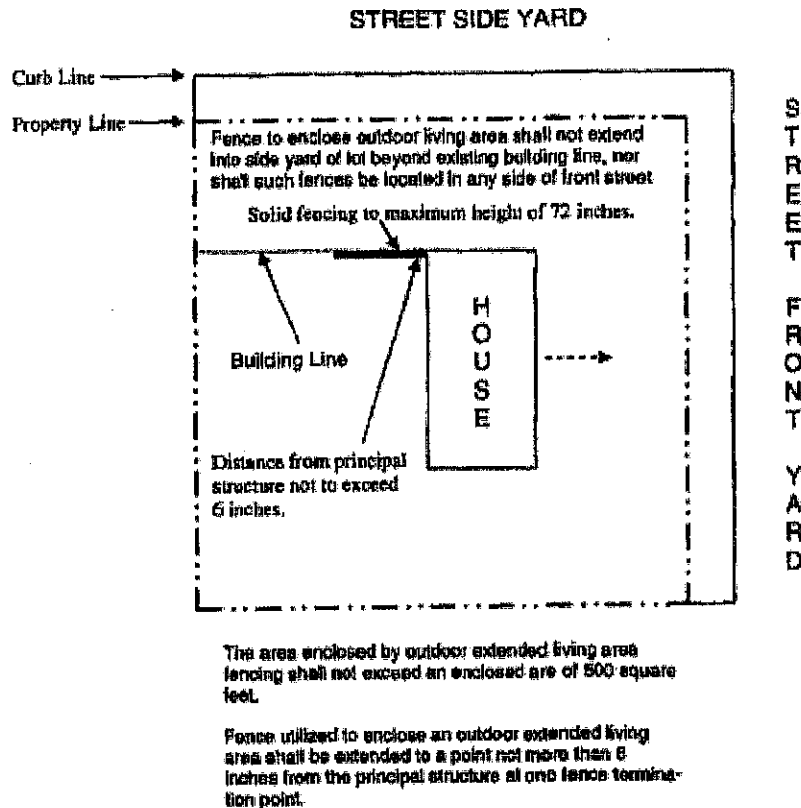
(B) *Outdoor living area extensions.* Solid fencing to a maximum height of 72 inches may be used to enclose outdoor extended living areas of a principal structure, subject to the following standards:

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Figure 154.125: Fencing for Outdoor Living Area



(Am. Ord. 97-155, passed 4-19-2005)

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Fences shall be considered to be structures for the purposes of applying the terms of the non-conforming structure provisions of this chapter, and the hazardous structures provisions of city code and state statute.

(Ord. 97-137, passed 8-4-2004)

§ 154.128 OTHER PROVISIONS; CONFLICTS.

To the extent that provisions of this chapter may conflict with other provisions of the city code regarding the regulation of fences and screening, the provisions of this chapter only shall apply.

(Ord. 97-137, passed 8-4-2004)

SECTION 3. Effective Date

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

SECTION 4. Adoption Date

This Ordinance No. 08-044 was adopted on this 7th day of June 2011, by a vote of ___ Ayes and ___ Nays.

Mayor Dean A. Johnston

ATTEST:

Bruce Messelt
City Administrator

This Ordinance No 08-044 was published on the ____ day of _____,
2011

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-044B

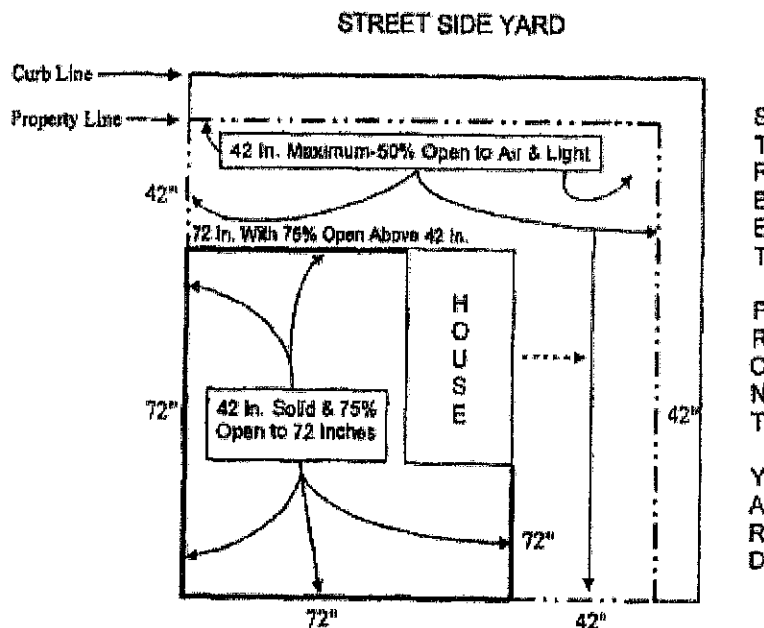
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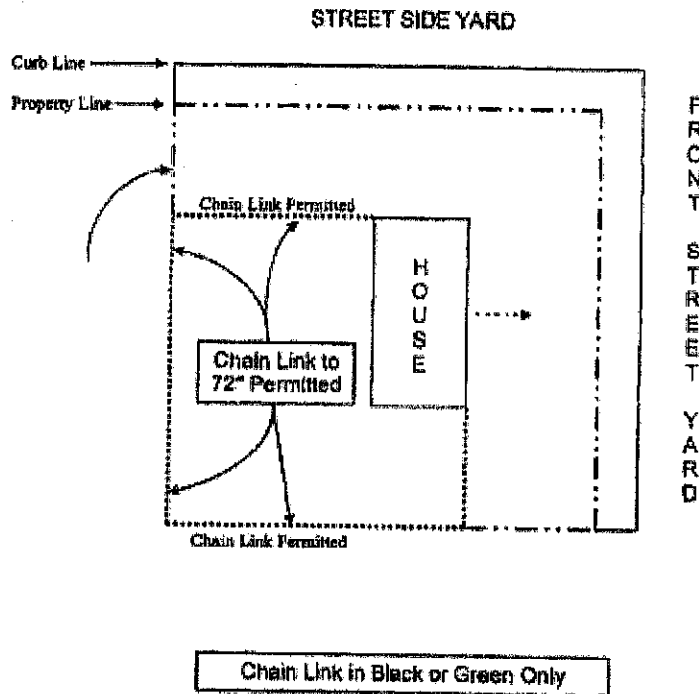
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(b) The area enclosed by screen fencing shall maintain a ratio of width to length of no greater than 2:1. (See § 154.093).

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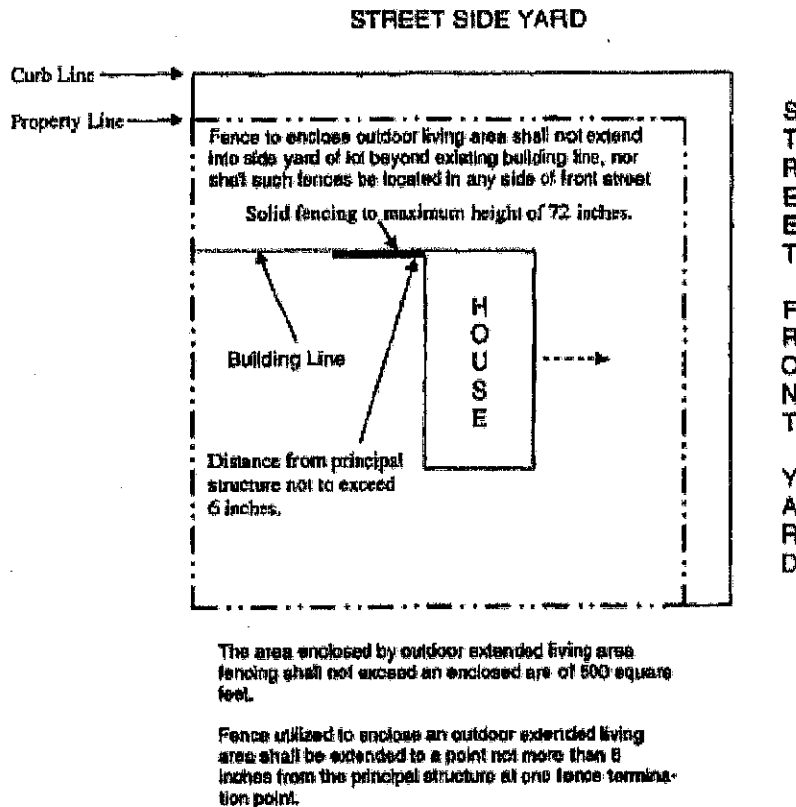
(B) *Outdoor living area extensions.* Solid fencing to a maximum height of 72 inches may be used to enclose outdoor extended living areas of a principal structure, subject to the following standards:

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(B) Failure to obtain a city fence permit prior to the installation of any fence subject to this regulation shall result in an automatic double permit fee, in addition to any

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(Ord. 97-137, passed 8-4-2004)

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Fences shall be considered to be structures for the purposes of applying the terms of the non-conforming structure provisions of this chapter, and the hazardous structures provisions of city code and state statute.

(Ord. 97-137, passed 8-4-2004)

§ 154.128 OTHER PROVISIONS; CONFLICTS.

To the extent that provisions of this chapter may conflict with other provisions of the city code regarding the regulation of fences and screening, the provisions of this chapter only shall apply.

(Ord. 97-137, passed 8-4-2004)

SECTION 3. Effective Date

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

SECTION 4. Adoption Date

This Ordinance No. 08-044 was adopted on this 7th day of June 2011, by a vote of ___ Ayes and ___ Nays.

Mayor Dean A. Johnston

ATTEST:

Bruce Messelt
City Administrator

This Ordinance No 08-044 was published on the ____ day of _____,
2011

CITY OF LAKE ELMO

RESOLUTION NO. 2011-021

**RESOLUTION AUTHORIZING PUBLICATION OF
ORDINANCE NO. 08-044 BY TITLE AND SUMMARY**

WHEREAS, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-044, an ordinance to amend the fence regulations within the City of Lake Elmo to allow solid fences up to 72 inches in height in a rear yard when abutting a road classified as a primary arterial, A minor arterial or B minor arterial and to require easement encroachment agreements when a fence is proposed to be constructed within a city easement; 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. 08-044 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. 08-044. The ordinance amends Title XV of the City Code, Land Use Regulations, allowing solid fences to be constructed within a rear yard when the rear yard abuts a road classified as a primary arterial, A minor arterial or B minor arterial. The Ordinance also requires an Easement Encroachment Agreement be submitted to the city holding the city harmless if a private property owner wishes to construct a fence within a city easement.

The full text of Ordinance No.08-044 is available for inspection at Lake Elmo city hall during regular business hours.

Mayor Dean A. 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 his office at city hall for public inspection and that he post a full copy of the ordinance in a public place within the city.

Dated: _____, 2011.

Mayor Dean Johnston

ATTEST:

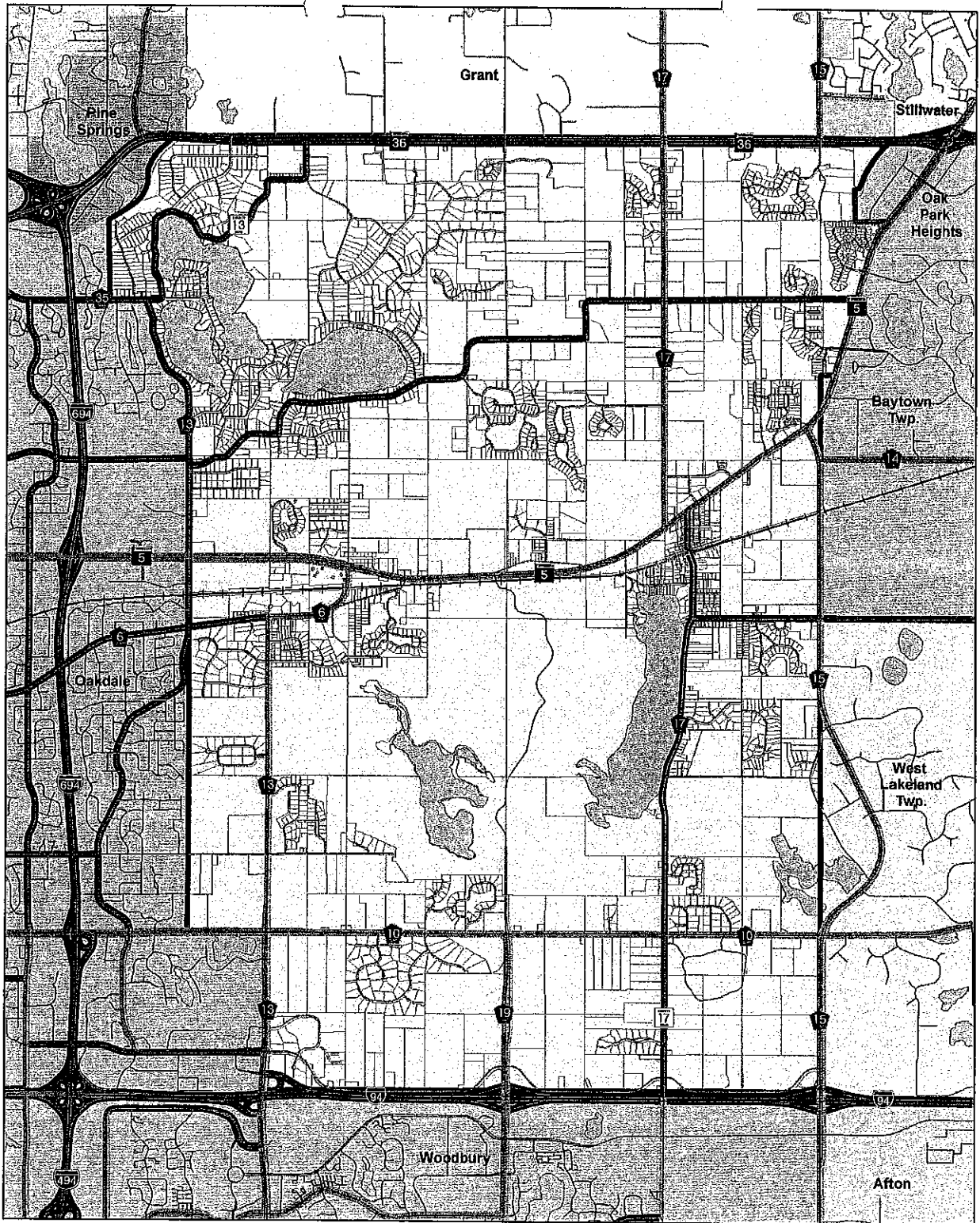
Bruce Messelt
City Administrator

(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.



**FIGURE 2:
EXISTING FUNCTIONAL
CLASSIFICATION**

Transportation Plan
2030 Comprehensive Plan
City of Lake Elmo, Minnesota



Map date: April 2009
Prepared by:

TKDA
ENGINEERS • ARCHITECTS • PLANNERS



LEGEND

- City Boundary
- Roadways
- Parcels
- Lakes

EXISTING FUNCTIONAL CLASSIFICATION

- Principal Arterial
- A Minor Arterial
- B Minor Arterial
- Major Collector
- Minor Collector

LIMITATION OF LIABILITY
This document is not a legally recorded map or survey and is not intended to be used as one. This map is a compilation of records and information from various state, county, and city offices, and other sources.

Public Hearing – Amendment to Fence Ordinance

Planner Matzek introduced amendments to the fence ordinance to allow solid fences to be constructed on the rear or side of a through lot that abuts a road with a classification of principal arterial, A minor arterial or B minor arterial. She said the solid fence, as written, would not be allowed in the side yard when it does not abut a street or the side yard of a corner lot – only a through lot, even when allowed along the rear yard. She said an additional amendment puts into place the need for an Easement Encroachment Agreement when a fence is proposed within an easement. Staff is recommending the approval of the amendments to the ordinance, but to remove the language regarding the side yard and only allowing the solid fences in yards designated as rear yards.

Commissioner Fliflet said a variance is an option for residents interested in adding a solid fence in a location not outright allowed.

Commissioner Hall asked if the city has requirements to keep obstructions from the view of traffic at street intersections.

Planner Matzek said there are not specific distances listed, but it is a nuisance to obstruct those views and she would rely on the City Engineer to determine that distance based on the speed of traffic.

Commissioner Haggard expressed concern regarding the view of traffic also leaving private driveways when they are not adjacent or a part of a street intersection.

Commissioner Williams said variances are expensive and to ask residents to pay for that without knowing if they will be able to put in their fence is asking too much. He suggested adding an exception for special cases involving side yards. He suggested changing the definition of double front lot to include front and side.

Commissioner Ziertman asked if a solid fence were allowed if it meets the setback requirement for a structure.

Planning Director Klatt said screening fences are required when there is something being stored outside that is not allowed to be stored outside. He said there is also a provision in the code that allows a solid fence, if it is entirely enclosed that the same size as an accessory building allowed on the property. He said staff is suggesting a change to that portion of the ordinance as well.

Planner Matzek said she received an email from a resident interested in the fence ordinance. Her concern was that the ordinance does not allow fences to be within the Ordinary High Waterline setback and she thought it should be allowed.

Chairman Van Zandt said lakeside property owners' property rights are frequently violated.

Commissioner Haggard asked if variance fees can be waived or reduced for fence applications.

Planner Matzek said that would be a legal question and she would ask the City Attorney.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 8:06 P.M.

Rob Konop, 12418 Marquess Way N

Mr. Konop said his neighbors have a solid fence adjacent to Highway 5. He said that variances are expensive and the fence ordinance is currently more restrictive than any other city. He said he needs a solid six foot fence in the side yards as well because neighbors can look into his back yard and could grab his kids.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 8:09 P.M.

Commissioner Fliflet said she supports a strict fence ordinance, but does not like the idea of having mismatching fences in the back yard and side yards. She said to fix the problem for that person who spoke, it still wouldn't accomplish what is being sought because you could see in the side yard from Highway 5.

Commissioner Bidon asked if there were regulations for landscaping or berms.

Planner Matzek said there are not regulations for landscaping, but berms may be regulated if they affect drainage.

Chairman Van Zandt said it amazes him that people buy homes in the airport approach path and then complain about the noise from the airplanes. He said the homes were cheaper to start with because of the airport and noise.

Commissioner Ziertman noted that when commercial uses abut residential property that the commercial property is required to screen that area by either a fence or landscaping.

Commissioner Williams said he thinks the definition for double frontage lot should be changed.

Commissioner Fliflet asked why the city would care if the person's yard was a side yard instead of a rear yard if they felt the need to have a screening fence on a busy roadway.

Commissioner Obermueller suggested certain architecturally appealing fences could be allowed to be up to 72 inches.

M/S, Williams/Hall, moved to amend 154.120 C 1 to say "lots with frontage along improved public streets at both the rear yard and front yard or at both the front yard and a side yard may apply the standards of subdivision B above for fences paralleling rear or side yards" and to change "fences on double front lots" to "fences on through lots."

Commissioner Fliflet said she would be more supportive if it was a separate paragraph and remove it from the double frontage paragraph.

Planning Director Klatt said there is not a definition for "double frontage lot," but there is a definition of "through lot."

Commissioner Williams said the definition for through lot says all roads abutting a street should be considered the front yard, but that isn't what is wanted.

Planning Director Klatt said the fence ordinance makes that as an exception where it is considered differently.

Vote: 8:0.

M/S, Williams/Ziertman, move to recommend approval of revised fence ordinance as amended.

Commissioner Fliflet said she is not in favor of it as it does not seem to solve the problem.

Commissioner Haggard said she is nervous about the safety issues with regards to sight distances, specifically regarding driveways.

Planning Director Klatt said it could be allowed as a conditional use permit which would require an individual review.

Commission Haggard suggested having a lower variance fee for fences.

M/S Williams/Hall, move to postpone consideration of the previous motion and direct staff to return at a future date with proposed language which will satisfy the commission's concern.

M/S, Hall/Williams, to amend the motion to include the reasons for postponing are to ensure staff has clearly understood the commission's intent and motions and can come back with alternate language and additional information for the commission.

Vote on amendment failed 2:6. Against: Ziertman, Fliflet, Van Zandt, Obermueller, Bidon and Haggard.

Vote on motion to postpone consideration failed 3:5. Against: Ziertman, Fliflet, Van Zandt, Bidon and Haggard

M/S/F, Obermeuler/Ziertman, move to amend the original motion to not allow fences in a side yard on a corner lot, but instead to ask the City Council to consider a sliding fee for a fence variance. Vote: 3:5. Against: Williams, Hall, Van Zandt, [REDACTED]

Original motion made by Commissioner Williams on ordinance: Vote: 4:3. Obermueller abstained.

EXISTING, UNCHANGED SECTIONS OF CODE

§ 96.03 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

(B)

(19) *Obstruction of view of traffic.* All trees, hedges, billboards, or other obstructions which prevent persons from having a clear view of traffic approaching an intersection from cross streets in sufficient time to bring a motor vehicle driven at a reasonable speed to a full stop before the intersection is reached;

§ 11.01 DEFINITIONS.

FENCE. A partition, structure, wall, or gate erected as a dividing marker, visual or physical barrier, or enclosure, not to include any roof or covering.

LOT AREA. The minimum of a horizontal plane within the lot lines.

LOT, BUILDABLE. A lot which meets or exceeds all requirements of the community land use and development ordinances without the necessity of variances.

LOT CONSOLIDATION. The combining of 2 or more existing parcels into 1 parcel and recorded as 1 parcel with the County Recorder's Office.

LOT, CORNER. A lot situated at the junction of and abutting on 2 or more intersecting streets; or a lot at the point of a deflection in alignment of a single street, the interior angle or which does not exceed 135 degrees.

LOT, CORNER. A lot situated at the intersection of 2 streets, the interior angle of the intersection not exceeding 135 degrees.

LOT DEPTH. The mean horizontal distance between the front and rear lines of a lot.

LOT IMPROVEMENT. Any building, structure, place, work of art, or other object, or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of the betterment.

LOT, INTERIOR. A lot other than a corner lot, including through lots.

LOT LINE, FRONT. The boundary of a lot which abuts a public street. In the case of a corner lot, it shall be the shortest dimension of a public street. If the dimensions of a corner lot are equal, the front lot line shall be designated by the owner. In the case of a corner lot in a non-residential area, the lot shall be deemed to have frontage on both streets.

LOT LINE, REAR. The boundary of a lot which is opposite to the front lot line. If the rear lot line is less than 10 feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line 10 feet in length within the lot, parallel to, and at the maximum distance from the front lot line.

LOT LINE, SIDE. Any boundary of a lot which is not a front lot line or a rear lot line.

LOT LINE. A lot line is the property line bounding a lot except that where any portion of a lot extends into a public right-of-way or a proposed public right-of-way, the line of the public right-of-way shall be the lot line.

LOT, NON-RIPARIAN. A separate parcel of land within a designated shoreland area but which does not have frontage along a lake or tributary stream.

LOT, RIPARIAN. A separate parcel of land within a designated shoreland area having frontage along a lake or tributary stream.

LOT, THROUGH. Any lot other than a corner lot which abuts more than 1 street. On a **THROUGH LOT**, all the street lines shall be considered the front lines for applying this section.

LOT WIDTH. The horizontal distance between the side lot lines of a lot measured at the setback line.

LOT. A parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means and separated from other parcels or portions by the description for the purpose of sale, lease or separation.

LOT. An area within a manufactured home park designed or used for the accommodation of a manufactured home.



MAYOR & COUNCIL COMMUNICATION

DATE: 6/7/2011
REGULAR
ITEM #: 4
MOTION

AGENDA ITEM: Kindred Court Drainage Corrections – Approve Project, Authorize Design and Obtain Contractor Quotes

SUBMITTED BY: Ryan Stempski, Assistant City Engineer

THROUGH: Bruce Messelt, City Administrator *BAW*

REVIEWED BY: Mike Bouthilet, Public Works
Jack Griffin, City Engineer
Tom Bouthilet, Finance Director

SUMMARY AND ACTION REQUESTED: The City Council is respectfully requested to consider approving the Kindred Court Drainage Corrections project in 2011 by authorizing the design, directing staff to obtain contractor quotes, and retaining a contractor to complete the work for a not to exceed total project amount of \$44,200. The project could be funded through Bond proceeds from the 2011 Street Improvement Bonds or it could be deferred until 2012 and funded through the 2012 Street Maintenance Budget. Should the Council choose to approve this project, the suggested motion is as follows:

SUGGESTED MOTION:

“Move to approve the Kindred Court Drainage Corrections project to be constructed in 2011 and funded through Bond proceeds for the 2011 Street Improvement Bonds, for a not to exceed amount of \$44,200.”

Or

“Move to approve the Kindred Court Drainage Corrections project to be constructed in 2012 and direct staff to prepare a project budget line item in the proposed 2012 Street Maintenance Budget.”

BACKGROUND INFORMATION AND STAFF REPORT: Kindred Court is a local residential street located in the Hamlet on Sunfish Lake subdivision. The street was originally constructed in 1998. Although the streets in this subdivision are generally in good condition, there is an isolated on-going drainage problem located at the south end cul-de-sac of Kindred Court.

Due to a minimal street grade and localized settlement of the street in this area, the roadway has not drained properly over the past several years. Settlement in the street has altered the drainage

pattern, trapping runoff from its intended discharge point. The trapped water is rather significant; to the point that it is a hazard, a significant nuisance, and will continue to further deteriorate the roadway if left unrepaired. The captive water creates a pond in the roadway centered at the end of the driveway at 3720 Kindred Court. This resident has been in contact with City staff over the years working to resolve the issue. During freezing conditions, an ice patch forms in this area that covers over half the road. Working with the two impacted residents, the Public Works Department has made multiple attempts to correct the issue by placing additional pavement over the settled areas, and by creating a second drainage discharge point from the roadway. With no easy answer to the problem, the Public Works staff has requested an engineered solution.

Using project record drawings together with a site visit, it appears that positive drainage could be restored to its originally intended drainage pattern by correcting approximately 300 feet of roadway. Detailed survey and plan grades would need to be established and construction stakes would be necessary to guide the contractor at the site. A preliminary cost estimate for the corrective work ranges from \$24,000 to \$40,000 depending upon the amount of street section to be removed and the extent of subgrade correction work once the bituminous has been removed.

The engineering work would consist of design survey, mapping existing conditions, and preparing a corrective street grade plan together with specifications and a small project form of contract. Contractor quotes would be solicited, received and awarded, and construction staking and coordination would be provided. The estimated engineering costs for this project are \$4,200.

FUNDING: Corrective work for Kindred Court is not currently part of the City's Street Capital Improvement Plan. The work would typically be considered a maintenance activity and therefore would not be assessed against the adjacent properties. Funding for this project would need to come from the street maintenance funds, which, for the 2011 Budget, is already 100% dedicated. Should the Council choose to move forward with this project, the Finance Department has identified the following two funding Alternatives:

1. To complete the project this construction season, staff would add the total project costs to the 2011 Street Improvement Bond and use the bond proceeds.
2. Postpone the project until 2012 and create a specific line item in the 2012 Street Maintenance Budget for this improvement.

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council move to approve the Kindred Court Drainage Corrections project to be constructed in 2011 by undertaking the following action:

“Move to approve the Kindred Court Drainage Corrections project to be constructed in 2011 and funded through Bond proceeds for the 2011 Street Improvement Bonds, for a not to exceed amount of \$44,200.”

Alternatively, the City Council does have the authority to table this item for future consideration, or further discuss, deliberate and/or, if appropriate, amend the recommended motion prior to

taking action. If the latter is done so, the appropriate action of the Council following such discussion would be:

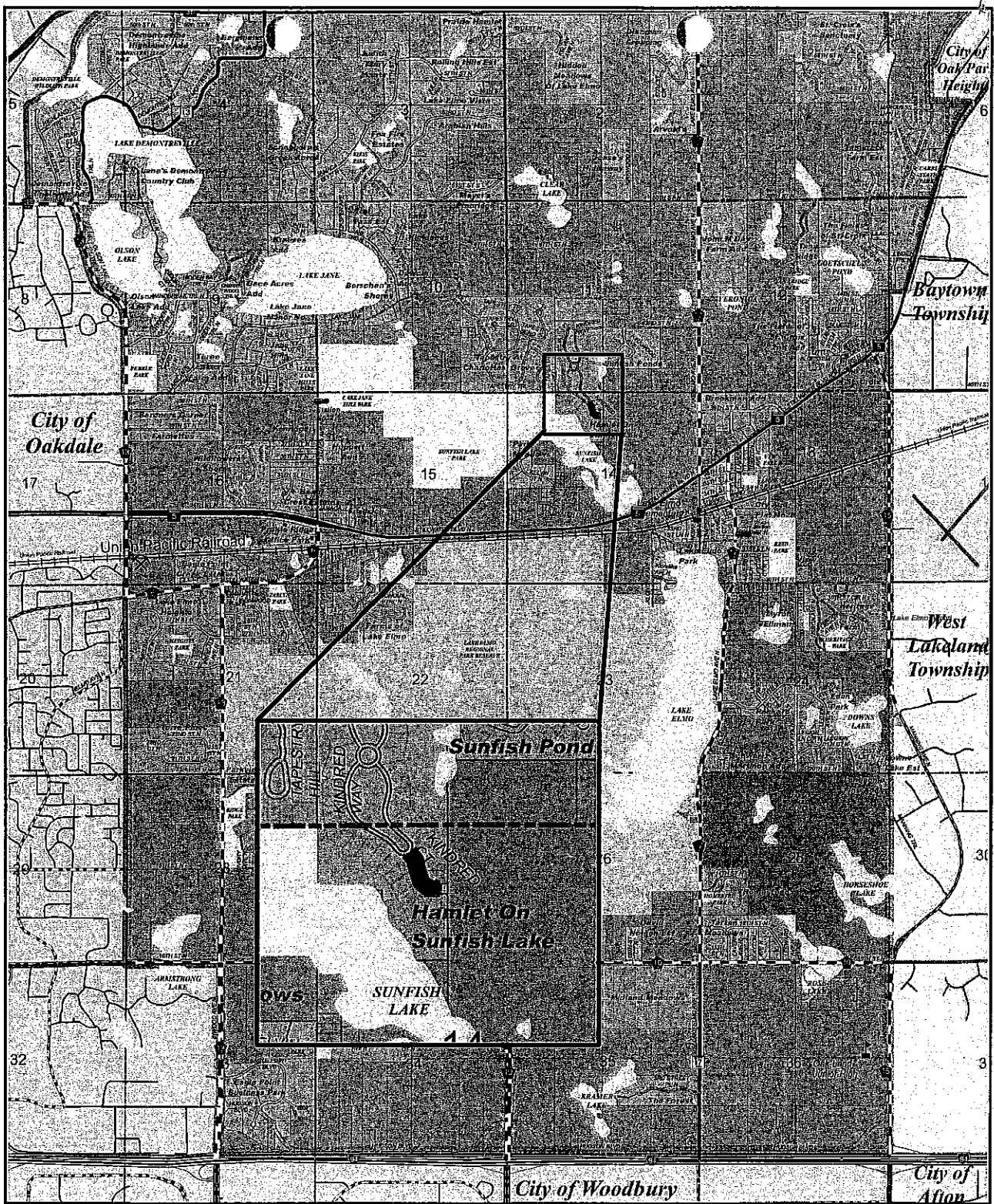
“Move to approve the Kindred Court Drainage Corrections project for a not to exceed amount of \$44,200 [and as amended and/or modified at tonight’s meeting].”

ATTACHMENTS: (1)

1. Location Map

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation..... City Engineer
- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor Facilitates
- Action on Motion..... Mayor & City Council









KINDRED COURT DRAINAGE CORRECTIONS LOCATION MAP

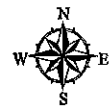


Legend

— KINDRED CRT

-  City Hall
3800 Laverne Avenue N
651772-6291
www.lakeelmo.org
-  Public Works Building
3440 Grand Ave N
651623-4514
-  Fire Stations
-  Schools

-  Parcels
-  Subdivisions
-  City Parks
-  Golf Course
-  Lake Elmo Regional
Park Reserve
Park Office
651450-8288
-  Lakes



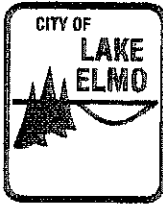
0.00 0.1 0.2
Miles

Map Date: April 2011

Created By

TKDA

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MAYOR & COUNCIL COMMUNICATION

DATE: 6/7/2011

REGULAR

ITEM #: 5

MOTION

AGENDA ITEM: Municipal Separate Storm Sewer System (MS4) Permit Program – Annual Public Meeting and Accept the 2010 MS4 Annual Report

SUBMITTED BY: Ryan Stempiski, Assistant City Engineer

THROUGH: Bruce A. Messelt, City Administrator *BAW*

REVIEWED BY: Jack Griffin, City Engineer
Mike Bouhilet, Public Works
Carol Kriegler, Project Assistant

SUMMARY AND ACTION REQUESTED: The City Council is respectfully requested to conduct the Annual Public Meeting for the Municipal Separate Storm Sewer System (MS4) permit program, receive the City Engineer's presentation and report, and receive public input and comments. After receiving public comments, it is respectfully requested that the Council accept the 2010 MS4 Annual Report by making the following suggested motion:

“Move to accept the Municipal Separate Storm Sewer System (MS4) Annual Report for 2010, and authorize staff to submit this report to the MPCA by June 30, 2011.”

STAFF REPORT: As part of the on-going permit requirements as a mandatory Municipal Separate Storm Sewer System (MS4) City, staff has prepared the 2010 MS4 Annual Report and will present a summary report to the City Council and general public. The City must hold an annual meeting to encourage public discussion and participation regarding its storm water quality and steps it is taking to address the City's Permit requirements. Notice of the Public Meeting was published in the Oakdale-Lake Elmo Review on May 4, 2011 (see attachment No. 1). The input received will be considered for updating the City's Storm Water Pollution Prevention Program (SWPPP) and the meeting minutes will be incorporated into the City's final report. The 2010 MS4 Annual Report must be submitted to the MPCA by June 30, 2011. A copy of the City's Storm Water Pollution Prevention Program (SWPPP) is available on the City website.

The Annual meeting is scheduled to be held as part of the regular City Council meeting at City Hall. The agenda for this meeting will include:

- A Presentation about implementation of the City's Storm Water Pollution Prevention Program in 2010,

- Affording interested persons an opportunity to make oral statements concerning the Storm Water Pollution Prevention Program,
- Consideration of relevant written materials that interested persons submit concerning the Storm Water Pollution Prevention Program; and,
- Consideration of public input in making adjustments to the 2011 implementation plan for the Storm Water Pollution Prevention Program.

Looking ahead, it appears that there may be significant changes to the MS4 permit program requirements over the next 1-2 years. Staff actively monitors and tracks permit program changes and legislation related to storm water management. In 2011, it is anticipated that there will be additional program requirements as mandated by the USEPA, the MPCA, and the Minnesota State Legislature.

MS4 PERMIT UPDATE: The City's MS4 Permit was issued on June 1, 2006 and was set to expire on May 31, 2011. Last December the City submitted its reapplication and associated fee (due 180 days prior to expiration) to remain in compliance with Federal/State Rules until the new Permit requirements are finalized.

The Municipal Separate Storm Sewer Permit Program (MS4) operates under a five year renewable cycle and is intended by Federal Rules to be a continuous improvement program with the first 5-year Permit focusing on "*program development*". The last MS4 General Permit by the MPCA was issued in June 2006 and was set to expire on May 31, 2011. However, the USEPA/MPCA has not yet fully established the next 5-year program requirements. The MPCA is working on reissuance of the MS4 General Permit and has just recently released (June 1, 2011) the new requirements for a 45-day public comment period. It is their intent to have the final requirements in place by December 2011. The focus of these new requirements is stated to be "*measuring implementation*". Once in place, it will be an expectation that all 235 Minnesota MS4's (including Lake Elmo) prepare a new 5-year Stormwater Pollution Prevention Program (SWPPP). This will likely be a significant work effort for the City. We anticipate an all new Permit format developed by the USEPA along with several new requirements and a new implementation focus.

In addition to the new MS4 Permit, the Minnesota State Legislature has also become involved in storm water management. In 2009, legislation was passed to require the MPCA to develop a detailed inventory of all storm water ponds in Minnesota. This requirement will be passed on to local MS4 governments in the new Permit. These laws were enacted as a result of the coal tar-based sealants often found in storm water pond sediments. Finally, staff continues to track and provide comment on two active TMDL studies, the Lake St. Croix TMDL and the Brown's Creek TMDL. Once these studies are finalized, the City will be required to revise its SWPPP to address waste load allocations set for the City.

2010 MS4 REPORT HIGHLIGHTS: The City's annual implementation of its Storm Water Pollution Prevention Program (SWPPP) addresses all permit requirements through six minimum control measures as outlined below.

MCM 1 and 2: Public Education & Outreach, Public Involvement & Participation: The City continues to be a member of the East Metro Water Resource Education Program (EMWREP), which continues to be a high value, low cost solution to address many of the educational and public outreach requirements of the City's permit program. More specifically, the EMWREP partnership covers the majority of Minimum Control Measures 1 and 2 (Public Education, Outreach, Involvement, and Participation). A copy of the EMWREP Annual Report has been included as attachment No. 2 in this report. Lake Elmo staff has also created educational materials for the public on illicit discharge (available at City Hall or on the City's website).

MCM 3: Illicit Discharge Detection and Elimination: City staff did not get an Illicit Discharge Ordinance prepared and adopted as required by the 2010 permit implementation program. This requirement will be addressed in 2011.

As part of the MS4 Outfall Inspections, Public Works staff inspected potential contamination sites within the City (mining sites, sites with large stockpiles, etc.). An annual inspection process is currently being developed to program and document this annual inspection process. A complete list of potential contamination sites across the City will be covered.

MCM 4: Construction Site Storm Water Controls: Enforcement of building and construction site erosion control has been successfully increased to bring builders/contractors into compliance through check lists and enforcement guidelines. This past year, there were 6 violations cited to builders for non-compliance to the City's Erosion and Sediment Control Ordinance.

MCM 5: Post-Construction Storm Water Management for development and redevelopment: Planning and engineering staff continue to develop and implement storm water BMP design standards to address storm water quality improvements for projects, redevelopment and development activities throughout the City.

As part of this initiative, new rain gardens are constructed each year along with the City's street improvement program. Eleven (11) rain gardens were constructed in 2010 with approximately 12 rain gardens being planned in 2011. As part of the project design, staff looks for opportunities to address storm water quality issues in sensitive high priority areas. In conjunction with the 2010 street improvement projects, staff installed two sump catch basins to capture sediment and debris in storm water structures prior to discharging to water bodies near Lake Jane. With the Jane Road reclaim project, a long infiltration ditch with native seed mix was used in lieu of concrete curb and gutter and conventional storm sewer, to address a direct discharge point to Lake Jane.

Additional storm water management initiatives are implemented as the opportunities arise. For example, four rain gardens were constructed as part of the parking lot improvements in Sunfish Lake Park; water quality plantings consisting of native, deep-rooted species were installed in the

Old Village Area along a drainage ditch to improve infiltration in an area known for nuisance flooding; and as staff reviews Building Permits, applications are consistently reviewed for adherence to maximum allowed impervious surface areas. In OP Districts, engineered rain gardens and pervious pavements are installed by applicants requesting an additional 5% of impervious surface.

MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations: The Public Works Department completed inspection of a minimum of 20% of the MS4 Outfalls again this spring. They completed inspections in the NE Quadrant of the City. Inspections and follow-up maintenance prioritization lists were developed and are available upon request at the Public Works Building. Public Works also keeps a list of all the storm water maintenance activities completed throughout the year (structure repair, street sweeping, ditch cleanout, BMP maintenance, and drainage issues, etc.).

BACKGROUND INFORMATION: The Municipal Separate Storm Sewer System (MS4) general permit is mandated by the federal regulations under the Clean Water Act and administered by the Minnesota Pollution Control Agency. The MS4 permitting program gives owners or operators of municipal separate storm sewer systems approval to discharge storm water to lakes, rivers and wetlands in Minnesota. The MS4 general permit focuses on reducing the pollution that enters these public systems and discharges to wetlands, streams and lakes ("waters of the state"). By federal rule, storm water systems in urban areas are labeled Mandatory MS4s. The City of Lake Elmo is a Mandatory MS4 City.

As a MS4 City, Lake Elmo is required to obtain and comply with a National Pollutant Discharge and Elimination System (NPDES) storm water permit. To meet these requirements the City has prepared and is implementing a five year Storm Water Pollution Prevention Program (SWPPP) which specifies and outlines a series of best management practices intended to satisfy the permit requirements for each of six minimum control measures. The six minimum control measures are:

1. Public Education and Outreach
2. Public Involvement and Participation
3. Illicit Discharge Detection and Elimination
4. Construction Site Storm Water Controls
5. Post-Construction Storm Water Management for development and redevelopment
6. Pollution Prevention/Good Housekeeping for Municipal Operations

In addition to these minimum measures, the City of Lake Elmo must address any impaired waters as identified by the USEPA list and review whether changes may be warranted in the City's Storm Water Pollution Prevention Program (SWPPP).

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council move to approve the suggested motion by undertaking the following action:

*“Move to accept the Municipal Separate Storm Sewer System (MS4) Annual Report for 2010,
and authorize staff to submit this report to the MPCA by June 30, 2011.”*

ATTACHMENTS: (3)

1. Notice of Annual Public Meeting
2. 2010 MS4 Annual Report
3. EMWREP Annual Report

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation..... City Engineer
- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor Facilitates
- Action on Motion..... Mayor & City Council

**CITY OF LAKE ELMO
NOTICE OF ANNUAL PUBLIC MEETING
ON THE CITY STORM WATER POLLUTION PREVENTION PROGRAM**

Notice is hereby given that the City Council of Lake Elmo will meet at City Hall at 7:00 p.m. on Tuesday, June 7, 2011, to conduct a public meeting to encourage public discussion and participation regarding its storm water quality and Storm Water Pollution Prevention Program.

A 1987 Amendment to the Federal Clean Water Act required implementation of a two-phase comprehensive national program to reduce pollution from storm water runoff. A National Pollutant Discharge Elimination System (NPDES) permit from the Minnesota Pollution Control Agency (MPCA) is required as part of this program. The permit identifies a number of measures that must be met or implemented by each community. The six minimum measures are:

- Public Education and Outreach
- Public Involvement and Participation
- Illicit Discharge Detection and Elimination
- Construction Site Storm Water Controls
- Post-Construction Storm Water Management for development and redevelopment
- Pollution Prevention/Good Housekeeping for Municipal Operations

The City's Storm Water Pollution Prevention Program (SWPPP) specifies best management practices intended to satisfy the permit requirements for each of the minimum measures. As part of this program, the City is required to hold an annual meeting to encourage public discussion and participation regarding its storm water quality and steps it is taking to address the six minimum control measures. A copy of the SWPPP is available by contacting the City Engineer. An annual report will be submitted to the MPCA in June 2011. The minutes of the annual public meeting will be incorporated into the City's annual report.

The meeting will be held as part of the regular city council meeting at City Hall. The agenda for this meeting will include:

- 1) A Presentation about implementation of the City's Surface Water Pollution Prevention Program in 2010,
- 2) Affording interested persons the opportunity to make oral statements concerning the Storm Water Pollution Prevention Program,
- 3) Consideration of relevant written materials that interested persons submit concerning the Storm Water Pollution Prevention Program; and,
- 4) Consideration of public input in making adjustments to the 2011 implementation plan for the Storm Water Pollution Prevention Program.

DATED: April 28, 2011

**BY ORDER OF THE LAKE ELMO CITY CLERK
Sharon Lumby, City Clerk**

(Published in the Oakdale-Lake Elmo Review on May 4, 2011)



Minnesota Pollution Control Agency

520 Lafayette Road North
St. Paul, MN 55155-4194

MS4 Annual Report for 2010

Municipal Separate Storm Sewer Systems (MS4s)

Reporting period January 1, 2010 to December 31, 2010

Due June 30, 2011

Doc Type: Permitting Annual Report

Instructions: By completing this **mandatory** MS4 Annual Report form, you are providing the Minnesota Pollution Control Agency (MPCA) with a summary of your status of compliance with permit conditions, including an assessment of the appropriateness of your identified best management practices (BMPs) and progress towards achieving your identified measurable goals for each of the minimum control measures as required by the MS4 Permit. If a permittee determines that program status or compliance with the permit can not be adequately reflected within the structure of this form additional explanation and/or information may be referenced in an attachment. This form has significant limitations and provides only a snap shot of MS4 compliance with the conditions in the Permit. After reviewing the information, MPCA staff may need to contact the permittee to clarify or seek additional information. The MPCA enforcement policy is to provide the opportunity to respond to any alleged violations before any enforcement action is taken.

Submittal: This MS4 Annual Report must be submitted electronically to the MPCA using the submit button at the end of the form, from the person that is duly authorized to certify this form. All questions with an asterisk (*) are required fields (these fields also have a red border), and must be completed before the form will send. A confirmation e-mail will be sent in response to electronic submissions. To obtain an electronic copy of the 2010 MS4 Annual Report form, please visit the MPCA website at: <http://www.pca.state.mn.us/water/stormwater/stormwater-ms4.html>.

If you have further questions, please contact one of these MPCA staff members (toll-free 800-657-3864):

- Joyce Cieluch 218-846-7387
- Scott Fox 651-757-2368
- Amy Garcia 651-757-2377

General Contact Information (*Required fields)

*Name of MS4: City of Lake Elmo *Contact name: Ryan Stempski, P.E.

*Mailing address: 3800 Laverne Ave. N

*City: Lake Elmo *State: MN *Zip code: 55042

*Phone (including area code): 651/777-5510 *E-mail: ryan.stempski@tkda.com

Check here if this contact information is different than the contact indicated on the mailing label.

Minimum Control Measure 1: Public Education and Outreach [V.G.1] (*Required fields)

- A. The permit requires each Permittee to implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and steps that the public can take to reduce pollutants in stormwater runoff. [Part V.G.1.a]

Note: Please indicate which of the following distribution methods you used during the 2010 calendar year. Indicate the number distributed in the spaces provided (enter "0" if the method was not used or "NA" if the data does not exist):

Media type	Number of media	Number of times published	Circulation/ Audience
<i>Example: Brochures:</i>	<i>3 different brochures</i>	<i>published 5 times</i>	<i>about 10,000</i>
Brochures:	6 different brochures	Always available at City Hall	about 7,000
Newsletter:	Lake Elmo City Newsletter	Published 12 articles	about 7,000
Posters:			
Newspaper articles:	Lillie Review	Published 52 articles	N/A
Utility bill inserts:			
Radio ads:	2 different radio stations	unknown	unknown
Television ads:	Channel 45	unknown	unknown
Cable Access Channel:			
Other: Targeted Mailing	1 Mailing	Mailed out once	90 households
Other:			
Other:			

B. *Do you use a website as a tool to distribute stormwater educational materials? Yes No

What is the URL: www.minwcd.org/emwrep, www.lakeelmo.org - Forms & Handouts

C. If you answered yes in question B. above, do you track hits to the site? Yes No

How many hits to the stormwater page during 2010: _____

D. *Did you hold stormwater related events, presentations to schools or other such activities? Yes No

If yes, please describe:

Blue Thumb presentation at June 8, 2010 Lake Elmo Neighborhood Party, Neighborhood Rain Garden Presentations

E. *Have specific messages been developed and distributed during the 2010 calendar year for Minimum Control Measure (MCM):

MCM 1: Yes No MCM 4: Yes No

MCM 2: Yes No MCM 5: Yes No

MCM 3: Yes No MCM 6: Yes No

F. *Have you developed partnerships with other MS4s, watershed districts, local or state governments, educational institutions, etc., to assist you in fulfilling the requirements for MCM 1? Yes No

G. List those entities with which you have partnered during the 2010 calendar year to meet the requirements of this MCM and describe the nature of the agreement(s). Attach a separate sheet if necessary:

East Metro Water Resource Education Program - Contract to provide education and public outreach.

H. *Have you developed methods to assess the effectiveness of your public education/outreach program? Yes No

If yes, please describe:

Number of residents enrolling in the Rain Garden Program

Minimum Control Measure 2: Public Participation/Involvement [V.G.2] (*Required fields)

A. *Did you hold a public meeting to present accomplishments for calendar year 2010 and to discuss your Stormwater Pollution Prevention Program (SWPPP)? [Part V.G.1.e] Yes No

If no, explain:

B. What was the date of the public meeting: 06/01/2010

C. How many citizens attended specifically for stormwater (excluding board/council members and staff/hired consultants)? 0

D. Was the public meeting a stand-alone meeting for stormwater or was it combined with some other function (City Council meeting, other public event, etc.)? Stand-alone Combined

E. *Each permittee must solicit and consider input from the public prior to submittal of the annual report. Did you receive written and/or oral input on your SWPPP? [Part V.G.2.b.1-3] Yes No

F. *Have you revised your SWPPP in response to written or oral comments received from the public since the last annual reporting cycle? [Part V.G.2.c] Yes No

If yes, describe. Attach a separate sheet if necessary:

Minimum Control Measure 3: Illicit Discharge Detection and Elimination [V.G.3] (*Required fields)

The permit requires permittees to develop, implement, and enforce a program to detect and eliminate illicit discharges as defined in 40 CFR 122.26(b)(2). You must also select and implement a program of appropriate BMPs and measurable goals for this minimum control measure.

- A. *Did you update your storm sewer system map in 2010? Yes No
 If yes, please explain which components (ponds, pipes; outfalls, waterbodies, etc.) were updated/added:

Note: The storm sewer system map was to be completed by June 30, 2008. [Part V.G.3.a]

- B. *Have you modified the format in which the map is available? Yes No
 C. If yes, indicate the new format:
 Hardcopy only GIS system CAD Other system: _____

- D. *Have you established an ordinance or other regulatory mechanism to prohibit illicit discharges and/or non-stormwater discharges from entering the MS4? Yes No

Note: The Permit requires the ordinance or other regulatory mechanism to be established by June 30, 2010 [Part V.G.3.b]

If yes, indicate whether you've established an: Ordinance or Regulatory mechanism

- E. If you answered yes in question D. above, provide the date the ordinance or other regulatory mechanism was adopted: _____
 F. If you answered yes in question D. above, a complete copy of your illicit discharge prohibition ordinance or other regulatory mechanism addressing the requirements of Part V.G.3.b. of the Permit must be submitted with this MS4 Annual Report. Please provide the URL/reference where your illicit discharge ordinance or other regulatory mechanism may be found. Include specific code numbers if available:

The ordinance may alternately be submitted as a separate electronic file attached to the e-mail submittal of this annual report. Are you submitting an electronic copy? Yes No

Minimum Control Measure 4: Construction Site Stormwater Runoff [V.G.4] (*Required fields)

The permit requires that each permittee **develop, implement, and enforce a program** to reduce pollutants in any stormwater runoff to your small MS4 from construction activities within your jurisdiction that result in a land disturbance of equal to or greater than one acre, including the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres. [Part V.G.4.]

- A. The permit requires an erosion and sediment control ordinance or regulatory mechanism that must include sanctions to ensure compliance and contains enforcement mechanisms [Part V.G.4.a]. Indicate which of the following enforcement mechanisms are contained in your ordinance or regulatory mechanism and the number of actions taken for each mechanism used during the reporting period (enter "0" if the method was not used or "NA" if the data does not exist). **Check all that apply.**

Enforcement mechanism	Number of actions	
<input checked="" type="checkbox"/> Verbal warnings	#	5
<input checked="" type="checkbox"/> Notice of violation	#	1
<input type="checkbox"/> Administrative orders	#	
<input checked="" type="checkbox"/> Stop-work orders	#	0
<input type="checkbox"/> Fines	#	
<input checked="" type="checkbox"/> Forfeit of security of bond money	#	0
<input checked="" type="checkbox"/> Withholding of certificate of occupancy	#	0
<input checked="" type="checkbox"/> Criminal actions	#	0
<input checked="" type="checkbox"/> Civil penalties	#	0
<input type="checkbox"/> Other:	#	

- B. *Have you developed written procedures for site inspections? Yes No

- C. *Have you developed written procedures for site enforcement? Yes No
- D. *Identify the number of active construction sites greater than an acre in your jurisdiction during the 2010 calendar year: 5
- E. *On average, how frequently are construction sites inspected (e.g., weekly, monthly, etc.)? Weekly
- F. *How many inspectors, at any time, did you have available to verify erosion and sediment control compliance at construction sites during the 2010 calendar year: 2

Minimum Control Measure 5: Post-construction Stormwater Management in New Development and Redevelopment [V.G.5] (*Required fields)

The permit requires each permittee to develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects within your jurisdiction that disturb an area greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or reduce water quality impacts. You must also select and implement a program of appropriate BMPs and measurable goals for this minimum control measure.

Note: The MS4 permit requirements associated with this minimum control measure were required to be fully developed and implemented by June 30, 2008.

- A. *Have you established design standards for stormwater treatment BMPs installed as a result of post-construction requirements? Yes No
- B. *Have you developed procedures for site plan review which incorporate consideration of water quality impacts? Yes No
- C. *How many projects have you reviewed during the 2010 calendar year to ensure adequate long-term operation and maintenance of permanent stormwater treatment BMPs installed as a result of post-construction requirements? [Part V.G.5.b. and Part V.G.5.c]. 1
- D. *Do plan reviewers use a checklist when reviewing plans? Yes No
- E. *How are you funding the long-term operation and maintenance of your stormwater management system? (Check all that apply)
 - Grants Stormwater utility fee Taxes
 - Other: _____

Minimum Control Measure 6: Pollution Prevention/Good Housekeeping for Municipal Operations [V.G.6] (*Required fields)

The permit requires each MS4 to develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Your program must include employee training to prevent and reduce stormwater pollution from activities, such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

- A. *Indicate the total number of structural pollution control devices (for example-grit chambers, sumps, floatable skimmers, etc.) within your MS4, the total number that were inspected in 2010, and calculate the percent inspected. Enter "0" if your MS4 does not contain structural pollution control devices or none were inspected in 2010. Enter "NA" if the data does not exist:

	*Total number	*Number inspected	*Percentage
*Structural pollution control devices:	4	4	100

- B. *Did you repair, replace, or maintain any structural pollution control devices? Yes No
- C. *For each BMP below, indicate the total number within your MS4, how many of each BMP type were inspected and the percent inspected in 2010. Enter "0" if your MS4 does not contain BMPs or none were inspected in 2010. Enter "NA" if the data does not exist:

Structure/Facility type	*Total number	*Number inspected	*Percentage
*Outfalls to receiving waters:	126	25	20%
*Sediment basins/ponds:	69	37	54%
*Total	195	62	32%

- D. Of the BMPs inspected in C. above, did you include any privately owned BMPs in that number? Yes No
- E. If yes in D. above, how many? Unknown

Section 7: Impaired Waters Review (*Required fields)

The permit requires any MS4 that discharges to a Water of the State, which appears on the current U. S. Environmental Protection Agency (EPA) approved list of impaired waters under Section 303(d) of the Clean Water Act, review whether changes to the SWPPP may be warranted to reduce the impact of your discharge [Part IV.D].

- A. *Does your MS4 discharge to any waters listed as impaired on the state 303 (d) list? Yes No
- B. *Have you modified your SWPPP in response to an approved Total Maximum Daily Load (TMDL)? Yes No
- If yes, indicate for which TMDL: _____

Section 8: Additional SWPPP Issues (*Required fields)

- A. *Did you make a change to any BMPs or measurable goals in your SWPPP since your last report? [Part V.H.] Yes No
- B. If yes, briefly list the BMPs or any measurable goals using their unique SWPPP identification numbers that were modified in your SWPPP, and why they were modified: *(Attach a separate sheet if necessary)*
- C. *Did you rely on any other entities (MS4s, consultants, or contractors) to implement any portion of your SWPPP? Yes No
- If yes, please identify them and list activities they assisted with:
 East Metro Water Resource Education Program - Assisted with meetings, newsletters, newspaper articles, radio ads, television ads, and targeted mailings.

Owner or Operator Certification (*Required fields)

The person with overall administrative responsibility for SWPPP implementation and Permit compliance must certify this MS4 Annual Report. This person must be duly authorized and should be either a principal executive (i.e., Director of Public Works, City Administrator) or ranking elected official (i.e., Mayor, Township Supervisor).

- *Yes - I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete (Minn. R. 7001.0070). I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment (Minn. R. 7001.0540).

*Name of certifying official: Bruce Messelt

*Title: City Administrator

*Date: _____
 (mm/dd/yyyy)





2010 Annual Report

Background: The East Metro Water Resource Education Program (EMWREP) is a partnership that was formed in 2006 to develop and implement a comprehensive water resource education and outreach program for the east metro area of St. Paul, MN. Members of the EMWREP partnership in 2010 included Brown's Creek, Carnelian-Marine-St Croix, Comfort-Lake Forest Lake, Rice Creek, Ramsey-Washington Metro, South Washington, and Valley Branch Watershed Districts, Middle St. Croix Watershed Management Organization, the cities of Cottage Grove, Dellwood, Forest Lake, Lake Elmo, Stillwater, and Willernie, West Lakeland Township, Washington County and the Washington Conservation District. The EMWREP region covers all of Washington County as well as the portions of Valley Branch and Comfort Lake - Forest Lake Watershed Districts that stretch into Anoka, Chisago and Ramsey Counties. A map and list of EMWREP partners can be found at www.mnwcd.org/cleanwater.

Purpose: The purpose of EMWREP is to educate the public and various other target audiences within the region about the impacts of non-point source pollution on local lakes, rivers, streams, wetlands and groundwater resources and engage people in projects that will help to protect and improve water quality in the region. EMWREP activities also help partners to meet education and public involvement requirements for MS4 Stormwater Pollution Prevention Permits and TMDL Plans.

Partnership Structure: EMWREP is guided by a steering committee comprised of representatives from each of the 17 partner organizations. The committee generally meets twice a year to provide recommendations on the program budget and activities. The EMWREP educator sends a quarterly e-newsletter to all partners' staff, council members and board members, and communicates one-on-one with individual partners on projects throughout the year. The EMWREP education plan is revised every two to three years to accommodate changing priorities and new target audiences. In addition, the EMWREP educator prepares an annual report on program activities and provides outreach data and statistics for partners' MS4 Permit reports. All EMWREP reports, plans, print materials and news articles are available on-line at www.mnwcd.org/emwrep.

Summary of 2010 EMWREP Education Programs:

Public Education Campaign: EMWREP engages in a number of activities aimed at increasing awareness of water resource issues, promoting a conservation ethic among local residents, and catalyzing behavior change. Many of these activities are accomplished in partnership with existing government, non-profit, and community based groups, as well through local media outlets. The general education campaign is also used to promote targeted outreach efforts and partner BMP programs.

Since 2006, EMWREP has produced weekly articles for several of the local newspapers, as well as providing material for 32 cities within the region to include in their newsletters. Articles are also featured on the blog <http://eastmetrowater.areavoices.com> and on the Washington Conservation District and Blue Thumb Facebook pages. EMWREP reached 7790 people at local community events in 2010, including the Washington County Fair.

Blue Thumb Program: (www.BlueThumb.org) The Blue Thumb – Planting for Clean Water program was developed by the Rice Creek Watershed District in 2006 and by 2010 was a dynamic coalition of more than 60 partner organizations working together to raise awareness about stormwater pollution and encourage homeowners to plant native gardens, raingardens and shoreline projects to protect surface and groundwater resources.

EMWREP uses Blue Thumb to promote partner BMP programs. This outreach is a critical component of an adaptive ecosystem management approach that connects outreach with project implementation and water monitoring. EMWREP uses workshops, neighborhoods parties and community presentations to connect local residents with resources available through Blue Thumb and the EMWREP partnership. Outreach in 2010 resulted in 130 new water quality projects in Washington County.

Blue Birds / Go Wild! (www.mnwcd.org/gowild) This is a new outreach strategy to leverage public interest in birds and wildlife in order to engage rural property owners in planting and habitat improvement projects in targeted areas where there will also reduce erosion and non-point source water pollution. Activities in 2010 included two bird habitat workshops, as well as surveys, focus groups and interviews to help develop new outreach strategies.

A key component of this program in 2011 will be collaborative outreach with local non-profits and sportsmen groups. EMWREP's role will be to support the outreach conducted by these groups, to help connect landowners with additional resources available through EMWREP partners, and to encourage projects that protect water as well as improving wildlife habitat.

Blue Biz: (www.cleanwaterMN.org/businesses) The Blue Biz program consists of a website and outreach materials that partners can use to engage commercial property owners in BMP projects. During 2010, EMWREP reached out to specific property owners identified in the Cottage Grove Hwy 61 sub-watershed assessment, resulting in two new bioretention projects.

Stormwater U: (www.extension.umn.edu/stormwater/) Stormwater U is a technical training series for municipal staff and contractors, including engineers, planners, inspectors and public works. Stormwater U workshops are hosted in collaboration with University of Minnesota Extension and the Minnesota Erosion Control Certification Program. In 2010, EMWREP hosted workshops on shoreline restoration, turf management and snow and ice management.

NEMO: (www.northlandnemo.org) The Northland NEMO program (Non-point Education for Municipal Officials) provides local elected officials and decision makers with resources and information to make informed decisions about land use and water quality in their communities. Northland NEMO is hosted by the University of Minnesota Extension and EMWREP is one of ten to twenty partner organizations. During 2010, EMWREP facilitated the Watershed Game activity with several groups of community leaders and helped to coordinate a workshop on the St. Croix River attended by 100 officials from communities in Minnesota and Wisconsin.

MS4 Toolkit: (www.cleanwatermn.org/MS4toolkit) EMWREP developed the MS4 Toolkit with a grant from the Minnesota Pollution Control Agency. The toolkit includes educational materials that partners can use to meet the six minimum control measures in the MS4 permit, such as brochures, posters, slide shows, training videos and more. In addition to the on-line materials, training videos for parks and public works staff and pop-up banners for community events are available partners to borrow. The website is now managed by the WaterShed Partners media campaign.

* A map of EMWREP program activities is included at the end of this report.

MS4 Permit requirements for the Stormwater Pollution Prevention Program

Correlating the Minimum Control Measures with EMWREP Programs and Audiences

1. Public Education and Outreach

1. Public Education Campaign (general public)
2. Blue Thumb (homeowners)
3. Blue Bird / Go Wild! (rural landowners)
4. Blue Biz (commercial property owners)

2. Public Participation

1. Public Education Campaign
2. Blue Thumb
3. Blue Bird / Go Wild!
4. Blue Biz

3. Illicit Discharge Detection and Elimination

1. Public Education Campaign
2. MS4 Toolkit (multiple audiences)

4. Construction Site Storm Water Runoff Control

1. Stormwater U (municipal staff and contractors)
2. MS4 Toolkit

5. Post Construction Storm Water Management

1. Stormwater U
2. NEMO (local elected officials and decision makers)
3. Blue Biz
4. MS4 Toolkit

6. Pollution Prevention and Good Housekeeping in Municipal Operations

1. Stormwater U
2. MS4 Toolkit

2010 Program Activities and Highlights

Public Education: General public education and outreach activities in 2010 included community events, student programs, mailings, newspaper columns, press releases, city newsletter articles, websites and social media. EMWREP also took part in the WaterShed Partners Clean Water Minnesota media campaign.

Community events: EMWREP reached 7790 people at local community events including:

- Woodbury Sustainability Fair (50)
- Hugo Feed Mill Open House (50)
- Forest Lake Home Show (200)
- Cottage Grove Arbor Day Event (100)
- Marine Millstream Day (300)
- Lake St. Croix Beach Heritage Day (300)
- Family Means St. Croix Valley Garden Tour (850)
- Square Lake Triathlon (900)
- Washington County Fair (5000)
- Newport Community Buckthorn Pull (40)



The Family Means St. Croix Valley Garden Tour featured a home in Mahtomedi with porous pavement and a rain garden.

Student Programs: EMWREP participated in two water education programs during 2010 for 3-5th grade students:

- OH Anderson Field Day, Mahtomedi – May (7 3rd-5th grade classes)
- Children's Water Festival, St. Paul – September (7 5th grade classes)

Targeted Mailings: Postcards were sent to 2490 residences during the year to advertise workshops and opportunities, including:



Postcards promoting native plants, rain gardens and shoreline plantings were sent to shoreline property owners in Comfort Lake – Forest Lake Watershed District.

- 1034 shoreline property owners in Comfort Lake – Forest Lake Watershed
- 971 rural landowners with more than 5 acres in Washington County
- 71 woodland property owners within the St. Croix River bird habitat project area
- 244 landowners in Carnelian-Marine-St. Croix Watershed
- 80 homeowners with the Power's Lake Trees project area in Woodbury
- 90 rural landowners in priority outreach areas within Washington County

Newspaper articles: The EMWREP educator writes weekly articles (52 per year) for several local papers. These articles can be found on-line at the East Metro Water blog <http://eastmetrowater.areavoices.com>. In addition, the articles were printed in the following papers:



- Valley Life - 49,000 readers in Stillwater, Bayport, Oak Park Heights, Stillwater Township, Afton, Lakeland, Marine, Hugo, Lake Elmo, Houlton, Somerset and New Richmond.
- Lillie Reviews - 34,392 readers in Oakdale, Lake Elmo, North St. Paul, Maplewood, White Bear Lake, White Bear Township, Gem Lake, Western Mahtomedi, and Landfall. (Articles are occasionally printed in Lillie owned papers outside the EMWREP area as well, reaching another 83,608 readers.)
- South Washington County Bulletin - 8616 readers in Cottage Grove, St. Paul Park, Newport and Grey Cloud.
- Oakdale and Woodbury Patch - on-line newspapers with more than 535 followers on twitter and facebook.

Press releases: Several other papers print press releases and news articles from EMWREP one to five times per year, including:

- Hugo Citizen - 10,000 readers
- Forest Lake Times - 13,029 readers
- Scandia Messenger - 1075 readers
- Woodbury Bulletin - 7811 readers
- Pioneer Press - 185,736 weekday readers

City newsletter articles: Information about water resources and EMWREP partner activities reached 355,174 people through community newsletters in 2010:

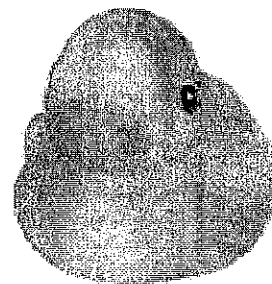
- Afton (pop. 2800)
 - Jan. - WCD tree and rain barrel sale; Benefits of trees
 - Feb. - Bird habitat & clean water
 - July - St. Croix River Awareness week & St. Croix Garden Tour
- Baytown (pop. 1970 - "Baytown Neighbors" goes to 88 households)
 - Feb. - Rain barrel sale
 - May - Bird habitat & clean water
- Birchwood (pop. 916)
 - Summer - Blue Thumb workshop insert
- Cottage Grove (pop. 34,000)
 - May - Car washing and chlorinated water discharges
 - June - Yard waste and lawn watering
- Dellwood (pop. 1035)
 - Summer mayor's letter - bird habitat

- Lake Elmo (pop. 7647)
 - April – Conserving water and lawn watering
 - Aug. – Illicit discharge, water conservation and erosion control
- Lakeland (pop. 1830)
 - January – Bird habitat and clean water
- Mahtomedi (pop. 8000)
 - Jan. – March – Winter salt and de-icing
 - April – June – WCD tree and rain barrel sale
 - Oct. – Dec. – New policies for city winter snow and ice management
- Newport (pop. 3715)
 - Spring – Stormwater Pollution
 - Fall – Buckthorn Day
- Oak Parks Heights (pop. 4724)
 - Second quarter – Rain barrel sale
- Stillwater (pop. 18,000)
 - April – Clean Water, lawn care, Blue Thumb
- West Lakeland (pop. 3547)
 - Spring insert – Blue Thumb workshop
- Woodbury (pop. 57,345)
 - Feb – WCD tree and rain barrel sale
 - Nov. stormwater update – Shallow lakes

Websites and Social Media: EMWREP uses several websites to provide information and resources for the public and also uses social media, such as facebook, twitter and the East Metro Water blog to reach people in the community:

- The Washington Conservation District website (www.mnwcd.org) received 11,192 visits from 4,375 visitors in 2010. EMWREP programs and partners are featured on several pages within the website, including www.mnwcd.org/cleanwater, www.mnwcd.org/emwrep, www.mnwcd.org/gowild and www.mnwcd.org/water_blue_thumb. WCD has around 50 friends on facebook.
- The Blue Thumb website (www.BlueThumb.org) received 24,324 visits from 17,286 visitors in 2010. Blue Thumb has around 340 friends on facebook.
- The Clean Water Minnesota website (www.cleanwatermn.org) received 2087 visits from 1633 visitors in 2010.
- The East Metro Water Blog was created in late October of 2010. It received an average of 68 visits per week in December.

Clean Water Minnesota Media Campaign: The WaterShed Partners are an innovative, dynamic coalition of over 50 public, private and non-profit organizations in the Twin Cities metro area that work collaboratively to teach residents how to care for area waters. The purpose of the WaterShed Partners is to promote a public understanding that inspires people to act to protect water quality in



The “rubber ducky” ads played on Channel 45 and cable television stations.

their watershed. EMWREP has been part of the WaterShed Partners since 2006.

WaterShed Partners coordinate the Clean Water Minnesota Media Campaign, which educates the public about stormwater pollution prevention through mass media such as television and radio. The group also maintains the www.cleanwatermn.org website, which provides resources for stormwater educators through the MS4 Toolkit (developed by EMWREP in 2009) and also has seasonal clean water tips for the public.

During 2010, the media campaign included billboards, commercials on cable television, Channel 45, and St. Paul Saints Television, and public service announcements on Minnesota Twins Radio and Minnesota Public Radio. Combined, these activities yielded an estimated 15,000,000 media impressions.



Blue Thumb: Blue Thumb – Planting for Clean Water activities in 2010 included workshops, meetings, presentations and community events. Last year, EMWREP also developed several new educational resources, including flyers and brochures, interactive displays and interpretive signs for local demonstration projects. Outreach in 2010 resulted in 130 new water quality projects in Washington County. Additionally, the Blue Thumb partnership maintains the www.BlueThumb.org website and reaches the public at several metro and statewide events each year.

Workshops, meetings and presentations: In 2010, 130 people attended Blue Thumb workshops, meetings and presentations organized by EMWREP partners.

- Blue Thumb
 - Oakdale – March 16 (16)
 - Woodbury – April 27 (20)
 - Birchwood – November 18 (8)
- Raingardens
 - St. Andrews, Mahtomedi, March 23 (13)
- Shoreline plantings
 - St. Andrews, Mahtomedi, April 6 (10)
 - Forest Lake, April 13 (15)
- Forest Lake Rotary, March 24 (15)
- Lake Elmo neighborhood party, June (8)
- CMSCWD lake meetings (40)
 - Long Lake, August
 - Sand Lake, August
 - Square Lake, August



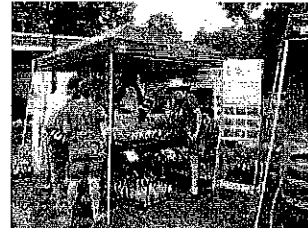
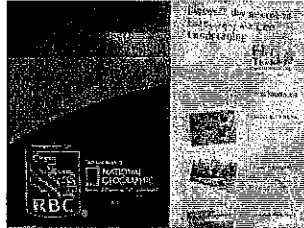
LSCB volunteer raingarden planting



Newport neighborhood project

Community Events: In addition to the local community events listed under Public Education, Blue Thumb partners also provided education and resources at several high visibility regional events, including:

- National Geographic, Blue Planet 2010 Expedition, July 4 in Minneapolis
- Minnesota State Fair, Eco Experience (attended by 350,000)



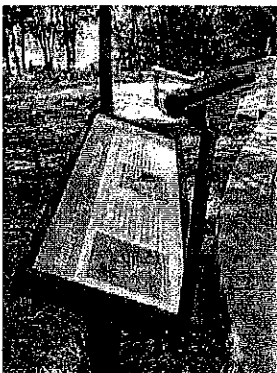
National Geographic made Minnesota the first stop on its Blue Planet 2010 Expedition, and partnered with Blue Thumb on a July 4 community event.

Exhibits and Interpretive Signs: EMWREP has several Blue Thumb posters, banners and table top displays for use at community events. A new interactive display developed in 2010 allows people to actually see the lengths of native plant roots and is very popular with kids as well as adults. This past year, interpretive signs were also created for demonstration projects at:

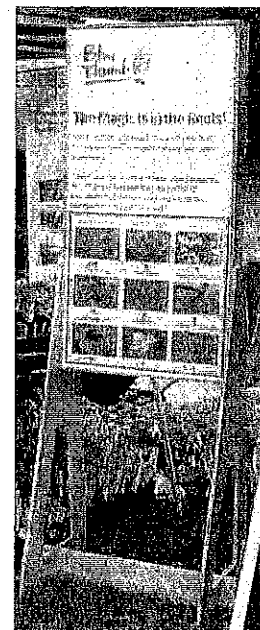
- Square Lake Park in May Township
- Lake St. Croix Beach City Hall
- Valley Ridge Mall in Stillwater

Educational materials: EMWREP developed several new fact sheets and brochures for Blue Thumb outreach in 2010. Current materials offered include:

- Blue Thumb Year-Round Guide to Yard Care
- Native Flowers, Shrubs and Trees for Yards, Raingardens and Shorelines
- Raingardens – The secret to clean water is in the roots!
- Raingardens – Plan today, plant tomorrow!
- Shoreline Plantings – Let nature do the work for you!



New signs at Square Lake Park.

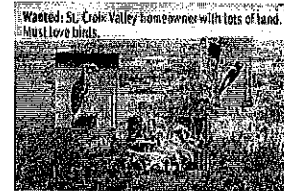


The retractable roots display is a conversation piece at community events.

Blue Birds / Go Wild! During the spring of 2010, EMWREP helped to host two workshops for landowners on the St. Croix River focusing on bird habitat and clean water. During summer and fall, EMWREP conducted surveys, focus groups and interviews with rural landowners in Washington County to help develop new outreach strategies for this audience. The goal for 2011 is to help more rural landowners install projects that reduce water pollution, especially on highly erodible lands that drain to rivers, lakes and streams within the area.

Bird Workshops: EMWREP collaborated with the WCD, Great River Greening and Audubon Minnesota to hold two workshops for large lot owners along the St. Croix River to promote projects, such as invasive species removal and native plantings, that would improve bird habitat and reduce runoff pollution. A total of 40 people attended.

- William O'Brien State Park – April 29 (24)
- Afton State Park – May 27 (16)



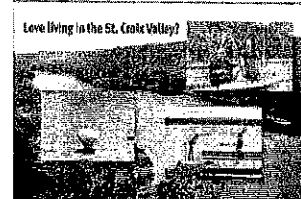
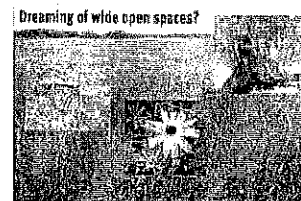
Postcard invitations were sent to people living in priority areas along the St. Croix River.

County Fair Survey: EMWREP surveyed 60 rural landowners at Washington County Fair in August. Findings indicated that:

- People are interested in:
 - Controlling weeds and invasive plant species
 - Reducing property taxes
 - Creating wildlife habitat
- They are not interested in planting buffers along streams and wetlands, fixing erosion or drainage issues or planting prairie.
- People with 5-10 acres are the most interested in conservation projects, while people with more than 40 acres and people with horses are the least.

Focus Group Interviews: During the fall, EMWREP worked with a student researcher from Macalaster University to conduct two focus group sessions with rural landowners in southern and northern Washington County.

- Afton – People in this focus group cited privacy, wildlife and woods as their favorite aspects to living in southern Washington County. They were very interested in buckthorn management. The people who mentioned surface water concerns lived on a waterway or had active erosion problems on their land
- Northern County – People in this group cited rural character and hunting and outdoor recreation as their favorite aspects to living in northern Washington County. They were most concerned with development pressure and perceived unfair treatment by cities, and thought outreach might be more successful if led by a non-profit or sportsman group instead of a government entity.



Survey and focus group participants expressed more interest in managing invasive plant species and creating wildlife habitat on their land than in doing projects to reduce water pollution.

- People from both groups expressed more interest in creating wildlife habitat and managing invasive species on their properties than in doing projects to reduce water pollution.

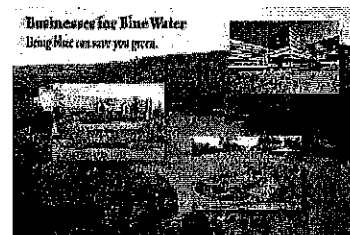
Interviews: During the fall, EMWREP worked with student volunteers from the University of Minnesota to conduct interviews with rural landowners who had done conservation projects in the past and with organizations and groups working on conservation in the area.

- Landowner interviews:
 - Half of the people who had done conservation projects in the past had done so to correct problems, such as erosion, on their land, while the other half had done so to protect local water resources.
 - They indicated that the design assistance and people at the Conservation District were critical to helping them do their projects.
 - Most were also interested in improving wildlife habitat.
- Organization interviews:
 - There are many groups doing education and activities around land and water conservation in the East Metro. Many expressed interest in working with EMWREP on outreach to local landowners.

Next Steps: EMWREP will continue to develop outreach strategies for rural landowners in 2011 and to work collaboratively with non-profit and sportsmen groups to encourage projects that protect water and improve wildlife habitat.

Blue Biz: During 2010 EMWREP developed new materials that partners can use for commercial outreach. In partnership with the South Washington Watershed District, Washington Conservation District and City of Cottage Grove, EMWREP attended a Cottage Grove Chamber event and reached out to specific businesses along Hwy 61 that were identified in a stormwater subwatershed assessment study. As a result, the South Washington County School District installed a bioretention area at their District Service Center and Target is working with the WCD and SWWD on a project plan. The following resources are available for commercial outreach:

- Website: www.cleanwatermn.org/businesses
- Minnesota Businesses for Clean Water – one page fact sheet
- Stillwater Country Club – case study fact sheet
- Valley Ridge Mall – case study fact sheet
- Blue Businesses postcard



A website and print materials are available for outreach to businesses.

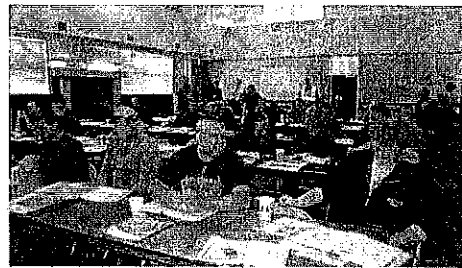
Stormwater U: During 2010, EMWREP collaborated with Blue Thumb partners to offer a shoreline restoration training for contractors and designers. EMWREP also collaborated with Ramsey-Washington Metro Watershed District, University of Minnesota Extension and Fortin Consulting to offer workshops on turf maintenance and snow and ice management for contractors and municipal staff.

Shoreline Restoration: This course, offered on February 9, was for landscape design and installation professionals that work on shoreline restoration projects. It covered topics such as design, plant selection and installation techniques.

- 75 participants attended from companies around the Twin Cities area

Turf management: This course, offered on April 20, was geared towards parks and ground maintenance staff and landscaping professionals. It covered topics such as mowing, watering, fertilizers and weed control and gave participants tools to reduce runoff pollution and save money.

- 50 participants attended from cities and companies in Washington and Ramsey Counties



Contractors and municipal staff learned about turf management at a Stormwater U workshop in North St. Paul.

Snow and Ice Management: This course, offered on Oct. 26, was geared towards municipal road crews and private contractors that plow streets and parking areas. It provided instruction on reducing salt and chemical use while also maintaining safety.

- 50 participants attended from cities and companies in Washington and Ramsey Counties

NEMO: In 2010, EMWREP used the newly developed Watershed Game activity to educate community leaders about practices that reduce runoff pollution. EMWREP also collaborated with the Minnesota DNR, Northland NEMO, St. Croix River Association, Middle St. Croix WMO, Washington Conservation District and the National Park Service to host a second workshop on the water for local elected officials and decision makers. EMWREP and partners also began work on the MIDS St. Croix project.

Watershed Game: EMWREP facilitated this activity with several groups, including:

- DNR Stakeholder workshop
- RWMWD Citizen Advisory Committee



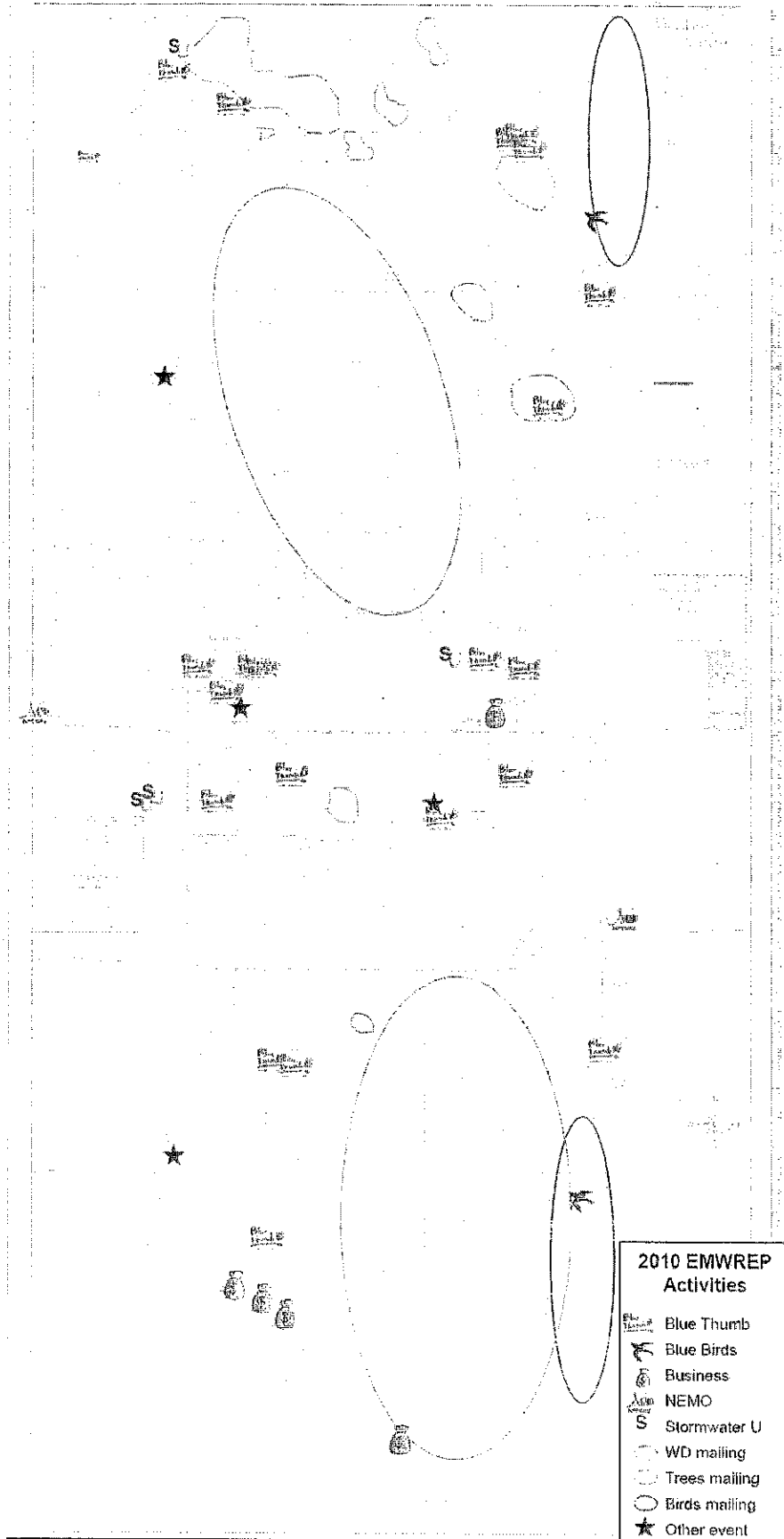
Over 100 people attended the July workshop on the water.

Workshop on the St. Croix River: Over 100 local elected officials and decision makers from communities on both sides of the St. Croix River attended the workshop on the water, held July 21. The event included a keynote speech by Jim Almendinger, Senior Scientist with the St. Croix Watershed Research Station, followed by three interactive learning activities. Workshop facilitators conducted a guided view from the river, showcasing stories of success from rural, developing and fully developed communities along the river. They also shared water samples, aquatic invertebrates and monitoring technology. A final activity was designed to help communities select appropriate policies and practices to protect water quality and achieve other community goals.

MIDS NEMO Project: Conservation St. Croix, a collaborative of nine Minnesota Soil and Water Conservation Districts in the St. Croix Basin received a 319 Clean Water grant to help communities update policies, procedures, ordinances, and zoning and subdivision codes to better protect the river. During 2011, EMWREP and other partners on the project began laying out the project timeline and conducting an inventory of existing community policies, ordinances and codes.

MS4 Toolkit: In 2011, EMWREP continued to use materials from the MS4 Education Toolkit for education and outreach to a variety of audiences about non-point source water pollution.

2010 EMWREP Activities





MAYOR & COUNCIL COMMUNICATION

DATE: 6/07/2011
REGULAR
ITEM #: 6
DISCUSSION

AGENDA ITEM: City Council Subcommittees

SUBMITTED BY: Lake Elmo City Council

THROUGH: Bruce Messelt, City Administrator *BAM*

REVIEWED BY: Sharon Lumby, City Clerk
Dave Snyder, City Attorney

SUMMARY AND ACTION REQUESTED: Time has been set aside for the City Council to discuss the roles and responsibilities of Council subcommittees. At present, this item is for information purposes only, as the City Council has the ability to structure itself, as appropriate, within the parameters of State statutes and generally-accepted guidelines and practices.

BACKGROUND INFORMATION & STAFF REPORT: In April, 2011 the City Council briefly discussed the roles and responsibilities of Council subcommittees. It was directed at that time that the City Council schedule this item for additional discussion at an upcoming Workshop. However, the City Council was unable to discuss this item during May.

To assist the City Council, available materials from the League of Minnesota Cities and guidelines based upon Robert's Rules of Order are attached. The City Attorney and other City Staff will be present to assist the City Council in its deliberation and discussion.

RECOMMENDATION: It is respectfully recommended that the City Council discuss the roles and responsibilities of Council subcommittees.

ATTACHMENTS: LMNC and related Materials.

SUGGESTED ORDER OF BUSINESS:

- Introduction..... Council Member Emmons
- Discussion..... Mayor & City Council
- Public Input, if Appropriate..... Mayor Facilitates
- Comments/Considerations..... Mayor & City Council

PART II
ELECTIONS, ELECTED OFFICIALS, AND COUNCIL MEETINGS

**CHAPTER 6: ELECTED OFFICIALS AND COUNCIL STRUCTURE
AND ROLE**

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Chapter 6

Elected officials and council structure and role

The cornerstone of city government in Minnesota is the elected city council ("council"). The council fashions the policies that determine a community's present and future well-being. Because people look to their local government for leadership, much of the responsibility for community development falls on the shoulders of city councilmembers.

Although the mayor is a member of the council in statutory cities and the clerk is a member of the council in Standard Plan cities, the mayor and clerk in all cities have some special duties. This chapter will discuss the special aspects of these positions and the council's role in city governance.

I. Elected officials in general

Minn. Stat. § 412.02, subd. 1;
Minn. Stat. § 412.191, subd. 1.

Although not all statutory cities have the same elective offices, all must have a mayor and at least three councilmembers. Whether a statutory city elects other officers depends on several factors, including the plan of government under which it operates.

For home rule charter cities, the city's charter specifies the type and number of elected officials.

A. Eligibility for office

Minn. Const. art VII, § 6; *See also, Jude v. Erdahl*, 296 Minn. 200, 207 N.W.2d 715 (Minn. 1973).

Minn. Const. art. VII, § 1.

The Minnesota Constitution sets the qualifications for elective office. To hold elective city office, individuals must be qualified city voters, at least 21 years of age on the date of taking office, U.S. citizens, and residents of the city for at least 30 days prior to the election. An individual who has been convicted of a felony under either state or federal law cannot hold elective office in Minnesota unless the individual's civil rights have been restored.

Minn. Stat. § 351.02(6).

Minn. Stat. § 412.02, subd. 2a.

If an individual fails to qualify for elective office within the allotted time, the city council may, by resolution, declare a vacancy and proceed to fill it by appointment. Individuals appointed to fill vacancies must also satisfy the requirements for elective office.

Minn. Stat. § 10A.01, subd. 26; Minn. Stat. § 10A.07; Minn. Stat. § 10A.09, subds. 1, 6a.

Elected and some appointed officials of cities with populations over 50,000 located in the seven-county metropolitan area must comply with conflict-of-interest disclosure and economic-interest-reporting requirements. Candidates for elected office must submit statements of economic interest to the city council within 14 days of filing an affidavit of candidacy. Persons accepting employment as public or local officials must file the disclosure statement within 60 days of accepting employment. In both cases, the law requires the filing of supplementary annual reports.

B. Terms of office

Minn. Stat. § 412.02, subd. 2; Minn. Stat. § 351.02; 2010 Minn. Laws ch. 201, § 59.

A.G. Op. 471-M (Nov. 23, 1999).

Terms of office in statutory cities begin on the first Monday of January following the election. The terms of the old officers in statutory cities end at this time, or as soon after that as the newly elected officers qualify by taking an oath and filing a bond, if one is required. If the newly elected officer refuses or fails to qualify, the incumbent officer continues to hold office until the council declares the office vacant and appoints a successor. The terms of all city councilmembers in charter cities expire on the first Monday in January of the year in which they expire. The length of the various terms of office is provided by statute. The attorney general has advised that a person elected to fill a vacancy is eligible to qualify and assume office upon receipt of an election certificate.

C. Oath of office

Minn. Stat. § 358.05.

Whether or not officials need a bond, they must take and sign an oath of office before exercising any of their powers. This includes members of councils, boards, commissions, and administrative officers. This applies to appointed as well as to elected officials.

See Minn. Const. art. V, § 6.
Minn. Stat. § 358.06.

The required oath is: "I, (name) do solemnly swear to support the Constitution of the United States, the Constitution of the State of Minnesota, and to discharge faithfully the duties of the office of (insert brief description of office) of the city of (insert city), Minnesota, to the best of my judgment and ability, so help me God."

Minn. Stat. § 358.08.

If the officer objects to an oath on religious grounds, the word "affirm" can substitute for the word "swear," and the phrase "and this I do under the penalties of perjury" can substitute for the phrase "so help me God."

Minn. Stat. § 358.09;
Minn. Stat. § 358.10.

Any person with authority to take and certify acknowledgments may administer the oath, including the city clerk, a justice of the peace, a notary public or a register of deeds. The candidate taking the oath must lift his or her hand while reciting the oath. The candidate qualifying for office must take the oath and sign a copy of the oath in the presence of the administering official.

Minn. Stat. § 358.11(3); See "Bonds for City Officials and Employees," *Minnesota Cities*, May-June 2002.

The signed copy should go to the city clerk for filing. City assessors should file their copy with the county auditor. If an officer must also submit a bond, the oath should be attached to the bond and both documents should go to the council for approval and then to the clerk for filing.

D. Term limits

Minn. Const. art. VII, § 6;
*Minneapolis Term Limits
Coalition v. Keefe*, 535
N.W.2d 306 (Minn. 1995).

The Minnesota Constitution establishes the eligibility requirements for public office without authorizing the adoption of additional "eligibility" requirements. Therefore, a charter city may not enact term limits as an eligibility requirement.

E. Vacancies

Minn. Stat. § 351.02.

Vacancies in an elective office in a statutory or home rule charter city may occur for the following reasons:

1. Death

Minn. Stat. § 351.02(1), (8).

The vacancy exists as of the date of death. If the elected officer has not yet begun the term of office, the vacancy exists from the date the term would have started.

2. Resignation

Minn. Stat. § 351.02(2); Minn.
Stat. § 351.01, subd. 1.

A resigning elected public official must submit a written resignation to the council. After receiving a resignation, the council should pass a resolution stating it has received and accepted the resignation, and declaring that a vacancy exists.

Minn. Stat. § 351.01, subds. 2,
3, 4; See informal A.G. letter
opinion dated March 3, 2003
(advising that Minnesota law
does not require that a written
resignation be "received" by
the council during a formal
meeting in order to be
effective).

Unless the resignation expressly states it is to take effect at a future date, the resignation will be effective when received by the council. If the resignation states it takes effect on a specified date, the vacancy occurs on that date whether or not the council has accepted it. To withdraw a prospective resignation, the resigning officer must submit a written statement of withdrawal in the same manner as the resignation. In order to be effective, the withdrawal must be received before the council accepts the resignation by resolution or before an officer authorized to receive it has issued a written acceptance.

3. Removal by operation of law

In most situations, it is not possible to remove statutory elected officials before the end of their terms, for cause or otherwise. Cities should consult with their city attorneys before attempting removal of any elected official.

Statutory city voters have no recall authority. Some home rule charters, however, give voters this option, but there remains some question as to whether this type of charter provision is constitutional.

Minn. Stat. § 351.02(5).
A.G. Op. 490D (Nov. 18,
1952); Minn. Stat. § 609.02,
subd. 2; Minn. Stat. § 609.42.

In certain situations, removal by operation of law can occur. A vacancy occurs if an elected official is convicted of any "infamous" crime. An infamous crime is a felony; that is, a crime for which a sentence of imprisonment for more than one year may be imposed. For example, bribery is a felony. Thus, a bribery conviction would result in the elected official's immediate removal from office. Moreover, any public officer convicted of bribery is forever disqualified from holding public office.

Minn. Stat. § 609.43; Minn.
Stat. § 609.02, subd. 4.

Misconduct of a public officer or employee, as defined by law, is a gross misdemeanor. Therefore, a misconduct conviction is not an infamous crime, and does not automatically result in an elected official's removal from office.

Minn. Stat. § 351.02(5); Minn.
Stat. § 358.05; Minn. Const.
art. V, § 6.

A vacancy does occur, however, when an elected official is convicted of an offense involving a violation of the individual's official oath. Many offenses that are not felonies or "infamous" crimes may involve a violation of an individual's oath and may result in a vacancy upon conviction.

See, Minn. Stat. §§ 609.415-
475.

Minn. Stat. § 13D.06, subd. 3.

A vacancy also occurs if a councilmember is found to have intentionally violated the open meeting law on at least three separate occasions. If a court finds a third, separate intentional violation, it must declare the position vacant and notify the appointing authority or clerk.

4. Termination of city residency

Minn. Stat. § 351.02(4).

A vacancy occurs when a city councilmember ceases to be a resident of the city. Residence is a factual question the council must determine in each case. Voting in the city is only one indication of residence. The office holder's intent and availability to perform official duties are additional criteria that should be considered. A councilmember becomes a non-resident when the property where the councilmember lives is detached from the city.

5. Failure to qualify for office

Minn. Stat. § 351.02(6).

An elected official may fail to qualify for office by refusing or neglecting to take the oath of office, to give or renew an official bond, or to deposit such oath or bond within the time prescribed by law. This type of vacancy is not automatic. A newly elected official may qualify at any time prior to the council declaring the office vacant.

6. Abandonment

A.G. Op. 99 (Aug. 26, 1920).

Whether an abandonment of office actually occurs is difficult to determine. The intent of the office holder is the controlling factor. The attorney general, while cautioning that this is a question of fact, has indicated that failure to participate in council activities for three months is sufficient grounds for declaring an abandonment of office.

7. 90-day absence rule

Minn. Stat. § 412.02, subd. 2b.

A vacancy in the office of mayor or councilmember may be declared by the council when the office holder is unable to serve in the office or to attend council meetings for a 90-day period because of illness, or because of absence from or refusal to attend council meetings for a 90-day period. If any of the preceding conditions occurs, the council may, by resolution, declare a vacancy and then fill it at a regular or special council meeting. The appointed councilmember will serve for the remainder of the unexpired term, or until the absent councilmember is again able to resume duties and attend council meetings, whichever is earlier. When the absent councilmember is able to resume duties and attend council meetings, the council shall, by resolution, remove the temporary office holder and restore the original office holder.

8. Qualifying for a second or incompatible office

See LMC Information Memo, *Official Conflict of Interest* for more information.

If an officer accepts a second office that is incompatible with the first, the first office is automatically vacated. (Section H of this chapter discusses incompatible offices in more detail.)

9. Expiration of elected term

Minn. Stat. § 412.02, subd. 2.

Generally, the vacancy occurring at the conclusion of an incumbent's term of office is filled immediately by the successor. If no one has been elected, the incumbent fills the office until the council appoints a successor and that person qualifies for the office.

10. Habitual drunkenness

Minn. Stat. § 351.07.

State law provides that the habitual drunkenness of any person holding office is good cause for removal from office.

F. Filling vacancies

Minn. Stat. § 412.02, subd. 2a.
A.G. Op. 59a-30 (July 24, 1996).

See "Vacancies on a Statutory City Council," *Minnesota Cities*, Oct. 2000.

While a council might identify and declare the facts giving rise to a vacancy, for all practical purposes they occur automatically and are not based upon any removal action. Because the council must fill vacancies in elective offices, it should determine whether a vacancy exists. After investigating the facts, the council should pass a resolution declaring a vacancy and then fill it as soon as possible.

Minn. Stat. § 412.02, subd. 2a.

A.G. Op. 471-M (Oct. 30, 1986).

State law provides that statutory city councils make the appointment to fill a vacancy, except in the case of a tie vote when the mayor makes the appointment. That means all members of the council, including the mayor, can vote on the appointment. And as long as at least a quorum of the council is present, a majority vote of those present is sufficient to make the appointment.

Minn. Stat. § 412.121; Minn. Stat. § 471.46.

State law does not place any limitation on a mayor's ability to make an appointment in the case of a tie vote. As a result, the mayor can appoint any qualified person willing to fill the vacancy even if that person was not the subject of the original appointment vote. If the vacancy is for the mayor's office and the council casts a tie vote, the acting mayor should make the appointment. The acting mayor may not, however, appoint himself or herself.

Minn. Const. art. VII, § 6.

The council may appoint any individual who is eligible for election to that office. Generally, to be eligible a person must be a U.S. citizen, a resident of the city, and at least 21 years old. The council is not obligated to appoint any candidate previously defeated in an election for the office.

Minn. Stat. § 415.15.
A.G. Op. 471-M (Dec. 27, 1977).

A retiring councilmember may not vote on the appointment of the successor to that vacancy. A councilmember who is elected mayor, however, may participate in the appointment vote to fill the vacancy in his or her former council position.

Minn. Stat. § 412.02, subd. 2a.

Under certain circumstances, individuals appointed to fill council vacancies serve on a temporary basis, and the city must hold a special election to elect a permanent replacement to fill the vacancy. Two factors determine whether an election is required: first, whether filing has opened for the next regular city election, and second, the length of the unexpired portion of the term at the time of the vacancy. If the vacancy occurs on or after the first day to file as a candidate for the next regular city election or if less than two years remain in the unexpired term, the city does not need to hold a special election, and the appointed person can serve out the remainder of the unexpired term. In the alternative, if the vacancy occurs before the first day to file as a candidate for the next regular city election and more than two years remain in the unexpired term, the city must hold a special election to fill the council vacancy at or before the next regular city election, and the person elected will serve out the remainder of the unexpired term. If the council chooses to hold a special election to fill a vacancy at a time other than at the regular city election, it must first adopt an ordinance specifying the circumstances under which such an election will be held.

Minn. Stat. § 412.02, subd. 2;
A.G. Op. 471-M (Nov. 23, 1999).

State law generally provides that the terms of elected city officials begin on the first Monday in January following the election. However, the attorney general has advised that a person elected to fill a vacancy is eligible to qualify and assume office upon receipt of an election certificate.

G. Councilmembers ineligible to fill certain vacancies

Minn. Stat. § 471.46.

City councilmembers, including mayors and elected clerks, may not be considered to fill vacancies in other city elective offices if the council has the power to make the appointment to fill the vacancy. This rule applies even if a councilmember resigns the position on the council before the council makes the appointment. An exception to this rule is that the council may appoint one of its members to the office of either mayor or clerk. In such a case, the councilmember being considered for the appointment may not vote.

H. Special concerns—gift law, conflicts of interest, and incompatible offices

There are several areas that are special concerns for all elected officials and some appointed officers. These include the following:

Gift law. City officials are generally prohibited from accepting gifts, although there are a few limited exceptions.

Conflicts of interest. Councils are generally prohibited from entering into a contract if one of their councilmembers has an interest in the contract. There are some exceptions to this rule.

Incompatible offices. City officials may not hold two offices that are incompatible.

In all three of these areas, the law is complex and whether a violation has occurred is not always clear. And even when a situation does not violate the law, people sometimes still question whether a city official has acted ethically. This section discusses each of the laws in more detail.

1. The law prohibiting gifts to city officials

Minn. Stat. § 471.895.

With some exceptions, every gift to any city official is prohibited. An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.

Minn. Stat. § 471.895, subd. 1(c).

An “interested person” is a person or a representative of a person or association with a direct financial interest in a decision the local official is authorized to make.

Minn. Stat. § 10A.071, subd. 1; Minn. Stat. § 471.895, subd. 1(b).

A “gift” means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

Minn. Stat. § 471.895, subd. 1(d).

A “local official” means an elected or appointed official of a city, or of an agency, authority, or instrumentality of a city.

All members of the city council, appointed boards, commissions, and committees are covered by this law. The definition of an interested person implies that local officials who are authorized to make decisions or recommendations that could impact someone financially are also covered by the law. As a result, top appointed employees are likely covered, such as the manager, administrator, clerk, financial officer, and other department heads. Other covered city employees could include inspectors and people who can make decisions or recommendations about purchasing property, supplies or services. Indeed, it is possible to construct fact situations where almost any public employee can make or recommend actions that could affect someone’s direct financial interest. As a result, many cities interpret the gift law to apply to all city employees.

An interested person under the gift law likely includes anyone who may provide goods or services to a city, such as engineers, attorneys, fiscal advisors, contractors, and sales representatives.

In addition, virtually every resident of the city and anyone doing business in the city could at some time have a direct financial interest in a decision a city official is authorized to make and thus could qualify as an interested person. The following are possible examples where a resident or business owner's financial interest could be affected:

- The levying of property taxes.
- The spreading of special assessments.
- The valuation of property for tax purposes.
- The issuing of a license.
- The zoning of property or granting of a land-use permit.

As a result, any person doing business or residing in the city is potentially an interested person as far as a city councilmember is concerned. Whether a resident or business owner is an interested person, as far as members of boards and commissions are concerned, depends on the types of decisions or recommendations the boards or commissions are authorized to make.

It is important to note that the decision or recommendation a city official is authorized to make does not have to be pending or probable. If an individual could at any time have a direct financial interest in a decision or recommendation that a city official would be authorized to make, that individual would likely be considered an interested person.

Minn. Stat. § 471.895, subd. 3;
See opinions issued by the MN
Campaign Finance and Public
Disclosure Board relating to
some of these exceptions.

There are a few limited exceptions to the gift law. For example, the following types of gifts are not prohibited:

- Political contributions.
- Services to assist an official in the performance of official duties.
- Services of insignificant monetary value.
- A plaque with a resale value of \$5 or less.
- A trinket or memento costing \$5 or less.
- Informational material of unexceptional value.
- Food or a beverage given at a reception, meal or meeting away from the recipient's place of work by an organization before whom the recipient makes a speech or answers questions as part of a program. (This exception probably permits only the principal speakers at meetings to receive gifts of food or beverage.)

- Gifts given because of the recipient's membership in a group, a majority of whose members are not local officials, if an equivalent gift is offered to or given to the other members of the group.
- Gifts given by an interested person who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.
- Gifts given by a national or multi-state organization of governmental organizations or officials, if a majority of the dues to the organization are paid from public funds, to attendees at a conference sponsored by that organization if the gift is food or a beverage given at a reception or meal and an equivalent gift is given or offered to all other attendees.

The law prohibits gifts to city officials, not to cities. Thus, an interested person can give a gift to a city. If the giver has no control over who will receive the gift and the gift was not targeted to a specific person, perhaps a city official could benefit from that gift. If the person who benefits from the gift has any control over its use, the gift would likely be prohibited. For example, if an interested person gave a city five tickets to a football game, the councilmembers probably could not decide to use the tickets for themselves.

2. Conflicts of interest

There are two types of conflicts of interest that a councilmember may encounter: those involving contractual decisions, and those involving non-contractual decisions.

Minn. Stat. § 471.87; Minn. Stat. § 412.311.

See LMC Information Memo, *Official Conflict of Interest*, for more information.

First, a councilmember of a statutory city may not have a direct or indirect personal, financial interest in any sale, lease or contract they are authorized to make in their official capacity. There are limited exceptions to this law. Unless there is an exception, any contract made in violation of this law is void.

City councilmembers, who knowingly authorize a prohibited contract, even though they do not benefit from it, may be guilty of a crime. The councilmember who would benefit from the contract could also be guilty of a crime if that person entered into it knowing it was prohibited. The contract is void even if the benefiting councilmember did not participate in the discussion of the contract or vote on the contract.

Second, there are also situations where councilmembers may find that they have an interest in a non-contractual decision the council will make. This type of interest does not have to be of a financial nature. These non-contractual matters may include such things as council decisions on zoning, local improvements, and the issuance of licenses. Although not generally prohibited by state law, an interested councilmember most likely should abstain from participating in the council discussion and from voting on these issues.

3. Incompatible offices

A.G. Op. 358 (Dec. 18, 1970); *State v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923); *Kenney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (Minn. 1886).

McCutcheon v. City of St. Paul, 216 N.W.2d 137 (Minn. 1974).

See LMC Information Memo, *Official Conflict of Interest*, for more information.

See 2010 Minn. Laws ch. 206, §§ 1-2 to be codified at Minn. Stat. § 410.191 and Minn. Stat. § 412.02, subd. 1a.

A.G. Op. 471-M (Dec. 11, 1957).

See *Kenney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (Minn. 1886); *State v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923);

Minn. Stat. § 471.46; A.G. Op. 256 (Jan. 17, 1935); A.G. Op. 235 (Dec. 31, 1928); A.G. Op. 234 (Dec. 19, 1927).

Incompatible offices are any public offices an individual may not hold simultaneously. The term “office” has been interpreted to include all elected offices and those appointed positions that have independent authority under law to determine public policy or to make a final decision not subject to a supervisor’s approval. Without specific statutory authority government officials cannot hold more than one position if the functions of the positions are incompatible or if the jobs create a conflict between two different public interests. In addition, a new state law expressly prohibits the mayor and councilmembers in both statutory and home rule charter cities from being “employed” by their city. The term “employed” is defined as “full-time permanent employment as defined by the city’s employment policy.” The new law applies to persons elected or appointed to serve as mayor or city councilmember on or after Aug. 1, 2010.

Unless otherwise limited by law, an individual may apply for a job or run for an office that is incompatible with a current position without resigning from the current position. When the individual is elected or appointed to an incompatible office, the individual is considered to have resigned from the first position.

Generally, positions are incompatible when one or more of the following conditions exist:

If the holder of one position (or the group or board of which the person is a member):

- Hires or appoints the other.
- Sets the salary for the other.
- Performs functions that are inconsistent with the other.
- Makes contracts with the other.
- Approves the official or fidelity bond of the other.

If a specific statute:

See 2010 Minn. Laws ch. 206, §§ 1-2 (to be codified at Minn. Stat. § 410.191 and Minn. Stat. § 412.02, subd. 1a).

- States that certain positions may not be held by one person.
- Requires that the holder may not take another position.
- Requires that the holder devote full-time to the position.

Minn. Stat. § 412.152.
See LMC Information
Memo, *Official Conflict
of Interest*, for more
information.

State statute allows a statutory city mayor to be the fire chief of an independent, nonprofit firefighting corporation if certain conditions are met. The statute, however, is unclear on several points. For example, it does not address council positions other than the mayor, so there still may be incompatibility concerns. It also appears to be limited to independent, nonprofit fire departments, so city departments (whether volunteer or salaried) are not addressed. Because each city may have a different relationship with its fire department, a city may want to get a legal opinion from its city attorney or from the attorney general before allowing a councilmember to serve as a firefighter with any sort of supervisory powers.

Minn. Stat. § 43A.32, subd.
2(b).

State law generally allows state employees to hold city offices as long as the positions are compatible. State civil-service employees can hold any local elected office as long as it does not conflict with their regular state employment. The Department of Employee Relations will make the determination of whether a conflict exists.

I. Publications and Web sites

Minn. Stat. § 10.60, subds. 2,
3.

The purpose of a city Web site or publication must be to provide information about the duties and jurisdiction of the city or to facilitate access to public services and information related to city responsibilities or functions. A city Web site or publication must not include pictures or other materials that tend to attribute the Web site or publication to an individual or group of individuals instead of to the city. A city publication must not include the words “with the compliments of” or contain letters of personal greeting that promote an elected or appointed official of a city.

Minn. Stat. § 10.60, subd. 3.

A city Web site may not contain a link to a Web-blog or site maintained by a candidate, a political committee, a political party or party unit, a principal campaign committee, or a state committee.

Minn. Stat. § 10.60, subd. 4.

A city Web site or publication may include biographical information about an elected or appointed official, a single official photograph of the official, and photographs of the official performing functions related to the office. There is no limitation on photographs, Web-casts, archives of Web-casts, and audio or video files that facilitate access to city information or services or inform the public about the duties and obligation of the city office or that are intended to promote trade or tourism. A city Web site or publication may include press releases, proposals, policy positions, and other information directly related to the legal functions, duties, and jurisdiction of a city official or organization.

Minn. Stat. § 10.60, subd. 5.

Cities may adopt more restrictive standards for the content of city publications or Web sites.

II. City council and its powers

It is the duty of the mayor, clerk, and councilmembers to ensure that the city is fulfilling its duties under the law and lawfully exercising its powers.

See Handbook, Chapter 18 for more information about personal liability for official actions.

City officials can sometimes be held personally liable for failing to act or for taking unauthorized actions on the part of the city. To avoid personal-liability lawsuits, city officials should gain a working knowledge of the laws that regulate city government. Whenever there is any doubt about the validity of an action or procedure, city officials should consult their city attorney.

A. Role of the individual councilmember

Councilmembers' statutory duties are to be performed, almost without exception, by the council as a whole. For example, it is the council and not individual councilmembers that must supervise administrative officers, formulate policies, and exercise city powers.

Councilmembers should devote their official time to problems of basic policy and act as liaisons between the city and the general public. Councilmembers should be concerned, not only with the conduct of daily affairs, but also with the future development of the city.

The most important single responsibility of a councilmember is participation at council meetings. In statutory cities, each councilmember, including the mayor, has full authority to make and second motions, participate in discussions, and vote on every matter before the council.

Minn. Stat. § 412.191, subd. 2;
Minn. Stat. § 13D.04.

In a statutory city, the mayor or any two councilmembers of a five-member council or any three members of a seven-member council may call a special meeting. Care should be exercised to give proper notice, however.

As individuals, councilmembers have no administrative authority. They cannot give orders or otherwise supervise city employees unless specifically directed to do so by the council. The council, however, has complete authority over all administrative affairs in the city. In Plan B cities, this authority is generally restricted to conducting investigations and establishing policies to be performed by the manager.

Minn. Stat. § 412.101
(repealed by Laws 2001, ch.
135, sec. 3).

Under state law that was repealed in 2001, all members of the council, including mayors, were "peace officers." Councilmembers were authorized to suppress any "riotous or disorderly conduct" in the streets or public places of the city. The mayor and individual councilmembers no longer have peace-officer authority.

B. The council's authority

Van Cleve v. Wallace, 216 Minn. 500, 13 N.W.2d 467 (Minn. 1944).

The city council is a continuing body. New members have no effect on the body except to change its membership. This means that all ordinances and resolutions remain in effect until the council alters or rescinds them, or until they expire through their own terms. At any time, the council can change any resolution, ordinance or administrative order whether or not the individuals presently on the council are the same as those serving when the council originally took action.

Minn. Stat. § 306.41.

There are exceptions to this rule. For example, the council cannot dissolve a perpetual-cemetery-maintenance fund. In addition, the council cannot rescind or unilaterally alter any valid contracts. This means the law of contracts applies to the council as it does to any other party. Whether a contract was validly made is a question of fact.

Reed v. City of Anoka, 85 Minn. 294, 88 N.W. 981 (Minn. 1902).

The following information outlines the major areas of council authority and responsibility.

1. Judging the qualification and election of its own members

Minn. Stat. § 412.191, subd. 2.

The council evaluates the credentials of individuals who are, or who claim to be, members of the council. This power includes certifying election results, determining whether an individual has the necessary qualifications to hold office, and deciding whether a council vacancy has occurred.

2. Setting and interpreting rules governing its own proceedings

Minn. Stat. § 412.191, subd. 2.

The council has the following powers:

- To preserve order during its own meetings.
- To establish rules of procedure.
- To compel the attendance of members at meetings and to punish non-attendance. The council does not have the power to remove members from office, but it may punish members by fines or by deducting a part of the absentee's compensation for failure to comply with attendance orders.

See Minn. Stat. § 43A.17, subd. 10 (prohibiting the reduction of councilmembers' salaries because of absences from official duties because of vacation or sickness).

3. Exercising all the powers of cities that the law does not delegate to others

Except for powers that the statutes delegate to a specific official or independent board or commission, the council has the authority to exercise all powers given to the city.

4. Legislating for the city

Minn. Stat. § 412.191, subd. 4.

The council may enact ordinances by a majority vote of all its members except where a larger number is required by law. The power to legislate also includes setting administrative policies and otherwise establishing public policy for the city.

Minn. Stat. § 412.231.

The council has the power to declare that violations of any ordinance are a crime and may prescribe penalties for ordinance violations. The statutory city code limits the penalty for ordinance violations to a fine of up to \$1,000 or 90 days in jail, or both.

5. Directing the enforcement of city ordinances

The council directs the enforcement of city ordinances by determining the level of law enforcement, setting qualifications for the police chief and police officers, purchasing certain types of equipment for police use, and by directing and supervising the work of police officers. The city council also directs all departments and employees responsible for the administration of its policies and ordinances in the general administration of their duties. The city council generally should not direct the enforcement efforts of its employees as to particular situations.

6. Appointing administrative personnel

In Standard Plan and Plan A cities, the council has the sole authority to appoint all city employees.

Minn. Stat. § 412.661.

In Plan B cities, the council appoints a city manager, who in turn appoints all city employees. The council may not dictate that the city manager appoint a particular person to city employment. Additionally, the council may not give any orders to employees hired by the manager.

7. Transacting city business

See Minn. Stat. § 412.201;
Minn. Stat. § 412.211.

The transaction of city business includes a wealth of activities, such as purchasing, executing legal papers, taking bids, letting contracts, making discretionary administrative decisions, and evaluating the work of the administrative departments and personnel.

8. Managing the city's financial operations

Minn. Stat. § 412.241.

The council has full authority over the city's financial affairs, including but not limited to:

Minn. Stat. § 412.251.

- Levying taxes.

Minn. Stat. § 412.701; Minn. Stat. § 275.065.

- Adopting a budget.

Minn. Stat. § 412.241.

- Auditing and settling accounts.

Minn. Stat. § 412.241.

- Safekeeping and disbursement of public money.

- Borrowing money.
- Designating depositories.

Minn. Stat. § 118A.02; Minn. Stat. §§ 427.01-.02.

Councils should seek the advice of their staff and of consultants in making many of these decisions.

9. Appointing members of the boards

Minn. Stat. § 412.111.

The council may create departments and advisory boards and appoint officers, employees, and agents for the city as deemed necessary for the proper management and operation of the city.

10. Conducting the city's intergovernmental affairs

Minn. Stat. § 471.59; Minn. Stat. § 465.58.

The council may make agreements for the joint exercise of powers through agreements with other units of government, appoint people to serve on intergovernmental bodies, conduct city business with state and federal agencies, and participate in intergovernmental programs and the work of municipal associations such as the League of Minnesota Cities.

11. Protecting the welfare of the city and its inhabitants

Minn. Stat. § 412.221, subd. 32.

Elected officials must formulate policies that will help the city solve future problems and adjust to social and economic trends. This requires long-range planning regarding city facilities and needs.

12. Providing community leadership

In addition to participating in civic events, city officials must provide leadership by promoting new ideas and suggesting new programs to improve the community and its surrounding areas.

13. Other specific powers

The city council also has specific powers in the following areas:

Minn. Stat. § 412.221, subds. 3, 28.

Buildings. The council has the power to construct or acquire structures needed for city purposes, and to control, protect, and insure public buildings, property, and records. The council also has the power, by ordinance, to regulate the construction of buildings.

Minn. Stat. § 412.221, subd. 5.

Actions at law. The council has the power to provide for the initiation or defense of actions in which the city may be interested. The council may employ attorneys for this purpose.

Minn. Stat. § 412.221, subd. 6.

Streets. The council has the power to lay out or change streets, parks, and other public grounds. By ordinance, the council may regulate the use of streets and public grounds.

- Minn. Stat. § 412.491. **Parks.** A statutory city may establish, improve, maintain, and manage parks and recreational facilities and, by ordinance, protect and regulate their use.
- Minn. Stat. § 412.221, subd. 8. **Trees.** The council has the power to provide for and, by ordinance, regulate the setting out and protection of trees, shrubs, and flowers in the city or upon its property.
- Minn. Stat. § 412.221, subd. 9. **Cemeteries.** The council has the power to acquire, hold, and manage cemetery grounds and to sell and convey cemetery lots. By ordinance, the city may regulate cemeteries and the disposal of cadavers.
- Minn. Stat. § 412.221, subd. 11. **Waterworks.** The council has the power to provide for and, by ordinance, regulate the use of wells, cisterns, reservoirs, and other types of water supply.
- Minn. Stat. § 412.221, subd. 16. **Hospital.** The council has the power to establish hospitals.
- Minn. Stat. § 412.221, subd. 17. **Fire prevention.** The council has the power to establish a fire department, appoint its officers and members, and prescribe their duties. The council also has the power, by ordinance, to prevent, control or extinguish fires.
- Minn. Stat. § 412.221, subd. 18. **Naming streets.** The council has the power, by ordinance, to name or rename the streets and public places of the city and to number or re-number the lots and blocks of the city. The council may make and record a consolidated plat of the city.
- Minn. Stat. § 412.221, subd. 21. **Animals.** The council has the power, by ordinance, to regulate the keeping of animals, to restrain their running at large, and to authorize their impoundment and destruction.
- Minn. Stat. § 412.221, subd. 22. **Health.** The council has the power, by ordinance, to provide for the disposal of solid waste, sewage, garbage, and other unwholesome substances.
- Minn. Stat. § 412.221, subds. 24, 25. **Noise and nuisances.** The council has the power, by ordinance, to regulate and prevent noise and to define and provide for the prevention or abatement of nuisances.
- Minn. Stat. § 412.221, subd. 25. **Amusement.** The council has the power, by ordinance, to prevent or license and regulate, billiard tables, bowling alleys, gambling devices, circuses, theatrical performances, amusements, or shows of any kind.
- Minn. Stat. § 412.221, subd. 26. **Vice.** The council has the power, by ordinance, to restrain and punish vagrants, prostitutes, and individuals guilty of lewd conduct.
- Minn. Stat. § 412.221, subd. 27. **Dances.** The council has the power, by ordinance, to license and regulate the operation of public-dance halls and the conduct of public dances.
- Minn. Stat. § 412.221, subd. 30. **Restaurants.** The council has the power to license and regulate restaurants and public-eating places.
- Minn. Stat. § 412.221, subd. 31. **Sewer and water connections.** The council has the power, by ordinance, to require the owner of any property that is abutting or adjacent to any street in which sewer and water mains have been laid to install a toilet in such buildings and connect it with the sewer and water mains.

Minn. Stat. § 412.221, subd. 32.

General welfare. The council has the power to provide for the government and good order of the city, the prevention of crime, the protection of public and private property, and the promotion of health, order, and convenience through the enactment of ordinances.

Minn. Stat. § 415.01.

Township powers. The council has all the powers given to towns in chapters 365 and 368 of the Minnesota Statutes.

C. Council committees

Although the statutes do not require the use of committees, some councils find they are helpful in reducing workload. By dividing their membership into several committees, a council enables its members to devote most of their time to specific areas of the city's operations. Each councilmember becomes a relative specialist in these areas and that councilmember's services become of greater value to the council as a whole.

Council action is necessary to establish committees either in the council's bylaws, by special resolution or through a motion.

The council may set up special and standing committees. The council appoints special committees to deal with a single transaction or project. For example, the council might appoint a special committee to study the advisability of purchasing land for a new park. Standing committees concentrate on work that is continuous or repeated from time to time during the year. Many cities, for example, have a standing committee on finance.

Sometimes councils set up their committees on a functional basis. Such committees deal with fire, police, health, public works, welfare or public utilities. This system encourages councilmembers to handle administrative details and, consequently, does not make full and proper use of the city's administrative officers. Thus, councils should try to limit their work to special policy problems or to certain staff or public-relations functions that are not the responsibility of administrative personnel. Examples include committees on auditing, personnel, budget, public reporting, purchasing, and licensing.

Committees may exercise all duties the council has legally assigned to them. They can have authority to conduct investigations and to make recommendations. Committees, however, may not make decisions on behalf of the council. Committees are subject to the same rules as the full council under the open meeting law.

In many cities, it is routine for the council to approve a committee's recommendations if it has done a thorough and competent job. It is important, however, for all councilmembers to be aware of their independent obligation to the city when considering whether to adopt a committee's recommendation. It is only the council's final decision, and not the committee's recommendation, that can bind the city. For example, committees may not enter into contracts or employ workers even if a specific motion of the council delegates such power to them.

D. Delegation of council power

A.G. Op. 624a-3 (Nov. 2, 1998).

Muehring v. School Dist. No. 31, 224 Minn. 432, 28 N.W.2d 655 (Minn. 1947); *Jewell Belting Co. v. Village of Bertha*, 91 Minn. 9, 97 N.W. 424 (Minn. 1903); *Minneapolis Gas-Light Co. v. City of Minneapolis*, 36 Minn. 159, 30 N.W. 450 (Minn. 1886).

Absent specific statutory or charter authority, a city council may not delegate its legislative or quasi-judicial power. In addition, a council may not delegate any administrative power of a discretionary nature. Merely ministerial functions, however, may be delegated to an officer or committee.

1. Discretionary and ministerial powers

The courts have not been explicit in describing the meaning of discretionary administrative power. They have, however, provided several rules that offer some basis for distinguishing which powers the council can delegate.

Johnson v. State, 553 N.W.2d 40 (Minn. 1996).

Discretionary powers or functions are those that involve the exercise of judgment. Ministerial functions are absolute, fixed, and certain so that no judgment is necessary in fulfilling them.

For example, the approval of a budget is a discretionary function while the signing of legal papers is a ministerial function. There are many tasks, however, for which the difference is largely one of degree. The courts, in these cases, generally differentiate by using a test of reasonableness.

2. Administrative standards

Courts generally permit the delegation of administrative power when the council establishes a fixed standard or rule to guide the subordinate. The courts usually permit delegation when the subordinate has reasonable discretion in administering an established standard or rule. Administration of land-use ordinances, building codes, and many other ordinances are examples.

3. Making vs. executing the law

Finally, the courts sometimes recognize a distinction between the power to make the law and the authority to execute it. A council cannot delegate the power to make a law, but the council can delegate the authority to execute it.

E. Salaries of mayor and councilmembers

Minn. Stat. § 415.11; See "Changing City Council Salaries," *Minnesota Cities*, Sept. 2002.

The city council in Second Class, Third Class, and Fourth Class cities establishes, by ordinance, the salaries of the mayor and councilmembers in an amount that the council deems "reasonable." Generally, no change in salary shall take effect until after the next succeeding regular city election.

Minn. Stat. § 415.11,
subd. 3.

A city council, however, may adopt an ordinance to take effect before the next city election that reduces the salaries of the mayor and councilmembers. The ordinance shall be in effect for 12 months, unless another period of time is specified in the ordinance, after which the reduced salary reverts to the salary in effect immediately before the ordinance was adopted.

Salaries may be an annual or monthly sum, or a per-meeting rate. The ordinance should specify whether the per-meeting rate applies only to regular meetings or to both regular and special meetings.

Minn. Stat. § 43A.17,
subd. 10.

Cities are prohibited from including provisions for vacation or sick leave in the compensation plan for councilmembers. Cities are also prohibited from reducing the salaries of councilmembers because of absences from official duties because of vacation or sickness.

Minn. Stat. § 415.10.

Iron Range cities have special legislative authority to make per-diem payments to councilmembers up to \$25 per day, not to exceed \$250 per year, for absences from the city while on official city business.

See IRS Publication
1542—*Per Diem Rates
(For Travel Within the
Continental United
States)*; IRS Publication
463—*Travel,
Entertainment, Gift and
Car Expenses*; IRS
Publication 15—
*Circular E, Employer's
Tax Guide.*

Some non-Iron Range cities have sought to pay their councils using per-diem rates. Cities should be careful in this area. A per diem is an expense allowance or an advanced reimbursement for business travel away from home. The IRS has strict guidelines for per-diem pay, including dollar limits above which the per diem must be treated as wages for tax purposes. Cities wishing to establish per-diem rates for councilmembers should consult with their financial advisors or the IRS for further guidance.

Minn. Stat. § 211B.10, subd. 2.

An employer must allow a councilmember to take time off from regular employment to attend council meetings. The time off may be without pay, with pay or made up with other hours as agreed to between the employee and the employer. When the councilmember takes time off without pay, the employer must make an effort to allow the employee to make up the time with other hours when the employee is available. No retaliatory action may be taken by the employer for absences to attend meetings necessitated by reason of the employee's public office.

III. Mayor

Minn. Stat. § 412.191, subds.
2, 1.

As the head of the city, the mayor officially speaks for both the council and the community as a whole. In all statutory cities and in most charter cities, the mayor is the presiding officer and a regular member of the council. The mayor has all the powers and duties for the office of councilmember in addition to those of mayor.

In a home rule charter city, the charter spells out the duties and responsibilities of the mayor. This chapter, however, deals with mayors of statutory cities.

Many mayors belong to the Minnesota Mayors' Association (MMA), which is affiliated with the League and holds an annual conference on issues of interest to mayors. Contact the League for more information about the MMA.

A. Official head of the city

As the official head of the city, the mayor has three important responsibilities:

First, the mayor usually serves as the city's representative before the Minnesota Legislature, federal agencies, and other local governments.

Second, the mayor performs ceremonial duties on behalf of the community. The mayor usually greets important visitors, gives formal and informal talks, and takes part in public events. Because local civic groups frequently ask the mayor to speak, the mayor must be prepared to explain and defend city problems and programs.

A third responsibility is to exert leadership in city affairs. Because the mayors of statutory cities lack significant individual authority, this responsibility frequently calls for tact rather than overt acts of direction or supervisory control.

B. Executing official documents

Minn. Stat. § 412.191, subd. 4;
Minn. Stat. § 412.201;
A.G. Op. 61-J (June 2, 1966).

The mayor of a statutory city must sign ordinances, contracts authorized by the council, and written orders for payment of claims that have been audited and allowed by the council. These are ministerial duties, and the mayor may not refuse to sign if the purpose, approval, and form are legally correct and complete.

C. Power to make some appointments

The power to appoint usually resides in the council. The mayor has authority to make the following appointments, however, subject to council approval:

Minn. Stat. § 412.501. (The council appoints the members of an advisory park board or commission created under Minn. Stat. § 412.111.)

Minn. Stat. § 134.09, subd. 1;
Minn. Stat. § 134.195, subd. 2
(joint school and public library).

Minn. Stat. § 12.25, subd. 1.

Minn. Stat. § 412.221, subd. 16.

Minn. Stat. § 44.04, subd. 1;
See Minn. Stat. § 419.02, subd. 1 (authorizing the creation of a joint police and fire commission with members appointed by the council).

Minn. Stat. § 469.003, subd. 6.

Minn. Stat. § 469.095,
subd. 2.

- Park board members.
- Public library board members.
- Emergency management director.
- Hospital board members.
- Some members of the police civil-service commission.
- HRA members.
- EDA members.

The mayor has authority to make the following appointments without needing council approval:

Minn. Stat. § 450.20.

- City art commission members (First Class cities).

Minn. Stat. § 412.02, subd. 2a.

- The mayor also appoints to fill vacancies in elective offices if the council's vote to fill the vacancy is tied.

D. Presiding officer at council meetings

Minn. Stat. § 412.191, subd. 1.

Plan A and Plan B statutory city councils are usually composed of five members consisting of the mayor and four councilmembers. In a Standard Plan city, the council consists of the mayor, the clerk, and three councilmembers. Any statutory city, however, may adopt a council size of seven following a council ordinance and voter approval at the next general city election.

Minn. Stat. § 412.02, subd. 6.

Minn. Stat. § 412.191, subd. 2.

The mayor serves as presiding officer at council meetings. The mayor generally recognizes speakers for debate and motions, and rules on questions of council procedure. The power to rule on council procedure is especially significant because once rulings are made they are binding on the council, unless the council votes to challenge them.

Minn. Stat. § 412.191, subd. 2;
See "Mayor's Power to Vote and Make Motions,"
Minnesota Cities, Jan. 2004.

A statutory city mayor can vote on all motions put before the council, but does not have the right to veto council actions. The right of the mayor to make and second motions is implied from the mayor's privilege of voting and taking part in regular council deliberations. The mayor has an obligation to be impartial and objective in conducting the meeting. To maintain this objectivity, many mayors choose to minimize making or seconding motions, and to allow other members of the council to speak before expressing an opinion. Mayors may also call special meetings.

E. Weed inspector

Minn. Stat. § 18.80, subds. 2, 3.

The mayor is the city weed inspector. The city may appoint one or more assistant weed inspectors. An assistant weed inspector has the same power, authority, and responsibility of the mayor in the capacity of weed inspector.

Minn. Stat. § 18.81, subd. 2.

Local weed inspectors examine all lands, including highways, roads, and alleys, to determine if the landowner has complied with the rules regarding the eradication of noxious weeds. Weed inspectors also issue permits for the transportation of materials infested with noxious, weed-propagating parts. A claim for the expenses of performing the weed inspector's duties is a legal charge against the city.

F. Election duties

Minn. Stat. § 204C.07, subds. 3, 4.

Mayors of all cities have election duties. At elections where cities will vote on a question, the mayor, upon receiving a written petition signed by at least 25 eligible voters, must appoint one voter for each precinct to act as a challenger of voters in the polling place. A challenger must be present in the polling place during voting hours, and must remain until the votes are counted and the results declared. Challengers cannot attempt to influence voting in any manner.

Minn. Stat. § 204C.31, subd. 1.

Mayors or chairs of the town board from the most populous municipality in each county serve as members of the county-canvassing board. Any member of the canvassing board may appoint a designee to appear at a meeting of the board.

G. Investigating fires

Minn. Stat. § 299F.04.

In cities without fire departments, the mayor must investigate or have investigated the cause, origin, and circumstances of any fire where damages exceed \$100. The investigation must begin within two days of the fire. The mayor must report the fire to the state fire marshal. Within one week of the fire, the mayor must furnish a written statement to the state fire marshal.

H. Declaring local emergencies

Minn. Stat. § 12.29, subd. 1.

Only the mayor can declare a local emergency. A local emergency cannot last for more than three days except with the council's consent. A local emergency must receive prompt and general publicity. The clerk must promptly file any order or proclamation declaring, continuing, or terminating the emergency.

Minn. Stat. § 12.29, subds. 2, 3.

A declaration of a local emergency invokes the response and recovery aspects of any local or interjurisdictional disaster plans and may authorize aid and assistance. No interjurisdictional agency or official may declare a local emergency unless expressly authorized by an agreement. An interjurisdictional disaster agency must provide aid and services in accordance with the agreement.

IV. Clerk and treasurer

See LMC Information Memo, *City Administration: Clerk, Administrator, Manager*, for more information regarding the clerk position.

This section gives an overview of the positions of clerk and treasurer.

A. Clerk

Minn. Stat. § 412.191, subd. 1; Minn. Stat. § 412.02; Minn. Stat. § 412.151.

See Discussion of filling council vacancies at Part I-F of this chapter.

See Handbook, Chapter 8 for more about the Clerk's duties.

The clerk position in a Standard Plan statutory city is an elected office. The clerk serves as a member of the council, as well as fulfilling the other duties of a city clerk prescribed by statute or by the council. Vacancies in the elected clerk position are handled in the same manner as council vacancies.

The clerk position in Plan A and Plan B cities is an appointed office. The clerk does not serve on the council, but is responsible for the duties prescribed by statute and by the council.

B. Treasurer

Minn. Stat. § 412.141; Minn. Stat. § 412.02.

See Discussion of filling council vacancies at Part I-F of this chapter.

See Handbook, Chapter 8, for more about the Treasurer's duties.

The treasurer in a Standard Plan statutory city is also an elected position, but the treasurer does not serve on the council. Vacancies in the elected treasurer position are handled the same as council vacancies.

The treasurer in Plan A and Plan B cities is not an elected office. All treasurers are responsible for those duties prescribed by statute or their city councils.

C. Combination of clerk-treasurer

Minn. Stat. § 412.02, subd. 3; Minn. Stat. § 412.541, subd. 1; Minn. Stat. § 412.591, subd. 2.

In statutory cities operating under either the Standard Plan or Plan A, the council may, by ordinance, combine the offices of clerk and treasurer into the office of clerk-treasurer. In Standard Plan cities, the council must adopt the ordinance at least 60 days before the next regular city election. The ordinance does not go into effect until the expiration of the term of the incumbent treasurer, or when an earlier vacancy occurs.

Minn. Stat. § 412.02, subd. 3; Minn. Stat. § 412.591, subd. 2.

In a Plan A city, the clerk-treasurer is an appointed official and the ordinance generally goes into effect immediately. A Plan A city can abolish the position of treasurer even if an appointed person holds the position. Under either the Standard Plan or Plan A, the council may reestablish separate offices of clerk and treasurer by ordinance.

Minn. Stat. § 412.591, subd. 3 (In 2005 and after, the threshold amount for requiring an audit is a base of \$150,000, which is adjusted for inflation using the annual implicit price deflator for state and local expenditures as published by the United States Department of Commerce.); Minn. Stat. § 471.697. *See E-Update*, Office of the State Auditor (Feb. 12, 2010)

If the offices of clerk and treasurer have been combined in a Standard Plan or a Plan A city, the council must provide for an audit of the city's financial affairs by the state auditor or a certified public accountant in accordance with minimum procedures prescribed by the state auditor. According to the calculations of the Office of the State Auditor, a city with a population of 2,500 or less and a combined clerk and treasurer must have an annual audit for 2009 if its annual revenue is greater than \$185,000 and must have an audit once every five years if its annual revenue is \$185,000 or less. A city with a population over 2,500 must have an annual audit performed.

V. Citizen boards and commissions

One way to increase positive feelings about government is to promote citizen involvement. Citywide or neighborhood committees, special project review committees, and even block organizations are some of the committees cropping up in many cities. In many cases, the council has formed or encouraged these citizen committees. The committees have saved time and have made contributions that could only occur through citizen participation.

Councilmembers have found that ignoring citizen concerns can result in their removal from office at the next election, or in the defeat of a program or activity as a result of citizen opposition.

Although city officials cannot, in most cases, delegate decision-making authority to citizen groups, they can use citizens in advisory roles. This technique only works, however, if the council listens to the advice. If the council does not follow the advice of the committee, it should give understandable reasons for taking other action.

When a council forms a citizen-advisory body, it should also establish the ground rules for its activities. The council should also stress that in the absence of clear statutory authority to delegate responsibility, the council must, by law, make the final decisions. State law allows, and in some cases requires, city councils to delegate decision-making power to certain independent boards and commissions.

A. Independent citizen boards and commissions

A.G. Op. 624a-3 (Nov. 2, 1998); A.G. Op. 1007 (July 8, 1977); A.G. Op. 1001-a (Sept. 15, 1950); A.G. Op. 1001-a (Aug. 27, 1957).

See *Muehring v. School Dist. No. 31*, 224 Minn. 432, 28 N.W.2d 655 (Minn. 1947); *Minneapolis Gas-Light Co. v. City of Minneapolis*, 36 Minn. 159, 30 N.W. 450 (Minn. 1886).

Minn. Stat. § 412.621.

The amount of discretionary power the council can give to independent citizen boards and commissions varies. Absent specific statutory or charter authority, local governing bodies may not delegate their discretionary powers and duties to other persons or bodies, including independent citizen boards and commissions.

In Plan B cities, with the exception of civil-service boards, special boards of review, and possibly the housing and redevelopment authority, there shall be no independent administrative board or commission, except for the purpose of administering a function jointly with another city or political subdivision. The council itself shall perform the duties and exercise the powers of the board of health, and shall govern and administer the library, parks, and utilities as fully as any other municipal function. The council may, however, create boards or commissions to advise the council with respect to any municipal function or activity, or to investigate any subject of interest to the city.

The statutes specifically authorize various independent boards and commissions in other statutory cities. The following is a list of the most common.

1. Airport board

Minn. Stat. § 360.038, subd. 2.

The council may establish, by ordinance or resolution, an airport board. The board shall be vested with authority for construction, enlargement, improvement, maintenance, equipment, operation, and regulation of the airport.

2. Civil-service board and commission

See Handbook, Chapter 9 for more information.

Civil-service commissions can take several different forms depending on the state statute under which the council establishes them.

3. Hospital board

Minn. Stat. § 412.221, subd. 16.

The council has the power to provide hospitals and, by ordinance, to establish a hospital board. Hospital boards may exercise any hospital-management powers conferred by the council. The council may abolish the board by a vote of all five members of the council. The board shall consist of five members appointed by the mayor with council approval for overlapping five-year terms. The council may remove members for cause.

4. Housing and redevelopment authority

Minn. Stat. § 469.003, subds. 1, 2.

A housing and redevelopment authority (HRA) has been created in each city by the Legislature. The HRA may not transact any business or exercise any powers until the city council, by resolution, finds that the city: has substandard, slum or blighted areas that cannot be redeveloped without government assistance; or, has a shortage of decent, safe, and sanitary low-income dwellings. The council may consider such a resolution only after holding a public hearing and meeting publication requirements.

Minn. Stat. § 469.003, subds. 5, 6.

An HRA consists of up to seven members who may be officers and employees of the city. The mayor appoints members with the approval of the council for overlapping five-year terms. In many cities, councilmembers appoint themselves to serve on the HRA; so the council becomes the HRA.

5. Intergovernmental boards and commissions

Minn. Stat. § 471.59; See Handbook, Chapter 17 for more information.

The council may create intergovernmental boards and commissions. A mutual agreement of the cooperating governments will set up the organizational format, powers, and duties of such boards.

6. Library board

Minn. Stat. § 134.09.

When a public library is established, except in First Class cities operating under a home rule charter, the mayor of the city, with council approval, shall appoint a board of five, seven, or nine members from among the residents of the city. The number of members shall be determined by resolution or ordinance. The board members shall serve staggered, three-year terms and may be removed for misconduct or neglect.

Minn. Stat. § 134.10.

Library board members serve without pay but may be reimbursed for actual and necessary traveling expenses.

Minn. Stat. § 134.11, subd. 2;
Minn. Stat. § 134.13.

Once established, the board prescribes its rules of procedure, selects its officers, and controls the library fund. Besides appointing new members to the board, the council has approval of all purchases of land and proposals for the erection of buildings. The board must file an annual report each year with the city council and the Department of Education.

7. Park board

Minn. Stat. § 412.501 (Cities may also create advisory park boards and commissions under Minn. Stat. § 412.111).

The council of any city of more than 1,000 population may, by ordinance, establish a park board. The board shall consist of three, five, seven or nine members as determined by resolution or ordinance. The mayor, with council approval, appoints the board members. Members serve three-year overlapping terms and may be removed by the mayor, with the council's consent, for cause after a hearing. Board members receive no compensation, unless the council authorizes it. The board may be dissolved by a unanimous vote of the council.

Minn. Stat. § 412.501; Minn. Stat. § 412.521.

The park board shall maintain, beautify, and care for park property and perform all other acts necessary to carry out its statutory powers. The board must make quarterly reports of its activities to the council, and file an annual statement of receipts and disbursements with the city clerk.

8. Recreation board

Minn. Stat. § 471.15.

Recreation is usually a function that is administered by the city council, the park board or the local school board. Any city may operate and expend funds for a public-recreation program and playgrounds, and acquire, equip, and maintain land, buildings or other recreational facilities, including swimming pools.

Minn. Stat. § 471.16.

Generally, a recreation board refers to an independent commission that is established cooperatively by the city council, school board, and park board. The statutes specifically authorize the formation of an intergovernmental commission with representatives from all three bodies.

9. Utilities commission

Minn. Stat. § 412.321, subds. 1, 2.

Any statutory city may own and operate facilities for supplying utility service. No gas, light, power, or heat utility may operate until approval by five-eighths of the voters voting on the proposition at a regular or special election.

Minn. Stat. § 412.331; Minn. Stat. § 412.341, subd. 1.

By ordinance, a city may establish a public-utilities commission. Utility commissions must have three council-appointed members who serve overlapping three-year terms. The council may appoint no more than one of its own members to the commission. City residence is not a qualification for membership on the commission unless required by the council.

Minn. Stat. § 412.341, subd. 2; Minn. Stat. § 412.351; Minn. Stat. § 412.361.

The commission shall adopt rules for its proceedings, but must hold at least one regular meeting each month. The commission may exercise all of the discretionary administrative authority necessary for the management of the utilities. The council may prescribe a salary for the commissioners and decide, by ordinance, which of the following municipally owned public utilities shall be within the commission's jurisdiction:

- Water.
- Light and power, including any system for the production and distribution of steam heat.
- Gas.
- Sanitary or storm sewer, or both.
- Public buildings owned or leased by the city.
- District heating systems.

Minn. Stat. § 465.70.

Additionally, some Third Class and Fourth Class cities may own and operate a television-signal-distribution system that shall be considered a public utility.

10. Municipal power agencies

Minn. Stat. §§ 453.51-.62.

Any two or more cities may form a municipal power agency if each city passes a resolution authorizing an agreement. The purpose of the agency is to secure an adequate, economical, and reliable supply of energy for cities that own and operate a utility for the distribution of electric energy. All agency powers lie with its board of directors and include constructing and acquiring generating and transmission facilities, the power of eminent domain, and the authority to issue bonds and notes. Any city council may, by resolution, exercise any of these powers as if it were a municipal power agency.

11. Municipal gas agencies

Minn. Stat. §§ 453A.01-.12.

Any two or more cities owning or operating a utility for the local distribution of gas may form a municipal gas agency if each passes a resolution authorizing the agreement. The purpose is to secure an adequate, economical, and reliable supply of gas for utility customers. The board of directors exercises all agency powers. Any city may, by resolution, exercise any of the powers of a municipal gas agency as if it were an agency.

12. Special board of review

Minn. Stat. § 274.01, subd. 2.

The governing body of any city may appoint a special board of review. This special board of review serves at the direction and discretion of the city council. The council determines the number of members, the compensation and expenses to be paid, and the term of office of each member. At least one member of the special board must be an appraiser, realtor or someone familiar with property valuations in the assessment district.

B. Advisory citizen boards and commissions

Minn. Stat. § 412.111.

Minn. Stat. § 462.354, subd. 1.

Another important link in city governing activities is the work of advisory boards and commissions. These entities are much like the independent or administrative boards and commissions. The city council may create and dissolve them by resolution, appoint people to serve on them, and exercise other powers of general supervision. The council must, however, pass an ordinance to create a planning commission.

There are several differences between independent boards and advisory boards. State statutes establish most independent boards and commissions and give them some discretionary powers. Advisory boards conduct studies and investigations on behalf of the council, and submit reports and recommendations for council consideration. An advisory-board recommendation does not take effect unless the council accepts it by passing an ordinance or resolution.

The council may organize advisory groups in any manner it deems appropriate. The council may find it wise to appoint people who represent various special-interest groups in the city.

An advisory commission may be created by the council for a special purpose, such as for conducting an investigation, and will cease to exist once the purpose of the commission has been achieved.

1. Planning commissions

Minn. Stat. §§ 462.351-.364;
See LMC Information Memo,
Planning Commission Guide

Cities can establish planning commissions by passing an ordinance describing their organization and powers. City officials, such as the mayor, attorney, and engineer, frequently are advisory members.

2. Other advisory boards and commissions

Other advisory boards and commissions commonly established by city councils include: industrial commissions, which have power to study the ways and means of attracting more commercial and industrial development to the city; safety councils, which advise the council on safety programs; and intergovernmental agencies, such as a joint-planning commission, which the city sponsors in cooperation with other units of government.

As government has become increasingly complex, cities have used fewer independent or administrative citizen boards and commissions. Instead of diffusing authority for government administration over a number of different agencies, many cities place all authority in the city council. This decision centralizes responsibility for the proper direction of local government affairs and increases voter understanding of government. Frequently, this trend leads to pressures for greater simplification and centralization in administration as well. The council-manager form of government (Plan B) is an answer to this pressure. Administrators, whose duties and functions lie somewhere between those of a manager and those of a clerk, may also help to centralize government.

See LMC Information Memo, City Administration: Clerk, Administrator, Manager, for more information about the manager and administrator positions.

VI. How chapter 6 applies to home rule charter cities

Several sections of this chapter may be useful to charter cities:

In the section concerning elected officials, the discussion of statutory city officers does not apply to charter cities, but the portions on eligibility, removal, resignations, and vacancies generally do apply. It may be possible that a charter could specify the particular conduct that would result in removal of a councilmember for nonfeasance of office. The attorney general, however, has advised that a charter provision which provides that a council vacancy would occur if a councilmember did not attend a specified number of meetings would not be valid. A charter may provide for the recall of any elective municipal officer and for removal of the officer by the electors of the city.

Minn. Stat. § 410.20; Minn. Const. art. VIII, § 5.

A.G. Op. 59a-30 (July 24, 1996); Minn. Stat. § 410.20.

If the mayor of a charter city presides at the council meeting, most of the section concerning the mayor applies to charter cities. Otherwise, only the portions dealing with weed inspection, election duties, and other duties apply.

The section concerning the statutory city council and its powers might prove interesting to charter city councilmembers since many of their powers are similar to those of statutory city councils. The laws relating to conflicts of interest and prohibiting gifts to local officials also apply to members of charter city councils, but many charter cities have more restrictive provisions concerning both issues in their charters.

A Quick-and-Easy Meeting Guide on how to be an effective officer and an active member:

- Preside like a "pro"
- Increase ability to chair a meeting
- Learn the language of a business meeting
- Know membership rights and responsibilities
- Enhance **your** ability to "make a difference"
- Speak with confidence
- Achieve positive results
- Participate with ease

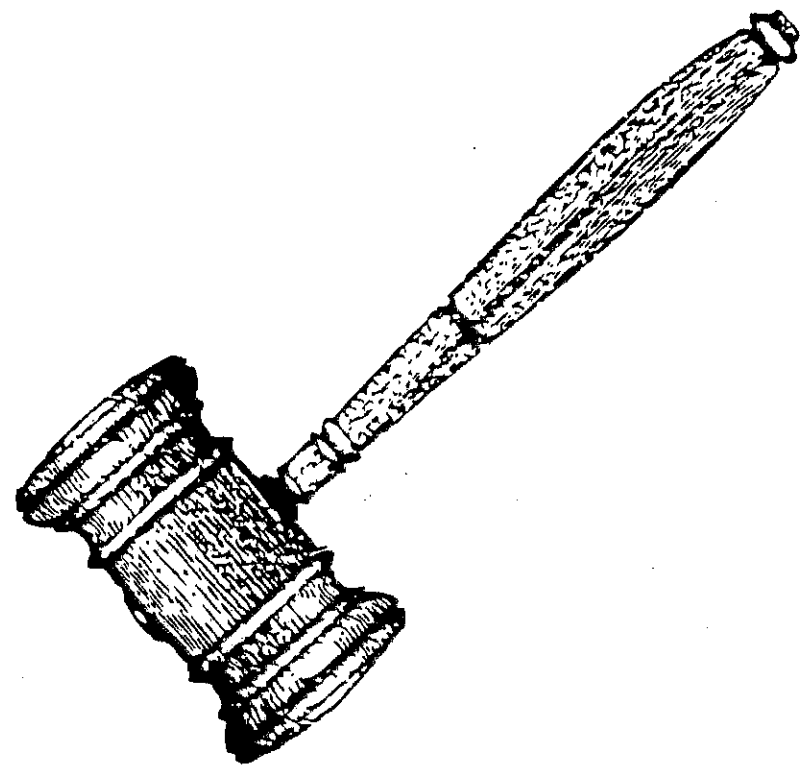
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FOURTH EDITION

PARTICIPATE WITH EASE

A Meeting Guide
Based on Robert's Rules



Betty S. Green, CPP-T PRP

LET'S APPOINT A COMMITTEE

Standing Committees are established in the bylaws; the bylaws should also grant authority to create Special Committees. It should be noted that except for the imagery involved, there is no discernible difference between a **task force** and a **committee**. (Task Force just sounds more prestigious!)

The committee may be a body of one or more persons, assigned the responsibility to consider, or to investigate, or to take action - or to do all of these things to accomplish the goals of the committee.

Committees do much of the work done in organizations, whether it is a Standing Committee or a Special Committee. The committee generally is composed of a chairman with the interest and ability to steer a group and members who actively participate.

THE COMMITTEE MEETING

The position of committee chairman is important. A good committee chairman will (1) discuss with the committee members the purpose of the committee; (2) explain their responsibilities; (3) mail an agenda to members before meeting; (4) begin the meeting on time; (5) allow the committee at its initial meeting to determine its goal(s) and then establish methods and a timetable to achieve these goal(s); (6) keep the discussion germane to the purpose of the meeting; (7) adjourn on schedule after summarizing action and any tasks to be completed before the next meeting. If necessary, the chairman will mail committee meeting minutes promptly to committee members.

The operation of the committee chairman in a committee meeting is similar to procedure in a small Board meeting. Informality is a key toward getting full discussion. The chairman may participate fully, making motions, voting, leading the discussion, giving guidance to the committee as may be required. Often the chairman will be the member who makes notes on the meeting activities and publishes the report on the committee's activity and progress.

OUTLINE OF SAMPLE COMMITTEE REPORT

Name of Committee
Committee Objective
Committee Goal(s)
Committee Budget for Year or Project
Background Information on Committee Research and Operation
Committee Activity to Achieve Goal(s)
Committee Recommendation(s)
Name of Chairman or All Committee Members

LET'S APPOINT A COMMITTEE (continued)

THE COMMITTEE REPORT

The committee report should be written, if possible, and should be brief but clear in expression. The report is written in the third person and is seldom addressed or dated. It is signed either by the chairman or by all members of the committee who are in agreement with the report contents.

When making a committee report, the chairman should present the report on behalf of the committee (not from the chairman).

If the committee report is more than a progress report, and requires action, it should consist of two parts:

1. The **report** which consists of background information such as the charge of the committee, how it carried out its charge, the sources of information if other than committee members were involved, and the possible solutions it considered, expressing the opinion of the majority.
2. The **recommendation**, which is the committee proposal for action based on the background information, is moved for adoption by the committee chairman when giving the report.

If approval is required for a recommended action, the action to be taken may be included as part of the commentary in the committee report, but at the end of the report, again repeat the action required in the form of a motion: **On behalf of the committee, I move that or I move to** (state the action requiring approval).

A recommendation or motion from a committee needs no second unless it is from a committee of one.



GOVERNING & MANAGING INFORMATION

Meetings of City Councils

140B
August 2008

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Part I. Introduction

This memo discusses city council meetings. However, much of what is addressed may also apply to city boards, commissions, and other public bodies. Where the discussion is specific to statutory cities, home rule charter cities should consult their charters.

See Part III - *The open meeting law.*

The discussion on the open meeting law applies to all city councils, city boards, commissions, and other public bodies.

Part II. Meetings and hearings

A. Meetings

A meeting is a gathering of a quorum of public officials to discuss, decide or receive information on matters over which they have authority. The members of the public usually do not speak at a meeting, although some city councils will occasionally recognize a member of the audience.

1. Types of meetings

There are two different types of meetings:

Minn. Stat. §§ 412.191, subd. 2; 13D.04, subd. 1.

- **Regular meetings.** Regular meetings of a statutory city council are held at times established by council rules. A council will typically meet once a month on a particular day, although some councils may have regular meetings scheduled more frequently. Home rule charter cities should consult their charters and any council rules concerning the scheduling of regular meetings.
- **Special meetings.** Special meetings are meetings held at times or places that are different from the regularly scheduled meetings. These are often scheduled to deal with specific items that need to be addressed before the next regular meeting. Generally, any matter can be addressed at a special meeting that can be addressed at a regular meeting. There are different types of special meetings, such as emergency meetings and continued meetings, which are discussed in more detail in a later section of this memo.

See Part IV - A - *Who may call a meeting?*

See Part III-E-3-*Emergency meetings*; Part III-E-4-*Recessed or continued meetings.*

2. First meeting of the year

There is no date set by statute for the first meeting of the year. In most statutory cities, the date is set by an ordinance establishing rules of procedure for the council. A home rule charter city should consult both its charter and any procedural rules the council has adopted.

*Minn. Stat. §§ 412.02, subd. 2;
645.44, subd. 5.*

The term of office for new statutory city council members begins on the first Monday in January. The first meeting is usually held on or shortly after this date. In the meantime, all previously chosen and qualified council members shall serve until their successors qualify. The first day of a new term in a home rule charter city is generally set by the charter.

The following must be done at the first meeting of the year:

Minn. Stat. § 412.121.

Minn. Stat. § 412.831.

*Minn. Stat. §§ 427.01-.02;
118A.02, subd. 1; 427.09.*

- Appoint an acting mayor.
- Select an official newspaper.
- Select an official depository for city funds. (This must be done within 30 days of the start of the city's fiscal year.)

In addition, although not required by statute, many city councils will also do the following at the first meeting of the year:

- Review council's bylaws and make any needed changes.
- Assign committee duties to members.
- Approve official bonds that have been filed with the clerk.

Home rule charter cities may have additional requirements for their first meeting of the year in their charters.

B. Hearings

A public hearing is a meeting that is held where members of the public can express their opinions. The council is there to regulate the hearing and make sure that people who want to speak on the issue get the opportunity. The council does not deliberate or discuss matters during the public-hearing portion of this type of meeting; instead, it listens to the public. Once the public-comment period is finished, the council will often wrap up the meeting.

In order to recess or continue a meeting of this sort, the council should not formally end the public-comment part of the hearing.

There are two types of hearings, those that are discretionary and those that are required by a specific statute, ordinance or charter provision.

1. Discretionary hearings

Many city councils will hold public hearings even when not legally required to do so. Generally, hearings of this type are for the purpose of allowing the public to comment on a specific issue. Such hearings can be helpful in raising concerns about an issue that the council may not have considered.

*See Part III - E - Notice
requirements.*

2. Required hearings

When a specific statute, ordinance or charter provision requires that the council hold a public hearing, the notice requirements must be followed carefully. Often there are special notice requirements that are more substantial than the notice that is needed for a simple special meeting. For example, hearings required for zoning-ordinance amendments and special assessments have special notice requirements.

See Minn. Stat. §§ 462.357, subd. 3; 429.031, subd. 1(a); 429.061, subd. 1.

Following are several of the more common matters that require public hearings:

Minn. Stat. § 412.851.

Minn. Stat. § 414.033, subd. 2b.

Minn. Stat. § 429.031, subd. 1.

Minn. Stat. § 429.061.

Minn. Stat. § 444.18, subd. 3.

Minn. Stat. § 469.003, subd. 2.

Minn. Stat. § 469.093, subd. 1.

Minn. Stat. § 469.065, subd. 2.

Minn. Stat. § 469.105, subd. 2.

Minn. Stat. § 469.107, subd. 2.

Minn. Stat. § 340A.602.

Minn. Stat. § 275.065, subd. 6.

Minn. Stat. § 462.357, subd. 3.

Minn. Stat. § 462.358, subd. 3b.

Minn. Stat. § 462.3593, subd. 2.

Minn. Stat. § 410.12, subd. 7.

- Street vacation.
- Annexation by ordinance.
- Local improvement projects that will be paid for with special assessments.
- When special assessments are made to property.
- Purchase and improvement of waterworks, sewers, drains, and storm sewers.
- Adoption of a housing redevelopment authority (HRA) resolution.
- Adoption of an economic development authority (EDA) enabling resolution.
- Sale of port authority land.
- Sale of EDA land.
- Increase of levy for an EDA.
- Continuation of a municipal liquor store after a net loss for two of three consecutive years.
- Truth-in-taxation.
- Adoption or amendment of a zoning ordinance.
- Subdivision applications.
- Granting of a conditional use permit.
- Adoption of a charter amendment by ordinance.

There are other situations that may require public hearings. Contact the League for further information if you are unsure about a particular situation.

Part III. The open meeting law

Minn. Stat. § 13D.01.

The Minnesota open meeting law generally requires that all meetings of public bodies be open to the public. This presumption of openness serves three basic purposes:

Rupp v. Mayasich, 533 N.W.2d 893 (Minn. Ct. App. 1995).

- To prohibit actions from being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning decisions of public bodies or detect improper influences.
- To ensure the public's right to be informed.
- To afford the public an opportunity to present its views to the public body.

See Part III - E - *Notice requirements*; and Part V - B - *Required contents*.

The open meeting law also contains some specific notice and record-keeping requirements, which are discussed in detail in later sections of this document.

A. Groups to which the law applies

Minn. Stat. § 13D.01, subd. 1.

The open meeting law applies to all governing bodies of any school district, unorganized territory, county, city, town or other public body, and to any committee, sub-committee, board, department or commission of a public body.

Thus, the law applies to meetings of all city councils, planning commissions, advisory boards, firefighter relief associations, economic development authorities, and housing redevelopment authorities, among others.

Southern Minnesota Municipal Power Agency v. Boyne, 578 N.W.2d 362 (Minn. 1998).

The Minnesota Supreme Court has held, however, that the governing body of a municipal power agency, created under Minn. Stat. §§ 453.51-453.62, is not subject to the open meeting law because the Minnesota Legislature granted these agencies authority to conduct their affairs as private corporations.

B. What is a meeting?

There is no statutory definition of the term "meeting" for the purpose of the open meeting law. Minnesota courts have generally ruled that a meeting is a gathering of a quorum of public officials to discuss, decide or receive information on matters over which they have authority.

See Part III - I - *Common problems in applying the law*.

Because the term "meeting" has not been clearly defined, the issue of whether or not a meeting has been held must be decided on a case-by-case basis. Some examples of cases are discussed in further detail in a later section of this memo.

C. Gatherings to which the law applies

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

The open meeting law applies to any gathering of a quorum or more of public officials where the members discuss, decide or receive information as a group on issues relating to the official business of the public body.

Minn. Stat. §§ 412.191, subd. 1; 645.08 (5).

A "quorum" is a majority of the members of a statutory city council. A majority of the qualified members of any board or commission also constitutes a quorum. Home rule charter cities may have different quorum requirements in their charters.

Thus, the open meeting law would apply to any of the following types of gatherings:

- Regular and special meetings.
- Public hearings.
- Executive sessions.
- Work sessions.
- Retreats.

A.G. Op. 63-A-5 (June 13, 1957); Minn. Stat. § 13D.01, subd. 1.

See Part III - I - Common problems in applying the law.

D. Exceptions and the procedures to use them

Minn. Stat. § 13D.01, subd. 3.

There are some exceptions to the open meeting law. Under certain circumstances, some meetings may be closed. There are also some meetings that must be closed. Before a meeting can be closed under any of the exceptions, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

Minn. Stat. § 13D.05, subd. 1(d).

1. Meetings that may be closed

The public body may choose to close certain meetings. The following types of meetings may be closed:

- **Meetings to consider strategies for labor negotiations under PELRA.** Although a meeting to consider strategies for labor negotiations may be closed, the actual negotiations must be done at an open meeting if a quorum of the council is present.

*Minn. Stat. §§ 13D.03; 13D.01,
subd. 3.*

Procedure. The following must be done to use this exception:

- i. Before closing the meeting, the council must decide to close the meeting by a majority vote at a public meeting.
- ii. Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- iii. A written roll of all people present at the closed meeting must be available to the public after the closed meeting.
- iv. The meeting must be tape-recorded.
- v. The recording must be kept for two years after the contract is signed.
- vi. The recording becomes public after all labor agreements are signed by the city council for the current budget period.

If an action claiming that other public business was transacted at the closed meeting is brought during the time the tape is not public, the court will review the recording privately. If it finds no violation of the open meeting law, the action will be dismissed and the recording will be preserved in court records until it becomes available to the public. If the court determines there may have been a violation, the entire recording may be introduced at the trial. However, the court may issue appropriate protective orders requested by either party.

- **Meetings to evaluate the performance of an individual subject to the public body's authority.**

*Minn. Stat. §§ 13D.05, subds. 3(a),
: 13D.01, subd. 3.*

Procedure. The following must be done to use this exception:

- i. The public body must identify the individual to be evaluated prior to closing the meeting.
- ii. The meeting must be open at the request of the individual who is the subject of the meeting, so some advance notice to the individual is needed in order to allow the individual to make an informed decision.
- iii. Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- iv. The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.
- v. At the next open meeting, the public body must summarize its conclusions regarding the evaluation. The council should be careful not to release private or confidential data in its summary.

Minn. Stat. § 13D.05, subd. 3(b).

*Prior Lake American v. Mader,
642 N.W.2d 729 (Minn. 2002).*

*Northwest Publications, Inc. v.
City of St. Paul, 435 N.W.2d 64
(Minn. Ct. App. 1989).*

- **Attorney-client privilege.** Meetings between the governing body and its attorney to discuss active, threatened, or pending litigation may be closed when the balancing of the purposes served by the attorney-client privilege against those served by the open meeting law dictates the need for absolute confidentiality. The need for absolute confidentiality should relate to litigation strategy, and will usually arise only after a substantive decision on the underlying matter has been made. This privilege may not be abused to suppress public observations of the decision-making process, and does not include situations where the council will be receiving general legal opinions and advice on the strengths and weaknesses of a proposed underlying action that may give rise to future litigation.

Procedure. The following must be done to use this exception:

- i. Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. The council should also describe how a balancing of the purposes of the attorney-client privilege against the purposes of the open meeting law demonstrates the need for absolute confidentiality.
- ii. The council must actually communicate with its attorney at the meeting.

*Minn. Stat. § 13D.01, subd. 3; See
The Free Press v. County of Blue
Earth, 677 N.W.2d 471 (Minn. Ct.
App. 2004) (holding that a
statement that a meeting was being
closed under the attorney-client
privilege to discuss "pending
litigation" did not satisfy the
requirement to "describe the
subject to be discussed" at the
closed meeting).*

Minn. Stat. § 13D.05, subd. 3(c).

- **Purchase or sale of property.** A public body may close a meeting to: determine the asking price for real or personal property to be sold by the public body; review confidential or nonpublic appraisal data; develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Minn. Stat. § 13D.05, subd. 3(c).

Procedure. The following must be done to use this exception:

- i. Before closing the meeting, the public body must state on the record the specific grounds for closing the meeting, describe the subject to be discussed, and identify the particular property that is the subject of the meeting.
- ii. The meeting must be tape-recorded and the property must be identified on the tape. The recording must be preserved for eight years, and must be made available to the public after all property discussed at the meeting has been purchased or sold or after the public body has abandoned the purchase or sale.
- iii. A list of council members and all other persons present at the closed meeting must be made available to the public after the closed meeting.
- iv. The actual purchase or sale of the property must be approved at an open meeting, and the purchase or sale price is public data.

Minn. Stat. § 13D.05, subd. 3(d).

- **Security Briefings.** A meeting may be closed to receive security briefing and reports, to discuss issues related to security systems, to discuss emergency-response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities— if disclosure of the information would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed, and all related financial decisions must be made at an open meeting.

Minn. Stat. § 13D.05, subd. 3(d).

Procedure. The following must be done to use this exception:

- i. Before closing the meeting, the public body must state on the record the specific grounds for closing the meeting and describe the subject to be discussed. When describing the subject to be discussed, the public body must refer to the facilities, systems, procedures, services or infrastructure to be considered during the closed meeting.
- ii. The closed meeting must be tape-recorded, and the recording must be preserved for at least four years.

2. Meetings that must be closed

There are some meetings that the law requires to be closed. The following meetings must be closed:

*Minn. Stat. §§ 13D.05, subd. 2(b);
13.43, subd. 2(4).*

- **Meetings for preliminary consideration of allegations or charges against an individual subject to the public body's authority.** While the law permits the council to announce that it is closing a meeting to consider charges against an individual, it is still the best practice not to refer to that individual by name. The council should state only that it is closing the meeting to give preliminary consideration to allegations against someone subject to its authority. However, if someone requests the name of the employee who is the subject of the closed meeting, the name will probably have to be furnished since the existence and status of any complaints against an employee are public data.

*Minn. Stat. §§ 13D.01, subd. 3;
13D.05, subds. 1.*

Procedure. The following must be done to use this exception:

- i. Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed.
- ii. The meeting must be open at the request of the individual who is the subject of the meeting. Thus, the individual should be given advance notice of the existence and nature of the charges against him or her, so that the individual can make an informed decision.
- iii. The meeting must be electronically recorded and the recording must be preserved for at least three years after the meeting.
- iv. If the public body decides that discipline of any nature may be warranted regarding the specific charges, further meetings must be open.

(Note: There is a special provision dealing with allegations of law enforcement personnel misconduct; see next discussion under ii.)

Minn. Stat. § 13D.05, subd. 2(a).

• **Portions of meetings at which any of the following data is discussed:**

- i. Data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
- ii. Internal affairs data relating to allegations of law enforcement personnel misconduct or active law enforcement investigative data.
- iii. Educational data, health data, medical data, welfare data or mental health data that are not-public data.
- iv. An individual's medical records governed by sections §§ 144.291 to 144.298.

Minn. Stat. §§ 144.291-144.298.

Minn. Stat. §§ 13D.01, subd. 3; 13D.05, subds. 1.

Procedure. Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed. The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

E. Notice requirements

Minn. Stat. § 13D.04.

Public notice must be given of all meetings of a public body. The notice requirements differ depending on the type of meeting.

Minn. Stat. § 13D.04, subd. 7.

However, if a person receives actual notice of a meeting at least 24 hours before the meeting, all notice requirements under the open meeting law are satisfied, regardless of the method of receipt.

Minn. Stat. § 412.191, subd. 2.

It should also be noted that statutory cities have some additional requirements for mailing notice to their council members regarding special meetings. There may also be additional notice requirements for home rule charter cities to consider. These cities should consult their charters for more information.

1. Regular meetings

Minn. Stat. § 13D.04, subd. 1.

A schedule of the regular meetings must be kept on file in the city office. If the city decides to hold a meeting at a different time or place, it must give the notice required for a special meeting.

Minn. Stat. §§ 13D.04; 412.191, subd. 2.

Cities must keep a schedule of the regular meetings of the council on file at the primary office of the council. This requirement can be complied with by posting the regular meeting schedule in a convenient public location.

2. Special meetings

Minn. Stat. § 13D.04, subd. 2.

A special meeting is a meeting that is held at a time or location different from that of a regular meeting.

Minn. Stat. § 13D.04, subd. 2;
Rupp v. Mayasich, 533 N.W.2d
893 (Minn. Ct. App. 1995).

A city must post written notice of a special meeting on its principal bulletin board or on the door of its meeting room if it does not have a bulletin board. If notice is posted on a bulletin board, the bulletin board must be located in a place that is reasonably accessible to the public. The notice must give the date, time, place, and purpose of the meeting. It must also be mailed to each individual who has filed a written request for notice of special meetings. As an alternative to posting the notice, the city can publish notice in the official newspaper at least three days before the meeting.

Minn. Stat. § 412.191, subd. 2.

In statutory cities, the clerk must mail notice of special meetings to all council members at least one day before the meeting.

Minn. Stat. §§ 645.15; 331A.08.

In calculating the number of days for providing notice, do not count the first day that the notice is given, but do count the last day. If the last day is a Saturday, Sunday or a legal holiday, that day is omitted from the calculation and the following day is considered the last day (unless, of course, it happens to be a Saturday, Sunday or legal holiday).

3. Emergency meetings

Minn. Stat. § 13D.04, subd. 3;
IPAD 06-027 (advising that the city council of Breezy Point had improperly held an emergency meeting to consider complaints against the city's building inspector); *Slippy v. Rack*, No. C5-06-3574 (9th Jud. Dist. June 8, 2007) (after the advisory opinion from the Dept. of Admin. was issued, the trial court held that the city council's decision to hold the emergency meeting complied with the open meeting law).

An "emergency meeting" is a special meeting called because of circumstances that, in the judgment of the public body, require immediate consideration by the public body. Posted or published notice of an emergency meeting is not required. However, the city must make a good faith effort to notify each news outlet that has filed a written request for notice. Notice must be given by telephone or any other method to notify members of the public body. The notice must include the subject of the meeting.

4. Recessed or continued meetings

Minn. Stat. § 13D.04, subd. 4.

No additional notice is needed for a recessed or continued meeting if all of the following criteria are met:

- The meeting is a recessed or continued session of a previous meeting.
- The time and place of the meeting was established during the previous meeting.
- The time and place of the meeting was recorded in the minutes of the previous meeting.

5. Closed meetings

Minn. Stat. § 13D.04, subd. 5.

See Part III - D- Exceptions and the procedures to use them.

The same notice requirements apply to closed meetings as to open meetings. Additionally, advance notice to an individual who will be the subject of such a meeting is needed under certain circumstances (such as to employees who are the subject of performance evaluations or disciplinary proceedings).

F. Written materials

Minn. Stat. § 13D.01, subd. 6.

At least one copy of the materials made available to the council at or before the meeting must also be made available for inspection by the public. However, this does not apply to not-public data or materials relating to the agenda items of a closed meeting.

G. Interactive television meetings

Minn. Stat. § 13D.02.

Meetings may be conducted using interactive television under certain circumstances. When a council meeting is conducted through interactive television, each council member participating in the meeting, wherever he or she is located, is considered present at the meeting for purposes of determining quorum and participation. A meeting may be conducted through interactive television if the following conditions are met:

- All members of the council participating in the meeting, wherever their physical location, can hear and see one another and also hear and see all discussion and testimony presented at any location at which at least one council member is present.
- Members of the public present at the council's regular meeting location can hear and see all discussion, testimony, and council votes.
- At least one member of the council is physically present at the regular meeting location.
- Each location at which a council member is present is open and accessible to the public.
- In addition to the notice required for the meeting, if it was not held through interactive television, the city must also post notice at the regular meeting site and at each of the sites from which a council member will be participating in the meeting.
- If interactive television is used to conduct a meeting, the council must allow a person, to the extent practical, to monitor the meeting electronically from a remote location. The council may require the person to pay for the documented marginal costs that the city incurs as a result of the additional connection.

H. Telephone or electronic meetings

Minn. Stat. § 13D.021, subd. 1.

Meetings may be conducted by telephone or other electronic means as long as the following conditions are met:

See Minn. Stat. ch. 12.

- The presiding officer, chief legal counsel or chief administrative officer for the affected governing body determines that an in-person meeting or a meeting conducted through interactive television is not practical or prudent because of a health pandemic or an emergency declared under chapter 12 of the Minnesota Statutes.
- All members of the body participating in the meeting can hear one another and can hear all discussion and testimony.
- Members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration.
- At least one member of the governing body, chief legal counsel or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration.
- All votes are conducted by roll call so that each member's vote on each issue can be identified and recorded.

Minn. Stat. § 13D.021, subd. 2.

Each member of the body participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

Minn. Stat. § 13D.021, subd. 3.

If telephone or another electronic means is used to conduct a meeting, to the extent practical, the body shall allow a person to monitor the meeting electronically from a remote location. The body may require the person making a connection to pay for the documented additional cost the body incurs as a result of the additional connection.

*Minn. Stat. § 13D.021, subd. 4;
Minn. Stat. § 13D.04.*

If telephone or another electronic means is used to conduct a regular, special, or emergency meeting, the public body shall provide notice of the regular meeting location, of the fact that some members may participate by telephone or other electronic means, and, if practical, of the option of connecting to the meeting remotely. The timing and method of providing notice is the same as other regular, special or emergency meetings held under the open meeting law.

I. Common problems in applying the law

There are many situations for which the open meeting law is unclear. This section provides an overview of some of the more common situations and how the law may be applied.

1. Data practices

Minn. Stat. § 13D.05, subds. 1(a), 2(a).

Generally, meetings may not be closed to discuss data that is not public. However, the public body must close any part of a meeting at which certain types of not-public data are discussed (such as active law enforcement investigative data, police internal affairs data, medical records data, and certain victim, health, medical or welfare data).

Minn. Stat. §§ 13D.05, subd. 2(a); 13.03, subd. 11.

If not-public data is discussed at an open meeting when the meeting is required to be closed, it is a violation of the open meeting law. Discussions of some types of not-public data may also be a violation of the Minnesota Government Data Practices Act (MGDPA). However, not-public data may generally be discussed at an open meeting without liability or penalty if both of the following criteria are met:

Minn. Stat. § 13D.05, subd. 1(b).

- The disclosure relates to a matter within the scope of the council's authority.
- The disclosure is necessary to conduct the business or agenda item before the public body.

Minn. Stat. § 13D.05, subd. 1(c).

Data that is discussed at an open meeting retains its original classification under the MGDPA. However, a record of the meeting is public, regardless of the form. It is suggested that not-public data that is discussed at an open meeting not be specifically detailed in the minutes.

2. Interviews

Chammel 10, Inc. v. Indep. Sch. Dist. No. 709, 298 Minn. 306, 215 N.W.2d 814 (Minn. 1974).

See Part III - I - *Serial gatherings.*

The Minnesota Supreme Court has held that a school board must interview prospective employees for administrative positions in open sessions. The court said that the absence of a statutory exception indicated that the Legislature had decided that such sessions should not be closed. The reasoning would seem to apply to city council interviews of prospective officers and employees as well, if a quorum is present.

Mankato Free Press v. City of North Mankato, No. C1-96-100036 (Fifth Jud. Dist. 1996).

In 1996, a district court found that it was not a violation of the open meeting law for candidates to be serially interviewed by members of a city council in one-on-one closed interviews. In this case, five city council members were present in the same building but each was conducting separate interviews in five different rooms. Because there was no quorum present in any of the rooms, the court found there was no meeting. The decision, however, was appealed.

Mankato Free Press v. City of North Mankato, 563 N.W.2d 291 (Minn. Ct. App. 1997).

Mankato Free Press v. City of North Mankato, No. C9-98-677 (Minn. Ct. App. Dec. 15, 1998) (unpublished decision).

In 1997, the Minnesota Court of Appeals reversed the district court's decision and remanded the case back to it for a factual determination on whether the city used the one-on-one interview process in order to avoid the requirements of the open meeting law. On remand, the district court found that the private interviews were not conducted for the purpose of avoiding public hearings. The case was again appealed. In an unpublished decision, the court of appeals agreed.

The implication of this decision appears to be that if serial meetings are held for the purpose of avoiding the requirements of the open meeting law, it will constitute a violation of the law. Cities that are considering holding private interviews with job applicants should first consult their city attorney.

3. Executive sessions

A.G. Op. 63-A-5 (June 13, 1957);
See also *Minn. Stat. §13D.01*,
subd. 1(b)(4)

The attorney general has advised that executive sessions of a city council must be open to the public.

4. Committees and liaisons

A.G. Op. 10-b (July 3, 1975).

The attorney general has advised that citizen advisory panels that are appointed by a governing body are also subject to the open meeting law.

Many city councils create committees to make recommendations to the council. Commonly, such committees will be responsible for researching a particular area and submitting a recommendation to the council for its approval. Such committees are usually advisory, and the council is still responsible for making the final decision.

A.G. Op. 65a-5 (Aug. 28, 1996).

Sovereign v. Dunn, 498 N.W.2d 62 (Minn. Ct. App. 1993); *LP AD 07-025*

City councils routinely appoint individual council members to act as liaisons between the council and particular committees. These types of meetings may also be subject to the open meeting law if the committee contains a quorum or more of the council or has decision-making authority. In addition, notice for a special council meeting may be needed if a quorum of the council will be present at the meeting and participating in the discussion.

Thuma v. Kroschel, 506 N.W.2d 14 (Minn. Ct. App. 1993); *A.G. Op. 65a-5* (Aug. 28, 1996).

For example, when a quorum of a city council attended a meeting of the city's planning commission, the Minnesota Court of Appeals ruled that there was a violation of the open meeting law, not because of the council members' attendance at the meeting, but because the council members conducted public business in conjunction with that meeting. Based on that decision, the attorney general has advised that mere attendance by additional council members at a meeting of a council committee held in compliance with the open meeting law would not constitute a special council meeting requiring separate notice. The attorney general warned, however, that the additional council members should not participate in committee discussions or deliberations absent a separate notice of a special city council meeting.

5. Chance or social gatherings

St. Cloud Newspapers, Inc. v. District 742 Cmty. Sch., 332 N.W.2d 1 (Minn. 1983).

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757 (Minn. 1982).

Chance or social gatherings of a quorum are not considered meetings under the open meeting law and are therefore exempt from it. However, a quorum may not, as a group, discuss or receive information on official business in any setting under the guise of a social gathering.

In 1982, the Minnesota Supreme Court held that a conversation between two council members over lunch regarding an application for a special-use permit did not violate the open meeting law because a quorum was not present.

6. Serial gatherings

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

Also see Part III - 1 - *Interviews and Technology trouble*.

Mankato Free Press v. City of North Mankato, 563 N.W.2d 291 (Minn. Ct. App. 1997).

The Minnesota Supreme Court has noted that meetings of less than a quorum of the public body held serially to avoid public hearings or to fashion agreement on an issue may violate the open meeting law. In short, this type of situation is a circumvention of the statute. As such, council members should avoid this type of practice.

A 1997 Minnesota Court of Appeals' decision also indicates that serial meetings could violate the open meeting law. In this decision, the court looked at a situation where the members of a city council conducted individual interviews of candidates for a city position in separate rooms. Although the district court found that no meetings had occurred because there was never a quorum of the council present, the court of appeals remanded the decision back to the district court for a determination of whether the council members had used this interview process for the purpose of avoiding the requirements of the open meeting law.

Mankato Free Press v. City of North Mankato, No. C9-98-677 (Minn. Ct. App. Dec. 15, 1998) (unpublished decision).

On remand, the district court found that the private interviews were not conducted for the purpose of avoiding the requirements of the open meeting law. This decision was also appealed, and the court of appeals, in a 1998 unpublished decision, agreed. A city that wants to hold private interviews with applicants for city employment should first consult with its city attorney.

7. Training sessions

A.G. Op. 63a-5 (Feb. 5, 1975).

The attorney general has advised that a city council's participation in a non-public training program devoted to developing skills is not covered by the open meeting law. However, the opinion also stated that if there were to be any discussions of city business by the attending members, either outside or during the training session, it could be seen as a violation of the open meeting law.

8. Technology trouble

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

See Part III - I - *Serial gatherings*.

The open meeting law does not address situations that may occur as a result of communication through telephone calls, letters, e-mail or similar technology. The Minnesota Supreme Court found that the open meeting law did not apply to letters or to telephone conversations between less than a quorum. While it is possible that a similar decision might be reached concerning the use of e-mail and other forms of technology, it should be stressed that if a quorum of members are involved in the communication, it would likely be considered to be a violation of the open meeting law.

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

See Electronic Communications Between Council Members, LMCIT Information Memo.

In addition, serial discussions between less than a quorum of the council that are used to deliberate matters that should be dealt with at an open meeting would likely violate the open meeting law. Therefore, city councils and other groups to which the open meeting law applies should not use letters, telephone conversations, e-mail, and other such technology if the following circumstances exist:

- A quorum of the council is involved.
- Information relating to official city business is being discussed.

J. Intentional violations of the open meeting law

Minn. Stat. § 13D.06, subds. 1.A.

A public officer who intentionally violates the open meeting law can be fined up to \$300. This fine may not be paid by the public body. In addition, a court may also award reasonable costs, disbursements, and attorney fees up to \$13,000 to the person who brought the violation to court.

Minn. Stat. 13D.06, subd. 4.

If a plaintiff prevails in a lawsuit under the open meeting law, a court shall award reasonable attorney fees if the court determines the public body was the subject of a prior written advisory opinion from the commissioner of the Department of Administration, and the court finds that the opinion is directly related to the lawsuit and that the public body did not act in conformity with the opinion. A court is also required to give deference to the advisory opinion in a lawsuit brought to determine whether the open meeting law was violated.

Minn. Stat. § 13D.06, subd. 3.

Claude v. Collins, 518 N.W.2d 836 (Minn. 1994); *Brown v. Cammon Falls Township*, 723 N.W.2d 31 (Minn. Ct. App. 2006).

If a public official is found to have intentionally violated this chapter in three or more separate actions, the public official must be removed from office and may not serve in any other capacity with that public body for a period of time equal to the term of office the person was serving. However, removal is only required if the conduct constitutes malfeasance or nonfeasance.

Quast v. Knutson, 276 Minn. 340, 150 N.W.2d 199 (Minn. 1967).

Sullivan v. Credit River Township, 217 N.W.2d 502 (Minn. 1974); *In re D & A Truck Line, Inc.*, 524 N.W.2d 1 (Minn. Ct. App. 1994); *Lac Qui Parle-Yellow Bank Watershed Dist. v. Wollschlager*, No. C6-96-1023 (Minn. Ct. App. Nov. 12, 1996) (unpublished decision).

Minn. Stat. § 13D.06, subd. 4(c).

The statute does not address whether actions taken at an improper meeting would be invalid. The Minnesota Supreme Court once held that an attempted school district consolidation was fatally defective when the initiating resolution was adopted at a meeting that was not open to the public.

However, in more recent decisions, Minnesota courts have refused to invalidate actions taken at improperly closed meetings. In an unpublished decision, the court stated that “even a violation of the open meeting law will not invalidate actions taken at that meeting.”

A public body may pay any costs, disbursements or attorney fees incurred by or awarded against any of its members for an action under the open meeting law.

Part IV. Scheduling meetings

A. Who may call a council meeting?

Minn. Stat. § 412.191, subd. 2.

A special meeting may be called by the mayor of a statutory city. Additionally, a special meeting may be called by any two members of a five-member council or three members of a seven-member council. The special-meeting request should be in writing and be filed with the clerk.

Home rule charter city councils may have additional limitations and powers regarding special meetings in their charters.

B. When meetings may not be scheduled

City council meetings may not be held at any of the following times:

Minn. Stat. § 202A.19, subd. 1.

Minn. Stat. § 204C.03, subd. 1.

- After 6 p.m. on the evening of a major political party precinct caucus.
- Between 6 p.m. and 8 p.m. on a day when there is an election being held within the city's boundaries.

Minn. Stat. § 645.41, subd. 5.

- On any legal holiday. (Note: Legal holidays include: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. However, political subdivisions have the option of determining whether Columbus Day and the Friday after Thanksgiving are holidays. If it is determined that Columbus Day and the day after Thanksgiving are not holidays, a meeting may be scheduled on these days.)

Home rule charter cities may have additional prohibitions in their charters as to when meetings may be scheduled.

Part V. Minutes

Minn. Stat. § 15.17.

Municipal officers must keep all records necessary to provide a full and accurate knowledge of their official activities.

A. Responsibility for taking minutes

Minn. Stat. § 412.151, subd. 1.

Whalen v. Minneapolis Special Sch. Dist. No. 1, 309 Minn. 292, 245 N.W.2d 440 (Minn. 1976).

A statutory city clerk must keep a minute book. Generally, he or she has wide discretion as to how to keep the minutes. A verbatim record of everything that was said is not normally required. However, in any case where the law or charter requires a verbatim record, using a tape recorder instead of a court reporter to accomplish that objective is probably valid.

B. Required contents

The following items must be included in the minutes:

Minn. Stat. §§ 13D.01, subd. 4; 331A.01, subd. 6; 15.17, subd. 1.

Minn. Stat. §§ 412.151, subd. 1; 412.191, subd. 3; 331A.01, subd. 6.

Minn. Stat. §§ 331A.01, subd. 6; 412.151, subd. 1; 412.191, subd. 3.

Minn. Stat. §§ 331A.01, subd. 6; 412.151, subd. 1.

Minn. Stat. §§ 331A.01, subd. 6; 412.191, subd. 3.

Minn. Stat. §§ 13D.01, subd. 4; 331A.01, subd. 6; 412.151, subd. 1; 412.191, subd. 3.

- The members of the public body who are present.
- The members who make or second motions.
- Roll call vote on motions.
- Subject matter of proposed resolutions or ordinances.
- Whether the resolutions or ordinances are defeated or adopted.
- The votes of each member, including the mayor.

Home rule charter cities may have additional requirements in their charters.

C. Other items that should be in the minutes

Swanson v. City of Bloomington,
421 N.W.2d 307 (Minn. 1988).

Dietz v. Dodge County, 487
N.W.2d 237 (Minn. 1992).

Although not generally required by statute, several court decisions suggest that including certain information in the minutes can help to defend a city's action should a lawsuit occur. The following types of data are examples of information that should be included in the minutes:

- **Findings of fact.** Case law requires them for land-use decisions and some personnel decisions.
- **The council's conclusions.** Case law requires them for land-use decisions and some personnel decisions.
- **The specific reasons behind the council's conclusions.** Examples would include such things as the economical, social, political or safety factors that were considered when the council made a particular decision.
- **Signature of clerk and mayor.** Because minutes would likely be considered official papers of the city, they should be signed by the clerk. And although the law does not require it, in many cities the mayor also signs the minutes after they are approved by the council.

Minn. Stat. § 412.151, subd. 1.

See "Statement of Position Meeting Minutes," Office of the State Auditor.

The Office of the State Auditor has also recommended that meeting minutes include the following information in addition to the information required by state statute.

- Type of meeting (regular, special, emergency, etc.)
- Type of group meeting (city council, planning committee, etc.)
- Date and place the meeting was held.
- Time the meeting was called to order.
- Approval of minutes of the previous meeting, with any corrections.
- Identity of parties to whom contracts were awarded.
- Abstentions from voting due to a conflict and the member's name and reason for abstention.
- Reasons the governing body awarded a particular contract to a bidder other than the lowest bidder.
- Granting of variances and special use permits.
- Approval of hourly rates paid for services provided, mileage rates, meal-reimbursement amounts, and per diem amounts.
- Listing of all bills allowed or approved for payment, noting the recipient, purpose and amount.
- List of all transfers of funds.
- Appointments of representatives to committees or outside organizations.
- Reports of the officers.
- Authorizations and directions to invest excess funds, information on investment redemptions and maturities.
- Time the meeting concluded.

D. Approval of minutes by council

Although it is not statutorily required, the council generally approves the minutes at the next council meeting. After the minutes have been approved, they become the official permanent record of the council meeting.

Problems sometime arise when someone requests a copy of the minutes before they have been approved by the council. The clerk must give out such information if someone requests it, but should make it clear that the minutes will not be officially approved until the next meeting.

Minn. Stat. § 412.191, subd. 3.

If the city publishes or mails the minutes, the council has two options. First, it may wait to publish them until after council approval. Second, the published minutes may include a notation that they are unofficial.

E. Publication

Minn. Stat. §§ 412.191, subd. 3
Minn. Stat. 331A.08, subd. 3.

A statutory city with a population of 1,000 or more must publish the council's official proceedings or a summary of them in its official newspaper within 30 days after every regular and special meeting. If the city council conducts regular meetings not more than once every 30 days, however, it need not publish the meeting minutes until 10 days after the council has approved them. A less expensive alternative is also available; instead of publishing the minutes, the city may mail a copy, at city expense, to any resident upon request. Statutory cities with a population of less than 1,000 are exempt from both of these requirements. Home rule charter cities should check their charters for any publication requirements.

If a statutory city chooses to publish a summary or condensed version of the official minutes, it must meet the following criteria:

Minn. Stat. § 331A.01, subd. 10.

- It must be written in a clear and coherent manner.
- It must avoid the use of technical or legal terms not generally familiar to the public.
- The publication must indicate it is only a summary.
- The publication must indicate the full text of the minutes is available for public inspection at a designated location.

Part VI. Holding meetings

A. Parliamentary procedure

Minn. Stat. § 412.191, subd. 2.

A statutory city council has the power to regulate its own procedure. Home rule charter cities may have similar provisions in their charters or the charter may spell out how meetings are to be conducted.

See Part VII - *Table of motions* and
Part VIII - *Model bylaws*.

Procedural rules are usually provided for in the rules or bylaws adopted by the council. Adoption of council rules may be supplemented by the use of a standard work on parliamentary procedure, such as *Robert's Rules of Order*.

Because of the small size of most city councils, procedures at council meetings, particularly in discussions, tend to be quite informal and many cities prefer to keep things simple and use just the basic rules regarding motions and voting, rather than adopting a more complex set of procedures.

Whatever rules the council adopts, it should follow them. Although the council can vote to change or suspend its rules if the occasion calls for it, it is probably better to stick with the adopted rules except on rare occasions.

B. Preserving order

Minn. Stat. § 412.191, subd. 2.

A statutory city council is authorized to preserve order at its meetings. The mayor, as the presiding officer, is also vested with some authority to prevent disturbances.

While council meetings must be open to the public, no one who is noisy or unruly has a right to remain in the council chambers. When the council decides that a disorderly person should not remain in the meeting hall, the police may be called to execute the orders of the presiding officer or the council.

No matter how disorderly the meeting, it will still be a legal meeting and any action taken at it in proper form will be valid.

If the audience becomes so disorderly that it is impossible to carry on a meeting, the mayor has the right and duty to declare the council meeting adjourned to some other time (and place, if necessary). The members of the council can also move for adjournment.

If the mayor is not conducting the meeting in an orderly fashion, there is relatively little the other council members can do to control the action of the presiding officer. However, a majority of the council can force adjournment whenever they feel it is necessary.

Minn. Stat. § 609.72, subd. 1(2).

*State v. Guy, 242 N.W.2d 864
(Neb. 1976).*

A person who disturbs a lawfully-held public meeting may be guilty of disorderly conduct. Any conduct that disturbs or interrupts the orderly progress of council proceedings is a disturbance that may be prevented, or punished if an ordinance violation is involved, without infringing on constitutional rights.

C. Participation in meetings

1. Mayor

Minn. Stat. § 412.191, subd. 1.

The mayor of a statutory city is a member of the council, and has the same right to vote and make and second motions at meetings as the other council members.

*Minn. Stat. §§ 412.191, subd. 2;
412.121.*

The mayor is the presiding officer of the meeting. In the absence of the mayor, the acting mayor must perform the duties of the mayor. The acting mayor is chosen at the first meeting of each year.

In some charter cities, the mayor might abstain from voting or participating unless there is a deadlock. This practice can help to preserve the neutrality of the chair of the meeting. However, counting votes at a meeting where a member abstains can sometimes be tricky.

In some charter cities the mayor has veto power. Charter cities should consult their charters for more information.

2. Clerk

Minn. Stat. § 412.191, subd. 1.

In a Standard Plan statutory city, the clerk is an elected member of the council. As such, he or she has the same voting powers and other privileges as do the other council members. Like the mayor, the clerk in a Standard Plan city is able to make and second motions.

In Plan A or Plan B statutory cities, the clerk is not a member of the council, and therefore, cannot vote or participate in council proceedings. Again, home rule charter cities may have different provisions in their charters.

3. City managers

Minn. Stat. § 412.651, subd. 5.

In a Plan B city, the city manager must attend all council meetings. He or she has the right to take part in the discussions, but not to vote. The council has the power to exclude the city manager from any meeting at which the manager's removal is considered.

4. Council members with disqualifying interests

See Official Conflict of Interest, LMC Information Memo, May 2004 for more information.

Sometimes, a council member may have a personal interest in a matter that the council must address, like licenses, zoning matters, special assessments or actual contracts. If it is determined that an individual council member has such an interest, the individual might be disqualified from participating in the decision.

Minn. Stat. § 471.88.

Lenz v. Coon Creek Watershed Dist., 278 Minn. 1, 153 N.W.2d 209 (Minn. 1967).

Under some circumstances, state statutes require that the interested council member abstain from voting. Under other circumstances, the law is less clear. However, a Minnesota Supreme Court decision suggests that an officer with a disqualifying interest should abstain from voting even when not expressly required under the statutes.

5. Audience participation

See Part II - Meetings and hearings.

Audience members are not normally able to take an active part in the council's discussion at a meeting. Only the council can make motions and vote at a council meeting. Audience members may not speak unless they have been recognized by the chair.

Many city councils have scheduled a portion of their meeting for public comment. These are often referred to as "open forums." During this part of the meeting, the chair of the council will recognize members of the audience to speak briefly on topics that concern them.

If a large number of audience members wish to speak, the meeting may not progress efficiently. Likewise, if one person spends a long time expressing his or her view, others may not get the opportunity to present their views. The following sections discuss ways to address some of these problems.

(1) Limiting time

Some councils have addressed this problem by placing a limit on the amount of time audience members are allowed to speak at a meeting. For example, the council may ask people to limit their remarks to no more than three minutes or allow only a specified number of people to speak.

A number of cities have established rules or guidelines that citizens must follow when speaking at a meeting. Often, the speaker must notify the city at least one day in advance so that he or she can be put on the agenda. At the time that the person notifies the city of his or her desire to speak at the meeting, he or she is given a copy of the "rules of conduct," which lists the time limit for speaking and any other city limitations. This gives the person time to plan his or her speech so it fits within the time limit. The mayor then reminds the speaker of the time limit before the speaker begins to speak. Some cities will have a clock visible to the speakers so they can see when their time for speaking is over.

(2) Limiting topic

Another option may be to limit the scope of comments to those matters being addressed by the council at the specific meeting. While this may be a way to focus the meeting on the matters being addressed by the council, it might also keep people from making the council aware of any new issues. Cities considering this approach might need to allow for other ways for people to bring up other topics.

Some cities will establish general rules outlining when citizens may speak at council meetings. Often these guidelines will require that the topic be identified in writing a few days before the actual meeting. The specific topic and the speaker's name are then put on the agenda. Such procedures are helpful in allowing the council to plan an efficient meeting and to prepare a response to the issue (if needed). It also helps to remind the speaker that he or she may only address those issues on the agenda.

6. Voting

City councils meet to discuss matters relating to city business and to make decisions for the city. When a matter is brought to a vote, the votes must be recorded in the minutes. The vote of each individual council member (including the mayor) must also be recorded on each appropriation of money, except for the payment of judgments, claims, and amounts fixed by statute.

Minn. Stat. § 13D.01, subd. 4.

A.G. Op. 471e (Sept. 18, 1962);
A.G. Op. 471e (Aug. 20, 1962).

Because of this requirement, city councils may not vote by secret ballot on matters addressed at council meetings unless the vote can be taken in such a manner that would comply with the statute's requirement.

(1) Counting votes

For more information on counting votes see "Counting the Votes on Council Actions (Part I and Part II)," *Minnesota Cities* (May, June-July, 2006); and "Voting Riddles," *Minnesota Cities* (April 2007).

Most of the time, a city council acts by majority vote; however, sometimes a simple majority vote is not enough for a matter to pass. Depending upon the matter before the council, more votes may be needed. Likewise, a home rule charter city may have additional requirements in its charter.

i. Entire council is present

When the entire council is present and all members vote, it is generally simple to determine if a matter has passed.

Minn. Stat. §§ 412.191, subd. 1; 645.08 (5).

- **Achieving a quorum.** A majority of the members of a statutory city council shall constitute a quorum. Obviously, when all members are present, a quorum has been achieved.
- **Motions and resolutions.** A majority of the quorum is needed to pass most motions and resolutions. Since most statutory cities have a five-member council, this means that three votes are normally needed if all members are present and voting. In a statutory city with a seven-member council, it would take at least four votes to pass most motions or resolutions.
- **Most ordinances.** A simple majority vote of an entire statutory city council is needed to pass most ordinances, regardless of the number of council members present. This means that three votes are needed to pass an ordinance in a city with a five-member council. In a statutory city with a seven-member council, four votes are needed to pass most ordinances. However, some ordinances require more than a simple majority vote.
- **Situations where statutes require extraordinary votes.** Several statutes require more than a simple majority to take certain kinds of actions. The following are some examples:
 - Adoption or amendment of zoning ordinances that change existing zoning from residential to commercial or industrial.
 - Adoption or amendment of comprehensive plans.
 - Abolishment of a planning agency.
 - Some capital improvements and acquisition or disposal of real property if the city has a comprehensive plan.

Minn. Stat. § 462.357, subd. 2.

Minn. Stat. § 462.355, subd. 3.

Minn. Stat. § 462.354, subd. 1.

Minn. Stat. § 462.356, subd. 2.

Minn. Stat. § 471.88.

See Official Conflict of Interest,
LMC Information Memo, May
2004.

Minn. Stat. § 429.031, subds. 1, 2.

Minn. Stat. § 410.12, subds. 6, 7.

Minn. Stat. § 412.191, subd. 4.

Minn. Stat. § 412.501.

Minn. Stat. § 412.851.

Minn. Stat. § 412.221, subd. 16.

- Contracts that are allowed even though one of the officers has a personal financial interest. Generally, a council member may not have a financial interest in a city contract. However, the statutes allow certain exceptions to this rule. If such a contract is permitted under an exception, the statute requires that it be approved by unanimous vote of the council. In some cases, the interested officer must abstain from voting, but it is probably advisable for him or her to refrain from participating in the discussion and voting, regardless of whether the statute specifically requires it.
- Some local improvements that will be paid for with special assessments.
- Some types of charter amendments.
- Summary publication of ordinances in statutory cities.
- Abolishing or changing the size of a statutory city park board.
- Some street vacations.
- Abolishment of a hospital board.

Home rule charter cities may have other supermajority vote requirements in their charters.

ii. Vacancies

State v. Hoppe, 194 Minn. 186,
260 N.W. 215 (Minn. 1935) *A.G.*
Op. 63-b-14 (Jan. 14, 1970) **Error!**
Bookmark not defined.; *A.G. Op.*
161-A-20 (July 3, 1974).

A vacancy temporarily reduces the size of the council; therefore, when there is a vacancy on a five-member council, the entire council consists of four people. For actions that require approval by a specified portion of the council, the required number of votes is calculated using the current number of seats that are filled.

Minn. Stat. §§ 412.191, subd. 1;
645.08(5).

- ***Achieving a quorum.*** Since a majority of a statutory city council is needed to achieve a quorum, a vacancy can affect the number of members that must be present in order to hold a meeting. One vacancy on a five-member council would not reduce the number of members needed to achieve a quorum (since both a majority of five and a majority of four is three). However, if there were two vacancies on a five-member council, the council would consist of three members and a majority of the council would be two members.
- ***Motions and resolutions.*** Since most motions and resolutions must be approved by a majority of those present at a meeting, a vacancy will have basically the same effect as an absence. A majority of those present must vote to approve in order for most motions and resolutions to pass.

- **Most ordinances.** Since most ordinances must be approved by a majority of the entire council, vacancies on the council can affect the number of votes needed to pass an ordinance. For example, if there were two vacancies on a five-member council, the entire council would consist of three members. In this case, a majority of the entire council would be two rather than three.
- **Situations where statutes require extraordinary votes.** If a statute or charter provision requires a specific number of votes (rather than a percentage of the council), the vacancy probably won't affect the required numbers of votes.

A.G. Op. 63a-11 (Oct. 20, 1966).

iii. Absences

Tracy Cement Tile Co. v. City of Tracy, 143 Minn. 415, 176 N.W. 189 (Minn. 1919).

A council member's absence from a meeting does not affect the number of votes needed if a statute requires an affirmative vote by a specified portion of the entire council.

Minn. Stat. §§ 412.191, subd. 1; 645.08(5).

- **Achieving a quorum.** Absences can certainly affect the ability of a city council to achieve a quorum, since a majority of a statutory city council is needed to achieve a quorum. For example, if one or two members of a five-member council are absent, the three remaining council members would constitute a quorum. However, if three members are absent, the remaining two members would not be able to hold a meeting because a quorum would not be present.

Jensen v. Indep. Consol. Sch. Dist. No. 85, 160 Minn. 233, 199 N.W. 911 (Minn. 1924); A.G. Op. 471-M (Oct. 30, 1986); A.G. Op. 161-A-20 (June 3, 1987); *Minn. Stat. § 645.08(5).*

- **Motions and resolutions.** Since most motions and resolutions must be approved by a majority of those present in order to pass, an absence can affect the number of votes needed. The general rule is that if a quorum is present, a majority of the quorum can pass any action except those where a statute or charter provision requires a larger number. The fewer members present, the fewer needed to constitute a majority. For example, if two members of a five-member council are absent, the remaining three constitute a quorum. A 2-1 vote is sufficient to pass most motions at such a meeting. However, if all five members are present, at least three votes would be needed to pass the same motion.

Minn. Stat. § 412.191, subd. 4.

- **Most ordinances.** The absence of a council member from a meeting does not affect the number of votes needed if the statutes require that a specified portion of the entire council is needed to approve an action. For example, it takes a majority of the entire council to pass an ordinance in a statutory city. In most statutory cities, a majority is three votes. If one council member is absent, it would still take a majority of the entire council (or three votes) to pass the ordinance.
- **Situations where statutes require extraordinary votes.** The absence of a member will not affect the number of votes needed if a statute requires approval by a specific number of votes or a certain portion of the entire council.

iv. Abstentions

Sometimes a council member who is present at a meeting will choose not to vote on a matter before the council. In some home rule charter cities, a mayor might not vote unless there is a tie. If a council member or mayor does not vote, it is recorded in the minutes as an abstention. How the abstention should be considered can sometimes depend upon the reason for the member's abstention.

- **Achieving a quorum.** Whether or not a council member abstains would not appear to have an effect on whether or not a quorum exists, and the meeting may be held.

*A.G. Op. 161-A-20 (June 3, 1987);
A.G. Op. 471-M (Oct. 30, 1986).*

Motions and resolutions. Generally, a motion or resolution is passed if the majority of those voting vote in favor of it. It's not entirely clear, however, if a court would apply this rule to the extreme case where a quorum is present but because of abstentions the number of affirmative votes is less than a majority of the quorum. Again, it may depend upon the reason behind the abstention.

- **Most ordinances.** An abstention by one or more council members does not reduce the number of votes needed if a statute or charter provision specifies a certain number of votes. For example, in a statutory city with a five-member council, three affirmative votes are needed to pass most ordinances; two "yes" votes and three abstentions are not enough.

However, if the abstention is required because a council member is disqualified from voting (such as when one member has a personal interest in the matter being considered by the council), the abstention is treated like a vacancy. In this type of situation, the size of the council is temporarily reduced.

*Ram Dev. Co. v. Shaw, 309 Minn.
139, 244 N.W.2d 110 (Minn.
1976).*

- **Situations where statutes require extraordinary votes.** An abstention by one or more council members does not reduce the number of votes needed if the statutes require the affirmative vote of a specific number or proportion of the entire council. For example, in a case where a seven-member board attempted to pass a zoning amendment that required a two-thirds vote of its members, three members abstained and four voted in favor of the amendment. The court ruled that this vote was not sufficient to pass the ordinance.

*1989 Street Improvement Program
v. Denmark Township, 483 N.W.2d
508 (Minn. Ct. App. 1992).*

Council members who have a disqualifying interest are generally excluded when counting the number of votes needed to approve an action by a supermajority vote. An example of such a situation was a local improvement project where two town board members owned property that was going to be assessed for the improvement. The court found it was proper for the two to abstain in this case, and that three affirmative votes were sufficient to meet the four-fifths majority vote requirement.

Although council members may be tempted to abstain from voting on a controversial matter, they should remember that the abstention will ultimately tend to pass or defeat the matter. The best advice is to avoid the kinds of problems that can arise from abstentions and vote, unless an abstention is required because a council member has a personal interest in the matter.

b. Long-distance voting

Minn. Stat. §§ 13D.02; 13D.021

Although the open meeting law permits meetings to be held by interactive television, and in the case of a health pandemic or an emergency, permits meetings to be held by telephone or other electronic means, the use of other types of technology have not yet been authorized.

i. Voting by proxy

Sometimes council members who are not able to be at a meeting want to vote on a matter that will be addressed at the meeting. State law does not permit a statutory city council member to vote by proxy. Home rule charter cities may find permission in their charters.

ii. Voting by phone

Minn. Stat. § 13D.021.

Likewise, unless there is a health pandemic or an emergency, state law does not authorize a council member to phone in his or her vote or participate in the meeting by conference call, or other electronic means.

7. Agendas

City clerks generally prepare agendas for council meetings. The agendas are then given to council members and other interested individuals such as department heads and citizens. The agenda establishes the order in which the matters are to be addressed during the meeting.

(1) Consent agenda

The consent agenda or consent calendar is used by many city councils to help shorten the length of the meetings by using time more efficiently. A consent agenda typically groups together many items that are routine and not controversial. Although the council must take action on these items, they do not require further discussion.

Examples of items typically included in a consent agenda are the approval of the minutes, the setting of the next meeting date, approval of routine expenditures, and the final approval of licenses and permits.

The council generally approves all items on the consent agenda with the passage of one motion. If there is any item on the consent agenda that a council member feels warrants further discussion, it is removed from the consent agenda and dealt with individually. It may be placed anywhere within the regular agenda.

The consent agenda may be a valuable tool for city councils that have to deal with many routine matters. Some city councils may need to amend their bylaws to allow the use of this procedure.

(2) Discussing items not on the agenda

Whether the council can discuss an item that was not included on the agenda is a question that may not have a clear answer. In part, the answer may depend upon the type of meeting that is being held and the type of meeting rules the council has adopted.

Cities should first check any rules that have been adopted by the council and any charter provisions, if the city is a home rule charter city. These local items may give more specific guidance where the statutes are vague.

*Minn. Stat. §§ 13D.04, subd. 1;
412.191, subd. 2.*

*Minn. Stat. § 13D.04, subd. 2.
See Part III - E - Notice
requirements.*

*Minn. Stat. § 13D.04, subd. 3.
See Part III - E - Notice
requirements.*

- **Regular meetings.** The statutes are basically silent on the ability of the council to address items that are not on the agenda at a regular meeting. However, it seems to be common practice for councils to address items that were not originally on the agenda of a regular meeting through a miscellaneous item on the agenda.
- **Special meetings.** A city must give notice of a special meeting to the public. This notice must include the date, time, place, and purpose of the meeting. Since the notice of the meeting should announce its purpose, council members should deal only with that specific issue.
- **Emergency meetings.** Although these types of meetings are very rare, the law seems to be clear. The law requires that notice must include the subject of the meeting. The law also states that if matters not directly related to the emergency are discussed or acted upon in an emergency meeting, the meeting minutes shall include a specific description of the matters. Surprisingly, the statute seems to give the council more leeway to take up other matters at an emergency meeting than at other types of meetings. However, discussion of topics other than the emergency should be avoided.

In conclusion, it is advisable for city councils to only deal with the specific items on the agenda for all but regular meetings. Council members may lose a great deal of credibility with the public if people believe they are trying to circumvent the law.

D. Attendance of council members

It is important for all council members to attend their city council meetings. When members are absent from a meeting, it can be difficult for the council to conduct business. Such difficulties can include the inability of the council to achieve a quorum, the difficulty in getting the needed number of votes to approve an action, and the difficulty in counting votes.

*Minn. Stat. §§ 412.191, subd. 1;
645.08 (5).*

In statutory cities, a majority of all the council members constitutes a quorum. This means that at least three members of a five-member council or four members of a seven-member council must be present in order for the council to hold a meeting. Home rule charter cities may have different quorum requirements in their charters.

1. Time off from employment

Minn. Stat. § 211B.10, subd. 2.

An elected official must be given time off from employment to attend meetings that are required because of the office. The time off may be with or without pay. If the time off is without pay, the employer must make an effort to allow the person to make up the hours at another time when he or she is available. An employer cannot retaliate against an employee who must take time off to attend such meetings.

2. Non-attendance

Sometimes, a city council will find that a council member is not attending council meetings. The absences may be due to a variety of reasons, such as illness, extended vacations or refusal to attend. Whatever the reason, such extended absences can make it difficult for the council to do its job. This section discusses some of the things city councils can consider to remedy this type of problem.

a. Reprimands

A.G. Op. 471-E (Jan. 21, 1942).

The attorney general has indicated a city council could reprimand a council member for missing meetings. The council would do this by passing a resolution. While such a reprimand might create political pressure and embarrassment for the absent council member, it won't necessarily compel the council member to attend meetings.

b. Compelling attendance

Minn. Stat. § 412.191, subd. 2.

State law authorizes a statutory city council to compel the attendance of its members and punish them for non-attendance. Unfortunately, it is not clear how this power should be exercised.

Minn. Stat. ch. 586.

It might be possible to compel the attendance of a council member through a mandamus action, which is a court order to force a public officer to perform a specific duty of his or her office. This type of remedy may be pursued by the city, individual council members or a citizen. However, city officials should consult with their city attorney before considering this approach.

c. Council pay

Minn. Stat. § 43A.17, subd. 10.

State law prohibits cities from diminishing a council member's pay for absences because of illness or vacation. As a result, if the council's salary is set at a monthly or annual salary, the council members are entitled to receive that pay whether or not they attend meetings.

On the other hand, it might be possible to set council compensation on a per-meeting basis. It should be noted that this state statute has not yet been interpreted by the courts or the attorney general.

d. Fines

Minn. Stat. § 412.191, subd. 2.

A system of fines may be an option a statutory city council could use to punish a council member for non-attendance. If a city wants to use this approach, it should adopt an ordinance or rule establishing a system of fines for missing meetings. However, as discussed above, a city cannot diminish a council member's salary for absences that are the result of illness or vacation.

e. Temporary replacement of council members

Minn. Stat. § 412.02, subd. 2b.

Statutory cities have an option to temporarily replace a council member under certain circumstances. A vacancy in the office of mayor or council member may be declared by the council if either of the following occurs:

- An officeholder is unable to serve in the office or attend council meetings for a 90-day period because of illness.
- An officeholder refuses to attend council meetings for a 90-day period.

If either of these conditions occurs, the council may declare a vacancy to exist and fill it at a regular or special council meeting. The vacancy may be filled for the remainder of the unexpired term or until the person is able to resume duties and attend council meetings, whichever is earlier. When the person is able to resume duties and attend council meetings, the council shall by resolution remove the temporary officeholder and restore the original officeholder.

Minn. Stat. § 410.33.

Home rule charter cities may use the same procedure described in this statute if their charter is silent on the matter.

f. Abandonment of office

A.G. Op. 450-A-11 (March 6, 1957).

Continued failure to attend council meetings may be grounds for a city council to find that an office has been abandoned and declare that the office is vacant. The attorney general has described abandonment as a form of resignation, and indicated that the officer's intent is a key issue in determining whether there has been an abandonment of the office.

A.G. Op. 434-A-2 (July 14, 1955);
Also see previous section.

Whether an office has actually been abandoned is a question of fact that must be determined on a case-by-case basis. The attorney general has said that mere absence by itself does not mean that the office has been abandoned. Following a 90-day period, the office may be declared vacant and the officer replaced on a temporary basis. There are no clear guidelines as to how long a council member must be absent in order for the office to be considered permanently vacant.

A.G. Op. 434-A-2 (July 14, 1955).

If the city council believes that the absent council member has abandoned the office, it can pass a resolution making this finding. The council should first give the absent council member notice and an opportunity to be heard. A city council that is considering declaring an office vacant due to abandonment should first consult with its city attorney.

g. Criminal penalties

Minn. Stat. § 609.43.

It is a gross misdemeanor for a public officer to intentionally fail to perform a known mandatory, nondiscretionary, ministerial duty of his or her office. It is arguable that attending council meetings might fall into this category of duties for council members.

Minn. Stat. § 351.02.

This type of remedy may be an extreme measure. Conviction may constitute a violation of the council member's oath of office, which would result in the office being vacant. Again, a city council that is considering this remedy should first consult with its city attorney.

E. Meeting room

1. Smoking

Minn. Stat. §§ 144.414, subd 1;
144.412.

The Minnesota Clean Indoor Air Act prohibits smoking at a public meeting. This law protects employees and the general public from the hazards of secondhand smoke by eliminating smoking in public places, places of employment, public transportation, and at public meetings.

Minn. Stat. § 144.416.

A city must make reasonable efforts to prevent smoking in the public place by posting appropriate signs, by any other appropriate means, and by asking any person who smokes in an area where smoking is prohibited to refrain from smoking, and, if the person does not refrain from smoking after being asked to do so, asking the person to leave. If the person refuses to leave, the city shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.

Minn. Stat. § 144.417, subds. 2, 3.

People who violate this law are guilty of a petty misdemeanor. Additionally, the state commissioner of health, a local health board or any affected party may pursue a court order to enjoin repeated violations.

Minn. Stat. § 144.417, subd. 4.

Nothing in the Minnesota Clean Indoor Air Act prohibits a statutory or home rule charter city from adopting and enforcing more restrictive measures to protect individuals from secondhand smoke.

2. Accessibility

Minn. Stat. § 363A.12.

42 U.S.C. §§ 12101-12213.

Both the meeting and the meeting room must be accessible. To ensure accessibility, the meeting should be located in a room that all people, including people with mobility impairments, will be able to reach. Cities may also need to have individuals sign for people with hearing loss and have written materials available in large print, Braille or audio cassette for people with sight impairments.

F. Broadcasting and recording of meetings

A.G. Op. 63a-5 (Dec. 4, 1972).

The attorney general has advised that the public may tape record a meeting if it will not have a significantly adverse effect on the order of the meeting or impinge on constitutionally-protected rights. Neither the public body nor any member may prohibit dissemination or broadcast of the tape.

*Minn. Stat. §§ 13.03, subd. 1 ;
13.02, subd. 7; 13D.03, subd. 2(b).
See Part III - D - Exceptions and
the procedures to use them.*

A city may tape record or videotape a meeting. The tape is a city record and must be kept in accordance with the city's record-retention policy. As a city record, such a tape must also be made available to the public if it contains public data. If the tape is of a closed meeting, it is generally not available to the public. Tapes of meetings that have been closed to consider labor negotiations under PELRA will become public after all labor contracts are signed for the current budget period.

Even though video tapes and sound recordings may indicate verbatim what occurred at a meeting, they are not the official record of the meeting. The approved minutes are the official record of the meeting.

Minn. Stat. § 13D.03, subd. 1(d)
See Part III - D - *Exceptions and the procedures to use them.*

All closed meeting, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

42 U.S.C. §§ 12101-12213.
See Part VI - E - Meeting room.

Many cities broadcast their council meetings over cable television. Such broadcasts may need to be closed-captioned or signed in order to be accessible for those with hearing impairments. It is unclear whether this cost should be paid by the city or the cable company. Cities should consult their cable franchise agreements for clarification.

Part VII. Table of motions

(Note: Also see discussion under Part VI – A. Parliamentary procedure)

There are three basic types of motions: privileged motions, subsidiary motions, and main motions. Privileged motions take precedence over subsidiary motions; subsidiary motions take precedence over main motions. The following charts of motions are listed in order of precedence and are based upon *Robert's Rules of Order Newly Revised*, 10th Edition (2000):

Chart A: Privileged motions—A privileged motion is a motion that does not relate to the business at hand. Such a motion usually deals with items that require immediate consideration.

Motion	Requires a second	Can interrupt speaker	Debatable	Amendable	Votes required to pass	Can be reconsidered
Fix a time to adjourn.	✓			✓	Majority	✓
To adjourn.	✓				Majority	
Recess. (A motion to take an intermission.)	✓			✓	Majority	
Raise a question of privilege. (A motion referring to a matter of personal concern to a member. Examples are asking to have the heat turned up, the windows opened, less noise, or requesting that the motion be stated again.)		✓			Usually, no vote is taken. The chair decides.	
Call for the orders of the day. (Forces the consideration of a postponed motion.)		✓			Usually, no vote is taken. The chair decides.	

Chart B: Subsidiary motions—A subsidiary motion is a motion that assists the group in disposing of the main motion.

Motion	Requires a second	Can interrupt speaker	Debatable	Amendable	Votes required to pass	Can be reconsidered
Lay on the table. (To postpone discussion temporarily.)	✓				Majority	
Previous question or call for the question. (To stop debate and force an immediate vote.)	✓				2/3	✓
Postpone to a definite time.	✓		✓	✓	Majority	✓
Commit or refer. (A motion to refer to a smaller committee.)	✓		✓	✓	Majority	If group has not begun consideration of a question.
Amend.	✓		✓	✓	Majority	Y
Postpone indefinitely.	✓		✓		Majority	Affirmative vote only

Chart C: Main motions—A main motion is a formal proposal that is made by a member that brings a particular matter before the group for consideration or action.

Motion	Requires a second	Can interrupt speaker	Debatable	Amendable	Votes required to pass	Can be reconsidered
Any general motion, resolution, or ordinance.	✓		✓	✓	Majority	✓
Take from the table.	✓				Majority	
Reconsider. (To reconsider a motion already passed/defeated.)	✓	✓	✓		Majority	
Appeal or challenge a ruling of the chair.	✓	✓	Depends		Majority	✓
Rescind. (A motion to strike out a previously adopted motion, resolution, bylaw, etc.)	✓		✓	✓	Varies, based on motion	Negative vote only

Part VIII. Model bylaws

(Note: Also see discussion under Part VI - Holding Meetings)

Resolution No. _____

A RESOLUTION ESTABLISHING RULES FOR THE ORGANIZATION AND PROCEDURE OF THE CITY COUNCIL OF _____

The city council of *(name of city)* resolves as follows:

WHEREAS, the city council of *(name of city)* has power to regulate its own procedure under Minn. Stat. § 412.191, subd. 2.

NOW THEREFORE, the city council of *(name of city)* has determined that its rules of organization and procedure are as follows.

Section 1. Meetings

Subdivision 1. Regular meetings. Regular meetings of the city council shall be held on the *(day)* of each calendar month at *(time)* p.m. Any regular meeting falling upon a holiday shall be held on the next following business day at the same time and place. The city clerk shall maintain a schedule of regular meetings. This schedule shall be available for public inspection during regular business hours at the city clerk's office. All meetings, including special emergency meetings, shall be held in the city hall.

Comment: Specify the day and time in the blanks, e.g., "the first Tuesday" of each month at "8:00 p.m." In statutory cities, the time and frequency of council meetings is a matter of council discretion. Home rule charter cities may have other requirements in their charters.

Subd. 2. Special meetings. The mayor or any two *(three, if a seven-member council)* members of the council may call a special meeting of the council upon at least 24 hours written notice to each member of the council. This notice shall be delivered personally to each member, or left at the member's usual place of residence with some responsible person. Similar written notice shall be mailed at least three days before the meeting date to those who have requested notice of such special meetings. This request must be in writing and be filed with the city clerk, designating an official address where notice may be mailed. Such request will be valid for one year.

Comment: In cities with a five-member council, two members may call a special meeting. In cities with a seven-member council, three members may call a special meeting. The procedure specified here conforms to the requirements of the open meeting law. Although the statute permits notice to be mailed to council members, personal delivery is preferable.

Subd. 3. Emergency meetings. The mayor or any two council members *(three council members if a seven-member council)* may call an emergency meeting when circumstances require the immediate consideration of a matter by the council. Notice may be in writing personally delivered to council members or may be in the form of personal telephone communication. Notice must include the date, time, place, and purpose of such a meeting. Where practical, the clerk shall make an effort to contact news gathering organizations that have filed a request to receive notice of special meetings.

Comment: This procedure conforms to the open meeting law. The meeting must be a true emergency and must not be simply a ruse to get around the more stringent notice requirements of special meetings. Posted or published notice is not required, although it is a good idea to post such notice.

Subd. 4. Initial meeting. At the first regular council meeting of January of each year, the council shall do the following:

- 1) Designate the depositories of city funds;
- 2) Designate the official newspaper;
- 3) Choose an acting mayor from the council members who shall perform the mayor's duties during the mayor's absence, disability from the city or, in case of vacancy in the office of mayor, until a successor has been appointed and qualifies;
- 4) Appoint necessary officers, employees, and members of boards, commissions, and committees.

Comment: In some cities, an organizational meeting is held on the first Monday of January. If this is done, the council may wish to change the language of the first sentence accordingly. It is not really necessary to specify what should be done at an organizational meeting, but if it is included in the rules, it will serve as a reminder. Home rule charter cities may have additional requirements in their charters.

Subd. 5. Public meetings. Except as otherwise provided in the open meeting law, all council meetings, including special, emergency, and adjourned meetings and meetings of all council committees shall be open to the public.

Comment: The open meeting law requires open meetings with very few exceptions. Special care is needed in order not to violate this statute when dealing with employment issues.

Section 2. Presiding officer

Subdivision 1. Who presides. The presiding officer shall be the mayor. In the absence of the mayor, the acting mayor shall preside. In the absence of both, the clerk shall call the meeting to order and shall preside until the council members present at the meeting choose one of their number to act temporarily as presiding officer.

Comment: This provision may need adaptation for a home rule charter city where the mayor is not a member of the council.

Subd. 2. Procedure. The presiding officer shall preserve order, enforce the rules of procedure herein prescribed and determine without debate, subject to the final decision of the council on appeal, all questions of procedure and order. Except as otherwise provided by statute or by these rules, the proceedings of the council shall be conducted in accordance with *Robert's Rules of Order, Newly Revised, 10th Edition*.

Subd. 3. Appeals. Any member may appeal to the council from a ruling of the presiding officer. If the appeal is seconded, the member may speak once solely on the question involved and the presiding officer may explain his or her ruling, but no other council member shall participate in the discussion. The appeal shall be sustained if it is approved by a majority of the members present.

Comment: This is covered by Robert's Rules, but it may be desirable to cover the matter in council rules so members are aware of the possibility of appeal. A majority or tie vote sustains the decision of the chair. When the presiding officer is a member of the council, he or she can vote on the appeal.

Subd. 4. Rights of presiding officer. The presiding officer may make motions, second motions, or speak on any question except that on demand of any council member the presiding officer shall pass the chair to another council member to preside temporarily.

Section 3. Minutes

Subdivision 1. Who keeps. Minutes of each council meeting shall be kept by the clerk or in the clerk's absence, the deputy clerk. In the absence of both, the presiding officer shall appoint a secretary pro tem.

Ordinances, resolutions, and claims need not be recorded in full in the minutes if they appear in other permanent records of the clerk and can be accurately identified from the description given in the minutes.

Comment: In a home rule charter city, the subdivision should conform to any applicable charter provisions.

Subd. 2. Approvals. The minutes of each meeting shall be reduced to typewritten form, shall be signed by the clerk, and copies shall be delivered to each council member as soon as practicable after the meeting. At the next regular meeting following such delivery, approval of the minutes need not be read aloud, but the presiding officer shall call for any additions or corrections. If there is no objection to a proposed addition or correction, it may be made without a vote of the council. If there is an objection, the council shall vote upon the addition or correction. If there are no additions or corrections, the minutes shall stand approved.

Subd. 3. Publication. The clerk shall publish a condensed version of the official minutes within 30 days of a regular or special meeting, which includes a summary of the action on motions, resolutions, ordinances, and other official proceedings. If the city council does not meet more than once every 30 days, the publication does not need to occur until ten days after the council has approved the minutes.

Section 4. Order of business.

Subdivision 1. Order established. Each meeting of the council shall convene at the time and place appointed. Council business shall be conducted in the following order:

- 1) Call to order
- 2) Roll call
- 3) Approval of minutes
- 4) Public hearings
- 5) Petitions, requests, and communications
- 6) Ordinances and resolutions
- 7) Reports of officers, boards, committees
- 8) Unfinished business
- 9) New business
- 10) Miscellaneous
- 11) Adjournment

Comment: The order of business will vary considerably from one place to another. The order set forth here is merely illustrative. In some cities, citizens may address the council at some specified time during the meeting. If this practice is to be followed, an item entitled "Comments and suggestions from citizens present" can be added.

Subd. 2. Varying order. The order of business may be varied by the presiding officer, but all public hearings shall be held at the time specified in the notice of the hearing.

Subd. 3. Agenda. The clerk shall prepare an agenda of business for each regular council meeting and file a copy in the office of the clerk not later than (*number*) days before the meeting. The agenda shall be prepared in accordance with the order of business and copies shall be delivered to each council member and to (*others*) as far in advance of the meeting as time for preparation will permit. No item of business shall be considered unless it appears on the agenda for the meeting or is approved for addition to the agenda by a unanimous vote of the council members present.

Comment: In smaller cities, it may not be necessary to prepare a formal agenda for each meeting. However, an agenda does inform the council members and citizens of the matters

which will come before the council and also helps to make certain that all business that needs to be transacted will be considered. Preparation of the agenda should follow a definite schedule, so that anyone desiring to submit a matter for council consideration will know when it should be given to the clerk. Deadlines for inclusion of items should allow sufficient time for the clerk to prepare the agenda. Some have suggested that the clerk should be allowed one or two working days for this purpose. In some cities, copies of the agenda are also furnished to the city attorney, department heads, the news media, and the public.

Subd. 4. Agenda materials. The clerk shall see that at least one copy of printed materials relating to agenda items is available to the public in the meeting room while the council considers their subject matter. The agenda item shall not be considered unless this provision is complied with. This section does not apply to materials that are classified as other than public under the Minnesota Government Data Practices Act or materials from closed meetings.

Comment: The open meeting law subjects a council member who intentionally violates this requirement to a civil penalty of up to \$300. This provision of the ordinance places responsibility with the city clerk to see that the materials are available when the law requires it. The provision relating to the clerk is optional, there is no such provision in the statute.

Section 5. Quorum and voting.

Subd. 1. Quorum. At all council meetings a majority of the elected council members shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. The council may punish non-attendance by a fine not exceeding \$ (dollar amount) for each absence from any meeting unless a reasonable excuse is offered.

Comment: This quorum requirement is fixed for statutory cities by Minn. Stat. § 412.191, subd. 1 and is usually the same in home rule charter cities. The provision that establishes a fine for non-attendance is authorized by the statutory provision empowering the council to punish non-attendance. (Minn. Stat. § 412.191, subd. 2.) Home rule charters usually give the council similar authority.

Subd. 2. Voting. The votes of the members on any question may be taken in any manner, which signifies the intention of the individual members, and the votes of the members on any action taken shall be recorded in the minutes. The vote of each member shall be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute. If any member is present but does not vote, the minutes, as to that member's name, shall be recorded as an abstention.

Comment: The requirement that each vote be recorded on actions taken and on appropriations is taken verbatim from the open meeting law, Minn. Stat. § 13D.01. The last sentence dealing with vote abstentions is optional. Some rules require the member to vote unless excused by a majority (or a supermajority) of the other members.

Subd. 3. Votes required. A majority vote of all members of the council shall be necessary for approval of any ordinance unless a larger number is required by statute. Except as otherwise provided by statute, a majority vote of a quorum shall prevail in all other cases.

Comment: In statutory cities, state law requires that a majority of all council members approve an ordinance, Minn. Stat. § 412.191, subd. 4. Most home rule charters have similar requirements, which sometimes extend to resolutions as well. In home rule charter cities, the last sentence may appropriately begin, "Except as otherwise provided by statute or charter."

Section 6. Ordinances, resolutions, motions, petitions, and communications.

Subd. 1. Readings. Every ordinance and resolution shall be presented in writing. An ordinance or resolution need not be read in full unless a member of the council requests such a reading.

Comment: In statutory cities, the council may pass an ordinance at the same meeting at which it is introduced, but requiring that the ordinance be first brought up at least a week before it is

adopted seems desirable even though a council may still be able to pass a valid ordinance without meeting the two-reading requirement. Most charters require at least two readings except in emergency ordinances.

Subd. 2. Signing and publication proof. Every ordinance and resolution passed by the council shall be signed by the mayor, attested by the clerk, and filed by the clerk in the ordinance or resolution book. Proof of publication of every ordinance shall be attached and filed with the ordinance.

Subd. 3. Repeals and amendments. Every ordinance or resolution repealing a previous ordinance or resolution or a section or subdivision thereof shall give the number, if any, and the title of the ordinance or code number of the ordinance or resolution to be repealed in whole or in part. Each ordinance or resolution amending an existing ordinance or resolution or part thereof shall set forth in full each amended section or subdivision as it will read with the amendment.

Subd. 4. Motions, petitions, communications. Every motion shall be stated in full before the presiding officer submits it to a vote and shall be recorded in the minutes. Every petition or other communication addressed to the council shall be in writing and shall be read in full upon presentation to the council unless the council dispenses with the reading. Each petition or other communication shall be recorded in the minutes by title and filed with the minutes in the office of the clerk.

Comment: The statutory city code does not define ordinances, resolutions, and motions, nor indicate in most cases where the council should use them. An ordinance should be used for regulatory legislation, including any which includes provisions for a penalty of fine or imprisonment. The local improvement code requires many of the procedural steps to be made by resolution. Otherwise, councils frequently take most administrative action by motion. Proceedings simply in the form of a motion duly adopted and entered in the minutes are frequently held to be equivalent to a resolution and probably this is sufficient for most administrative acts.

Section 7. Committees.

Subd. 1. Committees designated. The following committees shall be appointed by the council at the first regular council meeting in January of each year:

- 1) Auditing committee
- 2) Personnel committee
- 3) Purchasing committee
- 4) Public-reporting committee

Comment: This committee structure is illustrative only. In the absence of specific charter provisions, which are rare, the council determines the number and kind of committees. In general, the council should not set up committees on the basis of line functions, e.g., streets, since this is likely to involve them in administrative matters. In some small cities with no administrative staff this may, however, be unavoidable. It is better to have as few standing committees as possible, and set up special committees on particular subjects when necessary. Instead of setting forth the committee structure, some rules provide: "The council may create such committees, standing or special, as it deems necessary. Committees shall consist of as many members and perform such duties, as the council may require." In some cities, the council itself appoints the committees, although selection by a group is often difficult.

Subd. 2. Referral and reports. Any matter brought before the council for consideration may be referred by the presiding officer to the appropriate committee or to a special committee that the presiding officer appoints for a written report and recommendation before it is considered by the council as a whole. A majority of the members of the committee shall sign the report and file it with the clerk prior to the

council meeting at which it is to be submitted. Minority reports may be submitted. Each committee shall act promptly and faithfully on any matter referred to it.

Section 8. Suspension or amendment of rules.

These rules may be suspended or amended only by a two-thirds vote of the members present and voting.

Passed by the city council of *(name of city)* this _____ day of _____, 20__.

Mayor

Clerk



MAYOR & COUNCIL COMMUNICATION

DATE: 6/7/2011
REGULAR
ITEM #: 7
MOTION

AGENDA ITEM: Resignation and Replacement of Chair Jennifer Pelletier,
Beyond The Yellow Ribbon

SUBMITTED BY: Sharon Lumby, City Clerk

REVIEWED BY: Bruce Messelt, City Administrator *B Messelt*

SUMMARY AND ACTION REQUESTED: At the Request of Council, this item was added to the Council agenda to discuss the City's plan for the Yellow Ribbon Network and the process to find a replacement for Jennifer Pelletier as Chair of Beyond the Yellow Ribbon.

BACKGROUND INFORMATION: Lake Elmo residents Paul Ryberg and Jennifer Pelletier led an effort to bring the Yellow Ribbon Network of Washington to Lake Elmo. They requested City political and logistical support in this effort. On July 21, 2009, the City Council adopted Resolution No.2009-033 supporting the effort of the Yellow Ribbon Network of Washington County to support family members of service personnel during deployment to defend the democratic values of the United States of America.

On September 20, 2010, then-Governor Pawlenty joined the Minnesota National Guard in proclaiming the City of Lake Elmo as a Yellow Ribbon City in the State of Minnesota.

STAFF REPORT: City staff has provided logistical support and advice to the Committee and will continue to do so. Currently the City is acting as a fiduciary agent only and there are no budgeted funds in 2011 for financial assistance or staff support.

RECOMMENDATION: It is recommended that the City Council discuss replacement of Chair Jennifer Pelletier. It is also recommended that the City Council publically thank Jennifer Pelletier for her service to the community and its armed service members and families.

ATTACHMENTS:

1. Resolution No. 2009-056
2. Proclamation Declaring Yellow Ribbon City

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Clerk
- Council Discussion Mayor Facilitates
- Action on Motion Mayor & City Council

CITY OF LAKE ELMO
Washington County, Minnesota

RESOLUTION NO. 2009-033

**RESOLUTION OF SUPPORT FOR THE
YELLOW RIBBON NETWORK OF WASHINGTON COUNTY**

WHEREAS, many families support their military service members who are serving in the United States and overseas to protect the values and freedom enjoyed by citizens of the United States of America; and

WHEREAS, the Yellow Ribbon Network of Washington County has been formed to connect local military family members with residents and organizations such as cities, townships, schools, churches, community groups, businesses, and government agencies that can provide assistance and support in various forms to family members including spouses and children; and

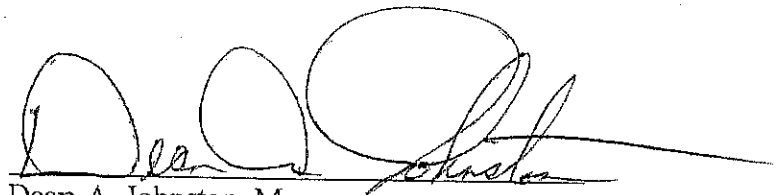
WHEREAS, the Yellow Ribbon Network of Washington County will build on the existing strengths of organizations already providing support of service personnel and their families by adding to the community support and awareness for helping spouses and children in ways to lessen their burden while a family member is deployed to protect our country; and

WHEREAS, the Yellow Ribbon Network of Washington County encourages communities and residents to work together to support the active duty troops and their families,


NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lake Elmo acknowledges with grateful appreciation, respect, and admiration, the sacrifices of military personnel who are leaving home and their loved ones to serve our nation; and

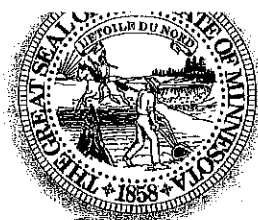
BE IT FURTHER RESOLVED, that the City Council fully supports the efforts of the Yellow Ribbon Network of Washington County to support family members of service personnel during deployments to defend the democratic values of the United States of America.

Adopted the City Council this 21st day of July, 2009.


Dean A. Johnston, Mayor

Attest:


Craig W. Dawson, Interim City Administrator



STATE of MINNESOTA

Proclamation

WHEREAS: The men and women of our Armed Forces are being called to duty with increasing frequency. In addition to remembering their courageous service, we must not forget the unsung heroes in the war on terror: the spouses and family members whose many sacrifices support the defense of this great nation; and

WHEREAS: The spouses and families of our deployed service members bear an enormous burden of concern and support for loved ones in harm's way, while continuing to perform the daily duties needed to sustain their families on the home front; and

WHEREAS: Many cities throughout the country display yellow ribbons and flags in support of the brave men and women serving abroad in the United States Armed Forces; and

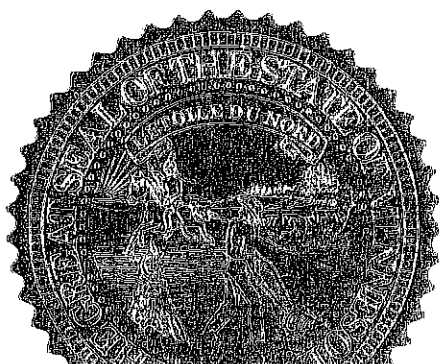
WHEREAS: LAKE ELMO is a Minnesota city that encourages its military members and spouses, giving them peace of mind in knowing they have the appreciation, love, and support of this community; and

WHEREAS: The *Yellow Ribbon City* campaign honors communities with exceptional records of caring for their military members and families through various programs and public works, and recognizes individuals in these communities who have sworn to uphold this standard for future military members and families. It is with this commitment to excellence that LAKE ELMO will serve with honor and distinction as a Yellow Ribbon City.

NOW, THEREFORE, I, TIM PAWLENTY, Governor of Minnesota, do hereby join the Minnesota National Guard in proclaiming the CITY of LAKE ELMO as a:

YELLOW RIBBON CITY

in the State of Minnesota.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Minnesota to be affixed at the State Capitol this 20th day of September in the year of our Lord two thousand and ten, and of the State the one hundred fifty-second.

T. Pawlenty



MAYOR & COUNCIL COMMUNICATION

DATE: 6/07/2011
REGULAR
ITEM #: 8
MOTION: *Resolution No. 2011-022*
Resolution No. 2011-023

AGENDA ITEM: Lake Elmo Avenue Infrastructure Project I-94 to 30th Street – Resolution Accepting Bids and Awarding a Contract

SUBMITTED BY: Jack Griffin, City Engineer

THROUGH: Bruce A. Messelt, City Administrator *BAM*

REVIEWED BY: Ryan Stempski, Assistant City Engineer

SUMMARY AND ACTION REQUESTED: The City Council is respectfully requested to consider approving a Resolution, Accepting Bids and Awarding the Contract for the Lake Elmo Avenue Infrastructure Project, I-94 to 30th Street. Bids were received, publicly opened, and read aloud on April 19, 2011. TKDA has prepared and attached the Bid Tabulation worksheet and a Letter of Recommendation for the Award of the Contract. The City has the right to reject all Bids, to award a contract for the lowest responsive Base Bid, or to award a contract for the lowest responsive Alternate Bid. The City may retain the Bids together with the Bid Securities for no more than 60 days from the date of the Bid Opening (or until June 19, 2011). Should the Council choose to award a contract, the suggested motion is as follows:

“Move to approve Resolution No. 2011-022, Accepting Bids and Awarding the Contract for the Lake Elmo Avenue Infrastructure Project, I-94 to 30th Street, to [S.J. Louis Construction Company for the Base Bid in the amount of \$2,710,546.00].”

or

Move to approve Resolution No. 2011-023, Accepting Bids and Awarding the Contract for the Lake Elmo Avenue Infrastructure Project, I-94 to 30th Street, to [Burschville Construction Inc. for the Alternate Bid in the amount of \$3,676,451.75].”

BACKGROUND INFORMATION: At the December 7, 2010, City Council Meeting, Council directed staff to prepare plans and specifications to incorporate a gravity trunk sewer option for all or portions of the corridor between 10th Street and I-94, and to incorporate these plans as an alternate bid for the Lake Elmo Avenue Infrastructure Project, I-94 to 30th Street. Staff was

directed to complete the necessary plans and specifications, work with the impacted property owners, and negotiate the necessary easements.

The base bid design includes a trunk sanitary sewer forcemain along the entire project corridor, connecting the proposed Village Area Lift Station to the MCES Meter Station (located near Hudson Boulevard and Lake Elmo Avenue). The project plans have been designed with the Village Area Lift Station located near Lisbon Avenue and 30th Street on a site previously presented to the Council as Site No. 3, located outside of and to the east of Reid Park. This trunk infrastructure project is the first step to provide Municipal Sewer Service for the Village Area. Once completed Municipal Sewer Service can be made available to the new Village development with the construction of the Village Parkway Trunk Sewer and/or to the Old Village with the construction of the Lake Elmo Avenue Trunk Gravity Sewer north to TH 5.

The alternate bid design is similar to the base bid design, but would construct trunk gravity sewer in lieu of forcemain near the south end of Cimarron to the MCES Meter Station. This trunk sewer plan configuration would eliminate redundant forcemain pipe infrastructure south of 10th Street and would result in lower overall Trunk Sewer Infrastructure System costs. The alignment of the gravity sewer follows the most cost-effective route south of 10th Street. Once this project is completed, Municipal Sewer Service would also be available in the southeast portion of Lake Elmo, in the areas immediately adjacent to the proposed gravity alignment.

This item has been continued from the May 3rd City Council meeting and was also presented at the May 10th Workshop.

STAFF REPORT: Bids were received on April 19, 2011. The contract documents allow the City to retain these bids together with their Bid security for a period of 60 days (June 19, 2011), before the City must either award the project or reject all bids. If the project is awarded at the May 3rd City Council Meeting, construction work would begin June 2011, The Contract substantial completion deadline is November 15, 2011 and the Contract final completion deadline is December 15, 2011.

The Engineer's preliminary estimate of total project cost for the Base Bid design was \$3.8 million and the Post Bid estimated total project cost is now \$3.65 million, after receiving contractor bids.

For the Alternate Bid design, the Engineer's preliminary estimate of total project cost was \$5.2 million and the Post Bid estimated total project cost is now \$4.85 million, after receiving contractor bids. These costs do not include easement acquisition costs for the easements south of 10th street, should any compensation be required for these easements.

In order to award a contract for the **Alternate Bid**, it is recommended that the City receive assurance that the permanent and temporary utility easements can be successfully acquired in a timely manner such that contractor delays are not incurred. Permanent and temporary utility easements are required from nine separate parcels under the ownership of six property owners.

Easement agreements have been prepared and sent to each of these property owners requesting the dedication of the easements at no cost to the City. The status of each of these easements will be reported to the Council at the meeting in the Staff report.

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council consider approving a Resolution Accepting Bids and Awarding the Contract for the Lake Elmo Avenue Infrastructure Project, I-94 to 30th Street for either the Base Bid, or the Alternate Bid, or the Council may consider rejecting all bids, or tabling action on this item until a future *Special Council Meeting* no later than June 19, 2011. Should the Council choose to award a contract, the suggested motion is as follows:

“Move to approve Resolution No. 2011-022, Accepting Bids and Awarding the Contract for the Lake Elmo Avenue Infrastructure Project, I-94 to 30th Street, to [S.J. Louis Construction Company for the Base Bid in the amount of \$2,710,546.00].”

or

Move to approve Resolution No. 2011-023, Accepting Bids and Awarding the Contract for the Lake Elmo Avenue Infrastructure Project, I-94 to 30th Street, to [Burschville Construction Inc. for the Alternate Bid in the amount of \$3,676,451.75].”

ATTACHMENTS: (4)

1. Resolution No. 2011-022
2. Resolution No. 2011-023
3. Engineers Letter of Recommendation for Award of Contract
4. Project Location Map

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item..... City Administrator
- Report/Presentation..... City Engineer
- Questions from Council to Staff..... Mayor & City Council
- Public Input, if Appropriate.....Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion.....Mayor Facilitates
- Action on Motion..... Mayor & City Council

(CITY OF LAKE ELMO ()
WASHINGTON COUNTY
STATE OF MINNESOTA

RESOLUTION NO. 2011-021

**A RESOLUTION ACCEPTING BIDS AND AWARDING THE CONTRACT
FOR THE LAKE ELMO AVENUE INFRASTRUCTURE PROJECT,
I-94 TO 30TH STREET
BASE BID AWARD**

WHEREAS, pursuant to resolutions passed by the council, TKDA was directed to prepare plans and specifications for the Lake Elmo Avenue Infrastructure Project I-94 to 30th Street, and to complete the design for an alternate bid option to include gravity sewer for portions of the corridor between 10th Street and I-94;

WHEREAS, TKDA has completed the plans and specifications and the City Council approved them on March 15, 2011, and directed staff to advertise and receive bids;

WHEREAS, pursuant to an advertisement for bids for the Lake Elmo Avenue Infrastructure Project I-94 to 30th Street, bids were received, opened and tabulated according to law, and bids were received complying with the advertisement;

WHEREAS, bids were tabulated, checked and summarized to verify that all requirements of the submittals were met;

AND WHEREAS, the City Engineer reviewed the bids and has provided a letter recommending the award of the contract to the lowest responsive bidder;

NOW, THEREFORE, BE IT RESOLVED,

- 1. That the Mayor and City Clerk are hereby authorized and directed to enter into a Contract in the accordance with the **ALTERNATE BID** Project, in the amount of the Contractor's lowest responsible bid, and according to the plans and specifications thereof approved by the City Council.*
- 2. The City Clerk is hereby authorized and directed to return forthwith to all bidders the deposits made with their bids, except that the deposits of the successful bidder and the next two lowest bidders shall be retained until a contract has been signed.*

Date: May 17, 2011 CITY OF LAKE ELMO

By: _____
Dean A. Johnston, Mayor

ATTEST:

Bruce A. Messelt
City Administrator

CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA

RESOLUTION NO. 2011-022

A RESOLUTION ACCEPTING BIDS AND AWARDING THE CONTRACT
FOR THE LAKE ELMO AVENUE INFRASTRUCTURE PROJECT,
I-94 TO 30TH STREET
BASE BID AWARD

WHEREAS, pursuant to resolutions passed by the council, TKDA was directed to prepare plans and specifications for the Lake Elmo Avenue Infrastructure Project I-94 to 30th Street, and to complete the design for an alternate bid option to include gravity sewer for portions of the corridor between 10th Street and I-94;

WHEREAS, TKDA has completed the plans and specifications and the City Council approved them on March 15, 2011, and directed staff to advertise and receive bids;

WHEREAS, pursuant to an advertisement for bids for the Lake Elmo Avenue Infrastructure Project I-94 to 30th Street, bids were received, opened and tabulated according to law, and bids were received complying with the advertisement;

WHEREAS, bids were tabulated, checked and summarized to verify that all requirements of the submittals were met;

AND WHEREAS, the City Engineer reviewed the bids and has provided a letter recommending the award of the contract to the lowest responsive bidder;

NOW, THEREFORE, BE IT RESOLVED,

- 1. That the Mayor and City Clerk are hereby authorized and directed to enter into a Contract in the accordance with the **BASE BID** Project, in the amount of the Contractor's lowest responsible bid, and according to the plans and specifications thereof approved by the City Council.*
- 2. The City Clerk is hereby authorized and directed to return forthwith to all bidders the deposits made with their bids, except that the deposits of the successful bidder and the next two lowest bidders shall be retained until a contract has been signed.*

Date: May 17, 2011 CITY OF LAKE ELMO

By: _____
Dean A. Johnston, Mayor

ATTEST:

Bruce A. Messelt
City Administrator

TKDA

ENGINEERING • ARCHITECTURE • PLANNING

The right time. The right people. The right company.

444 Cedar Street, Suite 1600
Saint Paul, MN 55101-2140

(651) 292-4400
(851) 292-0083 Fax
www.tkda.com

May 3, 2011

Honorable Mayor and City Council
City of Lake Elmo, Minnesota

Re: Lake Elmo Avenue Infrastructure Improvements, I-94 to 30th Street
City of Lake Elmo, Minnesota
TKDA Project No. 13857.000

Dear Mayor and City Council:

Bids for the referenced project were received on April 19, 2011, at 10:00 a.m. with the following results. A complete Tabulation of Bids is attached for your information.

<u>Contractor</u>	<u>BASE BID</u>
SJ Louis Construction Co.	\$2,710,546.00
Geislinger & Sons	\$2,753,894.00
Minger Construction, Inc.	\$2,805,181.00
LaTour Construction, Inc.	\$2,824,261.80
Ellingson Drainage	\$2,830,599.00
Burschville Construction, Inc.	\$2,880,318.00
GM Construction, Inc.	\$2,910,780.00
Duininck, Inc.	\$2,982,096.30
Veit & Company, Inc.	\$3,138,885.00
Engineer's Estimate	\$2,710,904.92

<u>Contractor</u>	<u>ALTERNATE BID</u>
Burschville Construction, Inc.	\$3,676,451.75
SJ Louis Construction Co.	\$3,684,907.45
Geislinger & Sons	\$3,688,623.75
LaTour Construction, Inc.	\$3,690,230.30
Minger Construction, Inc.	\$3,739,035.60
Duininck, Inc.	\$3,950,790.94
Veit & Company, Inc.	\$3,964,110.50
Ellingson Drainage	\$3,973,792.50
GM Construction, Inc.	\$4,452,074.78
Engineer's Estimate	\$3,808,552.12

Lake Elmo Avenue Infrastructure Improvements, I-94 to 30th Street

May 3, 2011

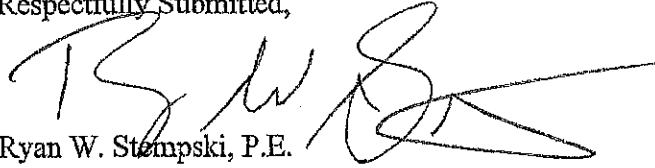
Page 2

Recommendation

Should the City Council decide to award the **BASE BID** (forcemain only) improvements, the recommended lowest responsive and responsible bidder is SJ Louis Construction Co., for their base bid of \$2,710,546.00.

Should the City Council decide to award the **ALTERNATE BID** (forcemain and gravity sewer south of 10th Street), the recommended lowest responsive and responsible bidder is Burschville Construction, Inc., for their alternate bid of \$3,676,451.75.

Respectfully Submitted,



Ryan W. Stempski, P.E.
Project Manager

Enclosures

cc: Bruce Messelt, City Administrator
Tom Bouthilet, Finance Director
Jack W. Griffin, City Engineer

TABULATION OF BASE BIDS

LAKE ELMO AVENUE INFRASTRUCTURE IMPROVEMENTS - 194 TO 30TH STREET
 CITY OF LAKE ELMO, MINNESOTA
 TKDA PROJECT NO. 13857.000

BIDS OPENED: APRIL 19, 2011, AT 10:00 AM

*DENOTES ERROR IN BIDDERS CALCULATION



ENGINEER'S ESTIMATE
 TOTAL AMOUNT

S J Louis Construction Co
 UNIT PRICE
 TOTAL AMOUNT

Geislinger and Sons Inc.
 UNIT PRICE
 TOTAL AMOUNT

Minger Construction Inc
 UNIT PRICE
 TOTAL AMOUNT

*DENOTES ERROR IN BIDDERS CALCULATION

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	ENGINEER'S ESTIMATE UNIT PRICE TOTAL AMOUNT	S J Louis Construction Co UNIT PRICE TOTAL AMOUNT	Geislinger and Sons Inc. UNIT PRICE TOTAL AMOUNT	Minger Construction Inc UNIT PRICE TOTAL AMOUNT
BASE BID							
GENERAL							
1	MOBILIZATION	1	LS	\$ 111,300.00	\$ 111,300.00	\$ 111,300.00	\$ 111,300.00
2	TRAFFIC CONTROL	1	LS	\$ 56,000.00	\$ 56,000.00	\$ 56,000.00	\$ 56,000.00
3	SILT FENCE	1908	LF	\$ 2.50	\$ 4,770.00	\$ 2.00	\$ 3,816.00
4	ROCK CONSTRUCTION ENTRANCE	1	EA	\$ 600.00	\$ 600.00	\$ 850.00	\$ 850.00
5	WATER FOR DUST CONTROL	100	MGAL	\$ 30.00	\$ 3,000.00	\$ 28.00	\$ 2,800.00
6	CLEAR & GRUB TREE	21	EA	\$ 250.00	\$ 5,250.00	\$ 250.00	\$ 5,250.00
7	DITCH CHECKS	65	LF	\$ 5.00	\$ 325.00	\$ 3.50	\$ 227.50
8	INLET PROTECTION	2	EA	\$ 300.00	\$ 600.00	\$ 85.00	\$ 170.00
9	HYDRO MULCH W/ SEED & FERTILIZER	228	AC	\$ 2,500.00	\$ 5,700.00	\$ 1,950.00	\$ 4,446.00
10	EROSION CONTROL BLANKET (WOOD FIBER)	560	SY	\$ 1.50	\$ 825.00	\$ 2.00	\$ 1,100.00
11	TORSION BORROW	500	CY	\$ 18.50	\$ 9,250.00	\$ 22.00	\$ 11,000.00
12	MODULAR BLOCK RETAINING WALL	60	SF	\$ 40.00	\$ 2,400.00	\$ 250.00	\$ 15,000.00
SUBTOTAL DIVISION 1 - GENERAL				\$ 188,670.00	\$ 100,870.00	\$ 152,212.00	\$ 72,624.00
DIVISION 2 - SANITARY SEWER							
1	LIFT STATION - STRUCTURE VALVE MH & PIPING	1	LS	\$ 200,000.00	\$ 200,000.00	\$ 171,000.00	\$ 185,000.00
2	LIFT STATION - PUMPS AND ACCESSORIES	1	LS	\$ 90,000.00	\$ 90,000.00	\$ 50,000.00	\$ 43,545.00
3	LIFT STATION - ELECTRICAL AND CONTROLS	1	LS	\$ 70,000.00	\$ 70,000.00	\$ 120,000.00	\$ 104,000.00
4	GENERATOR	1	LS	\$ 75,000.00	\$ 75,000.00	\$ 84,000.00	\$ 52,170.00
5	CHEMICAL FEED SYSTEM	1	LS	\$ 80,000.00	\$ 80,000.00	\$ 185,000.00	\$ 137,715.00
6	16" HDPE FORCEMAIN, INSTALLED BY HDD	16880	LF	\$ 80.00	\$ 1,350,400.00	\$ 93.00	\$ 1,487,840.00
7	16" HDPE FORCEMAIN, INSTALLED BY OPEN CUT	438	LF	\$ 45.00	\$ 19,710.00	\$ 49.00	\$ 21,482.00
8	18" PVC, PS48 SANITARY SEWER (0'-10" DEPTH)	333	LF	\$ 40.00	\$ 14,120.00	\$ 61.00	\$ 20,353.00
9	18" PVC, PS48 SANITARY SEWER (10'-12" DEPTH)	541	LF	\$ 42.00	\$ 22,722.00	\$ 66.00	\$ 35,706.00
10	18" PVC, PS48 SANITARY SEWER (12'-14" DEPTH)	504	LF	\$ 44.00	\$ 22,176.00	\$ 72.50	\$ 36,540.00
11	18" PVC, PS48 SANITARY SEWER (14'-16" DEPTH)	299	LF	\$ 46.00	\$ 13,754.00	\$ 80.00	\$ 23,920.00
12	18" PVC, PS48 SANITARY SEWER (16'-18" DEPTH)	21	LF	\$ 48.00	\$ 1,008.00	\$ 85.00	\$ 1,785.00
13	18" PVC, PS48 SANITARY SEWER (18'-20" DEPTH)	12	LF	\$ 55.00	\$ 660.00	\$ 80.00	\$ 960.00
14	48" DIAMETER SAN. MANHOLE, TYPE 30T (0'-10" DEPTH)	9	EA	\$ 2,900.00	\$ 26,100.00	\$ 3,200.00	\$ 28,800.00
15	48" DIAMETER SAN. MANHOLE, EXTRA DEPTH (>10' DEPTH)	28	EA	\$ 150.00	\$ 4,200.00	\$ 89.00	\$ 2,492.00
16	72" CLEANOUT MANHOLE	5	EA	\$ 8,000.00	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
17	72" AIR RELEASE MANHOLE	4	EA	\$ 8,000.00	\$ 32,000.00	\$ 9,500.00	\$ 38,000.00
18	EXTERNAL MANHOLE DROP	1	EA	\$ 1,500.00	\$ 1,500.00	\$ 3,000.00	\$ 3,000.00
19	16" RES. SEAT GATE VALVE & BOX	18	EA	\$ 4,000.00	\$ 72,000.00	\$ 8,250.00	\$ 148,500.00
20	TRENCH STABILIZATION ROCK	150	LF	\$ 5.00	\$ 750.00	\$ 45.00	\$ 6,750.00
21	TELEVISION	1730	LF	\$ 1.00	\$ 1,730.00	\$ 2.50	\$ 4,325.00
22	4" POLYSTYRENE INSULATION	7	SY	\$ 9.00	\$ 63.00	\$ 30.00	\$ 210.00
23	HORIZONTAL DIRECTIONAL DRILLING BORE PITS	1	LS	\$ 125,000.00	\$ 125,000.00	\$ 100,000.00	\$ 130,000.00
SUBTOTAL DIVISION 2 - SANITARY SEWER				\$ 2,243,886.00	\$ 2,529,349.00	\$ 2,513,787.00	\$ 2,640,875.30
DIVISION 3 - WATERMAIN							
1	8" X 6" WET TAP (INCLUDE SLEEVE AND VALVE)	1	EA	\$ 2,000.00	\$ 2,000.00	\$ 4,200.00	\$ 3,280.00
2	6" DIP, CL 52 WATERMAIN	382	LF	\$ 38.00	\$ 14,516.00	\$ 36.00	\$ 13,752.00
3	6" RES. SEAT GATE VALVE & BOX	1	EA	\$ 1,200.00	\$ 1,200.00	\$ 1,100.00	\$ 1,215.00
4	6" HYDRANT ASSEMBLY (8" B" BURY)	1	EA	\$ 3,000.00	\$ 3,000.00	\$ 3,600.00	\$ 3,995.00
SUBTOTAL DIVISION 3 - WATERMAIN				\$ 20,716.00	\$ 16,550.00	\$ 22,652.00	\$ 21,191.50
DIVISION 4 - STREETS & RESTORATION							
1	SAWCUT BITUMINOUS PAVEMENT	1340	LF	\$ 5.00	\$ 6,700.00	\$ 3.00	\$ 4,020.00
2	SALVAGE & REINSTALL SIGN	2	EA	\$ 100.00	\$ 200.00	\$ 180.00	\$ 360.00
3	REMOVE & DISPOSE OF EXIST. BITUMINOUS PAVEMENT, STREETS	750	SY	\$ 2.00	\$ 1,500.00	\$ 3.00	\$ 2,250.00
4	REMOVE & DISPOSE OF EXIST. CONCRETE CURB & GUTTER	20	LF	\$ 5.00	\$ 100.00	\$ 5.00	\$ 100.00
5	GRANULAR BORROW (P)	350	CY	\$ 12.00	\$ 4,200.00	\$ 16.00	\$ 5,600.00
6	CL 5 AGGREGATE BASE	1270	TN	\$ 18.00	\$ 22,860.00	\$ 14.00	\$ 17,780.00
7	2360 TYPE LV 3 BITUMINOUS NON-WEARING COURSE, STREETS	251	TN	\$ 62.00	\$ 15,662.00	\$ 70.00	\$ 17,570.00
8	2360 TYPE LV 4 BITUMINOUS WEARING COURSE, STREETS	210	TN	\$ 65.00	\$ 13,650.00	\$ 80.00	\$ 16,800.00
9	BITUMINOUS MATERIAL FOR TACK COAT	104	GA	\$ 3.00	\$ 312.00	\$ 3.00	\$ 312.00
10	1D412 CONCRETE CURB & GUTTER	20	LF	\$ 15.00	\$ 300.00	\$ 25.00	\$ 500.00
11	CL 5 AGGREGATE BASE, SHOULDER	95	TN	\$ 20.00	\$ 1,900.00	\$ 15.00	\$ 1,425.00
12	OFF ROAD STRUCTURE MARKER	20	EA	\$ 150.00	\$ 3,000.00	\$ 125.00	\$ 2,500.00
SUBTOTAL DIVISION 4 - STREETS & RESTORATION				\$ 70,284.00	\$ 63,777.00	\$ 66,273.00	\$ 70,480.20
TOTAL FOR BASE BID				\$ 2,710,904.92	\$ 2,710,546.00	\$ 2,753,994.00	\$ 2,805,181.00

TABULATION OF BASE BIDS

LAKE ELMO AVENUE INFRASTRUCTURE IMPROVEMENTS - 194 TO 30TH STREET
 CITY OF LAKE ELMO, MINNESOTA
 TKDA PROJECT NO. 13887.000

BIDS OPENED: APRIL 19, 2011, AT 10:00 AM

*DENOTES ERROR IN BIDDERS CALCULATION

LaTour Construction Inc.

Ellingson Drainage, Inc.

Burschville Construction Co

GM Contracting



*DENOTES ERROR IN BIDDERS CALCULATION

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	LaTour Construction Inc.		Ellingson Drainage, Inc.		Burschville Construction Co		GM Contracting	
				PRICE	TOTAL AMOUNT	PRICE	TOTAL AMOUNT	PRICE	TOTAL AMOUNT	PRICE	TOTAL AMOUNT
DIVISION 1 - GENERAL											
1	MOBILIZATION	1	LS	\$ 73,000.00	\$ 73,000.00	\$ 55,000.00	\$ 55,000.00	\$ 75,000.00	\$ 75,000.00	\$ 35,000.00	\$ 35,000.00
2	TRAFFIC CONTROL	1	LS	\$ 32,000.00	\$ 32,000.00	\$ 52,450.00	\$ 52,450.00	\$ 12,000.00	\$ 12,000.00	\$ 20,078.66	\$ 20,078.66
3	SILT FENCE	1908	LF	\$ 1.05	\$ 2,003.40	\$ 2.00	\$ 3,816.00	\$ 1.10	\$ 2,098.80	\$ 1.03	\$ 1,965.24
4	ROCK CONSTRUCTION ENTRANCE	1	EA	\$ 870.00	\$ 870.00	\$ 2,000.00	\$ 2,000.00	\$ 1,000.00	\$ 1,000.00	\$ 971.97	\$ 971.97
5	WATER FOR DUST CONTROL	100	MGAL	\$ 43.00	\$ 4,300.00	\$ 19.00	\$ 1,900.00	\$ 50.00	\$ 5,000.00	\$ 133.78	\$ 13,378.00
6	CLEAR & GRUB TREE	21	EA	\$ 365.00	\$ 7,665.00	\$ 135.00	\$ 2,835.00	\$ 365.00	\$ 7,665.00	\$ 358.44	\$ 7,527.24
7	DITCH CHECKS	66	LF	\$ 3.20	\$ 208.00	\$ 5.00	\$ 325.00	\$ 3.30	\$ 214.50	\$ 3.09	\$ 200.85
8	INLET PROTECTION	2	EA	\$ 150.00	\$ 300.00	\$ 310.00	\$ 620.00	\$ 250.00	\$ 500.00	\$ 158.47	\$ 312.94
9	HYDRO MULCH W/ SEED & FERTILIZER	2.28	AC	\$ 1,240.00	\$ 2,827.20	\$ 2,050.00	\$ 4,674.00	\$ 1,300.00	\$ 2,880.00	\$ 1,215.40	\$ 2,711.11
10	EROSION CONTROL BLANKET (WOOD FIBER)	550	SY	\$ 1.05	\$ 577.50	\$ 1.30	\$ 716.00	\$ 1.10	\$ 605.00	\$ 1.20	\$ 660.00
11	TOPSOIL BORROW	500	CY	\$ 19.50	\$ 9,750.00	\$ 22.00	\$ 11,000.00	\$ 15.00	\$ 7,500.00	\$ 33.83	\$ 16,915.00
12	MODULAR BLOCK RETAINING WALL	60	SF	\$ 32.00	\$ 1,920.00	\$ 32.00	\$ 1,920.00	\$ 40.00	\$ 2,400.00	\$ 39.14	\$ 2,348.40
SUBTOTAL DIVISION 1 - GENERAL					\$ 138,421.10		\$ 137,255.00		\$ 116,947.30		\$ 102,128.41
DIVISION 2 - SANITARY SEWER											
1	LIFT STATION - STRUCTURE, VALVE MH, & PIPING	1	LS	\$ 160,000.00	\$ 160,000.00	\$ 205,000.00	\$ 205,000.00	\$ 160,000.00	\$ 160,000.00	\$ 295,481.48	\$ 295,481.48
2	LIFT STATION - PUMPS, AND ACCESSORIES	1	LS	\$ 42,000.00	\$ 42,000.00	\$ 40,000.00	\$ 40,000.00	\$ 42,000.00	\$ 42,000.00	\$ 46,620.55	\$ 46,620.55
3	LIFT STATION - ELECTRICAL AND CONTROLS	1	LS	\$ 109,000.00	\$ 109,000.00	\$ 108,000.00	\$ 108,000.00	\$ 97,500.00	\$ 97,500.00	\$ 132,143.88	\$ 132,143.88
4	GENERATOR	1	LS	\$ 37,400.00	\$ 37,400.00	\$ 44,000.00	\$ 44,000.00	\$ 38,000.00	\$ 38,000.00	\$ 43,463.95	\$ 43,463.95
5	CHEMICAL FEED SYSTEM	1	LS	\$ 162,000.00	\$ 162,000.00	\$ 168,000.00	\$ 168,000.00	\$ 155,000.00	\$ 155,000.00	\$ 191,174.93	\$ 191,174.93
6	16" HDPE FORCEMAIN, INSTALLED BY HDD	16880	LF	\$ 98.00	\$ 1,654,840.00	\$ 83.50	\$ 1,408,780.00	\$ 97.00	\$ 1,637,660.00	\$ 96.32	\$ 1,624,617.60
7	16" HOPE FORCEMAIN, INSTALLED BY OPEN CUT	438	LF	\$ 67.00	\$ 29,346.00	\$ 59.85	\$ 26,126.70	\$ 63.00	\$ 27,510.00	\$ 52.76	\$ 23,108.88
8	18" PVC, PS46 SANITARY SEWER (0'-10" DEPTH)	353	LF	\$ 48.50	\$ 17,120.50	\$ 41.20	\$ 14,543.60	\$ 39.50	\$ 13,943.60	\$ 59.45	\$ 20,985.86
9	18" PVC, PS46 SANITARY SEWER (10'-12" DEPTH)	641	LF	\$ 52.60	\$ 33,725.20	\$ 41.20	\$ 26,488.20	\$ 40.50	\$ 25,910.50	\$ 59.45	\$ 38,182.45
10	18" PVC, PS46 SANITARY SEWER (12'-14" DEPTH)	604	LF	\$ 67.00	\$ 40,468.00	\$ 41.20	\$ 24,872.00	\$ 41.50	\$ 25,168.00	\$ 59.45	\$ 35,862.80
11	18" PVC, PS46 SANITARY SEWER (14'-16" DEPTH)	289	LF	\$ 61.20	\$ 17,666.80	\$ 42.50	\$ 12,307.50	\$ 42.80	\$ 12,307.50	\$ 59.45	\$ 17,276.55
12	18" PVC, PS46 SANITARY SEWER (16'-18" DEPTH)	21	LF	\$ 65.50	\$ 1,375.50	\$ 45.50	\$ 955.50	\$ 54.00	\$ 1,134.00	\$ 59.45	\$ 1,248.45
13	18" PVC, PS46 SANITARY SEWER (18'-20" DEPTH)	12	LF	\$ 70.00	\$ 840.00	\$ 92.00	\$ 1,104.00	\$ 84.00	\$ 1,008.00	\$ 59.45	\$ 713.40
14	48" DIAMETER SAN. MANHOLE, TYPE 301 (0'-10" DEPTH)	9	EA	\$ 2,370.00	\$ 21,330.00	\$ 2,650.00	\$ 23,850.00	\$ 2,900.00	\$ 26,100.00	\$ 3,283.29	\$ 29,549.61
15	48" DIAMETER SAN. MANHOLE, EXTRA DEPTH (2'-10" DEPTH)	28	EA	\$ 80.00	\$ 2,240.00	\$ 165.00	\$ 4,620.00	\$ 100.00	\$ 2,800.00	\$ 169.72	\$ 4,782.16
16	72" CLEANOUT MANHOLE	4	EA	\$ 11,700.00	\$ 46,800.00	\$ 16,500.00	\$ 66,000.00	\$ 12,000.00	\$ 48,000.00	\$ 10,762.37	\$ 43,811.85
17	72" AIR RELEASE MANHOLE	5	EA	\$ 13,100.00	\$ 65,500.00	\$ 19,500.00	\$ 97,500.00	\$ 15,000.00	\$ 60,000.00	\$ 11,898.03	\$ 47,592.12
18	EXTERNAL MANHOLE DROP	1	EA	\$ 7,285.00	\$ 7,285.00	\$ 4,550.00	\$ 4,550.00	\$ 6,000.00	\$ 6,000.00	\$ 5,198.82	\$ 5,198.82
19	16" RES. SEAT GATE VALVE & BOX	18	EA	\$ 7,300.00	\$ 131,400.00	\$ 8,635.00	\$ 155,430.00	\$ 8,400.00	\$ 151,200.00	\$ 7,045.80	\$ 126,820.80
20	TRENCH STABILIZATION ROCK	160	LF	\$ 8.50	\$ 1,360.00	\$ 11.65	\$ 1,864.00	\$ 6.50	\$ 1,050.00	\$ 5.15	\$ 824.00
21	TELEVISION	1730	LF	\$ 1.60	\$ 2,768.00	\$ 1.15	\$ 1,979.50	\$ 1.50	\$ 2,595.00	\$ 0.90	\$ 1,557.00
22	4" POLYSTYRENE INSULATION	7	SY	\$ 47.00	\$ 329.00	\$ 26.40	\$ 184.80	\$ 39.00	\$ 273.00	\$ 81.32	\$ 569.24
23	HORIZONTAL DIRECTIONAL DRILLING BORE PITS	1	LS	\$ 53,000.00	\$ 53,000.00	\$ 213,000.00	\$ 213,000.00	\$ 180,000.00	\$ 180,000.00	\$ 20,000.00	\$ 20,000.00
SUBTOTAL DIVISION 2 - SANITARY SEWER					\$ 2,699,732.40		\$ 2,617,943.10		\$ 2,665,856.50		\$ 2,732,081.57
DIVISION 3 - WATERMAIN											
1	8" x 6" WET TAP (INCLUDE SLEEVE AND VALVE)	1	EA	\$ 3,100.00	\$ 3,100.00	\$ 2,640.00	\$ 2,640.00	\$ 2,950.00	\$ 2,950.00	\$ 1,793.34	\$ 1,793.34
2	6" DIP. CL. 52 WATERMAIN	382	LF	\$ 27.00	\$ 10,314.00	\$ 30.00	\$ 11,460.00	\$ 22.50	\$ 8,595.00	\$ 27.90	\$ 10,637.80
3	6" RES. SEAT GATE VALVE & BOX	1	EA	\$ 1,375.00	\$ 1,375.00	\$ 1,325.00	\$ 1,325.00	\$ 1,050.00	\$ 1,050.00	\$ 1,562.73	\$ 1,562.73
4	6" HYDRANT ASSEMBLY (8'-6" BURY)	1	EA	\$ 3,585.00	\$ 3,585.00	\$ 3,600.00	\$ 3,600.00	\$ 3,360.00	\$ 3,360.00	\$ 3,664.53	\$ 3,664.53
SUBTOTAL DIVISION 3 - WATERMAIN					\$ 18,374.00		\$ 19,025.00		\$ 15,945.00		\$ 17,678.40
DIVISION 4 - STREETS & RESTORATION											
1	SAWCUT BITUMINOUS PAVEMENT	1340	LF	\$ 3.20	\$ 4,288.00	\$ 2.85	\$ 3,813.00	\$ 2.60	\$ 3,500.00	\$ 3.47	\$ 4,649.80
2	SALVAGE & REINSTALL SIGN	2	EA	\$ 90.00	\$ 180.00	\$ 90.00	\$ 180.00	\$ 165.00	\$ 330.00	\$ 87.55	\$ 175.10
3	REMOVE & DISPOSE OF EXIST. BITUMINOUS PAVEMENT, STREETS	750	SY	\$ 3.20	\$ 2,400.00	\$ 4.00	\$ 3,000.00	\$ 5.00	\$ 3,750.00	\$ 3.12	\$ 2,340.00
4	REMOVE & DISPOSE OF EXIST. CONCRETE CURB & GUTTER	20	LF	\$ 5.50	\$ 110.00	\$ 6.00	\$ 120.00	\$ 5.00	\$ 100.00	\$ 7.54	\$ 150.80
5	GRANULAR BORROW (P)	350	CY	\$ 17.00	\$ 5,950.00	\$ 14.75	\$ 5,162.50	\$ 11.50	\$ 4,025.00	\$ 12.50	\$ 4,375.00
6	CL. 5 AGGREGATE BASE	1270	TN	\$ 16.00	\$ 20,320.00	\$ 11.50	\$ 14,605.00	\$ 11.00	\$ 13,970.00	\$ 10.30	\$ 13,081.00
7	2360 TYPE LV 3 BITUMINOUS NON-WEARING COURSE, STREETS	251	TN	\$ 63.50	\$ 15,838.50	\$ 63.85	\$ 15,978.15	\$ 64.00	\$ 16,064.00	\$ 62.21	\$ 15,614.71
8	2360 TYPE LV 4 BITUMINOUS NON-WEARING COURSE, STREETS	210	TN	\$ 73.00	\$ 15,330.00	\$ 73.00	\$ 15,330.00	\$ 72.70	\$ 15,267.00	\$ 71.17	\$ 14,945.70
9	BITUMINOUS MATERIAL FOR TACK COAT	104	GA	\$ 3.20	\$ 332.80	\$ 3.00	\$ 312.00	\$ 3.30	\$ 343.20	\$ 3.09	\$ 321.36
10	ID412 CONCRETE CURB & GUTTER	20	LF	\$ 28.00	\$ 560.00	\$ 42.50	\$ 850.00	\$ 45.00	\$ 900.00	\$ 49.44	\$ 988.80
11	CL. 5 AGGREGATE BASE, SHOULDER	95	TN	\$ 39.00	\$ 3,705.00	\$ 22.75	\$ 2,161.25	\$ 26.00	\$ 2,470.00	\$ 14.44	\$ 1,371.80
12	OFF ROAD STRUCTURE MARKER	20	EA	\$ 81.00	\$ 1,620.00	\$ 41.00	\$ 820.00	\$ 50.00	\$ 1,000.00	\$ 40.17	\$ 803.40
SUBTOTAL DIVISION 4 - STREETS & RESTORATION					\$ 70,734.30		\$ 62,376.90		\$ 61,569.20		\$ 56,890.62
TOTAL FOR BASE BID					\$ 2,824,261.80		\$ 2,830,599.00		\$ 2,880,318.00		\$ 2,910,780.00

TABULATION OF BASE BIDS

LAKE ELMO AVENUE INFRASTRUCTURE IMPROVEMENTS - 194 TO 30TH STREET
 CITY OF LAKE ELMO, MINNESOTA
 TKDA PROJECT NO. 13857.000

BIDS OPENED: APRIL 19, 2011, AT 10:00 AM

*DENOTES ERROR IN BIDDERS CALCULATION



*DENOTES ERROR IN BIDDERS CALCULATION

Daininck, Inc. Veit & Companies

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
BASE BID							
GENERAL							
1	MOBILIZATION	1	LS	\$ 98,000.00	\$ 98,000.00	\$ 98,000.00	\$ 98,000.00
2	TRAFFIC CONTROL	1	LS	\$ 58,000.00	\$ 58,000.00	\$ 58,000.00	\$ 58,000.00
3	SILT FENCE	1908	LF	\$ 1,908.00	\$ 3,636,720.00	\$ 1,908.00	\$ 3,636,720.00
4	ROCK CONSTRUCTION ENTRANCE	1	EA	\$ 1,923.50	\$ 1,923.50	\$ 1,923.50	\$ 1,923.50
5	WATER FOR DUST CONTROL	100	MGAL	\$ 3,000.00	\$ 300,000.00	\$ 3,000.00	\$ 300,000.00
6	CLEAR & GRUB TREE	21	EA	\$ 4,725.00	\$ 99,825.00	\$ 4,725.00	\$ 99,825.00
7	DITCH CHECKS	65	LF	\$ 3.00	\$ 195.00	\$ 3.00	\$ 195.00
8	INLET PROTECTION	2	EA	\$ 1,180.00	\$ 2,360.00	\$ 1,180.00	\$ 2,360.00
9	HYDRO MULCH W/ SEED & FERTILIZER	2,228	AC	\$ 2,690.40	\$ 5,993,111.20	\$ 2,690.40	\$ 5,993,111.20
10	EROSION CONTROL BLANKET (WOOD FIBER)	560	SY	\$ 539.00	\$ 301,840.00	\$ 539.00	\$ 301,840.00
11	TOPSOIL BORROW	500	CY	\$ 11,350.00	\$ 5,675,000.00	\$ 11,350.00	\$ 5,675,000.00
12	MODULAR BLOCK RETAINING WALL	60	SF	\$ 50.00	\$ 3,000.00	\$ 50.00	\$ 3,000.00
SUBTOTAL DIVISION 1 - GENERAL							
DIVISION 2 - SANITARY SEWER							
1	LIFT STATION - STRUCTURE, VALVE MH, & PIPING	1	LS	\$ 142,000.00	\$ 142,000.00	\$ 142,000.00	\$ 142,000.00
2	LIFT STATION - PUMPS AND ACCESSORIES	1	LS	\$ 47,000.00	\$ 47,000.00	\$ 47,000.00	\$ 47,000.00
3	LIFT STATION - ELECTRICAL AND CONTROLS	1	LS	\$ 102,000.00	\$ 102,000.00	\$ 102,000.00	\$ 102,000.00
4	GENERATOR	1	LS	\$ 36,300.00	\$ 36,300.00	\$ 36,300.00	\$ 36,300.00
5	CHEMICAL FEED SYSTEM	1	LS	\$ 152,000.00	\$ 152,000.00	\$ 152,000.00	\$ 152,000.00
6	16" HDPE FORCEMAIN, INSTALLED BY HDD	16680	LF	\$ 92.00	\$ 1,534,560.00	\$ 92.00	\$ 1,534,560.00
7	16" HDPE FORCEMAIN, INSTALLED BY OPEN CUT	438	LF	\$ 74.80	\$ 32,762.40	\$ 74.80	\$ 32,762.40
8	18" PVC, PS46 SANITARY SEWER (0'-10" DEPTH)	353	LF	\$ 61.25	\$ 21,621.25	\$ 61.25	\$ 21,621.25
9	18" PVC, PS46 SANITARY SEWER (10'-12" DEPTH)	541	LF	\$ 63.30	\$ 34,245.30	\$ 63.30	\$ 34,245.30
10	18" PVC, PS46 SANITARY SEWER (12'-14" DEPTH)	504	LF	\$ 67.90	\$ 34,221.60	\$ 67.90	\$ 34,221.60
11	18" PVC, PS46 SANITARY SEWER (14'-16" DEPTH)	289	LF	\$ 70.85	\$ 20,475.65	\$ 70.85	\$ 20,475.65
12	18" PVC, PS46 SANITARY SEWER (16'-18" DEPTH)	21	LF	\$ 74.40	\$ 1,562.40	\$ 74.40	\$ 1,562.40
13	18" PVC, PS46 SANITARY SEWER (18'-25" DEPTH)	12	LF	\$ 95.30	\$ 1,143.60	\$ 95.30	\$ 1,143.60
14	48" DIAMETER SAN. MANHOLE, TYPE 301 (0'-10" DEPTH)	9	EA	\$ 2,629.00	\$ 23,661.00	\$ 2,629.00	\$ 23,661.00
15	48" DIAMETER SAN. MANHOLE, EXTRA DEPTH (>10' DEPTH)	28	EA	\$ 138.00	\$ 3,864.00	\$ 138.00	\$ 3,864.00
16	72" CLEANOUT MANHOLE	5	EA	\$ 14,670.00	\$ 73,350.00	\$ 14,670.00	\$ 73,350.00
17	72" AIR RELEASE MANHOLE	4	EA	\$ 16,890.00	\$ 67,560.00	\$ 16,890.00	\$ 67,560.00
18	EXTERNAL MANHOLE DROP	1	EA	\$ 7,510.00	\$ 7,510.00	\$ 7,510.00	\$ 7,510.00
19	18" RES. SEAT GATE VALVE & BOX	18	EA	\$ 8,650.00	\$ 155,700.00	\$ 8,650.00	\$ 155,700.00
20	TRENCH STABILIZATION ROCK	160	LF	\$ 15.00	\$ 2,400.00	\$ 15.00	\$ 2,400.00
21	TELEVISION	1750	LF	\$ 1.50	\$ 2,625.00	\$ 1.50	\$ 2,625.00
22	4" POLYSTYRENE INSULATION	7	SY	\$ 40.00	\$ 280.00	\$ 40.00	\$ 280.00
23	HORIZONTAL DIRECTIONAL DRILLING BORE PITS	1	LS	\$ 210,000.00	\$ 210,000.00	\$ 210,000.00	\$ 210,000.00
SUBTOTAL DIVISION 2 - SANITARY SEWER							
DIVISION 3 - WATERMAIN							
1	8" X 6" WET TAP (INCLUDE SLEEVE AND VALVE)	1	EA	\$ 2,691.00	\$ 2,691.00	\$ 2,691.00	\$ 2,691.00
2	6" DIP, CL 52 WATERMAIN	382	LF	\$ 37.40	\$ 14,286.80	\$ 37.40	\$ 14,286.80
3	6" RES. SEAT GATE VALVE & BOX	1	EA	\$ 1,227.00	\$ 1,227.00	\$ 1,227.00	\$ 1,227.00
4	6" HYDRANT ASSEMBLY (6'-6" BURY)	1	EA	\$ 3,540.00	\$ 3,540.00	\$ 3,540.00	\$ 3,540.00
SUBTOTAL DIVISION 3 - WATERMAIN							
DIVISION 4 - STREETS & RESTORATION							
1	SAWGUT BITUMINOUS PAVEMENT	1340	LF	\$ 3.50	\$ 4,690.00	\$ 3.50	\$ 4,690.00
2	SAVAGE & REINSTALL SIGN	2	EA	\$ 100.00	\$ 200.00	\$ 100.00	\$ 200.00
3	REMOVE & DISPOSE OF EXIST. BITUMINOUS PAVEMENT, STREETS	750	SY	\$ 3.75	\$ 2,812.50	\$ 3.75	\$ 2,812.50
4	REMOVE & DISPOSE OF EXIST. CONCRETE CURB & GUTTER	20	LF	\$ 6.00	\$ 120.00	\$ 6.00	\$ 120.00
5	GRANULAR BORROW (P)	350	CY	\$ 20.25	\$ 7,087.50	\$ 20.25	\$ 7,087.50
6	CL 5 AGGREGATE BASE	1270	TN	\$ 14.00	\$ 17,780.00	\$ 14.00	\$ 17,780.00
7	2360 TYPE LV 3 BITUMINOUS NON-WEARING COURSE, STREETS	251	TN	\$ 60.40	\$ 15,160.40	\$ 60.40	\$ 15,160.40
8	2360 TYPE LV 4 BITUMINOUS WEARING COURSE, STREETS	210	TN	\$ 69.10	\$ 14,511.00	\$ 69.10	\$ 14,511.00
9	BITUMINOUS MATERIAL FOR TACK COAT	104	GA	\$ 3.00	\$ 312.00	\$ 3.00	\$ 312.00
10	IM12 CONCRETE CURB & GUTTER	20	LF	\$ 100.00	\$ 2,000.00	\$ 100.00	\$ 2,000.00
11	CL 5 AGGREGATE BASE, SHOULDER	95	TN	\$ 20.00	\$ 1,900.00	\$ 20.00	\$ 1,900.00
12	OFF ROAD STRUCTURE MARKER	20	EA	\$ 45.00	\$ 900.00	\$ 45.00	\$ 900.00
SUBTOTAL DIVISION 4 - STREETS & RESTORATION							
TOTAL FOR BASE BID							
					\$ 2,982,096.30		\$ 2,982,096.30
							\$ 3,138,895.00

TABULATION OF ALTERNATE BIDS

LAKE ELMO AVENUE INFRASTRUCTURE IMPROVEMENTS - 194 TO 30TH STREET
CITY OF LAKE ELMO, MINNESOTA
TKDA PROJECT NO. 13857.00

BIDS OPENED: APRIL 18, 2011, AT 10:00 AM

*DENOTES ERROR IN BIDDERS CALCULATION

*DENOTES ERROR IN BIDDERS CALCULATION

Geislinger and Sons Inc.

S J Louis Construction Co

Burchville Construction Co

ENGINEERS ESTIMATE

QUANTITY

UNIT

DESCRIPTION

AMOUNT

PRICE

TOTAL

AMOUNT

UNIT

PRICE

TOTAL

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	ENGINEERS ESTIMATE TOTAL AMOUNT	Burchville Construction Co TOTAL AMOUNT	S J Louis Construction Co TOTAL AMOUNT	Geislinger and Sons Inc. TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
1	ALTERNATE NO. 1 - ADDITIONAL GRAVITY SEWER IN LIEU OF FORCEMAIN								
1	DIVISION 1 - GENERAL								
1	MOBILIZATION	1	LS	\$ 155,000.00	\$ 125,000.00	\$ 35,000.00	\$ 145,000.00	\$ 145,000.00	\$ 145,000.00
2	UTILITY CONTROL	1	LS	\$ 65,000.00	\$ 90,000.00	\$ 21,000.00	\$ 8,000.00	\$ 9,000.00	\$ 9,000.00
3	WATER CONSTRUCTION ENTRANCE	7,995	LF	\$ 2,500.00	\$ 1,100.00	\$ 1,400.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
4	WATER FOR DUST CONTROL	300	MGAL	\$ 300.00	\$ 1,000.00	\$ 3,000.00	\$ 850.00	\$ 850.00	\$ 850.00
5	CLEAR & GRUB TREE	274	EA	\$ 250.00	\$ 40.00	\$ 170.00	\$ 300.00	\$ 300.00	\$ 300.00
6	INLET PROTECTION	2	EA	\$ 900.00	\$ 82.50	\$ 25,345.00	\$ 240.00	\$ 240.00	\$ 240.00
7	HYDRO MULCH W/SEED & FERTILIZER	19,42	AC	\$ 2,500.00	\$ 1,200.00	\$ 86.00	\$ 1,750.00	\$ 1,750.00	\$ 1,750.00
8	EROSION CONTROL BLANKET (WOOD FIBER)	11,889	SY	\$ 18.00	\$ 13,092.30	\$ 18.00	\$ 21,847.35	\$ 21,847.35	\$ 21,847.35
9	TORSION BORROW	500	CY	\$ 500.00	\$ 15.00	\$ 7,500.00	\$ 18.00	\$ 9,000.00	\$ 9,000.00
10	MODULAR BLOCK RETAINING WALL	60	SF	\$ 40.00	\$ 40.00	\$ 2,400.00	\$ 31.00	\$ 1,860.00	\$ 1,860.00
	SUBTOTAL DIVISION 1 - GENERAL			\$ 405,971.00	\$ 248,025.80	\$ 107,935.45	\$ 508,997.25	\$ 508,997.25	\$ 508,997.25
11	DIVISION 2 - SANITARY SEWER, W/ VALVE AND PIPING								
11	LIFT STATION STRUCTURE, W/ ACCESS	1	LS	\$ 200,000.00	\$ 150,000.00	\$ 110,000.00	\$ 171,000.00	\$ 171,000.00	\$ 171,000.00
12	LIFT STATION ELECTRICAL AND CONTROL	1	LS	\$ 80,000.00	\$ 45,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
13	GENERATOR ELECTRICAL AND CONTROL	1	LS	\$ 80,000.00	\$ 97,500.00	\$ 87,000.00	\$ 120,000.00	\$ 120,000.00	\$ 120,000.00
14	CHEMICAL FEED SYSTEM	1	LS	\$ 80,000.00	\$ 38,000.00	\$ 43,750.00	\$ 54,000.00	\$ 54,000.00	\$ 54,000.00
15	16" HOPE FORCEMAIN, INSTALLED BY HOOD	466	LF	\$ 45.00	\$ 20,970.00	\$ 67.00	\$ 31,365.00	\$ 31,365.00	\$ 31,365.00
16	16" HOPE FORCEMAIN, INSTALLED BY OPEN CUT	10	LF	\$ 76.00	\$ 760.00	\$ 62.00	\$ 620.00	\$ 620.00	\$ 620.00
17	12" PVC SDR 35 SANITARY SEWER (20' - 35' DEPTH)	235	LF	\$ 72.00	\$ 16,920.00	\$ 42.50	\$ 9,987.50	\$ 9,987.50	\$ 9,987.50
18	12" PVC SDR 35 SANITARY SEWER (30' - 35' DEPTH)	164	LF	\$ 84.00	\$ 13,776.00	\$ 51.00	\$ 8,364.00	\$ 8,364.00	\$ 8,364.00
19	12" PVC SDR 35 SANITARY SEWER (10'-15' DEPTH)	60	LF	\$ 120.00	\$ 7,200.00	\$ 130.00	\$ 7,800.00	\$ 7,800.00	\$ 7,800.00
20	24" PVC PS116 SANITARY SEWER (20'-35' DEPTH)	72	LF	\$ 100.00	\$ 7,200.00	\$ 140.00	\$ 10,080.00	\$ 10,080.00	\$ 10,080.00
21	24" PVC PS116 SANITARY SEWER (10'-15' DEPTH)	748	LF	\$ 77.00	\$ 57,816.00	\$ 62.00	\$ 46,176.00	\$ 46,176.00	\$ 46,176.00
22	27" SANITARY SEWER (15' - 20' DEPTH)	748	LF	\$ 95.00	\$ 70,960.00	\$ 88.00	\$ 65,824.00	\$ 65,824.00	\$ 65,824.00
23	27" SANITARY SEWER (24' - 32' DEPTH)	42	LF	\$ 130.00	\$ 5,460.00	\$ 140.00	\$ 5,880.00	\$ 5,880.00	\$ 5,880.00
24	27" SANITARY SEWER (30' - 35' DEPTH)	235	LF	\$ 130.00	\$ 30,450.00	\$ 140.00	\$ 32,900.00	\$ 32,900.00	\$ 32,900.00
25	30" SANITARY SEWER (15' - 20' DEPTH)	247	LF	\$ 114.00	\$ 28,158.00	\$ 106.00	\$ 26,172.00	\$ 26,172.00	\$ 26,172.00
26	30" SANITARY SEWER (20' - 25' DEPTH)	2,305	LF	\$ 137.00	\$ 315,765.00	\$ 132.00	\$ 304,260.00	\$ 304,260.00	\$ 304,260.00
27	30" SANITARY SEWER (25' - 30' DEPTH)	581	LF	\$ 156.00	\$ 90,708.00	\$ 146.00	\$ 84,796.00	\$ 84,796.00	\$ 84,796.00
28	30" SANITARY SEWER (30' - 35' DEPTH)	65	LF	\$ 296.00	\$ 19,240.00	\$ 189.00	\$ 12,285.00	\$ 12,285.00	\$ 12,285.00
29	48" DIAMETER SAN. MANHOLE, TYPE 303 (10' - 10' DEPTH)	19	LF	\$ 2,700.00	\$ 51,300.00	\$ 2,900.00	\$ 55,100.00	\$ 55,100.00	\$ 55,100.00
30	48" DIAMETER SAN. MANHOLE, TYPE 303 (10' - 10' DEPTH)	221	LF	\$ 100.00	\$ 22,100.00	\$ 100.00	\$ 22,100.00	\$ 22,100.00	\$ 22,100.00
31	48" DIAMETER SAN. MANHOLE, TYPE 303 (10' - 10' DEPTH)	1	EA	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
32	48" DIAMETER SAN. MANHOLE, TYPE 303 (10' - 10' DEPTH)	8	EA	\$ 250.00	\$ 2,000.00	\$ 180.00	\$ 1,440.00	\$ 1,440.00	\$ 1,440.00
33	48" DIAMETER SAN. MANHOLE, TYPE 303 (10' - 10' DEPTH)	1	EA	\$ 1,750.00	\$ 1,750.00	\$ 1,750.00	\$ 1,750.00	\$ 1,750.00	\$ 1,750.00
34	48" DIAMETER SAN. MANHOLE, TYPE 303 (10' - 10' DEPTH)	3	EA	\$ 325.00	\$ 975.00	\$ 300.00	\$ 900.00	\$ 900.00	\$ 900.00
35	72" AIR RELEASE MANHOLE	4	EA	\$ 9,000.00	\$ 36,000.00	\$ 8,000.00	\$ 32,000.00	\$ 32,000.00	\$ 32,000.00
36	72" AIR RELEASE MANHOLE	4	EA	\$ 9,000.00	\$ 36,000.00	\$ 8,000.00	\$ 32,000.00	\$ 32,000.00	\$ 32,000.00
37	20" DIP CLASS B2 SANITARY SEWER	60	LF	\$ 80.00	\$ 4,800.00	\$ 84.00	\$ 5,040.00	\$ 5,040.00	\$ 5,040.00
38	NOT USED								
39	EXTENSION MANHOLE DROP	2	EA	\$ 1,500.00	\$ 3,000.00	\$ 1,500.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
40	18" RES. SEAT GATE VALVE & BOX	16	EA	\$ 4,000.00	\$ 64,000.00	\$ 5,400.00	\$ 86,400.00	\$ 86,400.00	\$ 86,400.00
41	18" RES. SEAT GATE VALVE & BOX	150	EA	\$ 9.00	\$ 1,350.00	\$ 6.50	\$ 975.00	\$ 975.00	\$ 975.00
42	18" RES. SEAT GATE VALVE & BOX	7,129	LF	\$ 1.00	\$ 7,129.00	\$ 1.25	\$ 8,911.25	\$ 8,911.25	\$ 8,911.25
43	HORIZONTAL DIRECTIONAL DRILLING BORE PITS	1	LS	\$ 110,000.00	\$ 110,000.00	\$ 82,000.00	\$ 130,000.00	\$ 130,000.00	\$ 130,000.00
	SUBTOTAL DIVISION 2 - SANITARY SEWER			\$ 3,029,207.00	\$ 3,310,694.25	\$ 3,376,892.50	\$ 3,273,077.50	\$ 3,273,077.50	\$ 3,273,077.50
44	DIVISION 3 - WATERMAIN								
44	6" X 6" WET TAP INCLUDE SLEEVE AND VALVE	1	EA	\$ 2,000.00	\$ 2,000.00	\$ 2,500.00	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00
45	6" DIP, CL 52 WATERMAIN	382	LF	\$ 38.00	\$ 14,516.00	\$ 26.00	\$ 9,952.00	\$ 9,952.00	\$ 9,952.00
46	6" RES. SEAT GATE VALVE & BOX	1	EA	\$ 1,200.00	\$ 1,200.00	\$ 1,250.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
47	6" HYDRANT ASSEMBLY (8'-6" BURY)	1	EA	\$ 3,000.00	\$ 3,000.00	\$ 3,250.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00
	SUBTOTAL DIVISION 3 - WATERMAIN			\$ 20,716.00	\$ 20,716.00	\$ 16,950.00	\$ 22,652.00	\$ 22,652.00	\$ 22,652.00
48	DIVISION 4 - STREETS & RESTORATION								
48	SAVING BITUMINOUS PAVEMENT	50	LF	\$ 5.00	\$ 250.00	\$ 6.00	\$ 300.00	\$ 300.00	\$ 300.00
49	REMOVAL & DISPOSAL OF EXIST. BITUMINOUS PAVEMENT	211	EA	\$ 100.00	\$ 21,100.00	\$ 150.00	\$ 31,650.00	\$ 31,650.00	\$ 31,650.00
50	REMOVAL & DISPOSAL OF EXIST. BITUMINOUS PAVEMENT	233	EA	\$ 200.00	\$ 46,600.00	\$ 300.00	\$ 70,000.00	\$ 70,000.00	\$ 70,000.00
51	REMOVAL & DISPOSAL OF EXIST. BITUMINOUS PAVEMENT	20	EA	\$ 5.00	\$ 100.00	\$ 5.00	\$ 100.00	\$ 100.00	\$ 100.00
52	GRAVULAR BORROW (P)	380	CY	\$ 12.00	\$ 4,560.00	\$ 9.50	\$ 3,605.00	\$ 3,605.00	\$ 3,605.00
53	CL 5 AGGREGATE BASE	1,008	SY	\$ 18.00	\$ 18,144.00	\$ 13.00	\$ 13,116.00	\$ 13,116.00	\$ 13,116.00
54	2380 TYPE LV BITUMINOUS WEAR COURSE, STREETS	2,683	TN	\$ 17.50	\$ 46,952.50	\$ 12.00	\$ 32,196.00	\$ 32,196.00	\$ 32,196.00
55	2380 TYPE LV BITUMINOUS WEAR COURSE, STREETS	195	TN	\$ 82.00	\$ 16,000.00	\$ 70.00	\$ 13,650.00	\$ 13,650.00	\$ 13,650.00
56	2380 TYPE LV BITUMINOUS WEAR COURSE, STREETS	125	TN	\$ 65.00	\$ 8,125.00	\$ 60.00	\$ 7,500.00	\$ 7,500.00	\$ 7,500.00
57	2380 TYPE LV BITUMINOUS WEAR COURSE, STREETS	68	GA	\$ 3.00	\$ 204.00	\$ 3.00	\$ 204.00	\$ 204.00	\$ 204.00
58	2380 TYPE LV BITUMINOUS WEAR COURSE, STREETS	20	LF	\$ 15.00	\$ 300.00	\$ 15.00	\$ 300.00	\$ 300.00	\$ 300.00
59	CL 5 AGGREGATE BASE SHOULDER	104	TN	\$ 20.00	\$ 2,080.00	\$ 15.00	\$ 1,560.00	\$ 1,560.00	\$ 1,560.00
60	CL 5 AGGREGATE BASE SHOULDER	208	EA	\$ 150.00	\$ 30,960.00	\$ 45.00	\$ 9,360.00	\$ 9,360.00	\$ 9,360.00
61	TEMPORARY ACCESS FOR EXISTING DRIVEWAY	2	EA	\$ 1,500.00	\$ 3,000.00	\$ 2,500.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
	SUBTOTAL DIVISION 4 - STREETS & RESTORATION			\$ 104,100.50	\$ 100,268.10	\$ 85,295.50	\$ 117,885.25	\$ 117,885.25	\$ 117,885.25
	TOTAL FOR ALTERNATE NO. 1 BID			\$ 3,808,552.12	\$ 3,876,451.75	\$ 3,654,907.45	\$ 3,688,623.75	\$ 3,688,623.75	\$ 3,688,623.75

TABLATION OF ALTERNATE BIDS

LAKE ELMO AVENUE INFRASTRUCTURE IMPROVEMENTS - 184 TO 30TH STREET
CITY OF LAKE ELMO, MINNESOTA
TKDA PROJECT NO. 13457.000

9:05 AM OPENED: APRIL 19, 2011, AT 10:00 AM
*DENOTES ERROR IN BIDDERS CALCULATION

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	Minger Construction Inc.		Dunnick, Inc.		Veit & Companies		Ellingson Drains, Inc.	
				UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
ALTERNATE NO. 1 - ADDITIONAL GRAVITY SEWER IN LIEU OF FORCE/MAIN											
DIVISION 1 - GENERAL											
1	MOBILIZATION	1	LS	43,050.00	\$	126,000.00	\$	120,000.00	\$	120,000.00	\$
2	TRAFFIC CONTROL	1	LS	41,295.00	\$	65,000.00	\$	30,000.00	\$	30,000.00	\$
3	SILT FENCE	7,695	LF	1.10	\$	8,464.50	\$	2.00	\$	15,390.00	\$
4	ROCK CONSTRUCTION ENTRANCE	300	EA	825.00	\$	247,500.00	\$	1,925.00	\$	577,500.00	\$
5	WATER FOR DUST CONTROL	300	MGAL	28.00	\$	8,400.00	\$	3,000.00	\$	9,000.00	\$
6	CLUMP & GRUB TREE	274	EA	84.35	\$	23,111.90	\$	90.00	\$	24,660.00	\$
7	INLET PROTECTION	2	EA	110.00	\$	220.00	\$	338.50	\$	677.00	\$
8	HYDRO MULCH MIXED & FERTILIZER	16,42	AC	1,170.00	\$	19,207.80	\$	23,304.00	\$	38,927.00	\$
9	EROSION CONTROL BLANKET (WOOD FIBER)	11,893	SY	1.06	\$	12,606.58	\$	1,665.14	\$	19,852.00	\$
10	TORSION FIBER	500	CY	3,900.00	\$	1,950,000.00	\$	14.00	\$	7,000.00	\$
11	MODULAR BLOCK RETAINING WALL	60	SF	37.35	\$	2,241.00	\$	42.50	\$	2,550.00	\$
SUB TOTAL DIVISION 1 - GENERAL											
DIVISION 2 - SANITARY SEWER											
1	LIFT STATION STRUCTURE VALVE VAULT AND PIPING	1	LS	181,935.00	\$	181,935.00	\$	156,000.00	\$	156,000.00	\$
2	LIFT STATION PUMPS AND ACCESSORIES	1	LS	43,225.00	\$	47,000.00	\$	44,718.50	\$	53,000.00	\$
3	LIFT STATION ELECTRICAL AND CONTROL	1	LS	104,000.00	\$	102,000.00	\$	102,091.50	\$	105,000.00	\$
4	GENERATOR	1	LS	57,055.00	\$	38,300.00	\$	46,652.50	\$	38,300.00	\$
5	CHEMICAL FEED SYSTEM	1	LS	136,345.00	\$	182,000.00	\$	171,944.50	\$	180,750.00	\$
6	16" HDPE FORCEMAIN INSTALLED BY OPEN CUT	14,690	LF	60.05	\$	880,890.00	\$	97.00	\$	1,423,950.00	\$
7	16" HDPE FORCEMAIN INSTALLED BY OPEN CUT	469	LF	126.00	\$	59,286.00	\$	55.00	\$	26,000.00	\$
8	12" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	10	LF	177.00	\$	1,770.00	\$	46.00	\$	460.00	\$
9	18" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	285	LF	45.05	\$	12,839.25	\$	65.00	\$	18,725.00	\$
10	24" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	164	LF	45.05	\$	7,388.20	\$	70.75	\$	11,623.75	\$
11	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	60	LF	309.00	\$	18,540.00	\$	177.00	\$	10,620.00	\$
12	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	10	LF	232.00	\$	2,320.00	\$	152.00	\$	1,520.00	\$
13	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	10	LF	88.56	\$	885.60	\$	72.16	\$	721.60	\$
14	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	748	LF	88.56	\$	66,196.80	\$	103.00	\$	77,040.00	\$
15	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	738	LF	137.40	\$	102,205.20	\$	100.00	\$	73,800.00	\$
16	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	42	LF	5,867.40	\$	246,320.80	\$	4,200.00	\$	168,000.00	\$
17	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	225	LF	178.00	\$	40,170.00	\$	100.00	\$	22,500.00	\$
18	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	247	LF	121.60	\$	30,043.20	\$	156.00	\$	38,592.00	\$
19	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	2,308	LF	158.55	\$	365,772.00	\$	155.00	\$	357,750.00	\$
20	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	295	LF	290.40	\$	85,617.60	\$	174.00	\$	51,360.00	\$
21	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	561	LF	200.35	\$	112,405.35	\$	155.00	\$	86,955.00	\$
22	36" PVC SDR 26 SANITARY SEWER (20' - 25' DEPTH)	19	LF	418.25	\$	7,946.75	\$	165.00	\$	3,135.00	\$
23	48" DIAMETER SAN. MANHOLE TYPE 303 (0' - 10' DEPTH)	1	LF	2,945.00	\$	2,945.00	\$	3,000.00	\$	3,000.00	\$
24	48" DIAMETER SAN. MANHOLE TYPE 303 (0' - 10' DEPTH)	22	LF	144.15	\$	3,171.30	\$	83.00	\$	1,826.00	\$
25	60" DIAMETER SAN. MANHOLE TYPE 303 EXTRA DEPTH (0-10' DEPTH)	6	EA	197.50	\$	1,185.00	\$	4,700.00	\$	28,200.00	\$
26	60" DIAMETER SAN. MANHOLE TYPE 303 EXTRA DEPTH (0-10' DEPTH)	1	EA	6,970.00	\$	6,970.00	\$	8,000.00	\$	8,000.00	\$
27	60" DIAMETER SAN. MANHOLE TYPE 303 (0' - 10' DEPTH)	1	EA	445.10	\$	445.10	\$	83.00	\$	68.90	\$
28	60" DIAMETER SAN. MANHOLE TYPE 303 (0' - 10' DEPTH)	3	EA	17,980.00	\$	53,940.00	\$	13,600.00	\$	40,800.00	\$
29	60" DIAMETER SAN. MANHOLE TYPE 303 (0' - 10' DEPTH)	1	EA	18,975.00	\$	18,975.00	\$	13,000.00	\$	13,000.00	\$
30	60" DIAMETER SAN. MANHOLE TYPE 303 (0' - 10' DEPTH)	4	EA	104.30	\$	417.20	\$	81.00	\$	324.00	\$
31	60" DIAMETER SAN. MANHOLE TYPE 303 (0' - 10' DEPTH)	2	EA	8,510.00	\$	17,020.00	\$	15,000.00	\$	30,000.00	\$
32	60" DIAMETER SAN. MANHOLE TYPE 303 (0' - 10' DEPTH)	18	EA	6,075.00	\$	109,350.00	\$	10,000.00	\$	180,000.00	\$
33	60" DIAMETER SAN. MANHOLE TYPE 303 (0' - 10' DEPTH)	160	EA	15.50	\$	2,480.00	\$	27.00	\$	4,320.00	\$
34	TELEVISION	7,128	LF	1.10	\$	7,840.80	\$	1.05	\$	7,485.45	\$
35	HORIZONTAL DIRECTIONAL DRILLING BORE PITTS	1	LS	168,400.00	\$	168,400.00	\$	310,000.00	\$	310,000.00	\$
SUBTOTAL DIVISION 2 - SANITARY SEWER											
DIVISION 3 - WATERMAIN											
1	8" WET TAP (INCLUDE SLEEVE AND VALVE)	1	EA	3,215.00	\$	3,215.00	\$	2,781.50	\$	3,200.00	\$
2	6" DIP. CL. 52 WATERMAIN	392	LF	32.75	\$	12,818.00	\$	34.50	\$	13,473.00	\$
3	6" RES. SEAT GATE VALVE & BOX	1	EA	1,205.00	\$	1,205.00	\$	1,127.50	\$	1,300.00	\$
4	6" HYDRANT ASSEMBLY (6" BURY)	1	EA	3,960.00	\$	3,960.00	\$	3,592.00	\$	3,740.00	\$
SUBTOTAL DIVISION 3 - WATERMAIN											
DIVISION 4 - STREETS & RESTORATION											
1	SAVING BITUMINOUS PAVEMENT	50	LF	172.50	\$	8,625.00	\$	100.00	\$	5,000.00	\$
2	REPLACE & RECONSTRUCT BITUMINOUS PAVEMENT	2,633	EA	160.00	\$	421,280.00	\$	372.50	\$	982,175.00	\$
3	REMOVE & REPOSE OF EXIST. BITUMINOUS PAVEMENT	2,633	EA	150.00	\$	394,950.00	\$	132.00	\$	347,556.00	\$
4	REMOVE & REPOSE OF EXIST. CONCRETE CURB & GUTTER	20	LF	15.10	\$	302.00	\$	3.50	\$	70.00	\$
5	CONCRETE CURB & GUTTER	20	LF	15.10	\$	302.00	\$	3.50	\$	70.00	\$
6	AGGREGATE BASE	350	CY	1.00	\$	350.00	\$	10.00	\$	3,500.00	\$
7	2366 TYPE IV BITUMINOUS WEAR COURSE, STREETS	2,633	SY	15.40	\$	40,548.20	\$	12.00	\$	31,596.00	\$
8	2366 TYPE IV BITUMINOUS WEARING COURSE, STREETS	165	SY	68.80	\$	11,355.60	\$	11.00	\$	1,815.00	\$
9	2365 TYPE IV BITUMINOUS WEARING COURSE, STREETS	128	SY	74.10	\$	9,484.80	\$	69.00	\$	8,811.00	\$
10	BITUMINOUS MATERIAL FOR TACK COAT	68	GA	1.80	\$	122.40	\$	2.00	\$	136.00	\$
11	4" CEMENT CONCRETE CURB & GUTTER	20	LF	48.25	\$	965.00	\$	22.50	\$	450.00	\$
12	4" CEMENT CONCRETE CURB & GUTTER	103	LF	27.80	\$	2,865.40	\$	22.50	\$	2,325.00	\$
13	18" CEMENT CONCRETE CURB & GUTTER	2	EA	1,312.00	\$	2,624.00	\$	1,625.00	\$	3,250.00	\$
SUBTOTAL DIVISION 4 - STREETS & RESTORATION											
TOTAL FOR ALTERNATE NO. 1 BID				\$	3,799,035.60	\$	3,950,790.94	\$	3,984,110.50	\$	3,973,792.50



*DENOTES ERROR IN BIDDERS CALCULATION

Veit & Companies

Dunnick, Inc.

Minger Construction Inc.

Ellingson Drains, Inc.

TABULATION OF ALTERNATE BIDS

LAKE ELMO AVENUE INFRASTRUCTURE IMPROVEMENTS - 194 TO 30TH STREET
 CITY OF LAKE ELMO, MINNESOTA
 TKDA PROJECT NO. 13857.000

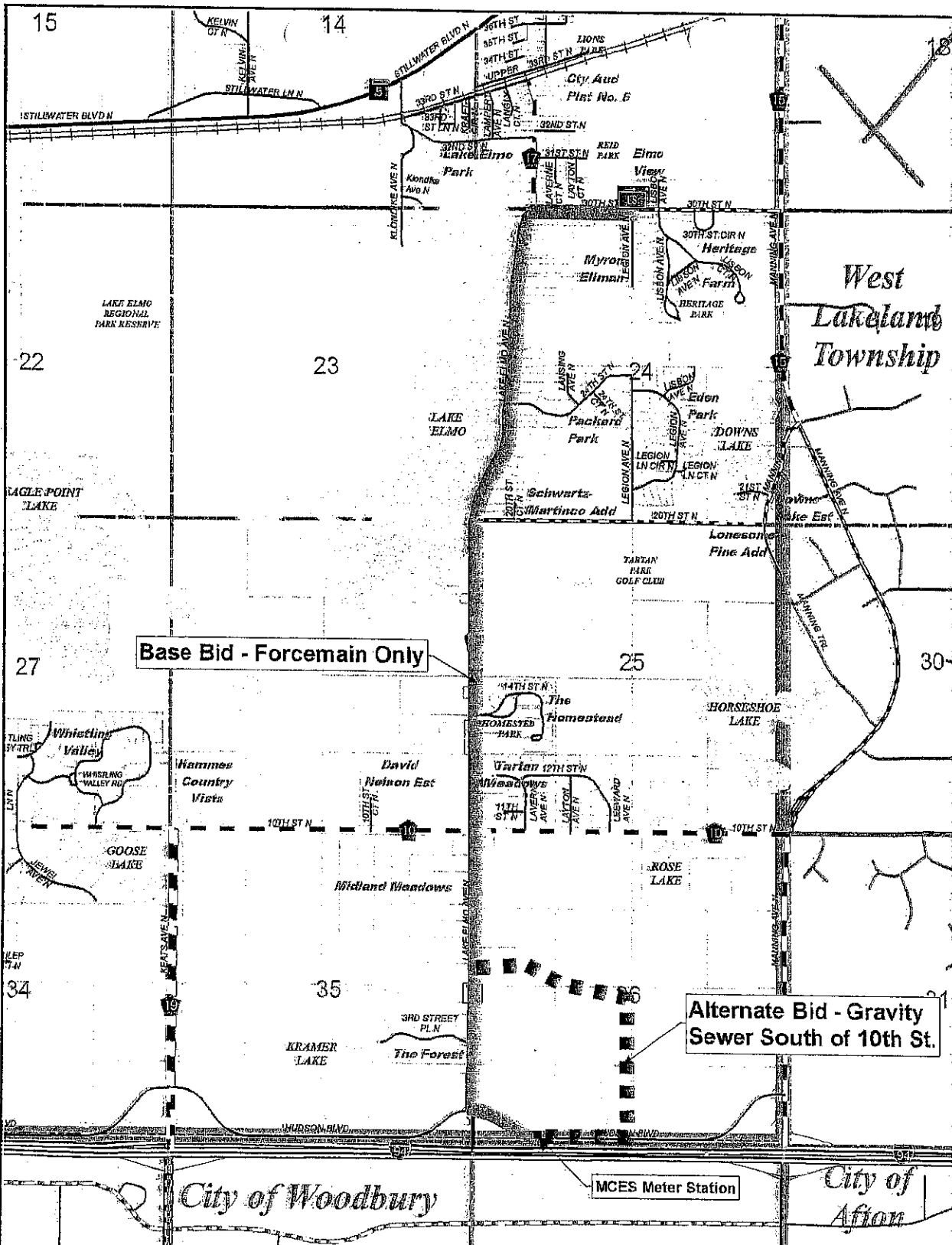
BIDS OPENED: APRIL 19, 2011, AT 10:00 AM

*DENOTES ERROR IN BIDDERS CALCULATION



*DENOTES ERROR IN BIDDERS CALCULATION

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	GM Contracting UNIT PRICE	TOTAL AMOUNT
ALTERNATE NO. 1 - ADDITIONAL GRAVITY SEWER IN LIEU OF FORCE MAIN GENERAL					
1	UTILIZATION	1	LS	18,552.00	\$ 18,552.00
2	TRAFFIC CONTROL	1	LS	20,981.48	\$ 20,981.48
3	SILT FENCE	7,695	LF	1.03	\$ 7,924.85
4	ROCK CONSTRUCTION ENTRANCE	1	EA	1,000.00	\$ 1,000.00
5	WATER FOR DUST CONTROL	300	MGAJ	30.00	\$ 9,000.00
6	CLEAR & GRUB TREE	274	EA	87.75	\$ 24,065.50
7	INLET PROTECTION	2	EA	174.95	\$ 349.90
8	HYDRO MULCH W/SEED & FERTILIZER	19.42	AC	1,227.24	\$ 23,833.00
9	EROSION CONTROL BLANKET (WOOD FIBER)	11,893	SY	1.21	\$ 14,390.53
10	TOPSOIL POROSOW	500	CY	95.69	\$ 47,845.00
11	MODULAR BLOCK RETAINING WALL	50	SY	381.19	\$ 19,059.50
	SUBTOTAL DIVISION 1 - GENERAL				\$ 170,783.78
DIVISION 2 - SANITARY SEWER					
1	12" DIAMETER SAN. MANHOLE, TYPE 303 (0' - 10' DEPTH)	1	LS	964,321.13	\$ 964,321.13
2	LIFT STATION PUMPS AND ACCESSORIES	1	LS	46,723.17	\$ 46,723.17
3	LIFT STATION ELECTRICAL AND CONTROL	1	LS	156,765.08	\$ 156,765.08
4	GENERATOR	1	LS	43,815.64	\$ 43,815.64
5	CHEMICAL FEED SYSTEM	1	LS	196,084.30	\$ 196,084.30
6	16" HOPE FORCE MAIN, INSTALLED BY HOH	14,600	LF	110.93	\$ 1,620,492.40
7	15" HOPE FORCE MAIN, INSTALLED BY OPEN CUT	465	LF	60.43	\$ 28,160.38
8	12" PVC, SDR 26 SANITARY SEWER (20' - 35' DEPTH)	10	LF	59.34	\$ 593.40
9	18" PVC, SDR 26 SANITARY SEWER (30' - 35' DEPTH)	285	LF	80.19	\$ 22,944.05
10	18" PVC, SDR 26 SANITARY SEWER (10-16' DEPTH)	164	LF	80.19	\$ 13,151.16
11	24" PVC, PS115 SANITARY SEWER (15-20' DEPTH)	60	LF	163.40	\$ 9,804.00
12	24" PVC, PS115 SANITARY SEWER (20-26' DEPTH)	10	LF	163.40	\$ 1,634.00
13	27" SANITARY SEWER (0' - 10' DEPTH)	72	LF	160.91	\$ 11,584.52
14	27" SANITARY SEWER (10' - 16' DEPTH)	76	LF	160.91	\$ 12,229.26
15	27" SANITARY SEWER (16' - 24' DEPTH)	75	LF	160.91	\$ 12,068.25
16	27" SANITARY SEWER (24' - 30' DEPTH)	42	LF	160.91	\$ 6,758.22
17	27" SANITARY SEWER (30' - 35' DEPTH)	226	LF	160.91	\$ 36,365.66
18	30" SANITARY SEWER (15' - 20' DEPTH)	247	LF	171.62	\$ 42,390.14
19	30" SANITARY SEWER (20' - 25' DEPTH)	2,305	LF	171.62	\$ 395,584.10
20	30" SANITARY SEWER (25' - 30' DEPTH)	725	LF	171.62	\$ 124,431.75
21	30" SANITARY SEWER (30' - 35' DEPTH)	681	LF	171.62	\$ 116,717.03
22	30" SANITARY SEWER (35' - 40' DEPTH)	66	LF	171.62	\$ 11,325.72
23	48" DIAMETER SAN. MANHOLE, TYPE 301 (0' - 10' DEPTH)	19	LF	4,287.00	\$ 81,453.00
24	48" DIAMETER SAN. MANHOLE, TYPE 301 EXTRA DEPTH (0-10' DEPTH)	221	LF	300.69	\$ 66,452.49
25	60" DIAMETER SAN. MANHOLE, TYPE 303 (0' - 10' DEPTH)	1	EA	5,920.88	\$ 5,920.88
26	60" DIAMETER SAN. MANHOLE, TYPE 303 EXTRA DEPTH (0-10' DEPTH)	8	EA	474.66	\$ 3,797.28
27	60" DIAMETER SAN. MANHOLE, TYPE 303 (0' - 10' DEPTH)	13	EA	11,782.24	\$ 153,369.12
28	60" DIAMETER SAN. MANHOLE, TYPE 303 EXTRA DEPTH (0-10' DEPTH)	13	EA	1,085.23	\$ 14,107.99
29	72" CLEANOUT MANHOLE	4	EA	11,474.34	\$ 45,897.36
30	72" AIR RELEASE MANHOLE	4	EA	11,955.87	\$ 47,943.48
31	20" DIP CLASS 52 SANITARY SEWER	80	LF	107.98	\$ 8,638.40
32	NOT USED				
33	EXTERNAL MANHOLE DROP	2	EA	5,716.35	\$ 11,432.70
34	16" RES. SEAT GATE VALVE & BOX	19	EA	7,402.33	\$ 140,644.27
35	FRENCH STABILIZATION ROCK	18	LF	0.50	\$ 9.00
36	TELEVISION	7,129	LF	6,415.10	\$ 45,738,000.90
37	NONCONFORMING DIAGONAL DRILLING SORE FITS	1	LS	78,817.37	\$ 78,817.37
	SUBTOTAL DIVISION 2 - SANITARY SEWER				\$ 4,170,576.44
DIVISION 3 - WATER MAIN					
1	6" X 6" WET TAP (INCLUDE SLEEVE AND VALVE)	1	EA	1,919.33	\$ 1,919.33
2	6" DIP, CL 52 WATER MAIN	362	LF	32.96	\$ 12,580.72
3	6" RES. SEAT GATE VALVE & BOX	1	EA	1,816.78	\$ 1,816.78
4	6" HYDRANT ASSEMBLY (8'-6" BURY)	1	EA	3,930.53	\$ 3,930.53
	SUBTOTAL DIVISION 3 - WATER MAIN				\$ 20,257.36
DIVISION 4 - STREETS & RESTORATION					
1	SAWOUT BITUMINOUS PAVEMENT	50	LF	5.25	\$ 262.50
2	SALVAGE & REINSTALL SIGN	21	EA	77.95	\$ 1,634.95
3	REMOVE & DISPOSE OF EXIST. BITUMINOUS PAVEMENT, DRIVES	2,833	SY	4.15	\$ 11,856.98
4	REMOVE & DISPOSE OF EXIST. BITUMINOUS PAVEMENT, STREETS	33	SY	4.15	\$ 138.23
5	REMOVE & DISPOSE OF EXIST. CONCRETE CURB & GUTTER	46	LF	29.45	\$ 1,354.70
6	REMOVE & DISPOSE OF EXIST. CONCRETE CURB & GUTTER	46	LF	29.45	\$ 1,354.70
7	CL 5 AGGREGATE BASE	1,009	TN	10.31	\$ 10,402.79
8	2860 TYPE 1V4 BITUMINOUS WEAR COURSE, DRIVES	2,833	SY	10.31	\$ 29,146.23
9	2360 TYPE 1V3 BITUMINOUS NO. WEARING COURSE, STREETS	165	TN	62.29	\$ 10,277.65
10	2360 TYPE 1V4 BITUMINOUS WEARING COURSE, STREETS	129	TN	71.26	\$ 9,192.54
11	BITUMINOUS MATERIAL FOR TACK COAT	68	GA	1.75	\$ 119.00
12	D412 CONCRETE CURB & GUTTER	20	LF	148.50	\$ 2,970.00
13	CL 5 AGGREGATE BASE, SHOULDER	108	TN	16.67	\$ 1,799.16
14	OFF ROAD STRUCTURE MARKET	24	EA	40.25	\$ 965.99
15	TEMPORARY ACCESS FOR EXISTING DRIVEWAY	2	EA	4,061.93	\$ 8,123.86
	SUBTOTAL DIVISION 4 - STREETS & RESTORATION				\$ 50,454.23
	TOTAL FOR ALTERNATE NO. 1 BID				\$ 4,452,074.79

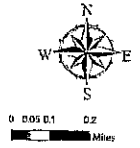


Legend

- Base Bid - Forcemain Only
- Alternate Bid - Gravity Sewer South of 10th Street

LOCATION MAP

- | | | | |
|--|---|--|---|
| | City Hall
2400 Lawrence Avenue W
35077-0316
www.lakeelmo.org | | Parcels |
| | Public Works Building
3446 104th Ave N
45102-3441 | | Subdivisions |
| | Fire Stations
Station 1
2501 Lawrence Ave N
35076-3001
Station 2
429, Spruce Ave N
35076-5601 | | City Parks |
| | Schools | | Golf Course |
| | | | Lake Elmo Regional Park Reserve
Park Office
651420-0146 |
| | | | Lakes |



Map Date: March 2011

Created By
TKDA
TERRITORY KENT DESIGN ARCHITECTS



MAYOR & COUNCIL COMMUNICATION

DATE: 6/07/2011
REGULAR
ITEM #: 9
DISCUSSION

AGENDA ITEM: Commercial Water Rate Review

SUBMITTED BY: Tom Bouthilet, Finance Director

REVIEWED BY: Bruce Messelt, City Administrator *BAM*

SUMMARY AND ACTION REQUESTED: It is respectfully requested that the City Council review the staff evaluation of proposed alternatives to the City's water rate structure addressing identified concerns with respect to large commercial water users. If agreement is reached on any proposed change, the suggested motion would be as follows:

"Move to direct City Staff to prepare a new ordinance, approving an amended 2011 fee schedule, as agreed upon at tonight's meeting."

BACKGROUND INFORMATION: The City Council directed Staff to evaluate and prepare for Council review possible alternatives to the City's Water rate structure to address identified concerns with respect to large Commercial water users. The current Water Conservation rate structure has been in place since December, 2009. Some large commercial water users have reported significant increases in water bills despite increased conservation efforts.

STAFF REPORT: The City has identified that most of the large commercial water establishments have separate irrigation meters in the southwest part of the City with one exception, the Machine Shed Restaurant. Conversely, there is only one large user that has an irrigation meter in the Old Village, Lawson Marshall & McDonald. The City is charged a surcharge for all water used in excess of the water consumed in January during the summer months. During the summer of 2010 this accounted for 25.3 million gallons or 24% of the total used in the entire year. The Southwest commercial establishment accounted for 6.6 million gallons during quarter ending August, 2010.

A majority of the Northern cities identified use the same Increasing Block Rates structure that this City adopted in December, 2009. The City of Roseville has a rate for under 30,000 gallons and a separate summer/winter fee for gallons consumed over 30,000 gallons.

Alternatives Examples of Conservation Rates:

Seasonal Rates: The rate per unit increases in the summer to encourage the efficient use of water during peak demand periods caused by outdoor water uses. Seasonal rates can take the form of a surcharge added to the normal rate or a separate fee schedule for winter and summer period.

Individualized Goal Rate (Water Budget Rate): A rate with tailored allocations developed for each customer. The rate increase as the allocation is used or exceeded by the customer. The allocation is generally based on winter or January use.

Excess Use Rates: Cost per unit increases greatly above established level in order to trigger a strong price signal that discourages excessive use. This rate is similar to an increasing block rate but with much higher charges for the larger volume blocks.

RECOMMENDATION: Staff recommends continuing with existing rate structure but considering possible modifications, such as capping the gallons used at 50,000 or 80,000 gallons; with all water consumed above this reverting to the City's Bulk water rate of \$3.26/one thousand gallons. Such Commercial domestic water rate structures, including a twenty-five dollar base charge, would be as follows:

<u>Option A (All domestic commercial accounts)</u>		<u>Option B (All domestic commercial accounts)</u>	
0 – 15,000 Gallons	\$3.11	0 – 15,000 Gallons	\$3.11
15,001 – 30,000 Gallons	\$3.26	15,001 – 30,000 Gallons	\$3.26
30,001 – 50,000 Gallons	\$3.77	30,001 – 50,000 Gallons	\$3.77
50,001 – 80,000 Gallons	\$5.00	50,000 +	\$3.26
80,000 +	\$3.26		

Another option, Option C, could be considered, wherein a separate classification is created for domestic (i.e. non-irrigation) high volume Hotels and Restaurant accounts. If considered, the same rate structure as option B could be considered.

If agreement is reached on any proposed change, the suggested motion would be as follows:

***“Move to direct City Staff to prepare a new ordinance, approving the amended 2011 fee schedule, as agreed upon at tonight’s meeting.*”**

ATTACHMENTS:

- 1) Water Comparison 2009/2010
- 2) Water and Sewer Rates Article, Minnesota Rural Water Assn

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation.....Finance Director
- Questions from Council to Staff..... Mayor Facilitates
- Public Hearing Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor Facilitates
- Action on Motion..... Mayor & City Council

OPTION A

City of Lake Elmo
Water Comparison 2009 / 2010

Sep-09 Domestic	Sep-09 Irrigation	Amount Billed	\$/1000 gals	Sep-10 Domestic	Sep-10 Irrigation	Amount Billed	\$/1000 gals	%	2010 DIFF	OPTION B*			OPTION C**		
										Commercial Domestic Only	Commercial Hotels, Restaurant High Vol.	3-Tier then Bulk Rate	REV Change	REV Change	3-Tier then Bulk Rate
318,000	277,000	\$1,894.50	3.18	358,000	220,000	\$ 3,396.50	5.88	85%	208,000	\$1,952.38	\$ (1,444.12)	\$ 1,952.38	\$ (1,444.12)		
4,000	400,000	\$1,302.40	3.22	6,000	383,000	\$ 2,352.55	6.05	88%		\$1,371.95	\$ (980.60)				
32,000	325,000	\$1,156.70	3.24	33,000	131,700	\$ 805.65	4.89	51%		\$709.93	\$ (101.72)				
509,800		\$1,605.38	3.15	464,900		\$ 2,841.60	6.11	94%	314,900	\$1,523.52	\$ (1,318.08)	\$ 1,523.52	\$ (1,318.08)		
887,400	425,624	\$4,120.37	3.14	887,400	383,061	\$ 7,897.50	6.22	98%	737,400	\$4,209.80	\$ (3,687.70)	\$ 4,209.80	\$ (3,687.70)		
33,000	967,000	\$3,150.00	3.15	38,000	529,000	\$ 3,406.60	6.01	91%		\$1,906.32	\$ (1,500.28)				
26,279	487,166	\$1,641.67	3.20	39,479	287,526	\$ 1,842.49	5.63	76%		\$1,294.89	\$ (547.60)				
23,000		\$121.30	5.27	37,000	583,000	\$ 3,753.90	6.05	15%		\$2,250.05	\$ (1,503.85)				
	1,031,000	\$4,206.48	4.08		867,000	\$ 3,771.45	4.35	7%		\$2,886.57	\$ (884.88)				
192,000	1,849,000	\$6,377.10	3.12	204,000	994,000	\$ 7,166.50	6.19	98%	54,000	\$3,940.98	\$ (3,225.52)	\$ 3,940.98	\$ (3,225.52)		
33,000	1,159,000	\$3,745.20	3.14	43,000	432,000	\$ 2,794.60	5.88	87%		\$1,681.30	\$ (1,112.80)				
	377,000	\$1,193.70	3.17		290,000	\$ 1,704.75	5.88	86%		\$1,005.55	\$ (699.20)				
	211,000	\$679.10	3.22		209,645	\$ 1,182.44	5.64	75%		\$743.59	\$ (438.85)				
154000		\$502.40	3.26	174000		\$ 950.75	5.46	67%	24,000	\$575.19	\$ (375.56)	\$ 575.19	\$ (375.56)		
250823		\$802.55	3.20	260226		\$ 1,511.22	5.81	81%	110,226	\$856.29	\$ (654.93)	\$ 856.29	\$ (654.93)		
111000		\$369.10	3.33	172000		\$ 937.75	5.45	64%	22,000	\$568.67	\$ (369.08)	\$ 568.67	\$ (369.08)		
378860		\$1,199.28	3.17	197800		\$ 1,105.45	5.59	77%	47,800	\$652.78	\$ (452.67)	\$ 652.78	\$ (452.67)		
13930	214000	\$756.58	3.32	12537	287000	\$ 1,748.49	5.84	76%	42,000	\$713.81	\$ (1,034.68)	\$ 633.87	\$ (433.88)		
197000		\$635.70	3.23	192000		\$ 1,067.75	5.56	72%		\$633.87	\$ (433.88)	\$ 633.87	\$ (433.88)		
204000		\$657.40	3.22	125000		\$ 632.25	5.06	57%		\$415.45	\$ (216.80)				
3,368,032	7,722,790	\$ 36,116.91	3.26	3,244,342	5,556,932	\$ 50,870.19	5.78	77%	1,560,326	\$ 29,887.39	\$ (20,982.80)	\$ 14,913.48	\$ (11,961.54)		

*Option B Rate Structure consists of Three Tiers and thereafter bulk rate applied to gallons used above 50,000

**Option C High Volume Users; Rate Structure consists of Three Tiers and thereafter bulk rate applied to gallons used above 50,000

Water and Sewer Rates

by Ruth Hubbard Administrator

There is not a week that goes by that we don't do a rate study for a water or wastewater system. There is really a big difference in some systems in the way that they charge for their product. There is also a big difference in the attitudes of the people that are presenting water and sewer rates for review and approval of their councils/boards and of the council/board members themselves. I've heard comments on both ends of the argument. "Our rate of \$3.75 per thousand is too cheap." "We only charge \$1.00 per thousand because that is all our fixed income residents can afford."

The bottom line... a system needs to collect enough revenue to cover your debt, depreciation, reserve and operation and maintenance expenses. While comparisons to your neighbor's rate is nice information it's not the benchmark to use to set your rates. You have a million dollar (usually much more) business. Run your water and wastewater system like a business. Gone are the days of entitlements.

KEEP IT SIMPLE! First, determine the number of EDU's on your water or wastewater system. EDU is Equivalent Dwelling Units. For water service, one equivalent dwelling unit is the amount of water an average single family residence uses. For sewer, it is the average amount of wastewater generated. The amount of EDUs to charge a commercial customer is determined by dividing the customer's total usage by the EDU amount. For instance, if a rate study determines that the average residential usage is 5,000 gallons of water a month, and a motel uses 25,000 gallons of water a month, then the motel uses 5 EDU. As you can see, the number of EDU's is not necessarily the same as the number of connections. Determining the number of EDU's also gives you an opportunity to charge a larger base rate (equitably) to the entities that are putting the most demand on your system.

The next step in setting your rate is to determine your actual (true) expenses. What is your debt service on your system? Do you have a short-lived assets report? Do you have a Capital Improvement Plan? What does it say? What is the amount of depreciation or reserve that needs to be put away each year for emergency repair and replacement? Using these amounts is sometimes used to set the base rate for your system. Base rate is the amount that is charged prior to any gallons being delivered to the household. Base rate would be charged regardless of whether anyone is home or not (snowbirds).

Next, what is the portion of salary and fringe of your operators and support staff that should be applied to your water or wastewater system? What is the chemical, electrical, heating, repair, permit and test costs, training and subscription costs, insurance, printing and publishing (Consumer Confidence Report), vehicle, mileage, postage gas, etc. cost?

These expenses are called your operation and maintenance expenses. I once did a rate study that had a total annual electrical bill of \$55.00. I'm looking at getting hooked up with this electrical company. I figure the cost for my house would be even cheaper than \$55.00. As I stated before, you need to determine your TRUE costs. Anyone can maneuver a budget to make

it look like your cost per thousand is less, however, that money has got to come from somewhere. Taxes? Liquor store revenue? Somewhere!

After you have your EDU's, fixed, operation and maintenance expenses, you need to determine gallons sold last year. There may be a big difference in the amount pumped and amount sold. (That's another article... determining your unaccounted for water) Your system really needs to be metered to determine rates that are fair and equitable to all customers. Meters will also reduce consumers water usage which will also reduce operation costs (chemicals, electricity, etc). That's another article!!

NOW, take your total expenses divided by your gallons sold divided by 1000. The equation would look like this: $\$140,400/27,000,000/1000 = \5.20 per thousand. (see chart) Using a flat rate of \$12.00 per month per EDU (384) this reduces your cost per thousand to \$3.15. This would make your average family of four have a monthly water bill of \$30.00 - \$35.00. Unreasonable? Compare the costs...this product is delivered to your tap every minute of every day, tested, safe drinking water. Remember, when funding agencies look at your system for loan and grant funds they will be looking at approximately 1.4% of your median household income as your ability to repay debt and O&M.

Is this clear as mud? Make your water and sewer rates simple, easy to understand, fair and equitable for all classes of customers. Structure your water and sewer rates to conserve your precious resource. Systems with populations greater than 1000 are required by law to have a Water Conservation Rate in place by January 2013. This will save you operation and maintenance money as well as possible construction money. More information on the Water Conservation Act can be found at www.mrwa.com on the home page.

Carl Brown has presented several training sessions for us in the past and also submits articles for publication quarterly. Carl has a very good book on setting rates which you can order directly from MRWA for \$25.00 plus tax and S&H. Carl will be in Minnesota again on October 13, 2011 so mark your calendar.

AND FINALLY, keep your customers informed. Your Consumer Confidence Report is due each July 1st. Take the time to let your customers know what really goes on with your business...the certification requirements, testing requirements, upcoming regulations and the need for operation, maintenance and infrastructure improvements.

Quality on Tap!! Our Professional...Our Commitment.

You have the most important business in town...without you all other activities would cease to exist!

OPTION A

City of Lake Elmo
Water Comparison 2009 / 2010

Sep-09 Domestic	Sep-09 Irrigation	Amount Billed	\$/1000 gals	Sep-10 Domestic	Sep-10 Irrigation	Amount Billed	\$/1000 gals	2010 DIFF	OPTION B** Commercial		OPTION C** Commercial	
									3-Tier then Bulk Rate	REY Change	3-Tier then Bulk Rate	REY Change
318,000	277,000	\$1,894.50	\$ 3.18	358,000	220,000	\$ 3,996.50	\$ 5.88	208,000	\$1,952.38	(\$1,444.12)	\$ 1,952.38	(\$1,444.12)
4,000	400,000	\$1,302.40	\$ 3.22	6,000	383,000	\$ 2,952.55	\$ 6.05		\$1,371.95	(\$980.60)		
32,000	325,000	\$1,156.70	\$ 3.24	33,000	131,700	\$ 805.65	\$ 4.89		\$703.93	(\$101.72)		
509,800	425,624	\$1,605.38	\$ 3.15	464,900	383,061	\$ 2,841.60	\$ 6.11	314,900	\$1,523.52	(\$1,318.08)	\$ 1,523.52	(\$1,318.08)
887,400	967,000	\$4,120.37	\$ 3.14	887,400	529,000	\$ 7,897.50	\$ 6.22	737,400	\$4,209.80	(\$3,687.70)	\$ 4,209.80	(\$3,687.70)
33,000	487,166	\$3,150.00	\$ 3.15	38,000	583,061	\$ 3,406.60	\$ 6.01		\$1,906.32	(\$1,500.28)		
26,279	487,166	\$1,641.67	\$ 3.20	39,479	287,526	\$ 1,842.49	\$ 5.63		\$1,294.89	(\$547.60)		
23,000	1,031,000	\$121.30	\$ 5.27	37,000	583,000	\$ 3,753.90	\$ 6.05		\$2,250.05	(\$1,503.85)		
		\$4,206.48	\$ 4.08			\$ 3,771.45	\$ 4.35	54,000	\$3,940.98	(\$3,225.52)	\$ 3,940.98	(\$3,225.52)
192,000	1,849,000	\$6,377.10	\$ 3.12	204,000	954,000	\$ 7,166.50	\$ 6.19		\$1,681.80	(\$1,112.80)		
33,000	1,159,000	\$3,745.20	\$ 3.14	43,000	432,000	\$ 2,794.60	\$ 5.88		\$1,005.55	(\$699.20)		
	377,000	\$1,193.70	\$ 3.17		290,000	\$ 1,704.75	\$ 5.88		\$743.59	(\$438.85)		
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154000		\$502.40	\$ 3.26	174000		\$ 950.75	\$ 5.46	24,000	\$575.19	(\$375.56)	\$ 575.19	(\$375.56)
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197000		\$635.70	\$ 3.23	192000		\$ 1,067.75	\$ 5.56	42,000	\$633.87	(\$433.88)	\$ 633.87	(\$433.88)
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