

FILE

City of Lake Elmo  
3800 Laverne Avenue North

February 1, 2011

7:00 p.m.

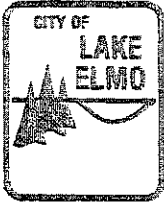
- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE:
- C. ATTENDANCE: \_\_\_ Johnston \_\_\_ Pearson \_\_\_ Emmons \_\_\_ Park \_\_\_ Smith
- D. APPROVAL OF AGENDA: (The approved agenda is the order in which the City Council will do its business.)
- E. ORDER OF BUSINESS: (This is the way that the City Council runs its meetings so everyone attending the meeting or watching the meeting understands how the City Council does its public business.)
- F. GROUND RULES: (These are the rules of behavior that the City Council adopted for doing its public business.)
- G. ACCEPT MINUTES: None
- H. PUBLIC COMMENTS/INQUIRIES: In order to be sure that anyone wishing to speak to the City Council is treated the same way, meeting attendees wishing to address the City Council on any items NOT on the regular agenda may speak for up to three minutes.
- I. CONSENT AGENDA: (Items are placed on the consent agenda by city staff and the Mayor because they are not anticipated to generate discussion. Items may be removed at City Council's request.)
  - 2. Approve payment of disbursements and payroll
  - 3a. Change Order #3 – 2010 Street and Water Quality Improvements
  - b. Payment Certificate #3
- J. REGULAR AGENDA:
  - 4. PUBLIC HEARING: 50<sup>th</sup> Street and Kimbro; Order Plans & Specs
  - 5. Xcel Franchise Agreement
  - 6. Municipal Toolkit for Jobs and Business Retention and Expansion
  - 7. Approve City Policy for Contract Services
  - 8. Update on Discussions relating to the Early Childhood Family Center

K. REPORTS AND ANNOUNCEMENTS:

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

- Mayor and City Council
- Administrator
- Planning Director

L. Adjourn



# MAYOR & COUNCIL COMMUNICATION

DATE: 2/01/2011  
CONSENT  
ITEM #: 2  
MOTION *as part of Consent Agenda*

**AGENDA ITEM:** Approve Disbursements in the Amount of \$ 94,947.14

**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 \$94,947.14 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 to be paid in accordance with State law and City policies and procedures.

Claim #	Amount	Description
ACH	\$ 6,838.90	Payroll Taxes to IRS 01/27/2011
ACH	\$ 1,207.12	Payroll Taxes to MN Dept. of Revenue 01/27/2011
ACH	\$ 4,027.73	Payroll Retirement to PERA 01/27/2011
DD3210 - DD3224	\$ 21,608.68	Payroll Dated 01/27/2011 (Direct Deposit)
36693 - 36697	\$ 18,388.30	Payroll Dated 01/27/2011
36698 - 36710	\$ 20,366.00	Accounts Payable Dated 01/19/2011 (FY 2010)
36711 - 3636737	\$ 36,140.94	Accounts Payable Dated 01/19/2011 (FY 2011)
ACH	\$ 750.00	Pre-Payment Sales & Use Tax January 2011
36738	\$ 1,172.00	DNR Annual Water Use Permit
<b>TOTAL</b>	<b>\$ 94,947.14</b>	

**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 \$94,947.14

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 February 1st, 2011, payable 2010 & 2011, Disbursement, as Presented *[and modified]* herein.”**

**ATTACHMENTS:**

1. Accounts Payable Dated 02/01/2011

**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 & City Council
- Action on Motion..... Mayor Facilitates

# Accounts Payable To Be Paid Proof List

User: JOAN Z  
 Printed: 01/27/2011 - 11:16 AM  
 Batch: 010-12-2010

Invoice #	Inv Date	Amount	Quantity	Fmt Date	Description	Reference	Task	Type	PO #	Close POLine #
ADV WATER Advanced Waterfet Tech, LLC										
8587	05/07/2010	358.02	0.00	02/01/2011	Street Sign Refurbishing		-	No		0000
101-430-3120-44040	Repairs/Maint Eqpt	358.02								
8587 Total:		358.02								
ADV WATER Total:		358.02								
ARAM Aramark, Inc.										
629-7148932	12/30/2010	26.28	0.00	02/01/2011	Uniforms		-	No		0000
101-430-3100-44170	Uniforms	26.28								
629-7148932 Total:		26.28								
ARAM Total:		26.28								
CARQUEST Car Quest Auto Parts										
2055-210597	12/29/2010	17.22	0.00	02/01/2011	Lamp, fuel cap		-	No		0000
101-430-3120-42210	Equipment Parts	17.22								
2055-210597 Total:		17.22								
CARQUEST Total:		17.22								
KAMCO Kamco, Corp										
3272	01/12/2011	500.00	0.00	02/01/2011	Put up & take down Holiday lights		-	No		0000
101-430-3100-43150	Contract Services	500.00								
3272 Total:		500.00								
KAMCO Total:		500.00								
LEOIL Lake Elmo Oil, Inc.										
11632,33,34,51	12/31/2010	8,461.53	0.00	02/01/2011	Fuel		-	No		0000
101-430-3120-42120	Fuel, Oil and Fluids	8,461.53								
11632,33,34,51 Total:		8,461.53								
LEOIL Total:		8,461.53								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
METRO MU METROPOLITAN MUNICIPALITIES ASSOCI										
302	11/17/2010	17.00	0.00	02/01/2011	LMC & Metro Cities Reg Mlg 11/17/10		-	No		0000
101-410-1320-44370	Conferences & Training	17.00								
	302 Total:	17.00								
	METRO MU Total:	17.00								
MNUNEMPL MN Dept Economic Security										
07973555	01/19/2011	5,218.02	0.00	02/01/2011	Unemployment Benefits		-	No		0000
101-000-0000-21708	Other Benefits	5,218.02								
	07973555 Total:	5,218.02								
	MNUNEMPL Total:	5,218.02								
RICHTMAN Richtman Karen										
01/19/2011	01/19/2011	2,500.00	0.00	02/01/2011	Recycling Grant 6/2010-12/2010		-	No		0000
101-430-3200-44300	Miscellaneous	2,500.00								
	01/19/2011 Total:	2,500.00								
	RICHTMAN Total:	2,500.00								
SCHUMACH Schumacher Rosemary										
12/22/2010	12/22/2010	473.22	0.00	02/01/2011	Damaged Mailbox		-	No		0000
101-430-3125-44040	Repairs/Maint Eqpt	473.22								
	12/22/2010 Total:	473.22								
	SCHUMACH Total:	473.22								
SKEJE Skeje Mark & Janet										
12/22/2010	12/22/2010	473.22	0.00	02/01/2011	Damaged mailbox		-	No		0000
101-430-3125-44040	Repairs/Maint Eqpt	473.22								
	12/22/2010 Total:	473.22								
	SKEJE Total:	473.22								
UNITEDPR United Land LLC										
00909235	01/29/2011	1,133.00	0.00	02/01/2011	OEA 2010 & 2nd 2009		-	No		0000
601-494-9400-44030	Repairs/Maint Imp Not Bldgs	1,133.00								
	00909235 Total:	1,133.00								
	UNITEDPR Total:	1,133.00								
WASHCONS Washington Conservation Dist.										
2032	12/31/2010	517.50	0.00	02/01/2011	4th Qtr Shared educator program		-	No		0000
603-496-9500-44370	Conferences & Training	517.50								
	2032 Total:	517.50								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
WASHCONS Total:		517.50								
WASHTAX Washington County										
68337	02/20/2011	670.99	0.00	02/01/2011	2011 Truth in Taxation Notice					0000
101-410-1320-43510	Legal Publishing	670.99								
68337 Total:		670.99								
WASHTAX Total:		670.99								
Report Total:		20,366.00								

# Accounts Payable To Be Paid Proof List

User: JOAN Z  
 Printed: 01/27/2011 - 11:23 AM  
 Batch: 006-01-2011

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
ACS Animal Control Services										
383	01/23/2011	444.00	0.00	02/01/2011	Animal Control Svs	12/21-1/16/11	-	No		0000
101-420-2700-43150	Contract Services									
	383 Total:	444.00								
	ACS Total:	444.00								
APARTMEN Apartment Movers, Inc.										
12/22/2010	12/22/2010	12,000.00	0.00	02/01/2011	City Administrator Relocation		-	No		0000
101-410-1320-44300	Miscellaneous									
	12/22/2010 Total:	12,000.00								
	APARTMEN Total:	12,000.00								
ARAM Aramark, Inc.										
629-7152695	01/03/2010	133.53	0.00	02/01/2011	Linen City Hall		-	No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg									
	629-7152695 Total:	133.53								
629-7155559	01/06/2011	84.08	0.00	02/01/2011	Uniforms		-	No		0000
101-430-3100-44170	Uniforms									
	629-7155559 Total:	84.08								
629-7160330	01/13/2011	21.29	0.00	02/01/2011	Uniforms		-	No		0000
101-430-3100-44170	Uniforms									
	629-7160330 Total:	21.29								
629-7165054	01/20/2011	21.29	0.00	02/01/2011	Uniforms		-	No		0000
101-430-3100-44170	Uniforms									
	629-7165054 Total:	21.29								
629-7166847	01/24/2011	104.87	0.00	02/01/2011	Linen City Hall		-	No		0000
101-410-1940-44010	Repairs/Maint Contractual Bldg									
	629-7166847 Total:	104.87								
	ARAM Total:	365.06								



Invoice #	Inv Date	Amount	Quantity	Unit Date	Description	Reference	Task	Type	PO #	Close POLine #
BECKER Becker Fire and Safety, LLC										
31	01/18/2011	169.77	0.00	02/01/2011	Annual Fire Extinguish Inspection		-	No		0000
101-430-3100-44040	Repairs/Maint Eqpt									
	31 Total:	169.77								
32	01/18/2011	342.80	0.00	02/01/2011	Replace 2 extinguishers		-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
	32 Total:	342.80								
	BECKER Total:	512.57								
CAPCITY Capitol City										
1252010	01/10/2011	50.00	0.00	02/01/2011	Annual Dues-Capitol City Regional		-	No		0000
101-420-2220-44330	Dues & Subscriptions									
	1252010 Total:	50.00								
	CAPCITY Total:	50.00								
CARQUEST Car Quest Auto Parts										
2055211670	01/12/2011	19.90	0.00	02/01/2011	Lamp, fuel cap		-	No		0000
101-430-3120-42210	Equipment Parts									
2055211670	01/12/2011	131.13	0.00	02/01/2011	Misc shop fluids		-	No		0000
101-430-3120-42120	Fuel, Oil and Fluids									
	2055211670 Total:	151.03								
	CARQUEST Total:	151.03								
CENTPOW Century Power Equipment										
512878	01/12/2011	50.31	0.00	02/01/2011	Two Cycle oil		-	No		0000
101-430-3120-42120	Fuel, Oil and Fluids									
	512878 Total:	50.31								
	CENTPOW Total:	50.31								
EMMONS A Emmons Alex										
01/24/2011	01/24/2011	55.00	0.00	02/01/2011	Cabled CC meeting 1/24/11		-	No		0000
101-410-1450-43620	Cable Operations									
	01/24/2011 Total:	55.00								
01/26/2011	01/26/2011	41.25	0.00	02/01/2011	Beyond Yellow Ribbon 1/26/11		-	No		0000
101-410-1450-43620	Cable Operations									
	01/26/2011 Total:	41.25								
	EMMONS A Total:	96.25								
GALLS Galls Incorporated										
511104436	01/13/2011	246.38	0.00	02/01/2011	Emergency FlareAlert Kit for CV2		-	No		0000
101-420-2220-42400	Small Tools & Equipment									

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close POLine #
	511104436 Total:	246.38								
	GALLS Total:	246.38								
MARVS Marv's Professional Tools										
233294	01/13/2011	41.71	0.00	02/01/2011	Hammer indent		-	No		0000
101-430-3100-42400	Small Tools & Minor Equipment									
	233294 Total:	41.71								
	MARVS Total:	41.71								
MENARDSO Menards - Oakdale										
38767	01/26/2011	46.68	0.00	02/01/2011	Furnace filters, misc shop supplies		-	No		0000
101-430-3100-42150	Shop Materials									
	38767 Total:	46.68								
40574	01/20/2011	64.82	0.00	02/01/2011	Mouse traps, G. Bags, shop hardware		-	No		0000
101-430-3100-42150	Shop Materials									
	40574 Total:	64.82								
41123	01/09/2011	17.92	0.00	02/01/2011	Station #2 Items		-	No		0000
101-420-2220-44010	Repairs/Maint Bldg									
41123	01/09/2011	27.87	0.00	02/01/2011	Tools, Station #2		-	No		0000
101-420-2220-42400	Small Tools & Equipment									
	41123 Total:	45.79								
	MENARDSO Total:	157.29								
METROFIR Metro Fire										
40042	01/20/2011	101.14	0.00	02/01/2011	Flashlight for CV2		-	No		0000
101-420-2220-42400	Small Tools & Equipment									
	40042 Total:	101.14								
	METROFIR Total:	101.14								
MNFIAM MnFIAM										
1105	01/20/2011	788.74	0.00	02/01/2011	Books for Officer Series & FFI		-	No		0000
101-420-2220-44350	Books									
	1105 Total:	788.74								
	MNFIAM Total:	788.74								
MORTON Morton Salt, Inc.										
577377	01/13/2011	3,453.13	0.00	02/01/2011	Road Salt		-	No		0000
101-430-3125-42290	Sand/Salt									
	577377 Total:	3,453.13								
579209	01/14/2011	1,822.67	0.00	02/01/2011	Road Salt		-	No		0000
101-430-3125-42290	Sand/Salt									

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close PO Line #
585928	01/20/2011	1,822.67	0.00	02/01/2011	Road Salt		-			No 0000
101-430-3125-42290	Sand/Salt	13,236.56								
585928 Total:		13,236.56								
MORTON Total:		18,512.36								
NAPA NAPA Auto Parts										
653795	01/21/2011	4.27	0.00	02/01/2011	Taillight		-			No 0000
101-420-2220-44040	Repairs/Maint Eqpt	4.27								
653795 Total:		4.27								
NAPA Total:		4.27								
NEXTEL Nextel Communications										
761950227-094	01/18/2011	85.78	0.00	02/01/2011	Cell Phone Service - Administration		-			No 0000
101-410-1940-43210	Telephone	177.03								
761950227-094	01/18/2011	17.74	0.00	02/01/2011	Cell Phone Service - Fire Department		-			No 0000
101-420-2220-43210	Telephone	59.74								
761950227-094	01/18/2011	17.74	0.00	02/01/2011	Cell Phone Service - Building Dept		-			No 0000
101-420-2400-43210	Telephone	59.74								
761950227-094	01/18/2011	54.82	0.00	02/01/2011	Cell Phone Service - Public Works Dept		-			No 0000
101-430-3100-43210	Telephone	54.82								
761950227-094	01/18/2011	395.11	0.00	02/01/2011	Cell Phone Service - Parks Dept		-			No 0000
101-450-5200-43210	Telephone	395.11								
761950227-094 Total:		395.11								
NEXTEL Total:		395.11								
OAKDRC Oakdale Rental Center										
10074737	01/20/2011	18.69	0.00	02/01/2011	Propane-shop		-			No 0000
101-430-3100-42150	Shop Materials	18.69								
10074737 Total:		18.69								
OAKDRC Total:		18.69								
POMPS Pumps Tire Service, Inc.										
199373	01/20/2011	414.80	0.00	02/01/2011	Tires for 07-1 (water)		-			No 0000
601-494-9400-44030	Repairs/Maint Imp Not Bldgs	414.80								
199373 Total:		414.80								
POMPS Total:		414.80								
REIDMITC Reid Mitch										
01/25/2011	01/25/2011	55.00	0.00	02/01/2011	CC Meeting 1/25/11		-			No 0000
101-410-1450-43620	Cable Operations	55.00								

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close PO Line #
	01/25/2011 Total:	55.00								
	REIDMITC Total:	55.00								
RUD Prince-Rud Diane	12/20/2010	320.00	0.00	02/01/2011	Cleaning City Hall & Annex		-	No		0000
	12/20/2010	240.00	0.00	02/01/2011	Cleaning Fire Hall		-	No		0000
	12/20/2010	560.00								
	12/20/2010 Total:	560.00								
	RUD Total:									
SACHSJIM James Sachs	01/24/2010	117.94	0.00	02/01/2011	Uniforms		-	No		0000
Chk Req	01/24/2010	117.94								
101-430-3100-44170	Uniforms	117.94								
	Chk Req Total:	117.94								
	SACHSJIM Total:	117.94								
SAMSCCLUB Sam's Club	01/21/2011	32.92	0.00	02/01/2011	Garden Hose for Station #2		-	No		0000
101-420-2220-42400	Small Tools & Equipment	131.35	0.00	02/01/2011	Station #1 & #2		-	No		0000
101-420-2220-44300	Miscellaneous	164.27								
	01/21/2011 Total:	164.27								
	SAMSCCLUB Total:	164.27								
SCHLOMKA Schlomka	01/03/2011	210.00	0.00	02/01/2011	Pump Holding Tank PW		-	No		0000
11329	Repairs/Maint Bldg	210.00								
101-430-3100-44010	Repairs/Maint Bldg	210.00								
	11329 Total:	210.00								
	SCHLOMKA Total:	210.00								
STEINMAN Steinman Tom	01/07/2011	28.22	0.00	02/01/2011	Nostalgic Photo & Frame Station #1		-	No		0000
101-420-2220-44300	Miscellaneous	28.22								
	01/07/2011 Total:	28.22								
	STEINMAN Total:	28.22								
TOUSLEY Tousley Motorsports	01/12/2011	295.11	0.00	02/01/2011	Repair Truck assembly on Ranger		-	No		0000
148027	Repairs/Maint Eqpt									
101-420-2220-44040	Repairs/Maint Eqpt									

Invoice #	Inv Date	Amount	Quantity	Pmt Date	Description	Reference	Task	Type	PO #	Close PO Line #
	148027 Total:	295.11								
	TOUSLEY Total:	295.11								
<hr/>										
	WASHWFC Assessor Division Washington Count									
	01/30/2011 01/30/2011	200.00	0.00	02/01/2011	County Web Subscription Services			No		0000
	101-410-1450-43180 Information Technology/Web									
	01/30/2011 Total:	200.00								
	WASHWFC Total:	200.00								
<hr/>										
	YOCUM Yocum Oil Company, Inc.									
	198171 01/21/2011	160.69	0.00	02/01/2011	Bulk Oil Tanks			No		0000
	101-430-3100-44010 Repairs/Maint Bldg									
	198171 Total:	160.69								
	YOCUM Total:	160.69								
	Report Total:	36,140.94								



## MAYOR & COUNCIL COMMUNICATION

DATE: 2/1/2011

**CONSENT**

ITEM #: 3a

**MOTION as part of the Consent Agenda**

**AGENDA ITEM:** 2010 Street and Water Quality Improvements – Change Order No. 3

**SUBMITTED BY:** Ryan Stempiski, Assistant City Engineer

**THROUGH:** Bruce A Messelt, City Administrator *BAM*

**REVIEWED BY:** Tom Bouthilet, Finance Director  
Jack Griffin, City Engineer

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**SUMMARY AND ACTION REQUESTED:** The City Council is respectfully requested to approve Change Order No. 3 in the amount of \$3,099.55 for the 2010 Street and Water Quality Improvements. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

**BACKGROUND INFORMATION & STAFF REPORT:** Change Order No. 3 covers additional work items by the Contractor that are necessary to accommodate a delay in the placement of the bituminous wear course until the spring 2011. This delay is at the request of City staff so that staff may evaluate the corrective work that was completed late last fall to address a saturated road sub-base from unknown water sources.

The additional work items will be paid to the Contractor, T.A. Schifsky and Sons, Inc. to place bituminous material to ramp catch basins along 57th Street to protect them during snow plow operations over the winter months. This request has been reviewed and is recommended in the amount requested.

**RECOMMENDATION:** Based upon the above information, it is recommended that the City Council approve as part of tonight's *Consent Agenda* Change Order No. 3 in the amount of \$3,099.55.

Alternatively, the City Council does have the authority to remove this item from the *Consent Agenda*, table this item for future consideration, or further discuss and deliberation prior to taking action. If the latter is done so, the appropriate action of the Council following such discussion would be:

**“Move to approve Change Order No. 3 in the amount of \$3,099.55 for the 2010 Street and Water Quality Improvements project *[as amended and/or modified at tonight’s meeting].*”**

**ATTACHMENTS:**

1. Change Order No. 3

**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 & City Council
- Action on Motion ..... Mayor Facilitates

CHANGE ORDER

TKDA  
Engineering-Architecture-Planning

Saint Paul, MN January 6 20 11 Proj. No. 14504.001 Change Order No. 3

To T.A. Schifsky and Sons, Inc.

for 2010 Street and Water Quality Improvements

for City of Lake Elmo, Minnesota

You are hereby directed to make the following change to your contract dated June 4, 20 10. The change and the work affected thereby is subject to all contract stipulations and covenants. This Change Order will (increase) (decrease) (~~not change~~) the contract sum by Three Thousand Ninety Nine Dollars and 55/100 (\$ 3,099.55).

This change order includes bituminous wear course paving for ramping of the catch basins on 57<sup>th</sup> Street to protect the concrete wings during the winter plowing season.

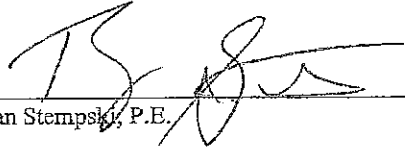
NET CHANGE = \$ 3,099.55

Amount of Original Contract	\$ 425,565.41
Additions approved to date (Change Order Nos. 1 )	\$ 8,805.00
Deductions approved to date (Nos. )	
Contract amount to date	\$ 434,370.41
Amount of this Change Order (Add) ( <del>Deduct</del> ) (No Change)	\$ 3,099.55
Revised Contract Amount	\$ 437,469.96

Approved \_\_\_\_\_  
City of Lake Elmo

TKDA

By \_\_\_\_\_

By  \_\_\_\_\_  
Ryan Stempski, P.E.

Approved \_\_\_\_\_  
T. A. Schifsky and Sons, Inc.

White - Owner  
Pink - Contractor  
Blue - TKDA

By \_\_\_\_\_



CHANGE ORDER NO. 3

Period Ending: January 6, 2011

2010 STREET & WATER QUALITY IMPROVEMENTS  
CITY OF LAKE ELMO, MINNESOTA  
TKDA PROJECT NO. 14604.001

ITEM NO.	DESCRIPTION	UNIT	CONTRACT QUANTITY	QUANTITY TO DATE	UNIT PRICE	AMOUNT TO DATE
1	BITUMINOUS WEAR COURSE PAVING FOR RAMPING OF THE CATCH BASIN'S ON 57TH ST	LS	1.0	1.0	\$ 3,099.55	\$ 3,099.55
SUBTOTAL						\$ 3,099.55
TOTAL CHANGE ORDER NO. 3						\$ 3,099.55



## MAYOR & COUNCIL COMMUNICATION

DATE: 2/01/2011

**CONSENT**

ITEM #: 3b

**MOTION as part of the Consent Agenda**

**AGENDA ITEM:** 2010 Street and Water Quality Improvements – Partial Payment No. 3

**SUBMITTED BY:** Ryan Stempski, Assistant City Engineer

**THROUGH:** Bruce A Messelt, City Administrator *BAM*

**REVIEWED BY:** Tom Bouthilet, Finance Director  
Jack Griffin, City Engineer

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**SUMMARY AND ACTION REQUESTED:** The City Council is respectfully requested to approve partial payment to T.A. Schifsky and Sons, Inc., the Contractor for the 2010 Street and Water Quality Improvements project. No specific motion is needed, as this is recommended to be part of the overall approval of the *Consent Agenda*.

**BACKGROUND INFORMATION & STAFF REPORT:** Work has been completed on Jane Road, Isle Avenue, and 53<sup>rd</sup> Street. Please see Attachment No. 2 for the Engineer's recommendation of acceptance and proposed warranty dates for these roads only. Retainage has been withheld in the amount of \$4,153.52 for the work on 57<sup>th</sup> Street, which remains incomplete. The final completion date for the remaining work on 57<sup>th</sup> Street is June 10, 2011.

The Contractor submitted Partial Payment Certificate No. 3 in the amount of \$34,514.92, which includes Change Order No. 3 in the amount of \$3,099.55 (see *Consent Agenda* Item No. 3a). This request has been reviewed and payment is recommended in the amount requested.

**RECOMMENDATION:** Based upon the above information, it is recommended that the City Council approve as part of tonight's *Consent Agenda* Partial Payment No. 3 in the amount of \$34,514.92.

Alternatively, the City Council does have the authority to remove this item from the *Consent Agenda*, table this item for future consideration, or further discuss and deliberation prior to taking action. If the latter is done so, the appropriate action of the Council following such discussion would be:

**“Move to authorize Partial Payment No. 3 in the amount of \$34,514.92 to be paid from the Project Fund for the 2010 Street and Water Quality Improvements project *[as amended and/or modified at tonight’s meeting].*”**

**ATTACHMENTS:**

1. Payment Certificate No. 3
2. Engineer’s Recommendation of Final Acceptance for Jane Road, Isle Avenue, and 53<sup>rd</sup> Street (Excluding 57<sup>th</sup> Street)

**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 & City Council
- Action on Motion ..... Mayor Facilitates

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Proj. No. 14504.001 Cert. No. 3 St. Paul, MN, January 6, 2011

To City of Lake Elmo, Minnesota Owner

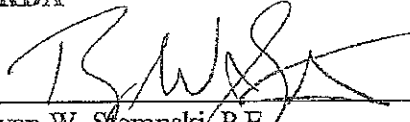
This Certifies that T.A. Schifsky and Sons, Inc., Contractor

For 2010 Street and Water Quality Improvements

Is entitled to Thirty Four Thousand Five Hundred Fourteen Dollars and 92/100 (\$34,514.92)

being 3rd estimate for partial payment on contract with you dated June 4, 2010

Received payment in full of above Certificate. TKDA

T.A. Schifsky and Sons, Inc., 2011   
Ryan W. Stempick, P.E.

### RECAPITULATION OF ACCOUNT

	CONTRACT PLUS EXTRAS	PAYMENTS	CREDITS
Contract price plus extras	\$ 425,565.41		
All previous payments		\$ 376,683.91	
All previous credits			
Extra No.			
Change Order No. 1	\$ 8,805.00		
Change Order No. 3	\$ 3,099.55		
" "			
" "			
Credit No.			\$ -
" "			
" "			
" "			
AMOUNT OF THIS CERTIFICATE		\$ 34,514.92	
Totals	\$ 437,469.96	\$ 411,198.83	\$ -
Credit Balance		\$ -	
There will remain unpaid on contract after payment of this Certificate		\$ 26,271.13	
	\$ 437,469.96	\$ 437,469.96	\$ -

TKDA  
Engineers-Architects-Planners Saint Paul, Minnesota 55101

**PERIODICAL ESTIMATE FOR PARTIAL PAYMENTS**

Estimate No. 3 Period Ending January 6, 20 11 Page 1 of 1 Proj. No. 14504.001  
Contractor T.A. Schifsky and Sons, Inc. Original Contract Amount 425,565.41  
Project 2010 Street and Water Quality Improvements  
Location City of Lake Elmo, Minnesota

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Total Contract Work Completed		\$	<u>415,352.35</u>
Total Approved Credits		\$	<u>0.00</u>
Total Approved Extra Work Completed	\$	<u>0.00</u>	
Approved Extra Orders Amount Completed		\$	<u>0.00</u>
Total Amount Earned This Estimate		\$	<u>415,352.35</u>

Less Approved Credits	\$	<u>0.00</u>	
Less 1 % Retained	\$	<u>4,153.52</u>	
<b>(work has been completed on Jane Rd, Isle Ave, and 53rd St; retainage reduced to cover the work on 57th St only, which is to be completed by 6-10-11)</b>			
Less Previous Payments	\$	<u>376,683.91</u>	
Total Deductions		\$	<u>380,837.43</u>
Amount Due This Estimate		\$	<u>34,514.92</u>

Contractor \_\_\_\_\_  
T.A. Schifsky and Sons, Inc.

Date \_\_\_\_\_

Engineer \_\_\_\_\_  
Ryan W. Stempski, P.E.

Date \_\_\_\_\_

PAY ESTIMATE NO. 3		PERIOD ENDING: January 6, 2011				
2010 STREET & WATER QUALITY IMPROVEMENTS						
CITY OF LAKE ELMO, MINNESOTA						
TKDA PROJECT NO. 14504.001						
ITEM NO.	DESCRIPTION	UNIT	CONTRACT QUANTITY	QUANTITY TO DATE	UNIT PRICE	AMOUNT TO DATE
<b>JANE NORTH ROAD</b>						
1	MOBILIZATION	LS	1	1.0	\$ 3,500.00	\$ 3,500.00
2	TRAFFIC CONTROL	LS	1	1.0	\$ 309.00	\$ 309.00
3	SILT FENCE	LF	465	934.0	\$ 2.06	\$ 1,924.04
4	INLET PROTECTION	EA	2	5.0	\$ 82.40	\$ 412.00
5	SALVAGE & REINSTALL MAILBOX	EA	11	11.0	\$ 66.95	\$ 736.45
6	CLEAR & GRUB TREE	EA	2	7.0	\$ 206.00	\$ 1,442.00
7	SALVAGE & REINSTALL SIGN	EA	3	-	\$ 123.60	\$ -
8	SAWCUT PAVEMENT (ALL TYPES)	LF	318	297.0	\$ 1.03	\$ 305.91
9	REMOVE & DISPOSE OF EXIST. BITUMINOUS PAVEMENT (DRIVEWAY)	SY	195	348.0	\$ 1.55	\$ 539.40
10	REMOVE & DISPOSE OF EXIST. PAVEMENT (STREETS)	SY	2487	2,487.0	\$ 1.13	\$ 2,810.31
11	REMOVE & DISPOSE OF EXIST. STORM SEWER MANHOLE	EA	2	2.0	\$ 618.00	\$ 1,236.00
12	REMOVE & DISPOSE OF EXIST. STORM SEWER (ALL TYPES & SIZES)	LF	22	22.0	\$ 18.54	\$ 407.88
13	COMMON EXCAVATION (P)	CY	1370	1,370.0	\$ 7.73	\$ 10,590.10
14	SUBGRADE PREPARATION	RS	10	10.0	\$ 169.95	\$ 1,699.50
15	PLACE & COMPACT RECLAIMED MATERIAL (FROM OTHER SITES) (LV)	CY	1046	611.0	\$ 4.12	\$ 2,517.32
16	2360 TYPE LV 3 BITUMINOUS NON-WEARING COURSE	TN	210	203.0	\$ 57.57	\$ 11,686.71
17	2360 TYPE LV 4 BITUMINOUS WEARING COURSE	TN	210	210.0	\$ 57.57	\$ 12,089.70
18	BITUMINOUS MATERIAL FOR TACK COAT	GAL	117	115.0	\$ 2.06	\$ 236.90
19	2"- 2360 TYPE LV 4 BITUMINOUS WEARING COURSE, DRIVE	SY	195	348.0	\$ 10.61	\$ 3,692.28
20	SAW & SEAL STREET (40' INTERVALS)	LF	497	475.0	\$ 1.67	\$ 793.25
21	D412 CONCRETE CURB & GUTTER	LF	2140	2,130.0	\$ 7.93	\$ 16,890.90
22	12" RCP CL. 5 STORM SEWER PIPE	LF	22	22.0	\$ 30.90	\$ 679.80
23	48" DIAMETER MANHOLE, TYPE 406S (0'-10' DEPTH)	EA	1	1.0	\$ 2,266.00	\$ 2,266.00
24	CATCH BASIN, TYPE 404S	EA	1	1.0	\$ 1,957.00	\$ 1,957.00
25	4" PERFORATED PVC EDGE DRAIN W/BACKFILL & WRAP	LF	24	24.0	\$ 9.27	\$ 222.48
26	EROSION STABILIZATION MAT, CL. 2	SY	49	49.0	\$ 5.15	\$ 252.35
27	DITCH CHECK	EA	3	3.0	\$ 412.00	\$ 1,236.00
28	INFILTRATION DITCH	LF	125	125.0	\$ 20.60	\$ 2,575.00
29	RAIN GARDEN	EA	1	1.0	\$ 927.00	\$ 927.00
30	RAIN GARDEN WSUMP	EA	2	2.0	\$ 1,442.00	\$ 2,884.00
31	MnDOT SEED MIX 328 W/ FERTILIZER & WOOD FIBER BLANKET	SY	175	80.0	\$ 3.61	\$ 288.80
32	SHORT GRASS WOODS EDGE SAVANNA W/ENHANCEMENT AND WOOD FIBER BLANKET	SY	432	205.0	\$ 4.64	\$ 951.20
33	SODDING	SY	663	1,048.0	\$ 2.58	\$ 2,703.84
<b>SUBTOTAL JANE NORTH ROAD</b>						<b>\$ 90,763.12</b>
<b>ISLE AVENUE NORTH</b>						
1	MOBILIZATION	LS	1	1.0	\$ 4,444.00	\$ 4,444.00
2	TRAFFIC CONTROL	LS	1	1.0	\$ 306.00	\$ 306.00
3	SILT FENCE	LF	195	202.0	\$ 1.02	\$ 206.04
4	INLET PROTECTION	EA	3	3.0	\$ 81.60	\$ 244.80
5	SALVAGE & REINSTALL MAILBOX	EA	14	14.0	\$ 86.70	\$ 1,213.80
6	SAWCUT PAVEMENT (ALL TYPES)	LF	341	252.0	\$ 1.15	\$ 289.80
7	REMOVE & DISPOSE OF EXIST. BITUMINOUS PAVEMENT (DRIVEWAY)	SY	134	155.0	\$ 1.53	\$ 237.15
8	REMOVE & DISPOSE OF EXIST. CONCRETE PAVEMENT (DRIVEWAY)	SY	50	7.0	\$ 3.06	\$ 21.42
9	SUBGRADE CORRECTION	SY	1440	1,528.0	\$ 3.06	\$ 4,675.68
10	LOAD & HAUL RECLAIMED MATERIAL (LV)	CY	414	260.0	\$ 5.97	\$ 1,552.20
11	RECLAIM EX. BIT. AND BASE MATERIALS	SY	6520	6,747.0	\$ 0.87	\$ 5,869.89
12	SUBGRADE PREPARATION OF RECLAIMED SURFACE	RS	16	16.0	\$ 102.00	\$ 1,632.00
13	2360 TYPE LV 3 BITUMINOUS NON-WEARING COURSE	TN	517	544.0	\$ 56.50	\$ 30,736.00
14	2360 TYPE LV 4 BITUMINOUS WEARING COURSE	TN	517	525.7	\$ 56.50	\$ 29,704.31
15	BITUMINOUS MATERIAL FOR TACK COAT	GAL	289	210.0	\$ 2.04	\$ 428.40
16	2"- 2360 TYPE LV 4 BITUMINOUS WEARING COURSE, DRIVE	SY	156	155.0	\$ 10.51	\$ 1,629.05
17	6" CONCRETE DRIVE	SY	50	3.0	\$ 31.62	\$ 94.86
18	SAW & SEAL STREET (40' INTERVALS)	LF	1121	1,120.0	\$ 1.65	\$ 1,848.00
19	D412 CONCRETE CURB & GUTTER	LF	3304	3,285.0	\$ 7.65	\$ 25,190.25
20	SAWCUT INLET	EA	3	-	\$ 25.50	\$ -
21	CL. 3 RIPRAP W/ GEOTEXTILE FILTER FABRIC	CY	4	4.0	\$ 112.20	\$ 448.80
22	EROSION STABILIZATION MAT, CL. 2	SY	6	6.0	\$ 10.20	\$ 61.20
23	DITCH GRADING	LF	35	35.0	\$ 9.18	\$ 321.30
24	RAIN GARDEN	EA	1	1.0	\$ 918.00	\$ 918.00
25	MnDOT SEED MIX 250 W/ FERTILIZER & WOOD FIBER BLANKET	SY	78	650.0	\$ 3.57	\$ 2,320.50
26	SODDING	SY	1080	1,707.0	\$ 3.06	\$ 5,223.42
<b>SUBTOTAL ISLE AVENUE NORTH</b>						<b>\$ 119,656.87</b>

PAY ESTIMATE NO. 3			PERIOD ENDING:		January 6, 2011	
2010 STREET & WATER QUALITY IMPROVEMENTS						
CITY OF LAKE ELMO, MINNESOTA						
TKDA PROJECT NO. 14604.001						
ITEM NO.	DESCRIPTION	UNIT	CONTRACT QUANTITY	QUANTITY TO DATE	UNIT PRICE	AMOUNT TO DATE
<b>53RD STREET NORTH</b>						
1	MOBILIZATION	LS	1	1.0	\$ 4,000.00	\$ 4,000.00
2	TRAFFIC CONTROL	LS	1	1.0	\$ 306.00	\$ 306.00
3	SILT FENCE	LF	105	136.0	\$ 2.04	\$ 277.44
4	INLET PROTECTION	EA	8	7.0	\$ 81.60	\$ 571.20
5	SAWCUT PAVEMENT (ALL TYPES)	LF	446	351.0	\$ 1.02	\$ 358.02
6	REMOVE & DISPOSE OF EXIST. BITUMINOUS PAVEMENT (DRIVEWAY)	SY	197	196.0	\$ 1.53	\$ 299.88
7	REMOVE & DISPOSE OF EXIST. CONCRETE PAVEMENT (DRIVEWAY)	SY	35	-	\$ 3.06	\$ -
8	REMOVE & DISPOSE OF EXIST. STORM SEWER MANHOLE	EA	2	2.0	\$ 714.00	\$ 1,428.00
9	REMOVE & DISPOSE OF EXIST. STORM SEWER (ALL TYPES & SIZES)	LF	30	30.0	\$ 7.14	\$ 214.20
10	SUBGRADE CORRECTION	SY	2520	44.0	\$ 3.08	\$ 134.64
11	LOAD & HAUL RECLAIMED MATERIAL (LV)	CY	411	411.0	\$ 6.12	\$ 2,515.32
12	RECLAIM EX. BIT. AND BASE MATERIALS	SY	10500	10,700.0	\$ 0.77	\$ 8,239.00
13	SUBGRADE PREPARATION OF RECLAIMED SURFACE	RS	32	32.0	\$ 85.00	\$ 2,720.00
14	2360 TYPE LV 3 BITUMINOUS NON-WEARING COURSE	TN	1,064	1,042.7	\$ 56.00	\$ 58,390.64
15	2360 TYPE LV 4 BITUMINOUS WEARING COURSE	TN	875	890.0	\$ 56.00	\$ 49,840.00
16	BITUMINOUS MATERIAL FOR TACK COAT	GAL	490	380.0	\$ 2.04	\$ 775.20
17	2"- 2360 TYPE LV 4 BITUMINOUS WEARING COURSE, DRIVE	SY	217	189.0	\$ 10.51	\$ 1,986.39
18	6" CONCRETE DRIVE	SY	35	-	\$ 33.66	\$ -
19	REMOVE & REPLACE BITUMINOUS FLUME	EA	2	2.0	\$ 102.00	\$ 204.00
20	SAW & SEAL STREET (40' INTERVALS)	LF	2205	2,356.0	\$ 1.65	\$ 3,887.40
21	CONNECT DRAINTILE TO EXISTING STORM SEWER	EA	1	1.0	\$ 306.00	\$ 306.00
22	ADJUST CATCH BASIN CASTING & INSTALL CONCRETE WINGS	EA	6	6.0	\$ 153.00	\$ 918.00
23	12" RCP CL. 5 STORM SEWER PIPE	LF	30	30.0	\$ 27.54	\$ 826.20
24	48" DIAMETER MANHOLE, TYPE 406S (0'-10' DEPTH)	EA	1	1.0	\$ 2,244.00	\$ 2,244.00
25	CATCH BASIN, TYPE 404S	EA	1	1.0	\$ 1,734.00	\$ 1,734.00
26	4" PERFORATED PVC EDGE DRAIN W/BACKFILL & WRAP	LF	15	20.0	\$ 15.30	\$ 306.00
27	EROSION STABILIZATION MAT, CL. 2	SY	12	7.0	\$ 6.12	\$ 42.84
28	RAIN GARDEN	EA	2	1.0	\$ 918.00	\$ 918.00
29	SODDING	SY	2,270	3,435.0	\$ 2.55	\$ 8,758.25
<b>SUBTOTAL 53RD STREET NORTH</b>						<b>\$ 152,201.62</b>
<b>57TH STREET NORTH</b>						
1	MOBILIZATION	LS	1	1.0	\$ 2,000.00	\$ 2,000.00
2	TRAFFIC CONTROL	LS	1	1.0	\$ 306.00	\$ 306.00
3	SILT FENCE	LF	80	37.0	\$ 2.04	\$ 75.48
4	INLET PROTECTION	EA	2	2.0	\$ 81.60	\$ 163.20
5	SAWCUT PAVEMENT (ALL TYPES)	LF	196	187.0	\$ 1.02	\$ 190.74
6	REMOVE & DISPOSE OF EXIST. BITUMINOUS PAVEMENT (DRIVEWAY)	SY	89	89.0	\$ 2.04	\$ 181.56
7	SUBGRADE CORRECTION	SY	683	883.0	\$ 3.06	\$ 2,089.98
8	LOAD & HAUL RECLAIMED MATERIAL (LV)	CY	233	233.0	\$ 5.97	\$ 1,391.01
9	RECLAIM EX. BIT. AND BASE MATERIALS	SY	3,767	3,767.0	\$ 0.77	\$ 2,900.59
10	SUBGRADE PREPARATION OF RECLAIMED SURFACE	RS	11	11.0	\$ 81.60	\$ 897.60
11	2360 TYPE LV 3 BITUMINOUS NON-WEARING COURSE	TN	382	371.0	\$ 57.57	\$ 21,358.47
12	2360 TYPE LV 4 BITUMINOUS WEARING COURSE	TN	314	-	\$ 57.57	\$ -
13	BITUMINOUS MATERIAL FOR TACK COAT	GAL	176	-	\$ 2.04	\$ -
14	2"- 2360 TYPE LV 4 BITUMINOUS WEARING COURSE, DRIVE	SY	89	76.0	\$ 10.51	\$ 798.76
15	SAW & SEAL STREET (40' INTERVALS)	LF	791	-	\$ 1.65	\$ -
16	CONNECT DRAINTILE TO EXISTING STORM SEWER	EA	4	2.0	\$ 255.00	\$ 510.00
17	ADJUST CATCH BASIN CASTING & INSTALL CONCRETE WINGS	EA	2	2.0	\$ 153.00	\$ 306.00
18	4" PERFORATED PVC EDGE DRAIN W/BACKFILL & WRAP	LF	380	422.0	\$ 10.20	\$ 4,304.40
19	SODDING	SY	753	648.0	\$ 2.55	\$ 1,652.40
<b>SUBTOTAL 57TH STREET NORTH</b>						<b>\$ 39,126.19</b>
<b>CHANGE ORDER NO. 1</b>						
1	CL. 5 AGGREGATE BASE	TN	587	707.0	\$ 15.00	\$ 10,605.00
<b>SUBTOTAL CHANGE ORDER NO. 1</b>						<b>\$ 10,605.00</b>
<b>CHANGE ORDER NO. 3</b>						
1	BITUMINOUS RAMPING OF C.B.'S ON 57TH STREET	LS	1	1.0	\$ 3,099.55	\$ 3,099.55
<b>SUBTOTAL CHANGE ORDER NO. 3</b>						<b>\$ 3,099.55</b>
<b>TOTAL PAY ESTIMATE NO. 3</b>						<b>\$ 415,352.35</b>

# TKDA

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February 1, 2011

Honorable Mayor and City Council Members  
City of Lake Elmo  
3800 Laverne Avenue  
Lake Elmo, Minnesota 55042

Re: Engineer's Recommendation of Final Acceptance – Jane Road, Isle Avenue, and 53<sup>rd</sup> Street (Excluding 57<sup>th</sup> Street)  
2010 Street and Water Quality Improvement Project  
City of Lake Elmo, Minnesota  
TKDA Project No. 14504.001

Dear Mayor and City Council Members:

We have reviewed the work under Contract for the 2010 Street and Water Quality Improvement Project, and find that a portion of the project has been fully completed in all respects according to the Contract, Plans and Specifications as prepared by TKDA. The Improvements for Jane Road, Isle Avenue, and 53<sup>rd</sup> Street are hereby declared to be complete and acceptance of the Contractor's work (T.A. Schifsky and Sons, Inc.) is recommended.

The work on 57<sup>th</sup> Street remains incomplete. The completion date for 57<sup>th</sup> Street was extended to June 10, 2011, approved by the City Council on September 21, 2010. Retainage is being withheld in the amount of \$4,153.52 until work is fully completed for 57<sup>th</sup> Street.

The one-year Warranty Period for Jane Road, Isle Avenue, and 53<sup>rd</sup> Street began on November 1, 2010, and will end on October 31, 2011.

Sincerely,



Ryan W. Stempski, P.E.  
Project Manager

cc: Bruce Messelt, City Administrator  
Jack Griffin, City Engineer





## MAYOR & COUNCIL COMMUNICATION

DATE: 2/01/2011  
REGULAR  
ITEM #: 4  
PUBLIC HEARING  
MOTION: Resolution 2011-004

**AGENDA ITEM:** 50th Street and Kimbro Avenue Street Improvements – Public Improvement Hearing and Resolution No. 2011-004 Ordering Improvement and the Preparation of Plans and Specifications

**SUBMITTED BY:** Ryan Stempski, Assistant City Engineer

**THROUGH:** Bruce A Messelt, City Administrator *BAM*

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

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**SUMMARY AND ACTION REQUESTED:** Pursuant to Minnesota Statutes, Sections 429.011 to 429.111, a Public Improvement Hearing has been noticed for February 1, 2011, at or near 7:00 P.M. to consider making improvements to the following street segments:

- 50th Street (from Kimbro Avenue to Lake Elmo Avenue), and
- Kimbro Avenue (from 50<sup>th</sup> Street to 47<sup>th</sup> Street)

The City Council is respectfully requested to convene the Public Hearing and, upon completion of the Public Hearing, affirmatively consider taking the following action:

*“Move to adopt Resolution No. 2011-004, ordering the Improvement and the preparation of the Plans and Specifications.”*

**STAFF REPORT AND BACKGROUND INFORMATION:** A Feasibility Report for improvements to 50th Street and Kimbro Avenue was adopted by the City Council at the January 4, 2011, council meeting. The Report recommends a “Shape and Pave” Improvement to provide a bituminous surfaced roadway for the existing gravel roadway. The estimated total project cost of the recommended improvements is \$281,000. Should the improvements be ordered, the project will be partially financed through special assessments to six benefitting properties, each with a proposed unit assessment of \$6,700. The remaining project costs would need to be financed through the city general levy.

A neighborhood meeting was held on January 18, 2011, for the property owners along the proposed improvements. The meeting was attended by 3 of the 6 benefitting properties. Each of the properties expressed support for the project and further expressed safety concerns along the roadway.

The attached notice was published in the official newspaper and individual notifications were sent to each address that will be specially assessed. The adopted Feasibility Report is available for review at City Hall.

**RECOMMENDATION:** Based upon the above information and staff report, it is recommended that the City Council adopt Resolution No. 2011-004, Ordering the Improvement and the preparation of Plans and Specifications for the 50th Street and Kimbro Avenue Street Improvements. Please note that because this project was initiated by the City Council, and not by a resident petition, the improvements must be ordered by a 4/5th majority of the City Council by undertaking the following action:

*“Move to adopt Resolution No. 2011-004, ordering the Improvement and the preparation of the Plans and Specifications.”*

Alternatively, the City Council may choose not to order a portion or all of the improvements. If the latter is undertaken the suggested motion would be:

*“Move to adopt Resolution No. 2011-004, ordering the Improvement and the preparation of the Plans and Specifications [as modified at tonight’s meeting].”*

**ATTACHMENTS:**

1. Resolution No. 2011-004
2. Notice of Public Hearing

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item ..... City Administrator
- Report/Presentation of Item ..... City Engineer
- Questions from Council to Staff ..... Mayor Facilitates
- Opening of Public Hearing ..... Mayor Facilitates
- Conduct Public Hearing ..... Mayor Facilitates
- Closing of Public Hearing ..... Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion/Comments ..... Mayor Facilitates
- Action on Motion ..... Mayor Facilitates

CITY OF LAKE ELMO  
NOTICE OF HEARING  
50<sup>th</sup> STREET AND KIMBRO AVENUE STREET IMPROVEMENTS

Notice is hereby given that the City Council of Lake Elmo will meet in the council chambers of the city hall at or approximately after 7:00 P.M. on Tuesday, February 1, 2011, to consider the making of the following improvements, pursuant to Minnesota Statutes, Sections 429.011 to 429.111;

The improvement of the **city streets including 50<sup>th</sup> Street from Lake Elmo Avenue (CSAH 17) to Kimbro Avenue and Kimbro Avenue from 50<sup>th</sup> Street to 47<sup>th</sup> Street** will consist of shaping the existing gravel surface, adding aggregate base as necessary, and providing a new bituminous surface in the current approximate location and grade.

The area proposed to be assessed for these improvements include properties abutting the above referenced streets or properties that gain access to their property from the above referenced streets. The estimated total cost of the street improvements is \$281,000, as approved by the Lake Elmo City Council. A reasonable estimate of the impact of the assessment to each property will be available at the hearing. Such persons as desire to be heard with reference to the proposed improvements will be heard at this meeting.

**DATED:** January 4, 2011

**BY ORDER OF THE LAKE ELMO CITY COUNCIL**

**Dean Johnston, Mayor**

*(Published in the Oakdale-Lake Elmo Review on January 12, 2011 and January 19, 2011)*

CITY OF LAKE ELMO  
WASHINGTON COUNTY  
STATE OF MINNESOTA

RESOLUTION NO. 2011-004

**A RESOLUTION ORDERING THE IMPROVEMENT AND  
PREPARATION OF PLANS AND SPECIFICATIONS  
FOR THE 50<sup>TH</sup> STREET AND KIMBRO AVENUE STREET  
IMPROVEMENTS**

*WHEREAS, pursuant a resolution of the City Council adopted the 4th day of January, 2011, the Council ordered a hearing on Improvement for the 50<sup>th</sup> Street and Kimbro Avenue Street Improvements, and*

*WHEREAS, ten days' mailed notice and two weeks published notice of the hearing was given, and the hearing was held thereon on the 1st day of February, 2011, at which all persons desiring to be heard will be given the opportunity to be heard thereon,*

*WHEREAS, the feasibility report states that the project is necessary, cost-effective, and feasible,*

*NOW, THEREFORE, BE IT RESOLVED,*

- 1. Such improvement is deemed necessary, cost-effective, and feasible as detailed in the Feasibility Report.*
- 2. Such improvement is hereby ordered as proposed in the Council resolution adopted the 1st day of February, 2011.*
- 3. TKDA is hereby designated as the engineer for this improvement. The engineer shall prepare Plans and Specifications for the making of such improvement.*
- 4. The City Council declares its official intent to reimburse itself for the costs of the improvement from the proceeds of a tax exempt bond.*

Date: February 1, 2011

CITY OF LAKE ELMO

By: \_\_\_\_\_

Dean A. Johnston  
Mayor

ATTEST:

\_\_\_\_\_  
Bruce A. Messelt  
City Administrator

**CERTIFICATION**

I hereby certify that the foregoing Resolution is a true and correct copy of a resolution presented to and adopted by the Council of the City of Lake Elmo at a duly authorized meeting thereof held on 1st day of February 2011, as shown by the minutes of said meeting in my possession.

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Sharon Lumby  
City Clerk

(Seal)



# MAYOR & COUNCIL COMMUNICATION

DATE: 2/01/2011  
REGULAR  
ITEM #: 5  
MOTION: Ordinance 08-039  
Ordinance 08-040

**AGENDA ITEM:** Consider Approval of Ordinance 08-039 Granting Xcel Energy a Franchise Agreement for Provision of Natural Gas and Ordinance 08-040 Granting Xcel Energy a Franchise Agreement for Provision of Electrical Power

**SUBMITTED BY:** Bruce A Messelt, City Administrator *BAM*

**THROUGH:** Dave Snyder, City Attorney

**REVIEWED BY:** Jack Griffin, City Engineer

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**SUMMARY AND ACTION REQUESTED:** The City Council is respectfully requested to welcome Ms. Colette Jurek of Xcel Energy and receive a brief presentation by Ms. Jurek and City staff regarding potential renewal of Natural Gas and Electric Franchise Agreements.

Upon completion of this presentation, Council direction is sought with respect to renewing the proposed Franchise Agreements, requesting revisions to the proposed Franchise Agreements, or utilizing the existing City Right-of-Way Ordinance in lieu of renewing the Franchise Agreements. The recommended motion to provide such direction would be as follows:

*“Move to direct City staff to undertake the following actions with respect to Xcel Energy’s provision of Natural Gas and Electrical Power: \_\_\_\_\_.”*

Alternatively, the City Council may approve the proposed Franchise Agreements, as presented by Xcel energy, by undertaking the following action:

*“Move to approve Ordinance 08-039 and Ordinance 08-040, respectively granting Xcel Energy Franchise Agreements for Provision of Natural Gas and Electrical Power.”*

**BACKGROUND INFORMATION:** The City of Lake Elmo’s current Franchise Agreements with Xcel Energy for natural gas and electrical services have expired. Xcel Energy is proposing new Franchise Agreements, attached, for a duration of 20-years.

Ms. Colette Jurek, Xcel Manager for Community & Local Government Relations, will be present at tonight's meeting to explain the proposed Franchise Agreements and their benefit to the City and Utility. In addition, Ms. Jurek will be presenting the City with a \$1,000 grant to help defray the costs of the new Welcome Sign located on Keats Ave.

Following Ms. Jurek's presentation, the City Attorney and Engineer will discuss City considerations with respect to the proposed Franchise Agreements and explain the options available to the City, including accepting the proposed Agreements, continued negotiation with Xcel Energy, or directing that the City's existing Right-of-Way Ordinance be applied in lieu of a Franchise Agreement.

**STAFF REPORT:** After reviewing the Franchise Agreements, City Staff believe the City Council has three options, two of which would be proposed as of greater benefit to the City:

1. Approve Ordinances 08-039 and 08-040, as presented by Xcel Energy;
2. Direct that the City's existing Right-of-Way Ordinance be applied in lieu of a Franchise Agreement; or
3. Direct City Staff to work with Xcel Energy to revise the Franchise Agreements to better reference the relevant Lake Elmo Ordinances.

With respect to Option #3: The City has an updated Right-of-Way Ordinance that is consistently followed for all private utilities located within Lake Elmo. Changing the conditions of these requirements for Xcel, as proposed under the Xcel Franchise Agreements would mean having two different standards by which to review and enforce permits. This would also require more staff time and the potential for confusion in Right-of-Way management. Here are some specific examples of where the City would want to synergize language:

- The Franchise Agreement waives the right for the City to collect any form of security on Right-of-Way Permits.
- The Franchise Agreement allows open cutting of public roads. Our policy is to require trenchless technologies.
- The Franchise Agreement allows Xcel to manage restoration, which is not consistent with the Lake Elmo Right-of-Way Ordinance.
- Relocations are covered in Chapter 94.62 of the Lake Elmo Ordinance. The Franchise Agreement has conditions which differ from these.
- Tree trimming is allowed in the Franchise Agreement, as Xcel find necessary and without any parameters. Our Ordinance is silent on this topic but our Forester is usually involved in assisting and advising.

One of the additional benefits of a Franchise Agreement would be the ability to impose a Franchise Fee at some future time, to be determined by the City Council. It should be noted,

however, that utilizing the City’s current Right-of-Way Ordinance does not obviate passage of a Franchise Agreement at some later date, should Xcel Energy and the City desire to do so.

**RECOMMENDATION:** Based upon the above information and staff report, it is recommended that the City Council renewing the proposed Franchise Agreements, requesting revisions to the proposed Franchise Agreements, or utilizing the existing City Right-of-Way Ordinance in lieu of renewing the Franchise Agreements. The recommended motion to provide such direction would be as follows:

*“Move to direct City staff to undertake the following actions with respect to Xcel Energy’s provision of Natural Gas and Electrical Power: \_\_\_\_\_.”*

Alternatively, the City Council may approve the proposed Franchise Agreements, as presented by Xcel energy, by undertaking the following action:

*“Move to approve Ordinance 08-039 and Ordinance 08-040, respectively granting Xcel Energy Franchise Agreements for Provision of Natural Gas and Electrical Power.”*

**ATTACHMENTS:**

1. Ordinance 08-039: Proposed Xcel Energy Natural Gas Franchise Agreement
2. Ordinance 08-040: Proposed Xcel Energy Electrical Power Franchise Agreement
3. City Right-of-Way Ordinance

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item ..... City Administrator
- Presentation by Xcel Energy ..... Ms. Jurek
- Report on Item ..... City Engineer/City Attorney
- Questions from Council to Staff/Guest..... Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion/Comments ..... Mayor Facilitates
- Action on Motion..... Mayor Facilitates



**GAS FRANCHISE ORDINANCE**

**ORDINANCE NO. 08-039**

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

**AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF LAKE ELMO, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.**

**THE CITY COUNCIL OF THE CITY OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA, ORDAINS:**

**SECTION 1. DEFINITIONS.**

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- 1.1 **City.** The City of Lake Elmo, County of Washington, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate Gas retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 **Company.** Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy its successors and assigns.
- 1.5 **Gas.** "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.
- 1.6 **Gas Facilities.** Pipes, mains, regulators, and other facilities owner or operated by Company for the purpose of providing gas service for public use.
- 1.7 **Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City Hall, 3800 Laverne Avenue North, Lake Elmo, MN 55042. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.8 **Public Ground.** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

1.9 **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

## **SECTION 2. ADOPTION OF FRANCHISE.**

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish Gas energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

2.2 **Effective Date: Written Acceptance.** This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

2.3 **Service and Rates.** The service to be provided and the rates to be charged by Company for Gas service in City are subject to the jurisdiction of the Commission.

2.4 **Publication Expense.** The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

2.5 **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

## **SECTION 3. LOCATION, OTHER REGULATIONS.**

3.1 **Location of Facilities.** Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Gas Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not

inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place, provided, at City's request, Company will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project.

3.2 Field Locations. Company shall provide field locations for its underground Gas Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Gas Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

3.5 Avoid Damage to Gas Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.

3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Gas Facilities.

## **SECTION 4. RELOCATIONS.**

4.1 Relocation of Gas Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City shall reimburse Company for Non-Betterment Costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Gas Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

4.2 Relocation of Gas Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

4.3 Projects with Federal Funding. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Electric Facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

## **SECTION 5. TREE TRIMMING.**

Company is also granted the permission and authority to trim all shrubs and trees, including roots, in the Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of Gas Facilities, provided that Company shall save City harmless from any liability in the premises.

## **SECTION 6. INDEMNIFICATION.**

6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

## **SECTION 7. VACATION OF PUBLIC WAYS.**

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

## **SECTION 8. CHANGE IN FORM OF GOVERNMENT.**

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

## **SECTION 9. FRANCHISE FEE.**

The City at the time of adopting this franchise agreement does not desire to require that Company collect a franchise fee from its customers in the City. At a future date during the term of this franchise agreement, the City may determine that it desires Company to collect a franchise fee. If so, the City may give Company Notice to amend this franchise agreement to authorize collection of a franchise fee by separate ordinance in an amount and upon such terms and conditions as Company at that time is willing to incorporate in its gas franchise agreements with other cities. Upon receipt of such Notice Company shall negotiate in good faith with City to so amend this franchise agreement.

**SECTION 10. PROVISIONS OF ORDINANCE.**

10.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

**SECTION 11. AMENDMENT PROCEDURE.**

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

**SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.**

This franchise supersedes any previous Gas franchise granted to Company or its predecessor.

Passed and approved: \_\_\_\_\_, 2010.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Date Published: \_\_\_\_\_

## ELECTRIC FRANCHISE ORDINANCE

ORDINANCE NO. 08-040

### CITY OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF LAKE ELMO, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA, ORDAINS:

#### SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- 1.1 **City.** The City of Lake Elmo, County of Washington, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 **Company.** Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy its successors and assigns.
- 1.5 **Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.
- 1.6 **Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City Hall, 3800 Laverne Avenue North, Lake Elmo, MN 55042. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.7 **Public Ground.** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

1.8 **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

## **SECTION 2. ADOPTION OF FRANCHISE.**

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

2.2 **Effective Date: Written Acceptance.** This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

2.3 **Service and Rates.** The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

2.4 **Publication Expense.** The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

2.5 **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

## **SECTION 3. LOCATION, OTHER REGULATIONS.**

3.1 **Location of Facilities.** Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be



subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

3.2 Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

3.5 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

3.7 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions acceptable to Company whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

#### **SECTION 4. RELOCATIONS.**

4.1 Relocation of Electric Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Electric Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Electric Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

4.2 Relocation of Electric Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

4.3 Projects with Federal Funding. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Electric Facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

## **SECTION 5. TREE TRIMMING.**

Company may trim all trees and shrubs in the Public Grounds and Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

## **SECTION 6. INDEMNIFICATION.**

6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

## **SECTION 7. VACATION OF PUBLIC WAYS.**

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

## **SECTION 8. CHANGE IN FORM OF GOVERNMENT.**

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

**SECTION 9. FRANCHISE FEE.**

The City at the time of adopting this franchise agreement does not desire to require that Company collect a franchise fee from its customers in the City. At a future date during the term of this franchise agreement, the City may determine that it desires Company to collect a franchise fee. If so, the City may give Company Notice to amend this franchise agreement to authorize collection of a franchise fee by separate ordinance in an amount and upon such terms and conditions as Company at that time is willing to incorporate in its electric franchise agreements with other cities. Upon receipt of such Notice Company shall negotiate in good faith with City to so amend this franchise agreement.

**SECTION 10. PROVISIONS OF ORDINANCE.**

10.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

**SECTION 11. AMENDMENT PROCEDURE.**

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

**SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.**

This franchise supersedes any previous electric franchise granted to Company or its predecessor.

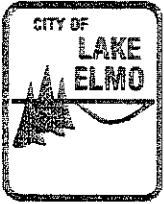
Passed and approved: \_\_\_\_\_, 2010.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Date Published: \_\_\_\_\_



# MAYOR & COUNCIL COMMUNICATION

DATE: 2/01/2011  
REGULAR  
ITEM #: 6  
DISCUSSION

**AGENDA ITEM:** Municipal Toolkit for Jobs and Business Retention and Expansion

**SUBMITTED BY:** Mayor and City Council

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

**REVIEWED BY:** - NA -

---

**SUMMARY AND ACTION REQUESTED:** The City Council recently requested receipt of a brief presentation regarding available municipal tools and practices in seeking to retain and expand local Jobs and Business activity. As such, Mr. Paul Steinman and Mr. Tony Schertler of Springsted, Inc., will be present to discuss these tools and best practices and answer Council questions.

**BACKGROUND INFORMATION & STAFF REPORT:** During its organizational meetings for 2011, the City Council elected to focus on and form a new Council Subcommittee on Job & Business Retention and Expansion. During these discussions, interest was expressed by the City Council in learning more about the tools available and practices utilized by similar municipalities.

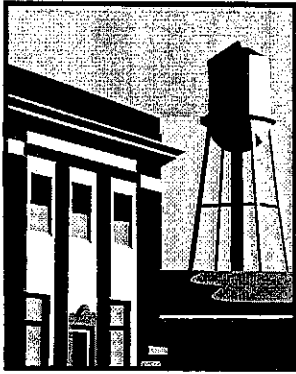
Therefore, at the direction of the City Council, Mr. Paul Steinman and Mr. Tony Schertler of Springsted, Inc. has been invited to present a brief overview and summary of available municipal tools and common practices in seeking to retain and expand local Jobs and Business activity. 30 minutes has been suggested as a reasonable amount of time for this discussion.

**RECOMMENDATION:** It is respectfully recommended that the City Council receive a brief presentation by and then discuss with Mr. Steinman and Mr. Tony Schertler municipal tools and common practices in seeking to retain and expand local Jobs and Business activity.

**ATTACHMENTS:** A copy of the LMNC Handbook for Cities Chapter on Development and Redevelopment is attached. Additional materials will be presented at the Council Meeting.

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item ..... City Administrator
- Report/Presentation.....Mr. Steniman
- Questions from Council to Presenter ..... Mayor Facilitates
- Public Input, if Appropriate ..... Mayor Facilitates
- Council Discussion/Direction ..... Mayor Facilitates



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**Part IV**

**REGULATORY AND DEVELOPMENT FUNCTIONS OF CITIES**

**CHAPTER 15: COMMUNITY DEVELOPMENT AND REDEVELOPMENT**

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CHAPTER 15

# Chapter 15

## Community development and redevelopment

This chapter describes the requirements for a city to establish criteria for awarding business subsidies, addresses the various development agencies cities may create, and provides a brief overview of state and federally sponsored programs for encouraging development and redevelopment. Most economic development tools can be applied to any size city. These tools are interrelated, and a city may use several for one project.

### I. Business subsidies or financial assistance

#### A. Business subsidies

Minn. Stat. §§ 116J.993 to 116J.995.

Minn. Stat. § 116J.993, subd. 3.

State law defines “business subsidy” or “subsidy” as a state or local government agency grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business in an amount greater than \$150,000.

Minn. Stat. § 116J.994, subs. 5, 11.

Minnesota Department of Employment and Economic Development (DEED).

Prior to awarding a business subsidy of more than \$150,000 (and as defined by law) to any business, a city and any Housing and Redevelopment Authority (HRA), Economic Development Authority (EDA), port authority, and nonprofit created by a local government must hold a public hearing and adopt criteria for awarding business subsidies. The public hearing notice must include a statement that either a resident or a city property owner may file a written complaint with the city if the city does not follow the business subsidy law. Written complaints must be filed within specified timelines. The criteria must include a policy regarding the wages to be paid for any jobs created. Copies of the criteria adopted by cities are found on the Minnesota Department of Employment and Economic Development (DEED) web site

Minn. Stat. § 116J.994, subd. 3.

Once the criteria are established, the grantor and the recipient must enter into subsidy agreements that meet the statutory requirements. The agreement must include an obligation to repay part or the entire subsidy if the recipient does not meet its obligations.

Minn. Stat. § 116J.993, subd. 3.

Minn. Stat. § 469.185.

Types of assistance meeting the definition of a business subsidy include: grants; contributions of real or personal property or infrastructure; the principal amount of a loan at rates below those commercially available to the recipient; any reduction or deferral of any tax or any fee; any guarantee of any payment under any loan, lease or other obligation; or any preferential use of government facilities given to a business.

Minn. Stat. § 116J.994, subd. 11.

The law imposes a 180-day statute of limitations on actions to challenge a city after approval of a business subsidy agreement. Citizens or owners of taxable property in a city may bring a civil action against the city for failure to comply with the business subsidy laws. Cities should therefore consult closely with the city attorney before awarding a business subsidy.

Minn. Stat. § 116J.993, subd. 3.

There are several exceptions to this definition, including a subsidy of less than \$150,000; subsidies for redevelopment, pollution control and land clean up, housing, industrial revenue bonds, utility property tax abatements and other similar programs.

Minn. Stat. § 116J.994, subds. 4, 7, 8.

Recipients must provide grantors with information on their progress toward the goals outlined in the agreement. The goals for increasing jobs or retaining jobs must result in local job creation and job retention. Grantors must submit the annual Minnesota Business Assistance Form (MBAF) to the Department of Employment and Economic Development (DEED) by April 1 each year for each business subsidy agreement. Local government agencies in cities with a population of 2,500 or more must submit an MBAF, regardless of whether they have awarded business subsidies. Local government agencies in cities with a population of 2,500 or less are exempt from filing the MBAF if they have not awarded a subsidy in the past five years.

## **B. Financial assistance**

Minn. Stat. § 116J.994, subd. 2.

Minn. Stat. § 116J.994, subd. 8.

Cities may offer “financial assistance” in the form of a business loan of more than \$25,000 or a guarantee of \$75,000 or more, but less than \$150,000 required to constitute a business subsidy. If a city offers such financial assistance it must develop criteria and set minimum wage floor levels as prescribed in business subsidy law. Cities granting such financial assistance must submit business assistance reports to the Department of Employment and Economic Development (DEED) within one year of granting the assistance.

# **II. City development tools**

## **A. General city development powers**

Minn. Stat. § 469.041.

Cities have authority to aid and cooperate in the planning, construction, or operation of economic development, and housing and redevelopment projects. The following is a partial list of actions cities may take, with or without compensation:

- Dedicate, sell, convey, or lease any of its interests in any property or grant easements, licenses, or any other rights or privileges to an HRA.
- Furnish parks, playgrounds, recreational, community education, water, sewer, and drainage facilities or other works adjacent to or in connection with housing and redevelopment projects.
- Grant a partial tax exemption of up to 50 percent of all local taxes for housing projects in a redevelopment district.

Minn. Stat. § 469.043, subd. 2.

Minn. Stat. § 469.192.

A statutory city, home rule charter city, economic development authority, housing and redevelopment authority, or port authority may make a loan to a business, a for-profit or nonprofit organization, or an individual for any purpose the entity is otherwise authorized to carry out under any of the laws cited.

*Judd Supply Co. v. Merchants & Mfgs. Ins. Co.*, 448 N.W.2d 895 (Minn. Ct. App. 1989).

Private development projects that receive public financial or other assistance will not necessarily become public projects that trigger competitive bidding or other state laws applicable to public works.

## B. Housing and redevelopment authorities

The predominant method of delivering and administering housing and redevelopment programs in Minnesota is through a legal public agency, accountable to city government. A city may establish this public agency, which is often the HRA. There are more than 230 HRAs in Minnesota.

### 1. Elements of an HRA

Minn. Stat. §§ 469.001 to 469.047, Minn. Stat. § 469.003.

An HRA is a public corporation with power to undertake certain types of housing and redevelopment or renewal activities. While state legislation conveys authority for housing and redevelopment in each city, it is up to the city council to formally establish an HRA before it can do business and use its powers. Once a council legally establishes an HRA, it may undertake certain types of planning and community development activities on its own with council approval.

Minn. Stat. § 469.003, subd. 1.

To create a housing and redevelopment authority, the city council must, by resolution, make the following findings required by law:

- Substandard, slum or blighted areas that cannot be redeveloped without governmental assistance; or,
- A shortage of affordable, decent, safe, and sanitary dwelling accommodations available to low-income individuals and families.

Minn. Stat. § 469.003, subds. 2, 4.

The council must pass this resolution after a public hearing. A copy of this resolution must go to the commissioner of DEED.

## 2. Area of operation for an HRA

Minn. Stat. § 469.004, subds. 1, 2.

The area of operation of a city HRA is the corporate limits of the city. County and multi-county HRAs operate in areas that include all the political subdivisions within the county or counties, except they may not undertake any project within the boundaries of a city that has not adopted a resolution authorizing the county or multi-county HRA to exercise powers within that city.

Minn. Stat. § 469.004, subd. 5.

Establishment of a county or multi-county HRA precludes the formation of city HRAs, unless the county or multi-county HRA and the commissioner of DEED agree to let the city form one.

## 3. HRA membership

Minn. Stat. § 469.003, subd. 6.

An HRA consists of five commissioners who are residents of the city. The mayor appoints and the council approves the members who serve five-year, staggered terms. City councilmembers often serve on the HRA. The entire membership of an HRA may consist of councilmembers.

24 C.F.R. 964.415.

Federal regulations require that at least one eligible resident be a member of a public housing agency board, which may be the HRA, an EDA or other public housing authority (PHA). This rule applies to any public housing agency that holds a public housing annual contributions contract with HUD or that administers Section 8 tenant-based rental assistance. The rule does not apply to state-financed public housing projects or Section 8 project-based assistance. A "small PHA exception" also exists.

Minn. Stat. § 469.003, subd. 7.

The city clerk must file a certificate of appointment for each commissioner of a city HRA and send a certified copy to the commissioner of DEED.

Minn. Stat. § 469.011, subd. 2.  
Minn. Stat. § 469.011, subd. 4.

State law allows the HRA to adopt bylaws. Commissioners may accept compensation of up to \$75 for each meeting they attend. Commissioners who are elected officials may receive daily payment for a particular day only if they do not receive any other daily payment for public service on that day. Commissioners who are public employees may not receive daily payment, but may not suffer loss in compensation or benefits as a result of their service.

## 4. HRA powers

Minn. Stat. § 469.012, subd. 1.

An HRA is primarily responsible for the planning and implementation of redevelopment and/or low-rent housing assistance programs within its area of operation. An HRA has all the powers necessary to carry out the state HRA Act, including but not limited to the following powers:

- To sue and be sued.
- To employ staff and an executive director.
- To undertake projects within its area of operation and to provide for the construction, reconstruction, improvement, extension, alteration, or repair of any project or part of a project.

- To sell, buy, own, and lease property by any means necessary, including the power of eminent domain.
- To cooperate with and use state and federal financial assistance programs.
- To develop rehabilitation and code enforcement techniques.
- To issue bonds for any of its corporate purposes backed by the pledge of revenues, grants or other contributions.
- To implement renewal or redevelopment programs using tax increment financing.
- To own, hold, improve, lease, sell or dispose of real or personal property.
- To designate substandard, slum or deteriorating areas needing redevelopment, and unsafe, unsanitary, and overcrowded housing.
- To make necessary expenditures to carry out the purposes of the HRA law.
- To develop and administer an interest reduction program to assist the financing of the construction, rehabilitation, or purchase of low- or moderate-income housing.

## 5. HRA special assessment and levy authority

Minn. Stat. § 469.001 – 469.047.

Minn. Stat. § 469.033, subd. 6.

Minn. Stat. § 275.70 to 275.74.

Minn. Stat. § 275.066.

HRA power to levy and collect taxes or special assessments is limited to the power provided in state law. Subject to a resolution of consent from the city council an HRA may levy a tax upon all taxable property within the city. (The council may give a consent that covers a series of years if they so choose or council may pass a resolution authorizing an HRA levy for a set amount of time, for example, the entire term of the bonds secured in part by an HRA levy and in part by a city levy.) State law recognizes the distinct nature of HRAs and designates them as “special taxing districts.” The maximum general allowable operational levy of HRAs is 0.0185 percent of the previous year’s taxable market value of all property in the city. The city’s total taxable market value is available from the county assessor. An HRA raises its own levy because it is a separate political subdivision and not a “local governmental unit.” Therefore, an HRA levy is not subject to levy limits but is subject to the 0.0185 percent market value limit. Levies collected by an HRA must be used only for purposes listed in the HRA Act.

Minn. Stat. § 469.107.

Minn. Stat. § 275.066.

There is crossover between HRA and EDA levies that can be confusing. Typically, EDAs are not authorized to levy taxes under state law. However, many city EDA-enabling resolutions adopt all the powers of an HRA, and then the EDA functions as a special taxing district under state law. If the enabling resolution so allows, the EDA levies a separate tax or “HRA levy” not subject to levy limits or city debt limits—but again subject to the 0.0185 percent of total city market value limit in state law. The city attorney may verify the structure and levy authority of each city’s HRA and/or EDA.

Minn. Stat. § 469.012, subd. 4.  
Minn. Stat. § 469.028.

While HRAs have the legal authority to “do whatever is necessary and convenient” to implement redevelopment, they are subject to the ordinances and laws of the city. The city council must approve HRA plans before the housing and redevelopment authority may begin implementation.

## 6. HRA contracting

Minn. Stat. § 469.015. Minn.  
Stat. § 469.015 subd. 1a.

All HRA construction work and purchases of equipment, supplies or materials that involve expenditure of more than \$100,000 must be competitively bid. An HRA (and a city) may also use the “best value alternative.” There are limited exceptions to these requirements for emergencies and certain projects, such as parking ramps and certain public transit facilities.

## 7. HRA financing

Minn. Stat. §§ 469.033 and  
469.034.

Operating funds, capital improvements, and debt retirement expenses for HRA projects may be financed by any one, or combination of, the following methods:

- Federal grants.
- Revenue bonds the HRA or local governing body sells.
- General obligation bonds the local governing body sells.
- Tax increments from redevelopment projects.
- A limited mill levy for redevelopment projects and planning activities.
- A limited mill levy for informational and relocation services.

Minn. Stat. § 429.034, subd. 1.

When an HRA issues bonds, the revenue generated must be used for the projects financed, or bond costs must be paid from income generated by designated projects. The law states that the principal and interest on bonds are payable exclusively from the income and revenues of the project financed with the proceeds of the bonds, or exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part with the proceeds of the bonds.

## 8. HRA certifications to state

The following documents relating to the establishment and activities of local HRAs must go to the DEED commissioner:

Minn. Stat. § 469.003, subsd. 4,  
6.

Minn. Stat. § 469.003, subd. 7.

- Resolution of need.
- Certificates of appointment or reappointment of HRA commissioners.
- Project reports.
- Applications for federal assistance.
- Contracts with federal agencies.



- Redevelopment plans.
- Low rent public housing project and management plans.

Minn. Stat. § 469.013.

In addition, annual financial reports must go to the state auditor.

## 9. HRA federal certification

In order for a local HRA to use federal Department of Housing and Urban Development (HUD) assistance programs, it must submit a transcript of organizational documents to the HUD area office.

## C. Economic development authorities

Minn. Stat. §§ 469.090 to 469.1082.

2010 Minn. Laws ch. 387, art. 1, § 25 amending Minn. Stat. § 469.1082, subd. 5.

*The Economic Development Authorities Handbook.* For a copy of this book, and for sample resolutions and by laws for an EDA, contact the League's Research Department at (651) 281-1220 or (800) 925-1122.

All cities and townships have authority from the state Legislature to create economic development authorities. The city may consolidate the economic development authority (EDA) with an existing HRA or the city may grant the authority HRA powers. The city council may create an EDA by passing an enabling resolution. Before adopting the enabling resolution, the city must first conduct a public hearing. The enabling resolution establishes a board of commissioners for the EDA. The city council can choose to serve as the EDA board of commissioners or create a board composed of community members. The mayor, with approval of the council, appoints the commissioners. The board may consist of three, five or seven members who serve six-year terms. The board is subject to the open meeting law.

### 1. EDA levies

Minn. Stat. § 275.70.

The typical EDA levy is different than the HRA levy discussed above. It is not a levy raised by the EDA—it is a levy set by a city at the request of the EDA. Basically, the city simply appropriates part of the money the city collects in the general city levy to the EDA. Because the EDA levy is part of the city levy, it is not a “special levy” under state law and thus the EDA levy is subject to the city’s overall levy limit. However, as noted above, many EDA-enabling resolutions adopt all the powers of an HRA. If so, the EDA may levy a separate tax or “HRA levy,” and then the EDA functions as a special taxing district as if it were an HRA and that levy is not subject to levy limits or to city debt limits. An EDA using the levy powers of an HRA is still limited to a levy no more than 0.0185 percent of the total taxable market value in the city.

Minn. Stat. § 275.066.

### 2. EDA loans

Minn. Stat. § 469.192.

Minn. Stat. §§ 469.090 to 469.1082.

Minn. Stat. § 469.098.

An EDA is authorized to make a loan to a business, a for-profit or nonprofit organization, or an individual. Before taking an action or making a decision which could substantially affect an EDA commissioner's or an employee's financial interests or those of an organization with which the commissioner or an employee is associated, a commissioner or employee of an authority must comply with specific requirements to disclose the conflict and obtain prior approval. Failure to do so may result in criminal charges.

Loans must be for a purpose the EDA is authorized to carry out under the law. An authorized purpose must deal with or contribute to economic or industrial development. EDAs have the ability to use pooled bond reserving. In most development programs, each bond issue is independent of any other bond issue with a separate service or sinking fund account. EDAs, however, may create a single common bond reserve fund. Under this arrangement, each project's revenues go into a common fund, which in turn pays the bondholders on all projects.

Through this pooling mechanism, the security of each project's bond increases and borrowing costs decrease as long as the pool has the necessary volume and diversity of cash flow.

### 3. Other EDA powers

Minn. Stat. § 469.101, subds 1, 2.

2010 Minn. Laws ch. 389, art. 7, § 5 *amending* Minn. Stat. § 469.101, subd. 1.

"Bill Summary H.F. 3729" House Research Department (May 16, 2010).

Minn. Stat. § 469.102.

EDAs can acquire property and facilities but cannot issue debt without an election. The city must authorize the issuance of debt in the resolution creating the EDA. Also, EDAs can create economic development districts but the districts must be contiguous. Current law eliminates the requirements that economic development districts established by EDAs meet the "blight test" under tax increment financing law for redevelopment districts. EDAs may exercise powers under the housing and redevelopment authority (HRA) law (if a particular EDA enabling resolution includes HRA power) to create a redevelopment project, housing development, or housing project under which a restrictive blight test does not apply. These projects can be used for similar purposes to those of an economic development district under the EDA law.

### D. Port authorities

Minn. Stat. §§ 469.048- 469.068.  
Minn. Stat. § 469.053.

The state Legislature authorizes city creation of port authorities. A port authority is a separate political entity with the right to sue and be sued in its own name and is generally organized to increase commerce in a city. Unlike EDAs and HRAs, a port authority may issue general obligation bonds without holding an election.

Minn. Stat. § 469.050. Minn. Stat. § 469.051.

Cities establish a port authority by passing an enabling resolution. It may have from three to seven commissioners (two of whom must be on the city council) appointed by the mayor and approved by the city council, unless a different number or procedure is set out in the enabling law. State law governs commissioner pay, vacancies, duties, and port authority by-laws.

Minn. Stat. § 469.051, subd. 2.

A port authority shall annually elect a president or chair, vice-president or vice-chair, treasurer, secretary, and assistant treasurer. A commissioner may not serve as president or chair and vice-president or vice-chair at the same time. The other offices may be held by one commissioner. The offices of secretary and assistant treasurer need not be held by a commissioner.

The treasurer of a port authority must be bonded to faithfully perform these duties:

- Receive and be responsible for port authority money.
- Be responsible for the acts of the assistant treasurer, if appointed.
- Disburse port authority money by check or electronic procedures.
- Keep an account of the source of all receipts, and the nature, purpose, and authority of all disbursements.
- File the authority's detailed financial statement with its secretary at least once a year at times set by the authority.

Minn. Stat. § 469.051, subd. 9.

The port authority's annual detailed financial statement must show all receipts and disbursements, their nature, the money on hand, the purposes to which the money on hand is to be applied, the authority's credits and assets, and its outstanding liabilities. The authority must examine the statement together with the treasurer's vouchers. If the authority finds the statement and vouchers correct, it shall approve them by resolution and record the resolution.

Minn. Stat. §§ 469.048–469.068.

State law governs many other aspects of port authorities, including but not limited to use of city property by a port authority, employees, contracts, and audits. The city attorney also acts as the port authority's attorney.

## E. Municipal or area redevelopment agencies

Minn. Stat. §§ 469.109 to 469.123.

Any rural municipality or group of municipalities may establish a public body, known as a municipal or area redevelopment agency, in and for the area the municipality covers. This law defines municipalities as home rule charter or statutory cities, counties, towns or school districts.

Minn. Stat. § 469.110, subd. 11.  
Minn. Stat. § 469.111.

The law includes only rural areas, which generally means all areas that are not within the boundary of any city having a population of 50,000 or more, and not immediately adjacent to urbanized and urbanizing areas with a population density of more than 100 persons per square mile—or areas with an unemployment rate of 6 percent or more. The restrictions limit applicability of the law to rural areas and to the Iron Range.

Minn. Stat. § 469.111.  
Minn. Stat. § 469.115.

The establishment of the municipal or area redevelopment agency is similar to the establishment of an HRA. A municipal or area redevelopment agency has similar powers to an HRA.

## F. City development districts

Minn. Stat. §§ 469.124 to 469.134.

Any home rule charter or statutory city may designate development districts within the boundaries of the city. Within these districts, cities may:

- Adopt a development program to acquire, construct, reconstruct, improve, alter, extend, operate, maintain or promote developments aimed at improving the physical facilities, quality of life, and quality of transportation.

- Promote pedestrian skyway systems.
- Install special lighting systems, street signs and street furniture, landscaping of streets and public property, and snow removal systems.

Minn. Stat. § 469.127.

The law encourages pedestrian skyway systems, underground pedestrian concourses, people-mover systems, and publicly-owned parking structures. It exempts these structures from taxation even when they are attached to privately-owned buildings.

## G. City industrial development

Minn. Stat. §§ 469.152 to 469.1651.

Minn. Stat. § 469.152.

For the purpose of attracting industrial and commercial development and encouraging local governments to prevent economic deterioration, any home rule charter or statutory city or its redevelopment agency has the power to promote industrial development by:

- Acquiring, constructing, and holding lands, buildings, easements, improvements to lands and buildings, capital equipment, and inventory for industrial projects.
- Issuing revenue bonds and entering into revenue agreements to finance these activities to promote industrial projects.
- Refinancing health care and other facilities.

Minn. Stat. § 469.155, subd. 4.

Under the legislation, cities assist industries in starting operations and use generated revenues to repay the costs. This law is the basis for issuing most industrial revenue bonds.

2010 Minn. Laws ch. 216, § 24 amending Minn. Stat. § 469.153, subd. 2.

Industrial projects eligible for assistance include any revenue-producing enterprises engaged in assembling, fabricating, manufacturing, mixing, processing, storing, warehousing, or distributing any products of agriculture, forestry, mining, or manufacturing; or in research and development activity in these fields; or in the manufacturing, creation, or production of intangible property, including any patent, copyright, formula, process, design, know how, format, or other similar item. "Project" also includes any properties designated as a qualified green building and sustainable design project under state law. Eligible projects may include costs related to dewatering activities.

2010 Minn. Laws ch. 216, § 26 to be codified as Minn. Stat. § 469.1655.

Minn. Stat. § 469.155, subd. 14.

The law prohibits a city from operating any of these projects as a business or in any other manner.

### III. Other development strategies

#### A. Housing bonds

Minn. Stat. ch. 462C.

Cities may use revenue bonds for financing single- and multi-family housing, primarily for the benefit of low- and moderate-income families. The law contains single- and multi-family housing criteria and the specific actions cities must take to comply with the law. Federal law limits the issuance of housing revenue bonds. Bonding authority is allocated by a state formula.

#### B. Industrial parks

An industrial park is a tract of land suitable for industrial use because of location, topography, proper zoning, availability to utilities, and accessibility to transportation. A single body has administrative control of the tract. In some cities, an industrial park may be little more than a tract of unimproved land, while in other cities it may be totally served by city services and have restrictive building requirements. An industrial park's purpose is to attract industrial development.

Property a city holds for later sale for economic development purposes remains tax exempt for a period of eight years, or until buildings or other improvements that are constructed after acquisition reach one-half occupancy.

Currently, private enterprise creates most new industrial park development by establishing a for-profit community development corporation. A city can cooperate with that corporation through its land-use controls and methods of financing public improvements. Many cities have also established industrial parks complete with streets, water, and sewer, in spite of the possible tax ramifications. The city then sells or leases a portion of the park to a business needing a location for its building.

Minn. Stat. § 469.185.

Minn. Stat. § 465.035.

A.G. Op. 476-B-2 (Mar. 2, 1961).  
*City of Pipestone v. Madsen*, 287  
 Minn. 357, 178 N.W.2d 594  
 (1970).

The law authorizes any city owning lands that are not restricted by deed to convey the lands for nominal consideration, to encourage and promote industry, and to provide employment for citizens. In finding that a conveyance of land for an indoor arena was not within the statute, the attorney general concluded the conveyance must encourage and promote industry and provide employment for citizens. A more direct promotion of industry is necessary, beyond the fact that more potential customers might be in town as a result of athletic contests. However, the courts have upheld the municipal industrial development revenue bond law, discussed subsequently, against the same objection. The city's attorney can best advise the city concerning the legality of a purchase of land for resale.

## C. Industrial revenue bonds

Minn. Stat. §§ 469.152 to 469.1651.

The municipal industrial development laws help cities attract new commercial and industrial development, and keep existing businesses in the city. The law authorizes the council to issue revenue bonds, and use the proceeds to acquire and construct industrial sites and facilities. The city then leases these facilities to private industry and uses the rental fee proceeds to retire the bonds.

A city may issue industrial revenue bonds, also known as municipal revenue bonds, without public referendum. It cannot pledge the full faith and credit of a community as security for these bonds. Thus, the city may not tax property owners to pay principal and interest on the bonds.

For more information, contact DEED 651.259.7114, 800.657.3858 or 888.438.5627. Main Office: 1st National Bank Building 332 Minnesota Street, Suite E200 Saint Paul, MN 55101-1351.

If a city decides to investigate the use of industrial bond financing, it should contact the Department of Employment and Economic Development. The department provides the city with information, advice, and technical assistance. This assistance is important, due to the adoption of federal and state laws allocating issuance authority among the states and their political subdivisions. The commissioner of Securities must approve the project.

## D. Commercial rehabilitation

Minn. Stat. § 469.184.

Cities have authority to carry out programs for the rehabilitation of small- and medium-sized commercial buildings. The city must adopt a program ordinance that provides for the adoption of program regulations, including a definition of small- and medium-sized commercial buildings. Loans under the program may be for amounts up to \$200,000. The city may finance the program through the sale of revenue bonds.

## E. Tax increment financing (TIF)

Minn. Stat. §§ 469.174 to 469.1799.

Tax increment financing authority is available to most cities. Cities with housing and redevelopment authorities, economic development authorities, port authorities, redevelopment agencies, those cities administering development districts or development projects, or cities exercising port authority powers under a general or special law may use tax increment financing. Amendments to the law, however, may make the use of this development tool more complicated.

Tax increment financing is a funding technique that takes advantage of the increases in tax capacity and property taxes from development or redevelopment to pay upfront public development or redevelopment costs. The difference in the tax capacity and the tax revenues the property generates after new construction has occurred, compared with the tax capacity and tax revenues it generated before the construction, is the captured value. The taxes paid on the captured value are called “increments.” Unlike property taxes, increments are not used to pay for the general costs of cities, counties, and schools. Instead, increments go to the development authority and are used to repay public indebtedness or current costs the city incurred in acquiring the property, removing existing structures or installing public services.

Thus, the property owner in a TIF district continues to pay the full amount of property taxes. TIF involves only the increased property taxes generated within the district. It does not change the amount of property taxes currently derived from the redevelopment area, nor does it directly affect the amount or rate of general ad valorem taxes the city levies. The result of a TIF project is an increased tax base that will benefit all local taxing jurisdictions. Additionally, TIF districts usually spur economic development and redevelopment through creating job, removing blight, and providing more affordable housing.

*State v. Wicklund*, 589 N.W.2d 793 (Minn. 1999) .

TIF is used to encourage four general types of private development: redevelopment, renovation and renewal, growth in low- to moderate-income housing, and economic development. Public financing using TIF funding for a privately owned facility does not make public space in the facility a public forum for free speech purposes.

A new TIF district involves compact development. Two major conditions must be satisfied:

- Parcels consisting of 70 percent of the area of the district are occupied by buildings or similar structures that are classified as class 3a property under state law. and
- The planned redevelopment or development of the district, when completed, will increase the total square footage of buildings, classified as class 3a under state law, occupying the district by three times or more relative to the square footage of similar buildings occupying the district when the resolution is approved.

The authority to establish or approve a compact development district expires on June 30, 2012.

2010 Minn. Laws ch. 216, § 26 amending Minn. Stat. § 469.174; 2010 Minn. Laws ch. 216, § 28 amending Minn. Stat. § 469.175 adding subd. 2a; 2010 Minn. Laws ch. 216, § 29 amending Minn. Stat. § 469.176, subd. 1b; 2010 Minn. Laws ch. 216, § 30 amending Minn. Stat. § 469.176 adding subd. 1i; 2010 Minn. Laws ch. 216, § 31 amending Minn. Stat. § 469.176, subd. 4c. Minn. Stat. § 273.13, subd. 24.

2010 Minn. Laws ch. 216, § 32  
amending Minn. Stat. § 469.176,  
adding subd. 4m.

Cities have temporary authority to spend TIF funds to stimulate construction using economic development districts for any type of project, if three conditions are met:

- The municipality funds projects that will create new jobs in the state, including construction jobs, and the project otherwise would not have begun before July 1, 2011, without assistance.
- Construction of the project begins no later than July 1, 2011.
- The request for certification is made by June 30, 2011.

This temporary authority to spend the tax increment expires Dec. 31, 2011.

Minn. Stat. § 469.175, subd. 5.

The city using TIF must report annually to the county board, the county auditor, the school board, and the state auditor as to the status of the TIF district or districts and publish the report. The state auditor has established a uniform system of accounting and financial reporting for TIF districts. The city must annually submit to the state auditor a financial report in compliance with these standards.

Minn. Stat. § 469.1771, subds. 1,  
2b.

The state auditor may audit TIF districts. If the state auditor notifies a TIF authority of an alleged violation, a copy of the notice is also forwarded to the county attorney. If no corrective action is brought within one year, the county attorney must notify the state auditor, who then notifies the attorney general. If the attorney general finds a substantial violation, the attorney general will petition the state tax court to suspend the authority's power to use TIF for a period of up to five years.

Minn. Stat. § 469.177, subd. 8.  
*Lake Superior Paper Indus. v. State*, 624 N.W.2d 254 (Minn. 2001). *Brookfield Trade Center, Inc. v. County of Ramsey*, 609 N.W.2d 868 (Minn. 1998).

The TIF agreement with the developer is a complex document. Assistance from a financial advisor and the city attorney is necessary in order to anticipate the many potential problems. An agreement can establish a minimum market value for tax increment assessment purposes, as well as provide that the developer pay a certain level of taxes regardless of any classification rate changes or levy decreases. The agreement should be entered into before the assembly and acquisition of the land on which the completed improvements are to be located.

See Minn. Stat. §§ 469.177,  
subds. 1b, 11; 469.1771, subd. 1;  
469.1791; 469.1793; 469.1799;  
and 469.1814.

The 2001 tax reform legislation, which reduced class rates and provided for the state takeover of the general education levy, resulted in several changes to various statutes to accommodate the changes. These changes considerably reduce the continued viability of TIF in the future.

Minn. Stat. § 469.174.

The law imposes a 180-day statute of limitations on actions to challenge the creation or modification of a TIF district. The law is complex including a "but-for" finding before a city approves a TIF plan and the creation of a TIF district. Cities must follow statutory requirements as to administrative expenses, plan modifications, reporting requirements, use of increment in pre-1979 districts, excess increments, pool, and decertification, among other things.

Minn. Stat. § 469.175.

Before a district can be created, the law requires a detailed estimate of the impact of a proposed district on city-provided services, such as police and fire protection, public infrastructure, and borrowing costs attributable to the district, in addition to other complex estimations must be prepared.



*Walser Auto Sales, Inc. v. City of Richfield*, 635 N.W.2d 391 (Minn. Ct. App. 2001), *aff'd*, 644 N.W.2d 425 (Minn. 2002).

Cities should use extreme care in establishing a TIF district and should follow all procedural requirements; otherwise a court may find the district was not properly established. In one case, a TIF district was not properly established where minimal effort was made to ensure the thorough inspection of the properties, inaccurate and unprecedented methodology was used to establish the condition of the buildings, and the buildings found structurally substandard were not reasonably distributed throughout the district.

*Chenoweth v. City of New Brighton*, 655 N.W.2d 821 (Minn. Ct. App. 2003)

In another case, a cause of action for inverse condemnation does not arise where a city's involvement with an adjacent property owner's development consists of establishing a TIF district, entering into a contract with a private developer specifying the size and value of structures to be built, and providing for substantial city assistance to facilitate development.

Given the complexity of the laws governing the use of TIF, cities or HRAs should not undertake this method of financing community development projects without the advice of an attorney and professional consultants.

## F. Property tax abatement

Minn. Stat. §§ 469.1812 to 469.1815.

A city may use this development tool to segregate some or all of the taxes (or the increase in taxes) it imposes on a parcel of property if the city expects the benefits of the proposed abatement agreement to at least equal the costs of the proposed development. The term "abatement" is somewhat misleading, as in most cases the tax is not forgiven; it is paid normally, but the amount of property tax levied by the city is used to pay for the bonds. The city must determine that the agreement is in the public interest because it will increase or preserve tax base, provide employment opportunities, provide or help acquire or construct public facilities, help redevelop or renew blighted areas, or help provide access to services for residents of the city. Property taxes in a TIF district cannot be abated unless the period of the abatement will not occur until after the district is decertified.

A resolution must be adopted after notice and public hearing, specifying the terms of the abatement. A city may issue bonds or other obligations to provide an amount equal to the sum of the abatements granted for a specific property. The maximum principal amount of these bonds may not exceed the estimated sum of the abatements for the property for the years authorized. The bonds may be general obligations of the city if the city council chooses to pledge the full faith and credit of the city in the resolution issuing the bonds. The law limits property tax abatements to 15 years. School districts and counties have similar abatement powers. A city, county, and school district can agree to abate their taxes on the same property.

## IV. State-sponsored development tools

### A. Minnesota Housing Finance Agency

Minn. Stat. ch. 462A. For more information about MHFA programs, contact MHFA at 400 Sibley Street Suite 300, St. Paul, MN 55101-1998 (651) 296-7608 or (800) 657-3769.

The goals of the Minnesota Housing Finance Agency (MHFA) are to provide decent, affordable housing to low- and moderate-income people; preserve the existing housing stock in Minnesota; preserve existing neighborhoods and prevent them from deteriorating; and prevent mortgage foreclosures while promoting energy conservation in residential housing.

The Minnesota Legislature created the MHFA in response to a shortage of affordable housing for low- and moderate-income people. Private enterprise and private investment were unable, without public assistance, to provide an adequate supply of safe, sanitary, and decent housing at affordable prices and rents.

Minn. Stat. § 462A.073 *et seq.*

MHFA: Minnesota City Participation Program.

The sale of state tax-exempt bonds is the primary financing for MFHA programs. Through the Minnesota City Participation Program, Minnesota Housing sells mortgage revenue bonds on behalf of cities to meet locally identified housing needs. The proceeds of these bonds provide below-market interest rate home mortgage loans for low- and moderate-income, first-time homebuyers, or for the construction or rehabilitation of single- and multi-family housing. Appropriations from the Legislature provide additional funding for programs, including the promotion of energy conservation; an increase in home ownership opportunities for first time homebuyers; home improvement grants to very low-income homeowners; and programs to improve the housing available to Native Americans, large families, and people with disabilities.

### B. Department of Employment and Economic Development (DEED)

Minn. Stat. ch. 116J.

Minnesota Department of Employment and Economic Development.

The Minnesota Department of Employment and Economic Development is the primary development agency for Minnesota. DEED staff is responsible for a wide range of grant and loan programs, as well as for providing technical assistance to businesses and communities.

Minn. Stat. §§ 116J.411 to 116J.424.

The USDA Development.

DEED also provides grants for contamination cleanup and redevelopment; administers the rural development program; makes challenge grants to regional organizations to encourage private investment in rural areas; and administers a revolving loan fund to provide loans to new and expanding business in rural Minnesota. Local government units, including cities, may receive these loans if the community has established a local revolving loan fund and can provide at least an equal match to the loan received.

Minn. Stat. § 116J.431.

Greater Minnesota Business  
Development Infrastructure Grant  
Program.

Cities outside the seven-county metropolitan area may receive grants from DEED for up to 50 percent of the capital costs of public infrastructure necessary for certain specified economic development projects, excluding retail and office space. For this program, "public infrastructure" means publicly owned physical infrastructure necessary to support economic development projects, including but not limited to sewers, water supply systems, utility extensions, streets, wastewater treatment systems, stormwater management systems, and facilities for pretreatment of wastewater to remove phosphorus.

Minn. Stat. § 116J.431, subd. 2.

Under this law, an "economic development project" for which a county or city may be eligible to receive a grant under this section includes manufacturing; technology; warehousing and distribution; research and development; agricultural processing or industrial park development that would be used by any one of these businesses.

2010 Minn. Laws ch. 189, § 39  
*amending* Minn. Stat. § 116J.435,  
as amended by 2009 Minn. Laws  
ch. 35, §§ 1 and 2, and 2009  
Minn. Laws ch. 78, art. 2, § 12.

DEED runs the Innovative Business Development Public Infrastructure (BDPI) program that provides grants to local governmental units on a competitive basis statewide for up to 50 percent of the capital cost of the public infrastructure necessary to expand or retain jobs.

Innovative Business  
Development Program:  
Department of Employment and  
Economic Development.

"Innovative business" means a business that is engaged in, or is committed to engage in, innovation in Minnesota in one of the following:

- Using proprietary technology to add value to a product, process, or service in a high technology field;
- Researching or developing a proprietary product, process, or service in a high technology field;
- Researching, developing, or producing a new proprietary technology for use in the fields of tourism, forestry, mining, transportation, or green manufacturing.

2010 Minn. Laws ch. 189, § 39  
*amending* Minn. Stat. § 116J.435,  
as amended by 2009 Minn. Laws  
ch. 35, §§ 1 and 2, and 2009  
Minn. Laws ch. 78, art. 2, § 12.

"Proprietary technology" means the technical innovations that are unique and legally owned or licensed by a business and includes, without limitation, those innovations that are patented, patent pending, a subject of trade secrets, or copyrighted. "Eligible project" means a bioscience an innovative business development capital improvement project in this state, including:

- Manufacturing; technology; warehousing and distribution; research and development;
- Bioscience innovative business incubator;
- Agricultural bio-processing processing; or industrial, office, or
- Research park development that would be used by a bioscience-based an innovative business.

Minn. Stat. § 272.02, subd. 64.

DEED administers "tax-free" job opportunity building zones (JOBZ). In each of these zones, businesses will be eligible for a broad range of tax incentives for a period of 12 years. Under the program, local units of government, including cities, must submit applications to DEED and follow all statutory requirements related to JOBZ.

## C. Enterprise Minnesota

Minn. Stat. ch. 116O.

Enterprise Minnesota is a nonprofit business consulting organization, set up by the Legislature that helps small and medium-sized manufacturing companies, education services, and government entities in Minnesota. Enterprise Minnesota operates as a fee-for-services 501(c) (3) nonprofit.

Enterprise Minnesota 612-373-2900 or 800-325-3073.

Minn. Stat. § 116O.061.

Enterprise Minnesota focuses on applied research and technology transfer and early stage funding. It may provide financial assistance, including loan guarantees, direct loans, interest subsidies, or equity investments, to sole proprietorships, corporations, other entities, nonprofit organizations, or joint ventures. Financial assistance includes but is not limited to assisting a qualified company or organization with business services and products that will enhance the operations of the entity.

## D. E-commerce ready cities

Minn. Stat. § 116J.037.

DEED (651) 297-1291 or (800) 657-3858.

As a tangential aid to encouraging development, the Department of Employment and Economic Development may designate cities that meet certain criteria as e-commerce ready.

## E. Corporations

Minn. Stat. § 465.717.

Minn. Stat. § 471.59.

LMCIT risk information memo, *Liability Coverage for Joint Powers Agreements*.

Cities must not create nonprofit corporations unless authorized to do so by special legislation. The law allows incorporation of a joint powers entity, but these must comply with all applicable public sector laws (open meeting, gift law, conflicts of interest, competitive bidding, etc.) and must be separately insured.

## V. Federal development tools

### A. Community development block grants

More information is available on the HUD web site.

The Community Development Block Grant (CDBG) program, under the U.S. Department of Housing and Urban Development (HUD), provides cities with federal funding to initiate and continue a diverse array of housing and community development projects.

### B. Rural development grants

For more information, contact Rural Development State Office 410 Farm Credit Service Building 375 Jackson Street St. Paul, MN 55101-1853, (651) 602-7800. See also, Handbook, Chapter 25.

A variety of grants and loans to encourage economic development are available to cities from the U. S. Department of Agriculture, rural development program. Sewer, water, rural enterprise, housing, and other types of grants and loans are available.

## **VI. How this chapter applies to home rule charter cities**

All of the tools this chapter lists are available to charter cities. The general discussions also apply to all cities.

**PART VI**  
**FINANCE, BUDGETING, AND DEBT**

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# Chapter 25

## Financing public improvements

### I. Financing and planning overview

Minn. Stat. § 412.221.

"Financing Infrastructure Projects"  
*Minnesota Cities* (Aug. 2009, p. 6).

Cities use a variety of funding techniques to construct, maintain, or improve local infrastructure made up of the basic facilities, services, and systems a city needs to function. Local infrastructure varies greatly from one city to the next but may include buildings; libraries; water and sewer systems; transportation and communications systems; parks; and public thoroughfares such as sidewalks, trails, streets, bridges, and parking facilities. Money to fund local improvements comes from a variety of sources and often combines the following income generating methods and situations. This chapter focuses on the most commonly used legislatively authorized financing tools available to cities.

Handbook, Chapter 21.

Consider combining the financing tools described in this chapter with a long-term capital budgeting plan. A capital budgeting plan (sometimes referred to as a capital improvement plan or CIP) typically lists five or six years of needed capital improvements (sewer and water infrastructure, public buildings, equipment, or land purchases), their order of priority, and the means of financing. A plan allows a city to build up a fund balance for these projects. Priorities in the capital budget program remain tentative, and the council reviews them annually. Although capital improvement budgeting may appear cumbersome and unwieldy to small cities, this is actually not the case. A capital budget plan provides protection to small cities, avoiding unforeseen infrastructure failures and expensive emergency repairs.



## II. Issuing debt

### A. Bonds

Handbook, Chapter 24.

"Municipal Borrowing Authority,"  
*Minnesota Cities* (July, 2001 p. 19).

Minn. Stat. § 475.52.

Cities commonly raise capital to pay for local improvements by borrowing money. Cities incur debt and borrow money by issuing and selling municipal bonds also known as general obligation (GO) bonds. (Unlike a person getting a loan to finance the purchase of a car, cities may not borrow money from banks through conventional loans to finance local improvements.) GO bonds often create funding tied to a specific use (such as water systems) but are backed by the taxing power of the city.

Municipal bonds are low risk because all city assets and resources, including the unlimited power to tax, back the city's contract to pay back the amount of the bond with interest. The security for a GO bond is the pledge of those resources and taxing powers.

Minn. Stat. § 475.53, subd. 1.

There are limits on the amount of debt a city may incur through the issue and sale of bonds. Currently the "net debt" limit is 3 percent of the market value of taxable property in the city. In some situations, residents must vote in favor of a bond before a city may issue them, however, there are many exceptions to this requirement.

Handbook, Chapter 21.

There are other types of bonds, each requiring specific legal procedures, for example:

- Revenue bonds—tied to a specific funding stream.
- GO revenue bonds—tied to both the full faith and credit of the city and a specific funding stream.
- Bonds by purpose—GO bonds issued for a specific purpose. This is not a legal requirement but used for convenience in identifying bonds with an improvement.
- Bonds by user—also known as "private activity bonds" and used partially or entirely for private purposes, but still tax exempt.

Municipal bonds are attractive to buyers because they are low risk and usually tax exempt. When using bonds to finance local improvements, cities must work with the city attorney and bond counsel to maintain the tax-exempt status of the bonds and ensure compliance with all state and federal financing and bond law.

## B. Certificates of indebtedness

Minn. Stat. § 412.301.

Minn. Stat. § 410.32.

Statutory and charter cities may issue debt in the form of capital notes or certificates of indebtedness to purchase :

- public safety equipment,
- ambulance and other medical equipment,
- road construction and maintenance equipment, and other capital equipment
- computer hardware and software, whether bundled with machinery or equipment or unbundled.
- The purchased equipment or machinery must have an expected useful life at least as long as the certificates or notes.

## III. Property tax related tools

### A. Local general fund

LMC Property Tax 101.

State of the Cities Report 2009.

City general levies collected with property taxes may fund local improvements. Cities identify local improvement needs in the annual budgeting process and may assign a percentage of the general city levy to fund ongoing capital improvements. Though property taxes fund essential infrastructure needs, cities report property tax collection shortfalls due to the dramatically increased number of foreclosures.

### B. Infrastructure replacement reserve fund

Minn. Stat. § 471.572.

Another financing mechanism is the creation of an infrastructure replacement reserve fund. A city council may establish a reserve fund by a two-thirds vote of all its members through ordinance or resolution, and may annually levy a property tax for the support of the fund. The city must hold a public hearing on the question and comply with other procedural requirements.

The proceeds of property taxes the city levies specifically to support this fund must go into the reserve fund. The city may dedicate any other additional monies to the fund.

Before levying property taxes for the reserve fund, the city must publish an initial resolution authorizing the tax levy in its official newspaper. If, within 10 days after the publication, voters file a petition with the clerk, the council must submit the levy question to the voters at a regular or special election. For the petition to be valid, it must be signed by a number of qualified voters greater than 10 percent of the number who voted in the last general city election.

If the city establishes a reserve fund, the council may submit a question to the voters asking if the city should dedicate the fund to a particular type of capital improvement. If a majority vote in favor of the restriction, the reserve fund may only be used for that purpose.

### C. Storm sewer improvement districts

Minn. Stat. §§ 444.16 - 444.21.

Creating a storm sewer improvement district (SSID) provides another tool to fund specialized city infrastructure. After two weeks published notice and a public hearing, the council of any city may, by a two-thirds vote of council members, pass an ordinance establishing an SSID. After passage, the council must record the ordinance with the county auditor and/or the county recorder. After establishing the district, the council may acquire, construct, reconstruct, extend, maintain, and otherwise improve, storm sewer systems and related facilities within the district. The city may also acquire, maintain, and improve stormwater holding areas and ponds within and outside city limits for the benefit of the district.

Minn. Stat. § 444.19.

Tax levies on property in the district pay for the improvements, including principal and interest on bonds. A council may, by resolution, decide to issue GO bonds to assure payment of the principal and interest in the event the proceeds of the tax levy in the district are insufficient to pay the principal and interest. The sale of such bonds must comply with Chapter 475, except that such bond sale requires no election. The amount of the obligations, or bonds, is not included in determining the net indebtedness of the city. After all obligations issued to finance improvements within the district are retired, the council may choose to dissolve the district, but is not required to do so.

Minn. Stat. § 444.18, subd. 3

Once the council establishes an SSID, it must follow statutory procedures before awarding a contract for an improvement in such a district. The council must hold a public hearing on the proposed improvement after giving published notice twice in the city's official newspaper. The notice must include the time, date, and place of the hearing; the general nature of the improvement; the estimated cost of the improvement; which areas in the city the levy will cover; and the amount of time to recover the costs of the improvements.

Minn. Stat. § 444.18, subd. 3

Before awarding a contract for an improvement, a city must publish notice of a public hearing two times, at least a week apart. The hearing must occur at least three days after the last publication. The owners of property within the district must also receive mailed notice of the public hearing at least 10 days before the hearing occurs. Such mailed notice must include the estimated tax levy each parcel pays in the first year.

Minn. Stat. § 444.18, subd. 3

Before the hearing, the council must secure a report from the city's engineer, advising the council as to:

- The feasibility of the proposed improvement,
- Whether it should be made as proposed or in connection with some other improvement, and
- The estimated cost of the improvement.

Minn. Stat. § 444.18, subd. 3

The council must pass a resolution adopting the improvement. The resolution may be adopted at any time within six months after the hearing.

## **D. Urban and rural service districts**

Minn. Stat. § 272.67.

State law allows cities to divide their area into an urban service district and a rural service district. Cities in a metropolitan county with a first class city cannot use this statutory tool.

### **1. Urban service district**

The urban service district must include all lands within the boundaries of the city, which are not included in the rural service district. The ordinance determines the approximate ratio that exists between the benefits resulting from tax-supported municipal service to parcels of land of like market value and in the urban service district. The council may amend the ordinance to change this benefit ratio.

### **2. Rural service district**

The rural service district includes only such unplatted lands, or parcels, that the city council determines are rural in character, and are not developed for commercial, industrial, or urban residential purposes. For these reasons, land in the rural service district does not benefit from city services to the same degree as other lands. The rural service district may include parcels of land that are not contiguous to one another. The ordinance may also designate lands outside the city, which, if annexed, will be included within the rural service district. Parcels may be added to or removed from the rural service district, but the ordinance may not require an amendment to remove lands from a rural district.

The county auditor then allocates levies (other than those for payment of bonds and judgments) between the areas in amounts proportionate to benefits ratios determined for the separate districts. In theory, this division into urban and rural service districts generates additional tax dollars from developed properties in the city, which can be used to pay for municipal services and fund local improvements that benefit those properties.

## E. Tax abatement

Minn. Stat. §§ 469.1812 - 1815.

"Property Tax Abatements for Economic Development," House Research Short Subjects, Aug. 2007. Handbook, Chapter 15.

Minn. Stat. § 469.1813.

This financing tool authorizes the issuance of bonds to be paid back with the funds collected by tax abatements. The term "abatement" is misleading, as the tax is not forgiven or abated. The tax is paid normally, but the amount of property tax levied by the city is used to pay for the bonds. For example, a city may "abate" all or a portion of city property tax on one or more parcels of real or personal property, including machinery, for economic development purposes. And cities may issue general obligation or revenue bonds to construct public improvements. As the property owners pay the abated taxes, rather than the local property taxes, the payments go directly to paying off the bonds. Abatement bonds are not subject to referendum approval and are excluded from debt limits. In any year, the total amount of property taxes abated by a city may not exceed 10 percent of the net tax capacity of the political subdivision for the taxes payable year to which the abatement applies or \$200,000, whichever is greater.

## F. Tax increment financing

Minn. Stat. §§ 469.174 - 179.

Handbook, Chapter 21.

"Tax Increment Financing," House Research Short Subject, Jan. 2008.

Tax increment financing (TIF) is a broadly applicable financing tool that funds more than local improvements. Basically, it segregates certain tax dollars from a defined area in the city for use in developing and improving the area, which can include local improvements. TIF takes advantage of the increases in tax capacity and property taxes from development or redevelopment before the development actually occurs to pay for public development or redevelopment costs. The difference in the tax capacity and the tax revenues the property generates after new construction has occurred, compared with the tax capacity and tax revenues it generated before the construction, is the captured value. The taxes paid on the captured value are called "increments." Unlike property taxes, increments are not used to pay for the general costs of cities, counties, and schools. Instead, increments go directly to the development authority to repay public indebtedness or upfront costs the city incurs in acquiring the property, removing existing structures, or installing public services. TIF requires extensive planning, implementation, and reporting in consultation with the appropriate financial and legal professionals.

## IV. Funds for specific purposes

### A. Waterworks systems

Minn. Stat. § 444.075.

Minn. Stat. § 444.075, subd. 2.

Minn. Stat. § 444.075, subd. 3(b).

Cities may acquire and operate waterworks systems including sewer systems and storm sewer systems. Cities may use any of the following tools or a combination of them to fund construction, maintenance, or improvement of any of these systems or parts of these systems. Cities may also use special assessments to pay for waterworks, sewer and storm sewer systems, discussed subsequently. In statutory and charter cities, even if a charter indicates otherwise, charges made for services must be, as nearly as possible, proportionate to the cost of furnishing the service.

#### 1. Availability fees

Minn. Stat. § 444.075.

Minn. Stat. § 444.075, subd. 3(h).

Minn. Stat. § 444.075, subd. 3c(b).

Water and sewer availability fee, sometimes known as WAC and SAC fees, may be set to cover the eventual costs of improvements to local waterworks infrastructure including construction, reconstruction, repair, or enlargement of the system. Cities may charge use and availability fees for waterworks services even against properties not currently connected to the system. Collecting charges to build up revenue is reasonable, according to the law, even well before a city starts a planned waterworks or sewer project. Availability fees for waterworks, sanitary sewers, or storm sewer must pay for the construction, reconstruction, repair, enlargement, improvement, or other obtainment; the maintenance, operation, and use of the facilities; and of obtaining and complying with permits required by law.

#### 2. Use fees for water, sewer, and storm sewers

##### a. Water fees

Minn. Stat. § 444.075, subsd. 3-4.

Minnesota Rural Water Association,  
Water Rate Analysis Spreadsheet.

"Water and Sewer Rates," by Ruth  
Hubbard, Minnesota Rural Water  
Today, June 6, 2000.

A city may use a combination of methods to set rates for water, including, but not limited to, flat rates, rates based on usage, and different rates based on a reasonable classification of property (for example, commercial or residential property). Cities may consider doing a rate study to ensure that collections cover debt, depreciation, reserve, operating, and maintenance costs.

##### b. Sewer fees

Minn. Stat. § 444.075, subd. 3a(4).

Cities may charge for sanitary sewer according to the amount of water consumed or by reference to a reasonable classification of the types of premises receiving the service. Cities may also combine these formulas to set sanitary sewer charges based on the type of property and the amount of water used. Sanitary sewer charges must not be based on the size, or square footage, of the property served.

**c. Storm sewer fees**

Minn. Stat. § 444.075, subd. 3b(4).

Storm sewers are systems built to prevent flooding and to separate stormwater from sanitary sewer systems. Stormwater is the runoff from rain and melted snow that picks up dirt, grease, fertilizer, and many other pollutants as it makes its way into streams and lakes. Minnesota law currently defines “storm sewer” as storm sewer systems, including mains, holding areas and ponds, and other accessories and related facilities for the collection and disposal of stormwater. Storm sewer charges may be fixed according to the size of the property (adjusted for a reasonable calculation of the stormwater runoff) or by referring to the same reasonable classification of the type of property as discussed above. Storm sewer charges may also be calculated by referring to the quantity and quality of pollutants and the difficulty of disposing of the stormwater runoff. Storm sewer charges must not be based on the amount of water consumed at a particular property.

**3. Connection charges**

Minn. Stat. § 444.075, subd. 3.  
*Crown Cork & Seal Co., Inc. v. City of Lakeville*, 313 N.W.2d 196 (Minn. 1981).

Cities may use connection charges (in addition to use and availability charges) to finance the construction and operation of water and sewer systems. Cities cannot base connection charges on the square footage of the property served. Connection charges may be set by reference to any of the following criteria:

- The actual cost of connection,
- By reference to assessments paid by the connecting property, or
- At the council’s discretion, by any other method, as long as the connection charge is “just and equitable.”

Cities may also use connection charges to pay for obtaining and complying with permits required by law (for example, permits that the National Pollutant Discharge Elimination System requires.)

**4. Contracts**

Minn. Stat. § 444.075, subd. 5.

Cities may contract with individuals, companies, or corporations to either use or construct waterworks facilities. The company or individual need not be a resident or inside city limits. Cities may also contract with other cities or counties to obtain or use waterworks facilities.

**B. Recreation facilities**

Minn. Stat. § 471.191.

Any city operating playgrounds or a program of public recreation may issue bonds to acquire, lease, or maintain land, buildings, and other recreational facilities. These include, but are not limited to, indoor swimming pools; skating rinks; athletic fields; golf courses; marinas; concert halls; museums; and facilities for other kinds of athletic or cultural participation, contests, or exhibitions; and related parking facilities. Revenue or general obligation bonds may fund such facilities but they are subject to a vote.

## C. Street reconstruction

Minn. Stat. § 475.58, subd. 3b.

If a city has a street reconstruction plan that describes the street reconstruction to be financed and covering at least five years, it may issue bonds to do so without a vote, but only after a public hearing. Street reconstruction includes utility replacement and relocation and other activities incidental to the street reconstruction, turn lanes, and other improvements having a substantial public safety function, realignments, other modifications to intersect with state and county roads, and the local share of state and county road projects. Street reconstruction does not include costs of widening a street or adding curbs and gutters where none previously existed. Voters may petition for a referendum, or vote, on issuing the bonds within 30 days of the public hearing.

Minn. Stat. § 475.58, subd. 3b.

A unanimous vote of all the city council members *present* may now authorize street reconstruction bonds rather than the previous requirement of a unanimous vote of all members of the council.

## D. Capital improvement

Minn. Stat. § 475.521.

Cities may issue capital improvement bonds for specific purposes. It is essential that cities follow statutory procedures (such as providing notice and a public hearing) when issuing this, or any, type of bond. In this context, “capital improvement” means acquisition or betterment of public lands, buildings, or other improvements for the purpose of a city hall, town hall, library, public safety facility, and public works facility. An improvement must have an expected useful life of five years or more to qualify. Three-fifths of the members of a five-member governing body must vote to approve the bonds. In the case of a governing body having more or less than five members, at least two-thirds of the council must vote to approve them. Capital improvement does not include light rail transit or any activity related to it, or a park, road, or bridge. City halls or town halls qualify as capital improvements as well as the land for any of these public facilities. These bonds are not subject to a vote unless voters petition for a reverse referendum.



## V. Land use related tools

### A. Development contracts

Minn. Stat. § 462.358.

LMC information memo, *Zoning Guide for Cities*.

Handbook, Chapter 21.

Minn. Stat. § 462.358, subd. 2b.

*Ruzic v. City of Eden Prairie*, 479 N.W.2d 417 (Minn. Ct. App. 1991).

LMCIT risk management memo, *Subdivisions, Plats and Development Agreements*

Cities may, by ordinance, regulate subdivisions of land encouraging orderly development and planning for all the related necessities such as streets, parks, water, sewer, stormwater, and open spaces. City authority to adopt a subdivision ordinance includes setting out the standards and requirements to subdivide land in the city. As part of this process, cities may enter into development contracts requiring that a developer install local improvements in a new subdivision. Or, the city may enter into an agreement with a developer, requiring that the developer pay the special assessments if the city puts in the improvements. Development agreements are sophisticated, legally binding contracts that may govern everything from lampposts to financial protections for the city and the developer. Seek legal advice from the city attorney long before entering into a development agreement.

### B. Land and park dedication or fees

Minn. Stat. § 462.358, subd. 2b.

As another way to fund local improvements in a newly developing area, a city subdivision ordinance may require that a developer dedicate a reasonable portion of buildable land of any proposed subdivision to the public for use as:

- Streets; roads; sewers; electric, gas, and water facilities; stormwater drainage and holding areas or ponds; and similar utilities and improvements; and
- Parks, certain recreational facilities, playgrounds, trails, wetlands, or open space.

Alternatively, cities may accept a “cash fee” instead of land. The ordinance must specifically describe these dedication requirements and the alternative fee. The city must seek legal advice and carefully follow the laws procedural mandates, especially if a city requires dedication of land for park purposes.

### C. Adequate public facilities

Minn. Stat. § 462.358, subd. 1a.

Minn. Stat. § 462.358, subd. 2a.

*Concept Properties, LLP v. City of Minnetrista*, 694 N.W.2d 804 (Minn. Ct. App. 2005).

State law gives cities authority to manage development of land to protect and promote public health, safety, and general welfare. Some cities focus on this authority and adopt subdivision ordinances based on adequate public facilities standards. Some cities posit that this allows a city to approve or deny a subdivision application by focusing on public infrastructure facilities such as roads, stormwater ponds, sewer, water, and trails. If developers so choose they may enter into development agreements to address the lack of adequate public facilities before development occurs.

Similarly, establishing transportation improvement districts (TID) in a city recognizes the need for funding to address substandard infrastructure near new developments. Using these land use related approaches to financing local improvements in a city requires ongoing legal advice.

## VI. Statutory financing tools

### A. Special assessments

Minn. Stat. ch. 429.

Chapter 429 allows special assessments, which theoretically ease the problem of financing local improvements. Special assessments are charges a city levies against real property for a local improvement that provides special benefits to the charged properties. The city may finance all or part of an improvements cost in this manner, but only by strict compliance with the law.

LMC information memo, *Special Assessment Guide*, and *Special Assessments Checklist and Sample Forms*.

The most typical use is to pay for infrastructure in undeveloped areas of a city, particularly when the city is converting new tracts of land to urban or residential use. Special assessments frequently pay for opening and surfacing streets; installing utility lines; and constructing curbs, gutters, and sidewalks. Special assessments may partially underwrite the cost of major maintenance programs. Cities often use special assessment to finance, in part, large-scale repairs and maintenance operations on streets, sidewalks, sewers, and similar facilities. Another use of special assessments is the redevelopment of existing neighborhoods. Cities use special assessments when areas age and the infrastructure needs updating.

Minn. Stat. §§ 216C.435-436; 2010 Minn. Laws ch. 389, art. 7, §§ 11-19 amending 2010 Minn. Laws, ch. 216, § 3-4 adding and amending various subdivisions.

2010 Minn. Laws ch. 216, § 21 amending Minn. Stat. § 429.021, subd. 1.

Contact the Minnesota Department of Employment and Economic Development 651-259-7114.

Minn. Stat. §§ 216C.435-.436.

Cities may encourage energy improvements on private property. Residents may use the *Voluntary Energy Improvements Financing Program* to make energy improvements to their qualifying real property in the city. If a city chooses to institute this program, the city issues revenue bonds to procure funds that residents then use. (Another 2010 session law amends the previous 2010 session law and allows economic development authorities (EDAs) and housing redevelopment authorities (HRAs) to do this with city approval.) Cities secure repayment of the bonds with a lien against the qualifying real property, and owners repay the borrowed money as a special assessment added to their property taxes. At the time of publication some questions exist regarding this program and the priority of liens created by it.

Special Assessments, House Research Information Brief, Sept. 2008.

The special benefits test limits how much an area of a city pays for local improvements through special assessments. The measure of the benefit is the increase in the market value of the land because of the improvement. Under the special benefit test, special assessments are presumptively valid if the land receives a special benefit from the improvement, the assessment does not exceed the special benefit measured by the increase in market value due to the improvement, and the assessment is uniform as applied to the same class of property in the assessed area.

To ensure full protection for property owners, state law and courts applying Chapter 429 insist on strict compliance with complex procedural requirements. Because these requirements have legal implications, city councils should have the city attorney guide assessment proceedings.

## B. Special service districts

Minn. Stat. §§ 428A.01 - 428A.101.

Another way to fund local improvements in business areas of a city is by use of special service districts (SSDs). An SSD is any defined area in a city where the city delivers special services for which the city imposes and collects special charges. Only land zoned for business purposes (commercial, industrial, land for public utility purposes, or vacant land similarly zoned) is subject to the special charges.

Minn. Stat. § 428A.02.

Minn. Stat. § 428A.08.

Landowners, not the city, initiate establishment of an SSD. Twenty-five percent or more of the owners of the land area of property subject to service charges *and* owners of 25 percent or more of the net tax capacity of property subject to the district must file a petition with the city clerk, calling for a public hearing. The city council may decide to establish the SSD based on the petition, but is not required to do so. Before the imposition of service charges in a district, for each calendar year, a hearing must be held according to law and notice must be given and must be mailed to any owner, individual, or business organization subject to a service charge.

Minn. Stat. § 428A.02, subd. 2.

Minn. Stat. § 428A.03, subd. 1.

Minn. Stat. § 428A.101.

SSDs are another tool cities may use to make, and pay for, local improvements in certain areas of a city if business owners request it and where special services are rendered and paid for with revenues collected from service charges. Service district charges are not property tax levies, even though they are based on net tax capacity and are payable and collected in the same manner as property taxes. The service charges are not included in computations of tax increments, fiscal disparities, or any other law that applies to general ad valorem levies. Note: The establishment of a new special service districts after June 30, 2013, requires special legislation.

## C. Housing improvement areas

Minn. Stat. §§ 428A.11 - 428A.20.

In a very similar manner to SSDs, cities may use housing improvement areas (HIAs) to fund local improvements in common areas of townhouses or condominium neighborhoods. Note: After June 30, 2013, the establishment of a new HIA requires enactment of a special law authorizing the establishment. Prior to establishment of a housing improvement area, the governing body of the city must:

Minn. Stat. § 428A.03, subd. 1a.

- Provide full disclosure of public expenditures, as well as the terms of any loans, bonds, or other financing arrangements for housing improvement area projects; and
- Determine whether the association or the city will contract for the housing improvements, and ensure that any contracts made by the implementing entity are subject to municipal contracting law.

Minn. Stat. § 471.345.

Minn. Stat. § 428A.12.

A petition from landowners initiates establishment of an HIA, not the city council. At least 50 percent of the affected property owners of the housing units potentially subject to fees in the proposed HIA must file a petition with the city clerk. The petition, filed with the city clerk, requests a public hearing on the establishment of an HIA and on the proposed fees. Additional statutory procedures apply to HIAs.

Minn. Stat. § 428A.20.

The city council may specially assess housing improvements to property in an HIA *in addition* to the fees for improvements made pursuant to the HIA ordinance. If a fee is imposed on a basis other than the tax capacity or square footage of the housing unit, the council must make a finding that the alternative basis for the fee is more fair and reasonable. (Of course, a city doing so must follow all special assessment procedures in Chapter 429.)

Minn. Stat. § 428A.14, subd. 1.

Minn. Stat. § 428A.18, subd. 2.

Minn. Stat. § 428A.13.

Minn. Stat. § 428A.14.

However, both an HIA ordinance or an HIA resolution setting fees may be vetoed. If 45 percent of the residents of housing units subject to the fees file an objection to the ordinance adopted by the with the city clerk before the effective date of the ordinance, it does not take effect. In addition, if owners of 45 percent or more of the housing units' tax capacity subject to the fee set by resolution file an objection with the city clerk before the effective date of the resolution, it does not become effective.

## D. Sidewalk improvement districts

Minn. Stat. § 435.44.

A city may establish, by ordinance, a sidewalk improvement district to pay all or part of the cost of sidewalk construction and repair by apportioning the cost throughout the property in the district on a “direct or indirect benefit basis.” The council may establish districts in order to provide all areas with safe pedestrian walkways to and from schools, school bus stops, public transportation facilities, and other neighborhood and community services.

The total cost may be apportioned and assessed to all property in the district on a uniform basis as to each classification of property. An indirect benefit assessment may involve all property in the district without regard to location of sidewalks. A direct benefit may be assessed to abutting property for the additional cost of an extra sidewalk width. Assessments may be spread over a five-year period, but there is no provision in the statute for issuing obligations initially, to finance the cost, nor is any procedure prescribed for making the assessments. The law makes no mention of Chapter 429 or special assessments.

## E. Economic development authority

Minn. Stat. §§ 469.090 – 469.1081.  
Handbook, Chapter 15.

Economic development authorities (EDAs) possess additional funding power that may help cities fund certain local improvements. An in-depth examination of EDAs is beyond the scope of this chapter, but in general an EDA can issue lease revenue bonds (without a vote or referendum requirement and not subject to net debt limits) to construct public facilities such as a fire hall or a city hall, and lease it back to the city. In the lease, the city agrees to cover the bond payments and eventually purchase the public facility.

Minn. Stat. §469.174 adding subd. 10c; Minn. Stat. §469.175 adding subd. 2b; Minn. Stat. §469.176 adding subd. ii. Minn. Stat. § 273.13, subd. 24.

Compact development tax increment financing (TIF) districts must meet two conditions: Parcels consisting of 70 percent of the area of the district are occupied by buildings or similar structures that are classified as class 3a property. The planned redevelopment or development of the district, when completed, will increase the total square footage of buildings occupying the district by three times or more relative to the square footage of similar buildings occupying the district when the resolution is approved. The authority to establish or approve such a district expires on June 30, 2012.

## VII. State funding sources for roads and bridges

The state provides funding to Minnesota cities for local roads and bridges in a number of ways:

- The municipal state aid program (MSA),
- The local road improvement program,
- State bonding,
- Regular state general fund appropriations.

### A. Municipal state aid (MSA)

Minn. Const. art. XIV, § 4.  
Minn. Stat. §§ 162.09 – 162.18.  
Minn. Stat. § 162.09, subd. 4.  
Minn. R. ch. 8820.

The MSA program, administered by the Minnesota Department of Transportation (Mn/DOT) provides funding to support qualifying city roads and bridges in cities with a population of 5,000 or more, based on the last federal census or a special census, done by contract with the U.S. Bureau of the Census and paid for by the city. Mn/DOT decides what city roads fit the criteria as defined by rule.

Cities use these funds to construct, improve, and repair MSA streets in any of the following ways:

- Use current allocations to pay for projects.
- Borrow against the city's future MSA allocation.
- Issue bonds that will be repaid with MSA funds.
- Use MSA funds to meet participation requirements on county or Mn/DOT projects.
- Combine MSA dollars with money collected through special assessments.

Mn/DOT State Aid for Local Transportation.

City engineers work with the state to identify and procure MSA funding for qualifying streets. A screening board, appointed by the commissioner of Transportation, includes one city engineer from each of the eight Mn/DOT districts, two engineers from the Metro Division, and one engineer from each of the first class cities (populations of 100,000 or more). The board annually reviews all information as to the financial needs of the MSA system and submits its recommendations to the commissioner on or before the first day of November of each year.

## **B. State funded local road improvement program**

Minn. Stat. § 174.52.

State Aid for Local Transportation (SALT).

Two types of accounts provide financial assistance to cities in construction, reconstruction, or reconditioning of roads and bridges with regional significance:

- Trunk highway account,
- Routes of regional significance account.

Each account has unique criteria in how and when the funds become available and how they may be spent. Mn/DOT and the State Aid for Local Transportation Division (SALT) administers these programs and provides oversight and approval of all projects using funds from these programs.

### **1. Trunk highway account**

Mn/DOT State Aid Manual.

According to Mn/DOT, this account funds loans or grants to cities to assist in paying the local share of Mn/DOT trunk highway projects that have local costs related to the trunk highway improvement and are not funded or are only partially funded with other state and federal funds. The Legislature authorizes the use of GO bonds for this account.

### **2. Routes of regional significance account**

Mn/DOT State Aid Manual.

Grants from this state account may help cities pay the costs of constructing or reconstructing city streets with statewide or regional significance that have not been fully funded through other state, federal, or local funding sources. The SALT Office selects projects for these grants based on established procedures and criteria.

### 3. Local bridge replacement program

Minn. Stat. § 174.50.

Minn. Stat. § 174.50, subds. 6 and 7.  
Minn. Stat. § 174.50, subd. 6c

Mn/DOT and SALT administer funding programs exclusively for local bridge projects, including the Federal Aid Bridge Replacement Program and State Transportation Fund (Bridge Bonds). Although the state manages these programs, the funds are not state aid funds. Mn/DOT must cooperate with local road authorities to develop rules, procedures for application for grants, conditions of grant administration, standards, and criteria for local bridge projects and specifications. In addition, Mn/DOT must develop rules that establish criteria for determining priorities and amounts of grants. The basis of the criteria must consider the following factors:

- Effectiveness of the project in eliminating a deficiency in the transportation system;
- Number of persons affected by the deficiency;
- Economic feasibility;
- Effect on optimum land use and other concerns of state and regional planning;
- Availability of other financing capability; and
- Adequacy of provision for proper operation and maintenance after construction.

As part of the standards or rules, Mn/DOT must, in consultation with local road authorities, establish a minimum distance between any two bridges that cross over the same river, stream, or waterway, so that only one of the bridges is eligible for a grant. As appropriate, Mn/DOT may establish exceptions from the minimum distance requirement or procedures for obtaining a variance. Cities must apply for the money and win approval on a project-by-project basis. Mn/DOT may make a grant to any city for replacement or rehabilitation of a fracture-critical bridge.

City Engineers Association of Minnesota, Minnesota Chapter of the American Public Works Association and the League of Minnesota Cities, *Funding Street Construction and Maintenance in Minnesota's Cities*. January 2003.

State bridge bonds generally match or supplement other bridge repair and replacement resources such as federal aid, county state aid (CSA) and MSA allotments, and local property tax revenue. Bond funds are often the catalyst that allows replacement or rehabilitation of a bridge. Historically, bridge bonds provide 20 percent to 40 percent of a project's cost.

### C. State highway user taxes

Minn. Const. art. XIV, § 5.

The Minnesota Constitution establishes the Highway User Tax Distribution Fund (HUTDF). Revenue comes from the state motor fuel tax, or gas tax, and vehicle registration fees. Nine percent of the revenue goes to the MSA system, 62 percent to the trunk highway fund, and 29 percent to the CSA highway fund. The state parcels out remaining funds to a number of different transportation programs based on a legislatively determined formula that changes no more than once every six years. Sometimes, but not often, the state appropriates general fund dollars for specific local road and bridge programs.

## D. Transportation revolving loan fund

Minn. Stat. § 446A.085.

Minn. Stat. § 466A.085, subd. 15.

The state transportation revolving loan fund provides below-market financing to local governments and Mn/DOT for transportation-related projects. Mn/DOT also administers this program in conjunction with the Public Facilities Authority (PFA). PFA may loan money to a city for transportation infrastructure projects even if the city is not eligible for federal or state financing. The loan must be repaid by the city from the proceeds of special assessments, tax increments, or other local taxes, such as sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes, and food and beverage taxes, authorized to be used for purposes of the project.

## VIII. Federal road and bridge funding sources

Mn/DOT Minnesota's Highway Finances.

Funds for roads and bridges come to Minnesota from the federal highway trust funds and from federal motor fuel taxes. There are eight area transportation partnerships (ATPs), which include representatives from cities and counties, the state, and other transit-related agencies. A substantial amount of federal highway revenue goes to local government projects. Typically, this is about \$100 million or more per year.

### A. Grant anticipation financing of transportation or transit projects

Minn. Stat. § 475.522.

Cities may borrow in anticipation of the receipt of federal transportation grants by issuing bonds (known as GARVEE bonds). With this funding tool, a city can borrow on behalf of a state agency that is to receive the federal grants. The state agency pledges to pay the grant money to the city or county that issued the bonds. The proceeds of the bonds then finance the transportation projects, which the grants will eventually fund as well as debt service, issuance costs, and funding a reserve for the project.

## IX. State funding for infrastructure

Public Facilities Authority.  
Minn. Stat. ch. 446A.

The Minnesota PFA is responsible for the administration and financial management of revolving loan funds and other programs to assist local governments and others with the construction of public infrastructure. The programs administered, in part, by PFA are:



Minn. Stat. § 446A.07.

Minn. Stat. § 446A.07, subd. 7.

Minn. Stat. § 446A.072, subd. 1.

Minn. Stat. § 446A.074

Minn. Stat. § 446A.073.

Minn. Stat. § 446A.075 subd. 1a.

Minn. Stat. § 446A.081, subd. 9.

Minn. Stat. § 446A.081, subd.8.

Minn. Stat. § 446A.087.

- Clean Water Revolving Fund, providing below-market financing to local governments to upgrade and construct wastewater treatment and collection facilities, administered in conjunction with the Minnesota Pollution Control Agency and based on criteria in state law.
- Wastewater Infrastructure Fund (WIF), providing supplemental assistance to local governments for predesign, design and construction of cost-effective wastewater treatment projects, including purchase of land and easements. Supplemental assistance is provided in conjunction with the clean water revolving fund.
- Total Maximum Daily Load (TMDL) Grants, providing money to assist municipalities with costs for projects required by TMDL implementation plans.
- Small Community Wastewater Treatment Program, providing loans and grants to assist local governments with costs to replace non-complying Subsurface Sewage Treatment Systems (SSTS) (commonly known as septic systems) with new subsurface sewage treatment systems, or publicly owned and operated small cluster sewage treatment systems. If a governmental unit receives preliminary approval by the Pollution Control Agency of its feasibility report the state may make a partial construction award for eligible design costs.
- Drinking Water Revolving Fund, providing below-market financing and in some situations, loan forgiveness, to local governments and other public water suppliers to upgrade and construct drinking water treatment, distribution, and storage facilities. The Minnesota Department of Health (MDH) also administers this program based on criteria in state law.
- Credit Enhancement Program, providing a limited state guarantee for certain types of general obligation bonds issued by cities for purposes specified in state law.

## A. USDA rural development

As it relates to local infrastructure, USDA Rural Development provides funding to rural communities for clean water, hospitals, clinics, community centers, day-care facilities, first responder needs and other essential community infrastructure. Rural development prioritizes public entities, in areas with less than 5,500 people, to restore a deteriorating water supply, or to improve, enlarge, or modify a water facility or an inadequate waste disposal facility. Small facilities and those serving low-income communities receive preference.

USDA Rural Development, Program Fact Sheets.

## 1. Financing tools for water-related projects

Minnesota Rural Water Financing Authority.

Cities often encounter timing issues when working with federal grants or financing water-related projects. The money may not be available when the city needs to start water, sewer, and wastewater projects. Minnesota Rural Water in conjunction with others, offers a number of financing tools to help cities fund water, sewer, and wastewater projects:

Minnesota Governmental Agency Finance Group.

The Minnesota Rural Water Finance Authority (MRWFA) is an interim construction loan program providing funding at a very low cost of borrowing for communities receiving a permanent loan commitment from the U. S. Department of Agriculture, Rural Development (RD).

Micro Loan Financing Program.

The Minnesota Governmental Agency Finance Group (MGAFG), in conjunction with Morgan Keegan, offers a “Flexible-Term Finance Program” for a variety of projects with loan terms up to 25 years helping communities obtain competitive financing for water, wastewater, gas, streets, and community facilities projects.

National Rural Water Association Revolving Loan Fund.

Minnesota Rural Water Association’s Micro Loan Program provides low-cost loans from \$30,000 to \$200,000, repayable in seven years, to members for small projects.

National Rural Water Association (NRWA) Revolving Loan Fund (RLF) provides financing to eligible utilities for pre-development costs associated with proposed water and wastewater projects. RLF funds can also be used on existing water/wastewater systems and the short-term costs incurred for replacement equipment, small-scale extension of services or other small capital projects that are not a part of regular operations and maintenance.

## 2. Funding for infrastructure in greater Minnesota

Greater Minnesota Business Development Grant.

The purpose of the Greater Minnesota Business Development Infrastructure Grant program is to stimulate new economic development and/or create or retain jobs in greater Minnesota through public infrastructure investments. The program provides grants to cities, on a competitive application basis, of up to 50 percent of the capital costs of industrial park development or other projects that will keep and/or enhance jobs, increase a city’s tax base, and expand or create new economic development. Eligible applicants are statutory or home rule cities outside of the seven-county metropolitan area. Eligible projects are publicly owned infrastructures that include, but are not limited to, wastewater collection and treatment, drinking water, storm sewers, utility extensions, and streets that support economic development projects. Projects include manufacturing, technology, warehousing and distribution, research and development, and agricultural processing.

Minn. Stat. § 116J.431.

“Public infrastructure” means publicly owned physical infrastructure necessary to support economic development projects, including, but not limited to, sewers, water supply systems, utility extensions, streets, wastewater treatment systems, stormwater management systems, and facilities for pretreatment of wastewater to remove phosphorus. Funding for the program comes from state issued general obligation bonds and the amount available varies each bonding year.

## X. Emergencies

Many state and federal agencies may offer various types of aid to cities in case of natural disasters. While most of this is beyond the scope of this chapter the following tools may assist funding infrastructure repair or replacement after a disaster occurs.

### A. Levy for emergencies

Minn. Stat. § 12.26, subd. 2.

Minn. Stat. § 12.26, subd. 3.

Cities may annually levy for emergency management purposes in excess of and over and above all taxing limitations to pay expenditures incurred for emergency management purposes. In order to purchase additional infrastructure equipment (partially paid through federal funding), a political subdivision may levy an additional tax with the governor’s approval.

Minn. Stat. § 273.1231 - 273.1235.

Minnesota Department of Revenue:  
Truth in Taxation for taxes payable  
in 2011.

The Minnesota Department of Revenue may decide to extend levy due dates for cities requesting a special levy to prepare infrastructure or other property for or repair the effects of natural disaster including the occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from natural causes. Levy increases for costs of clean up relating to a natural disaster are allowed beyond the amount certified for truth in taxation with the approval of the Commissioner of Revenue. Costs for preparing for the flood in addition to costs for repairing the effects of the flood could be included in the levy increase (beyond the preliminary levy certified for truth in taxation). In large scale disasters like floods the Department of Revenue would allow the natural disaster special levy to include local costs for the disaster abatement. However, local costs for the abatement for one or minimal number of properties, for example, due to individual disaster like a fire, would not qualify for the special levy.

### B. Issuing debt in an emergency

Minn. Stat. § 475.754.

Minn. Const. art. XI, § 6.

Handbook, Chapter 24,

Minn. Stat. § 412.751.

Cities experiencing extraordinary expenditures, including infrastructure repairs, due to any natural disaster may issue emergency certificates of indebtedness. The city council may authorize the sale of certificates of indebtedness to mature within three years and to bear interest at a rate not to exceed the amount prescribed in law. The certificates may be issued with or without advertising for bids on such terms and conditions as the council may determine. The state auditor prescribes forms for these certificates.

Minn. Stat. § 475.58, subd. 1(11).

The certificates must be repaid by a levy that, according to the Department of Revenue, is not subject to or included in a city's levy limit. If these certificates are used to compensate for unallotment or loss of other state aid, the same amount cannot be again recouped under a separate special levy. The certificates may be issued without holding a bond election.

### C. Federal disaster relief

44 C.F.R., Part 201.

*Disaster Mitigation Act of 2000  
Brings New Planning Requirements  
to Local Governments.*

Congress has a long history of funding disaster relief, recovery, and some hazard mitigation planning through the Federal Emergency Management Agency (FEMA). Now the Disaster Mitigation Act of 2000 (Public Law 106-390) reinforces the importance of mitigation planning in both pre- and post-disaster situations, and emphasizes planning for disasters before they occur. States and communities must have an approved mitigation plan in place prior to receiving Hazard Mitigation Grant Program funds. A local mitigation plan may ensure a city's eligibility for federal grant dollars to replace local infrastructure.

## XI. How this chapter applies to home rule charter cities

Minn. Stat. ch. 410.

Charter cities may use any of the financing tools described in this chapter unless the city's charter provides otherwise. Some charters limit or alter a city's authority to use a particular financing tool, making it most important that charter cities consult the city attorney and the charter before embarking on a local improvement project.

### A. Special assessments in charter cities

The constitutional special benefit rule applies to charter cities. Again, the special benefit rule requires that the amount of special assessments to a parcel of property cannot exceed the increase in market value of that property because of the improvement.

Minn. Stat. ch. 429.

Minn. Stat. § 429.111.

A.G. Op. 59B14. (June 26, 1956)

Generally, any city operating under a home rule charter may proceed either under Chapter 429 or under its charter in making an improvement, unless a home rule charter or amendment taking effect after April 17, 1953, provides for an improvement under Chapter 429 or the charter exclusively.

Minn. Stat. § 429.021, subd. 3.

If an option exists, the city council must determine whether to proceed under its charter or Chapter 429.

Minn. Stat. § 429.021, subd. 3.

Even if the city follows charter procedures, state law requires that notices of proposed assessments inform property owners of the procedures they must follow under the charter in order to appeal the assessments to district court. The notices must also inform property owners of the provisions of the senior citizen deferment law, military or disability related deferments, and the existence of any deferment procedure established by the city.

Minn. Stat. §§ 435.193 - 435.195.

Minn. Stat. § 429.021, subd. 3.

Charter provisions must require that the council issue the contract for all or part of the work, or order all or part of the work done by day labor, no later than one year after the adoption of the resolution ordering such improvement—unless the council specifically states a different time limit in the resolution ordering the improvement.

## **B. Funding for infrastructure**

Some charters may limit the city's authority to use state law funding mechanisms or may include voting requirements that differ from state law. Each charter is a unique local constitution, which charter city councils must follow. Consult the city attorney for interpretation of local charters as they relate to financing local improvements.

## **XII. Conclusion**

Funding local infrastructure improvements poses significant challenges to city councils. Careful planning, capital improvement plans, and fees that comport with all the costs of providing services help cities fund essential infrastructure expenditures.



## MAYOR & COUNCIL COMMUNICATION

DATE: 2/01/2011  
**REGULAR**  
ITEM #: 7  
**ACTION**

**AGENDA ITEM:** Approval of City Policy on Contracted Services

**SUBMITTED BY:** City Administrative Staff

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

**REVIEWED BY:** - NA -

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**SUMMARY AND ACTION REQUESTED:** Pursuant to City Council direction from December 14th, 2010, it is respectfully requested that the Mayor and City Council Members receive a brief presentation on the proposed City Policy on Contracted Services and, if appropriate, approve said Policy. The suggested motion to undertake this activity is:

**SUGGESTED MOTION:** *“Move to approve the City Policy on Contracted Services.”*

**BACKGROUND INFORMATION:** At its December 14th, 2010 meeting, the City Council directed preparation of a final draft of a proposed City Policy with respect to Contracted Services. While much progress was made in 2010 in establishing administrative procedures, additional effort will continue to be required in 2011 to make needed and desired improvements. Passage of a clear policy on Contracted Services is an important step in the process.

**STAFF REPORT:** The following are the key provisions of the proposed Policy (final formatting will be undertaken, once approved by the City Council):

- All contracts and/or contract amendments shall be placed in writing, reviewed by the City Attorney and City Administrator, and formally acted upon (approved, modified, rejected, etc.) by the City Council;
- Multi-year or on-going City contracts shall be evaluated annually by the City Administrator and summarized for review by the City Council. Limited-duration contracts shall be evaluated by the City Administrator, summarized for review by the City Council, and documented for future reference;

- Renewal of multi-year or on-going contracts shall be dependent upon sufficient annually-budgeted financial resources, continuing necessity of services, and appropriate legal authority;
- Renewal of multi-year or on-going contracts shall be undertaken in writing and upon affirmative action of the City Council (either independently or via approval of the annual Budget).
- Any/all changes in services provided or fees charged shall be submitted in writing by the service provider by September 1st of the prior year in order to be considered as part of the annual budgeting process;
- The City will strive to receive the most cost-effective services through periodic affirmative review and, if directed by the City Council, bidding of contracted services according to the attached schedule;
- Whenever appropriate, a formal Request for Qualifications/Request for Proposals (RFQ/RFP) process will be utilized to solicit, evaluate and rank qualified and interested service providers;
- Preference for local service/goods providers (defined first as Lake Elmo, then as East Metro) shall serve as a tie-breaker among equally qualified and ranked applicants;
- When a RFQ/RFP process is not utilized, all reasonable efforts will be made to seek at least two comparable bids or quotes prior to approving contracted services;
- On-call or emergency contracts will be delineated in writing, with appropriate fee schedule(s) defined and attached.
- The City Council retains the ultimate authority to approve, revise, amend and/or terminate service contracts, as allowed under state law and delineated in said contracts.

**FINANCIAL/LEGAL/OTHER CONSIDERATIONS:** At this time, no requested Council discussion of this item at tonight's meeting is anticipated to generate immediate financial, legal or other considerations. However, specific Council direction emanating from this discussion may have certain additional considerations, such as direction to proceed with certain contract renewals, etc.

**ATTACHMENTS:** Revised 2011 City Contract/Schedule

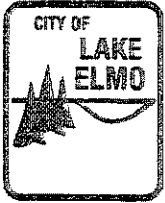
**SUGGESTED ORDER OF BUSINESS:**

- Introduction & Report..... City Administrator
- Questions from Council to Staff ..... Mayor Facilitates
- Public Input, if Appropriate ..... Mayor Facilitates
- Call for Motion ..... Mayor & City Council

- Discussion/Comments..... Mayor Facilitates
- Action on Motion..... Mayor Facilitates



<u>Contract</u>	<u>Contractor</u>	<u>Representative</u>	<u>Type</u>	<u>Start</u>	<u>Up/Due</u>
Accounting - General Ledger	KDV	Joe Rigdon	Active	2008	2011/12
Accounting - Payroll, Utilities, AP	C & J	Cathy & Joan Ziertman	Active	2010	2011/12
Animal Control	ACS	Richard Ruzicka	Active	2005	2011/12
Assessor	FXL	Frank Langer	Active	?	2011/12
Attorney - Civil/Municipal	Eckberg, Lammers, Briggs & Wolf	Dave Synder	Expired	2009	
Attorney - Criminal	Peterson Fram & Bergman Pa	Jerry Filla	Expired	?	
Attorney - Combined (2009)	Eckberg, Lammers, Briggs & Wolf	Dave Synder	Active	2010	TBD
Auditor	Abdo, Eick & Myers	Steve McDonald	Active	2002	2011/12
Cleaning		Diane Prince Rud	Active	?	2010/11
Emergency Communications	ECN/Code Red		Active	2010	2012/13
Engineering	TKDA	Jack Griffin	Active	?	2012/13
Financial Planning (Village)	Ehlers		Active	2008	On-Call
Forestor	Plant Health Associates	Kathy Widin	Active	2008	2010/11
Health Benefits	Financial Concepts	Andy Weitnauer	Active	2010	2011/12
IT	City of Roseville	Terre	Active	2008	IGA
OSHA/Safety	City of Forest Lake		Active	2010	IGA
Police	Washington County	Commander Dexter	Active		IGA
Recycle Education & Support	Service on a Shoe String	Karen Ritchman	Active	?	2010/11
Rugs, Uniforms & Supplies	Aamark		Active	?	2010/11
Telephone Service	Eventis		Active	2007	2011/12
Waste	Maroney's		Active	?	1012/13
Electrical & Gas Franchise Agreements	Xcel Energy	Colette Jurek	Expired		2010
Bond Counsel	Dorsey & Whitney (thru Northern Trust)		On-Call	?	On-Call
Building Code/Inspection	City of Bayport		On-Call	2010	IGA
Electric	Linner		On-Call	?	On-Call
Financial Consulting	Northern Trust		On-Call	?	On-Call
Fire Maintenance	City of Oakdale & Local		On-Call	2010	IGA
Fuel	Lake Elmo Oil, Yokum		On-Call	?	On-Call
HR/Personnel	Springsted		On-Call	2009	On-Call
Investment Brokers	Norther Trust, Wells Fargo, Morgan Stanley		On-Call	?	On-Call
Keys/Security	Amdahl/Curt's Lock		On-Call	?	On-Call
Medical Supplies			On-Call	?	On-Call
Planning Support		Ben Gazola	On-Call	?	On-Call
Road Grading	Miller		On-Call	?	On-Call
Snowplow	Buelow/Kline		On-Call	?	On-Call
* Local Preference as a tie-breaker	** On-Call pre-register option/bid check				



# MAYOR & COUNCIL COMMUNICATION

DATE: 2/01/2011  
**REGULAR**  
ITEM #: 8  
**DISCUSSION**

**AGENDA ITEM:** Update on Discussions Regarding Location of the ECFC in Lake Elmo  
**SUBMITTED BY:** Mayor and City Administrator  
**THROUGH:** Bruce A. Messelt, City Administrator *BAM*  
**REVIEWED BY:** - NA -

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**SUMMARY AND ACTION REQUESTED:** The City Council is respectfully requested to receive a brief update from the City Administrator and Mayor regarding recent discussions relating to potential location of the Stillwater Area School District's Early Childhood & Family Center in Lake Elmo.

**BACKGROUND INFORMATION & STAFF REPORT:** In August 2010 and again on November 3rd, 2010, the City Council directed the City Administrator actively seek to formulate a proposal to potentially locate the Stillwater Area School District's Early Childhood & Family Center in Lake Elmo.

Since that time, active conversation has taken place regarding this potentiality, leading to recent efforts to craft a specific proposal for City and School District consideration. Tonight's presentation will serve as a "check-in" with the City Council to ensure the efforts undertaken, to date, are on target and consistent with previous Council direction to develop a viable location proposal.

**RECOMMENDATION:** It is respectfully recommended that the City Council receive a brief presentation by the Mayor and City Administrator regarding recent discussions and efforts relating to potential location of the Stillwater Area School District's Early Childhood & Family Center in Lake Elmo.

**ATTACHMENTS:** Materials will be presented at the Council Meeting.

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item ..... City Administrator
- Report/Presentation ..... Mayor/Administrator
- Questions from Council ..... Mayor Facilitates
- Public Input, if Appropriate ..... Mayor Facilitates
- Council Discussion/Direction ..... Mayor Facilitates