

LAUDERDALE CITY COUNCIL MEETING AGENDA
7:30 P.M. TUESDAY, JANUARY 3, 2017
LAUDERDALE CITY HALL, 1891 WALNUT STREET

The City Council is meeting as a legislative body to conduct the business of the City according to Robert's Rules of Order and the Standing Rules of Order and Business of the City Council. Unless so ordered by the Mayor, citizen participation is limited to the times indicated and always within the prescribed rules of conduct for public input at meetings.

1. **SWEARING IN OF NEWLY ELECTED OFFICIALS**
2. **CALL THE MEETING TO ORDER**
3. **ROLL CALL**
4. **APPROVALS**
 - a. Agenda
 - b. Claims Totaling \$31,898.89
5. **CONSENT**
6. **SPECIAL ORDER OF BUSINESS/RECOGNITIONS/PROCLAMATIONS**
7. **INFORMATIONAL PRESENTATIONS / REPORTS**
8. **PUBLIC HEARINGS**

Public hearings are conducted so that the public affected by a proposal may have input into the decision. During hearings all affected residents will be given an opportunity to speak pursuant to the Robert's Rules of Order and the standing rules of order and business of the City Council.

9. **DISCUSSION / ACTION ITEMS**
 - a. Declaring a City Council Vacancy and Establishing Appointment Process – Resolution 010317A
10. **ITEMS REMOVED FROM THE CONSENT AGENDA**
11. **ADDITIONAL ITEMS**
12. **SET AGENDA FOR NEXT MEETING**
13. **WORK SESSION**
14. **CLOSED SESSION**
 - a. Discussion of Pending Litigation (Rocket Outdoor Advertising, LLC v. City of Lauderdale).
15. **ADJOURNMENT**

LAUDERDALE COUNCIL ACTION FORM

Action Requested

Consent _____
Public Hearing _____
Discussion _____
Action _____
Resolution _____
Work Session _____

Meeting Date January 3, 2017

ITEM NUMBER Swearing In Ceremony

STAFF INITIAL



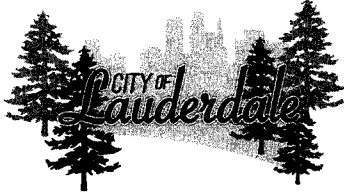
APPROVED BY ADMINISTRATOR

DESCRIPTION OF ISSUE AND PAST COUNCIL ACTION:

This year's swearing in ceremony may seem a little odd because it won't be at a regularly scheduled city council meeting but please bring family and friends. Heather will administer the oaths and have you sign them after your swearing in.

We had hoped to have the carpet project done by the meeting but ran into some issues so unfortunately the Council Chambers will look a little out of sorts. I can explain further at the meeting.

STAFF RECOMMENDATION:



CITY OF LAUDERDALE
LAUDERDALE CITY HALL
1891 WALNUT STREET
LAUDERDALE, MN 55113
651-792-7650
651-631-2066 FAX

Request for Council Action

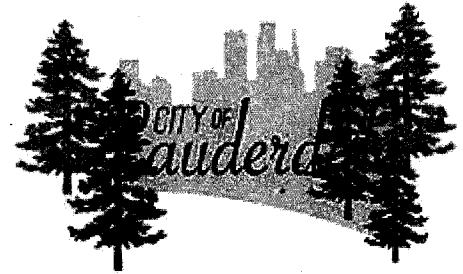
To: Mayor and City Council
From: City Administrator
Meeting Date: January 3, 2017
Subject: List of Claims

The claims totaling \$31,898.89 are provided for City Council review and approval which includes check numbers 25167 to 25188.

Accounts Payable

Checks by Date - Detail by Check Date

User: heather.butkowski
 Printed: 12/30/2016 4:33 PM



Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Check Amount
ACH	43	Public Employees Retirement Association PR Batch 52500.12.2016 PERA Coordinated PR Batch 52500.12.2016 PERA Coordinated	12/16/2016 PR Batch 52500.12.2016 PER PR Batch 52500.12.2016 PER	878.22 1,013.32
Total for this ACH Check for Vendor 43:				1,891.54
ACH	44	Minnesota Department of Revenue PR Batch 52500.12.2016 State Income Tax	12/16/2016 PR Batch 52500.12.2016 Stat	480.41
Total for this ACH Check for Vendor 44:				480.41
ACH	45	ICMA Retirement Corporation PR Batch 52500.12.2016 Deferred Comp PR Batch 52500.12.2016 Deferred Comp	12/16/2016 PR Batch 52500.12.2016 Def PR Batch 52500.12.2016 Def	1,841.92 848.77
Total for this ACH Check for Vendor 45:				2,690.69
ACH	46	Internal Revenue Service PR Batch 52500.12.2016 Medicare Employer Po PR Batch 52500.12.2016 FICA Employer Portio PR Batch 52500.12.2016 FICA Employee Portio PR Batch 52500.12.2016 Federal Income Tax PR Batch 52500.12.2016 Medicare Employee Pc	12/16/2016 PR Batch 52500.12.2016 Mec PR Batch 52500.12.2016 FIC PR Batch 52500.12.2016 FIC PR Batch 52500.12.2016 Fed PR Batch 52500.12.2016 Mec	231.95 991.75 991.75 1,099.69 231.95
Total for this ACH Check for Vendor 46:				3,547.09
Total for 12/16/2016:				8,609.73
ACH	133 4Q2016	Miles Cline 4Q2016 Mileage	12/30/2016	129.92
Total for this ACH Check for Vendor 133:				129.92
ACH	56 4Q2016	James Bownik 4Q2016 Mileage	12/30/2016	76.25
Total for this ACH Check for Vendor 56:				76.25
ACH	57 4Q2016	Heather Butkowski 4Q2016 Mileage	12/30/2016	77.00
Total for this ACH Check for Vendor 57:				77.00
ACH	43	Public Employees Retirement Association PR Batch 52600.12.2016 PERA Coordinated PR Batch 52600.12.2016 PERA Coordinated	12/30/2016 PR Batch 52600.12.2016 PER PR Batch 52600.12.2016 PER	894.46 1,032.06
Total for this ACH Check for Vendor 43:				1,926.52
ACH	44	Minnesota Department of Revenue	12/30/2016	

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Check Amount
		PR Batch 52600.12.2016 State Income Tax	PR Batch 52600.12.2016 Stat	493.41
		Total for this ACH Check for Vendor 44:		493.41
ACH	45	ICMA Retirement Corporation	12/30/2016	
		PR Batch 52600.12.2016 Deferred Comp	PR Batch 52600.12.2016 Defi	1,842.09
		Total for this ACH Check for Vendor 45:		1,842.09
ACH	46	Internal Revenue Service	12/30/2016	
		PR Batch 52600.12.2016 FICA Employer Portio	PR Batch 52600.12.2016 FIC.	891.06
		PR Batch 52600.12.2016 Medicare Employee Pc	PR Batch 52600.12.2016 Mec	208.39
		PR Batch 52600.12.2016 Federal Income Tax	PR Batch 52600.12.2016 Fed	1,139.05
		PR Batch 52600.12.2016 Medicare Employer Po	PR Batch 52600.12.2016 Mec	208.39
		PR Batch 52600.12.2016 FICA Employer Portio	PR Batch 52600.12.2016 FIC.	891.06
		Total for this ACH Check for Vendor 46:		3,337.95
25167	20 375903 375903 375903	Abdo Eick & Meyers LLP 2016 Audit Fees 2016 Audit Fees 2016 Audit Fees	12/30/2016	
				2,000.00
				250.00
				250.00
		Total for Check Number 25167:		2,500.00
25168	34	AFSCME MN Council 5	12/30/2016	
		PR Batch 52600.12.2016 Union Dues	PR Batch 52600.12.2016 Uni	191.20
		Total for Check Number 25168:		191.20
25169	22 1003658764	AmeriPride Services Inc Paper Towels	12/30/2016	
				64.04
		Total for Check Number 25169:		64.04
25170	52	Bluechip Tree Company Remove Dead Ash in Nature Area	12/30/2016	
				495.00
		Total for Check Number 25170:		495.00
25171	36 0222297 0222342	City of Roseville December IT Services December Phone Services	12/30/2016	
				492.33
				90.84
		Total for Check Number 25171:		583.17
25172	25 RISK-001820	County of Ramsey PR Batch 52600.12.2016 Long Term Disability PR Batch 52600.12.2016 Short Term Disability PR Batch 52600.12.2016 Life Insurance 12/16 Insurance Processing Fee	12/30/2016	
				76.05
				59.35
				282.15
				25.00
		Total for Check Number 25172:		442.55
25173	60 2277524-11 2277524-11	G & K Services Inc November Uniforms November Uniforms	12/30/2016	
				57.55
				57.55
		Total for Check Number 25173:		115.10
25174	8 FY2016	Duane Grace 2016 Commercial Plan Reviews	12/30/2016	
				2,951.36

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Check Amount
			Total for Check Number 25174:	2,951.36
25175	82	Home Depot Cleaning Supplies	12/30/2016	7.88
			Total for Check Number 25175:	7.88
25176	65 14334154	Integra Telecom Holdings Inc December Fax Line	12/30/2016	51.28
			Total for Check Number 25176:	51.28
25177	31 134813	Kennedy & Graven Chartered November Legal Services	12/30/2016	1,254.00
			Total for Check Number 25177:	1,254.00
25178	1 031298-00009 12292016	Lillie Suburban Newspapers Warming House Job Posting Ordinance Publications	12/30/2016	207.00 257.40
			Total for Check Number 25178:	464.40
25179	23 INV687017	Metro Sales Inc 4Q2016 Copier Printing	12/30/2016	193.02
			Total for Check Number 25179:	193.02
25180	75	Petty Cash Blue Tape Mail Plans to D. Grace EJ Food Misc Halloween Food Dispose of HP Printer Stamps Propane for Grill on Halloween	12/30/2016	6.70 37.32 22.65 8.06 10.00 37.00 23.56
			Total for Check Number 25180:	145.29
25181	47	Public Employees Insurance Program PR Batch 52600.12.2016 Dental PR Batch 52600.12.2016 Health Insurance	12/30/2016 PR Batch 52600.12.2016 Den PR Batch 52600.12.2016 Hea	107.49 2,218.06
			Total for Check Number 25181:	2,325.55
25182	14 163750	Rapit Printing Inc Standard White Logo Envelopes	12/30/2016	131.23
			Total for Check Number 25182:	131.23
25183	26 1140041 1140043	Stantec Consulting Services Inc I/I Report for Met Council 2016 Sanitary Sewer Lining Project	12/30/2016	380.00 94.50
			Total for Check Number 25183:	474.50
25184	91	Suburban Ace Hardware Plumbing Supplies	12/30/2016	30.85
			Total for Check Number 25184:	30.85
25185	4	The Neighborhood Recycling Company	12/30/2016	

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Check Amount
	16942	November Revenue Share		-276.74
	16942	November Recycling Fee		2,396.16
Total for Check Number 25185:				2,119.42
25186	3 319258117	US National Equipment Finance Copier Contract	12/30/2016	149.00
Total for Check Number 25186:				149.00
25187	90 9776206059 9776206059 9776206059	Verizon Wireless November Cell Phone November Cell Phone November Cell Phone	12/30/2016	32.51 16.25 16.26
Total for Check Number 25187:				65.02
25188	74 526517533 526695870 526695870 526695870 526695870	Xcel Energy November Street Lighting 1917 Walnut Street 1885 Fulham Street 1917 Walnut Street 1885 Fulham Street	12/30/2016	510.50 42.71 30.47 55.16 13.32
Total for Check Number 25188:				652.16
Total for 12/30/2016:				23,289.16
Report Total (33 checks):				31,898.89

LAUDERDALE COUNCIL ACTION FORM

Action Requested

Consent _____
 Public Hearing _____
 Discussion X
 Action X
 Resolution _____
 Work Session _____

Meeting Date January 3, 2017

ITEM NUMBER Council Appointment

STAFF INITIAL AB

APPROVED BY ADMINISTRATOR _____

DESCRIPTION OF ISSUE AND PAST COUNCIL ACTION:

Upon Mary Gaasch's swearing in as Mayor, her council seat will be come vacant. Adoption of the following resolution officially declares the seat vacant.

State law provides little guidance on how her seat must be filled. Most typically, cities create some form of application and/or interview process to find a qualified candidate for the seat. If that is the direction the Council would like to go, staff drafted an application form for your review. In order to make the appointment at the January 24, 2017 council meeting, the timeline would need to look something like the following:

1. January 3: adopt resolution declaring vacancy and establish process to fill the seat.
2. January 4: staff will distribute information regarding the vacancy through our usual channels: website, email, and cable access channel.
3. January 13: applications returned by noon to City Hall.
4. January 13: staff will distribute copies of the application to the City Council.
5. January 13: staff will schedule interviews with the perspective council members.
6. January 17, 19 or 20: interviews at City Hall.
7. January 24: make appointment.

The key to making this work is finding a time that the City Council can hold interviews. City Hall is closed January 16 for Martin Luther King, Jr. Day and January 18 is the first night of the Police Workgroup. Realistically, that leaves Tuesday, January 17 or Thursday, January 19 for interviews. Do either of those work? Does this plan and timeframe for selecting a new council member meet the Council's expectations?

STAFF RECOMMENDATION:

Motion to adopt Resolution 010317A—A Resolution Declaring a Vacancy on the City Council.

RESOLUTION 010317A

**CITY OF LAUDERDALE
COUNTY OF RAMSEY
STATE OF MINNESOTA**

RESOLUTION DECLARING A VACANCY ON THE CITY COUNCIL

WHEREAS, the office of Council Member became vacant effective upon the swearing in of Mary Gaasch who was elected to the Office of Mayor; and

WHEREAS, the term of the that office is in its third year and said term will expire on January 7, 2019; and

WHEREAS, Minn. Stat. § 412.02, subd 2a, provides that the council make an appointment to fill the vacancy for the unexpired term.

NOW, THEREFORE, BE IT RESOLVED, that a vacancy on the City Council is hereby declared. The Council intends to appoint an individual at the earliest practical date to fill the vacancy for the remainder of the unexpired term.

Adopted by the City Council of the City of Lauderdale, Minnesota, on this 3rd day of January, 2017.

Mary Gaasch, Mayor

ATTEST:

Heather Butkowski, City Administrator



CITY OF LAUDERDALE
LAUDERDALE CITY HALL
1891 WALNUT STREET
LAUDERDALE, MN 55113
651-792-7650
651-631-2066 FAX

CITY COUNCIL APPLICATION FORM

The City of Lauderdale welcomes you as an applicant for the position of city council member. Your application will be considered with others in competition for the position. Please furnish complete and accurate information. Upon receipt of your application, you will be contacted for an interview with the city council.

Data Practices Advisory

Please note that Minnesota Statute, Chapter 13.601, classifies the following as public data on applications for appointment to a public body:

- (1) name;
- (2) city of residence;
- (3) education and training;
- (4) employment history;
- (5) volunteer work;
- (6) awards and honors;
- (7) prior government service;
- (8) any data required to be provided or that are voluntarily provided in an application for appointment to a multimember agency pursuant to section 15.0597; and
- (9) veteran status.

Furthermore, state law requires that, once an individual is appointed to a public body, their residential address and either a telephone number or e-mail address becomes public data.

Tennessee Warning

The purpose and intended use of the information requested on this application is to assist us in determining your qualifications so the City Council can make an informed decision regarding the appointment. Your contact information is also being requested at this time so that staff has the ability to verify your eligibility for appointment (residential address) and to contact you regarding your application. If you are appointed to the City Council, the contact information that you have listed on this application (residential address, personal phone number, and email address) will become public unless you note otherwise in the outlined area below in this application.

An applicant is not required to provide any information; however, failure to answer any of the questions on this application may cause the appointing authority to reject the application or to select another candidate. The data on this form will be maintained by the City of Lauderdale in accordance with the Minnesota Government Data Practices Act and the non-public portions of the form, if any, will be available to individuals working for the City whose work assignments reasonably require access.



CITY OF LAUDERDALE
LAUDERDALE CITY HALL
1891 WALNUT STREET
LAUDERDALE, MN 55113
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**THE INFORMATION PROVIDED ON THIS PAGE IS OPEN TO THE PUBLIC
PURSUANT TO THE MINNESOTA DATA PRACTICES ACT**

Personal Information

Last Name	First	Middle	
*Current Address:			
Street	City	State	Zip
*Phone Contact Information:			
*Email Address:			



CITY OF LAUDERDALE
LAUDERDALE CITY HALL
1891 WALNUT STREET
LAUDERDALE, MN 55113
651-792-7650
651-631-2066 FAX

Please answer the following (*use the space below or attach separately*)

1. Please indicate your availability for an interview on January X, 2017 beginning at _____.

2. Please summarize why you are seeking an appointment to the City Council.

3. List any work experience you believe is relevant to the City Council position.

4. List any civic or volunteer experience you believe is relevant to the City Council position.



CITY OF LAUDERDALE
LAUDERDALE CITY HALL
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5. What do you hope to accomplish as a member of the City Council?

By signing below, I am authorizing that the above information and statements listed in this application are true and acknowledge that upon appointment to the City Council that my current address, personal phone number, and email address will be released as public data.

Applicant Signature _____ **Date** _____

Application Submission

Please select one of the following options to submit your application.

Mail:

City of Lauderdale
1891 Walnut Street
Lauderdale, MN 55113

Fax:

651.631.2066

Email:

Heather.Butkowski@ci.lauderdale.mn.us

Thank you for your interest in serving your Community!

**LAUDERDALE COUNCIL
ACTION FORM**

Action Requested

Consent _____
Public Hearing _____
Discussion _____
Action _____
Resolution _____
Closed Session X

Meeting Date January 3, 2017

ITEM NUMBER Litigation

STAFF INITIAL AB

APPROVED BY ADMINISTRATOR _____

DESCRIPTION OF ISSUE AND PAST COUNCIL ACTION:

The council meeting includes a closed session to discuss the complaint filed by Rocket Outdoor Advertising, LLC against the City of Lauderdale. City Attorney David Anderson from Kennedy and Graven will be in attendance as will Paul Reuvers of Iverson, Reuvers, and Condon. Paul was appointed by the League of Minnesota Cities to represent the City.

Attached is a copy of the posting for this closed session as well as the complaint filed by Rocket Outdoor Advertising. There should be a vote prior to entering the closed session with a motion something to the effect of:

Motion to go into closed session, as authorized under the attorney-client privilege pursuant to Minnesota Statutes Section 13D.03, subdivision 3(b), to discuss with our counsel the pending litigation of *Rocket Outdoor Advertising, LLC against the City of Lauderdale*, which has been filed in in United States District Court for the District of Minnesota.

STAFF RECOMMENDATION:

**CITY OF LAUDERDALE
LAUDERDALE, MINNESOTA**

REVISED NOTICE OF SPECIAL CITY COUNCIL MEETING

**Tuesday, January 3, 2017
7:30 p.m.**

NOTICE IS HEREBY GIVEN that the City Council will hold a Special Meeting on Tuesday, January 3, 2017, commencing at 7:30 p.m. at 1891 Walnut Street, Lauderdale, Minnesota for the following purpose:

1. To swear in the newly elected officials.
2. Declare a vacant council seat and determine a process to fill the seat.
3. Approve claims.
4. Possible closed session to discuss pending litigation (Rocket Outdoor Advertising, LLC v. City of Lauderdale).

Heather Butkowski, City Administrator

DATED: December 20, 2016.



Michael J. Mergens
direct: 612.314.8003
email: mike@entrepartnerlaw.com

December 19, 2016

Ronald H. Batty
Kennedy Graven, Chartered
470 U.S. Bank Plaza
200 South 6th Street
Minneapolis, MN 55402

Via email and US Mail

RE: *Rocket Outdoor Advertising, LLC v. City of Lauderdale*

Mr. Batty:

Following up on conversation from Friday, please accept this letter as written request that your client, the City of Lauderdale, waive service of the summons and complaint pursuant to Fed. R. Civ. Pro. 4(d). A copy of the complaint, two copies of the waiver of service form, and a self-addressed, stamped envelop are enclosed.

For your information, the case has been assigned to Judge Frank (after Judge Kyle recused).

Should you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael J. Mergens', written over a horizontal line.

Michael J. Mergens

Enclosures

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ROCKET OUTDOOR ADVERTISING, LLC,

Court File No. _____

Plaintiff,

**COMPLAINT
(JURY TRIAL DEMANDED)**

v.

CITY OF LAUDERDALE, MINNESOTA,

Defendant.

COMES NOW Plaintiff Rocket Outdoor Advertising, LLC (“Rocket”), by and through its undersigned counsel, and files this Complaint, stating as follows:

PARTIES

1. Rocket is a Florida limited liability company that has been authorized to transact business in Minnesota. Rocket is in the business of erecting and operating signs that are utilized by businesses, churches, organizations, and individuals to communicate commercial and noncommercial messages. Rocket’s members have been in the sign industry for decades and have developed and operated dozens of signs in several states.

2. Defendant City of Lauderdale, Minnesota (“City”) is a municipal corporation located in Ramsey County and organized under the laws of the State of Minnesota. As explained herein, the City has enacted and enforced sign legislation that impermissibly infringes upon the federal and state constitutional rights of Rocket and many others.

JURISDICTION AND VENUE

3. Rocket’s federal law claims arise under the First Amendment to the United States Constitution and Section 1983 of the Civil Rights Act. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331. The claim which is brought pursuant to the Minnesota

Constitution is related in such a way to Plaintiff's federal law claims that this Court has supplemental jurisdiction over them pursuant to 28 U.S.C. § 1367.

4. The City is subject to the jurisdiction of this Court pursuant to 28 U.S.C. § 1391 and venue is proper as to the City under the facts and circumstances as alleged herein.

FACTUAL ALLEGATIONS

I. The Sign Code.

5. The City has enacted a Sign Code to govern the posting of signs in the City. A true and correct copy of this Code is attached hereto as Exhibit A.

6. The Sign Code prohibits the display of signs anywhere within the City, but it then exempts seven categories of signs from this ban. *See* Sign Code § 10-10-1. There is, however, no procedure to obtain a sign permit from the City Council and the decision whether or not a sign is exempt for the general sign prohibition rests solely in the discretion of the City Administrator.

7. Whether a sign qualifies for each of the seven exempt categories depends on the message or content of the sign. *Id.* at §§ 10-10-2 (exempting signs “announc[ing] the name, address, or professional activity of the occupant of the premises on which said sign is located”); 10-1-3 (exempting “bulletin boards,” but only “in connection with any church, school, or similar public structure”); 10-10-4 (exempting “temporary real estate signs” that “advertise[] [a] particular property for sale, or for rent, or for lease”); 10-10-5 (exempting “real estate development signs” that promote certain residential projects); 10-10-6 (exempting “political signs” that relate to an election); 10-10-7 (exempting “business signs” relating to the premises where the business is located and so long as they do “not contain information or advertising for any product not sold on the premises”); 10-10-8 (exempting “directional signs” so long as they bear specified content *and* the City Board exercises its unfettered discretion to allow them).

8. The Sign Code fails to articulate the purpose or interests for which the general ban and content-based exemptions were enacted.

9. Where discretion is given to the City to approve signs, there are no objective standards for such approvals. Further, the City is not constrained by any procedural safeguards and can take as long as it likes to consider such requests. Specifically, because the Sign Code does not provide for an application of any sort, Minn. Stat. § 15.99 does not apply. Thus, the City has total discretion to veto, or pocket veto, such signs.

II. Rocket's Request to Post a Sign in the City.

10. Rocket is in the business of developing signs to be used for the dissemination of both commercial and noncommercial speech. Such signs are often the cheapest and most targeted method for individuals, small businesses, and local organizations to get their messages out to the community. In addition, such signs are a powerful medium for the advertising of ideological, religious, and political ideas. Signs of this nature prevent a unique and affordable means of communication. The City does not provide an alternative means of communication similar to the sign.

11. Rocket desires to erect and operate a sign in the City's commercial and industrial area. The City has certain corridors, including Highway 280, that are ideal for such signage because the sign will have no impact on residential areas but will be extremely effective at directing motorists to local businesses and organizations and informing them about important issues and events.

12. Rocket has spent substantial time and effort researching the areas of the City that are appropriate for new signage. To date, one local landowner has authorized Rocket to seek approval of a sign on his property. The subject property is located at 2820 Broadway Drive NE,

Lauderdale, Minnesota 55113. This is a lot used for industrial purposes. It is across a large highway from any residences, and such residences are further shielded by a sound barrier wall and extensive vegetation. The proposed sign will “read” to traffic traveling on Highway 280 and will not be visible from any other roadway.

13. The proposed sign location is fully compliant with the State of Minnesota’s laws and regulations regarding signs. The State regulates such signs for purposes of safety and aesthetics and has codified regulations that would specifically allow Rocket’s proposed sign. For example, the size, spacing, and zoning of the proposed sign has been specifically authorized in the State’s regulations.

14. On October 25, 2016, two of Rocket’s members, Wayne Charles and Jim Waid, went to the City’s offices to inquire about posting a sign on the subject property. They indicated the sign would display various commercial and non-commercial messages and provided City Administrator Heather Butkowski with substantial information regarding the sign, including structural plans showing the configuration of the proposed sign and a site plan showing where the sign would appear on the subject property.

15. Ms. Butkowski commented that the proposed sign did not meet any of the exemptions and could not be posted. Mr. Charles said he believed the Code suffered from constitutional problems and asked to discuss these issues with the City Attorney. Ms. Butkowski responded that she would get back to Mr. Charles after discussing the matter with the City Attorney.

16. By mid-November, Rocket still had not heard back from Ms. Butkowski. Mr. Charles called and spoke to Ms. Butkowski who again said she would try to speak with the City Attorney. She indicated she would call Mr. Charles once she spoke to the City Attorney. In the

meantime, Ms. Butkowski made clear that her denial of the sign remained effective and that Rocket was not entitled to post the sign. Ms. Butkowski's decision was never submitted to the City Council for a vote.

17. By November 28, 2016, Rocket still had not heard back from Ms. Butkowski. Mr. Charles called and left her another message, but to date has not received a return call.

18. Based on the foregoing, it is clear the City will not allow Rocket's proposed sign.

19. As a result of the Sign Code, Rocket has been unable to post its proposed sign. Consequently, both Rocket and those who would display content on its sign have not been able to disseminate desired commercial and noncommercial messages to the City's residents and visitors. The loss of such speech activity – even for one day – is irreparable as a matter of law. This deprivation, however, has also caused Rocket and the landowner for its proposed sign substantial quantifiable financial damage.

COUNT ONE

THE SIGN CODE VIOLATES THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 3 OF THE MINNESOTA CONSTITUTION

20. Rocket incorporates by reference the allegations in Paragraphs 1 through 19 above as if set forth verbatim herein.

21. The Sign Code violates the First Amendment to the United States Constitution and Article I, Section 3 of the Minnesota Constitution, both facially and as applied, in several ways:

(a). the Sign Code is impermissibly content-based because on its face it draws distinctions based on the message a speaker conveys and cannot survive strict scrutiny. *See* Sign Code §§ 10-10-1 – 10-10-8. Indeed, the City's Sign Code is substantively indistinguishable from

the content-based sign code that was invalidated by the Supreme Court in *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015);

(b). even if the Sign Code was not content-based, which it clearly is, it fails the intermediate commercial speech test articulated in *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980). Indeed, the Code fails to articulate any governmental interests it was enacted to further, let alone substantial interests. *See generally* Sign Code. As such, the City cannot possibly show that its complete ban and limited exemptions directly advance such interests or reach no further than necessary to accomplish them;

(c). the Sign Code grants unfettered discretion to City officials to permit signs. *See* Sign Code, § 10-10-8 (granting City officials unfettered discretion to permit directional signs via use of the permissive word “may”); *also, e.g., Young v. City of Roseville*, 78 F. Supp. 2d 970, 975 (D. Minn. 1999) (holding a sign ordinance that provides “some guidance” unconstitutional for excessive discretion); *The Lamar Co. v. City of Marietta*, 538 F. Supp. 2d 1366, 1372-73 (N.D. Ga. 2008) (holding that the use of the word “may” afforded officials total control over whether to allow signs, such discretion created the potential for arbitrary suppression of undesirable speech, and that this single deficiency caused the entire code to be invalid); *Lamar Advertising Co. v. City of Douglasville*, 254 F. Supp. 2d 1321, 1328 (N.D. Ga. 2003) (invalidating provision which authorized official to allow signs if all criteria were met, but did not require the official to do so); *North Olmsted Chamber of Commerce v. City of N. Olmsted*, 86 F. Supp. 2d 755, 765, 780 (N.D. Ohio 2000) (finding impermissible discretion where “a sign permit may be issued”). Officials also have undue discretion to determine if certain messages qualify for the City’s content-based exemptions; and

(d). as shown by the City's conduct in this case, where Rocket has been strung along for six weeks by the City, because there is no application process or action by the City Council the "60-day" rule in Minn. Stat. § 15.99 does not apply and there are no time limits even on the City's discretionary approval process. The City can literally take as long as it likes, thereby issuing a pocket veto to any sign applicant it does not favor.

22. Because these aspects of the City's Sign Code are constitutionally invalid and inseparable from the remainder of the Code, this Court should declare the Sign Code invalid in its entirety. Because no valid regulation prohibits Rocket's requested sign, the City should be ordered to permit Rocket to post the sign.

23. In addition, pursuant to 42 U.S.C. § 1983, Rocket is entitled to compensation for the damages it has suffered as a result of the City's unconstitutional Sign Code and, pursuant to 42 U.S.C. § 1988, reimbursement for all reasonable costs, including attorneys' fees, of bringing this lawsuit to assert its and others' constitutional rights.

COUNT TWO

INJUNCTIVE RELIEF

24. Rocket incorporates by reference the allegations in Paragraphs 1 through 23 above as if set forth verbatim herein.

25. The City's conduct is causing serious and irreparable harm to Rocket and, unless enjoined, the conduct of the City will continue to injure Rocket through the denial of its speech rights.

26. Rocket has no adequate remedy at law to remedy the denial of its speech rights. Rocket has been and will continue to suffer irreparable harm if the City is allowed to enforce the Sign Code.

27. Rocket seeks temporary and permanent injunctive relief in order to prevent irreparable injury caused by the Sign Code.

JURY DEMAND

28. Plaintiff demands a jury trial on all claims so triable.

WHEREFORE, Plaintiff Rocket Outdoor Advertising, LLC prays for judgment as follows:

- (1) Declaratory relief as specified herein;
- (2) An order preliminarily enjoining enforcement of the City's Sign Code;
- (3) An order permanently enjoining enforcement of the City's Sign Code;
- (4) A declaration that the City's Sign Code is unconstitutional and otherwise invalid;
- (5) An order compelling the City to permit Plaintiff to post and operate its proposed sign;
- (6) An order compelling the City to provide any and all necessary certification to the State of Minnesota;
- (7) An award of all such actual, consequential, general, presumed, and nominal damages as a jury determines are appropriate;
- (8) Reimbursement for the full amount of Plaintiff's reasonable attorneys' fees and costs of bringing and prosecuting this action; and
- (9) Such other and further relief as the Court may deem just and equitable.

DATED this 15th day of December, 2016.

Respectfully submitted,

BY: ENTREPARTNER LAW FIRM, PLLC

s/Michael J. Mergens

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Attorneys for Plaintiff

Rocket Outdoor Advertising, LLC

*Application for *Pro Hac Vice* Admission to be submitted prior to first appearance

EXHIBIT A

LA605

10-10 (1)

CHAPTER 10

SIGNS

SECTION:

- 10-10-1: General Rule
- 10-10-2: Professional Activity On Premises
- 10-10-3: Bulletin Board
- 10-10-4: Temporary Real Estate
- 10-10-5: Real Estate Development
- 10-10-6: Political
- 10-10-7: Business
- 10-10-8: Directional

10-10-1: GENERAL RULE:

No sign, billboard, or exterior commercial graphic display shall be permitted in any district except as herein provided. (Zoning Ord. as amd.)

10-10-2: PROFESSIONAL ACTIVITY ON PREMISES:

In any district a sign not exceeding two (2) square feet in surface size is permitted which announces the name, address, or professional activity of the occupant of the premises on which said sign is located. (Zoning Ord. as amd.)

10-10-3: BULLETIN BOARD:

A bulletin board not exceeding twenty four (24) square feet is permitted in connection with any church, school or similar public structure. (Zoning Ord. as amd.)

10-10-4: TEMPORARY REAL ESTATE:

Temporary real estate signs of six (6) square feet per side may be placed in the yard of any residential structure which advertises that particular property for sale, or for rent, or for lease. Such sign will be promptly removed when it has fulfilled its function. (Zoning Ord. as amd.)

10-10-5: REAL ESTATE DEVELOPMENT:

Real estate development signs may be erected to promote a single family or multiple family residential project of ten (10) or more dwelling units. Such signs will not exceed one hundred (100) square feet in area and shall be removed when the project is ninety percent (90%) completed, sold or leased. (Zoning Ord. as amd.)

LA605

10-10 (2)

10-10-6: POLITICAL:

Political signs are allowed in any district on private property with the consent of the owner of the property to a maximum size of sixteen (16) square feet. Such signs must be removed within seven (7) days following the date of the election to which they apply. (Zoning Ord. as amd.)

10-10-7: BUSINESS:

Business signs shall be permitted in connection with any legal business or industry when located on the same premises, and if they meet the following requirements:

A. Contents: Signs shall not contain information or advertising for any product not sold on the premises.

B. Size: Signs shall not have a combined aggregate surface size greater than five (5) square feet for each one foot (1') of width of the principal structure on the premises up to a maximum of two hundred fifty (250) square feet.

C. Projection: Signs shall not project over public rights of way.

D. Flashing Signs: Flashing signs and those signs giving off an intermittent or rotating beam or ray of light shall be prohibited.

E. Illuminated Signs: Illuminated signs shall be diffused so as not to direct rays of light into adjacent property or onto any public right of way.

F. Elevation: Signs shall be limited so as to extend not more than twenty five feet (25') above the average elevation of the public street abutting upon the lot or tract on which such sign is located.

G. Maintenance: Signs shall be painted at least once every two (2) years including all parts and supports, unless such parts or supports are galvanized or otherwise treated to prevent rust. (Zoning Ord. as amd.)

10-10-8: DIRECTIONAL:

The Board may permit directional signs of twelve (12) square feet in connection with any legal business or industry provided they contain no information other than instructions for convenience of vehicular traffic in reaching such business or industry. (Zoning Ord. as amd.)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Rocket Outdoor Advertising, LLC
(b) County of Residence of First Listed Plaintiff Hennepin Co., MN
(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael J. Mergens - EntrePartner Law Firm, PLLC
Highlight Center
807 Broadway Street NE, Suite 140
Minneapolis, MN 55413
612-314-8001

DEFENDANTS
City of Lauderdale, MN
County of Residence of First Listed Defendant Ramsey Co., MN
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
[] 1 U.S. Government Plaintiff
[] 2 U.S. Government Defendant
[X] 3 Federal Question (U.S. Government Not a Party)
[] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State [] 1 PTF [] 1 DEF
Citizen of Another State [] 2 PTF [] 2 DEF
Citizen or Subject of a Foreign Country [] 3 PTF [] 3 DEF
Incorporated or Principal Place of Business In This State [] 4 PTF [] 4 DEF
Incorporated and Principal Place of Business In Another State [] 5 PTF [] 5 DEF
Foreign Nation [] 6 PTF [] 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various suit types like 110 Insurance, 310 Airplane, 440 Other Civil Rights, etc.

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Remanded from Appellate Court
[] 4 Reinstated or Reopened
[] 5 Transferred from Another District (specify)
[] 6 Multidistrict Litigation - Transfer
[] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
First Amendment to U.S. Constitution; 42 U.S.C. § 1983
Brief description of cause:
Defendant has enacted and is enforcing unconstitutional sign regulations.

VII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 12/15/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael J. Mergens

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ROCKET OUTDOOR ADVERTISING, LLC,

Court File No. _____

Plaintiff,

v.

**WAIVER OF SERVICE
OF SUMMONS**

CITY OF LAUDERDALE, MINNESOTA,

Defendant.

TO: Plaintiff Rocket Outdoor, Advertising, LLC, by and through its attorney Michael J. Mergens, EntrePartner Law Firm, PLLC, 807 Broadway Avenue NE, Suite 140, Minneapolis, MN, 55413.

Defendant City of Lauderdale, by and through its undersigned counsel, as received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

As counsel for Defendant, I agree to save the expense of serving a summons and complaint in this case.

As counsel for Defendant, I understand Defendant will keep all defenses of objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that Defendant waives any objections to the absence of a summons or of service.

As counsel for Defendant, I also understand that Defendant must file and serve an answer or a motion under Rule 12 within 30 days from December 19, 2016, the date when this request was sent. If Defendant fails to do so, a default judgment will be entered against the Defendant.

Date: _____

Ronald H. Batty (_____)
Kennedy Graven, Chartered
470 U.S. Bank Plaza
200 South 6th Street
Minneapolis, MN 55402

rbatty@kennedy-graven.com
612-337-9262