



## **NOTICE OF MEETING**

## City Council Workshop 3800 Laverne Avenue North Tuesday, October 11, 2016 <u>6:30 PM</u>

I.	Call to Order	6:30 pm
II.	SSTS Ordinance	6:30pm
III.	Annual Review of Contracts	7:00pm
IV.	Open Gov	7:30 pm
V.	Snow Removal Policy	7:45pm
VI.	LMCIT Video: "in the Scope of Your Authority: Preventing Public Official Liability"	8:30pm
VII.	Adjourn	9:00 pm



#### STAFF REPORT

DATE:

October 11, 2016

**WORK SESSION** 

ITEM #:

DISCUSSION

TO: Mayor and City Council

FROM: Kristina Handt, City Administrator

AGENDA ITEM: SSTS Ordinance and County Services

#### BACKGROUND:

The City's ordinances relating to subsurface sewage treatment systems (SSTS) is in Chap 51 of the code. A copy is included in your packet. The city has been contracting with Washington County for SSTS permit and inspections. It has been determined by county staff that the current city ordinance is out of compliance with state rules.

#### **ISSUE FOR DISCUSSION:**

What ordinance amendment should staff prepare?

#### **PROPOSAL DETAILS/ANALYSIS:**

Included in your packet is a memo from county staff laying out the options and discussing the issues. County staff (Girard Goder or Jeff Tavis) will be in attendance at the work session to provide additional information and answer questions since this is a very technical issue.

In addition to the memo, I asked for more specific info from county staff about what aspects of the city's SSTS ordinance were out of compliance. Girard Goder provided the following comments:

The City Code includes the following provision (because it incorporates the County Ordinance word for word):

#### 3.1 Administrative scope.

This chapter shall apply and be in effect in all areas in Washington County other than cities and towns that have adopted ordinances that comply with Minnesota Statute Section 115.55, Minnesota Rules, Chapter 7082, and are as strict as this Chapter. [...]

Discussion: The City does not have the statutorily granted authority to enact an ordinance outside of its jurisdiction.

#### 3.3 Variance procedures.

[...] Modifications related to setbacks or zoning shall be heard by the Washington County Board of Adjustment and Appeals. [...]

Discussion: Here the establishes that the Washington County Board of Adjustment and Appeals consider variance requests, which is problematic because the Board does not have land use authority within the City. This also conflicts with Section 51.005 of the City Code which establishes that variances and appeals shall be heard by the City.

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There are numerous other instances where the verbatim incorporation of the County Ordinance unintentionally grants/confers/requires County oversight/administration/control for a city ordinance. Should the City wish to continue to have the County administer the City ordinance, the better course of action would be for the City to establish itself as the regulatory authority (by still adopting the County Ordinance but also modifying all references to Washington County [and the various boards, departments, etc.] to instead read as their City equivalent counterparts) and subsequently contract with the County to deliver the City program.

In regards to the exceptions established in Section 53.003 of the City Code, I have the following comments:

- (A) The following provisions are adopted separately from the Chapter 4 adopted in § 51.002 and are more restricting than Chapter 4 of the Washington County Development Code:
  - (1) Washington County Development Code Chapter 4; Section 6 Permits:
- (a) "Mound systems are not allowed for collector systems in the OP Open Space Preservation District."

In the hypothetical scenario\* that an existing community septic system needed to be replaced due to a separation to groundwater, and the soil conditions dictated that a replacement system would need to be a mound system, one of the two outcomes would result:

- 1. An individual mound would need to constructed for every residence, or
- 2. The existing structures would become uninhabitable because a replacement, compliance community septic system would be prohibited.

\*Note: I do not know whether any existing community septic systems are located in OP Open Space Preservation Districts, so the above points may be moot and this provision only applies to new construction.

(2) Washington County Development Code Chapter 4; Section 22 - Maintenance:

(b) "Sewage tanks shall be pumped or inspected by a licensed septic pumper, or inspected by a state-certified septic inspector every 2 years. A pumping and/or inspection report shall be submitted to the permitting authority by the pumper or inspector."

As written, this requirement may be preempted by the restriction in MINN STAT 115.55 Subp. 5 (c), which states, in pertinent part:

A certificate of compliance for an existing system is valid for three years from the date of issuance unless the local unit of government finds evidence of an imminent threat to public health or safety requiring removal and abatement under section 145A.04, subdivision 8.

To fully address whether this provision is allowable, the term "inspected" as used here, would need to be defined. The type of inspection (a tank integrity assessment) that I believe is intended here is allowable under state and county rules to be performed by a licensed septic maintenance business (i.e. "septic pumper"). However the type of inspection (a compliance inspection) that is required under state and county rules to be performed by a "state-certified septic inspector", cannot be required every two years by the City.

- (B) OP Waste Water Treatment Systems.
- (1) Collector systems in the OP zone shall be operated and maintained by a business licensed as a service provider in accordance with Minn. Rules 7083. An operation and maintenance plan shall be prepared by the developer prior to final plat approval. The homeowners association shall be responsible for implementing this plan. Included in this plan shall be both ground water monitoring, and visual inspections. Biannual reports shall be prepared by the service provider and submitted to the permitting authority.

This provision is, for all intents and purposes, redundant with a provision in the County Ordinance.

- (C) Systems Serving Multiple Properties.
- (1) Any SSTS system serving two or more properties shall be designed by a registered professional engineer in the State of Minnesota in addition to having all other necessary certifications and licenses required by Minn. Rules, Chapter 7083, including the collection component of the shared system, or any component of the system that is located within an asset of the city.

This provision may be prohibited by MN Rules 7082.00100 Subp. 3 Item A (in pertinent part):

[...] A local unit of government is not authorized to require additional local licenses, local registrations, local certificates, or other similar professional credentials to perform SSTS work.

#### **FISCAL IMPACT:**

NA

#### **OPTIONS:**

- 1) Adopt a current ordinance
- 2) Repeal or amend sections of current ordinance



#### Department of Public Health and Environment

Lowell Johnson Director

David Brummel Deputy Director

#### **MEMORANDUM**

Date:

September 22, 2016

To:

Kristina Handt, City of Lake Elmo Administrator

From:

Girard Goder, Environmental Program Supervisor

Re:

Consideration of Subsurface Sewage Treatment System Regulation Variances

Following up on previous communications, this letter will serve to elucidate which unit of local government shall consider and decide variance requests to subsurface sewage treatment system (SSTS) regulations in the City of Lake Elmo. As previously discussed, by December 31, 2016 the City of Lake Elmo must either 1) repeal its SSTS ordinance, in which case the county SSTS ordinance would take effect, or 2) adopt an updated ordinance which meets current standards established in Minnesota Rules Chapter 7082.

If the City chooses to adopt a current ordinance, the City could then Contract with the county to administer the City ordinance. This would include reviewing all installation and operating permit applications, issuing permits and conducting installation inspections as well as other associated functions. In this scenario, all variance requests would be considered by the City.

If the City chooses to repeal Section 51.002 of the city code, the Washington County Subsurface Sewage Treatment System ordinance would take effect within Lake Elmo. In this scenario, variance requests would be considered by the county, with the exception of variances for the setbacks and zoning requirements in the attached document, which would be considered by the city.

Cc: Lowell Johnson, Director of Washington County Public Health and Environment Jeff Travis, Senior Program Manager

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## Setbacks Applicable to the Installation of a Subsurface Sewage Treatment System

Subsurface Sewage Treatment System Minimum Setback Distances (Feet)

Subsurface Sewage Treatment System Vin		Soil Treatment
Feature	Sewage Tank	and Dispersal Area
Water supply wells less than 50 feet deep and not encountering at least 10 feet of impervious material	50	100
Any other water supply well or buried suction pipe	50	50
Buried pipe distributing water under pressure	10	10
Occupied buildings and buildings with basements or crawl spaces	10	20
Non-occupied structures, deck post footings	5	10
Property lines	10	10
Above ground and in-ground swimming pools	10	10
The Ordinary High Water I	Level (OHWL) of:	
Natural Environment Lakes	150	150
Recreational Development Lakes	75	75
General Development Lakes	75	75
Unclassified Body of Water	75	75
Transition Rivers/Streams	150	150
Tributary Rivers/Streams	150	150

#### Setbacks Applicable to the Sites Used for Land Spreading of Septage

To be approved as a site for land application of domestic septage, the following minimum requirements must be met:

The site shall:

Not be in a shoreland area;

Setbacks to Physical Features					
		Setback Dista	inces in Feet		
		Surface Application	Incorporated within 48 hours	Injected	
Private drinking water		200			
Public drinking water v	vell		1000		
Irrigation well		50	25	25	
Occupied building (resi		200	200	100	
Residential developmen	Shipport Control of the Control of t	600	600	300	
Commercial subdivision	n .	600	600	300	
Recreation area		600	600	300	
Public contact sites		600	600	300	
Property line	4	50	50	50	
Road right-of-way		50	50	50	
Down gradient lakes, rivers, streams, wetlands, intermittent streams, or tile inlets connected to these surface water	Slope 0 % to 6 % Slope 6 % to 12 % Winter (0 % to 2	200 Not Allowed	50 100 Not	50 100 Not	
features**, and sinkholes	%)	600	Applicable	Applicable	
Grassed Water Ways	Slope 0 % to 6 % Slope 6 % to 12 %	100 Not Allowed	33	33	
Shoreland Area		Not Allowed	Not Allowed	Not Allowed	

#### SUBSURFACE SEWAGE TREATMENT SYSTEMS

#### § 51.001 INTENT AND PURPOSE.

This subchapter is adopted for the purpose of protecting the health, safety and welfare of the residents of the city through regulating the location, design, installation, use and maintenance of individual sewage treatment systems so as to prevent contamination of surface waters and groundwaters.

(1997 Code, § 700.02) (Am. Ord. 08-029, passed 9-21-2010)

# § 51.002 ADOPTION OF COUNTY SUBSURFACE SEWAGE TREATMENT SYSTEM ORDINANCE.

Chapter 4 of the Washington County Development Code entitled Subsurface Sewage Treatment Systems Regulations, as amended is hereby adopted by reference in its entirety as if herein printed in full.

(Ord. 08-029, passed 9-21-2010)

#### 

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    - (a) "Mound systems are not allowed for collector systems in the OP Open Space Preservation District."
  - (2) Washington County Development Code Chapter 4; Section 22 Maintenance:
- (b) "Sewage tanks shall be pumped or inspected by a licensed septic pumper, or inspected by a state-certified septic inspector every 2 years. A pumping and/or inspection report shall be submitted to the permitting authority by the pumper or inspector."
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(Ord. 08-029, passed 9-21-2010)

*		

#### ■§ 51.004 GENERALLY.

General requirements - community treatment systems. Lawful connections to community sewage treatment systems. New connections will be allowed, with city permit, according to the following conditions.

- (A) Where an existing individual sewage treatment system is failing and where the property in question is near the community sewage treatment system, a new connection may be permitted if capacity is available in all components of the community sewage treatment system.
- (B) New connection to a community sewage treatment system will not be permitted for new construction, unless the previous structure on which the new construction occurs was previously connected to the existing community sewage treatment system.

(Am. Ord. 97-105, passed 4-2-2002)

- (C) The fee for new connections shall be evaluated on a case by case basis. In general the new user shall pay all costs to connect to the system, plus a charge to pay for previously built drainfield areas.
- (D) No person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any community sewage treatment system or appurtenance of the system without first obtaining a written permit from the city.

(1997 Code, § 700.04) (Am. Ord. 08-029, passed 9-21-2010) Penalty, see § 10.99

#### **■§ 51.005 ADMINISTRATION.**

- (A) Board of Adjustment and Appeals.
- (1) (a) An aggrieved party may appeal a decision by the permitting authority regarding the interpretation or application of the provisions of §§ 51.001et seq.
  - (b) Appeals shall be reviewed and determined by the city's Board of Adjustment and Appeals.
- (2) Request for variances to the provisions of §§ <u>51.001</u>et seq. shall be reviewed pursuant to the procedures and standards contained in the zoning code.

(Am. Ord. 97-124, passed 11-18-2003; Am. Ord. 08-029, passed 9-21-2010)

Zignego Insurance Agency	Youth Services Bureau	Yale Mechanical	musii. County official a Office	Wash County Shariffs Office	retelled y and Process Controls	T-1 - 1 P C - 1	Smith Shafar & Associates	Sanibatek, Inc.	Sale Assule	Cofe Accura	PermitWorks III	NED	MnDOT	Loeffler	railuscape Aicilitecture	Landson A solitable	I also Elmo Associatos I I D	Kennedy & Gravan Chartered	Jazace Inspections Inc	Hildi Inc	G&K	Focus Engineering, Inc.	Eckberg Lammers, P.C.	Dan Raboin	Coordinated Business Services	City of Roseville	City of Roseville	City of Hugo	Beenive industries	Animal Humane Society	A simplify College	Vendor
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12/31/2016	12/31/2017	8/31/2017	12/31/2016		7/24/2018	2019		OPEN	9/1/2017	OPEN	12/31/2016		OFEN	OBEN	OPEN	9/30/2019	112/31/2016	OPEN	OPEN	0/20/201/	710C/0C/9	9104/11/4	12/31/2021	12/31/2016	OPEN	12/31/2016	12/31/2016	OPEN	4/30/2017	12/31/2016	End	
	Α	Auto Renew	three 1 yr extensions	2 year contract; with				Pending Termination	Annual	Pending Termination	12/31/16	> Years from Agreement	rending Termination	-	Pending Termination	9/30/19	Auto renewal	Pending Termination		Auto renewal	A into transmit				Auto renewal	Auto - Annual Renewal	Auto - Annual Renewal	none	Auto - 5/1 of year	12/31/2016 Auto - Annual Renewal	Terms	
		30 days prior to end of term	90 days prior to 12/31		None noted	,		60 day notice		None noted					30 days		60 day written	30 days		90 days	NO L				None noted	90 days	90 days			30 days	Notice required	
			90 days prior to 12/31 Auto renewal for 3 - 1 year periods to end 12/31/19			2017-2019 audits	RFP in 2013 for 2013-2016 audits; renewed 2016 for					No signed copy	copiers	Could not locate a copy - put in place when purchased					GASB Requirement; Full Study every two years				J'en contact, Ici i ii 2017	3 year contract: REP in 2014							Notes	



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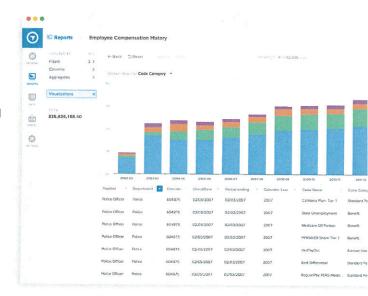
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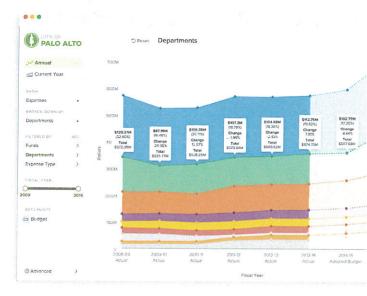
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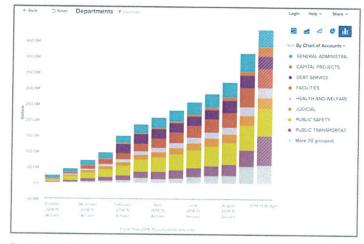


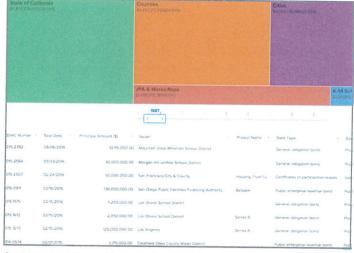
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-Tony Cholewinski Assistant to the Deputy Controller of Management Systems County of Allegheny, PA

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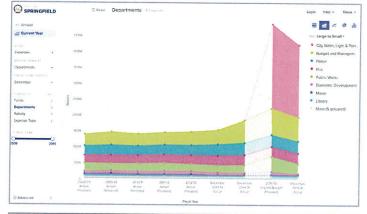
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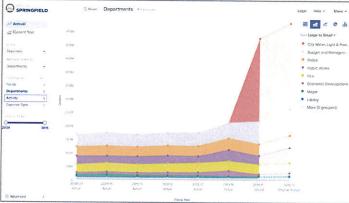
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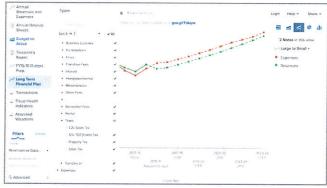
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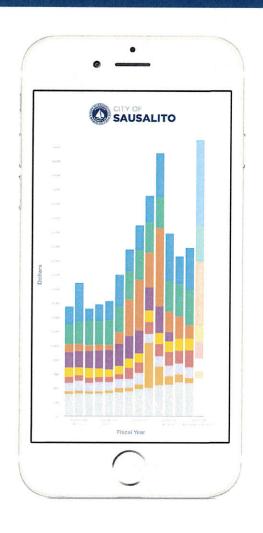


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-Jason Johnson Budget and Technology Manager City of Rocklin, CA

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### CITY OF LAKE ELMO

# Snowplowing and Ice Control Policy



#### Introduction

The City of Lake Elmo, Minnesota, finds that it is in the best interest of the residents of the city to assume basic responsibility for control of snow and ice on city streets. Reasonable ice and snow control is necessary for routine travel and emergency services. The city will attempt to provide such control in a safe and cost effective manner, keeping in mind safety, budget, personnel, and environmental concerns. The city will use city employees, equipment and/or private contractors to provide this service. This policy does not relieve the operator of private vehicles, pedestrians, property owners, residents and all others that may be using public streets, of their responsibility to act in a reasonable, prudent and cautious manner, given the prevailing street conditions.

#### 1. Commencement

The Public Works Director or designee will decide when to begin snow or ice control operations. The criteria for that decision are:

- A. Snow accumulation of two (2) inches or more;
- B. Drifting of snow that causes problems for travel;
- C. Icy conditions which seriously affect travel; and
- D. Time of snowfall in relationship to heavy use of streets.

Snow and ice control operations are expensive and involve the use of limited personnel and equipment. Consequently, full street width snowplowing operations will not generally be conducted for snowfall of less than two (2) inches. Night-time plowing will usually begin at approximately 2:00 A.M. However, starting time may vary according to weather conditions.

#### 2. Winter Parking Restrictions

It shall be unlawful to park any vehicle or trailer, attended or unattended, on any city street after a 2" or greater snowfall until cessation of snowfall and the street is plowed to its full width (Ord. 72-03).

Social media, city website and local news stations will be used to communicate emergency parking restrictions.

#### 3. Movement of snow

Snow will be plowed in a manner so as to minimize traffic obstructions. Streets will be plowed from the center outward to the boulevard areas.

In times of extreme snowfall, streets will not always immediately be able to be completely cleared of snow. Snow will be removed from main arterial streets first, starting at centerline and plowed to the curb. Plow district units will work together in the cleaning of these streets, (i.e. tandem plowing). These streets will be maintained even in a blizzard event.

For safety reasons, Cul-de-sacs will be plowed from the center outward to the boulevard when possible.

#### 4. Snow Removal

The Public Works Director or designee will determine if and when snow will be removed from the area by truck. Such snow removal will occur in areas where there is no room on the boulevard for snow storage and in areas where accumulated piles of snow create a hazardous condition. Snow removal operations will not commence until other snowplowing operations have been completed. Snow removal operations may also be delayed depending on weather conditions, personnel and budget availability. The snow will be removed and hauled to a snow storage area. The snow storage area will be located so as to minimize environmental problems.

#### 5. Priorities and Schedule of Streets to be Plowed

The city has classified city streets based on the street function, traffic volume and importance to the welfare of the community.

- I. First Priority: "Main Arterial Streets" These are high volume routes, which connect major sections of the city and provide access for emergency fire, police, and medical services. They also provide access to schools and commercial businesses. Priority will also be given to parking lots and access to City Hall and Fire Stations.
- II. Second Priority: Lower volume residential streets.
- III. Third Priority: Alleys, city parking lots and cul-de-sacs.

During significant and severe storms, the city must be prepared to move personnel and equipment to maintain priority routes first. In fulfilling the need to have all priority streets safe and passable, when resources are limited, plowing of all other streets may be stopped at any time so resources can be shifted to priority routes.

Unforeseeable circumstances may cause delays in completing assigned plow routes. Such circumstances may include weather conditions that endanger the safety of snowplow operators and/or safe and effective operation of equipment, commuter traffic, disabled vehicles, poor visibility conditions, parked cars along streets, assistance to emergency response vehicles, equipment breakdown, and personnel shortages.

#### 6. Work Schedule for Snowplow Operators

Snowplow operators will be expected to work their assigned shifts. In severe snow emergencies, operators sometimes have to work longer shifts in excess of 40 per week. While work breaks are not guaranteed, generally operators will take breaks in accordance with city policy, provided the breaks do not interfere with city services or operations. In addition, operators will be allowed

sufficient time to eat a meal during any shift which is eight or more hours. After a twelve-hour shift, the operators will be replaced if additional qualified personnel are available.

#### 7. Traffic Regulations

The city recognizes that snowplow operators are exempt from traffic regulations set forth in Minnesota Statutes, Chapter 169 while actually engaged in work on streets, except for regulations related to driving while impaired and the safety of school children. Pursuant to this authority, snowplow operators engaged in snow removal or ice control on city streets have discretion to safely disregard traffic laws set forth in Chapter 169, except for laws relating to impaired driving and school children safety.

The privileges granted herein to operators of snow removal and ice control vehicles shall apply only if the vehicle is equipped with one lighted lamp displaying a flashing, oscillating, or rotating amber light placed in such a position on the vehicle as to be visible throughout an arc of 360 degrees,

#### 8. Weather Conditions

Snow and ice control operations will be conducted only when weather conditions do not endanger the safety of snowplow operators and equipment. Factors that may delay snow and ice control operations include: severe cold, significant winds, and limited visibility.

#### 9. Use of Sand, Salt, and Other Chemicals

The city will use sand, salt, and other chemicals when there are hazardous ice or slippery conditions. The city is concerned about the effect of such chemicals on the environment and will limit its use for that reason.

#### 10. Mailboxes and other private property

It is the responsibility of property owners to keep their mailbox clear of snow for postal deliveries.

Damage to a mailbox is a risk that snowplow operators face during winter plowing requirements. The city will conduct a review of each mailbox damage claim to determine, whether the city has any legal responsibility for the damage and if so replace the mailbox. The mailbox and/or post must show signs of physical damage characteristic of being struck by city snow removal equipment. The act of snow itself coming off a plow and dislodging any component of a mailbox shall not be the responsibility of the city to repair. If the city, in its discretion, determines replacement is appropriate, the city will replace the mailbox with a standard size, non-decorative metal mailbox and replace the support post as necessary with a 4" x 4", decay resistance wood support post, both which will be installed by the city.

\*Please refer to **Attachment** #1 for tips on a properly installed mailbox from the United States Postal Service.

Replacement or repair of objects in the right-of way area (ROW) is the responsibility of the property owner. This includes but is not limited to any landscaping, boulders, posts, fences, irrigation systems or improperly installed mail boxes as well as any other substantial objects in the ROW. If your lawn (grass/sod) is physically damaged by city snow removal equipment repairs will be made with black dirt and grass seed in the spring.

#### 11. Garbage and Recycling Containers

Please do not place garbage or recycling containers in the street during a snow fall event until your street is plowed to full width. Containers can be placed in your driveway adjacent to the street and still be accessible for pick-up.

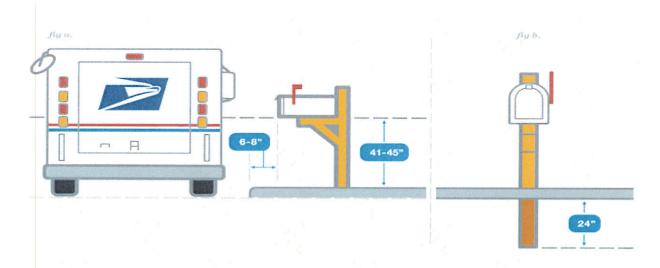
#### 12. Fire Hydrants

Residents are encouraged to help the Public Works Department and Fire Department by clearing snow away from fire hydrants. This will allow the Fire Department adequate access to the hydrant in the event of an emergency. We ask you to clear the snow in a 5' area around the fire hydrant.

#### 13. <u>Deviation from Policy</u>

The Public Works Director or designee may deviate from this policy when in his or her judgment it is in the best interest of the city or is necessary because of budget needs or other circumstances. Changes in priorities (lasting more than 4 hours) will be documented as to what caused such.

#### Attachment #1



#### Placing the Mailbox

Here are some helpful guidelines to follow when installing your mailbox:

- Position your mailbox 41" to 45" from the road surface to the bottom of the mailbox or point of mail entry.
- Place your mailbox 6" to 8" back from the curb. If you do not have a raised curb, contact your local postmaster for guidance.
- Put your house or apartment number on the mailbox.
- If your mailbox is on a different street from your house or apartment, put your full street address on the box.
- If you are attaching the box to your house, make sure the postal carrier can reach it easily from your sidewalk, steps, or porch.

#### Installing the Post

The best mailbox supports are stable but bend or fall away if a car hits them. The Federal Highway Administration recommends:

- A 4" x 4" wooden support or a 2"-diameter standard steel or aluminum pipe.
- Avoid unyielding and potentially dangerous supports, like heavy metal pipes, concrete posts, and farm equipment (e.g., milk cans filled with concrete).
- Bury your post no more than 24" deep.

**Proposed Winter Parking Ordinance** 

Chapter 72

72.03 Winter Parking Restrictions

It shall be unlawful to park any vehicle or trailer, attended or unattended, on any city street after a 2" or greater snowfall until cessation of snowfall and the street is plowed to its full width.



#### INFORMATION MEMO

# Role with It: Individual versus Council Authority

Learn common ways councilmembers may overstep their proper role and the personal liability that may ensue. Understand actions you may take in your role as an individual councilmember versus your role as part of the entire city council.

#### RELEVANT LINKS:

See sections Role of the Individual Councilmember and the Council's Authority in Handbook, Chapter 6.

#### I. Role of an individual council member

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

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

#### II. Councilmembers and city employees

Relationships between the council and city employees can create situations where councilmembers may overstep their proper role, causing potential liability for the councilmember and the city. Use of an employment scenario may be helpful in understanding an individual councilmember's role in dealing with employee discipline and termination.

Here is a scenario. The council has ongoing concerns with the municipal liquor store manager. Citizens complain the store is closed when it should be open. There are even reports the staff drinks on the premises. One councilmember decides to address the situation herself. She continuously stops by the store and even drives by the manager's house to make sure he is not home when he should be working. During one visit to the store, the councilmember finds the staff, including the manager, drinking in the back of the store. Knowing the council will agree, she terminates the manager on the spot. To make this situation easier, she also negotiates a severance package with him. The councilmember then relates the incident to several friends, making some exaggerated descriptions of what happened.

Obviously, the liquor store manager's actions raise many liability concerns for the city. However, the councilmember's actions are also problematic because she acted beyond the scope of her authority.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

Minn. Stat. § 412.221, listing powers of the council.

Minn. Stat. § 412.201, requiring council approval of contracts for Standard Plan and Plan A cities.

Minn. Stat. § 410.16.

Johnson v. State, 553 N.W.2d 40 (Minn. 1996), defining powers involving exercise of judgment.

Minn. R. 1250.0400, subp. 2.

#### A. Investigating and terminating employees

In this scenario did the councilmember have authority to investigate or terminate the store manager? No.

In Minnesota, a council's powers are derived from state statutes or city charters. In statutory Standard Plan and Plan A cities, the statutes give the entire council control over city matters, including the power to control city finances, to make contracts, to enact ordinances, and to oversee city personnel. The statutes do not allow an individual councilmember to investigate employees or terminate employment.

In charter cities, the charter dictates a councilmember's role. State law allows charter cities to adopt any form of government as long as it is not inconsistent with state statutes or the state constitution. In almost all cities, charters give authority to the council rather than to individual councilmembers. However, councilmembers from charter cities should consult their charters to determine their proper roles.

# B. Delegating authority to investigate or terminate employees

Could the councilmember in our scenario delegate the authority to investigate or terminate the store manager? Yes and no.

Individual councilmembers can perform any duty the council legally assigns to them. However, a statutory city council cannot delegate any discretionary powers, defined by case law as powers involving the exercise of judgment. In this scenario a statutory city council could authorize the councilmember to investigate the liquor store manager, but not to terminate him. Charter cities cannot delegate any discretionary authority unless the charter specifically allows delegation.

Councilmembers should be careful even when performing duties legally assigned to them. In our scenario the councilmember's actions may have crossed the line into harassment. The councilmember could safely view the employee's time cards, respond to citizen complaints, and probably even stop by the store occasionally. She should not drive by the employee's house.

On a related matter, the League often receives calls about whether an individual councilmember can review an employee's private personnel documents. Individuals whose job duties reasonably require access to private data may view the data. Since individual councilmembers do not have authority over city personnel, they cannot access this private information. The council could authorize an individual councilmember to view the data.

See Section III, Mayor, in Handbook, Chapter 6.

Minn. Stat. § 412.201.

Jewell v. Bertha, 97 N.W. 424 (Minn. 1903).

# C. Mayor's power to investigate or terminate employees

In most cities a mayor may not investigate or terminate an employee. A frequent misconception is that mayors have more power than other councilmembers. The mayor is the official head of the city, and he or she speaks for the city government and presides over council meetings. The mayor also breaks a tie vote when filling council vacancies, and can make some other appointments such as park board members subject to council approval. The mayor has no individual authority over city staff.

Truthfully, mayors of statutory cities have very limited additional powers. Outside of a few exceptions, the mayor cannot act without council approval.

A majority of charter cities have a weak-mayor form of government, in which the mayor's powers are generally no greater than those of other councilmembers. A few charter cities give the mayor limited additional powers such as control over the police department. Three charter cities—St. Paul, Duluth, and St. Cloud—follow a strong-mayor format where the mayor has administrative authority over city matters, including city personnel. Mayors of these cities would probably be able to investigate and remove employees without council approval. Mayors in charter cities should review their charters to determine the extent of their authority over employees.

#### D. Negotiating employee severance packages

In our scenario the councilmember may not negotiate a severance package with the liquor store manager either. State law provides the "council" must authorize contracts. Minnesota case law holds this power cannot be delegated and also that a city is not bound by a contract made by an individual councilmember. Councilmembers from charter cities should consult their charters, but most charters probably would not authorize an individual councilmember to execute contracts.

The full council could later ratify the contract. If the council does not ratify the contract, the individual councilmember could potentially be liable for claims such as detrimental reliance or promissory estoppel. Accordingly, all councilmembers should be clear when speaking with individuals interested in contracting with the city that only the full council can enter into a contract.

Minn. Stat. §§ 412.601 - .751.

Handbook, Chapter 8.

Minn. Stat. § 466.07.

See Section II-E on Official Immunity in Handbook, Chapter 18.

See Section III-B on Protection from Defamation, in Handbook, Chapter 18.

LMC information memo, LMCIT Property, Crime, Bond, and Petrofund Coverage, Section VI-A, Bond coverage.

# III. Councilmembers and employees in Plan B cities

Plan B cities have a council-manager form of government. A number of charter cities also use this structure. Like Standard Plan and Plan A cities, the council exercises policy-making and legislative authority. But in Plan B cities, the council delegates administrative control to the city manager, who then implements the council's directives. For example, the council appoints the manager who, in turn, appoints and supervises the city staff. A city manager is the city's purchasing agent for contracts under \$20,000, unless the city council provides for a lower limit. Therefore, in a Plan B city, the city manager, rather than the council or an individual councilmember, would be the proper person to investigate the liquor store manager and terminate his employment.

City managers should not be confused with city administrators. The city administrator position is a position created by council ordinance or resolution, not by statute. The duties of the administrator will vary from city to city, with some administrators also serving as city clerk. A statutory city council cannot delegate any discretionary authority to a city administrator. A charter city council may do so only if the charter allows delegation.

# IV. Potential personal liability for councilmembers

State law requires cities to defend and indemnity councilmembers for any suit arising from their official duties.

The doctrine of official immunity protects public officials from suits based upon discretionary actions taken in the course of their official duties. For example, a councilmember could not be held liable over the question of calling for special assessments. Neither official immunity nor the statute applies when a councilmember acts with malice or in bad faith.

These doctrines may not protect the councilmember in the above scenario because she was acting outside the scope of her duties.

Of particular concern for the councilmember in this situation is a defamation claim. A defamatory statement is one that is false, made to a third party, and harms the reputation of the subject. A councilmember is protected if the statement is made in good faith during a proper occasion and is based on probable cause. The proper place to make even true statements would be at a council meeting.

Research@lmc.org 651.281.1200 or 800.925.1122

#### V. For further assistance

If you have questions about the role of an individual councilmember or the city council as a whole, you should discuss the matter with your city attorney. In addition, the League's Research and Information Services Department can answer questions about the role of council members in different types of cities.