CITY OF ST. FRANCIS
CITY COUNCIL AGENDA

APRIL 2, 2012

ISD #15 CENTRAL SERVICES CENTER (DISTRICT OFFICES)
4115 Ambassador Blvd. NW
6:00 PM

1. Call to Order/Pledge of Allegiance
2. Roll Call
3. Adopt Agenda
4. Consent Agenda
   a. Approve City Council Minutes – March 19, 2012
   b. Receive and File URRWMO Minutes – January 3, 2012
   c. Receive and File the URRWMO Draft Minutes – March 6, 2012
   d. Receive and File the City Council/Management Team Work Session – March 18, 2012
   e. Approve the hiring of Barbara Ellefson as a Part Time Liquor Store Clerk
   f. Extend the Interim Fire Chief Contract with the City of Ramsey
   g. Payment of Claims
5. Meeting Open to the Public
6. Petitions, Requests, Applications
   a. Liquor License Approval for the Ponds Golf Course
   b. ISD #15 – School Clinic
7. Ordinances & Resolutions:
   a. Ordinance 168 Second Series-Amending and Restating the City of St. Francis Home Rule Charter Section 7.16 Capital Improvement Program (Second Reading)
   b. Ordinance 169 Second Series- Amending and Restating the City of St. Francis Home Rule Charter Chapter 5 Pertaining to Primary Elections (Second Reading)
   c. Resolution 2012-09: Setting the 2012 Yearly Rate for the Disposal of Excess Personal Property
   d. Resolution 2012-10: Declaring Surplus Property
8. Reports of Consultants & Staff Members
   a. Engineer: Trunk Highway 47 Signage Inquiry
   b. Attorney: "Old" Food-n-Fuel Property Discussion
   c. Staff:
   Fire Dept.:
   Public Works: Equipment Purchase
   Liquor Store:
   Police:
   City Administrator: Legislative Updates
9. Reports from Council Members
10. Report from Mayor
11. Old Business
12. New Business
13. Adjournment

Calendar of Events

Apr 16:	Board of Appeal and Equalization @ ISD #15 Central Services Center (District Offices) 5:00 pm
Apr 16:	City Council Meeting @ ISD #15 Central Services Center (District Offices) 6:00 pm
Apr 18:	Planning Commission Meeting @ ISD #15 Central Services Center (District Offices) 7:00 pm
Apr 21:	2012 St. Francis Area Business & Community Expo @ SFHS 10 am – 3 pm
May 7:	City Council Meeting @ ISD #15 Central Services Center (District Offices) 6:00 pm

TO: Mayor & City Council

FROM: Matthew L. Hylen,
City Administrator

RE: Agenda Memorandum – April 2, 2012 Meeting

Agenda Items:

4. **Consent Agenda:**

6. **Petitions, Requests, Applications:**
   a. *Ponds Golf Course Liquor License:* Attached is the request for a prorated Liquor License for 2012 in the amount of $3,150. Council action should note this is conditional until all necessary documents have been submitted to the City and the Liquor Control Board.
   b. *ISD#15 Clinic Zoning Status Update:* Attached is a memorandum from City Planner Nate Sparks extending the 60 day rule deadline on this zoning request and outlining what the Council needs to decide. The Planning Commission remains in deadlock on recommending for or against this proposal.
7. **Ordinances & Resolutions:**
   a. *Ordinance 168, Second Series:* Attached is Ordinance 168, Second Series (second reading) to amend and restate the City Home Rule Charter Section 7.16. This change relates to amending the submission date of the 5 year Capital Improvement Plan. Currently it is June 1st the Council will receive the plan and the recommendation is for July 1st. This change would result in budgetary information being gathered at a similar time to the formulation of the annual operational budgets. A motion would be in order with a roll call vote to approve Ordinance 168, second series. Note a unanimous vote is required to amend the Home Rule Charter.
   b. *Ordinance 169, Second Series:* Attached is Ordinance 169, Second Series (second reading) to amend and restate the City Home Rule Charter Chapter 5. This change identifies the how and when a primary election could be held for local offices in the City of St. Francis. A motion would be in order with a roll call vote to approve Ordinance 169, second series. Note: a unanimous vote is required to amend the Home Rule Charter.
   c. *Resolution 2012-09:* Attached is Resolution 2012-09 which sets the 2012 yearly rate for the disposal of excess personal property. This does not represent any changes over the 2011 policy. A motion would be in order to approve Resolution 2012-09.
   d. *Resolution 2012-10:* Attached is Resolution 2012-10 declaring surplus property and authorizing the disposal of said property. A motion would be in order to approve Resolution 2012-10.

8. **Reports:**
   a. **Engineer:** *Trunk Highway 47 Signage:* Attached is a memorandum from City Engineer Jared Voge relating to Council questions relating to T.H.47 signage.
   b. **City Attorney:** *Old Food N Fuel Building:* Attached is a memorandum from City Attorney Scott Lepak as a follow up from the last Council meeting on City options.

c. **Staff:**
Fire:
Public Works: *Equipment Purchase:* Attached is an Agenda Report with supporting document from Public Works Director Paul Teicher. This information relates to general direction received at our planning retreat with the Council a few weeks ago.
Liquor Store:
Police:
City Administrator:

11. Old Business

12. New Business:

CITY OF ST. FRANCIS
ST. FRANCIS, MN
ANOKA COUNTY

CITY COUNCIL MINUTES

MARCH 19, 2012

1. **Call to Order/Pledge of Allegiance:** The regular City Council Meeting was called to order by Mayor Jerry Tveit at 6:00 p m.

2. **Roll Call:** Present were Mayor Jerry Tveit, Council members Jeff Sandoval, Tim Brown, Steve Kane and Chris McClish. Also present were City Attorney Scott Lepak (Barna, Guzy and Steffen, Ltd) City Engineer Jared Voge (Bolton & Menk, Inc.), Police Chief Jeff Harapat, Police Sergeant Jake Rehling, Fire Chief Dean Kapler, Finance Director Darcy Mulvihill, City Administrator Matt Hylen and City Clerk Barb Held.

3. **Adopt Agenda:** MOTION BY SANDOVAL SECOND BROWN TO ADOPT THE MARCH 19, 2012 CITY COUNCIL AGENDA. Motion carried 5-0. Tveit stated I would like to go right to the public hearing and the ordinance amendments regarding the Charter Commission Amendments due to a family emergency, I will have to leave early.

6 b. **Charter Commission Recommended Amendments-Public Hearing:** Mayor Tveit opened the Public Hearing at 6:02 pm. City Attorney Scott Lepak gave a brief overview of the Charter Amendments.
Mayor Tveit asked if there was any public input on the Charter Amendments. With none being heard, Mayor Tveit closed the Public Hearing at 6:03 pm.

7 c. **Ordinance 168, Second Series-Amending and Restating the City of St. Francis Home Rule Charter Section 7.16 Capital Improvement Program (First Reading):** MOTION SANDOVAL BY KANE SECOND APPROVING THE FIRST READING OF ORDINANCE 168, SECOND SERIES AMENDING AND RESTATING THE CITY OF ST FRANCIS HOME RULE CHARTER SECTION 7.16 CAPITAL IMPROVEMENT PROGRAM. Roll Call: Ayes: McClish, Sandoval, Brown, Kane and Tveit. Nays: None. Motion carried 5-0.

d. **Ordinance 169, Second Series-Amending and Restating the City of St. Francis Home Rule Charter Chapter 5 Pertaining to Primary Elections (First Reading)**: MOTION BY BROWN SECOND McCLISH APPROVING THE FIRST READING OF ORDINANCE 169, SECOND SERIES AMENDING AND RESTATING THE CITY OF ST FRANCIS HOME RULE CHARTER CHAPTER 5 PERTAINING TO PRIMARY ELECTIONS. Roll Call: Ayes: Brown, Kane, Sandoval, McClish, and Tveit. Nays: None. Motion carried 5-0.

Mayor Tveit excused himself from the City Council meeting at 6:05 pm. Mayor Pro-Tem Steve Kane presided over the meeting.

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4. **Consent Agenda:** MOTION BY SANDOVAL SECOND McCLISH TO APPROVE THE MARCH 19, 2012, CITY COUNCIL CONSENT AGENDA-G AS FOLLOWS:

a. Approve the City Council Minutes of March 5, 2012.

b. Approved Pay Estimate No. 4 from Amcon Construction Management for Fabcon, Inc. $29,968; Maxx Steel Erectors Inc. $25,999; Shaw/Stewart Lumber $21,114; Gopher State Contractors, Inc $30, 970; M. Reinert Drywall, Inc. $8,831, McDowall Company $245,024, and SCR, Inc-St Cloud $57,992.

c. Accept the Resignation of Public Works Employee Jacob Skorseth.

d. Authorization to Fill the Public Works Water/Wastewater Position.

e. Approve the Massage Therapy Renewal License for St. Francis Physical Therapy Wellness Center/Nicole Kotaska.

f. Approve the Minneman Triathlon Permit for June 30, 2012 to Optum Health Performance.

e. Approve the Payment of Claims for $562,338.55 (Check numbers 63328-63398)

Motion carried 4-0.

5. **Meeting Open to the Public: None**

6. **Petitions, Requests, Applications:**

a. **Mayor's Trail Ride Donation Presentation to the St. Francis Ambassador Program**: Mayor Pro-Tem Steve Kane presented a check for $100.00 to the St. Francis Ambassadors. The Mayor's Trail Ride unfortunately was cancelled this year due to lack of snow but they still granted a donation to each organization each mayor had listed.

7. **Ordinances & Resolution:**

a. **Ordinance 166, Second Series-Amending Section 12.03 Entitled "Sale of Real Property" (Second Reading):** MOTION BY SANDOVAL SECOND McCLISH APPROVING THE SECOND READING OF ORDINANCE 166, SECOND SERIES AN ORDINANCE AMENDING SECTION 12.03 ENTITLED "SALE OF REAL PROPERTY". Roll Call: Ayes: McClish, Brown, Sandoval, and Kane. Nays: None. Motion carried 4-0.

b. **Ordinance 167, Second Series-Approving the Exchange of City Owned Real Estate and Easement with Anoka County (Second Reading):** MOTION BY BROWN SECOND McCLISH TVEIT APPROVING THE SECOND READING OF ORDINANCE 167, SECOND SERIES AN ORDINANCE APPROVING THE EXCHANGE OF CITY OWNED REAL ESTATE AND EASEMENT WITH ANOKA COUNTY. Roll Call: Brown, Sandoval, McClish, and Kane. Nays: None. Motion carried 4-0.

e. **Resolution 2012-08: Re-Establishing Precincts and Polling Places:** MOTION BY SANDOVAL SECOND BROWN APPROVING RESOLUTION 2012-08 REESTABLISHING PRECINCTS AND POLLING PLACES. Motion carried 4-0.

8. **Reports of Consultants & Staff Members:**

a. **Engineer:**

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b. **Attorney:**

c. Staff: Fire Department: Update on the Joint Fire Study Group: Fire Chief Dean Kapler stated the study group has been meeting every two weeks. On March 29, 2012, the study group will vote on a report and whether or not to bring it forward to all the cities. On April 12, 2012 at 7:00 pm in Ramsey's City Hall, there will be a presentation to all five city council's that belong to the Fire Study Group at this time.

Apparatus Update: Fire Chief Dean Kapler gave a presentation of current and future apparatus equipment. At the last City Council meeting, you authorized the transfer of the Ranger to the Fire Department from the public works department. I believe this will be a great tool for the department. This piece of equipment will be able to get to areas where other vehicles would not. With the weather we are having there are bound to be more grass fires. In addition, we have a command trailer, which is an underutilized piece of equipment. I would like to see if there is interest for this trailer from other communities. I think there was a great amount research that must have done before acquiring this trailer, but it is not used. We do have at least one community that has shown some interest in the trailer. I would like to ask that this piece of equipment, declared as surplus property. A resolution will be brought forward at the next meeting. Sandoval said he would like the money when this is sold be put back in the fire department budget.

Public Works: **Equipment Purchase:** Hylen stated Public Works Director Paul Teicher is out helping his department on a grader issue. Hylen referenced Teicher's Agenda Report and stated they have two vehicles scheduled for replacement in the Capital Improvement Plan this year; a 2002 F-250 and a 2000 F-450. Teicher's recommendation as written in his Agenda Report is to:

1. Trade the 2002 F-250, the 2005 Crown Victoria, and the 2000 F-450 for a total trade in value of $16,500, which will be reflected in the purchase price of his recommended purchases.
2. Purchase a 2012 F-550 cab/chassis from Midway Ford for $26,825.56 (State bid, includes trade values, tax and license)
3. Purchase a sign/service/crane body and attachments to be installed on the 2012 F-550 cab/chassis from Aspen Equipment for $76,990.61 (State bid pricing)
4. Purchase a 2012 F-250 from Midway Ford for $17,807.20 (State bid, includes trade values, tax and license)

MOTION BY SANDOVAL SECOND McCLISH APPROVING THE FOUR ITEMS PER THE PUBLIC WORKS DIRECTOR'S AGENDA REPORT. Motion carried 4-0.

Liquor Store:

Police Dept:

City Administrator Report: Land Lease Bid Results: Hylen stated last Wednesday, March 14, 2012 at 3:00 pm we had two bidders whom submitted bids. Tom Carlisle of Wyoming, MN had the highest bid for the 183 acres in Isanti County at $90.00 per acres. None of the bidders wanted to bid on the 40 acres due to the cost. MOTION SANDOVAL SECOND BROWN TO AUTHORIZE CITY ADMINISTRATOR TO ENTER INTO A LAND LEASE WITH TOM CARLISLE ON THE 183 ACRE (177 TILLABLE) PARCEL IN ISANTI COUNTY FOR $90 PER ACRE FOR THREE YEARS SUBJECT TO REVIEW AND

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APPROVAL BY THE CITY ADMINISTRATOR AND CITY ATTORNEY AS TO FORM. Motion carried 4-0.

Reports from Council Members: None.

10. **Report from Mayor:** Kane reported there were two meetings set last Thursday for Pioneer Day discussion. Next Pioneer Day meeting will be on March 29, 2012 at 7:00 pm at the American Legion. Good mix of businesses, residents, and organizations. Feel there were many great ideas.

This Thursday, Mr. Hylen and I will be attending the 2012 Joint Legislative Conference in St. Paul.

11. **Old Business**: McClish would like to see if the City could contact the owner of the old Food-n-Fuel building. Hylen reported the City Attorney and I have been in discussion on this topic. We have had a person that has shown interest. I will continue on the re-development of that property. If that does not work, we will look at our ordinances on the enforcement side of things. McClish asked if there are any grants out there. Hylen said there are grants for petroleum clean up but you have proof of a spill.

12. **New Business:** None.

13. **Adjournment:** The City Council adjourned the meeting at 6:33 pm.

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Barbara I. Held, City Clerk

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Upper Rum River Watershed Management Organization
Meeting Minutes for January 3, 2012

Chair Todd Miller called the meeting to order at 7:05 pm with the following members present Mary Ann Empson, Ed Faherty, Orval Leistico, Lan Tornes, Jared Trost, Steve Voss, Richard Walstrom, and John Wangensteen. Absent was Jeff Sandoval.

APPROVAL OF AGENDA

Steve Voss moved and Lan Tornes seconded to approve the agenda as presented. All in favor, motion carried.

APPROVAL OF MINUTES

Mary Ann Empson moved and Ed Faherty seconded to approve the October 27, 2011 meeting minutes as presented. All in favor, motion carried.

NEW BUSINESS

A. Purchase computer for URRWMO use – As follow-up to the brief discussion at the October meeting, the board discussed the purchase of a computer for the recording secretary to use, in order to protect her personal computer. The idea is that the computer will be used for both the URRWMO and the SRWMO, with each WMO paying for half the cost of the computer. Ms. Gessner brought in an ACER One notebook for review. The cost for the computer is $200. Both Steve Voss and Mary Ann Empson, who are members of the SRWMO board, thought it a good idea to present this joint purchase request to the SRWMO board. Steve asked Ms. Gessner to add "joint purchase of a computer" to the February SRWMO agenda. Chair Miller will contact Dan Babineau, SRWMO Chair, to discuss the joint purchase. **Steve Voss moved and Ed Faherty seconded to approve $100 toward the cost of the Acer One computer, and that the SRWMO be contacted regarding sharing the cost of this computer. All in favor, motion carried.** It was discussed that if the SRWMO does not contribute to the cost of the computer, that the remaining $100 will be invoiced to the URRWMO.

B. Receipt of 2012 budget invoices update – Checks have been received from Nowthen, East Bethel, and Ham Lake. Bethel has approved the invoice, and Oak Grove will be reviewing its invoice request the end of January. Lan Tornes will contact St. Francis to find out its invoice status and email board members with an update.

OLD BUSINESS

A. Checking Account – Chair Miller reported that he will be meeting with People's Bank regarding opening a non-profit checking account. It is his understanding that those persons authorized to sign on the account will need to provide a copy of their respective city's resolution appointing them to the URRWMO. Mary Ann Empson and Richard Walstrom will provide the needed papers. When the account is ready to be opened, both Mary Ann and Richard will need to go to People's Bank to sign on to the account. Mary Ann Empson informed the board that she will be resigning from both the URRWMO and the SRWMO, in

order to avoid a possible conflict of interest between her and her husband's business and the WMO's. She is expecting to submit her resignation around April. Until her resignation, Mary Ann will be an authorized signer on the account.

MAIL

A. Received the following three items from LMCIT Insurance:

1. Hard copy of the insurance policy, which will be filed at Oak Grove City Hall.

2. Dividend check for $450.00.

3. Letter regarding 2011-2012 coverage changes, rates and dividends.

OTHER

A. Approval of recording secretary invoice – **Ed Faherty moved and Lan Tornes seconded to approve an invoice of $310 for recording services, ½ of the cost of the computer, the cost of a USB drive, and for the first half of the 2012 budget billing services. All in favor, motion carried.**

ADJOURN

Ed Faherty moved and Mary Ann Empson seconded to adjourn. All in favor, meeting adjourned at 7:36 pm.

Gail E. Gessner, Recording Secretary
Submitted via email on 1/4/12

Upper Rum River Watershed Management Organization
Meeting Minutes for March 6, 2012

Chair Miller called the meeting to order at 7:00 pm.

Present: Mary Ann Empson
Ed Faherty
Orval Leistico
Lan Tornes
Richard Walstrom
John Wangensteen

Absent: Kevin Armstrong
Richard Lawrence
Jared Trost
Jerry Tveit

Also present: Jamie Schurbon, Anoka Conservation District

APPROVAL OF AGENDA

Mary Ann Empson moved and Richard Walstrom seconded to approve the agenda as presented. All in favor, motion carried.

APPROVAL OF MINUTES

Lan Tornes moved and Orval Leistico seconded to approve the January 3, 2012 meeting minutes as presented. All in favor, motion carried.

UNFINISHED BUSINESS

A. Receipt of 2012 budget payments – All payments have been received.

B. Checking account update - Chair Miller reported that an account has been opened at People's Bank with himself, Mary Ann Empson, and Richard Walstrom as signers. $9,115.52 was deposited into the account.

C. Refund of 2011 budget balance from Oak Grove – The check submitted was less than the amount expected. Ed Faherty will follow-up with Oak Grove personnel to clarify the discrepancy.

D. 2011 work results – Jamie Schurbon distributed copies of and reviewed the work results.

NEW BUSINESS

A. SRWMO's decision to contribute toward recording secretary computer – Gail Gessner reported that the SRWMO approved payment of $100 toward the computer.

B. Change meeting location to Sandhill Center – Chair Miller asked if members would be willing to move the URRWMO meeting location to Sandhill Center. The check book could be kept in the Bethel City office safe, so there would be no need to pick up a key or the checkbook prior to a meeting. Also, the Bethel City office is open until 6:00 pm and the Sandhill Center until 9:00 pm. It was asked what room would be used for the meetings and would someone have to set the building alarm if the meeting were to go past 9:00 pm? Chair Miller will check into these questions and report back at the next meeting.

C. 2012 URRWMO-ACD work contract – Jamie Schurbon reviewed the contract and recommended changes that would lower the initial proposal submitted in early 2011 by $350. The recommended changes were to delete the Rum River water quality monitoring, since the MPCA will be doing intensive river monitoring in 2012-13, fund the high school biomonitoring program, and fund two of five reference wetland monitoring sites. The Board discussed having URRWMO information and the high school biomonitoring program included in the web video. **Lan Tornes moved and Ed Faherty seconded to approve the 2012 Contract for Services between the URRWMO and Anoka Conservation District. All in favor, motion carried.**

D. 2013 ACD work proposal for budgeting purposes – Jamie Schurbon presented and reviewed the proposal. Members need to bring this draft proposal to the May meeting.

E. City annual reports to the URRWMO – Bethel and East Bethel need to submit reports. The City of Bethel has deficiencies compared to what is required by the watershed plan. Chair Miller reported that he has submitted what is needed to Bethel's new city engineer. Jamie Schurbon will follow-up with East Bethel.

F. MN Pollution Control Agency Rum River study – Jamie Schurbon reported that he attended the meeting and it is clear that work needs to be done further upstream in 2013.

MAIL

A. Thank you card from People's Bank.
B. Invoice for $170 from People's Bank to cover check and stamp costs.
C. WSB & Associates – Construction plan for section of Hwy 22 in Nowthen submitted for comments. Jamie Schurbon will review it for the URRWMO.

OTHER

A. Approval of invoice(s)

1. Gail Gessner - $150 recording secretary fee
2. Todd Miller - $40 reimbursement for MN EIN# application fee

Richard Walstrom moved and Lan Tornes seconded to approve the recording secretary invoice for $150.00, and Todd Miller's invoice for $40.00. All in favor, motion carried.

Members were reminded that the May meeting is the annual meeting. Elections will be for chair, vice chair, and secretary (with the possible added duties of treasurer).

Discussed if the checkbook should be left in the meeting room cabinet overnight or if Chair Miller should take the checkbook home with him. **Lan Tornes moved and Richard Walstrom seconded to direct Chair Miller to take the checkbook home and lock it in his safe, then put it in the Bethel City safe the following day. Motion carried 6-0, with Chair Miller abstaining.**

ADJOURN

Ed Faherty moved and Richard Walstrom seconded to adjourn. All in favor, meeting adjourned at 9:22 pm.

Gail E. Gessner, Recording Secretary
Submitted via email on 3/9/12

Barb Held

From: WMO Recording_Secretary <recordwmo@gmail.com>
Sent: Tuesday, March 20, 2012 1:10 PM
To: Barb Held; City of Bethel; City of East Bethel; City of Ham Lake; City of Nowthen; City of Oak Grove; City of St. Francis; Ed Faherty; Gail Gessner; Jamie Schurbon; Jared Trost; Jerry Tveit; John Wangensteen; Kevin Armstrong; Lan Tornes; Mary Ann Empson; Orval Leistico; Richard Lawrence; Richard Walstrom; Todd Miller
Subject: Minor correction to URRWMO 3/6/12 unapproved minutes

Jamie Schurbon has asked for the following correction to the unapproved minutes:

"Minor correction to new business item E in the draft minutes. "Bethel and East Bethel need to submit reports..." should be changed to "East Bethel needs to..." Bethel had submitted a report."

Please note this correction on the previously emailed draft copy of the minutes.

Gail

CITY OF ST. FRANCIS
ST. FRANCIS, MN
ANOKA COUNTY

CITY COUNCIL/MANAGEMENT TEAM WORK SESSION NOTES

MARCH 18, 2012

The City Council held a Work Session on March 18, 212 at 1:00 pm at the St. Francis Community Center. Present were Mayor Tveit, Council members Steve Kane, Chris McClish and Tim Brown. Council member Jeff Sandoval was absent. Also present were City Administrator Matt Hylen, Finance Director Darcy Mulvihill, Public Works Director Paul Teicher, Police Sergeant Jake Rehling, Fire Chief Dean Kapler and City Clerk Barb Held.

City Administrator, Matt Hylen gave an overview of the 2011 City Council/Management Team Retreat Report facilitated by Richard and 000 Fursman of the Brimeyer Fursman LLC. After the review of the 2011 report, Mayor Tveit asked if there were goals or priorities that should be removed or added. The council did have some discussion on this topic.

Topics of discussion that followed were on; Challenges for 2012-13, Tangible Goals for 2012-13 and 2013 Budget Issues. Each council member and department gave a brief presentation on budget issues and goals.

In regards to the Joint Fire Study Group there will be a meeting held on April 12, 2012 at Ramsey City Hall, 7:00 pm. The Joint Fire Study Group will be giving a presentation of their findings to the five City Councils of the cities involved within the study group.

Mayor Tveit adjourned the Work Session at 4:33 pm.

Respectfully submitted,

Barb Held
City Clerk

Second Addendum to Interim Agreement for Fire Chief Services for the City of St. Francis, Minnesota.

The City of St. Francis, the City of Ramsey and Dean Kapler are the parties to an agreement dated May 16, 2011 (hereinafter referred to as the Agreement) detailing Mr. Kapler's role as Interim Fire Chief for the City of St. Francis. This Agreement provided that it expires by its terms on October 31, 2011 unless extended pursuant to Paragraph 9 of the Agreement by written agreement of all of the parties. The parties entered into a first Addendum to extent this Agreement until April 30, 2012. The parties have determined to extend this Agreement for one additional year.

This Addendum will serve to document that the parties have agreed to extend the Interim Agreement for Fire Chief Services through April 30, 2013. All other provisions of the Agreement will continue in full force and effect until this time.

This Addendum will be attached to the original Agreement.

For the City of St. Francis:

_____
City Administrator

Dated: _____, 2012

For the City of Ramsey:

_____
City Administrator

Dated: _____, 2012

For Dean Kapler:

_____
Dean Kapler

Dated: _____, 2012

544510-v2

City of St. Francis

PAYMENT BATCH AP 04-02-12

ADVANCED AUTOMOTIVE CARE, INC.					
12/19/2011	33545	E 101-42110-221	Vehicle Repair & Maintenance	09 DODGE CHARGE	969.92
12/21/2011	33574	E 101-42110-221	Vehicle Repair & Maintenance	08 DODGE CHARGE	891.71
12/26/2011	33609	E 101-42110-221	Vehicle Repair & Maintenance	09 DODGE CHARGE	14.78
12/28/2011	33613	E 101-42110-221	Vehicle Repair & Maintenance	08 DODGE CHARGE	65.73
01/09/2012	33706	E 101-42110-221	Vehicle Repair & Maintenance	10 DODGE CHARGE	1,061.40
01/10/2012	33719	E 101-42110-221	Vehicle Repair & Maintenance	09 DODGE CHARGE	537.92
01/31/2012	33852	E 101-42110-221	Vehicle Repair & Maintenance	09 DODGE CHARGE	367.45
02/06/2012	33902	E 101-42110-221	Vehicle Repair & Maintenance	08 DODGE CHARGE	959.61
02/17/2012	34001	E 101-42110-221	Vehicle Repair & Maintenance	08 DODGE CHARGE	85.98
02/17/2012	34006	E 101-42110-221	Vehicle Repair & Maintenance	09 DODGE CHARGE	365.34
04/01/2012	33669	E 101-42110-221	Vehicle Repair & Maintenance	07 FORD CROWN V	28.89
					$5,348.73
AMERIPRIDE LINEN & APPAREL SER					
03/15/2012	1002081819	E 609-49750-219	Rug Maintenance	RUG MAINT	46.23
03/22/2012	1002088466	E 101-41940-219	Rug Maintenance	MATS	48.74
					$94.97
ANOKA COUNTY CENTRAL COMM.					
03/14/2012	2012-118	E 101-42110-321	Telephone	FEBRUARY 2012	156.12
					$156.12
ANOKA COUNTY TREASURY DEPT.					
03/20/2012	217316	E 101-43100-408	Ice& Snow Removal	SALT PURCHASED IN JAN	6,923.15
					$6,923.15
ASPEN MILLS					
03/09/2012	118940	E 101-42210-437	Uniform Allowance	KIM SWENSON	70.90
					$70.90
ASSURANT EMPLOYEE BENEFITS					
04/01/2012	5447229.0412	E 101-41400-130	Employer Paid Insurance	APRIL PREMIUM	127.69
04/01/2012	5447229.0412	E 101-41500-130	Employer Paid Insurance	APRIL PREMIUM	45.97
04/01/2012	5447229.0412	E 101-42110-130	Employer Paid Insurance	APRIL PREMIUM	504.82
04/01/2012	5447229.0412	E 101-43100-130	Employer Paid Insurance	APRIL PREMIUM	71.93
04/01/2012	5447229.0412	E 101-43210-130	Employer Paid Insurance	APRIL PREMIUM	15.99
04/01/2012	5447229.0412	E 101-45200-130	Employer Paid Insurance	APRIL PREMIUM	71.93
04/01/2012	5447229.0412	E 601-49440-130	Employer Paid Insurance	APRIL PREMIUM	80.92
04/01/2012	5447229.0412	E 602-49490-130	Employer Paid Insurance	APRIL PREMIUM	80.92
04/01/2012	5447229.0412	E 609-49750-130	Employer Paid Insurance	APRIL PREMIUM	81.13
					$1,081.30
BOLTON & MENK, INC.					
01/17/2012	0144853	G 602-16500	Construction in Progress	AMBASSADOR TRUNK UTILITY I	1,888.50

02/29/2012	0145760	E 101-43100-303	Engineering Fees	GIS	37.13
02/29/2012	0145760	E 101-45200-303	Engineering Fees	GIS	37.13
02/29/2012	0145760	E 601-49440-303	Engineering Fees	GIS	37.13
02/29/2012	0145760	E 602-49490-303	Engineering Fees	GIS	37.11
02/29/2012	0145761	G 602-16500	Construction in Progress	AMBASSADOR TRUNK	880.00
02/29/2012	0145762	E 101-43100-303	Engineering Fees	RIVER CROSSING	330.00
02/29/2012	0145763	E 402-43000-303	Engineering Fees	PW/POLICE BUILDING	1,940.00
02/29/2012	0145764	E 101-43100-303	Engineering Fees	239TH AVENUE	330.00
02/29/2012	0145765	E 601-49440-303	Engineering Fees	WATER SYSTEM INVENTORY	1,024.00
02/29/2012	0145767	E 101-41910-303	Engineering Fees	23539 ST. FRANCIS BLVD	110.00
02/29/2012	0145767	E 101-43100-303	Engineering Fees	MNDOT LETTER	30.00
02/29/2012	0145767	E 101-43100-414	Storm Sewers	URRWMO ANNUAL ACTIVITY	110.00
02/29/2012	0145767	E 101-43100-414	Storm Sewers	WCA YEAR END	207.50
02/29/2012	0145767	E 101-43100-414	Storm Sewers	WCA MEMO	90.00
02/29/2012	0145768	E 101-43100-303	Engineering Fees	2012 STATE AID	2,220.00
02/29/2012	0145769	G 803-22044	Esc-Rum River Bluffs	RUM RIVER BLUFFS	440.00
02/29/2012	145766	E 601-49440-303	Engineering Fees	WOODHAVEN	1,350.00
					$11,098.50

BRAUN INTERTECCORPORATION

03/06/2012	348611	E 601-49440-259	Water Meters	METERING MANHOLE REPLACE	606.75
					$606.75

CENTERPOINT ENERGY

03/16/2012	5939160-7.0312	E 101-43100-383	Gas Utilities	PUBLIC WORKS	180.57
03/16/2012	5939160-7.0312	E 101-45200-383	Gas Utilities	PUBLIC WORKS	180.57
03/16/2012	5944643-5.0312	E 609-49750-383	Gas Utilities	LIQUOR	106.70
03/16/2012	5945449-6.0312	E 101-42110-383	Gas Utilities	POLICE/FIRE	221.01
03/16/2012	5945449-6.0312	E 101-42210-383	Gas Utilities	POLICE/FIRE	515.70
03/16/2012	5963820-5.0312	E 101-45200-383	Gas Utilities	WARMING HOUSE	95.31
03/16/2012	6002544-2.0312	E 601-49440-383	Gas Utilities	PUBLIC WORKS	60.32
03/16/2012	6002544-2.0312	E 602-49490-383	Gas Utilities	PUBLIC WORKS	60.33
03/16/2012	6002548-3.0312	E 602-49490-383	Gas Utilities	WWTP	228.99
03/16/2012	6886465-1.0312	E 101-41940-383	Gas Utilities	CITY HALL	36.26
03/16/2012	6886468-5.0312	E 101-41940-383	Gas Utilities	CITY HALL	13.46
03/16/2012	6886472-7.0312	E 101-41940-383	Gas Utilities	CITY HALL	31.94
03/16/2012	6886475-0.0312	E 101-41940-383	Gas Utilities	CITY HALL	31.33
03/16/2012	7900331-5.0312	E 601-49440-383	Gas Utilities	STARK DRIVE	697.56
03/16/2012	8964221-9.0312	E 602-49490-383	Gas Utilities	LIFT STATION	46.07
					$2,506.12

CENTURY LINK

03/07/2012	1049.0312	E 601-49440-321	Telephone	03/07/12 - 04/06/12	163.40
					$163.40

CHISAGO LAKES DISTRIBUTING CO.

03/23/2012	469012	E 609-49751-252	Beer For Resale	BEER	230.20
					$230.20

COCA COLA REFRESHMENTS

03/20/2012	0198090418	E 609-49751-254	Miscellaneous Merchandise	MISC	184.40
03/20/2012	01980904419	E 609-49751-254	Miscellaneous Merchandise	MISC	(59.60)

					$124.80
CONNEXUS ENERGY					
03/21/2012	.0312	E 101-41940-381	Electric Utilities	ELECTRIC	54.04
03/21/2012	.0312	E 101-41940-381	Electric Utilities	ELECTRIC	263.74
03/21/2012	.0312	E 101-42110-381	Electric Utilities	ELECTRIC	5.34
03/21/2012	.0312	E 101-42110-381	Electric Utilities	ELECTRIC	5.34
03/21/2012	.0312	E 101-42110-381	Electric Utilities	ELECTRIC	188.34
03/21/2012	.0312	E 101-42210-381	Electric Utilities	ELECTRIC	439.45
03/21/2012	.0312	E 101-43100-381	Electric Utilities	ELECTRIC	150.28
03/21/2012	.0312	E 101-43100-386	Street Lighting	ELECTRIC	3,498.84
03/21/2012	.0312	E 101-45200-381	Electric Utilities	ELECTRIC	268.16
03/21/2012	.0312	E 101-45200-381	Electric Utilities	ELECTRIC	150.28
03/21/2012	.0312	E 601-49440-380	Electric-System	ELECTRIC	4,483.34
03/21/2012	.0312	E 602-49451-381	Electric Utilities	ELECTRIC	5,730.08
03/21/2012	.0312	E 609-49750-381	Electric Utilities	ELECTRIC	920.08
					$16,157.31
CONSTRUCTION & GENERAL					
03/26/2012	032612	G 101-21707	Union Dues	MAINT DUES APRIL 2012	190.00
					$190.00
CRYSTAL SPRINGS ICE					
03/17/2012	26027	E 609-49751-254	Miscellaneous Merchandise	MISC	67.20
03/19/2012	26047	E 609-49751-254	Miscellaneous Merchandise	MISC	111.20
					$178.40
DAHLHEIMER DIST. CO. INC.					
03/14/2012	1016662	E 609-49751-252	Beer For Resale	BEER	7,714.25
03/14/2012	1016662	E 609-49751-254	Miscellaneous Merchandise	MISC	220.00
03/14/2012	1016662	E 609-49751-255	N/A Products	N/A	15.50
03/21/2012	1016698	E 609-49751-252	Beer For Resale	BEER	10,580.20
03/21/2012	1016698	E 609-49751-254	Miscellaneous Merchandise	MISC	84.00
03/21/2012	1016698	E 609-49751-255	N/A Products	N/A	15.50
					$18,629.45
DAY DISTRIBUTING CO.					
03/16/2012	642554	E 609-49751-252	Beer For Resale	BEER	1,906.00
03/16/2012	642554	E 609-49751-255	N/A Products	N/A	36.80
					$1,942.80
EAGLE GARAGE DOOR CO.					
12/16/2011	3251	E 101-42110-401	Repairs/Maint Buildings	INSTALLED MAG SWITCHES ON	457.50
					$457.50
ECM PUBLISHERS, INC.					
03/14/2012	IP000812053	E 609-49750-340	Advertising	DISPLAY ADVERTISING	2,400.00
03/23/2012	IQ001796236	E 101-41400-351	Legal Notices Publishing	LEGAL ORDINANCE 167	328.00
03/23/2012	IQ001796344	E 101-41400-351	Legal Notices Publishing	LEGAL ORDINANCE 166	97.38
					$2,825.38
ELECTRIC PUMP					
03/13/2012	46875-IN	E 602-49490-228	Equipment Maintenance	BLOWER #1	3,606.70
					$3,606.70

ELITE SANITATION					
02/29/2012	20394	E 101-45200-402	Janitorial Service	PORTABLE TOILET RENTAL	144.97
					$144.97
EXTREME BEVERAGE					
03/23/2012	W-519019	E 609-49751-254	Miscellaneous Merchandise	MISC	315.00
					$315.00
FREEDOM SERVICES, INC.-FD					
03/20/2012	12209	G 101-21706	Flex Account	MONTHLY DEPOSIT APRIL 2012	418.34
03/20/2012	12209	G 101-21708	Health Premium	MONTHLY DEPOSIT APRIL 2012	2,343.42
					$2,761.76
FREEDOM SERVICES, INC.-RE					
03/21/2012	12236	E 101-41540-301	Auditing and Acct g Services	PLAN YEAR 3/1/12 - 2/28/13	800.00
					$800.00
FREEDOM SERVICES, INC-MA					
03/20/2012	12210	E 101-41540-301	Auditing and Acct g Services	APRIL 2012 ADMIN FEE	95.60
					$95.60
G&K SERVICES, INC					
03/16/2012	1043134224	E 101-43100-402	Janitorial Service	MATS	20.61
03/16/2012	1043134224	E 101-45200-402	Janitorial Service	MATS	20.61
03/16/2012	1043134224	E 601-49440-402	Janitorial Service	MATS	20.60
03/16/2012	1043134224	E 602-49490-402	Janitorial Service	MATS	20.60
					$82.42
GRANITE CITY JOBBING CO.					
03/13/2012	714466	E 609-49750-210	Operating Supplies	OPERATING	50.87
03/13/2012	714466	E 609-49751-206	Freight and Fuel Charges	FREIGHT	4.25
03/13/2012	714466	E 609-49751-254	Miscellaneous Merchandise	MISC	30.77
03/13/2012	714466	E 609-49751-256	Tobacco Products For Resale	TOBACCO	500.39
03/13/2012	714466	G 101-20810	Sales Tax Payable	USE TAX	(0.39)
03/20/2012	715208	E 609-49750-210	Operating Supplies	OPERATING	220.56
03/20/2012	715208	E 609-49751-206	Freight and Fuel Charges	FREIGHT	10.52
03/20/2012	715208	E 609-49751-254	Miscellaneous Merchandise	MISC	83.24
03/20/2012	715208	E 609-49751-256	Tobacco Products For Resale	TOBACCO	786.71
03/20/2012	715208	G 101-20810	Sales Tax Payable	USE TAX	(0.78)
					$1,686.14
HARMON AUTOGLASS					
03/28/2012	103-80983	E 601-49440-221	Vehicle Repair & Maintenance	11 FORD ESCAPE WINDSHIELD	60.00
					$60.00
HAWKINS, INC.					
03/19/2012	3319721	E 602-49490-216	Chemicals and Chem Products	CHEMICALS	1,532.53
03/19/2012	3319722	E 601-49440-216	Chemicals and Chem Products	CHEMICALS	383.15
					$1,915.68
INNOVATIVE OFFICE SOLUTIONS, L					
03/20/2012	IN0010115	E 101-42400-200	Office Supplies	CARD HOLDER	1.87
03/20/2012	IN0010117	E 101-41400-200	Office Supplies	TOWELS	15.86
03/20/2012	IN0010117	E 101-42110-200	Office Supplies	TOWELS	5.28
03/20/2012	IN0010117	E 101-42210-200	Office Supplies	TOWELS	5.28

03/20/2012	IN0010117	E 101-42210-217	Other Operating Supplies	TOWELS	52.88
03/20/2012	IN0010117	E 101-43100-200	Office Supplies	TOWELS	5.28
03/20/2012	IN0010117	E 101-45200-200	Office Supplies	TOWELS	5.28
03/20/2012	IN0010117	E 601-49440-200	Office Supplies	TOWELS	5.28
03/20/2012	IN0010117	E 602-49490-200	Office Supplies	TOWELS	5.28
03/20/2012	IN0010117	E 609-49750-200	Office Supplies	TOWELS	5.34
03/20/2012	IN0010120	E 101-41940-210	Operating Supplies	GARBAGE CAN	109.65
03/20/2012	IN0010120	E 101-45000-217	Other Operating Supplies	GARBAGE CAN	109.66
					$326.94
JJ TAYLOR DISTRIBUTING					
03/14/2012	1713674	E 609-49751-206	Freight and Fuel Charges	FREIGHT	3.00
03/14/2012	1713674	E 609-49751-252	Beer For Resale	BEER	260.27
					$263.27
JOHNSON BROS WHLSE LIQUOR					
03/14/2012	1253530	E 609-49751-206	Freight and Fuel Charges	FREIGHT	17.89
03/14/2012	1253530	E 609-49751-251	Liquor For Resale	LIQUOR	1,286.70
03/14/2012	1253531	E 609-49751-206	Freight and Fuel Charges	FREIGHT	30.87
03/14/2012	1253531	E 609-49751-253	Wine For Resale	WINE	897.75
03/15/2012	1253886	E 609-49751-251	Liquor For Resale	LIQUOR	423.85
03/15/2012	529108	E 609-49751-206	Freight and Fuel Charges	FREIGHT	(1.47)
03/15/2012	529108	E 609-49751-251	Liquor For Resale	LIQUOR	(115.35)
03/21/2012	1257958	E 609-49751-206	Freight and Fuel Charges	FREIGHT	10.29
03/21/2012	1257958	E 609-49751-251	Liquor For Resale	LIQUOR	906.24
03/21/2012	1257959	E 609-49751-206	Freight and Fuel Charges	FREIGHT	20.58
03/21/2012	1257959	E 609-49751-253	Wine For Resale	WINE	733.10
					$4,210.45
KIMS KLEANING					
03/26/2012	2000	E 101-41940-402	Janitorial Service	CITY HALL	256.52
03/26/2012	2001	E 101-43100-402	Janitorial Service	PW	171.01
03/26/2012	2002	E 101-42110-402	Janitorial Service	POLICE	513.03
03/26/2012	2003	E 101-42210-402	Janitorial Service	FIRE	136.81
03/26/2012	2004	E 101-45000-402	Janitorial Service	WARMING HOUSE	106.88
03/26/2012	2005	E 601-49440-402	Janitorial Service	WATER	171.01
					$1,355.26
LAW ENFORCEMENT LABOR SVCS.					
03/26/2012	032612	G 101-21707	Union Dues	UNION DUES APRIL 2012	323.82
					$323.82
LOUDEN, BRYANT					
03/20/2012	032012	E 101-42210-441	Miscellaneous	PIZZA AT FIRE	111.38
					$111.38
MCDONALD DIST CO.					
03/15/2012	296508	E 609-49751-206	Freight and Fuel Charges	FREIGHT	3.00
03/15/2012	296508	E 609-49751-252	Beer For Resale	BEER	8,003.10
03/22/2012	297085	E 609-49751-254	Miscellaneous Merchandise	MISC	204.00
03/22/2012	297085	E 609-49751-255	N/A Products	N/A	16.75
03/22/2012	297086	E 609-49751-206	Freight and Fuel Charges	FREIGHT	3.00
03/22/2012	297086	E 609-49751-252	Beer For Resale	BEER	5,060.00

					$13,289.85
MN NCPERS LIFE INSURANCE					
03/23/2010	7334412	G 101-21710	Other Deductions	APRIL PREMIUMS	48.00
					$48.00
MY ALARM CENTER					
02/27/2012	952864	E 609-49750-445	Security	MONITORING 4/1/12 - 4/30/12	27.79
					$27.79
OLSEN COMPANIES					
03/22/2012	676831	E 601-49440-228	Equipment Maintenance	HOIST CRANE INSPECTION	201.53
03/22/2012	676831	E 602-49490-228	Equipment Maintenance	HOIST CRANE INSPECTION	201.52
					$403.05
OPUS 21					
03/15/2012	120221	E 601-49440-382	Utility Billing	FEBRUARY 2012	1,428.92
03/15/2012	120221	E 602-49490-382	Utility Billing	FEBRUARY 2012	1,428.93
					$2,857.85
PACE ANALYTICAL SERVICES					
03/14/2012	VM124551	E 602-49490-313	Sample Testing	TESTING	45.00
					$45.00
PHILLIPS WINE & SPIRITS CO.					
03/09/2012	3478696	E 609-49751-251	Liquor For Resale	LIQUOR CREDIT	(4.33)
03/09/2012	3478697	E 609-49751-251	Liquor For Resale	LIQUOR CREDIT	(13.34)
03/09/2012	3478698	E 609-49751-251	Liquor For Resale	LIQUOR CREDIT	(9.33)
03/09/2012	3478699	E 609-49751-251	Liquor For Resale	LIQUOR CREDIT	(10.40)
03/12/2012	2213650	E 609-49751-206	Freight and Fuel Charges	FREIGHT	20.58
03/12/2012	2213650	E 609-49751-253	Wine For Resale	WINE	383.50
03/14/2012	2210577	E 609-49751-206	Freight and Fuel Charges	FREIGHT	16.17
03/14/2012	2210577	E 609-49751-251	Liquor For Resale	LIQUOR	1,364.77
03/14/2012	2210578	E 609-49751-206	Freight and Fuel Charges	FREIGHT	2.94
03/14/2012	2210578	E 609-49751-254	Miscellaneous Merchandise	MISC	37.25
03/14/2012	2210578	E 609-49751-255	N/A Products	N/A	56.00
03/15/2012	3478947	E 609-49751-206	Freight and Fuel Charges	FREIGHT	(5.88)
03/15/2012	3478947	E 609-49751-251	Liquor For Resale	LIQUOR	(326.00)
03/21/2012	2213649	E 609-49751-206	Freight and Fuel Charges	FREIGHT	17.64
03/21/2012	2213649	E 609-49751-251	Liquor For Resale	LIQUOR	979.77
03/22/2012	3479352	E 609-49751-206	Freight and Fuel Charges	LIQUOR CREDIT	(1.47)
03/22/2012	3479352	E 609-49751-251	Liquor For Resale	LIQUOR CREDIT	(86.35)
					$2,421.52
POSTMASTER - ST. FRANCIS					
02/28/2012	022812	E 230-49990-441	Miscellaneous	PIONEER DAYS PO BOX	44.00
					$44.00
PRINTING UNLIMITED					
03/09/2012	6199	E 101-42110-200	Office Supplies	EVIDENCE CONTROL LOGS	66.96
03/26/2012	00006216	E 101-41400-200	Office Supplies	ENVELOPES	33.20
03/26/2012	00006216	E 101-42110-200	Office Supplies	ENVELOPES	11.07
03/26/2012	00006216	E 101-42210-200	Office Supplies	ENVELOPES	11.07
03/26/2012	00006216	E 101-43100-200	Office Supplies	ENVELOPES	11.07
03/26/2012	00006216	E 101-45200-200	Office Supplies	ENVELOPES	11.07

03/26/2012	00006216	E 601-49440-200	Office Supplies	ENVELOPES	11.07
03/26/2012	00006216	E 602-49490-200	Office Supplies	ENVELOPES	11.07
03/26/2012	00006216	E 609-49750-200	Office Supplies	ENVELOPES	11.05
					$177.63
PUBLIC SAFETY EQUIPMENT, LLC					
03/21/2012	3227	E 101-42110-218	Equipment Repair & Maintenance	RADAR AND LASER CHECKS	198.00
					$198.00
RAMSEY, CITY OF					
03/27/2012	032712	E 101-42210-311	Contract	CHIEF KAPLER'S MARCH SERVI	666.00
					$666.00
RJM DISTRIBUTING INC.					
03/13/2012	16747	E 609-49751-252	Beer For Resale	BEER	472.50
					$472.50
SCOTT OLMSTEAD BUILDERS					
		G 803-22000	Deposits	22991 NAVAJO ST ESCROW	1,500.00
					$1,500.00
SKINNER, MARLINE					
03/27/2012	032712	E 101-42700-311	Contract	CONTRACT	500.00
					$500.00
SOUTHERN WINE & SPIRITS OF MN					
03/14/2012	1739634	E 609-49751-206	Freight and Fuel Charges	FREIGHT	2.50
03/14/2012	1739634	E 609-49751-253	Wine For Resale	WINE	96.00
03/28/2012	1723389	E 609-49751-253	Wine For Resale	WINE CREDIT	(48.00)
03/28/2012	1723925	E 609-49751-253	Wine For Resale	WINE CREDIT	(45.96)
					$4.54
STANLEY ACCESS TECH LLC					
03/09/2012	0901895393	E 609-49750-228	Equipment Maintenance	STANDARD SERVICE LABOR	178.00
					$178.00
STAPLES					
12/14/2011	111584618	E 101-42110-200	Office Supplies	SUPPLIES	167.12
12/14/2011	111587961	E 101-42110-200	Office Supplies	SUPPLIES	82.42
03/02/2012	112657518	E 101-42110-200	Office Supplies	SUPPLIES	166.67
					$416.21
STERLING TROPHY					
03/20/2012	9050	E 101-42210-437	Uniform Allowance	ENGRAVING	55.47
					$55.47
TELECIDE (TWIN CITIES EMEDIA)					
03/21/2012	20120031	E 101-41400-433	Dues and Subscriptions	ONLINE FILE FOLDER RENEWAI	29.00
03/31/2012	20120029	E 101-41400-200	Office Supplies	KEYBOARD	14.45
					$43.45
THE AMERICAN BOTTLING COMPANY					
03/23/2012	2449911537	E 609-49751-254	Miscellaneous Merchandise	MISC	362.20
					$362.20
THORPE DISTRIBUTING COMPANY					
03/23/2012	681321	E 609-49751-252	Beer For Resale	BEER	32.31

					$32.31
TOTAL CONTROL SYSTEMS, INC.					
03/19/2012	6023	E 601-49440-229	Project Repair & Maintenance	CHANGE FIREWALL/ROUTER NE	275.95
03/19/2012	6023	E 602-49490-229	Project Repair & Maintenance	CHANGE FIREWALL/ROUTER NE	275.95
					$551.90
UNIFORMS UNLIMITED					
03/09/2012	112437	E 101-42110-448	Reserve Officers	TASER-NICK STEIGER	1,733.66
					$1,733.66
VINOCOPIA, INC.					
03/23/2012	0054014-IN	E 609-49751-206	Freight and Fuel Charges	FREIGHT	46.00
03/23/2012	0054014-IN	E 609-49751-251	Liquor For Resale	LIQUOR	608.50
03/23/2012	0054014-IN	E 609-49751-253	Wine For Resale	WINE	392.00
					$1,046.50
WIRTZ BEVERAGE MN					
03/15/2012	716910	E 609-49751-206	Freight and Fuel Charges	FREIGHT	17.40
03/15/2012	716910	E 609-49751-251	Liquor For Resale	LIQUOR	560.39
03/15/2012	716910	E 609-49751-253	Wine For Resale	WINE	547.65
03/15/2012	716910	E 609-49751-254	Miscellaneous Merchandise	MISC	92.49
03/22/2012	719586	E 609-49751-206	Freight and Fuel Charges	FREIGHT	14.50
03/22/2012	719586	E 609-49751-251	Liquor For Resale	LIQUOR	1,349.60
03/22/2012	720033	E 609-49751-206	Freight and Fuel Charges	FREIGHT	171.10
03/22/2012	720033	E 609-49751-251	Liquor For Resale	LIQUOR	9,554.21
03/22/2012	720033	E 609-49751-253	Wine For Resale	WINE	239.75
					$12,547.09
WONDERFUL WORLD OF WOODY, THE					
	PD-6-9-12	E 230-49990-441	Miscellaneous	PIONEER DAYS	525.00
					$525.00
					$126,992.69

FUND SUMMARY

101 GENERAL FUND	$33,868.67
230 PIONEER DAYS	$569.00
402 CAPITAL EQUIPMENT	$1,940.00
601 WATER FUND	$11,060.93
602 SEWER FUND	$16,079.58
609 MUNICIPAL LIQUOR FUND	$61,534.51
803 ESCROW	$1,940.00
Total	126,992.69

CITY OF ST. FRANCIS
4/2/2012

Checks cut since last Council Meeting

Check Date	Check Number	Payee	Description	Amount
		TOTAL		0.00

Disbursements via Debits to Checking account in March 2012

Date	Payee	Description	Amount
3/1/2012	Federal Tax	Federal Payroll Tax	14,635.68
3/1/2012	PERA	P.E.R.A	11,880.14
3/1/2012	ING	Deferred Comp	905.00
3/1/2012	ICMA	Deferred Comp	790.00
3/1/2012	State Tax	State Payroll Tax	3,305.59
3/14/2012	Sales Tax	Sales tax	13,441.00
03/15/12	Federal Tax	Federal Payroll Tax	14,493.44
03/15/12	PERA	P.E.R.A	2,895.95
03/15/12	ING	Deferred Comp	905.00
03/15/12	ICMA	Deferred Comp	790.00
03/15/12	State Tax	State Payroll Tax	3,247.50
03/20/12	Federal Tax	Federal Payroll Tax	1,157.45
03/20/12	PERA	P.E.R.A	320.16
03/20/12	State Tax	State Payroll Tax	148.57
03/10/12	Elan Financial	Credit Card	9,222.11
03/29/12	Federal Tax	Federal Payroll Tax	12,616.97
03/29/12	PERA	P.E.R.A	11,751.03
03/29/12	ING	Deferred Comp	905.00
03/29/12	ICMA	Deferred Comp	690.00
03/29/12	State Tax	State Payroll Tax	2,389.89
	TOTAL		106,490.48

Richard H. Lund

March 27, 2012

City of St. Francis

City Council

Re: Liquor License

Dear Council Members:

I am requesting favorable consideration be granted to prorating the liquor license fee for the calendar year 2012. The basis for my request is that the Ponds has struggled as a business for years. I believe it is everyone's best interest to make this a community success!

Sincerely,

Richard H. Lund

RHL/dm

City of St. Francis

23340 Cree Street NW • PO Box 730
St. Francis, Minnesota 55070
763-753-2630
FAX 763-753-9881

License Fee: $_____
Investigation Fee: $_____
Sunday Liquor Fee: $_____
Date Rec'd: _____
Receipt #_____
License #_____
Term of Insurance_____

APPLICATION FOR BEER, WINE, LIQUOR SALES

PART ONE: GENERAL INFORMATION

Type of License:

Beer-Off Sale	____	**Liquor**-Club On Sale	____	**Wine**-On Sale	____
-On Sale	____	-On Sale	✓		
-Temp. On Sale	____	-On Sale Limited	____		
		-On Sale Sunday	✓		
		-On Sale Temporary	____		

ADDRESS FOR WHICH APPLICATION IS MADE:
2881 229th Ave NW
St. Francis, MN 55070

NAME OF OPERATION AT ABOVE ADDRESS:
RHL Properties, Inc. dba The Ponds

Is applicant an: ___Individual ___Partnership X Corporation ___Other Organization

Name of individual, partnership, corporation or other form of organization making application:
RHL Properties, Inc. dba The Ponds

Address: 132

Phone Number: _____

If incorporated, state of incorporation: MN
*Please attach a copy of Certificate of Incorporation or other documentation of legal status.

CITY OF ST. FRANCIS PLANNING REPORT

TO:	St. Francis City Council Matt Hylen, City Administrator
FROM:	Nate Sparks, City Planner
MEETING DATE:	April 2, 2012
DATE:	March 28, 2012
RE:	Ordinance Amendment & Conditional Use Permit 3325 Bridge Street

BACKGROUND

The St. Francis School District would like to open up a clinic for school staff and dependents in the high school building as a way to lower health care costs. The High School building is located in the R-2, Single Family Residential District and accessory medical clinics are not allowed in residential areas. Therefore, the School made an application for a text amendment to allow for this use. Since there are conditions upon which this use would be allowed, it is proposed as a conditional use. The School has also made an application for the CUP.

At the February Planning Commission meeting, a public hearing was held for a text amendment and conditional use permit for the St. Francis School District. Motions for both approval and denial failed 2-2. The Council reviewed the application and directed the item back to the Planning Commission for a formal recommendation. The Planning Commission discussed the matter again at their March meeting. Once again, the Planning Commission voted 2-2.

REQUEST REVIEW

In the Comprehensive Plan, the High School building is guided for a public land use. The zoning district the City has historically used for such purposes is the R-2, Urban Residential District. The City of St. Francis has historically allowed schools and churches as permitted uses in urban residential neighborhoods. While not uncommon, this may cause issues with accessory uses for such institutions, which may end up being incompatible with the neighboring residential uses. This is why the clinic proposed is being approached as a conditional use rather than a permitted use in the proposed text amendment.

Larger employers sometimes have accessory day care centers, clinics, and other such uses within their buildings for use by the employees. Many cities allow these uses via conditional use permits to monitor the use and to ensure it does not become a zoning violation and maintains its accessory use status. St. Francis does not currently have provisions to allow such uses.

Another similar example is accessory uses related to churches. Some churches have day care centers, which are only typically allowed in residential areas when within homes.

There are three other cities that have recently discussed this same topic. New Hope and Farmington recently approved similar ordinance amendments for their schools to operate clinics. New Hope approved theirs via a CUP. The City of Brooklyn Center allowed a clinic in a school building under their existing ordinance.

DRAFT AMENDMENT

The School District wishes to have a limited medical clinic within the High School building in order to primarily serve district employees and their dependents. If the Planning Commission finds that this use is acceptable it would be appropriate to add this use as a conditional use in the R-2 District. The draft language proposed read as follows:

10-57-4: R-2 District Conditional Uses:

D. Accessory Medical Clinic to a Public School provided:

a. The clinic is located within an existing school building.

b. The clinic exclusively serves school district employees and dependents.

c. The clinic shall be clearly accessory and incidental to the school use.

d. The school shall demonstrate that adequate required parking is available on site to serve both the school and the clinic.

e. The clinic shall not exceed 1,400 square feet in area.

CONDITIONAL USE PERMIT

It is appropriate for potentially incompatible uses within zoning districts to be allowed only through conditional uses. Since the use is proposed for a single family residential district, a CUP is required. The School District has requested that the Planning Commission consider the request for the CUP conditional to the approval of the ordinance amendment. If the Planning Commission recommends approval or denial of the ordinance amendment, subsequent consideration to the CUP should be given, as well.

STAFF RECOMMENDATION

The proposal by the School District may be considered to be appropriate for this type of use and site location provided it is limited. A clinic open to the general public would most definitely require a rezoning to commercial. However, with a conditional use permit to ensure compatibility concerns can be managed, it could be considered appropriate.

The Planning Commission discussed possibly re-assessing how the City zones properties identified as Public in the Comprehensive Plan. It was not clear if the outcome of this discussion would result in allowing the clinic in the school.

REQUESTED ACTION

The City Council must make a policy decision on the acceptability of the accessory medical clinic to a public institution in the R-2 District. The draft ordinance attempts to mitigate potential impacts that may be presented by a clinic in the school. The City Council may direct Staff to do one of the following actions, keeping in mind that a final decision must be made by the Council at the May 21st meeting at the latest:

1. Return the application to the Planning Commission for further discussion.
2. Direct Staff to bring back a resolution denying the request.
3. Direct Staff to bring back an ordinance and resolution approving the request.

DARRELL A. JENSEN
JEFFREY S. JOHNSON
RUSSELL H. CROWDER
JON P. ERICKSON
THOMAS P. MALONE
MICHAEL F. HURLEY
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KIP R. PETERSON
KRISTIN N. BLENKUSH
TAMMY J. SCHEMMEL
SUSAN E. TEGT

OF COUNSEL
W. JAMES VOGL, JR

MEMORANDUM

TO: St. Francis Charter Commission, City Administrator
FROM: Scott Lepak, City Attorney
RE: Draft of Language Changes recommended by Charter Commission
DATED: November 21, 2011

On November 16, 2011, the Charter Commission asked the City Council to reconsider the charter amendments originally proposed in the spring of 2011. In order to meet the statutory requirements of Minn. Stat. Sec. 410.12, I recommend that this matter not be considered at the November 21, 2011 regular council meeting.

In order to meet this statutory requirement, I recommend the following process:

1. The Charter Commission meet as a group and make the recommendations noted in the Chair's memo.

2. The City publishes a notice of public hearing on the proposed changes. The notice must contain the text of the proposed amendment.

3. At least two weeks (but less than one month) after the published notice, the city council must hold the public hearing.

4. Within one month of the public hearing, the city council must vote on the proposed charter amendment ordinance (two readings are required).

   a. The ordinance is enacted if it receives an affirmative vote of **all** members of the city council and is approved by the mayor and published as in the case of other ordinances.

   b. An ordinance amending a city charter shall not become effective until 90 days after passage and publication unless a sufficient number of voters petition for a referendum within 60 days.

An EOE/AA Employer
Celebrating 70 Years of Legal Service

The applicable statute in this area is as follows:

> Subd. 7. **Amendment by ordinance.** Upon recommendation of the charter commission the city council may enact a charter amendment by ordinance. Within one month of receiving a recommendation to amend the charter by ordinance, the city must publish notice of a public hearing on the proposal and the notice must contain the text of the proposed amendment. The city council must hold the public hearing on the proposed charter amendment at least two weeks but not more than one month after the notice is published. Within one month of the public hearing, the city council must vote on the proposed charter amendment ordinance. The ordinance is enacted if it receives an affirmative vote of all members of the city council and is approved by the mayor and published as in the case of other ordinances. An ordinance amending a city charter shall not become effective until 90 days after passage and publication or at such later date as is fixed in the ordinance. Within 60 days after passage and publication of such an ordinance, a petition requesting a referendum on the ordinance may be filed with the city clerk. Such petition shall be signed by qualified voters equal in number to two percent of the total number of votes cast in the city at the last state general election or 2,000, whichever is less. If the city has a system of permanent registration of voters, only registered voters are eligible to sign the petition. If the requisite petition is filed within the prescribed period, the ordinance shall not become effective until it is approved by the voters as in the case of charter amendments submitted by the charter commission, the council, or by petition of the voters, except that the council may submit the ordinance at any general or special election held at least 60 days after submission of the petition, or it may reconsider its action in adopting the ordinance. As far as practicable the requirements of subdivisions 1 to 3 apply to petitions submitted under this section, to an ordinance amending a charter, and to the filing of such ordinance when approved by the voters.

Minn. Stat. § 410.12, Subd. 7.

AFFIDAVIT OF PUBLICATION

STATE OF MINNESOTA)
COUNTY OF ANOKA) SS

PUBLIC HEARING NOTICE
CITY OF ST. FRANCIS

NOTICE IS HEREBY GIVEN that the St. Francis City Council will be con-
ucting a Public Hearing on March 19, 2012 at 6:00 pm or shortly thereafter.
he Public Hearing will be conducted at the Independent School District #15
ffices located at 4115 Ambassador Blvd., St. Francis, MN 55070.

The purpose of the Public Hearing is to consider the proposed amendments
the current City Charter as follows:

Section 7.16. Capital Improvement Program. The Council shall direct the
reparation and submission to it of a recommended five year capital improve-
ent program no later than ~~June~~ July first (1st) of each year. The capital
provement program shall include a list of all capital improvements pro-
osed to be undertaken during the next five (5) fiscal years, with appropriate
pporting information as to the necessity for such improvements; cost esti-
ates, method of financing and recommended time schedules for each such
provement; and the estimated annual cost of operating and maintaining
e facilities to be constructed or acquired. This information shall be revised
d extended each year for capital improvements still pending or in process.
e Council shall hold a Public Hearing on the capital improvement program
d adopt it with or without amendment no later than August fifteenth. and;

Section 5.01. Amend the language as follows:

Subdivision 2. Filing and Nomination. Not more than twelve (12) nor less
an ten (10) weeks before the date of the primary election, an individual
ho is eligible and desires to have his name placed on the official ballot as
candidate for an office to be voted for at the primary election or general
ection, depending upon the number of candidates that actually file for each
fice, shall file his affidavit of candidacy with the City Clerk. The City Clerk
all also accept an application signed by not less than five (5) voters and filed
behalf of an eligible person whom they desire to be a candidate, if service
a copy of the application has been made on the candidate and proof of
rvice is endorsed on the application being filed. Upon receipt of a filing fee
the amount of five dollars ($5.00) the City Clerk shall place the name of the
ndidate on the official ballot without partisan designation.

Subdivision 3. Notice. At least two (2) weeks before the first day to file
fidavits or applications of candidacy, and at least two (2) weeks prior to each
imary election, general election, and special election, the City Clerk shall
blish and post in the Clerk's office a notice thereof.

Subdivision 7. Primary Elections. Primary elections shall be held on the
me date as prescribed by the Minnesota Statutes, which establishes the state-
de primary election date. The primary election shall be for the selection of
o nominees for each elective office at the regular municipal election, unless
o nominees or fewer file for each elective office. In the event two nominees
fewer file for an elective office, the names of such nominees shall be placed
the municipal general election ballot as the nominee for that office and no
imary election shall be held for such elective office.

All interested parties are encouraged to attend the Public Hearing. Verbal
d written testimony regarding the request will be accepted during the
aring. A copy of the proposed amendments to the City Charter may be
tained by contacting the City of St. Francis, 23340 Cree St. NW 55070 or
calling 763-753-2630.

rbara I. Held
ty Clerk
cdefghijklmnopqrstuvwxyz

Published in Anoka County Union
Feb. 24, 2012

J. Bodley, being duly sworn on oath says that he is the managing editor of the
nown as the Anoka County Union, and has full knowledge of the facts which are

e newspaper has complied with all of the requirements constituting qualifications
ied newspaper, as provided by Minnesota Statue 331A.02, 331A.07 and other
ws, as ammended.

e printed NOTICE OF PUBLIC HEARING (3/19/12), which is attached was cut
olumns of said newspaper and was printed and published once a week for one
as first published on Friday, the 24th day of February, 2012, and was therefore
published on every Friday to and including Friday, the 24th day of February,
printed below is a copy of the lower case alphabet from A to Z, both inclusive,
ereby acknowledged as being the size and kind of type used in the composition
ion of the notice

abcdefghijklmnopqrstuvwxyz
abcdefghijklmnopqrstuvwxyz

Managing Editor

and sworn to before me on
y of February, 2012

y Petro

TRACY A. PETRO
Notary Public-Minnesota
My Commission Expires Jan 31, 2017

RATE INFORMATION

(1) Lowest classified rate paid by commercial users for comparable space	$ 15.00 (line, word or inch rate)
(2) Maximum rate allowed by law for the above matter	$ 15.00 (line, word or inch rate)
(3) Rate actually charged for the above matter	$10.25 (line, word or inch rate)

2,917,645

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SUSAN E. TEGT

MEMORANDUM

TO: St. Francis Charter Commission, City Administrator
FROM: Scott Lepak, City Attorney
RE: Draft of Language Changes recommended by Charter Commission
DATED: April 29, 2011

At the April 27, 2011 Charter Commission Meeting, the Charter Commission asked me to draft the changes to the Charter discussed by the Commission along with its recommendations for changing the City Code:

Charter language:

The language changes proposed by the Charter Commission are as follows:

1. Section 7.16. The Charter Commission would like to change the submission date of the capital improvement plan (CIP) from June 1 to July 1 to better fit budgeting processes. This is accomplished by the following:

> **Section 7.16. Capital Improvement Program.** The Council shall direct the preparation and submission to it of a recommended five year capital improvement program no later than ~~June~~ July first (1st) of each year. The capital improvement program shall include a list of all capital improvements proposed to be undertaken during the next five (5) fiscal years, with appropriate supporting information as to the necessity for such improvements; cost estimates, method of financing and recommended time schedules for each such improvement; and the estimated annual cost of operating and maintaining the facilities to be constructed or acquired. This information shall be revised and extended each year for capital improvements still pending or in process. The Council shall hold a Public Hearing on the capital improvement program and adopt it with or without amendment no later than August fifteenth (15th).

2. Chapter 5. The Charter Commission is seeking to incorporate primary elections into the election process. In order to meet the statutory requirements of this change, the City Council will be required to act on this language by ordinance or resolution, no later than April 15 in the year when the election is to be held. See Minnesota Statute Sec. 205.065. It is anticipated that this will be effective for the 2012 elections. Pursuant to Minnesota Statute Sec. 205.065, subd. 4, a primary election may or may not occur depending upon the number of candidates that have

filed as a candidate for the particular office at issue and thus flexibility allowing for operation at a primary or a general election is needed. Other changes to the Charter regarding when the affidavit of candidacy is required to be filed must also be modified if a primary election is adopted. Minnesota Statute Sec. 205.13, subd. 1a.

Section 5.01. Amend the language as follows:

Subdivision 2. Filing and Nomination. Not more than twelve (12) nor less than ten (10) weeks before the date of the primary election, an individual who is eligible and desires to have his name placed on the official ballot as a candidate for an office to be voted for at the primary election or general election, depending upon the number of candidates that actually file for each office, shall file his affidavit of candidacy with the City Clerk. The City Clerk shall also accept an application signed by not less than five (5) voters and filed on behalf of an eligible person whom they desire to be a candidate, if service of a copy of the application has been made on the candidate and proof of service is endorsed on the application being filed. Upon receipt of a filing fee in the amount of five dollars ($5.00) the City Clerk shall place the name of the candidate on the official ballot without partisan designation.

Subdivision 3. Notice. At least two (2) weeks before the first day to file affidavits or applications of candidacy, and at least two (2) weeks prior to each primary election, general election, and special election, the City Clerk shall publish and post in the Clerk's office a notice thereof.

Subdivision 7. Primary Elections. Primary elections shall be held on the same date as prescribed by the Minnesota Statutes, which establishes the statewide primary election date. The primary election shall be for the selection of two nominees for each elective office at the regular municipal election, unless two nominees or fewer file for each elective office. In the event two nominees or fewer file for an elective office, the names of such nominees shall be placed on the municipal general election ballot as the nominee for that office and no primary election shall be held for such elective office.

CITY OF ST. FRANCIS
PUBLIC HEARING NOTICE

NOTICE IS HEREBY GIVEN that the St. Francis City Council will be conducting a Public Hearing on March 19, 2012 at 6:00 pm or shortly thereafter. The Public Hearing will be conducted at the Independent School District #15 Offices located at 4115 Ambassador Blvd. St. Francis, MN 55070.

The purpose of the Public Hearing is to consider the proposed amendments to the current City Charter as follows:

Section 7.16. Capital Improvement Program. The Council shall direct the preparation and submission to it of a recommended five year capital improvement program no later than ~~June~~ July first (1st) of each year. The capital improvement program shall include a list of all capital improvements proposed to be undertaken during the next five (5) fiscal years, with appropriate supporting information as to the necessity for such improvements; cost estimates, method of financing and recommended time schedules for each such improvement; and the estimated annual cost of operating and maintaining the facilities to be constructed or acquired. This information shall be revised and extended each year for capital improvements still pending or in process. The Council shall hold a Public Hearing on the capital improvement program and adopt it with or without amendment no later than August fifteenth. and;

Section 5.01. Amend the language as follows:
Subdivision 2. Filing and Nomination. Not more than twelve (12) nor less than ten (10) weeks before the date of the primary election, an individual who is eligible and desires to have his name placed on the official ballot as a candidate for an office to be voted for at the primary election or general election, depending upon the number of candidates that actually file for each office, shall file his affidavit of candidacy with the City Clerk. The City Clerk shall also accept an application signed by not less than five (5) voters and filed on behalf of an eligible person whom they desire to be a candidate, if service of a copy of the application has been made on the candidate and proof of service is endorsed on the application being filed. Upon receipt of a filing fee in the amount of five dollars ($5.00) the City Clerk shall place the name of the candidate on the official ballot without partisan designation.
Subdivision 3. Notice. At least two (2) weeks before the first day to file affidavits or applications of candidacy, and at least two (2) weeks prior to each primary election, general election, and special election, the City Clerk shall publish and post in the Clerk's office a notice thereof.
Subdivision 7. Primary Elections. Primary elections shall be held on the same date as prescribed by the Minnesota Statutes, which establishes the statewide primary election date. The primary election shall be for the selection of two nominees for each elective office at the regular municipal election, unless two nominees or fewer file for each elective office. In the event two nominees or fewer file for an elective office, the names of such nominees shall be placed on the municipal general election ballot as the nominee for that office and no primary election shall be held for such elective office.

All interested parties are encouraged to attend the Public Hearing. Verbal and written testimony regarding the request will be accepted during the Hearing. A copy of the proposed amendments to the City Charter may be obtained by contacting the City of St. Francis, 23340 Cree St. NW 55070 or by calling 763-753-2630.

Barbara I. Held
City Clerk

ORDINANCE 168, SECOND SERIES

CITY OF ST. FRANCIS
ANOKA COUNTY
STATE OF MINNESOTA

AN ORDINANCE AMENDING AND RESTATING THE CITY OF ST. FRANCIS HOME RULE CHARTER.

THE CITY OF ST. FRANCIS ORDAINS:

The language changes proposed by the Charter Commission are as follows:

1. Section 7.16. The Charter Commission would like to change the submission date of the capital improvement plan (CIP) from June 1 to July 1 to better fit budgeting processes. This is accomplished by the following:

Section 7.16. Capital Improvement Program. The Council shall direct the preparation and submission to it of a recommended five year capital improvement program no later than ~~June~~ July first (1st) of each year. The capital improvement program shall include a list of all capital improvements proposed to be undertaken during the next five (5) fiscal years, with appropriate supporting information as to the necessity for such improvements; cost estimates, method of financing and recommended time schedules for each such improvement; and the estimated annual cost of operating and maintaining the facilities to be constructed or acquired. This information shall be revised and extended each year for capital improvements still pending or in process. The Council shall hold a Public Hearing on the capital improvement program and adopt it with or without amendment no later than August fifteenth (15th).

Section 2. Effective Date.

This Ordinance shall take effect ninety (90) days after its publication.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF ST. FRANCIS THIS _____ DAY OF _____, _____.

APPROVED:

ATTEST:

_____
Jerry Tveit, Mayor

_____
Barbara I. Held, City Clerk

ORDINANCE 169, SECOND SERIES

CITY OF ST. FRANCIS
ANOKA COUNTY
STATE OF MINNESOTA

AN ORDINANCE AMENDING AND RESTATING THE CITY OF ST. FRANCIS HOME RULE CHARTER.

THE CITY OF ST. FRANCIS ORDAINS:

The language changes proposed by the Charter Commission are as follows:

Chapter 5. The Charter Commission is seeking to incorporate primary elections into the election process. In order to meet the statutory requirements of this change, the City Council will be required to act on this language by ordinance or resolution, no later than April 15 in the year when the election is to be held. See Minnesota Statute Sec. 205.065. It is anticipated that this will be effective for the 2012 elections. Pursuant to Minnesota Statute Sec. 205.065, subd. 4, a primary election may or may not occur depending upon the number of candidates that have filed as a candidate for the particular office at issue and thus flexibility allowing for operation at a primary or a general election is needed. Other changes to the Charter regarding when the affidavit of candidacy is required to be filed must also be modified if a primary election is adopted. Minnesota Statute Sec. 205.13, Subd. 1a.

Section 5.01. Amend the language as follows:

Subdivision 2. Filing and Nomination. Not more than <u>twelve (12)</u> nor less than <u>ten (10)</u> weeks before the date of the <u>primary</u> election, an individual who is eligible and desires to have his name placed on the official ballot as a candidate for an office to be voted for at the <u>primary election or general</u> election, <u>depending upon the number of candidates that actually file for each office</u>, shall file his affidavit of candidacy with the City Clerk. The City Clerk shall also accept an application signed by not less than five (5) voters and filed on behalf of an eligible person whom they desire to be a candidate, if service of a copy of the application has been made on the candidate and proof of service is endorsed on the application being filed. Upon receipt of a filing fee in the amount of five dollars ($5.00) the City Clerk shall place the name of the candidate on the official ballot without partisan designation.

Subdivision 3. Notice. At least two (2) weeks before the first day to file affidavits or applications of candidacy, and at least two (2) weeks prior to each <u>primary election</u>, general election, and special election, the City Clerk shall publish and post in the Clerk's office a notice thereof.

Subdivision 7. Primary Elections. Primary elections shall be held on the same date as prescribed by the Minnesota Statutes, which establishes the statewide primary election date. The primary election shall be for the selection of two nominees for each elective office at the regular municipal election, unless two nominees or fewer file for each elective office. In the event two nominees or fewer file for an elective office, the names of such nominees shall be placed on the municipal general election ballot as the nominee for that office and no primary election shall be held for such elective office.

This Ordinance shall take effect ninety (90) days after its publication.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF ST. FRANCIS THIS _____ DAY OF _____, _____.

APPROVED:

ATTEST:

_____

Jerry Tveit, Mayor

_____

Barbara I. Held, City Clerk

CITY OF ST. FRANCIS
ST. FRANCIS, MN

RESOLUTION 2012-09

A RESOLUTION SETTING THE 2012 YEARLY RATE FOR THE DISPOSAL OF EXCESS PERSONAL PROPERTY

WHEREAS, Section 8-7-3 of the St. Francis City Code entitled "Disposal of Excess Property" outlines the procedure for disposal of City owned property having a total estimated value less than ten thousand dollars as follows:

8-7-3: DISPOSAL OF EXCESS PROPERTY. (Ord. 33, SS, 1-3-1995)

A. Declaration of Surplus and Authorizing Sale of Property. The City Administrator may, from time to time, inform the Council that certain personal property or real property owned by the City is no longer needed for a municipal purpose and should be sold or disposed of. By action of the Council, said property may be declared surplus, the value estimated and City Administrator authorized to dispose of said property in the manner stated herein. (Ord. 104, SS, 11-20-2006)

1. Surplus Personal Property with a Total Estimated Value of Less than Ten Thousand Dollars ($10,000.00). If property is declared surplus by the Council and assigned an estimated value less than ten thousand ($10,000.00), the City Administrator may sell or dispose of surplus property through negotiated sale, quotation, auction or other means as provided by the Council in a rate resolution establishing the procedure to apply surplus property based on the estimated surplus amount. (Ord. 104, SS, 11-20-2006)

WHEREAS, this Resolution is intended to serve as the "rate resolution establishing the procedure to apply surplus property based on the estimated surplus amount."

WHEREAS, this Resolution is intended to apply to the disposal of personal property and is not to be viewed as authorizing or applying to the disposal of real property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Francis that the approximate value of the rate resolution for the year 2012 is assigned as follows:

<u>Surplus Personal Property Total Estimated Value</u>

Less than Two Hundred

Fifty Dollars ($250)	The City Administrator may dispose of said surplus property through negotiated sale, quotation, electronic selling process, auction, newspaper ad indicating best offer or other means as determined by the City Administrator except to the extent that specific or other means are directed by Council.
Two Hundred Fifty-one Dollars to Five Hundred Dollars ($251-$500)	City Administrator will dispose of said surplus property through negotiated sale, quotation, electronic selling process, newspaper ad indicating estimated price or best offer or auction or any other means directed by Council.
Five Hundred One Dollars to One Thousand Dollars ($501-$1,000)	City Administrator will dispose of said surplus property through negotiated sale, quotation, electronic selling process, newspaper ad indicating estimated price or auction or any other means directed by Council.

BE IT FURTHER RESOLVED that the City Staff is hereby authorized to dispose of said property pursuant to City Code Requirements.

BE IT FURTHER RESOLVED that this Resolution shall continue in effect until superseded by a subsequent Resolution Setting the Rate Resolution For the Disposal of Excess Personal Property.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF ST. FRANCIS THIS ____ DAY OF APRIL, 2012.

APPROVED:

_____
Jerry Tveit
Mayor of St. Francis

ATTEST:

_____
Barbara I. Held
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OF COUNSEL
W. JAMES VOGL, JR

MEMORANDUM

TO: Matt Hylen, City Administrator
FROM: Scott Lepak, City Attorney
RE: Disposal of 2008 Charger with blown engine
DATED: March 29, 2012

You indicated to me that the City's 2008 Charger has a blown motor. This is a vehicle that has 120,000 miles of patrol use and is not covered by any warranties. You further indicated that it has a salvage value of $1,000 using two quotes (from Dodge of Burnsville and from the owner of the St. Francis salvage yard) in "as is" condition and that you were also advised that the cost of replacing the engine would not add sufficient value to this vehicle to cover the cost of the engine, labor plus one thousand dollars. In other words, the maximum value of the vehicle is no more than $1,000.

In looking at the City Resolution on Disposal of excess personal property, the squad would need to be declared excess by the Council. Upon this determination, the City Administrator would have the authority to "dispose of said surplus property through negotiated sale, quotation, electronic selling process, newspaper ad indicating estimated price or auction or any other means directed by Council." I have attached the Resolution to this memorandum for your reference.

Given the two quotes, it appears that the City could sell it to the local salvage yard for the assigned value.

Please let me know if you have any questions or would like to discuss this matter further.

560686-v1

CITY OF ST. FRANCIS
ST. FRANCIS, MN
ANOKA COUNTY

RESOLUTION 2012-10

A RESOLUTION DECLARING SURPLUS PROPERTY AND AUTHORIZING THE DISPOSAL OF SAID PROPERTY

WHEREAS, Section 8-7-3 of the St. Francis City Code entitled "Disposal of Excess Property" outlines the procedure for disposal of City owned property; and

WHEREAS, pursuant to Section 8-7-3, the City has identified property owned by the City that is no longer needed for municipal service; and

WHEREAS, by the City Council of the City of St. Francis that the following property is hereby classified as surplus property, with the approximate value said property assigned as follows:

2008 Dodge Charger (Blown Motor $5,000+ to Repair)	Value $ 1,000
2007 Fire Department Command Trailer	Value $20,000

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Francis that the proceeds from the Command Trailer be placed in the General Fund and subsequently transferred to the Fire Truck Replacement Fund; and

BE IT FURTHER RESOLVED that the City Staff is hereby authorized to dispose of said property pursuant to City Code Requirements.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF ST. FRANCIS THIS 2nd DAY OF APRIL, 2012.

APPROVED:

_____
Jerry Tveit
Mayor of St. Francis

ATTEST:

_____
Barbara I. Held
City Clerk

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MEMORANDUM

Date: March 19, 2012

To: Matt Hylen, City Administrator

From: Jared Voge, P.E.
City Engineer

Subject: Trunk Highway 47 Signage
City of St. Francis, Minnesota
BMI Project No.: R13.104400

At the February 20, 2012 City Council Meeting, Council Member Brown inquired about signage installation along Trunk Highway 47 for Ambassador Boulevard. Council Member Brown indicated that he had received an inquiry from a resident who had referenced the signage for Alpine Drive along Trunk Highway 47 in the City of Ramsey.

Upon investigation of the Alpine Drive signage within the City of Ramsey, we have prepared a drawing illustrating a sign panel which could be installed along Ambassador Boulevard. I have enclosed a copy of the drawing and a picture of the existing Alpine Drive signage for your information. Based on the Minnesota Department of Transportation Technical Memorandum 12-02-T-01; January 23, 2011, Attachment A, the cost associated with the sign installation would be $2,788.80 per sign. I have also obtained a verbal quote from a signage contractor to install the same sign and they have quoted a price of approximately $2,000.00 per sign.

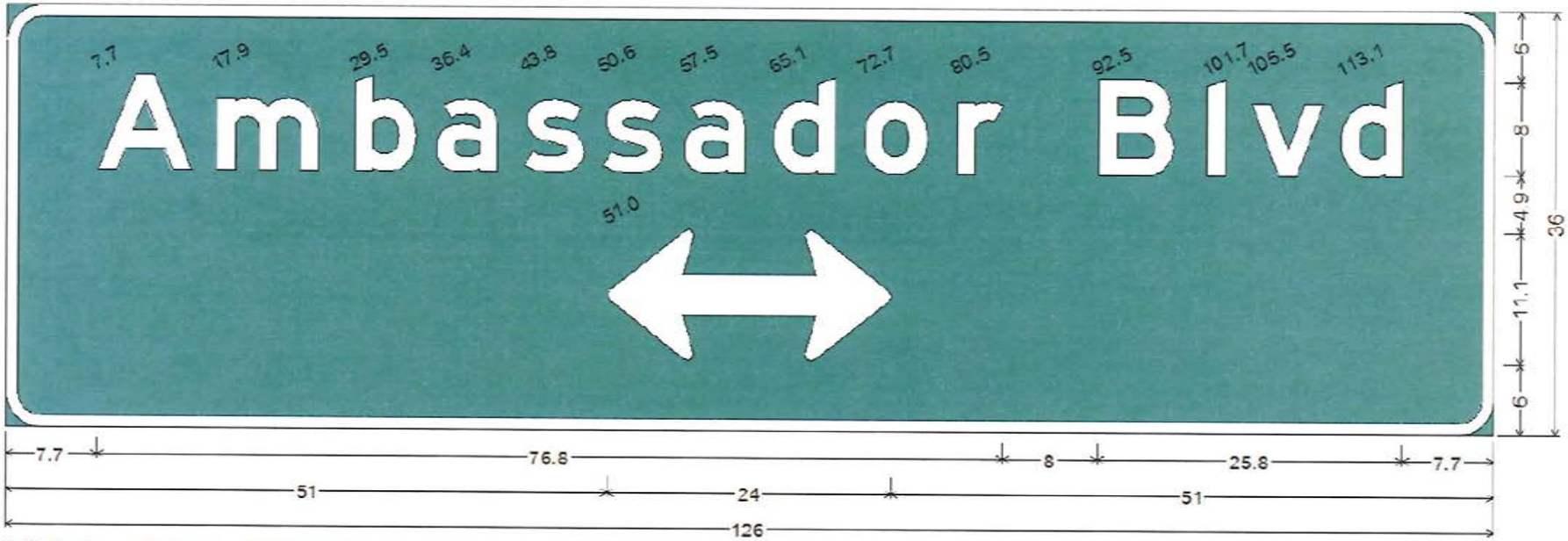
If the City Council desires to pursue the installation of advance street name signage along Trunk Highway 47 for Ambassador Boulevard, a Mn/DOT signage permit will also be required.

In summary, the signage, materials, and installation required for advanced street name signage for northbound and southbound Trunk Highway 47 traffic totals approximately $4,500.00 plus permit fees. Please let me know if the City Council would like to pursue the advanced street name signage installation.

If you have any questions, please call.

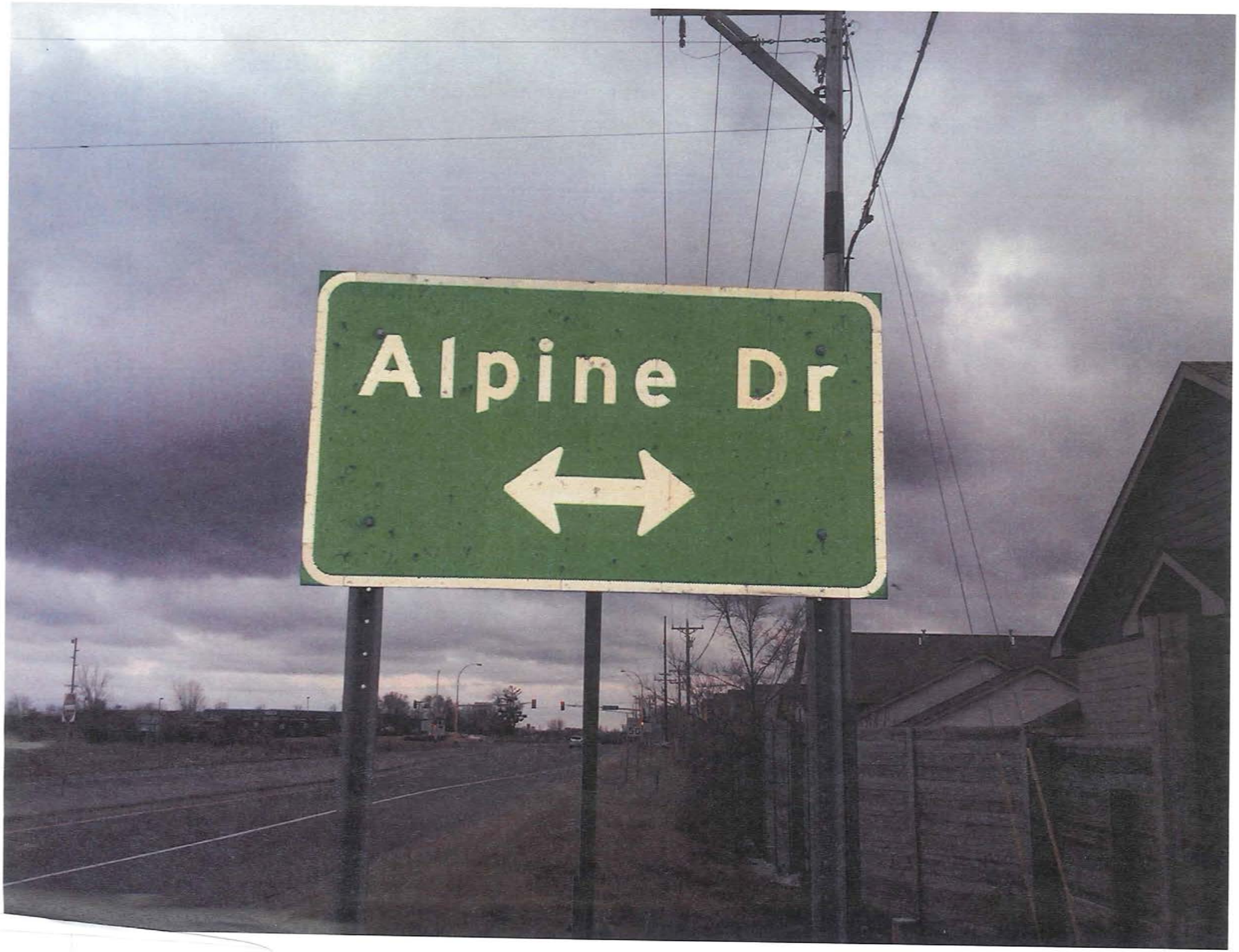
JAV/jd

Enclosure



3.0" Radius, 1.0" Border, White on Green;

"Ambassador Blvd" E Mod; Double Headed Arrow 5 - 24.0" 0°;


Alpine Dr

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OF COUNSEL
W. JAMES VOGL, JR

MEMORANDUM

TO: St. Francis Mayor, City Council and City Administrator
FROM: Scott Lepak, City Attorney
RE: Old Food N Fuel Building
DATED: March 28, 2012

At the last council meeting, the council raised the issue of the City's options related to the old Food N. Fuel building. As the council knows, this is a building that has been out of use for a number of years. The main building has been secured, initial work was done on the underground gas tanks, the car wash is an open building and the shed has alternately been secure and unsecure. The grounds are periodically maintained.

1. Securing a vacant building.

Basically, vacant buildings are required to be secured by taking all action as defined by Minn. Stat. Sec. 463.251, Subd. 1(c):

> "Secure" may include, but is not limited to, installing locks, repairing windows and doors, boarding windows and doors, posting "no-trespassing" signs, installing exterior lighting or motion-detecting lights, fencing the property, and installing a monitored alarm or other security system.

The City addressed this security issue in 2007 as I recall.

2. Dealing with a Hazardous and Substantard building.

The Hazardous and Substandard Buildings Act establishes the procedure by which cities can address hazardous buildings within their jurisdictions. Minn. Stat. §463.15 et. seq.

The statute defines a "hazardous building" as "any building which, because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or hazard to public safety and health." Minn. Stat. § 463.15, subd. 3 (2010). There is no firm test for how many deficiencies constitute a hazardous building. Examples of deficiencies that together have been found to support a city's order to raze a hazardous building are:

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- badly deteriorated foundation and foundation sills,
- broken and deteriorating siding,
- rotting and collapsing roof cornices,
- holes in the roof,
- evidence of roof leakage,
- holes in plaster walls and ceilings,
- broken window lights,
- destroyed window sashes,
- dry water traps resulting in open sewers, and
- debris littering interior of the building.

Ukkonen v. City of Minneapolis, 280 Minn. 494 496, 160 N.W.2d 249, 250 (1968).

The determination that a building is hazardous is fact-intensive and must be considered on a case by case basis.

The City has been periodically reviewing the property with a focus on these statutory factors as well as compliance with the State Fire Code. In the event that sufficient problems exist to raise this property to the level of a hazardous building, the issue will be brought to the City Council for a fact finding hearing and ultimate determination.

3. Underground Storage Tanks.

The Food N Fuel location also has underground storage tanks. These tanks are state regulated. The City Planner has been monitoring this part of the property.

Steps if the Property is Hazardous

Step 1: Review the final report of staff/consultants.

Step 2: Provide a copy of the final report to the business owner.

Step 3: Place the matter on the council agenda at an open meeting. The League of Minnesota Cities advises that, although not required, the building owner should be notified of the fact that the condition of the building will be considered at this hearing. I agree with this recommendation.

a. At this meeting, the City will need to create a record of all relevant documents and data (including photographs) and this report relating to the buildings.

b. Based on this record, the City Council must make a determination whether the building(s) are hazardous.

Step 4: If the Council determines that the building(s) are hazardous, the City should review its options and decide which course to take.

Option 1: The City can ask the owner to voluntarily repair or remove the hazardous condition. Minn. Stat. § 463.151 (2010).

Pro: In the event that the owner agrees, this is the fastest and easiest way to get the hazardous building issues addressed.

Con: This agreement would need to have some specific parameters placed on timing and extent of repairs needed. Simply turning the matter over to the owner may result in delays or insufficient repairs. This has not been a speedy process to date.

Option 2: If the owner refuses to voluntarily repair the hazardous condition, the City can make the necessary repairs or remove the hazardous condition itself, after obtaining the written consent of the all owners of record, all tenants and all lienholders of record. After obtaining such written consent, the city can remove or raze the hazardous building or repair the hazardous condition and then assess the costs against the property (to be paid in a maximum of 5 equal, annual installments at 8% interest). Minn. Stat. § 463.151 (2010).

Pro: This is a City initiated project that would result in a great level of oversight/access by the City.

Pro: The cost is assessed against the property.

Con: This option places the City squarely within the responsibility for fixing the hazardous condition.

Option 3: Alternatively, the City can acquire the building by eminent domain. In doing so the City must follow all the procedures established in Minn. Stat. Ch. 117. Minn. Stat. § 463.152 (2010). If the City wishes to follow the eminent domain process, it should make a specific finding that the building is a public nuisance pursuant to Minn. Stat. § 609.74 (2010).

Pro: This will result in demolition of a hazardous building.

Con: Eminent domain is not a speedy process.

Con: The City will acquire the property in its undesirable condition.

Con: This process likely would be expensive.

Con: This may result in the City becoming a landlord.

Option 4: Another option is that the City can issue an order directing the owner of a hazardous building to either raze the building or repair the hazardous condition. Minn. Stat. § 463.16 (2010).

Pro: This is a City directed but owner performed project.

Con: This is a time consuming and potentially costly (in terms of City attorney time and City expenses) that, while it can be charged back against the property, may not result in actual payment to the City for a significant period of time.

Under this Option 4, the form and content of the City's order is proscribed in Minn. Stat. § 463.17. The order must:

- be in writing,
- recite the grounds for the order,
- specify the necessary repairs (if applicable), and
- provide a reasonable time for compliance.

Minn. Stat. § 463.17, subd. 1 (2010).

The order must further state that if the corrective action is not taken, or an answer filed within 20 days, then the City will bring a motion in the district court for summary enforcement of the order. Minn. Stat. § 463.18 (2010).

If there is personal property or fixtures on the property that will need to be removed to do the necessary repair or abatement work, then the disposition of that property also needs to be addressed in the order. Minn. Stat. § 463.21 (2010); Minn. Stat § 463.24 (2010).

The order must be served on the owner(s) of record, the owner's agent if an agent manages the building, all tenants, and all lienholders in the manner provided for service of a civil Summons and Complaint. Minn. Stat. § 463.17, subd. 2 (2010).

If no corrective action is taken or an answer filed, a copy of the order together with proof of service, must be filed with the district court administrator five or more days before the city can file a motion for summary enforcement. Minn. Stat. § 463.17, subd. 3 (2010). At the same time the copy of the order and affidavit of service are filed, the city must also file for recording a notice of lis pendens with the county recorder or the registrar of titles. Id.

If an answer is filed, then the matter becomes a contested case and is treated like any other civil matter; the Rules of Civil Procedure apply, discovery can be conducted and the matter proceeds to trial. Minn. Stat. § 463.20 (2010). This type of action takes priority over other civil cases and "shall be tried forthwith." Id. If the City's order is sustained, the court issues an order entering judgment and directing the razing of the building or establishing a deadline for completion of repairs or the abatement of the hazardous condition. Id. The court can modify the terms of the City's order. Id. If the City's order is not sustained however, the order is annulled.

If no answer is filed, then the matter proceeds by default, and the City needs to file the order and proof of service at least five days in advance, bring a motion for summary enforcement of the order, and record a lis pendens against the property. Minn. Stat. § 463.19 (2010); Minn. Stat. § 463.17, subd. 3 (2010). At the default hearing on the motion for summary enforcement, the City must be prepared to present evidence regarding the condition of the property and the necessary repairs, abatement measures or need for demolition. The court will affirm or modify the order as it sees fit, set the time for enforcement of the order, and will enter judgment. Minn. Stat. § 463.19 (2010).

Once the City has obtained a judgment entitling it to enforce the order, it can commence the necessary repairs or demolition of the building. This work can be completed by City employees if appropriate, or it can be contracted out.

The City must keep an accounting of all of the expenses incurred in obtaining and enforcing the order and the amounts received, if any, from the sale of salvaged items, the building or the structure. Minn. Stat. § 463.22 (2010). The City must approve a resolution certifying the expenses incurred and the amounts received, then report the statement of expenses and receipts to the court for approval and allowance. Id. The court can allow the expense report or modify it. Id. If there is a deficiency, the court shall certify the deficiency to the City Clerk for collection. The Owner must pay by October 1st, with no penalties and if the payment is not made by October 1st, then the Clerk certifies the deficiency to the County Auditor as a special assessment. The City Council can provide that the assessment be paid a maximum of five annual installments at 8% interest. Minn. Stat. § 463.22 (2010); Minn. Stat. § 463.161 (2010).

Alternatively, if the City does not want to collect the deficiency by special assessment, it can recover the costs by obtaining a judgment against the owner. Minn. Stat. §463.21 (2010).

560619-v1

GOVERNING & MANAGING INFORMATION

Dangerous Properties

75B.2
December 2010

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I. Introduction

LMC information memo, *Public Nuisances*; LMCIT risk management memo, *Combating Public Nuisances in the Community Hey - Pick that Up.*

Cities sometimes need to deal with properties that are dangerous because of conditions that are hazardous or pose health risks. The city's response to these properties depends on the severity of the problem. On one end of the spectrum, a nuisance ordinance may be effective in dealing with problems like junk vehicles or tall grass. At the other end of the spectrum, the statutory hazardous building process may be the appropriate tool to raze or tear down a hazardous building. The city will need to evaluate the different options and determine which tool best fits the needs of the particular situation. This memo addresses dangerous properties and the tools available under state law that may help to remedy the dangerous or unhealthy conditions.

This memo will cover the following dangerous property situations and the potential tools to deal with them:

- Hazardous excavations.
- Buildings damaged by fire or explosion.
- Unsecured vacant buildings.
- Garbage houses.
- Hazardous buildings.

This memo is an overview of how to deal with the situations mentioned above. It is intended as a way to start looking at the city's options, as well as a reference for when the city moves forward with a selected option. Often, the laws are quite detailed or technical, so it is imperative to work with the city attorney. The city attorney will be able to provide specific legal advice in a particular situation. In some situations, like the hazardous building process, the city will need to use its city attorney in the related court proceedings. This memo is intended only as general information and should not replace the specific legal advice of the city attorney.

II. Lawfully entering private property

The procedures covered in this memo involve private property. Private property rights are afforded constitutional protections, so it is important that the city take appropriate steps to ensure these rights are respected. Whenever this memo mentions entering private property for an inspection, repair work, or other purpose, the principles outlined in this section will apply.

U.S. Const. 4th amendment.

Camara v. Municipal Court, 387 U.S. 523, 280 Minn. 390 (1967)

LMCIT risk management memo,

Generally, in order to lawfully enter private property to inspect or correct a situation, the city must either obtain voluntary consent from the owner or an administrative search warrant. This is because the Fourth and Fourteenth

Knock Three Times – Entering Private Property for Public Works Purposes.

Amendments to the U.S. Constitution prohibit unreasonable searches and seizures of persons or property. The United States Supreme Court has held that these Fourth Amendment guarantees apply to city inspections. If a city unlawfully enters private property, it may be a violation of these constitutional rights.

In many circumstances, seeking consent is the simplest way to gain access to property. If the city has consent to enter the property, it may do so. Consent must be voluntarily given by a person who has the authority to consent, such as the owner or occupant of the property. It is important that the person giving consent is aware of the purpose and scope of the inspection before consenting. It is preferable to obtain the consent in writing.

If the city does not or cannot obtain the owner's consent to enter the property, another way to enter the property is to obtain an administrative search warrant. An administrative search warrant is issued by a judge and allows designated people to enter the property for certain purposes specified in the warrant. An administrative search warrant removes the need for consent.

Camara v. Municipal Court, 387 U.S. 523 (1967).

In order to obtain an administrative search warrant, the city must show the judge there is "probable cause" as to why its request to enter private property is justified. The application for a warrant must describe the city's inspection program and establish how the particular requested inspection falls within the scope of the ordinance.

After an administrative search warrant is issued, it is important for the city to provide notice to the property owner or occupant. The notice should identify the nature and scope of the inspection or work, the date, and the time it will be performed. If the city must return to the property to continue work or to follow up on an inspection or code violation, it is also important to notify the property owner or occupant of the date and time the city will return.

It may be possible to lawfully enter private property without consent or a warrant, such as when an emergency exists. The city attorney will be able to provide specific legal advice on whether a warrant or consent is necessary.

III. Due process

U.S. Const., amendments V and XIV; Minnesota Const., art.1 Minnesota Const., art. 1, § 7.

Village of Zumbrota v. Johnson, 280 Minn. 390, 161 N.W.2d 626 (1968).

Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893 (1976).

Due process is also something the city should consider when using any of the procedures discussed in this memo. Both the federal and state constitutions provide that no person may be deprived of life, liberty, or property without due process of law. The two basic concepts of due process are: 1) notice to interested parties, such as the property owner, and 2) an opportunity to be heard by a person or group who has the authority to make a decision on the matter. The opportunity to be heard must be at a meaningful time and in a meaningful manner. Unless there is an emergency situation, notice and an opportunity to be heard should be provided without restraint, because a decision that is adverse to the property owner results in a loss of property without compensation.

Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893 (1976).

Due process is not a fixed standard, but rather is flexible and should be tailored to the particular situation. Some statutes provide particular notice and hearing requirements that help to clarify what due process is required under particular statutes. If there are no statutory notice or hearing requirements, or the requirements provided are minimal, that does not mean that due process does not apply. Rather, that means that the city, with the help of the city attorney, should determine if due process applies and, if so, how the city will satisfy these requirements.

In some instances in this memo, the discussion of the law does not prescribe due process requirements, but it seems that the principles of due process should apply. At these points, the memo makes suggestions on how to satisfy due process. Keep in mind that these are only suggestions and the city should work with the city attorney to determine the best way to handle due process requirements in a particular situation.

IV. Hazardous excavations

Minn. Stat. § 463.25.

State law provides a specific process to deal with hazardous excavations. A hazardous excavation exists in the following situations:

- An excavation for building purposes is left open for more than six months without proceeding with the erection of a building thereon, whether or not completed.
- Any excavation or basement is not filled to grade or otherwise protected after a building is destroyed, demolished, or removed.

See Section II *Entering private property.*

The statute does not give direction to the council on how to determine if a particular excavation meets the statutory definition. An inspection of an excavation may provide relevant information. It is a good idea to take notes and photographs of what is observed at the inspection. The city should consider how it will lawfully enter the property to make the inspection.

While the council is considering whether the excavation is hazardous, it may be helpful to consider any reports, photos, or other information related to the property. It is a good idea for the council to document its decision and the reasons that support that decision. In the case of a court challenge, the documented decisions and supporting reasons may help the city defend its determination.

See Section III *Due process.*

Although the law does not strictly require the property owner to be notified that the issue of filling or protecting a hazardous excavation will be discussed at a meeting, it is a good idea to notify the property owner that the issue will be discussed and to allow him or her a chance to speak on the issue. By doing so, there will be a stronger argument that the property owner's due process rights have been respected.

Minn. Stat. § 463.25; Minn. Stat. § 463.17.

Model Resolution Ordering a Hazardous Excavation to be Filled, Protected, or Built Upon.

If the council determines that the excavation is hazardous, the council may order that the excavation be filled or protected, or that the erection of the building begin forthwith if the excavation is for building purposes. The order is generally done by resolution. While the law does not specify what

should be included in the order, it should likely be in writing and should, at a minimum:

- Include the grounds or basis for the order.
- Specify the necessary work to be done.
- State that if the land owner does not comply with the order within 15 days after notice is served, the council will have the work done.
- State the city will specially assess any costs incurred by the city doing the work against the property.

Minn. Stat. § 463.25; Minn. Stat. § 463.17, subd. 2.

LMC information memo, *Newspaper Publication.*

The order must be served upon the owner of record or the owner's agent if an agent is in charge of the building or property, any occupying tenant, and all lien-holders of record. Service is completed in the same manner as a service of summons in a civil action. If the owner cannot be found, the order must be served by posting it at the main entrance to the building or, if there is no building, in a conspicuous place on the property. In addition to posting, the order must be published for four weeks in the official newspaper of the municipality; if there is no official city newspaper, then the order is published in a legal newspaper in the county.

Minn. Stat. § 463.25.

See Section VII *Entering private property.*

Minn. Stat. § 471.345.

If the owner of the land does not comply with the order within 15 days after it is served, the council must have the excavation filled to grade or protected. If the city needs to do the work, the city needs to determine the best way to get the work done. In some circumstances, city employees may be able to do the work. In other situations, the city may need to hire someone. Depending on the work to be done, the competitive bidding laws may apply.

Minn. Stat. § 463.25; Minn. Stat. § 463.21; Minn. Stat. § 463.161; Minn. Stat. §§ 429.061-429.081.

LMC information memo, Special Assessment Guide.

The costs incurred by the city may be charged against the property as a special assessment. The city council may provide that the assessment may be paid in five or fewer equal annual installments with interest at 8 percent per year. It is a good idea to keep an accurate record of the incurred costs so the city can accurately assess them. An alternative to using a special assessment is to recover the costs by obtaining a court judgment against the property owner.

V. Buildings damaged by fire or explosion

Sometimes, there is a fire or explosion in a city that damages a building. If the owner does not make the necessary repairs to the property, the responsibility sometimes may fall to the city. If the building was insured, it may be an option for the city to receive a portion of the insurance settlements from the damage if the city has established an escrow or trust account for this purpose.

A. Establishing the account

Minn. Stat. § 65A.50, subds. 12, 14.

In order to obtain a portion of the insurance settlements from fire or explosion damage, the city must first establish an escrow or trust account. It is important to note that the city cannot obtain insurance settlement proceeds for losses that happened before the effective date of the account.

Minn. Stat. § 65A.50, subds. 12, 14.

The escrow or trust account is established by passing a resolution. The next step is to notify the commissioner of commerce, in writing, that the city has established a trust or escrow account and intends to uniformly apply this section with respect to all property located within the city. The city should also request to be added to the list of cities that maintain these accounts.

Minn. Stat. § 65A.50, subds. 12, 14.

Department of Commerce List of "Insurance Escrow by Municipalities for Debris Removal."

The commissioner keeps a list of all cities with this type of account. When the commissioner receives notice that a city has established an account, the commissioner will add the city to the list. Then, the commissioner will distribute the list to all insurance companies transacting property insurance in this state, indicating the addition of the new city. The addition of the city to the list is effective on the date specified by the commissioner in the amendment. The commissioner must notify the city and insurance companies of the effective date of the addition, which cannot be less than 30 days after the receipt of notice by the insurance company.

Minn. Stat. § 65A.50, subd. 13(b).

See Section V B *Discontinuing the account.*

Once on the list, cities must make a written report to the commissioner on the extent of the city's use of the escrow account. The report must also include the effect of the use of the law on arson fires in the city. The report must be filed with the commissioner no later than 90 days after the two-year anniversary of the city's placement on the list and, thereafter, no later than 90 days after each subsequent two-year period. If the commissioner does not receive the written report, the commissioner will provide a written reminder notice. If the commissioner does not receive the report within 30 days after providing the written reminder, the city will be treated as having made a written request to be deleted.

B. Discontinuing the account

Minn. Stat. § 65A.50, subds. 13, 15.

If the city no longer wishes to have the escrow or trust account and wants to be removed from the commissioner's list, the city must notify the commissioner in writing that it wants to be deleted from the list. The city may stop operating the escrow or trust account for more than six months after notifying the commissioner. The city must give 30 days written notice before it stops using the account. After the commissioner receives the city's written request, the commissioner shall prepare and distribute an amendment to the list, indicating the deletion. The deletion shall be effective on the date specified by the commissioner in the amendment. The commissioner must then notify the city and insurance companies of the effective date of the deletion, which must be not less than 30 days after the insurance companies receive notice. A city must continue to use its escrow or trust account for any loss which occurs before the effective date of the deletion.

C. Funding and using the account

Minn. Stat. § 65A.50, subd. 2.

Once the city has set up the account, it cannot use it unless there is an insured building in the city that has been damaged by fire or explosion. Even then, the account is only used after the statutory process is followed.

1. Funding the account

Minn. Stat. § 65A.50, subd. 2.

When a property owner files a claim for a loss to his or her insured real property due to fire or explosion and a final settlement is reached on the loss, the insurer must withhold from payment of the settlement the lesser of 25 percent of the actual cash value of the insured's real property at the time of the loss or 25 percent of the final settlement. (The property owner with insurance is known as "the insured.") For purposes of this law, a final settlement is the determination of the amount owed to the insured by any of the following means:

- Acceptance of a proof of loss by the insurer.
- Execution of a release by the insured.
- Acceptance of an arbitration award by both the insured and the insurer.
- A court judgment.

Minn. Stat. § 65A.50, subds. 9, 11.

The final settlement amount cannot include the payment of policy proceeds for personal property or contents damage, or for additional coverage not contained in the fire coverage portion of the fire insurance policy. Further, this process applies only to final settlements that exceed 49 percent of the insurance on the insured real property.

Minn. Stat. § 65A.50, subd. 16.

The requirement to withhold portions of the insurance settlement proceeds does not apply if all of the following conditions occur:

- Within 30 days after agreement on a final settlement between the insured and the insurer, the insured has filed with the insurer evidence of a contract to repair.
- The insured consents to the payment of funds directly to the contractor performing the repair services.
- Upon receipt of the contract to repair, the insurer gives notice to the municipality in which the property is situated that there will not be a withholding under this section because of the repair contract.

Minn. Stat. § 65A.50, subd. 16.

Funds released under these circumstances may be forwarded only to a contractor performing the repair services on the insured property.

Minn. Stat. § 65A.50, subd. 17.

If the insured and the insurer have agreed on the demolition costs or the debris removal costs as part of the final settlement of the real property insured claim, the insurer shall withhold the largest of the following sums::

- The agreed cost of demolition or debris removal.

- Twenty-five percent of the actual cash value of the insured real property at the time of loss.
- Twenty-five percent of the final settlement of the insured real property claim.

Minn. Stat. § 65A.50, subd. 2.

At the time funds are withheld, the insurer must give notice of the withholding to the treasurer of the city where the property is located, the insured, and any bank or lender that has a lien on the property and that is named on the insurance policy. If the settlement resulted from a court judgment, notice must also be provided to the court where the judgment was entered. The notice must include:

- The identity and address of the insurer.
- The name and address of each policyholder, including any bank or lender that holds a mortgage on the property.
- The location of the insured real property.
- The date of loss, policy number, and claim number.
- The amount of money withheld.
- A statement that the city may have the withheld amount paid into a trust or escrow account established for the purposes of this section if it shows cause within 30 days that the money should be withheld to protect the public health and safety; otherwise, the withheld amount shall be paid to the insured at the expiration of 30 days.

Minn. Stat. § 65A.50, subd. 16.

- An explanation of the provisions of this section and a verbatim reproduction of the statutory subdivision regarding exceptions to withholding.

Minn. Stat. § 65A.50, subd. 3.

In order for the city to put the withheld funds into its escrow or trust account and retain the funds, the chief fire official or other authorized city representative must prepare an affidavit that says that the insured's damaged structure violates specified health and safety standards, and this requires the escrow of the withheld amount as surety for the repair, replacement, or removal of the damaged structure. This affidavit constitutes cause for escrowing the withheld amount.

Minn. Stat. § 65A.50, subd. 3.

Where there is a settlement on the insurance claim, the affidavit must be sent to the insurer, the insured, and any banks or lenders who hold a mortgage on the property. Once the insurer receives the affidavit, the insurer must forward the withheld amount to the city treasurer. The insurer must also provide notice of the forwarding of funds to the insured and any bank or lender that holds a mortgage on the property. If there was a court judgment on the insurance claim, the affidavit and notice of forwarding the funds must also be given to the court that entered the judgment.

Minn. Stat. § 65A.50, subd. 4.

When the city receives the withheld funds from the insurance company, the city treasurer must record the information and the date the money was received. The treasurer must immediately deposit the money into the

Minn. Stat. § 65A.50, subd. 5.

established trust or escrow account. Money deposited into the account must not be commingled with city funds. The account may be interest-bearing. Any interest earned on money placed in a trust or escrow account shall be retained by the municipality to defray expenses incurred under this section.

2. Releasing funds from the account

Once the money is in the city trust or escrow account, there are several situations that trigger releasing those funds.

a. Releasing funds to bank or lender

Minn. Stat. § 65A.50, subd. 4.

If the mortgage on the insured property is in default, the bank or lender who holds that mortgage may make a written request to the city for the funds. Not later than 10 days after receiving the written request, the treasurer must release any or all of the proceeds to the extent necessary to satisfy the outstanding mortgage.

b. Releasing funds to the insured

Minn. Stat. § 65A.50, subd. 6.

There are two situations described in statute where the funds in the account must be immediately forwarded to the insured. The first situation is where the chief fire official or other authorized city representative receives or is shown reasonable proof that the damaged or destroyed portions of the insured structure have been repaired or replaced. However, if not all repairs or replacement have been made, the city may withhold the amount that is needed to complete repair or replacement.

Minn. Stat. § 65A.50, subd. 6.

The second situation is when the chief fire official or other authorized city representative receives or is shown reasonable proof that the damaged or destroyed structure and any and all remnants of the structure have been removed from the land where the structure was located. This may be done by the owner or any other person. The work must have been done in compliance with local code requirements.

Minn. Stat. § 65A.50, subd. 6.

There is also a third situation when funds must be immediately released, but in this situation, the funds are forwarded to a third-party contractor and not the insured. In this situation, the funds deposited into the escrow or trust account must be immediately forwarded to the contractor when the chief fire official or other authorized city representative receives or is shown reasonable proof that the insured has entered into a contract to perform repair, replacement, or removal services on the property. It must also be shown that the insured consents to payment of the funds directly to the contractor performing the services. These funds may be forwarded only to a contractor performing services on the insured property.

Minn. Stat. § 65A.50, subd. 7.

As mentioned in the three situations above, the insured must show reasonable proof in order to have the funds released or forwarded. The law provides three situations that will be considered reasonable proof:

- Originals or copies of pertinent contracts, invoices, receipts, and other similar papers showing both the work performed or to be performed and

the materials used or to be used by all contractors performing repair, replacement, or removal services with respect to the insured real property.

- An affidavit executed by the contractor who has performed the greatest amount of repair or replacement work on the structure, or who has done most of the clearing and removal work if structure repair or replacement is not to be performed. The contractor shall attach to the affidavit all pertinent contracts, invoices, and receipts and shall swear that these attached papers correctly indicate the nature and extent of the work performed to date by the contractor and the materials used.
- An inspection of the insured real property to verify that repair, replacement, or clearing has been completed.

3. Use of retained proceeds

Minn. Stat. § 65A.50, subd. 8.

If reasonable proof is not received or shown to the chief fire official or other authorized city representative within 45 days after the funds were received by the treasurer, the city must use the funds to secure, repair, or demolish the damaged or destroyed structure and clear the property in question, so that the structure and property are in compliance with local code requirements and applicable ordinances of the municipality. Any unused portion of the retained funds must be returned to the insured.

Minn. Stat. § 65A.50, subd. 8; See Minn. Stat. ch. 299F; Minn. Stat. ch. 463; Section VIII *Hazardous buildings.*

It may be possible that during these 45 days, the city may have secured, repaired, or demolished the damaged or destroyed structure under another law or ordinance such as the hazardous building laws. If this is the case, after the 45 days lapse, the city may release any special assessment placed on the property and reimburse itself from the retained funds.

Minn. Stat. § 65A.50, subd. 8.

No more than 15 percent of the funds used by the municipality may be attributed to the city's administrative expenses. Any administrative expenses must be directly related to the actions authorized by the statute.

VI. Securing vacant buildings

Minn. Stat. § 463.251.

A vacant or unoccupied building may be hazardous because it is open to trespass and has not been secured. If the building could be made safe by being secured, the council may order that the building be secured. "Secure" is defined to include installing locks, repairing windows and doors, boarding windows and doors, posting "no-trespassing" signs, installing exterior lighting or motion-detecting lights, fencing the property, and installing a monitored alarm or other security system. This is not an exhaustive list, so the city may take other appropriate actions to secure a building.

See Section II *Entering private property.*

State statutes do not give direction to cities on how to determine if a building is hazardous due to it being open to trespass. Council determination on whether a building is vacant or unoccupied and open to trespass should be based on city inspections, notes, photos, or other information related to the property. The city should also consider how to lawfully enter the

property for inspection purposes.

LMCIT risk management information memo, *Exercising Discretion: Keeping Records to Support Immunity.*

It is a good idea for the council to document its decision and the reasons that support that decision. In the case of a court challenge, the documented decisions and supporting reasons may help the city defend its determination.

See Section III *Due process.*

Although the law does not strictly require the property owner to be notified that the issue of securing the building will be discussed at a meeting, it is a good idea to notify the property owner that the issue will be discussed and to allow him or her a chance to speak on the issue. By doing so, there will be a stronger argument that the property owner's due process rights have been respected. Also, notice to the property owner of the problem may lead to self-remedy before an order is necessary.

Minn. Stat. § 463.251, subd. 2.

Model Resolution Ordering the Securing of a Vacant Building.

If the council determines the building is hazardous and should be secured, the council adopts an order by resolution. The council must serve notice of the order to the owner of record (or the owner's agent), the taxpayer identified in the property tax records for that parcel, the holder of the mortgage or sheriff's certificate, and any neighborhood association for the neighborhood where the building is located that has requested notice. The notice of the order is served by delivering or mailing a copy to these people at their last known address.

Minn. Stat. § 463.251, subd. 2.

The notice of the order should be in writing and must include a statement that:

- Informs the owner and the holder of any mortgage or sheriff's certificate of the requirements that the owner or holder of the certificate has 14 days to comply with the order or provide the council with a reasonable plan and schedule to comply with the order and that costs may be assessed against the property if the person does not secure the building.
- Informs the owner and the holder of any mortgage or sheriff's certificate that, within 14 days of the ordering being served, the person may request a hearing before the governing body challenging the governing body's determination that the property is vacant or unoccupied and hazardous.

Minn. Stat. § 582.031, subd. 1(b).

Minn. Stat. § 582.032, subd. 7.

- Notifies the holder of any sheriff's certificate of the holder's duty under section 582.031, subdivision 1, paragraph (b), to enter the premises to protect the premises from waste and trespass if the order is not challenged or set aside and there is prima facie evidence of abandonment of the property as described in section by law.

While the law does not require it, it is a good idea to include the grounds or basis for ordering the building to be secured. It may also be a good idea to specify what actions need to be taken to secure the building.

2010 Minn. Laws, Ch. 375, § 8 *amending* Minn. Stat. § 463.251, subd. 3.

The owner or a holder of a sheriff's certificate of sale may then comply with the order, provide the council with a reasonable plan and schedule to comply with the order, or request a hearing on the order. If the owner does not take one of these actions within 6 days after the order is served, the council must ensure that the building is properly secured.

If the city must secure the building, the city council will need to determine the best way to get the work done. In some circumstances, city employees may be able to do the work. In other situations, the city council may need to hire someone to do the work. Depending on the work that needs to be done, the competitive bidding laws may apply.

Minn. Stat. § 471.345.

The costs of securing the building may be charged against the real estate as a special assessment. The city council may provide that the assessment may be paid in five or fewer equal annual installments with interest at 8 percent per year. It is a good idea to keep an accurate account of the incurred costs so the city can assess them. An alternative to using a special assessment is to recover the costs by obtaining a court judgment against the property owner.

Minn. Stat. § 463.251, subd. 3; Minn. Stat. § 463.21; Minn. Stat. § 463.161; Minn. Stat. §§ 429.061-.081.

LMC information memo, *Special Assessment Guide*.

In the metropolitan area, the council may work with neighborhood associations to develop and implement plans to secure vacant buildings in a timely and cost-effective manner. (A neighborhood association is an organization recognized by the city as representing a neighborhood within the city.) The city may use rehabilitation and revitalization funds in this scenario.

Minn. Stat. § 463.251, subds. 1, 3; Minn. Stat. § 473.121, subd. 2.

The statutes do not provide a process for emergency securing of a vacant building. However, a city may adopt an ordinance that would allow the city to secure the building in an emergency situation when a vacant building presents an immediate danger to the health and safety of persons in the community.

Minn. Stat. § 463.251, subd. 4.

Model Ordinance Regarding Securing of Vacant Buildings.

VII. Garbage houses

Sometimes cities find there is a building in the city that poses a public health threat. These types of buildings are often referred to as "garbage houses," but the laws apply to any property, not just residential property. The danger from garbage houses comes from conditions inside of the building that pose some sort of threat to a person's health rather than the physical, structural condition of the building itself.

Minn. Stat. § 145A.04, subd. 8.

In order to be a "garbage house," the conditions have to be rather severe. For example, a couple bags of smelly garbage in the kitchen probably do not constitute a garbage house. Here are some examples of conditions in garbage houses:

- Accumulation of garbage, furniture, debris, litter, or other items that hinder the ability to move freely in the house and/or open doors.
- Significant accumulation of human or animal fecal matter or other waste.
- Significant rodent or insect infestation.

These are not the only conditions that would cause a building to be considered a public health threat. Rather, this list is an example of the types of things that might be present in a garbage house.

Under the "Local Public Health Act," a board of health may take actions to

Minn. Stat. § 145A.01-.12.

remove and abate these public health nuisances. The governing board of a city or county may establish a board of health. However, most cities do not have their own board of health. Therefore, dealing with garbage houses is often up to the county board of health and not the city.

Minn. Stat. § 145A.04, subd. 8(a); Minn. Stat. § 145A.02.

One of the board's duties is to deal with threats to public health. If there is a threat to the public health, such as a public health nuisance (e.g., any activity or failure to act that adversely affects the public health), a source of filth, or a cause of sickness found on any property, the board of health (or its agent) must order the owner or occupant of the property to remove or abate the threat. Generally, if the owner, occupant, or agent does not comply with the requirements of the notice, then the board of health (or its agent) must remove or abate the nuisance, source of filth, or cause of sickness described in the notice.

A. Local ordinances

Minn. Stat. § 145A.05, subds. 1, 7.

Both the county and the city have some authority to adopt ordinances related to public health. The county board may adopt ordinances for all or part of its jurisdiction to regulate actual or potential threats to the public health, including ordinances to define public health nuisances and provide for their prevention or abatement. However, these ordinances cannot be preempted by, be in conflict with, or be less restrictive than standards set out in state laws or rules. The city council may also adopt ordinances relating to the public health authorized by law or by an agreement with the commissioner of health. The ordinances cannot conflict with or be less restrictive than ordinances adopted by the county board or state law.

Minn. Stat. § 145A.05, subd. 9.

Minn. Stat. § 145A.10, subd. 9.

If there is a community health board in place of a board of health, it may recommend local ordinances pertaining to community health services to the city council or county board within its jurisdiction.

VIII. Hazardous buildings

Minn. Stat. §§ 463.15-.261.

Minnesota law provides authority and a process to deal with hazardous buildings. This process allows the city to order a property owner to repair or remove a hazardous condition, or in extreme cases, to raze the building. If the owner does not do the work, the city may do so and charge the costs against the property as a special assessment. The law requires that the court oversee or be involved during most of the process. As such, it is very important to work with the city attorney. The city attorney will be needed to draft documents, file court papers, appear in court, and provide specific legal advice throughout the process.

Minn. R. 1300.0180; Minn. R. 1311.0206.

Where applicable, the Minnesota State Building Code requires that all unsafe buildings and structures must be repaired, rehabilitated, demolished, or removed according to the statutory hazardous building provisions.

Minn. Stat. § 463.26.

City of Minneapolis v. Meldahl, 607 N.W.2d 168, 171 (Minn.App.2000).

Hazardous building laws are supplementary to other statutory and charter provisions. This means cities may enact and enforce ordinances on the same subject. Any ordinance that is passed must allow for due process and cannot

contradict state law. The city should seek advice from the city attorney if it wishes to adopt this type of ordinance.

A. Characteristics of a hazardous building

Minn. Stat. § 463.15, subds. 2, 3.

State law defines a hazardous building or hazardous property as, "any building or property which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment constitutes a fire hazard or a hazard to public safety or health." A building is defined as, "any structure or part of a structure." For purposes of this memo, the phrase hazardous building will be used to include hazardous property and structures.

Ukkonen v. City of Minneapolis, 280 Minn. 494, 160 N.W.2d 249, 250 (1968)

Determining whether a building is hazardous depends on the particular facts of each situation. For example, in one opinion where the Minnesota supreme court upheld a city's order to raze a hazardous building, the court described the building in question as having the following conditions:

- Unoccupied.
- Badly deteriorated sections of concrete block foundation.
- Decayed and rotted wooden foundation sills.
- Broken, deteriorating, and falling siding.
- Rotted and collapsing roof cornice.
- Large holes in asphalt roof covering.
- Evidence of roof leaks.
- Large holes in the plaster finish of walls and ceilings.
- Many broken window lights.
- Damaged or destroyed window sashes.
- Dry water traps in wash basin and water closet resulting in open sewers.
- Paper, lumber, wood lath, plaster, and debris littering interior of building.

These are not the only conditions that would cause a building to be considered "hazardous." Rather, these are examples of the types of things that might be present in a hazardous building. While this example shows that there were many problems with this building, there is no formula to determine how many problems make a building hazardous. Again, that depends on the particular situation.

B. Identifying a hazardous building

If the city believes there is a building that may be hazardous, it is a good idea for the city to gather and document information about the building. An inspection of the property may provide information that may help the

council determine if the building is hazardous. While inspecting the property, it is helpful to take detailed notes and photographs of what was observed. Because there are constitutional limitations on entering private property, the city should consider how it will lawfully enter the property to make the inspection.

See Section II *Entering private property.*

Before the council orders a hazardous condition to be repaired or removed, the council must first make a determination that the building is hazardous. This must be done during an open city council meeting. At the meeting, it is advisable that the city council consider all the relevant evidence it has, such as any inspection notes or reports, photographs of the property, code violations, and any other information related to the property, including any information provided by the property owner or occupant. It is also advisable to keep in mind the statutory definition and consider how the evidence relates to this definition. There is no rigid formula in how the determination must be structured, but they should be sufficient to make the owner aware of the basis of the decision.

LMC information memo, *Meetings of City Councils.*

Rostamkhani v. City of St. Paul, 645 N.W.2d 479 (Minn. Ct. App. 2002); *Vue v. City of St. Paul*, No. 09-316 (Minn. Ct. App. April 13, 2010)(unpublished opinion).

Minn. Stat. § 463.15.

Ellis v. City of Minneapolis, No. A07-2440 (Minn. Ct. App. Jan. 20, 2009)(unpublished opinion).

The decision to repair or remove a hazardous condition, or to raze a building, must not be arbitrary or capricious. A decision is arbitrary or capricious if it is unreasoned and does not consider the facts and circumstances of the situation. Said another way, the city's decision must be reasoned and supported by substantial evidence. It is a good idea for the council to keep a detailed record of the discussion, the evidence considered, and the ultimate decision that was reached based on the evidence considered. This record will help the city defend its decision if it is later challenged in court.

Rostamkhani v. City of St. Paul, 645 N.W.2d 479, 484-85 (Minn. Ct. App. 2002);

CUP Foods, Inc. v. City of Minneapolis, 633 N.W.2d 557, 562 (Minn.App.2001); *Tessmer v. City of St. Paul*, No. A07-2349 (Minn. Ct. App. Dec. 16, 2008) (unpublished opinion).

LMCIT risk management information memo, *Exercising Discretion: Keeping Records to Support Immunity.*

Although the law does not explicitly require the property owner to be notified of the council consideration of the property, it is advisable to take steps to ensure the property owner's due process rights are respected. One way to do this may be to notify the property owner that the issue will be discussed and to allow the owner a chance to speak with the council and provide any evidence or information that he or she may have. Notice to tenants as well as lien-holders may also be advisable. Notice may also lead to self-remedy of the hazardous conditions.

See Section III *Due process.*

C. Removal or repair by consent

One method of dealing with a hazardous condition or building is to approach the property owner to ask him or her to voluntarily repair or remove the hazardous condition or to raze the hazardous building. If the owner will not or cannot voluntarily repair or remove the hazardous condition, the city may obtain written consent of all owners of record, occupying tenants, and all lien-holders of record that allows the city to make the repair or remove the hazardous condition. The "owner," "owner of record," and "lien-holder of record" are persons that have a right or interest in the property and have recorded their interest with the county recorder or registrar of titles in the county where the property is located.

Minn. Stat. § 463.151.

Minn. Stat. § 463.15, subd. 4.

If the city does the work, the costs that the city incurs in repairing or

Minn. Stat. § 463.151; Minn.

Stat. § 463.21; Minn. Stat. §§ 429.061-.081.

See Section V D 4 *Recovering costs.*

LMC information memo, *Special Assessment Guide.*

removing the hazardous condition are charged against the property as a lien against the real estate. This lien is levied and collected as a special assessment. The city council may provide that the assessment may be paid in five or fewer equal annual installments with interest at 8 percent per year. As an alternative to the lien, the city can recover the costs by obtaining a court judgment against the owner of the real estate.

See Section VIII D *Removal or repair by order.*

If the property owner voluntarily remedies the problem, or if the city obtains consent and remedies the problem, the city may be able to avoid the lengthy process used when there is no consent. However, neither of these options is required by law. The city may choose not to use these options, but rather proceed straight to removal or repair by order. Similarly, if the city's attempts to use these two methods fail, the city may proceed by ordering the repair or removal.

D. Removal or repair by order

Village of Zumbrota v. Johnson, 280 Minn. 390, 161 N.W.2d 626 (Minn. 1968)

City of Wells v. Swehla, No. C3-00-319 (Minn. Ct. App. Oct. 17, 2000) (unpublished decision); In the Matter of a Hazardous Building Located at 303-5th Ave. NE, in the City of Cambridge, No. C3-99-1382, 2000 WL 136017 (Minn. Ct. App. Feb. 8, 2000) (unpublished decision).

The Minnesota supreme court has said that a city should use its authority under the hazardous building process prudently in order to avoid unnecessary infringement on the property owner's rights. The city must be especially cautious when ordering a hazardous building to be razed. Minnesota courts have further stated that, although the statute gives the city the discretion to decide whether a building should be removed or repaired, destruction of a hazardous building should not be authorized unless it can be shown that the hazardous conditions cannot be removed or repaired. Therefore, the property owner should be given a reasonable amount of time to repair or remove the hazardous conditions. Failure to make repairs or remove hazardous conditions may be grounds to allow the city to demolish the building.

1. The order to remove or repair

Minn. Stat. § 463.16; Minn. Stat. § 463.17, subd. 1.

Model Resolution Ordering the Repair or Removal of Hazardous Conditions; Model Resolution Ordering the Razing of a Hazardous Building.

If the council determines a building is hazardous, the council may adopt an order declaring the building to be hazardous and ordering the owner to repair or remove the condition or raze the building. The order is usually done by resolution. The order to repair or remove a hazardous condition or to raze a hazardous building must be in writing and must:

- Recite the grounds or basis for the order.
- Specify the necessary repairs, if any, and provide a reasonable time to comply with the order.
- State that a motion for summary enforcement of the order will be made to the district court of the county in which the hazardous building or property is situated unless corrective action is taken, or unless an answer is filed within the time specified in section 463.18, which is 20 days.

Minn. Stat. § 463.18.

In the Matter of a Hazardous Building Located at 303-5th Ave. NE, in the City of Cambridge, No. C3-99-1382, 2000 WL 136017 (Minn. Ct. App. Feb. 8,

In preparing the order, it is important that the city take care to specify the necessary repairs. The order must be specific enough to give the property owner notice of the alleged hazardous conditions. One way to do this is to list the hazardous conditions individually in an explanatory manner. A

2000) (unpublished decision); *Village of Zumbrota v. Johnson*, 280 Minn. 390, 161 N.W.2d 626 (Minn. 1968)

general statement that the owner "must eliminate hazardous conditions" is likely not specific enough.

Minn. Stat. § 463.17, subd. 2.

Minn. Stat. § 463.15, subd. 4.

The council's order must be served upon the property owner of record, or the owner's agent if an agent is in charge of the building, any occupying tenants, and all lien-holders of record. ("Owner," "owner of record," and "lien-holder of record" are any people that have a right or interest in the property and evidence of this interest is recorded in the office of the county recorder or registrar of titles in the county where the property is situated.) The service of the order must be done in the same manner as the service of a summons in a civil court action. To make sure the order is properly served, the city may hire a professional process server.

Minn. Stat. § 463.17, subd. 2.

LMC information memo, *Newspaper Publication.*

If the owner cannot be found, the order is served by posting it at the main entrance to the building. In addition to posting, the order must be published for four weeks in the official city newspaper; if there is no official city newspaper, then the order is published in a legal newspaper in the county.

Minn. Stat. § 469.201-.207.

A city with a Targeted Neighborhood Revitalization Program may assess a penalty of up to 1 percent of the market value of the real property for any building in the city that the city determines to be hazardous. Because there are statutory requirements that must be met in order to do so, the city should work with its city attorney.

a. Removal of personal property and fixtures

Minn. Stat. § 463.24.

If personal property or fixtures are in the building, the city may address these items in the order. Personal property is anything that is subject to ownership that is not classified as real property. Some examples of personal property are furniture, clothing, and televisions. A fixture is an item of personal property that is attached to the property or building and is considered part of the building Some examples of fixtures are built-in appliances, water heaters, and cabinets.

Minn. Stat. § 463.24; Minn. Stat. § 463.21.

If personal property or fixtures will unreasonably interfere with the work to be done, or if the razing or removal makes removal of the property necessary, the order may direct the removal of the personal property or fixtures within a reasonable amount of time. If the property or fixtures are not removed in the specified timeframe and the council enforces the order, the council may sell any valuable personal property, fixtures, or salvage at a public auction after three days posted notice. If the items do not have any appreciable value, the council may have them destroyed.

2. Responding to the order

Minn. Stat. § 463.18; Minn. Stat. § 463.20.

Once the order is served on the appropriate people, any one of those people may contest the order. This is done by "answering" the order. The answer must specifically deny the facts in the order that are disputed. The answer to the order must be served within 20 days from the date the order was served. The answer is served in the manner provided for the service of an answer in a civil court action. When an answer is filed, the court will become involved

like any other law suit. This situation is called a "contested case."

Minn. Stat. § 463.19.

If no one answers the order, the proceedings are a "default case." Although there may be no answer to the order, the city must still seek a court judgment to enforce the order.

a. Court judgment: Contested case

Minn. Stat. § 463.20.

Where an answer to the order is filed, the proceedings are treated like any other civil action, except this type of action has priority over all other pending civil actions. A contested case has the attributes of a civil law suit, such as filing documents with the court, gathering evidence, and a trial.

Minn. Stat. § 557.02.

Because this type of case deals with a person's interest in his or her real property, it is a good idea for the city to file a "lis pendens" with the county recorder at the start of the case. The lis pendens filing gives potential purchasers notice about the hazardous building proceedings. A lis pendens must include the names of the parties in the suit, the object of the law suit, and a description of the real property involved. At the end of the proceeding, it is a good idea to file a notice that the lis pendens is discharged.

Minn. Stat. § 463.20; *In the Matter of a Hazardous Building Located at 303-5th Ave. NE, in the City of Cambridge*, No. C3-99-1382, 2000 WL 136017 (Minn. Ct. App. Feb. 8, 2000) (unpublished decision); *City of Wells v. Swehla*, No. C3-00-319 (Minn. App. Oct 17, 2000) (unpublished decision).

After a trial, the court may or may not uphold the order issued by the city. The court may modify the order, including adding other hazardous conditions that need to be repaired or removed, so long as there is evidence to support the change. When considering the city's order, the district court must consider the possibility of repairing the building.

Minn. Stat. § 463.20.

If the court upholds the order, with or without modification, the court enters judgment in favor of the city. The court also sets a time in which the hazardous condition must be repaired or removed or the building must be razed in compliance with the order. If the court does not uphold the order, the court annuls the order and sets it aside. Either way, the court administrator must mail a copy of the judgment to everyone originally served with the order.

Minn. Stat. § 463.161.

If the court issues an opinion that gives the property owner a specified amount of time to fix or remove the hazardous conditions, the city generally cannot take action in that time period unless the order so authorizes. The city may ask the court to require the property owner to provide the city with ongoing access to inspect the progress and work. Generally, if at the end of the time period the owner has not fixed or removed the hazardous conditions, the city may repair or remove the hazardous condition or raze the hazardous building. Consult the city attorney to determine if any additional court orders are necessary.

b. Court judgment: Default case

Minn. Stat. § 463.19.
Minn. Stat. § 463.17, subd.3.

If no one files an answer to the city's order, it becomes a default case. The city still needs to ask the court to enforce the city's order. This is done by a motion to enforce the order. A motion is a type of court hearing where the

city asks the court to do something. At least five days before filing the motion to enforce the order, the city must file a copy of the order and proof of service with the court administrator of the district court of the county where the hazardous building is located.

Minn. Stat. § 463.17, subd. 3.

At the time of filing the order and proof of service with the district court, the city must also file a lis pendens notice with the county recorder or registrar of titles. This is called a "lis pendens." The notice should also include the names of the parties and the purpose of the action. If the city abandons the hazardous building order proceeding, it must file a notice to that effect with the county recorder within 10 days. At the end of the proceeding, the city should file a notice that the lis pendens is discharged.

Minn. Stat. § 557.02.

Minn. Stat. § 463.19.

There will be a court hearing on the motion to enforce the order. The city will present any evidence that the court requires. The court may then affirm or modify the order and enter judgment accordingly. The court will also set a time after which the council may enforce the order. The court administrator will mail a copy of the judgment to all people who were served with the original order.

3. Doing the work

If the city is authorized by the court to remove or repair a hazardous condition or to raze a hazardous building, the city council will need to determine the best way to get the work done. In some circumstances, city employees may be able to do the work. In other situations, the city council may need to hire someone to do the work. Depending on the work to be done, the competitive bidding laws may apply.

Minn. Stat. § 471.345.

Minn. Stat. § 463.21; Minn. Stat. § 463.24.

When doing the work to remove or repair a hazardous condition or raze a hazardous building, there may be personal property or fixtures that need to be removed. If the original order included a provision ordering the property owner or tenant to remove personal property or fixtures, and the owner did not comply with the provisions in the order, the city may remove the property and fixtures. It is a good idea to keep an inventory of all items removed from the property so that the city has a record if questions arise later about what was removed. The city may also sell any salvage materials at the public auction. The auction must be posted for three days prior to the auction. If the items have no appreciable value, the city may destroy them.

Model Notice for Public Auction

4. Recovering costs

Minn. Stat. § 463.22.

Model Resolution Adopting Expense Report.

Throughout the hazardous building process, the city must keep an accurate account of the expenses it incurs in carrying out and enforcing the order. At a minimum, this account must include the following expenses:

- Filing fees.
- Service fees.
- Publication fees.
- Attorney's fees.

- Appraisers' fees.
- Witness fees, including expert witness fees.
- Traveling expenses incurred by the municipality from the time the order was originally made.

Minn. Stat. § 463.22.

This is not an exhaustive list of expenses, so other expenses incurred by the city should also be included. The city must credit the account with the amount received, if any, from the sale of the salvage, building, or structure.

Minn. Stat. § 463.22.

City of Delano v. Abene, No. C0-01-983 (Minn. Ct. App. Dec. 11, 2001)(unpublished decision);

City of Litchfield v. Schwanke, 530 N.W.2d 580 (Minn. Ct. App. 1995).

The city must report any actions it has taken under the order, including a statement of money received and expenses incurred, to the court for approval and allowance. Upon examination, the court may correct the expenses and determine the amount the city is entitled to receive. The court may also determine the reasonableness of the expenses. Then the court allows the expense account. Even where a court has significantly modified the original city order, the city may be awarded expenses.

Minn. Stat. § 463.22.

Minn. Stat. § 463.161, subd. 3; Minn. Stat. § 463.21; Minn. Stat. §§ 429.061-.081.

LMC information memo, *Special Assessment Guide*.

Gadey v. City of Minneapolis, 517 N.W.2d 344 (Minn. Ct. App. 1994)

If the amount received from the sale of salvage or property does not equal or exceed the amount of expenses allowed by the court, the court's judgment will certify the deficiency to the city clerk for collection. The owner or another interested party must pay the deficiency amount by October 1. The city cannot add on a penalty to this amount. If the payment is not made by October 1, the clerk must certify the amount of the deficiency amount to the county auditor to be entered on the county tax lists as a special assessment against the property. The deficiency is collected in the same manner as other taxes. The amount collected by the county must be paid into the city treasury. The city council may provide that the assessment may be paid in five or fewer equal annual installments with interest at 8 percent per year.

Minn. Stat. § 463.21.

An alternative to using a special assessment against the property is to recover the costs by obtaining a court judgment against the property owner.

Minn. Stat. § 463.22.

If the amount received for the sale of the salvage or the building exceeds the allowed expenses incurred by the city, and there are delinquent taxes against the property, the court will direct that the excess shall be paid to the county treasurer to be applied to the delinquent taxes. If there are no delinquent taxes, the court will direct the surplus to be paid to the owner.

Minn. Stat. § 463.23.

The net proceeds of any sales of property, fixtures, or salvage must be paid to the persons designated in the judgment in proportion to their interest. Accepting this payment waives all objections to the payment and the proceedings. If any party to whom a payment of damages is made is not a resident of the state, or the place of residence is not known, the party is an infant or under a legal disability, refuses to accept payment, or if it is doubtful to whom the payment should be made, the city may pay the amount to the clerk of courts to be paid out under the direction of the court. Unless there is an appeal to the payment, the deposit with the clerk is considered a payment of the award.

E. Eminent domain for hazardous buildings

Minn. Stat. § 463.152;

Minn. Stat. ch. 117.

Handbook Chapter 14, Section XII, C *Eminent Domain.*

Powell v. City of Clearwater, 389 N.W.2d 206 (Minn. Ct. App. 1986).

As an alternative to the hazardous building process discussed above, the city council may use its eminent domain authority. The city's eminent domain authority allows the city to take (or condemn) private property for public use. The city must pay the landowner reasonable compensation. Essentially, this is a way to require that an owner sell his or her land to a city. This procedure requires a formal court action. However, the city does not need to use the eminent domain process in order to repair or remove a hazardous condition or building.

Minn. Stat. § 463.152; Minn. Stat. ch. 117.

Handbook Chapter 14, Section XII, C *Eminent Domain.*

The city may use eminent domain to acquire any hazardous building, real estate on which any such building is located, or vacant or undeveloped real estate which is found to be hazardous within the meaning of the hazardous building laws in order to maintain a sufficient supply of adequate, safe, and sanitary housing and buildings used for living, commercial, industrial, or other purposes or any combination of purposes.

Minn. Stat. § 463.152; Minn. Stat. § 117.025.

Although the hazardous building laws declare the acquisition of a hazardous building and real estate, by state statutes, is to be a public purpose, it seems that is not enough. This is because in 2006 the state legislature made changes to the eminent domain laws that limited the purposes for which eminent domain may be used. When using eminent domain for a hazardous building, the city must have a public purpose under eminent domain law. The removal of a public nuisance is a specific public purpose defined by law. Therefore, it seems that if the city wishes to use eminent domain for a hazardous building, it would need to establish the building is a public nuisance or meets one of the other public purposes defined in state law.

Minn. Stat. § 609.74.

When making findings that a hazardous building is a public nuisance, it is a good idea to keep in mind the statutory definition of a public nuisance. A public nuisance is defined as:

- Maintaining or permitting a condition which unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public.
- Interfering with, obstructing, or rendering dangerous for passage any public highway, right-of-way, or waters used by the public.
- Any other act or omission declared by law to be a public nuisance.

Minn. Stat. § 117.0412.

There are other requirements, including hearing requirements, which must be followed when using eminent domain to acquire property. Therefore, the city should work closely with the city attorney to ensure all requirements and procedures are properly followed.

Minn. Stat. § 463.261; Minn. Stat. §§ 117.50-.56.

In re Wren, 699 N.W.2d 758 (Minn. 2005 distinguished by *Instant Testing Co. v. Community*

All buildings and real estate upon which buildings are located acquired by eminent domain are acquisitions for the purposes of reestablishment and relocation benefits. Both state and federal law protect property owners and tenants who are required to move because of an eminent domain proceeding.

Security Bank, 715 N.W.2d 124 (Minn. Ct. App. 2006).

The city, or condemning authority, must pay relocation costs for the people who must move.

Whether it is desirable for the city to use eminent domain instead of the statutory hazardous building process depends on what end result the city would like to accomplish. For example, if the city wants to acquire the property for a public use, the city may find the eminent domain process more suitable for the situation. On the other hand, if the city does not want to acquire the property, eminent domain may be less suitable for the situation. The city attorney will be able to assist the city in determining whether or not it is desirable to use eminent domain for a hazardous building.

IX. Conclusion

Cities have a variety of tools to use when they need to deal with properties that are hazardous or pose health risks. The city will need to evaluate the different options and determine which tool best fits the needs of the particular situation. By using the tools outlined in this memo, they can make buildings in the city safer for residents.

GOVERNING & MANAGING INFORMATION

Public Nuisances

400a.3
January 2010

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I. Introduction

Nuisances impact a community's livability. Minnesota cities provide for and protect the general welfare of its residents. This can include the prevention or abatement of various nuisance activities. In addition, state statutes provide cities the specific authority to abate nuisances within their jurisdictions.

Although it may seem relatively simple in theory, nuisance enforcement is much more difficult in practice. When adopting local regulations, cities need to consider many things, such as:

- Is the conduct or activity really a nuisance?
- Does that type of activity negatively impact the entire community or only certain individuals?
- Will we actively investigate nuisance conditions, or will we rely on resident complaints?
- How will we address an individual's rights when the city investigates or removes nuisance conditions?
- What resources do we have (or need) to enforce our ordinances?

Enforcement can be difficult, even in the most obvious situations. The "nuisance" owner may honestly have no idea that the use of his or her property is negatively impacting the community. Nuisance owners often have their own questions, such as:

- Why am I required to shovel the sidewalk in front of my property?
- Who are you to tell me how loud I can play my music?
- Why should my neighbors care how many cars I park on my property?
- Don't you need a warrant to enter my property?

These are questions city officials should be prepared to answer.

This memo examines what nuisances are as well as the tools cities can use to effectively and fairly eliminate nuisance conditions when they occur.

II. What is a nuisance?

Minn. Stat. § 561.01.

Matter v. Nelson, 478 N.W.2d 211 (Minn. Ct. App. 1991).

See Appendix.

As defined by statute, a nuisance is anything injurious to health, indecent or offensive to the senses, or that obstructs the free use and comfortable use of life or property. Nuisance laws attempt to balance the competing interests and uses of property. As such, nuisance regulations commonly address neighborhood and land use issues, such as zoning, building codes, and fire codes, as well as more general quality-of-life concerns. City ordinances tend to provide a more detailed definition for nuisance conditions within a jurisdiction.

Highview N. Apts. v. County of Ramsey, 323 N.W.2d 65 (Minn. 1982).

Nuisances can spring up in a variety of ways. A nuisance may be created by:

- An intentional act.
- Negligent conduct.
- An ultra-hazardous activity.
- A violation of state statute.
- A violation of city ordinance.
- Any other wrongful (or "tortious") activity.

Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc., 624 N.W.2d 796. (Minn. Ct. App. 2001).

35 Dunnell Minn. Digest *Nuisance* § 1.02 (4th ed. 1997).

With nuisances, a person's intent is often immaterial; the person's motive or intent doesn't necessarily enter into the analysis of whether the condition or conduct is a nuisance. While nuisances may often include negligent conduct, determining whether an individual failed to exercise due care is not always critical. Consequence, rather than intent or care, is the primary concern.

See Part V – *Common nuisances.*

Nuisances may occur when someone fails to do something that is required. For example, the failure to cut one's grass may become a nuisance. Nuisances can also occur when people do something they shouldn't. Common examples of these action-based nuisances are: vehicle noise; accumulation of garbage or other junk; and parking an excessive number of vehicles at one location.

35 Dunnell Minn. Digest *Nuisance* § 1.04 (4th ed. 1997).

See LMC information memo, *Zoning Guide for Cities.*

Often, the location and its surroundings are critical in determining if a nuisance exists. Something considered a nuisance in a higher density, residential area may be appropriate in an industrial zone (or in another city altogether).

III. Creation and classification

35 Dunnell Minn. Digest *Nuisance* § 2.00 (4th ed. 1997).

Nuisances can generally be categorized as follows:

A. Nuisance per se

Robinson v. Westman, 224 Minn. 105, 29 N.W. 1 (1947); *State v. Lloyd A. Fry Roofing Co.*, 310 Minn. 535, 246 N.W.2d 692 (1976).

See Part IV – A – 2 – *Injunctions and abatements.*

A "nuisance per se" (or "nuisance at law") is an act, occupation, or structure which is a nuisance at all times and under all circumstances, regardless of the actual location or its surroundings. In the case of a nuisance per se, the right to relief is established more simply through proof of the act itself. For example, conduct specifically prohibited by state statute or local ordinance would be a nuisance per se.

B. Nuisance in fact

Olsen v. City of Minneapolis, 263 Minn. 1, 115 N.W.2d 734 (1962).

A "nuisance in fact" is an act, occupation, or structure that becomes a nuisance based upon its relationship to its surroundings, its location, or the manner in which it is performed or operated.

C. Ordinance classifications

See Appendix.

See Part IV – *Public vs. private nuisances.*

When defining nuisance activities, it is quite common for city ordinances to classify nuisances with the following general classifications. Such classifications separate nuisances by the harms that they cause, but also upon the broad police powers a city has to remedy such situations. It is quite possible for each category to include both per se and in fact nuisances.

1. Against the peace

Certain actions can be categorized as a "nuisance against the peace." These and similar conditions can create fire, traffic, or other safety hazards:

- Snow, ice, or other obstructions impacting city streets and sidewalks.
- Trees or other materials blocking traffic or sightlines.
- Unnecessary or excessive noises and vibrations.
- Accumulation of old machinery, appliances, motor vehicles, and the like.

2. Against the quality of life

Some activities impact more generally upon a community's "quality of life":

Minn. Stat. § 609.72.

- Disorderly conduct.
- Use and/or sale of drugs and alcohol.
- Prostitution.
- Loud music.
- Barking dogs or animal fighting.

3. Affecting morals

Some are categorized due to the detrimental impact on community morals:

Minn. Stat. § 609.755.

Minn. Stat. § 609.322.

Minn. Stat. ch. 340A.

- Use of illegal gambling devices.
- Houses of prostitution.
- Illegal sale or production of alcoholic beverages.

4. Affecting public health

Some activities are nuisances because they impact public health:

- Accumulation of rotting food, household wastes, and other refuse.
- Animals running at large.
- Noxious weeds.

Minn. Stat. §§ 18.76-.91.

IV. Public vs. private nuisances

In evaluating how it will respond to nuisances a city must first decide whether something is a public or private nuisance.

Handbook, Chapter 12.

Excelsior Baking Co. v. City of Northfield, 247 Minn. 387, 77 N.W.2d 188 (1956).

Hill v. Stokely-Van Camp, Inc., 260 Minn. 315, 109 N.W.2d 749 (1961).

Public nuisances affect a considerable number of people; they violate public rights and produce a common or general injury, or they injure or annoy the portion of the public that comes into contact with them. Because they harm the general public, they can be addressed through city action.

A private nuisance, on the other hand, produces damages or injuries to only one person or a few people. As such, the prevention or abatement of a private nuisance is generally the responsibility of the individual injured, not the city.

Aldrich v. Wetmore, 52 Minn. 164, 53 N.W. 1072 (1893).

35 Dunnell Minn. Digest *Nuisance* §2.02(b) (4th ed. 1997).

See Part VII – *Remedies*.

Nuisances can be both public and private. For example, a tree on private property could overhang both the public right of way and the adjoining private property. Public nuisances are generally remedied by criminal prosecution or injunction or abatement actions. Private nuisances are typically remedied by a private civil action.

When the city receives a nuisance complaint, alleging some harmful or inappropriate conduct, city officials should consider the following questions:

- Is the activity actually a nuisance (as provided in state law or as defined in the city ordinances)?
- If it is a nuisance, is it a public or private nuisance?
- If it is a public nuisance, what enforcement actions should be used?

A. Public nuisances

Victor E. Schwartz & Phil Goldberg, *The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort*, 45 Washburn L.J. 541 (2006).

Public nuisance laws have developed over centuries of English and U.S. court decisions (common law). In addition, state and local governments determine through state statutes and/or local ordinances what are considered nuisance activities for a particular jurisdiction.

Nuisance laws have evolved over time and will continue to do so. With more and more people living and working closely in our cities, individuals have a greater opportunity to impact the living conditions of their neighbors. Changes in industrial and commercial practices also lead to different beliefs on what are appropriate uses of property, real and personal, and what is not proper.

Kelsey v. Chicago R.I. & P.R. Co., 264 Minn. 49, 117 N.W.2d 559 (1962).

Public nuisances negatively impact a community—perhaps the city at large, or an otherwise significant area such as a neighborhood. Public nuisance laws address both intentional acts and negligent conduct.

1. Statutory criminal offenses

Minn. Stat. § 609.74.

State statutes provide that a person is guilty of maintaining a public nuisance (a misdemeanor offense) when he or she, by an affirmative action or upon a failure to act, does any of the following:

- Maintains or permits a condition which unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public.

State v. Nelson, 189 Minn. 87, 248 N.W. 751 (1933).

- Interferes with, obstructs, or renders dangerous for passage any public highway, right-of-way, or waters used by the public.
- Is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided.

Minn. Stat. § 609.745.

Both the person in control of the real property where a public nuisance is maintained, as well as a property owner who rents property with knowledge of the nuisance conditions, may be guilty of a misdemeanor. Statutory nuisance violations can be enforced through criminal prosecutions.

2. Injunctions and abatements

Minn. Stat. §§ 617.80-.87.

In addition to possible criminal prosecutions, the state statutes also provide a mechanism for obtaining temporary or permanent injunctions or orders for abatement of certain defined public nuisance activities. An injunction is an order that requires a person to stop doing something that harms (e.g., refraining from loud noises, odors, etc.); an abatement order would require a harmful condition to be removed from the property (e,g., cutting weeds, draining stagnant water, etc.).

Minn. Stat. § 617.81, subd. 2.

Minn. Stat. § 617.80, subd. 2.

For purposes of statutory injunction or abatement proceedings, a public nuisance exists upon proof of ***one or more separate incidents*** committed within the previous 12 months either within a building or upon the land surrounding the structure of:

- Prostitution or prostitution-related activity;
- The unlawful sale, possession, storage, delivery, giving, manufacture, cultivation, or use of controlled substances;

Minn. Stat. § 340A.401 (unlicensed sales).

Minn. Stat. § 340A.503, subd. 2(1) (persons under 21 years of age).

- Selling alcohol without a commercial license and/or the unlawful sales or gifts of alcohol to persons under 21 years of age, when multiple violations occur during the same behavioral incident when the building is not occupied by the owner or a tenant, lessee, or occupant; or

Minn. Stat. § 609.02, subd. 6.

- The unlawful use or possession of a dangerous weapon.

Minn. Stat. § 617.81, subd. 2.

In addition, for purposes of injunction or abatement, a public nuisance also exists upon proof of ***two or more separate behavioral incidents*** committed within the previous 12 months within a building (or upon the land surrounding the structure) of:

- Gambling or gambling-related activities;

See Part IV – A – 1 – Statutory *criminal offenses*.

- Maintaining a public nuisance as defined by Minn. Stat. § 609.74, clause (1) or (3);

Minn. Stat. § 609.745.

- Permitting a nuisance to occur in violation of Minn. Stat. § 609.745;

Minn. Stat. § 340A.401.

- The sale of alcoholic beverages without commercial license;

Minn. Stat. § 340A.503, subd. 2(1).

- The unlawful sale or gifts of alcoholic beverages to an individual under 21 years of age; or
- The violation by a commercial enterprise of state or local licensing regulations, state statute, or local ordinance prohibiting the maintenance of a public nuisance.

Minn. Stat. § 617.81, subd. 2(c).

To obtain an injunction or abatement order, proof of each element of the conduct constituting the nuisance must be established by clear and convincing evidence.

3. Court decisions

35 Dunnell Minn. Digest *Nuisances* §§ 4.00-.15 (4th ed. 1997).

Minnesota courts have found, among others, the following specific circumstances to be nuisances:

- Accumulation of filth;
- Noise;
- Offensive odors;
- Automobile wrecking;
- Houses of prostitution;
- The operation of steam shovels;
- Hazardous buildings;
- Three or more people obstructing the free passage of sidewalk traffic;
- Icy sidewalks or driveways;
- A building overhanging a public street;
- Stockyards, slaughtering houses, and rendering works;
- Gases and gas odors, including those emanating from gas plants, petroleum tanks, and engines;
- Smoke, dirt, and cinders emitted from chimneys and smoke stacks;
- Obstructions or pollution of public streets or waters;
- Discharge of water and sewage unto adjacent lands;
- Cesspools.

4. Local regulation

See Part VI – *Municipal regulations.*

In addition to the statutory and the common law authorities, cities have the ability to define and establish through local ordinances additional nuisance conduct—so long as it is able to demonstrate that the condition or activity is a public nuisance.

B. Private nuisances

Minn. Stat. § 561.01.

Minnesota House Research Dept., *Minnesota's Public and Private Nuisance Laws* (July 2008).

Holmberg v. Bergin, 285 Minn. 250, 172 N.W.2d 739 (1969).

Similar to public nuisances, a private nuisance is anything injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, interfering with the comfortable enjoyment of life or property. An activity does not need to be unlawful to be a nuisance; for example, a tree overhanging into a neighbor's yard may become a private nuisance.

Hill v. Stokely-Van Camp, Inc., 260 Minn. 315, 109 N.W.2d 749 (1961).

A private nuisance harms few persons. As such, the responsibility for prevention or abatement is the responsibility of those harmed and is not a proper ground for city actions. In contrast to public nuisances, which are redressed by state prosecution or abatement actions, private nuisances are only addressed by the individuals harmed through private actions.

C. Creating a private duty

Cracraft v. City of St. Louis Park, 279 N.W.2d 801 (Minn. 1979).

Even though cities do not generally play a role in abating private nuisances, in limited circumstances it is possible for a city to assume a duty and subsequent responsibilities in protecting or preventing private harms from occurring. For such a private duty to exist, an individual will need to demonstrate that:

- The city had actual knowledge of the dangerous condition;
- There was reasonable reliance by those subject to the council's representation and conduct and the reliance was based on specific actions or representations which caused the person harmed to forgo other means of protection;
- The ordinance set forth a mandatory act intended to protect a particular class of people and not just the general public; and
- The city's action or inaction increased the risk of harm.

Danielson v. City of Brooklyn Park, 516 N.W.2d 203 (Minn. Ct. App. 1994).

The burden will be on the individual to demonstrate that the city has assumed such responsibility. While courts have been reluctant to find cities liable for otherwise private injuries, examples where such a duty has been found includes:

Hansen v. City of St. Paul, 298 Minn. 205, 214 N.W.2d 346 (1974).

- Someone bitten by a dangerous dog running at large, where the city had knowledge but failed to enforce its own ordinance; or

Gilbert v. Billman Const., Inc., 371 N.W.2d 542 (Minn. 1985).

- An employee who exceeds his authority by either making specific promises to a homeowner that the conditions will be remedied or provides a guarantee or approval as to private conditions.

"Consider Ordinances before Adopting," *Minnesota Cities* (Sept. 2007, p. 39).

It is important for cities to enforce their ordinances and to refrain from making promises that they are unable or unwilling to keep.

V. Common nuisances

Nuisances are typically location-specific. Depending on the location, an activity could be either appropriate or terribly harmful. It is generally inappropriate to simply label something a nuisance without investigating the actual impact upon the community. However, there are particular broad categories of activities that often constitute nuisances.

A. Noise

LMC information memo, *Minnesota Model Noise Control Ordinance.*

Sounds are a byproduct of life. Inevitably, noise can negatively impact the quality of life. Typical complaints involve:

- Barking dogs;
- Lawn mowers, leaf blowers, and other similar equipment;
- Radios;
- Construction equipment;
- Parties, concerts, and other social events;
- Motor vehicles.

LMC information memo, *Model Vehicle Noise Ordinance.*

Village of Wadena v. Folkestad, 194 Minn. 146, 260 N.W. 221 (1935); *City of Edina v. Dreher*, 454 N.W.2d 621 (Minn. Ct. App. 1990).

For noise to be considered a nuisance, it must significantly interfere with one's enjoyment of life and property. Slight or occasional noises are typically not sufficient to create a nuisance condition. Similarly, those "usual" noises, such as the afternoon operation of a lawn mower, don't generally rise to nuisance levels.

Minn. Stat. § 116.07.

MPCA

Coates v. City of Cincinnati, 402 U.S. 611, 91 S. Ct. 1686 (1971).

Although the Minnesota Pollution Control Agency (MPCA) has statewide authority over noise and noise control issues, local noise ordinances enable city officials to address community concerns. Cities should be prepared to defend the regulations and criteria, as subjective standards are more vulnerable to legal challenge.

B. Weeds, trees, and long grass

Failing to control a property's vegetation can become a public nuisance.

Minn. Stat. §§ 18.75-.91.

State v. Boehm, 92 Minn. 374, 100 N.W. 95 (1904).

Holmberg v. Bergin, 285 Minn. 250, 172 N.W.2d 739 (1969); *Jones v. Farnham*, 299 Minn. 156, 216 N.W.2d 834 (1974).

The Minnesota Noxious Weed Law requires anyone who owns and occupies land to control or eradicate all noxious weeds on the property. Excessive weeds, grass and other vegetation (often intermixed with trash and other decaying property) are not only physical blight conditions, but can create fire and other safety hazards. Overhanging tree branches and expanding tree roots are often private nuisances between neighbors, but can also block intersection sight lines, push up sidewalks, and clog city sewer lines. Neglected diseased or dying trees can affect an entire community and cause significant ecological and structural hardships.

See Part VII – F – *Abatement*.

These conditions are often abated by city officials as needed.

C. Streets and sidewalks

Local regulations often address the use and possible misuse of a city's streets and sidewalks system.

LMC information memo, *Acquisition and Maintenance of City Streets*.

Since the accumulation of snow and ice can create hazardous conditions, cities often require adjoining residents to clear sidewalks of snow and ice within a reasonable time and prohibit parking on city streets until plowing is complete. Failure to comply with these regulations can result in abatement, which could include shoveling the sidewalk and fining the property owner or assessing the property, and towing and impounding of vehicles.

LMC information memo, *Parking: Notes and Ordinances*.

Some cities choose to regulate parking on city streets through specific regulations. For instance, ordinance provisions may restrict or prohibit:

- Parking or operating commercial vehicles in residential areas.
- Overnight parking of campers and recreational vehicles.
- Parking vehicles for sale in the public right-of-way.

Handbook, Chapter 11.

In an attempt to establish an acceptable balance concerning street usage, some cities issue licenses or permits, or establish regulations for some city street and sidewalks activities, including:

- Parades and protests.
- Street dances and block parties.

LMC information memo, *Regulating Peddlers, Solicitors and Transient Merchants*.

- Hotdog vendors and other transient merchant activities.
- Sidewalk cafes.
- Informational signs.

D. Motor vehicles

Minn. Stat. ch. 168B.

Pursuant to state statutes, certain motor vehicles are considered health and safety hazards. Since they can be attractive to children and harbor rodents and other pests, the presence of abandoned or junk vehicles can lead to various concerns. Cities have the authority to take into their custody:

Minn. Stat. § 168B.04.

- Abandoned vehicles, left on public or private property with no potential for further use.
- Junk vehicles (unregistered and only valued at the scrap metal within).
- Unauthorized vehicles, in circumstances provided for in state statute.

Minn. Stat. § 168B.04, subd. 2.

When vehicles are impounded, cities are required to follow specific notice requirements concerning both the taking of the vehicle as well as the possible sale or disposal as provided by the statutes. Cities may also adopt ordinances so long as they are not less stringent than state law.

Minn. Stat. § 168B.09.

E. Adult uses

Minn. Stat. ch. 617.

Northshor Experience, Inc. v. City of Duluth, MN, 442 F.Supp.2d 713 (D. Minn. 2006).

Many cities have adopted ordinances to regulate adult uses. There is also general authority provided in state law for those decisions (though it is important to note that the statutes' constitutionality has been challenged). Public nuisances associated with the secondary effects of many adult uses can be addressed by a narrowly tailored adult use ordinance.

LMCIT risk management memo, *Strip Clubs: The Bare Essentials – Regulation of Adult Uses by Minnesota Cities.*

Handbook, Chapter 11.

See LMC *Adult Use Packet.*

While state law prohibits indecent exposure and obscene materials and performances, many adult uses, such as strip clubs and sexually oriented adult bookstores, are not per se obscene. In many cases, such establishments are subject to certain First Amendment protections and cannot generally be prohibited within a jurisdiction. More often, however, cities are restricted to regulating adult businesses, requiring business licenses, and limiting locations through zoning code restrictions.

F. Fires and smoke

See LMC information memo, *Open Burning in Cities.*

With limited exceptions provided for campfires, cooking fires, and the like, open burning is a highly regulated activity in Minnesota. Many materials are specifically prohibited from open burning and most burning require first obtaining a burning permit from the Minnesota Department of Natural Resources (DNR) or one of its agents. Cities have statutory authority to further restrict or prohibit open burning within their jurisdiction.

DNR Forestry Division.

"Regulating Outdoor Furnaces and Boilers," *Minnesota Cities* (Feb. 2008, p. 19).

State v. Chicago, M. & St. P. Ry. Co., 114 Minn. 122, 130 N.W. 545 (1911).

Of particular concern is the operation of backyard solid fuel burning stoves. Because these stoves are fully enclosed with smokestacks, they fall outside of those state regulations on open burning. However, these stoves produce a low temperature burn and typically have very short smokestacks, emitting a tremendous amount of smoke at or near ground level. The Minnesota Supreme Court determined that excessive smoke can be a public nuisance when it invades a residence or place of occupation. Many cities have adopted ordinances regulating the use of solid fuel burners.

G. Animals

See *Lead v. Inch*, 116 Minn. 467, 134 N.W. 218 (1912).

Communities use a variety of measures to regulate animal nuisance problems within their jurisdictions. As cities have become more densely populated and the variety and number of pets have changed (i.e., pot-bellied pigs, poultry, apiaries), the need to regulate has increased. Animals, pets or otherwise, and their owners can negatively impact a community in many ways, including:

Minn. Stat. § 347.04.

- Excessive barking, howling, whining, or other noise problems.
- Injuring or inflicting great bodily harm.
- Running at-large.
- Keeping of farm or other wild/non-domesticated animals.
- Having too many animals at one location.
- Creating bad odors.
- Having and possibly spreading disease.
- Causing significant property damage.
- Leaving animal waste on public or private property.

Holt v. City of Sauk Rapids, 559 N.W.2d 444 (Minn. Ct. App. 1997).

See Part IX – B – *Notice-due process.*

As a result of these and other justifications, animal and pet regulations have been found to be a proper exercise of a city's police powers. Although due process is critical whenever private property is entered or personal property is removed, extra care should be followed to ensure that an owner's rights are provided when animals are impounded.

H. Water

Minn. Stat. § 429.021.

See Part XI – *Special assessments.*

Minnesota cities have used their authority to abate various water-related nuisances such as draining and filling of swamps, marshes, and ponds on public or private property. Subject to compliance with DNR regulations, cities are authorized to undertake and finance such public improvements, at least partially, through the special assessment process.

I. Building and property conditions

See Part IV – A – *Public nuisances.*

Minn. Stat. § 617.80.

Minn. Stat. § 617.81.

Many problems arise when private buildings and their surrounding properties are not properly maintained. Fortunately, state statutes provide significant authority to impose criminal penalties on individuals who maintain properties that constitute a public nuisance, as well as a process to abate such conditions when they do occur. In landlord-tenant situations, both tenant and owner may be held responsible for nuisance acts occurring on the property.

Cates v. Rose Bros., 182 Minn. 494, 234 N.W. 681 (1931).

Handbook, Chapter 14.

In addition, cities can enforce building and/or property "maintenance" codes, providing an additional local regulatory option. A typical property regulation may address outdoor storage, including what may be stored outside, how much/many items may be stored on the property, how long something may be stored outside, and different standards for front and back yards.

While important everywhere, communities interested in renewal and redevelopment often make the elimination of nuisances a higher priority and seek various methods—including criminal prosecutions, active inspections, or abatement procedures—to achieve optimal results. This can be of particular importance when economic conditions result in an increased number of vacant and/or foreclosed properties.

J. Hazardous and vacant properties

Minn. Stat. §§ 463.15-26.

Ukkonen v. City of Minneapolis, 280 Minn. 494, 160 N.W.2d 249 (1968).

The Hazardous and Substandard Buildings Act provides the procedure cities may use to address hazardous buildings and dangerous excavations within their communities. A "hazardous building" is "any building which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety and health."

Minn. Stat. § 463.17.

Cities typically first notify the owner of record to request the voluntary repair or removal of the hazardous condition or structure. If the owner is unwilling to repair, or if repair or removal is impractical, a city may choose to take one of the following actions:

Minn. Stat. § 463.151.

- Upon the consent in writing of all owners of record, tenants, and all lien holders of record, the city itself may remove or raze any hazardous building or remove or correct any hazardous condition, assessing the costs incurred against the property.

Minn. Stat. ch. 117.

- Acquire the hazardous building(s) or property through the exercise of the city's eminent domain authority.

Minn. Stat. § 463.16.

- Order the owner to correct or remove the condition or raze the building.

Minn. Stat. § 463.161; Minn. Stat. § 463.21.

- Obtain a court judgment and the city itself can correct or remove the hazardous condition, assessing the costs incurred against the real property.

See LMC information memo, *Dangerous Properties.*

When ordering the owner to correct or remove any hazardous conditions, specific statutory procedures must be followed, including enforcement through judicial action. Any attempt to order correction must proceed through the guidance and assistance of the city attorney.

Minn. Stat. § 463.251.

City of Wells v. Swehla, No. C3-00-319, 2000 WL 1577087 (Minn. Ct. App. 2000) (unpublished opinion)

Vacant properties can also be a detriment to a community's health, safety, and general welfare. Unoccupied, unsecured properties can quickly become the breeding ground for rodents, trash, and criminal activities. Cities can order vacant or unoccupied structures to be secured against trespass and provide for the emergency securing of a building when health and safety concerns require. A number of cities have adopted local regulations related to vacant structures.

K. Consumption of police services

Minn. Stat. § 504B.205.

Some cities have adopted ordinances declaring excessive use of police services to be a public nuisance. Under these regulations, the costs of excessive police services are pushed back onto those individuals whose nuisance activities resulted in repeat police responses (and additional costs) to one location. Cities adopting such measures must be careful not to impede an individual's right to seek police or other emergency assistance when needed.

L. Miscellaneous

Minn. Stat. § 609.74.

This list of nuisance activities is not intended to be definitive. Cities, either specifically within a general nuisance ordinance or elsewhere within the city code, regulate or prohibit harmful, indecent or offensive conduct. As a few final examples, cities regularly enforce city ordinances concerning:

- Noxious smells or odors.
- Graffiti.
- Animated signage.
- Excessive or misdirected light.
- Glare.

A city may certainly find other acts or uses to be nuisances, and the list and type of activities may change over time. Before making such a declaration, seek the advice of the city attorney.

VI. Municipal regulations

Seiler, Bryan M., Note, *Moving from "Broken Windows" to Healthy Neighborhood Policy: Reforming Urban Nuisance Law in Public and Private Sectors*, 92 Minn. L. Rev. 883, 903 (2008).

There are various reasons why cities regulate nuisance activities or conditions. When a city does become involved, it needs be sure that it has the general authority to act, and complies with any statutory or ordinance requirements. Cities need to limit their actions to public, not private, nuisances.

A. Authority

Minn. Stat. § 412.221, subd. 23.

Handbook, Chapter 4.

Minn. Stat. § 410.33.

In addition to the criminal penalty and abatement measures provided in state statutes, cities also have the general authority to handle nuisance issues though the adoption of local measures. For statutory cities, the city council has specifically been provided the power to, by ordinance, define nuisances and provide for their prevention or abatement. Most home rule charter cities have similar authority through a charter provision providing either a similar grant of power, or the general authority to provide for the community's safety, health, and welfare. In the absence of any specific charter provision, charter cities may also exercise the powers of a statutory city.

State v. Lloyd A. Fry Roofing Co., 310 Minn. 535, 246 N.W.2d 692 (1976); *Claesgens v. Animal Rescue League of Hennepin County*, 173 Minn. 61, 216 N.W. 535 (1927).

There are limits to this local authority. City actions will be invalidated if this authority is exercised in an arbitrary or unreasonable manner or if pre-empted by state or federal laws.

B. Nuisance ordinances

Handbook, Chapter 7.

A city may best be able to control public nuisances through the adoption of a nuisance ordinance (or collection of city ordinances) that defines and classifies nuisances, provides for their abatement, and establishes penalties for noncompliance. Because city ordinances have the force and effect of law, their form and content are important, as well as the procedures for adoption.

Minn. Stat. § 412.221, subd. 32.

St. Paul v. Gilfillan, 36 Minn. 298, 31 N.W. 49 (1886) *Cf. City of St. Paul v. Haugbro*, 93 Minn. 59, 100 N.W. 470 (1904).

An ordinance defining a particular activity as a public nuisance is presumably a valid exercise of a city's police powers. Not only have many cities adopted nuisance ordinances, but many rely on their local ordinances more than state statutes. However, ordinances may only regulate public nuisances and may not declare something a public nuisance that would otherwise be considered a private nuisance, relatively harmless, or simply not a nuisance at all.

Press v. City of Minneapolis, 553 N.W.2d 80 (Minn. Ct. App. 1996); *State v. Becker*, 351 N.W.2d 923 (Minn. 1984).

Ordinance language is critical for city efforts to be effective. City ordinances often mirror the provisions provided in state law, but often include specific acts or omissions to provide local officials direction in enforcing nuisance violations. A common problem is not properly defining terms, or using terms too vague or broad to be enforceable. Conversely, an ordinance may be drafted in a way that is too limiting to encompass all intended violations. The ordinance should clearly provide the enforcement procedure and how it will be interpreted and applied. The primary purpose of nuisance regulations is usually to encourage compliance, not necessarily punish offenders.

VII. Remedies

Lorshbough v. Township of Buzzle, 258 N.W.2d 96 (Minn. 1977); *Pelican Lake Property Owners Ass'n v. County of Crow Wing*, Nos. C5-98-1549, C3-98-1940 (Minn. Ct. App. Aug. 17, 1999) (unpublished decision); *Schultz v. Frank*, No. C1-00-285 (Minn. Ct. App. Aug 1, 2000) (unpublished decision).

Cities have choices in how they will remedy nuisance conditions and enforce their nuisance ordinances. Adopting an ordinance may create a duty to take some reasonable steps to enforce it on behalf of the general public. Most cities will use a combination of methods, depending upon their resources and the seriousness of the offense. Whatever methods are used, it is a good practice to have a policy guiding when a particular method will be used. This will ensure that similar violations are treated equally.

A. Self-remedy

The most cost-effective way to remedy nuisance conditions is for the individual to correct the situation him- or herself with minimal city involvement. There are situations where someone is unaware that he or she is maintaining a nuisance and will correct the situation when so informed through a letter or a conversation.

Cities can also consider other potentially effective voluntary approaches for nuisance elimination. For example, many cities sponsor neighborhood cleanup days or city-wide recycling events. These activities: provide individuals the opportunity to dispose of many larger items; provide an opportunity for neighborhood residents to work together to address general maintenance issues; and may provide incentive for individuals to fix up their own property.

B. Criminal prosecutions

Minn. Stat. § 412.231.

Minn. Stat. § 609.02.

Most nuisance ordinances provide that violations will constitute a misdemeanor offense. A misdemeanor is a crime for which a sentence of not more than 90 days imprisonment or a fine of not more than $1,000 (or both) may be imposed.

Criminal prosecutions may take longer than other alternatives and require a higher burden of proof (beyond a reasonable doubt). However, a possible criminal conviction can provide a good incentive for the individual to bring his or her property into compliance. As part of the criminal sentencing, some or all of the actual jail time or fines may be suspended (or stayed), so long as the nuisance condition is remedied within a particular period of time.

C. Civil actions

When the city has reasonable grounds to believe a nuisance exists, it may bring a civil action in district court to end that activity. Rather than seek criminal penalties, cities often pursue a civil remedy to achieve compliance with a city ordinance. Civil actions are generally faster, preferred by the courts, and provide the city the advantage of a lower burden of proof (*preponderance of the evidence*). Civil remedies can include injunctions or restraining orders. Subsequent violations of restraining orders can be enforced though contempt proceedings.

See Part VII – F – *Abatement*.

D. Administrative enforcement

Hannan v. City of Minneapolis, 623 N.W.2d 281 (Minn. Ct. App. 2001).

City of Ramsey v. Kiefer, No. A08-1714 (Minn. Ct. App. Aug. 25, 2009) (unpublished decision).

Some cities have adopted administrative enforcement ordinances for dealing with nuisance conditions. An administrative process is a quasi, non-judicial alternative remedy. Under this system, property owners (or other types of alleged nuisance violators) are provided the opportunity to present their side before an administrative hearing officer (or panel) appointed by the city council. When violations are found, penalties typically follow a pre-established schedule: more nominal fees for a first violation with increased penalties for subsequent acts.

The advantage to establishing an administrative hearing procedure is that it is less formal, less costly, and potentially less intimidating than the court system. The accused is given a chance to come into compliance, with all monies collected retained by the city, not distributed through the state court system.

Cities should be aware that both the state auditor and the state attorney general have questioned whether cities have authority to enact these local processes. Accordingly, cities contemplating such an ordinance should work closely with their city attorney.

E. Licensing

Handbook, Chapter 11.

Handbook, Chapter 12.

Minn. Stat. § 415.17.

Cities also address nuisance conditions through common regulatory means, such as city licenses, permits, and other forms of required registration. The use of licenses and permits offer cities an effective means to monitor compliance. The conditions included with the application process help ensure that an applicant complies with ordinance requirements before the license or permit is issued. If it is found at a later time that the license or permit holder is not in compliance, the city can suspend, revoke, or deny renewal of the license or permit, and potentially even close a business unless or until it is brought back into compliance.

Licensing practices can provide broad benefits to local communities by addressing direct and secondary impacts of particular activities. For instance, cities often regulate:

- The consumption and sale of alcohol.
- The conduct of adult businesses.
- The conduct of lawful gambling.
- The operations of peddlers, solicitors, and transient merchants.
- The use of city streets and sidewalks.
- Land use and development.

See LMC information memo, *Zoning Guide for Cities.*

Zylka v. City of Crystal, 283 Minn. 192, 167 N.W.2d 45 (Minn. 1969).

A land use tool known as a conditional use permit (CUP) is a good example of such a regulation. Conditional uses seek to strike a middle ground between the unchecked approval of a particular use and complete prohibition. Conditional uses are uses that will be allowed if certain conditions (that minimize the problematic or nuisance features of the use) are met. If such conditions are not followed, the permit may be revoked.

City of Duluth v. Krupp, 46 Minn. 435, 49 N.W. 235 (1891); *Orr v. City of Rochester*, 193 Minn. 371, 258 N.W. 569 (1935).

"Setting Municipal Fees," *Minnesota Cities* (Apr. 2004, p. 19).

An additional benefit with licensing or permitting systems is the collection of a fee. A proper license fee can include the law enforcement/city staff costs required to properly enforce the city regulations or address the other negative consequences that are likely to occur with that type of activity. Cities cannot set license fees so high as to prohibit such businesses (or activities) within the city altogether.

F. Abatement

Regardless of what level of priority is placed on regulating nuisance activities, situations will arise that demand city action. Who will act and how the situation is actually remedied depends upon the particulars involved.

1. Voluntary abatement—notice

See Part VII – A – *Self-remedy.*

In almost all cases, the city's first step in an abatement process is the request for a voluntary remedy of the nuisance condition. Again, convincing an individual to take care of his or her own problems is the most cost-effective way to address most public nuisances. If this does not occur, a clearly written notice is an important first step in providing due process, ensuring that the individual's property rights are protected if the city must abate the condition itself.

2. Injunctions

35 Dunnell Minn. Digest *Nuisances* § 2.03 (4th ed. 1997).

State v. Sportsmen's County Club 214 Minn. 151, 7 N.W.2d 495 (1943).

Since the criminal process can often times be slow and the results are uncertain, it may be necessary to seek injunctive relief to *terminate or prevent a nuisance*. Under its duty and authority to protect the rights of all of its citizens, a city can obtain injunctions to restrain public nuisances.

Minn. Stat. §§ 617.82-.83.

See Minnesota House Research Dept., *Minnesota's Public and Private Nuisance Laws* (July 2008).

The city attorney files a petition with the district court seeking a temporary injunction. The court will hold a "show cause" hearing to provide the alleged violator an opportunity to be heard on the allegations within the petition. If the judge believes that the condition has occurred, he or she will issue a temporary injunction, detailing the prohibited conduct or conditions. After a temporary injunction is issued, the court, after a further hearing, may issue a permanent injunction and order of abatement if it finds (by clear and convincing evidence) that a nuisance exists. Violation of temporary or permanent injunction is treated as contempt of court.

See Part VII – F – 3 – *Orders of abatement.*

Minn. Stat. § 617.86.

See Appendix.

When adopting a nuisance ordinance, it is important to include a provision providing that the city will seek a court injunction when no other adequate remedy exists.

3. Orders of abatement

For some nuisance conditions, an order preventing the condition from continuing will sufficiently end the problem conduct. Noise nuisances are a good example; when the noise is no longer allowed, the nuisance no longer exists. In others circumstances (such as the long grass and weeds), the nuisance will continue until steps are taken to eliminate the condition (the grass and weeds are cut). In those cases, an abatement order will provide the process for nuisance elimination.

a. Judicial Orders

Ames v. Cannon River Mfg. Co., 27 Minn. 245, 6 N.W. 787 (1880).

When a city seeks relief through the courts, the judge's order will provide the process for abatement. It may provide the owner the opportunity to remedy the situation himself, as well as provide deadlines for when the city may remove the situation itself. The court is available to resolve any additional disputes that may arise during the process, or impose additional penalties for not complying with the order.

Minn. Stat. § 617.82.

City of West St. Paul v. Krengel, 768 N.W.2d 352 (Minn. 2009).

The property owner may enter into an agreement with the city to avoid the issuance or enforcement of an abatement order. If the property owner fails to abate the public nuisance conditions, the city may again seek an injunction.

b. City orders

LMCIT risk management memo, *Cleaning Up Your City: How to Eliminate Nuisances.*

Many cities attempt to avoid the judicial process by including within their local ordinances the authority to abate nuisance conditions themselves. Mindful of property rights and the need to provide adequate due process, the city ordinance typically provides for:

- Property inspections (which may require obtaining the necessary warrants) and documentation of any nuisance condition or activity.
- Written notice of the finding of a violation of city ordinance provided to the owners or operators.
- An opportunity to contest the nuisance finding with the city council or selected neutral party.

- Written notice of the date when the violation of city ordinance must be remedied; possible second written notice when the condition has not been corrected; notice of the court date if the city seeks a court order declaring the nuisance condition.
- City cleanup of the nuisance condition.
- When personal property is removed in the cleanup process, an inventory of all property collected; notice of where the property can be reclaimed; and the date by which it must be reclaimed, or it will be disposed of (sold or destroyed) by the city. Depending upon the property involved, there may be specific statutory procedures to follow.
- An inventory of all costs involved (i.e., cleanup and storage).
- A claim sent to the property owner for the total costs of abatement, as well as how costs will be collected, including possible certification and collection with property taxes.

See Part XI – *Special assessments*.

c. Tenants Remedies Act

Minn. Stat. §§ 504B.395-.471.
Minn. Stat. § 504B.381.

There is also limited authority for a city to intervene in landlord-tenant situations. A state, county, or local department or authority, charged with enforcing health, housing, or building maintenance codes has specific statutory authority to bring an action in district court and request a remedy (landlord ordered to remove condition) for violation of health, safety, housing, building, fire prevention, or housing maintenance codes on the tenant's behalf.

4. Summary/emergency abatement

Reed v. Board of Park Com'rs of City of Winona, 100 Minn. 167, 110 N.W. 1119 (1907).

While cities typically must provide notice and a chance to respond to nuisance conditions, there are limited circumstances that may justify dispensing with standard procedures. There are situations so dangerous that require immediate repair or elimination, such as:

- Open wells.
- Abandoned machinery and appliances (i.e., "locking" refrigerators).
- Downed power lines.
- Fallen trees.
- Obstructed streets and sidewalks.
- Raw sewage.

Kelty v. City of Minneapolis, 157 Minn. 430, 196 N.W. 487 (1923).

The power to summarily abate nuisances is limited, based upon actual necessity as defined and provided by ordinance. When summary action is necessary, city officials need to document the circumstances, preparing reports and taking photographs to support and defend their actions if necessary.

See Part IX – C – *Documentation.*

5. Demolitions

City of Minneapolis v. Meldahl, 607 N.W.2d 168 (Minn. Ct. App. 2000).

Minn. Stat. § 463.16.

See LMC information memo, *Dangerous Properties* .

State statutes, as well as some city ordinances, provide for the destruction of buildings, structures, or other nuisance situations. As a drastic, irreversible solution to nuisance conditions, demolitions should only be used as a last resort and after all statutory and procedural requirements are strictly followed. When repairs or alterations can be made to remedy a hazardous situation, repairs should generally be ordered, rather than destruction of the property.

VIII. Enforcement decisions

See Part VIII – C – *Inspection-based enforcement.*

See Part VIII – B – *Complaint-based enforcement.*

There is no blueprint for effective nuisance enforcement. Each city responds to nuisance activities in its own manner, based upon city finances and staffing needs, as well as the community's interest or concerns. Some cities take a proactive approach to nuisance enforcement, sending officials out into neighborhoods, industrial parks, and business districts, actively looking for code violations. In others, the response is more reactive, relying more on complaints than active investigating. The approach that is ultimately used should be formally adopted by city policy. It should be specific enough to defend against claims of unequal treatment, yet with enough flexibility to allow for different circumstances that may arise.

A. Enforcement officers

Minn. Stat. § 412.231.

Cities need to decide who is responsible for enforcing their nuisance regulations. As ordinance violations are misdemeanor offenses, city law enforcement will certainly play a significant role. However, when regulating nuisances, cities can also rely on:

- City administration.
- Civilian code enforcement officers.
- Hearing officers.
- Building inspectors.
- Animal control officials.
- Public works, street, or sanitation department officials.
- State officials (MPCA, Building Codes & Standards, DNR).
- Private contractors.

See "Consider Ordinances before Adopting," *Minnesota Cities* (Sept. 2007, p. 39).

A city's investment into nuisance code enforcement will vary, based upon city priorities, needs, and resources. It is important to consider these factors when drafting city ordinances or policies. Ordinances and policies that a city will not have the ability to enforce should not be adopted.

It may seem appealing to make nuisance enforcement the responsibility of a single person or department, so the city knows who is handling all nuisance issues. However, because of the variety of responsibilities and the particular expertise that is often needed for addressing different situations, it may not be practical.

Cities should consider training employees that are involved in nuisance enforcement. This type of training can include:

- How city ordinances are interpreted
- Proper inspection methods
- Private property rights
- Administrative search warrants
- Appropriate citizen interactions
- Any other relevant information.

When changes are made to city ordinances or enforcement policies, city officials should always be advised and instructed on how those changes impact present practices. Cities also need to provide their city employees with the tools and resources necessary to enforce their ordinances. For example, if the city cuts long grass and weeds in the summer, or shovels sidewalks in the winter, it's going to need (at the least) a lawn mower and a shovel.

B. Complaint-based enforcement

Many cities enforce their nuisance ordinances only when they receive complaints from the public. A complaint-driven city policy may provide:

- Logging all complaints received, with date of received complaint and location of nuisance.
- Processing complaints to the appropriate city official or department.
- Inspection of the alleged violation.
- If a nuisance condition exists, notice to property owner or offender.
- Administrative, civil, or criminal actions to obtain compliance.
- A follow-up letter to complainant, indicating abatement, impending prosecution, or confirmation that no violation was found.

A complaint-driven approach to nuisance enforcement can be less taxing on city resources. However, it may allow nuisance conditions to exist for longer periods of time, creating a more complex situation and costly remedy. Additionally, delayed enforcement may cause a negative impact on the community, lowering property values and impacting community vitality.

Mi nn. Stat. § 13.44, subd. 1.

LMC information memo, *Data Practices: Analyze, Classify & Respond.*

Cities should also remember that the identity of individuals who register complaints with their city concerning violations of state laws or local ordinances concerning the use of real property are classified as confidential data under the Minnesota Government Data Practices Act.

C. Inspection-based enforcement

If a city wants to take a more proactive approach and minimize the impact of nuisances, it can establish an active inspection program to seek out potential violations and require compliance with city regulations. Inspection programs are quite common and most likely are already being used for:

See LMCIT risk management memo, *Streets and Sidewalks: Doing the Best with What You Have.*

- City street and sidewalk conditions.

See LMCIT Sewer Toolkit.

- City water and sewer systems.

See LMC information memo, *Liquor Licensing and Regulation.*

- Liquor and other licensed commercial establishments.
- Rental housing.

A nuisance inspection program sends city officials into the community to locate nuisance violations. When conducting inspections, city staff:

- Collect and record all relevant facts and data, including the name of the alleged violator, location, and nature of the violation, photograph conditions and record their observations on the conditions;
- Analyze all the information to determine if a nuisance condition exists;
- Document conclusions and recommend a course of action; and
- Provide owner or offender notice of condition and expected course of correction and/or consequences.

See LMCIT risk management memo, *Pol icy Pep Talk: What Makes a Good Policy.*

City budgets and human resources will determine how proactive a city can be in actively investigating nuisance concerns in addition to responding to complaints. Active inspection programs should operate in accordance with an adopted policy, something that prioritizes active inspections based on community needs and city resources.

IX. Particular concerns

There are certain issues that commonly arise when cities adopt and enforce nuisance regulations.

A. Private property

Enforcement measures often lead city inspectors to nuisance conditions on private property, whether it is residential, industrial, commercial, or otherwise. Entry onto private property for licensing, nuisance, or hazardous building purposes is subject to the same requirements as any other government intrusion onto private property. The Fourth and Fourteenth Amendments to the U.S. Constitution prohibit unreasonable searches and seizures. Individuals have a reasonable expectation of privacy on their property. Care must be taken to ensure that the city does not violate the property owner's right to be free from unreasonable searches. To enter onto private property, government officials normally must either have the owner's permission, or have first obtained a search warrant.

U.S. Const. amend. IV; U.S. Const. amend XIV.

Katz v. U.S., 389 U.S. 347, 88 S. Ct. 507 (1967).

Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684 (1961).

1. Plain view

When a city official is able to observe a violation from a public street, sidewalk, or neighboring property (provided that neighboring property owner granted permission to be there), a person can be charged with an ordinance violation. The observation must provide the official all the information necessary to conclude that the nuisance condition exists. Common examples of nuisances that can exist and be classified as such from a plain view can include diseased trees, noxious weeds, long grass, the accumulation of junk, and noise.

Dow Chemical Co. v. U.S., 476 U.S. 227, 106 S. Ct. 1819 (1986).

Air Pollution Variance Bd. v. Western Alfalfa Corp., 416 U.S. 861, 94 S. Ct. 2114 (1974).

The U.S. Supreme Court has held that when a criminal act or violation is within plain view, there is no violation of the Fourth Amendment, and seizure may be permissible without first obtaining a warrant. However, if the nuisance condition is not serious enough to warrant immediate abatement, officials should provide notice to the offender of the condition and an opportunity for self-remedy.

Horton v. California, 496 U.S. 128, 110 S. Ct. 2301 (1990).

2. Consent to enter

Consent searches are important tools for local officials as an individual's consent will legitimize investigations that would otherwise be invalid under Fourth Amendment provisions. Consent searches can be reasonable and avoid the need to obtain an administrative search warrant, especially in conditions when an alleged nuisance violation cannot be identified by plain view, or when circumstances need to be abated by local officials.

LMCIT risk management memo, *Consent Searches*.

Schneckloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041 (1973).

Camara v. Municipal Court, 387 U.S. 523, 87 S. Ct. 1727 (1967); *U.S. v. J. B. Kramer Grocery Co.*, 418 F.2d 987 (8th Cir. 1969); *Carlin v. Comm'r of Pub. Safety*, 413 N.W.2d 249 (Minn. Ct. App. 1987).

Consent may be given by the owner or tenant of the property, or by an individual in control of the premises. Consent must be given voluntarily. Courts have upheld consent searches when individuals provide a "welcoming action" such as waving instead of providing a verbal response. An individual does not have to be told they have a right to refuse entry, but an inspector cannot insist entering or other acts of coercion if entry is denied. When possible, obtain a written consent prior to entering private property.

3. Search warrants

U.S. v. Dunn, 480 U.S. 294, 107 S. Ct. 1134 (1987).

Search Warrant of Columbia Heights v. Rozman, 586 N,W.2d 273 (Minn. Ct. App. 1998).

If the city does not have consent from the property owner, it must obtain an administrative search warrant before entering the property. The warrant process protects an individual's privacy against arbitrary invasions by the government. Steps taken to preserve privacy are relevant when considering entry issues. Evidence collected in violation of the Fourth Amendment may be excluded, making it difficult to obtain a conviction or other desired result. Violations of constitutional rights could subject the city to penalties as well.

Camara v. Municipal Court, 387 U.S. 523, 87 S. Ct. 1727 (1967).

To obtain an administrative search warrant, the city must show probable cause why its request to enter private property is justified. The application for a warrant must describe the city's inspection program and establish how the particular inspection requested falls within the scope of the ordinance.

City officials should assume an administrative warrant will be required to enter a premises for purposes of inspection or investigation unless:

- An emergency exists—an imminent threat to the public's safety, health, or general welfare;
- An appropriate person has granted consent to enter;
- The place to be inspected is heavily regulated, such a liquor stores, firearms dealers, junkyards, etc.; or
- Inspection is required as part of city licensing.

B. Notice—due process

LMCIT risk management memo, *Combating Public Nuisances in the Community*..

In non-emergency situations, a property owner must be provided notice of alleged ordinance violations and the opportunity to remedy the condition before the city can exercise police powers and abate the nuisance condition itself. This notice should provide:

- The nature of the violation and the city ordinance in violation.
- The necessary remedy for the condition.
- The date by which it must be corrected or the city will abate itself.
- The right to request a hearing and the date the request must be made by.
- A description of the penalties if the condition is not corrected.
- Notice that costs incurred may be assessed against the property.

Minn. Stat. § 617.81, subd. 4.

This effectively mirrors the procedural requirements for the abatement procedures provided in the state statutes.

Minn. Stat. § 617.81, subd. 4.

The city should provide a reasonable period of time for the individual to correct the nuisance condition. For example, the state statutory option provides 30 days before an abatement action is filed. Reasonable time is subjective, depending upon the type and severity of the violation. Too much time may frustrate efforts to prosecute conditions of noncompliance. For example, if the condition *really* was a detriment to the general public's health, safety, and welfare, why was it allowed it to remain for such a long time?

Village of Zumbrota v. Johnson, 280 Minn. 390, 161 N.W.2d 626 (1968).

When the identity of the person maintaining a nuisance condition is known, notice should be provided by personal service or service by mail (posting notice on the property *may* also be sufficient). If the person is unknown, publication can be sufficient, but the city's diligence in determining identity or residency may come into question.

C. Documentation

See LMCIT risk management memo, *Exercising Discretion: Keeping Records to Support Immunity.*

State v. Haase, No. C4-00-1463, 2001 WL 345485 (Minn. Ct. App. Apr. 10, 2001 (unpublished decision).

City officials need to document and maintain records of their nuisance abatement activities. Staff notes, photographs, video recordings, and copies of notices will all help the city demonstrate that a nuisance condition existed. Adequate records will assist city staff in refreshing their recollections when testifying—perhaps more important in larger cities with many nuisance conditions occurring at any one time. Consider what equipment would be helpful (such as a digital camera) for documenting enforcement activities.

X. Consequences

The decision to adopt and enforce ordinances will lead to various consequences, some positive, some negative. Cities should consider the potential, perhaps likely, impacts when they consider their options.

A. Positives

A well-written and enforced city nuisance program may be the best option a community has in maintaining a high quality of life. Nuisance conditions can greatly impact a community's general livability. Cities can also avoid greater long-term costs when conditions are addressed in their infancy.

"Broken Windows" *The Atlantic Online*, (March 1982)

In addition to the obvious criminal or social concerns nuisances can cause, many theorists contend that nuisance conditions themselves breed more and more nuisance activities. With their "broken windows" theory, James Q. Wilson and George Keiling proposed that if nuisances are allowed to go uncorrected, individuals are empowered to cause more nuisances, nurturing an environment in which criminals can thrive on apathy and neglect.

In short, the enforcement of ordinances and the abatement of nuisances have been credited with:

- Increased property values and community pride.
- Lower crime rates and less gang-related activities.
- Creating a more attractive destination to visitors, potential residents, and potential businesses.

B. Negatives

Handbook, Chapter 18.

There are ongoing responsibilities with enforcing nuisance ordinances. While cities are afforded some degree of deference in regard to city policies, the lack of clarity surrounding nuisance activities can create its own problems particularly where:

- Officials are not properly trained in nuisance enforcement.
- Differences in philosophies exist.
- A nuisance is declared, but no nuisance actually exists.
- City officials have consistently failed to enforce an ordinance.
- Selective or discriminatory enforcement occurs.
- City officials undertake unreasonable or illegal searches.
- Inappropriate or unwarranted abatement actions occur.

Center on Juvenile and Criminal Justice

There is a large area of conduct where there may be a reasonable difference in opinion as to whether something really is a public nuisance. In addition, there are conflicting opinions on how valid "broken windows" or similar theories are in demonstrating how minor nuisances grow into larger concerns.

See Part XI – *Special assessments.*

Regardless of the long-term savings, nuisance enforcement costs money. A city will need to budget for the costs of city employees, inspections, hearings, and the actual abatement of nuisance and hazardous conditions. While there are mechanisms to recover abatement/enforcement costs, many governments simply do not have the funds to make code enforcement a priority.

XI. Special assessments

In addition to the other means available for a city to recoup the nuisance-related costs, a city may use special assessments to recover its costs.

See LMC information memo, *Special Assessment Guide.*

Minn. Const. art. X § 1.

Minn. Stat. § 429.061.

Special assessments are a charge imposed on properties for a particular improvement that benefits the owners of those selected properties. The authority to use special assessments originates in the Minnesota Constitution. Cities and other governmental entities have the authority "to levy and collect assessments for local improvements upon property benefited thereby." Generally, cities use assessments to finance a variety of public improvements, but may also use them to collect unpaid service charges. Statutory or charter procedures and notice requirements must be followed.

Minn. Stat. § 429.101, subd. 1

Cities may, through city ordinance, require that property owners perform certain property-related services. If the city performs the services, it may assess the property benefited for all or any part of the cost of:

- Snow, ice, or rubbish removal from sidewalks.
- Weed elimination from streets or private property.
- The removal or elimination of public health or safety hazards from private property.
- The installation or repair of water service lines, street sprinkling, or other dust treatment of streets.
- The trimming and care of trees and the removal of unsound trees from any street.
- The treatment and removal of insect-infested or diseased trees on private property.
- The repair of sidewalks and alleys.
- Inspections relating to municipal housing maintenance code violations.
- Recovering delinquent vacant building program registration fees.

Minn. Stat. § 429.101, subd. 2.

Singer v. City of Minneapolis, 586 N.W.2d 804 (Minn. Ct. App. 1988).

Special assessments levied may be payable in a single installment or by up to 10 equal annual payments. The city must pass an ordinance to make this authority effective. The special assessment statute can also apply to home rule charter cities in absence of a specific charter or ordinance provision governing assessment procedures within that jurisdiction.

Minn. Stat. § 429.101, subd. 1.

Assuming the city has adopted a special assessment ordinance and the condition fits under the state statute, costs may be recoverable through the assessment process.

XII. Conclusion

Cities have broad authority to define, penalize, and abate public nuisance activities and conditions. City authority is not limitless, however. Cities do not have the power to intervene over private nuisances, nor may they declare conditions to be nuisances that in fact are not. Local authority must not be used arbitrarily, but city officials must be prepared to enforce whatever provisions are adopted. While there are ways to recoup enforcement and abatement expenses, effective nuisance regulations require funding and the use of city personnel.

Appendix

LEAGUE OF MINNESOTA CITIES MODEL NUISANCE ORDINANCE (January 2010)

Before adopting this ordinance, a city should be familiar with the contents of the League of Minnesota Cities information memo, *Public Nuisances*, LMC 400A (January 2010).

INTRODUCTION AND INSTRUCTIONS:

This model ordinance regulating public nuisances contains a number of provisions a city may want to adopt. A city wishing to adopt this ordinance should review it with the city attorney to determine which provisions are best suited to the city's circumstances. A city can modify these ordinances by eliminating provisions that apply to activities it does not seek to regulate. Because provisions within this ordinance implicate state statutes and involve state and federal constitutional rights, the city attorney should review any modifications to ensure they conform to current law.

This model ordinance is drafted in the form prescribed by Minn. Stat. § 412.191, subd. 4, for statutory cities. Home rule charters often contain provisions concerning how the city may enact ordinances. Home rule charter cities should consult their charter and city attorney to ensure that the city complies with all charter requirements.

If your city has codified its ordinances, a copy of any nuisance ordinance must be furnished to the county law library or its designated depository pursuant to Minn. Stat. § 415.021.

ORDINANCE NO. _____

AN ORDINANCE REGULATING PUBLIC NUISANCES WITHIN THE CITY OF _____, MINNESOTA

THE CITY COUNCIL OF THE CITY OF _____, MINNESOTA DOES ORDAIN:

SECTION ONE. PUBLIC NUISANCE PROHIBITION.

A person must not act, or fail to act, in a manner that is or causes a public nuisance. For purpose of this ordinance, a person that does any of the following is guilty of maintaining a public nuisance:

(A) Maintains or permits a condition which unreasonably annoys, injures, or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public; or

(B) Interferes with, obstructs, or renders dangerous for passage, any public highway or right-of-way, or waters used by the public; or

(C) Does any other act or omission declared by law or this ordinance to be a public nuisance.

SECTION TWO. PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

(A) The exposed accumulation of decayed or unwholesome food or vegetable matter;

(B) All diseased animals running at large;

(C) All ponds or pools of stagnant water;

(D) Carcasses of animals not buried or destroyed within twenty-four (24) hours after death;

(E) Accumulation of manure, refuse, or other debris;

(F) Privy vaults and garbage cans which are not rodent-free or fly-tight, or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;

(G) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste, or other substances;

(H) All noxious weeds and other rank growths of vegetation upon public or private property;

(I) Dense smoke, noxious fumes, gas, soot, or cinders in unreasonable quantities;

(J) All public exposure of people having a contagious disease; and

(K) Any offensive trade or business as defined by statute not operating under local license.

SECTION THREE. PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

The following are hereby declared to be nuisances affecting public morals and decency:

(A) All gambling devices, slot machines, and punch boards, except otherwise authorized and permitted by federal, state, or local law;

(B) Betting, bookmaking, and all apparatus used in those occupations;

(C) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame, and bawdy houses;

(D) All places where intoxicating or 3.2 malt liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort, for the purpose of drinking intoxicating or 3.2 malt liquor, or where intoxicating or 3.2 malt liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining that place; and

(E) Any vehicle used for the unlawful transportation of intoxicating or 3.2 malt liquor, or for promiscuous sexual intercourse, or any other immoral or illegal purpose.

SECTION FOUR. PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following are declared to be nuisances affecting public peace and safety:

(A) All snow and ice that is not removed from public sidewalks within twenty-four (24) hours after the snow or other precipitation causing the condition has ceased to fall;

(B) All trees, hedges, billboards, or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;

(C) All wires and limbs of trees that are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;

(D) Any person participating in any party or other gathering that causes the unreasonable disturbing of the peace, quiet, or repose of another person;

(E) All unnecessary and annoying vibrations;

(F) Obstructions and excavations affecting the ordinary public use of streets, alleys, sidewalks, or public grounds, except under conditions as are permitted by this ordinance or other applicable law;

(G) Radio aerials or television antennae erected or maintained in a dangerous manner;

(H) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk that causes large crowds or people to gather, obstructing traffic and the free use of the street or sidewalk;

(I) All hanging signs, awnings, and other similar structures over streets and sidewalks, so situated as to endanger public safety, or not constructed and maintained as provided by ordinance;

(J) The allowing of rainwater, ice, or snow to fall from any building or structure upon any street or sidewalk or to follow across any sidewalk;

(K) Any barbed wire fence located less than six (6) feet above the ground and within three (3) feet of a public sidewalk or way;

(L) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;

(M) Wastewater cast upon or permitted to flow upon streets or other public properties;

(N) Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other materials in a manner conducive to the harboring of rats, mice, snakes, or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health, or other safety hazards from such accumulation;

(O) Any well, hole, or similar excavation that is left uncovered or in such other condition as to constitute a hazard to any child or other person coming on the premises where it is located;

(P) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter, or ditch with trash or other materials;

(Q) The placing or throwing on any street, sidewalk, or other public property of any glass, tacks, nails, bottles, or other substances that may injure any person or animal or damage any pneumatic tire when passing over such substance;

(R) The depositing of garbage or refuse on a public right-of-way or on adjacent private property;

(S) Reflected glare or light from private exterior lighting exceeding 0.5 footcandles as measured on the property line of the property where the lighting is located when abutting any residential parcel, and one (1) footcandle when abutting any commercial or industrial parcel; and

(T) All other conditions or things that are likely to cause injury to the person or property of another.

SECTION FIVE. NOISE VIOLATIONS.

(A) **Prohibited noises.**

The following are declared to be nuisances affecting public health, safety, peace, or welfare:

(1) Any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person, or precludes their enjoyment of property, or affects their property's value (this general prohibition is not limited by any specific restrictions provided in this ordinance);

(2) All obnoxious noises, motor vehicle or otherwise, in violation of Minn. R. ch. 7030, as they may be amended from time to time, are hereby incorporated into this ordinance by reference;

(3) The use of any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling, or other noise;

(4) The discharging of the exhaust or permitting the discharge of the exhaust of any statutory internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle (ATV), snowmobile, or any recreational device, except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations;

(5) Any loud or excessive noise in the loading, unloading, or unpacking of any vehicle; and

(6) The use or operation, or permitting the use or operation, of any radio receiving set, television set, musical instrument, music device, paging system, machine, or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet, and comfort of any person nearby.

(B) **Hourly restriction of certain operations.**

(1) **Domestic power equipment**. No person shall operate a power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, drill, or other similar domestic power equipment, except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday. Snow removal equipment is exempt from this provision.

(2) **Refuse hauling**. No person shall collect or remove garbage or refuse in any residential district, except between the hours of 6:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

(3) **Construction activities**. No person shall engage in or permit construction activities involving the use of any kind of electric, diesel, or gas-powered machine or other power equipment, except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

(4) **Radios, music devices, paging systems, and the like.** The operation of any device referred to in subdivision (A) (6) between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building shall be prima facie evidence of a violation of this section.

(C) **Noise impact statements**. The Council may require any person applying for a change in zoning classification or a permit or license for any structure, operation, process, installation, alteration, or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the Council. The Council shall evaluate each such statement and take its evaluation into account in approving or disapproving the license or permit applied for or the zoning changes requested.

SECTION SIX. NUISANCE PARKING AND STORAGE.

(A) **Declaration of nuisance**. The outside parking and storage on residentially zoned property of large numbers of vehicles and vehicles, materials, supplies, or equipment not customarily used for residential purposes in violation of the requirements set forth below is declared to be a public nuisance because it: (1) obstructs views on streets and private property, (2) creates cluttered and otherwise unsightly areas, (3) prevents the full use of residential streets for residential parking, (4) introduces commercial advertising signs into areas where commercial advertising signs are otherwise prohibited, (5) decreases adjoining landowners' and occupants' use and enjoyment of their property and neighborhood, and (6) otherwise adversely affects property values and neighborhood patterns.

(B) **Unlawful parking and storage.**

(1) A person must not place, store, or allow the placement or storage of ice fishing houses, skateboard ramps, playhouses, or other similar non-permanent structures outside

continuously for longer than twenty-four (24) hours in the front yard area of residential property unless more than one hundred (100) feet back from the front property line.

(2) A person must not place, store, or allow the placement or storage of pipe, lumber, forms, steel, machinery, or similar materials, including all materials used in conjunction with a business, outside on residential property, unless shielded from public view by an opaque cover or fence.

(3) A person must not cause, undertake, permit, or allow the outside parking and storage of vehicles on residential property unless it complies with the following requirements:

(a) No more than four (4) vehicles per lawful dwelling unit may be parked or stored anywhere outside on residential property, except as otherwise permitted or required by the city because of nonresidential characteristics of the property. The maximum number does not include vehicles of occasional guests who do not reside on the property.

(b) Vehicles that are parked or stored outside in the front yard areas must be on a paved or graveled parking surface or driveway area.

(c) Vehicles, watercraft, and other articles stored outside on residential property must be owned by a person who resides on that property. Students who are away from school for periods of time but still claim the property as their legal residence will be considered residents on the property.

SECTION SEVEN. INOPERABLE MOTOR VEHICLES.

(A) **Declaration of nuisance**. Any motor vehicle described in this section shall constitute a hazard to the health and welfare of the residents of the community as such vehicles can harbor noxious diseases, furnish a shelter and breeding ground for vermin, and present physical danger to the safety and well-being of children and citizens. Motor vehicles also contain various fluids which, if released into the environment, can and do cause significant health risks to the community.

(B) **Inoperable motor vehicles.** It shall be unlawful to keep, park, store, or abandon any motor vehicle that is not in operating condition, partially dismantled, used for repair of parts or as a source of repair or replacement parts for other vehicles, kept for scrapping, dismantling, or salvage of any kind, or which is not properly licensed for operation within the state, pursuant to Minn. Stat. § 168B.011, subd. 3, as it may be amended from time to time.

(C) **Screening**. This section does not apply to a motor vehicle enclosed in a building and/or kept out of view from any street, road, or alley, and which does not foster complaint from a resident of the city. Privacy fencing is permissible.

SECTION EIGHT. DUTIES OF CITY OFFICERS.

City officials may apply and enforce any provision of this ordinance relating to public nuisances within this jurisdiction. Any peace officer or other designated city official shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances. Except in emergency situations of imminent danger to human life and safety, no peace officer or designated city official will enter private property for the purpose of inspecting or preventing public nuisances without the permission of the owner, resident, or other person in control of the property, unless the officer or person designated has obtained a warrant or order from a court of competent jurisdiction authorizing entry.

SECTION NINE. ABATEMENT PROCEDURE.

(A) **Procedure**. Whenever the peace officer or other designated official determines that a public nuisance is being maintained or exists on the premises in the city, the official shall notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the official shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement or obtain an administrative search and seizure warrant and abate the nuisance.

(B) **Notice**. Written notice of the violation; notice of the time, date, place, and subject of any hearing before the City Council; notice of the City Council order; and notice of motion for summary enforcement hearing shall be served by a peace officer or designated official on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premise is not occupied, the owner of record is unknown, or if the owner of record or occupant refuses to accept notice, notice of the violation shall be served by positing it on the premises.

(C) **Emergency procedure; summary enforcement**. In cases of emergency, where delay in abatement required to complete the procedure and notice requirements as set forth in subdivisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health, safety, or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the peace officer or other designated official shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement will unreasonably endanger public health, safety, or welfare. The officer or designated official shall notify in writing the occupant or owner of the premises of the nature of the nuisance, whether public health, safety, or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in subdivision (A) of this section and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

(D) **Immediate abatement.** Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

(E) **Unlawful parties or gatherings.** When law enforcement determines that a gathering is creating such a noise disturbance as prohibited under Section Four, Subdivision D, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disburse immediately. No person shall refuse to leave after being ordered to do so by law enforcement. Every owner or tenant of such premises who has knowledge of the disturbance shall make every reasonable effort to see that the disturbance is stopped.

(F) **Judicial remedy.** Nothing in this section shall prevent the city from seeking a judicial remedy when no other adequate administrative remedy exists.

SECTION TEN. RECOVERY OF COST.

(A) **Personal liability**. The owner of the premises on which a nuisance has been abated by the city, or a person who has caused a public nuisance on property not owned by that person, shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the city clerk or other city official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the city clerk.

(B) **Assessment**. After notice and hearing as provided in Minn. Stat. § 429.061, as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the city clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other such charges as well as other charges for current services to be assessed under Minn. Stat. § 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and any other pertinent statutes for certification to the county auditor and collection along with current taxes the following year or in annual installments, not exceeding ten (10), as the City Council may determine in each case.

SECTION ELEVEN. PENALTY.

Any person convicted of violating any provision of this ordinance is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000.00) or imprisonment for not more than ninety (90) days, or both, plus the costs of prosecution in either case.

SECTION TWELVE. SEVERABILITY.

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION THIRTEEN. EFFECTIVE DATE.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat., § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Passed by the Council this _____ day of _____, _____.

Attested:

_____ _____

Mayor **City Clerk**

AGENDA REPORT

TO: City Administrator

FROM: Public Works Director

SUBJECT: **Wheel Loader Purchase**

DATE: 4-2-2012

INTRODUCTION: Purchasing a wheel loader has been in the CIP for many years. This is a proven efficient snow removal tool and is essential for managing a road salt storage pile. The purchase has been delayed over the years because we have not had a proper facility for the storage and care for such a large piece of equipment. Storm sewer management and practices recommend having a street sweeper.

BACKGROUND: In the current CIP our scheduled purchase year is 2013. Because of new tier 4 emission requirements and the new optimized Z-bar linkage, the purchase price of a Cat wheel loader in 2013 will increase 6% to 8% ($9,000 to $12,000). The new facility will be ready in the fall of 2012. With these factors in mind, now might be a better time to purchase a wheel loader. If ordered now, the expected delivery date fully equipped would be early September. Storm water management authorities have recommended the purchase of street sweepers. Currently, contractors are used to sweep city streets on an as needed basis. Owning a self-contained mobile street sweeper is expensive and very labor intensive. Purchasing a small street sweeper attachment for the wheel loader would fill the gap for having a street sweeper in the event of an emergency (spill, accident) and for clean up after any City events or City repair projects. Contractors would still be used for routine spring and fall street sweeping.

RECOMMENDATION: Council authorizes the early purchase of the Cat Loader with pallet forks as quoted per State Bid from Ziegler Caterpillar Columbus, MN, for $166,643.78.

Council authorizes the purchase of used Sweepster attachment for wheel loader as quoted from Ziegler Caterpillar Columbus, MN, for $17,100.00.

BUDGET IMPACT: This is a 2013 budgeted CIP item and the total cost is approximately $1,600.00 under budget in the 2013 CIP. In order to "balance" the 2012 and 2013 budgets, the Council will be spending reserve dollars in 2012 and staff will eliminate the 2013 scheduled purchase of a wheel loader, this item would not be replaced with anything in the 2013 budget. Therefore, over the 2 year budget cycle, there should not be any negative budget impacts.

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Attachments:
1. Photos and Quote

City Of St. Francis

924K WHEEL LOADER

Attn: Paul
03/21/2012

Articulating Wheel Loader

	Make & Model	Caterpillar 924K
Price		$92,910.00
2.1	Cab—Deluxe. Also includes floodlights, external heated mirrors, sun visor, sun screen	INCLUDED
2.3	AM/FM radio	$210.00
2.5	Ride control	$2,050.00
2.10	Rear vision camera. 115 degree color camera connected to a 7 inch LCD in cab screen	$1,710.00
	Air conditioner	Included
2.11	Washer & Wiper, intermittent front	
3.2	Caterpillar Tier IVi compliant engine (Includes creeper control,trans.)	$7,560.00
3.3	Differential, locking front	Included
3.4	Differential, limited slip, rear	$1,474.00
4.1	Strobe light Whelan 1200 blue or amber	$770.00
4.2	Work lights	$40.00
5.4	TIRES, 20.5-R25 * Michelin, XTLA L2	$3,960.00
6.4	Hydraulics 4 valve, 2 lever with proportional control	$1,920.00
7.7	Caterpillar Fusion quick coupler, (factory installed)	$3,470.00
7.10	General Purpose, 2.7cyd. with bolt-on edge	$4,470.00
7.40	Falls Model PR1243 hydraulic reversible plow (12') with Caterpillar or American Coupler female adapter installed.	$8,140.00
7.35	Falls LDL 10 snow wing (10') with hydraulic push bar and PR 1243 (12') hydraulic reversible plow with Caterpillar or American female adapter installed. (includes 7.31 2SGL ELECTRONIC JOYSTICK W/ 2 DIVERTER VALVES)	$16,580.00
8.2	Counterweight, 1,135 lbs	$670.00
8.10	Fenders, roading, front and rear (non metallic)	$1,260.00
9.73	5 Year/5000 Hour Total Plus	$4,070.00

TOTAL.....$151,264.00
Sales Tax (6.875).....$ 10,399.40
Total.....$161,663.40

OPTIONS:

60" PALLET FORKS.....$ 4,360.00

6 stainless steel couplers for plow wing install ($50.00 each X 6).....$+ 300.00
4660.00 + TAX = $4980.38

Model LLB Pick up Broom with IT coupler attach single gutter broom(new).$ 19,900.00

2007 Sweepster Broom with curb brush and water option(USED)..... ...$ 16,000.00 + TAX = $17,100.00
Sold w/ 1 year parts warranty

CAT 924K
CAT

SWEEPSTE