

**A G E N D A**  
**CITY COUNCIL MEETING**  
**TUESDAY, JANUARY 18, 2022**  
**5:30 P.M.**  
**COUNCIL CHAMBERS**

Call to Order.

Pledge of Allegiance.

Roll Call.

- (mot) 1. Adoption of Agenda.
  - (mot) 2. Approving minutes from January 3, 2022
  - 3. Recognitions and Awards.  
Food Drive Plaque Presentation – Trish Harren
  - (mot) 4. \*Consent Agenda  
Licenses:
    - Exempt Gambling (raffle): NWTF Cedar River Longbeards Chapter on January 29, 2022
    - Food: United Asian Grocery, 1300 18<sup>th</sup> Avenue NW, Suite C
    - Massage Establishment: DS Massage, 2105 3<sup>rd</sup> Avenue SE
    - Massage Therapist: Daniel Stallkamp, 2105 3<sup>rd</sup> Avenue SE
    - Massage Therapist: Jody Nelson, 804 16<sup>th</sup> Avenue SE
    - Tree Removal: Koehler's Yard Service, 89190 State Hwy 251
- Claims:
- a. Pre-list of bills
  - b. Investment Report.

**PETITIONS AND REQUESTS:**

- 5. Mr. Timm's 4<sup>th</sup> grade class from Southgate requesting permission to plant trees on City property.
- (res) 6. Amending the Minnesota Municipal Gas Agreement.
- (res) 7. Setting 2022 assessment rates.
- (mot) 8. Accepting the audit engagement letter from CliftonLarsonAllen, LLP.
- 9. Reviewing an updated zoning ordinance. *(full text in separate upload)*
  - (mot) a. For preparation of the ordinance.
  - (ord) b. For adoption and publication of the ordinance.
  - (res) c. For summary publication of the ordinance.
- (res) 10. Authorizing the execution of a Minnesota opioids state subdivision memorandum of agreement.
- (res) 11. Accepting donations to the City of Austin.

- (res) 12. Granting an easement to Metro Fibernet, LLC.
- (res) 13. Dedicating property for street purposes.
- (res) 14. Approving an ICM agreement with Minnesota Freezer Warehouse.
- (res) 15. Receiving a feasibility report and calling for a public hearing on April 4, 2022 for street improvements on 40<sup>th</sup> Street W (Oakland Avenue W to 5<sup>th</sup> Avenue NW) and 5<sup>th</sup> Avenue NW (40<sup>th</sup> Street NW to Dead End), Project 22108.
- 16. Reviewing a variance request from Gregory Hovland.
  - (mot) a. Approve or deny variance request.
- (res) 17. Granting an off-site gambling permit to the Fraternal Order of the Eagles at the Mower County Fairgrounds on February 25 & 26, 2022.
- (mot) 18. Granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 307 7<sup>th</sup> Street NE, Cruz Property.

#### **CITIZENS ADDRESSING THE COUNCIL**

#### **HONORARY COUNCIL MEMBER COMMENTS**

#### **REPORTS AND RECOMMENDATIONS:**

City Administrator  
City Council

- (mot) Adjourn to **Monday, February 7, 2022** at 5:30 pm in the Council Chambers.

\*All items listed with an asterisk (\*) are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a council member or citizen so requests in which event the item will be removed from the general order of business and considered in its normal sequence on the agenda.

M I N U T E S  
CITY COUNCIL MEETING  
January 3, 2022  
5:30 PM  
Council Chambers

MEMBERS PRESENT: Mayor King. Council Members Paul Fischer, Rebecca Waller, Oballa Oballa, Michael Postma, Joyce Poshusta and Council Member-at-Large Jeff Austin

MEMBERS ABSENT: Council Member Jason Baskin

STAFF PRESENT: City Administrator Craig Clark, Director of Administrative Services Tom Dankert and Police Chief David McKichan

STAFF APPEARING ELECTRONICALLY: Public Works Director Steven Lang, Fire Chief Jim McCoy, Planning and Zoning Administrator Holly Wallace, Park and Rec Director Kevin Nelson, City Attorney Craig Byram, Assistant City Engineer Mitch Wenum, Library Director Julie Clinefelter, Human Resources Director Trish Wiechmann and City Clerk Ann Kasel

APPEARING IN PERSON: Austin Daily Herald

Mayor King called the meeting to order at 5:30 p.m.

Moved by Council Member Postma, seconded by Council Member Fischer, approving the agenda. Carried.

Moved by Council Member Fischer, seconded by Council Member Waller, approving Council minutes from December 20, 2021. Carried.

#### CONSENT AGENDA

Moved by Council Member Fischer, seconded by Council Member Oballa, approving the consent agenda as follows:

#### Licenses:

Exempt Gambling: PayItForward, Inc. on January 15, 2022  
Food: Loikaw21 Co., 209 11<sup>th</sup> Street NE  
Food: Sterling Main Street, 1305 1<sup>st</sup> Avenue SW  
Motel: Sterling Motel, 1507 W. Oakland Avenue  
Right-of-Way: ACI Asphalt & Concrete, Inc., Maple Grove  
Right-of-Way: Carl Bolander & Sons, LLC, St. Paul  
Right-of-Way: MetroFibernet, LLC, Overland Park, Kansas  
Tree Service: O'Connell Tree Service, LLC, Hollandale

Claims:

- a. Pre-list of bills
- b. Credit Card Report.

Carried.

## PETITIONS AND REQUESTS

Director of Administrative Services Tom Dankert requested the Council designate depositories for checking and investment of public funds. He stated there are no changes from the previous year.

Moved by Council Member-at-Large Austin, seconded by Council Member Oballa, adopting a resolution designating depositories for checking and investment of public funds for 2022. Carried 6-0.

Director of Administrative Services Tom Dankert requested the Council approve the official newspaper for 2022. The Austin Daily Herald is the only eligible newspaper and is raising their rate 8% to \$5.47 per inch.

Moved by Council Member Fischer, seconded by Council Member Waller, designating the official newspaper for the City for 2022. Carried 6-0.

Director of Administrative Services Tom Dankert requested the Council set the mileage reimbursement rate at .585 cents per mile for 2022.

Moved by Council Member Postma, seconded by Council Member Poshusta, adopting a resolution setting the mileage reimbursement rate for 2021 at .585 cents per mile. Carried 6-0.

Director of Administrative Services Tom Dankert requested approval of budget adjustment number 1 for the 2022 budget. He stated the adjustment is needed for the Hormel Foundation grants and additional Police items.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution approving budget adjustment number 1. Carried 6-0.

Director of Administrative Services Tom Dankert requested the Council approve the appointment of the Mayor and himself to the Board of Trustees for the Volunteer Relief Association. The officers were originally appointed in the 1990's but haven't been appointed since. Mr. Dankert stated the appointment would be an annual item.

Moved by Council Member Fischer, seconded by Council Member Oballa, adopting a resolution appointing Mayor King and Director of Administrative Services Tom Dankert to the board of trustees for the part-time firefighter's relief association. Carried.

Assistant City Engineer Mitch Wenum presented a feasibility report to Council for the 21<sup>st</sup> Avenue NE – 8<sup>th</sup> Drive NE to 14<sup>th</sup> Street NE street construction project. He stated the project is feasible and will have a total cost of \$1,400,000. Mr. Wenum reviewed the project and requested a public hearing be held for the improvement on February 22, 2022.

Moved by Council Member Fischer, seconded by Council Member Oballa, adopting a resolution receiving a feasibility report and calling for a public hearing on February 22, 2022 for street improvements on 21<sup>st</sup> Avenue NE – 8<sup>th</sup> Drive NE to 14<sup>th</sup> Street NE, Project 22101. Carried 6-0.

Assistant City Engineer Mitch Wenum presented a feasibility report to Council for the 9<sup>th</sup> Street NW – 10<sup>th</sup> Avenue NW to 12<sup>th</sup> Avenue NW and 10<sup>th</sup> Street NW – 8<sup>th</sup> Avenue NW to 13<sup>th</sup> Avenue NW street construction project. He stated the project is feasible and will have a total cost of \$930,000. Mr. Wenum reviewed the project and requested a public hearing be held for the improvement on February 22, 2022.

Moved by Council Member Oballa, seconded by Council Member Waller, adopting a resolution Receiving a feasibility report and calling for a public hearing on February 22, 2022 for street improvements on 9<sup>th</sup> Street NW – 10<sup>th</sup> Avenue NW to 12<sup>th</sup> Avenue NW and 10<sup>th</sup> Street NW – 8<sup>th</sup> Avenue NW to 13<sup>th</sup> Avenue NW, Project 22102. Carried 6-0.

Assistant City Engineer Mitch Wenum presented a feasibility report to Council for 3<sup>rd</sup> Avenue NE – Oakland Place NE to 19<sup>th</sup> Street NE street construction project. He stated the project is feasible and will have a total cost of \$1,010,000. Mr. Wenum reviewed the project and requested a public hearing be held for the improvement on February 22, 2022.

Moved by Council Member Fischer, seconded by Council Member Postma, adopting a resolution Receiving a feasibility report and calling for a public hearing on February 22, 2022 for street improvements on 3<sup>rd</sup> Avenue NE – Oakland Place NE to 19<sup>th</sup> Street NE, Project 22103. Carried 6-0.

Assistant City Engineer Mitch Wenum presented a feasibility report to Council for the 3<sup>rd</sup> Street NE – 16<sup>th</sup> Avenue NE to 18<sup>th</sup> Avenue NE street construction project. He stated the project is feasible and will have a total cost of \$500,000. Mr. Wenum reviewed the project and requested a public hearing be held for the improvement on February 22, 2022.

Moved by Council Member Poshusta, seconded by Council Member Waller, adopting a resolution Receiving a feasibility report and calling for a public hearing on February 22, 2022 for street improvements on 3<sup>rd</sup> Street NE – 16<sup>th</sup> Avenue NE to 18<sup>th</sup> Avenue NE, Project 22104. Carried 6-0.

Assistant City Engineer Mitch Wenum presented a feasibility report to Council for the 5<sup>th</sup> Avenue SW – 27<sup>th</sup> Street SW to 29<sup>th</sup> Street SW and 16<sup>th</sup> Street SW – 16<sup>th</sup> Avenue SW to 19<sup>th</sup> Avenue SW street construction project. He stated the project is feasible and will have a total cost of \$125,000. Mr. Wenum reviewed the project and requested a public hearing be held for the improvement on February 22, 2022.

Moved by Council Member Fischer, seconded by Council Member Oballa, adopting a resolution Receiving a feasibility report and calling for a public hearing on February 22, 2022 for street improvements on 5<sup>th</sup> Avenue SW – 27<sup>th</sup> Street SW to 29<sup>th</sup> Street SW and 16<sup>th</sup> Street SW – 16<sup>th</sup> Avenue SW to 19<sup>th</sup> Avenue SW, Project 22106. Carried 6-0.

Assistant City Engineer Mitch Wenum presented a feasibility report to Council for the 7<sup>th</sup> Avenue SW – 23<sup>rd</sup> Street SW to 24<sup>th</sup> Street SW, 11<sup>th</sup> Avenue SW – 10<sup>th</sup> Avenue SW to 18<sup>th</sup> Street SW and 23<sup>rd</sup> Street SW – 9<sup>th</sup> Avenue SW to dead end street construction project. He stated the project is feasible and will have a total cost of \$250,000. Mr. Wenum reviewed the project and requested a public hearing be held for the improvement on February 22, 2022.

Moved by Council Member Fischer, seconded by Council Member Waller, adopting a resolution receiving a feasibility report and calling for a public hearing on February 22, 2022 for street improvements on 7<sup>th</sup> Avenue SW – 23<sup>rd</sup> Street SW to 24<sup>th</sup> Street SW, 11<sup>th</sup> Avenue SW – 10<sup>th</sup> Avenue SW to 18<sup>th</sup> Street SW and 23<sup>rd</sup> Street SW – 9<sup>th</sup> Avenue SW to dead end, Project 22107. Carried 6-0.

## REPORTS

City Administrator Craig Clark stated the joint Council and school board meeting will be on February 14<sup>th</sup> at 4:30 in the school annex.

Council Member-at-Large Austin congratulated Council Member Oballa on the birth of his son.

Council Member Fischer thanked all law enforcement for all of their hard work lately. Council Member Oballa echoed his words.

Moved by Council Member Postma, seconded by Council Member Fischer, adjourning the meeting to January 18, 2022. Carried.

Adjourned: 5:55 p.m.

Approved: January 18, 2022

Mayor: \_\_\_\_\_

City Recorder: \_\_\_\_\_



Date: December 29th, 2021

To: Mayor Steve King  
Austin City Council

From: Mark Nibaur, General Manager  
Austin Utilities

RE: Resolution Approving Amendment to Minnesota Municipal Gas Agency (MMGA)  
Agreement

Austin Utilities is a founding member of MMGA. The agency was formed to allow gas municipals to participate in natural gas prepay purchases. A natural gas prepay purchase deal is a gas and financial commodity transaction to provide customers an economic hedge on natural gas pricing. The deal allows AU to lock in a discount for long term future gas purchase.

MMGA would like to amend the agency agreement to allow the agency to expand the participants joining a natural gas prepay transaction.

The Minnesota Legislature amended the Act to provide municipal gas agencies such as MMGA, to exercise powers of a municipal power agency under Minnesota Statutes, Chapter 453A. Accordingly, the Agency and its Members wish to amend the Original Agency Agreement in order that the Agency Agreement authorizes and empowers the Agency to exercise such powers in a tax-exempt prepaid energy transaction.

Section 1 of the Original Agency Agreement is hereby amended to read as follows:

*Section 1. Creation and Purpose. The below-mentioned Agency is created and incorporated as a municipal corporation and a political subdivision of the State of Minnesota under and pursuant to the provisions of the Act, to exercise thereunder a part of the sovereign powers of said State, to finance, acquire, operate and dispose of, either as owner or agent, projects, located within or outside the state, for the production, exploration, transmission or storage of gas resources, and to enter into contracts relating to the acquisition, operation, disposal or leasing of related projects or sale of related services, in order to secure an adequate, economical, and reliable supply of gas, and in furtherance thereof, to exercise all of the powers granted to an Agency by the Act and by Minnesota Statutes, Sections 452.25 and 452.26.*

*The Agency may also exercise the powers of a municipal power agency under Minnesota Statutes, Chapter 453, to the extent authorized by the Act.*

The MMGA Board approved an amendment to the Agency Agreement. Next steps are for all the members to seek governing bodies' approval of the amendment.

Included with this memo is a certification, resolution and the amendment documents.

If you have questions, please let me know.

Thank you

**AMENDMENT No. 1  
to AGENCY AGREEMENT**

This Amendment No. 1 dated as of January 1, 2022 ("Amendment No. 1") amends the Agency Agreement dated as of April 10, 2007, creating the Minnesota Municipal Gas Agency (the "Agency") which agreement is on file (Corporate Charter No. 2529998-2) with the Secretary of State of Minnesota (the "Original Agency Agreement"; such Original Agency Agreement as amended by this Amendment No. 1 is hereinafter referred to as the "Agency Agreement"). The parties to the Original Agency Agreement are CITY OF AUSTIN, a city organized and existing under the laws of the State of Minnesota, CITY OF CIRCLE PINES, a city organized and existing under the laws of the State of Minnesota, CITY OF CLARISSA, a city organized and existing under the laws of the State of Minnesota, CITY OF EAGLE BEND, a city organized and existing under the laws of the State of Minnesota, CITY OF FAIRFAX, a city organized and existing under the laws of the State of Minnesota, CITY OF HIBBING, a city organized and existing under the laws of the State of Minnesota, CITY OF HUTCHINSON, a city organized and existing under the laws of the State of Minnesota, CITY OF NEW ULM, a city organized and existing under the laws of the State of Minnesota, CITY OF OWATONNA, a city organized and existing under the laws of the State of Minnesota, CITY OF PERHAM, a city organized and existing under the laws of the State of Minnesota, CITY OF TYLER, a city organized and existing under the laws of the State of Minnesota, and CITY OF VIRGINIA, a city organized and existing under the laws of the State of Minnesota (herein referred to collectively as the "Cities"). The Cities and any cities becoming parties to the Agency Agreement in accordance with its terms after the date hereof are herein collectively referred to as the "Members." Capitalized terms not otherwise defined in this Amendment No. 1 shall be as defined in the Original Agency Agreement.

**WITNESSETH:**

**WHEREAS**, the Original Agency Agreement created the Agency pursuant to Minnesota Statutes, Section 453A.01 through Section 453A.12, inclusive (herein referred to as the "Act," which term includes any amendment thereof); and

**WHEREAS**, each City is a Member of the Agency and is authorized either by the laws of the State of Minnesota or by its city charter adopted pursuant thereto to engage in the local distribution and sale of gas; and

**WHEREAS**, the Original Agency Agreement provides for the amendment thereof subject to certain conditions set forth in the Original Agency Agreement; and

**WHEREAS**, this Amendment No. 1 has been approved by two-thirds of all of the Representatives, and has been approved and concurred in by resolutions of the governing body (as such term is defined in the Act) and resolutions of the city council (or other body which is charged by law or its charter with the general control of such City's governmental affairs) of two-thirds of all of the Members, and upon the filing with the Secretary of State as required by the Act of a certified copy of each such resolution and this Amendment No. 1, this Amendment No. 1 shall be effective.

**NOW, THEREFORE,** each of the Cities and each of the cities becoming a Member of the Agency after the date hereof, does hereby covenant and agree, each in consideration of the foregoing and in consideration of the covenants and agreements of the other; as follows:

**Section 1. Purpose of Amendment No. 1.** The Minnesota Legislature has amended the Act to provide that municipal gas agencies such as the Agency may exercise powers of a municipal power agency under Minnesota Statutes, Chapter 453, for certain purposes. In planning for its future needs and those of its Members, the Agency may determine that it is beneficial to the Agency and its Members for the Agency to exercise such powers. Accordingly, the Agency and its Members wish to amend the Original Agency Agreement in order that the Agency Agreement authorizes and empowers the Agency to exercise such powers.

**Section 2. Amendments to Original Agency Agreement.** Section 1 of the Original Agency Agreement is hereby amended to read as follows:

Section 1. Creation and Purpose. The below-mentioned Agency is created and incorporated as a municipal corporation and a political subdivision of the State of Minnesota under and pursuant to the provisions of the Act, to exercise thereunder a part of the sovereign powers of said State, to finance, acquire, operate and dispose of, either as owner or agent, projects, located within or outside the state, for the production, exploration, transmission or storage of gas resources, and to enter into contracts relating to the acquisition, operation, disposal or leasing of related projects or sale of related services, in order to secure an adequate, economical, and reliable supply of gas, and in furtherance thereof, to exercise all of the powers granted to an Agency by the Act and by Minnesota Statutes, Sections 452.25 and 452.26.

The Agency may also exercise the powers of a municipal power agency under Minnesota Statutes, Chapter 453, to the extent authorized by the Act.

**Section 3. Effective Date.** This Amendment No. 1 shall be effective upon its filing with the Secretary of State as required by the Act together with a certified copy of the resolutions referred to in the last "WHEREAS" clause hereof.

**Section 4. Counterparts.** Amendment No. 1 may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute Amendment No. 1 by signing any such counterpart.

IN WITNESS WHEREOF, at least two-thirds of the CITY OF AUSTIN, the CITY OF CIRCLE PINES, the CITY OF CLARISSA, the CITY OF EAGLE BEND, the CITY OF FAIRFAX, the CITY OF HIBBING, the CITY OF HUTCHINSON, the CITY OF NEW ULM, the CITY OF OWATONNA, the CITY OF PERHAM, the CITY OF TYLER, and the CITY OF VIRGINIA, have caused this AMENDMENT NO. 1 to be executed and attested by a duly authorized officer, have caused to be attached hereto the certified resolution of its governing body (as such term is defined by the Act), and the certified resolution of its city council (or other body which is charged by law or its charter with the general control of such City's governmental affairs), and have caused this AMENDMENT NO. 1 to be filed with the Secretary of State of Minnesota, all as of the day and year first written above.

CITY OF AUSTIN, MINNESOTA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)  
Attest:

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

**CERTIFICATION OF RESOLUTION RELATING TO  
AMENDMENT OF AGENCY AGREEMENT OF  
MINNESOTA MUNICIPAL GAS AGENCY**

Entity: \_\_\_\_\_  
Governing Body: \_\_\_\_\_

We, the undersigned \_\_\_\_\_ and \_\_\_\_\_ of the \_\_\_\_\_, for and on behalf of \_\_\_\_\_, do hereby certify as follows:

Attached hereto is a full, true and correct copy of Resolution \_\_\_\_\_ (the "Agency Agreement Amendment Resolution") of and adopted by the \_\_\_\_\_ (the "\_\_\_\_\_"), approving Amendment No. 1 to the Agency Agreement of the Minnesota Municipal Gas Agency, dated April 10, 2007. The members of the \_\_\_\_\_ have and had, at the time of the adoption of the Agency Agreement Amendment Resolution, full power and lawful authority to adopt the Agency Agreement Amendment Resolution. The Agency Agreement Amendment Resolution was adopted at a meeting of the \_\_\_\_\_, held on \_\_\_\_\_, 202\_\_, for which meeting proper notice was given in the manner required by law, and at which meeting a quorum was present and acting throughout. The Agency Agreement Amendment Resolution has not been altered, amended, repealed, or limited as of the date hereof and is in full force and effect.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**RESOLUTION APPROVING AMENDMENT OF AGENCY  
AGREEMENT OF MINNESOTA MUNICIPAL GAS AGENCY**

**Resolution No. \_\_\_\_\_**

WHEREAS, the \_\_\_\_\_ is a member of the Minnesota Municipal Gas Agency (the "Agency"), a municipal gas agency organized under Minnesota Statutes, Sections 453A.01 through 453A.12, and a Minnesota municipal corporation and political subdivision, pursuant to that Agency Agreement dated April 10, 2007 (the "Agency Agreement"); and

WHEREAS, there have been presented to the \_\_\_\_\_ copies of a proposed Amendment No. 1 to the Agency Agreement, the form which is attached hereto as Exhibit A (the "Amendment"); and

WHEREAS, the Board of Directors and Member Representatives of the Agency have approved the Amendment as required by the Agency Agreement.

NOW, THEREFORE BE IT RESOLVED, AS FOLLOWS:

1. That the \_\_\_\_\_ approves and concurs in the Amendment; and
2. The \_\_\_\_\_ authorizes, empowers and directs \_\_\_\_\_ to execute the Amendment and all other documents, and to take all other actions, to effect the Amendment.

Adopted by the \_\_\_\_\_ of the \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

(SEAL)

ATTEST:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT A**  
Amendment No. 1 to Agency Agreement

City of Austin  
500 Fourth Avenue N.E.  
Austin, Minnesota 55912-3773



Steven J. Lang, P.E.  
City Engineer/P.W. Director  
507-437-9950  
Fax 507-437-7101  
slang@ci.austin.mn.us

## Memorandum

**To:** Mayor & Council  
**From:** Mitch Wenum, PE  
**Date:** January 12, 2022  
**Subject:** 2022 Assessment Rates

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The City of Austin has developed a system of set assessment rates for street reconstruction projects. This process allows the city to develop the assessment amounts and present them to the property owners before the project begins. Ideally, 50% of the project costs would be assessed to the adjacent property owners. This is difficult to achieve due to corner lots, intersections and other factors, therefore our goal is to assess 40% of the project costs.

For the 2021 local street projects, we compared the actual construction costs to the assessments made to adjacent property owners. We determined that 33.1% of the local street project costs were assessed to adjacent property owners, the remainder of the project costs were paid by the capital revolving fund. In order to meet state requirements for assessments we need to assess a minimum of 20% of project costs.

At the work session on January 3<sup>rd</sup>, we discussed the proposed assessment rates. The council directed us to increase the residential and commercial street reconstruction rates by 7%. This increase will likely keep our assessments near 30-35% of the total street reconstruction cost. In addition, we have proposed rate adjustments for sidewalk, curb & gutter, and mill & overlay rates as shown on the attached sheet.

If you have any questions, please feel free to contact me.

Please see attachments:

- Paving Assessment Policy
- 2021 Project Costs and Assessments
- Construction Costs Index, 2004-2021
- Assessment Rate Index, 2003-2022
- Assessment Rates, 2003-2022

## **Paving Assessment Policy**

### **Roadway Life Expectancy**

A new fully reconstructed roadway completed under the direction of the City Engineer, is expected to last a minimum of 35 years. If the roadway is reconstructed prior to the 35 year life, adjacent property owners will receive a 1/35th reduction to the assessment rate for every year short of 35 (example; if a roadway is reconstructed 32 years after the previous reconstruction project, the assessment rate would be reduced by 3/35ths). A resurfacing project will have a life expectancy of 7 years and the same credit would apply accordingly.

### **Commercial Property**

Commercially used property will be assessed based on a set rate adopted by the City Council at the first part of each year. The basis of the amount is the cost to reconstruct the street divided by four. One side pays  $\frac{1}{4}$ , the other side pays  $\frac{1}{4}$ , and the City pays the remaining  $\frac{1}{2}$ . If there is no existing curb and curb is installed, the property will be charged additional for curb at the designated rate.

In the case of a commercial corner lot that the owner maintains a residence, the assessment will be split accordingly:

The above described situation will have the property owner paying a commercial assessment rate for the average length of the two sides and paying a residential rate for the remaining length. The commercial assessment rate will be the first rate applied if the two phases are done in different years.

### **Residential Property**

Residential property will be assessed based on a set rate adopted by the City Council at the first part of each year. The basis of the amount is the cost to reconstruct the street divided by four. One side pays  $\frac{1}{4}$ , the other side pays  $\frac{1}{4}$ , and the City pays the remaining  $\frac{1}{2}$ . If there is no existing curb and curb is installed, the property will be charged additional for curb at the designated rate.

### **Schools & Churches**

Property owned by the school district and churches shall be assessed at the residential rate, but do not receive the corner lot exemption.

### **Apartments**

Property having a multiple dwelling use shall be assessed at the residential rate.

- 1) If owner maintains a residence in the building, it will receive the corner lot policy.
- 2) If owner does not live at residence, it will not receive the corner lot exemption.

### **Frontage Roads/Service Drives**

Where a street and a frontage road/service drive exists, the property abutting the frontage road/service drive will only be assessed for improvements to the frontage road/service drive. They will not be assessed for improvements to the street.

### **Corner Lot**

Corner lots will not be assessed for any more than the average length of both sides. The first side assessed against the property will continue to govern for future assessments. The corner lot policy only applies to residential parcels.

### **Interior Lot – Double Frontage**

Interior lots which abut two parallel streets, the frontage shall be calculated on only one side of the lot, using the average of each end. The first side assessed against the property will continue to govern for future assessments. The interior lot policy only applies to residential parcels.

### **Curb & Gutter**

A property will only be assessed for curb & gutter on the first initial installation. Corner lots will be assessed for curb & gutter using the corner lot policy.

### **Sidewalk**

Property owners will be assessed for sidewalk repair or replacement for all panels adjacent to their property frontage. Owners will be assessed based on set assessment rates or actual construction costs.

### **Assessment Period**

The assessment will be spread over a maximum 15-year period. The Council will set the interest rate on the unpaid balance at the time of the assessment hearing.

### **Annexations**

When the City annexes a subdivision into the City, whether the subdivision be partially or totally improved, the assessments will be for total costs of the improvements, such as, the sanitary sewer, the water, and the street improvements to the abutting properties. Credit will be given for curb or curb & gutter or any street surfacing on place at the time of the annexation.

## 2021 Project Costs and Assessments

### 1st Street & 1st Avenue SE

Street	\$606,117
Storm	\$80,707
Sanitary	\$63,021
Electrical	\$0
A.U. Billing	\$0
Assessment	\$124,355

% Assess.                      20.5%

### 8th Street & 9th Street NE

Street	\$776,246
Storm	\$109,533
Sanitary	\$79,946
Electrical	\$0
A.U. Billing	\$0
Assessment	\$216,680

% Assess.                      27.9%

**Average Local  
% Assessed      33.1%**

### 19th Street & 1st Avenue NW

Street	\$543,732
Storm	\$79,929
Sanitary	\$73,482
Electrical	\$0
A.U. Billing	\$0
Assessment	\$210,935

% Assess.                      38.8%

### 1st Avenue & 16th Street NE

Street	\$847,214
Storm	\$123,768
Sanitary	\$70,625
Electrical	\$0
A.U. Billing	\$0
Assessment	\$289,947

% Assess.                      34.2%

0.0% Not included in Ave. % Assessed

**21% Increase in Assessment Rates needed to meet 40% assessment goal**

### Funding

Street	50% Assessments & 50% Fund 49, Surplus funds from previous projects/state aid funds
Storm	Fund 67, Stormwater Utility District, User Fees
Sanitary	Fund 61, WWTP, User Fees
Street Lighting	Funding same as Street category
A.U. Billing	Work performed for Austin Utilities, they are billed 100% of costs

**Construction Bid Items**

Year	Common Excavation	Aggregate Base	Asphalt Paving	Concrete Paving	4" Sidewalk	Curb & Gutter	Catch Basins	Storm Manhole	Sanitary Manhole
2004		\$10.00 5.0%	\$38.50 1.3%	\$31.07 18.5%			\$1,150.00 8.7%	\$1,550.00 6.5%	
2005	\$7.25 37.9%	\$10.50 -4.8%	\$39.00 10.3%	\$36.81 6.1%	#DIV/0! \$3.55 -17.7%	#DIV/0! \$13.65 -19.4%	\$1,250.00 -6.0%	\$1,650.00 1.5%	
2006	\$10.00 12.5%	\$10.00 30.0%	\$43.00 14.0%	\$39.06 5.0%	\$2.92 4.5%	\$11.00 0.0%	\$1,175.00 2.1%	\$1,675.00 7.5%	
2008	\$11.25 -20.0%	\$13.00 1.9%	\$49.00 18.4%	\$41.00 9.8%	\$3.05 1.6%	\$11.00 2.3%	\$1,200.00 14.6%	\$1,800.00 6.9%	
2010	\$9.00 0.0%	\$13.25 5.7%	\$58.00 17.2%	\$45.00 6.7%	\$3.10 12.9%	\$11.25 2.2%	\$1,375.00 -3.6%	\$1,925.00	
2012	\$9.00 -11.1%	\$14.00 7.1%	\$68.00 4.4%	\$48.00 10.9%	\$3.50 17.1%	\$11.50 8.7%	\$1,325.00		
2014	\$8.00 12.5%	\$15.00 6.7%	\$71.00 -12.0%	\$53.25 7.0%	\$4.10 32.4%	\$12.50 40.0%	\$1,500.00 2.3%		
2016	\$9.00 -4.1%	\$16.00 2.6%	\$62.50 4.0%	\$57.00 -13.7%	\$5.43 9.6%	\$17.50 2.9%	\$1,535.00 10.2%	\$2,050.00 -4.2%	
2017	\$8.63 5.8%	\$16.42 5.1%	\$65.00 2.9%	\$49.19 No Bids	\$5.95 -5.9%	\$18.00 4.4%	\$1,691.00 8.5%	\$1,963.00 28.2%	\$3,130.00 -11.5%
2018	\$9.13 28.8%	\$17.25 11.7%	\$66.91 10.9%		\$5.60 23.9%	\$18.80 1.1%	\$1,834.00 31.4%	\$2,516.00 10.6%	\$2,769.00 60.0%
2019	\$11.76 3.0%	\$19.26 -1.5%	\$74.17 -7.0%	\$63.56 -4.0%	\$6.94 -7.8%	\$19.00 2.3%	\$2,410.00 -4.6%	\$2,783.00 -0.1%	\$4,430.00 9.5%
2020	\$12.11 0.8%	\$18.98 -1.1%	\$69.00 -1.6%	\$61.00 3.7%	\$6.40 -4.4%	\$19.43 0.6%	\$2,300.00 15.4%	\$2,780.00 4.0%	\$4,850.00 -10.1%
2021	\$12.21	\$18.78	\$67.92	\$63.25	\$6.12	\$19.54	\$2,655.00	\$2,890.00	\$4,360.00

2010 to 2021 % Change

35.7%

41.7%

17.1%

40.6%

97.4%

73.7%

93.1%

50.1%

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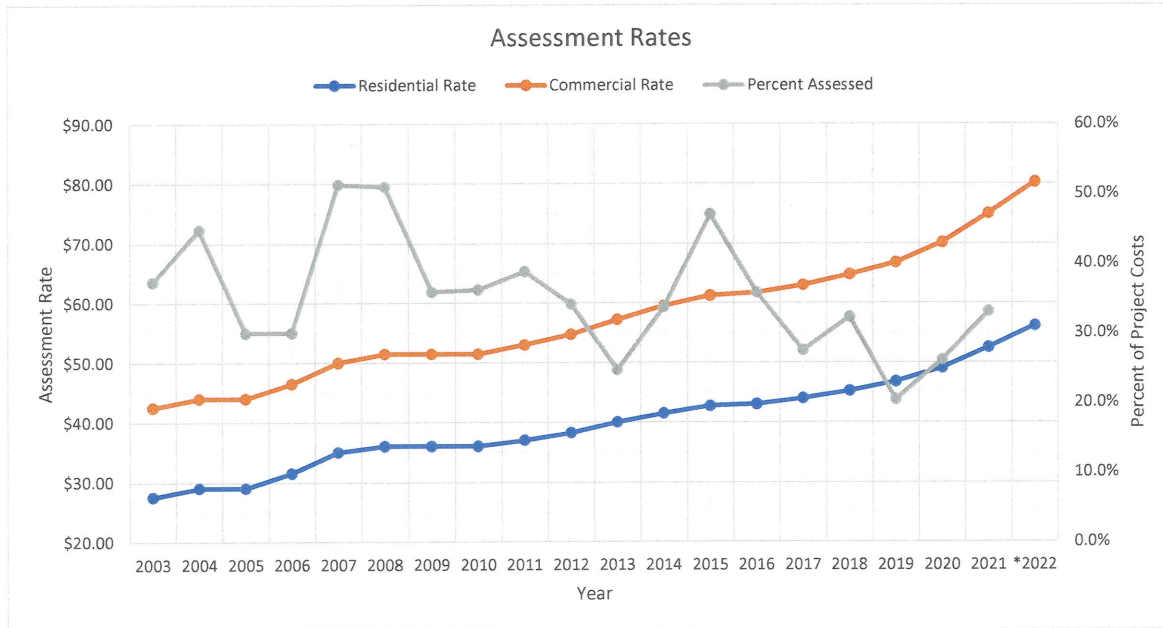
Year	Residential Rate	Commercial Rate	Percent Assessed	Assessed Rate		Average Construction Rate	
				4" Sidewalk	6" Sidewalk	4" Sidewalk	6" Sidewalk
2003	\$27.50	\$42.50	37.3%	n/a	n/a		
2004	5.5% \$29.00	3.5% \$44.00	44.8%	\$3.60	\$4.20	\$3.55	\$3.80
2005	0.0% \$29.00	0.0% \$44.00	30.0%	\$3.60	\$4.20	\$3.50	\$4.00
2006	8.6% \$31.50	5.7% \$46.50	30.0%	\$3.60	\$4.20	\$3.40	\$4.00
2007	11.1% \$35.00	7.5% \$50.00	51.3%	\$3.60	\$4.20	\$3.10	\$4.25
2008	2.9% \$36.00	3.0% \$51.50	51.0%	\$3.60	\$4.20	\$3.15	\$4.10
2009	0.0% \$36.00	0.0% \$51.50	35.9%	\$3.60	\$4.20	\$3.20	\$4.20
2010	0.0% \$36.00	0.0% \$51.50	36.2%	\$3.60	\$4.20	\$3.15	\$4.25
2011	2.8% \$37.00	2.9% \$53.00	38.8%	\$3.60	\$4.20	\$3.40	\$4.80
2012	3.4% \$38.25	3.3% \$54.75	34.1%	\$3.60	\$4.60	\$3.65	\$4.80
2013	4.6% \$40.00	4.6% \$57.25	24.7%	\$3.60	\$4.60	\$4.60	\$5.20
2014	3.8% \$41.50	3.9% \$59.50	33.7%	\$4.00	\$5.00	\$4.10	\$6.10
2015	3.0% \$42.75	2.9% \$61.25	47.0%	\$4.10	\$5.50	\$5.11	\$6.84
2016	0.6% \$43.00	0.8% \$61.75	35.8%	\$4.25	\$5.75	\$5.44	\$7.48
2017	2.3% \$44.00	2.0% \$63.00	27.5%	\$4.75	\$6.25	\$5.95	\$9.12
2018	2.8% \$45.25	2.8% \$64.75	32.3%	\$5.25	\$7.00	\$5.56	\$8.26
2019	3.3% \$46.75	3.1% \$66.75	20.4%	\$5.25	\$7.50	\$6.94	\$11.00
2020	5.0% \$49.09	5.0% \$70.09	26.1%	\$6.00	\$8.50	\$6.40	\$9.06
2021	7.0% \$52.51	7.0% \$74.97	33.1%	\$6.50	\$9.00	6.12	8.91
*2022	7.0% \$56.18	7.0% \$80.22		\$6.75	\$9.25		

\* Proposed

2011 to 2021 % Change						
41.9%	41.5%		80.6%	114.3%	80.0%	85.6%

Different Rate Increases for Reference

Rate Increase	Rate		Projected % Assessed
0% Increase	Residential	\$52.51	34.5%
	Commercial	\$74.97	
5% Increase	Residential	\$55.14	35.9%
	Commercial	\$78.72	
10% Increase	Residential	\$57.76	37.2%
	Commercial	\$82.47	
15% Increase	Residential	\$60.39	38.6%
	Commercial	\$86.22	
20% Increase	Residential	\$63.01	39.9%
	Commercial	\$89.96	



City of Austin  
Street/Sidewalk Reconstruction Assessment Rates

Land Use	Year	Sidewalk*		Concrete Curb & Gutter (Linear Foot)	Street Reconstruction Urban (Linear Foot)	Mill & Overlay (Linear Foot per inch)
		4" Thick (Square Foot)	6" Thick (Square Foot)			
Residential	2003	N/A	N/A	\$8.25	\$27.50	
	2004	\$3.60	\$3.60	\$8.75	\$29.00	
	2005	\$3.60	\$4.20	\$9.00	\$29.00	
	2006	\$3.60	\$4.20	\$9.50	\$31.50	
	2007	\$3.60	\$4.20	\$10.50	\$35.00	
	2008	\$3.60	\$4.20	\$10.50	\$36.00	
	2009	\$3.60	\$4.20	\$10.50	\$36.00	
	2010	\$3.60	\$4.20	\$10.50	\$36.00	
	2011	\$3.60	\$4.20	\$10.50	\$37.00	
	2012	\$3.60	\$4.60	\$10.50	\$38.25	
	2013	\$3.60	\$4.60	\$11.00	\$40.00	
	2014	\$4.00	\$5.00	\$12.00	\$41.50	
	2015	\$4.10	\$5.50	\$12.50	\$42.75	
	2016	\$4.25	\$5.75	\$13.00	\$43.00	
	2017	\$4.75	\$6.25	\$14.00	\$44.00	
	2018	\$5.25	\$7.00	\$15.00	\$45.25	
	2019	\$5.25	\$7.50	\$16.50	\$46.75	
	2020	\$6.00	\$8.50	\$17.33	\$49.09	
	2021	\$6.50	\$9.00	\$18.00	\$52.51	\$5.35
	<b>2022</b>	<b>\$6.75</b>	<b>\$9.25</b>	<b>\$19.50</b>	<b>\$56.18</b>	<b>\$6.35</b>
Commercial/ Industrial	2003	N/A	N/A	\$8.25	\$42.50	
	2004	\$4.20	\$4.20	\$8.75	\$44.00	
	2005	\$3.60	\$4.20	\$9.00	\$44.00	
	2006	\$3.60	\$4.20	\$9.50	\$46.50	
	2007	\$3.60	\$4.20	\$10.50	\$50.00	
	2008	\$3.60	\$4.20	\$10.50	\$51.50	
	2009	\$3.60	\$4.20	\$10.50	\$51.50	
	2010	\$3.60	\$4.20	\$10.50	\$51.50	
	2011	\$3.60	\$4.20	\$10.50	\$53.00	
	2012	\$3.60	\$4.60	\$10.50	\$54.75	
	2013	\$3.60	\$4.60	\$11.00	\$57.25	
	2014	\$4.00	\$5.00	\$12.00	\$59.50	
	2015	\$4.10	\$5.50	\$12.50	\$61.25	
	2016	\$4.25	\$5.75	\$13.00	\$61.75	
	2017	\$4.75	\$6.25	\$14.00	\$63.00	
	2018	\$5.25	\$7.00	\$15.00	\$64.75	
	2019	\$5.25	\$7.50	\$16.50	\$66.75	
	2020	\$6.00	\$8.50	\$17.33	\$70.09	
	2021	\$6.50	\$9.00	\$18.00	\$74.97	\$6.64
	<b>2022</b>	<b>\$6.75</b>	<b>\$9.25</b>	<b>\$19.50</b>	<b>\$80.22</b>	<b>\$7.88</b>

\* Rate associated with street projects only.

\*\* Rates for sidewalk project will be based on actual construction costs.

Example 2022 Street Assessment Amounts		
Lot Frontage	Residential	Commercial
50	\$2,809.00	\$4,011.00
75	\$4,213.50	\$6,016.50
100	\$5,618.00	\$8,022.00
125	\$7,022.50	\$10,027.50

## RESOLUTION NO.

### STREET RECONSTRUCTION ASSESSMENT RATES

**WHEREAS**, in order to determine support for a project and to provide actual costs versus estimates to property owners, the City of Austin proposes to adopt rates and hold public hearings for street reconstruction projects prior to the start of each project.

**WHEREAS**, this method of assessing will allow property owners to know their actual costs at the start of the project; and

**WHEREAS**, rates will be set based on the assessing policies as follows:

1. Corner lot policy
2. Interior lots with double frontage
3. Roadway Life expectancy
4. Credit for life expectancy
5. Credit for curb and gutter
6. Maximum width and thickness to be assessed based on property use
7. Assess a minimum of 20% of the project costs and a maximum of 50% for reconstruction projects

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Austin adopts the following rates which will be reviewed on an annual basis based on the City's experience and a recognized measure of inflation.

#### Residential:

	<u>2022 Rate</u>
Sidewalk (4" thick)	\$ 6.75/ Sq. Ft.
Sidewalk (6" thick)	\$ 9.25/ Sq. Ft.
Concrete Curb	\$ 19.50/ Lin. Ft.
Urban Street Reconstruction	\$ 56.18/ Lin. Ft.
Mill & Overlay	\$5.35/Lin. Ft. per inch

#### Commercial/Industrial:

	<u>2021 Rate</u>
Sidewalk (4" thick)	\$ 6.75/ Sq. Ft.
Sidewalk (6" thick)	\$ 9.25/ Sq. Ft.
Concrete Curb	\$ 19.50/ Lin. Ft.
Urban Street Reconstruction	\$ 80.22/ Lin. Ft.
Mill & Overlay	\$7.88/Lin. Ft. per inch

Passed by a vote of yeas and nays this 18th day of January, 2022.

YEAS

NAYS

ATTEST:

APPROVED:

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City Recorder

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Mayor

City of Austin  
500 Fourth Avenue N.E.  
Austin, Minnesota 55912-3773



Phone: 507-437-9940

www.ci.austin.mn.us

## MEMO

TO: Mayor and City Council

FROM: Tom Dankert *TD*  
Director of Administrative Services

DATE: January 6, 2022

SUBJECT: 2021 Audit Quote from CLA, LLP  
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We have recently received the quote from our auditor's CliftonLarsonAllen LLP to perform the 2021 financial statement audit of the City of Austin as required by state law. The total quote is \$47,565 and represents a 2.7% increase in the audit fees for the year.

In the past we have verbally checked around with other major CPA firms, and we have been told if you are switching to save fees, don't bother spending the time. If we want to switch due to quality, then we should look for other quotes. I don't believe I have heard any complaints from past councils on the quality of our audits. This compares to prior years, as follows:

	<u>2016</u>	<u>2017</u>	<u>2018*</u>	<u>2019*</u>	<u>2020</u>	<u>Proposed 2021</u>
City Funds	\$ 36,940	\$ 37,640	\$ 38,500	\$ 36,325	\$ 36,325	\$ 37,000
Legal Compliance	3,560	3,560	3,560	1,000	1,000	1,000
Single Audit	0	0	0	0	2,500	3,000
Port Authority	4,100	4,175	4,275	4,275	4,275	4,300
Funds						
Tech. Charge-5%	<u>0</u>	<u>0</u>	<u>0</u>	<u>2,205</u>	<u>2,205</u>	<u>2,265</u>
Total	<u>\$ 44,910</u>	<u>\$ 44,600</u>	<u>\$ 45,375</u>	<u>\$ 43,805</u>	<u>\$ 46,305</u>	<u>\$ 47,565</u>

\*- audit bill decreased \$2,500 as a Single Audit was not needed.

Additionally, if we want the auditors to draft the conversion entries and Comprehensive Annual Financial Report (CAFR), it will be an additional charge of \$12,000 to \$15,000, plus the 5% technology charge. In the past the City has done this procedure as staff have the experience of creating conversion entries, drafting the government-wide financial statements, Management Discussion and Analysis, and the footnotes. We have been told by the auditors that most clients do not do this, and they do it for them.

We have been with this local CPA firm for many years, and they are recognized in Minnesota as one of the top governmental accounting practices. I would recommend approval of the audit quote from CliftonLarsonAllen LLP for 2021, however if the City Council would like to bid future audits out, we need to start this process in early summer.

**We would request Council approval of the audit engagement letter, and to authorize the Mayor and Director of Administrative Services to sign the engagement letter for the 2021 audit.**



CliftonLarsonAllen LLP  
109 North Main Street, Suite 200, P.O. Box 217  
Austin, MN 55912-0217

phone 507-434-7000 fax 507-437-8997  
CLAconnect.com

January 5, 2022

City Council and Management  
City of Austin  
500 Fourth Avenue NE  
Austin, MN 55912

We are pleased to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the audit and nonaudit services CliftonLarsonAllen LLP ("CLA," "we," "us," and "our") will provide for City of Austin, Minnesota ("you," "your," or "the entity") for the year ended December 31, 2021.

Craig Popenhagen is responsible for the performance of the audit engagement.

#### Scope of audit services

We will audit the financial statements of the governmental activities, the business-type activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements of City of Austin, as of and for the year ended December 31, 2021, and the related notes to the financial statements.

The Governmental Accounting Standards Board (GASB) provides for certain required supplementary information (RSI) to accompany the entity's basic financial statements. The RSI will be subjected to certain limited procedures, but will not be audited.

We will also evaluate and report on the presentation of the following supplementary information other than RSI accompanying the financial statements in relation to the financial statements as a whole:

1. Schedule of expenditures of federal awards
2. Combining and individual fund statements and schedules
3. Debt service requirements to maturity

The following information other than RSI accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements and our auditors' report will not provide an opinion or any assurance on that information:

1. Introductory Section
2. Statistical Section

We will also audit the financial statements of the Austin Utilities (a fund of the City) for the year ended December 31, 2021. In relation to that report:

- The RSI will be subjected to certain limited procedures, but will not be audited.



CLA is an independent member of Nexia International, a leading, global network of independent accounting and consulting firms. See [nexia.com/member-firm-disclaimer](https://nexia.com/member-firm-disclaimer) for details.

### **Nonaudit services**

We will also provide the following nonaudit services:

- Preparation of your financial statements and related notes and RSI (for Austin Utilities).
- Prepare the Data Collection Form.

### **Audit objectives**

The objectives of our audit are to obtain reasonable assurance about whether the basic financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinions about whether your basic financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP). Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS) will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

Our audit will be conducted in accordance with U.S. GAAS; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards require us to be independent of the entity and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. Our audit will include tests of your accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express opinions and render the required reports. We will apply certain limited procedures to the RSI in accordance with U.S. GAAS. However, we will not express an opinion or provide any assurance on the RSI because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. We will also perform procedures to enable us to express an opinion on whether the supplementary information (as identified above) other than RSI accompanying the financial statements is fairly stated, in all material respects, in relation to the financial statements as a whole.

The objectives of our audit also include:

- Reporting on internal control over financial reporting and on compliance with the provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Reporting on internal control over compliance related to major programs and expressing an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Uniform Guidance.

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states (1) that the purpose of the report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

We will issue written reports upon completion of our audit of your financial statements and compliance with requirements applicable to major programs. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph to our auditors' report, or if necessary, withdraw from the engagement. If our opinions on the financial statements or the single audit compliance opinion is other than unmodified, we will discuss the reasons with you in advance. If circumstances occur related to the condition of your records, the availability of sufficient, appropriate audit evidence, or the existence of a significant risk of material misstatement of the financial statements or material noncompliance caused by error, fraudulent financial reporting, or misappropriation of assets, which in our professional judgment prevent us from completing the audit or forming opinions on the financial statements or an opinion on compliance, we retain the right to take any course of action permitted by professional standards, including declining to express opinions or issue reports, or withdrawing from the engagement.

As part of our audit, we will also perform the procedures and provide the report required by the *Minnesota Legal Compliance Audit Guide for Cities*.

#### **Auditor responsibilities, procedures, and limitations**

We will conduct our audit in accordance with U.S. GAAS, the standards for financial audits contained in *Government Auditing Standards*, and the Uniform Guidance. Those standards require that we exercise professional judgment and maintain professional skepticism throughout the planning and performance of the audit. As part of our audit, we will:

- Identify and assess the risks of material misstatement of the financial statements and material noncompliance, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement or a material noncompliance resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing opinions on the effectiveness of the entity's internal control. However, we will communicate to you in writing any significant deficiencies or material weaknesses in internal control relevant to the audit of the basic financial statements that we have identified during the audit.

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the basic financial statements, including the amounts and disclosures, and whether the basic financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time.

There is an unavoidable risk, because of the inherent limitations of an audit, together with the inherent limitations of internal control, that some material misstatements or noncompliance may not be detected, even though the audit is properly planned and performed in accordance with U.S. GAAS, *Government Auditing Standards*, and the Uniform Guidance. Because we will not perform a detailed examination of all transactions, material misstatements, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity, may not be detected. Because the determination of waste and abuse is subjective, *Government Auditing Standards* do not require auditors to perform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform the appropriate level of management and those charged with governance of any material errors, fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management and those charged with governance of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a single audit.

Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting fraud or errors that are material to the financial statements and to preventing and detecting misstatements resulting from noncompliance with provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with the direct and material compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify deficiencies, significant deficiencies, or material weaknesses in internal control. However, we will communicate to you in writing significant deficiencies or material weaknesses in internal control relevant to the audit of the basic financial statements that we identify during the audit that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the entity's compliance with the provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

We will include in our report on internal control over financial reporting and on compliance relevant information about any identified or suspected instances of fraud and any identified or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements that may have occurred that are required to be communicated under *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards that may have a direct and material effect on each of the entity's major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the "OMB Compliance Supplement" for the types of compliance requirements that could have a direct and material effect on each of the entity's major programs. The purpose of these procedures will be to express an opinion on the entity's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

We will evaluate the presentation of the schedule of expenditures of federal awards accompanying the financial statements in relation to the financial statements as a whole. We will make certain inquiries of management and evaluate the form, content, and methods of preparing the schedule to determine whether the information complies with U.S. GAAP and the Uniform Guidance, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We will compare and reconcile the schedule to the underlying accounting records and other records used to prepare the financial statements or to the financial statements themselves.

Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

#### **Management responsibilities**

Our audit will be conducted on the basis that you (management and, when appropriate, those charged with governance) acknowledge and understand that you have certain responsibilities that are fundamental to the conduct of an audit.

You are responsible for the preparation and fair presentation of the financial statements, RSI, and the schedule of expenditures of federal awards in accordance with U.S. GAAP. Management is also responsible for identifying all federal awards received, understanding and complying with the compliance requirements, and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in accordance with the requirements of the Uniform Guidance.

Management's responsibilities include the selection and application of accounting principles; recording and reflecting all transactions in the financial statements; determining the reasonableness of significant accounting estimates included in the financial statements; adjusting the financial statements to correct material misstatements; and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole. In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the entity's ability to continue as a going concern for 12 months beyond the financial statement date.

Management is responsible for compliance with applicable laws and regulations and the provisions of contracts and grant agreements, including compliance with federal statutes, regulations, and the terms and conditions of federal awards applicable to the entity's federal programs. Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

You are responsible for the design, implementation, and maintenance of effective internal control, including internal control over compliance, relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including evaluating and monitoring ongoing activities and safeguarding assets to help ensure that appropriate goals and objectives are met; and that there is reasonable assurance that government programs are administered in compliance with compliance requirements.

You are responsible for the design, implementation, and maintenance of internal controls to prevent and detect fraud; assessing the risk that the financial statements may be materially misstated as a result of fraud; and for informing us about all known or suspected fraud affecting the entity involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for implementing systems designed to achieve compliance with applicable laws and regulations and the provisions of contracts and grant agreements, including compliance with federal statutes, regulations, and the terms and conditions of federal awards applicable to the entity's federal programs; identifying and ensuring that the entity complies with applicable laws, regulations, contracts, and grant agreements, including compliance with federal statutes, regulations, and the terms and conditions of federal awards applicable to the entity's federal programs; and informing us of all instances of identified or suspected noncompliance whose effects on the financial statements should be considered.

You are responsible for taking timely and appropriate steps to remedy any fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that we may report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings; and to follow up and take prompt corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. The summary schedule of prior audit findings should be available for our review on March 8, 2022.

You are responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, including amounts and disclosures, such as records, documentation, identification of all related parties and all related-party relationships and transactions, and other matters, and for the accuracy and completeness of that information (including information from within and outside of the general and subsidiary ledgers), and for ensuring management information and financial information is reliable and properly reported; (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance; (3) additional information that we may request for the purpose of the audit; and (4) unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence. You agree to inform us of events occurring or facts discovered subsequent to the date of the financial statements that may affect the financial statements.

You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon or make the audited financial statements readily available to intended users of the schedule of expenditures of federal awards no later than the date the schedule of expenditures of federal awards is issued with our report thereon. Your responsibilities include acknowledging to us in the representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is fairly presented in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

Management is responsible for the preparation and fair presentation of other supplementary information in accordance with U.S. GAAP. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon or make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. You agree to provide us written representations related to the presentation of the supplementary information.

Management is responsible for providing us with a written confirmation concerning representations made by you and your staff to us in connection with the audit and the presentation of the basic financial statements and RSI. During our engagement, we will request information and explanations from you regarding, among other matters, the entity's activities, internal control, future plans, specific transactions, and accounting systems and procedures. The procedures we will perform during our engagement and the conclusions we reach as a basis for our report will be heavily influenced by the representations that we receive in the representation letter and otherwise from you. Accordingly, inaccurate, incomplete, or false representations could cause us to expend unnecessary effort or could cause a material fraud or error to go undetected by our procedures. In view of the foregoing, you agree that we shall not be responsible for any misstatements in the entity's financial statements that we may fail to detect as a result of misrepresentations made to us by you.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies to us of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the "Audit objectives" section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other engagements or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions for the report, and for the timing and format for providing that information.

#### **Responsibilities and limitations related to nonaudit services**

For all nonaudit services we may provide to you, management agrees to assume all management responsibilities; oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience to understand and oversee the services; evaluate the adequacy and results of the services; and accept responsibility for the results of the services. Management is also responsible for ensuring that your data and records are complete and that you have received sufficient information to oversee the services.

The responsibilities and limitations related to the nonaudit services performed as part of this engagement are as follows:

- We will prepare a draft of your financial statements and related notes and RSI (for Austin Utilities) in conformity with U.S. GAAP based on information provided by you. Since the preparation and fair presentation of the financial statements and RSI is your responsibility, you will be required to acknowledge in the representation letter our assistance with preparation of the financial statements and RSI and that you have reviewed and approved the financial statements and related notes and RSI prior to their issuance and have accepted responsibility for them. You have a responsibility to be in a position in fact and appearance to make an informed judgment on those financial statements and RSI.
- We will prepare the Data Collection Form. Management is responsible to review for completeness and accuracy before submitting to the Federal Audit Clearing House.

These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*.

### **Use of financial statements**

The financial statements and our report thereon are for management's use. If you intend to reproduce and publish the financial statements and our report thereon, they must be reproduced in their entirety. Inclusion of the audited financial statements in a document, such as an annual report or an offering document, should be done only with our prior approval of the document. You are responsible to provide us the opportunity to review such documents before issuance.

If the parties (i.e., you and CLA) agree that CLA will not be involved with your official statements related to municipal securities filings or other offering documents, we will require that any official statements or other offering documents issued by you with which we are not involved clearly indicate that CLA is not involved with the contents of such documents. Such disclosure should read as follows:

CliftonLarsonAllen LLP, our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. CliftonLarsonAllen LLP also has not performed any procedures relating to this offering document.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website or submitted on a regulator website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in those sites or to consider the consistency of other information in the electronic site with the original document.

We may issue preliminary draft financial statements to you for your review. Any preliminary draft financial statements should not be relied on or distributed.

### **Engagement administration and other matters**

We expect to begin our audit on approximately March 8, 2022.

We understand that your employees will prepare all confirmations, account analyses, and audit schedules we request and will locate any documents or invoices selected by us for testing.

At the conclusion of the engagement, we will complete the auditor sections of the electronic Data Collection Form SF-SAC and perform the steps to certify the Form SF-SAC and single audit reporting package. It is management's responsibility to complete the auditee sections of the Data Collection Form. We will create the single audit reporting package PDF file for submission; however, it is management's responsibility to review for completeness and accuracy and electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse and, if appropriate, to pass-through entities. The Data Collection Form and the reporting package must be electronically submitted within the earlier of 30 calendar days after receipt of the auditors' reports or nine months after the end of the audit period.

We will provide copies of our reports to the entity; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing confidential or sensitive information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the sole and exclusive property of CLA and constitutes confidential and proprietary information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to a Regulator, Cognizant or Oversight Agency for Audit, or Pass-through Entity, or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of CLA personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of seven years after the report release date or for any additional period requested by the Regulator, Cognizant or Oversight Agency for Audit, or Pass-through Entity. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

Except as permitted by the "Consent" section of this agreement, CLA will not disclose any confidential, proprietary, or privileged information of the entity to any persons without the authorization of entity management or unless required by law. This confidentiality provision does not prohibit us from disclosing your information to one or more of our affiliated companies in order to provide services that you have requested from us or from any such affiliated company. Any such affiliated company shall be subject to the same restrictions on the use and disclosure of your information as apply to us.

Our engagement ends on delivery of our signed report. Any additional services that might be requested will be a separate, new engagement. The terms and conditions of that new engagement will be governed by a new, specific engagement letter for that service.

*Government Auditing Standards* require that we make our most recent external peer review report publicly available. The report is posted on our website at [www.CLAconnect.com/Aboutus/](http://www.CLAconnect.com/Aboutus/).

## **Mediation**

Any disagreement, controversy, or claim ("Dispute") that may arise out of any aspect of our services or relationship with you, including this engagement, shall be submitted to non-binding mediation by written notice ("Mediation Notice") to the other party. In mediation, we will work with you to resolve any differences voluntarily with the aid of an impartial mediator.

The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the Dispute.

Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

Any Dispute will be governed by the laws of the state of Minnesota, without giving effect to choice of law principles.

### **Time limitation**

The nature of our services makes it difficult, with the passage of time, to gather and present evidence that fully and fairly establishes the facts underlying any Dispute that may arise between the parties. The parties agree that, notwithstanding any statute or law of limitations that might otherwise apply to a Dispute, including one arising out of this agreement or the services performed under this agreement, for breach of contract or fiduciary duty, tort, fraud, misrepresentation or any other cause of action or remedy, any action or legal proceeding by you against us must be commenced within twenty-four (24) months ("Limitation Period") after the date when we deliver our final audit report under this agreement to you, regardless of whether we do other services for you relating to the audit report, or you shall be forever barred from commencing a lawsuit or obtaining any legal or equitable relief or recovery.

The Limitation Period applies and begins to run even if you have not suffered any damage or loss, or have not become aware of the existence or possible existence of a Dispute.

### **Fees**

We estimate our fees for these services will be:

City Funds (except for the Utility Enterprise Fund)	\$37,000
Minnesota Legal Compliance Audit	1,000
UGG Single Audit (if needed)	3,000
Port Authority of Austin	4,300
Preparation of the City's Comprehensive Annual Financial Report	\$12,000 to \$15,000

We will also bill for expenses (including travel, other costs such as report production, word processing, postage, etc., and internal and administrative charges) plus a technology and client support fee of five percent (5%) of all professional fees billed. These estimates are based on anticipated cooperation from your personnel and their assistance with preparing confirmations and requested schedules. If the requested items are not available on the dates required or are not accurate, the fees and expenses will likely be higher. If unexpected circumstances require significant additional time, we will advise you before undertaking work that would require a substantial increase in the fee and expense estimates. Our invoices, including applicable state and local taxes, will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 30 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed even if we have not issued our reports. You will be obligated to compensate us for all time expended and related fees and to reimburse us for all out-of-pocket expenditures through the date of termination.

### **Other fees**

You also agree to compensate us for any time and expenses, including time and expenses of legal counsel, we may incur in responding to discovery requests or participating as a witness or otherwise in any legal, regulatory, or other proceedings that we are asked to respond to on your behalf.

***Finance charges and collection expenses***

You agree that if any statement is not paid within 30 days from its billing date, the unpaid balance shall accrue interest at the monthly rate of one and one-quarter percent (1.25%), which is an annual percentage rate of 15%. In the event that any collection action is required to collect unpaid balances due us, reasonable attorney fees and expenses shall be recoverable.

**Consent**

***Consent to use information for benchmarking analysis***

In an effort to better serve the needs of our clients, we develop a variety of benchmark, performance indicator, and predictive analysis reports, using anonymized client data obtained from our audit, tax, and other engagements. Business and financial information that you provide to us may be combined with information from other clients and included within the aggregated data that we use in these reports. While some of these analytical reports will be published and released publicly, please be assured that the separate information that we obtain from you will remain confidential, as required by the AICPA Code of Professional Conduct.

***Subcontractors***

CLA may, at times, use subcontractors to perform services under this agreement, and they may have access to your information and records. Any such subcontractors will be subject to the same restrictions on the use of such information and records as apply to CLA under this agreement.

**Agreement**

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. This letter constitutes the entire agreement regarding these services and supersedes all prior agreements (whether oral or written), understandings, negotiations, and discussions between you and CLA. If you have any questions, please let us know. Please sign, date, and return this letter to us to indicate your acknowledgment and understanding of, and agreement with, the arrangements for our audit of your financial statements including the terms of our engagement and the parties' respective responsibilities.

Sincerely,

**CliftonLarsonAllen LLP**



Craig W. Popenhagen, CPA  
Principal  
507-280-2327  
[craig.popenhagen@CLAconnect.com](mailto:craig.popenhagen@CLAconnect.com)

**Response:**

This letter correctly sets forth the understanding of City of Austin.

Authorized governance signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

Authorized management signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

City of Austin  
500 Fourth Avenue N.E.  
Austin, Minnesota 55912-3773



Planning & Zoning Department  
507-437-9950  
Fax 507-437-7101

## Memorandum

**To:** Mayor and City Council

**From:** Holly Wallace, Planning & Zoning Administrator

**Date:** January 12, 2022

**Re:** Update of zoning and subdivision codes

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After updating the city's comprehensive plan in 2016, it was recommended that the zoning and subdivision ordinances also be updated to facilitate the implementation of the goals and vision of the comprehensive plan, limit legal challenges due to inconsistencies between the comp plan and zoning/subdivision codes, and make the codes more efficient and user friendly for the public and staff. The update also addresses language that was outdated, regarding people with disabilities for example, and issues that came to planning commission often, such as off-street parking requirements, yards that are non-conforming and accessory structures, among many other items.

In late 2019, WSB was selected to assist the city in updating the zoning/subdivision codes, which has been completed and presented for review and approval. All such codes have elements that are required by law and elements that may change from time to time as the community addresses new, and ongoing, challenges and opportunities. Once the new code is implemented and as staff becomes more familiar with the combined code, organization and updates; there will likely be some adjustments. However the proposed document overall meets the goals which initiated the update.

At the January 11, 2022 meeting of the Austin Planning Commission, the Commission reviewed the proposed code update. After review of the materials, an overview by WSB, public comment (none present) and discussion by the Planning Commission, the Commission, with six members present recommends the approval of this land use ordinance by the following vote:

5 Ayes

1 Nay

For approval of this proposed ordinance, the vote must be a unanimous approval for the first reading of the ordinance. If this fails to obtain an approval, the second reading of the ordinance shall be by 2/3<sup>rd</sup>'s vote in accordance to MN Statute 462.357, Subd.2

## Memorandum

To: Holly Wallace, Planning and Zoning Administrator

From: Eric Zweber, AICP, Senior Planner

Date: December 21, 2021

Re: Unified Development Code (Zoning and Subdivision Ordinances) Public Hearing  
WSB Project No. 014636-000

The Austin Planning Commission will be conducted a public hearing to consider recommending adoption of the new Unified Development Code (UDC) to guide the implementation of the City's Comprehensive Plan and development within the community. A UDC is a combination of the Subdivision Ordinance, Zoning Ordinance and other regulations (such as shoreland regulations) that impact the development within the community into one unified Code.

WSB has been selected by the City to lead the Zoning Ordinance update and creation of the UDC. The process of developing the UDC has been as follows:

Project Timeline	
September 2019	Project Kick-Off
October 2019	Planning Commission/City Council Workshop
March 2020	Pop-Up Engagement at Austin Library
April 2020 thru Oct. 2021	Draft Unified Development Code (UDC)
November 2, 2021	Draft UDC Uploaded to Project Website <a href="http://austinupdate.home.blog">austinupdate.home.blog</a>
November 2, 2021	Presentation to the Chamber of Commerce
January 11, 2021	Planning Commission Public Hearing
January 18, 2021	City Council Adoption

The UDC contains seven (7) sections and one (1) appendix.

Unified Development Code
1. General Provisions
2. Zoning Districts
3. Uses and Use Standards
4. Development Standards
5. Subdivisions
6. Administration and Procedures
7. Definitions
Appendix: Zoning Map

During the creation of the UDC, the first step was to begin with the Chapter 11: Zoning Regulation and Chapter 13: Subdivision Regulation and combine them into one document. After that document was combined, a number of updates and revisions were conducted, including:

- Updating the Shoreland regulations to comply with the current Minnesota Department of Natural Resources (DNR) regulations
- Update the definitions (currently 132 definitions expanded to 187 definitions)

- Eliminate the B-1 Neighborhood Business District and move the existing B-1 properties into the B-2 Community Business District
- Combined all of the uses listed within the individual zoning districts into a common use table where all uses and zoning districts are displayed together
- Combined all of the lot sizes and setbacks listed within the individual zoning districts into a common use table where all the dimensional standards and zoning districts are displayed together
- Combine all the conditions placed on individual uses into one area instead of within the individual zoning districts
- Create form-based standards within the B-3 Central Business District
- Create an Administrative Lot Split process to administratively create up to three (3) lots with a previously approved plat in which the lots comply with all UDC requirements
- Create a Minor Subdivision process to simply subdivisions that create no more than five (5) lots

The intention of the changes and revisions to the existing Subdivision and Zoning Regulations are to make the document more user and development friendly. Please review the attached UDC in preparation for the January 11, 2022 Public Hearing.

# **Austin Unified Development Code**

## Planning Commission

January 11, 2022 5:30 p.m.



## Project Timeline

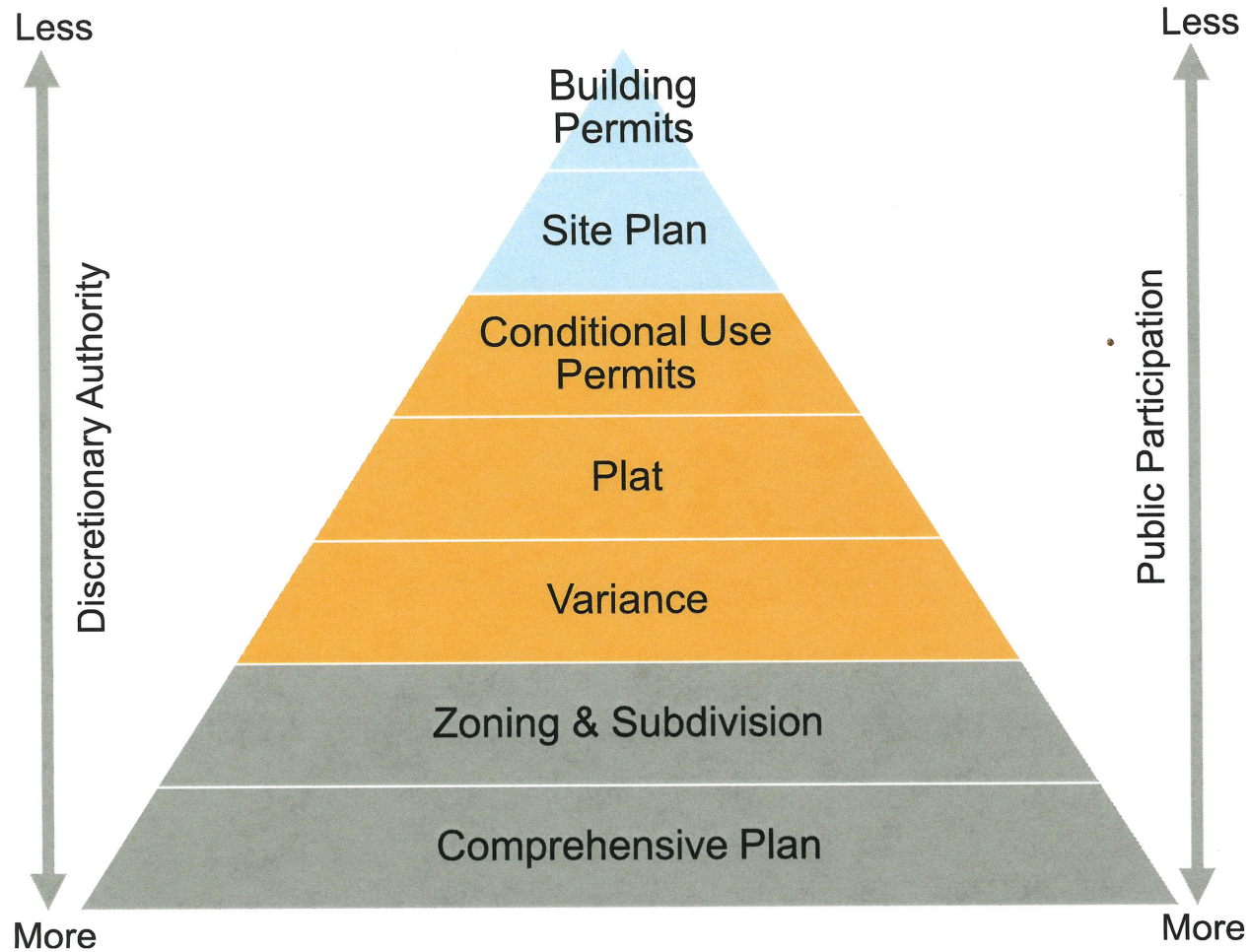
September 2019	Project Kick-Off
October 2019	Planning Commission/City Council
March 2020	Pop-Up Engagement at Library
Apr. '20 – Oct. '21	Draft Unified Development Code
Nov. 2, 2021	Austin Area Chamber
Nov. 2, 2021	Upload UDC to Project Website
Jan. 11, 2022	Planning Commission
Jan. 18, 2022	City Council





## Purpose of Unified Development Code

- Implement the 2016 Comprehensive Plan
- Combine Chapter 11 Zoning and Chapter 13 Subdivisions
- Addresses Changes in State Regulations
- Simply Development Process
- Address Community Preferences and Aesthetics
- Reduce Impacts from Certain Uses
- Anticipates Growth and City Expansion



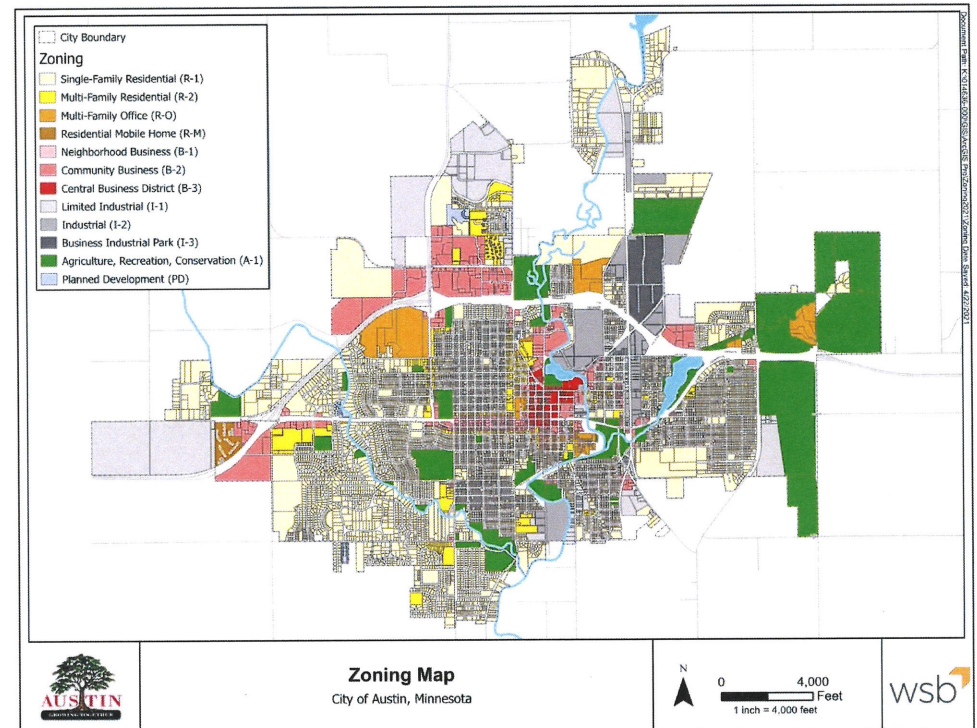
Turning Plans  
into Policy

# Unified Development Code

## Structure

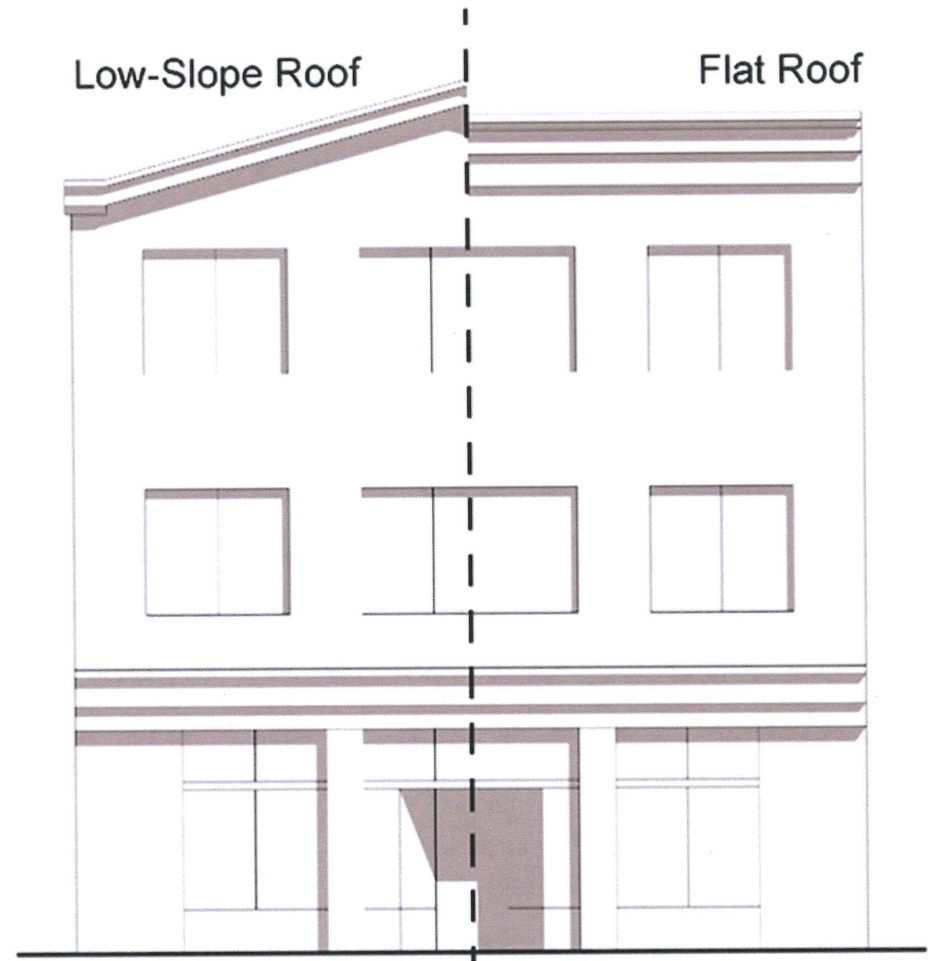
1. General Provisions
2. Zoning Districts
3. Uses and Use Standards
4. Development Standards
5. Subdivisions
6. Administration and Procedures
7. Definitions

Appendix: Zoning Map



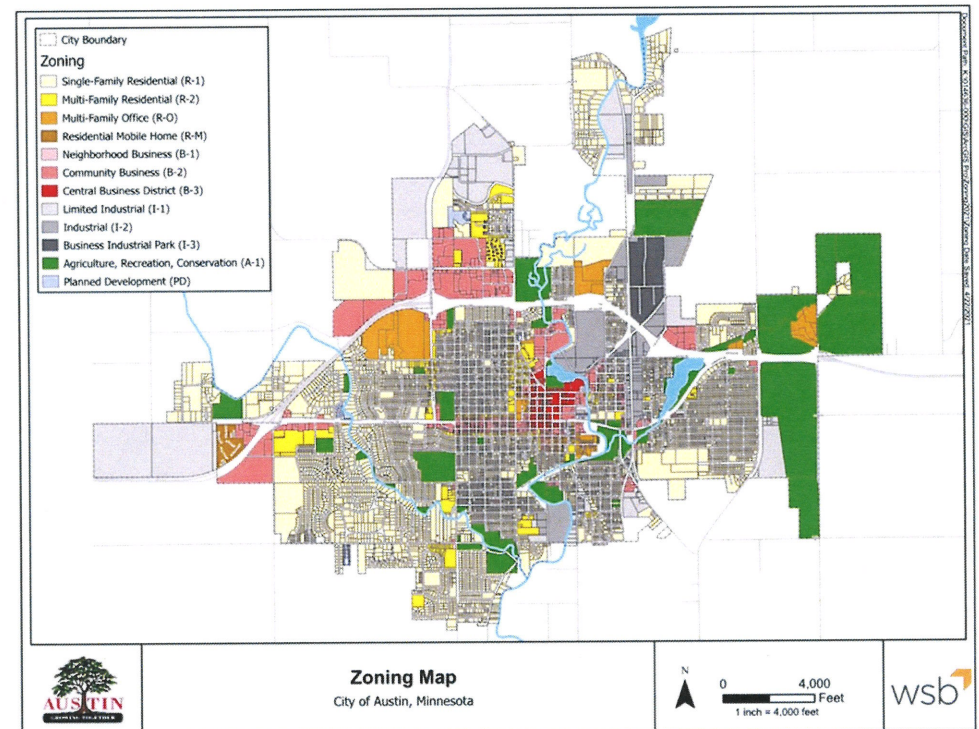
## General Provisions

- Authority from the State
- Purpose Statements
- Relationship to Comprehensive Plan
- Text over Graphics
- Jurisdiction
- Does Not Apply to Existing Easements or Deeds
- Interpretation
- Repeal
- Rules and Definitions
- Separability
- Date of Effect



# Zoning Districts

- Districts
  - Residential
  - Business
  - Industrial
  - Agriculture and Conservation
  - Planned Unit Development
- Zoning Map
- Boundaries
- District Regulations
  - Lot Sizes
  - Setbacks
  - Heights
  - Lot Coverage



# Zoning Districts

- Residential Districts
  - R-1 Single-Family Residential
  - R-2 Multi-Family Residential
  - R-O Multi-Family and Office District
  - RM Residential Manufactured Home District
- Business Districts
  - B-2 Community Business District
  - B-3 Central Business District
- Industrial Districts
  - I-1 Limited Industrial District
  - I-2 Industrial District
  - I-3 Business/Industrial Park District

Zoning District	Lot Area (sq. ft.)	Lot Width (ft.)	Front Yard (ft.)		Side Yard Each/sum (ft.)	Rear Yard (ft.)	Max. Height (ft.)	Max. lot coverage
R-1	6,000	60	25		5/10	20	30	40%
R-2	5,000	50	25		8/16	10	5 stories or 65 ft.	40%
R-O	5,000	50	25		8/16	10	5 stories or 65 ft.	60%
R-M								
B-2	6,000	60	7				5 stories or 65 ft.	80%
B-3								
I-1			25		10	10	75	
I-2			25		20	20	75	
I-3			30		15	30	70	
A-1	200,000	200			40	12/32	35	40%
S-Z								

# Uses and Use Standards

- Use Matrix
- Specific Use Standards
  - Accessory Structures
  - Auto-Related Uses
  - Breweries
  - Community Gardens
  - Drive-Thrus
  - Home Occupations
  - Parking Structures

	Residential				Commercial		Industrial			Ag
<i>P = Permitted C = Conditional I = Interim Blank Cell = Prohibited</i>	R-1	R-2	R-O	R-M	B-2	B-3	I-1	I-2	I-3	A-1
<b>COMMERCIAL</b>										
<b>Food &amp; Beverage</b>										
Bar/lounge		P	P		P	P	P			
Restaurant		P	P		P	P	P			
Restaurant, drive-in/drive-thru		P	P		P		P			
<b>Retail</b>										
Gas station		P	P		P		P			
Outdoor sales, service, rental lot					P		C	C		
Commercial retail (up to 1,500 sq. ft.)	P	P	P		P	P	P	P		
Commercial retail (more than 1,500 sq. ft.)	C	P	P		P	P	P	P		
Commercial retail (more than 70,000 sq. ft.)					C		C	C		
Contractor Yard							P	P		
<b>Service</b>										
Animal hospital or veterinarian clinic		P	P		P	P		P		P
Animal shelter or adoption center							P			
Repair and maintenance services		P	P		P		P	P		
Funeral home or mortuary		P	P		P	P	P	P		
Personal service and repair (e.g. salon, tailor)		P	P		P	P	P	P		
Self-storage facility							P			
Bank		P	P		P	P				

# Development Standards

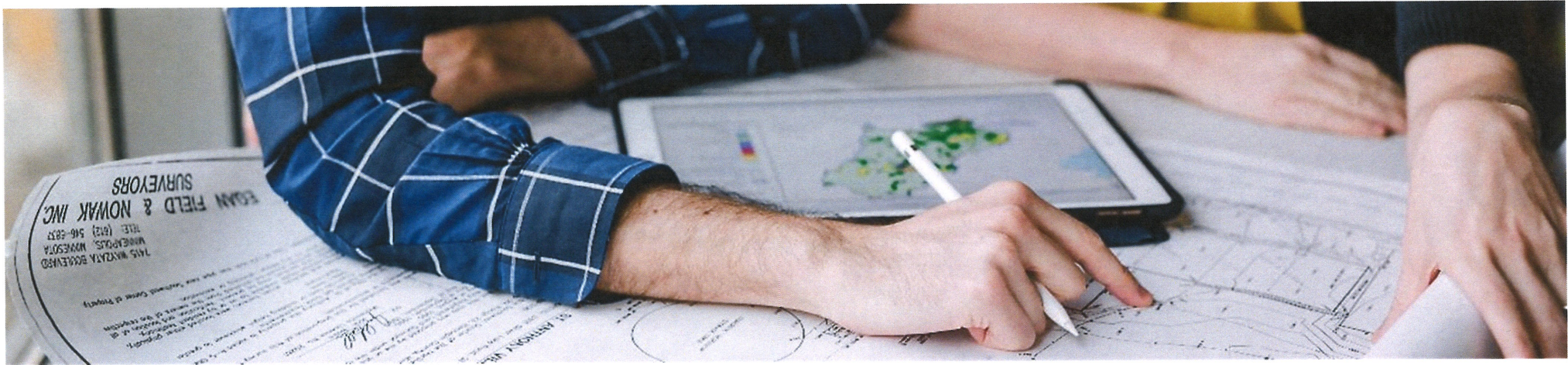
- District Specific Standards
  - B-3, Central Business District
  - Manufactured Home Parks
  - Shoreland Overlay District
- General Standards
  - Nuisances
  - Fences and Structures
- Grading and Excavating
- Landscaping
- Tree Preservation
- Transportation and Traffic
- Stormwater Management
- Wetlands
- Hazardous Materials

Land Uses	General Development	Recreational Development	Natural Environment
Single residential	P	P	P
Duplex, triplex, quad residential	P	P	C
Residential PUD	C	C	C
Water-dependent commercial - Accessory to residential PUD	C	C	C
Commercial	P	P	C
Commercial PUD - Expansion of PUD involving up to six additional units or sites allowed as a permitted use provided the provisions of Section 10.0 are satisfied.	C	C	C
Solar Power Facilities (principal land use)	C	C	C
Parks & historic sites	C	C	C
Public, semipublic	P	P	C
Industrial	C	C	N
Agricultural: cropland and pasture	P	P	P
Forest management	P	P	P
Forest land conversion	C	C	C

## Subdivisions

- Platting
  - Preliminary Plat
  - Final Plat
- Minimum Improvements
  - Compliance with Plans
  - Park Dedication
  - Streets and Infrastructure
- Alternatives to Platting
  - Administrative Lot Splits
  - Minor Subdivisions





## Administration and Procedures

- Development Review Procedures
- Zoning Administrator
- Nonconformities
  - *Lots*
  - *Structures*
  - *Uses*
- Conditional Use Permits
- Board of Adjustments and Appeals
- Zoning Amendments
- Planned Unit Development

## Definitions

- **Uses**

(Agriculture to Water-Oriented Accessory Structure)

- **Buildings, Objects, and Structures**

(Alley to Tree)

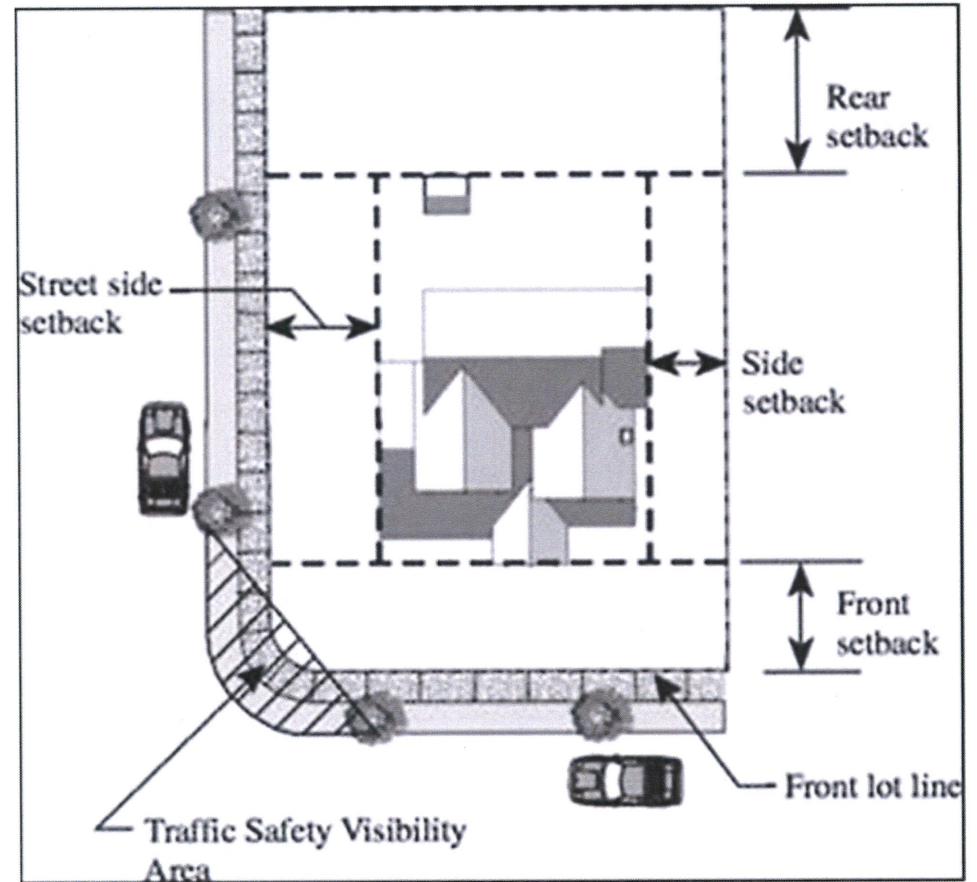
- **Measurements**

(Bluff to Yard)

- **State Regulations**

(Animal Feedlot – Minn. Rules 7020.0300 to

Sewage Treatment Systems – Minn. Rules 7080.1100)





## Provide your Comments

Project Website:

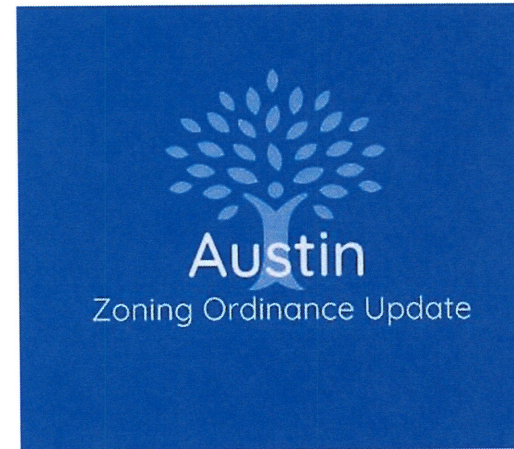
- [austinupdate.home.blog](http://austinupdate.home.blog)

Holly Wallace, City of Austin

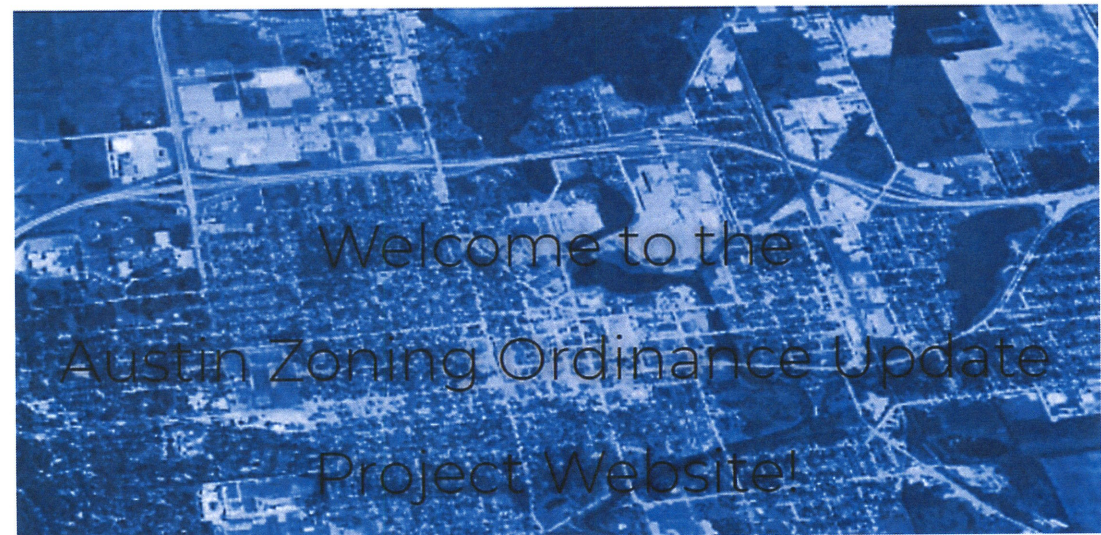
- Planning and Zoning Administrator
- [HollyW@ci.austin.mn.us](mailto:HollyW@ci.austin.mn.us)

Eric Zweber, WSB

- [ezweber@wsbeng.com](mailto:ezweber@wsbeng.com)



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**CITY OF AUSTIN**  
**SUMMARY PUBLICATION**  
**ORDINANCE NO. XXX**

**AN ORDINANCE AMENDING THE  
AUSTIN CITY CODE OF ORDINANCES CHAPTER 11 ZONING REGULATIONS  
AND CHAPTER 13 SUBDIVISION REGULATIONS**

During their January 18, 2022 meeting, the City Council of the City of Austin adopted Ordinance No. \_\_\_\_\_. The ordinance amends the Zoning Ordinance relating to implementing the 2040 Comprehensive Plan.

**NOTICE IS HEREBY GIVEN** that the Planning Commission of the City of Austin, Minnesota will hold a public hearing to accept input text amendments to numerous chapters and sections of the City Code listed below. In 2016, the City of Austin adopted its Comprehensive Plan and subsequently has prepared a number of amendments to the City Code and Zoning Ordinance to implement the visions, goals, policies, and implementation strategies of the Comprehensive Plan. The City is proposing to repeal the existing Chapter 11 Zoning Regulation and Chapter 13 Subdivision Regulation and replace them with a new Zoning Ordinance with the following chapters and sections of the City Code:

In summary, the ordinance amendments make the following changes:

- 11.1      General Provisions
- 11.2      Zoning Districts
- 11.3      Uses of Use Standards
- 11.4      Development Standards
- 11.5      Subdivisions
- 11.6      Administration and Procedures
- 11.7      Definitions
- Appendix   Zoning Map

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that a copy of Ordinance No. \_\_\_\_\_ shall be kept in the City Clerk's office at City Hall for public inspection and a full copy of the ordinance be posted in the lobby of City Hall for 30 days after adoption.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the City Council of the  
City of Austin, Minnesota.

On motion by \_\_\_\_\_  
Second by \_\_\_\_\_

Voting:   Ayes:  
             Absent:  
             Abstain:

**CITY OF AUSTIN**

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

Summary published in Review: \_\_\_\_\_

**RESOLUTION NO. 2022-xxx**

**RESOLUTION APPROVING PUBLICATION OF ORDINANCE NO.XXX AN  
ORDINANCE AMENDING THE AUSTIN CITY CODE OF ORDINANCES CHAPTER  
11 ZONING REGULATIONS AND CHAPTER 13 SUBDIVISION REGULATIONS**

**WHEREAS**, the Planning Commission of the City of Austin recommended City Council approve these amendments after holding a public hearing on January 11, 2022; and

**WHEREAS**, the City Council of the City of Austin adopted Ordinance \_\_\_\_\_ amending the City of Austin Zoning Ordinance to implement the 2016 Comprehensive Plan; and

**WHEREAS**, Minnesota Statutes, Section 412.191, Subd. 4 allows publication by title and summary in the case of lengthy ordinances; and

**WHEREAS**, the City Council finds that the following summary would clearly inform the public of the intent and effect of the Ordinances.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN**, by the Council of the City of Austin that the City Clerk shall cause the following summary of Ordinance No. \_\_\_\_\_ to be published in the official newspaper in lieu of the entire ordinance:

During their January 18, 2022 meeting, the City Council of the City of Austin adopted Ordinance No. \_\_\_\_\_. The ordinance amends the Zoning Ordinance relating to implementing the 2016 Comprehensive Plan.

In summary, the ordinance amendments make the following changes:

- 11.1      General Provisions
- 11.2      Zoning Districts
- 11.3      Uses of Use Standards
- 11.4      Development Standards
- 11.5      Subdivisions
- 11.6      Administration and Procedures
- 11.7      Definitions
- Appendix   Zoning Map

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that a copy of Ordinance No. \_\_\_\_\_ shall be kept in the City Clerk's office at City Hall for public inspection and a full copy of the ordinance be posted in the lobby of City Hall for 30 days after adoption.

**ADOPTED** this 18<sup>th</sup> day of January, 2022.

Motion by Council Member

Second by Council Member

Voting:

Aye:

Nay:

Abstain:

Absent:

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Recorder

**RESOLUTION NO****AUTHORIZING THE EXECUTION OF THE  
MINNESOTA OPIOIDS STATE-SUBDIVISION  
MEMORANDUM OF AGREEMENT**

**WHEREAS**, the State of Minnesota, Minnesota counties and cities, and their people have been harmed by misconduct committed by certain entities that engage in or have engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic;

**WHEREAS**, certain Minnesota counties and cities, through their counsel, and the State, through its Attorney General, are separately engaged in ongoing investigations, litigation, and settlement discussions seeking to hold opioid manufacturers and distributors accountable for the damage caused by their misconduct;

**WHEREAS**, the State and Local Governments share a common desire to abate and alleviate the impacts of the misconduct described above throughout Minnesota;

**WHEREAS**, while the State and Local Governments recognize the sums which may be available from the aforementioned litigation will likely be insufficient to fully abate the public health crisis caused by the opioid epidemic, they share a common interest in dedicating the most resources possible to the abatement effort;

**WHEREAS**, Minnesota's share of settlement funds from the National Settlement Agreements will be maximized only if all Minnesota counties, and cities of a certain size, participate in the settlements;

**WHEREAS**, the State of Minnesota, by and through its Attorney General, has requested local governments to enter into and execute the attached memorandum of agreement.

**NOW THEREFORE, BE IT RESOLVED**, that the Mayor and City Recorder and authorized to execute the Memorandum of Agreement for the State of Minnesota and authorized to transmit a copy to the Minnesota Attorney General.

Passed by a vote of yeas and nays this 18th day of January, 2022.

YEAS

NAYS

ATTEST:

APPROVED:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

## **MINNESOTA OPIOIDS STATE-SUBDIVISION MEMORANDUM OF AGREEMENT**

**WHEREAS**, the State of Minnesota, Minnesota counties and cities, and their people have been harmed by misconduct committed by certain entities that engage in or have engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic;

**WHEREAS**, certain Minnesota counties and cities, through their counsel, and the State, through its Attorney General, are separately engaged in ongoing investigations, litigation, and settlement discussions seeking to hold opioid manufacturers and distributors accountable for the damage caused by their misconduct;

**WHEREAS**, the State and Local Governments share a common desire to abate and alleviate the impacts of the misconduct described above throughout Minnesota;

**WHEREAS**, while the State and Local Governments recognize the sums which may be available from the aforementioned litigation will likely be insufficient to fully abate the public health crisis caused by the opioid epidemic, they share a common interest in dedicating the most resources possible to the abatement effort;

**WHEREAS**, the investigations and litigation with Johnson & Johnson, AmerisourceBergen, Cardinal Health, and McKesson have resulted in National Settlement Agreements with those companies, which the State has already committed to join;

**WHEREAS**, Minnesota's share of settlement funds from the National Settlement Agreements will be maximized only if all Minnesota counties, and cities of a certain size, participate in the settlements;

**WHEREAS**, the National Settlement Agreements will set a default allocation between each state and its political subdivisions unless they enter into a state-specific agreement regarding the distribution and use of settlement amounts;

**WHEREAS**, this Memorandum of Agreement is intended to facilitate compliance by the State and by the Local Governments with the terms of the National Settlement Agreements and is intended to serve as a State-Subdivision Agreement under the National Settlement Agreements;

**WHEREAS**, this Memorandum of Agreement is also intended to serve as a State-Subdivision Agreement under resolutions of claims concerning alleged misconduct in the manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic entered in bankruptcy court that provide for payments (including payments through a trust) to both the State and Minnesota counties and cities and allow for the allocation between a state and its political subdivisions to be set through a state-specific agreement; and

**WHEREAS**, specifically, this Memorandum of Agreement is intended to serve under the Bankruptcy Resolutions concerning Purdue Pharma and Mallinckrodt as a qualifying Statewide Abatement Agreement.

## **I. Definitions**

As used in this MOA (including the preamble above):

“Approved Uses” shall mean forward-looking strategies, programming, and services to abate the opioid epidemic that fall within the list of uses on **Exhibit A**. Consistent with the terms of the National Settlement Agreements and Bankruptcy Resolutions, “Approved Uses” shall include the reasonable administrative expenses associated with overseeing and administering Opioid Settlement Funds. Reimbursement by the State or Local Governments for past expenses are not Approved Uses.

“Backstop Fund” is defined in Section VI.B below.

“Bankruptcy Defendants” mean Purdue Pharma L.P. and Mallinckrodt plc.

“Bankruptcy Resolution(s)” means resolutions of claims concerning alleged misconduct in manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic by the Bankruptcy Defendants entered in bankruptcy court that provide for payments (including payments through a trust) to both the State and Minnesota counties and municipalities and allow for the allocation between the state and its political subdivisions to be set through a state-specific agreement.

“Counsel” is defined in Section VI.B below.

“County Area” shall mean a county in the State of Minnesota plus the Local Governments, or portion of any Local Government, within that county.

“Governing Body” means (1) for a county, the county commissioners of the county, and (2) for a municipality, the elected city council or the equivalent legislative body for the municipality.

“Legislative Modification” is defined in Section II.C below.

“Litigating Local Governments” mean a Local Government that filed an opioid lawsuit(s) on or before December 3, 2021, as defined in Section VI.B below.

“Local Abatement Funds” are defined in Section II.B below.

“Local Government” means all counties and cities within the geographic boundaries of the state of Minnesota.

“MDL Matter” means the matter captioned *In re National Prescription Opiate Litigation*, MDL 2804, pending in the United States District Court for the Northern District of Ohio.

“Memorandum of Agreement” or “MOA” mean this agreement, the Minnesota Opioids State-Subdivision Memorandum of Agreement.

“National Settlement Agreements” means the national opioid settlement agreements with the Parties and one or all of the Settling Defendants concerning alleged misconduct in manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic.

“Opioid Settlement Funds” shall mean all funds allocated by the National Settlement Agreements and any Bankruptcy Resolutions to the State and Local Governments for purposes of opioid remediation activities or restitution, as well as any repayment of those funds and any interest or investment earnings that may accrue as those funds are temporarily held before being expended on opioid remediation strategies.

“Opioid Supply Chain Participants” means entities that engage in or have engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic, including their officers, directors, employees, or agents, acting in their capacity as such.

“Parties” means the State and the Participating Local Governments.

“Participating Local Government” means a county or city within the geographic boundaries of the State of Minnesota that has signed this Memorandum of Agreement and has executed a release of claims with the Settling Defendants by signing on to the National Settlement Agreements. For the avoidance of doubt, a Local Government must sign this MOA to become a “Participating Local Government.”

“Region” is defined in Section II.H below.

“Settling Defendants” means Johnson & Johnson, AmerisourceBergen, Cardinal Health, and McKesson, as well as their subsidiaries, affiliates, officers, and directors named in a National Settlement Agreement.

“State” means the State of Minnesota by and through its Attorney General, Keith Ellison.

“State Abatement Fund” is defined in Section II.B below.

## **II. Allocation of Settlement Proceeds**

- A. Method of distribution. Pursuant to the National Settlement Agreements and any Bankruptcy Resolutions, Opioid Settlement Funds shall be distributed directly to the State and directly to Participating Local Governments in such proportions and for such uses as set forth in this MOA, provided Opioid Settlement Funds shall not be considered funds of the State or any Participating Local Government unless and until such time as each annual distribution is made.
- B. Overall allocation of funds. Opioid Settlement Funds will be initially allocated as follows: (i) 25% directly to the State (“State Abatement Fund”), and (ii) 75% directly to abatement funds established by Participating Local Governments (“Local Abatement Funds”). This initial allocation is subject to modification by Sections II.F, II.G, and II.H, below.

C. Statutory change.

1. The Parties agree to work together in good faith to propose and lobby for legislation in the 2022 Minnesota legislative session to modify the distribution of the State's Opiate Epidemic Response Fund under Minnesota Statutes section 256.043, subd. 3(d), so that "50 percent of the remaining amount" is no longer appropriated to county social services, as related to Opioid Settlement Funds that are ultimately placed into the Minnesota Opiate Epidemic Response Fund ("Legislative Modification").<sup>1</sup> Such efforts include, but are not limited to, providing testimony and letters in support of the Legislative Modification.
2. It is the intent of the Parties that the Legislative Modification would affect only the county share under section 256.043, subd. 3(d), and would not impact the provision of funds to tribal social service agencies. Further, it is the intent of the Parties that the Legislative Modification would relate only to disposition of Opioid Settlement Funds and is not predicated on a change to the distribution of the Board of Pharmacy fee revenue that is deposited into the Opiate Epidemic Response Fund.

D. Bill Drafting Workgroup. The Parties will work together to convene a Bill Drafting Workgroup to recommend draft legislation to achieve this Legislative Modification. The Workgroup will meet as often as practicable in December 2021 and January 2022 until recommended language is completed. Invitations to participate in the group shall be extended to the League of Minnesota Cities, the Association of Minnesota Counties, the Coalition of Greater Minnesota Cities, state agencies, the Governor's Office, the Attorney General's Office, the Opioid Epidemic Response Advisory Council, the Revisor's Office, and Minnesota tribal representatives. The Workgroup will host meetings with Members of the Minnesota House of Representatives and Minnesota Senate who have been involved in this matter to assist in crafting a bill draft.

E. No payments until August 1, 2022. The Parties agree to take all steps necessary to ensure that any Opioid Settlement Funds ready for distribution directly to the State and Participating Local Governments under the National Settlement Agreements or Bankruptcy Resolutions are not actually distributed to the Parties until on or after August 1, 2022, in order to allow the Parties to pursue legislative change that would take effect before the Opioid Settlement Funds are received by the Parties. Such steps may include, but are not limited to, the Attorney General's Office delaying its filing of Consent Judgments in Minnesota state court memorializing the National Settlement Agreements. This provision will cease to apply upon the effective date of the Legislative Modification described above, if that date is prior to August 1, 2022.

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<sup>1</sup> It is the intent of the Parties that counties will continue to fund child protection services for children and families who are affected by addiction, in compliance with the Approved Uses in **Exhibit A.**

- F. Effect of no statutory change by August 1, 2022. If the Legislative Modification described above does not take effect by August 1, 2022, the allocation between the Parties set forth in Section II.B shall be modified as follows: (i) 40% directly to the State Abatement Fund, and (ii) 60% to Local Abatement Funds. The Parties further agree to discuss potential amendment of this MOA if such legislation does not timely go into effect in accordance with this paragraph.
- G. Effect of later statutory change. If the Legislative Modification described above takes effect after August 1, 2022, the allocation between the Parties will be modified as follows: (i) 25% directly to the State Abatement Fund, and (ii) 75% to Local Abatement Funds.
- H. Effect of partial statutory change. If any legislative action otherwise modifies or diminishes the direct allocation of Opioid Settlement Funds to Participating Local Governments so that as a result the Participating Local Governments would receive less than 75 percent of the Opioid Settlement Funds (inclusive of amounts received by counties per statutory appropriation through the Minnesota Opiate Epidemic Response Fund), then the allocation set forth in Section II.B will be modified to ensure Participating Local Governments receive 75% of the Opioid Settlement Funds.
- I. Participating Local Governments receiving payments. The proportions set forth in **Exhibit B** provide for payments directly to: (i) all Minnesota counties; and (ii) all Minnesota cities that (a) have a population of more than 30,000, based on the United States Census Bureau's Vintage 2019 population totals, (b) have funded or otherwise managed an established health care or treatment infrastructure (e.g., health department or similar agency), or (c) have initiated litigation against the Settling Defendants as of December 3, 2021.
- J. Allocation of funds between Participating Local Governments. The Local Abatement Funds shall be allocated to Participating Local Governments in such proportions as set forth in **Exhibit B**, attached hereto and incorporated herein by reference, which is based upon the MDL Matter's Opioid Negotiation Class Model.<sup>2</sup> The proportions shall not change based on population changes during the term of the MOA. However, to the extent required by the terms of the National Settlement Agreements, the proportions set forth in **Exhibit B** must be adjusted: (i) to provide no payment from the National Settlement Agreements to any listed county or municipality that does not participate in the National Settlement Agreements; and (ii) to provide a reduced payment from the National Settlement Agreements to any listed county or city that signs on to the National Settlement Agreements after the Initial Participation Date.
- K. Redistribution in certain situations. In the event a Participating Local Government merges, dissolves, or ceases to exist, the allocation percentage for that Participating Local

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<sup>2</sup> More specifically, the proportions in Exhibit B were created based on Exhibit G to the National Settlement Agreements, which in turn was based on the MDL Matter's allocation criteria. Cities under 30,000 in population that had shares under the Exhibit G default allocation were removed and their shares were proportionally reallocated amongst the remaining subdivisions.

Government shall be redistributed equitably based on the composition of the successor Local Government. In the event an allocation to a Local Government cannot be paid to the Local Government, such unpaid allocations will be allocated to Local Abatement Funds and be distributed in such proportions as set forth in Exhibit B.

- L. City may direct payments to county. Any city allocated a share may elect to have its full share or a portion of its full share of current or future annual distributions of settlement funds instead directed to the county or counties in which it is located, so long as that county or counties are Participating Local Governments[s]. Such an election must be made by January 1 each year to apply to the following fiscal year. If a city is located in more than one county, the city's funds will be directed based on the MDL Matter's Opioid Negotiation Class Model.

### **III. Special Revenue Fund**

- A. Creation of special revenue fund. Every Participating Local Government receiving Opioid Settlement Funds through direct distribution shall create a separate special revenue fund, as described below, that is designated for the receipt and expenditure of Opioid Settlement Funds.
- B. Procedures for special revenue fund. Funds in this special revenue fund shall not be commingled with any other money or funds of the Participating Local Government. The funds in the special revenue fund shall not be used for any loans or pledge of assets, unless the loan or pledge is for an Approved Use. Participating Local Governments may not assign to another entity their rights to receive payments of Opioid Settlement Funds or their responsibilities for funding decisions, except as provided in Section II.L.
- C. Process for drawing from special revenue funds.
  - 1. Opioid Settlement Funds can be used for a purpose when the Governing Body includes in its budget or passes a separate resolution authorizing the expenditure of a stated amount of Opioid Settlement Funds for that purpose or those purposes during a specified period of time.
  - 2. The budget or resolution must (i) indicate that it is an authorization for expenditures of opioid settlement funds; (ii) state the specific strategy or strategies the county or city intends to fund, using the item letter and/or number in **Exhibit A** to identify each funded strategy, if applicable; and (iii) state the amount dedicated to each strategy for a stated period of time.
- D. Local government grantmaking. Participating Local Governments may make contracts with or grants to a nonprofit, charity, or other entity with Opioid Settlement Funds.
- E. Interest earned on special revenue fund. The funds in the special revenue fund may be invested, consistent with the investment limitations for local governments, and may be

placed in an interest-bearing bank account. Any interest earned on the special revenue funds must be used in a way that is consistent with this MOA.

#### **IV. Opioid Remediation Activities**

- A. Limitation on use of funds. This MOA requires that Opioid Settlement Funds be utilized only for future opioid remediation activities, and Parties shall expend Opioid Settlement Funds only for Approved Uses and for expenditures incurred after the effective date of this MOA, unless execution of the National Settlement Agreements requires a later date. Opioid Settlement Funds cannot be used to pay litigation costs, expenses, or attorney fees arising from the enforcement of legal claims related to the opioid epidemic, except for the portion of Opioid Settlement Funds that comprise the Backstop Fund described in Section VI. For the avoidance of doubt, counsel for Litigating Local Governments may recover litigation costs, expenses, or attorney fees from the common benefit, contingency fee, and cost funds established in the National Settlement Agreements, as well as the Backstop Fund described in Section VI.
- B. Public health departments as Chief Strategists. For Participating Local Governments that have public health departments, the public health departments shall serve as the lead agency and Chief Strategist to identify, collaborate, and respond to local issues as Local Governments decide how to leverage and disburse Opioid Settlement Funds. In their role as Chief Strategist, public health departments will convene multi-sector meetings and lead efforts that build upon local efforts like Community Health Assessments and Community Health Improvement Plans, while fostering community focused and collaborative evidence-informed approaches that prevent and address addiction across the areas of public health, human services, and public safety. Chief Strategists should consult with municipalities located within their county in the development of any Community Health Assessment, and are encouraged to collaborate with law enforcement agencies in the county where appropriate.
- C. Administrative expenses. Reasonable administrative costs for the State or Local Government to administer its allocation of the Opioid Settlement Funds shall not exceed actual costs, 10% of the relevant allocation of the Opioid Settlement Funds, or any administrative expense limitation imposed by the National Settlement Agreements or Bankruptcy Resolution, whichever is less.
- D. Regions. Two or more Participating Local Governments may at their discretion form a new group or utilize an existing group ("Region") to pool their respective shares of settlement funds and make joint spending decisions. Participating Local Governments may choose to create a Region or utilize an existing Region under a joint exercise of powers under Minn. Stat. § 471.59.
- E. Consultation and partnerships.
  - 1. Each county receiving Opioid Settlement Funds must consult annually with the municipalities in the county regarding future use of the settlement funds in the

county, including by holding an annual meeting with all municipalities in the county in order to receive input as to proposed uses of the Opioid Settlement Funds and to encourage collaboration between Local Governments both within and beyond the county. These meetings shall be open to the public.

2. Participating Local Governments within the same County Area have a duty to regularly consult with each other to coordinate spending priorities.
3. Participating Local Governments can form partnerships at the local level whereby Participating Local Governments dedicate a portion of their Opioid Settlement Funds to support city- or community-based work with local stakeholders and partners within the Approved Uses.

F. Collaboration. The State and Participating Local Governments must collaborate to promote effective use of Opioid Settlement Funds, including through the sharing of expertise, training, and technical assistance. They will also coordinate with trusted partners, including community stakeholders, to collect and share information about successful regional and other high-impact strategies and opioid treatment programs.

## **V. Reporting and Compliance**

- A. Construction of reporting and compliance provisions. Reporting and compliance requirements will be developed and mutually agreed upon by the Parties, utilizing the recommendations provided by the Advisory Panel to the Attorney General on Distribution and Allocation of Opioid Settlement Funds.
- B. Reporting Workgroup. The Parties will work together to establish a Reporting Workgroup that includes representatives of the Attorney General's Office, state stakeholders, and city and county representatives, who will meet on a regular basis to develop reporting and compliance recommendations. The Reporting Workgroup must produce a set of reporting and compliance measures by June 1, 2022. Such reporting and compliance measures will be effective once approved by representatives of the Attorney General's Office, the Governor's Office, the Association of Minnesota Counties, and the League of Minnesota Cities that are on the Workgroup.

## **VI. Backstop Fund**

- A. National Attorney Fee Fund. The National Settlement Agreements provide for the payment of all or a portion of the attorney fees and costs owed by Litigating Local Governments to private attorneys specifically retained to file suit in the opioid litigation ("National Attorney Fee Fund"). The Parties acknowledge that the National Settlement Agreements may provide for a portion of the attorney fees of Litigating Local Governments.
- B. Backstop Fund and Waiver of Contingency Fee. The Parties agree that the Participating Local Governments will create a supplemental attorney fees fund (the "Backstop Fund") to be used to compensate private attorneys ("Counsel") for Local Governments that filed opioid lawsuits on or before December 3, 2021 ("Litigating Local Governments"). By

order<sup>3</sup> dated August 6, 2021, Judge Polster capped all applicable contingent fee agreements at 15%. Judge Polster's 15% cap does not limit fees from the National Attorney Fee Fund or from any state backstop fund for attorney fees, but private attorneys for local governments must waive their contingent fee agreements to receive payment from the National Attorney Fee Fund. Judge Polster recognized that a state backstop fund can be designed to incentivize private attorneys to waive their right to enforce contingent fee agreements and instead apply to the National Attorney Fee Fund, with the goals of achieving greater subdivision participation and higher ultimate payouts to both states and local governments. Accordingly, in order to seek payment from the Backstop Fund, Counsel must agree to waive their contingency fee agreements relating to these National Settlement Agreements and first apply to the National Attorney Fee Fund.

- C. Backstop Fund Source. The Backstop Fund will be funded by seven percent (7%) of the share of each payment made to the Local Abatement Funds from the National Settlement Agreements (annual or otherwise), based upon the initial allocation of 25% directly to the State Abatement Fund and 75% directly to Local Abatement Funds, and will not include payments resulting from the Purdue or Mallinckrodt Bankruptcies. In the event that the initial allocation is modified pursuant to Section II.F. above, then the Backstop Fund will be funded by 8.75% of the share of each payment made to the Local Abatement Funds from the National Settlement Agreements (annual or otherwise), based upon the modified allocation of 40% directly to the State Abatement Fund and 60% directly to the Local Abatement Funds, and will not include payments resulting from the Purdue or Mallinckrodt Bankruptcies. In the event that the allocation is modified pursuant to Section II.G. or Section II.H. above, back to an allocation of 25% directly to the State Abatement Fund and 75% directly to Local Abatement Funds, then the Backstop Fund will be funded by 7% of the share of each payment made to the Local Abatement Funds from the National Settlement Agreements (annual or otherwise), and will not include payments resulting from the Purdue or Mallinckrodt Bankruptcies.
- D. Backstop Fund Payment Cap. Any attorney fees paid from the Backstop Fund, together with any compensation received from the National Settlement Agreements' Contingency Fee Fund, shall not exceed 15% of the total gross recovery of the Litigating Local Governments' share of funds from the National Settlement Agreements. To avoid doubt, in no instance will Counsel receive more than 15% of the amount paid to their respective Litigating Local Government client(s) when taking into account what private attorneys receive from both the Backstop Fund and any fees received from the National Settlement Agreements' Contingency Fee Fund.
- E. Requirements to Seek Payment from Backstop Fund. A private attorney may seek payment from the Backstop Fund in the event that funds received by Counsel from the National Settlement Agreements' Contingency Fee Fund are insufficient to cover the amount that would be due to Counsel under any contingency fee agreement with a Litigating Local Government based on any recovery Litigating Local Governments receive from the National Settlement Agreements. Before seeking any payment from the Backstop Fund,

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<sup>3</sup> Order, In re: Nat'l Prescription Opiate Litig., Case No. 17-MD-02804, Doc. No. 3814 (N.D. Ohio August 6, 2021).

private attorneys must certify that they first sought fees from the National Settlement Agreements' Contingency Fee Fund, and must certify that they agreed to accept the maximum fees payments awarded to them. Nothing in this Section, or in the terms of this Agreement, shall be construed as a waiver of fees, contractual or otherwise, with respect to fees that may be recovered under a contingency fee agreement or otherwise from other past or future settlements, verdicts, or recoveries related to the opioid litigation.

- F. Special Master. A special master will administer the Backstop Fund, including overseeing any distribution, evaluating the requests of Counsel for payment, and determining the appropriate amount of any payment from the Backstop Fund. The special master will be selected jointly by the Minnesota Attorney General and the Hennepin County Attorney, and will be one of the following individuals: Hon. Jeffrey Keyes, Hon. David Lillehaug; or Hon. Jack Van de North. The special master will be compensated from the Backstop Fund. In the event that a successor special master is needed, the Minnesota Attorney General and the Hennepin County Attorney will jointly select the successor special master from the above-listed individuals. If none of the above-listed individuals is available to serve as the successor special master, then the Minnesota Attorney General and the Hennepin County Attorney will jointly select a successor special master from a list of individuals that is agreed upon between the Minnesota Attorney General, the Hennepin County Attorney, and Counsel.
- G. Special Master Determinations. The special master will determine the amount and timing of any payment to Counsel from the Backstop Fund. The special master shall make one determination regarding payment of attorney fees to Counsel, which will apply through the term of the recovery from the National Settlement Agreements. In making such determinations, the special master shall consider the amounts that have been or will be received by the private attorney's firm from the National Settlement Agreements' Contingency Fee Fund relating to Litigating Local Governments; the contingency fee contracts; the dollar amount of recovery for Counsel's respective clients who are Litigating Local Governments; the Backstop Fund Payment Cap above; the complexity of the legal issues involved in the opioid litigation; work done to directly benefit the Local Governments within the State of Minnesota; and the principles set forth in the Minnesota Rules of Professional Conduct, including the reasonable and contingency fee principles of Rule 1.5. In the interest of transparency, Counsel shall provide information in their initial fee application about the total amount of fees that Counsel have received or will receive from the National Attorney Fee Fund related to the Litigating Local Governments.
- H. Special Master Proceedings. Counsel seeking payment from the Backstop Fund may also provide written submissions to the special master, which may include declarations from counsel, summaries relating to the factors described above, and/or attestation regarding total payments awarded or anticipated from the National Settlement Agreements' Contingency Fee Fund. Private attorneys shall not be required to disclose work product, proprietary or confidential information, including but not limited to detailed billing or lodestar records. To the extent that counsel rely upon written submissions to support their application to the special master, the special master will incorporate said submission or summary into the record. Any proceedings before the special master and documents filed with the special master shall be public, and the special master's determinations regarding

any payment from the Backstop Funds shall be transparent, public, final, and not appealable.

- I. Distribution of Any Excess Funds. To the extent the special master determines that the Backstop Fund exceeds the amount necessary for payment to Counsel, the special master shall distribute any excess amount to Participating Local Governments according to the percentages set forth in **Exhibit B**.
- J. Term. The Backstop Fund will be administered for (a) the length of the National Litigation Settlement payments; or (b) until all Counsel for Litigating Local Governments have either (i) received payments equal to the Backstop Fund Payment Cap above or (ii) received the full amount determined by the special master; whichever occurs first.
- K. No State Funds Toward Attorney Fees. For the avoidance of doubt, no portion of the State Abatement Fund will be used to fund the Backstop Fund or in any other way to fund any Litigating Local Government's attorney fees and expenses. Any funds that the State receives from the National Settlement Agreements as attorney fees and costs or in lieu of attorney fees and costs, including the Additional Restitution Amounts, will be treated as State Abatement Funds.

## VII. General Terms

- A. Scope of agreement. This MOA applies to all settlements under the National Settlement Agreements with Settling Defendants and the Bankruptcy Resolutions with Bankruptcy Defendants.<sup>4</sup> The Parties agree to discuss the use, as the Parties may deem appropriate in the future, of the settlement terms set out herein (after any necessary amendments) for resolutions with Opioid Supply Chain Participants not covered by the National Settlement Agreements or a Bankruptcy Resolution. The Parties acknowledge that this MOA does not excuse any requirements placed upon them by the terms of the National Settlement Agreements or any Bankruptcy Resolution, except to the extent those terms allow for a State-Subdivision Agreement to do so.
- B. When MOA takes effect.
  - 1. This MOA shall become effective at the time a sufficient number of Local Governments have joined the MOA to qualify this MOA as a State-Subdivision Agreement under the National Settlement Agreements or as a Statewide Abatement Agreement under any Bankruptcy Resolution. If this MOA does not thereby qualify as a State-Subdivision Agreement or Statewide Abatement Agreement, this MOA will have no effect.
  - 2. The Parties may conditionally agree to sign on to the MOA through a letter of intent, resolution, or similar written statement, declaration, or pronouncement declaring

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<sup>4</sup> For the avoidance of doubt, this includes settlements reached with AmerisourceBergen, Cardinal Health, and McKesson, and Janssen, and Bankruptcy Resolutions involving Purdue Pharma L.P., and Mallinckrodt plc.

their intent to sign on to the MOA if the threshold for Party participation in a specific Settlement is achieved.

C. Dispute resolution.

1. If any Party believes another Party has violated the terms of this MOA, the alleging Party may seek to enforce the terms of this MOA in Ramsey County District Court, provided the alleging Party first provides notice to the alleged offending Party of the alleged violation and a reasonable opportunity to cure the alleged violation.
2. If a Party believes another Party, Region, or individual involved in the receipt, distribution, or administration of Opioid Settlement Funds has violated any applicable ethics codes or rules, a complaint shall be lodged with the appropriate forum for handling such matters.
3. If a Party believes another Party, Region, or individual involved in the receipt, distribution, or administration of Opioid Settlement Funds violated any Minnesota criminal law, such conduct shall be reported to the appropriate criminal authorities.

D. Amendments. The Parties agree to make such amendments as necessary to implement the intent of this MOA.

E. Applicable law and venue. Unless otherwise required by the National Settlement Agreements or a Bankruptcy Resolution, this MOA, including any issues related to interpretation or enforcement, is governed by the laws of the State of Minnesota. Any action related to the provisions of this MOA must be adjudicated by the Ramsey County District Court. If any provision of this MOA is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision which can be given effect without the invalid provision.

F. Relationship of this MOA to other agreements and resolutions. All Parties acknowledge and agree that the National Settlement Agreements will require a Participating Local Government to release all its claims against the Settling Defendants to receive direct allocation of Opioid Settlement Funds. All Parties further acknowledge and agree that based on the terms of the National Settlement Agreements, a Participating Local Government may receive funds through this MOA only after complying with all requirements set forth in the National Settlement Agreements to release its claims. This MOA is not a promise from any Party that any National Settlement Agreements or Bankruptcy Resolution will be finalized or executed.

G. When MOA is no longer in effect. This MOA is effective until one year after the last date on which any Opioid Settlement Funds are being spent by the Parties pursuant to the National Settlement Agreements and any Bankruptcy Resolution.

H. No waiver for failure to exercise. The failure of a Party to exercise any rights under this MOA will not be deemed to be a waiver of any right or any future rights.

- I. No effect on authority of Parties. Nothing in this MOA should be construed to limit the power or authority of the State of Minnesota, the Attorney General, or the Local Governments, except as expressly set forth herein.
- J. Signing and execution. This MOA may be executed in counterparts, each of which constitutes an original, and all of which constitute one and the same agreement. This MOA may be executed by facsimile or electronic copy in any image format. Each Party represents that all procedures necessary to authorize such Party's execution of this MOA have been performed and that the person signing for such Party has been authorized to execute the MOA in an official capacity that binds the Party.

**This Minnesota Opioids State-Subdivision Memorandum of Agreement is signed**

this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by:

\_\_\_\_\_

Name and Title: \_\_\_\_\_

On behalf of: \_\_\_\_\_

## **EXHIBIT A**

### **List of Opioid Remediation Uses**

Settlement fund recipients shall choose from among abatement strategies, including but not limited to those listed in this Exhibit. The programs and strategies listed in this Exhibit are not exclusive, and fund recipients shall have flexibility to modify their abatement approach as needed and as new uses are discovered.

<b>PART ONE: TREATMENT</b>
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#### **A. TREAT OPIOID USE DISORDER (OUD)**

Support treatment of Opioid Use Disorder (“*OUD*”) and any co-occurring Substance Use Disorder or Mental Health (“*SUD/MH*”) conditions through evidence-based or evidence-informed programs<sup>5</sup> or strategies that may include, but are not limited to, those that:<sup>6</sup>

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, including all forms of Medication for Opioid Use Disorder (“*MOUD*”)<sup>7</sup> approved by the U.S. Food and Drug Administration.
2. Support and reimburse evidence-based services that adhere to the American Society of Addiction Medicine (“*ASAM*”) continuum of care for OUD and any co-occurring SUD/MH conditions.
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, including *MOUD*, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. Improve oversight of Opioid Treatment Programs (“*OTPs*”) to assure evidence-based or evidence-informed practices such as adequate methadone dosing and low threshold approaches to treatment.

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<sup>5</sup> Use of the terms “evidence-based,” “evidence-informed,” or “best practices” shall not limit the ability of recipients to fund innovative services or those built on culturally specific needs. Rather, recipients are encouraged to support culturally appropriate services and programs for persons with OUD and any co-occurring SUD/MH conditions.

<sup>6</sup> As used in this Exhibit, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.

<sup>7</sup> Historically, pharmacological treatment for opioid use disorder was referred to as “Medication-Assisted Treatment” (“*MAT*”). It has recently been determined that the better term is “Medication for Opioid Use Disorder” (“*MOUD*”). This Exhibit will use “*MOUD*” going forward. Use of the term *MOUD* is not intended to and shall in no way limit abatement programs or strategies now or into the future as new strategies and terminology evolve.

5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions and for persons who have experienced an opioid overdose.
6. Provide treatment of trauma for individuals with OUD (e.g., violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (e.g., surviving family members after an overdose or overdose fatality), and training of health care personnel to identify and address such trauma.
7. Support detoxification (detox) and withdrawal management services for people with OUD and any co-occurring SUD/MH conditions, including but not limited to medical detox, referral to treatment, or connections to other services or supports.
8. Provide training on MOUD for health care providers, first responders, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH or mental health conditions.
10. Offer fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Offer scholarships and supports for certified addiction counselors, licensed alcohol and drug counselors, licensed clinical social workers, licensed mental health counselors, and other mental and behavioral health practitioners or workers, including peer recovery coaches, peer recovery supports, and treatment coordinators, involved in addressing OUD and any co-occurring SUD/MH or mental health conditions, including, but not limited to, training, scholarships, fellowships, loan repayment programs, continuing education, licensing fees, or other incentives for providers to work in rural or underserved areas.
12. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (“*DATA 2000*”) to prescribe MOUD for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.
13. Dissemination of web-based training curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service–Opioids web-based training curriculum and motivational interviewing.
14. Develop and disseminate new curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service for Medication–Assisted Treatment.

**B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY**

Support people in recovery from OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the programs or strategies that:

1. Provide comprehensive wrap-around services to individuals with OUD and any co-occurring SUD/MH conditions, including housing, transportation, education, job placement, job training, or childcare.
2. Provide the full continuum of care of treatment and recovery services for OUD and any co-occurring SUD/MH conditions, including supportive housing, peer support services and counseling, community navigators, case management, and connections to community-based services.
3. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions.
4. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, including supportive housing, recovery housing, housing assistance programs, training for housing providers, or recovery housing programs that allow or integrate FDA-approved medication with other support services.
5. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions.
6. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions.
7. Provide or support transportation to treatment or recovery programs or services for persons with OUD and any co-occurring SUD/MH conditions.
8. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions.
9. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
10. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to support the person with OUD in the family.

11. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to individuals with or in recovery from OUD, including reducing stigma.
12. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.
13. Create or support culturally appropriate services and programs for persons with OUD and any co-occurring SUD/MH conditions, including but not limited to new Americans, African Americans, and American Indians.
14. Create and/or support recovery high schools.
15. Hire or train behavioral health workers to provide or expand any of the services or supports listed above.

**C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED**  
**(CONNECTIONS TO CARE)**

Provide connections to care for people who have—or are at risk of developing—OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Fund Screening, Brief Intervention and Referral to Treatment (“SBIRT”) programs to reduce the transition from use to disorders, including SBIRT services to pregnant women who are uninsured or not eligible for Medicaid.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.
4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Expand services such as navigators and on-call teams to begin MOUD in hospital emergency departments.
6. Provide training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MOUD, recovery case management or support services.
7. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, or persons who have experienced an opioid overdose, into clinically appropriate follow-up care through a bridge clinic or similar approach.

8. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose.
9. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
10. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions or to persons who have experienced an opioid overdose.
11. Expand warm hand-off services to transition to recovery services.
12. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
13. Develop and support best practices on addressing OUD in the workplace.
14. Support assistance programs for health care providers with OUD.
15. Engage non-profits and the faith community as a system to support outreach for treatment.
16. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions.

**D. ADDRESS THE NEEDS OF CRIMINAL JUSTICE-INVOLVED PERSONS**

Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support pre-arrest or pre-arraignment diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, including established strategies such as:
  1. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (“*PAARR*”);
  2. Active outreach strategies such as the Drug Abuse Response Team (“*DART*”) model;

3. “Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
  4. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (“*LEAD*”) model;
  5. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative; or
  6. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions to evidence-informed treatment, including MOUD, and related services.
  3. Support treatment and recovery courts that provide evidence-based options for persons with OUD and any co-occurring SUD/MH conditions.
  4. Provide evidence-informed treatment, including MOUD, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are incarcerated in jail or prison.
  5. Provide evidence-informed treatment, including MOUD, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are leaving jail or prison or have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
  6. Support critical time interventions (“*CTP*”), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.
  7. Provide training on best practices for addressing the needs of criminal justice-involved persons with OUD and any co-occurring SUD/MH conditions to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, harm reduction, case management, or other services offered in connection with any of the strategies described in this section.

**E. ADDRESS THE NEEDS OF THE PERINATAL POPULATION, CAREGIVERS, AND FAMILIES, INCLUDING BABIES WITH NEONATAL OPIOID WITHDRAWAL SYNDROME.**

Address the needs of the perinatal population and caregivers with OUD and any co-occurring SUD/MH conditions, and the needs of their families, including babies with

neonatal opioid withdrawal syndrome (“*NOWS*”), through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support evidence-based or evidence-informed treatment, including MOUD, recovery services and supports, and prevention services for the perinatal population—or individuals who could become pregnant—who have OUD and any co-occurring SUD/MH conditions, and other measures to educate and provide support to caregivers and families affected by Neonatal Opioid Withdrawal Syndrome.
2. Expand comprehensive evidence-based treatment and recovery services, including MOUD, for uninsured individuals with OUD and any co-occurring SUD/MH conditions for up to 12 months postpartum.
3. Provide training for obstetricians or other healthcare personnel who work with the perinatal population and their families regarding treatment of OUD and any co-occurring SUD/MH conditions.
4. Expand comprehensive evidence-based treatment and recovery support for *NOWS* babies; expand services for better continuum of care with infant-caregiver dyad; and expand long-term treatment and services for medical monitoring of *NOWS* babies and their caregivers and families.
5. Provide training to health care providers who work with the perinatal population and caregivers on best practices for compliance with federal requirements that children born with *NOWS* get referred to appropriate services and receive a plan of safe care.
6. Provide child and family supports for caregivers with OUD and any co-occurring SUD/MH conditions, emphasizing the desire to keep families together.
7. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.
8. Offer home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, including, but not limited to, parent skills training.
9. Provide support for Children’s Services—Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION
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**F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS**

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding medical provider education and outreach regarding best prescribing practices for opioids consistent with the Guidelines for Prescribing Opioids for Chronic Pain from the U.S. Centers for Disease Control and Prevention, including providers at hospitals (academic detailing).
2. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Providing Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Supporting enhancements or improvements to Prescription Drug Monitoring Programs (“PDMPs”), including, but not limited to, improvements that:
  1. Increase the number of prescribers using PDMPs;
  2. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs, by improving the interface that prescribers use to access PDMP data, or both; or
  3. Enable states to use PDMP data in support of surveillance or intervention strategies, including MOUD referrals and follow-up for individuals identified within PDMP data as likely to experience OUD in a manner that complies with all relevant privacy and security laws and rules.
6. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation’s Emergency Medical Technician overdose database in a manner that complies with all relevant privacy and security laws and rules.
7. Increasing electronic prescribing to prevent diversion or forgery.
8. Educating dispensers on appropriate opioid dispensing.

## **G. PREVENT MISUSE OF OPIOIDS**

Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding media campaigns to prevent opioid misuse, including but not limited to focusing on risk factors and early interventions.
2. Corrective advertising or affirmative public education campaigns based on evidence.
3. Public education relating to drug disposal.
4. Drug take-back disposal or destruction programs.
5. Funding community anti-drug coalitions that engage in drug prevention efforts.
6. Supporting community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction—including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (“SAMHSA”).
7. Engaging non-profits and faith-based communities as systems to support prevention.
8. Funding evidence-based prevention programs in schools or evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
9. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
10. Create or support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions.
11. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
12. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses, behavioral health

workers or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or another drug misuse.

#### **H. PREVENT OVERDOSE DEATHS AND OTHER HARMS (HARM REDUCTION)**

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Increased availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, individuals with OUD and their friends and family members, schools, community navigators and outreach workers, persons being released from jail or prison, or other members of the general public.
2. Public health entities providing free naloxone to anyone in the community.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, community support groups, and other members of the general public.
4. Enabling school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expanding, improving, or developing data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.
7. Public education relating to immunity and Good Samaritan laws.
8. Educating first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Syringe service programs and other evidence-informed programs to reduce harms associated with intravenous drug use, including supplies, staffing, space, peer support services, referrals to treatment, fentanyl checking, connections to care, and the full range of harm reduction and treatment services provided by these programs.
10. Expanding access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
11. Supporting mobile units that offer or provide referrals to harm reduction services, treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions.

12. Providing training in harm reduction strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions.
13. Supporting screening for fentanyl in routine clinical toxicology testing.

<b>PART THREE: OTHER STRATEGIES</b>
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**I. FIRST RESPONDERS**

In addition to items in section C, D and H relating to first responders, support the following:

1. Law enforcement expenditures related to the opioid epidemic.
2. Education of law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.
3. Provision of wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.

**J. LEADERSHIP, PLANNING AND COORDINATION**

Support efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Statewide, regional, local or community regional planning to identify root causes of addiction and overdose, goals for reducing harms related to the opioid epidemic, and areas and populations with the greatest needs for treatment intervention services, and to support training and technical assistance and other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
2. A dashboard to (a) share reports, recommendations, or plans to spend opioid settlement funds; (b) to show how opioid settlement funds have been spent; (c) to report program or strategy outcomes; or (d) to track, share or visualize key opioid- or health-related indicators and supports as identified through collaborative statewide, regional, local or community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

4. Provide resources to staff government oversight and management of opioid abatement programs.
5. Support multidisciplinary collaborative approaches consisting of, but not limited to, public health, public safety, behavioral health, harm reduction, and others at the state, regional, local, nonprofit, and community level to maximize collective impact.

## **K. TRAINING**

In addition to the training referred to throughout this document, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, those that:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Support infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy list (*e.g.*, health care, primary care, pharmacies, PDMPs, etc.).

## **L. RESEARCH**

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, data collection and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.
4. Research on novel harm reduction and prevention efforts such as the provision of fentanyl test strips.
5. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
6. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (*e.g.*, Hawaii HOPE and Dakota 24/7).

7. Epidemiological surveillance of OUD-related behaviors in critical populations, including individuals entering the criminal justice system, including, but not limited to approaches modeled on the Arrestee Drug Abuse Monitoring (“ADAM”) system.
8. Qualitative and quantitative research regarding public health risks and harm reduction opportunities within illicit drug markets, including surveys of market participants who sell or distribute illicit opioids.
9. Geospatial analysis of access barriers to MOUD and their association with treatment engagement and treatment outcomes.

**M. POST-MORTEM**

1. Toxicology tests for the range of opioids, including synthetic opioids, seen in overdose deaths as well as newly evolving synthetic opioids infiltrating the drug supply.
2. Toxicology method development and method validation for the range of synthetic opioids observed now and in the future, including the cost of installation, maintenance, repairs and training of capital equipment.
3. Autopsies in cases of overdose deaths resulting from opioids and synthetic opioids.
4. Additional storage space/facilities for bodies directly related to opioid or synthetic opioid related deaths.
5. Comprehensive death investigations for individuals where a death is caused by or suspected to have been caused by an opioid or synthetic opioid overdose, whether intentional or accidental (overdose fatality reviews).
6. Indigent burial for unclaimed remains resulting from overdose deaths.
7. Navigation-to-care services for individuals with opioid use disorder who are encountered by the medical examiner’s office as either family and/or social network members of decedents dying of opioid overdose.
8. Epidemiologic data management and reporting to public health and public safety stakeholders regarding opioid overdose fatalities.

## **EXHIBIT B**

### **Local Abatement Funds Allocation**

<b>Subdivision</b>	<b>Allocation Percentage</b>
AITKIN COUNTY	0.5760578506020%
Andover city	0.1364919450741%
ANOKA COUNTY	5.0386504680954%
Apple Valley city	0.2990817344560%
BECKER COUNTY	0.6619330684437%
BELTRAMI COUNTY	0.7640787092763%
BENTON COUNTY	0.6440948102319%
BIG STONE COUNTY	0.1194868774775%
Blaine city	0.4249516912759%
Bloomington city	0.4900195550092%
BLUE EARTH COUNTY	0.6635420704652%
Brooklyn Center city	0.1413853902225%
Brooklyn Park city	0.2804136234778%
BROWN COUNTY	0.3325325415732%
Burnsville city	0.5135361296508%
CARLTON COUNTY	0.9839591749060%
CARVER COUNTY	1.1452829659572%
CASS COUNTY	0.8895681513437%
CHIPPEWA COUNTY	0.2092611794436%
CHISAGO COUNTY	0.9950193750117%
CLAY COUNTY	0.9428475281726%
CLEARWATER COUNTY	0.1858592042741%
COOK COUNTY	0.1074594959729%
Coon Rapids city	0.5772642444915%
Cottage Grove city	0.2810994719143%
COTTONWOOD COUNTY	0.1739065270025%
CROW WING COUNTY	1.1394859174804%
DAKOTA COUNTY	4.4207140602835%
DODGE COUNTY	0.2213963257778%
DOUGLAS COUNTY	0.6021779472345%
Duluth city	1.1502115379896%
Eagan city	0.3657951576014%
Eden Prairie city	0.2552171572659%
Edina city	0.1973054822135%
FARIBAULT COUNTY	0.2169409335358%
FILLMORE COUNTY	0.2329591105316%
FREEBORN COUNTY	0.3507169823793%
GOODHUE COUNTY	0.5616542387089%

<b>Subdivision</b>	<b>Allocation Percentage</b>
GRANT COUNTY	0.0764556498477%
HENNEPIN COUNTY	19.0624622261821%
HOUSTON COUNTY	0.3099019273452%
HUBBARD COUNTY	0.4582368775192%
Inver Grove Heights city	0.2193400520297%
ISANTI COUNTY	0.7712992707537%
ITASCA COUNTY	1.1406408131328%
JACKSON COUNTY	0.1408950443531%
KANABEC COUNTY	0.3078966749987%
KANDIYOHI COUNTY	0.1581167542252%
KITSON COUNTY	0.0812834506382%
KOOCHICHING COUNTY	0.2612581865885%
LAC QUI PARLE COUNTY	0.0985665133485%
LAKE COUNTY	0.1827750320696%
LAKE OF THE WOODS COUNTY	0.1123105027592%
Lakeville city	0.2822249627090%
LE SUEUR COUNTY	0.3225703347466%
LINCOLN COUNTY	0.1091919983965%
LYON COUNTY	0.2935118186364%
MAHNOMEN COUNTY	0.1416417687922%
Mankato city	0.3698584320930%
Maple Grove city	0.1814019046900%
Maplewood city	0.1875101678223%
MARSHALL COUNTY	0.1296352091057%
MARTIN COUNTY	0.2543064014046%
MCLEOD COUNTY	0.1247104517575%
MEEKER COUNTY	0.3744031515243%
MILLE LACS COUNTY	0.9301506695846%
Minneapolis city	4.8777618689374%
Minnetonka city	0.1967231070869%
Moorhead city	0.4337377037965%
MORRISON COUNTY	0.7178981419196%
MOWER COUNTY	0.5801769148506%
MURRAY COUNTY	0.1348775389165%
NICOLLET COUNTY	0.1572381052896%
NOBLES COUNTY	0.1562005111775%
NORMAN COUNTY	0.1087596675165%
North St. Paul city	0.0575844069340%
OLMSTED COUNTY	1.9236715094724%
OTTER TAIL COUNTY	0.8336175418789%
PENNINGTON COUNTY	0.3082576394945%
PINE COUNTY	0.5671222706703%

<b>Subdivision</b>	<b>Allocation Percentage</b>
PIPESTONE COUNTY	0.1535154503112%
Plymouth city	0.1762541472591%
POLK COUNTY	0.8654291473909%
POPE COUNTY	0.1870129873102%
Proctor city	0.0214374127881%
RAMSEY COUNTY	7.1081424150498%
RED LAKE COUNTY	0.0532649128178%
REDWOOD COUNTY	0.2809842366614%
RENVILLE COUNTY	0.2706888807449%
RICE COUNTY	0.2674764397830%
Richfield city	0.2534018444052%
Rochester city	0.7363082848763%
ROCK COUNTY	0.2043437335735%
ROSEAU COUNTY	0.2517872793025%
Roseville city	0.1721905548771%
Savage city	0.1883576635033%
SCOTT COUNTY	1.3274301645797%
Shakopee city	0.2879873611373%
SHERBURNE COUNTY	1.2543449471994%
SIBLEY COUNTY	0.2393480708456%
ST LOUIS COUNTY	4.7407767169807%
St. Cloud city	0.7330089009029%
St. Louis Park city	0.1476314588229%
St. Paul city	3.7475206797569%
STEARNS COUNTY	2.4158085321227%
STEELE COUNTY	0.3969975262520%
STEVENS COUNTY	0.1439474275223%
SWIFT COUNTY	0.1344167568499%
TODD COUNTY	0.4180909816781%
TRAVERSE COUNTY	0.0903964133868%
WABASHA COUNTY	0.3103038996965%
WADENA COUNTY	0.2644094336575%
WASECA COUNTY	0.2857912156338%
WASHINGTON COUNTY	3.0852862512586%
WATONWAN COUNTY	0.1475626355615%
WILKIN COUNTY	0.0937962507119%
WINONA COUNTY	0.7755267356126%
Woodbury city	0.4677270171716%
WRIGHT COUNTY	1.6985269385427%
YELLOW MEDICINE COUNTY	0.1742264836427%

## RESOLUTION NO.

## ACCEPTING DONATIONS TO THE CITY OF AUSTIN

WHEREAS, the City has received gift as follows:

Gift	Donor	For
\$1,000	Kurt Potach	APD exercise/training room
\$350	Edward Jones	APD community distribution
In Kwik Trip		
Gift cards		

NOW THEREFORE, BE IT RESOLVED that the Austin City Council accepts said gifts to the City of Austin.

Passed by a vote of yeas and nays this 18th day of January, 2022.

YEAS

NAYS

ATTEST:

APPROVED:

---

 City Recorder

---

 Mayor

City of Austin  
Craig Clark,  
City Administrator



500 Fourth Avenue N.E.  
Austin, Minnesota 55912-3773  
Phone: 507-437-9941  
[craigc@ci.austin.mn.us](mailto:craigc@ci.austin.mn.us)  
[www.ci.austin.mn.us](http://www.ci.austin.mn.us)

1/11/22

**TO: Honorable Mayor and City Council Members**  
**FROM: Craig D. Clark, Administrator**  
**RE: City owned property that is leased by KSMQ Public Television**

Metronet approached the City of Austin with a request to have a secondary access to their hut site located just north of the Dominos Pizza along Main Street. They would like redundancy of access from Main Street and from the west as well. As a result, they have requested an access easement (Exhibit 1) from the City of Austin, as the current property owners, of 2 feet wide by 92 feet long piece along the eastern property line.

Metronet and KSMQ have been in direct communications as our interest is largely tied with KSMQ's ability to allow this as part of the property in a working manner. Eric Olson, President and CEO of KSMQ has provided a letter of support and finds no issues with granting the easement and provided the letter included (Exhibit 2).

**Council Action is requested to approve the easement included at Exhibit 1 and authorize the Mayor to sign the easement on behalf of the City.**



2000 Eighth Ave. NW  
Austin, MN 55912

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12/21/2021

City of Austin  
The Honorable Steve King  
500 4<sup>th</sup> Avenue NE  
Austin, MN 55912

RE: Communications Systems Right-of-Way and Easement – Metro Fibernet, LLC

Dear Mr. King,

Because we are in the process of purchasing property from the City that would be subject to Metro Fibernet, LLC's ("MetroNet") proposed *Communications Systems Right-of-Way and Easement* ("Easement") request for 107 W Oakland Ave, Austin, MN, we are writing to let you know that we are fully supportive of the Easement. MetroNet has spoken with KSMQ regarding its plans for the fiber optic route along the Northeast side of the new KSMQ building site within the Subdivision of Berry, Block 1, northeast portion of Lot 8.

As explained to us, granting this easement to MetroNet will allow them to construct a 100% fiber network throughout the City of Austin, MN from their shelter site located at 102 Main Street in Austin, MN. KSMQ does not have any concerns and fully supports this request. KSMQ also acknowledges that this Communications Systems Right-of-Way and Easement will automatically transfer with the sale of the property to KSMQ after the transfer of ownership from the City of Austin to KSMQ.

Sincerely,

A handwritten signature in dark ink, appearing to read "Eric Olson", written in a cursive, flowing style.

Eric Olson  
President/CEO  
KSMQ Public Service Media, Inc.

## COMMUNICATIONS SYSTEMS RIGHT-OF-WAY AND EASEMENT

Grant of Easement by: City of Austin, Minnesota whose address is 500 4<sup>th</sup> Avenue NE, Austin, Minnesota 55912 and ("Grantor") to: Metro Fibernet, LLC, whose address is 8837 Bond Avenue, Overland Park, Kansas 66214.

For the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor grants to Metro Fibernet, LLC, a Nevada limited liability company, its successors, assigns, lessees and agents ("Grantee"), subject to the terms stated below, a freely assignable, perpetual right-of-way and easement ("Easement") to construct, operate, maintain, expand, replace and remove a communication systems that Grantee may, from time to time, require, consisting of but not limited to a cabinet, underground cables, wires, conduits, manholes, handholes, drains, splicing boxes, surface location markers, utilities, and other facilities or structures for similar uses, upon, over, through, under, and along a parcel of land as described and depicted on the Exhibit A ("Easement Tract"), which is located on a portion of the real property owned by Grantor, commonly known as 107 W Oakland Ave, Austin, MN. This grant of Easement also includes: (i) the right of ingress and egress over and across any real property owned or controlled by Grantor adjacent to the Easement Tract for the purpose of exercising the rights granted herein; (ii) the right to clear and keep cleared all trees, roots, brush and other obstructions from the surface and sub-surface of the Easement Tract during construction and maintenance and to use adjacent areas as necessary, and the right to connect to the electrical power source located on or near the property.

Grantor will have the right to use and enjoy the Easement Tract so long as Grantor's use does not interfere with the rights conveyed to Grantee. Grantor will not erect any structure, or plant trees or other vegetation within the Easement Tract. Grantor warrants that Grantor is the owner of the land on which the Easement Tract is located and will defend title to the land and Easement Tract against the claims of any and all persons, and that Grantor has full authority to grant this Easement according to its terms.

The grant of this right of way and easement shall run with the land and be binding on and inure to the benefit of the parties, their heirs, successors and assigns.

Executed by Grantor this \_\_\_\_ day of \_\_\_\_\_, 2021.

Grantor:

\_\_\_\_\_  
Name: City of Austin, MN  
Title: Steve King  
\_\_\_\_\_  
Title: Mayor

ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared Steve King, known to me to be the identical person who executed this foregoing instrument as an authorized representative on behalf of City of Austin, MN and acknowledged to me that he/she executed the same voluntarily for the uses and purposes therein set forth.

\_\_\_\_\_  
Notary Public

I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Anita Larson

PREPARED BY AND WHEN RECORDED RETURN TO:  
Constance Shidler  
Metro Fibernet, LLC  
8837 Bond Street  
Overland Park, KS 66214

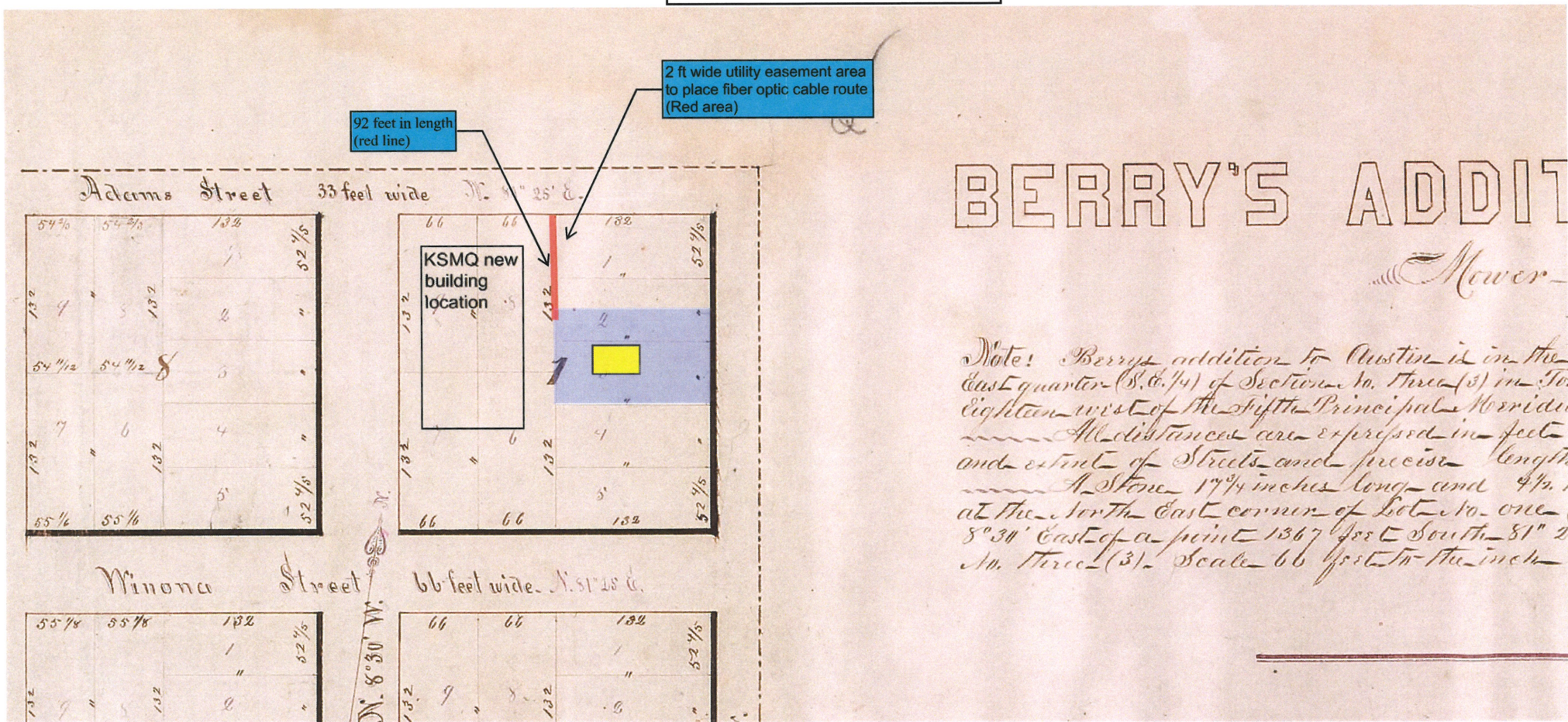
#### EXHIBIT A

A two-foot strip of land running north and south along the east property line located on the Subdivision of Berry, Block 1, Subdivision corrected description 34095, Lots 6,7,8, & 9 for ninety-two feet (92) in the northeasterly portion of Lot 8, of Austin, MN, Mower County MN for utility purpose.

#### EXHIBIT B

Drawing

## Exhibit B



**RESOLUTION NO.**

**GRANTING AN EASEMENT  
TO METRO FIBERNET, LLC**

WHEREAS, Metro Fibernet, LLC has requested use of property owned by the City of Austin for an easement for communications system purposes; and

WHEREAS, the easement would consist of a two-foot strip of land in Block 1 of Berry's Addition; and

WHEREAS, said easement agreement is attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Austin does grant an easement to Metro Fibernet, LLC, which easement is on file in the city offices.

Passed by a vote Yeas and Nays this 18th day of January, 2022.

YEAS

NAYS

ATTEST:

APPROVED:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

RESOLUTION NO. \_\_\_\_\_  
DEDICATION OF CERTAIN PROPERTY  
FOR STREET PURPOSES

WHEREAS, Geo. A. Hormel & Company (now known as Hormel Foods Corporation) a corporation, previously executed a deed of dedication dated September 17, 1966, and said deed of dedication was accepted by the City of Austin by Resolution 4729, dated September 19, 1966, and recorded in the Office of the County Recorder for Mower County Minnesota on September 23, 1966, as document number 279218; and

WHEREAS, said deed of dedication served to dedicate multiple parcels to the City of Austin, a Municipal Corporation, FOR PUBLIC STREET PURPOSES; and

WHEREAS, one such parcel (referred to in said deed of dedication as "Tract B" is and was described as follows:

The following portion of the Northwest Quarter of the Southeast Quarter of said Section 35: Beginning at the Southeast corner of said Quarter-Quarter Section; thence West 66.0 feet along the South line of said Quarter-Quarter Section; thence Northerly 845.94 feet at a deflection angle of 88° 53' right; thence Northerly 235.11 feet at a deflection angle of 0° 40' left, to the Southeasterly right-of-way line of the former Chicago Great Western Railway Company; thence Northeasterly 112.02 feet at a deflection angle of 36° 06' right, along said railroad right-of-way line; thence Southerly 326.0 feet at a deflection angle of 143° 54' right; thence Southerly 847.42 feet at a deflection angle of 0° 40' right, to the point of beginning containing 1.65 acres.

WHEREAS, said Tract B is and has been developed by the City of Austin as a portion of 14<sup>th</sup> Street NE, a public roadway, open to the public, and maintained by the City of Austin for such purpose; and

WHEREAS, the above-described dedication of Tract B created a narrow sliver of land between the eastern line of said Tract B and the eastern line of the Northwest Quarter of the Southeast Quarter of Section 35, Township 103 North, Range 18 West, Mower County, Minnesota, thereby creating a separation between the parcels east of said line (i.e., located in the Northeast Quarter of the Southeast Quarter of said Section 35), and the now existing road dedication described above; and

WHEREAS, Hormel Foods has agreed to convey, by Quit Claim Deed, said narrow sliver of land described in the preceding paragraph to the City of Austin; and

WHEREAS, the City of Austin wishes to dedicate such narrow strip of land as additional dedicated road right-of-way, to provide for future expansion or redesign of the existing roadway

and to provide for immediate access to said dedicated road right-of-way by parcels located east of said narrow strip of land; and

WHEREAS, the City of Austin has need of said property for street purposes both to facilitate future development of those parcels located in the Northwest Quarter of the Southeast Quarter of Section 35, Township 103 North, Range 18 West, and for future redevelopment of that portion of 14<sup>th</sup> Street NE lying south of the southeasterly right-of-way line of the former Chicago Great Western Railway Company to better align with that portion of 14<sup>th</sup> Street NE lying north of the northerly right-of-way line of the former Chicago Great Western Railway Company.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF AUSTIN, that the City of Austin does hereby accept the conveyance of the above described narrow strip of land by Hormel Foods Corporation to the City of Austin, hereby dedicates the same for public street purposes, and authorizes the City Attorney for the City of Austin to accept on behalf of the City of Austin a properly executed Quit Claim Deed from Hormel Foods Corporation, for the parcel legally described on attached **Exhibit A** and to record the same with the County Recorder's Office for Mower County, Minnesota, and further the Common Council hereby dedicates said parcel legally described on attached Exhibit A for public street purposes.

Passed by a vote of Yeas and Nays this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Steve King, Mayor

Attest:

\_\_\_\_\_  
Tom Dankert, City Recorder

## Exhibit A

All that portion of the Northwest Quarter of the Southeast Quarter of Section 35, Township 103 North, Range 18 West, Mower County, Minnesota, lying east of the following described parcel:

The following portion of the Northwest Quarter of the Southeast Quarter of said Section 35: Beginning at the Southeast corner of said Quarter-Quarter Section; thence West 66.0 feet along the South line of said Quarter-Quarter Section; thence Northerly 845.94 feet at a deflection angle of  $88^{\circ}53'$  right; thence Northerly 235.11 feet at a deflection angle of  $0^{\circ}40'$  left, to the Southeasterly right-of-way line of the former Chicago Great Western Railway Company; thence Northeasterly 112.02 feet at a deflection angle of  $36^{\circ}06'$  right, along said railroad right-of-way line; thence Southerly 326.0 feet at a deflection angle of  $143^{\circ}54'$  right; thence Southerly 847.42 feet at a deflection angle of  $0^{\circ}40'$  right, to the point of beginning containing 1.65 acres. Said parcel having been previously described as "Tract B" in the Deed of Dedication from Geo. A. Hormel & Company to the City of Austin dated September 19, 1966, and recorded in the office of the Mower County Recorder on September 23, 1966, as document number 279218.

(Top 3 inches reserved for recording data)

**QUIT CLAIM DEED**

**Business Entity to Business Entity**

eCRV number: **N/A**

DEED TAX DUE: **\$1.65**

DATE: **January 12, 2022**

FOR VALUABLE CONSIDERATION, **Hormel Foods Corporation**, a corporation under the laws of the **State of Delaware** ("Grantor"), hereby conveys and quitclaims to **the City of Austin**, a municipal corporation under the laws of the **State of Minnesota** ("Grantee"), real property in **Mower County**, Minnesota, legally described as follows:

See attached **Exhibit A**

Check here if all or part of the described real property is Registered (Torrens) ☐

together with all hereditaments and appurtenances belonging thereto.

**THIS DEED TRANSFERS REAL PROPERTY IN EXCHANGE FOR \$500.00 OR LESS OF CONSIDERATION.**

Check applicable box:

- ☒ The Seller certifies that the Seller does not know of any wells on the described real property.
- ☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)
- ☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

**Hormel Foods Corporation,  
a Delaware corporation**

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

Gary L. Jamison

Its: Vice President and Treasurer

State of Minnesota, County of Mower

This instrument was acknowledged before me on January 12, 2022, by Gary L. Jamison, as Vice President and Treasurer of Hormel Foods Corporation, a Delaware corporation, on behalf of the corporation.



Megan E Crouch  
(signature of notarial officer)

Title (and Rank): Notary Public

My commission expires: January 31, 2025

(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:

Faegre Drinker Biddle LLP (AMW)  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901

**TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT SHOULD BE SENT TO:**

CITY OF AUSTIN  
500 4<sup>th</sup> Avenue NE  
Austin, MN 55912

US.135844279.01

**Exhibit A**  
**Legal Description**

All that portion of the Northwest Quarter of the Southeast Quarter of Section 35, Township 103 North, Range 18 West, Mower County, Minnesota, lying east of the following described parcel:

The following portion of the Northwest Quarter of the Southeast Quarter of said Section 35: Beginning at the Southeast corner of said Quarter-Quarter Section; thence West 66.0 feet along the South line of said Quarter-Quarter Section; thence Northerly 845.94 feet at a deflection angle of 88° 53' right; thence Northerly 235.11 feet at a deflection angle of 0° 40' left, to the Southeasterly right-of-way line of the former Chicago Great Western Railway Company; thence Northeasterly 112.02 feet at a deflection angle of 36° 06' right, along said railroad right-of-way line; thence Southerly 326.0 feet at a deflection angle of 143° 54' right; thence Southerly 847.42 feet at a deflection angle of 0° 40' right, to the point of beginning containing 1.65 acres. Said parcel having been previously described as "Tract B" in the Deed of Dedication from Geo. A. Hormel & Company to the City of Austin dated September 19, 1966, and recorded in the office of the Mower County Recorder on September 23, 1966, as document number 279218.



O'Leary Sliver

14th STREET NE

4 SEC 35-T103N-R18W

349050070

349050101

349050052

349050053



City of Austin  
500 Fourth Avenue N.E.  
Austin, Minnesota 55912-3773



Steven J. Lang, P.E.  
City Engr./Public Works Dir.  
507-437-9949  
Fax 507-437-7101  
slang@ci.austin.mn.us

## Memorandum

**To:** Mayor & Council  
**From:** Steven J. Lang, P.E.  
**Date:** January 11, 2022  
**Subject:** Individual Control Mechanism (ICM)  
MN Freezer Warehouse (MFW)

---

MN Freezer Warehouse is a supplier of temperature-controlled supply chain warehouse services. Their focus is to providing distribution needs and responsive solutions to cold chain problems. The facility is located in the NE Industrial Park at 1907-14<sup>th</sup> Street NE.

They have a unique situation where during the summer months they lose a great deal of water through evaporation in their condensing units. Currently their sewer bill is based on the incoming water meter, so they are being billed for sewer water that is actually lost to evaporation. In order to more accurately measure their sewer usage, we have worked with them to install a series of meters, which will allow us to measure to volume of water lost to evaporation. At the end of each cooling season, we will then refund them a credit for the water that did not go down the sewer.

We have detailed this process in an ICM agreement, which is attached for your review. It will require the WWTP staff to read a series of meters at the beginning and end of the cooling season to calculate the refund. As per the agreement, MFW will be required to install and maintain the necessary meters.

We would recommend approval of the ICM agreement for sanitary sewer deduct, which would expire December 31<sup>st</sup>, 2031. If you have any questions, please feel free to contract me.

**SEWER DEDUCT AGREEMENT  
BETWEEN  
THE CITY OF AUSTIN  
AND  
MINNESOTA FREEZER WAREHOUSE COMPANY**

The City of Austin operates a wastewater treatment plant that serves the businesses and citizens located within the City of Austin. Minnesota Freezer Warehouse Company (MFWC) operates a refrigeration facility located in the Austin Industrial Park that currently discharges approximately 1,000,000 gallons per year of wastewater. The main function of this business is refrigeration of food products.

**Minnesota Freezer Warehouse Company:** Is a supplier of temperature-controlled supply chain warehouse services. Providing distribution needs, and responsive solutions to cold chain problems

The purpose of this agreement is to develop a means by which water used for refrigeration that is lost to evaporation through the cooling towers can be quantified; to set forth limitations, conditions and requirements for the discharge; and to specify the rights and obligations of the parties to this agreement. This quantity of water that is lost to evaporation shall then be deducted from MFWC yearly sewer bill.

1. Attached is a schematic showing the general layout of Meter A & B relative to the cooling tower recirculation tank. It will be the responsibility of MFWC to install Meter A & B and pay for all costs associated with the installation. In addition, a City of Austin lock shall be installed on the sump drain valve to verify that water is not syphoned from the system avoiding/bypassing Meter B.
2. The City shall monitor the wastewater discharge from this facility on a yearly basis. All meter readings and analysis shall be performed by the City of Austin. In the fall when the system is being drained down, MFWC shall contact the City of Austin to perform the meter reading. At that time, the City representative shall remove the lock to complete the final drain-down. The final volume of water in the tank below Meter B shall be measured and incorporated into the calculation.
3. Initial Set-up:
  - MFWC shall install Meter A & B
  - MFWC shall provide a location for a lock to be installed on the sump drain valve
  - City of Austin will install the valve lock and read meters
4. Fall Drain-Down Procedure:
  - MFWC shall drain the cooling towers and recirculation tank down to the level of Meter B
  - City of Austin will read Meter A & B
  - City of Austin will calculate the volume of water remaining in the tank (Qty. C) and remove the lock to drain the remaining water
  - City of Austin will reinstall the lock and the system is then ready for spring startup
5. Sewer Deduct Calculation and Procedure:

Meter A – Meter B + Qty. C = Quantity Lost to Evaporation

Quantity Lost to Evaporation x Current Sewer Rate = Sewer User Refund

City of Austin will cut a refund check to MFWC.

6. Duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter the facility for the purposes of inspection, observation, measurement, and/or meter reading pertinent to discharge to any public sewer or natural outlet in accordance with this agreement.
7. This agreement may be renewed or modified by mutual consent of the City and MFWC. This agreement is not transferable except with the prior written permission of the City and prior agreement in writing to the transfer and all conditions in the agreement by the parties involved.
8. MNFWC will be responsible to have the flow meters A & B calibrated one time a year by a third party, and provide certification to the City of Austin's pretreatment advisor. Flows will be read by city staff on a yearly basis. It is the owner's responsibility to maintain the meter in accurate operating condition. When flow meter is not working, flow will be based off of Austin Utilities public water meter readings.
9. Any record or other information obtained by the City of Austin or furnished to by the owner or operator of one or more SIU's as it applies to wastewater, which are certified by said owner or operator, and said certification, as it applies to wastewater is approved in writing by the city to relate to (a) sales figures, (b) processes or methods of production unique to the owner or operator, or (c) information which would tend to affect adversely the competitive position of said owner operator, shall be only for the confidential use of the City of Austin in discharging its statutory obligations, unless otherwise specifically authorized by said owner or operator. Provided, however that all such information may be used by the City of Austin in compiling or publishing analysis, reports, or summaries relating to the general condition of the wastewater and how it effects the city's Wastewater Treatment Facility so as long as such analyses or summaries do not identify any owner or operator who has so certified. Notwithstanding the foregoing, the City of Austin may disclose any information, whether or not otherwise considered confidential which it is obligated to disclose in order to comply with city state federal laws and regulations, to the extent and for the purpose of such governmentally required disclosure.
10. This agreement expires on December 31, <sup>2031 sjl</sup>~~2024~~ and is subject to be re-opened at the request of either party.

Agreed to:

City of Austin, Minnesota

Minnesota Freezer Warehouse Company

By: \_\_\_\_\_  
Steve King  
Mayor

By: Charles T. Newell  
CHARLES NEWELL  
PRESIDENT CEO

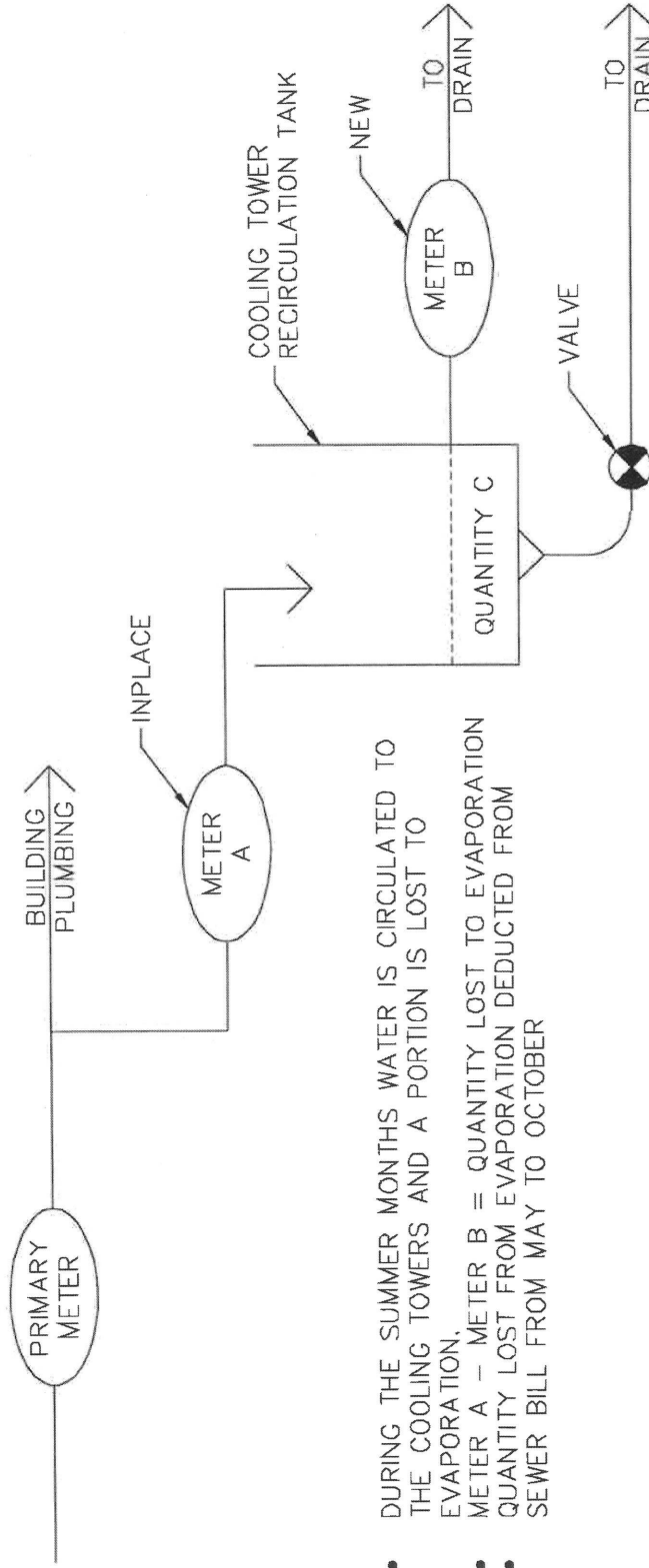
Date: \_\_\_\_\_

Date: 01-03-2022

By: \_\_\_\_\_  
Tom Dankert  
City Recorder

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

# MINNESOTA FREEZER WAREHOUSE



- DURING THE SUMMER MONTHS WATER IS CIRCULATED TO THE COOLING TOWERS AND A PORTION IS LOST TO EVAPORATION.
- METER A - METER B = QUANTITY LOST TO EVAPORATION
- QUANTITY LOST FROM EVAPORATION DEDUCTED FROM SEWER BILL FROM MAY TO OCTOBER

**RESOLUTION NO.**

**RESOLUTION AUTHORIZING INDIVIDUAL CONTROL MECHANISM AGREEMENT  
BETWEEN THE CITY OF AUSTIN AND MN FREEZER WAREHOUSE**

**WHEREAS**, the City of Austin desires to enter into an ICM agreement with MN Freezer Warehouse to address the water lost in the summer months due to evaporation.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council approves the agreement attached in Exhibit A and that such agreement will be effective immediately upon adoption of this resolution and will expire on December 31, 2031.

Passed by a vote of yeas and nays this 18th day of January, 2022.

YEAS

NAYS

ATTEST:

APPROVED:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

City of Austin  
500 Fourth Avenue N.E.  
Austin, Minnesota 55912-3773



Steven J. Lang, P.E.  
City Engineer/P.W. Director  
507-437-9950  
Fax 507-437-7101  
slang@ci.austin.mn.us

## Memorandum

**To:** Mayor & Council  
**From:** Mitch Wenum, PE  
**Date:** January 12, 2022  
**Subject:** 2022 Construction Projects, Feasibility Reports

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In preparation for 2022 construction projects, we have prepared the following feasibility reports:

- |   | <u>Project #</u> |
|---|------------------|
| 1) <b>40<sup>th</sup> Street NW &amp; 5<sup>th</sup> Avenue NW</b>      | <b>22108</b>     |
| a. 40 <sup>th</sup> Street NW – Oakland Ave W to 5 <sup>th</sup> Ave NW |                  |
| b. 5 <sup>th</sup> Avenue NW – 40 <sup>th</sup> St NW to Dead End       |                  |

If you have any questions, please feel free to contact me.

DATE: January 12, 2022  
PROJECT NO: 22108

## REPORT ON FEASIBILITY OF PROPOSED LOCAL IMPROVEMENTS

Honorable Mayor & Members of the City Council  
City of Austin, Minnesota

A resolution requesting a feasibility study for the paving of 40<sup>th</sup> Street NW (Oakland Ave W to 5<sup>th</sup> Ave NW) and 5<sup>th</sup> Avenue NW (40<sup>th</sup> St NW to Dead End) was referred to this office on December 6, 2021 for the Engineer's Preliminary Report.

We report that the improvements are feasible.

40<sup>th</sup> Street NW and 5<sup>th</sup> Avenue NW are gravel roads that were annexed into the city in 2016. The proposed project will consist of the following:

**40<sup>th</sup> Street NW (Oakland Ave W to 5<sup>th</sup> Ave NW)**  
**5<sup>th</sup> Avenue NW (40<sup>th</sup> St NW to Dead End)**

- 1) Grade the existing gravel to form a suitable base for asphalt paving.
- 2) Pave 4" of asphalt pavement.
- 3) Shoulder grading and restoration
- 4) Austin Utilities does not have any work planned on the project.

The estimated construction costs are as follows:

40 <sup>th</sup> Street NW & 5 <sup>th</sup> Avenue NW	\$ 160,000
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The total estimated costs would be funded as follows:

Assessment Bonds	\$ 160,000
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One hundred percent of the project costs will be assessed to the abutting property owners based on the contractor's low bid for the project. Each parcel will pay 1/28th of the total project cost, except those that have multiple sewer services will pay additional.



Digitally signed by  
Steven Lang  
Date: 2022.01.13  
07:57:43 -06'00'

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City Engineer

The Council has considered the above project and recommends that a public hearing be scheduled for April 4, 2022, to consider the proposed project.

**RESOLUTION NO.**

**RESOLUTION CALLING  
HEARING ON IMPROVEMENT**

**WHEREAS**, a report has been prepared by the City Engineer, with reference to the following improvement:

40<sup>th</sup> Street W (Oakland Avenue W to 5<sup>th</sup> Avenue NW) and  
5<sup>th</sup> Avenue NW (40<sup>th</sup> Street NW to Dead End), Project 22108.

and said report was received by the City Council on January 18, 2022.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of Austin, Minnesota:

- A. The Council will consider the improvement on the following street improvement project in accordance with the reports and assessments of abutting property for all or a portion of the cost of the improvement pursuant to Minnesota Statutes Section 429.011 and 429.111 as amended, at an estimated total cost of the improvements as follows:

\$160,000

- B. A public hearing shall be held on such proposed improvement on the 4th day of April, 2022 in the Council Chambers of the Municipal Building at 5:30 p.m., and the City Clerk shall give mailed and published notice of such hearing on improvement as required by law.

Passed by the Austin City Council on the 18th day of January, 2022.

YEAS

NAYS

ATTEST:

APPROVED:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

City of Austin  
500 Fourth Avenue N.E.  
Austin, Minnesota 55912-3773



Planning & Zoning Department  
507-437-9950  
Fax 507-437-7101

## Memorandum

**To:** Mayor and City Council

**From:** Austin Planning Commission

**Re:** Recommendation for Variance Requested by:  
Greg Hovland  
800 38<sup>th</sup> Ave NE  
Austin MN 55912

**Date:** January 12, 2022

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At the January 11, 2022 meeting of the Austin Planning Commission, the Commission reviewed a request from Greg Hovland for a variance from the requirements of Austin City Code Section 11.01, subd. 1, regulating square footage of accessory structures.

The allowed square footage for lots over one acre is 1,584 sq. ft. The petitioner has requested a 1246 square foot variance from City Code Section 11.01(1) limiting the total aggregate area of all "accessory structures" to 1584 sq. ft. for parcels exceeding one acre. This variance request is for the construction of a 2400 sq. ft. shed.

The property in question is approximately 1.4 acres. With this proposed 2400 sq. ft. addition, the total lot coverage with structures would be approximately 8% (40% lot coverage is the maximum allowed).

After review, the Planning Commission, with six members present, recommended approving the variance by the following vote:

Ayes – 6                      Nays – 0

The Planning Commission made the following findings regarding this request:

1. The requested variance is in harmony with the general purposes and intent of the zoning ordinance.
2. The variance, if granted, would not alter the essential character of the locality in which the property is situated.
3. There are circumstances unique to the property not created by the landowner.
4. The landowner intends to use the land in a reasonable manner not permitted by the ordinance.

**PETITIONER:** Greg Hovland  
800 38<sup>th</sup> Ave NE  
Austin MN 55912

**LEGAL DESCRIPTION:** See attached application.

**CURRENT LAND USE AND ZONING CLASSIFICATION:** "R-1" Single-Family Residence District  
Single-Family Residence

**SURROUNDING ZONING:**

North	-	Residential	-	"R-1" District
South	-	Residential	-	"R-1" District
East	-	Residential	-	"R-1" District
West	-	Residential	-	"R-1" District

**REQUESTED ACTION:** The petitioner has requested a 1246 sq. ft. foot variance from City Code Section 11.01,(1) limiting the total aggregate area of all "accessory structures" to 1584 sq. ft. for parcels exceeding one acre. This variance request is for the construction of a 2400 sq. ft. shed in addition to an existing garage.

The property in question is approximately 1.4 acres, a fairly large parcel. With this proposed 2400 sq. ft. addition, the total lot coverage with structures would be approximately 8% (40% lot coverage is the maximum allowed).

Structures on property being reviewed:

Dwelling	=	2187 sq. ft.
Existing detached garage	=	430 sq. ft.
Proposed shed	=	2400 sq. ft.
Total	=	5017 sq. ft.

The Planning Commission and City Council must decide if the variance required meets the statutory requirements for granting a variance:

1. *The variance is in harmony with the general purposes and intent of the zoning code.*
2. *The variance is consistent with the comprehensive plan.*
3. *The applicant has established that there are practical difficulties in complying with the provision and that the property owner proposes to use the property in a reasonable manner not permitted by the provision.*
  - *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*
  - *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*
  - *The variance will not alter the essential character of the surrounding area.*

**NOTE:** Economic considerations alone shall not constitute an undue hardship, if a reasonable use of the property exists under the terms of the ordinance.

**STAFF REPORT:** In reviewing this requested variance, may I recommend that consideration be taken regarding the following:

- Is this proposed structure in character of this residential neighborhood.
- The property owner would like additional storage space.

Attachment: Aerial of property, site plan

# PLOT PLAN

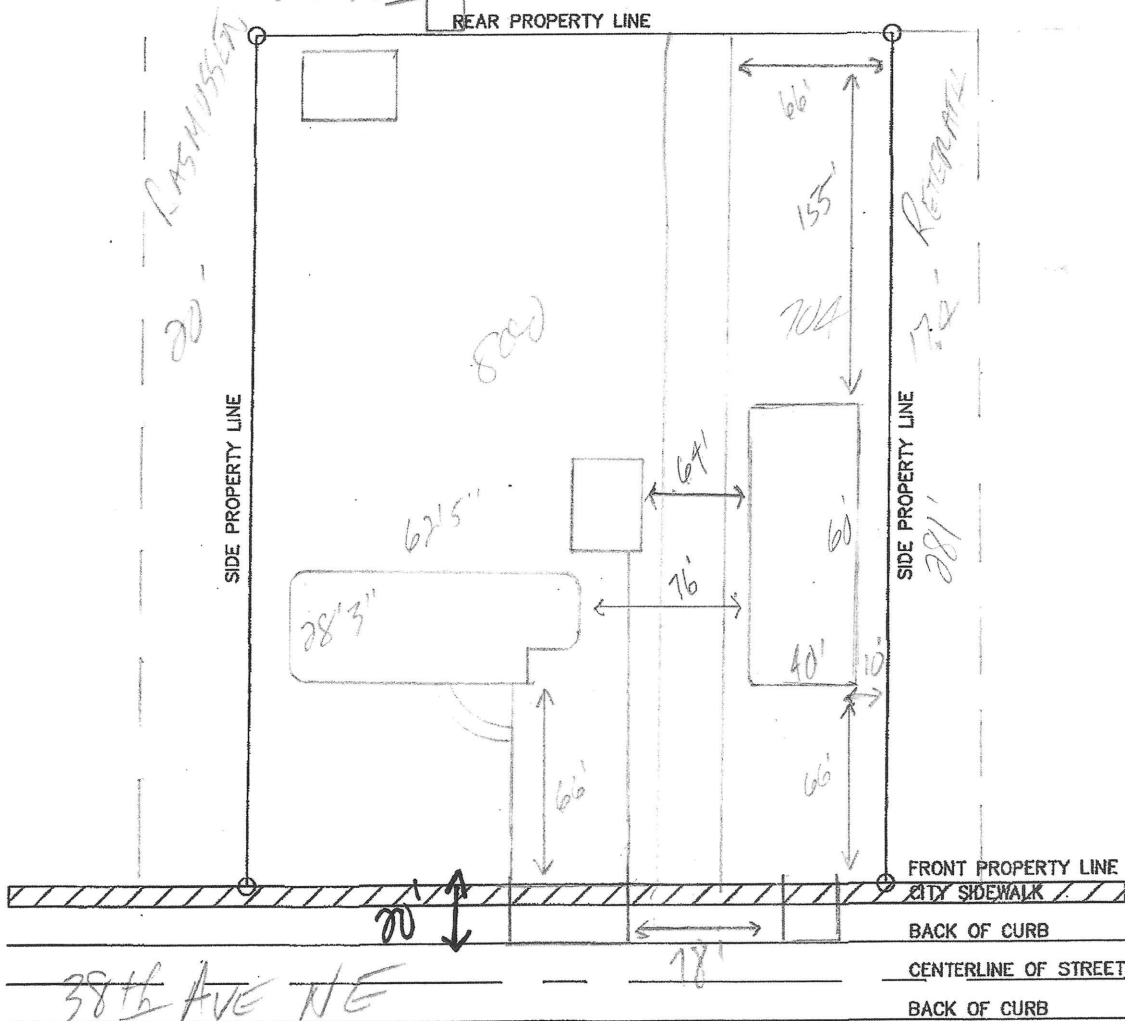
ADDRESS: 800 38th Ave NE  
 LEGAL DESCRIPTION: 34.839.0180

LOT \_\_\_\_\_ BLOCK \_\_\_\_\_ ADDITION \_\_\_\_\_  
 SITE AREA: \_\_\_\_\_ SQ. FT. AREA OF SITE OCCUPIED BY BUILDING: 2,400 SQ. FT.

INSTRUCTIONS TO APPLICANT: \_\_\_\_\_ COVERAGE PERCENTAGE: \_\_\_\_\_ %

FOR NEW BUILDINGS AND BUILDING ADDITIONS THE FOLLOWING INFORMATION MUST BE PROVIDED IN THE SPACE BELOW:

- 1) Location of proposed construction and existing improvements.
- 2) Show buildings (square footage) and setback distances of existing buildings and new structures.
  - a) How far the new building will be away from the front property line.
  - b) How far the new building will be away from the side property line.
  - c) How far the new building will be away from the rear property line.
  - d) How far the new building will be away from existing structures.
- 3) Show easements.
- 4) Indicate whether property is a corner lot. No
- 5) Show street and avenue location. 800 38th Ave NE



SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

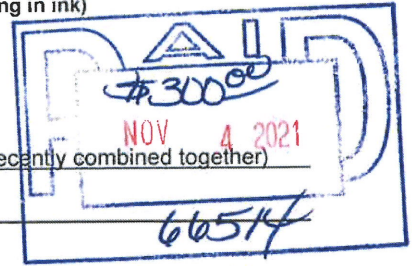
NORTH



# APPLICATION FOR CONSIDERATION OF PLANNING REQUEST

(This form should be filled out in duplicate by typing or printing in ink)

CITY OF AUSTIN



Street Location of Property: 704 38<sup>th</sup> Avenue NE (adjacent to 800 38<sup>th</sup> Avenue and recently combined together)

Legal Description of Property: \_\_\_\_\_

Owner: Name Greg Hovland

Phone 507-269-8395

Address 800 38<sup>th</sup> Avenue NE

City Austin

State MN

Zip 55912

Type of Request: ☒ Variance \_\_\_\_\_ ☐ CUP \_\_\_\_\_ ☐ IUP \_\_\_\_\_ ☐ Rezone \_\_\_\_\_ ☐ Other \_\_\_\_\_

Applicable to Section \_\_\_\_\_ of the Austin City Zoning Ordinance, as amended

Description of Request I Would like to add a 40' x 60' building to my 1.5 acre lot, which is larger than the current limitations in the city of Austin. There is also driveway access with a culvert present on the lot.

Reason for Request My building will house my car collection and allow me to be able to work on my cars at a single location next to my home. My acreage requires larger mowers and other equipment to maintain it as well. I currently have a 29' car trailer and may have a motorhome, or travel trailer in the future. There are numerous buildings in this part of the city (rural setting) and of various sizes, some smaller some similar in size and others even larger. My property backs up to a farm field.

Present Zoning Classification R1

Existing Use of the Property \_\_\_\_\_

Has a request for a rezoning, variance, or conditional use permit on the subject site or any part thereof been previously sought? no When? \_\_\_\_\_

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

Approved \_\_\_\_\_ Denied \_\_\_\_\_ by the Planning Commission on \_\_\_\_\_ (date)

Approved \_\_\_\_\_ Denied \_\_\_\_\_ by the Common Council

Comments \_\_\_\_\_

#### Hovland Variance Mailing List

34.839.0190 Jimmy Bolden Jr/808 38<sup>th</sup> Ave NE

34.839.0020 Phillip Matter/705 38<sup>th</sup> Ave NE

34.839.0150 Cedar River Developers LLC/Ag Land/No physical address

34.839.0100 No owner/700 38<sup>th</sup> Ave NE

34.839.0200 Cherri Rasmussen/804 38<sup>th</sup> Ave NE

34.839.0060 Larry Rosecke/801 38<sup>th</sup> Ave NE

34.839.0055 Larry Rosecke/803 38<sup>th</sup> Ave NE

34.839.0050 Nathan Conner/807 38<sup>th</sup> Ave NE

**AFFIDAVIT OF MAILING**  
**PUBLIC HEARING VARIANCE NOTICE**  
**STATE OF MINNESOTA**  
**COUNTY OF MOWER**

Lauren K Bakken, being first duly sworn, disposes and says: "I am a United states citizen, over 21 years of age, and the engineering clerk of the City of Austin, MN."

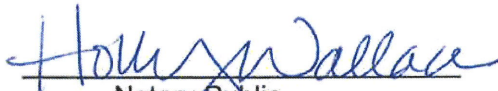
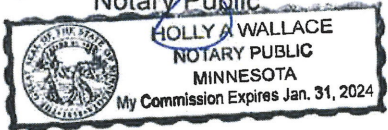
On Thursday December 23rd 2021, acting on behalf of the City Planning Commission, I deposited in the United States Post Office in Austin, Minnesota copies of the attached notice of a hearing, enclosed in sealed envelopes, with postage thereon fully prepaid, address to the following persons at the addresses appearing below their respective names:

Hovland - Variance  
See attached list

There is delivery service by United States mail between the place of mailing and the places so addressed.

  
\_\_\_\_\_  
Lauren K Bakken

Subscribed and sworn to before me  
This 27<sup>th</sup> day of December 2021.

  
\_\_\_\_\_  
Notary Public  


**RESOLUTION NO.**

**APPROVING APPLICATION TO CONDUCT OFF-SITE GAMBLING  
FOR THE FRATERNAL ORDER OF THE EAGLES #703**

**BE IT RESOLVED**, that the City of Austin approves an application from the Fraternal Order of the Eagles #703 to conduct off-site gambling at the Mower County Fairgrounds, 700 12<sup>th</sup> Street SW on February 25, 2022 and February 26, 2022.

Approved by the Austin City Council this 18th day of January, 2022.

YEAS

NAYS

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

City of Austin  
Zoning Department



500 Fourth Avenue N.E.  
Austin, Minnesota 55912-3773  
Phone: 507-437-9950  
Fax: 507-437-7101  
[www.ci.austin.mn.us](http://www.ci.austin.mn.us)

## Memorandum

**To:** Mayor and City Council

**Cc:** Roque Vasquez Cruz  
307 7<sup>th</sup> St NE, Austin, MN 55912

**From:** Holly Wallace, Planning & Zoning Administrator

**Re:** Accumulation of Refuse and Junk and Vehicles  
At 307 7<sup>th</sup> St NE, Cruz Property

**Date:** January 14, 2022

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May I ask the City Council to approve granting the Planning & Zoning Department the power to contract for the removal of refuse and junk at 307 7<sup>th</sup> St NE. The property owner has been notified of this violation to the City Code Sections 10.14 Subd.1(B), 10.14 Subd.4-6 and 10.33 Subd.1(G), Subd.2(B-1) but has failed to resolve this issue. (See Attached)

Therefore, I am requesting the Mayor and City Council to approve empowering the Planning & Zoning Department to act on the removal of this junk. Such action is permitted by the City Code Section 10.14.

Thank You

City of Austin  
Zoning Department



500 Fourth Avenue N.E.  
Austin, Minnesota 55912-3773  
Phone: 507-437-9950  
Fax: 507-437-7101  
[www.ci.austin.mn.us](http://www.ci.austin.mn.us)

December 17<sup>th</sup>, 2021

Roque Vasquez Cruz  
307 7<sup>th</sup> St NE  
Austin, MN 55912

RE: Zoning Violations at 307 7<sup>th</sup> St NE, Austin, MN 55912

Dear Roque:

The City of Austin Planning and Zoning Department has observed a violation of City Code on your property. An investigation of this complaint was conducted on December 17<sup>th</sup>, 2021 at this site and the following issues need to be resolved:

1. **Remove junk from property**
2. **Provide current registration for all vehicles, and must be operable. Remove from property or store in an enclosed structure**

The violation of Austin City Code Sections 10.14 Subd.1(B), 10.33 Subd.1(G)& Subd. 2(B-1) and 10.14 Subd.4-6 were found. These City Code sections read as follows:

**City Code Section 10.14, Subd. 1(B):**

**JUNK.** All scrap metal, rags, batteries, paper, trash, rubber tires, debris, waste, wood, and/or construction materials not used in connection with a building or which is carried as inventory in an on-going construction business at a lawful place of business, dismantled vehicles, machinery and appliances or parts thereof and parts of vehicles, glass, tinware, plastic, aluminum and/or steel cans, old or discarded household goods, household furnishings or furniture, hardware or appliances. Neatly stacked firewood located so as to comply with the setback requirements as set forth in Chapter 11 and in accordance with side yard or rear yard setback requirements shall not be considered junk.

**City Code Section 10.14, Subd. 4. Notice and abatement.**

**B. Public nuisances affecting health**

5. Accumulations of manure, refuse, junk or other debris;

**D. Public nuisances affecting peace and safety.**

16. Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material 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 safety hazards from accumulation;

**City Code Section 10.33 Subd. 1 (G)**

Operable equipment for transportation of people, goods or material and equipment ordinarily used for recreational purposes. Including shall be, by way of example and not limitation, automobiles, trucks, pick-up trucks, trailers, marine crafts, snowmobiles, all terrain vehicles, motor homes, pick-up campers, buses, and camping trailers.

**City Code Section 10.33 Subd. 2. Off-street outside parking within residential districts.**

B. The number of vehicles permitted for outside parking in rear yard and side yard areas shall be limited as follows:

1. Two currently registered passenger vehicles registered to the licensed owner/occupant of the residence may be parked in the rear or side yard areas.

**City Code Section 10.14, Subd. 4(E-G)  
NOTICE AND ABATEMENT.**

E. Whenever a public officer or other person charged with enforcement determines that a public nuisance is being maintained or exists on premises in the City, the City enforcement officer shall notify in writing the owner or occupant of the premises of such fact and order that such nuisance be terminated and abated.

F. The notice shall be served in person or by certified or registered mail. If the premises are not occupied and the owner is unknown, the notice may be served by posting it on the premises. The notice shall specify the steps to be taken to abate the nuisance and the time, not exceeding ten (10) days, within which the nuisance is to be abated.

G. If an emergency exists that presents an immediate danger to citizens affecting their safety, the officer shall require immediate abatement of such nuisance. If the notice is not complied with within the time specified, the enforcing officer shall report that fact forthwith to the Council and may take such other appropriate action as may be necessary. The Council may, after notice to the owner or occupant, provide for the abating of the nuisance by the City.

**City Code Section 10.14, Subd. 5:**

**RECOVERY OF COST.** The owner of the premises on which a nuisance has been abated by the City 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 Recorder shall prepare a bill for the cost and mail it to the owner. There upon, the amount shall be immediately due and payable at the Office of the City Recorder. Ownership shall be presumed to be the owner as shown on the records of the County Treasurer unless the City Recorder has reason to know that such information is not accurate, in which event, notice shall be given to such other person as the City Recorder has reason to believe is, in fact, the true owner of said premises.

**City Code Section 10.14, Subd. 6:**

**ASSESSMENT.** If the cost of abating said nuisance is not paid in full to the City Recorder before September 1, next, then on or before September 1, next, following the abatement of the nuisance, the City Recorder shall list the total unpaid charges along with other such charges, as well as other charges for current services to be assessed under Minnesota Statutes 429.101 against each separate lot or parcel to which charges are attributable. The Council may then spread the charges against such property under that statute and 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 Council may determine in each case.

Please resolve the City Code violations within 10 days of the date of this letter, or the matter will be referred to the Austin City Council for corrective action. Council generally meets the first and third Mondays of every month. You will be fined a minimum of \$100, the amount varies depending on the type of violations.

Your cooperation with this matter will be greatly appreciated, and if you have any questions, please call me at my office at (507)437-9950.

Sincerely,



Brent Johnson  
Zoning Inspector



January 12, 2022

11:32 AM

307 7th St NE