



**Agenda  
Minnetonka City Council  
Regular Meeting  
Monday, April 20, 2020  
6:30 p.m.  
WebEx**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Schaeppi-Coakley-Kirk-Schack-Carter-Calvert-Wiersum
4. Approval of Agenda
5. Approval of Minutes:
  - A. March 16, 2020 emergency council meeting
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases:
  - A. Bids for the Ridgedale Drive Landscape Improvements  
Recommendation: Adopt the resolution (4 votes)
10. Consent Agenda - Items Requiring a Majority Vote:
  - A. Resolution approving agreement for donation to the city of vacant land on Hwy. 7  
Recommendation: Adopt the resolution (4 votes)
  - B. Ordinance amending the zoning ordinance and subdivision ordinances relating to appeals  
Recommendation: Adopt the ordinance (4 votes)

Due to the COVID-19 health pandemic, the city council's regular meeting place is not available. Pursuant to Minn. Stat. § 13D.021, city council members will participate in the meeting remotely via WebEx. Members of the public who desire to monitor the meeting remotely or to give input or testimony during the meeting can find instructions at <https://www.minnetonkamn.gov/government/city-council-mayor/city-council-meetings>.

- 11. Consent Agenda - Items Requiring Five Votes: None
- 12. Introduction of Ordinances:
  - A. Ordinance amending Minnetonka City Code Section 845.030 relating to lawn maintenance  
Recommendation: Introduce the ordinance (4 votes)
  - B. Ordinance adding a new city code section 1315.030 to allow for electronic signatures on resolutions and ordinances  
Recommendation: Introduce the ordinance (4 votes)
- 13. Public Hearings:
  - A. Resolution amending Council Policy 8.3 regarding plant pest program  
Recommendation: Hold the public hearing and adopt the resolution (4 votes)
- 14. Other Business:
  - A. Statute of limitations tolling agreement relating to 3908 Auburn Drive  
Recommendation: Approve the agreement (4 votes)
  - B. Emergency Rental Housing Assistance  
Recommendation:
    - 1) Approve the emergency ordinance to create a Housing Trust Fund Account; and
    - 2) Transfer \$150,000 from the Development Fund to the Housing Trust Fund (5 votes)
  - C. COVID-19 budget impacts  
Recommendation: Informational only (No formal action required)
- 15. Appointments and Reappointments: None
- 16. Adjournment

**Minutes**  
**Minnnetonka City Council Emergency Meeting**  
**Monday, March 16, 2020**

**1. Call to Order**

Mayor Brad Wiersum called the meeting to order at 6:32 p.m.

**2. Roll Call**

Council Members Susan Carter, Brian Kirk, Deb Calvert, Bradley Schaeppi, Kissy Coakley, Rebecca Schack, and Brad Wiersum were present.

**3. Briefing on COVID-19 response efforts**

City Manager Geralyn Barone thanked council for being present for an emergency meeting. She expressed it became clear over the weekend that there was a need to call a meeting related to the declaration of a local emergency and authorizing certain actions. Barone stated the city has cancelled all public meetings for the rest of the month and that staff would be providing background on plans and measures.

Emergency Management Director and Fire Chief John Vance discussed the emergency plan and pandemic plan for the city. He explained stopping the spread of the virus is the main priority. This can be accomplished by practicing social distancing, proper hygiene, and postponing or canceling events to help slow the spread of COVID-19. He stated this plan is for the safety of employees and the public we serve. The Emergency Operation Center (EOC) has been established and staff has been making daily updates and situation reports.

Calvert discussed the importance of communication channels during this serious time. She suggested all councilmembers should have the director's phone numbers.

Schaeppi asked about the daily reports and updates. He asked for clarification on who gets those and what is included in them. Chief Vance explained they are on #4 of the situation reports. He stated fire, police and public works discuss what they are seeing out in the community and the current situations. They just finished a check on retail establishments concerning food and supplies. They use that information to report to the county and state levels. They also talked about threats to personal protection and the equipment that will be needed to take care of the community at large.

Barone emphasized how as a local government, one of our main priorities is to continue to serve the community with our safety and public facilities.

Chief Vance discussed that council will receive copies of both the emergency and pandemic plans. The fire department is operating with more caution and personal protection than usual. They have been on conference calls with both state and local officials for best practices and have cancelled all trainings and nonessential meetings

until the end of the month. There is some concern, if they were to be hit hard, the supply chain of masks would be a factor. At this time however, they have a good cache. The fire department has been limiting how many personnel have contact with patients by threshold interviews. If patients are not showing life threatening symptoms, they are scaling that back to one person in the room. Alternating staffing plans are also being determined using most of the part-time firefighters, along with the 10 full-time firefighters.

Police Chief Boerboom gave an update on the police department staff including the four teams of patrol, two teams of investigations, command staff and the records staff. They are working to create alternating schedules and remote work when possible. All outreach activities and trainings have been cancelled and they are focused on reactive vs. proactive policing.

Police are limiting the amount of officers on medical calls. He explained the last resort is to bring someone to jail, in order to limit the exposure on both ends. They are working with other communities to combine resources and talents and have instructed officers to report all possible exposures. Boerboom reassured council they are prepared and in a good place.

Recreation Director Kelly O'Dea explained that last Friday all recreation programming was cancelled for the remainder of the month. The Minnetonka Community Center, Ice Arena and Williston Fitness Center are also closed. He stated that clients will be credited back funds and the programming department is continuing to work on that. Steve Pieh and other community connections are being contacted for help with reaching out to the senior community. Barone stated the city plans to partner with nonprofits to help the community and add support where needed.

Community Development Director Julie Wischnack discussed staying in compliance with the state and how public meeting cancellations need to be documented properly. In terms of housing in the community, she noted there are many calls being taken about homes that have needs or challenges.

Wischnack explained environmental health are functions delegated from the state through agreements with Department of Agriculture and Department of Health. Currently, these mandates have not yet been released. There has been advisory opinions coming out and they will continue to monitor them. Wischnack stated they are no longer inspecting schools or areas with vulnerable populations. Things like nuisance enforcement are lower priority at this point.

Inspections staff are working under a delegated authority from the state to enforce codes within the city. At this time, they have been advised to continue these inspections. The city is making every effort to keep employees safe while conducting inspections.

Public Works Director Will Manchester stated they are watching their point of contact to keep the risk of exposure low. All services have continued and they are monitoring if anything needs to change. He stated there is an agreement in place with neighboring cities if they need or want to share resources.



Utilities, water and sewer, have daily routine monitoring, making sure those systems are running well. Manchester discussed there has been an increase in flushable wipes causing them to have to pull more pumps than usual. Fleet services continue support and do necessary repairs to emergency vehicles. Custodial and facilities staff continue to work on disinfection and operational maintenance. They have seen a slight backorder on some of those disinfectant supplies. Minnetonka roads will still be cleared per usual in the event of a snowstorm.

City Attorney Corrine Heine discussed the civil division and indicated it has not changed. She noted she does have three additional attorneys to help her if she can no longer do the job for some reason. Prosecution has also not been impacted yet, but there are two attorneys that have the highest exposure due to court appearances. They are attempting to establish distancing but they will continue to go to trial for the time being. Non-attorney staff have been reporting to work currently, but will work remotely if necessary.

Finance Director Darin Nelson stated assessing is the most critical area right now due to the time of year. There are a number of assessment appointments on the books, but all in-home visits with property owners have been suspended per Hennepin County advice.

Local board of review is April 6 and is still tentatively scheduled. The assessing department will update council if that schedule changes. Payroll and vendor payments are still being processed. Nelson stated an account code has been created to track all time during COVID-19, in the event there is a FEMA declaration. Utility billing staff are working on a plan to work remotely, so they do not fall behind on processing monthly payments.

Administrative Services Director and Assistant City Manager Mike Funk gave updates on the communications department. They will continue to update the website for residents and keep the community informed. They will also work with the city manager on any direction given from council tonight. Human Resources is working on policies and questions from directors on teleworking and how to help employees work with school closings and all other critical issues. Allowing sick leave up to negative 40 hours has been implemented to help personnel. He explained shift schedules and paid leave are also being worked on. IT has been very busy setting up each department with remote access and all systems related to being able to work remotely.

Barone discussed that the city is allowing 14 paid days if an employee were to be diagnosed with the Coronavirus in addition to their normal time. She stated the biggest change would be if the city does close, in which case the plan is to pay all employees. From an expenditure aspect that would not change much. There will be changes on the revenue side, with Williston being closed and other activities being cancelled. Staff will keep track of those expenses and the city might be able to recoup those losses through a budget stabilization fund or possible federal aid. Barone expressed this is a very fluid situation and leadership continues having daily briefings to stay informed.

Shack discussed the new federal guideline of a maximum of ten people in a group. She questioned what the city is doing about open spaces and large cubical areas. She stated she would like to see people working from home as much as possible for the health and safety of everyone. Shack expressed she was happy to hear the city plans to

continue to pay part-time staff, as that was a big concern for her. She stated she fully supports this policy, and is very proud of the leadership team and staff for all they have done.

Calvert thanked staff for all their hard work and dedication. She questioned about elections, noting that city hall is an absentee voting location and on Election Day, three precincts are located there. Funk explained that there is not another election until August and the city clerk division is working with Hennepin County to determine next steps.

Calvert asked about evictions and what the city is doing to protect our most vulnerable residents. She stated that council needs to advocate for residents and keep roofs over their heads, especially if the Coronavirus is the reason they are not paying. Wischnack stated there are many state statutes that relate to evictions. There is pending legislation with emergency temporary housing assistance, and the city has a long history of working with local organizations.

Wiersum asked what legal authority we have as a city in regards to evictions. He stated he would like to see staff provide a point of view on this issue. Wischnack explained the statutes are very clear on the eviction process, but there are also county level actions on timing of those notices. At the county level, they may be able to delay notices. Heine stated that evictions may not have been put on the high priority list with the courts at this time, which will also help those residents.

Schaeppi stated he had some insight on the question from Councilmember Calvert regarding evictions. He stated there was an email today from the Minnesota Supreme Court Chief Justice discussing all civil and criminal cases, ranking them high, medium and low priorities. He explained there is a stay on all evictions throughout the month of March. He suggested to watch and see what the state and county do through March.

Calvert expressed concern for staff and residents on how the city is accepting utility payments. Finance Director Darin Nelson explained that the city has two utility payment drop boxes, and that online and phone payments will still be accepted.

Calvert asked what kind of meetings council could have remotely, allowing them to stay connected and make decisions. Barone stated that IT would continue to work to allow remote meetings and technology.

Coakley thanked staff for all the information and updates given. She questioned what the city council would be able to do for people that are in the process of moving out and are having a hard time finding other available housing. Wischnack explained that staff does a great job helping people in transition, and they will be prepared to help with the potential influx of needs.

Kirk thanked staff for all of their hard work and the work they will continue to do. He suggested creating a phone tree to contact seniors. He also suggested working on projects that are hard to finish when the city is open. He questioned if the remodel is still on schedule and if it is slowing down their response times at all being out of their normal locations.

Manchester discussed that the fire and police facilities are still on track and in progress. Chief Vance reported that response times are being closely watched. Their deployment model was city hall, and now that they are more spread out across the city, there may even be a decrease in those times. Chief Boerboom stated the police are fully operational and he does not expect the relocation to affect them in any way.

Kirk stated he wants the city to be a hub of information. He stated this should include helping residents that want to volunteer or are looking for help from nonprofits such as the ICA food shelf. GERALYN said our internal teams are working with faith organizations and nonprofits to make sure the city is on top of those conversations.

Schaepfi thanked the city for going above and beyond. He stated it is fantastic to hear that the daily status reports are showing real time results and that leadership is making it possible to have staff work remotely. He suggested that part-time staff or the staff that is not working help with the needs of the community by calling residents or working with the food shelf. He stated the importance of focusing on those in need and continuing to look outside the box and be creative.

Carter stated she was very appreciative and recognized staffs efforts. She discussed that she had to be honest about the weaknesses she sees with protocols. She stated a few councilmembers were on a plane just last week. She emphasized the need to be more cautious and more efficient in times like these.

Wiersum stated Councilmember Carter makes a very important point. We have to be very mindful of the seriousness of this virus. Staying very aware of social distancing and doing our part not to overwhelm the healthcare system.

Wiersum suggested looking to work with nonprofits and others to help our most vulnerable residents. He suggested adopting one person to take care of and check in on. He stated everyone needs to do their part, while still being safe and responsible.

Wiersum discussed disinfecting wipes. He said the city needs to communicate to the residents about the complications that it causes when people flush disinfecting wipes. Flushing those wipes causes many problems for the city and could become a potential public safety and health concern.

Wiersum thanked staff for their updates and hard work. He stated they have their regular job to do plus all the new crisis work and are doing it all well.

#### **4. Resolution consenting to mayor's declaration of local emergency**

City Attorney Corrine Heine explained this resolution is needed to keep the emergency declaration in effect until the federal or state action declares an end or if the city council adopts a subsequent resolution ending the state of emergency. During this period, the emergency operation plan is in effect. It authorizes the city manager to take certain steps to continue operations. It also invokes provisions of state law to loosen up certain requirements that would normally be required by the charter and the state.

The resolution confirms that future meetings of the council could be held by telephone or other electronic means. The state law requires all members that are participating must be able to hear one another and all testimonies. Members of the public need to be able to hear the votes and roll call. The law also requires at least one person who is either city council, city manager or city attorney needs to be present in the actual meeting room, unless the health pandemic makes it impossible to use the council chambers.

Schack moved, Calvert seconded a motion to adopt Resolution 2019-029 consenting to the mayor's declaration of a local emergency. All voted "yes". Motion carried.

**5. Adjournment**

Calvert moved, Kirk seconded a motion to adjourn the meeting at 8:12 pm. All voted "yes." Motion carried.

Respectfully submitted,

Becky Koosman  
City Clerk

**City Council Agenda Item #9A  
Meeting of April 20, 2020**

**Brief Description:** Bids for the Ridgedale Drive Landscape Improvements

**Recommended Action:** Adopt the resolution

**Background**

On May 20, 2019, council awarded the bid for the 2019 Street Reconstruction project – Ridgedale Drive, from Plymouth Road east to I-394. Street and utility construction began following the approval and Stage 1 of the improvements, from Wayzata Boulevard to just north of YMCA Lane, was completed last fall. The remaining street and utility improvements are scheduled to be completed by the fall of 2020.

At the time of council’s authorization, it was noted that the landscaping component would be brought back to council as a separate project similar to past county road projects, to ensure that the landscaping is installed by a landscape contractor as opposed to a roadway or utility specific contractor. This provides the city with a better final product and allows for a longer maintenance period on the plantings, to make certain they are well established following the construction.

On March 2, 2020, the city council adopted a resolution accepting plans and specifications and authorizing the advertisement for bids for the Ridgedale Drive Landscape Improvements.

**Proposed Improvements**

The landscaping improvements include boulevard and median plantings as discussed with council during the development of the project, guided by the Ridgedale Village Center Study and Ridgedale Area Public Realm Guidelines. The landscaping plantings and trees are designed for sustainability, with careful consideration and review of plant types, plant placement, and future maintenance. The type and variety of plantings were selected with consideration of climate change and adaptability.

Plant types and species include, to name a few, a variety of pine, birch, oak, and tamaracks; shrubs including dogwood, sumac, honeysuckle, and scotch pines; prairie type grasses including little bluestem and prairie dropseed; and perennials including purple cone flower and blue aster.

While not needed to maintain these types of plantings, an alternate for construction of an irrigation system to the medians and boulevards on Ridgedale Drive was included with the bid. The base bid includes a one-year maintenance period, and additional alternates were included to explore costs for additional plant maintenance periods.

**Bid Opening**

Bids were opened electronically for the project on April 8, 2020. Six bids were received in response to the call for bids, and the bid results are as follows:

<b>Contractor</b>	<b>Total Base Bids</b>
<b>Cedar Ridge Landscaping, Inc.</b>	<b>\$390,039.00</b>
Great Northern Landscapes, Inc.	\$486,724.80
Margolis Company	\$488,727.00
Peterson Companies	\$497,151.15
Hoffman & McNamara Company	\$525,579.00
Urban Companies	\$609,356.00
<i>Engineer's Estimate</i>	<i>\$525,000.00</i>

<b>Contractor</b>	<b>Alternate Bids</b>				
	Alt. 1 - Irrigation System	Alt. 2 - Additional Maintenance - Year 2 (with Alt. 1 Award)	Alt. 3 - Additional Maintenance - Year 2 (no Alt. 1 Award)	Alt. 4 - Additional Maintenance - Year 3 (with Alt. 1 Award)	Alt. 5 - Additional Maintenance - Year 3 (no Alt. 1 Award)
<b>Cedar Ridge Landscaping, Inc.</b>	<b>\$77,929.00</b>	<b>\$18,100.00</b>	\$21,907.00	<b>\$12,000.00</b>	\$15,000.00
Great Northern Landscapes, Inc.	\$142,573.00	\$24,000.00	\$29,000.00	\$27,000.00	\$32,000.00
Margolis Company	\$252,670.00	\$33,875.00	\$47,605.00	\$34,845.00	\$48,990.00
Peterson Companies	\$116,065.00	\$28,015.00	\$40,034.00	\$19,257.00	\$31,276.00
Hoffman & McNamara Company	\$148,000.00	\$35,750.00	\$49,850.00	\$37,800.00	\$42,625.00
Urban Companies	\$180,000.00	\$35,000.00	\$37,000.00	\$35,000.00	\$37,000.00

Bid alternates as shown above were included as noted in the March 2 council item to receive bid pricing for an irrigation system and extended maintenance periods with and without an irrigation system. Due to favorable bids received, it is recommended to award the Base Bid with Alternates 1, 2, and 4 which include the irrigation system and the additional plant maintenance period of two years. These additional two years extend the one-year contract maintenance period to provide for a total of 3-years of maintenance following initial plantings. The total base bid with the recommended alternates is \$498,068.00.

The low bidder, Cedar Ridge Landscaping, has satisfactorily completed projects in Minnetonka.

### **Estimated Project Costs and Funding**

As previously approved by council on May 20, 2019, the fund balances can support the total estimated project costs of \$550,000 for landscaping from the overall project budget of \$11,850,000. The total estimated construction cost includes engineering, administration, and contingency.

The estimated project costs for the Ridgedale Drive Landscaping Improvements portion is shown in the cost and funding summary below.

	<b>Budget Amount</b>	<b>Proposed Funding</b>	<b>Expense</b>
Landscape Construction Costs w/Contingencies			\$550,000
Street Improvement Fund	\$600,000	\$600,000	
<b>Total Budget</b>	<b>\$600,000</b>	<b>\$600,000</b>	<b>\$550,000</b>

As a note, the installation of pedestrian, interpretive, and gateway signs would be completed following the landscape work as the remaining individual contract for the project. Funding for this work is included in the project's overall budget and would be further coordinated following the establishment of the plantings, as well as coordination of improvements at the Crane Lake Park Preserve and Ridgedale Park.

### **Citizen Input**

As the project was developed and prior to council's previous approvals, individual meetings were held with business owners along the corridor, MnDOT, Hennepin County, Metropolitan Transit, and Ridgedale Center representatives. Also, community open houses were held on Oct. 16, 2017 and Sept. 11, 2018 presenting an opportunity for comment on the project and associated streetscape concepts. Overall, general support for the initial concept was expressed.

### **Schedule**

Construction of the landscaping improvements is anticipated to begin along the east side of Ridgedale Mall in 2020. The landscaping improvements for the remaining portion of the project will be completed in 2021, in efforts to avoid conflicting impacts with the street and utility work.

The landscaping project would maintain access to all businesses throughout the project, however sections of roadway may be fully closed for short periods of time. Detours would be provided well in advance of any closures.

If the recommended actions are approved by council, landscaping installation could begin in May. Various communication strategies will continue to be used including signage, text alerts, email updates, citizen alerts and newsletters.

### **Recommendation**

1. Award the contract including Alternate 1, 2, and 4 for the Ridgedale Drive Landscape Improvements, Project No. 19501 to Cedar Ridge Landscaping, Inc., in the amount of \$498,068.00.
2. Authorize the city engineer to approve change orders without further council approval, provided that the total contract costs do not exceed \$550,000.

Submitted through:

Geralyn Barone, City Manager  
Will Manchester, PE, Director of Public Works  
Phil Olson, PE, City Engineer  
Darin Nelson, Finance Director

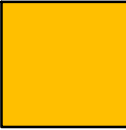
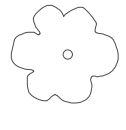

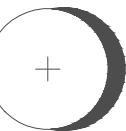
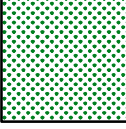
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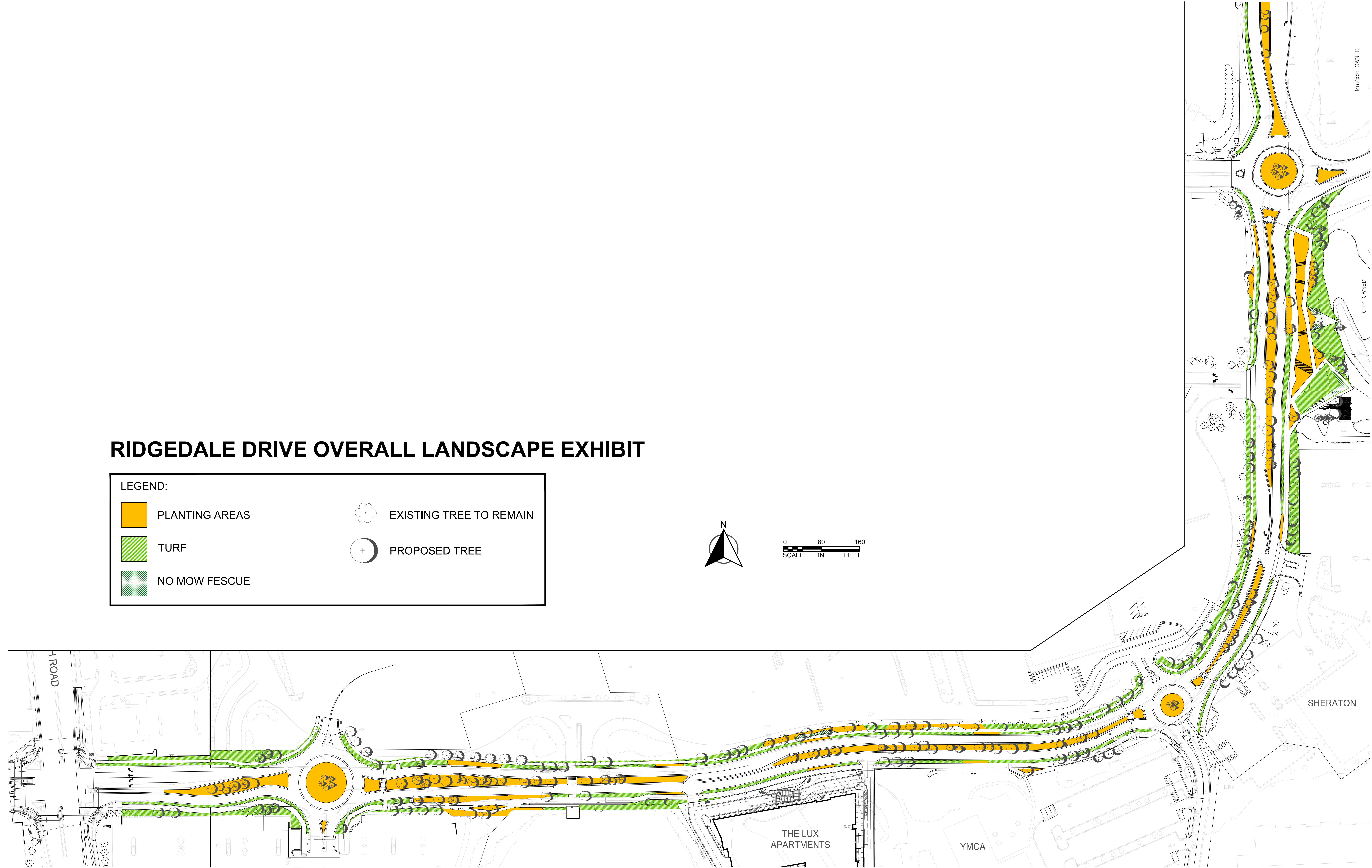
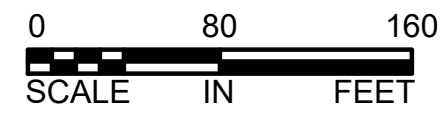
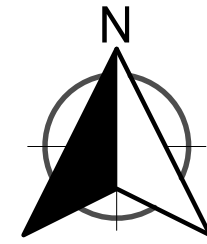
Chris Long, PE, Assistant City Engineer



# RIDGEDALE DRIVE OVERALL LANDSCAPE EXHIBIT

**LEGEND:**

	PLANTING AREAS		EXISTING TREE TO REMAIN
	TURF		PROPOSED TREE
	NO MOW FESCUE		





**City Council Agenda Item #10A**  
**Meeting of April 20, 2020**

**Brief Description:** Resolution approving agreement for donation to the city of vacant land on Hwy. 7

**Recommended Action:** Adopt the resolution

**Background**

Con-Mix LLC was the owner of vacant land consisting of two lots on the south side of Highway 7, located between 16809 Highway 7 and 4748 Clear Spring Road. Con-Mix LLC was unsuccessful in its own attempts to market and sell the property. The sole member of Con-Mix LLC, William Stewart Radzwill, is now deceased and the lots are assets of Mr. Radzwill's estate. The estate has proposed to donate the lots to the city.

The lots have the following characteristics:

- Combined Size: 0.5 acres
- Zoning: R-1
- Property Taxes: The estimated total market value of the two lots is \$21,000. Taxes due on both lots in 2019 totaled \$359.48.
- Current land use: The lots are vacant, undeveloped land. The lots have significant tree cover and do not lie on any apparent wetland or floodplain.
- Location: The lots are located on Highway 7. They border privately owned residential property to the west and the south, as well as residential property owned by the Metropolitan Council to the east.

The city's internal land committee has recommended accepting the donation because the lots are open land on the Highway 7 corridor.

The city attorney has prepared a donation agreement for the city council's consideration. The agreement is contingent upon examination of title and the results of any environmental or soil investigations the city may choose to undertake. The estate has warranted that to its knowledge, the lots have not been used to store any hazardous substances or petroleum and the lots have no underground storage tanks or septic systems. If the transaction closes prior to June 30, 2020, there will be no real estate taxes payable starting in 2021. Per the agreement, the estate bears responsibility for real estate taxes payable in 2020.

**Recommendation**

Adopt the resolution.

Submitted through:  
Geraldyn Barone, City Manager

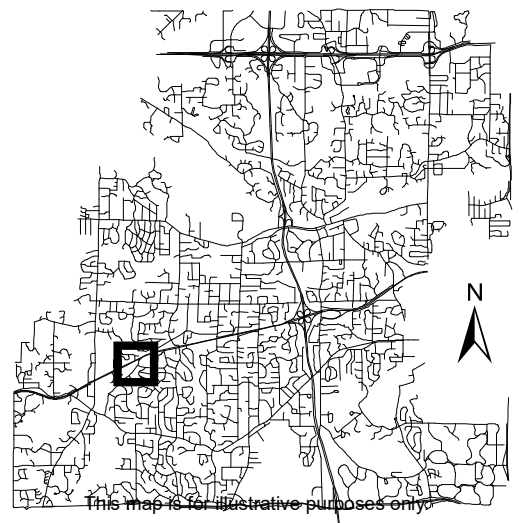
Originated by:  
Corrine Heine, City Attorney





### Location Map

Properties:  
29-117-22-24-0023  
29-117-22-21-0041



This map is for illustrative purposes only.



## DONATION AGREEMENT

THIS AGREEMENT is made and entered into as of April 20, 2020, by and between **Kristina Dianne Radzwill DeLaundreau and William Kirk Radzwill, co-Personal Representatives of the Estate of William Stewart Radzwill**, the sole owner of Con-Mix, LLC, a limited liability company under the laws of Minnesota (“Donors”), and the City of Minnetonka, a Minnesota municipal corporation (“City”).

### RECITALS

A. Con-Mix LLC is the fee owner of record of certain real property in the city of Minnetonka, County of Hennepin, State of Minnesota, legally described as follows:

Outlot B, WILLOW WOOD, Hennepin County, Minnesota

And

Lot 1, “Green Valley Second unit”, except that part thereof described as follows:

Beginning at the most southerly corner of Lot 1; thence Northwesterly along the Westerly line of said Lot, 175 feet; thence Northeasterly to a point in the Easterly line of Lot 1, said point being distant 165 feet Northerly from the Southeasterly corner of said lot; thence South along the East line of said lot to the Southeasterly corner thereof; thence Southwesterly along the South line of said lot to point of beginning.

(the “Property”)

B. The sole owner of Con-Mix LLC was William Stewart Radzwill, who is deceased. The Property is an asset of the Estate of William Stewart Radzwill.

C. Donors desire to donate, and the City desires to accept the donation of, the Property, subject to the terms and conditions of this Agreement.

### AGREEMENT

In consideration of the mutual covenants made below and other good and valuable consideration, the parties agree as follows:

1. Offer and Acceptance. Donors agree to convey fee simple title to the City as a donation. The City agrees to accept the donation of the Property, subject to the terms and conditions of this Agreement.

2. Title Matters. The City shall, at its sole expense, obtain a commitment for an owner's policy of title insurance from the title company of its choice, or, if the property is registered, such evidence of title as the City deems appropriate (the “Title Evidence”). The City shall be allowed until May 1, 2020 to obtain the Title Evidence and to make any objections to marketability of title, which must be made in writing or deemed waived. Donors shall have until Closing Date

(defined below) to make title marketable. Upon correction of title, the parties shall perform this Agreement according to its terms. If the Donors fail to make title marketable by Closing, the City may terminate this Agreement without any liability on its part.

3. Conditions to Closing. The closing of the transaction contemplated by this Agreement and the obligation of the Donors to donate the Property and of the City to accept the Property shall be subject to the following conditions:

3.1 The City reviewing and approving title to the Property pursuant to Section 2 of this Agreement.

3.2. The City having determined on or before the Closing Date that it is satisfied, based upon the results of, and matters disclosed by, any environmental or soil investigations or testing of the Property, that there are no environmental, soil, or other conditions that would interfere with the City's use of the Property.

The above contingencies are for the sole benefit of the City, and the City shall have the right to waive those contingencies by giving written notice to Donors or proceeding to Closing. If the contingencies set forth in this Section have not been satisfied by the Closing Date, the City may terminate this Agreement without any liability on its part by giving written notice to Donors on or before the Closing Date.

4. Environmental and Soil Investigations. The City and its agents shall have the right, at their sole option and risk, to enter the Property for the purposes of testing soils, surveying, and undertaking such other work and inspections as it deems appropriate to determine the suitability of the Property for uses by the City. If the City investigates or tests the Property pursuant to this Section, the City shall pay all costs and expenses of such investigations and testing and shall hold Donors harmless from all damages and liabilities arising out of the City's activities.

5. Real Estate Taxes. On or before the Closing Date, Donors will pay all real estate taxes attributable to the Property and payable in 2020 or prior years, including penalties and interest, if any. The City will be responsible to pay real estate taxes, if any, payable in 2021 and subsequent years.

6. Special Assessments. There are no levied or pending assessments against the Property.

7. Closing.

7.1. The closing shall take place on a date and at a location that is mutually acceptable to the parties but no later than June 30, 2020 ("Closing Date").

7.2. On the Closing Date, Donors shall deliver to the City possession of the Property, and shall execute and deliver to the City:

- a) A duly executed personal representative's deed conveying marketable title to the Property to the City, in a form acceptable to City's title examiner;
- b) Certified copy of unrestricted letters testamentary in a form acceptable to City's title examiner and, if applicable, certified copy of will;
- c) Well Disclosure Certification delivered with this Agreement, if required, or, if there is no well on the Property, the personal representative's deed must include the following statement: "Sellers certify that the Sellers do not know of any wells on the described real property."
- d) An affidavit of non-foreign identity; and
- e) Such other documents as may be required by the City's title examiner or title insurance company.

7.3. The City shall pay at closing: the state deed tax; all recording fees and charges relating to the transaction; title insurance premium, if any; and title company closing fee if any.

8. Personal Property Not Included. There is no personal property included in this donation. Donors must remove all personal property, if any, from the Property prior to closing.

9. Covenants, Representations and Warranties of Donors. Donors hereby warrant and represent to the City that, as of the date hereof, each of the following is true and accurate to the best of Donors' knowledge:

9.1. Donors shall take no actions to encumber title to the Property after the date of this Agreement.

9.2. Donors have the full right and authority to convey the Property to the City as provided in this Agreement.

9.3. To the Donors' knowledge, they are not aware of any use of the Property for the storage of hazardous substances or petroleum products. Donors have not received notice of, and have no knowledge of, any condition that may exist on the Property that may support a claim or cause of action under (a) the Comprehensive Environmental Response Compensation and Liability Act of 1980 (" CERCLA"), 42 U.S.C. § 9601-9657, as amended, or any similar state law or local ordinance; (b) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq.; (c) the Federal Water Pollution Control Act, 33 U. S.C. § 1251 et seq.; (d) the Clean Air Act, 42 U S.C § 7401, et seq.; (e) the Clean Water Act 33 U.S.C. § 1251 et seq.; (f) the Toxic Substances

Control Act, 15 U.S.C. 2601 et seq.; (g) the Safe Drinking Water Act, 42 U.S.C. 300(1) et seq.; (h) the Minnesota Environmental Response and Liability Act, Minn. Stat. § 155B; (i) the Minnesota Petroleum Tank Release Cleanup Act, Minn. Stat. § 115C; (j) all rules or regulations promulgated under any of the foregoing; (k) any amendments of the foregoing; or (l) any other federal, state, county, municipal, local or other statute, law, ordinance or regulation.

9.4. To Donors' knowledge, there are no underground storage tanks located on the Property, and there are no septic systems located on the Property.

10. Miscellaneous

10.1 This agreement represents the complete and final agreement of the parties and supersedes any prior oral or written understanding. This agreement may be amended only by a writing executed by both parties. This agreement shall be binding on the parties hereto, their successors and assigns.

10.2 The City and Donors represent and warrant that the recitals contained in this Agreement are true and accurate.

10.3 All notices required by this Agreement shall be given by depositing in the U.S. mail, postage prepaid, certified mail, return receipt requested, to the following addresses (or such other addresses as either party may notify the other):

To the Donors: Sykora & Santini PLLC  
Attn: Jennifer S. Santini  
212 3<sup>rd</sup> Avenue N, Suite 504  
Minneapolis, MN 55401

\_\_\_\_\_  
\_\_\_\_\_

To the City: City of Minnetonka  
Attn: City Manager  
14600 Minnetonka Blvd.  
Minnetonka, MN 55345

10.4 This contract shall be governed by the laws of the State of Minnesota, without regard to choice of law provisions.

10.5 Well Disclosure:

Sellers certify that the Sellers do not know of any wells on the described real property.

OR

A completed Well Disclosure Certificate accompanies this Donation Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF MINNETONKA

DONORS:

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

\_\_\_\_\_  
Kristina Dianne Radzwill DeLaundreau,  
co-personal representative of the  
Estate of William Stewart Radzwill,  
the sole owner of Con-Mix LLC

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
William Kirk Radzwill,  
co-personal representative of the  
Estate of William Stewart Radzwill,  
the sole owner of Con-Mix LLC



**Resolution No. 2020-**

**Resolution approving agreement for donation to the city of vacant land on Hwy. 7**

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Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

- 1.01. Con-Mix LLC is the owner of vacant, undeveloped property on Hwy. 7, PID 2911722210041 (unaddressed) and PID 2911722240023 (unaddressed). The estate of the sole member of Con-Mix LLC has offered to donate the property to the city.
- 1.02. The city attorney has prepared a donation agreement to address the terms and conditions for the city accepting the donation.

Section 2. Council Action.

- 2.01. The city council hereby approves the donation agreement for the property.
- 2.02. The mayor and city manager are hereby authorized and directed to execute the donation agreement and all other instruments necessary to complete the transaction contemplated by the purchase agreement.
- 2.03. The city manager is authorized to waive contingencies or to terminate the donation agreement, as the city manager determines to be in the best interests of the city.

Adopted by the City Council of the City of Minnetonka, Minnesota, on April 20, 2020.

---

Brad Wiersum, Mayor

Attest:

---

Becky Koosman, City Clerk

**Action on this resolution:**

Motion for adoption:  
Seconded by:  
Voted in favor of:  
Voted against:  
Abstained:  
Absent:  
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on April 20, 2020.

---

Becky Koosman, City Clerk

**City Council Agenda Item #10B**  
**Meeting of April 20, 2020**

**Brief Description**            Ordinance amending the zoning ordinance and subdivision ordinances relating to appeals

**Recommendation**        Adopt the ordinance

**Background**

The zoning and subdivision ordinances outline the procedure for appealing decisions of the city planner, city engineer, and the planning commission:

- Any person aggrieved by a decision of the city planner or city engineer may appeal the decision to the planning commission. The appeal must be submitted in writing within 10 days of the date of the decision.
- Similarly, any person aggrieved by a final decision of the planning commission may appeal the decision to the city council. The appeal must be submitted in writing within 10 days of the date of the decision.

Neither the zoning nor subdivision ordinances include any provision for appealing a decision of the city council. In other words, there is no appeal period – or time limit – under which an aggrieved party may file legal action against the city. The Minnesota Supreme Court referenced an ordinance-defined appeal period in a recent zoning decision.

**Proposal**

Staff is proposing an amendment to the zoning and subdivision ordinances, establishing that a person may appeal a final decision of the city to Hennepin County District Court within 60 days of the written notice of the decision of the city council. The 60-day deadline reflects the deadline established by the Minnesota Rules of Civil Appellate Procedure.

**Planning Commission Hearing and Recommendation**

On Feb. 24, 2020, the city council introduced this ordinance and referred it to the planning commission. The planning commission considered the ordinance amendment on March 5, 2020. The meeting minutes are attached. Staff recommended approval noting:

- The proposed amendment would not require any change to the “post-decision” administrative processes. Staff already provides copies of signed resolutions/ordinances – approving or denying applications – to applicants after final council decisions.
- The amendment would not prevent an applicant from moving forward on a project approved by the city. Rather, the amendment would establish a timeframe under which a person or group opposed to a zoning or subdivision decision, may appeal a decision to the courts.

At the commission meeting, a public hearing was opened to take comment. No comments were received. On a 6-0 vote, the commission recommended that the city council adopt the ordinance.

**Staff Recommendation**

Adopt to the ordinance amending the zoning ordinance and subdivision ordinances relating to appeals.

Through:      GERALYN BARONE, City Manager  
                    Julie Wischnack, AICP, Community Development Director  
                    Loren Gordon, AICP, City Planner

Originator:    Susan Thomas, AICP, Assistant City Planner

**MINNETONKA PLANNING COMMISSION**  
**March 5, 2020**

**Brief Description**            Ordinance amending the zoning ordinance and subdivision ordinances relating to appeals.

**Recommendation**            Recommend the city council adopt the ordinance.

**Background**

The zoning and subdivision ordinances outline the procedure for appealing decisions of the city planner, city engineer, and the planning commission:

- Any person aggrieved by a decision of the city planner or city engineer may appeal the decision to the planning commission. The appeal must be submitted in writing within 10 days of the date of the decision.
- Similarly, any person aggrieved by a final decision of the planning commission may appeal the decision to the city council. The appeal must be submitted in writing within 10 days of the date of the decision.

Neither the zoning nor subdivision ordinances include any provision for appealing a decision of the city council. In other words, there is no appeal period – or time limit – under which an aggrieved party may file legal action against the city. The Minnesota Supreme Court referenced an ordinance-defined appeal period in a recent zoning decision.

**Proposal**

Staff is proposing an amendment to the zoning and subdivision ordinances, establishing that a person may appeal a final decision to Hennepin County District Court within 60 days of the written notice of the decision of the city council.

**Staff Comment**

The proposed amendment would not require any change to the “post-decision” administrative processes. Staff already provides copies of signed resolutions/ordinances – approving or denying applications – following meetings. Neither would the amendment prevent an applicant from moving forward on a project approved by the city. Rather, the amendment would simply establish a timeframe under which a person or group opposed to a zoning or subdivision decision may appeal a decision to the courts. The 60 day deadline reflects the deadline established by the Minnesota Rules of Civil Appellate Procedure.

**Staff Recommendation**

Recommend the city council adopt to the ordinance amending the zoning ordinance and subdivision ordinances relating to appeals.

Originator:     Susan Thomas, AICP, Assistant City Planner  
Through:        Loren Gordon, AICP, City Planner

***Waterman moved, second by Maxwell, to recommend that the city council adopt the resolution denying the preliminary plat with a lot width at setback variance for Fretham 29<sup>th</sup> Addition at 16856 Sherwood Road.***

***Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.***

**D. Ordinance amending the zoning ordinance and subdivision ordinances relating to appeals.**

Chair Sewall introduced the proposal and called for the staff report.

Thomas reported. She recommended approval of the ordinance.

The public hearing was opened. No testimony was submitted and the hearing was closed.

***Powers moved, second by Henry, to recommend that the city council adopt the ordinance amending the zoning ordinance and subdivision ordinances relating to appeals.***

***Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.***

**9. Elections**

***Powers moved, second by Hanson, to elect Sewall to serve as chair of the Minnetonka Planning Commission for one year beginning March 5, 2020.***

***Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.***

***Powers moved, second by Waterman, to elect Hanson to serve as vice chair of the Minnetonka Planning Commission for one year beginning March 5, 2020.***

***Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.***

**10. Planning Commission Bylaws and Policies**

Chair Sewall introduced the proposal and called for the staff report.

Gordon reported. He recommended approval of the bylaws and policies listed in the staff report.

## Ordinance No. 2020-

### An Ordinance amending sections 300.04 and 400.065 of the Minnetonka City Code, relating to appeals from final city decisions on zoning and subdivision applications

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The City of Minnetonka Ordains:

Section 1. Section 300.04(6) of the Minnetonka City Code is amended to read as follows:

#### **6. Appeals.**

a) Any person aggrieved by a decision of the planning commission regarding an application on which the decision of the planning commission may be final may appeal such decision to the city council. The appeal shall be submitted in writing within 10 days of the date of the decision or the decision stands. Upon appeal, the city council shall consider the request within 90 days unless an extended period is agreed with the appellant. The city council may reverse the decision of the planning commission by an affirmative vote of two-thirds of its full membership.

b) A person aggrieved by a decision of the city planner or the city engineer that is made under the authority of this ordinance may appeal such decision to the planning commission. The appeal must be submitted in writing within 10 days of the date of the decision. A person aggrieved by a decision of the planning commission regarding such appeal may appeal the decision of the planning commission to the city council. The appeal must be submitted in writing within 10 days of the decision. The city council may reverse the decision of the planning commission by an affirmative vote of at least two-thirds of its full membership.

c) In any matter in which the planning commission's decision is not final but is a recommendation to the city council, the city council may adopt, modify or reject the recommendation of the planning commission by vote of a simple majority of those present, unless otherwise required by this ordinance.

d) A person aggrieved by a final city decision made under this chapter 3 may seek judicial review by filing an action with the Hennepin County District Court within 60 days after the date that the city provides written notice of the final decision to the applicant.

e) Any applicant who obtains a building permit, starts construction, begins a use in reliance upon the decision of the planning commission, or any combination of those activities, prior to the termination of the appeal period, assumes the risk that the decision may be reversed upon appeal. When an appeal is received by the city, the applicant will be notified of the appeal and informed as to the date of the city council meeting where it will be heard.

Section 2. Section 400.065 of the Minnetonka City Code is amended by changing the title of the section to read as follows:

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The ~~stricken~~ language is deleted; the underlined language is inserted.

Section 400.065. Violations; Penalties; Appeals.

Section 3. Section 400.065 of the Minnetonka City Code is amended by adding a new subdivision 5, to read as follows:

5. Appeals.

A person aggrieved by a final city decision made under this chapter 4 may seek judicial review by filing an action with the Hennepin County District Court within 60 days after the date that the city provides written notice of the final decision to the applicant.

Section 4. This ordinance is effective upon passage.

Adopted by the city council of the City of Minnetonka, Minnesota, on April 20, 2020.

\_\_\_\_\_  
Brad Wiersum, Mayor

Attest:

\_\_\_\_\_  
Becky Koosman, City Clerk

**Action on this Ordinance:**

Date of introduction: Feb. 24, 2020

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:



I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on April 20, 2020.

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Becky Koosman, City Clerk

**City Council Agenda Item #12A**  
**Meeting of April 20, 2020**

**Brief Description:** Ordinance amending Minnetonka City Code Section 845.030 relating to lawn maintenance

**Recommended Action:** Introduce the ordinance

**Background**

About 85 percent of all flowering plants on earth, including roughly one-third of the fruits and vegetables we eat, require the assistance of animal pollinators in order to produce fruit and seeds. Unfortunately, all groups of pollinators are declining globally. This could have serious impacts on our food supply and the health of our planet.

Municipalities, residents, businesses, schools, and faith-based organizations undertake practices that affect pollinators, including landscaping, mowing, chemical use, and more. Small changes to those practices can have large impacts on pollinators, to their detriment or benefit.

In 2017, the city council adopted a resolution authorizing participation in the National Wildlife Federation's Mayors' Monarch Pledge and committed to a wide range of actions to benefit pollinators. The pledge includes 24 possible action steps in three categories: (1) Communications and Convening, (2) Program and Demonstration Gardens, and (3) Systems Change. Cities that pledge to enact eight or more steps receive special recognition as part of the program's Leadership Circle. As noted in the attached map, the city of Minnetonka is the only metro area community to reach that goal. In fact, the city has now completed 22 of 24 steps, which is two steps away from achieving the final level of 'Monarch Champion'.

**Proposed Ordinance Amendment**

Staff is proposing amendments to section 845.030 of the city code pertaining to lawn maintenance. In 1992, after many discussions and consultations with MN Department of Natural Resources (DNR), Hennepin County Extension Services, MN Landscape Arboretum and the Wildflower Research Center, the current ordinance was established. It was understood that allowing more native yards benefited the environment. Despite the original code being developed decades ago, the city has benefited from many property owners taking advantage of the alternative landscaping provisions over the last 30 years.

To be more current, additional language and clarity is needed. The proposed changes promote lawn maintenance practices that benefit pollinators and advance the city's commitment to goals outlined in the Mayors' Monarch Pledge. Increasing pollinator habitat has the additional benefits of capturing runoff, reducing erosion, improving air quality, limiting the need for chemical inputs, and enhancing the community's overall climate resilience.

The primary changes proposed are:

- Recognizing yards as one of the city's environmental assets.
- Defining or redefining bee lawn, meadow vegetation, turf grasses, and weeds.
- Permitting low-growing perennial plants in lawns or native meadow vegetation in place of turf, and distinguishing between these amenities and nuisance weeds.

- 
- Requiring that property owners post signage when installing bee lawns or meadow vegetation, and providing signage.

In addition to ordinance changes, staff will also provide signage to property owners transitioning to pollinator habitat and develop guidance documents to aide property owners in choosing beneficial plants suitable to site conditions. If the city receives complaints regarding these alternative landscapes, the city's nuisance enforcement personnel will work with the natural resources division to ensure the ordinance requirements are met.

### **Recommendation**

Introduce the ordinance amending Minnetonka City Code Section 845.030 relating to lawn maintenance.

#### Submitted through:

Geralyn Barone, City Manager  
Will Manchester, Director of Public Works  
Julie Wischnack, Community Development Director, AICP

#### Originated by:

Leslie Yetka, Natural Resources Manager  
Christine Petersen, Program and Outreach Coordinator  
Corrine Heine, City Attorney

**Ordinance No. 2020-**

**An ordinance amending Minnetonka City Code Section 845.030  
relating to lawn maintenance**

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The City of Minnetonka Ordains:

Section 1. Section 845.030 of the Minnetonka City Code is amended to read as follows:

**845.030. Special Provisions - Lawn Maintenance.**

1. Preamble. The city council finds that ~~there are a variety of landscapes in the city that add diversity and~~ adiverse landscapes add richness to the environment and enhance quality of life. ~~This includes~~ certain areas in the city that have been left, ~~or allowed to go, unmaintained.~~ undisturbed intentionally, such as those that capture and divert water, and other unmaintained areas that offer significant ecological benefits. These have been accepted by the vast majority of the city residents as appropriate and as part of the unique quality of life in this community. There are community expectations, however, that once an area has been disturbed, landscaped, or otherwise maintained, that area will continue to be maintained in a consistent manner. When vegetation in that area is not continually maintained, it becomes aesthetically displeasing and violates community standards. ~~Property that appears neglected~~ Poorly maintained property may decrease the value of adjacent properties. In addition, if vegetation is not properly maintained, ~~there may be~~ the following adverse impacts on the environment or the public health, safety, and welfare may occur:

- a. undesirable vegetation and noxious weeds such as common buckthorn, ~~quackgrass, garlic mustard, and Canada thistle,~~ and other weeds may invade and threaten to supplant ~~other~~ more desirable vegetation;
- b. vegetation that causes allergic reactions, such as ragweed, may develop; and
- c. tall vegetation along driveways and public roads ~~or overhanging branches~~ may impair visibility when entering or exiting public along public roads.

The city council also finds that it is in the public interest to allow ~~citizens~~ residents to choose the type of landscaping on their properties and to make changes in that vegetation. As a protection for the larger community, however, this change in vegetation must be properly managed and maintained and the length of the transition period must be minimized.

The council finds that ~~the establishment of prairie and~~ meadow plant communities is ~~and~~ bee lawns are acceptable landscape treatments in the city. This requires special

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The ~~stricken~~ language is deleted; the underlined language is inserted.

consideration, ~~however, because weeds will grow~~ during the first few years, as newly established vegetation gradually overtakes weeds. ~~of transition before the new vegetation predominates and will appear like neglect.~~ Therefore, the council finds that this type of meadow vegetation and bee lawns is are acceptable if ~~it is~~ properly maintained to shorten the transition period and if ~~notice is given of~~ signage is posted describing the intended result.

In contrast, the transition to trees and other woody species does not require special consideration because untended grass or weeds are not a necessary part of that transition period. ~~Rather,~~ The transition period is may be shortened by eliminating competition around the seedlings through such techniques as organic mulch.

The city council enacts this ordinance to balance the public interest in ~~a variety of~~ diverse vegetation with the public need to ensure proper maintenance of that vegetation. The council finds that establishing a height limitation for certain vegetation is in the best interest of the public health, safety, and welfare as outlined above and is a reasonable maintenance standard.

2. Definitions. For purposes of this section the following words have the meanings specified below.

a. "Bee lawn" means turf mixed with low-growing legumes and other non-invasive perennials that produce flowers beneficial to pollinators.

a.b. "Meadow vegetation" ~~is means~~ grasses and flowering broad-leaf plants that are native to, or adapted to, ~~the state of Minnesota,~~ this region and that are commonly found in meadow and prairie plant communities, except weeds.

b.c. "Noxious weeds" ~~are means~~ those plants so designated by the state of Minnesota under Minn. Stat. § 18.79474, subd. 135 and as amended.

c.d. "Regularly cut" means mowing or otherwise cutting the vegetation so that it does not exceed 10 inches in height.

d.e. "Turf grasses" ~~are means~~ grasses commonly used in regularly cut lawn areas, such as bluegrass, ~~fescue and~~ perennial rye grass and fescue blends, and non-woody ~~vegetation~~ flowering plants interspersed with in them.

e.f. "Weeds" include all ~~noxious weeds, buffalobur, burdock, common cocklebur, crabgrass, dandelions, jimsonweed, quackgrass, common and giant ragweed, field sandbur, velvetleaf, and wild sunflower.~~ Weeds also include anything that is horticulturally out of place. ~~For example, a tree seedling is a weed in a vegetable garden. A property owner may establish that a plant or plants are not horticulturally out of place by providing a written landscape plan for the area in question, complete with a~~

~~listing and locations of plant species. The plants specifically listed above may not be included within the landscape plan. Vegetation that does not comply with this plan are weeds-poison ivy, Canada thistle, leafy spurge, garlic mustard and other noxious weeds, as well as nuisance weeds such as burdock, stickseed, sow thistle, and ragweed.~~

3. Maintenance standard. The maintenance standard in this section applies to property that has been developed with a building as defined in the building code, including vacant property combined with developed property for tax purposes, and any a-parcel of property that has been completely or partially disturbed by demolition, grading or other means in preparation for development or redevelopment.

a. All turf grasses, bee lawns and weeds must not exceed a height of 10 inches, measured from the base at ground level to the tip of each stalk, stem, blade, or leaf.

b. This requirement does not apply to the following:

- (1) a wetland or floodplain designated in the zoning ordinance and required wetland buffers or those voluntarily created by a private land owner when compatible with the character of the neighborhood and the intent of the wetland ordinance, Section 300.23;
- (2) a drainage pond or ditch that stores or conveys stormwater;
- (3) a pasture that is (a) currently being used only for the exercise or feeding of domestic hoofed animals, (b) physically surrounded by a permanent fence that separates the pasture from property used for other purposes, (c) at least one-half acre in size, and (d) undeveloped with any habitable buildings;
- (4) an area in which the land and vegetation appears not to have previously been graded, landscaped, mowed, or otherwise disturbed by human or mechanical means at any time. Determination of what constitutes this type of area will be based on a reasonable judgment of the present appearance of the area. The recent history of the area may be relevant to this determination; and
- (5) an area established with meadow vegetation or as a bee lawn if:
  - (a) the prior vegetation is eliminated and the meadow-new vegetation is ~~planted through transplanting or seed~~ established by human or mechanical means;
  - (b) the area is cut at least once per year to a height of no more than 10 inches, if weeds cover more than 25 percent of the area; and

- (c) a sign provided by the city is posted on the property in a location likely to be seen by the public, advising that a meadow or prairie-bee lawn is being established. This sign is required only if the meadow vegetation or bee lawn is in an area likely to be seen by the public. ~~This sign must be in addition to any sign permitted by the sign ordinance but must be no smaller than ten inches square, no larger than one square foot, and no higher than three feet tall.~~ Property owners must contact city staff to request the appropriate sign, and the sign must remain posted until ~~The sign is no longer required when~~ weeds cover less than 25 percent ~~or less~~ of the area.

4. Declaration of public nuisance. The following are public nuisances subject to abatement under this chapter:

- a. noxious weeds;
- b. vegetation that does not meet the maintenance standard specified in paragraph 3 above; and
- c. vegetation that violates the sight-distance standards in section 300.15, subd. 9(e) and section 300.28, subd. 2022 of this code.

Section. 2. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 3. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on

\_\_\_\_\_  
Brad Wiersum, Mayor

Attest:

\_\_\_\_\_  
Becky Koosman, City Clerk

**Action on this Ordinance:**

\_\_\_\_\_  
The ~~stricken~~ language is deleted; the underlined language is inserted.

Date of introduction:

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on

---

Becky Koosman, City Clerk

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The ~~stricken~~ language is deleted; the underlined language is inserted.





# City of Minnetonka Proclamation

Monarch and Pollinator Awareness Month  
July 2019

- WHEREAS, more than eighty-five percent of flowering plants on Earth, including wild and cultivated species, require the assistance of animal pollinators in order to produce seeds; and
- WHEREAS, globally, pollinators are in decline due to pressures including habitat loss, climate change, and increased use of chemicals; and
- WHEREAS, the monarch butterfly is an iconic North American pollinator whose population has been reduced by more than 80 percent in the past 20 years; and
- WHEREAS, the United States Department of Agriculture and the U.S. Fish and Wildlife Service have declared the monarch to be a priority species for conservation because healthy monarch habitat benefits a wide variety of other species; and
- WHEREAS, individuals and communities can help to save the monarch butterfly and other pollinators by planting native host and nectar plants and taking other steps to provide healthy habitat in back yards and open spaces.

NOW THEREFORE BE IT RESOLVED that the Minnetonka City Council hereby proclaims the month of July as "Monarch and Pollinator Awareness Month" in the city of Minnetonka.

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Brad Wiersum, Mayor

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June 24, 2019

## Mayors' Monarch Pledge Action Items – City of Minnetonka

	<b>MMP Action Step</b>	<b>Status</b>	<b>Notes</b>
<b>Communications &amp; Convening</b>	<b>1</b>	Issue a proclamation to raise awareness about the decline of the monarch butterfly and the species' need for habitat	Done Monarch and Pollinator Awareness Month proclamation was signed by mayor on June 26, 2017; renewed in 2018 and 2019
	<b>2</b>	Launch a public communication effort to encourage citizens to plant monarch gardens at their homes or in their neighborhoods	Ongoing Natural Resources has an enduring commitment to educating residents about pollinators. We use newsletters (print and email), the website, social media, and employee intranet; interpretive signage; events (Open House, State of the City, Night for Neighbors, Pollinator Field Day); and partner with other organizations (e.g., promoting BWSR's Lawns to Legumes grant program and possibly becoming an endorsing organization for MN Arboretum's Pollinator Summit)
	<b>3</b>	Communicate with community garden groups and urge them to plant native milkweeds and nectar-producing plants	Ongoing Presented to seniors' Garden Club in 2017 and 2019
	<b>4</b>	Convene city park and public works department staff and identify opportunities for revised mowing and milkweed/native nectar plant planting programs	Ongoing Collaborating with Parks & Trails and Facilities staff to inform volunteers about opportunities to incorporate pollinator-friendly plants into ornamental and seasonal park plantings
	<b>5</b>	Convene a meeting with gardening leaders in the community to discuss partnerships to support monarch butterfly conservation	Done Presented at Freshwater Society's pollinator workshop (a continuing education event for Master Water Stewards that was open to the public) in 2017

	<b>MMP Action Step</b>	<b>Status</b>	<b>Notes</b>
<b>Program &amp; Demonstration Gardens</b>	<b>6</b>	Host or support a native plant sale or milkweed seed giveaway event	Ongoing NR has hosted some sort of native plant sale since 2010. That sale is now part of a city event called Pollinator Field Day. In 2019, a native plant vendor was also at the first farmers' market.
	<b>7</b>	Facilitate or support a milkweed seed collection and propagation effort	Ongoing NR's restoration specialist collects seeds every fall in city parks, and uses them in park restoration areas. There is a milkweed seed ball-making activity at Pollinator Field Day; visitors plant the seeds at home or in a city park.
	<b>8</b>	Plant a monarch-friendly demonstration garden at City Hall or other prominent location	Ongoing Demonstration garden planted in Nov 2016 along the path leading to the west portion of Civic Center Park; interpretive signage added in 2017. Hillside at Community Center area also left unmowed to allow milkweed growth (and monarch eggs are often found there)
	<b>9</b>	Convert abandoned lots to monarch habitat	Ongoing Oric Ave outlot restoration includes invasive species removal and native prairie plantings
	<b>10</b>	Plant milkweed and native nectar plants in medians and public rights-of-way	Ongoing Native perennials and grasses are often added to median and right-of-way plantings after road reconstruction; medians and endcaps at city hall are also incorporates natives
	<b>11</b>	Launch a program to plant native milkweeds and nectar plants in school gardens by engaging students, teachers, and the community	Ongoing An ambitious community garden project is being installed Scenic Heights Elementary School, led by Riley-Purgatory-Bluff Creek Watershed District and Barr Engineering with consultation from city staff
	<b>12</b>	Earn recognition for being a wildlife-friendly city by expanding your action plan to include other wildlife and habitat conservation efforts through a program like the NWF Community Wildlife Habitat program	Ongoing Minnetonka has been a Tree City USA since 1994, and in 2015 received the Arbor Day Foundations Growth Award for innovative, sustainable community forestry practices
	<b>13</b>	Create a monarch neighborhood challenge to engage neighborhoods	Done In 2017, the PolliNeighbor Challenge was distributed at Night for Neighbors (went to ~250 neighborhood

## Mayors' Monarch Pledge Action Items – City of Minnetonka

	and homeowners' associations within the city to create habitat for the monarch butterfly		captains); this challenge was updated in 2019 and used for Pollinator Field Day and Night for Neighbors
14	Initiate or support citizen-science efforts that help monitor monarch migration and health	Ongoing	Pollinator Field Day includes citizen science demonstrations
15	Add milkweed and nectar producing plants in community gardens	Ongoing	NR and Recreation are collaborating to educate community gardeners at Kelly Park about annual plants that benefit pollinators and vegetable gardens
16	Expand invasive species removal programs to make it possible to re-establish native milkweed and nectar plants to the landscape	Ongoing	Since the 1990s, NR staff have worked to remove invasive species so that native prairie, woodland and shoreland species can reestablish in city parks
17	Host or support a city monarch butterfly festival	Ongoing	Pollinator Field Day includes crafts, games, and educational events to celebrate monarchs, pollinators and their habitat. Attendance increased from ~175 at the first event in 2017 to ~300 in 2019.

<b>MMP Action Step</b>		<b>Status</b>	<b>Notes</b>
<b>Systems Change</b>	18	Remove milkweed from the list of noxious plants in city weed/landscaping ordinances (if applicable)	Done Minnetonka follows the state list, which does not list milkweed as noxious
	19	Change weed or mowing ordinances to allow for native prairie and plant habitats	Done Ordinance has long been in place that allows Minnetonkans to plant native meadow vegetation
	20	Increase the percentage of native plants, shrubs and trees that must be used in city landscaping ordinances and encourage the use of milkweed where appropriate	Done In July 2019, city council unanimously passed amendments to the landscaping ordinance, requiring all new developments and redevelopments to include at least 25 percent native plants and native cultivars in their landscaping plans. Plant lists were created as guidance for developers.
	21	Direct city property managers to consider the use of native milkweed and nectar plants at city properties where appropriate	Ongoing NR collaborates with Parks, Streets, Recreation, Facilities, and Community Development to maintain ongoing conversations about native plantings
	22	Integrate monarch butterfly conservation into the city's Park Master Plan, Sustainability Plan, Climate Resiliency Plan or other city plans	Done Native habitat is addressed in the Resource Management chapter of the city's 2030 Comprehensive Guide Plan, and NR staff suggested language for the 2040 plan
	23	Change landscape ordinances to support integrated pest management and reduced use of pesticides and insecticides	In process In 2020, NR staff will develop outreach to help developers and property owners reduce chemical use through IPM and planting choices. Lawn maintenance amendments have also been proposed related to bee lawns and meadow vegetation.
	24	Adopt pesticide practices that are not harmful to pollinators	Upcoming NR will continue to work with other divisions and departments to develop a sustainable IPM plan and formalize parameters for chemical use on city properties.



**City Council Agenda Item #12B**  
**Meeting of April 20, 2020**

**Brief Description:** Ordinance adding a new city code section 1315.030 to allow for electronic signatures on resolutions and ordinances

**Recommended Action:** Introduce the ordinance

**Background**

The city code does not expressly permit the mayor and the city clerk to use electronic signatures when signing or attesting to resolutions and ordinances. Using standard electronic processes to enact resolutions and ordinances will provide for the more efficient conduct of city business. Although the impracticalities of using handwritten signatures have been exacerbated by the current COVID-19 pandemic, the city will benefit both now and in the future from the ability to use electronic signatures to execute ordinances and resolutions.

The proposed ordinance amends Minnetonka City Code Section 1315, which relates to enacting ordinances, resolutions, and policies, by adding a new section. The proposed ordinance allows the mayor and the clerk to use an electronic signature to sign and attest to city ordinances and resolutions. The electronic signature must meet the requirements of the Minnesota Uniform Electronic Transactions Act that would apply if the ordinance or resolution were part of a transaction. Although that statute only applies to transactions, the intent of the ordinance is to subject electronic signatures on ordinances and resolutions to established standards as defined in law.

The proposed ordinance also ratifies all resolutions and ordinances which have been electronically executed since Resolution No. 2020-029, which consented to the mayor's declaration of a local emergency. This provision is included so that these resolutions and ordinances need not be re-executed to comply with the proposed ordinance's provisions.

**Recommendation**

Introduce the ordinance.

Submitted through:

Geralyn Barone, City Manager  
Corrine Heine, City Attorney  
Mike Funk, Assistant City Manager

Originated by:

Samuel Schultz, Legal Department Intern

**Ordinance No. 2020-**

**An Ordinance adding a new city code section 1315.030 to allow for electronic signatures on resolutions and ordinances**

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The City of Minnetonka ordains:

Section 1. Section 1315 of the Minnetonka City Code, relating to ordinances, resolutions and policies, is amended by adding a new section 1315.030 as follows:

**1315.030. Electronic Signatures**

The mayor may sign and the city clerk may attest to ordinances and resolutions adopted by the city council by the use of an electronic signature. The electronic signature must meet the requirements of the Minnesota Uniform Electronic Transactions Act, Minnesota Statutes chapter 325L, as if the ordinance or resolution were part of a transaction as defined by that statute.

Section 2. Ordinances and resolutions that have been executed prior to the effective date of this ordinance, but after the adoption of Resolution No. 2020-029, a resolution consenting to mayor's declaration of a local emergency, are hereby ratified.

Section 3. This ordinance is effective 30 days after publication.

Adopted by the City Council of the City of Minnetonka, Minnesota, on April 20, 2020.

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Brad Wiersum, Mayor

Attest:

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Becky Koosman, City Clerk

**Action on this Ordinance:**

Date of introduction:

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

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The ~~stricken~~ language is deleted; the underlined language is inserted.

Date of publication:

I hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on April 20, 2020.

\_\_\_\_\_  
Becky Koosman, City Clerk

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



**City Council Agenda Item #13A**  
**Meeting of April 20, 2020**

**Brief Description:** Resolution amending Council Policy 8.3 regarding plant pest program

**Recommended Action:** Hold the public hearing and adopt the resolution

**Background**

Since at least 1935, state law has authorized cities to control plant diseases, although over the decades, the legislature has amended and re-codified the specific statutes that provide that authority, in order to address new diseases and plant pests. For example, the city adopted an ordinance regarding trees affected with Dutch elm disease and oak wilt in 1973, acting under general legislative authority related to “plant diseases.” The state legislature caught up to the city in 1974, by enacting specific legislation related to the control of Dutch elm disease and oak wilt. The city’s ordinance on Dutch elm disease and oak wilt is found in Section 840 of the city code.

Most recently, in 2003, the legislature enacted Minnesota Statutes, Section 18G.13, which authorizes cities to adopt and enforce regulations to control and prevent the spread of plant pests and diseases, by resolution or ordinance. Rather than identify specific diseases, such as Dutch elm disease and oak wilt, the 2003 legislation returned to the use of the generic term “plant pests” in recognition that changing ecologies may present new threats to our plant resources. The definition of “plant pests” includes any living agent capable of reproducing itself and causing harm, including insects, bacteria, viruses, microorganisms, and other agents.

In 2018, the council recognized the emerald ash borer as the latest threat to Minnetonka trees. On May 14, 2018, the council adopted a plant pest program (Council Policy 8.3) that identifies the authority for establishing the program, the responsible parties to abate the nuisance condition, details on the biology of the regulated plant pests (including signs and symptoms), as well as control and sanitation measures. Council Policy 8.3 serves to guide city staff and to provide flexibility in implementing the plant pest program.

**Resolution amending Council Policy 8.3**

Council Policy 8.3 provides that the city will share the costs of removing a diseased tree that is located on private property but within a public right of way. The policy reflected the city’s long-standing cost-sharing practice for those situations, which the city considered to be an equitable sharing of costs, based on the property owner’s private interest in the tree and the city’s interest in protecting the traveling public on adjacent rights of way. The staff report for the May 14, 2018 meeting noted, however, that city staff intended to propose a change in that cost-sharing practice as part of the 2019 budget and that, if the council approved the funds in the 2019 budget, the staff would bring Council Policy 8.3 back to the council for amendment.

During the discussion of the 2019 budget on June 4, 2018, city staff proposed that the city move away from a cost-share program, and instead fund the full cost of removing infested trees from city rights-of-way, as well as for trees on city-owned land. The city council adopted and funded this change as part of the 2019-2023 Capital Improvement Program. Since then, city staff have



implemented the revised cost-sharing practice. However, the policy document itself has not been updated. The attached resolution amends the policy to formally reflect that change.

Additional proposed changes provide clarifying language to restrict the expenditure of public funds to only those trees located within a right-of-way that has been opened to public travel. That language is consistent with the underlying rationale for expending city funds, which was to protect the traveling public. In addition, the revised policy updates the sanitation and removal timelines for EAB-infested trees to reflect a more efficient implementation protocol. A public hearing is required before changes can be made.

### **Recommendation**

Hold the public hearing and adopt the resolution amending Council Policy 8.3 regarding the plant pest program.

Submitted through:

Geralyn Barone, City Manager  
Will Manchester, Public Works Director

Originated by:

Leslie Yetka, Natural Resources Manager  
Hannibal Hayes, City Forester  
Corrine Heine, City Attorney

**Resolution No. 2020-**

**Resolution adopting changes to Council Policy 8.3  
regarding plant pest program**

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Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

- 1.01. State law authorizes cities to adopt and enforce regulations, by ordinance or resolution, to control and prevent the spread of plant pests and diseases.
- 1.02. City Code section 840.015 provides that the city's plant pest regulations must be adopted by resolution of the city council, after a public hearing.
- 1.03. After due notice, the city council held a public hearing on April 20, 2020, to consider revisions to the city's plant pest program, Council Policy 8.3.

Section 2. Council Action.

- 2.01. The city council hereby amends Council Policy 8.3, Plant Pest Program, as shown on the attached Exhibit A

Adopted by the City Council of the City of Minnetonka, Minnesota, on

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Brad Wiersum, Mayor

Attest:

---

Becky Koosman, City Clerk

**Action on this resolution:**

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

**Policy Number 8.3  
Plant Pest Program**

**Purpose of Policy:** This policy establishes a plant pest program as authorized by Minn. Stat. § 18G.13 and Minnetonka City Code § 840.015

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**Authority for establishing program**

This plant pest program is established pursuant to Minnesota Statutes, section 18G.13, subdivision 7, Minnetonka City Code section 840.015.

**Determination of plant pests to be prevented, controlled, managed or eliminated**

The Minnetonka city council finds that the following plant pests may cause significant damage or harm to the city's economy, environment or human health:

- **Dutch elm disease fungus, *Ophiostoma novo-ulmi***
  - **Elm bark beetles, *Scolytus multistriatus*, *Scolytus schevyrewi* or *Hylurgopinus rufipes***
- **Emerald ash borer beetle, *Agrilus planipennis* Fairmaire**
- **Oak wilt disease fungus, *Ceratocystis fagacearum***

**Responsible parties**

City staff survey the entire city—including public lands, private property, and the right-of-way (road edge)—for the above-listed plant pests. Responsibility for managing diseased [or infested](#) trees and incurring the cost of required sanitation (and optional prevention and control measures) is as follows:

- Public lands – the city is responsible for performing and paying the costs of plant pest control, prevention, and management on lands that are owned by the city.
- Private property – the property owner is responsible for performing and paying the costs of plant pest control, prevention, and management on the property owner's land. If a public nuisance exists and the property owner fails to abate the nuisance, the city may perform the work and assess the costs against the owner's property in the manner provided by section 845 of the Minnetonka City Code.
- Right-of-way – Property ownership generally extends to the centerline of the abutting street, which means the property owner owns the land and the trees on the land, and the city has an easement for street and utility uses. The property owner is responsible for performing and paying the costs of plant pest prevention and control; however, if a tree in ~~the~~[an opened](#) right-of-way is

marked for removal, the city will pay for ~~half~~ the cost of diseased or infested tree removal ~~(up to half the city contractor's rate, not including tax)~~ in recognition of the city's interest in protecting the traveling public.

### **Dutch elm disease fungus and elm bark beetles**

Since the 1930s, hundreds of thousands of elms have died from Dutch elm disease (DED). Despite its common name, this fungus probably originated in Asia, then spread to Europe and the United States. Although disease-resistant varieties are being developed, all native elm species are susceptible to DED, which is carried from infected to healthy elms by native or European elm bark beetles. After the fungus is introduced into an elm's water conducting system, leaves (typically at the branch tips) wilt, turn yellow, and often drop from the branches. An infected elm dies because, in its attempt to stop the spread of the fungus, it blocks its own ability to transport water. Because the root systems of adjacent elms often graft (fuse together), DED can spread directly between trees generally growing 50-100 feet apart.

#### Signs and Symptoms:

- Are most obvious between late spring and late summer, though trees infected the previous year may become symptomatic as soon as they leaf out in early spring.
- Visible wilting
- Discoloration of the leaves (yellow or brown)
- Branch death
  - If beginning in the crown, wilting begins first at branch tips ("flagging") and progresses through the crown
  - When infection occurs through root grafting (less common), branch death may begin in the lower crown on the side nearest the graft; it then spreads to the entire crown, sometimes quite rapidly
- Brown staining of the year's new wood, just under the bark

#### Prevention and Control Measures:

- Before removing diseased trees, property owners are advised to:
  - Have a qualified tree care professional inject healthy adjacent elm trees with a fungicide and reevaluate every two or three years (depending on the chemical used) for continued protection. This systemic chemical spreads to all parts of the plant, reducing the risk of above - and below-ground spread of the DED fungus.
  - Where terrain permits, a root-graft barrier should be installed between diseased elms and any healthy trees of the same species within a 100-foot radius, in order to prevent the spread of DED between the shared root systems of adjacent elm trees.
- Replace removed trees with species outside the elm family. A diverse community forest is more resistant to the spread of epidemic-level diseases and pests.

#### Required Sanitation Measures:

- City staff will identify and mark infected elm trees throughout Minnetonka.

- Tree removal and all associated work must be completed by the ~~indicated~~ provided deadline (typically 30 days after marking):
  - Dispose of marked tree(s) and all branches and logs by chipping or removal to an approved brush drop site.
  - Debark stump(s), or cut to within one inch of ground level, or have the stump(s) removed.

### **Emerald ash borer beetle**

Emerald ash borer, often called EAB, is a non-native (invasive) insect from Asia that kills ash trees and related species in the Oleaceae family (such as white fringetree). ~~According to the Minnesota Department of Agriculture, no North American ash population is resistant to EAB.~~ In areas where emerald ash borer is established, ash tree mortality rates approach 100 percent. Once EAB infests an area, it cannot be eradicated. Minnesota is home to approximately 900 million ash trees, the highest population of any state. The life cycle of emerald ash borer begins when an adult lays eggs in the bark crevices of ash trees. Hatched larvae burrow into the wood and begin to feed, creating S-shaped galleries under the bark as they move. Over a period of three to five years, subsequent generations of larvae damage the wood and disrupt the tree's ability to draw water and nutrients from the soil, eventually killing the tree. In Minnesota, larvae typically overwinter for one or two years before hatching out in early summer. The new adults chew characteristic D-shaped exit holes in the bark and feed minimally on ash leaves before flying short distances (up to two miles) to mate and lay eggs on ash trees in new locations. People accelerate the movement of this pest by carrying EAB-infested firewood to new locations.

#### Signs and Symptoms:

- Increased woodpecker activity (as the birds feed on larvae in the living branches)
- "Blonding," pale coloration of bark due to woodpecker activity
- Thinning foliage in the top third of the crown (less diagnostic)
- Small D-shaped exit holes
- S-shaped galleries under the bark
- Vertical splits in the bark

#### Prevention and Control Measures:

- Educate property owners to avoid pruning and removal of ash trees between May and September, when emerald ash borers are most active.
- Have a qualified tree care professional inject healthy ash trees 10" in diameter or larger with emamectin benzoate, an insecticide that kills EAB larvae. Reevaluate every two or three years (depending on the dosage used) for continued protection.
- Develop a plan to gradually remove smaller ash trees, and those in poor health or structure, from the landscape.
- Replace removed trees with species outside the Oleaceae family. A diverse community forest is more resistant to the spread of epidemic-level diseases and pests.
- Never transport ash wood or brush outside the state's designated quarantined area (which includes the Twin Cities metro). Quarantine information is regularly updated

on the Minnesota Department of Agriculture website (search “emerald ash borer quarantine”).

Required Sanitation Measures\*:

- City staff will scout for EAB-infested trees between early in summer and early winter, and mark them for removal either by December 31 or by March 31, depending on when marked in the fall/winter.
- Tree removal and all associated work must be completed by the indicated provided deadline (between October 15 and March 1):
  - Dispose of marked tree(s) and all associated debris by chipping or removal to an approved brush drop site.
  - Debark the stump(s), or cut to within one inch of ground level, or have the stump(s) removed.

\*City staff will request that the city council amend these requirements when EAB has spread throughout the city and the city has determined that the population can no longer be managed. At that time, city staff will recommend that the city council require removal of ash trees infested with EAB only if they pose a risk to public safety or public property.

**Oak wilt disease fungus**

Oak wilt is caused by a fungal pathogen that most commonly spreads between the interconnected (grafted) root systems of trees growing within 50-100 feet of each other. When the fungus is introduced into the water-conducting system of a red oak tree, the leaves wilt, brown, and drop from the branches. The disease can kill a red oak within a few weeks. The tree dies because, in its attempt to stop the spread of the fungus, it blocks its own ability to transport water. To prevent new infections throughout the community, diseased red oaks should be removed before they can produce a fungal spore mat the following spring. Without good sanitation, the spore mat attracts sap beetles that carry the disease to oaks with fresh pruning or storm damage wounds, starting new oak wilt pockets across the wider landscape.

Signs and Symptoms:

- Foliage wilts from the top down, spreading throughout the crown
- Individual leaves wilt from the leaf tip and margins inward, turning bronze or brown
- Rapid and complete wilting within 2-6 weeks
- When the bark is pulled back from a branch with wilting leaves, the wood below is typically discolored

Prevention and Control Measures:

- Educate property owners to avoid pruning oak trees between mid-March and October, when the oak wilt fungus and its insect vectors are most active.
- Before removing diseased trees, property owners are advised to:
  - Have a qualified tree care professional inject healthy adjacent red oak trees with the fungicide propiconazole and reevaluate every other year for continued

- protection. This systemic chemical spreads to all parts of the plant, reducing the risk of above- and below-ground spread of the oak wilt fungus.
- Where terrain permits, a root-graft barrier should be installed between diseased red oaks and any healthy red oak trees within a 100-foot radius, in order to prevent the spread of oak wilt fungus between the shared root systems of adjacent red oak trees.
  - The city does not require the removal of white and bur oak trees infected with oak wilt disease. Both species of tree are more tolerant of the oak wilt disease than red oak trees, and through removal of infected branches and chemical injection, can be preserved. In addition, neither a white nor a bur oak tree will produce a spore mat in the spring after its death.
  - Replace removed trees with species other than oak (and preferably outside the beech family, to which oaks belong). A diverse community forest is more resistant to the spread of epidemic-level diseases and pests.

#### Required Sanitation Measures:

- City staff will identify and mark infected red oak trees throughout Minnetonka.
- Tree removal and all associated work must be completed by the [indicated-provided](#) deadline (February 1) to prevent the formation of a spore mat:  
Dispose of the tree(s) and all associated debris by chipping or removal to an approved brush drop site. (With prior approval and oversight by Natural Resources staff, oak wood may be retained as firewood, see below)
  - Debark the stump(s), or cut to within one inch of ground level, or have the stump(s) removed.
- With prior approval, firewood may be kept using one of the following methods:
  - Cut, split and then stack wood loose for air flow (enough space for a chipmunk to crawl between pieces). Then, call forestry staff for an inspection by October 15.
    - If firewood is not dry when inspected, then the wood must be covered with plastic that is 5 millimeters thick or more. Edges of plastic must be buried in the ground to create a tight seal. The wood must then be re-inspected by November 15.
      - If the wood has not been properly covered, it will be deemed a nuisance and the property owner will need to remove all of the wood by February 1.
  - Cut wood into three foot sections, creating space between ends of each log to allow for air flow. Perform this work as soon as possible to allow each section to dry. Then, call forestry staff for an inspection by October 15.
    - If the wood is not sufficiently dry, all wood must be covered with plastic that is 5 millimeters thick or more. Edges of plastic must be buried in the ground to create a tight seal. The wood must then be re-inspected by November 15.
      - If wood has not been properly covered, it will be deemed a nuisance and the property owner will need to remove all of the wood by February 1.

- Firewood must remain covered until July 4 of the following year, to prevent sap-feeding beetles from spreading the oak wilt fungus. City staff will perform random firewood inspections to check that control measures remain in place during this time frame.

**Amendments to Policy**

This policy may be amended only after a public hearing as required by City Code section 840.015.

Adopted by Resolution No. 2018-071  
Council Meeting of June 18, 2018

[Amended by Resolution No. 2020-  
Council Meeting of April 20, 2020](#)



**City Council Agenda Item #14A**  
**Meeting of April 20, 2020**

**Brief Description:** Statute of limitations tolling agreement relating to 3908 Auburn Drive

**Recommended Action:** Approve the agreement

**Background**

Shane and Sarah Feldhaus reside at 3908 Auburn Drive, which is situated on the east side of Huntingdon Pond. Over the past several years, the Feldhauses have raised concerns to city public works staff and city council members about the rising water elevation of Huntingdon Pond. In response, public works staff has suggested several options the Feldhauses could consider taking to protect their property, including the construction of a berm, installing a sump pump system, and removing the lower level/basement exterior access to their basement.

In November 2019, the city pumped water from Huntingdon Pond in response to a resident petition signed by a majority of the property owners on the pond. Pumping was successful and helped reduce the risk of flooding at the Feldhaus property. However, pumping was stopped before the city's water elevation goal could be met fully due to resident concerns of noise impacts from the pump.

The Feldhauses have advocated for the construction of a permanent storm sewer outlet from Huntingdon Pond. On Feb. 27, 2020, public works staff held a neighborhood meeting to provide an opportunity for residents of the Huntingdon Pond neighborhood to discuss the situation and better understand what changes would occur to the water level of the pond if a storm sewer outlet is installed. The city also presented two possible options for outlet locations along with the likely impacts to adjacent properties. The response from the neighborhood was split with some residents wanting an outlet and some wanting the pond to remain natural.

Moving forward, the city will continue to monitor the water level on Huntingdon Pond. If water levels would again reach historic high levels, and the Feldhaus's home is in immediate danger of flooding, staff would again work to coordinate pumping efforts. Staff would also continue to work with property owners on flood protection measures on private property. For a more permanent solution, the property owners on Huntingdon Pond could choose to petition the city for consideration to fund a permanent outlet pipe. City staff will be including an unfunded project page in the city's five year Capital Improvement Plan for council consideration.

On March 11, 2020, an attorney for the Feldhauses sent a notice of claim to the city and simultaneously asked the city to consider entering into a tolling agreement. A tolling agreement is an agreement that effectively pauses the clock on applicable statutes of limitation for filing lawsuits. The purpose of the agreement is to allow parties to continue discussions, to determine whether a mutually agreeable solution can be reached, without putting either of the parties in danger of losing their ability to bring litigation due to the running of a statute of limitations. Statutes of limitations vary in length, depending upon the nature of the claim being asserted, and can be as short as 2 years or as long as 15 years.

The city has an obligation to cooperate with its insurer, so the city attorney submitted the proposed tolling agreement to the League of Minnesota Cities Insurance Trust (LMCIT). Both the city attorney and the LMCIT have approved the form of the proposed agreement. The proposed agreement has an initial term of six months and will extend for an additional six-month period unless either party provides notice to the other of an intent not to extend the agreement. It is expected that the parties would continue discussions about a potential solution in the interim. City staff will provide the council with status updates as appropriate.

**Recommendation**

Approve the tolling agreement, subject to non-material changes approved by the city attorney and city manager.

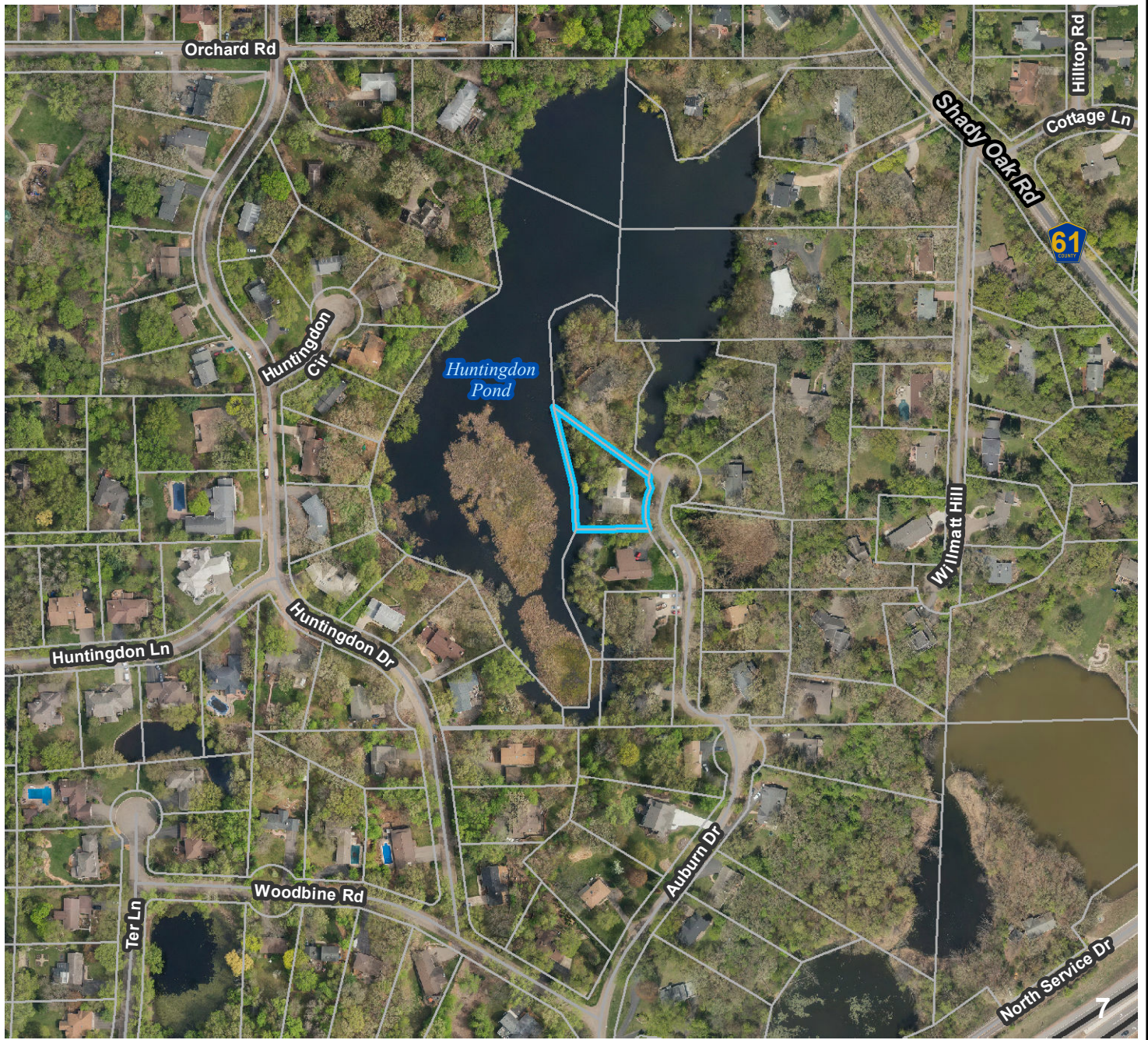
Submitted through:

Geralyn Barone, City Manager  
Will Manchester, P.E., Director of Public Works


Originated by:

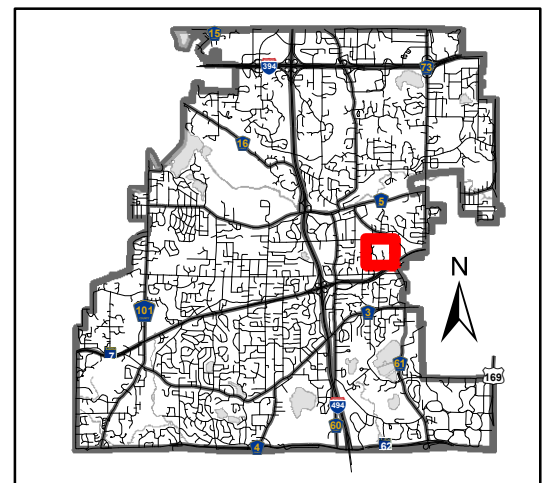
Corrine Heine, City Attorney  
Phil Olson, P.E., City Engineer





## Huntingdon Pond

 3908 Auburn Drive



This map is for illustrative purposes only.



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† ALSO ADMITTED IN WISCONSIN  
\* ALSO ADMITTED IN NORTH DAKOTA  
\*\* ALSO ADMITTED IN IOWA  
^ ALSO ADMITTED IN SOUTH DAKOTA

March 11, 2020

Via Email and U.S. Mail

Corrine Heine, Esq.  
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RE: Shane and Sara Feldhaus – 3908 Auburn Drive  
Our File No.: 1505.001

Dear Ms. Heine,

I am writing to follow-up on our conversation from last week regarding the Feldhauses, who reside at 3908 Auburn Drive in Minnetonka, MN. As we discussed, the Feldhauses are concerned that their home will flood if the City does not take action to control the water levels of Huntingdon Pond. Without limitation, the Feldhauses were injured when the City stopped pumping to lower the water level of Huntingdon Pond in November 2019, and indicated that it will not pump in the future, regardless of water levels, unless certain preconditions to pumping are met, including but not necessarily limited to community approval of the pumping request. The Feldhauses may incur significant damages if this problem is not resolved, including but not limited to the loss of value and use of their home. The specific amount is not currently known but could easily exceed \$500,000.

We are continuing to evaluate potential options to protect the home and wish to work cooperatively with the City to explore these options to the fullest extent possible. To that end, I propose that the Feldhauses and the City enter into a standstill and tolling agreement to preserve any causes of action they may have in the event the parties are not able to reach a resolution outside of litigation. I propose that the term last for 2 years, and that the agreement be terminable at will, without or without cause, by either party upon 60 days' written notice. The agreement will expressly reserve all existing claims and defenses. I can draft the agreement for your review if the City is willing to entertain it. I understand any approval will be subject to review of the proposed document.

Ms. Heine, Esq.

Page 2

March 11, 2020

Notwithstanding the possibility of a standstill and tolling agreement, I wish to put the City on notice that the Feldhauses may have a claim under Minn. Stat. Sect. 466.02, among other remedies. Therefore, please also note that this communication serves as a notice of a potential claim as required by Minn. Stat. Sect. 466.05.

I appreciate your attention to this. Feel free to call me to discuss. Thank you.

Sincerely,

THE COLEMAN LAW FIRM, LLC



Benjamin J. Kirk

BJK/

## TOLLING AGREEMENT

This Agreement is entered into between **Shane Feldhaus and Sara Feldhaus** (“Feldhauses”) and **City of Minnetonka** (“City”) (collectively the “Parties”) effective April 20, 2020.

### Recitals

WHEREAS, the Feldhauses own and reside at the residential property with the street address 3908 Auburn Drive, Minnetonka, MN 55305 (the “Property”).

WHEREAS, the City of Minnetonka is a municipal corporation in the State of Minnesota, whose address for the purpose of this Agreement is City of Minnetonka, 14600 Minnetonka Blvd, Minnetonka, MN 55345.

WHEREAS, the Property is adjacent to Huntingdon Pond, which is a landlocked pond that is managed and controlled by the City.

WHEREAS, the Feldhauses allege that the Property is at risk of seasonal flooding from Huntingdon Pond and believe they may have legal claims against the City for damages as a result of this risk of flooding.

WHEREAS, the Parties desire to investigate and discuss potential solutions to eliminate or mitigate the risk of Huntingdon Pond flooding the Property and avoid formal legal action, if possible.

WHEREAS, the Feldhauses wish to be assured that their forbearance from serving and filing a formal Summons and Complaint upon the City in this matter will not give rise to a contention or assertion by the City that this forbearance has caused any applicable statute of limitations or repose to have expired or been exceeded, and further, that such a forbearance will not give rise to a contention or assertion that the Feldhauses are barred from asserting claims by the doctrine of laches, where those limitations would not have expired or been exceeded had the Feldhauses not elected this forbearance, and that the Parties respective claims and defenses existing as of the Effective Date of this Agreement shall be preserved through the term of this Agreement.

NOW THEREFORE, the Parties, for good and sufficient consideration, the sufficiency of which is hereby acknowledged, agree as follows:

### Agreement

1. Commencing on April 20, 2020, and for the duration of this Agreement, the Parties agree to toll and suspend all applicable statutes of limitations, statutes of repose, or limitations based upon time, including, but not limited to laches (hereinafter referred to as “Time Limitations”) as to any and all claims and defenses that either party may have in connection with, related to or arising from Huntingdon Pond flooding or posing a flood risk to the Property.

2. The Feldhauses shall not assert a formal legal claim against the City arising out of Huntingdon Pond during the time this Agreement is in effect.

3. If the Feldhauses later assert a formal legal claim against the City, the City shall not assert a defense based on any Time Limitation that may have expired during the term of this Agreement.

4. This waiver shall not be construed as a waiver of any defenses that have become established prior to the effective date of this Agreement, or which would arise after the date of termination of this Agreement, excluding the period during which this Agreement has operated to toll any Time Limitations.

5. The running of all applicable Time Limitations shall recommence on the termination of this Agreement, unless there is an extension of this Agreement executed in writing by and on behalf of the Parties hereto.

6. Upon termination of this Agreement, or termination of any written extension thereof, the Parties shall be returned to the status quo as of the effective date of this Agreement.

7. It is understood that by entering into this Agreement, neither Party is waiving any claims, rights or defenses that may have accrued up to the effective date of this Agreement. The Parties also do not waive and continue to accrue any and all claims for interest charges or other costs that the party may ultimately be entitled to. Further, the fact that the Parties entered into this Agreement shall not be construed as any admission or acknowledgment of fault or wrongdoing by any Party.

8. The effective date of this Agreement is April 20, 2020. This Agreement will have a term of six (6) months from this date, but will automatically renew for an additional six (6) month period unless terminated in writing by the Parties hereto. Either party may terminate this Agreement at any time by providing notice of intent to terminate in writing addressed to the party at the address indicated below. Notice shall be done by certified or registered mail and shall be copied to the Party's legal counsel. The effective date of termination given by written notice shall be sixty (60) days beyond the date notice is given, and any statute of limitations or repose defenses will begin to run again after the effective date of termination. Legal claims may be commenced on or after the effective date of termination.

Address for Notice:

Shane and Sara Feldhaus  
3908 Auburn Drive  
Minnetonka, MN 55305

Address for Notice:

City of Minnetonka  
14600 Minnetonka Blvd  
Minnetonka, MN 55345

Attorney of Record:

Benjamin J. Kirk, Esq.  
The Coleman Law Firm, LLC  
800 Washington Avenue North

Attorney of Record:

Corrine Heine, Esq.  
Minnetonka City Attorney  
City of Minnetonka

Suite 620  
Minneapolis, MN 55401  
bjk@jwcolaw.com

14600 Minnetonka Blvd  
Minnetonka, MN 55345  
cheine@minnetonkamn.gov

9. This Agreement shall not be offered in evidence in any action or proceeding except to prove that the Time Limitations were tolled for the period of time during which this Agreement was in effect.



**Signature Page – Feldhaus**

**Shane and Sara Feldhaus**

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Shane Feldhaus

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Sara Feldhaus

**Signature Page – City**

**City of Minnetonka**

By \_\_\_\_\_  
Brad Wiersum, Mayor

By \_\_\_\_\_  
Gerald Barone, City Manager

**City Council Agenda Item #14B**  
**Meeting of April 20, 2020**

<b>Brief Description</b>	Emergency Rental Housing Assistance
<b>Recommendation</b>	1) Approve the emergency ordinance to create a Housing Trust Fund Account; and  2) Transfer \$150,000 from the Development Fund to the Housing Trust Fund

**Background**

On April 6, 2020, the city council approved a small business deferred loan program to address the impacts of COVID-19 and provided feedback to staff that they were additionally concerned about housing emergency assistance for Minnetonka residents. In response, staff is proposing that the city council consider approving funding for a temporary rental housing assistance program to prevent the displacement of households impacted by COVID-19.

For over 15 years, Minnetonka has had a successful partnership with [Intercongregation Communities Association \(ICA\)](#) to provide food services, employment assistance, and emergency rent assistance to Minnetonka residents. Staff is proposing that ICA continue to provide that service with an additional city contribution to provide emergency rent assistance. The proposed eligibility, application/review process, and funding source are included in the staff report.

**Proposed Eligibility**

Staff is proposing an emergency rental housing assistance program that will provide temporary relief for households that are experiencing financial hardship due to COVID-19. Providing assistance contributes to household stability and preserves community wellbeing.

- Minnetonka residents earning up to 120% of the Area Median Income may apply for emergency rental housing assistance.
  - Income up to \$84,000 for a one-person household
  - Income up to \$96,000 for a two-person household
  - Income up to \$108,000 for a three-person household
  - Income up to \$120,000 for a four-person household

(These income limits are the 2019 Housing and Urban Development income limits for Hennepin County)

- Qualified households may receive a one-time payment of up to \$1,500 to assist with rent and utility expenses.
- Households must provide evidence of financial hardship related to COVID-19. Examples include medical bills, bank statements, letters of job termination, or late rent notices.
- Households must provide evidence of job loss or lost wages due to COVID-19.
- Households must provide evidence of an application for unemployment benefits and/or emergency assistance through Hennepin County.

- Households cannot currently be receiving ongoing housing assistance, such as Section 8, or Public Housing assistance.

Rental assistance up to \$1,500 per household will provide assistance for approximately 100 households. ICA reported that the average amount of assistance per household is currently \$650. Minnetonka staff is proposing the higher level of assistance to meet a variety of needs for households earning up to 120% AMI. Staff is anticipating that a majority of the households served will receive less than \$1,500 through this effort.

### **Proposed Application and Review Process**

Information on how to apply for Emergency Rental Housing Assistance will be available on the City of Minnetonka website, and applications for assistance will be distributed to residents through ICA's call center. ICA case management staff and volunteers will be available to conduct business via email or phone to assist residents requesting emergency assistance. In some instances, ICA case managers will complete intake questionnaires over the phone to determine resident eligibility. This may be necessary to practice social distancing in response to COVID-19 orders. ICA will have additional volunteers available to assist with increased demand due to the additional funding for Minnetonka residents.

During the application process, ICA's case management staff will request documentation from applicants that supports the request for emergency rental housing assistance due to COVID-19 related impacts. During the review process, ICA staff will contact applicants to discuss current household budgets for things such as rent, healthcare, transportation, food, utilities, etc. ICA staff will assist families with prioritizing budgets and will provide information on other available resources. ICA case managers will help households determine how much assistance is necessary to ensure the current or following month's rent is paid. Rental assistance is provided directly to the landlord/property manager. The goal of this assistance is to provide temporary, one-time assistance for households impacted by COVID-19 that are unable to pay rent.

### **City Assistance Request**

Staff is recommending that the city council designate \$150,000 of the existing fund balance from the Development Fund to provide emergency rental housing assistance to Minnetonka households. This amount represents the balance of conduit bond administrative fees, that the city collected, that is available for this purpose and is not committed to other programming. The emergency ordinance provides the city with the authority to transfer these funds to a temporary affordable housing trust fund and use these funds for emergency rental assistance. This is the only mechanism available for the city to use these funds for direct rental assistance. The cities of St. Louis Park, Edina, and Bloomington have established housing trust funds for this purpose. The City of Richfield is also considering a housing trust fund to provide assistance due to the impact of the COVID-19 pandemic. If adopted, the ordinance would be in effect for 61 days. The council could consider establishing a permanent housing trust fund in the future.

### **Next Steps**

Staff will draft a contract for services with ICA to dispense the emergency assistance on behalf of the City of Minnetonka. The funding amount is within the city manager's authority to execute

the contract, and following its execution, staff will dispense funding to ICA to begin providing assistance.

**Recommendation**

- 1) Approve the emergency ordinance to create a Housing Trust Fund; and
- 2) Transfer \$150,000 from the Development Fund to the Housing Trust Fund.

Submitted through:

Geralyn Barone, City Manager  
Julie Wischnack, AICP, Community Development Director  
Darin Nelson, Finance Director

Originated by:

Alisha Gray, EDFP, Economic Development and Housing Manager

## Ordinance No. 2020-

### **An Emergency Ordinance establishing an Affordable Housing Trust Fund in order to provide emergency rental assistance within the City of Minnetonka**

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Be it ordained by the City Council (the "Council") of the City of Minnetonka, Minnesota (the "City"):

Section 1. Preamble.

- 1.01. The spread of COVID-19 in the United States and Minnesota has raised serious public health concerns and resulted in a great deal of uncertainty. Much remains unknown about the virus and how it spreads.
- 1.02. On March 11, 2020, the World Health Organization determined that the COVID-19 outbreak constitutes a pandemic. On March 13, 2020, President Trump declared a national state of emergency as a result of the pandemic.
- 1.03. On March 13, 2020, Governor Tim Walz issued Emergency Executive Order 20-01, declaring a state of peacetime emergency to address the COVID-19 pandemic in Minnesota. The Governor's Executive Order triggered activation of the City's emergency management plan and enabled the City to exercise its emergency powers. The Governor has subsequently issued 23 additional Executive Orders to combat the impacts of COVID-19 within the State of Minnesota, which include closures of schools, bars, restaurants, and other places of public accommodation, and directing Minnesotans to stay at home (with exceptions for obtaining necessary supplies, healthcare and similar needs) unless they are engaged in critical sector work.
- 1.04. On March 16, 2020, the Mayor of the City issued Declaration 2020-01, declaring a local emergency. On March 16, 2020, the City Council of the City approved Resolution 2020-29, consenting to the Mayor's declaration and formally authorizing the City to implement its Emergency Operations Plan and Pandemic Response Plan. These plans provide the basic strategy of the City to mobilize resources, conduct activities to guide and support local emergency management efforts, and authorize city staff to take actions deemed necessary to protect the public health and safety.
- 1.05. In order to provide emergency rental housing assistance that will provide temporary relief for households in the City that are experiencing financial hardship due to COVID-19, the City has determined to create an Affordable Housing Trust Fund to assist residents who cannot pay their rent due to the impact of the Governor's Emergency Executive Orders.

Section 2. Definitions.

- 2.01. "Persons of very low income"- means families and individuals whose incomes do not exceed 50 percent of area median income, as median income was most recently determined by the United States Department of Housing and Urban Development for the Minneapolis-St. Paul-Bloomington, Minnesota Metropolitan Statistical Area, as adjusted for smaller and larger families.
- 2.02. "Persons of low income" means families and individuals whose incomes do not exceed 80 percent of the area median income, as median income was

most recently determined by the United States Department of Housing and Urban Development for the Minneapolis-St. Paul-Bloomington, Minnesota Metropolitan Statistical Area, as adjusted for smaller and larger families.

2.03. "Persons of moderate-income" means families and individuals whose incomes exceed 80 percent, but do not exceed 120 percent, of area median income, as median income was most recently determined by the United States Department of Housing and Urban Development for the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin Metropolitan Statistical Area, as adjusted for smaller and larger families.

Section 3. Establishing the Affordable Housing Trust Fund.

3.01. Pursuant to the authority granted to the City under Minnesota Statutes, Section 462C.16, an affordable housing trust fund is established to provide rental assistance to persons of very low, low, and moderate-income.

Section 4. Funding Sources.

4.01. The Affordable Housing Trust Fund shall be initially funded by administrative fees received by the City for the issuance of conduit bonds. The City Council may also pledge other sources of funding, which may include, but are not limited to:

- (a) Private cash donations from individuals and corporations designated for the Affordable Housing Trust Fund.
- (b) Payments in lieu of participation in current or future affordable housing programs.
- (c) Matching funds from a federal or state affordable housing trust fund or a state program designated to fund an affordable housing trust fund.
- (d) The sale of real and personal property.
- (e) Local government appropriations, development fees, and other funds as designated from time to time by the city council.
- (f) Tax Increment Finance (TIF) pooled funds.
- (g) Housing and Redevelopment levy funds.

Section 5. Purpose of the Affordable Housing Trust Fund.

5.01. The City may use money from the Affordable Housing Trust Fund to provide tenant and project-based rental assistance to residents of the City that are unable to pay their rent due to the impact of COVID-19.

Section 6. Administration of the Affordable Housing Trust Fund.

- 6.01 The Economic Development Authority in and for the City of Minnetonka (the "Authority") shall administer the Affordable Housing Trust Fund on behalf of the City.
- 6.02. The Authority shall report annually to the City on the use of the Affordable Housing Trust Fund account, including the number and types of households for which rental assistance payments were provided.
- Section 7. Council Action.
- 7.01. The implementation of the Affordable Housing Trust Fund is hereby approved.
- 7.02. This Emergency Ordinance shall be effective immediately upon its adoption and shall be automatically repealed on the 61st day after its adoption.

Adopted by the City Council of the City of Minnetonka, Minnesota, on April 20, 2020.

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Brad Wiersum, Mayor

Attest:

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Becky Koosman, City Clerk

**Action on this ordinance:**

Date of introduction: April 20, 2020  
Date of adoption:  
Motion for adoption:  
Seconded by:  
Voted in favor of:  
Voted against:  
Abstained:  
Absent:  
Ordinance adopted.

Date of publication:

I hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on April 20, 2020.

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Becky Koosman, City Clerk



**City Council Agenda Item #14C**  
**Meeting of April 20, 2020**

**Brief Description:** COVID-19 budget impacts

**Recommended Action:** Informational only

**Background**

The worldwide pandemic caused by COVID-19 has severely impacted every economic sector, including local governments. The United States, State of Minnesota, and the city have all declared states of emergency. Unlike natural disasters, such as severe weather that are relatively short and often cause localized damage, this emergency is worldwide and is having vast economic consequences rather than physical destruction. The economic downturn is causing an immediate reduction in the city's revenues versus a more typical natural disaster that requires extraordinary costs to respond and recover.

At the April 20 council meeting, staff will provide the city council an update on current and projected financial impacts. Council will have the opportunity to discuss this in more detail at its May 11 study session, in conjunction with review of the 2021 – 2025 Capital Improvements Program (CIP).

Similar to many other businesses, the city has temporarily closed its facilities to the public. These closings have resulted in the cancelation of many activities, reservations, and programs. Recreational facilities such as the Williston Center, ice arenas and community center closed on March 13 and will remain closed until at least May 4. These closures have resulted in lost revenue that will not be made up this year.

**Recreation Services**

Through April, the Williston Center, ice arenas, and community center are expecting to lose approximately \$360,000, \$96,000 and \$14,000, respectively, primarily due to the suspension of membership fees, unsold ice time, and room reservation cancellations. Further, recreational programming is also feeling the impact of the shutdown and has issued approximately \$100,000 in programming refunds. The combined loss through April is estimated to be \$570,000.

If facilities remained closed through May, recreational facilities would lose an additional \$270,000, including \$15,000 from sales and services at the Gray's Bay marina. Recreation programming could lose an additional \$100,000 with the potential to be even more as some summer programming begins in May. If these facilities and programs discontinued as noted, the total loss for May alone could be \$385,000.

In order to reduce budget impacts in recreation services, effective May 1 nearly 120 seasonal and part-time staff will be furloughed until further notice. The vast majority of these employees are based at the Williston Center. Doing so has the effect of reducing monthly revenue losses by \$125,000.

### Other Revenue Challenges

Recreational programming and facilities are not the only revenue streams being affected by the pandemic and the subsequent Safe at Home order issued by the governor. Court fine revenue is also being impacted by a combination of the court system delaying some of its existing caseload and a decline in overall traffic. Traffic congestion and activity began declining in March and resulted in a 50 percent drop in traffic citations. The combination of these two causes will decrease the city's annual fines and fees budget by \$55,000 or 17 percent.

A decline in revenue from building permits and licenses is also anticipated. At the moment, developers are still indicating a desire to move forward with projects. However, it is still very early in this new economic state, and a slowdown in projects in the early planning stages is quite possible. At this point, a ten percent or \$432,000 reduction in permits and licenses through the end of 2020 is forecasted.

Although Hennepin County is extending the deadline for submittal of the first half of 2020 property taxes from May 15 to July 15, the city's proceeds should be in hand by the end of July. Nonetheless, it is anticipated that overall 2020 property tax revenue will not meet budget expectations, as delinquencies will likely increase. In time, the city will eventually receive most of these taxes. However, the city will have to cash flow this lost revenue in the meantime. Early estimates indicate that 2020 delinquencies may exceed the 2020 budgeted amount by \$300,000.

Fees for water usage are another revenue source that is being closely monitored. Early estimates indicate that consumption appears to be down about 2.5 percent, which equates to about \$34,000 per month in lost revenue for the Utility Fund. This estimate is based solely on total water pumped each day and not necessarily actual sales, which can vary if there are abnormal uses such as water main breaks. Additionally, late fees on all utility bills are suspended for three months, which have historically averaged about \$9,100 per month.

### Potential Solutions

Although these revenue losses seem daunting, there are a number of measures in place, plus some potential future actions, that will assist in mitigating these impacts. Council Policy 2.13 entitled "Determining Adequate Fund Balances" establishes appropriate fund balances in the city's general fund and capital funds. The policy provides for a budget stabilization reserve of 30 – 50 percent of the next year's budget, which is an insurance policy of sorts for temporary revenue shortfalls or unpredicted one-time expenses or mandates. Financial impacts from the COVID-19 pandemic is a qualifying use of existing fund balances under the council policy.

Further, staff has discussed other actions to address overall budget shortfalls. Some examples include:

- Identifying 2020 budget savings, such as:
  - Postponing hiring for vacant positions
  - Delaying purchases of major equipment
  - Delaying select capital projects
  - Canceling off-site training and conferences
  - Reducing overtime costs

- Cash flowing expenses using existing fund balances until revenue arrives, such as delayed property tax payments
- Submitting qualified expenses for reimbursement under FEMA's Public Assistance Grants
- Applying for future federal or state stimulus package benefits

Specific actions will depend on the duration of the pandemic and subsequent financial impacts. With a variety of options and tools available to ensure financial stability, staff will continue to keep the city council informed with recommended approaches. As noted, more detailed information will be presented to the city council at its upcoming CIP study session on May 11.

**Recommendation**

Informational purposes only; no formal action required.

Submitted through:  
Geraldyn Barone, City Manager

Originated by:  
Darin Nelson, Finance Director

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**Policy Number 2.13**  
**Determining Adequate Fund Balances**

**Purpose of Policy:** This policy establishes appropriate levels of fund balance in government funds to ensure the city maintains prudent financial resources to protect itself against the need to reduce service levels or raise taxes and fees due to temporary revenue shortfalls or unpredicted one-time expenses or mandates.

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**Background**

The city of Minnetonka recognizes it is essential to maintain adequate fund balances in its government funds to mitigate against current and future risks, to ensure stable tax rates, and to provide for long-term financial planning. Historically, maintaining such balances has significantly contributed to recognition of the city's continued creditworthiness, which has provided financial benefits to the city's taxpayers including lower costs of borrowing. Furthermore, a policy to establish appropriate levels of fund balance is desirable, so that excess government funds may be made available for alternative, appropriate uses.

The following policy applies to the city's general fund and capital funds and addresses the unrestricted portion of fund balances, which consists of committed, assigned, and unassigned classifications of resources.

- *Committed* balances are amounts that are constrained by formal action of the city council.
- *Assigned* balances are amounts intended for specific purposes as designated by the city manager.
- *Unassigned* balances are amounts that have not been designated for explicit purposes.

**General Fund**

The city council will annually commit a balance in the general fund to reserve funding for the liabilities associated with compensated absences of employees.

The city manager may explicitly assign in the annual budget amounts in the fund balance for future, specified funding purposes such as unforeseen firefighter pension liabilities.

The city manager will assign in the annual budget a *Budget Stabilization Reserve*, which is an amount equivalent to thirty (30) to fifty (50) percent of the following year's operating budget to provide:

- working capital for operating expenses within the annual cycle constraints of receiving tax levy proceeds;
  - resources as a reserve for delinquent taxes;
  - a reserve against economic uncertainties leading to overestimates in revenue forecasts;
  - resources to provide for unpredictable changes in state law; and
-

- monies for unforeseen expenditures such as natural disasters, for which no other government resources are made available or there is a delay in receiving those funds from other government entities.

Amounts in the *Budget Stabilization Reserve* above forty (40) percent of the following year's operating budget may be considered unassigned and are available to be transferred and/or appropriated by the council for only one-time costs such as capital needs or pilot programs for which there are no ongoing financial commitments.

If the level of the *Budget Stabilization Reserve* falls below thirty (30) percent of the following year's operating budget, the city will develop and implement a plan to replenish the fund.

### **Capital Funds**

After accounting for any funds explicitly committed to specific purposes by law or other council action, positive balances in capital funds associated with incomplete capital budget projects within the city's adopted capital improvement program are committed and unavailable for other purposes. All other positive balances in capital funds are considered assigned for the capital purposes of each fund.

The city manager will establish prospective fund balance guidelines for each capital fund, which will reflect the type of fund, subsequent-year budget needs, annual cash flow requirements, replacement reserves and potential contingencies. The guidelines will be used to responsibly manage balances over the five-year horizon of the city capital improvement program budget.

### **Other**

When amounts are available for the same particular purpose in more than one of the three classifications of unrestricted fund balance, resources will be used in the order of 1) committed, 2) assigned, and then 3) unassigned.

Adopted by Resolution No. 89-8860  
Council Meeting of May 15, 1989

Amended by Resolution No. 1994-9706  
Council Meeting of May 9, 1994

Amended by Resolution No. 2011-118  
Council Meeting of December 19, 2011