Agenda
Minnetonka City Council
Regular Meeting, Monday, Feb. 5, 2018
6:30 p.m.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Acomb-Calvert-Bergstedt-Wagner-Ellingson-Wiersum
4. Approval of Agenda
5. Approval of Minutes: Jan. 24, 2018 regular council meeting
6. Special Matters:
   A. Proclamation declaring Feb. 15, 2018 “Not for Sale Day” to Raise Awareness About Sexual Exploitation
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote: None
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances:
   A. Items concerning iFly at 12415 Wayzata Boulevard:
      1) Amendment to the existing master development plan;
      2) Site and building plan review; and
      3) Sign plan review
      Recommendation: Introduce the ordinance and refer it to the planning commission (4 votes)
   B. Introduction of ordinance regarding small wireless facilities in public right of way
      Recommendation: Introduce the ordinance (4 votes)
C. Ordinance repealing and replacing City Code 300.34, Telecommunication Facilities
   Recommendation: Introduce the ordinance and refer it to the planning commission

13. Public Hearings:
   A. 2018 Community Development Block Grant funds
      Recommendation: Hold the public hearing and adopt the resolution (4 votes)

14. Other Business:
   A. Concept plan review for Ridgedale Active Adult Apartments at 12421 Wayzata Blvd.
      Recommendation: Discuss concept plan with the applicant. No formal action required.

15. Appointments and Reappointments:
   A. Appointments and reappointments to Minnetonka boards and commissions
      Recommendation: Approve the recommended appointments (majority vote)

16. Adjournment
Minutes
Minnetonka City Council
Wednesday, Jan. 24, 2018

1. Call to Order

Mayor Brad Wiersum called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Councilmembers Bob Ellingson, Patty Acomb, Deb Calvert, and Mayor Wiersum were present. Tim Bergstedt and Tony Wagner were excused.

4. Approval of Agenda

Wiersum indicated the council would go into closed session as item 16 on the agenda. The council was also going to conduct a special meeting to interview candidates for the city’s boards and commissions. So as to not keep the candidates waiting, he proposed the council recess the regular meeting after item 15A on the agenda, and then go into the special meeting. When the special meeting was adjourned, the council would reconvene the regular meeting starting with item 16, the closed session.

Calvert moved, Acomb seconded a motion to accept the agenda as proposed by Wiersum with an addendum to item 14A. All voted “yes.” Motion carried.

5. Approval of Minutes: Jan. 8, 2018 regular council meetings

Acomb moved, Ellingson seconded a motion to approve the minutes of the Jan. 8, 2018 regular council meeting, as presented. All voted “yes.” Motion carried.

6. Special Matters: None

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming city events and council meetings.

Acomb reported that recently she and Wagner attended the ribbon cutting at the Cherrywood assisted living facility by Ridgedale. She said the facility was beautiful and amazing services are offered to the residents. She said she was only able to speak with three residents but all three lived in Minnetonka prior to moving to Cherrywood. She said this was an indication that the hope to diversity housing types in the city was working.

Wiersum said he attended the League of Minnesota Cities’ Board meeting the previous week. The board was updated on the League’s legislative priorities.
8. Citizens Wishing to Discuss Matters not on the Agenda

Kim Oelhafen, 2038 19th Street, Minneapolis, said she was appearing on behalf of the Tonka CARES Community Coalition and the Hopkins One Voice Community Coalition. Both coalitions support the council raising the tobacco sales age to 21. She said smoking’s negative effects are well documented so the question was what could be done to stop people from smoking. The most effective method was preventing kids from ever starting to smoke. She said many 16 year olds and 17 year olds have access to 18 year olds as peers, colleagues and classmates. Most do not have access to 21 year olds however.

Elyse Levine Less said she was appearing on behalf of her father, Jerry Levine. She read a statement from her father, a Minnetonka resident. Levine smoked since the age of 15 along with many of his friends. He noted cigarettes were romanticized in the media. He first tried to stop smoking when he was diagnosed with lung cancer. He later suffered from throat cancer. What ultimately got him to give up cigarettes was when his four year old grandson informed him he couldn’t play with him anymore because Levine smoked. Levine Less noted the reason her father was unable to appear in person was because his doctor suspected the throat cancer might have returned and had ordered tests.

Caleb Schultz, 4401 Wilson Street, said he was a physician who worked at the Hennepin County Medical Center. He recently moved to Minnetonka from Edina where he served on the community health commission and led the charge to have Edina become the first city to raise the tobacco sales age to 21. He said the Tobacco 21 effort was the next step in eliminating tobacco use. An article that appeared in Minnesota Medicine estimated that if the sales age was increased to 21 statewide, it would prevent 30,000 young people from starting to smoke within 15 years. He said the health costs related to smoking caused an enormous burden on individuals, families and taxpayers. Some argue raising the sales age would hurt businesses but he said sales to people under 21 accounted for two to four percent of all tobacco sales. He said 95 percent of the initiation to smoking would be eliminated along with the two percent of sales. Along with Edina, the cities of St. Louis Park, Bloomington and Plymouth have raised the tobacco sales age to 21 becoming part of the 285 cities in five states who adopted the same sales age.

Acomb said in a perfect world issues like this one would be addressed on a statewide basis. But in areas like the Clean Indoor Air Act, it took local government to lead the effort before a statewide law was passed. She said because so many nearby cities had raised the age of sales in their communities, it was time for Minnetonka to look at the issue.

Wiersum thanked those who appeared and said the work they were doing was important. From a public health perspective he wanted Minnetonka to be at the forefront along with the other western suburbs. He said the best way to proceed was for the group to work with city staff.
9. Bids and Purchases:

A. Bids for Secondary Williston Road Lift Station Forcemain

Barone gave the staff report.

Acomb moved, Calvert seconded a motion to award the contract to Widmer Construction, LLC in the amount of $1,196,799. All voted “yes.” Motion carried.

10. Consent Agenda – Items Requiring a Majority Vote:

A. Agreement with Xcel Energy for the burial of power lines along Woodhill Road

Acomb moved, Ellingson seconded a motion to authorize the mayor and city manager to execute an agreement with Xcel Energy in the estimated amount of $798,447.95 to provide burial of overhead utility lines as part of the 2018 Street Rehabilitation Project on Woodhill Road. All voted “yes.” Motion carried.

B. Resolution establishing the interest rate for the SAC/REC deferral program

Acomb moved, Ellingson seconded a motion to adopt resolution 2018-004 establishing the interest rates for 2018 deferrals. All voted “yes.” Motion carried.

C. Resolution calling special election for April 10, 2018

Wiersum pulled the item from the consent agenda. He went over the proposed schedule for the special election.

Assistant City Manager Perry Vetter presented the communications plan.

Wiersum noted he had been the Ward 3 councilmember and the vacancy was created when he was elected mayor. The council discussed options to fill the vacancy at its Jan. 8 meeting. They decided to call for a special election in order to allow voters to decide who will represent them on the council.

City Clerk David Maeda said the League of Women Voters will hold a candidate forum on March 20.

Acomb said the last special election in the city was when she was first elected. She asked if the mailing to households was also done in that election. Vetter said he did not know but staff felt the mailing was a good reminder for voters. Acomb agreed it was a good idea.

Ellingson moved, Acomb seconded a motion to adopt resolution 2018-005 calling special election for April 10, 2018, All voted “yes.” Motion carried.
11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings: None

14. Other Business:

A. Resolutions for Ridgehaven Lane/Ridgedale Drive (Cartway Lane) and Plymouth Road improvements

City Engineer Will Manchester gave the staff report.

Acomb noted that Manchester had indicated there would be a significant cost savings by doing some things upfront. She asked the extent of the cost savings. Manchester said he didn’t have the exact amount but things like doing the water main or storm sewer replacement meant not having to redo the road again later on. He indicated the costs would be at least double if things like that were not done.

Wiersum asked if the regular schedule of improvements was followed, how far in the future the other work be done. Manchester said there was nothing scheduled or budgeted for in the next five years. The water main would depend on the development in the area. He said the storm sewer had been televised and could likely last longer than five years.

Lucy Taylor, 2117 Indian Road West, said she had attended many of the meetings and had questions. Would the road be closed? How would this project interact with the upcoming construction of Ridgedale Drive? How would the timing work? Manchester said the road would remain open during construction. This project was scheduled for 2018 with a completion date in October. There may be some cleanup work in the spring of 2019. The Ridgedale Drive portion would begin in 2019. Barone said the project had been purposely scheduled to be completed before the holiday season.

Keith Waxelman, 16013 Ringer Road, said a Wayzata road project with extended construction delays caused hardships on several small businesses that led to some of the businesses closing. He noted there were several small businesses in this area and he asked if any consideration was given to how the project would impact those businesses. Manchester said staff had met with all the businesses and would continue to meet with them. The goal was to make sure access was available at all times. Community Development Director Julie Wischnack said the Open to Business assistance program used in other projects would be available for this project as well.

Wiersum said this was an important project. A number of plans had been looked at. Discussions were held with property owners and business owners. The current plan solves more problems than any of the other plans and was a longer term fix. Traffic was managed in a much more positive way. He said it was an
expensive project but would make Minnetonka a much more livable community because of the improved vehicle access as well as the improved walkability.

Acomb moved, Calvert seconded a motion to adopt resolution 2018-006 accepting plans and specifications and authorizing the advertisement for bids for the Ridgehaven Lane/Ridgedale Drive Project No. 16501; resolution 2018-007 authorizing a No Parking zone on Ridgehaven Lane and Ridgedale Drive; resolution 2018-008 authorizing execution of a Cooperative Construction Agreement; resolution 2018-009 authorizing execution of an agreement for the Delegated Contract Process. All voted “yes.” Motion carried.

15. Appointments and Reappointments:

A. Appointment of Councilmember Tim Bergstedt to the I-494 Joint Powers Organization

Wiersum moved, Ellingson seconded a motion to approve the appointment of Tim Bergstedt to the I-494 Joint Powers Organization. All voted “yes.” Motion carried.

16. Closed session to consider purchase of real property at 13009 Burwell Drive

Wiersum moved, Calvert seconded a motion to recess the meeting at 7:26 p.m. All voted “yes.” Motion carried.

The council interviewed board and commission candidates.

The council went into closed session at 8:32 p.m. to discuss potential purchase of real property at 13009 Burwell Drive. Present were Ellingson, Acomb, Calvert, and Wiersum. Ellingson was excused at 8:35 p.m.

Staff present at the closed session were: Barone, Vetter, Manchester, Wischnack, City Attorney Corrine Heine, Finance Director Merrill King and Maeda.

Wiersum adjourned the closed session at 9:14 p.m.

17. Adjournment

Wiersum moved, Calvert seconded a motion to adjourn the meeting at 9:14 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City of Minnetonka
Proclamation
Declaring Feb. 15, 2018 “Not for Sale Day”
to Raise Awareness About Sexual Exploitation

WHEREAS, sexual exploitation is defined as the sexual abuse of someone who engages in commercial sexual activity. Commercial sexual activity occurs when anything of value or a promise of anything of value, such as money, drugs, food, shelter, protection, and other basics of life is provided in exchange for any type of sexual activity; and

WHEREAS, sexual trafficking and commercial sexual exploitation is a market built on exploitation, violence, and brutality. Sex buyers use money and power to exploit victims. Victims of sexual exploitation come from every background, race, gender, sexual orientation, age and economic status. The average age of entry for a minor who is exploited is 12 to 14 years of age. Based on a national study, 26,000 Minnesota men may have bought sex in the past year; and

WHEREAS, the perpetrators of sexual exploitation cause great harm and trauma to their victims, violating their rights, traumatizing families, and undermining the stability, safety and well-being of our communities; law enforcement officials and nonprofits across Minnesota are taking aggressive action to crack down on buyers of commercial sex and boosting prevention measures for keeping persons from being exploited and sex-trafficked; and

WHEREAS, the Minnesota Department of Health and Minnesota Department of Human Services as well as other state and nonprofit agencies along with local municipalities and law enforcement agencies are working together towards providing supportive victim-centered services; and

WHEREAS, Sexual Exploitation Awareness Month is an opportunity to educate, promote safety for all, ensure accountability and justice, and underscore the commitments made to end sexual exploitation in our communities.

NOW THEREFORE BE IT RESOLVED that the Minnetonka City Council hereby proclaims Feb. 15, 2018 as “Not for Sale Day” and declares February 2018 as Sexual Exploitation Awareness Month.

Brad Wiersum, Mayor
Feb. 5, 2018
Brief Description
Items concerning iFly at 12415 Wayzata Boulevard:

1) Amendment to the existing master development plan;
2) Site and building plan review; and
3) Sign plan review

Recommendation
Introduce the ordinance and refer it to the planning commission

Background

In March 2013, the city council approved the master development plan for Ridgedale Shopping Center. The master development plan consists of three phases:

- **Phase One:** The first phase included construction of an 80,000 square foot addition to Macy’s, updating the exterior of the Macy’s store, as well as parking lot, stormwater and landscaping improvements for the north side of the site.

- **Phase Two:** The second phase consisted of demolition of the then existing Macy’s Men’s and Home store and construction of an addition to the mall and a new, 140,000 square foot anchor department store. Phase Two also included parking lot, stormwater, and landscaping improvements along the south side of the mall property.

- **Phase Three:** The third phase consisted of three new, freestanding restaurants on the northwest side of the mall, as well as final parking lot and landscaping improvements.

In May 2017, the city council approved site plans and design criteria for the Phase Three restaurant pads in the northwest corner of the Ridgedale parking lot. At that time, the council also approved building plans and conditional use permit for a restaurant, with an outdoor patio on the westernmost pad site. Shell construction of that building is well underway and city staff has been working with the property owner and prospective tenants to ensure the façade treatments comply with the approved design guidelines. (Note that changes are being considered for the design guidelines on a separate agenda item.)

In October 2017, the city council reviewed a concept plan presented by SkyGroup Investments, LLC (“iFly”). The plan contemplated a building for indoor skydiving on the second pad site. Conceptually, the building would be roughly 5,000 square feet in footprint area and 56 feet tall. The council asked questions about how the building would function and expressed some concern related to noise generation and the amount of overall signage shown on the plan. However, the council generally expressed support for the entertainment use and the overall size/mass of the building.
Proposal

iFly has now submitted formal applications and plans for the second pad site. The plans are generally consistent with the concept presented to the council in October 2017. As submitted the proposal requires:

1) **Master development plan amendment.** The existing mall’s master development plan illustrates the three pad sites as restaurants. While iFly would still be considered an entertainment use, the use is significantly different than what was original envisioned. This, coupled with the increased building height, triggers an amendment to the master development plan.

2) **Site and building plan review.** By city code, site and building plan approval is required for construction of any new building of the proposed size.

3) **Sign plan review.** By code, all signage is regulated by the city’s sign ordinance. However, developments, on properties zoned P.U.D./P.I.D., which have unique characteristics and signage needs may be regulated by a “sign plan” rather than by ordinance if approved by the city.

Issue Identification

The purpose of introducing an ordinance is to give the city council the opportunity to review a new application before sending it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The tentative planning commission date is Feb. 15, 2018.

Based on preliminary review of the proposal, staff has identified the following issues for further analysis and discussion:

1) **Site and building design.** The proposed site and building design will be considered with reference to the requirement and intent of the original master development plan, site plans approved in May 2017, concept plan and city code standards.

2) **Signage.** During its review of the concept plan, the council expressed concern related to the amount of signage proposed for the new building. The applicant has significantly reduced the amount of proposed signage since the council’s preliminary review. However, the amount of signage proposed for the building still exceeds what would be allowed under the city’s sign ordinance.

Staff Recommendation

Introduce the ordinance amending the existing master development plan and refer it to the planning commission.
Meeting of Feb. 5, 2018
Subject: iFly, 12415 Wayzata Boulevard

Submitted through:
   Geralyn Barone, City Manager
   Julie Wischnack, AICP, Community Development Director
   Loren Gordon, AICP, City Planner

Originated by:
   Ashley Cauley, Senior Planner
Location Map

Ifly
Address: 12415 Wayzata Blvd
Project No. 17004.17b

This map is for illustrative purposes only.
Master Development Plan for the Ridgedale Mall adopted in 2013
October 2017 Concept Plan
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Rendering
Front Facade
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A. Concept plan review for iFLY at 12415 Wayzata Boulevard

City Planner Loren Gordon gave the staff report.

Mark Lee, director of development for iFLY, said he was glad to talk about bringing the dream of flight to people visiting Ridgedale. This would be the first and only location of iFLY in Minnesota. He shared a video of what indoor skydiving was. He said it was great watching his brother experience the experience. He couldn’t be more glad to bring indoor skydiving to Minnetonka.

Schneider said the size of the building likely wasn’t an issue but signage could be. Allowing visibility from 394 was important but to have signage around the building might be problematic. He said iFLY could attract a whole different market of people to the mall that would not otherwise come. Over time it would expose the other retailers to a lot broader base given the uniqueness of iFLY. He asked if there was a possibility to link the experience with virtual reality goggles to let users feel like they were skydiving into something other than a glass bubble. Lee said the company was looking into that option although it hadn’t rolled it out in any of its other locations.

Allendorf said he appreciated the concept views of how the building related to its neighboring buildings. He agreed iFLY would open up an entertainment option that currently didn’t exist in the city. He said he too was concerned about the signage. His first inclination was to allow iFLY to have signs all over but then he questioned what that meant for other tenants of the mall. He said it would be a fine line between allowing the proper signage for this business, if the process proceeds, with what that would mean for the other businesses at the mall.

Bergstedt asked Lee to address potential noise issues with restaurants with outdoor seating on either side of the proposed site. Lee said because of the recycling air design, the noise never escapes the building. It was silent from the outside. Inside the chamber ear protection would be worn because of how loud it will be. Bergstedt asked if iFLY was successful in Minnetonka, if the company would look at other Minnesota locations. One of the appeals was it would bring a whole new clientele to Ridgedale. This would be lost if the plan was to saturate the metro area with similar stores. Lee said he saw it likely as a two store market with an east/west strategy. There was nothing currently in the works. Bergstedt noted there was an indoor skydiving facility in Scottsdale, Arizona. He asked if that was owned by iFLY. Lee confirmed it was owned by iFLY. He said some of the older
facilities had a louvered system that allowed air in for cooling. Those systems were louder. The Minnetonka facility would have a chiller system that doesn’t need outside air. He noted there would be wall to wall steady air flow so a person couldn’t fall off the stream of air unlike some of the competitors. Bergstedt said he was excited about the use but he too was concerned about balancing the signage.

Acomb said Lee had estimated there would be around 150,000 visitors a year. This would mean around 400 people a day would visit iFLY. She asked if this was based on data from other sites. Lee said the number was based on other sites but was on the high side. He said the Twin Cities was the second largest metro area that iFLY was not in. The only larger city was Boston.

Ellingson asked how many people could fly at a time. Lee said for new flyers there would be only one person in the chamber at a time. There always would be an instructor in the chamber as well.

Wiersum asked for information about the typical customer experience. Lee said most people call ahead or signup online. The experience lasts about an hour and a half. There is a course that teaches people the concepts. The person gears up. The flying experience lasts about a minute. This is longer than a free fall when a person jumps out of a plane. The cost is around $60. Wiersum asked who the target audience was. Lee said it varies a bit by area but usually it’s those 7 to 17 years old or 9 to 19 years old.

Schneider said one downside was if iFLY left, there wasn’t much of a reuse of the building. Lee said because of the deal structure, iFLY was paying for the building so it was in their best interest to make sure the business succeeds. What would likely happen when the tunnel gets decommissioned, was the entire building would be taken down.

Acomb asked if because the building was a high energy user, solar energy was an option. Lee said he was on an energy call earlier in the week when solar energy was discussed. Nothing has been ruled out. The number one cost is electricity.

Annette Bertelsen, 13513 Larkin Drive, said she was speaking on behalf of a group of residents who live in the Essex Hills neighborhood. The group was thrilled about the use and was looking forward to having an attraction like this at Ridgedale. She said the neighborhood group had questions about the traffic and if an application was submitted, if there would be a traffic study. The group also had questions if the placement of the building was the best location to accommodate future growth. She suggested if there was a neighborhood meeting that representatives from
General Growth attend to talk about their visions for future growth and structured parking on the mall property — or, alternatively, that they attend the first public engagement discussions coming up for the comprehensive guide plan for the Ridgedale Village area.

Wischnack noted that no one attended the first planning commission meeting on the project. Around five hundred people in the central area were notified of that meeting. Because the iFLY representative was flying in from Austin, Texas, and the General Growth representative was flying in from Chicago, it was challenging to setup a neighborhood meeting where they could attend. She said it could be done if that was what the council directed. Schneider said he was assuming that type of meeting might occur during a formal application process. Allendorf said he thought it made more sense to have the General Growth representative attend a meeting as part of the comprehensive guide plan process for the area rather than a neighborhood meeting for this project. Bergstedt said given the quiet, yet unique use of this project and its location, he didn’t think many people would attend a neighborhood meeting other than hearing from a General Growth representative. He didn’t want to make the applicant fly in for a meeting that no one attended. Schneider said he supported separating the overall visioning of the Ridgedale area and this project.
Current Proposal
LANDSCAPE PLAN

1. THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR INSTALLING MATERIALS AND PLANTS SHOWN ON THE LANDSCAPE PLAN. THE CONTRACTOR IS RESPONSIBLE FOR THE COST TO REPAIR UTILITIES, ADJACENT LANDSCAPE, PUBLIC AND PRIVATE PROPERTY THAT IS DAMAGED BY THE CONTRACTOR OR THEIR SUBCONTRACTOR'S OPERATIONS DURING INSTALLATION OR DURING THE SPECIFIED MAINTENANCE PERIOD. CALL FOR UTILITY LOCATIONS PRIOR TO ANY EXCAVATION.

2. THE CONTRACTOR SHALL REPORT ANY DISCREPANCY IN PLAN VS. FIELD CONDITIONS IMMEDIATELY TO THE LANDSCAPE ARCHITECT, PRIOR TO CONTINUING WITH THAT PORTION OF WORK.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REPAIR OF ANY OF THEIR TRENCHES OR EXCAVATIONS THAT SETTLE.

4. ALL NURSERY STOCK SHALL BE WELL BRANCHED, HEALTHY, FULL, PRE-HARVESTED AND FERTILIZED. DECIDUOUS TREES SHALL BE FREE OF FRESH SCARS. TRUNKS WILL BE WRAPPED IF NECESSARY TO PREVENT SUN SCALD AND INSECT DAMAGE. THE LANDSCAPE CONTRACTOR SHALL REMOVE THE WRAP AT THE PROPER TIME AS A PART OF THIS CONTRACT.

5. ALL NURSERY STOCK SHALL BE GUARANTEED, BY THE CONTRACTOR, FOR ONE YEAR FROM DATE OF FINAL INSPECTION.

6. AMENDED SOIL SHALL BE PROVIDED AND GRADED BY THE GENERAL CONTRACTOR UP TO 6 INCHES BELOW FINISHED GRADE IN TURF AREAS AND 18 INCHES IN PLANTING AREAS.

7. PLANTING AREA SOIL SHALL BE AMENDED WITH 25% SPHAGNUM PEATMOSS, 5% HUMUS AND 65% PULVERIZED SOIL FOR ALL SHRUB, ORNAMENTAL GRASS, PERENNIAL AND ANNUAL BEDS. AMENDED TURF AREA SOIL SHALL BE STANDARD TOPSOIL.

8. SOD LIMIT LINES ARE APPROXIMATE. CONTRACTOR SHALL SOD ALL AREAS WHICH ARE DISTURBED BY GRADING AND CONSTRUCTION.

9. CONTRACTOR SHALL INSTALL SHREDDED HARDWOOD MULCH AT A 3" DEPTH TO ALL TREES, SHRUB, PERENNIAL, AND GROUND COVER AREAS. TREES PLANTED IN AREA COVERED BY TURF SHALL RECEIVE A 4' FT. WIDE BY 3" DEEP SHREDDED HARDWOOD MULCH BAND. A SPADED BED EDGE SHALL SEPARATE MULCH BEDS FROM TURF OR SEEDED AREAS. A SPADED EDGE IS NOT REQUIRED ALONG CURBED EDGES.

10. DO NOT DISTURB THE EXISTING PAVING, LIGHTING, OR LANDSCAPING THAT EXISTS ADJACENT TO THE SITE UNLESS OTHERWISE NOTED ON PLAN.

11. PLANT QUANTITIES SHOWN ARE FOR THE CONVENIENCE OF THE OWNER AND JURISDICTIONAL REVIEW AGENCIES. THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING ALL PLANT QUANTITIES AS DRAWN.

12. THE OWNER'S REPRESENTATIVE MAY REJECT ANY PLANT MATERIALS THAT ARE DISEASED, DEFORMED, OR OTHERWISE NOT EXHIBITING SUPERIOR QUALITY.
IRRIGATION NOTES

1. THIS DRAWING ILLUSTRATES THE SCOPE AND CONCEPT FOR THE IRRIGATION SYSTEM. IT DOES NOT SPECIFY ALL THE WORK.
2. SUBMIT SHOP DRAWINGS FOR A COMPLETE AND FUNCTIONAL IRRIGATION SYSTEM. SYSTEM TO PROVIDE HEAD TO HEAD SPACING WITH 100% COVERAGE WHERE SHOWN.
3. LOCATE ALL VALVES AND QUICK COUPLERS ON THE INSIDE EDGE OF ALL SHRUB BEDS WHERE PRACTICAL. INSTALL VALVE BOXES FOR BOTH QUICK COUPLERS AND VALVES. ALL VALVES TO BE A 3/4" DIAMETER OR LARGER.
4. COMPARE WITH ALL LOCAL IRRIGATION CODES AND REGULATIONS REQUIRED BY THE CITY.
5. LOCATE AND PROVIDE FOR ALL PERMITS, FEES, AND INSPECTIONS NECESSARY FOR EXECUTION OF THE WORK.
6. OBTAIN OWNER REPRESENTATIVE'S APPROVAL OF PIPE TRENCH AND LINE LAYOUT PRIOR TO INSTALLATION.
7. CONFIRM ALL QUANTITIES. SUPPLY SUFFICIENT QUANTITIES TO COMPLETE THE JOB AS DRAWN.
8. ROUTE ALL IRRIGATION LINES AROUND EXISTING PLANT MATERIAL TAKING EXTREME CARE NOT TO SEVER ROOTS AND ROOT BALLS.
9. ALL IRRIGATION LINES TO BE 100% PVC, SCHEDULE 40. ALL IRRIGATION LATERALS TO BE POLYETHYLENE HD-100. DOUBLE CLAMP ALL LINES 1" OR LARGER.
10. LOCATE ALL SLEEVING UNDER PAVEMENTS, COORDINATE WITH CONCRETE CONTRACTOR TO PROVIDE NECESSARY SLEEVING IN CONCRETE.
11. PROVIDE RPZ BACKFLOW PREVENTER AND ALL OTHER NECESSARY PLUMBING.
12. PROVIDE OWNER AS-BUILT DRAWINGS.
13. IF NECESSARY, CONTRACTOR TO PROVIDE A BOOSTER PUMP SYSTEM TO HANDLE THE VOLUMES AND PRESSURE OF WATER REQUIRED BY THE IRRIGATION SYSTEM.
14. CONTRACTOR TO COORDINATE LOCATION OF 110 VOLT POWER SOURCE FOR FIELD CONTROLLERS WITH THE IRRIGATION CONSULTANT AND ELECTRICAL ENGINEER.
15. IRRIGATION CONTRACTOR TO PROVIDE A CONTROLLER IN A WATERPROOF, LOCKABLE ENCLOSURE.
16. ELECTRICAL ENCLOSURE TO BE TIGHTLY FITTED TO BASE OF BUILDING.
17. IRRIGATION SYSTEM TO BE MULTI-ZONED.

IRRIGATION LIMITS

LAWN AREA IRRIGATION LIMITS
To be irrigated by rotor heads

LANDSCAPE BED IRRIGATION LIMITS
To be irrigated by drip line or spray heads

NOTE:
THE IRRIGATION SUPPLY SHALL COME OFF THE DOMESTIC SIDE OF THE WATER SERVICE PRIOR TO THE DOMESTIC METER AND THEN BE SEPARATELY FOR BILLING PURPOSES. THE IRRIGATION METER IS PURCHASED BY FILLING OUT A PLUMBING PERMIT FOR THE METER.
Site Plan

100% Design Intent
Prepared by:
1112 Pearl Street, Boulder CO, 80302
TEL 303 447 8202   FAX 303 440 7096
www.Stantec.com

Original: 2018 JANUARY 09

Revisions:

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iFLY Prototype
SkyGroup Investments, LLC
LW, CC, SE, JB, JW, KH

Elephant, 2018

SITE PLAN
EXTERIOR FINISHES

STN1
EFS1
MTL3
MTL2
STF1
CON 2
STN2

STEEL TUBE TRELLIS @4'-0" O.C.

DO NOT FABRICATE DIRECTLY FROM THESE DRAWINGS: These drawings are for the sole purpose of expressing visual design intent only and are not intended to be used for actual fabrication. Fabricator/contractor accepts total responsibility for materials selection, dimensions, engineering, fabrication, and installation.

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Prepared by:
1112 Pearl Street. Boulder CO, 80302
TEL 303 447 8202   FAX 303 440 7096
www.Stantec.com

Original: 2018 JANUARY 09

**100% DESIGN INTENT**

Prepared by:

STUDENT

iFLY Prototype

SkyGroup Investments, LLC

OWNER

LW, CC, JS, MJ, JH

PROJECT

DO NOT FABRICATE DIRECTLY FROM THESE DRAWINGS: These drawings are for the sole purpose of expressing visual design intent only and are not intended to be used for actual fabrication. Fabricator/contractor accepts total responsibility for materials selection, dimensions, engineering, fabrication, and installation.

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EXTERIOR FINISHES
The City Of Minnetonka Ordains:

Section 1.

1.01 The subject property is located at 12415 Wayzata Boulevard. It is legally described as:

Tract B, Registered Land Survey No. 1826, files of the Registrar of Titles.

1.02 In 2013, the city approved the master development plan for Ridgedale Shopping Center. The master development plan consisted of three phases. The third phase included the construction of three freestanding restaurants on the northwest side of the mall.

1.03 In 2017, the city approved site plans and design criteria for the three restaurant pads indicated on the master development plan as phase three. A conditional use permit and building plans were approved for the first and westernmost pad site.

1.04 SkyGroup Investments, LLC (‘iFly’) has submitted plans to develop the second pad site with a building intended to be used for indoor skydiving. While the use is still an entertainment use, it is significantly different than what was originally envisioned for the pad sites.

Section 2.

2.01 This ordinance is based on the findings that the proposed development would not negatively impact public health, safety or welfare.

Section 3.

3.01 Approval is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans:
• Site layout and paving plan dated Jan. 10, 2018;
• Grading plan dated Jan. 10, 2018;
• Utility plan dated Jan. 10, 2018;
• Landscape plan dated Jan. 10, 2018;
• Performance irrigation plan dated Jan. 10, 2018;
• Site plan dated Jan. 9, 2018;
• Site and building elevations dated Jan. 9, 2018;
• Floor plan dated Jan. 9, 2018;

The above plans are hereby adopted as the master development plan and as final site and building plans.

2. The development must further comply with all conditions outlined in City Council Resolution 2018-XX, adopted by the Minnetonka City Council on __________, 2018.

Section 4. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 5. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on __________, 2018.

__________________________
Brad Wiersum, Mayor

ATTEST:

__________________________
David E. Maeda, City Clerk

Action on this ordinance:

Date of introduction: Feb. 5, 2018
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 correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on , 2018.

David E. Maeda, City Clerk
Brief Description: Introduction of ordinance regarding small wireless facilities in public right of way

Recommended Action: Introduce the ordinance

Background

State law allows cities to regulate the use of public right of way, in order to protect public infrastructure and to address costs and negative impacts caused by excavations and obstructions of right of way by utility companies and others. The city adopted its current right of way management ordinance, Section 1120 of the Minnetonka City Code, in 2010, largely patterned on the League of Minnesota Cities' model right of way ordinance.

In recent years, the demand for wireless communications services has seen dramatic growth. The latest technology push has been for delivery of fifth-generation wireless broadband technology, or “5G” wireless services. In order to deliver 5G service, telecommunications providers propose to build small cell wireless networks. The networks rely upon the installation of small wireless facilities that have shorter ranges and therefore are more densely located than the traditional large monopoles or antennas on water towers. Small wireless facilities can be collocated on utility poles and light fixtures but may also require the erection of a separate pole or support structure.

In 2017, telecommunications providers pursued state legislation that, as initially introduced, would have granted far-reaching rights for providers to install small wireless facilities in public right of way and on publicly-owned property, including utility poles and signs. The League of Minnesota Cities and others opposed the legislation. The final legislation preserves some city authority to regulate small wireless facilities, but subject to limitations. As defined by the legislation, a small wireless facility must not exceed six cubic feet in size, and its related ground equipment (if any) must not exceed 28 cubic feet in size.

As a result of the legislation, the city needs to update its right of way management ordinance. The League of Minnesota Cities has prepared an updated model ordinance, based on the 2017 legislation. The city attorney prepared the attached ordinance based on that model and the requirements of the 2017 legislation. The key provisions of the proposed ordinance are taken directly from state law and are not subject to change. The fees in the proposed ordinance represent the city’s best estimate of costs and will be re-evaluated periodically based on actual experience. The rent fees are for use of city-owned poles in the right of way and are the maximum allowed by law.

A copy of a League of Minnesota Cities information memo is provided for reference.

Recommendation

Introduce the ordinance.

Submitted through:
Geralyn Barone, City Manager
Will Manchester, City Engineer
Brian Wagstrom, Public Works Director

Originated by:
Corrine Heine, City Attorney
The City of Minnetonka Ordains:

Section 1. Section 1120.015 of the Minnetonka City Code, related to definitions, is amended by adding a new subdivision 4, to read as follows, and renumbering subsequent subdivisions (including those amended by sections 2 through 6 of this ordinance) accordingly:

4. “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately or by the city or other governmental unit.

Section 2. Section 1120.015, subdivision 19 of the Minnetonka City Code, related to definitions, is amended to read as follows:

19. "Management costs" means the actual costs the city incurs in managing its rights-of-way, including the costs associated with registering right-of-way users; issuing, processing, and verifying right-of-way or small wireless facility excavation and obstruction permits; inspecting project work and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; enforcing and correcting non-complying project work; mapping of facilities located in the right-of-way; revoking right-of-way or small wireless facility permits; performing all other tasks required by this section; and managing matters described in this section. Management costs do not include: payment by a telecommunications right-of-way user for the use of the right-of-way; unreasonable fees of a third-party contractor used by the city, including fees tied to based on customer counts, access lines, or revenues generated by the right-of-way or for the city; the fees and cost of litigation related to the interpretation of state law or this section; or the city costs related to appeals taken pursuant to this section.

Section 3. Section 1120.015, subdivision 23 of the Minnetonka City Code, related to definitions, is amended to read as follows:

23. “Permittee” means a person to whom an excavation or obstruction permit or small wireless facility permit has been issued by the city under this section.

Section 4. Section 1120.015, subdivision 26 of the Minnetonka City Code, related to definitions, is amended to read as follows:

The stricken language is deleted; the underlined language is inserted.
26. "Public right-of-way" or "right-of-way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

Section 5. Section 1120.015 of the Minnetonka City Code, related to definitions, is amended by adding new subdivisions 32 and 33, to read as follows, and by renumbering subsequent subdivisions accordingly:

32. "Small wireless facility" means a wireless facility that meets both of the following qualifications:

   a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

   b. All other wireless equipment associated with the small wireless facility is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

33. "Telecommunications right-of-way user" means a person owning or controlling a facility in the right-of-way or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service or transporting telecommunication or other voice or data information. A cable communication system defined and regulated under Minn. Stat. Ch. 238, and telecommunication activities related to providing a natural gas or electric energy services, a public utility as defined in Minn. Stat. Ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Ch. 308A, are not telecommunications right-of-way users for purposes of this section except to the extent such entity is offering wireless service.

Section 6. Section 1120.015 of the Minnetonka City Code, related to definitions, is amended by adding new subdivisions 35, 36, 37, 38 and 39 to read as follows:

35. "Utility pole" means a pole that is used in whole or in part to facilitate telecommunications or electric service.

36. "Wireless facility" means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including...
equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility. “Wireless facility” does not include: wireless support structures; wireline backhaul facilities; or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

37. “Wireless service” means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

38. “Wireless support structure” means a new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

39. “Wireline backhaul facility” means a facility used to transport communication data by wire from a wireless facility to a communications network.

Section 7. Section 1120.035 of the Minnetonka City Code, subdivision 1, relating to registered right of way users, is amended to read as follows:

1. Information Required. The registrant must provide the following at the time of registration and must promptly notify the city of changes in such information:

   a. registrant’s name, address, telephone number, facsimile number and gopher one-call registration certificate number if required by state law;

   b. name, address, telephone number, email address, and facsimile number of the person responsible for fulfilling the obligations of the registrant;

   c. a certificate of insurance or self-insurance verifying the coverage required in this section;

   d. 24-hour emergency number;

   e. an acknowledgement by the registrant of the indemnification pursuant to section 1120.130; and

   f. if the registrant is a corporation, a copy of the certificate that is required to be filed under Minn. Stat. § 300.06 as recorded and certified to the Minnesota secretary of state;
g. a copy of the registrant’s order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the registrant is lawfully required to have such authorization or approval; and

f.h. such other information as the director may require.

Section 8. Section 1120.045 of the Minnetonka City Code is amended to read as follows:

1120.045. Permit Requirements.

1. Permit Required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the city to do so. A public right-of-way user that owns or controls a facility within a public right-of-way, or any portion of it, on May 27, 2010 and that subsequently excavates or otherwise obstructs a public right-of-way, or any portion of it, must first obtain a permit as required under this section.

a. Excavation permit. An excavation permit is required by a registrant to excavate the part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities as described in the permit, to the extent and for the duration specified in the permit.

b. Obstruction permit. An obstruction permit is required by a registrant to hinder free and open passage over the part of the right-of-way described in the permit by placing equipment described in the permit on the right-of-way, to the extent and for the duration specified in the permit. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

c. Small wireless facility permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified in the permit, provided that the permit remains in effect for the length of time the facility is in use, unless lawfully revoked.

2. Routine Obstruction and Excavation. Routine excavations and obstructions are permitted without separate notice and separate compensation for such projects. Projects that do not involve excavation of paved surface and that last less than a continuous eight hour period in duration between 7 a.m. and 7 p.m. Monday through Friday, excluding holidays, may, in the director’s discretion, be considered routine obstruction and excavation and include by way of example, switching, replacing fuses,
replacing transformers, placing line guards, animal protection, leak surveys, anode installations and inspections, or to repair facilities due to public damage or accident.

Section 9. Section 1120.055, subdivision 1 of the Minnetonka City Code, related to permit fees, is amended to read as follows:

1. Establishment. Permit fees Fees for right-of-way permits will be established to recover the city management costs and, when applicable, restoration costs. Fees for small wireless facility permits will be established to recover the city’s management costs and, for facilities to be collocated on city-owned support structures, the city engineering, make-ready, and construction costs associated with collocation. The permit fees are specified in section 710.005 of the city code. No permit fee is refundable. No permit fee will be required for an obstruction or excavation permit issued to the city, although the city must be allocated its full portion of the city management costs in calculating the permit fees.

Section 10. Section 1120.060 of the Minnetonka City Code is amended to read as follows:

1120.060. Permit Issuance.

1. Issuance. Except as otherwise provided in section 1120.062, if the applicant has satisfied the requirements of this section and there are no reasons for denial under paragraph 3 below, the city will issue a permit within ten business days after receiving a completed application.

2. Conditions. The city may impose reasonable conditions upon the issuance of the permit to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

3. Denial or revocation. The city may deny or revoke a permit for any one or more of the following reasons:

   a. The applicant failed to meet the requirements and conditions of this section;

   b. The applicant failed to register pursuant to this section;

   c. The street surface was constructed or reconstructed at the proposed location within the preceding five years, unless the director determines that no other locations are feasible or when necessitated by emergency;

   d. The applicant is subject to revocation of a prior permit issued pursuant to this section;

The stricken language is deleted; the underlined language is inserted.
e. The proposed schedule for the work would conflict or interfere with an exhibition, celebration, festival or other similar event;

f. The right-of-way would become unduly congested due to the proposed facilities and equipment when combined with other uses in the right-of-way;

g. The time schedule for the project conflicts with scheduled public improvement of the public right-of-way;

h. Businesses or residences in the vicinity will be unreasonably disrupted;

i. The applicant failed to meet a reasonable schedule to participate in a mandated joint trench operation with other applicants, and the additional work will unreasonably disrupt the restored right-of-way, businesses or residences;

j. The proposed project violates a provision of this code;

k. Environmental or seasonal conditions are unreasonable for the work; or

l. The proposed project is adverse to the public health, safety and welfare, by interfering with the safety and convenience of ordinary travel over the public right-of-way, or endangers the public right-of-way and its users, as reasonably determined by the city based on relevant factors that may include:

   1) the extent of public right-of-way area available;

   2) the competing public service demands for the particular proposed space in the public right-of-way;

   3) the availability of other feasible locations in the public right-of-way or in other public rights-of-way for the facility(s) of the permit applicant;

   4) the applicability of an ordinance or other regulation that affects the location of a facility in the public right-of-way;

   5) the applicant's prior lack of compliance with the terms and conditions of its franchise, this section or other applicable ordinances and regulations;

   6) the condition and age of the public right-of-way and the city's scheduled reconstruction of it; or
7) the costs of disruption to the public and damage to the public right-of-way balanced against the benefits to the public served by an expansion into additional parts of the public right-of-way.

4. Appeal. The applicant may appeal a denial to the city council by submitting a written request to the director. The city council may affirm, reverse or modify the director's decision.

Section 11. Section 1120 of the Minnetonka City Code, relating to right of way management, is amended by adding a new section 1120.062 as follows:

1120.062. Small Wireless Facility Permit Applications

1. Deadline for action. The city shall approve or deny a small wireless facility permit application within 90 days after the application is filed. The small wireless facility permit, and any associated building application, will be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

2. Consolidated applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by the city, provided that all small wireless facilities in the application:
   a. are located within a two-mile radius;
   b. consist of substantially similar equipment; and
   c. are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

3. Tolling of deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:
   a. The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In that case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of the extension.
   b. The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days.
of receipt of the application. Upon submission of additional documents or information, the city will have ten days to notify the applicant in writing of any still-missing information.

c. The city and a small wireless facility applicant agree in writing to toll the review period.

4. Small wireless facility conditions. In addition to conditions imposed under section 1120.060, subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way is subject to the following conditions:

a. A small wireless facility must be collocated on the particular wireless support structure, under the attachment specifications and at the height as indicated in the applicable permit application.

b. Small wireless facilities must comply with applicable provisions of section 300 of this code, including, but not limited to, separate requirements.

c. No new wireless support structure installed within the right-of-way may exceed 50 feet in height without the city’s written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure that exceeds 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

d. No wireless facility may extend more than 10 feet above its wireless support structure.

e. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of the structure.

f. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of the structure.

5. Denial or revocation. A small wireless facility permit may be denied or revoked for one or more of the reasons in section 1120.060, subdivision 3. The denial or revocation of a small wireless facility permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within.

The stricken language is deleted; the underlined language is inserted.
three business days after its decision to deny or revoke a permit. If an application is
denied, the right-of-way user may address the reasons for denial identified by the city
and resubmit its application. If the application is resubmitted within 30 days of receipt of
the notice of denial, no additional application fees may be imposed. The city must
approve or deny the resubmitted application within 30 days after submission

6. Small wireless facility agreement. A small wireless facility may not be collocated on a
small wireless support structure owned or controlled by the city, or on any other city
asset in the right-of-way, unless the applicant has executed a standard small wireless
facility collocation agreement with the city. The standard collocation agreement is in
addition to, and not in lieu of, the required small wireless facility permit; provided,
however, that the applicant is not required to also obtain a license or franchise in order
to collocate. Issuance of a small wireless facility permit does not supersede, alter or
affect any then-existing agreement between the city and the applicant.

Section 12. Section 710.005, paragraph 8 of the Minnetonka City Code, relating to permit
fees for engineering and street items, is amended to read as follows:

<table>
<thead>
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<th>para. no.</th>
<th>description</th>
<th>amount</th>
<th>code section</th>
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<td>8</td>
<td>engineering and street items</td>
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<td>driveway permit</td>
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<td>excavation within boulevard</td>
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<td>open cut trench</td>
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<td>facility if not purchased</td>
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The stricken language is deleted; the underlined language is inserted.
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<th>watts OR actual costs, whichever is greater</th>
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<td>all other signs</td>
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</table>

Section 13. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 14. This ordinance is effective 30 days after publication.

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

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

**Action on this Ordinance:**

Date of introduction:  
Date of adoption:  
Motion for adoption:  
Seconded by:  
Voted in favor of:  

The stricken language is deleted; the underlined language is inserted.
Ordinance No. 2018-

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

David E. Maeda, City Clerk
INFORMATION MEMO

Cell Towers, Small Cell Technologies & Distributed Antenna Systems

Learn about large and small cell tower deployment and siting requests for small cell, small wireless and distributed antenna systems (DAS) technology. Better understand the trend of the addition of DAS, small wireless or small cell equipment on existing utility equipment. Be aware of common gaps in city zoning, impact of federal and state law, reasons for collocation agreements and some best practices for dealing with large and small cell towers, small wireless facilities and DAS.

RELEVANT LINKS:

I. Deployment of large cell towers or antennas

A cell site or cell tower creates a “cell” in a cellular network and typically supports antennas plus other equipment, such as one or more sets of transceivers, digital signal processors, control electronics, GPS equipment, primary and backup electrical power and sheltering. Only a finite number of calls or data can go through these facilities at once and the working range of the cell site varies based on any number of factors, including height of the antenna. The Federal Communications Commission (FCC) has stated that cellular or personal communications services (PCS) towers typically range anywhere from 50 to 200 feet high.

The emergence of personal communications services, the increased number of cell providers, and the growing demand for better coverage have spurred requests for new cell towers, small cell equipment, and distributed antenna systems (DAS) nationwide. Thus, some cellular carriers, telecommunications wholesalers or tower companies, have attempted to quickly deploy telecommunications systems or personal wireless service facilities, and, in doing so, often claim federal law requires cities to allow construction or placement of towers, equipment, or antennas in rights of way. Such claims generally have no basis. Although not completely unfettered, cities can feel assured that, in general, federal law preserves local zoning and land use authority.

A. The Telecommunications Act and the FCC

The Telecommunications Act of 1996 (TCA) represented America’s first successful attempt to reform regulations on telecommunications in more than 60 years, and was the first piece of legislation to address internet access. Congress enacted the TCA to promote competition and higher quality in American telecommunications services and to encourage rapid deployment of new telecommunications technologies.
The FCC is the federal agency charged with creating rules and policies under the TCA and other telecommunications laws.

The FCC also manages and licenses commercial users (like cell providers and tower companies), as well as non-commercial users (like local governments). As a result, both the TCA and FCC rulings impact interactions between the cell industry and local government.

The significant changes in the wireless industry and its related shared wireless infrastructures, along with consumer demand for fast and reliable service on mobile devices, have fueled a frenzy of requests for large and small cell/DAS site development and/or deployment. As a part of this, cities find themselves facing cell industry arguments that federal law requires cities to approve tower siting requests.

Companies making these claims most often cite Section 253 or Section 332 of the TCA as support. Section 253 states “no state or local statute or regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Section 332 has a similar provision ensuring the entry of commercial mobile services into desired geographic markets to establish personal wireless service facilities.

These provisions should not, however, be read out of context. When reviewing the relevant sections in their entirety, it becomes clear that federal law does not pre-empt local municipal regulations and land use controls. Specifically, the law states “[n]othing in this section affects the authority of a state or local government to manage the public rights of way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights of way …” and that “nothing in this chapter shall limit or affect the authority of … local government … over decisions regarding the placement, construction, and modification of personal wireless service facilities”. Courts consistently have agreed that local governments retain their regulatory authority and, when faced with making decisions on placement of towers, antenna or new telecommunication service equipment on city facilities, they generally have the same rights that private individuals have to deny or permit placement of a cellular tower on their property. This means cities can regulate and permit placement of towers and other personal wireless service facilities, including, in most situations (though some state law restrictions exist regarding regulations of small wireless support structures), controlling height, exterior materials, accessory buildings, and even location. Cities should be careful to make sure that local regulations don’t have the effect of completely banning all cell towers or personal wireless service facilities. Such regulation could run afoul of federal law (not to mention state law as well).
Some cellular companies try to gain unfettered access to city right of way by claiming they are utilities. The basis for such a claim usually follows one of two themes—either that, as a utility, federal law entitles them to entry; or, in the alternative, under the city’s ordinances, they get the same treatment as other utilities. Courts have rejected the first argument of entitlement, citing to the specific directive that local municipalities retain traditional zoning discretion.

B. State law

In the alternative, the argument that a city’s local ordinances include towers as a utility has, on occasion and in different states, carried more weight with a court. To counter such arguments, cities may consider specifically excluding towers, antenna, small cell, and DAS equipment from their ordinance’s definition of utilities. The Minnesota Department of Commerce, in a letter to a wireless infrastructure provider, cautioned one infrastructure company that its certificate of authority to provide a local niche service did not authorize it to claim an exemption from local zoning. The Minnesota Department of Commerce additionally requested that the offending company cease from making those assertions.

In Minnesota, to clear up confusion about whether wireless providers represent telecommunications right-of-way users under state law and to address concerns about deployment of small wireless technology, the Legislature amended Minnesota’s Right-of-Way User statutes, or Minnesota ROW Law, in the 2017 legislative session to specifically address small wireless facilities and the support structures on which those facilities may attach.

Because of these amendments, effective May 31, 2017 additional specific state statutory provisions apply when cities, through an ordinance, manage their rights of way, recover their right-of-way management costs (subject to certain restrictions), and charge rent for attaching to city-owned structures in public rights of way. Rent, however, is capped for collocation of small wireless facilities. State law defines “collocate” or “collocation” as a means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by a local government unit.

The Minnesota ROW Law allows cities to require telecommunications right-of-way users to get a permit for use of the right of way; however, it creates a separate permitting structure for the siting of small wireless facilities.
Because of the recent significant changes in the state law and the specific requirements for deployment of small wireless facilities that do not apply to other telecommunications right-of-way users, cities should work with their city attorneys to review and update their ordinances.

C. Limitations on cities’ authority

1. Federal law

Although federal law expressly preserves local governmental regulatory authority, it does place several substantive and procedural limits on that authority. Specifically, a city:

- Cannot unreasonably discriminate among providers of functionally equivalent services.
- Cannot regulate those providers in a manner that prohibits or has the effect of prohibiting the provision of telecommunications services or personal wireless services.
- Must act on applications within a reasonable time.
- Must document denial of an application in writing supported by “substantial evidence.”

Proof that the local zoning authority’s decision furthers the applicable local zoning requirements or ordinances satisfies the substantial evidence test. Municipalities cannot cite environmental concerns as a reason for denial, however, when the antennas comply with FCC rules on radio emissions. In the alternative, cities can request proof of compliance with the FCC rules.

Bringing an action in federal court represents the recourse available to the cellular industry if challenging the denial of a siting request under federal law. Based on the limitations set forth in the federal law on local land use and zoning authority, most often, when cities deny siting requests, the challenges to those denials claim one of the following:

- The municipal action has the effect of “prohibiting the provision of personal wireless service.”
- The municipal action unreasonably discriminates among providers of functionally equivalent services (i.e., cell providers claiming to be a type of utility so they can get the same treatment as a utility under city ordinance).
2. State law

In addition to mirroring some of the federal law requirements, such as the requirement of equal treatment of all like providers, state law permits cities, by ordinance, to further regulate “telecommunications right-of-way users.”

Minnesota’s Telecom ROW Law expressly includes wireless service providers as telecommunications right-of-way users, making the law applicable to the siting of both large and small, wire-lined or wireless telecommunications equipment and facilities, in the rights of way.

State law places additional restrictions on the permitting and regulating of small wireless facilities and wireless support structure placement. Accordingly, cities should work with city attorneys when drafting, adopting, or amending their ordinance. The Telecom ROW Law still expressly protects local control, allowing cities to deny permits for reasonable public health, welfare, and safety reasons, with no definitions of or limitations on what qualifies as health, welfare, and safety reasons.

D. Court decisions

The 8th U.S. Circuit Court of Appeals (controlling law for Minnesota) recognizes that cities do indeed retain local authority over decisions regarding the placement and construction of towers and personal wireless service facilities.

The 8th Circuit also has heard cases where a carrier or other telecommunications company argued they are a utility and should be treated as such under local ordinances. Absent a local ordinance that includes this type of equipment within its definition of utilities, courts do not necessarily deem cell towers or other personal communications services equipment functionally equivalent to utilities.

Additionally, courts have found that the federal law anticipates some disparate application of the law, even among those deemed functionally equivalent. For example, courts determined it reasonable to consider the location of a cell tower when deciding whether to approve tower construction (finding it okay to treat different locations differently), so long as cities do not allow one company to build a tower at a specific location at the exclusion of other providers.
E. City approaches

Regulation of placement of cell towers and personal wireless services can occur through an ordinance. The Minnesota ROW Law provides cities with comprehensive authority to manage their rights of way. With the unique application of federal law to telecommunications and the recent changes to state law, along with siting requests for locations both in and out of rights of way, many cities find having a separate telecommunications right-of-way user ordinance (in addition to a right-of-way ordinance) allows cities to better regulate towers and other telecommunications equipment, as well as collocation of small wireless facilities and support structures.

Some cities also have modified the definitions in their ordinances to exclude cell towers, telecommunications, wireless systems, DAS, small cell equipment, and more from utilities to counter the cell industry’s requests for equal treatment or more lenient zoning under the city’s zoning ordinances.

In addition to adopting specific regulations, many city zoning ordinances recognize structures as conditional uses requiring a permit (or many of these regulations include a provision for variances, if needed). While cities may require special permits or variances to their zoning for siting of large cell facilities, under state law, small wireless facilities and wireless support structures accommodating those small wireless facilities are deemed a permitted use. The only exception to the presumed, permitted use for small wireless is that a city may require a special or conditional land use permit to install a new wireless support structure in a residentially zoned or historic district. Cities will want to review their zoning to make sure it complies with the Minnesota ROW Law.

II. Deployment of small cell technologies and DAS

Small cell equipment and DAS both transmit wireless signals to and from a defined area to a larger cell tower. They are often installed at sites that support cell coverage either within a large cell area that has high coverage needs or at sites within large geographic areas that have poor cell coverage overall.
Situational needs dictate when cell providers use small cell towers, as opposed to DAS technology. Generally, cell providers install small cell towers when they need to target specific indoor or outdoor areas like stadiums, hospitals, or shopping malls. DAS technology, alternatively, uses a small radio unit and an antenna (that directly link to an existing large cell tower via fiber optics). Installation of a DAS often involves cell providers using the fiber within existing utility structures to link to its larger cell tower. Cities sometimes are asked to provide the power needed for the radios, which the city can negotiate into the leasing agreement with the cell provider.

A. Additional zoning and permitting needs under state law

Historically, many cities’ ordinances address large cell sites, but not small cell towers or DAS. With the recent changes to state law, cities should work with their city attorney to review their ordinances in consideration of the new statutory permit process for the siting of small wireless facilities.

Cities can charge rent (up to a cap for small wireless siting) under the statute for placement of cell technology or DAS on existing or newly installed support structures, like poles or water towers; and, also, can enter into a separate agreement to address issues not covered by state law or ordinance. Cities should work with their city attorney to get assistance with drafting these agreements and any additional documents, like a bill of sale (for transfer of pole from carrier to city), if necessary.

The terms and conditions of these agreements, called collocation agreements, for siting of small wireless facilities, most likely will mirror agreements formerly referred to as master licensing agreements, often including provisions such as:

- Definitions of scope of permitted uses.
- Establishment of right-of-way rental fee (note statutory limitations).
- Protection of city resources.
- Provision of contract term (note statutory limitations).
- Statement of general provisions.
- Maintenance and repair terms.
- Indemnity provisions.
- Insurance and casualty.
- Limitation of liability provision.
- Terms for removal.
State law does not require a separate agreement, and some cities have chosen to put these provisions in their ordinance or permit instead. For cities that choose to have a separate agreement in place, they must develop and make that agreement publicly available no later than November 31, 2017 (six months after the effective date of this act) or three months after receiving a small wireless facility permit application from a wireless service provider. The agreement must be made available in a substantially complete form; however, the parties to the small wireless facility collocation agreement can incorporate additional mutually agreed upon terms and conditions. The law classifies any small wireless facility collocation agreement between a local government unit and a wireless service provider as public data, not on individuals, making those agreements accessible to the public under Minnesota’s Data Practices Law.

Additionally, the new amendments to Minnesota’s Telecom ROW Law set forth other requirements that apply only to small cell wireless facility deployment. The 2017 amendments changed Minnesota’s ROW Law significantly, the details, of which, can be found in the League’s FAQ on Minnesota 2017 Telecommunication Right of Way User Amendments (July 2017). However, after the amendments, the law now generally provides:

- A presumption of permitted use in all zoning districts, except in districts zoned residential or historical districts.
- The requirement that cities issue or deny small wireless facility requests within 90 days, with a tolling period allowed upon written notice to the applicant, within 30 days of receipt of the application.
- An allowance to batch applications (simultaneously submit a group of applications), with the limitation to not exceed 15 small wireless requests for substantially similar equipment on similar types of wireless support structures within a two-mile radius.
- Rent not to exceed $150 per year with option of an additional $25 for maintenance and allowances for electricity, if cities do not require separate metering.
- The limitation that cities cannot ask for information already provided by the same applicant in another small cell wireless facility application, as identified by the applicant, by reference number to those other applications.
- A restriction that the height of wireless support structures cannot exceed 50 feet, unless the city agrees otherwise.
- A restriction that wireless facilities constructed in the right of way may not extend more than 10 feet above an existing wireless support structure in place.
• A prohibition on moratoriums with respect to filing, receiving, or processing applications for right-of-way or small wireless facility permits; or issuing or approving right-of-way or small wireless facility permits. For cities that did not have a right-of-way ordinance in place on or before May 18, 2017, the prohibition on moratoria does not take effect until January 1, 2018, giving those cities an opportunity to enact an ordinance regulating its public rights-of-way.

NOTE: These additional state law requirements do NOT apply to collocation on structures owned, operated maintained or served by municipal utilities. Also, the small wireless statutory requirements do not invalidate agreements in place at the time of enactment of the 2017 amendments (May 31, 2017).

The siting of DAS or new small cell technologies also must comply with the same restrictions under federal law that apply to large cell sitings. Specifically, a city:

• May not unreasonably discriminate among providers of functionally equivalent services.
• May not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services.
• Must act on applications within a reasonable time.
• Must make any denial of an application in writing supported by substantial evidence in a written record.

Because of the complexities in the state law and the overlay of federal regulations, some cities have found it a best practice to adopt or amend a telecommunications right-of-way ordinance separate from their general right-of-way management ordinance. Cities that do not choose to adopt separate ordinances, at a minimum, should work with their attorney to review and amend their existing right-of-way ordinances, if necessary, to accommodate for telecommunications right-of-way users and the recent state law amendments for small wireless facilities. For example, since state law now recognizes small wireless facilities as a permitted use, zoning ordinances that require conditional use permits for these facilities likely will need amending.

Since wireless providers seek to attach their small cell and DAS equipment to city-owned structures, many cities choose to have a separate agreement in place to address terms and conditions not included in ordinances or permits. If the city chooses to do so, the law requires the city to have these agreements available in a substantial form so applicants can anticipate the terms and conditions. Again, cities should work with the city attorney to draft a template agreement governing attachment of wireless facilities to municipally owned structures in the right of way.
With the nationwide trend encouraging deployment of these new technologies, if a city denies an application, it must do so in writing and provide detailed reasonable findings that document the health, welfare, and safety reasons for the denial. With the unique circumstances of each community often raising concerns about sitings, cities may benefit from proactively working with providers.

### B. Modifications of existing telecommunication structures

If a siting request proposes modifications to and/or collocations of wireless transmission equipment on existing FCC-regulated towers or base stations, then federal law further limits local municipal control. Specifically, federal law requires cities to grant requests for modifications or collocation to existing FCC-regulated structures when that modification would not “substantially change” the physical dimensions of the tower or base station.

The FCC has established guidelines on what “substantially change the physical dimensions” means and what constitutes a “wireless tower or base station.”

Once small cell equipment or antennas gets placed on that pole, then the pole becomes a telecommunication structure subject to federal law and FCC regulations. Accordingly, after allowing collocation once, the city then must comply with the more restrictive federal laws that allow modifications to these structures that do not substantially change the physical dimensions of the pole, like having equipment from the other cell carriers.

Under this law, it appears cities cannot ask an applicant who is requesting modification for documentation information other than how the modification impacts the physical dimensions of the structure. Accordingly, documentation illustrating the need for such wireless facilities or justifying the business decision likely cannot be requested. Of course, as with the other siting requests, state and local zoning authorities must take prompt action on these siting applications for wireless facilities (60-day shot clock rule).

Two wireless industry associations, the WIA (formerly known as the PCIA) and CTIA, collaborated with the National League of Cities, the National Association of Counties, and the National Association of Telecommunications Officers and Advisors to: (1) develop a model ordinance and application for reviewing eligible small cell/DAS facilities requests under federal law; (2) discuss and distribute wireless siting best practices; (3) create a checklist that local government officials can use to help streamline the review process; and (4) hold webinars regarding the application process.
III. Moratoriums

The cellular industry often challenges moratoriums used to stall placement of cell towers, as well as small cell/DAS technology, until cities can address regulation of these structures. Generally, these providers argue that these moratoriums do one of the following:

- Prohibit or have the effect of prohibiting the provision of personal wireless services.
- Violate federal law by failing to act on an application within a reasonable time.

State law now prohibits moratoriums with respect to: (1) filing, receiving, or processing applications for right-of-way or small wireless facility permits; or (2) issuing or approving right-of-way or small wireless facility permits. For cities that did not have an ordinance enabling it to manage its right-of-way on or before May 18, 2017, the prohibition on moratoria does not take effect until January 1, 2018, giving those cities an opportunity to enact an ordinance regulating its public rights-of-way.

IV. Conclusion

With the greater use of calls and data associated with mobile technology, cities likely will see more new cell towers, as well as small cell technology/DAS requests. Consequently, it would make sense to proactively review city regulations to ensure consistency with federal and state law, while still retaining control over the deployment of structures and the use of rights of way.
Many cities address cell towers in their ordinances already. For informational purposes only, the links below reference some telecommunications facilities ordinances in Minnesota. PLEASE NOTE, these ordinances reflect each city’s unique circumstances and may pre-date the 2017 Legislative Session which, then, would not have considered the amendments to Minn. Stat. §§ 237.162, 237.163 when drafted.

### Sample Telecommunications Ordinances

<table>
<thead>
<tr>
<th>City</th>
<th>Ordinance Details</th>
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<tbody>
<tr>
<td><strong>City of Edina</strong> (predates 2017 amendments)</td>
<td>Ordinance: (<a href="#">Chapter 34: Telecommunications</a>)</td>
</tr>
<tr>
<td><strong>City of Brainerd</strong></td>
<td><strong>Memo to Planning Commission from City Planner, July 13, 2017 Re:</strong> <a href="#">Draft Ordinance: Section 35: Anetennas and Towers</a></td>
</tr>
<tr>
<td><strong>City of Minneapolis</strong></td>
<td><strong>Ordinance:</strong> (<a href="#">Amendment to Ordinance to accommodate Small Cell/DAS equipment</a>)</td>
</tr>
<tr>
<td><strong>City of Bloomington</strong></td>
<td><strong>Ordinance:</strong> (<a href="#">Part II City Code, Chapter 17: Streets and Rights-of-Way</a>)</td>
</tr>
</tbody>
</table>

**Permit:** [Small Cell Permit](#)

### Sample Collocation Agreement for DAS/Small Call

<table>
<thead>
<tr>
<th>City</th>
<th>Agreement Details</th>
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<tbody>
<tr>
<td><strong>Texas City Attorney Association</strong></td>
<td>Addendum to Local Gov. Code, Chapter 283</td>
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<tr>
<td><strong>San Antonio, Texas</strong></td>
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<tr>
<td><strong>Boston, Massachusetts</strong></td>
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<tr>
<td><strong>San Francisco, California</strong></td>
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<tr>
<td><strong>League of Minnesota Cities Model</strong></td>
<td><a href="#">Small Wireless Facility Collocation Agreement</a></td>
</tr>
</tbody>
</table>
City Council Agenda Item #12C
Meeting of Feb. 5, 2018

Brief Description
Ordinance repealing and replacing City Code 300.34, Telecommunication Facilities

Recommendation
Introduce the ordinance and refer it to the planning commission

Proposed Ordinance

As the city’s right-of-way ordinance must be amended to reflect state statute pertaining to small wireless facilities, the city’s telecommunications ordinance must in turn be amended to reflect the right-of-way ordinance update. The telecommunication ordinance was originally drafted in 1997 and has undergone a series of changes over the succeeding years. Rather, than again simply adding language to the existing ordinance, planning staff took this opportunity to review the telecommunication ordinance in its entirety.

Staff found that few substantive changes are necessary to reflect the updated right-of-way ordinance. However, the organization of the existing ordinance is confusing. As such, staff proposes repealing the existing ordinance and replacing it with a new ordinance. The primary differences between the existing ordinance and proposed ordinance are:

- **Renumbering.** In 2016, the city council approved Phase I of the sign ordinance update. As part of that update, city staff proposed a full reorganization/renumbering of the zoning ordinance. The intent of the reorganization/renumbering is to provide a more user-friendly and visually appealing ordinance. Staff suggests continuing the reorganization/renumbering with the updated Telecommunications Facilities Ordinance.

- **Definitions.** Updated definitions are proposed to provide more clarity and reflect language within the ordinance.

- **Permit Application Procedure.** As proposed, the review deadline for administrative permits is increased to correspond with state statute.

- **Organization of Standards.** The proposed ordinance clearly groups regulations into two categories: (1) regulations applying to facilities located outside of public right-of-way; and (2) regulations applying to facilities located within right-of-way.

- **General Standard.** One new general standard is proposed, requiring that service providers be identified for proposed facilities. The intent of this standard is to prevent speculative installation of facilities.

- **Specific Standards.** As proposed, the allowable size of ground-mounted equipment is increased to correspond with state statute.

Staff Recommendation

The purpose of introducing an ordinance is to give the city council the opportunity to review the ordinance before referring it to the planning commission for a recommendation. Introducing an
ordinance does not constitute an approval. The planning commission review of the proposed ordinance is tentatively scheduled for Mar. 1, 2018.

Staff recommends the council introduce the Telecommunications Facilities Ordinance and refer it to the planning commission.

Submitted through:
   Geralyn Barone, City Manager
   Julie Wischnack, AICP, Community Development Director
   Loren Gordon, AICP, City Planner

Originated by:
   Susan Thomas AICP, Assistant City Planner
Ordinance No. 2018-

An Ordinance amending the city’s telecommunication regulations;
Repealing section 300.34 of the Minnetonka City code
and adding a new section 310.03

The City of Minnetonka Ordains:

Section 1. Section 300.34 of the Minnetonka City Code, a copy of which is attached as Exhibit A, is repealed.

Section 2. The Minnetonka City Code is amended by adding a new section 310.03, in the form of the attached Exhibit B.

Section 3. This ordinance is effective on the date of its adoption.

Adopted by the city council of the City of Minnetonka, Minnesota on _________________, 2018.

Action on this Ordinance:

Date of introduction: Feb.5, 2018
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 _________________, 2018.

__________________________
David E. Maeda, City Clerk
Exhibit A

Ordinance to be Repealed
SECTION 300.34. TELECOMMUNICATIONS FACILITIES

1. Purpose and Intent.

The purpose of this section is to establish predictable and balanced regulations for the siting and screening of wireless telecommunication equipment in order to accommodate the growth of wireless communication systems within the city while protecting the public against any adverse impacts on the city’s aesthetic resources and the public welfare. This section recognizes that these wireless communication systems provide a valuable service to the public but that they are not a public utility. This section creates two categories of support structures for antennas. The first category consists of existing towers, water towers, and high density residential and non-residential buildings, which the ordinance favors in order to minimize the number of free-standing towers needed to serve the community. The second category consists of all other support structures. The structures in this second category are all classified as free-standing telecommunications towers even if they are intended to replace existing light poles, utility poles, or similar structures. Free-standing towers are subject to increased standards to minimize their visual impact. One such standard is that towers must use state-of-the-art stealth design techniques to disguise the towers and soften their views. A telecommunications company that does not currently use stealth technology will need to develop this capability in order to place free-standing towers in this city. This ordinance does not accept the lowest common denominator and challenges the telecommunications companies to improve their technology.

This ordinance allows minimal use of the public right-of-way for telecommunication antennas because that space should be reserved for public utilities and should be free of safety hazards. In addition, telecommunications facilities located in the right-of-way have the potential of being very visible to the traveling public. In order to locate in a public right-of-way, telecommunications companies must use improved technology to reduce the size and visibility of their facilities.

(Amended by Ord. 2010-11, adopted June 20, 2011; amended by Ord. 2009-14, adopted September 14, 2009)

2. Definitions.

For the purposes of this section, the terms below have the meaning given to them, unless the context clearly indicates a different meaning:

a) “Accessory equipment” means the wires, cables, and other equipment or facilities that are used with antennas.

b) “Antenna” means a device used for transmitting or receiving telecommunication, television or radio signals that is used for personal wireless telecommunication service or any other purpose, except a device used for the private enjoyment of those on the premises where it is
located, such as amateur radio antennas and antennas receiving television signals for viewing on site. “Antenna” also does not include a lightning rod.

c) “Antenna support structure” means an existing structure that is a telecommunications tower, high density residential or non-residential building, water tower, or electric transmission tower carrying over 200 kilo volts of electricity, that can be used for the location of antennas without increasing the mass of the existing structure.

d) “Engineer” means an engineer licensed by the state of Minnesota, or an engineer acceptable to the city if licensing is not available.

e) “Stealth design” means state-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the visual impact as much as reasonably possible. Examples of stealth design techniques include eliminating all horizontal projections; architecturally screening roof-mounted antennas and accessory equipment; integrating telecommunications facilities into architectural elements; nestling telecommunications facilities into the surrounding landscape so that the topography or vegetation reduces their view; using the location that would result in the least amount of visibility to the public, minimizing the size and appearance of the telecommunications facilities; and designing telecommunications towers to appear other than as towers, such as light poles, power poles, flag poles, and trees.

f) “Telecommunications facilities” means antennas, accessory equipment, and telecommunications towers.

g) “Telecommunications tower” or “tower” means a free-standing, self-supporting lattice, guyed, or monopole structure constructed from grade intended to support antennas, except towers used for amateur radio operations.

(Amended by Ord. 2011-11, adopted June 20, 2011; amended by Ord. 2009-14, adopted September 14, 2009)

3. Administrative Approval.

a) The city planner may grant administrative approval of the following telecommunication facilities:

1) Telecommunications facilities located on electric transmission towers carrying over 200 kilo volts of electricity.

2) Telecommunication facilities located on an antenna support structure that has already been approved by a conditional use permit as the location for a telecommunication facility, if the proposed facility does not involve a variance and is not accompanied by any other matter requiring consideration by the planning commission or city council.

3) A one-time 15-foot extension of an existing monopole telecommunications structure or one-time replacement of an existing monopole by a tower no greater than 15-feet taller than the existing monopole may be administratively approved if the proposed facility does not involve a variance and is not accompanied by any other matter requiring consideration by the planning commission and city council; and

4) Telecommunication facilities that are attached to an existing public utility structure within a right-of-way if:
a. the telecommunication facility does not extend above the top of the existing utility structure and the height of the existing utility structure is not increased to accommodate the telecommunication facility;

b. any replacement utility structure does not exceed the height of the existing utility structure, including the telecommunication facility, and does not exceed the diameter of the existing utility structure by more than 50 percent;

c. the telecommunication facility is no larger than three cubic feet and has no individual surface larger than four square feet;

d. the telecommunication facility uses stealth design as much as possible, but in no event extends outward from the utility structure beyond two and one-half feet or three feet for an antenna that is one half inch in diameter or less;

e. there is no ground mounted equipment;

f. there is no interference with public safety communications or with the original use of the public utility structure; and

g. the telecommunication facility must be removed and relocated when the road authority requires the removal and relocation of the public utility structure.

b) Administrative review and approval is subject to the following:

1) Submittal of a complete site and building plan review application, accompanied by a registered land survey, complete site plan, building elevations, and antenna elevations and be signed by a registered architect, civil engineer, landscape architect or other appropriate design professional.

2) Submittal of an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of the applicant's system. The applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis; and

3) Submittal of any necessary easements and easement exhibits, which have been prepared by an attorney knowledgeable in the area of real estate and which are subject to the city attorney's approval.

c) The city planner will render a decision within 30 days and serve a copy of the decision upon the applicant by mail.

d) Any person aggrieved by a decision of the city planner may appeal the decision to the planning commission in the manner specified in section 300.04 of this ordinance.

(Amended by Ord. 2011-11, adopted June 20, 2011; amended by Ord. 2010-06, adopted April 5, 2010; added by Ord. 2009-14, adopted September 14, 2009)


Telecommunications facilities that are not eligible for administrative approval under subdivision 3 are permitted only as a conditional use in all zoning districts and must be in compliance with the provisions of this section.
a) Conditional use telecommunication facilities are subject to the review procedures outlined in section 300.06 of this ordinance.

b) Conditional use telecommunications facilities are subject to the following standards:

1) Residential and commercial zoning districts.

   a. Telecommunication facilities may be located only on public or institutional property: in R-1 and R-2 residential districts and on property guided for low-density residential in the Planned I-394 District subject the standards listed in subparagraphs b through e which follow.

   b. An applicant must provide an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of its system and that there is no existing antenna support structure that could adequately serve the area if antennas were placed on it. The applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis;

   c. A telecommunications facility must use as many stealth design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide stealth design techniques. The city council may require that a different location be used if it would result in less public visibility, is available, and would meet the applicant’s reasonable capacity and coverage needs; and

   d. A telecommunications tower and antennas, including attachments other than lighting rods, must not exceed 75 feet in height, measured from grade. The city council may increase this height to 90 feet if the increase in height would not have a significant impact on surrounding properties because of proximity, topography or screening by trees or buildings or would accommodate two or more users. The city council may waive this height standard for a tower used wholly or partially for essential public services, such as public safety.

   e. Telecommunications facilities may be located in public right-of-way of a major collector or arterial roadway as defined in the comprehensive plan, if they meet all of the following requirements:

      1. The facility is not located within a special area designated subdivision 7;

      2. The facility is not located adjacent to residually zoned property unless the applicant demonstrates by providing a study prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of its system and no other location is feasible in a non-residential zone;

      3. The facility must use as many stealth design techniques as reasonably possible. In particular, the antennas must be designed to minimize their size and appearance. Economic considerations alone are not justification for failing to provide stealth design techniques; and

      4. The facility must also comply with the requirements in subdivision 6(k) below.

2) Industrial districts.

   a. Antennas may be located in industrial districts on an antenna support structure, a public utility facility, or a telecommunications tower and may be on any right-of-way. Antennas on a right-of-way must also comply with the requirements in subdivision 5(k) below.
b. In industrial districts, a telecommunications tower, including attachments other than lighting rods, may not exceed 150 feet in height, measured from grade. The city council may allow towers up to 199 feet high if the applicant can demonstrate that off-site views of the tower will be minimized by the topography of the site and surrounding area, the location of the tower, the tower design, the surrounding tree cover and structures, or the use of screening. The city council may waive this height standard for a tower used wholly or partially for essential public services, such as public safety.

c. No part of a tower in an industrial district may have a horizontal area of more than 500 square feet.

d. An applicant must provide an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of its system and that there is no existing antenna support structure that could adequately serve the area if antennas were placed on it. The applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis.

e. A telecommunications facility must use as many stealth design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide stealth design techniques. The city council may require that a different location be used if it would result in less public visibility, is available, and would meet the applicant's reasonable capacity and coverage needs.

(Amended by Ord. 2011-11, adopted June 20, 2011; amended by Ord. 2010-06, adopted April 5, 2010; amended by Ord. 2009-14, adopted September 14, 2009)

5. General Standards.

The following standards apply to all telecommunications facilities.

a) Vertical projection on antenna support structures. Antennas mounted on an antenna support structure must not extend more than 15 feet above the height of the structure to which they are attached. Wall or facade-mounted antennas may not extend above the cornice line and must be constructed of a material or color that matches the exterior of the building.

b) Horizontal projection. Antennas must not project out from the side of the antenna support structure or tower, unless it is physically impossible to locate the antennas within the structure or tower, in which case they must not project out by more than three feet by more than three feet.

c) Setbacks. A tower adjacent to a R-1, R-2, or R-3 zoning district must meet the building setback that is established for the district where it is to be located, but only from the residential zone. This setback is not required for a tower in a right-of-way. The city may waive this setback requirement if necessary to implement stealth design techniques or if the residentially zoned property is public or institutional property. An accessory equipment cabinet that is greater than 120 square feet in size must be at least ten feet from all property lines.

d) Height. The height of an antenna and tower must be the minimum necessary to meet the applicant’s coverage and capacity needs, as verified by an electrical engineer or other appropriate professional. The city council may waive this requirement if additional height is appropriate for co-location opportunities.
e) Exterior surfaces. Towers and antennas must be painted a non-contrasting color consistent with the surrounding area such as: blue, gray, brown, or silver, or have a galvanized finish to reduce visual impact. Metal towers must be constructed of, or treated with, corrosion-resistant material.

f) Ground-mounted equipment. Ground-mounted accessory equipment or buildings must be architecturally designed to blend in with the surrounding environment, including the principal structure, or must be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the character of the surrounding neighborhood. No more than one accessory building is permitted for each tower. Additional space needed for the co-location of antennas must be added to an existing accessory building in a manner to make it appear as one building. Design of the building or equipment cabinet, screening and landscaping are subject to a site plan review under section 300.27 of this code.

g) Construction. Telecommunications facilities must be in compliance with all building and electrical code requirements. A tower must be designed and certified by an engineer to be structurally sound and in conformance with the building code. Structural design, mounting and installation of the telecommunications facilities must be in compliance with the manufacturer’s specifications.

h) Co-location opportunity. If a new tower over 60 feet in height is to be constructed:

1) the tower must be designed to accommodate both the applicant’s antennas and antennas for at least one additional comparable user;

2) the tower must be designed to accept antennas mounted at additional heights;

3) the applicant, the tower owner, the landowner, and their successors must allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use, must submit a dispute over the potential terms and conditions to binding arbitration, and must sign the conditional use permit agreeing to these requirements. The city council may waive these co-location requirements if necessary to implement stealth design.

i) External messages. No advertising message or identification sign larger than two square feet may be affixed to the telecommunications facilities.

j) Lighting. Telecommunications facilities may not be artificially illuminated unless required by law or by a governmental agency to protect the public’s health and safety or unless necessary to facilitate service to ground-mounted equipment.

k) Rights-of-way. All telecommunication facilities in a public right-of-way must comply with the following:

1) Telecommunications facilities located within a right-of-way must not negatively impact the public health, safety and welfare, interfere with the safety and convenience of ordinary travel over the right-of-way, or otherwise negatively impact the right-of-way or its users. In determining compliance with this standard, the city may consider one or more of the following factors:

   a.) the extent to which right-of-way space where the permit is sought is available, including the placement of the ground equipment;

   b.) the potential demands for the particular space in the right-of-way;
c.) the availability of other locations in a right-of-way that would have less public impact;

d.) the extent to which the placement of the telecommunications facilities minimizes impacts on adjacent property; and

e.) the applicability of ordinances or other regulations of the right-of-way that affect location of equipment in the right-of-way;

2) The facility, including attachments other than lighting rods, may not exceed 60 feet in height measured from grade in residential and commercial zones, or 75 feet in industrial zones. The city council may waive this height standard for a facility used wholly or partially for essential public services, such as public safety;

3) The support structure for the antennas cannot exceed the diameter of the closest public utility pole by more than 50 percent, but in no event may exceed 18 inches in diameter;

4) Antennas and other components must not project out from the side of the support structure by more than two feet in residential and commercial districts or three feet in industrial districts;

5) The support structure for the antennas must match the materials and color of the closest public utility structures in the right-of-way, if required by the city planner;

6) Ground mounted equipment will be allowed only if:

   a. the equipment will not disrupt traffic or pedestrian circulation;
   b. the equipment will not create a safety hazard;
   c. the location of the equipment minimizes impacts on adjacent property; and
   d. The equipment will not adversely impact the health, safety, or welfare of the community;

7) Ground mounted equipment must be:

   a. set back a minimum of 10 feet from the existing or planned edge of the pavement;
   b. separated from a sidewalk or trail by a minimum of 3 feet;
   c. set back a minimum of 50 feet from the nearest intersection right-of-way line;

   d. set back a minimum of 50 feet from the nearest principal residential structure;
   e. separated from the nearest ground mounted telecommunication facilities in a right-of-way by at least 330 feet;

   f. no larger than 3 feet in height above grade and 27 cubic feet in size in residential districts;
   g. no larger than 5 feet in height above grade and 81 cubic feet in size in non-residential districts; and
   h. screened by vegetative or other screening compatible with the surrounding area if deemed necessary by the city planner;

8) The antennas cannot interfere with public safety communications;
9) The telecommunication facility must be removed and relocated when the road authority requires the removal and relocation of public utility structures; and

10) Telecommunications facilities within a right-of-way must receive a right-of-way permit from the appropriate road authority.

l) On-site employees. There must be no employees on the site on a permanent basis. Occasional or temporary repair and service activities are allowed.

m) Landowner authorization. When applicable, the applicant must provide written authorization from the property owner. The property owner must sign the conditional use permit agreeing to the permit conditions, agreeing to remove the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city’s right to assess removal costs under paragraph (n) below.

n) Removal. Obsolete telecommunications facilities must be removed within 90 days after cessation of their use at the site, unless an exemption is granted by the city council. Unused telecommunications facilities and all related equipment must be removed within one year after cessation of operation at the site, unless an exemption is granted by the city council. Telecommunications facilities and related equipment that have become hazardous must be removed or made not hazardous within 30 days after written notice to the current owner and to any separate landowner, unless an exemption is granted by the city council. Notice may be made to the address listed in the application, unless another one has subsequently been provided, and to the taxpayer of the property listed in the Hennepin county tax records. Telecommunications facilities and all related equipment that are not removed within this time limit are declared to be public nuisances and may be removed by the city. The city may assess its costs of removal against the property.

o) Historic Places. No telecommunication tower may be located with 400 feet of the boundary of any property that contains a facility or structure listed on the national register of historic places. Antennas may be located in this restricted area only if they are hidden from public view.

(Amended by Ord. 2011-11, adopted June 20, 2011; amended by Ord. 2010-06, adopted April 5, 2010)

6. Special Area Requirements.

a) The special areas of Minnetonka Mills, Glen Lake Station and Minnetonka Boulevard/County Road 101 are recognized within the comprehensive plan as unique neighborhood commercial nodes. They are planned to have improved street appeal including pedestrian walkways with landscaped boulevards and street lights, buried utilities, and coordinated signs and facade improvements. Accordingly, there is a presumption that telecommunication facilities are prohibited in these areas. An applicant may overcome this presumption by submitting an analysis prepared by a radio or electrical engineer showing that no other available location allowed under this ordinance would meet its reasonable coverage and capacity needs. The applicant must pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis.

b) If telecommunications facilities are permitted in these special areas under paragraph (a) above, then the installation of telecommunications facilities in these special areas must meet the following additional standards:
1) Ground-mounted accessory equipment must be placed within a principal building. If space is not available in the principal building, an accessory building may be used if it meets the applicable district standards and is constructed of building materials similar to the principal building; and

2) Telecommunications facilities cannot be within the right-of-way or within any front yards. The city council may waive one or both of these additional standards if the proposal would provide public benefit, such as improving the current aesthetics of the site.

(Amended by Ord. 2009-14, adopted September 14, 2009)

(Section added by Ord. #2002-03, adopted January 7, 2002)
SECTION 310.03 TELECOMMUNICATION FACILITIES REGULATIONS

1. Purpose and Findings

a) Purpose. The purpose of this section is to establish predictable and balanced regulations for telecommunication facilities and systems in order to accommodate such within the city, while protecting the community against any adverse impacts to the public welfare or aesthetic resources.

b) Findings. The City of Minnetonka finds the following:

1) Wireless telecommunication systems provide a valuable service to the public. However, telecommunications facilities and systems are not a public utility nor part of the public infrastructure system.

2) To promote and preserve the public health, safety, welfare, and aesthetics of the community, the location, design, construction, and modification of telecommunication facilities and systems must be regulated.

3) To minimize the visual impact of telecommunication facilities:

a. installation of facilities on existing support structures is favored over installation of new, freestanding telecommunication towers;

b. new telecommunication towers must be designed to accommodate more than one telecommunication provider and must incorporate stealth design techniques; and

4) To minimize safety hazards and visual impacts, and to ensure continued and adequate space for public utilities, public right-of-way should be minimally used for telecommunication facilities.

c) Severability. Every section, subdivision, clause or phrase of this section 310.03 is declared separable from every other section, subdivision, clause or phrase. If any such part is held to be invalid by competent authority, no other part shall be invalidated by such action or decision.

2. Definitions

For the purpose of this ordinance, the terms below have the meaning given to them, unless the context clearly indicates a different meaning:

a) “Accessory Equipment” – means wires, cables, generators, or other equipment or apparatus associated with an antenna and necessary for telecommunication transmission.
b) “Antenna” – any device used for the transmission or reception of wireless radio television, or electromagnetic waves for cellular, internet service, personal communication service, enhances specialized mobilized radio service, or television purposes.

c) “Engineer” – an engineer licensed by the state of Minnesota, or an engineer acceptable to the city if licensing is not available.

d) “Stealth Design” – design intended to minimize visual impact of an object on its surroundings. Examples of stealth telecommunication design include: eliminating horizontal projections; screening with other architectural elements; nestling into surrounding landscape such that natural topography or vegetation reduces views; locating in areas that would result in the least amount of visibility to the public; minimizing size; and designing a telecommunications facility to appear as something other than a telecommunications facility.

e) “Support Structure” – an existing structure on which antenna can be mounted without increasing the mass of the existing structure. Examples of support structures include: telecommunication tower, building, water tower, electrical transmission tower.

f) “Telecommunication Facility” – antennas, associated equipment, and support structures.

g) “Tower” – a freestanding, self-supported structure constructed from grade for the purpose of supporting one or more antenna.

3. Citation; Administration and Enforcement.

a) Citation. This section 310.03 may be cited as the Minnetonka Telecommunications Ordinance.

b) Administration and Enforcement. Administration and enforcement of this section 310.03 is governed by section 300.03.

4. PERMITS; PROCEDURES AND VARIANCES.

a) Administrative Permits. The city planner or their designee may administratively approve permits for the following telecommunication facilities, provided the facilities do not involve a variance or any other matter requiring consideration by the planning commission or city council:

1) Telecommunication facilities located on electric transmission towers carrying over 200 kilo volts of electricity.

2) Telecommunication facilities located on a telecommunication support structure for which a conditional use permit has already been approved

3) A one-time 15-foot extension of an existing telecommunication tower or one-time replacement of a telecommunication tower by a tower no greater than 15 feet taller than the original, existing tower up to a maximum height of 90 feet.
4) Telecommunication facilities located on public utility structures within public rights-of-way, if the facility:
   a. Does not extend above the top of the existing utility structure by more than 10 feet;
   b. Is a replacement utility structure that does not exceed 50 feet in height or the height of the existing utility structure, whichever is greater, and does not exceed the diameter of the existing utility structure by more than 50 percent; and
   c. Includes no component larger than six cubic feet in size.

b) Conditional Use Permits. Any telecommunication facility that is not eligible for an administrative permit may be allowed only by conditional use permit.

c) Permit Application Procedure.

1) Applications for both administrative and conditional use permits must be on the appropriate form provided by the city and must include all of the following, unless otherwise waived by city staff:
   • Name of the wireless telecommunication provider that will utilize the facility and provider’s consent to the application;
   • Registered land survey;
   • Site plan;
   • Any necessary easements and easement exhibits;
   • Support structure elevations;
   • Construction drawings signed by a registered architect, civil engineer, landscape architect or other appropriate design professional;
   • Coverage and capacity analysis prepared by a radio or electrical engineer, which demonstrates that the location of the proposed facility is necessary to meet the coverage and capacity needs of the wireless telecommunication providers system; and
   • Cash escrow to cover the reasonable expense of a radio or electrical engineer retained by the city, at its option, to review the coverage and capacity analysis and to conduct an interference study.

2) Administrative permit applications are subject to the review of the city planner, who will render a decision within time periods provided by Minnesota Statute 15.99 and Minnetonka City Code 1120 as applicable and will serve a copy of that decision upon the applicant by mail. Any person aggrieved by the decision of the city planner may appeal the decision to the planning commission in the manner specified in section 300.04 of this ordinance.

3) Conditional use permit applications are subject to the review procedures outlined in section 300.06 of this ordinance

4) A variance from the regulations in this ordinance requires a separate application, according to the procedures in section 300.07 of this code.
5. **General Regulations**

a) **All facilities.** All telecommunication facilities, administratively or conditionally permitted, are subject to the following general regulations:

1) **Service Provider.** A telecommunications service provider must be identified for the proposed telecommunication facility and must occupy the facility with twelve months of approval.

2) **Historic Places.** No telecommunications facility may be located with 400 feet of the boundary of any property that contains a facility or structure listed on the national register of historic places.

3) **Construction.** Telecommunications facilities must be in compliance with all building and electrical code requirements. A tower must be designed and certified by an engineer to be structurally sound and in conformance with the building code. Structural design, mounting and installation of the telecommunications facilities must be in compliance with the manufacturer’s specifications.

4) **Collocation.** New towers must be designed to accommodate more than one telecommunication provider at more than one height within the tower, unless it is physically impossible or impractical to do so at the tower’s proposed location. In addition, the applicant, tower owner, landlord, and their successors must agree in writing to: (1) meet reasonable terms and conditions for shared use; (2) submit a dispute over the potential terms and conditions to binding arbitration.

5) **Stealth Design.** Facilities must use as many stealth design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide stealth design techniques.

6) **Location.** Facilities must be located in an area that will meet the applicant’s reasonable coverage and capacity needs. However, the city may require that a different location be used if it would result in less public visibility, is available, and would continue to meet the applicant’s reasonable capacity and coverage needs.

7) **Landowner authorization.** When applicable, the applicant must provide written authorization from the property owner. The property owner must sign the conditional use permit agreeing to the permit conditions, agreeing to remove the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city’s right to assess removal costs under paragraph (l) below.

8) **Removal.** Obsolete telecommunications facilities must be removed within 90 days after cessation of their use at the site, unless an exemption is granted by the city council. Unused telecommunications facilities and all related equipment must be removed within one year after cessation of operation at the site, unless an exemption is granted by the city council. Telecommunications facilities and related equipment that have become hazardous must be removed or made not hazardous within 30 days after written notice to the current owner and to any separate landowner, unless an exemption is granted by the city council. Notice may be made to the address listed in the application, unless another one has subsequently been provided, and
to the taxpayer of the property listed in the Hennepin County tax records. Telecommunications facilities and all related equipment that are not removed within this time limit are declared to be public nuisances and may be removed by the city. The city may assess its costs of removal against the property.

b) **Facilities located within public right-of-way.** In addition to the regulations outlined in the previous section, telecommunication facilities located within the public right-of-way are subject to the following general regulations:

1) Facilities are subject to the requirements of Section 1120, Right-of-Way Management.

2) Facilities may not impact the public health, safety, or welfare, interfere with safety and convenience of ordinary travel over the right-of-way, or otherwise negatively impact the right-of-way or its users. In determining compliance with this standard, the city may consider one or more of the following factors:

   a. The extent to which right-of-way space is available for the proposed facility, including accessory equipment.

   b. The potential demand for the particular space in the right-of-way less public impact.

   c. The availability of other locations in the right-of-way that would have less public impact.

   d. The extent to which the facility placement minimizes impacts on adjacent property.

   e. The applicability of ordinances or other regulations that may affect the location of the facility or accessory equipment.

3) Facilities must be removed when required by the road authority.

6. **Specific Regulations**

a) **Facilities located outside of public right-of-way.** All telecommunication facilities, administratively or conditionally permitted, are subject to the following specific regulations:

1) Location. Telecommunication facilities may be located within any zoning district. However, on properties guided low-density residential, facilities may only be located on public or institutional property.

2) Height. Maximum tower height, excluding lightning rods, is restricted based on the land use designation of property on which the tower is located:
### Land Use Designation

<table>
<thead>
<tr>
<th>Land Use Designation</th>
<th>Single-User Tower</th>
<th>Multiple-User Tower</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low and Medium Density</td>
<td>60 feet</td>
<td>90 feet</td>
</tr>
<tr>
<td>High Density</td>
<td>75 feet</td>
<td>90 feet</td>
</tr>
<tr>
<td>Office, Commercial</td>
<td>75 feet</td>
<td>90 feet</td>
</tr>
<tr>
<td>Industrial</td>
<td>150 feet</td>
<td>150 feet</td>
</tr>
<tr>
<td>Institutional</td>
<td>60 feet</td>
<td>90 feet</td>
</tr>
</tbody>
</table>

The city council may increase height if the applicant can demonstrate that the increase would not have a significant impact on surrounding properties because of things like proximity, topography, or screening by trees or buildings. The council may likewise waive height restrictions for towers wholly or partially for essential public services, such as public safety.

3. **Setbacks.** Towers located adjacent to low or medium-density residential properties must meet the minimum setback requirements established for principal structures within the associated residential zoning district, but only from the property line abutting the residential district. The city council may waive the setback requirement if necessary to implement stealth design techniques. Accessory equipment must meet minimum setback requirements established for accessory structures within the zoning district.

4. **Horizontal Projection.** Antennas may not project out from an antenna support structure or tower, unless it is physically impossible to locate the antenna with the structure or tower, in which case they may not project out more than three feet.

5. **Vertical Projection.** Antennas mounted on an antenna support structure may not extend more than 15 feet above the structure to which they are attached. Wall or façade-mounted antennas may not extend above the cornice line and must be constructed of a material or color that matches the exterior of the building.

6. **Accessory Equipment.** Accessory equipment or buildings must be architecturally designed to blend in with the surrounding natural or built environment or must be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the character of the surrounding neighborhood. No more than one accessory building is permitted for each tower. If additional space is needed to accommodate the co-location of antennas, the existing accessory building must be expanded or a new accessory building must be constructed adjacent and complementary to the existing building. Design of the building or equipment cabinet, screening and landscaping are subject to a site plan review under section 300.27 of this code.

7. **Color.** Antennas and towers must be painted a non-contrasting color consistent with the surrounding area such as: blue, gray, brown, or silver, or have a galvanized finish to reduce visual impact. Metal towers must be constructed of, or treated with, corrosion-resistant material.
8) Lighting. Telecommunications facilities may not be artificially illuminated unless required by law or by a governmental agency to protect the public’s health and safety or unless necessary to facilitate service to ground-mounted equipment.

b) Facilities located within public right-of-way. All telecommunication facilities, administratively or conditionally permitted, are subject to the following specific regulations:

1) Location.

a. Unless located in an industrial district, facilities are only permitted within the right-of-way of collector or arterial streets as defined in the Comprehensive Guide Plan. However, in no case are facilities permitted within certain village centers as designated in Subdivision 3 of this section.

b. Facilities are not permitted adjacent to residentially zoned property unless an applicant demonstrates, by providing a study prepared by a radio or electrical engineer, that the proposed location is necessary to reasonably meet the coverage and capacity needs of its system and no other location is feasible in a non-residential area.

2) Height. Maximum height, including attachments other than lightning rods, is restricted based on the land use designation of property adjacent to the proposed facility:

<table>
<thead>
<tr>
<th>Adjacent Land Use Designation</th>
<th>Maximum Height</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>60 feet</td>
</tr>
<tr>
<td>Office, Commercial</td>
<td>60 feet</td>
</tr>
<tr>
<td>Industrial</td>
<td>75 feet</td>
</tr>
<tr>
<td>Institutional</td>
<td>60 feet</td>
</tr>
</tbody>
</table>

The council may waive height restrictions for facilities wholly or partially for essential public services, such as public safety.

3) Width. The support structure or tower cannot exceed the width of the closest public utility pole by more than 50 percent, but in no case may it exceed 18 inches in diameter.

4) Horizontal Projection. Antennas may not project out from a support structure or tower, unless it is physically impossible to locate the antenna with the structure or tower, in which case they may not project out more than two feet.

5) Vertical Projection. Antennas mounted on an antenna support structure may not extend more than 10 feet above the structure to which they are attached.

6) Facility Separation. Telecommunication facilities must be separated by at least 330 feet.
7) Ground mounted accessory equipment.
   
   a. Equipment will be allowed only if it will not adversely impact public health, safety, or welfare of the community. In determining compliance with this standard, the city may consider one or more of the following factors:
      
      1. Whether the equipment will disrupt vehicle traffic or pedestrian circulation.
      
      2. Whether the equipment location and screening minimizes impact on adjacent properties.
   
   b. Equipment must not exceed the following size limits:

<table>
<thead>
<tr>
<th>Adjacent Land Use Designation</th>
<th>Maximum Height</th>
<th>Maximum Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>3 feet</td>
<td>28 cubic feet</td>
</tr>
<tr>
<td>Non-Residential</td>
<td>5 feet</td>
<td>81 cubic feet</td>
</tr>
</tbody>
</table>

   c. Equipment must meet the following setbacks requirements.

<table>
<thead>
<tr>
<th>Minimum Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing or planned edge of roadway pavement</td>
</tr>
<tr>
<td>Existing or planned edge of sidewalk or trail</td>
</tr>
<tr>
<td>Nearest intersection right-of-way line</td>
</tr>
<tr>
<td>Nearest principal residential structure</td>
</tr>
</tbody>
</table>

   d. Equipment must be screened by vegetative or other screening compatible with the surrounding area, as required by the city.

8) Color. The support structure or tower must match the materials and colors of the closest public utility structures located within the right-of-way, or as required by the city.

9) Lighting. Telecommunications facilities may not be artificially illuminated unless required by law or by a governmental agency to protect the public’s health and safety or unless necessary to facilitate service to ground-mounted equipment.

c) Facilities located within certain village centers. All telecommunication facilities, administratively or conditionally permitted, are subject to the following specific regulations:

1) The Glen Lake Station and Minnetonka Boulevard/County Road 101 Community Village Centers, and the Minnetonka Mills Area Special Purpose Village Center are recognized within the Comprehensive Guide Plan as unique commercial nodes. These village
centers represent the earliest developed commercial areas in the city. They have existing and anticipated pedestrian designs unique within Minnetonka, typified by sidewalks, trails, landscaped boulevards, street lights, and buried utilities. Accordingly, there is a presumption that telecommunication facilities are prohibited in these areas. An applicant may overcome this presumption by submitting an analysis prepared by a radio or electrical engineer showing that no other available location allowed under this ordinance would meet its reasonable coverage and capacity needs.

2) If telecommunication facilities are permitted in these special village centers under paragraph (a) above, then the installation of the facilities must meet the following additional standards:

a. Accessory equipment must be located within a principal building. If space is not available in the principal building, an accessory building may be used. The accessory building must meet the construction standard of the applicable zoning district and must complement the principal structure design and materials.

b. Telecommunication facilities may not be located within public right-of-way or within any front yard. The council may waive one or both of these restrictions if the proposal would provide a public benefit, such as improving the existing site aesthetics.

7. Exceptions

This ordinance does not apply to any facility or device that is used for the private enjoyment of those on the premises where it is located. Examples include: amateur radio antennas and antennas receiving television signals for viewing on site. Such facilities or devices are considered accessory uses and are regulated as such in each zoning district.
Brief Description 2018 Community Development Block Grant funds

Recommendation Hold the public hearing and adopt the resolution

Background

Since 1974, the Community Development Block Grant (CDBG) program, overseen by the U.S. Department of Housing and Urban Development (HUD), provides federal funds to implement a range of economic and community development activities. Based upon the needs, priorities, and benefits to the community, CDBG activities are developed and the division of funding is determined at a local level. All funded activities must meet at least one of the three national objectives:

- Benefit low and moderate income persons
- Help prevent and/or eliminate slums and/or blight
- Meet other community development needs of particular urgency

Minnetonka’s 2018 CDBG Allocation

In 2018, the City of Minnetonka will be part of the Urban County CDBG Program. Under the Urban County CDBG program, the city is notified annually by Hennepin County of its CDBG allocation based on a formula used by HUD and the yearly grant dollars directed into the national CDBG program. The distribution formula is based on population, individuals with incomes at or below the poverty level, and the number of overcrowded housing units. This relationship was established by the council on June 12, 2017, through a Joint Cooperation Agreement between the county and the city, which allows the county to administer the grant dollars and ensure federal compliance.

The advantages of participating in the Urban County CDBG Program include:
- The city does not have to submit its own annual action plan or certifications
- The county handles most or all IDIS software activity reporting
- The county completes environmental reviews
- The city does not need to individually meet spend-down timeliness tests (the tests would instead be applied across the entire county program)
- The county coordinates fair housing activities
- The county conducts monitoring of the public service agency recipients

For CDBG program year 2018, the estimated direct city allocation for Minnetonka is $132,000 (The city’s 2017 allocation under the city’s entitlement election was $136,926). If the final allocation, which will be announced between May and July, is different from this amount the funding amounts will be adjusted on a pro-rata basis. Following HUD’s announcement of the funding allocation amount this summer, staff will coordinate with Hennepin County to finalize the
subrecipient agreement and any third-party agreements. A draft subrecipient agreement is attached to the report.

The CDBG program year is July 1 to June 30, which differs from the city’s fiscal year of Jan. 1 to Dec. 31. Because of this, the city’s budget only reflects CDBG funds spent during its fiscal year, and does not reflect the true annual CDBG allocation. All finances and allocation years in this report refer to the federal program year.

Table 1: Key Components of Minnetonka’s CDBG Program:

<table>
<thead>
<tr>
<th>COMPONENT</th>
<th>RECOMMENDED FUNDING</th>
<th>Percentage of CDBG Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Services</td>
<td>$19,800</td>
<td>15%</td>
</tr>
<tr>
<td>Small Projects Housing Rehabilitation</td>
<td>$112,200</td>
<td>85%</td>
</tr>
<tr>
<td>Total</td>
<td>$132,000</td>
<td>100%</td>
</tr>
</tbody>
</table>

Public Services

Beginning with the 2018 program year, CDBG funding for public service activities will be awarded through a single combined, competitive Request for Proposals (RFP) covering all the cities in the county CDBG program. Fifteen percent of the overall county CDBG allocation will be set-aside for this purpose. All public services agencies that previously received public service funding through CDBG have been directly notified of the consolidated RFP process for 2018. Upon request, staff provided letters of support for agencies that were previously funded through Minnetonka’s CDBG Program. Additionally, the RFP was advertised on the city website and through social media. The process for awarding 2018 public service funding is outlined below:

- Jan. 2018 – Hennepin County and Minnetonka advertised the consolidated RFP Application Process
- Feb. 2018 – Interested public service agencies serving Minnetonka submit their applications to Hennepin County by Feb. 27, 2018
- March 2018– A selection committee comprised of staff from cities in suburban Hennepin County (including Minnetonka) will review applications and make funding recommendations to the Hennepin County Board.
- May to July 2018 – Hennepin County Board and HUD approve funding awards.
- July 1, 2018 to June 30, 2019 – 2018 CDBG Program Year

HOME Line Funding Request

Beth Kodluboy, Executive Director of HOME Line, presented at the Nov. 27, 2017 Economic Development Advisory Commission (EDAC) meeting to request program funding support for 2018. Public service agencies are typically funded through CDBG; however, due to continuing concerns by HUD about applicant eligibility verification for HOME Line, staff is recommending that HOME Line be funded at $5,200 through the Development Account. This approach was discussed by the city council during budget deliberations in 2016 and recommended by the EDAC at the Nov. 27, 2017 meeting. The unapproved minutes from that meeting are attached as a reference.
HOME Line received $4,000 in funding through the Development Fund in 2017 and $2,000 from the Development account in 2016.

**Small Projects Program**

The Small Projects Program (formerly called the Emergency Repair Program) offers ten-year, no-interest deferred loans of up to $5,000. The program focuses on smaller and more urgent rehabilitation needs, providing more immediate assistance to homeowners. Minnetonka’s rehabilitation programs began in 1975 and since then, over 597 Minnetonka homeowners have benefited, utilizing over $4.2 million for home improvements. To qualify, applicants must have an income at or below 80 percent of area median income, adjusted for size. (Table 2) Staff is anticipating that the county will take over the administration of the program beginning July 1, 2018.

**Table 2: 2017 Income Limits (2018 limits are anticipated to be released in April)**

<table>
<thead>
<tr>
<th>Household Size</th>
<th>80% of Median Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 person</td>
<td>$47,600</td>
</tr>
<tr>
<td>2 persons</td>
<td>$54,400</td>
</tr>
<tr>
<td>3 persons</td>
<td>$61,200</td>
</tr>
<tr>
<td>4 persons</td>
<td>$68,000</td>
</tr>
<tr>
<td>5 persons</td>
<td>$78,900</td>
</tr>
<tr>
<td>6 persons</td>
<td>$84,350</td>
</tr>
<tr>
<td>7 persons</td>
<td>$84,350</td>
</tr>
<tr>
<td>8 persons</td>
<td>$89,800</td>
</tr>
</tbody>
</table>

Table 3 describes the two-year use of the program. The number of qualifying applicants differs from total projects completed and in progress, because projects may take more than one year to complete.

**Table 3: Small Projects Program Two-Year Program Summary**

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum deferred loan allowed</td>
<td>$5,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Average deferred loan approved</td>
<td>$4,812</td>
<td>$4,898</td>
</tr>
<tr>
<td>Total Pre-Applicants</td>
<td>74</td>
<td>34</td>
</tr>
<tr>
<td>Qualifying Applicants</td>
<td>50</td>
<td>22</td>
</tr>
<tr>
<td>Projects Completed</td>
<td>31</td>
<td>8</td>
</tr>
<tr>
<td>Projects Still in Progress</td>
<td>12</td>
<td>14</td>
</tr>
<tr>
<td>TOTAL EXPENDITURES</td>
<td>$144,665</td>
<td>$74,186</td>
</tr>
</tbody>
</table>

Staff processed a total of 34 Small Projects Program pre-applications in July. The pre-application process was delayed a few months in 2017 due to the delayed disbursement of CDBG funding.
from HUD in 2017. Because of the income verification requirements, full applications are
distributed for eligibility once the project manager reviews the income eligibility of participants.
Therefore, the total application numbers shown above differ from the total pre-applications
received. The 2017 budget indicates funding for this area is $120,930, which is available through
June 30, 2018.

Administration

Under the Urban County CDBG Program, the county will retain 13% of the total CDBG allocation
for administrative purposes in 2018, but as much as 15% (in future years) if deemed necessary
for future administration of the program and fair housing activities. Under the Urban County CDBG
Program, the county would receive approximately $17,160 for the overall management of the
program (based on the estimated 2018 CDBG allocation).

The county fee to administer the rehabilitation program specifically is an additional 12% of the
rehab allocation (approximately $13,464 based on the estimated 2018 allocation of the
rehabilitation funds). This fee is similar to the administration fee charged for the Welcome to
Minnetonka and Minnetonka Home Enhancement Programs that are managed by the Center for
Energy and Environment.

Fair Housing Activities

To fulfill the fair housing component that HUD requires, the city is currently a member of the
Hennepin Housing Consortium and receives the benefits that the consortium provides, including
inclusion in Hennepin County’s Consolidated Plan. By electing to participate in the Urban
Hennepin County CDBG program, the city would still be a member of the Hennepin Housing
Consortium, and receive the benefits the consortium provides for housing programs. The county
will retain one percent ($1,320) of the total allocation amount for fair housing activities on the city’s
behalf. This is consistent with prior year expenditures for fair housing activities.

HUD Compliance

To receive CDBG funds, the city must comply with the regulations of the program, which are
enforced by HUD. HUD ensures compliance through an on-site audit, and monitoring of the city’s
spending of funds.

HUD also monitors the city’s spend down of funds. The city must be continually putting the funds
into use. By May 1, 2018, the city can only have $236,079 of unspent funds (1.5 times the current
grant amount). Currently, the city has $273,858 of unspent funds and is in the process of reviewing
additional applicants for the small project program in order to meet the spend down requirement.
Future CDBG Funding

For many years, there has been discussion at the federal level regarding the future of CDBG funding. As outlined in the Economic Improvement Program, it is anticipated CDBG funding will continue to decrease and will no longer be available at some future time. Staff communicates with CDBG funding recipients, so as more information is known these recipients will be kept up to date.

Recommendation

Staff recommends the city council:

1) Hold the public hearing on the use of 2018 CDBG funds,
2) Adopt the resolution approving the proposed allocation for 2018 Urban Hennepin County Community Development (CDBG) program funds, and;
3) Authorize the negotiation and execution of a subrecipient agreement with Urban Hennepin County and any third party agreements, and;
4) Approve funding for HOME Line in the amount of $5,200 from the Development Account for 2018.

Submitted through:
   Geralyn Barone, City Manager
   Merrill King, Finance Director
   Julie Wischnack, AICP, Community Development Director

Originated by:
   Alisha Gray, Economic Development and Housing Manager

Supplemental Information

City Council Agenda Packet– June 12, 2018

EDAC Unapproved Minutes – Nov. 27, 2017 – HOME Line Recommendation

CDBG 2018 Public Services Request for Proposals Guide

Draft 2018 CDBG Subrecipient Agreement
Resolution No. 2018-

Resolution approving proposed application for 2018 Urban Hennepin County Community Development Block Grant (CDBG) program funds and authorizing execution of subrecipient agreement with Urban Hennepin County and any third party agreements

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

Section 1. Background.

1.01 The City of Minnetonka, through execution of a Joint Cooperation Agreement with Hennepin County, is cooperating in the Urban Hennepin County Community Development Block Grant Program; and

1.02 The City of Minnetonka has developed a proposal for the use of 2018 Urban Hennepin County Community Development Block Grant funds;

Section 2. City Council Action.

2.01 The city council of Minnetonka approves the following project(s) for funding from the 2018 Urban Hennepin County Community Development Block Grant Program and authorizes submittal of the proposal to Urban Hennepin County/Consolidated Pool.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Housing Rehabilitation</td>
<td>$112,200</td>
</tr>
</tbody>
</table>

2.02 The city council hereby authorizes and directs the mayor and city manager to negotiate and execute the Subrecipient Agreement and any required Third Party Agreement on behalf of the City to implement the 2018 Community Development Block Grant Program.

2.03 Should the actual amount of FY2018 CDBG available to the city be different from the preliminary amount provided to the city, the city council hereby authorizes the city manager to adjust the following activity budget(s) proportionally to reflect the actual amount of funding available.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Housing Rehabilitation</td>
<td>$112,200</td>
</tr>
</tbody>
</table>
Resolution No. 2018-                                                                                   Page 2

Adopted by the city council of the City of Minnetonka, Minnesota, on Feb. 5, 2018.

_______________________________________
Brad Wiersum, Mayor

Attest:

_________________________________
David E. Maeda, 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 Feb. 5, 2018.

__________________________________
David E. Maeda, City Clerk
Lehnhoff clarified that during the meeting, “interest rate” was mistakenly spoken when the speaker intended to refer to “inflation” when referring to the TIF district.

5. Staff Report

Gray reported:

- A ribbon cutting was held at The Farm and Vine, a restaurant in the Highland Bank Building.
- The Metropolitan Council rejected the bids and advertised for new bids that are due in January. The goal is to award the bid in April of 2018. A corridor protection wall is being required by DNSF to protect the freight rail from SWLRT. A supplemental environmental review will be done.
- There is a road reconstruction project planned for next summer near Highland Bank. The MTC bus stop will be moved to line up with the crosswalk. Adding future bus stops on Ridgedale Drive was also discussed.
- Cherrywood Pointe is nearly complete.
- Mesaba Capital had a groundbreaking last week.
- Mastercraft should begin construction soon.
- Total Wine and Cheesecake Factory are open.
- The Open to Business Program received 96 views on the website. New ads will be in the *Minnetonka Memo*. In 2018, a business newsletter will be created.
- The economic gardening program through Hennepin County has two Minnetonka companies.

Beth Kodluboy, executive director of HOME Line, stated that HOME Line has been serving Minnetonka residents since 1992. HOME Line provides legal advice specific to keeping residents in a safe, decent, and affordable home. HOME Line helps prevent callers from making poor decisions that may lead to eviction. In 2016, it served 132 families in Minnetonka, prevented 7 evictions, and saved families over $17,000 in returned damage deposits and monies owed for security deposits and repairs. Most of the callers have low incomes. In Minnetonka, 80 percent of the callers met HUD’s low income standards. Financing repairs, security deposits, and breaking leases are the top three issues in Minnetonka. HOME Line estimates to help between 132 and 150 families in Minnetonka in 2017. November has been a record month. The cost would be between $5,200 and $5,800. The number of foreclosures has gone down to 1 or 2 a year. She was available for questions.

Happe thought the service is important.

Knickerbocker asked when Hennepin County will make its allocation of CDBG funds. He asked what would happen if other non-profits also request funding. He did not think it would be timely to act on this request.
Gray explained that Hennepin County will make its allocation of CDBG funds in March of 2018.

Wischnack explained that HOME Line is not eligible for CDBG funds. This process has always been done for HOME Line which utilizes money from the development fund.

Knickerbocker asked if the city could enter into a contract with HOME Line so that it would be treated as a contract for services rather than HOME Line having to request money each year. Wischnack said that could be considered for next year. The 2018 budget will be adopted next week.

Johnston moved, Jacobsohn seconded a motion to recommend that the city council allocate $5,200 to HOME Line. Happe, Jacobsohn, Johnston, and Isaacson voted yes. Knickerbocker voted no. Johnson and Yunker were absent. Motion passed.

Gray continued the staff report:

- Staff is proposing that The Mariner receive $210,000 for its project and $67,000 go to WHALT of the funds provided by the Metropolitan Council.
- The loan programs are being moved over to the center for energy and environment for administration. Residents can apply on line or request a paper application.
- Minnetonka Heights has a buyer. The buyer is looking at keeping most of the rents at affordable levels, but rents could change to market rate. Chair Isaacson was curious if the purchase price was based on affordable or marketable rates.

6. Other Business

The next EDAC meeting is scheduled for Thursday, December 7, 2017 at 6 p.m.

7. Adjournment

Jacobsohn moved, Johnston seconded a motion to adjourn the meeting at 7:30 p.m. Happe, Jacobsohn, Johnston, Knickerbocker and Isaacson voted yes. Johnson and Yunker were absent. Motion passed.
Hennepin County
Community Development Block Grant
2018 Public Services
Request for Proposals Guide

2018 CDBG Program Year (July 1, 2018 – June 30, 2019)
Responses due by Tuesday, February 27, 2018 at 4:30 p.m.
PART 1: INTRODUCTION

Hennepin County is requesting proposals to fund public service activities for low- and moderate-income families and individuals in suburban Hennepin County. Approximately $400,000 in funding will be awarded to assist in the provision of a variety of public service activities, including (but not limited to) family, youth, and senior services. This funding is available through the federal Community Development Block Grant (CDBG) program. Funding is provided through Hennepin County in partnership with the cities of Brooklyn Park, Maple Grove, Minnetonka, and other participating cities.

APPLICATION AND FUNDING SCHEDULE

1. Distribution of Applications and Solicitation of Proposal ....................................................January 4, 2018
2. Applications Due ...............................................................by 4:30 p.m. on Tuesday, February 27, 2018
3. Application Review ................................................................................................................March 2018
4. County Board approval of funding awards (subject to change) ........................................May/June, 2018
5. HUD approval of funding awards (subject to change) .........................................................June/July, 2018
6. Contract Period .................................................................................................................July 1, 2018 – June 30, 2019

SUBMISSION OF PROPOSALS

Applications will be received in the Hennepin County Supplier Portal. In order to submit an application, you must first register with the Supplier Portal. For more information on how to register, please go to the Supplier Portal Information Page. Please register with the Supplier Portal at least 5 business days prior to the application deadline.

Applications must be submitted using the fillable application form provided. Optional materials such as letters of support or additional pages may be submitted as separate attachments in PDF format. Failure to submit a proposal on time may be grounds for rejection of the proposal; however, the County reserves the right to accept proposals after the time and date specified at its sole discretion.

INQUIRIES

Please direct any questions to Spencer Agnew, 612-348-2205, Spencer.Agnew@hennepin.us or Tonja West-Hafner, 612-348-2599, tonja.west-hafner@hennepin.us.

ADDENDA

The County reserves the right to modify the RFP at any time prior to the application due date. If the RFP is modified, addenda to the RFP will be provided to all applicants known to have received a copy of the RFP. It is the responsibility of each prospective applicant to ensure receipt of all addenda. The County will modify the RFP only by formal written addenda. Applicant’s proposal should be based on the specifications herein and any formal written addenda from the County.
COUNTY’S RIGHT TO WITHDRAW, CANCEL, SUSPEND AND/OR MODIFY RFP

The County reserves the right to withdraw, cancel, suspend, and/or modify this RFP for any reason and at any time with no liability to any prospective applicant for any costs or expenses incurred in connection with the RFP or otherwise. Hennepin County reserves the right to accept or reject any or all applications received, to accept or reject any late applications, to rescind the request for proposals, to request additional information as deemed necessary to review any application, to negotiate with all qualified proposers, to use any or all proposer ideas and/or approaches presented, or to cancel in part or in its entirety this request for proposals, if it is in the best interest of Hennepin County to do so.

PROPOSER’S RIGHT TO WITHDRAW OR MODIFY PROPOSAL

An application may be withdrawn on written request of the applicant prior to the proposal due date. Prior to the proposal due date, changes may be made, provided the change is submitted in writing and signed by an officer or authorized representative of the applicant. No modification, unless in writing, will be accepted.

PROPOSALS WILL NOT BE RETURNED

Upon submission, proposals will not be returned.

PUBLIC DISCLOSURE OF PROPOSAL DOCUMENTS

Under Minnesota law, proposals are private and nonpublic until the proposals are opened on the proposal due date. Once the proposals are opened, the name of the applicant becomes public. All other data in the proposal is private or nonpublic data until completion of the evaluation process. The evaluation process is completed when the County enters into a contract with an applicant. At that time, all remaining data submitted by all applicants is public with the exception of data exempted under Minn. Stat. Section 13.37 of the Minnesota Government Data Practices Act.

If the applicant believes non-public data is included in its proposal, applicant shall clearly identify the data and cite the Minnesota Government Data Practices Act exemption(s). However, the applicant agrees, as a condition of submitting a proposal, the County will not be liable or accountable for any loss or damage which may result from a breach of confidentiality, as may be related to the proposal. Pricing, fees, and costs are public data.

The applicant agrees to indemnify and hold the County, its officials, agents, and employees harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision.
PROPOSER’S COSTS

The County shall not be responsible for any costs incurred by applicant in connection with this RFP. Applicant shall bear all costs associated with proposal preparation, submission, and attendance at presentation interviews, or any other activity associated with this RFP or otherwise.

COLLUSION

If the County determines that collusion has occurred among applicants, none of the applications of the participants in such collusion shall be considered. The County’s determination shall be final.

CONFLICT OF INTEREST

Applicant affirms that, to the best of its knowledge, its application does not present a conflict of interest with any party or entity, which may be affected by the terms of a contract resulting from this RFP. The applicant agrees that, should any conflict or potential conflict of interest become known, it will immediately notify the County of the conflict or potential conflict, and will advise the County whether it will or will not resign from the other engagement or representation. Further, the County may make reasonable efforts to avoid, mitigate, or neutralize an organizational conflict of interest by an applicant in all competitive procurements. To avoid an organizational conflict of interest by an applicant, the County may utilize methods including disqualifying an applicant from eligibility for a contract award or canceling the contract if the conflict is discovered after a contract has been issued. To mitigate or neutralize an organizational conflict of interest by an applicant, the County may use methods such as revising the scope of work to be conducted, allowing applicant to propose the exclusion of task areas that create a conflict, or providing information to all applicants to assure that all facts are known to all applicants. The County may, at its sole and absolute discretion, waive any conflict of interest.

PROPOSAL FORMAT AND CONTENT

Applicants must submit one electronic copy of the Application Form in PDF format. Optional addenda, such as budget pages and letters of support may be included as PDF attachments.

PROPOSAL EVALUATION AND RECOMMENDATION FOR SELECTION

A selection committee comprised of staff from cities in suburban Hennepin County will review applications and make funding recommendations. Projects will be reviewed using established review and ranking criteria. The selection committee may request additional information prior to finalizing its funding recommendations. Funding recommendations will then be considered by the County Board, which will have final authority on funding allocations. Funding recommendations are expected to be presented to the Board in May, 2018, although this timeline is subject to change.
The County may require the entities selected for funding to submit fiscal, technical, or other revisions of their applications. The County reserves the right, in its sole discretion, to make a determination of awards regardless of the recommendations of the Review Committee, and reserves the right, in its sole discretion, to make fewer awards than recommended or no awards. This RFP does not constitute a commitment to make funding awards. Hennepin County reserves the right to cancel a funding commitment if the project is not proceeding according to the timeline submitted in the application.

FINANCING TERMS AND CONTRACTUAL REQUIREMENTS

Public services activities are typically awarded financial assistance in the form of a one-year grant. Financing terms will be determined by Hennepin County staff based on the project’s timeline and operating budget. The minimum funding award will be $5,000. There is no maximum funding award. Funds are anticipated to be available for eligible expenditures incurred after final contracts are executed, shortly after the May board action.

PART 2: PROPOSAL CRITERIA

COUNTY PRIORITIES

The Hennepin County Five-Year Consolidated Plan for suburban Hennepin County identifies Education, Outreach, and Services for low- and moderate-income households (at or below 80% Area Median Income (AMI)) as a Priority Need. This includes a wide range of activities serving individuals, families, youth, and seniors, including:

- Domestic Abuse Counseling
- Emergency Assistance (including temporary/short-term housing assistance)
- Fair Housing Activities
- Financial Counseling (including homeownership counseling)
- Homelessness Prevention
- Job Training
- Senior Center Programming
- Senior Services
- Transportation Services
- Tenant Counseling
- Youth Counseling
- Youth Programming
ELIGIBLE APPLICANTS

Eligible applicants are governmental agencies, community-based organizations, tribal organizations, and nonprofit entities. Requests for individual assistance are not accepted through this RFP.

ELIGIBLE ACTIVITIES

Federal regulations allow the use of CDBG funds for a wide range of public service activities, including but not limited to: job training, crime prevention, child care, health services, substance abuse services, fair housing counseling, education programs, energy conservation, services for senior citizens, services for homeless persons, welfare services (excluding income payments), and recreation services. CDBG funds may be used to pay for labor, supplies, and material as well as to operate and/or maintain the portion of a facility in which the public service is located.

INELIGIBLE ACTIVITIES

Federal regulations do not allow CDBG funds to be utilized for political activities or for direct payments to households for the provision of basic services such as food, shelter, or clothing. However, short-term (up to three consecutive months) emergency assistance is allowed if payments are made directly to the provider of services on behalf of an individual or family.

LOW/MOD INCOME BENEFIT

Activities receiving CDBG public service funding must serve a client base of which a minimum of 51% of clients are “low/mod income” households, which is defined as having an annual gross income at or below 80% of Area Median Income (AMI). Income limits are determined the U.S. Department of Housing and Urban Development (HUD) and adjusted on an annual basis. The current limits (effective June 15, 2017) based on household size are:

<table>
<thead>
<tr>
<th></th>
<th>1 Person</th>
<th>2 Person</th>
<th>3 Person</th>
<th>4 Person</th>
<th>5 Person</th>
<th>6 Person</th>
<th>7 Person</th>
<th>8 Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>30%</td>
<td>19,000</td>
<td>21,700</td>
<td>24,400</td>
<td>27,100</td>
<td>29,300</td>
<td>31,450</td>
<td>33,650</td>
<td>35,800</td>
</tr>
<tr>
<td>50%</td>
<td>31,650</td>
<td>36,200</td>
<td>40,700</td>
<td>45,200</td>
<td>48,850</td>
<td>52,450</td>
<td>56,050</td>
<td>59,700</td>
</tr>
<tr>
<td>80%</td>
<td>47,600</td>
<td>54,400</td>
<td>61,200</td>
<td>68,000</td>
<td>73,450</td>
<td>78,900</td>
<td>84,350</td>
<td>89,800</td>
</tr>
</tbody>
</table>

ELIGIBLE SERVICE AREA

Activities must serve one or more suburban cities which are participants in the Hennepin County CDBG program (identified in the map on next page). The cities of Minneapolis, Bloomington, Eden Prairie, and Plymouth are not participants in the County CDBG program and these areas are not eligible for funding through this RFP.
**OTHER CDBG PROGRAM REQUIREMENTS**

*Descriptions or summaries of laws, rules and regulations below are not meant to be definitive or conclusive; applicants are responsible for knowing and complying with all requirements, specifically federal regulations for Community Development Block Grants (24 CFR Part 570).*

**Anti-Discrimination** In accordance with Hennepin County’s policies against discrimination, no person shall be excluded from full employment rights or participation in or the benefits of any program, service, or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin; and no person who is protected by applicable federal or state laws, rules, or regulations against discrimination shall be otherwise subjected to discrimination.

**Affirmative Action** Projects shall comply with all applicable local rules and regulations for affirmative action. Where federal, state, and/or local policies and requirements for affirmative action and equal employment opportunity differ, the most restrictive policies and requirements shall apply. However, applicant shall provide any reports or other documentation required by each jurisdiction in order to demonstrate compliance with applicable laws, ordinances, and regulations.

**Environmental Review** A completed Environmental Review is required for all activities receiving CDBG assistance. The Environmental Review will be completed by County staff. Once an application has been submitted through this RFP, “no choice limiting action” may be taken by the applicant prior to receiving the Release of Funds. Choice limiting actions include, but are not limited to: any physical action on a site; commitment or expenditure of HUD or non-HUD funds for property acquisition, rehabilitation, conversion, lease, repair, or construction activities. Applicants that proceed with any choice limiting action(s) will forfeit access to CDBG funds for the project. Purchase Agreements for property should be contingent upon this requirement.

**Financial Management** Projects must follow federal requirements (described at 2 CFR Part 200) for allowable costs and other financial management requirements including single audit requirements, if applicable.

**Financial Commitments** Applicants shall identify all financial commitments necessary to complete the activity and provide third party documentation supporting all funding pledges, conditions/terms and applicable deadlines. Any in-kind contributions from the municipality, business sector, and/or community must also be detailed and included with the application. CDBG funds may not be used to substitute other local or state funding for the same activity in the prior 12 months.
PART 3: PROPOSAL RANKING CRITERIA

All applications will be reviewed by Hennepin County staff to assure that the projects are eligible for CDBG funding and meet CDBG Program benefit requirements. Projects which do not meet basic CDBG eligibility criteria will be removed from further consideration. The Selection Committee will then utilize the following criteria to rate projects and formulate funding recommendations to the Hennepin County Board of Commissioners.

**Category 1: Timeliness of Expenditures and Activity Completion (0 to 10 points)**

- The project will be completed and expend funds in a timely manner.
- The project schedule (interim milestones and completion) is reasonable.
- The project can be completed within the grant term (July 1, 2018 to June 30, 2019)
- Most or all needed funding has been committed.
- Priority given to activities that will be ready to request full or partial reimbursement by March 1, 2019.

**Category 2: Feasibility and Organizational Capacity (0 to 10 points)**

- The applicant has the staff expertise to implement the proposed activity
- The applicant has the staff expertise to ensure compliance with federal grant regulations.
- The project team has successfully completed similar CDBG or other federally-funded activities.
- The organization has the financial capacity to complete the project.
- The project is feasible to implement (including compliance with federal grant regulations) with identified financial and staff resources.

**Category 3: Project Benefit (0 to 15 Points)**

- The project will benefit a substantial number of people/households/housing units.
- Project provides benefit principally to low- and moderate-income persons.
- Project budget appears reasonable and CDBG funds are being prudently utilized.
- The project leverages funding from other local, state, or private sources.
- The project provides a benefit or service that meets a growing need.
- The project serves a large geographic area of the suburban county, or provides a service in a limited area that is lacking in similar services.
- The project serves an area or population with a high rate of poverty.

**Category 4: Public Support and Consistency with Plans (0 to 10 points)**

- The project addresses a high priority need identified in the 2015-2019 Consolidated Plan.
- Project addresses a locally identified high priority community development need.
- Letters of support or other demonstration of community and/or constituency support of the proposed project have been submitted.
CITY SUBRECIPIENT AGREEMENT
URBAN HENNEPIN COUNTY
2018 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

THIS AGREEMENT is made and entered into by and between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, hereinafter referred to as "RECIPIENT," A-2400 Government Center, Minneapolis, Minnesota 55487, and the CITY OF MINNETONKA, 14600 Minnetonka Blvd, Minnetonka, Minnesota 55345, hereinafter referred to as "SUBRECIPIENT," said parties to this Agreement each being governmental units of the State of Minnesota, and is made pursuant to Minnesota Statutes, Section 471.59.

WITNESSETH

WHEREAS, the Federal Department of Housing and Urban Development approved a Fiscal Year 2018 Community Development Block Grant (CDBG) Program (Catalog of Federal Domestic Assistance (CFDA) number 14.218) entitlement allocation to the RECIPIENT under Title I of the Housing and Community Development Act of 1974, as amended (the "Act"), to carry out various community development activities in cooperation with SUBRECIPIENT, according to the implementing regulations at 24 CFR Part 570; and

WHEREAS, contingent upon the RECIPIENT entering into a Funding Agreement with HUD for the receipt of the Federal Fiscal Year 2018 CDBG funds, the RECIPIENT has approved the use of $_______________ of Federal Fiscal Year 2018 CDBG funds by the SUBRECIPIENT and any resulting program income for the implementation of eligible community development activity/ies included in and a part of the 2018 Annual Action Plan, Urban Hennepin County Community Development Block Grant (CDBG) Program, and further described in Exhibit 2 and Exhibit 3 to this Agreement; and

WHEREAS, the SUBRECIPIENT agrees to assume certain responsibilities for the implementation of the approved activities identified in Exhibit 2, said responsibilities being specified in part in the Joint Cooperation Agreement effective October 1, 2014, executed between RECIPIENT and SUBRECIPIENT and in the 2018 Annual Action Plan, Urban Hennepin County CDBG Program and the Certifications contained therein; the SUBRECIPIENT agrees to implement those activities described in Exhibit 2 attached hereto, and the RECIPIENT agrees to reimburse the SUBRECIPIENT for said implementation in a total amount not to exceed $____________; and

WHEREAS, the RECIPIENT agrees to implement and reimburse certain activities approved by the SUBRECIPIENT, as identified in Exhibit 3 (in a total amount not to exceed $_______________ from SUBRECIPIENT’S 2018 allocation). RECIPIENT’S implementation shall comply with all applicable requirements of the Act, and the rules and regulations promulgated pursuant to the Act, including but not limited to 24 CFR Part 570; additionally, where applicable, RECIPIENT shall execute a Nonprofit Subrecipient Agreement/Program Year 2018 Community Development Block Grant Program with public service providers approved by the SUBRECIPIENT.
NOW, THEREFORE, the parties hereunto do hereby agree as follows:
1. **SCOPE OF SERVICES**

   A. The SUBRECIPIENT shall expend all or any part of its CDBG allocation only on those activities identified in Exhibit 2, subject to the requirements of this Agreement and the stipulations and requirements set forth in Exhibit 2 to this Agreement.

   B. The SUBRECIPIENT shall take all necessary actions, not only to comply with the stipulations as set out in Exhibit 2, but to comply with any requests by the RECIPIENT in that connection; it being understood that the RECIPIENT is responsible to the Department of Housing and Urban Development (HUD) for ensuring compliance with such requirements. The SUBRECIPIENT also will promptly notify the RECIPIENT of any changes in the scope or character of the activity/ies which it is implementing.

   C. At the request of the RECIPIENT, on a form to be provided, the SUBRECIPIENT shall submit a schedule, corresponding to the term of this Agreement, showing milestones for activity implementation and timely expenditure of funds and will provide other information as requested to assure compliance with HUD timeliness requirements.

   D. SUBRECIPIENT shall submit all necessary documentation applicable to each specific activity as identified in Exhibit 2.

2. **TERM OF AGREEMENT**

   The effective date of this Agreement is July 1, 2018. The termination date of this Agreement is June 30, 2018, or at such time as the activity/ies constituting part of this Agreement are satisfactorily completed prior thereto. Upon expiration, the SUBRECIPIENT shall relinquish to the RECIPIENT all program funds unexpended and uncommitted, and all accounts receivable attributable to the use of CDBG funds for the activities described in Exhibit 2, as may be amended.

3. **THIRD PARTY AGREEMENTS**

   The SUBRECIPIENT may subcontract this Agreement and/or the services to be performed hereunder, whether in whole or in part, only with the prior consent of the RECIPIENT and only through a written Third Party Agreement acceptable to the RECIPIENT. The SUBRECIPIENT shall not otherwise assign, transfer, or pledge this Agreement and/or the services to be performed hereunder, whether in whole or in part, without the prior consent of the RECIPIENT.

4. **AMENDMENTS TO AGREEMENT**

   Any material alterations, variations, modifications or waivers of provisions of this Agreement shall only be valid when reduced to writing as an Amendment to this Agreement signed, approved and properly executed by the authorized representatives of the parties. An exception to this process will be in amending Exhibit 2 to this Agreement.

   Exhibit 2 shall be deemed amended to conform to any amendments to the Annual Action
Plan, as such amendments occur.

Amendments will be considered at the following levels:

**Level 1: Minor Amendment.** A minor amendment is a modification that (1) increases or decreases the amount awarded to an activity by less than 25 percent; or (2) changes the eligible activity or location of activity, but not the purpose, scope or intended beneficiaries.

Minor amendments do not require public comment, city council action, or Board action and are considered “revisions”. Hennepin County staff in the Housing Development Division of the Department of Community Works may approve minor amendments provided they are eligible and satisfy the objectives of the Consolidated Plan and the CDBG Program.

**Level 2: General Amendment.** A general amendment is one that (1) increases or decreases the amount awarded to an activity by 25-50 percent of the original budget; or (2) increases or decreases the amount awarded to an activity by more than 50 percent of the original budget but less than $100,000; or (3) cancels an activity.

Notification of the general amendment and comment period will be published in the official newspaper for the city initiating the amendment at least 15 days prior to approval. A public hearing is not required. All comments received during the comment period will be considered prior to implementation of the general amendment.

Hennepin County staff in the Housing Development Division of the Department of Community Works may approve general amendments provided they are eligible and satisfy the objectives of the Consolidated Plan and the CDBG Program and, the public notice requirement has been satisfied.

**Level 3: Substantial Amendment.** A substantial amendment is one that (1) increases or decreases the amount awarded to a CDBG activity by a minimum of $100,000 and is more than 50 percent of the original budget; or (2) changes the purpose, scope or intended beneficiaries of an activity; or (3) creates a new project.

Notification of the substantial amendment and comment period will be published in the official newspaper for the city initiating the amendment at least 30 days prior to approval. A public hearing is not required. All comments received during the comment period will be considered prior to approving the amendment. A summary of any written comments received and a copy of the written response from the county or city will be attached to the substantial amendment. The city initiating the amendment must be approved by that city council and the Hennepin County Board.

5. **PAYMENT OF CDBG FUNDS**

The RECIPIENT agrees to provide the SUBRECIPIENT with CDBG funds not to exceed the Hennepin County authorized budget to enable the SUBRECIPIENT to carry out its CDBG-eligible activity/ies as described in Exhibit 2. It is understood that the RECIPIENT shall be held accountable to HUD for the lawful expenditure of CDBG funds under this Agreement. The RECIPIENT shall therefore make no payment of CDBG funds to the
SUBRECIPIENT and draw no funds from HUD/U.S. Treasury on behalf of a SUBRECIPIENT activity/ies, prior to having received a request for reimbursement for expenses incurred from the SUBRECIPIENT. In addition to the request form, SUBRECIPIENT shall provide copies of all documents and records needed to ensure that the SUBRECIPIENT has complied with the appropriate regulations and requirements.

All invoices shall display the COUNTY purchase order number and be sent to the central invoice receiving address supplied by the COUNTY.

6. **INDEMNITY AND INSURANCE**

   A. The SUBRECIPIENT does hereby agree to defend, indemnify, and hold harmless the RECIPIENT, its elected officials, officers, agents, volunteers and employees from and against all costs, expenses, claims, suits or judgments arising from or growing out of any injuries, loss or damage sustained by any person or corporation, including employees of SUBRECIPIENT and property of SUBRECIPIENT, which are caused by or sustained in connection with the tasks carried out by the SUBRECIPIENT under this Agreement.

   B. In order to protect SUBRECIPIENT and RECIPIENT from liability and to effectuate the indemnification provisions hereinabove, each SUBRECIPIENT that is not self-insured agrees that during the term of this Agreement it will carry a single limit or combined limit or excess umbrella commercial general liability policy in an amount equal to, but shall not be required to carry coverage in excess of, claim limits specified in Minnesota Statutes Section 466.04, as amended.

   C. This section shall in no way be intended by the parties hereto as a waiver of the liability limits specified in Minnesota Statutes Section 466.04, as amended.

7. **CONFLICT OF INTEREST**

   A. In the procurement of supplies, equipment, construction, and services by the SUBRECIPIENT, the conflict of interest provisions in 24 CFR 85.36 and OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance), as applicable, shall apply.

   B. In all other cases, the provisions of 24 CFR 570.611 shall apply.

8. **DATA PRIVACY**

The SUBRECIPIENT agrees to abide by the provisions of the Minnesota Government Data Practices Act and all other applicable state and federal laws, rules, and regulations relating to data privacy or confidentiality, and as any of the same may be amended. The SUBRECIPIENT agrees to defend, indemnify and hold the RECIPIENT, its elected officials, officers, agents, volunteers and employees harmless from any claims resulting from the SUBRECIPIENT'S unlawful disclosure and/or use of such protected data.

9. **SUSPENSION OR TERMINATION**
A. If the SUBRECIPIENT materially fails to comply with any term of this Agreement or so fails to administer the work as to endanger the performance of this Agreement, this shall constitute noncompliance and default. Unless the SUBRECIPIENT’S default is excused by the RECIPIENT, the RECIPIENT may take one or more of the actions prescribed in 24 CFR 85.43, including the option of immediately canceling this Agreement in its entirety.

B. The RECIPIENT’S failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.

C. This Agreement may be cancelled with or without cause by either party upon thirty (30) days' written notice according to the provisions in 24 CFR 85.44.

D. CDBG funds allocated to the SUBRECIPIENT under this Agreement may not be obligated or expended by the SUBRECIPIENT following such date of termination. Any funds allocated to the SUBRECIPIENT under this Agreement which remain unobligated or unspent following such date of termination shall automatically revert to the RECIPIENT.

10. **REVERSION OF ASSETS**

Upon expiration or termination of this Agreement, the SUBRECIPIENT shall transfer to the RECIPIENT any CDBG funds on hand or in the accounts receivable attributable to the use of CDBG funds, including CDBG funds provided to the SUBRECIPIENT in the form of a loan. Any real property under the control of the SUBRECIPIENT that was acquired or improved, in whole or in part, using CDBG funds in excess of $25,000 shall either be:

A. Used to meet one of the national objectives in 24 CFR 570.208 and not used for the general conduct of government until:

   (1) For units of general local government, five years from the date that the unit of general local government is no longer considered by HUD to be a part of Urban Hennepin County.

   (2) For any other SUBRECIPIENT, five years after expiration of this Agreement; or

B. Not used in accordance with A. above, in which event the SUBRECIPIENT shall pay to the RECIPIENT an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. The payment is program income to the RECIPIENT. No payment is required after the period of time specified in A. above.

11. **PROCUREMENT**

The SUBRECIPIENT shall be responsible for procurement of all supplies, equipment, services, and construction necessary for implementation of its activity/ies. Procurement shall be carried out in accordance with the "Common Rule" Administrative Requirements
in 24 CFR 85 and all provisions of the CDBG Regulations in 24 CFR 570 (the most restrictive of which will take precedence). The SUBRECIPIENT shall prepare, or cause to be prepared, all advertisements, negotiations, notices, and documents, enter into all contracts, and conduct all meetings, conferences, and interviews as necessary to ensure compliance with the above described procurement requirements. The RECIPIENT shall provide advice and staff assistance to the SUBRECIPIENT to carry out its CDBG-funded activity/ies.

12. ACQUISITION, RELOCATION, AND DISPLACEMENT

A. The SUBRECIPIENT shall be responsible for carrying out all acquisitions of real property necessary for implementation of the activity/ies. The SUBRECIPIENT shall conduct all such acquisitions in its name, or in the name of any of its public, governmental, nonprofit agencies as authorized by its governing body, which shall hold title to all real property purchased. The SUBRECIPIENT shall be responsible for preparation of all notices, appraisals, and documentation required in conducting acquisition under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 as required under 49 CFR Part 24 and of the CDBG Program. The SUBRECIPIENT shall also be responsible for providing all relocation notices, counseling, and services required by said regulations. The RECIPIENT shall provide advice and staff assistance to the SUBRECIPIENT to carry out its CDBG-funded activity/ies.

B. The SUBRECIPIENT shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under 24 CFR 570.606(a) and HUD implementing regulations at 24 CFR 42; the requirements in 24 CFR 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act); the relocation requirements of 24 CFR 570.606(c) governing displacement subject to section 104(k) of the Act; and the requirements of 24 CFR 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

13. ENVIRONMENTAL REVIEW

The RECIPIENT shall determine the level of environmental review required under 24 CFR Part 58 and maintain the environmental review record on all activities. The SUBRECIPIENT shall be responsible for providing necessary information, relevant documents, and public notices to the RECIPIENT to accomplish this task.

14. LABOR STANDARDS, EMPLOYMENT, AND CONTRACTING

The RECIPIENT shall be responsible for the preparation of all requests for HUD for wage rate determinations on CDBG activities undertaken by the SUBRECIPIENT. The SUBRECIPIENT shall notify the RECIPIENT prior to initiating any activity, including advertising for contractual services which will include costs likely to be subject to the provisions on Federal Labor Standards and Equal Employment Opportunity and related implementing regulations. The RECIPIENT will provide technical assistance to the SUBRECIPIENT to ensure compliance with these requirements.
No CDBG funds shall be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24. Prior to awarding a contract, the SUBRECIPIENT shall promptly notify the RECIPIENT. The RECIPIENT shall be responsible for determining the status of the contractor under this requirement, and shall notify SUBRECIPIENT if the contractor is or is not prohibited from doing business with the Federal government as a result of debarment or suspension proceedings.

15. **PROGRAM INCOME**

If the SUBRECIPIENT generated any program income, as defined in 24 CFR 570.500, as a result of the expenditure of CDBG funds, the provisions of 24 CFR 570.504 shall apply, as well as the following specific stipulations:

A. The SUBRECIPIENT will notify the RECIPIENT of any program income within ten (10) days of the date such program income is generated. When program income is generated by an activity only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used.

B. On a form to be provided by the RECIPIENT, the SUBRECIPIENT will document amounts received as program income are properly determined, calculated and supported. The RECIPIENT will subsequently review and verify documentation to assure Federal requirements are met.

C. Any such program income must be paid to the RECIPIENT by the SUBRECIPIENT as soon as feasible after such program income is generated unless the SUBRECIPIENT is permitted to retain program income.

D. Program income returned to the RECIPIENT shall be credited to the grant authority of SUBRECIPIENT, whose project generated the program income, and shall be used for fundable and eligible CDBG activities consistent with this Agreement.

E. Program income shall be expended by the SUBRECIPIENT within one year of receipt by the RECIPIENT.

F. The SUBRECIPIENT further recognizes that the RECIPIENT has the responsibility for monitoring and reporting to HUD on the use of any such program income. The responsibility for appropriate record keeping by the SUBRECIPIENT and reporting to the RECIPIENT by the SUBRECIPIENT on the use of such program income is hereby recognized by the SUBRECIPIENT. The RECIPIENT agrees to provide technical assistance to the SUBRECIPIENT in establishing an appropriate and proper record-keeping and reporting system, as required by HUD.

G. In the event of close-out or change in status of the SUBRECIPIENT, any program income that is on hand or received subsequent to the close-out or change in status shall be paid to RECIPIENT as soon as feasible after the income is received. The RECIPIENT agrees to notify the SUBRECIPIENT, should closeout or change in status of the SUBRECIPIENT occur.
16. **USE OF REAL PROPERTY**

The following standards shall apply to real property under the control of the SUBRECIPIENT that was acquired or improved, in whole or in part, using CDBG funds:

A. The SUBRECIPIENT shall inform the RECIPIENT at least thirty (30) days prior to any modification or change in the use of the real property from that planned at the time of acquisition or improvements, including disposition. The SUBRECIPIENT will comply with the requirements of 24 CFR 570.505 to provide affected citizens the opportunity to comment on any proposed change and to consult with affected citizens.

B. The SUBRECIPIENT shall reimburse the RECIPIENT in an amount equal to the current fair market value (less any portion thereof attributable to expenditures of non-CDBG funds) of property acquired or improved with CDBG funds that is sold or transferred for a use which does not qualify under the CDBG regulations. Said reimbursement shall be provided to the RECIPIENT at the time of sale or transfer of the property referenced herein. Fair market value shall be established by a current written appraisal by a qualified appraiser. The RECIPIENT will have the option of requiring a second appraisal after review of the initial appraisal.

C. Any program income generated from the disposition or transfer of real property prior to or subsequent to the close-out, change of status or termination of the Joint Cooperation Agreement between the RECIPIENT and the SUBRECIPIENT shall be repaid to the RECIPIENT at the time of disposition or transfer of the property.

17. **ADMINISTRATIVE REQUIREMENTS**

The uniform administrative requirements delineated in 24 CFR 570.502 and any and all administrative requirements or guidelines promulgated by the RECIPIENT shall apply to all activities undertaken by the SUBRECIPIENT provided for in this Agreement and to any program income generated therefrom.

18. **AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY**

A. During the performance of this Agreement, the SUBRECIPIENT agrees to the following: In accordance with the Hennepin County Affirmative Action Policy and the County Commissioners' Policies Against Discrimination, no person shall be excluded from full employment rights or participation in, or the benefits of, any program, service or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin; and no person who is protected by applicable federal or state laws against discrimination shall be otherwise subjected to discrimination.

B. The SUBRECIPIENT will furnish all information and reports required to comply with the provisions of 24 CFR Part 570 and all applicable state and federal laws, rules, and regulations pertaining to discrimination and equal opportunity.

19. **NON-DISCRIMINATION BASED ON DISABILITY**
A. The SUBRECIPIENT shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, to ensure that no otherwise qualified individual with a handicap, as defined in Section 504, shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination by the SUBRECIPIENT receiving assistance from the RECIPIENT under Section 106 and/or Section 108 of the Housing and Community Development Act of 1974, as amended.

B. When and where applicable, the SUBRECIPIENT shall comply with, and make best efforts to have its third party providers comply with, Public Law 101-336 Americans With Disabilities Act of 1990, Title I "Employment," Title II "Public Services" - Subtitle A, and Title III "Public Accommodations and Services Operated By Private Entities" and all ensuing federal regulations implementing said Act.

20. **LEAD-BASED PAINT**

The SUBRECIPIENT shall comply with the Lead-Based Paint notification, inspection, testing and abatement procedures established in 24 CFR 570.608.

21. **FAIR HOUSING**

In accordance with the Fair Housing Act, Community Development Block Grant recipients are required to administer all programs and activities in a manner to affirmatively further the policies of the Fair Housing Act. The RECIPIENT has certified to HUD that it will affirmatively further fair housing within its jurisdiction. Should HUD make a determination that the SUBRECIPIENT has not affirmatively furthered fair housing or has impeded action by the RECIPIENT to comply with its fair housing certification, the RECIPIENT shall exercise its authority, as contained in the Joint Cooperation Agreement, to prohibit the SUBRECIPIENT from receiving CDBG funding for any activities until the violation has been remedied.

22. **LOBBYING**

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the SUBRECIPIENT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal Grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement SUBRECIPIENT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
23. **USE OF EXCESSIVE FORCE BY LAW ENFORCEMENT AGENCIES**

SUBRECIPIENT has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

24. **OTHER CDBG POLICIES**

The SUBRECIPIENT shall comply with the applicable section of 24 CFR 570.200, particularly sections (b) (Special Policies Governing Facilities); (c) (Special Assessments); (f) (Means of Carrying out Eligible Activities); and (j) (Faith-Based Activities).

25. **TECHNICAL ASSISTANCE**

The RECIPIENT agrees to provide technical assistance to the SUBRECIPIENT in the form of oral and/or written guidance and on-site assistance regarding CDBG procedures and project management. This assistance will be provided as requested by the SUBRECIPIENT and at other times at the initiative of the RECIPIENT when new or updated information concerning the CDBG Program is received by the RECIPIENT and deemed necessary to be provided to the SUBRECIPIENT.

26. **RECORD-KEEPING**

The SUBRECIPIENT shall maintain records of the receipt and expenditure of all CDBG funds, such records to be maintained in accordance with OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance) and the "Common Rule" Administrative Requirements in 24 CFR 85 and in accordance with OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance), as applicable. All records shall be made available upon request of the RECIPIENT for inspection/s and audit/s by the RECIPIENT or its representatives. If a financial audit/s determines that the SUBRECIPIENT has improperly expended CDBG funds, resulting in the U.S. Department of Housing and Urban Development (HUD) disallowing such expenditures, the RECIPIENT reserves the right to recover from the SUBRECIPIENT such disallowed expenditures from non-CDBG sources. Audit procedures are specified below in Section 28 of this AGREEMENT.

27. **ACCESS TO RECORDS**

The RECIPIENT shall have authority to review any and all procedures and all materials, notices, documents, etc., prepared by the SUBRECIPIENT in implementation of this Agreement, and the SUBRECIPIENT agrees to provide all information required by any person authorized by the RECIPIENT to request such information from the SUBRECIPIENT for the purpose of reviewing the same.

28. **AUDIT**

The SUBRECIPIENT agrees to provide RECIPIENT with an annual audit consistent with
the Single Audit Act OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance) and, to certify and assure compliance with the financial standards as set forth in Exhibit 2 to this AGREEMENT.

A. The SUBRECIPIENT agrees to provide RECIPIENT with an annual audit consistent with the requirements as stated in the first paragraph of this section above. The audit shall be completed and submitted to RECIPIENT within the earlier of 30 days after receipt of the auditor’s report(s), or nine months after the end of the audit period.

B. RECIPIENT will issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

C. In those instances where less than $750,000 in assistance is expended from all Federal sources in any one fiscal year, and a single audit is not required, the RECIPIENT requests the following information within the same timeframe as in A., above: (1) annual financial statements, (2) independent auditor’s report on internal control over financial reporting based on an audit of financial statements performed in accordance with government auditing standards, and (3) the Management Letter.

D. The cost of the audit is not reimbursable from CDBG funds.

E. The RECIPIENT reserves the right to recover from the SUBRECIPIENT’S non-CDBG funds any CDBG expenses which are disallowed by an audit.

F. Assurance and certification by the Chief Financial Officer for the SUBRECIPIENT regarding its financial management system is attached hereto as Exhibit 1 and incorporated herein by reference.

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RECIPIENT EXECUTION

The Hennepin County Board of Commissioners having duly approved this Agreement on ______________ pursuant to Resolution No. ______________ and the proper County officials having signed this Agreement, the RECIPIENT agrees to be bound by the provisions herein set forth.

Approved as to form:

Assistant County Attorney
Date: __________

COUNTY OF HENNEPIN
STATE OF MINNESOTA

By: ______________________________
Chair of Its County Board

ATTEST:
Deputy/Clerk of County Board
Date: ______________________________

And:
County Administrator
Date: ______________________________

And:
Assistant County Administrator, Public Works
Date: ______________________________

Recommended for Approval:

Director, Community Works
Date: ______________________________
SUBRECIPIENT EXECUTION

SUBRECIPIENT, having signed this Agreement, and the SUBRECIPIENT'S governing body having authorized such approval and the proper city official having signed this Agreement, SUBRECIPIENT agrees to be bound by the provisions of this Agreement.

By entering into this Agreement the SUBRECIPIENT certifies that it is not prohibited from doing business with either the federal government or the State of Minnesota as a result of debarment or suspension proceedings.

SUBRECIPIENT:
CITY OF MINNETONKA

(Place city seal here)

By: _____________________________________
Its: _____________________________________
And: ____________________________________
Its: _____________________________________
Attest: __________________________________
Title: ___________________________________
Date: ___________________________________

DUNS #: 010332393

CITY MUST CHECK ONE:

The City is organized pursuant to:

☐ Plan A  ☐ Plan B  ☐ Charter
CITY SUBRECIPIENT AGREEMENT
URBAN HENNEPIN COUNTY
2018 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

EXHIBIT 1
ASSURANCE AND CERTIFICATION

SUBRECIPIENT COMPLIANCE

SUBRECIPIENT shall comply with the Single Audit Act, OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance). SUBRECIPIENT shall maintain a system of internal control over all programs in order to demonstrate compliance with the Single Audit Act, Uniform Grant Guidance and other pertinent laws and regulations. SUBRECIPIENT shall respond to audit findings, questioned costs or other compliance measures issues which may include taking requisite corrective action, executing necessary documents and other requirements;

If SUBRECIPIENT is a nonprofit organization, SUBRECIPIENT’s signature on this Agreement assures and certifies it has met federal, state and local requirements regarding SUBRECIPIENT’s financial management system.

SUBRECIPIENT is hereby notified of the following Federal Award Identification Information:

1. Subrecipient name (which must match registered name in DUNS): CITY OF MINNETONKA
2. Subrecipient's DUNS number (see § 200.32 Data Universal Numbering System (DUNS) number):
3. Federal Award Identification Number (FAIN):
4. Federal Award Date (see § 200.39 Federal award date): To be determined
5. Subaward Period of Performance Start and End Date: 7/1/2018 – 6/30/2019
6. Amount of Federal Funds Obligated by this action: $____________
7. Total Amount of Federal Funds Obligated to the Subrecipient: $____________
8. Total Amount of the Federal Award: $____________
9. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA): See activities in Exhibit 2.
10. Name of Federal awarding agency, pass-through entity, and contact information for awarding official: ________________________
11. CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement: ________________, Community Development Block Grant
12. Identification of whether the award is R&D: Not R&D

R&D means Research and Development. OMB Uniform Grant Guidance defines “Research” as the systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is defined as the systematic use of knowledge or understanding gained from research.
13. Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414 Indirect (F&A) costs) and: Indirect costs not applicable.
14. Identification of whether the award is used as loans or loan guarantees: The award is not a loan or loan guarantee project

As applicable, SUBRECIPIENT shall confirm in writing that SUBRECIPIENT did not expend $750,000 or more in total federal funds in a fiscal year. If SUBRECIPIENT expends $750,000 or more of federal funds in a fiscal year, SUBRECIPIENT shall complete financial and compliance audits in accordance with the Single Audit Act and/or OMB Uniform Grant Guidance, as applicable. SUBRECIPIENT shall cooperate fully in the following:

1. During the term of this Agreement and as necessary after the expiration of this Agreement, to ensure compliance with applicable law, SUBRECIPIENT agrees to provide an annual audit report consistent with the provisions of the Single Audit Act and/or OMB Uniform Grant Guidance in accordance with government auditing standards, as applicable, within nine (9) months after SUBRECIPIENT’s fiscal year-end. The cost of an audit is not reimbursable from funds received through this Agreement.

2. SUBRECIPIENT shall provide all information requested by COUNTY and report as directed by COUNTY.

As applicable, SUBRECIPIENT shall maintain property records that include a description of the applicable property, a serial number or other identification number, the source of the property, who holds title, the acquisition date and cost of the property, the percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data, including the date of disposal and sale price of the property. SUBRECIPIENT shall make said records available to COUNTY within five (5) business days of COUNTY’s written request.

Failure to comply with the above requirements may result in forfeiture of funds. Without limiting any other remedies available at law, COUNTY reserves the right to recover from SUBRECIPIENT the full amount of any funds found to be improperly expended or otherwise disallowed.

We certify and assure that we are in compliance with the above conditions.

Specifically, our organization’s financial management system provides for the following:

1. Accurate, current, and complete disclosure of the financial results of each federally sponsored project or program in accordance with the reporting requirements set forth in OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance). 2. Records that identify adequately the source and application of funds for federally sponsored activities. These records contain information pertaining to federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income.

3. Effective control over and accountability for all funds, property, and other assets. These assets are adequately safeguarded and are used solely for authorized purposes.

4. Comparison of actual outlays with budget amounts for each grant or other agreement and, whenever appropriate or required, comparisons of financial information with performance
and unit cost data.

5. Procedures to minimize the elapsed time between the transfer of funds from the county to our organization and the disbursement of funds by our organization.

6. Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of the applicable federal cost principles and the terms of the grant or other agreement.

7. Accounting records that are supported by source documentation.

8. Annual audits by a firm of independent certified public accountants to ascertain the effectiveness of the financial management systems and internal procedures that we have established to meet the terms and conditions of the federal grants and other agreements. The audits are conducted on an organization-wide basis and include an appropriate sampling of federal agreements.

9. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

10. Organizations (subrecipients) that receive CDBG funds from us are required to comply with the financial management standards set forth in this certification.

This assurance and certification is given in connection with any and all CDBG funds received after the date this form is signed. This includes payments after such date for financial assistance approved before such date. The undersigned recognizes and agrees that any such assistance will be extended in reliance on the representations and agreements made in this assurance. This assurance and certification is binding on this organization, its subrecipients, and on the authorized official whose signature appears below.

____________________________________________
Date

CITY OF MINNETONKA

By: ___________________________________________
Name of Chief Financial Officer (please print)

____________________________________________
Signature of Chief Financial Officer
Resolution No. 2018-

Resolution approving proposed application for 2018 Urban Hennepin County Community Development Block Grant (CDBG) program funds and authorizing execution of subrecipient agreement with Urban Hennepin County and any third party agreements

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

Section 1. Background.

1.01 The City of Minnetonka, through execution of a Joint Cooperation Agreement with Hennepin County, is cooperating in the Urban Hennepin County Community Development Block Grant Program; and

1.02 The City of Minnetonka has developed a proposal for the use of 2018 Urban Hennepin County Community Development Block Grant funds;

Section 2. City Council Action.

2.01 The city council of Minnetonka approves the following project(s) for funding from the 2018 Urban Hennepin County Community Development Block Grant Program and authorizes submittal of the proposal to Urban Hennepin County/Consolidated Pool.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Housing Rehabilitation</td>
<td>$112,200</td>
</tr>
</tbody>
</table>

2.02 The city council hereby authorizes and directs the mayor and city manager to negotiate and execute the Subrecipient Agreement and any required Third Party Agreement on behalf of the City to implement the 2018 Community Development Block Grant Program.

2.03 Should the actual amount of FY2018 CDBG available to the city be different from the preliminary amount provided to the city, the city council hereby authorizes the city manager to adjust the following activity budget(s) proportionally to reflect the actual amount of funding available.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Housing Rehabilitation</td>
<td>$112,200</td>
</tr>
</tbody>
</table>
Resolution No. 2018-

Adopted by the city council of the City of Minnetonka, Minnesota, on Feb. 5, 2018.

_______________________________________
Brad Wiersum, Mayor

Attest:

_________________________________
David E. Maeda, 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 Feb. 5, 2018.

__________________________________
David E. Maeda, City Clerk
**City Council Agenda Item #14A**  
**Meeting of Feb. 5, 2018**

<table>
<thead>
<tr>
<th><strong>Brief Description</strong></th>
<th>Concept plan review for Ridgedale Active Adult Apartments at 12421 Wayzata Blvd.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Action Requested</strong></td>
<td>Discuss concept plan with the applicant. No formal action required.</td>
</tr>
</tbody>
</table>

**Background**

Trammell Crow Company is proposing to redevelop portions of the existing commercial property located at 12421 Wayzata Blvd. Neighboring properties include Firestone to the north and Ridgedale Center to the north and east. US and Wells Fargo Banks are located to the west. South across Ridgedale Drive is the Hennepin County Ridgedale Library and Service Center.

The concept plan contemplates a six-story, luxury, age-restricted (55-plus) apartment project with 168 rental units, under-building parking and on-site amenities. The project also proposes to dedicate park land for a future park amenity. The proposed project would be located in the parking lot directly south of Firestone at Ridgedale Center. Housing units would provide a mix of 1 to 2 bedroom units ranging from almost 600 square feet to over 1,200 square feet. A number of on-site amenities are included in the building including fitness facilities, a community room and an outdoor patio and pool area. (See attached plans.)

Trammell Crow also proposes to dedicate land to the city for a future park site. If the project proceeds, the city would engage in further study and planning for development of the park. Planning for a new city park is an important undertaking and one that requires careful consideration of an appropriate process for public engagement and ultimately design of park features. One approach is to establish a working group comprised of city council, planning commission and park board members. Preliminarily, this working group would establish potential ideas for the park. Further public engagement would be defined through this working group that would eventually lead to preliminary designs for the city council to consider. See below for recommended process.

The site is zoned PID Planned I-394 District and guided for mixed use in the 2030 comprehensive plan. Although the [Ridgedale Vision 2035](#) plan does not specifically identify this site for use other than parking and circulation, the broader plan notes the potential for 800 housing units and public community space. To date, 115 housing units have been built in the Highland Bank or 1700 redevelopment project. Another concept plan for nearly 100 units, the Ridgedale Executive Apartments, was recently reviewed by the city. (See attachments.)

**Key Issues**

City staff has identified the following considerations for any development of the subject properties:

- **Change of land use**: The proposal represents the introduction of a non-commercial use on the Ridgedale Center property. The 2030 Comprehensive Plan indicates mixed use on the Ridgedale Center property, which includes housing. The Ridgedale Vision 2035 Plan anticipates additional housing in the immediate area.
• **Site Plan**: The proposed site plan would intensify development on the site but differently than if the proposal were commercial development. Site circulation for residents and emergency response, snow removal, and pedestrian connections become more important as site use intensifies. Connections to a future Ridgedale Drive roadway have been considered and need further review.

• **Building Character**: Building elevations have been provided with fairly significant character details. Input on building massing and desired character is important.

**Review Process**

Staff has outlined the following review process for the proposal. At this time, a formal application has not been submitted.

• **Neighborhood Meeting**. The developer held a neighborhood meeting Feb. 6, 2018. Approximately nine people attended the meeting. Questions and comments included the following:
  - What are opportunities for additional density on the mall property?
  - What is the height relationship to the 1700 building?
  - Safety for pedestrian connections in the area.
  - Is there flexibility for a 5-story building?
  - What are views to residential neighborhoods to the south?
  - How do we plan for redevelopment? Don’t want one-off development that is unorganized or unplanned.

• **Planning Commission Concept Plan Review**. The planning commission reviewed the concept plan at its Feb. 1, 2018 meeting. A summary of the meeting will be provided to the city council in a change memorandum.

• **City Council Concept Plan Review**. The city council Concept Plan Review is intended as a follow-up to the planning commission meeting and would follow the same format as the planning commission Concept Plan Review. No staff recommendations are provided, the public is invited to offer comments, and council members are afforded the opportunity to ask questions and provide feedback without any formal motions or votes.

Neighborhood notices were sent to Ridgedale list areas 2, 4 and 5 (see attachment).

**Park Planning Process**

There are a number of projects approved or proposed in the area (iFly, Ridgedale Executive Apartments, Ridgehaven Lane/Plymouth Road improvements, Ridgedale Drive Improvements, this project and others under construction). Because of the planning complexities of all of those projects staff believes it would be helpful to establish a small working group of each of the city entities that influence these projects. The small working group would assist staff in establishing the process and potential design attributes of park amenities in the Ridgedale Area. Below is an outline of the next couple of months for the work group to begin its work.
Meeting of Feb. 5, 2018
Subject: Ridgedale Active Adult Apartments Concept Plan Review

- Feb. 1: Planning Commission identifies one member to be a liaison to the smaller work group which will study the potential for a park amenity.
- Feb. 7: Park Board identifies one member to be a liaison to the smaller work group which will study the potential for a park amenity.
- Feb. 19: (week of) gather the small work group to discuss the park(s)
- Feb. 26: City Council reviews the Ridgedale Drive preliminary layout; also receives information about Ridgedale area design guidelines.
- March-April: More small group discussions
- March-April: Public outreach – discussion about park
- March-April: determine if amenities will be included in CIP discussion.

Staff Recommendation

Staff recommends the city council provide comment and feedback on the identified key issues, park planning process and others the city council deems appropriate. The discussion is intended to assist the applicant with future direction that may lead to the preparation of more detailed development plans. Additionally, any input or changes to the notice area is welcomed for future mailings.

Through:     Geralyn Barone, City Manager
            Julie Wischnack, AICP, Community Development Director

Originator:  Loren Gordon, AICP, City Planner
ADDITIONAL INFORMATION

Next Steps

- **Formal Application.** If the developer chooses to file a formal application, notification of the application would be mailed to area property owners. Property owners are encouraged to view plans and provide feedback via the city's website. Through recent website updates: (1) staff can provide residents with ongoing project updates, (2) residents can “follow” projects they are particularly interested in by signing up for automatic notification of project updates; (3) residents may provide project feedback on project; and (4) and staff can review resident comments.

- **Neighborhood Meeting.** Prior to the planning commission meeting and official public hearing, an additional public meeting would be held with neighbors to discuss specific engineering, architectural and other details of the project, and to solicit feedback. This extends the timing that has historically been provided in advance of the planning commission review to allow more public consideration of the project specifics.

- **Council Introduction.** The proposal would be introduced at a city council meeting. At that time, the council would be provided another opportunity to review the issues identified during the initial concept plan review meeting, and to provide direction about any refinements or additional issues they wish to be researched, and for which staff recommendations should be prepared.

- **Planning Commission Review.** The planning commission would hold an official public hearing for the development review and would subsequently recommend action to the city council.

- **City Council Action.** Based on input from the planning commission, professional staff and general public, the city council would take final action.

Roles and Responsibilities

- **Applicants.** Applicants are responsible for providing clear, complete and timely information throughout the review process. They are expected to be accessible to both the city and to the public, and to respect the integrity of the public process.

- **Public.** Neighbors and the general public will be encouraged and enabled to participate in the review process to the extent they are interested. However, effective public participation involves shared responsibilities. While the city has an obligation to provide information and feedback opportunities, interested residents are expected to accept the responsibility to educate themselves about the project and review process, to provide constructive, timely and germane feedback, and to stay informed and involved throughout the entire process.

- **Planning Commission.** The planning commission hosts the primary forum for public input and provides clear and definitive recommendations to the city council. To serve in that role, the commission identifies and attempts to resolve development issues and
concerns prior to the council’s consideration by carefully balancing the interests of applicants, neighbors, and the general public.

- **City Council.** As the ultimate decision maker, the city council must be in a position to equitably and consistently weigh all input from their staff, the general public, planning commissioners, applicants and other advisors. Accordingly, council members traditionally keep an open mind until all the facts are received. The council ensures that residents have an opportunity to effectively participate in the process.

- **City Staff.** City staff is neither an advocate for the public nor the applicant. Rather, staff provides professional advice and recommendations to all interested parties, including the city council, planning commission, applicant and residents. Staff advocates for its professional position, not a project. Staff recommendations consider neighborhood concerns, but necessarily reflect professional standards, legal requirements and broader community interests.
Location Map
Project: Trammell Crow
Address: 12421 Wayzata Blvd
### BUILDING METRICS

<table>
<thead>
<tr>
<th>LEVEL</th>
<th>TOTAL GSF</th>
<th>PARKING GSF</th>
<th>STALLS</th>
<th>AMENITY GSF</th>
<th>APT GSF</th>
<th>APT RSF</th>
<th>APT UNITS</th>
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<td>52,422</td>
<td>130</td>
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<td>LEVEL 1</td>
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<td>38,603</td>
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<td>3,735</td>
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<td>LEVEL 4</td>
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<td></td>
<td>276,132</td>
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<td>14,132</td>
<td>170,975</td>
<td>144,843</td>
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</table>

- GSF/STALL: 427
- STALLS/UNIT ENCLOSED: 1.27
- SURFACE STALLS: 3
- STALLS/UNIT INCL. SURFACE: 1.29

### UNIT METRICS

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<tr>
<th>Level</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>TOTAL %</th>
<th>Beds</th>
<th>Avg</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Junior 1 Bedroom</td>
<td>3</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>38</td>
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<td>566-690</td>
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<tr>
<td>1 Bedroom</td>
<td>1</td>
<td>3</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>32</td>
<td>19%</td>
<td>32</td>
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<tr>
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<td>2</td>
<td>3</td>
<td>6</td>
<td>6</td>
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<td>6</td>
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<td>17%</td>
<td>29</td>
<td>779-901</td>
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<td>30</td>
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<td>1068-1117</td>
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<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>18</td>
<td>11%</td>
<td>36</td>
<td>1222-1227</td>
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<td>34</td>
<td>168</td>
<td>237</td>
<td>862</td>
<td></td>
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</tr>
</tbody>
</table>
2035 Concept Plan: Potential New Development

Ridgedale Active Adult Apartments location
Vignettes
List 1
North of 394

List 3

List 4

List 5

Notices sent to list areas 2, 4 and 5
City Council Agenda Item #15A
Meeting of Feb. 5, 2018

Brief Description: Appointments and reappointments to Minnetonka boards and commissions

Recommended Action: Approve the recommended appointments

Background
On Jan. 8 and Jan. 24, the city council interviewed a number of applicants for the open positions on the EDAC and planning commission. After reviewing the comments from each council member and my notes, I am recommending appointing Megan Luke and Jay Hromatka to fill the vacancies on the EDAC and Alex Hanson to fill the vacancy on the planning commission. I have spoken with the applicants and they have expressed the willingness to dedicate the time and energy necessary to be contributing members.

In addition, on Jan. 31, 2018, the appointment terms will expire for some members of the EDAC, park board and planning commission. All of them are eligible to be reappointed and have been valuable and productive members. In addition, each member has indicated an interest in continuing to serve an additional term. I am recommending reappointment of the following eligible members.

The updated membership rosters showing the composition of the above boards and commissions following these reappointments are attached.

Recommendation
To approve the following appointments and reappointments to the Minnetonka Boards, Commissions and Committees:

- Deb Calvert, to the EDAC, as Alternate Council Liaison, to serve a two-year term, effective Feb. 1, 2018 and expiring on Jan. 31, 2020.
- Jack Acomb, to the park board as the student representative, to serve a one-year term, effective Feb. 1, 2018 and expiring on Jan. 31, 2019.
- Alex Hanson, to the planning commission, to serve a two-year term, effective Feb. 1, 2018 and expiring on Jan. 31, 2020.
David Knight, to the planning commission, to serve another two-year term, effective Feb. 1, 2018 and expiring on Jan. 31, 2020.


The chair and vice chair of the EDAC for 2018 will be appointed at a later date.

Respectfully submitted,

Brad Wiersum
Mayor
Economic Development Advisory Commission

The Economic Development Advisory Commission (EDAC) advises the city council regarding redevelopment, development/finance, housing and transportation. This board is comprised of seven members who reside in the city, work in the city or own a business in the city. Members serve a two-year terms. Meetings are held as needed.

<table>
<thead>
<tr>
<th>Name</th>
<th>Calvert</th>
<th>Ward</th>
<th>Comments</th>
<th>Appointed</th>
<th>Term Expires</th>
<th>Reappointed</th>
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<th>Reappointed</th>
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</thead>
<tbody>
<tr>
<td>Deborah</td>
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<td></td>
<td>Alt. Council Liaison</td>
<td>1/8/2018</td>
<td>1/31/2020</td>
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<tr>
<td>Jay</td>
<td>Hromatka</td>
<td>1</td>
<td></td>
<td>2/5/2018</td>
<td>1/31/2020</td>
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<td></td>
<td></td>
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<tr>
<td>Lee</td>
<td>Jacobsohn</td>
<td>4</td>
<td></td>
<td>2/7/2017</td>
<td>1/31/2019</td>
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<td>Jacob</td>
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<td></td>
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<td>1/31/2020</td>
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<td>Melissa</td>
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<td>2</td>
<td></td>
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<tr>
<td>Charlie</td>
<td>Yunker</td>
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<td></td>
<td>1/25/2016</td>
<td>1/31/2020</td>
<td>2/1/2018</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Staff Liaisons:**
Alisha Gray, Community Development, Ph# 952-939-8285
Park Board

This board is comprised of seven members plus one student representative. This board consults with the city council and staff in matters relating to parkland, park facilities, programs, and finances. The board’s functions include long and short range planning related to capital improvement projects, acquisition, development and use of parklands, park facilities, recreational and leisure time facilities, and recreational programs. This board meets the first Wednesday of each month at 7:00 p.m. Members serve two-year terms.

<table>
<thead>
<tr>
<th>Name</th>
<th>Ward</th>
<th>Comments</th>
<th>Appointed</th>
<th>Reappointed</th>
<th>Term Expires</th>
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<tbody>
<tr>
<td>Jack Acomb</td>
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<td></td>
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<td>2/1/2017</td>
<td>1/31/2019</td>
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<td></td>
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<td>1/31/2019</td>
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<td></td>
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<tr>
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<td></td>
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<td>2/1/2018</td>
<td>1/31/2020</td>
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Staff Liaisons:
Perry Vetter, Assistant City Manager Ph# 952-939-8216
Kelly O'Dea, Recreation Services Director, Ph# 952-939-8360
# Planning Commission

## Current Members

The planning commission assists and advises the city council in administration of the City Zoning Ordinance; conducts public hearings on matters as required by provisions of the zoning ordinance, subdivision ordinance, and any other matters referred by the council or by ordinance. Following the required public hearings, the planning commission makes its reports and recommendations to the city council and city manager. This commission is comprised of seven members who serve two-year terms. The meetings are generally held Thursday nights, twice a month at 6:30 p.m.

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<th>Name</th>
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<th>Appointed</th>
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**Other Commission Members:**

Loren Gordon - City of Minnetonka Staff Liaison Ph# 952-939-8296
12A Items concerning iFly at 12415 Wayzata Boulevard

The city planner’s change memo clarifies that the restaurant pad design guidelines will be reviewed at a future meeting.

12B Introduction of ordinance regarding small wireless facilities in public right of way

The ordinance in the council packet contained a typo. The city planner’s change memo contains the corrected language.

14A Concept plan review for Ridgedale Active Adult Apartments at 12421 Wayzata Blvd.

The staff report indicated the wrong date for the neighborhood meeting. The date of the meeting was Jan. 6, 2018.
TO: City Council
FROM: Loren Gordon, AICP, City Planner
DATE: Feb. 5, 2018
SUBJECT: Change Memo for Feb. 5, 2018

ITEM 12A – Items concerning iFly at 12415 Wayzata Blvd.

The Ridgedale restaurant pad design guidelines will be reviewed at a future meeting. The staff report should be changed to reflect, “...changes are being considered for the design guidelines on a separate agenda item at a future meeting.”

ITEM 12B – Small wireless facilities in the right of way

The last sentence of ordinance section 2(19) should read as follows:

Management costs do not include: payment by a telecommunications right-of-way user for the use of the right-of-way; unreasonable fees of a third-party contractor used by the city, including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city; the fees and cost of litigation related to the interpretation of state law or this section; or the city costs related to appeals taken pursuant to this section.

ITEM 14A – Ridgedale Active Adult Apartments

The staff report should reflect the correct neighborhood meeting date – Feb. Jan. 6, 2018.

The planning commission reviewed the concept plan at its Feb. 1, 2018 meeting. The planning commission had the following comments:

- What is the tallest building in the active adult market? 6 stories.
- What are the target market considerations? Lack of this market product in Minnetonka.
- What happens in 30 years? Plan for a shaft in the building to accommodate a kitchen.
- Do you work with city’s on affordable housing in projects like this? Junior 1 bedroom unit is geared toward that market.
- What is the parking count and guest parking accommodations? 1.1 spaces per unit. Guest parking also internal to the building.
- What type of options are available for residents who don’t drive? Shuttle service available for trips.
- Rooftop space considered? Trying to keep the spaces centralized.