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**STON CITY COUNCIL  
MEETING AGENDA  
OCTOBER 4, 2010 AT 6:30 PM  
COUNCIL CHAMBERS**

*The City Council is provided background information for agenda items in advance by city staff, committees and boards. Many decisions regarding agenda items are based upon this information, as well as: City policy and practices, input from constituents, questions or information that has not yet been presented or discussed regarding an agenda item. If you have a concern or question, please ask to be recognized by the Mayor during the "Citizens addressing the Council" portion of the agenda—state your name and address for the record. Please keep comments under 5 minutes. Individuals wishing to speak for more than five minutes should ask to be included on the agenda in advance. All comments are appreciated, but please refrain from personal or derogatory attacks on individuals.*

1. Call meeting to order and Pledge of Allegiance
2. Roll Call
3. Approve the agenda and any agenda additions

**CONSENT AGENDA**

*The items listed for consideration will be enacted by one motion unless the Mayor, a member of the City Council, City Staff or a person in attendance requests an item to be removed from the Agenda.*

4. Approval of Consent Agenda
  - A) Approval of the September 20<sup>th</sup> Regular Meeting Minutes
  - B) Approval of Bills
  - C) Approval of Engineering Services Proposal for the 2011 Railroad Crossings Improvement

**PUBLIC HEARINGS**

**PETITIONS, REQUESTS, & COMMUNICATIONS**

5. Addressing the Council
  - A) Citizens Addressing the Council
6. Announcements
  - A) International Walk to School Day ó Wednesday, October 6<sup>th</sup>
  - B) LMC Regional Meeting ó Thursday, October 7<sup>th</sup> in Montgomery
  - C) Budget Workshop Meeting ó Wednesday, October 13<sup>th</sup> @ 5:30 p.m.
  - D) Southern Minnesota Initiative Foundation Annual Luncheon ó Thursday, October 21<sup>st</sup> @ 11:30 a.m. in Owatonna
7. Communications
  - A) September Police Calls Report
  - B) September Building Permit Report
  - C) MMPA 2<sup>nd</sup> Quarter 2010 Financial Statement

## ICERS, BOARDS & COMMITTEES

### ORDINANCES & RESOLUTIONS

8. Ordinances
  - A) 252 (2<sup>nd</sup> Reading) ó Amending Ordinance 214 (Addressing the Methods of Assessment)
  - B) 253 (2<sup>nd</sup> Reading) ó Amending Ordinance 192 (Right-of-Ways & Easements)
9. Resolutions
  - A) 44-2010 ó Summary Publication of Ordinance 252
  - B) 45-2010 ó Summary Publication of Ordinance 253
  - C) 46-2010 ó Accepting a Donation
  - D) 47-2010 ó Providing for the Competitive Negotiated Sale of \$3,345,000 GO Hospital Refunding Bonds
  - E) 48-2010 ó International Walk to School Day

### UNFINISHED BUSINESS

10. Approve/Deny Insurance Requirements for the Community Center Cleaning Contract

### NEW BUSINESS

11. Approve/Deny a Memorandum of Understanding Regarding the Use of the Mid-County Co-Op Property by Warren Dressen
- 12.

### MISCELLANEOUS BUSINESS

13. Council Committee Updates
14. Open Discussion

### ADJOURNMENT

#### Reminders:

- 1) Planning & Zoning ó October 7<sup>th</sup> @ 7 pm
- 2) Parks Board ó October 11<sup>th</sup> @ 6 pm (Tech Center)
- 3) Police Committee ó October 25<sup>th</sup> @ 1 pm (Tech Center)
- 4) Hospital Board ó October 25<sup>th</sup> @ 5 pm (SMC)
- 5) EDA ó October 27<sup>th</sup> @ 6 pm (Tech Center)

The meeting was called to order at 6:30 p.m., Mayor Kreft presiding.

Members present: Mayor Kreft, Pederson, Pichelmann, Reetz, Vrklan, Wills

Members absent: None

Also present: City Administrator Jaunich, City Attorney Arneson

Motion by Pederson, seconded by Wills, and passed by unanimous vote to approve the agenda with the following addition:

9E) Resolution 48-2010 ó International Walk to School Day.

Motion by Reetz, seconded by Pederson, and passed by unanimous vote to approve the consent agenda as follows:

- A) Approval of the September 20<sup>th</sup> Regular Meeting Minutes
- B) Approval of the Bills
- C) Approval of Engineering Services Proposal for the 2011 Railroad Crossings Improvement.

It was noted that there were no public hearings scheduled.

It was noted that there were no citizens present to address the Council on non-agenda items.

The following announcements were reviewed:

- 1) International Walk to School Day ó Wednesday, October 6<sup>th</sup>
- 2) LMC Regional Meeting ó Thursday, October 7<sup>th</sup> in Montgomery
- 3) Budget Workshop Meeting ó Wednesday, October 13<sup>th</sup> @ 5:30 pm
- 4) Southern Minnesota Initiative Foundation Annual Luncheon ó Thursday, October 21<sup>st</sup> @ 11:30 am in Owatonna.

The Council reviewed the following communications:

- 1) September Police Calls Report
- 2) September Building Permit Report
- 3) MMPA 2<sup>nd</sup> Quarter 2010 Financial Statement.

It was noted that there were no Officers, Boards or Committees reporting to the Council.

The second reading of Ordinance 252 ó An Ordinance Amending Ordinance 214, Section 7(A), Addressing the Methods of Assessments, was held. Adm. Jaunich noted that there were no changes made since the first reading.

Motion by Vrklan, seconded by Reetz, and passed by unanimous vote to approve Ordinance 252 ó An Ordinance Amending Ordinance 214, Section 7(A), Addressing the Methods of Assessments, as follows:

#### **ORDINANCE 252**

#### **AN ORDINANCE AMENDING ORDINANCE 214, SECTION 7(A), ADDRESSING THE METHODS OF ASSESSMENTS**

THE CITY COUNCIL OF THE CITY OF ARLINGTON, MINNESOTA TO PROMOTE THE PUBLIC SAFETY, HEALTH AND WELFARE, HEREBY ORDAIN AS FOLLOWS:

by amended to read as follows:

assessment. The cost per adjusted front foot method of assessment shall be based on the quotient of the assessable costs divided by the total assessable frontage benefiting from the improvement. For the purpose of determining the assessable frontage, all properties, including governmental agencies, shall have their frontages included in such calculation.

The actual physical dimensions of a parcel abutting an improvement (i.e., street, sewer, water, etc.) shall not be construed as the frontage utilized to calculate the assessment for a particular parcel. Rather, adjusted front footage will be determined. The purpose of this method is to equalize assessment calculations for lots of similar size. Individual parcels by their very nature differ considerably in shape and area. The following procedures will apply when calculating adjusted front footage. The selection of the appropriate procedure will be determined by the specified configuration of the parcel. All measurements will be scaled from available plat and section maps and will be rounded down to the nearest foot dimension with any excess fraction deleted.

1. Rectangular Interior Lots. A rectangular lot is defined as having no more than five (5) feet difference between the front and rear lot lines. The adjusted front footage is the actual front footage of the lot. For rectangular lots whose frontage is greater than its depth or when the divergence between front and rear lot lines is greater than five (5) feet, the odd shaped lot method shall be used.
2. Odd Shaped Lots. For odd shaped lots, such as triangle shaped lots; lots with more than four sides; and those existing on cul-de-sacs and curvilinear streets where there is more than five (5) feet of difference between the front and rear lot lines, and where the lot's frontage is greater than its depth, the odd shaped lot method of determining the adjusted front footage shall be used.

The adjusted front footage of an Odd Shaped Lot shall be computed by dividing the area of the lot by the minimum lot area of the zoning district or PUD that the lot is located in to determine the equivalent number of front footage units in the parcel. The number of units multiplied by the average lot width of the zoning district or PUD that the lot is located in will give the adjusted front footage. For lots that do not have average lot areas or average lot width requirements, the average size of a lot area and width within the assessed area or the average size of a lot area and width within the subdivision will be used.

3. Corner Lot Adjustment. Street surface, sidewalks and curb and gutter costs for the front lot is assessed 100% and the side footage is assessed 50% with the remaining 50% being paid for by the City.

Section 2. All other portions of Ordinance 214 not amended by this ordinance shall remain in full force and effect.

This ordinance shall become effective immediately upon publication.

For City of Arlington

/s/ James R. Kreft  
By James R. Kreft  
Its Mayor

/s/ Matthew Jaunich  
By Matthew Jaunich  
Its City Administrator

The second reading of Ordinance 253 ó An Ordinance to Administer and Regulate the Public Right-of-Way and Easements in the Public Interest, and to Provide for the Issuance and Regulation of Right-of-Way and Easement Permits within the City of Arlington, Minnesota, was held. Adm. Jaunich stated that a few minor changes had been after the first reading per City Attorney Arneson's recommendation.

Motion by Wills, seconded by Pichelmann, and passed by unanimous vote to approve Ordinance 253 ó An Ordinance to Administer and Regulate the Public Right-of-Way and Easements in the Public Interest, and to Provide for the Issuance and Regulation of Right-of-Way and Easement Permits within the City of Arlington, Minnesota, as follows:

**ORDINANCE 253**

**AN ORDINANCE TO ADMINISTER AND REGULATE THE PUBLIC RIGHT-OF-WAY AND EASEMENTS IN THE PUBLIC INTEREST, AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY AND EASEMENT PERMITS WITHIN THE CITY OF ARLINGTON, MINNESOTA.**

ARLINGTON, MINNESOTA TO PROMOTE THE PUBLIC SAFETY,  
AS FOLLOWS:

Ordinance 192 is hereby repealed in its entirety, and is replaced by Ordinance 253, to read as follows:

## SECTION 1. ELECTION AND DEFINITIONS

### 1.01. Election to Manage the Public Right-of-Way and Easements

In accordance with the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to this chapter to manage right-of-ways and easements within its jurisdiction. This ordinance has been enacted to require the owners of property containing a public easement or right-of-way to use the property in a manner consistent with the grant of the easement or right-of-way, and assure the city of reasonable access onto easements or right-of-ways in an emergency situation. This ordinance recognizes the need to maintain public right-of-ways and easements free of obstructions and accessible, while allowing non-conflicting uses by the property owner.

### 1.02. Definitions.

For purposes of this ordinance, the following terms have the stated meanings:

- a) *Landowner*. Shall mean the fee owner(s), tenants or occupiers of a parcel of property over, on or under which the city holds a public easement or right-of-way.
- b) *City*. Shall mean the city of Arlington, Minnesota.
- c) *Easement*. An easement is the right to use another person's land for a stated purpose. For this ordinance it shall mean a public easement of any type, including but not limited to an easement for utility, drainage, roadway, ingress/egress, sidewalk, boulevard and other public purposes. The area of an easement shall not be limited to that portion of the easement actually put to use, but shall extend to the entire easement as described in the grant or dedication, including roadway ditches and boulevards lying within the designated areas.
- d) *Pre-Existing Use*. Means a use or activity existing within an easement or right-of-way at the time this ordinance was enacted.
- e) *City's Easement Use*. Shall be any use which the city is authorized to maintain by the grant or dedication of the easement as construed in accordance with the laws of the State of Minnesota.
- f) *Boulevard*. Shall mean that portion of a street or road easement located outside of the portion of the easements which is actually improved for street or road purposes and used for vehicular traffic or the parking of vehicles. With respect to streets or roads improved with curbing, the boulevard shall be that portion of the easement separated from the improved portion of the street or road by the curbing.
- g) *Utility Easement*. Shall mean any public easement which affords the city the right to install, locate or maintain any public utility, including but not limited to sanitary sewer lines, water lines, storm sewer lines, gas lines, electrical cables, and cable television.
- h) *Right-of-way*. A right-of-way is a type of easement that gives someone the right to travel across property owned by another person. For this ordinance, right-of-way shall mean 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 right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

The definitions included in Minnesota Statute Section 237.162, Minnesota Rules 7819.0100 subs. 1 through 23, and Minnesota Rules 7560.0100 subs. 1 through 12 is hereby adopted by reference and is incorporated into this ordinance as if set out in full.

## SECTION 2. PUBLIC RIGHT-OF-WAYS

### 2.01. Permit Requirement.

1. Permit Required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.
  - a. Excavation Permit. An excavation permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
  - b. Obstruction Permit. An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
2. Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (i) makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

ota Rule 7819.1000 subp. 3 and notwithstanding subdivision 2 of this a delay penalty for unreasonable delays in right-of-way excavation, delay penalty shall be established from time to time by city council

resolution.

4. Permit Display. Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

#### 2.02. Permit Applications.

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

1. Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:
  - a. Each permittee's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
  - b. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
  - c. A certificate of insurance or self-insurance:
    - i. Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the city;
    - ii. Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
    - iii. Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
    - iv. Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
    - v. Indicating a minimum comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage of \$500,000 each to protect the city and the public and to carry out the purposes and policies of this chapter. The city reserves the right to require higher insurance coverage, depending on the scope of the project.
    - vi. The city may require a copy of the actual insurance policies.
    - vii. If the person is a corporation, a copy of the certificate required to be filed under Minn. Stat. 300.06, 302A, or other appropriate state law, as recorded and certified to by the Secretary of State.
    - viii. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
2. Payment of money due the city for
  - a. permit fees, estimated restoration costs and other management costs,
  - b. prior obstructions or excavations;
  - c. any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
  - d. Franchise fees or other charges, if applicable.

#### 2.03. Issuance of permit; conditions.

1. Permit Issuance. If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.
2. Conditions. The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560. In addition, all permitted projects shall be subject to delay or termination with the approval of the city, when seasonally prohibited or when weather or other conditions make it unreasonable to conduct such work.
3. Trenchless Excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the city.

mit fee in an amount sufficient to recover the following costs:

- a. the city management costs;
  - b. Degradation costs, if applicable.
  2. Obstruction Permit Fee. The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.
  3. Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.
  4. Non refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 2.12 are not refundable.
  5. Application to franchises. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.
  6. All permit fees shall be established consistent with the provisions of Minnesota Rule 7819.100. All permit fees shall be established from time to time by city council resolution.
- 2.05. Right-of-Way Patching and Restoration.
1. Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Section 2.03.
  2. Patch and Restoration. Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
    - a. City Restoration. If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with having to correct the defective work.
    - b. Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000 unless waived by the city in its sole discretion, as appropriate for small projects.
    - c. Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
  3. Standards. The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100
  4. Duty to correct defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the city, correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 2.03.
  5. Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.
- 2.06. Supplementary Applications.
1. Limitation on Area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.
  2. Limitation on Dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date. Extensions may be granted by the city for a maximum of five work days without further fees, provided such work delays was due to circumstances beyond the control of the permit holder or the work was prohibited as unseasonable or unreasonable. Any extension beyond five work days requires a new permit and permit fees may be prorated depending on the scope of work to be completed.

the requirements and conditions of this chapter or if the city determines safety, and welfare or when necessary to protect the right-of-way and

its current use.

#### 2.08. Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Secs. 237.162 and 237.163.

#### 2.09. Inspection.

1. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules 7819.1300.
2. Site Inspection. Permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
3. Authority of City.
  - a. At the time of inspection the city may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or well being of the public.
  - b. The city may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the city may revoke the permit pursuant to Section 2.12.

#### 2.10. Work Done Without a permit.

1. Emergency Situations. Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities that it considers being an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.
2. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

#### 2.11. Supplementary Notification.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

#### 2.12. Revocation of Permits.

1. Substantial Breach. The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
  - a. The violation of any material provision of the right-of-way permit;
  - b. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
  - c. Any material misrepresentation of fact in the application for a right-of-way permit;
  - d. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
  - e. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 2.09.
2. Written Notice of Breach. If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations might be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.



- ty-four (24) hours of receiving notification of the breach, permittee  
le to the city, which will cure the breach. Permittee's failure to so  
submit an acceptable plan, or permittee's failure to reasonably  
implement the approved plan, shall be cause for immediate revocation of the permit.
4. Reimbursement of City Costs. If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.
- 2.13. Mapping Data.
1. Information Required. Each permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100.
  2. Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals install after December 31, 2005, shall be a condition of any city approval necessary for 1) payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429, and 2) City approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 462. The city shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.
- 2.14. Location of Facilities.
1. Placement, location, and relocation of facilities must comply with the act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
  2. Corridors. The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.
  3. Limitation of Space. To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the director shall have the power to prohibit or director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.
- 2.15. Damage to Other Facilities.
- When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the city shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the city's response to an emergency occasioned by that owner's facilities.
- 2.16. Right-of-Way Vacation.
- Reservation of right. If the city vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.
- 2.17. Indemnification and Liability
- By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.
- 2.18. Abandoned Facilities.
- Removal of Abandoned Facilities. Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the director waives this requirement.
- 2.19. Appeal.
- A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; (4) believes that the fees imposed are invalid; or (5) disputes a determination of the city regarding Section 2.13.2 of this

imposition, or decision reviewed, upon written request, by the city  
written request at its next regularly scheduled meeting. A decision by the  
fee imposition will be in writing and supported by written findings

establishing the reasonableness of the decision.

### SECTION 3. LIMITING ACTIVITIES IN PUBLIC EASEMENTS

#### 3.01. Limitation of Activities in Area of Easement.

1. The following activities by the owner are permitted in an easement:
  - a. Lawn.
  - b. Vegetable or flower garden.
  - c. Maintenance of lawn ornaments, lawn furniture, recreation and play equipment and game apparatus which are not affixed or anchored to the ground.
  - d. Driveway and sidewalks.
  - e. The use and maintenance of (1) (a, b, c) above by the landowner and guests in a regular and intended manner.
2. Limited activities, such as gardens, are not allowed in city easement corridors which are designed as right-of-way for motor vehicle use, whether or not they are currently being used for motor vehicle travel.
3. All other uses, unless specifically permitted herein, shall be considered prohibited and shall not be maintained on or in an easement, except by written permit granted by the city after application pursuant to the following procedures:
  - a. The landowner shall submit a written request to the city administrator describing the easement to be affected and the proposed use for which permit is sought, together with an administration fee as may be set by resolution of the city council.
  - b. The city administration shall refer the request to the city street supervisor for consideration and recommendation. If the easement to be affected by the request is a utility easement, the request shall also be referred to the city engineer for consideration and recommendation;
  - c. Based upon the recommendations received from the street supervisor and city engineer, the city administrator shall make a recommendation to the city council and the city council shall approve or deny the request, taking into consideration the stated purpose of this ordinance. Any approval must be accompanied by specific conditions or modifications to the original request as deemed appropriate to protect the city's interests; the permit must contain the specific conditions to protect the city's interests.
  - d. Fences may only be erected over an easement if the landowner meets the requirements of Ordinance 183 and/or 190 as may be amended.
4. When landowners undertake permitted activities within easements, the city retains the right to require the landowner to remove or abate such activities wherein such activities interfere in any manner with the city's easement use. The city reserves the right to obtain access to the easement. The landowner shall bear all costs for removal and/or restoration of permitted activities in the event access to the easement is required. The city specifically reserves all rights of an easement holder afforded under the common law of the State of Minnesota.
5. Nothing stated herein shall deny the city the right to request a landowner to remove or abate any permitted use or activity existing in the easement where the use or activity directly interferes in any manner with the city's easement use, if the city is currently engaging in the use or intends on engaging in the use. The city specifically reserves all rights of an easement holder afforded under the common law of the State of Minnesota.

#### 3.02. Pre-Existing Uses.

1. A preexisting use, which is not otherwise specifically permitted by this ordinance, shall be discontinued and removed from the easement within 60 days of enactment of this ordinance, except as provided below:
2. The following prohibited pre-existing uses shall be allowed to continue under the terms set forth in paragraph 3 herein:
  - a. Trees, shrubs, bushes, parking lots, and fences which are not inconsistent or interfering with the city's easements use.
  - b. Structures or buildings which are not inconsistent or interfering with the city's easement use.
3. No pre-existing prohibited uses, allowed to be continued under paragraph 2 of this section, shall be enlarged, nor shall they be altered, improved, repaired or restored. If the pre-existing prohibited use is discontinued or substantially destroyed, the right to maintain the pre-existing prohibited use is lost.

### SECTION 4. ENFORCEMENT

#### 4.01. Enforcement and Police Powers.

If the landowner refuses to remove or abate a prohibited use within the easement or right-of-way, or if a pre-existing use permitted under Section 3.02.2 interferes with the city's easement use, in addition to the procedure set forth in Section 3.02.1, the city may take any reasonable steps to remove or abate the use and assess the cost of removal or abatement to the property. The city administrator shall send a written notice of a violation to the landowner directing the landowner to bring the property into compliance with the ordinance within 30 days.

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to compliance within the 30 day violation notice term, then the city shall use as set out in this section. The city also reserves the right to immediately remove or abate a prohibited use without advance notice to the property owner, if said prohibited use interferes with urgent repair or replacement of city utilities within the easement corridor.

The city shall not be liable for any damage to the property of the landowner in the easement or right-of-way or damage to any structures located in the easement or right-of-way which are removed or abated in the city while engaging in the city's easement or right-of-way use.

A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public. Any violation of this ordinance shall be considered a misdemeanor punishable by the fines and penalties set out in state law for misdemeanor level offenses. Each day that a violation exists shall be considered a separate misdemeanor.

This ordinance shall become effective immediately upon publication.

For the City of Arlington:

/s/ James R. Kreft
Jaunich
By James R. Kreft
Its Mayor

/s/ Matthew
By Matthew Jaunich
Its City Administrator

Councilmember Vrklan introduced the following resolution and moved for its adoption:

RESOLUTION 44-2010
A RESOLUTION AUTHORIZING SUMMARY PUBLICATION OF ORDINANCE 252 ENTITLED "AN ORDINANCE AMENDING ORDINANCE 214, SECTION 7(A), ADDRESSING THE METHODS OF ASSESSMENTS"

WHEREAS, the City Council of Arlington routinely passes ordinances to promote the public safety, health and welfare of the residents of Arlington; and

WHEREAS, the City Council initiated an ordinance (252) to amend Ordinance 214, addressing the methods of assessments; and

WHEREAS, the City Council held a first reading of Ordinance 252 at its regular meeting on September 20, 2010; and

WHEREAS, the City Council approved the second reading and adoption of Ordinance 252 at its regular meeting on October 4, 2010; and

WHEREAS, the City Council of the City of Arlington has determined the publication of the title and a summary of Ordinance 252 entitled "An Ordinance Amending Ordinance 214, Section 7(A), addressing the methods of assessment" would clearly inform the public of the intent and effect of Ordinance 252; and

WHEREAS, prior to the publication of the title and summary, the Council has read and approved the text of the summary and determined that it clearly informs the public of the intent and effect of the Ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the City Administrator shall cause a summary of Ordinance 252 to be published in the City's official newspaper at the earliest practicable date.

BE IT FURTHER RESOLVED, the summary publication shall read as follows:

On October 4, 2010, the City Council of the City of Arlington approved Ordinance 252 entitled "An Ordinance Amending Ordinance 214, Section 7(A), addressing the methods of assessment" The Ordinance in its entirety is available for review and/or photocopying during regular office hours at the City of Arlington, 204 Shamrock Drive, Arlington, Minnesota 55307. The purpose of the ordinance is to modify Section 7(A) of the City's Special Assessment Policy for Public Improvements and Maintenance Costs, specifically, methods of assessments and calculation standards for rectangular interior lots and odd shaped lots.



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resolution was duly seconded by Councilmember Wills and upon poll r thereof: Pederson, Pichelmann, Reetz, Vrklan, Wills; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: None.

Approved by the City Council of the City of Arlington this 4<sup>th</sup> day of October, 2010.

CITY OF ARLINGTON, MINNESOTA

/s/ James R. Krefl  
Mayor

Attest: /s/ Matthew Jaunich  
City Administrator

Councilmember Reetz introduced the following resolution and moved for its adoption:

**RESOLUTION 45-2010**

**A RESOLUTION AUTHORIZING SUMMARY PUBLICATION OF ORDINANCE 253 ENTITLED “AN ORDINANCE TO ADMINISTER AND REGULATE THE PUBLIC RIGHT-OF-WAY AND EASEMENTS IN THE PUBLIC INTEREST AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY AND EASEMENT PERMITS WITHIN THE CITY OF ARLINGTON, MINNESOTA”**

WHEREAS, the City Council of Arlington routinely passes ordinances to promote the public safety, health and welfare of the residents of Arlington; and

WHEREAS, the City Council initiated an ordinance (253) to administer and regulate the public right-of-way and easements; and

WHEREAS, the City Council held a first reading of Ordinance 253 at its regular meeting on September 20, 2010; and

WHEREAS, the City Council approved the second reading and adoption of Ordinance 253 at its regular meeting on October 4, 2010; and

WHEREAS, the City Council of the City of Arlington has determined the publication of the title and a summary of Ordinance 253 entitled “An Ordinance to Administer and Regulate the Public Right-of-Way and Easements in the Public Interest and to Provide for the Issuance and Regulation of Right-of-Way and Easement Permits within the City of Arlington, Minnesota”; and

WHEREAS, prior to the publication of the title and summary, the Council has read and approved the text of the summary and determined that it clearly informs the public of the intent and effect of the Ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the City Administrator shall cause a summary of Ordinance 253 to be published in the City’s official newspaper at the earliest practicable date.

BE IT FURTHER RESOLVED, the summary publication shall read as follows:

“On October 4, 2010, the City Council of the City of Arlington approved Ordinance 253 entitled “An Ordinance to Administer and Regulate the Public Right-of-Way and Easements in the Public Interest and to Provide for the Issuance and Regulation of Right-of-Way and Easement Permits within the City of Arlington, Minnesota”. The Ordinance in its entirety is available for review and/or photocopying during regular office hours at the City of Arlington, 204 Shamrock Drive, Arlington, Minnesota 55307. The purpose of the ordinance is to administer and regulate public right-of-ways and easements, including the issuance of permits for work to be done in the right-of-ways and easements.”

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember Pederson and upon poll being taken thereon the following voted in favor thereof: Pederson, Pichelmann, Reetz, Vrklan, Wills; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: None.



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ington this 4<sup>th</sup> day of October, 2010.

/s/ James R. Krefl  
Mayor

Attest: /s/ Matthew Jaunich  
City Administrator

Councilmember Reetz introduced the following resolution and moved for its adoption:

**RESOLUTION 46-2010  
A RESOLUTION ACCEPTING A DONATION AND DESIGNATING ITS USE**

WHEREAS, the City of Arlington may accept a gift of real or personal property, including money, and use it in accordance with the terms prescribed by the donor; and

WHEREAS, the City may not, however, accept or use gifts for religious or sectarian purposes; and

WHEREAS, the City of Arlington has received a donation of money from the Arlington Baseball Association for the purpose of purchasing an auto pulse for the Ambulance.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Arlington that the City accepts the \$1,000 donation in full and designates its use to the ambulance fund for use in purchasing an auto pulse.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember Pederson and upon poll being taken thereon the following voted in favor thereof: Pederson, Pichelmann, Reetz, Vrklan, Wills; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: None.

Approved by the City Council of the City of Arlington this 4<sup>th</sup> day of October, 2010.

CITY OF ARLINGTON, MINNESOTA

/s/ James R. Krefl  
Mayor

Attest: /s/ Matthew Jaunich  
City Administrator

Brief discussion was held on refinancing the 2002 Hospital Bonds. Adm. Jaunich stated that the Hospital Board was recommending refinancing, as the interest rates are much lower now and the savings would be more than \$500,000 over the remaining life of the issue.

Councilmember Vrklan introduced the following resolution and moved for its adoption:

**RESOLUTION 47-2010  
A RESOLUTION PROVIDING FOR THE COMPETITIVE NEGOTIATED SALE OF  
\$3,345,000 GENERAL OBLIGATION HOSPITAL REFUNDING BONDS, SERIES 2010B**

A. WHEREAS, the City Council of the City of Arlington, Minnesota (the "City"), has heretofore determined that it is necessary and expedient to issue the City's \$3,345,000 General Obligation Hospital Refunding Bonds, Series 2010B (the "Bonds"), to refinance the outstanding maturities of the City's G.O. Hospital Bonds, Series 2002 and;

B. WHEREAS, the City has retained David Drown Associates, Inc., in Minneapolis, Minnesota ("David Drown"), as its independent financial advisor for the Bonds and is therefore authorized to sell the Bonds by a competitive negotiated sale in accordance with Minnesota Statutes, Section 475.60, Subdivision 2(9):

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Arlington, Minnesota, as follows:

1. Authorization. The Council hereby authorizes David Drown to solicit bids for the competitive negotiated sale of the Bonds.
2. Meeting: Bid Opening. The Council shall meet at the time and place specified in the Terms of Offering attached hereto as Exhibit A for the purpose of considering sealed bids for, and awarding the sale of, the

nee, shall open bids at the time and place specified in such Terms of

itions of the Bonds and the negotiation thereof are fully set forth in the "Terms of Offering" attached hereto as Exhibit A and hereby approved and made a part hereof.

4. Official Statement. In connection with said competitive negotiated sale, the officers or employees of the City are hereby authorized to cooperate with David Drown and participate in the preparation of an official statement for the Bonds and to execute and deliver it on behalf of the City upon its completion.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember Pichelmann and upon poll being taken thereon the following voted in favor thereof: Pederson, Pichelmann, Reetz, Vrklan, Wills; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: None.

Approved by the City Council of the City of Arlington this 4<sup>th</sup> day of October, 2010.

CITY OF ARLINGTON, MINNESOTA

/s/ James R. Kreft  
Mayor

Attest: /s/ Matthew Jaunich  
City Administrator

Councilmember Reetz introduced the following resolution and moved for its adoption:

**RESOLUTION 48-2010**  
**A RESOLUTION DESIGNATING WEDNESDAY, OCTOBER 6, 2010 "INTERNATIONAL WALK TO SCHOOL DAY" IN THE CITY OF ARLINGTON, MINNESOTA**

**WHEREAS**, in cooperation and conjunction with Sibley East School District, St. Paul's Lutheran School of Arlington, Green Isle Community School, Sibley County Public Health, the City of Gaylord, and the City of Green Isle, the City of Arlington promotes the health, safety, and welfare of our students en route to school; and

**WHEREAS**, as an integral component of our "Safe Routes to School" collaboration, the above agencies have made it a priority to examine, evaluate, and improve the safety and connectivity of the pedestrian routes used by our local students; and

**WHEREAS**, hundreds of children could be saved each year if communities take steps to make pedestrian safety a priority; and

**WHEREAS**, a lack of physical activity plays a leading role in rising rates of obesity, diabetes and other health problems among children and being able to walk or bicycle to school offers an opportunity to build activity into daily routine; and

**WHEREAS**, driving students to school by private vehicle contributes to traffic congestion, parking issues, and air pollution; and

**WHEREAS**, an important role for parents and caregivers is to teach children about pedestrian safety and become aware of the difficulties and dangers that children face on their trip to school each day and the health and environmental risks related to physical inactivity and air pollution; and

**WHEREAS**, community leaders and parents can determine the "walkability" of their community by using a walkability checklist; and

**WHEREAS**, community members and leaders should make a plan to make changes to enable children to safely walk and bicycle in our communities and develop a list of suggestions for improvements that can be done over time; and

**WHEREAS**, children, parents and community leaders around the world are joining together to walk to school and evaluate walking and bicycling conditions in their communities; and

of the City Council of the City of Arlington that October 6, 2010  
Day" in the City of Arlington, Minnesota and the Arlington City  
safety and health of children today and every day.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember Pederson and upon poll being taken thereon the following voted in favor thereof: Pederson, Pichelmann, Reetz, Vrklan, Wills; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: None.

Approved by the City Council of the City of Arlington this 4<sup>th</sup> day of October, 2010.

CITY OF ARLINGTON, MINNESOTA

/s/ James R. Kreft  
Mayor

Attest: /s/ Matthew Jaunich  
City Administrator

Discussion was held on whether the requirement of having insurance (general liability and/or worker's compensation) should be changed with regards to the Cleaning Contract for the Community Center. Adm. Jaunich commented that past contracts have been with companies that have employees, but the contract approved at the last meeting is with an individual who does not have employees or insurance. It was noted that Mr. Mueller would get the insurance if he was required to do so, but he would have to increase his original bid amount. Attorney Arneson talked about how the State views the differences between independent contractors and employees. It was his recommendation that the individual party should form a LLC (Limited Liability Corporation) for insurance reasons or the City should require Worker's Compensation Insurance (at a minimum).

Motion by Reetz, seconded by Vrklan, and passed by unanimous vote to approve the insurance requirement for cleaning the Community Center or likewise, forming a LLC with a worker's compensation exemption; and to authorize Staff to negotiate the bid amount.

Adm. Jaunich explained that Warren Dressen d/b/a Dressen Transportation had met with the Planning & Zoning Committee about moving his business from Cologne to the Mid-County Cooperative site in the industrial park. He stated that Mr. Dressen would be operating a transportation business on the site and was looking into some other options as well. He added that since the full use of the property was unclear a Memorandum of Understanding (MOU) was drafted, which specified what was allowed per current zoning standards and what would be needed in the event things changed. Reetz commented that Mr. Dressen had talked about expanding the (railroad) spur line and having (outside) bulk product storage on site. It was noted that PZ Adm. Smith-Strack had done a site visit of Cologne property and stated that it was organized and maintained. Adm. Jaunich stated that the PZ Committee was recommending approval of the MOU. Reetz added that Mr. Dressen was planning to change the access from County Road 12 to Circle Drive, which Darin Mielke (PZ member and also County employee) approved of.

Motion by Galen, seconded by Pichelmann, and passed by unanimous vote to approve the Memorandum of Understanding for the use of the Mid-County Cooperative property as presented above.

Wills gave an update on the Cable Commission. He stated that they toured the Gaylord site where equipment is stored and discussed some recent purchases.

Vrklan gave an update on the Cemetery Committee. He stated that Supt. Thomes had removed some dead shrubbery along the east boundary line. He commented that they had some discussion about getting the next road (to the south) put in or added to the schedule within the Capital Improvement Plan.



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Supt. Thomes, Shawn Battcher and Ray Haggemiller had at the Sportsmanø Park recently. He expressed a special work he did, plus putting on the overhang on his own.

Adm. Jaunich commented that he had heard from Engineer Swanson regarding the grant application paperwork for upgrading/expanding the wastewater treatment facility. He stated that the City scored very well, which puts it high on the priority list (number 1 within the region it was assigned to). It was noted that the A-GI WW Committee would be getting to review the information and then make their recommendation to each of the City Councils.

Adm. Jaunich stated that the re-roofing of the Community Center was going very well. He commented that the Contractor has been finding things (defects during original installation) and documenting them as they go along.

Adm. Jaunich commented that they were 90% done with the upgrades at the Hwy 5 Lift station. He stated that they had to do a few minor changes with some valves due to spacing issues. The project should be completed within next couple of weeks.

Reetz reported that he may not be able to make the Special Budget meeting on Oct. 13<sup>th</sup> due to work related issues.

Motion by Vrklan, seconded by Wills, and passed by unanimous vote to adjourn the meeting at 7:14 pm.

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City Administrator Matthew Jaunich

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Mayor James R. Kreft