

**Mountain Lake City Council Meeting**  
**Mountain Lake City Hall**  
**TUESDAY, July 5, 2016**  
**6:30 p.m.**

**AGENDA**

1. Meeting called to order by Mayor Mike Nelson
  - \* Further information on agenda item is attached
  
2. Approval of Agenda and Consent Agenda
  - a. Bills: Check #'s 9918907-9918941 439E & 440E\*(1-4)
  - b. Approval of Payroll Checks # 62536 - 62555
  - c. Approval of June 22 Council Minutes\*(5-7)
  - d. Approval of April 25 Planning and Zoning Commission Minutes\*(8-9)
  - e. Approval of May and June Building Permits\*(10-11)
  
3. Public – A total of ten (10) minutes is allotted for individuals to briefly discuss a topic of concern with the Council.
  
4. Approval Well #7 Project Final Payment\*(12-15)
  
5. Public Works
  - a. 306 Golf Course Rd. Stormwater Issues\*(16-17)
  - b. Capital Improvement Plan\*(18)
  - c. Cemetery\*(19-25)
  
6. Public Nuisances
  - a. 1406 3<sup>rd</sup> Ave. Update
  - b. Establish Fines\*(12 & 26-36)
  
7. Resolution #18-16 Conditional Use, PIN 22.520.0640, 817 Second Avenue\*(37-44)
  
8. Temporary Family Health Care Dwellings
  - a. First Reading Ordinance #6-16, Opt-Out of Requirements of MN Statutes Section 462.3593\*(12 & 45)
  - b. MN Statute 462.3593\*(46-52)
  - c. Review of Current City Code\*(53-64)

9. Adopted Updated Drug and Alcohol Testing Policy for Commercial Drivers (DOT)\*(12 & 65-92)
10. Administrator
  - a. Salaries – Trail/Parks Part-time Employee, Council
11. Adjourn

**DATES TO REMEMBER**

**TUESDAY OCTOBER 4 - CMPAS Annual Meeting, 3-7 PM, Mankato**

**\*Check Detail Register©**

*July 5, 2016 mtg*  
*9918907 - 9918941*  
*4396 + 440E*

June 2016 to July 2016

	Check Amt	Invoice	Comment
<b>10100 United Prairie</b>			
Paid Chk# 9918907 6/23/2016 AFLAC			
G 101-21713 AFLAC	\$192.74		
Total AFLAC	\$192.74		
<b>Paid Chk# 9918908 6/23/2016 AFSCME COUNCIL 65</b>			
G 101-21707 Union Dues	\$154.86		
Total AFSCME COUNCIL 65	\$154.86		
<b>Paid Chk# 9918909 6/23/2016 BCBS/HSA</b>			
G 101-21714 HSA	\$393.85		
Total BCBS/HSA	\$393.85		
<b>Paid Chk# 9918910 6/23/2016 COMMISSIONER OF REVENUE</b>			
G 101-21702 State Withholding	\$813.84		
Total COMMISSIONER OF REVENUE	\$813.84		
<b>Paid Chk# 9918911 6/23/2016 GISLASON &amp; HUNTER</b>			
G 101-21712 Garnishments	\$362.72		
Total GISLASON & HUNTER	\$362.72		
<b>Paid Chk# 9918912 6/23/2016 INTERNAL REVENUE SERVICE</b>			
G 101-21701 Federal Withholding	\$1,871.55		
G 101-21703 FICA Tax Withholding	\$2,748.06		
Total INTERNAL REVENUE SERVICE	\$4,619.61		
<b>Paid Chk# 9918913 6/23/2016 PERA</b>			
G 101-21704 PERA	\$4,030.24		
Total PERA	\$4,030.24		
<b>Paid Chk# 9918914 6/23/2016 SW/WC SERVICE COOPERATIVES</b>			
G 101-21708 Employee Paid Health Insurance	\$1,169.90		
Total SW/WC SERVICE COOPERATIVES	\$1,169.90		
<b>Paid Chk# 9918915 6/23/2016 VALIC</b>			
G 101-21705 VALIC	\$388.00		
Total VALIC	\$388.00		
<b>Paid Chk# 9918916 6/21/2016 WILLIAM POHLMAN</b>			
E 101-42100-308 Training & Instruction	\$331.64		CONFERENCE EXPENSE
Total WILLIAM POHLMAN	\$331.64		
<b>Paid Chk# 9918917 6/21/2016 MUNICIPAL UTILITIES</b>			
R 101-00000-31000 General Property Taxes	\$11,123.65		PRIVATE SEWER #22123-PAY TO UT
Total MUNICIPAL UTILITIES	\$11,123.65		
<b>Paid Chk# 9918918 7/1/2016 MUNICIPAL UTILITIES</b>			
E 101-43160-381 Electric Utilities	\$2,666.22		MAY STREET LIGHTING
Total MUNICIPAL UTILITIES	\$2,666.22		
<b>Paid Chk# 9918919 7/1/2016 ALPHA WIRELESS COMMUNICATIONS</b>			
E 231-42154-404 Repairs/Maint Machinery/Equip	\$56.00	201051	REPROGRAM AMB RADIO
E 221-42200-404 Repairs/Maint Machinery/Equip	\$73.23	683772	FD-CHARGER & BATTERIES
E 231-42154-404 Repairs/Maint Machinery/Equip	\$73.63	683772	AMB-CHARGER & BATTERIES
otal ALPHA WIRELESS COMMUNICATIONS	\$202.86		
<b>Paid Chk# 9918920 7/1/2016 AMBULANCE FUND</b>			

CITY OF MOUNTAIN LAKE

\*Check Detail Register©

June 2016 to July 2016

			Check Amt	Invoice	Comment
E 231-42154-430	Miscellaneous		\$4.43	6/28/16	FOOD ON AMBULANCE FUND
	<b>Total AMBULANCE FUND</b>		<b>\$4.43</b>		
<b>Paid Chk# 9918921 7/1/2016 CARDMEMBER SERVICE</b>					
E 101-00000-430	Miscellaneous		\$9.99		CODE 42 SOFTWARE
E 221-42200-580	Other Equipment		\$821.51	13104	FD-AIR PACKS & AIR MASKS
E 101-42100-308	Training & Instruction		\$181.46	5/19-5/20	2 NIGHTS LODGING-MARSHALL WILL P.TRAINING
	<b>Total CARDMEMBER SERVICE</b>		<b>\$1,012.96</b>		
<b>Paid Chk# 9918922 7/1/2016 COMMUNITY ASSET DEVELOP GROUP</b>					
E 342-47000-300	Professional Srvs		\$11,051.34		TIF PAYMENT (DEC 15)
E 342-47000-300	Professional Srvs		\$12,176.33		TIF PAYMENT (JUNE16)
	<b>Total COMMUNITY ASSET DEVELOP GROUP</b>		<b>\$23,227.67</b>		
<b>Paid Chk# 9918923 7/1/2016 DENNIS HULZEBOS</b>					
E 101-45186-400	Janitor-Repairs/Maint		\$250.00		JULY MAINT AT SR CTR
E 211-45500-400	Janitor-Repairs/Maint		\$345.00		JULY MAINT AT LIBRARY
	<b>Total DENNIS HULZEBOS</b>		<b>\$595.00</b>		
<b>Paid Chk# 9918924 7/1/2016 FARM &amp; HOME PUBLISHERS</b>					
E 221-42200-430	Miscellaneous		\$77.40	F597637	JACKSON CTY PLAT BOOKS-FIRE DEPT
	<b>Total FARM &amp; HOME PUBLISHERS</b>		<b>\$77.40</b>		
<b>Paid Chk# 9918925 7/1/2016 FRONTIER</b>					
E 101-42100-321	Telephone		\$219.88		POLICE DEPT PHONE-427-3403
E 101-00000-430	Miscellaneous		\$98.64		UT-PHONE
E 205-46500-321	Telephone		\$5.08		CHAMBER 800#
E 101-45186-321	Telephone		\$63.33		SR CTR PHONE-427-2151
E 101-43100-321	Telephone		\$68.80		STREET DEPT PHONE-427-2997
E 205-46500-321	Telephone		\$37.50		EDA PORTION OF DSL & 427-2999
E 101-41400-321	Telephone		\$190.52		CITY HALL PHONE-427-2999
	<b>Total FRONTIER</b>		<b>\$683.75</b>		
<b>Paid Chk# 9918926 7/1/2016 GREATAMERICA FINANCIAL SVCS</b>					
E 205-46500-200	Office Supplies		\$5.62	18928030	EDA-MONTHLY COLOR COPY MACHINE LEASE
E 101-00000-430	Miscellaneous		\$27.79	18928030	MONTHLY COLOR COPY MACHINE LEASE
E 101-00000-430	Miscellaneous		\$91.31	18928030	UT-MONTHLY COLOR COPY MACHINE LEASE
E 101-42100-200	Office Supplies		\$8.78	18928030	PD-MONTHLY COLOR COPY MACHINE LEASE
E 101-41400-200	Office Supplies		\$26.35	18928030	OFFICE-MONTHLY COLOR COPY MACHINE LEASE
E 101-00000-430	Miscellaneous		\$8.43	18928030	CHAMBER-MONTHLY COLOR COPY MACHINE LEASE
	<b>Total GREATAMERICA FINANCIAL SVCS</b>		<b>\$168.28</b>		
<b>Paid Chk# 9918927 7/1/2016 INDOFF INCORPORATED</b>					
E 101-41400-200	Office Supplies		\$0.69	2804439	BINDER CLIPS
E 101-41400-200	Office Supplies		\$12.08	2805726	PENCILS,TAPE
E 101-41400-200	Office Supplies		\$13.67	2808157	11X17 PAPER
E 101-41400-200	Office Supplies		\$17.41	2811182	BLUE PENS
	<b>Total INDOFF INCORPORATED</b>		<b>\$43.85</b>		
<b>Paid Chk# 9918928 7/1/2016 JOHN YSKER</b>					
E 101-43240-111	Contract		\$250.00		JULY DUMP SALARY
	<b>Total JOHN YSKER</b>		<b>\$250.00</b>		
<b>Paid Chk# 9918929 7/1/2016 LAKER GRILL</b>					
E 221-42200-430	Miscellaneous		\$287.80		FIRE DEPT CANDY POW WOW PARADE
	<b>Total LAKER GRILL</b>		<b>\$287.80</b>		

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CITY OF MOUNTAIN LAKE

**\*Check Detail Register©**

June 2016 to July 2016

		Check Amt	Invoice	Comment
Paid Chk#	9918930	7/1/2016	<b>MEDICA</b>	
R 231-42154-34205	Ambulance Services	\$501.06		REFUND OVERPAYMENT REFERENCE #6807298
	<b>Total MEDICA</b>	\$501.06		
Paid Chk#	9918931	7/1/2016	<b>MINNESOTA ENERGY RESOURCE CORP</b>	
E 101-45186-383	Gas Utilities	\$44.28		SR CTR GAS-ACCT#4010846-6
E 101-41400-383	Gas Utilities	\$101.98		CITY HALL GAS-ACCT#4346780-2
E 221-42200-383	Gas Utilities	\$35.86		FIRE DEPT PORTION OF FIREHALL GAS-ACCT#4296165-6
E 231-42154-383	Gas Utilities	\$17.66		AMB PORTION OF FIREHALL GAS-ACCT#4296165-6
E 101-43100-383	Gas Utilities	\$60.20		STREET GARAGE GAS-ACCT#4092120-7
	<b>Total MINNESOTA ENERGY RESOURCE CORP</b>	\$259.98		
Paid Chk#	9918932	7/1/2016	<b>MINNESOTA MUTUAL LIFE</b>	
E 101-41400-134	Employer Paid Life	\$3.40		JULY LIFE INS-OFFICE
E 101-45200-134	Employer Paid Life	\$1.02		JULY LIFE INS-PARKS DEPT
E 205-46500-134	Employer Paid Life	\$1.70		JULY LIFE INS-EDA ROB ANDERSON
E 101-42100-135	Employer Paid Other	\$1.70		JULY BRIAN LUNZ LIFE INSURANCE
G 101-21706	Hospitalization/Medical Ins	\$25.30		JULY LIFE INS-ROBB ANDERSON
E 101-42100-134	Employer Paid Life	\$6.80		JULY LIFE INS-POLICE DEPT
E 101-41400-134	Employer Paid Life	\$1.70		JULY WENDY FAST-LAKER APTS-LIFE INS
E 101-43100-134	Employer Paid Life	\$3.06		JULY LIFE INS-ST DEPT
E 211-45500-134	Employer Paid Life	\$1.70		JULY LIFE INS-LIBRARY
G 101-21706	Hospitalization/Medical Ins	\$12.00		JULY LIFE INS-STEVE PETERS
G 101-21706	Hospitalization/Medical Ins	\$10.90		JULY LIFE INS-DARON FRIESEN
E 101-46200-134	Employer Paid Life	\$1.02		JULY LIFE INS-CEMETERY
	<b>Total MINNESOTA MUTUAL LIFE</b>	\$70.30		
Paid Chk#	9918933	7/1/2016	<b>MUNICIPAL UTILITIES</b>	
E 101-45186-380	Elec,Water,Sewer	\$305.28		SR CTR UT
E 240-46500-430	Miscellaneous	\$140.63		UT-212 10TH ST NORTH-CUSTOM MOTORS BLDG
E 101-45200-380	Elec,Water,Sewer	\$80.18		LAWCON PARK LIGHTS
E 101-41400-380	Elec,Water,Sewer	\$326.28		CITY HALL UT
E 101-45200-380	Elec,Water,Sewer	\$115.42		CITY PARK RESTROOMS UT
E 607-46330-380	Elec,Water,Sewer	\$1.52		4-PLEX PORTION OF ST LITE ON HERITAGE DRIVE
E 101-45183-380	Elec,Water,Sewer	\$715.03		UT AT CAMPGROUND
E 608-46330-380	Elec,Water,Sewer	\$2.95		8-PLEX PORTION OF ST LITE ON HERITAGE DRIVE
E 101-43100-380	Elec,Water,Sewer	\$191.67		ST DEPT UT
E 221-42200-380	Elec,Water,Sewer	\$433.75		FIRE DEPT PORTION OF FIREHALL UT
E 211-45500-380	Elec,Water,Sewer	\$239.85		LIBRARY UT
E 231-42154-380	Elec,Water,Sewer	\$29.71		AMB PORTION OF FIREHALL UT
E 101-45200-380	Elec,Water,Sewer	\$0.13		UT AT CITY PARK SHELTERHOUSE
	<b>Total MUNICIPAL UTILITIES</b>	\$2,582.40		
Paid Chk#	9918934	7/1/2016	<b>MUSKE, MUSKE, SURHOFF</b>	
E 101-41400-304	Legal Fees	\$1,400.00		JULY LEGAL RETAINER
	<b>Total MUSKE, MUSKE, SURHOFF</b>	\$1,400.00		
Paid Chk#	9918935	7/1/2016	<b>NAM DESIGN</b>	
E 221-42200-404	Repairs/Maint Machinery/Equip	\$198.79	5385	DOOR STICKERS-FD GRASS RIG
	<b>Total NAM DESIGN</b>	\$198.79		
Paid Chk#	9918936	7/1/2016	<b>PAT OJA</b>	
E 221-42200-308	Training & Instruction	\$50.00	6/19/16	RENTAL-FD KITCHEN FIRE TRAILER FOR POW WOW DEMONSTRATION
	<b>Total PAT OJA</b>	\$50.00		

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**\*Check Detail Register©**

June 2016 to July 2016

			Check Amt	Invoice	Comment
Paid Chk# 9918937	7/1/2016	PRAXAIR			
E 231-42154-210	Operating Supplies		\$122.98	73443418	OXYGEN FOR AMBULANCE
	<b>Total PRAXAIR</b>		<b>\$122.98</b>		
Paid Chk# 9918938	7/1/2016	ST JAMES ELECTRIC			
E 101-45186-401	Repairs/Maint Buildings		\$87.63	147338	REPAIR BALLAST AT COMM CTR
	<b>Total ST JAMES ELECTRIC</b>		<b>\$87.63</b>		
Paid Chk# 9918939	7/1/2016	SW DUST TREATMENT INC.			
E 101-43121-224	Street Maint Materials		\$5,638.40	4747	2016 DUST CONTROL
	<b>Total SW DUST TREATMENT INC.</b>		<b>\$5,638.40</b>		
Paid Chk# 9918940	7/1/2016	UNITED STATES TREASURY			
E 101-00000-430	Miscellaneous		\$97.65		2016 PCCORI TAX
	<b>Total UNITED STATES TREASURY</b>		<b>\$97.65</b>		
Paid Chk# 9918941	7/1/2016	VERIZON			
E 101-42100-321	Telephone		\$35.01		PD-TABLET #2
E 101-42100-321	Telephone		\$35.05		PD-TABLET #1
E 231-42154-321	Telephone		\$9.60		AMB CELL PHONE
E 101-42100-321	Telephone		\$9.07		POLICE CELL PHONE
E 231-42154-321	Telephone		\$35.01		AMB JET PACK
	<b>Total VERIZON</b>		<b>\$123.74</b>		
	10100 United Prairie		<b>\$63,934.20</b>		

**Fund Summary**

<b>10100 United Prairie</b>	
101 GENERAL FUND	\$37,096.56
205 ECONOMIC DEVELOPMENT AUTHORITY	\$49.90
211 LIBRARY FUND	\$586.55
221 FIRE DEPT FUND	\$1,978.34
231 AMBULANCE FUND	\$850.08
240 PROTIENT-DTED LOAN	\$140.63
342 T.I.F. #1-4 GOOD SAM	\$23,227.67
607 EDA---4 PLEX FUND	\$1.52
608 EDA---8 PLEX FUND	\$2.95
	<b>\$63,934.20</b>

Paid Chk# 000439E	6/16/2016	SELECT ACCOUNT			
G 101-21710	Employee Flex Plan		\$356.00		EMPLOYEE REIMBURSEMENT
	<b>Total SELECT ACCOUNT</b>		<b>\$356.00</b>		
Paid Chk# 000440E	6/21/2016	PERA			
E 231-42154-121	PERA		\$7,500.91		AMBULANCE 1ST HALF PERA
	<b>Total PERA</b>		<b>\$7,500.91</b>		

**DRAFT**  
**Mountain Lake City Council Meeting**  
**Mountain Lake City Hall**  
**Wednesday June 22, 2016**  
**6:30 p.m.**

Members Present: Mike Nelson, Dana Kass, Darla Kruser, David Savage Andrew Ysker

Members Absent: None

Staff Present: Wendy Meyer Clerk/Administrator; Maryellen Suhrhoff, Muske, Muske and Suhrhoff, City Attorney

Others Present: Paul Bredeson, Ed Zepeda, McKinstry, Inc.; Cheryl Hiebert, Mountain Lake/Butterfield Observer/Advocate; Loyal Klassen; Jim Peterson, Lake Commission Chair

**Call to Order**

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

**Agenda and Consent Agenda**

Motion by Savage, seconded by Kass to amend the agenda with the removal of 6. Well #7 Final Payment and with the addition of 11b. Cemetery. Motion carried unanimously. Questions were asked about check numbers 9918870 and 9918905. Motion by Kass, seconded by Ysker, to approve the consent agenda as presented and the agenda as amended. presented. Motion carried unanimously.

Bills: Check #'s 9918851 – 9918906, 437E & 438E

Payroll Checks # 62499 - 62535

June 6 and June 15 Council Minutes

June 2 and June 9 Utility Commission Minutes

May 10 Police Commission Minutes

May 13 EDA Minutes

Approval of May 9 Lake Commission Minutes

**Public**

Loyal Klassen, 306 Golf Course Road, discussed the storm water that stands on his property after heavy rain. A map of the area and a plan for correcting storm water problems in that part of the city prepared by the city's engineers, Bolton and Menk, during the design phase of the 2012-2014 Utility and Street Project were reviewed. The administrator will get input from the Street Superintendent.

### **Guaranteed Energy Savings Program (GESp)**

Paul Bredeson, Senior Program Manager and Ed Zepeda, Senior Account Manager, McKinstry, Inc. updated the council. The program, offered by the MN Department of Commerce, offers units of government loans for energy conservation measures if the measures generate savings sufficient to make the loan payment. McKinstry has collected data on the city's buildings and lighting and has determined there are six potential areas where the program could be used. Costs and savings are being refined; recommendations will be presented to the city in approximately a month.

### **Adoption of Resolution #17-16, Hazardous Building Resolution 1406 3<sup>rd</sup> Ave., PIN 22.610.0550**

The resolution was reviewed. Motion by Ysker, seconded by Savage, to adopt the resolution. Motion carried unanimously. The resolution will be served on the property owner.

### **Trail and Parks Part-time Employee**

Regular trail maintenance and improvement projects were discussed. The work has increased since the trail was surfaced. Volunteers have limited availability. The position's possible number of work hours, length of hire, and duties were considered. Motion by Kruser, seconded by Kass, to advertise for a 20 hour a week employee and evaluate the position at the end of the season. Motion carried unanimously.

### **Adoption of Resolution #16-16, Tax-Forfeited Property**

Motion by Savage, seconded by Kruser, to adopt Resolution #16-16 approving the sale of tax-forfeited parcel 22.611.0110 without a 60 day waiting period and with the intention to re-assess special assessments. Motion carried unanimously.

### **Letter supporting Special Session**

The draft letter was reviewed. Motion by Kruser, seconded by Ysker, to send the letter. Motion carried unanimously.

### **Consider Temporary Dwelling Law and Possible Opt-Out**

The law was passed during the legislative session and becomes effective Sept. 1, 2016. Cities can opt out by ordinance. There was discussion about the law, opting out, local control, and residential conditional uses. The city attorney and clerk/administrator were directed to prepare an ordinance to opt-out and review the conditional use language in Ch. 9 for possible revision.

### **Draft 2017 Capital Improvement Plan**

The draft plan was reviewed. The Public Works section (Street, Parks, Cemetery, and Campground). The superintendent of the department will be contacted and asked for his input on



timing of major equipment purchases. The administrator was directed to locate cities that rotate equipment based on hours and request their replacement schedules.

**Cemetery**

The policy regarding the pre-placing of tombstones was discussed.

**Yoder v City of Mt. Lake**

Motion by Kass, seconded by Savage, to close the open meeting to discuss litigation as per MN Statute 13D.05 Subd. 3b. at 7:55 p.m. Motion carried unanimously. Motion by Kass, seconded by Ysker, to close the closed meeting and open the open meeting at 8:05 p.m. Motion carried.

**Adjourn**

Motion by Kruser, seconded by Kass, to adjourn at 8:17 p.m.

ATTEST:

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Wendy Meyer, Clerk/Administrator

**TUESDAY OCTOBER 4 - CMPAS Annual Meeting, 3-7 PM, Mankato**

**City of Mountain Lake  
Planning and Zoning Commission  
Monday, April 25, 2016  
5:30 PM  
City Hall**

Members Present: Bryan Bargen, Nathan Harder, Dean Janzen, Doug Regehr, Tim Swoboda

Members Absent: Nik Strom, Sharron Hanson

Staff Present: Wendy Meyer, Clerk/Administrator

Others Present: Dana Kass, Council Liaison

**Call to Order**

The Chair Bryan Bargen called the meeting to order at 5:30 p.m.

**Additions to the Agenda**

There were no additions to the agenda.

**Approval of January 25 Minutes**

Motion by Janzen, seconded by Harder, to approve the January 25 minutes. Motion carried unanimously.

**Building/Shingling/Siding/Fencing Permits**

The permits issued in February, March and April and the setbacks for projects at 1112 4<sup>th</sup> Ave. and 414 11<sup>th</sup> St. N. Motion by Janzen, seconded by Strom, to approve the permits. Motion carried unanimously.

**Encroachments**

The draft language of Ordinance #2-16 was reviewed and discussed. No changes were made. Motion by Janzen, seconded by Harder, to recommend adoption of the ordinance as presented to the city council. Motion carried unanimously.

**Section 9.34 Telecommunication Towers and Antennae**

A homeowner is planning on placing a 90 foot amateur radio operator tower on his property on So. 13<sup>th</sup> St. Definition #5 Telecommunication Tower, in Subdivision 1 includes the following sentence: 'The term tower shall not include amateur radio operators' equipment, as licensed by the Federal Communications Commission (FCC).' The FCC does not have setback requirements. The tower's location is such that if it falls it will fall on the owner's home, the lawns of neighbors, or the public street. Staff is recommending that the above sentence be removed

from the ordinance. Motion by Janzen, seconded by Harder, to recommend to the council that the sentence be removed from the ordinance. Motion carried unanimously.

**New Daycare**

The owner of a daycare planning to open in Mt. Lake will be applying for a conditional use permit.

**Mt. Lake Utility New Substation**

The reasons for the construction of a new substation and its intended location on PIN 22.524.0010 in the northeast corner of the County Road #1 and First Ave. So. intersection were discussed. The property is zoned Industrial (I). As found in Section 9.30 Subdivision 2, #10 'Public utility or service buildings and stations' are permitted uses in the Industrial zone. No permit or hearing is needed.

**Adjourn**

Bergen adjourned the meeting at 6PM.

ATTEST:

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Wendy Meyer, Clerk/Administrator

## Building, Shinging and Siding, and Fence Permits May and June 2016

Building Permits								
Mifek	LLC	502 CR #1 So.	22.003.0100	CR Construction	BC706027	Offices inside Mt. Power Hyd.		
Quiring	James & Carla	1515 2nd Ave.	22.610.0490	Self		8' by 8' deck north side of house		
Jellema	Ben	817 2nd Ave.	22.520.0640	Self		Replace front steps with same; remove lath/plaster from porch; replace insulation' remove 3 windows and dry		
Bettin	Michael	1001 Prince St.	22.443.0070	Rocker		Replace 56 by 65 window with bay window		
Strutz	Daniel & Susanna	1009 Midway Rd.	22.550.0030	Self	BC638265	replace window with bump out window		
Country	Pride	1130 3rd Ave.	22.520.0220	Fast	133418	move wall for new refrigeration units		
Adrian	Emily	1016 10th St. N.	22.555.0500	Carter	665543	doors, new drywall, electric and plumbing		
<b>Fence Permits</b>								
Hardy	Shawn	1209 2nd Ave.	22.711.0110	Self		6' wood fence on south and east sides of lot		
Ramm	Kevin	1020 Prince St.	22.611.0570	Self		6' wood fence on south and east sides of lot		
Intham	Victor	401 10th St. N.	22.520.1510	self		6' wood north of house		
Jellema	Ben	817 2nd Ave.	22.520.0640	self		4' high fence; 30' by 66' enclosure; east side of house		
Pankratz	Scott & Jessica	811 4th Ave.	22.520.1640	Self		6 foot fence, west side of property		
Pankratz	Mark	1004 Prince St.	22.611.0450	self		6 ft. high wood fence, backyard, 200 ft.		
<b>Shingle/Siding</b>								
Herrig	Rick	1406 6th Ave.	22.410.0170	Self		shingle garage		
Pederson	Daintri & Chad	1115 Castle Dr.	22.292.0050	Rocker	BC638265	siding, soffit/facia, gutters, downspouts, and replace windows with same size		
Phanlunasonk	William	708 5th Avenue	22.520.1720	self		shingle garage		
Bettin	Michael	1001 Prince St.	22.443.0070	Rocker	BC638265	shingle house		
Hardy	Andrew	214 7th St. N.	22.520.0651	Self		shingle house and garage, architectural shingle		
Elg	Anthony & Tawana	1009 5th Ave.	22.520.1940	Heffele	20204606	shingle house and garage		
Lucht	Randy & Grace	1611 6th Ave	22.610.0809	self		shingle double garage in back		

**Building, Shingling and Siding, and Fence Permits  
May and June 2016**

Watkins	Dana & Linda	2300 3rd Ave.	22.613.0140	ABC Seamless 630072	install seamless steel siding
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Notes on Agenda Items

Item #4. Well #7 Final Payment – all paperwork has been received from the general contractor

Item #6. The City's doesn't have fines for all public nuisances. Maryellen is requesting fines be established. Sections of code where fines should be determined and fines currently in effect for some public nuisances are included.

Item #8. In addition to the opt-out ordinance the requirements of new law and the current regulation of trailers, etc. in city code are included.

Item #9. The current Drug and Alcohol Policy was adopted May 21, 2012. MN Municipal Utilities Association (MMUA) is recommending updates to #3 – Commercial Motor Vehicle Operator. The draft policy included in the packet would replace #3. Sections 1 and 2 of the policy adopted 5/21/12 remain in effect.

PARTIAL PAY ESTIMATE NO.  
 2014 CONSTRUCTION OF WELL NO. 7 & RAW WATERMAIN  
 CITY OF MOUNTAIN LAKE, MINNESOTA  
 BMI PROJECT NO.: S14.107249  
 WORK COMPLETED THROUGH MAY 31, 2016  
 H:\MTLKAS14107249\3\_Preliminary Design\Spreadsheets\107249 QUANT.xls\Partial Pay Est. #5A

**5 & Final**

DISTRIBUTION:  
 CONTRACTOR (1)  
 OWNER (1)  
 ENGINEER (1)  
 SURETY (1)

TOTAL, COMPLETED WORK TO DATE.....	\$643,637.77
TOTAL, STORED MATERIALS.....	\$0.00
TOTAL, COMPLETED WORK & STORED MATERIALS.....	\$643,637.77
RETAINED PERCENTAGE ( 0% ).....	\$0.00
TOTAL AMOUNT OF OTHER PAYMENTS OR (DEDUCTIONS).....	\$0.00
NET AMOUNT DUE TO CONTRACTOR TO DATE.....	\$643,637.77
TOTAL AMOUNT PAID ON PREVIOUS ESTIMATES.....	\$587,985.73
PAY CONTRACTOR AS ESTIMATE NO. 5 .....	\$55,652.04

Certificate for Final Payment

I hereby certify that, to the best of my knowledge and belief, all items quantities and prices of work and material shown on this Estimate are correct and that all work has been performed in full accordance with the terms and conditions of the Contract for this project between the Owner and the undersigned Contractor, and as amended by any authorized changes, and that the foregoing is a true and correct statement of the amount for the Final Estimate, that the provisions of M. S. 290.92 have been complied with and that all claims against me by reason of the Contract have been paid or satisfactorily secured.

Contractor: GM Contracting  
 19810-515 Ave, P.O. Box 736  
 Lake Crystal, MN 56055

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

APPROVED FOR FINAL PAYMENT BY CONTRACTOR'S SURETY

By \_\_\_\_\_  
 Surety Company Title Date

CHECKED AND APPROVED AS TO QUANTITIES AND AMOUNT:  
 BOLTON & MENK, INC., ENGINEERS, 140 FIRST AVENUE NORTH, P.O. BOX 434 SLEEPY EYE, MN.

By \_\_\_\_\_, Project Engineer  
 Andrew R. Kehren Title Date

APPROVED FOR PAYMENT:  
 Owner: CITY OF MOUNTAIN LAKE, MINNESOTA

By \_\_\_\_\_  
 Name Title Date

And \_\_\_\_\_  
 Name Title Date

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**5 & Final**

**PARTIAL PAY ESTIMATE NO.**

2014 CONSTRUCTION OF WELL NO. 7 & RAW WATERMAIN  
CITY OF MOUNTAIN LAKE, MINNESOTA  
BMI PROJECT NO.: S14.107249

FILENAME: H:\MTL\KSI\141072493\_Preliminary Design\Spreadsheets\107249 QUANT.xls\Partial Pay Est. #5A  
WORK COMPLETED THROUGH MAY 31, 2016

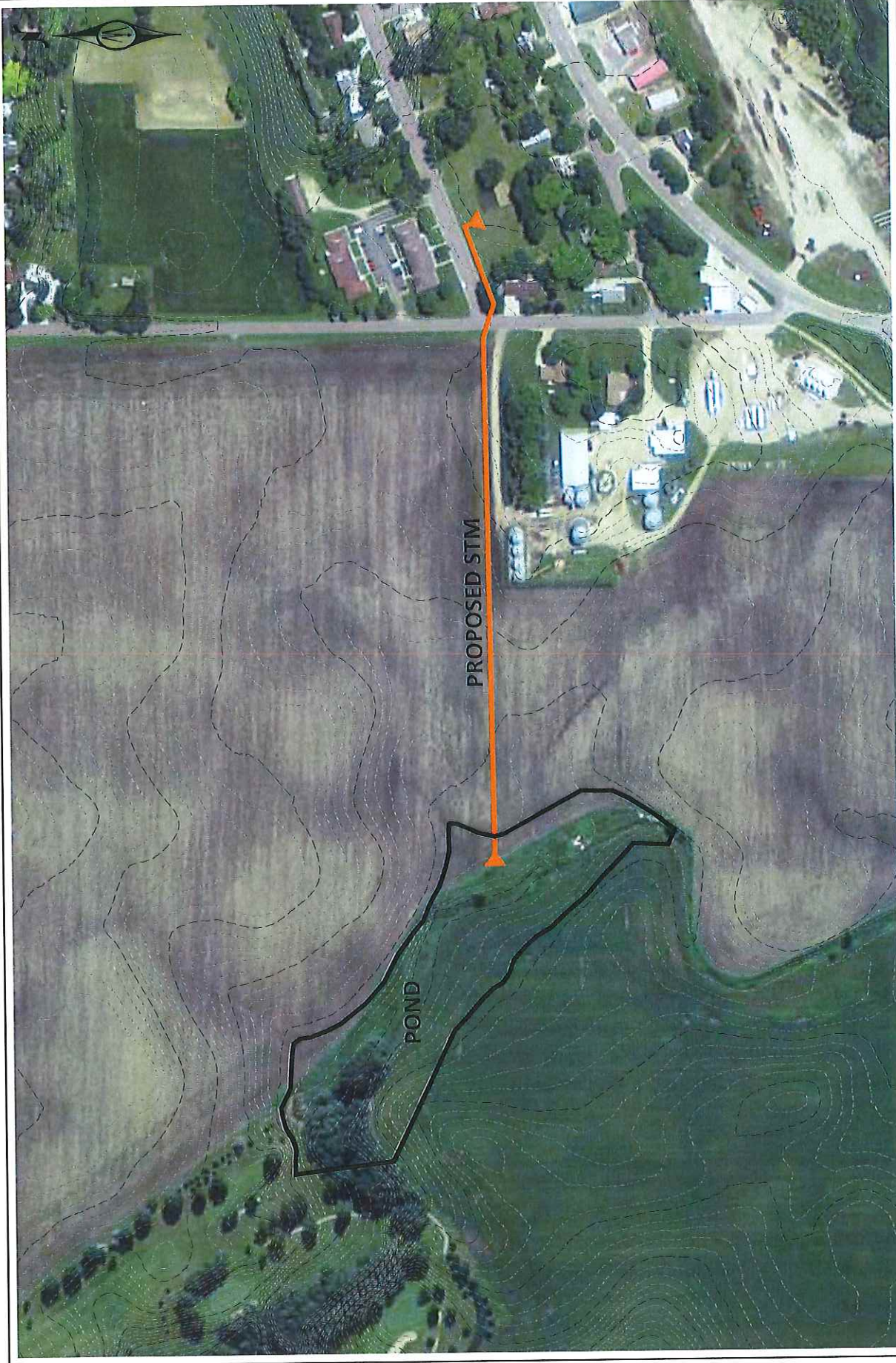
BID ITEM NO.	ITEM DESCRIPTION	CONTRACT PRICES			WORK COMPLETED PREVIOUS ESTIMATE			WORK COMPLETED JOB-TO-DATE			
		UNIT PRICE	QNTY	UNIT	AMOUNT	QNTY	UNIT	AMOUNT	QNTY	UNIT	AMOUNT
1	Mobilization	\$65,000.00	1	Lump Sum	\$65,000.00	0.90	Lump Sum	\$58,500.00	1	Lump Sum	\$65,000.00
2	Traffic Control	\$5,000.00	1	Lump Sum	\$5,000.00	0.90	Lump Sum	\$4,500.00	1	Lump Sum	\$5,000.00
3	Clearing Tree	\$250.00	0	Each	\$0.00	0	Each	\$0.00	0	Each	\$0.00
4	Grubbing Tree	\$100.00	16	Each	\$1,600.00	16	Each	\$1,600.00	16	Each	\$1,600.00
5	Common Excavation (EV) (P)	\$18.25	160	C.Y.	\$2,920.00	160	C.Y.	\$2,920.00	160	C.Y.	\$2,920.00
6	Subgrade Excavation (EV)	\$18.25	20	C.Y.	\$365.00	35	C.Y.	\$638.75	35	C.Y.	\$638.75
7	Subgrade Correction Aggregate (CV)	\$34.50	20	C.Y.	\$690.00	0	C.Y.	\$0.00	0	C.Y.	\$0.00
8	Remove Bituminous Pavement	\$6.00	100	S.Y.	\$600.00	100	S.Y.	\$600.00	100	S.Y.	\$600.00
9	Topsoil Borrow (LV)	\$18.30	500	C.Y.	\$9,150.00	30	C.Y.	\$549.00	30	C.Y.	\$549.00
10	Geotextile Fabric, Type V	\$1.55	750	S.Y.	\$1,162.50	580	S.Y.	\$899.00	580	S.Y.	\$899.00
11	Common Laborer	\$76.78	10	Hour	\$767.80	10	Hour	\$767.80	10	Hour	\$767.80
12	2 C.Y. Shovel	\$174.04	5	Hour	\$870.20	11	Hour	\$1,914.44	11	Hour	\$1,914.44
13	10 C.Y. Truck	\$98.09	5	Hour	\$490.45	0	Hour	\$0.00	0	Hour	\$0.00
14	2 C.Y. Front End Loader	\$142.48	5	Hour	\$712.40	1	Hour	\$142.48	1	Hour	\$142.48
15	1 1/2 C.Y. Skid Loader	\$109.27	5	Hour	\$546.35	0	Hour	\$0.00	0	Hour	\$0.00
16	Aggregate Base, Class 5	\$24.79	540	Ton	\$13,386.60	540	Ton	\$13,386.60	965	Ton	\$23,922.35
17	Salvaged Aggregate from Stockpile	\$8.97	200	Ton	\$1,794.00	50	Ton	\$448.50	50	Ton	\$448.50
18	Type SP Non-Wearing Course Mixture (B)	\$34.37	90	S.Y.	\$3,093.30	102	S.Y.	\$3,505.74	102	S.Y.	\$3,505.74
19	Type SP Wearing Course Mixture (B)	\$28.75	90	S.Y.	\$2,587.50	102	S.Y.	\$2,932.50	102	S.Y.	\$2,932.50
20	Slit Fence, Machine Sliced and/or 9" Biroll	\$3.51	200	L.F.	\$702.00	335	L.F.	\$1,175.85	335	L.F.	\$1,175.85
21	Inlet Protection	\$250.00	6	Each	\$1,500.00	0	Each	\$0.00	0	Each	\$0.00
22	Erosion Control Blanket, Category 2	\$2.58	400	S.Y.	\$1,032.00	581	S.Y.	\$1,498.98	581	S.Y.	\$1,498.98
23	Turf Establishment - Temporary	\$2,891.17	0.7	Acre	\$2,023.82	0.6	Acre	\$1,734.70	0.6	Acre	\$1,734.70
24	Turf Establishment - Permanent	\$3,923.73	0.7	Acre	\$2,746.61	0.8	Acre	\$3,138.98	0.8	Acre	\$3,138.98
25	Remove Culvert & Aprons	\$16.00	64	L.F.	\$1,024.00	64	L.F.	\$1,024.00	64	L.F.	\$1,024.00
26	21"x15" CMP-Arch Pipe Safety Apron w/ Grate	\$786.89	2	Each	\$1,573.78	2	Each	\$1,573.78	2	Each	\$1,573.78
27	4" - 12" PVC Pipe Tile Repair	\$25.00	100	L.F.	\$2,500.00	0	L.F.	\$0.00	0	L.F.	\$0.00
28	21"x15" CMP-Arch Pipe Culvert	\$58.60	60	L.F.	\$3,516.00	60	L.F.	\$3,516.00	60	L.F.	\$3,516.00
29	Random Riprap, Class II	\$85.00	1	C.Y.	\$85.00	1	C.Y.	\$85.00	1	C.Y.	\$85.00
30	6" PVC Watermain - C900	\$47.57	61	L.F.	\$2,901.77	57	L.F.	\$2,711.49	57	L.F.	\$2,711.49
31	8" PVC Watermain - C900	\$69.44	1,711	L.F.	\$118,811.84	205	L.F.	\$14,235.20	209	L.F.	\$14,512.96
32	8" PVC Restrained Joint Watermain - Trenchless Installation	\$69.44	270	L.F.	\$18,748.80	1,775	L.F.	\$123,256.00	1,787	L.F.	\$124,089.28



**5 & Final**

**PARTIAL PAY ESTIMATE NO.**  
 2014 CONSTRUCTION OF WELL NO. 7 & RAW WATERMAIN  
 CITY OF MOUNTAIN LAKE, MINNESOTA  
 BMT PROJECT NO.: S14.107249  
 FILENAME: H:\M\TK\S141072493\_Preliminary Design\Spreadsheets\107249 QUANT.xls\Partial Pay Est. #5A  
 WORK COMPLETED THROUGH MAY 31, 2016

BID ITEM NO.	ITEM DESCRIPTION	CONTRACT PRICES			WORK COMPLETED PREVIOUS ESTIMATE			WORK COMPLETED JOB-TO-DATE			
		UNIT PRICE	QNTY	UNIT	AMOUNT	QNTY	UNIT	AMOUNT	QNTY	UNIT	AMOUNT
33	Watermain Fittings	\$12.62	962	Pound	\$12,140.44	824	Pound	\$10,398.88	824	Pound	\$10,398.88
34	Hydrant	\$4,689.23	2	Each	\$9,378.46	2	Each	\$9,378.46	2	Each	\$9,378.46
35	6" Gate Valve and Box	\$2,830.69	5	Each	\$14,153.45	5	Each	\$14,153.45	5	Each	\$14,153.45
36	8" Gate Valve and Box	\$3,299.20	1	Each	\$3,299.20	1	Each	\$3,299.20	1	Each	\$3,299.20
37	Drill 6" Pilot Test Hole	\$32.52	185	L.F.	\$6,016.20	210	L.F.	\$6,829.20	210	L.F.	\$6,829.20
38	Drill 18" Diameter (Nominal) Open Hole	\$72.28	185	L.F.	\$13,371.80	207	L.F.	\$14,961.96	207	L.F.	\$14,961.96
39	F & I 12" Diameter Casing	\$51.63	155	L.F.	\$8,002.65	148	L.F.	\$7,641.24	148	L.F.	\$7,641.24
40	12" Pipe Size SS Screen and Fittings - 100 Slot Screen	\$206.51	35	L.F.	\$7,227.85	54	L.F.	\$11,151.54	54	L.F.	\$11,151.54
41	Furnish and Install Pitless Unit	\$16,354.80	1	L.S.	\$16,354.80	1	L.S.	\$16,354.80	1	L.S.	\$16,354.80
42	Furnish and Install Gravel Pack - #120 Well Slot Red Flint	\$30.98	45	L.F.	\$1,394.10	64	L.F.	\$1,982.72	64	L.F.	\$1,982.72
43	Grout Well No. 7	\$413.02	20	Cubic Yard	\$8,260.40	4	Cubic Yard	\$1,652.08	4	Cubic Yard	\$1,652.08
44	Furnish and Install & Remove Well Development Equipment	\$2,048.84	1	Lump Sum	\$2,048.84	1	Lump Sum	\$2,048.84	1	Lump Sum	\$2,048.84
45	Well Development	\$206.51	60	Hour	\$12,390.60	49	Hour	\$10,118.99	49	Hour	\$10,118.99
46	Furnish, Install & Remove Test Pump with Discharge Piping	\$2,048.84	1	Lump Sum	\$2,048.84	1.0	Lump Sum	\$2,048.84	1.0	Lump Sum	\$2,048.84
47	Test Pumping	\$103.26	60	Hour	\$6,195.60	45	Hour	\$4,646.70	45	Hour	\$4,646.70
48	Water Analysis	\$2,065.12	1	Lump Sum	\$2,065.12	1	Lump Sum	\$2,065.12	1	Lump Sum	\$2,065.12
49	Video Taping	\$1,032.56	1	Lump Sum	\$1,032.56	1	Lump Sum	\$1,032.56	1	Lump Sum	\$1,032.56
50	Well No. 7 Pump, Pipe, Controls and Appertenances, Concrete Slab	\$189,007.28	1	Lump Sum	\$189,007.28	1	Lump Sum	\$189,007.28	1	Lump Sum	\$189,007.28
51	Well No. 5 Dedicated Draw Down Monitor	\$6,132.52	1	Lump Sum	\$6,132.52	1	Lump Sum	\$6,132.52	1	Lump Sum	\$6,132.52
52	Well No. 6 Dedicated Draw Down Monitor	\$5,099.39	1	Lump Sum	\$5,099.39	1	Lump Sum	\$5,099.39	1	Lump Sum	\$5,099.39
53	Modifications in Well Meter Building including Pipe, Fittings, Valves, Meter, Painting and Appertenances	\$40,907.27	1	Lump Sum	\$40,907.27	0.90	Lump Sum	\$36,816.54	1	Lump Sum	\$40,907.27
54	Remove Existing Structure No. 1	\$2,500.00	1	Lump Sum	\$2,500.00	1	Lump Sum	\$2,500.00	1	Lump Sum	\$2,500.00
55	Remove Existing Structure No. 2	\$2,500.00	1	Lump Sum	\$2,500.00	1	Lump Sum	\$2,500.00	1	Lump Sum	\$2,500.00
56	Remove Existing Structure No. 3	\$2,500.00	1	Lump Sum	\$2,500.00	1	Lump Sum	\$2,500.00	1	Lump Sum	\$2,500.00
57	Remove Existing Structure No. 4	\$2,500.00	1	Lump Sum	\$2,500.00	1	Lump Sum	\$2,500.00	1	Lump Sum	\$2,500.00
58	Remove Column Pipe & Pump; Remove Concrete Collar at Well No.2	\$3,548.45	1	Lump Sum	\$3,548.45	0.5	Lump Sum	\$1,774.23	1	Lump Sum	\$3,548.45
59	Remove Inner Casing at Well No. 2	\$2,048.84	1	Lump Sum	\$2,048.84	0.9	Lump Sum	\$1,843.96	1	Lump Sum	\$2,048.84
60	Grout for Sealing Well No. 2 and Structures 1, 2, 3 and 4	\$413.02	35	Cubic Yard	\$14,455.70	3	Cubic Yard	\$1,239.06	17.5	Cubic Yard	\$7,227.85
	Credit for Balance of Allowance										
	<b>TOTAL PAY ESTIMATE AMOUNT</b>				<b>\$664,482.08</b>			<b>\$618,932.35</b>			<b>\$643,637.77</b>
											<b>-\$6,000.00</b>



CITY OF MOUNTAIN LAKE, MINNESOTA  
 SOUTHWEST STORM WATER OUTLET FROM GOLF COURSE  
 ROAD TO NEW POND ON SOUTH SIDE OF GOLF COURSE

JUNE, 2016  
 FIGURE No. 1

**BOLTON & MENK, INC.**  
 Consulting Engineers & Surveyors  
 140 FIRST AVENUE NORTH, PO BOX 434 - SLEEPY EYE, MINNESOTA 56085  
 Phone: (507) 794-5541 Email: SleepyEye@bolton-menk.com  
 www.bolton-menk.com



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**Preliminary Project Cost Estimate**  
**Southwest Storm Water Outlet from Golf Course Road/4th Avenue to**  
**New Pond on South Side of Golf Course**  
**Mountain Lake, Minnesota**

Filename: H:\M\TLK\General\Southwest Storm Water Outfall & Pond\Southwest Storm Water Outlet & Pond.xls\Pre Proj Cost Est  
 Date: June 22, 2016 Update

ITEM NO.	ITEM	ESTIMATED QUANT.	UNIT	ESTIMATED UNIT PRICE	ESTIMATED AMOUNT
	<b>Street and Surfacing Restoration</b>				
1	Mobilization and Traffic Control	1	Lump Sum	\$15,000.00	\$15,000.00
2	Remove Bituminous Pavement	80	Square Yard	\$10.00	\$800.00
3	Common Laborer (1)	5	Hour	\$75.00	\$375.00
4	Min. 10 C.Y. Truck (1)	2	Hour	\$100.00	\$200.00
5	3 C.Y. Shovel (1)	2	Hour	\$210.00	\$420.00
6	1/2 C.Y. Skid Loader (1)	2	Hour	\$100.00	\$200.00
7	Topsoil Borrow (L.V.)	10	Cubic Yard	\$30.00	\$300.00
8	Bituminous Street Patch	80	Square Yard	\$50.00	\$4,000.00
9	Inlet Protection	5	Each	\$250.00	\$1,250.00
10	Temporary Seeding	4.5	Acre	\$600.00	\$2,700.00
11	Permanent Seeding	4.5	Acre	\$800.00	\$3,600.00
12	Erosion Control Blanket	1,000	Square Yard	\$2.50	\$2,500.00
	<b>Subtotal Street and Surfacing Restoration</b>				<b>\$31,345.00</b>
	<b>Storm Sewer Construction</b>				
13	36" RC Pipe Storm Sewer	50	Linear Foot	\$82.00	\$4,100.00
14	36" Alternative Pipe Storm Sewer	1,200	Linear Foot	\$48.00	\$57,600.00
15	36" RCP Apron	1	Each	\$650.00	\$650.00
16	24" RC Pipe Storm Sewer	150	Linear Foot	\$48.00	\$7,200.00
17	24" Alternative Pipe Storm Sewer	150	Linear Foot	\$32.00	\$4,800.00
18	24" Apron	1	Each	\$450.00	\$450.00
19	Tile Repair	100	Linear Foot	\$25.00	\$2,500.00
20	Storm Sewer Structure	5	Each	\$2,500.00	\$12,500.00
21	Casting Assembly	178	Pound	\$750.00	\$133,500.00
22	Random Rip Rap	150	Ton	\$40.00	\$6,000.00
23	Storm Water Retention Pond Excavation	15,000	Cubic Yard	\$5.00	\$75,000.00
24	Storm Water Pond Outlet	1	Each	\$10,000.00	\$10,000.00
	<b>Subtotal for Storm Sewer Construction</b>				<b>\$314,300.00</b>
	<b>Subtotal</b>				<b>\$345,645.00</b>
	Contingency for Incidental and Unforeseen Items of Work	10%			\$34,564.50
	<b>Total Estimated Construction Cost</b>				<b>\$380,209.50</b>
	Preliminary, Design, Bid and Construction Engineering				\$68,437.71
	Administration, Legal, Permit Fees, Other Project Costs				\$19,010.48
	Easements	3	Acres	\$1,000.00	\$3,000.00
	Land Acquisition for Storm Water Retention Pond	5	Acres	\$6,500.00	\$29,250.00
	<b>TOTAL ESTIMATED PROJECT COST</b>				<b>\$499,907.69</b>

-DRAFT-

2016	2017	2018	2019	2020	2021 and Beyond
	Lawn Mower Trailer (ST)\$6,1000	<b>PUBLIC WORKS</b>			
Replace Lawn Mower (ST) \$5,500		Replace Lawn Mower (ST) \$12,000			
4th Ave./Mt. Lake Apt. Storm Sewer Upgrades (SS)	< --- Possible ST, SS & W/WW Project - city hall block alleys; 6th St. 15th St. btw 3rd & 6th Ave., gravel alley--->				
Lights in Street Shop (ST) \$5,000	Lights in Street Shop (ST) \$5,000				
Replace Payloader (ST) \$50,000					
Dump Truck \$80,000 (ST)----->					
Replace 1997 Blade (ST) \$225,000					
Replace skidloader (ST) \$18,000					

## Ordinance No. 3-11

### City of Mountain Lake, Minnesota

#### An Ordinance Establishing the Mt. Lake Cemetery and Regulating its Maintenance and Use

THE CITY COUNCIL OF THE CITY OF MOUNTAIN LAKE, COTTONWOOD COUNTY, MINNESOTA ORDAINS that Section 7.04 Cemetery Regulations be repealed in its entirety and that a new Section 7.04 be adopted as follows:

#### SECTION 7.04 CEMETERY REGULATION

##### SUBDIVISION 1. DEFINITIONS.

- (a.) **City.** The City of Mt. Lake, Minnesota, owning and controlling the cemetery.
- (b.) **Cemetery.** A tract of land used for burials or above-ground interment.
- (c.) **Burial Permit.** Legal written documents needed for burial to occur.
- (d.) **Burial Vault.** A container that houses a casket for final interment in the cemetery.
- (e.) **Interment.** Disposition of human remains or cremated remains by burial or entombment.
- (f.) **Lot.** A parcel of land nine (9) ft. in length; five (5) ft. in width on which one traditional or two cremation burials are permitted.
- (g.) **Double Lot.** A parcel of land nine (9) ft. in length; ten (10) ft. in width on which two traditional or four cremation burials are permitted.
- (h.) **Monument.** A memorial of granite, marble or bronze that extends above the surface of the lawn.
- (i.) **Marker.** A memorial of granite, marble or bronze that does not extend above the surface of the lawn.

**SUBDIVISION 2. ESTABLISHMENT.**

A cemetery has been established and is continued upon land owned and designated by the City of Mountain Lake, Minnesota, as Mountain Lake Cemetery. The plats of the cemetery filed with the county recorder in Cottonwood County, Minnesota, are adopted as the official plat of the cemetery. No person shall lay out or establish any cemetery, or use any lot of land within this City for the burial of dead except in the Mountain Lake Cemetery, or some other tract of land duly designated by the City as a cemetery.

**SUBDIVISION 3. SALE OF LOTS.**

The prices of cemetery lots and services will be set by resolution of the City Council. Any person paying for a lot is entitled to a license agreement conveying the lot. A license agreement conveying a lot gives the purchaser only the right of burial therein and shall be considered as a license that restricts the use to burial purposes.

**SUBDIVISION 4. CONDITIONS OF LOT PURCHASE.**

All lot agreements are subject to reasonable rules and regulations as the Council may adopt relative to the use of the cemetery. No lot shall be used for any purpose other than the burial of human remains and the placing of memorials as permitted by this ordinance or any additional regulation that the Council may adopt.

**SUBDIVISION 5. HANDLING OF FUNDS.**

All money received from the sale of lots and other services must be paid to the City treasurer. No lot agreement to any cemetery lot shall be issued, nor any cemetery service performed until payment has been received or a payment plan has been agreed upon.

**SUBDIVISION 6. BURIAL PERMITS.**

A burial permit from a funeral home or State Registrar of Vital Statistics, or a disposition permit, or death certificate as prescribed by a State Department of Health shall be filed with the City within one week of a burial.

**SUBDIVISION 7. INTERMENTS.**

All excavations shall be made by the cemetery superintendent or his agents. At least twenty-four (24) hours notice shall be given, and the type of burial and the location shall be specified.

One traditional burial or two cremation burials will be permitted per lot. Two traditional burials or four cremation burials will be permitted per double lot. (See Subdivision 14 Diagrams.) When a couple is buried on a double lot the husband shall be buried on the southern lot; the wife on the northern lot.

**SUBDIVISION 8. BURIAL VAULTS.**

All caskets, traditional or cremation, must be encased in a permanent type burial case or vault delivered and installed by a bonded and insured burial vault provider. Fiberglass vaults are prohibited.

**SUBDIVISION 9. DISINTERMENT AND REMOVAL.**

Disinterment and re-interment must comply with Minnesota Statute Section 149A.96. Before any grave may be opened, written permission of the lot owner shall be filed with the cemetery superintendent, a permit from the county health officer or licensed mortician shall be secured and presented, and the required fees paid. If the casket is re-interred in another cemetery the lot owner or his/her representative will pay one open/close fee. If the casket is re-interred in the Mountain Lake Cemetery a fee twice the open/close fee will be paid. This provision does not apply when disinterment is ordered by a duly authorized public authority.

- (a) Removal of a body by the heirs so that the lot may be sold for profit to themselves, or removal contrary to the expressed or implied wish of the original lot owner is forbidden.
- (b) A body may be removed from its original lot to a larger or better lot in the cemetery when there has been an exchange or purchase for that purpose.
- (c) The City shall assume no liability for damage to any casket or burial case in making the disinterment and removal.

**SUBDIVISION 10. MONUMENTS and MARKERS.**

- (a.) All monuments and markers shall be placed as shown in Subd. 14. Diagrams or as directed by the superintendent.
- (b.) No monument or marker shall be placed on either single or double lot before a burial has occurred.
- (c.) The masonry foundation base pad of a monument or marker shall not exceed 2' by 5' on a double lot or 2' by 3' on a lot. All monuments and markers shall be slightly smaller than the foundation base pad. (See Subdivision 14 Diagrams).
- (d.) All monuments and markers shall be at the head end of the grave. (See Subdivision 14. Diagrams.)
- (e.) In the old sections of the cemetery and on Sections A and B, all monuments shall be set level. (See Subdivision 14. Diagrams.)

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(f.) Markers in Sections C and D cannot be higher than ground level. (See Subdivision 14. Diagrams)

(g.) Monuments and markers must be constructed of granite, marble, or bronze material.

**SUBDIVISION 11. FOUNDATIONS.**

All monuments and markers shall be placed on foundations of solid masonry. The top of all foundations shall not be higher than two inches below the established grade.

**SUBDIVISION 12. INSTALLATION OF MONUMENTS AND MARKERS.**

No monument or marker may be placed without the supervision of the cemetery superintendent or his agent. Monuments and markers cannot be placed after November 20. Monuments and markers shall be placed during city work hours 7:00 a.m. to 3:30 p.m. Monday through Friday. Monuments and markers placed after regular city work hours will be subject to a fee equal to the overtime wages and benefits of the supervising employee. Monuments and markers cannot be installed after November 20.

**SUBDIVISION 13. DECORATION OF LOTS.**

(a) Plants and flowers may be placed permanently on cemetery lots when in an urn that is part of the monument or marker, or in a permanent flower/plant stand. Plants and flowers may be placed in other containers from one week before to two weeks after Memorial Day. No trees, shrubs or vines may be planted, nor may fences be erected. The City reserves the right to remove any tree shrub, vine, plant, or flower that may become unsightly, dangerous, or not in keeping with the landscape design of the cemetery. The City shall not be responsible for damaged, lost, or misplaced flower containers.

(b) The placing of boxes, shells, toys, metal designs, ornaments, chairs, settees, glass, wood or iron cases, and similar articles upon lots shall not be permitted; if such items are placed, the City may remove them.

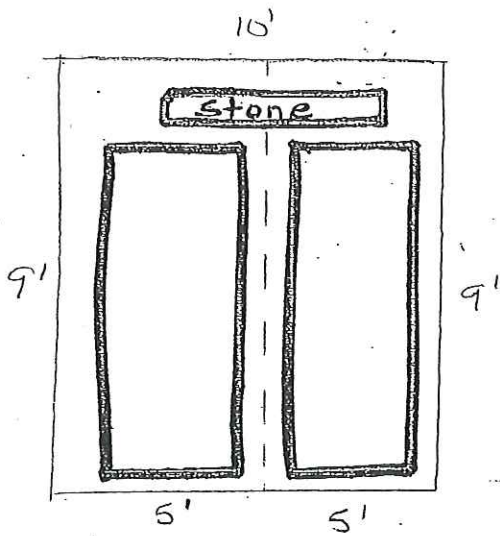
(c) All objects not described above, including balloons, banners, food and beverages, knick knacks, shepherd hooks, solar lights and lanterns, stuffed animals, wind chimes, windmills, windsocks, and statuary not incorporated into a monument, are prohibited and may be subject to immediate removal.

(d) The City reserves the right to remove all monuments, markers, flowers, plants, trees, decorations, or other similar things without liability to the owner whenever any of these objects become unsafe.

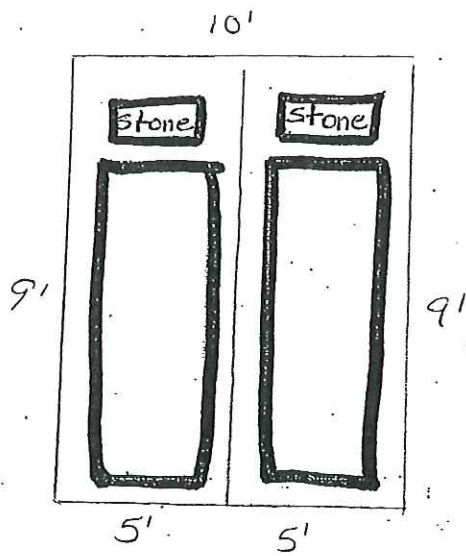
**SUBDIVISION 14. DIAGRAMS.**

22

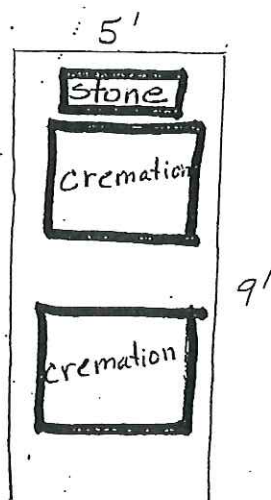




- a. Double lot - 10 feet by 9 feet
- Two traditional burials
  - Monument or marker for double lot
  - Monument or marker masonry foundation pad slightly smaller than 2 feet by 5 feet



- b. Lot - 5 feet by 9 feet (two shown)
- One traditional burial
  - Monument or marker for lot
  - Monument or marker masonry foundation pad slightly smaller than 2 feet by 3 feet



- c. Lot - 5 feet by 9 feet (one shown)
- Two cremation burials
  - Monument or marker for lot
  - Monument or marker masonry foundation pad slightly smaller than 2 feet by 3 feet

**SUBDIVISION 15. PENALTY.**

Any person violating any provision of this ordinance is guilty of a misdemeanor and subject to fines as set by the court.

Adopted by the Council this 21st day of March 2011.

Attest:

  
Mayor

  
Clerk

Published in the Mt. Lake/Butterfield Observer/Advocate \_\_\_\_\_.

CITY OF MOUNTAIN LAKE, MN

ORDINANCE #3-15

AN ORDINANCE AMENDING SUBD. 8 BURIAL VAULTS; SUBD. 10  
MONUMENTS AND MARKERS; AND SUBD. 14 DIAGRAMS; IN SECTION 7.04  
CEMETERY REGULATION.

Be it ordained by the City Council of the City of Mountain Lake that following subdivisions of Section 7.04 be amended to read:

Subd. 8 *Burial Vaults*

Added language is underlined.

*All caskets, traditional or cremation must be encased in a permanent type burial case or vault, delivered and installed by a bonded and insured burial vault provider, and must be buried completely underground. Fiberglass vaults are prohibited.*

Subd. 10 *Monuments and Markers* Paragraph c.

*The masonry foundation base pad of a monument or market shall not exceed 2' by 6' on a double lot or 2' by 3' on a lot. All monuments and markers shall be slightly smaller than the foundation base pad.*


A double lot base pad was previously 2' by 5'.

Subd. 14 *Diagrams*, Paragraph a. *Double Lot – 10 feet by 9 feet, Bullet Point #3*

*Monument or marker masonry foundation pad slightly smaller than 2 feet by 6 feet.*

The foundation base pad for previously slightly smaller than 2 feet by 5 feet.

Adopted by the City Council this 18th day of May, 2015.

  
Mike Nelson, Mayor

ATTEST:

  
Wendy Meyer, Clerk/Administrator

## MOUNTAIN LAKE POLICE FINES

Adopted January 4, 2016.

Section	Offense	Base Fine	SC/LL	Total
8.01	Storage Deposit Dispose Refuse 1st Off	100	75+5	180
8.01	Storage Deposit Dispose Refuse 2nd Off	200	75+5	280
8.02	Abandoned Vehicle	100	75+5	180
8.03	Public Nuisance 1st Offense	100	75+5	180
8.03	Public Nuisance 2nd Offense	200	75+5	280
8.04	Obstruction/Dump on Public Property 1st Off	100	75+5	180
8.04	Obstruction/Dump on Public Property 2nd Off	300	75+5	380
8.05s1	Dangerous Weapons	300	75+5	380
8.05s3	Discharge Firearm, Explosive, Dang Weapon	300	75+5	380
8.05s4	Possess Discharge Fireworks	100	75+5	180
8.05s5	Sale of Fireworks	50	75+5	130
8.06	Dangerous Trespass/Other Acts	300	75+5	380
8.08	Disorderly Conduct	300	75+5	380
8.09	Disorderly Conduct - Noise 1st Offense	50	75+5	130
8.09	Disorderly Conduct - Noise 2nd Offense	100	75+5	180
8.09	Disorderly Conduct - Noise 3rd Offense	150	75+5	230
8.10s2	Tobacco Possession by Minor	Juv Court		
8.10s3	Tobacco Use by Minor	Juv Court		
8.10s4	Procurement by/for Minor	Juv Court		
8.10s5	Tobacco-False ID	Juv Court		
8.11	Curfew 1st Offense	Juv Court		
8.11	Curfew 2nd Offense	Juv Court		
8.12s3	Dog Running 1st Offense	20	75+5	100
8.12s3	Dog Running 2nd Offense	40	75+5	120
8.12s3	Dog Running 3rd Offense	60	75+5	140
8.12s4	Animal License 1st Offense	20	75+5	100
8.12s4	Animal License 2nd Offense	40	75+5	120
8.12s4	Animal License 3rd Offense	60	75+5	140
8.12s5	Number of Animals	100	75+5	180
8.12s8	Animal Tag	20	75+5	100
8.12s14	Animal - Unlawful Acts	100	75+5	180
8.12s15	Non-Domestic Animals	60	75+5	140
8.12s21	Animal Waste	100	75+5	180
8.12s22	Dog Barking 1st Offense	20	75+5	100
8.12s22	Dog Barking 2nd Offense	40	75+5	120
8.12s22	Dog Barking 3rd Offense	60	75+5	140
8.12s23	Animal Damage to Property	100	75+5	180
8.12s24	Staking of Animals	100	75+5	180
8.12s25	Kennels	100	75+5	180
8.13	Animals & Fowl Violations	50	75+5	130
8.15	Open Burning 1st offense	50	75+5	130
8.15	Open Burning 2nd offense	75	75+5	155
8.15	Open Burning 3rd Offense	100	75+5	180
8.15s3	Firewood Storage 1st Offense	100	75+5	180
8.15s3	Firewood Storage 2nd Offense	300	75+5	380
8.15s4	Careless Fire	100	75+5	180
11.02s6	U-Turns	50	75+5	130
11.02s7	Exhibition Driving	100	75+5	180
11.03s2	General Parking	13	12	25
11.03s4	Angle Parking	13	12	25
11.03s9	Truck Parking	13	12	25
11.05s2	Handicapped Parking	100	75+5	180
11.05s3	Fire Lane Parking	13	12	25
11.06	Snow Parking	13	12	25
11.07	Recreational Vehicle Parking	50	75+5	130

25A

CITY OF MOUNTAIN LAKE, MN

ORDINANCE #3-16

AN ORDINANCE AMENDING  
MOUNTAIN LAKE CITY CODE  
CHAPTER 4 Construction Licensing, Permits and Regulation  
SECTION 4.07 Uniform Building Code,  
SUBDIVISION 17 Foundations, Exterior Walls and Roofs

Be it ordained by the City Council of the City of Mountain Lake that Subdivision 17 of Section 4.07 be amended to read as follows:

Added language is underlined.

**SECTION 4.07 UNIFORM BUILDING CODE**

**SUBDIVISION 17 Foundations, Exterior Walls and Roofs**

*The foundation, exterior walls, and exterior roof shall be substantially water tight and protected against vermin and rodents and shall be kept in sound condition and repair. Every exterior wall shall be free of deterioration, holes, breaks, loose or rotting boards of timbers, and any other which might admit rain or dampness to the interior portion of the walls or the exterior spaces of the building. All exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by paint or other protective covering or treatment. If the exterior surface is unpainted or determined by the code enforcement officer to be paint blistered, the surface shall be painted. Foundation and basement walls shall be free of volunteer trees, shrubbery, and other plants growing wedged between the foundation or basement wall and the surrounding soil. If the exterior surface of the pointing on any brick, block or stone wall is loose or has fallen out, the surface shall be repaired.*

Adopted by the Mountain Lake City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mike Nelson, Mayor

## Section 4.07 Uniform Housing Code

Basements unfinished shall not be occupied for the purpose of living.

### Subdivision 22. Commencement of Proceedings

Whenever possible, a building inspection shall be initiated within three (3) business days of receipt of any complaint alleging a particular building to be substandard. Whenever the Building Official has inspected or caused to be inspected any building and has found and determined that such building is a substandard building, he shall commence proceedings to cause the repair, rehabilitation, vacation, or demolition of the building.

### Subdivision 23. Notice and Order

The Building Official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:

1. The street address and a legal description sufficient for identification of the premises upon which the building is located.
2. A statement that the Building Official has found the building to be substandard with a brief and concise description of the conditions found to render the building dangerous.
3. A statement of the action required to be taken as determined by the Building Official.
  - (i) If the Building Official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefore and the work physically commenced within such time (not to exceed thirty (30) days from the date of the order) and completed within such time as the Building Official shall determine is reasonable under all circumstances.
  - (ii) If the Building Official has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a certain time from the date of the order as determined by the Building Official.
4. Statements advising that if any required repair or demolition work (without vacation being required) is not commenced within the time specified, the Building Official:
  - (i) Will order the building vacated and posted to prevent further occupancy until the work is completed; and
  - (ii) May proceed to cause the work to be done and charge the cost thereof against the property or its owner.
5. Statements advising: That any person having record title or legal interest in the building may appeal from the notice and order any actions of the Building Official.

## Section 4.07 continued

### Subdivision 24. Appeals

Any person aggrieved by any notice or order of the Building Official issued under this Ordinance may file a petition with the City Clerk within ten (10) days after the notice or order.

- A. Upon receipt of the review, the City Administrator, or designee, shall set a date for a hearing and give the petitioner at least five (5) days prior written notice of the date, time and place of the hearing.
- B. At the hearing, the petitioner shall be given an opportunity to show cause by the notice or order should be modified or withdrawn. The petitioner may be represented by counsel or petitioners of choosing at his/her expense.
- C. The hearing shall be conducted by the City Administrator, provided he/she did not participate in the drafting of the order.

### Subdivision 25. Appeal to Council

Any decision rendered pursuant to "Appeals Subdivision" may be appealed to the City Council (Housing Board). A petitioner seeking a decision must file written notice of appeal with the City Clerk within ten (10) days after the decision of the City Administrator. The matter will thereupon be placed on the City Council Agenda as soon as practical. The City Council shall review the findings of fact and conclusions to determine whether they were correct. The City Council may modify, reverse, or affirm the decision of the City Administrator upon the same standard set forth in the previous subdivision (Appeals).

### Subdivision 25 Enforcement

Violation of this Ordinance shall be a petty misdemeanor and/or remedied by the guidelines set forth by this ordinance.

CITY OF MOUNTAIN LAKE, MN

ORDINANCE #4-16

AN ORDINANCE AMENDING MOUNTAIN LAKE CITY CODE  
CHAPTER 8 Public Protection, Crimes and Offenses  
SECTION 8.03 Public Nuisances,  
SUBDIVISION 3 Public Nuisances Affecting Health, Number 7  
SECTION 8.03 PUBLIC NUISANCE ORDINANCE

Be it ordained by the City Council of the City of Mountain Lake that Number 7, Subdivision 3 is amended to read as follows:

Added language is underlined.

**SECTION 8.03 Public Nuisances**

**SUBDIVISION 3 Public Nuisances Affecting Health, Number 7**

All noxious weeds and other rank growth of vegetation upon public and private property. Trees, shrubbery, flower beds, and garden areas that are not reasonably maintained shall be considered rank growth.

Adopted by the Mountain Lake City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mike Nelson, Mayor

ATTEST:

\_\_\_\_\_  
Wendy Meyer, Clerk/Administrator



## Section 8.03 Public Nuisances

### Subdivision 6. Abatement.

1. Notice. Whenever in the judgment of the City Council or its agent, it is determined upon investigation that a nuisance is being maintained or exists within the City, the designated agent:
  - A. Shall notify in writing the person committing or maintaining such nuisance and the owner of such property and require the person to terminate and abate said nuisance and to remove such conditions or remedy such defects. Said written notice shall be served upon such persons in person or by certified mail. If the premises are not occupied and the address of the owner is unknown, service on the owner may be had by posting a copy of the notice on the premises. Such notice shall require the owner or occupant of the premises, or both, to take reasonable steps within ten (10) calendar days to abate and remove said nuisance. The maximum time for the removal of said nuisance after service of said notice shall not exceed ten days, unless extended by the City Council in writing. Service of notice may be proved by an affidavit of service.
  - B. Law Enforcement may issue a citation for the violation of this ordinance, which violation shall be a misdemeanor punishable in accordance with misdemeanors under Minnesota Statute; however, the City Council has the authority to issue an administrative citation in lieu of a criminal citation.
  - C. If after service of notice, the person fails to abate the nuisance or make the necessary repairs, alternations or changes in accordance with the order of the City Council or its agent, the City Council shall provide written notice of an opportunity for a hearing informing the responsible party that the Council may vote to abate such nuisance. Said written notice shall be served upon the person committing or maintaining said nuisance and the owner of such property in person or by certified mail. If the premises are not occupied and the address of the owner is unknown, service on the owner may be had by posting a copy of the hearing notice on the premises; however, thirty days must elapse between the time of posting and the hearing.
  - D. Abatement:
    - 1) The City may order such nuisance to be abated at the expense of the City. The owner of the premises of which a nuisance has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed and the cost and the cost determined, the City Administrator shall prepare a bill for the cost and mail it to the owner. Thereupon, the amount shall be immediately due and payable at the office of the City Administrator. The City may recover such expenditure by assessing the cost of the enforcement action against the real property upon which the nuisance existed and to certify the same to the County Auditor for

## Section 8.03 continued

collection in the same manner as taxes and special assessments are certified and collected. In the alternative, the City can seek money against the responsible party.

- E. Emergency procedure; Summary enforcement. In cases of emergency, where delay in abatement due to the above notice procedures will permit a continuing nuisance to unreasonably endanger public health, safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the Officer charged with enforcement shall determine that a public nuisance exists or is being maintained on the premises in the City and that delay in abatement of the nuisance will unreasonably endanger public health, safety, or welfare. The enforcement officer shall notify the occupant or owner of the premises in person or by certified mail of the nature of the nuisance and of the City's intention to seek summary enforcement and the time and place of the council meeting to consider the question of summary enforcement. The City Council, at such meeting, may then order that such nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.
- F. Immediate Abatement: Nothing in this Ordinance shall prevent the City without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

# Ch. 8 Public Protection, Crimes & Offenses

## SECTION 8.98. ADMINISTRATIVE CITATION AND CIVIL PENALTIES

### Subdivision 1. Purpose.

The City Council finds that there is a need for alternative methods of enforcing city code. While criminal fines penalties have been the most frequent enforcement mechanism, there are certain negative consequences for the City and the defendant. The delay inherent in such system does not ensure prompt resolution. Citizens resent being labeled a criminal for these relatively minor infractions. The higher burden of proof and the higher fines do not appear appropriate for most administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement. The method of enforcement shall be used in addition to any other legal remedy currently available.

### Subdivision 2. General Provisions.

1. The city council may designate that certain violations of the city code as administrative offenses, which may be subject to an administrative citation and civil penalties. Each day a violation exists constitutes a separate offense.
2. An administrative offense may be subject to a civil penalty not exceeding \$1,000
3. The City Council must adopt by resolution a schedule of fines for offenses, which may be initiated by administrative citation.
4. Any person authorized to enforce provisions of the city code may issue an administrative citation upon belief that that a code violation has occurred. The citation must be issued in person or by mail to the person responsible for the violation or attached to the motor vehicle in case of a vehicular offense.
5. The citation must state the date, time, and nature of the offense, the citation of the code provision violated, the name of the issuing officer, the amount of the scheduled fine and the manner for paying the fine.
6. The citation shall explain: (1) that it is a civil violation of law; (2) if the accused wishes to contest the citation, he must notify the police department and a criminal citation shall be issued instead; (3) such criminal citations shall be addressed District Court.
7. The person responsible for the violation must either pay the fine withing 10 business days after issuance, or notify the police department that he will contest the matter as a criminal matter in District Court. The police department shall then issue a criminal citation.

8. If such fine is not paid within 10 business days after issuance, and the police department has not been notified that the accused is contesting the matter, the police department shall issue a criminal citation.

**SECTION 8.99. VIOLATION A MISDEMEANOR**

Every person violates a section, subdivision, paragraph or provision of this Chapter when he performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, or performs an act prohibited or declared unlawful or fails to act when such failure is prohibited or declared unlawful by a Code adopted by reference by this Chapter, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

CITY OF MOUNTAIN LAKE, MN

ORDINANCE #5-16

AN ORDINANCE AMENDING MOUNTAIN LAKE CITY CODE  
CHAPTER 8 Public Protection, Crimes and Offenses  
SECTION 8.17 Grass, Weeds, Brush and Other Vegetation on  
Private Property

SUBDIVISION 1 Cutting and Removal of Grass, Weeds and Other Rank, Poisonous of  
Harmful Vegetation

Be it ordained by the City Council of the City of Mountain Lake that Subdivision 1 of Section 8.17 be amended to read as follows:

Added language is underlined.

**SECTION 8.17**

**SUBDIVISION 1 Cutting and Removal of Grass, Weeds and Other Rank Poisonous or Harmful Vegetation.**

*It is unlawful for any person having control of any occupied or unoccupied lot or land or any part thereof in the City to permit or maintain on any such lot or land, or on or along the sidewalk, street or alley adjacent to the same between the property line and the curb or middle of the alley or for ten feet outside the property line if there be no curb, any growth of weeds, grass, brush, unmaintained garden areas and flower beds, or other rank vegetation to a greater height than eight (8) inches on the average, or any accumulation of dead weeds, grass or brush.*

Adopted by the Mountain Lake City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mike Nelson, Mayor

ATTEST:

\_\_\_\_\_  
Wendy Meyer, Clerk/Administrator

Published in the Mt. Lake Observer/Butterfield Advocate on \_\_\_\_\_, 2016.

# Ch. 8 Public Protection, Crimes & Offenses

## SECTION 8.17. GRASS, WEEDS, BRUSH AND OTHER VEGETATION ON PRIVATE PROPERTY.

### Subdivision 1. Cutting and Removal of Grass, Weeds and Other Rank, Poisonous or Harmful Vegetation.

1. It is unlawful for any person having control of any occupied or unoccupied lot or land or any part thereof in the City to permit or maintain on any such lot or land, or on or along the sidewalk, street or alley adjacent to the same between the property line and the curb or middle of the alley or for ten feet outside the property line if there be no curb, any growth of weeds, grass, brush or other rank vegetation to a greater height than eight (8) inches on the average, or any accumulation of dead weeds, grass or brush.
2. It is also unlawful to any such person to cause, suffer or allow poison ivy, ragweed or other poisonous plants, or plants detrimental to health to grow on any such lot or land in such manner that any part of such ivy, ragweed, or other poisonous or harmful weed shall extend upon, overhang or border any public place or allow to seed, pollen or other poisonous particles or emanations there from to be carried through the air into any such public place.

### Subdivision 2. Duty of Owner, Lessee or Occupant.

It is the duty of any owner, lessee or occupant of any lot or land to cut and remove or cause to be cut and removed all such weeds, grass, brush or other rank, poisonous or harmful vegetation as often as may be necessary to comply with the provisions of Subdivision 1; provided that cutting and removing such weeds, grass and vegetation at least once every three weeks, between May 15 and September 15 shall be deemed to be a compliance with this Section.

### Subdivision 3. When City to do Work.

If the provisions of the foregoing Subdivisions are not complied with:

1. The City Clerk-Treasurer shall serve written notice upon the owner, lessee or occupant or any person having the care or control of any such lot or land to comply with the provisions of this Section.
2. If the person upon whom the notice is served fails, neglects or refuses to cut and remove or to cause to be cut and removed such weeds, grass, brush or other vegetation within five (5) days after receipt of such notice, or
3. If no person can be found in the City who either is or claims to be the owner of such lot or land, or who either represents or claims to represent such owner, the City shall cause such weeds, grass, brush and other vegetation on such lot or land to be cut and removed and the actual cost of such cutting and removal, plus five per cent for inspection and other additional costs in connection therewith, shall

## 8.17 continued

thereupon become and be a lien upon the property on which such weeds, grass, brush, and other vegetation were located and shall be added to and become and form part of the taxes next to be assessed and levied upon such lot or land and shall bear interest at the same rate as taxes and shall be collected and enforced by the same officer and in the same manner as taxes.

CONDITIONAL USE PERMIT APPLICATION

City of Mt. Lake

Conditional Use Permit Application Fee \$ 100<sup>00</sup>  
(All fees payable upon submittal of completed application.)

Please complete the application. If the spaces provided are insufficient, use additional sheets.

1. Name of Owner (First) (Middle) (Last)

(Phone)

Benjamin Onno Jellema

507-848-6049

2. Address of Owner (Street and PO Box) (City) (State) (Zip)

P.O. Box 68 817 2nd Ave. Mountain Lake, MN 56159

3. Name of Applicant if Different from Owner: (First) (Middle) (Last)

Makayla Ray Price

507-841-1788

4. Address of Applicant If Different from Above:

\_\_\_\_\_

5. Street Address of Property Where Conditional Use will be in Effect:

817 2nd Ave. Mountain Lake, MN 56159

6. Complete Legal Description of the Property Involved and Its Property Identification Number:

Lot-015 BLK-009. Mt Lake-orig twist w64' Alley BTW  
lots 13 & 14; w64' lots 13, 14, & 15 BLK 9. Property Identification  
number: 22-520-0640. 817 2nd Ave Mountain Lake, MN 56159.


7. State exactly what is intended to be done on or with the property that requires the conditional use permit:


Opening a family child care (daycare) in my home. My name  
will be Lil' Pumpkin's Play School and hours are 5am - 5pm,  
but will also be flexible to open earlier or close later as needed  
for parents. Generally my back door will be where they pick up and  
drop off children (through alley). Since we live so close to the  
railroad we will be putting up a fence. I am being licenced as a CA  
which is 12 children (including my own 2) but I am going to drop  
down to a CA (10 children) so I can have more infants and toddlers.  
My goal is to open August 15th, 2016 and as long as we can get the  
fence and porch updated I will be.



8. The following information must be submitted with this application if requested: A. Site Plan (showing parcel and building dimensions); B Location of all buildings and their square footage; C. Curb cuts, driveways, access roads, parking spaces, off-street loading areas and sidewalks; D. Landscaping and screening plans; E. Drainage plan; F. Sanitary sewer and water plan with estimated use per day; G. Soil types; H. Any additional data reasonably required

Signature: **The above statements are true and correct to the best of my knowledge.**

Applicant Signature: 

Property Owner Signature: 

Date: 5-14-16



Drawer C  
Mountain Lake, Minnesota 56159  
(507) 427-2999 • Fax (507) 427-3327

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**NOTICE TO ADJOINING PROPERTY OWNERS**

**PUBLIC HEARING ON A PETITION TO GRANT A CONDITIONAL USE PERMIT**

**CITY OF MOUNTAIN LAKE PLANNING AND ZONING COMMISSION**

June 6, 2016

A petition for a Conditional Use Permit for Parcel Number 22.520.0640, described as W64' of Alley Between Lots 13 and 14; W64' of Lots 13, 14, and 15; Block 9, Original Townsite, 817 Second Avenue, has been filed by Benjamin Jellema and MaKayla Price.

The Conditional Use Permit petition has been submitted for the purpose of allowing a day care in the residential district in accordance with Mt. Lake Ordinance 9, Section 11 Subd. 3. #7 and #16.

A public hearing will be held by the City of Mt. Lake Planning and Zoning Commission on Monday, June 27, 2016 at 5:35 p.m. in the Council Chamber of the Mt. Lake City Hall, 930 Third Ave. Mt. Lake, MN. At the public hearing you may speak in opposition to or in support of the proposed Conditional Use Permit.

Planning and Zoning Commission meetings are public meetings and are open to the public. Attendance at this public hearing is not limited to those receiving this Notice. If you know of any neighbor or affected property owner who did not received this Notice please inform them of this public hearing.

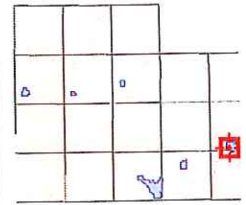
If you have any concerns or further questions about the proposed use of the property, please contact the City Administrator, Wendy Meyer.

Respectfully,

City of Mt. Lake Planning Commission



Overview



Legend

- Corporate Limits
- Political Township
- Parcels

Parcel ID	225200640	Alternate ID	n/a	Owner Address	JELLEMA/BENJAMIN O
Sec/Twp/Rng	0-0-0	Class	RESIDENTIAL\ SINGLE UNIT		%DEBRA JELLEMA
Property Address	817 2ND AVE	Acreage	n/a		450 CHESTNUT STE
	56159				TRIMONT MN 56176
District	n/a				
Brief Tax Description	W64' ALLEY BTW LOTS 13 & 14; W64' LOTS 13, 14 & 15 BLK 9				
	<b>(Note: Not to be used on legal documents)</b>				

Date created: 6/22/2016

Developed by  
The Schneider Corporation

**CITY OF MOUNTAIN LAKE, MINNESOTA**

Resolution No. 18-16

**A RESOLUTION APPROVING A CONDITIONAL USE PERMIT TO  
ALLOW A DAYCARE IN THE RESIDENTIAL DISTRICT ON  
PARCEL NUMBER 22.520.0640,  
DESCRIBED AS W64' OF ALLEY BETWEEN LOTS 13 AND 14; W64' OF LOTS 13, 14,  
AND 15; BLOCK 9; ORIGINAL TOWNSITE; CITY OF MOUNTAIN LAKE, MN  
WITH A PHYSICAL ADDRESS OF 817 SECOND AVENUE**

WHEREAS, Benjamin Jellema is the current owner of the above named property; and

WHEREAS, MaKayla Price has stated her intent to open a daycare at the above named property;  
and

WHEREAS, said property is presently zoned as 'R' Residential Use District classification, wherein  
a daycare is an allowable conditional use; and

WHEREAS, Benjamin Jellema and MaKayla Price have submitted to the City an application for a  
conditional use permit to allow a daycare on above named property as set forth in Mountain Lake  
Ordinance 9.11 Subdivision 3, Number 7; and

WHEREAS, the City of Mountain Lake Planning and Zoning Commission conducted a public  
hearing on June 27, 2016 to consider said conditional use permit application and at the conclusion  
of said hearing passed a motion recommending the approval of a conditional use permit with the  
following conditions: the number of children is limited to that of the current license – 12 children,  
and hours of operation are limited to 5AM to 6PM; and

WHEREAS, the Mountain Lake City Council upon the recommendation of the Planning and  
Zoning Commission considered granting a conditional use permit to allow a daycare at the above  
named property;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
MOUNTAIN LAKE, MN: That a conditional use permit with conditions allowing a daycare on the  
above named property is hereby proved; and,

BE IT FURTHER RESOLVED BY SAID CITY COUNCIL that this Resolution shall become  
effective after its passage and approval.

PASSED AND ADOPTED by the City Council of the City of Mountain Lake, MN on this 5<sup>th</sup> day  
of July 2016.

ATTEST:

\_\_\_\_\_  
Mike Nelson, Mayor

\_\_\_\_\_  
Wendy Meyer, Clerk/Administrator

**Conditional Use  
FINDINGS OF FACT  
Parcel Number 22.520.0640**

Legal Description: W64' of Alley between Lots 13 and 14; W64' of Lots 13, 14, and 15, Block 9 Original Township the City of Mountain Lake  
Physical Address: 817 Second Avenue.

1. The conditional use was submitted in compliance with city code. *An application has been completed by Ben Jellema, property owner, and MaKayla Price, business owner, as required by Mountain Lake Code 9.70 Subd. 4.*

2. The conditional use request was made public in compliance with city code and state law. *The Notice of Public Hearing was published at least 10 days but no more than 30 days in the Mountain Lake/Butterfield Observer/Advocate, posted in City Hall and on the city's website. Property owners within 350' of the property received mailed notification of the hearing. A public hearing was held on Monday June 27, 2016 at 5:35 p.m. No written comments regarding the conditional use were received at City Hall. There were no oral comments in support or in opposition to the conditional use made during the Public Hearing.*

3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. *The proposed conditional use is listed in Mountain Lake Code 9.11 Subd. 3, Number 7, day care. The proposed location is in a residential zoned district. The business will be located in a house. The business owner and property owner resides on the property. The business owner is the only employee. By license the owner is limited to 12 children but stated in the application that she intends to have 10 children including two of her own. The owner has applied for and been issued a fence permit to construct a six foot wood fence to the east and north of the house. The business is service in nature. The owner has stated that she intends to operate the business from 5:00 a.m. to 5:00 p.m. The Planning and Zoning Commission determined that the following conditions should be adopted:*

1. the number of children is limited to that of the current license – 12 children; conditional use must be amended if the business wishes to care for additional children.
2. the hours of operation are 5 am to 6 pm; conditional use must be amended if the business wishes to operate additional hours.

4. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding vacant property for predominant uses in the area. *The area is developed. The proposed location, while zoned residential, is near the edge of the downtown commercial zoned district and fringe commercial district. The properties to the south have large storage buildings, construction equipment, and construction supplies. A half-block to the east is the Mountain Lake Municipal Utilities'*

power plant, and commercial buildings. The property is on Block 9 which also contains single family homes and CenterPoint Assemblies of God Church. The church is west of the property. The property is a block from Third Ave. (CR #27) a major thoroughfare.

5. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided for the conditional use. City streets provide adequate access to the property. Customers will be able to access the daycare via Second Avenue and the north/south alley that runs on the west side of the house. The back door, off the alley, will be the primary drop-off and pick-up. The property is connected to city utilities.

6. That adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the conditional use. The daycare is for licensed for a maximum of 12 children by Des Moines Valley Health and Human Services. The owner anticipates parents parking for less than 10 minutes, twice a day to drop off and pick up children at various times. Parking is available on the alley on the west side of the property and on Second Avenue on the south side of the property. Off-street parking will also be available in the owner's driveway off the alley.

7. That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibrations, so that none of these will constitute a nuisance and to control lighted signs and other lights in such a manner that on disturbance to neighboring properties will result. Nuisances will be minimal or non-existent. The business will generate no fumes, dust, noise or vibrations. The daycare is limited by licensing to a maximum of 12 children. The outdoor activities of the children will be consistent with those of any large family residing in a residential area. The children's play area will be located in a fenced area on the east and north sides of the house. Lighted signs will not be used to advertise or identify the business.

8. That proper facilities are provided which would eliminate any traffic congestion or traffic hazard, which may result from the proposed conditional use. There are adequate streets to bring safely move traffic to and from the property. There is adequate room for parking to drop-off and pick-up of children. .

9. There is a demonstrated need for the proposed conditional use. The City of Mountain Lake is focused on creating and retaining jobs in the community. Job growth must be accompanied by increasing the number of daycare providers. Working families need conveniently located, nearby daycare providers. The addition of this business to Mountain Lake will increase the options of residents within the community for this type of service.

10. The proposed conditional use is in compliance with the City Comprehensive Plan. The Comprehensive Plan supports the development of a strong, diversified and growing economic base. The use is consistent with city land use plan (2006) and the intent of the zoning district.

**Approval**

The City of Mountain Lake Planning and Zoning Commission held a public hearing during their regularly scheduled meeting 5:30 p.m. Monday June 27, 2016. During the public hearing the application, site map and draft findings of fact were reviewed and discussed. Following the discussion the Commission adopted a motion recommending the Mountain Lake City Council approve the permit with the two (2) conditions found above.

The Mountain Lake City Council at their July 5, 2016 meeting reviewed the application, site map and draft findings of fact and considered the Commission's recommendation. Following their review the Council did adopt Resolution #.

**DRAFT**  
**ORDINANCE NO. 7-16**  
**CITY OF MOUNTAIN LAKE**  
**AN ORDINANCE OPTING-OUT OF**  
**THE REQUIREMENTS OF**  
**MINNESOTA STATUTES, SECTION 462.3593**

**WHEREAS**, on May 12, 2016, Governor Dayton signed into law the creation and regulation of temporary family health care dwellings, codified at Minn. Stat. § 462.3593, which permit and regulate temporary family health care dwellings;

**WHEREAS**, subdivision 9 of Minn. Stat. §462.3593 allows cities to “opt out” of those regulations;

**THE CITY COUNCIL OF THE CITY OF MOUNTAIN LAKE ORDAINS as follows:**

**Section 9.15 of Chapter 9 of the Mountain Lake Code is added as follows:**

**I.**     **SECTION 9.15.** Pursuant to authority granted by Minnesota Statutes, Section 462.3593, subdivision 9, the City of MountainLake opts-out of the requirements of Minn. Stat. §462.3593, which defines and regulates Temporary Family Health Care Dwellings.

**II.**     This Ordinance shall be effective immediately upon its passage and publication.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the City Council of the City of Mountain Lake.

**CITY OF MOUNTAIN LAKE**

By: \_\_\_\_\_  
Mike Nelson, Mayor

ATTEST:

\_\_\_\_\_  
Wendy Meyer, City Administrator



# Temporary Dwelling Legislation Becomes Law

**Cities may opt out of permitting temporary family dwellings, but they must pass an ordinance to do so.**

*(Published May 16, 2016)*

A bill creating a new process for local governments to permit certain types of recreational vehicles as temporary family dwellings was signed into law by Gov. Dayton on May 12. Chapter 111 ([Link to: https://www.revisor.mn.gov/laws/?year=2016&type=0&doctype=Chapter&id=111](https://www.revisor.mn.gov/laws/?year=2016&type=0&doctype=Chapter&id=111)) (SF 2555, Sen. John Hoffman ([Link to: http://www.senate.mn/members/member\\_bio.php?mem\\_id=1205](http://www.senate.mn/members/member_bio.php?mem_id=1205)), DFL-Champlain, and Rep. Roz Peterson ([Link to: http://www.house.leg.state.mn.us/members/members.asp?id=15442](http://www.house.leg.state.mn.us/members/members.asp?id=15442)), R-Burnsville) previously passed the House floor on a vote of 113-17.

## **Purpose of the law**

The main stated motivation behind the new law is to provide transitional housing for seniors. For example, if a family wanted to keep a close eye on grandma while she recuperates from surgery, they could have grandma stay in a temporary family health care dwelling in the yard or driveway.

The law has a broader effect than that, however, with anyone who needs assistance with two or more “instrumental activities of daily life” for mental or physical reasons eligible to be housed in this manner.

## **Summary of changes**

The League worked extensively with the authors and proponents and with other local government organizations throughout the legislative process to craft a law that is manageable for cities and counties.

Local governments may opt out of this program if they determine that this type of expedited land use permitting for temporary dwellings is not well-suited to their community. Many communities have communicated that property owners in their jurisdiction have adequate access to a permit for this type of use through existing local land use controls and permitting authority.

## **Cities must pass ordinance to opt out**

To be clear, unless a city chooses not to participate in this program by passing an ordinance specifically opting out, the law will require the city to issue permits to qualified applicants starting on Sept. 1, 2016. A permit can be denied for appropriate cause. The law lists the information required and the requirements that may be considered in that decision.

The final act has the following key components:

Creates a new type of permit referred to as a temporary dwelling permit that has a six-month duration, with an option to extend the permit for six months.

Requires that the permit be for a property where the caregiver or relative resides.

Allows modular and manufactured housing (instead of just recreational vehicles) to use this permit process as long as the unit meets all of the listed criteria.

Lists the criteria for the structure and the information required in the permit application.

Addresses sewer safety issues with required backflow valves and advance verification of septic service contracts.

Requires the inclusion of site maps showing where the unit will be placed and notification of adjacent neighbors prior to application.

Requires applications to specify the individual authorized to live in the unit.

Applies the permit approval process found in Minnesota Statutes, section 15.99 ([Link to: https://www.revisor.mn.gov/statutes/?id=15.99](https://www.revisor.mn.gov/statutes/?id=15.99)), but allows the local government unit only 15 days to make a decision on granting the permit (no extension). It waives the public hearing requirement and allows the clock to be restarted if an application is deemed incomplete, as long as the applicant is notified of how the application is incomplete within five days. A 30-day decision is allowed if the regular council meeting occurs only once a month.

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### Temporary Dwelling Legislation Becomes Law

Requires unit placement to meet existing stormwater, shoreland, setback, and easement requirements. A permit exempts the units only from accessory unit ordinances and recreational vehicle parking and storage ordinances.

Sets a default permit fee level that may be replaced by a local ordinance.

Allows cities to pass an ordinance opting out of using this new permitting system.

A complete review of the provisions of the new law will be included in the League's *2016 Law Summaries* in June.

Read the current issue of the Cities Bulletin (*Link to: <http://www.lmc.org/page/1/cities-bulletin-newsletter.jsp>*)

Sec. 3.

**[462.3593] TEMPORARY FAMILY HEALTH CARE DWELLINGS.**

**Subdivision 1.**

**Definitions.**

- (a) For purposes of this section, the following terms have the meanings given.
- (b) "Caregiver" means an individual 18 years of age or older who:
- (1) provides care for a mentally or physically impaired person; and
  - (2) is a relative, legal guardian, or health care agent of the mentally or physically impaired person for whom the individual is caring.
- (c) "Instrumental activities of daily living" has the meaning given in section 256B.0659, subdivision 1, paragraph (i).
- (d) "Mentally or physically impaired person" means a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified in writing by a physician, a physician assistant, or an advanced practice registered nurse licensed to practice in this state.
- (e) "Relative" means a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, or niece of the mentally or physically impaired person. Relative includes half, step, and in-law relationships.
- (f) "Temporary family health care dwelling" means a mobile residential dwelling providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that meets the requirements of subdivision 2.

**Subd. 2.**

**Temporary family health care dwelling.**

A temporary family health care dwelling must:

- (1) be primarily assembled at a location other than its site of installation;
- (2) be no more than 300 gross square feet;
- (3) not be attached to a permanent foundation;
- (4) be universally designed and meet state-recognized accessibility standards;
- (5) provide access to water and electric utilities either by connecting to the utilities that are serving the principal dwelling on the lot or by other comparable means;
- (6) have exterior materials that are compatible in composition, appearance, and durability to the exterior materials used in standard residential construction;
- (7) have a minimum insulation rating of R-15;

(8) be able to be installed, removed, and transported by a one-ton pickup truck as defined in section 168.002, subdivision 21b, a truck as defined in section 168.002, subdivision 37, or a truck tractor as defined in section 168.002, subdivision 38;

(9) be built to either Minnesota Rules, chapter 1360 or 1361, and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2; and

(10) be equipped with a backflow check valve.

### **Subd. 3.**

#### **Temporary dwelling permit; application.**

(a) Unless the municipality has designated temporary family health care dwellings as permitted uses, a temporary family health care dwelling is subject to the provisions in this section. A temporary family health care dwelling that meets the requirements of this section cannot be prohibited by a local ordinance that regulates accessory uses or recreational vehicle parking or storage.

(b) The caregiver or relative must apply for a temporary dwelling permit from the municipality. The permit application must be signed by the primary caregiver, the owner of the property on which the temporary family health care dwelling will be located, and the resident of the property if the property owner does not reside on the property, and include:

(1) the name, address, and telephone number of the property owner, the resident of the property if different from the owner, and the primary caregiver responsible for the care of the mentally or physically impaired person; and the name of the mentally or physically impaired person who will live in the temporary family health care dwelling;

(2) proof of the provider network from which the mentally or physically impaired person may receive respite care, primary care, or remote patient monitoring services;

(3) a written certification that the mentally or physically impaired person requires assistance with two or more instrumental activities of daily living signed by a physician, a physician assistant, or an advanced practice registered nurse licensed to practice in this state;

(4) an executed contract for septic service management or other proof of adequate septic service management;

(5) an affidavit that the applicant has provided notice to adjacent property owners and residents of the application for the temporary dwelling permit; and

(6) a general site map to show the location of the temporary family health care dwelling and other structures on the lot.

(c) The temporary family health care dwelling must be located on property where the caregiver or relative resides. A temporary family health care dwelling must comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure. The temporary family health care

dwelling must be located on the lot so that septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.

(d) A temporary family health care dwelling is limited to one occupant who is a mentally or physically impaired person. The person must be identified in the application. Only one temporary family health care dwelling is allowed on a lot.

(e) Unless otherwise provided, a temporary family health care dwelling installed under this section must comply with all applicable state law, local ordinances, and charter provisions.

#### **Subd. 4.**

##### **Initial permit term; renewal.**

The initial temporary dwelling permit is valid for six months. The applicant may renew the permit once for an additional six months.

#### **Subd. 5.**

##### **Inspection.**

The municipality may require that the permit holder provide evidence of compliance with this section as long as the temporary family health care dwelling remains on the property. The municipality may inspect the temporary family health care dwelling at reasonable times convenient to the caregiver to determine if the temporary family health care dwelling is occupied and meets the requirements of this section.

#### **Subd. 6.**

##### **Revocation of permit.**

The municipality may revoke the temporary dwelling permit if the permit holder violates any requirement of this section. If the municipality revokes a permit, the permit holder has 60 days from the date of revocation to remove the temporary family health care dwelling.

#### **Subd. 7.**

##### **Fee.**

Unless otherwise provided by ordinance, the municipality may charge a fee of up to \$100 for the initial permit and up to \$50 for a renewal of the permit.

#### **Subd. 8.**

##### **No public hearing required; application of section 15.99.**

(a) Due to the time-sensitive nature of issuing a temporary dwelling permit for a temporary family health care dwelling, the municipality does not have to hold a public hearing on the application.

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(b) The procedures governing the time limit for deciding an application for the temporary dwelling permit under this section are governed by section 15.99, except as provided in this section. The municipality has 15 days to issue a permit requested under this section or to deny it, except that if the statutory or home rule charter city holds regular meetings only once per calendar month the statutory or home rule charter city has 30 days to issue a permit requested under this section or to deny it. If the municipality receives a written request that does not contain all required information, the applicable 15-day or 30-day limit starts over only if the municipality sends written notice within five business days of receipt of the request telling the requester what information is missing. The municipality cannot extend the period of time to decide.

**Subd. 9.**

**Opt-out.**

A municipality may by ordinance opt-out of the requirements of this section.

**Sec. 4.**

**EFFECTIVE DATE.**

This act is effective September 1, 2016, and applies to temporary dwelling permit applications made under this act on or after that date.

Presented to the governor May 12, 2016

Signed by the governor May 12, 2016, 1:27 p.m.

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i) "Instrumental activities of daily living" means activities to include meal planning and preparation; basic assistance with paying bills; shopping for food, clothing, and other essential items; performing household tasks integral to the personal care assistance services; communication by telephone and other media; and traveling, including to medical appointments and to participate in the community.

## CHAPTER 8

### PUBLIC PROTECTION, CRIMES AND OFFENSES

#### SECTION 8.01. STORAGE, DEPOSIT, AND DISPOSAL OF REFUSE; STORAGE OF JUNK VEHICLES, HOUSEHOLD FURNISHINGS, AND APPLIANCES ON PUBLIC OR PRIVATE PROPERTY; ABANDONING OR STORING A VEHICLE; NUISANCE.

**Subdivision 1. Definitions.** The following terms, as used in this Section, shall have the meanings state:

1. "Abandon" – A motor vehicle as defined in Minnesota State Statute 169.01 and has remained illegally on public or private property for more than 48 hours, is in an inoperable condition, lacking vital components.
2. "Commercial Establishment" – Any premises, where a commercial or industrial enterprise of any kind is carried on, and shall include restaurants, clubs, churches, and schools where food is prepared or served.
3. "Inoperable" – Any motor vehicle as defined in Minnesota Statutes, Chapter 169.
4. "Junk Vehicle"
  - a. Any unlicensed or unregistered motor vehicle or any inoperable vehicle.
  - b. Is extensively damaged, with the damage including but not limited to things as broken or missing wheels, motor, drive train or transmission;
5. "Motor Vehicle" – A vehicle as defined in Minnesota Statutes, Chapter 169. "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include an electric personal assistive mobility device or a vehicle moved solely by human power.



## Ch. 8, Section 8.01

### Subdivision 3. Storage of Motor Vehicles and/or Junk Vehicles.

1. It is unlawful to park or store any unlicensed, unregistered or inoperable motor vehicle, or parts or components thereof on any property, public or private, unless housed within a lawfully erected building.
2. Required off street automobile parking space shall not be utilized for open storage or for the storage of vehicles which are inoperable, for sale or for rent.
3. It is unlawful to park or store any junk vehicle or parts or components thereof on any property, public or private, unless housed within a lawfully erected building. This section shall not apply to premises on which a junk dealer lawfully carries on such business.

# Ch. 9 Land Use Regulation (Zoning)

## SECTION 9.11. (R) RESIDENTIAL DISTRICT.

### Subdivision 1. Purpose.

The Residential District is intended to promote moderate to intensive residential use in areas that are provided with community water and sewer facilities.

### Subdivision 2. Permitted Uses.

1. Single-family and two-family (duplex) dwellings.
2. Existing agriculture.
3. Recreational or community buildings which are publicly owned and operated.
4. Parks and playgrounds.

### Subdivision 3. Conditional Uses.

1. Multi-family dwellings and twin homes.
2. Churches, provided that no building shall be located within twenty-five (25) feet of any lot in the residential district.
3. Libraries.
4. Public, parochial, or other private elementary, middle, junior high, or senior high school offering a curriculum equivalent to the public school system; and not operated for profit.
5. Hospitals and clinics (excluding non-human) and medical offices.
6. Boarding and lodging houses.
7. Residential facilities or day care facilities.
8. Essential public utility structures.
9. Planned unit developments.
10. Manufactured Home Parks.
11. Offices of persons and home occupations when such use does not exceed one-third (1/3) of the main floor space of a dwelling or when located in an existing accessory building and when only persons residing on the premises are employed. A conditional use permit for a home office is not required if such office is

supplementary to a business located elsewhere in the City and if the amount of traffic entering such office does not exceed that which is normal and customary for a residence.

12. Mortuaries or funeral homes.
13. Convalescent, nursing, and rest homes.
14. Businesses in a "transitional residential area". Transitional residential area is an area with lots located on one of the following major thoroughfares: Third Avenue, Tenth Street, or County Road 1; and adjacent to or within 200 feet of a commercially zoned district. Proposed businesses should meet the following criteria:
  - a. Hours of operation shall be limited to between 6:30 a.m. and 9 p.m.
  - b. No outdoor displays or sales of merchandise or services shall be permitted.
  - c. Signs shall conform to Mountain Lake City Code, Section 9.50, Subdivision 3.
  - d. No business shall be permitted to discharge offensive odors, fumes, smoke, glare, or noises which are audible beyond the property limits.
  - e. Deliveries to the premises shall be made only during the hours of operation.
  - f. Traffic associated with the use shall not be detrimental to the neighborhood or create congestion on the street where business is located. Parking must meet standards set forth in Mountain Lake City Code, Section 9.50, Subdivision 4.
16. Home occupations that meet the following requirements:
  1. Only family members residing on the premises shall be engaged in the home occupation.
  2. Hours: Except for licensed child day care facilities, customers may visit the site only during the hours of 7 a.m. to 9 p.m.
  3. The home occupation shall be clearly incidental to the primary use of the home as a residence. Except for licensed child day care facilities, the home occupation shall not exceed 33% of the main floor space of a dwelling. Exterior modifications to the dwelling to accommodate the home occupation shall be prohibited.
  4. The use of an accessory building for the home occupation is limited to just storage. This type of use is further limited to 25% of the enclosed area within the accessory building or a total of 250 square feet, whichever is less

5. No display of goods, products or services shall be visible from off-site.
6. Traffic and parking associated with the use shall not be detrimental to the neighborhood or create congestion on the street where the home occupation is located. Truck deliveries or pick-ups at the home are permitted to occur between the hours of 8 a.m. to 6 p.m. The amount of traffic shall not exceed that which is normal and customary for a residence.
7. No goods, products or commodities bought or secured for the express purpose of resale shall be sold at retail or wholesale on the premises. The sale of products or goods may be permitted if such items are incidental or supplementary to the home occupation.
8. No equipment or process shall be used in connection with the home occupation which creates noise, vibration, glare, fumes, odors or electrical interference which is detectable off-site.
9. Only one commercially licensed vehicle shall be allowed in connection with the home occupation.
10. A conditional use permit for a home office is not required if is supplementary to the business located elsewhere in the City and if the amount of traffic entering such office does not exceed that which is normal and customary for a residence.

Subdivision 4. Accessory Uses.

1. Private garage.
2. Private swimming pool when completely enclosed within a chain link or similar fence, five (5) feet high.
3. Keeping of not more than two (2) boarders and/or roomers by a resident family; provided that the Council may grant a special permit to keep more than two boarders and/or roomers for one year at a time upon proof of compliance by the applicant for such special permit with the provisions of Section 9.50, Subdivision 4, prescribing the required number of on-site parking spaces.
4. Living quarters of persons employed on the premises.
5. Storage garages where the lot is occupied by a multiple-family dwelling, hospital, or institutional building.
6. Accessory uses incidental to the principal uses allowed.

# Ch. 9 Land Use Regulation (Zoning)

## SECTION 9.14. REGULATION OF TRAILERS.

### Subdivision 1. Permit Required.

A person must not occupy or use a trailer for habitation or living quarters for longer than ten (10) days in a calendar year, without first obtaining a permit from the zoning administrator.

### Subdivision 2. Application.

Application for a permit must be made to the zoning administrator, must be accompanied by the required fee and must contain the following information:

- A. The names of the owners and persons who are to occupy the trailer;
- B. Name of the owner and address and description of premises on which the trailer is to be placed and used;
- C. Description of the trailer, the serial number, if any;
- D. Date of placing on the private premises describe in the application;
- E. Duration of the proposed occupancy;
- F. Signature of applicant and verification.

### Subdivision 3. Issuance.

A permit will not be issued unless adequate water supply and sanitary services are provided.

### Subdivision 4. Duration.

The term of a permit is no greater than three (3) months. The applicant is the new owner and the land is occupied by no other habitable dwelling than the applicant's trailer, the zoning administrator may grant a permit for longer than three (3) months while a permanent dwelling is constructed. Only one permit may be issued for a particular piece of property in a 24 month period, except that additional permits may be granted when necessitated by unforeseen acts of nature.

## CHAPTER 11

### TRAFFIC, PARKING, SIDEWALKS, RECREATIONAL VEHICLES

#### SECTION 11.01 DEFINITIONS

##### Subdivision 1.

For the purpose of this chapter, the terms defined in this section shall have the meanings ascribed to them.

1. Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.
2. Motor Vehicle. Any self-propelled vehicle designed and originally manufactured to operate primarily on highways, and not operated exclusively upon railroad tracks. It includes any vehicle propelled or drawn by a self-propelled vehicle and includes vehicles known as trackless trolleys that are propelled by electric power obtained from overhead trolley wires but not operated upon rails. It does not include snowmobiles, manufactured homes, or park trailers. Motor vehicles also do not include an electric personal assistive mobility device or a vehicle moved solely by human power.
3. Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and bicycles with motor attached.
4. Motorized Bicycle. A bicycle that is propelled by an electric or a liquid fuel motor of a piston displacement capacity of 50 cubic centimeters or less, and a maximum of two brake horsepower, which is capable of a maximum speed of not more than 30 miles per hour on a flat surface.
5. Electric-assisted bicycle. A motor vehicle with two or three wheels that:
  - a) Has a saddle and fully operable pedals for human propulsion;
  - b) Meets the requirements of federal motor vehicle safety standards in Code of Federal Regulations, title 49, sections 571.01 et seq.; and
  - c) Has an electric motor that has a power output of not more than 1,000 watts, is incapable of propelling the vehicle at a speed of more than 20 miles per hour, is incapable of further increasing the speed of the device when human power alone is used to propel the vehicle at a speed of more than 20 miles per hour, and disengages or ceases to function when the vehicle's brakes are applied.

## Section 11.01 continued

6. Recreation vehicle. A travel trailer including those that telescope or fold down, chassis-mounted campers, motor homes, tent trailers, and converted buses that provide temporary human living quarters.

"Recreational Vehicle" is a vehicle that:

- a) Is not used as the residence of the owner or occupant;
  - b) Is used while engaged in recreational or vacation activities; and
  - c) Is either self-propelled or towed on the highways incidental to the recreational or vacation activities.
7. Trailer. Any vehicle designed for carrying property or passengers on its own structure and for being drawn by a motor vehicle but does not include a trailer drawn by a truck-tractor semi trailer combination or an auxiliary axle on a motor vehicle which carries a portion of the weight of the motor vehicle to which it is attached.

# Ch. 11 Traffic, Parking & Recreational Vehicles

## SECTION 11.04 RESIDENTIAL OFF-STREET PARKING.

### Subdivision 1. Definitions.

1. Vehicle- any device in, upon, or by which any person or property is or may be transported or drawn upon a street, except devices used exclusively upon stationary rails or tracks.
2. Parking Space- A suitably surfaced and permanently maintained area on private property, either within a building or outside that consists of crushed rock, rock, gravel, cement or blacktop.
3. Setback Line- The minimum horizontal distance between a structure and a lot line.
4. Front Yard- The yard extending the width of the lot from the front lot line to the building setback line.
5. Rear Yard Line- the yard extending the width of the lot extending from the rear lot line to the rear setback line.
6. Lot Line- a line bounding a lot, except that where any portion of a lot extends into a street, the line of such street shall be the lot line.
7. Front Lot Line- The boundary of a lot which abuts a street. For any lot other than a corner lot, which abuts more than one street, all boundaries abutting and parallel to the streets shall be front line lots.
8. Rear Lot Line- the boundary of a lot, which is opposite or most distant from the front lot line.
9. Side Yard- the yard extending along the side lot between the front and rear yards, extending perpendicularly from the side lot line to the side yard setback.

### Subdivision 2. Off-Street Parking Regulations

1. Any vehicle parked at a residence, the off-street parking space must be within a building or outside on a space, which is maintained with crushed rock, rock, gravel, cement or blacktop and kept neatly.
2. Required off-street parking automobile parking space shall not be utilized for open storage or for the storage of vehicles, which are inoperable, for sale or for rent.
3. The parking area shall have vehicular access to a street, alley, or roadway with such use and shall not be encroached upon in any manner.



## Section 11.04 continued

4. Required off-street vehicle parking space shall not be utilized for open storage or for the storage of vehicles, which are inoperable, wrecked, partially dismantled or junked condition.
5. Off-street parking in a residential zone shall not be located in the front yard setback or in a street side yard setback.
6. The vehicle must have affixed to it valid, current motor vehicle registration/license, unless housed in a lawfully erected building defined by Minnesota State Building Standards/Code.
7. Off-street parking in a residential zone shall have five (5) feet setback between the parking space and the property line.

# CM.11 Traffic, Parking & Recreational Vehicles

## SECTION 11.07 RECREATIONAL CAMPING VEHICLE PARKING

Subdivision 1. Definitions. The term "recreational camping vehicle means any of the following:

1. "Travel Trailer" a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified "Travel Trailer" by the manufacturer of the trailer.
2. "Pick-up Coach" A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.
3. "Motor Home" a portable, temporary building to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.
4. "Camping Trailer" a folding structure, mounted on wheels and designed for travel, recreation and vacation uses.

Subdivision 2. Recreational Camping Vehicles Off-Street Parking.

1. Required off-street recreational camping vehicles parking space shall not be utilized for open storage, or for the storage of vehicles which are inoperable, for sale, or for rent.
2. Recreational Camping Vehicles off street parking shall be on crushed rock, rock, gravel, cement or blacktop;
3. The parking spot for the camping vehicle of crushed rock or gravel shall be neatly kept.
4. The vehicle must not be in a rusted, wrecked, partially dismantled or junked condition.
5. The recreational camping vehicle must have affixed to it a valid current motor vehicle license.

Subdivision 3. Recreational Camping Vehicles On-Street Parking.

1. Recreational vehicles may be parked on the roadway for not more than twenty-four (24) hours for the purposes of loading and unloading.
2. Recreational Camping Vehicles, which are tow able vehicles and parked on the street, must stay connected to the tow vehicle;
3. The Camping Vehicles must have affixed to it a valid current motor vehicle license;

## Section 11.07 continued

4. The vehicle must not lack essential parts that would render it inoperable;
5. The vehicle must not be in a rusted, wrecked, partially dismantled or junked condition.

# **CITY OF MOUNTAIN LAKE DRUG AND ALCOHOL POLICIES**

*Adopted May 21, 2012*

## **1. DRUG-FREE WORKPLACE**

The City is committed to protecting the safety, health, and well-being of all employees and other individuals in our workplace. It is recognized that alcohol abuse and drug use pose a significant threat to our goals. The City has established a drug-free workplace program that balances our respect for individuals with the need to maintain an alcohol and drug-free environment.

To assist employees in understanding the perils of drug and alcohol abuse, the City has established a Drug and Alcohol Policy. This Drug and Alcohol Policy constitutes the City's drug free awareness program and fulfills the notification requirements of the federal Drug-Free Workplace Act of 1988. The City will use this program as an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace. The program will inform employees of the dangers of drug and alcohol abuse, explain the City's Drug and Alcohol Policy and the sanctions imposed for its violation, and highlight any treatment, counseling, and rehabilitation referral services that may be available to employees in the City. Employees and supervisors will receive mandatory annual training on this program/policy. Nothing set forth in this policy is intended to conflict with state law.

The Drug and Alcohol Policy does not apply to Police Department employees when the prohibited act or possession is performed in accordance with Police Department Policy, and such use or possession is necessary in connection with the investigation of illegal activities.

This policy applies to members of the Ambulance Dept. while on-call and during the four (4) hours prior to scheduled on-call.

This policy does not apply to members of the volunteer Fire Department. Firefighters, if called, are responsible for the safety for the community and their fellow firefighters. Firefighters that have used alcohol or drugs prior to a call-out have the duty to report such use to the Fire Chief. The Fire Chief may at his or her discretion refuse such firefighter's attendance at the fire call. Failure of a firefighter to notify the Chief violates the trust placed in the firefighter by the public and will not be tolerated by the Department or the City Council.

## **2. DRUG AND ALCOHOL PROGRAM**

### **Purpose**

The purpose of this policy is to ensure a drug and alcohol free work environment and to eliminate drug and alcohol related accidents, injuries, fatalities and damage to City property resulting from the misuse of alcohol or use of controlled substances. It is the City's intention to comply fully with drug and alcohol testing as authorized under Minnesota statutes. In the event the applicable Minnesota statute is amended, this policy and the requirements shall be deemed to have been amended automatically. Redrafting will not be necessary in order to reflect and be in compliance with Minnesota statutes. The City reserves the right to apply the amended requirements immediately, without giving prior notice to employees and/or applicants who may be covered by this policy, unless such notice is required by Minnesota statute or other applicable law.

The use, possession, distribution, manufacture or sale of alcohol or illegal drugs anywhere at work on City time, on City property while on City time, or in City vehicles is prohibited and considered a willful violation of City policy which can result in suspension or discharge.

The unlawful manufacture, distribution, possession, or use of a controlled substance on City property or while conducting City business is absolutely prohibited. Violations of this policy will result in disciplinary action, up to and including termination, and may have legal consequences.

Employees must, as a condition of employment, abide by terms of the above policy and must report any conviction under a criminal drug statute for violations occurring on or off work premises while conducting City business. A report of the conviction must be made within five (5) days after the conviction as required by the Drug-Free Workplace Act of 1988.

## Testing Policy

**Types of Testing.** Employees are subject to drug and alcohol testing in the following circumstances:

- a. **Job Applicant/Pre-employment Testing.** All job applicants who receive a contingent job offer from the City may be required to submit to and pass an alcohol and illegal drug, or their metabolites, urinalysis test with a negative test result, prior to commencing employment. Pre-employment testing will be determined by city administrator in consultation with the supervisor and/or city attorney. The offer of employment is conditional upon a passing result. If the offer of conditional employment is subsequently withdrawn, the City will notify the applicant of the reason for the withdrawal.
- b. **Routine Physical Examination Testing.** An employee may be required to undergo drug and alcohol testing as part of a routine physical examination. The drug or alcohol test will be requested no more than once annually and the employee will be given at least two weeks' written notice that the test shall be required as part of the examination.
- c. **Random Testing.** An employee in a safety sensitive position, which includes Street Department, Utility Department, and Police Department employees, and members of the Fire and Ambulance Squads, in which impairment caused by drug or alcohol usage would threaten the health or safety of any person may be required to undergo random drug and alcohol testing. In addition, employees who are required to have commercial driver's licenses are subject to random testing as required by federal law. (Reference Policy Section 3 *Drug and Alcohol Program—Commercial Motor Vehicle Operator.*)
- d. **Reasonable Suspicion Testing.** An employee may be required to undergo drug and alcohol testing if there is a reasonable suspicion that the employee: (a) is under the influence of drugs or alcohol; or (b) has engaged in the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on City property or operating a City vehicle, machinery, or equipment; or (c) has sustained a personal injury arising out of and in the course of employment, or caused another person to sustain a personal injury; or (d) has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident (reference definition of "accident" in 10.2, Definitions, B). Reasonable suspicion testing for accidents outside of this definition may occur at the discretion of city administrator in consultation with the supervisor and/or the city attorney. A supervisor will transport or coordinate the same-sex transport of the employee to the clinic/hospital where the testing will occur.
- e. **Treatment Program Testing.** An employee may be required to undergo drug and alcohol testing if the employee has been referred by the City for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under the City insurance, in which case, the employee may be requested or required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.

**Testing Procedure.** The city administrator in consultation with the supervisor and/or the city attorney may order the drug and alcohol testing. Before undergoing drug or alcohol testing, the employee shall complete a form (1) acknowledging that the employee has seen a copy of the City's drug and alcohol policy, and (2) indicating consent to undergo the drug and alcohol testing.

**Testing Laboratory.** A laboratory meeting all requirements of state law, including those set forth in Minn. Stat. Sec. 181.953, shall handle all drug and alcohol testing.

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**Test Results.** Within three days of obtaining the final test results, the testing laboratory shall provide the City with a written report indicating the drug(s), alcohol, or their metabolites tested for, the types of test conducted, and whether the test produced negative or positive test results. Within three working days after receipt of the test result report, the City shall inform the employee in writing of a negative test result on an initial screening test, or of a negative or positive test result on a confirmatory test.

**Rights of Employees and Job Applicants.** Employees and applicants have a right to request and receive a copy of the test result report. If an employee or applicant tests positive for drug use, the City will give written notice of the right to explain the positive test. Within three working days after notice of a positive test result on a confirmatory test, the employee or applicant may submit information to the City to explain that result or may, within five working days after notice of the positive test result, request a confirmatory retest at the employee's or the applicant's own expense. If the confirmatory retest does not confirm the original positive test result, the City will not take any adverse personnel action against the employee or applicant based on the original confirmatory test and will reimburse the employee for the expense of the retest.

**Consequences for Refusal to Test.** Employees and job applicants have the right to refuse to undergo drug and alcohol testing. However, failure to comply with the City's drug and alcohol policy, and refusal to take a drug and alcohol test upon request shall subject an employee to discipline, including discharge. If an applicant refuses to test, the job offer will immediately be withdrawn.

**Discipline.** An employee who has a positive test result on a confirmatory test, when this is the first such result for the employee, will be subject to discipline but shall not be discharged unless (1) the employee has been given an opportunity to participate in either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the City after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency, and (2) the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program as evidenced by withdrawal from the program before its completion or has a positive test result on a confirmatory test after completion of the program. Participation in the specified program will be at the employee's own expense or pursuant to coverage under the City's insurance. The City may temporarily suspend the employee or transfer the employee (for whom this is the first such result for the employee) to another position at the same rate of pay pending the outcome of a confirmatory test and, if requested, the confirmatory retest, provided the City believes that it is reasonably necessary to protect the health or safety of the employee, co-employees, or the public. An employee who has been suspended without pay will be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.

All other employees obtaining a positive test result and not participating in a rehabilitation program will be subject to discipline including discharge. An employee required to take time off in order to participate in a rehabilitation program will be permitted to use sick leave, vacation time, compensatory time, floating holidays, and/or unpaid leave. An employee who undergoes substance abuse treatment and counseling under this policy and who continues to work must meet all established standards of conduct and job performance.

#### **Data Privacy**

Test results and other information gathered under this policy will be treated as private data on individuals. Positive results will be disclosed to the employee/applicant, the employee's supervisor and the City Administrator. Results will not be disclosed to others unless requested in writing by the employee/applicant or as required by law.

### **3. DRUG AND ALCOHOL PROGRAM—COMMERCIAL MOTOR VEHICLE OPERATOR**

#### **Purpose**

This policy describes the City's Drug and Alcohol Program for certain personnel required to hold Commercial Driver's Licenses. The purpose of this program/policy is to ensure a drug and alcohol free transportation and work environment and to reduce and eliminate drug and alcohol related accidents, injuries, fatalities and damage to City property resulting from the misuse of alcohol or use of controlled substances by drivers who operate vehicles requiring a Commercial Driver's License. This program is

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being implemented through a consortium with other municipal utilities and local governments through the MMUA Drug and Alcohol Testing Consortium. As consortium participants, municipal utilities and local governments share costs for program administration and recordkeeping and pool their employees for the purpose of random testing.

### Policy

This policy applies to every City employee (full-time, ¾-time, part-time and temporary), and applicant for employment in the case of pre-employment drug testing, who holds a Commercial Driver's License (CDL) and whose job description requires the employee to drive a Commercial Motor Vehicle (CMV).

This policy implements the drug and alcohol testing requirements of the U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA). It is in addition to the City Drug and Alcohol Policy which is established under Minnesota state law and the Drug Free Workplace Act of 1988.

It is the City's intention to comply fully with the DOT regulations. In the event DOT regulations are amended, this policy and the requirements shall be deemed to have been amended automatically. Redrafting will not be necessary in order to reflect and be in compliance with DOT regulations. The City reserves the right to apply the amended requirements immediately, without giving prior notice to employees and/or applicants who may be covered by this policy, unless such notice is required by DOT or other applicable law.

### Definitions

Definitions as used under this Policy set forth below and in greater detail in 49 CFR § § 40.3 and 382.107.

- A. Driver: Any employee who holds a CDL and operates a CMV which falls under the specific DOT criteria. The word driver and employee will be used throughout this policy interchangeably.
- B. Accident: An occurrence involving a commercial motor vehicle while being operated for the City which results in:
  1. A loss of human life; or
  2. The employee receiving a citation under State or local law for a moving traffic violation arising from the accident if the accident involved:
    - Bodily injury to a person who as a result of the injury, immediately receives medical treatment away from the scene of the accident; and/or
    - One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- C. Breath Alcohol Technician (BAT): An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device.
- D. Commercial Motor Vehicle: CMV means a motor vehicle or a combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
  - Has a gross combination weight rating of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000; or
  - Has a gross vehicle weight rating of 26,001 pounds or more; or
  - Is designed to transport 16 or more passengers including the driver; or
  - Is of any size and is used in the transportation of materials found to be for the purposes of the Hazardous Transportation Act and which require the motor vehicle to have a placard under the Hazardous Materials Regulations.
- E. Confirmatory Test:  
Alcohol: a second test, following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration.  
Drugs: a second testing of the original test sample when the initial test produces a positive test result.
- F. Confirmatory Re-Test: A third testing of the original test sample when the confirmatory test produces a positive test result. A confirmatory retest is done at the request and the expense of the employee/applicant.
- G. Controlled Substances (Drugs): For purposes of this policy, drug means a controlled substance. The term includes prescribed drugs not legally obtained, prescribed drugs not being used for prescribed purposes, and any prescribed drugs not taken in accordance with a prescription. In other words, medications prescribed for someone other than the driver will be considered unlawfully used under

any circumstances. Pursuant to DOT regulations, all DOT-required drug tests must test for the following substances identified in 49 CFR § 40.85: marijuana, cocaine, amphetamines, opiates (e.g. opium heroin, morphine or codeine) and phencyclidine (i.e. PCP or "angel dust"). The City reserves its independent authority and discretion to prohibit and test for other drugs.

- H. Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, adulterated or substituted specimen, together with his/her medical history and any other relevant biomedical information.
- I. Refusal to Submit: Refusal to submit to an alcohol and/or a controlled substance test is considered when an employee/applicant:
  - 1. Fails to provide adequate breath for testing without a valid medical explanation after he/she has received notice of the requirement for breath testing;
  - 2. Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he/she has received notice of the requirement for urine testing; or
  - 3. Engages in conduct that clearly obstructs the testing process, such as providing an adulterated or substituted specimen.
- J. Safety-Sensitive Function: All time from the time a CMV operator begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work and includes the following:
  - 1. all time inspecting equipment as required by the Federal Motor Carrier Safety Administration, or otherwise inspecting, servicing, or conditioning any CMV at any time;
  - 2. all time spent at the driving controls of a CMV;
  - 3. all time, other than driving time, spent on or in a CMV
  - 4. all time remaining in readiness to operate the vehicle;
  - 5. all time spent performing the driver requirements associated with an accident; and
  - 6. all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- K. Substance Abuse Professional (SAP): A licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

### Prohibitions

An employee covered by this Policy shall not:

- A. Report for duty, operate City vehicles, equipment or machinery, perform safety sensitive functions, or remain on City property while having any detectable or measurable amount of alcohol in his/her system or while under the influence of illegal drugs;
- B. Use, possess, sell, distribute, manufacture, or transport illegal drugs or alcohol while on City property, while operating City equipment, or while on duty;
- C. Consume alcohol within four hours before operating a City vehicle;
- D. Attempt to perform job duties when taking medically prescribed drugs or other substances which may alter job performance, unless the employee has been advised by a licensed medical practitioner that the prescription drug will not adversely affect the driver's ability to safely operate a CMV. If the prescription drug does affect performance, the employee must notify his/her supervisor.
- E. Refuse to submit to a required drug and/or alcohol test as required under this policy.

Any supervisor or manager who has actual knowledge that an employee has violated or attempted to violate any of the above prohibitions shall not permit the employee to perform any job duties, nor to remain on duty.

An employee found to be in violation of any of the provisions of this policy shall be subject to discipline up to and including termination from employment. See section titled, "Consequences for Employees Engaging in Prohibited Conduct" of this policy for more information.

### Types of Testing

The City may test any applicant to whom a conditional offer of employment has been made and may test any Driver for controlled substance and alcohol under any of the following circumstances:

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### Pre-Employment Testing

The City will conduct pre-employment controlled substance testing of each applicant for a Driver position after a conditional job offer has been made to the applicant, prior to the first time a Driver performs a safety-sensitive function for the City. A Driver may not perform safety-sensitive functions unless the Driver has received a controlled substance test result from the Medical Review Officer indicating a verified negative test result. As an alternative to pre-employment controlled substance testing, the City may obtain information from the applicant's previous employers certifying compliance with another DOT controlled substance testing program. If requested, each applicant must execute a consent form authorizing the disclosure of such information.

### Post-Accident Testing

As soon as practicable following an accident involving a commercial motor vehicle while being operated for the City, the City will test for alcohol and controlled substance of each surviving Driver:

- A. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- B. Who receives a citation under state or local law for a moving violation arising from the accident and one of the following two conditions is met:
  - 1) the accident involved bodily injury to any person who, as a result of the injury immediately receives medical treatment away from the scene of the accident, or
  - 2) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

A driver who is subject to post-accident testing must remain readily available for such testing. Drivers not readily available for such testing may be deemed by the City to have refused to submit to testing.

Drivers are required to submit to post-accident controlled substance testing as soon as possible within thirty-two (32) hours of the accident. If the Driver is not tested within thirty-two (32) hours after the accident, the City will cease its attempts to test the Driver and prepare and maintain on file a record stating why the test was not promptly administered.

Drivers are required to submit to post-accident alcohol testing as soon as possible within two (2) hours, and in any event no more than eight (8) hours after the accident. After an accident, consuming alcohol is prohibited until the Driver is tested. If the Driver is not tested within two (2) hours after the accident, the City will prepare and maintain on file a record stating why the test was not administered within that time. If the Driver is not tested within eight (8) hours after the accident, the City will cease its attempts to test the Driver and prepare and maintain on file a record stating why the test was not administered.

In the event of an accident, it is possible the Driver will be directed to submit to a breath, blood, or urine test for the use of alcohol or controlled substance administered by a federal, state, or local law enforcement officer. Whenever such a test is conducted by a law enforcement officer, the Driver must contact the City and immediately report the existence of the test, and if available, provide the name, badge number, and telephone number of the law enforcement officer who conducted the test.

### Random Testing

Every Driver will be subject to alcohol and controlled substance testing on a random selection basis. Drivers will be selected for testing by use of a scientifically valid method under which each Driver has an equal chance of being selected each time selections are made. These random tests will be conducted throughout the calendar year. Each Driver who is notified of selection for random testing must cease performing safety-sensitive functions (other than driving a commercial motor vehicle) and report to the designated test site immediately. It is mathematically possible that Drivers may be selected for more than one (1) random test per year.

If a Driver is selected for a random test while he or she is absent, on leave or away from work, that Driver will be required to undergo the test when he or she returns to work.

At this time, federal law requires the City to test at a rate of at least fifty percent (50%) of its average number of Drivers for controlled substance each year, and to test at a rate of at least ten percent (10%) of

its average number of Drivers for alcohol each year. These minimum testing rates are subject to change by the DOT.

#### Reasonable Suspicion Testing

When the City has reasonable suspicion to believe the Driver has engaged in conduct prohibited by federal law, the City must require the Driver to submit to an alcohol or controlled substance test. Alcohol testing will occur while the Driver is performing safety-sensitive functions, just before the Driver is to perform safety-sensitive functions, or just after the Driver has ceased performing such functions.

The City's determination that reasonable suspicion exists to require the Driver to undergo an alcohol test will be based on specific contemporaneous, articulatable observations concerning the appearance, behavior, speech or body odors of the Driver made during, just preceding, or just after the period of the work day that the Driver is required to be in compliance with this policy. In the case of controlled substance, the observations may include indications of the chronic and withdrawal effects of a controlled substance.

The required observations for reasonable suspicion testing will be made by a Supervisor or other person designated by the City who has received appropriate training in identification of actions, appearance and conduct of a Driver which are indicative of the use of alcohol or controlled substance. These observations will be reflected in writing on a Reasonable Suspicion Record Form.

If a reasonable suspicion alcohol test is not administered within two (2) hours following the determination of reasonable suspicion, the City will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If a reasonable suspicion alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, the City will prepare and maintain on file a record stating the reasons the alcohol test was not administered, and will cease attempts to conduct the alcohol test. If a reasonable suspicion controlled substance test is not administered within thirty-two (32) hours following the determination of reasonable suspicion, the City will cease attempts to administer a controlled substance test and will prepare a record stating the reasons for not administering the test.

Notwithstanding the absence of a reasonable suspicion test, no Driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while the Driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol use, nor will the City permit the Driver to perform or continue to perform safety-sensitive functions until (1) an alcohol test is administered and the Driver's alcohol concentration is less than .02; or (2) twenty-four (24) hours have elapsed following the determination of reasonable suspicion.

#### Return-to-Duty Testing

The City reserves the right to impose discipline against Drivers who violate applicable FMCSA rules or this policy, subject to applicable personnel and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or re-qualify such Drivers.

Should the City consider reinstatement of such a Driver, the Driver must undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved a controlled substance, before the Driver returns to duty requiring the performance of a safety-sensitive function.

#### Follow-Up Testing

The City reserves the right to impose discipline against Drivers who violate applicable FMCSA rules, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or re-qualify such Drivers.

Should the City reinstate a Driver following determination by a Substance Abuse Professional that the Driver needs assistance to resolve problems associated with alcohol use and/or use of controlled substance, the City will ensure that the Driver is subject to unannounced follow-up alcohol and/or controlled substance testing. The number and frequency of such follow-up testing will be directed by the Substance Abuse Professional and consist of at least (6) tests in the first twelve (12) months following the Driver's return to duty. Follow-up testing will not exceed sixty (60) months from the date of the Driver's return to duty. Follow-up alcohol testing will be conducted only when the Driver is performing safety-

sensitive functions, just before the Driver is to perform safety-sensitive functions, or just after the Driver has ceased performing safety-sensitive functions.

## **Collection and Testing Procedures**

### Alcohol Testing

Employees will be tested for alcohol just before, during, or immediately following performance of a safety-sensitive function. Screening tests for alcohol concentration will be performed utilizing a non-evidential screening device included by the National Highway Traffic Safety Administration on its conforming products list (e.g. , a saliva screening device) or an evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT) at a collection site. All confirmation tests will be conducted in a location that affords privacy to the Driver being tested, unless unusual circumstances (e.g. when it is essential to conduct a test outdoors at the scene of an accident) make it impracticable to provide such privacy.

If a breath test is being conducted, and a Driver does not provide a sufficient amount of breath to permit a valid breath test, the collector will instruct the Driver the proper way to provide sufficient amount of breath, and ask the Driver to attempt to provide a sufficient amount of breath a second time. If the Driver again attempts and fails to provide a sufficient amount of breath, the collector may provide another opportunity for the Driver to do so if the collector believes there is a strong likelihood that another opportunity could result in a sufficient amount of breath. The collector may then change to a saliva alcohol screening test, if the collector is qualified to provide such a test. If none of these procedures result in a sufficient amount of breath for an alcohol test, the Driver must obtain, within five days, a written evaluation from a licensed physician acceptable to the City who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen for testing. If the licensed physician concludes that a medical condition has, or with a high degree of probability could have, precluded the Driver from providing a sufficient specimen, the City will consider the test to be canceled. If the licensed physician cannot make such a determination, the City will consider the Driver to have refused to engage in the testing process, and will take appropriate disciplinary action under this policy.

If the collector is utilizing a saliva alcohol test, and the employee is unable to provide sufficient saliva to complete the test on a saliva screening device, the collector will conduct a new screening test using a new screening device. If the employee has not provided a sufficient amount of saliva to complete the new test, the collector will arrange to administer an alcohol test to the employee using a breath testing device.

### Controlled Substance Testing

The City will use a "split urine specimen" collection procedure for controlled substance testing. Collection of urine specimens for controlled substance testing will be conducted by an approved collector and will be conducted in a setting and manner calculated to ensure the Driver's privacy. The collection facility will be responsible for maintaining a proper chain of custody for delivery of the sample to a DHHS –certified laboratory for analysis. The laboratory will retain a sufficient portion of any positive sample for testing and store that portion in a scientifically-acceptable manner for a minimum of twelve (12) months.

If an employee fails to provide a sufficient amount of urine to permit a controlled substance test (45 milliliters of urine), the collector will discard the insufficient specimen, unless there is evidence of tampering with that specimen. The collector will urge the Driver to drink up to 40 ounces of fluid, distributed reasonably for a period of up to three hours, or until the Driver has provided a sufficient urine specimen, whichever occurs first. If the Driver has not provided a sufficient specimen within three hours of the first unsuccessful attempt, the collector will cease efforts to attempt to obtain a specimen. The Driver must then obtain, within five working days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. If the licensed physician concludes that a medical condition has, or with a high degree of probability could have, precluded the Driver from providing a sufficient amount of urine, the City will consider the test to have been canceled. If a licensed physician cannot make such a determination, the City will consider the Driver to have engaged in a refusal to test, and will take appropriate disciplinary action under this policy.

### Chain of Custody and Confidentiality of Test Results

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All controlled substance and alcohol testing will be performed in compliance with applicable law, including use of an appropriately-licensed urine testing laboratory which observes applicable control and custody procedures. The City will use procedures to test for the presence of alcohol and controlled substance in order to protect the Driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct Driver. All reports of tests will be kept in the strictest confidence by the laboratory and provided only to the City and the City's MRO, unless the Driver provides written consent or disclosure is otherwise permitted or required by law.

#### Review by Medical Review Officer (MRO)

Results of controlled substance tests will be sent by the testing laboratory to an independent Medical Review Officer (MRO) selected by the City. The MRO is responsible for performing many functions, including reviewing and interpreting test results, reviewing the Driver's medical history to explain a positive test result, and notifying Drivers of confirmed positive test results. Drivers who have been tested for controlled substances must remain available following the test to be contacted by the MRO.

Prior to making a final decision to verify a positive test result, the MRO will give the individual an opportunity to discuss the test result. The MRO, or a staff person under the MRO's supervision, will contact the individual directly, on a confidential basis, to determine whether the individual wishes to discuss the test result. If the individual wishes to discuss the test result:

- A. The individual may be required to speak and/or meet with the MRO, who will review the individual's medical history, including any medical records provided;
- B. The individual will be afforded the opportunity to discuss the test results and to offer any additional or clarifying information which may explain the positive test result;
- C. If there is some new information which may affect the original finding, the MRO may request the laboratory to perform additional testing on the original specimen in order to further clarify the results; and
- D. A final determination will be made by the MRO that the test is either positive or negative, and the individual will be so advised.

If the MRO determines that there is a legitimate medical explanation for a confirmed positive test result, the MRO will report the test result to the City as negative. If the MRO determines that there is no legitimate medical explanation for a confirmed positive test result, the MRO will report the positive test result to the City in accordance with DOT regulations. Based on a review of laboratory reports, quality assurance and quality control data, and other controlled substance test results, the MRO may conclude that a particular confirmed positive controlled substance test result is scientifically insufficient for further action. Under these circumstances, the MRO will conclude that the test is negative for the presence of controlled substances or controlled substance metabolites in a Driver's system.

#### Notification of Test Results

1. Job Applicants: The City will notify an applicant of the results of a pre-employment controlled substance test if the applicant requests such test results within sixty (60) calendar days of being notified of the disposition of the applicant's employment application.
2. Employees: The City will notify a Driver of the results of random, reasonable, suspicion, and post-accident tests for controlled substance if the test results are verified positive, and will inform the Driver which controlled substance or substances were verified as positive. Results of alcohol tests will be immediately available from the collection agent.
3. Right to Confirmatory Retest: Within seventy-two (72) hours after receiving notice of a positive controlled substance test result, an applicant or Driver may request through the MRO a confirmatory retest of the Driver's split specimen. Action required by federal regulation as a result of a positive controlled substance (e.g. removal from safety-sensitive functions) will not be stayed during retesting of the split specimen. If the result of the confirmatory retest fails to reconfirm the presence of the controlled substance(s) or controlled substance metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO will cancel the test. Drivers will be reimbursed for any pay lost if taken out of service based upon a positive test result which is later negated by a confirmatory retest, and no adverse personnel action will be taken against the Driver or job applicant based on the original test.
4. Dilute Specimens

- a. Dilute Positives. If the City receives information that a Driver has provided a dilute positive specimen, the City will consider the employee to have tested positive under this policy.
- b. Dilute Negatives. If a Driver provides a dilute negative specimen, the City will direct the Driver to take a second screening test. The second screening test will be performed as soon as possible after the City receives word of the dilute negative specimen and will be performed at the Driver's expense.

### **Refusal to Submit a Test**

Drivers and applicants have the right to refuse to submit to an alcohol or controlled substance test. If a Driver or applicant refuses, no test will be conducted. However, such a refusal by a Driver will be considered a positive test result, will cause disqualification from performing safety sensitive functions, and will result in discipline pursuant to this policy. If an applicant refuses to submit to pre-employment testing, any conditional offer of employment will be withdrawn.

### **Consequences for Drivers engaging in Prohibited Conduct**

- A. Job Applicants. The City's conditional offer of employment will be withdrawn from any job applicant who refuses to be tested or tests positive for a controlled substance pursuant to this policy.
- B. Removal from Safety-Sensitive Function. Employees shall not be permitted to perform safety-sensitive functions; Federal Highway Administration (FHWA) rules require that in the event of an alcohol test result over .02 but less than 0.04, an employee shall not be permitted to perform safety-sensitive functions for at least 24 hours.
- C. Notification of Resources. The City shall advise employees of the resources available to them in evaluating and resolving problems associated with misuse of alcohol or use of controlled substances.
- D. Evaluation and Follow-up Testing. Employees shall be evaluated by a substance abuse professional as determined by the City. The substance abuse professional shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and/or controlled substance use. In addition, each employee identified as needing assistance in resolving problems associated with alcohol or controlled substances shall be evaluated by a substance abuse professional to determine that the employee has followed the rehabilitation program prescribed.
- E. Rehabilitation. Participation in a counseling or rehabilitation program will be at the employee's own expense or pursuant to coverage under the employee's benefit plan.
- F. Return-to-Duty. Before an employee returns to duty requiring performance of a safety-sensitive function he/she shall undergo a return-to-duty test with a result indicating a breath alcohol level of less than 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved controlled substance use. The employee shall also be subject to unannounced follow-up alcohol and controlled substance testing following the employee's return to work. This testing shall be as directed by the substance abuse professional and federal law.

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## DRUG AND ALCOHOL TESTING POLICY FOR COMMERCIAL DRIVERS (DOT POLICY)

7-5-16

### PURPOSE AND OBJECTIVES

The City of Mountain Lake (“Employer”) has a vital interest in maintaining safe, healthful, and efficient working conditions for employees, and recognizes that individuals who are impaired because of drugs and/or alcohol jeopardize the safety and health of other workers as well as themselves. The Employer is concerned about providing a safe workplace for its employees, and while the Employer does not intend to intrude into the private lives of its employees, it is the goal to provide a work environment conducive to maximum safety and optimum work standards. Alcohol and drug abuse can cause unsatisfactory job performance, increased tardiness and absenteeism, increased accidents and workers’ compensation claims, higher insurance rates, and an increase in theft of Employer property. The use, possession, manufacture, sale, transportation, or other distribution of controlled substance or controlled substance paraphernalia and the unauthorized use, possession transportation, sale, or other distribution of alcohol is contrary to this policy and jeopardizes public safety.

In response to regulations issued by United States Department of Transportation (“DOT”), the Employer has adopted this Policy on Alcohol and Controlled Substances for employees who hold a commercial driver’s license (CDL) to perform their duties. The Employer also has a separate Policy on Controlled Substance and Alcohol Testing for employees not covered by DOT regulations.

Given the significant dangers of alcohol and controlled substance use, each applicant and driver must abide by this policy as a term and condition of hiring and continued employment. Moreover, federal law requires the Employer to implement such a policy.

To ensure this policy is clearly communicated to all drivers and applicants, and in order to comply with applicable federal law, drivers and applicants are required to review this policy and sign the “Substance Abuse Policy Employee Acknowledgement of Notification” form. (See Section 4.)

Because changes in applicable law and the Employer’s practices and procedures may occur from time to time, this policy may change in the future, and nothing in this policy is intended to be a contract, promise, or guarantee the Employer will follow any particular course of action, disciplinary, rehabilitative or otherwise, except as required by law. This policy does not in any way affect or change the status of any at-will employee.

Any revisions to the Federal Omnibus Transportation Employee Testing Act will take precedence over this policy to the extent the policy has not incorporated those revisions.

## **PERSONS SUBJECT TO TESTING & TYPES OF TESTS**

All employees are subject to testing whose job duties include performing "safety-sensitive duties" on Employer vehicles that:

1. Have a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or
2. Have a gross vehicle weight rating or gross vehicle weight of 26,0001 or more pounds whichever is greater; or
3. Are designed to transport 16 or more passengers, including the driver; or
4. Are of any size and are used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

The following functions are considered safety-sensitive:

- all time waiting to be dispatched to drive a commercial motor vehicle
- all time inspecting, servicing, or conditioning a commercial motor vehicle
- all time driving at the controls of the commercial motor vehicle
- all other time in or upon a commercial motor vehicle (except time spent resting in a sleeper berth)
- all time loading or unloading a commercial motor vehicle, attending the same, giving or receiving receipts for shipments being loaded or unloaded, or remaining in readiness to operate the vehicle
- all time repairing, obtaining assistance, or attending to a disabled commercial motor vehicle.

The Employer may test any applicant to whom a conditional offer of employment has been made and any driver for controlled substance and alcohol under any of the following circumstances:

Pre-Employment Testing. All applicants, including current employees seeking a transfer, applying for a position where duties include performing safety-sensitive duties described above, will be required to take a drug test prior to the first time a driver performs a safety-sensitive function for the Employer, but only after a conditional offer of employment has been made. A driver may not perform safety-sensitive functions unless the driver has received a controlled substance test result from the Medical Review Officer ("MRO") indicating a verified negative test result. In addition to pre-employment controlled substance testing, applicants will be required to authorize in writing former employers to release alcohol test results of .04 or greater, positive controlled substance test results, refusals to test, other violations of drug and alcohol

testing regulations, and completion of return to duty requirements within the preceding three years. (See Release of Information from Previous Employer Form, in Section 4.)

The Employer will contact the candidate's DOT regulated previous and current employers within the last three years for drug and alcohol test results as referenced above, and review the testing history if feasible before the employee first performs safety-sensitive functions for the Employer.

Post-Accident Testing. As soon as practicable following an accident involving a commercial motor vehicle operating on a public road, the Employer will test each surviving driver for controlled substances and alcohol when the following occurs:

- The accident involves a fatality or
- The driver receives a citation for a moving traffic violation from the accident and an injury is treated away from the accident scene or
- The driver receives a citation for a moving traffic violation from the accident and a vehicle is required to be towed from the accident scene.

The chart on the following page summarizes when DOT post-accident testing needs to be conducted.

This chart summarizes when DOT post-accident testing needs to be conducted:

Type of accident involved	Citation issued to the DOT covered CDL driver?	Test must be performed by the Employer
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

A driver subject to post-accident testing must remain readily available or the driver will be deemed to have refused to submit to testing. This requirement to remain ready for testing does not preclude a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care.

*Post-Accident Controlled Substance Testing*



Drivers are required to submit a urine sample for post-accident controlled substance testing as soon as possible. If the driver is not tested within thirty-two (32) hours after the accident, the Employer will cease its attempts to test the driver and prepare and maintain on file a record stating why the test was not promptly administered.

#### *Post-Accident Alcohol Testing*

Drivers are required to submit to post-accident alcohol testing as soon as possible. After an accident, consuming alcohol is prohibited until the driver is tested. If the driver is not tested within two (2) hours after the accident, the Employer will prepare and maintain on file a record stating why the test was not administered within that time. If eight hours have elapsed since the accident and the driver has not submitted to an alcohol test, the Employer will cease its attempts to test the driver and prepare and maintain on file a record stating why the test was not administered.

The Employer may accept the results of a blood or breath test in place of an alcohol test and urine test for the use of controlled substances if:

- The tests are conducted by federal, state, or local officials having independent authority for the test, and
- The tests conform to applicable federal, state, or local testing requirements, and
- The test results can be obtained by the Employer.

Whenever such a test is conducted by a law enforcement officer, the driver must contact the Employer and immediately report the existence of the test, providing the name, badge number, and telephone number of the law enforcement officer who conducted the test.

Random Testing. Every driver will be subject to unannounced alcohol and controlled substance testing on a random selection basis. Drivers will be selected for testing by use of a scientifically valid method under which each driver has an equal chance of being selected each time selections are made. These random tests will be conducted throughout the calendar year. Each driver who is notified of selection for random testing must cease performing safety-sensitive functions and report to the designated test site immediately. It is mathematically possible drivers may be selected and tested more than once, and others not at all

If a driver is selected for a random test while he or she is absent, on leave or away from work, that driver may be required to undergo the test when he or she returns to work.

For 2016, federal law requires the Employer to test at a rate of at least twenty-five percent (25%) of its average number of drivers for controlled substance each year, and to test at a rate of at least ten percent (10%) of its average number of drivers for alcohol each year. These minimum testing rates are subject to change by the DOT.

Reasonable Suspicion Testing. When a supervisor has reasonable suspicion to believe a driver has engaged in conduct prohibited by federal law or this policy, the Employer will require the

driver to submit to an alcohol and/or controlled substance test. (See Reasonable Suspicion Observation Form in Section 4.)

The Employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test will be based on "specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver." In the case of controlled substance, the observations may include indications of the chronic and withdrawal effects of a controlled substance.

The required observations for reasonable suspicion testing will be made by a supervisor or other person designated by the Employer who has received appropriate training in identification of actions, appearance and conduct of a driver which are indicative of the use of alcohol or controlled substance. (See Reasonable Suspicion Training Record form in Section 4.) These observations leading to an alcohol or controlled substance test will be reflected in writing and signed by the supervisor who made the observations. The record will be retained by the Employer. The person who makes the determination that reasonable suspicion exists to conduct testing, will not be the person conducting the testing, which shall instead be conducted by another qualified person.

Alcohol testing is authorized only if the observations are made during, just before, or just after the driver has ceased performing such functions. If a reasonable suspicion alcohol test is not administered within two (2) hours following the determination of reasonable suspicion, the Employer will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If a reasonable suspicion alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, the Employer will prepare and maintain on file a record stating the reasons the alcohol test was not administered, and will cease attempts to conduct the alcohol test.

Notwithstanding the absence of a reasonable suspicion test, no driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol use, nor will the Employer permit the driver to perform or continue to perform safety-sensitive functions until (1) an alcohol test is administered and the driver's alcohol concentration is less than .02; or (2) twenty-four (24) hours have elapsed following the determination of reasonable suspicion.

Return-to-Duty Testing. The Employer reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policy and collective bargaining agreements. Except as otherwise required by law, the Employer is not obligated to reinstate or requalify such drivers for a first positive test result.

Should the Employer consider reinstatement of a DOT covered driver, the driver must undergo a Substance Abuse Professional ("SAP") evaluation and participate in any prescribed

education/treatment, and successfully complete return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or or a controlled substance test with a verified negative result, before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP determines if the driver has completed the education/treatment as prescribed.

The employee is responsible for paying for all costs associated with the return-to-duty test. The controlled substance test will be conducted under direct observation.

Follow-Up Testing. The Employer reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the Employer is not obligated to reinstate or requalify such drivers.

Should the Employer reinstate a driver following a determination by a Substance Abuse Professional (SAP) that the driver is in need of assistance in resolving problems associated with alcohol use and/or use of controlled substance, the Employer will ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substance testing. The number and frequency of such follow-up testing will be directed by the SAP and will consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. Follow-up testing will not exceed sixty (60) months from the date of the driver's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the SAP determines such test is no longer necessary. The employee is responsible for paying for all costs associated with follow-up tests.

Follow-up alcohol testing will be conducted only when the driver is performing safety-sensitive functions, or immediately prior to or after performing safety-sensitive functions.

Cost of Required Testing. The Employer will pay for the cost of pre-employment, post-accident, random, and reasonable suspicion controlled substance and alcohol testing requested or required of all job applicants and employees. The driver must pay for the cost of all requested confirmatory re-tests, return-to-duty, and follow-up testing.

## **REQUIRED PRIOR CONTROLLED SUBSTANCE AND ALCOHOL CHECKS FOR APPLICANTS**

The Employer will conduct prior drug and alcohol checks of applicants for employment to drive a commercial motor vehicle. Applicants must execute a consent form authorizing the Employer to obtain the required information. The Employer will obtain (pursuant to the applicant's written consent) information on the applicant's alcohol test with a concentration result of 0.04 or greater, positive controlled substance test results, refusals to be tested, and other relevant information within the preceding three (3) years which are maintained by the applicant's previous employers.

The Employer will obtain all information concerning the applicant which is maintained by the applicant's previous employers within the preceding three (3) years pursuant to DOT and FMCSA controlled substance and alcohol testing regulations. The Employer will review such records, if feasible, prior to the first time a driver performs safety-sensitive functions.

## PROHIBITED CONDUCT

The following conduct is explicitly prohibited by applicable DOT and FMCSA regulations and therefore constitutes violation of Employer policy.

Under the influence of alcohol when reporting for duty or while on duty. No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of 0.02, but less than 0.04, will be removed from duty for 24 hours, escorted home and placed on vacation leave for hours missed from work.

On-Duty Use of Alcohol. No driver may use alcohol while performing safety-sensitive functions.

Pre-Duty Use of Alcohol. No driver may perform safety-sensitive functions within four (4) hours after using alcohol. If an employee has had alcohol within four hours they are to notify their supervisors before performing any safety-sensitive functions.

Alcohol Use Following an Accident. No driver required to take a post-accident alcohol test may use alcohol for eight (8) hours following the accident, or until the driver undergoes a post-accident alcohol test, whichever occurs first.

Refusal to Submit to a Required Alcohol or Controlled Substance Test. No applicant or driver may refuse to submit to pre-employment, post-accident, random, reasonable suspicion or follow-up alcohol or controlled substance testing.

In the event an applicant or driver does in fact refuse to submit to required alcohol or controlled substance testing, no test will be conducted. Refusal by a driver to submit to controlled substance or alcohol testing will be considered a positive test result, will cause disqualification from performing safety-sensitive functions, and may appear on the driver's permanent record. Drivers who refuse to submit to testing will be subject to discipline, up to and including termination. If an applicant refuses to submit to pre-employment controlled substance testing, any applicable conditional offer will be withdrawn.

For purposes of this section, a driver is considered to have refused to submit to an alcohol or controlled substance test when the driver:

- Fails to provide adequate breath for alcohol testing without a valid medical explanation after he or she has received notice of the requirement for breath testing.

- Fails to provide adequate urine for controlled substance testing without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing.
- Fails to report for testing within a reasonable period of time, as determined by the Employer.
- Fails to remain at a testing site until testing is complete.
- In the case of directly observed or monitored collection, fails to permit observation or monitoring.
- Fails or declines to take a second test as required by the Employer and/or collector.
- Fails to undergo a medical examination as directed by the Employer pursuant to federal law.
- Refuses to complete and sign the alcohol testing form, to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise cooperate in any way that prevents the completion of the testing process.
- Engages in conduct that clearly obstructs the test process.

Altering or attempting to alter a urine sample or breath test. A driver altering or attempting to alter a urine sample or controlled substance test, or substituting or attempting to substitute a urine sample, will be subject to providing a specimen under direct observation. Both specimens will be subject to laboratory testing. In such case, the employee may be subject to immediate termination of employment and any job offer made to an applicant will be immediately withdrawn.

Controlled Substance Use. No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver in writing the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Drivers must forward this information regarding therapeutic controlled substance use to the Employer immediately after receiving any such advice.

Having a medical marijuana card and/or a cannabis prescription from a physician does not allow anyone to use or possess that drug in the Employer's workplace. The federal government still classifies cannabis as an illegal drug. **There is no acceptable concentration of marijuana metabolites in the urine or blood of an employee who performs safety-sensitive duties for the Employer.** Employees are still subject to being tested under our policies, as well as for being disciplined, suspended or terminated after testing positive for cannabis while at work.

Controlled Substance Testing. No driver may report for duty, remain on-duty or perform a safety-sensitive function if the driver tests positive for controlled substance.

## COLLECTION AND TESTING PROCEDURES

Drivers are required to report immediately upon notification to the collection site. For random tests conducted off site, employees may use an Employer vehicle to drive to the collection site. Drivers will be expected to provide a photo ID card for identification to the collection staff. All drivers will be expected to cooperate with collection site personnel requests to remove any unnecessary outer garments such as coats, sweaters or jackets and will be required to empty their pockets. Collection personnel will complete a Federal Custody and Control Form ("CCF") which drivers providing a sample will sign as well.

Alcohol Testing. Employees will be tested for alcohol just before, during, or immediately following performance of a safety-sensitive function. If a driver is also taking a DOT controlled substance test, generally speaking, the alcohol test is completed before the urine collection process begins. Screening tests for alcohol concentration will be performed utilizing a non-evidential screening device included by the National Highway Traffic Safety Administration on its conforming products list (e.g., a saliva screening device) or an evidential breath testing device ("EBT") operated by a trained breath alcohol technician ("BAT") at a collection site. An alcohol test usually takes approximately 15 minutes if the result is negative. If a driver's first attempt is positive (with an alcohol concentration of .02 or greater), the driver will be asked to wait at least 15 minutes and then be tested again. The driver may not eat, drink or place anything in his/her mouth (e.g., cigarette, chewing gum) during this time. All confirmation tests will be conducted in a location that affords privacy to the driver being tested, unless unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident) make it impracticable to provide such privacy. Any results less than 0.02 alcohol concentration is considered a "negative" test result.

If the driver attempts and fails to provide an adequate amount of breath, he/she will be referred to a physician to determine if the driver's inability to provide a specimen is genuine or constitutes a refusal to test. Alcohol test results are reported directly to the Employer by the collection site staff.

Controlled Substance Testing. The Employer will use a "split urine specimen" collection procedure for controlled substance testing. Collection of urine specimens for controlled substance testing will be conducted by an approved collector and will be conducted in a setting and manner to ensure the driver's privacy.

Controlled substance testing generally takes about 15 minutes. At the collection site, the driver will be given a sealed container and must provide at least 45 ml of urine for testing. Once the sample is provided the collection personnel will check the temperature and color and look for signs of contamination. The urine is then split into two separate specimen containers (A, or "primary," and B, or "split") with identifying labels and security seals affixed to both. The collection facility will be responsible for maintaining a proper chain of custody for delivery of the sample to a DHHS-certified laboratory for analysis. The laboratory will retain a sufficient portion of any positive sample for testing and store that portion in a scientifically-acceptable manner for a minimum 365-day period

If an employee fails to provide a sufficient amount of urine to permit a controlled substance test (45 milliliters of urine), the collector will discard the insufficient specimen, unless there is evidence of tampering with that specimen. The collector will urge the driver to drink up to 40 ounces of fluid, distributed reasonably over a period of up to three hours, or until the driver has provided a sufficient urine specimen, whichever occurs first. If the driver has not provided a sufficient specimen within three hours of the first unsuccessful attempt, the collector will cease efforts to attempt to obtain a specimen. The driver must then obtain, within five calendar days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. If the licensed physician concludes the driver has a medical condition, or with a high degree of probability could have, which precluded the driver from providing a sufficient amount of urine, the Employer will consider the test to have been canceled. If a licensed physician cannot make such a determination, the Employer will consider the driver to have engaged in a refusal to test, and will take appropriate disciplinary action under this policy.

The primary specimen is used for the first test. If the test is negative, it is reported to the MRO who then reports the result, following a review of the CCF Form for compliance, to the Employer. If the initial result is positive or non-negative, a "confirmatory retest" will be conducted on the primary specimen. If the confirmatory re-test is also positive, the result will be sent to the MRO. The MRO will contact the driver to verify the positive result. If the MRO is unable to reach the driver directly, the MRO must contact the Employer who will direct the driver to contact the MRO.

## **REVIEW OF TEST RESULTS**

The MRO is a licensed physician with knowledge and clinical experience in substance abuse disorders, and is responsible for receiving and reviewing laboratory results of the controlled substances test as well as evaluating medical explanations for certain drug test results. Prior to making a final decision to verify a positive test result, the MRO will give the driver or the job applicant an opportunity to discuss the test result, typically through a phone call. The MRO, or a staff person under the MRO's supervision, will contact the individual directly, on a confidential basis, to determine whether the individual wishes to discuss the test result. If the employee or job applicant wishes to discuss the test result:

- The individual may be required to speak and/or meet with the MRO, who will review the individual's medical history, including any medical records provided.
- The individual will be afforded the opportunity to discuss the test results and to offer any additional or clarifying information which may explain the positive test result. If the employee or job applicant believes a mistake was made at the collection site, at the laboratory, on a chain-of-custody form, or that the drug test results are caused by lawful substance use, the employee should tell the MRO.

- If there is some new information which may affect the original finding, the MRO may request the laboratory to perform additional testing on the original specimen in order to further clarify the results; and
- A final determination will be made by the MRO that the test is either positive or negative, and the individual will be so advised.

If the MRO upholds the positive, adulterated or substituted drug determination, that test result will be provided to the Employer. There is no opportunity to explain a positive alcohol test provided in the DOT regulations.

The driver can request the MRO to have the split specimen (the second "B" container) tested at the driver's expense. This includes all costs that may be associated with the re-test. There is no split specimen testing for an invalid result. The driver has 72 hours after they have been notified of the positive result to make this request. If the employee requests an analysis of the split specimen, the MRO will direct the laboratory to send the split specimen to another certified laboratory for analysis.

If an employee has not contacted the MRO within 72 hours, the employee may present information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO, or other circumstances unavoidably prevented the employee from making timely contact. If the MRO concludes there is legitimate explanation for the employee's failure to contact within 72 hours, the MRO will direct the analysis of the split specimen.

If the results of the split specimen are negative, the Employer may pay for all costs associated with the test and there will be no adverse action taken against the employee or job applicant.

## **NOTIFICATION OF TEST RESULTS**

Employees. The Employer will notify a driver of the results of random, reasonable suspicion, and post-accident tests for controlled substance if the test results are verified positive, and will inform the driver which controlled substance or substances were verified as positive. Results of alcohol tests will be immediately available from the collection agent.

Right to Confirmatory Retest. Within seventy-two (72) hours after receiving notice of a positive controlled substance test result, an applicant or driver may request through the MRO a re-analysis (confirmatory retest) of the driver's split specimen. Action required by federal regulation as a result of a positive controlled substance test (e.g., removal from safety-sensitive functions) will not be stayed during retesting of the split specimen. If the result of the confirmatory retest fails to reconfirm the presence of the controlled substance(s) or controlled substance metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO will cancel the test.



## Dilute Specimens

### ***Dilute Negatives***

*Creatinine concentration of specimen is equal to or greater than 2 mg/dL, but less than or equal to 5 mg/dL*

If the Employer receives information that a driver has provided a dilute negative specimen, the Employer will direct a recollection, pursuant to the MRO's direction, under direct observation.

### ***Creatinine concentration of specimen is greater than 5 mg/dL***

If the MRO advises the Employer that the employee's dilute negative specimen contains a creatinine concentration greater than five mg/dL the Employer will direct the driver to take a second screening test, not under direct observation. The second screening test will be performed as soon as possible after the Employer receives word of the dilute negative specimen. *Note: Employer can choose only to require retesting for dilute negatives where the Creatinine concentration of specimen is greater than 5 mg/dL for pre-employment testing, reasonable suspicion, post-accident, or random testing or for all of these tests.*

## **CONSEQUENCES FOR DRIVERS ENGAGING IN PROHIBITED CONDUCT**

Job Applicants. Any applicable conditional offer of employment will be withdrawn from a job applicant or employee seeking a transfer who refuses to be tested or tests positive for controlled substance pursuant to this policy.

Employees. Drivers who are known to have engaged in prohibited behavior with regard to alcohol misuse or use of controlled substance, as defined earlier in this policy, are subject to the following consequences:

- Removal from Safety-Sensitive Functions  
No driver may perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by federal law.

No driver who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 may perform or continue to perform safety-sensitive functions for the Employer, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty, but not less than twenty-four (24) hours following administration of the test.

If a driver tests positive under this policy, or is found to have an alcohol concentration of .02 or greater but less than .04, the driver will be removed from safety sensitive duties and escorted home; the driver should not drive home, but be escorted to his or her home. The driver will then be placed on vacatio

- Notification of Resources Available  
The Employer will advise each driver who has engaged in conduct prohibited by federal law or who has a positive alcohol or controlled substance test of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of a controlled substance, including the names, addresses, and telephone numbers of Substance Abuse Professionals and counseling and treatment programs. The Employer will provide this SAP listing in writing at no cost to the driver.
- Discipline  
The Employer reserves the right to impose whatever discipline the Employer deems appropriate in its sole discretion, up to and including termination for a first occurrence, against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the Employer is not obligated to reinstate or requalify such drivers following a first positive confirmed controlled substance or alcohol test result.
- Evaluation, and Return to Duty Testing  
Should the Employer wish to consider reinstatement of a driver who engaged in conduct prohibited by federal law and/or who had a positive alcohol or controlled substance test, the driver must undergo a SAP evaluation, participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or or a controlled substance test with a verified negative result, before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP will determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and controlled substance use and will ensure the driver properly follows any rehabilitation program and submits to unannounced follow-up alcohol and controlled substance testing.
- Follow-Up Testing  
If the driver passes the return-to-duty test, he/she will be subject to unannounced follow-up alcohol and/or controlled substance testing. The number and frequency for such follow-up testing will be as directed by the SAP and will consist of at least six tests in the first twelve months. These tests will be conducted under direct observation.
- Refusal to test  
All drivers and applicants have the right to refuse to take a required alcohol and/or controlled substance test. If an employee refuses to undergo testing, the employee will be considered to have tested positive and may be subject to disciplinary

action, up to and including termination. Refer to Refusing to Test provided earlier in this policy.

- Responsibility for Cost of Evaluation and Rehabilitation  
Drivers will be responsible for paying the cost of evaluation and rehabilitation (including services provided by a Substance Abuse Professional) recommended or required by the Employer or FMCSA or DOT rules, except to the extent that such expense is covered by an applicable employee benefit plan or imposed on the Employer pursuant to a collective bargaining agreement.

## **LOSS OF CDL LICENSE FOR TRAFFIC VIOLATIONS IN COMMERCIAL AND PERSONAL VEHICLES**

Effective August 1, 2005, the FMCSA established strict rules impacting when CDL license holders can lose their CDL for certain traffic offenses in a commercial or personal vehicle. Employees are required to notify their supervisor immediately if the status of their CDL license changes in any way.

## **MAINTENANCE AND DISCLOSURE OF RECORDS**

Except as required or authorized by law, the Employer will not release driver's information that is contained in records required to be maintained by this policy or FMCSA and DOT regulations. In addition, a driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or a controlled substance, including any records pertaining to his or her alcohol or controlled substance tests.

## **POLICY CONTACT FOR ADDITIONAL INFORMATION**

If you have any questions about this policy or the Employer's controlled substance and alcohol testing procedures, you may contact the City Clerk/Administrator to obtain additional information.

## DEFINITIONS

**“Accident,”** means an occurrence involving a commercial motor vehicle operating on a public road which results in a fatality; bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle. The term “accident” does not include an occurrence involving only boarding and alighting from a stationary motor vehicle; an occurrence involving only the loading or unloading of cargo; or an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle unless the vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 C.F.R. § 177.823; 49 C.F.R. § 382.303(a); 49 C.F.R. § 382.303(f).

**“Alcohol Concentration (or Content),”** means the alcohol on a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test. 49 C.F.R. § 382.107.

**“Alcohol Use,”** means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. 49 C.F.R. § 382.107.

**“Applicant,”** means a person applying to drive a commercial motor vehicle. 49 C.F.R. § 382.107.

**“Breath Alcohol Technician” or “BAT,”** means an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT). 49 C.F.R. § 40.3.

**“Employer,”** means Employer of [Employer Name].

**“Employer Premises,”** means all job sites, facilities, offices, buildings, structures, equipment, vehicles and parking areas, whether owned, leased, used or under the control of the Employer.

**“Collection Site,”** means a place designated by the Employer where drivers present themselves for the purpose of providing a specimen of their urine or breath to be analyzed for the presence of alcohol or controlled substances. 49 C.F.R. § 40.3.

**“Commercial Motor Vehicle,”** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle (1) has a gross combination weight rating or gross combination weight of 26,001 or more pounds, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or (2) has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; or (3) is designed to transport

sixteen (16) or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulation. (49 C.F.R. part 172, subpart F) § 382.107. Fire trucks and other emergency fire equipment are not considered to be commercial vehicles under this policy.

**“Confirmation (or Confirmatory) Test,”** for alcohol testing means a second test, following a positive non-evidential test, following a positive non-evidential (e.g., saliva) screening test or a breath alcohol screening test with the result of 0.02 or greater, that provides quantitative data of alcohol concentration. For controlled substance testing, “Confirmation (or Confirmatory) Test” means a second analytical procedure to identify the presence of a specific controlled substance or metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy. 49 C.F.R. § 382.107.

**“Controlled Substance,”** means those substances identified in 49 C.F.R. § 40.21(a). Marijuana, amphetamines, opiates, (including heroin), phencyclidine (PCP), cocaine, and any of their metabolites are included within this definition. 49 (C.F.R. § 382.107; 49 C.F.R. § 40.21(a).

**“Department of Transportation” or “DOT,”** means the United States Department of Transportation.

**“DHHS,”** means the Department of Health & Human Services or any designee of the Secretary, Department of Health & Human Services. 49 C.F.R. § 40.3.

**“Disabling Damage,”** means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven. Disabling damage does not include damage which can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage even if no spare tire is available, headlight or tail light damage or damage to turn signals, horn or windshield wipers which make them inoperative. 49 C.F.R. § 382.107.

**“Driver,”** means any person who operates a commercial motor vehicle. This includes, but is not limited to full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors who are either directly employed by or under lease to the Employer or who operate a commercial motor vehicle at the direction of or with the consent of the Employer. For purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle. 49 C.F.R. § 382.107.

**“Drug,”** has the same meaning as “controlled substance.”

**“Employee seeking a transfer,”** refers to an employee who is not subject to DOT regulations seeking a transfer to a position that will subject them to DOT regulations in the sought after position.

**“Evidential Breath Testing Device” or “EBT,”** means a device approved by the National Highway Traffic Safety Administration (“NHTSA”) for the evidential testing of breath and placed on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices.” 49 C.F.R. § 40.3.

**“Federal Motor Carrier Safety Administration” or “FMCSA,”** means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

**“Medical Review Officer” or “MRO,”** means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by a controlled substance testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with his or her medical history and any other relevant biomedical information. 49 C.F.R. § 40.3

**“Performing (a Safety-Sensitive Function),”** means any period in which a driver is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. 49 C.F.R. § 382.107.

**“Positive Test Result,”** means a finding of the presence of alcohol or controlled substance, or their metabolites, in the sample tested in levels at or above the threshold detection levels established by applicable law.

**“Reasonable Suspicion,”** means a belief a driver has engaged in conduct prohibited by the FMCSA controlled substance and alcohol testing regulations, except when related solely to the possession of alcohol, based on specific contemporaneous, articulable observations made by a supervisor or Employer official who has received appropriate training concerning the appearance, behavior, speech or body odors of the driver. The determination of reasonable suspicion will be made in writing on a Reasonable Suspicion Observation Form during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this policy. In the case of a controlled substance, the observations may include indications of the chronic and withdrawal effects of a controlled substance.

**“Safety-Sensitive Function,”** means all time from the time a driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-sensitive functions include:

- All time at an Employer plant, terminal, facility, or other property, or on any public property,
- waiting to be dispatched, unless the driver has been relieved from duty by the employer;

- All time inspecting equipment as required by 49 C.F.R. § 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 C.F.R. § 393.76);
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. 49 C.F.R. § 382.107.

**“Screening Test (also known as Initial Test),”** in alcohol testing, means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. Screening tests may be conducted by utilizing a non-evidential screening device included by the National Highway Traffic Administration on its conforming products list (e.g., a saliva screening device) or an evidential breath testing device (“EBT”) operated by a trained breath alcohol technician (“BAT”). In controlled substance testing, “Screening Test” means an immunoassay screen to eliminate “negative” urine specimens from further consideration. 49 C.F.R. § 382.107.

**“Substance Abuse Professional” or “SAP,”** means a licensed physician (medical doctor or doctor of osteopathy), licensed or certified psychologist, licensed or certified social worker, licensed or certified employee assistance professional, or licensed or certified addiction counselor (certified by the National Association of Alcoholism and Controlled Substance Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders. 49 C.F.R. § 382.107.