

Pursuant to due call and notice thereof, a regular meeting of the North Mankato City Council was held in the Municipal Building Council Chambers on July 18, 2016. Mayor Dehen called the meeting to order at 7:00 p.m. asking that everyone join in the Pledge of Allegiance. The following were present for roll call: Mayor Dehen, Council Members Freyberg, Spears, Steiner and Norland, City Administrator Harrenstein, Finance Director McCann, Attorney Kennedy, City Planner Fischer, Public Works Director Swanson and City Clerk Van Genderen.

Approval of Agenda

Council Member Norland moved, seconded by Council Member Steiner, to approve the agenda as presented. Vote on the motion: Freyberg, Spears, Steiner, Norland and Dehen aye; no nays. Motion carried.

Approval of Council Workshop Minutes

Council Member Steiner moved, seconded by Council Member Freyberg to approve the minutes of the Council Workshop meeting of July 5, 2016. Vote on the motion: Freyberg, Steiner and Dehen aye; Norland and Spears abstain. Motion carried.

Approval of Council Minutes

Council Member Norland moved, seconded by Council Member Steiner to approve the minutes of the Council meeting of July 5, 2016. Vote on the motion: Freyberg, Spears, Steiner, Norland and Dehen aye; no nays. Motion carried.

Public Hearing, 7 pm-Proposed Sidewalk Maintenance and Installation Policy

Barb Church, 102 Wheeler Avenue, appeared before Council and requested assurance that the Council would review each project to determine if sidewalks were necessary.

Phil Henry, 1300 Noretta Drive, appeared before Council and stated he did not believe residents should be responsible for 50% of sidewalk repair or replacement. Mayor Dehen stated 50% would relieve property owners from paying the current assessment amount of 100% for sidewalk repair or replacement. Mr. Henry stated it was unfair to property owners and the City should pay for the repair or replacement because they pay for bike trails.

Public Hearing, 7 pm-Amend Franchise Ordinance No. 156 Third Series, Granted to Charter Communications.

Administrator Harrenstein introduced Brian Grogan from Moss and Barnett who represented North Mankato during the negotiations with Charter Communications. Mr. Grogan stated the Charter Franchise expired in 2011 and the agreement had been going month to month since that date. The agreement before Council extends the terms of the Franchise to 2021 to coincide with Consolidated Communications Franchise expiration. Terms included in the agreement included an increased Franchise fee from 3% to 5% and the elimination of the PEG fee. Council Member Spears requested clarification on what terms North Mankato was not able to receive. Attorney Grogan stated a compromise was not made allowing upgrading local access content to HD.

Ms. Herrerra from Charter Communications appeared before Council and stated Charter was prepared to accept the terms outlined in the Ordinance.

Public Hearing, 7 pm-Utility Easements Vacation between Lots 14 and 15, Block Seven, Restless Court Townhomes Plat.

City Planner Fischer reported the recording of the Utility Easements Vacation between Lots 14 and 15, Block 7 is required because the property was replatted and townhomes built; a vacation was not recorded and as the townhomes are for sale the title company is requesting the easement be vacated.

Consent Agenda

Council Member Steiner moved, seconded by Council Member Norland, to approve the Consent Agenda which included:

- A. Bills and Appropriations.
- B. Adopted Res. 57-16 Approving Donations/Contributions/Grants.
- C. Approved Application for On-Sale Intoxicating Liquor, Sunday On-Sale Liquor, Cabaret and Soft Drink for Allen and Paula Enz d/b/a American Bar at 503 Belgrade Avenue.
- D. Approved Large Group Permit for Sarah Sanderson at 1014 Shady Oak Drive for a Block Party on August 5, 2016 from 5 p.m. to 10 p.m.
- E. Set Public Hearing, 7 pm on August 1, 2016 to Consider Ordinance Opting-Out of the Requirements of Minnesota Statutes, Section 462.3593.
- F. Set Public Hearing, 7 pm on August 1, 2016 to Consider Amending City Code, Chapter 111, Alcoholic Beverages.
- G. Approved a Temporary Liquor License for the North Mankato Fire Relief Association for July 30-31, 2016 at Caswell Park.

Vote on the motion: Freyberg, Spears, Steiner, Norland and Dehen aye; no nays. Motion carried. Council Member Spears requested clarification on the Ordinance Opting-Out of the Requirements of Minnesota Statutes, Section 462.3593. Attorney Kennedy stated there were concerns with the size of the buildings allowed, zoning expectations and plumbing code issues. Council Member Spears requested more information on the State Statute and possible information on creating an Ordinance to address aging and health care temporary housing concerns.

Public Comments

Tom Hagen, 927 Lake Street, appeared before Council and stated he was dissatisfied with the audio permit process and demanded changes.

Business Items

Res. No. 58-16 Vacating Utility Easements Vacation between Lots 14 and 15, Block 7 Restless Court Townhomes Plat. Council Member Freyberg moved, seconded by Council Member Norland to Adopt the Resolution Vacating Utility Easements Vacation between Lots 14 and 15, Block 7 Restless Court Townhomes Plat. Vote on the motion: Freyberg, Spears, Steiner, Norland and Dehen aye; no nays. Motion carried.

Approved Zoning Application Z-4-16 and Adopted Ordinance No. 75 Fourth Series, Rezoning Lot 1, Block 1, Schorn Subdivision from I-1, Planned Industrial to B-3, General Commercial. Council Member Norland moved, seconded by Council Member Steiner to Approve Zoning Application Z-4-16 and Adopt Ordinance No. 75 Fourth Series, Rezoning Lot 1, Block 1, Schorn Subdivision from I-1, Planned Industrial to B-3, General Commercial. Vote on the motion, Freyberg, Spears, Steiner, Norland, and Dehen aye; no nays. Motion carried.

Consider Proposed Amendments to B-1, B-2 and B-3 Building Setbacks, A request from the City of North Mankato. City Planner Fischer reported the Planning Commission has been reviewing commercial setbacks. He reported that in 2006, a major recodification of the City Code occurred. As a result there were many changes made throughout the City Code including changes to commercial setbacks. Specifically, increasing the front yard setback in the B-3 district from 15 feet to 40 feet. He stated the current setbacks are as follows:

	<u>Front</u>	<u>Side</u>	<u>Rear</u>
B-1	30 feet	10 feet	25 feet
B-2	40 feet	10 feet	25 feet
B-3	40 feet	10 feet	25 feet

City Planner Fischer reviewed a request from Casey's General store who are considering an expansion, but originally built when the front setbacks were 15 feet. Currently the front setbacks for B-3 is 40 feet making it difficult for Casey's to expand. Planner Fischer also indicated the Mankato Clinic is working on expansion plans and has concerns about setbacks. The Planning Commission held multiple discussions on setbacks including concern about corner lots, effective land use and site lines. The Planning Commission recommended the following setbacks:

	<u>Front</u>	<u>Side</u>	<u>Rear</u>	<u>Parking</u>
B-1	20 feet	10 feet	15 feet	10 feet
B-2	20 feet	10 feet	15 feet	10 feet
B-3	20 feet	10 feet	15 feet	10 feet

Council Member Freyberg requested clarification on the change in 2006. City Planner Fischer indicated it may have been that the Council valued the green space. Council Member Freyberg requested a Public Hearing. **Council Member Norland moved, seconded by Council Member Steiner to Set a Public Hearing on Proposed Amendments to B-1, B-2 and B-3 Building Setbacks. Vote on the motion, Freyberg, Spears, Steiner, Norland and Dehen aye; no nays. Motion carried.**

Ordinance No. 76, Fourth Series An Ordinance of the City of North Mankato, Minnesota Amending Ordinance No. 156 Third Series by Extending the Franchise Term, Amending the Franchise Fee and Deleting the Peg Fee Obligation. Council Member Norland moved, seconded by Council Member Steiner to Adopt Ordinance No. 76, Fourth Series An Ordinance of the City of North Mankato, Minnesota Amending Ordinance No. 156 Third Series by Extending the Franchise Term, Amending the Franchise Fee and Deleting the Peg Fee Obligation. **Vote on the motion, Freyberg, Spears, Steiner, Norland and Dehen aye; no nays. Motion carried.**

Res. No. 59-16 Adopting Proposed Sidewalk Maintenance and Installation Policy. City Administrator Harrenstein stated several proposed changes were included in the final draft including reducing the City portion for repair or reconstruction of sidewalks from 60% to 50%, reducing the minimum sidewalk width from 6-feet to 5-feet, including the language that if the City Forester deemed a tree worth saving the sidewalk could be rerouted around the tree and ensuring the use of the correct map. Council Member Spears requested assurances that each project would be considered separately and the map not used to justify a sidewalk when it is not desired. Mayor Dehen stated each project would include a Public Hearing to discuss the inclusion of a sidewalk. **Council Member Norland moved, seconded by Council Member Steiner to Adopt Res. No. 59-16 Adopting Proposed Sidewalk Maintenance and Installation Policy. Vote on the motion, Freyberg, Steiner, Norland and Dehen aye; Spears nays. Motion carried.**

Res. No. 60-16 Awarding Bid for Project No. 16-01EF Municipal Building Entrance and Parking Lot. City Engineer Dan Sarff reported one (1) bid was received and opened on Tuesday, July 12, 2016. The bid was from Nielsen Concrete, LLC for \$194,185.00. The bid received was approximately 40% over the engineers estimate. Engineer Sarff reported he spoke with other potential bidders and the lack of other bidders and the higher than anticipated prices were due to the complex nature of the project and the tight timeline. City Engineer Sarff recommended approving the bid. City Administrator Harrenstein stated staff recommends the project be divided evenly between either three or four funds of the City: General, Water, Sewer, Federal Revolving Loan Fund. An even split for the project would result in \$40,000 from each fund being transferred into the 2016 Construction Fund to complete the project. If the Council is uncomfortable using the Federal Revolving Loan Fund, then simply dividing the cost three ways among the General, Water, and Sewer Fund can be used to fund the project. Staff believes the Federal Revolving Loan Fund should be preserved for redevelopment or economic development purposes and therefore recommends a three way split between the General, Water, and Sewer Fund. Council Member Freyberg indicated that he supported the project but was concerned that with the complexities of the project the bid should have been accepted prior to the City beginning work. City Engineer Sarff stated the timing required to get out in front of the contractors; if the City would have waited, the project would have been pushed too far out into the fall. Council Member Freyberg stated he would have considered pushing it back another year. **Council Member Steiner moved, seconded by Council Member Norland to Adopt Res. No. 60-16 Awarding Bid for Project No. 16-01EF Municipal Building Entrance and Parking Lot Authorizing the use of up to \$53,000 from each of the following funds for the project: General, Water and Sewer. Vote on the motion, Freyberg, Steiner, Norland and Dehen aye; Spears nays. Motion carried.**

Res. No. 61-16 Awarding Bid for Project No. 16-02E 2016 Bituminous Mill and Overlay Projects and Spring Lake Trail Repairs. City Engineer Sarff reported bids were received and opened on July 12th at 11:00 a.m. for the 2016 Bituminous Mill and Overlay Project and Spring Lake Park Trail Repairs, City Project No. 16-02E. One (1) bid was received from OMG Midwest, Inc. for a total project bid of \$246,525.45 which is 18% below engineer estimates. City Engineer Sarff recommended approving the bid. **Council Member Norland moved, seconded by Council Member Steiner to adopt Res. No. 61-16 Awarding Bid for Project No. 16-02E 2016 Bituminous Mill and Overlay Projects and Spring Lake Trail Repairs. Vote on the motion, Freyberg, Spears, Steiner, Norland and Dehen aye; no nays. Motion carried.**

Res. No. 62-16 Establishing, Naming and Outlining the Roles and Responsibilities of the North Mankato Events and Promotion Advisory Group. City Administrator Harrenstein stated the resolution was presented before Council during the last work session. Administrator Harrenstein indicated that with increased events the City would like an advisory council to help coordinate events. Council Member Spears requested clarification on those involved in the committee. Administrator Harrenstein indicated there would be a mix of staff and volunteers. **Council Member Norland moved, seconded by Council Member Steiner to adopt Res. No. 62-16 Establishing, Naming and Outlining the Roles and Responsibilities of the North Mankato Events and Promotion Advisory Group. Vote on the motion, Freyberg, Spears, Steiner, Norland and Dehen aye; no nays. Motion carried.**

Res. No. 63-16 A Resolution of the North Mankato City Council in the Matter of a Hazardous Building Located at 732 Wall Street, North Mankato, Minnesota, Described as Set Forth in this Resolution Owned by Georgia A. Kirchner, a Single Person. Attorney Kennedy

stated City Planner Fischer, due to complaints received concerning the condition of the property at 732 Wall Street, has implemented the Code Enforcement Policy procedure. As no improvements have been made to the property, Attorney Kennedy stated he has become involved to help move the process towards abatement. The City will serve the resolution on the property owner if the owner does not proceed to abate the nuisance and the City will cause a motion of summary enforcement to be made to the District Court of Nicollet County. **Council Member Freyberg moved, seconded by Council Member Norland to adopt. Res. No. 63-16 A Resolution of the North Mankato City Council in the Matter of a Hazardous Building Located at 732 Wall Street, North Mankato, Minnesota, Described as Set Forth in this Resolution Owned by Georgia A. Kirchner, a Single Person. Vote on the motion, Freyberg, Spears, Steiner, Norland and Dehen aye; no nays. Motion carried.**

Agenda Item 13J Consider Adopting Resolution Specifying Proposed Use of Revenues from the Extension of the Local Sales and Use Tax and Agenda Item 13K Consider Resolution Determining the Necessity for the Extension of a Sales and Use Tax and Calling a Special Election Thereon. City Administrator Harrenstein requested these items be deferred until August 1, 2016 due to the potential Legislative Special Session allowing Council more time to consider the resolutions, but action must be taken on the resolutions at the August 1, 2016 meeting. **Council Member Norland moved, seconded by Council Member Steiner to review Agenda Item 13J Consider Adopting Resolution Specifying Proposed Use of Revenues from the Extension of the Local Sales and Use Tax and Agenda Item 13K Consider Resolution Determining the Necessity for the Extension of a Sales and Use Tax and Calling a Special Election Thereon on August 1, 2016 at the regular meeting of the City Council of the City of North Mankato. Vote on the motion, Freyberg, Spears, Steiner, Norland and Dehen aye; no nays. Motion carried.**

City Administrator and Staff Comments

None.

Mayor and Council Comments

Mayor Dehen announced the City of North Mankato won the Fun Days celebrity horseshoe tournament.

Mayor Dehen invited everyone to attend Blues on Belgrade on July 23, 2016 from 12 noon to 11:00 p.m.

Public Comments

Tom Hagen, 927 Lake Street, appeared before Council and stated he has been attending Council Meetings for three years and has presented many wonderful ideas that the Council has not moved on and he now believes it is time for the City Council to be removed and replaced with a new Council.

Barb Church, 102 Wheeler Avenue, appeared before Council and spoke about the new volunteer group.

Phil Henry, 1300 Noretta Drive, appeared before Council stated he did not agree with starting the Municipal Building entrance before receiving the bid.

There being no further business, on a motion by Council Member Steiner, seconded by Council Member Norland, the meeting adjourned at 8:13 p.m.

Mayor

City Clerk

CITY OF NORTH MANKATO

REQUEST FOR COUNCIL ACTION



Agenda Item: #7	Department: Administration	Council Meeting Date: 08/01/2016																											
TITLE OF ISSUE: Public Hearing, 7 pm Proposed Amendment to City Code, Chapter 111, Alcoholic Beverages.																													
BACKGROUND AND SUPPLEMENTAL INFORMATION: City Staff is recommending the City Council consider allowing qualifying temporary 3.2 liquor license applicants the opportunity to qualify for 12 days in any calendar year as allowed by State Statute 340A.410 Subd. 10. Temporary licenses; restrictions.																													
<i>If additional space is required, attach a separate sheet</i>																													
REQUESTED COUNCIL ACTION: Action requested in 12A.																													
For Clerk's Use: Motion By: _____ Second By: _____ Vote Record: <table style="margin-left: 40px; border: none;"> <tr> <td style="text-align: center;">Aye</td> <td style="text-align: center;">Nay</td> <td></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Spears</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Steiner</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Norland</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Freyberg</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Dehen</td> </tr> </table>	Aye	Nay		_____	_____	Spears	_____	_____	Steiner	_____	_____	Norland	_____	_____	Freyberg	_____	_____	Dehen	SUPPORTING DOCUMENTS ATTACHED <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">Resolution</td> <td style="text-align: center;">Ordinance</td> <td style="text-align: center;">Contract</td> <td style="text-align: center;">Minutes</td> <td style="text-align: center;">Map</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> Other (specify) <u>Notice of Public Hearing, State Statute</u> <u>Proposed changes to City Code</u> _____ _____ _____	Resolution	Ordinance	Contract	Minutes	Map	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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NOTICE OF PUBLIC HEARING ON AMENDING CITY CODE,
CHAPTER 111, ALCOHOLIC BEVERAGES

NOTICE IS HEREBY GIVEN that the City Council of the City of North Mankato, Minnesota, will meet in the Council Chambers of the Municipal Building, 1001 Belgrade Avenue, North Mankato, Minnesota at 7 p.m. on the 1st day of August 2016, to hold a public hearing to consider amending the City Code Chapter 111, Alcoholic Beverages allowing qualifying temporary 3.2 liquor license applicants the opportunity to qualify for 12 days in any calendar year as allowed by State Statute 340A.410 Subd. 10. Temporary licenses; restrictions.

Such persons as desire to be heard with reference to the proposed Amendment to the City Code will be heard at this meeting.

Dated this 19th day of July 2016

April Van Genderen
City Clerk
City of North Mankato

July 20, 2016
**NOTICE OF
PUBLIC HEARING ON
AMENDING CITY CODE,
CHAPTER 111,
ALCOHOLIC BEVERAGES**

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Dated this 19th day of July 2016.

/s/ April Van Genderen
City Clerk
City of North Mankato

CITY OF NORTH MANKATO

REQUEST FOR COUNCIL ACTION



Agenda Item: #8	Department: City Attorney	Council Meeting Date: 08/01/2016																												
TITLE OF ISSUE: Public Hearing, 7 pm-Proposed Ordinance Opting-Out of the Requirements of Minnesota Statutes 462.3593.																														
BACKGROUND AND SUPPLEMENTAL INFORMATION: On May 12, 2016, Governor Dayton signed, into law, a bill creating a new process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling. The legislation allows a short term care alternative for a "mentally or physically impaired person", by allowing them to stay in a "temporary dwelling" on a relative's or caregiver's property.																														
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REQUESTED COUNCIL ACTION: Action requested in 12B.																														
For Clerk's Use: Motion By: _____ Second By: _____ Vote Record: <table style="margin-left: 40px; border: none;"> <tr> <td style="text-align: center;">Aye</td> <td style="text-align: center;">Nay</td> <td></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Spears</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Steiner</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Norland</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Freyberg</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Dehen</td> </tr> </table>	Aye	Nay		_____	_____	Spears	_____	_____	Steiner	_____	_____	Norland	_____	_____	Freyberg	_____	_____	Dehen	SUPPORTING DOCUMENTS ATTACHED <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">Resolution</td> <td style="text-align: center;">Ordinance</td> <td style="text-align: center;">Contract</td> <td style="text-align: center;">Minutes</td> <td style="text-align: center;">Map</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> Other (specify) <u>Notice of Public Hearing</u> _____ _____ _____		Resolution	Ordinance	Contract	Minutes	Map	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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**NOTICE OF PUBLIC HEARING ON AN ORDINANCE OPTING-OUT
OF THE REQUIREMENTS OF MINNESOTA STATUTES, SECTION 462.3593**

The City of North Mankato, Minnesota will hold a public hearing on Monday, August 1, 2016 at 7:00 p.m. at City Hall to consider an Ordinance opting-out of the requirements of Minnesota Statutes, Section 462.3593. The Ordinance opts out of Minnesota Statute 462.3593 which permit and regulate temporary family health care dwellings. The City Hall building is located at 1001 Belgrade Avenue, North Mankato, Minnesota.

Any person may speak to the City Council concerning the proposed Ordinance at the time of the public hearing. Any person may submit written comments by addressing those comments to the City Council at 1001 Belgrade Avenue, North Mankato, Minnesota.

Dated this 19th day of July 2016.

/s/ April Van Genderen
April Van Genderen
City Clerk

July 20, 2016
**NOTICE OF
PUBLIC HEARING ON AN
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Dated this 19th day of July 2016.

/s/ April Van Genderen
April Van Genderen
City Clerk

CITY OF NORTH MANKATO

REQUEST FOR COUNCIL ACTION



Agenda Item: #9	Department: City Planner	Council Meeting Date: 08/01/2016																												
TITLE OF ISSUE: Public Hearing, 7 pm- Proposed Amendments to B-1, B-2 and B-3 Setbacks.																														
BACKGROUND AND SUPPLEMENTAL INFORMATION: Staff brought proposed amendments to B-1, B-2 and B-3 Setbacks before the Planning Commission and a Public Hearing is being held to gather feedback from the public.																														
<i>If additional space is required, attach a separate sheet</i>																														
REQUESTED COUNCIL ACTION: Action requested in Agenda Item 12C.																														
For Clerk's Use: Motion By: _____ Second By: _____ Vote Record: <table style="display: inline-table; vertical-align: top; margin-left: 20px;"> <tr> <td style="text-align: center;">Aye</td> <td style="text-align: center;">Nay</td> <td></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Spears</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Steiner</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Norland</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Freyberg</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Dehen</td> </tr> </table>	Aye	Nay		_____	_____	Spears	_____	_____	Steiner	_____	_____	Norland	_____	_____	Freyberg	_____	_____	Dehen	SUPPORTING DOCUMENTS ATTACHED <table style="width: 100%; text-align: center;"> <tr> <td>Resolution</td> <td>Ordinance</td> <td>Contract</td> <td>Minutes</td> <td>Map</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table> Other (specify) <u>Notice of Public Hearing</u> _____ _____ _____		Resolution	Ordinance	Contract	Minutes	Map	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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**NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS TO
B-1, B-2 AND B-3 BUILDING SETBACKS**

The City of North Mankato, Minnesota will hold a public hearing on Monday, August 1, 2016 at 7:00 p.m. at City Hall to consider City Code amendments to §156.042, 156.043 and 156.044 regarding B-1, B-2 and B-3 Building Setbacks. The City Hall building is located at 1001 Belgrade Avenue, North Mankato, Minnesota.

Any person may speak to the City Council concerning the proposed City Code amendments at the time of the public hearing. Any person may submit written comments by addressing those comments to the City Council at 1001 Belgrade Avenue, North Mankato, Minnesota.

Dated this 19th day of July 2016.

/s/ April Van Genderen
April Van Genderen
City Clerk

July 21, 2016
**NOTICE OF
PUBLIC HEARING ON
PROPOSED AMENDMENTS
TO B-1, B-2 AND B-3
BUILDING SETBACKS**

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Dated this 19th day of July 2016.

/s/ April Van Genderen
April Van Genderen
City Clerk



City of North Mankato, MN

Claims List - Regular

By Vendor Name

Date Range: 8-1-2016

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: APBNK-APBNK						
	Void	08/01/2016	Regular	0	-	85370
	Void	08/01/2016	Regular	0	-	85382
00416	1st LINE/LEEWES VENTURES LLC	08/01/2016	Regular	0	243.90	85331
00008	A+ SYSTEMS GROUP	08/01/2016	Regular	0	149.70	85332
00029	AG SPRAY EQUIPMENT	08/01/2016	Regular	0	147.60	85333
00050	ALPHA WIRELESS COMMUNICATIONS	08/01/2016	Regular	0	65.56	85334
00090	APT MACHINING & FABRICATING, INC.	08/01/2016	Regular	0	250.00	85335
00102	AUDIO EDITIONS	08/01/2016	Regular	0	196.77	85336
00113	BAKER & TAYLOR	08/01/2016	Regular	0	69.96	85337
00118	BARNES & NOBLE, INC.	08/01/2016	Regular	0	750.00	85338
00123	BATTERIES+BULBS	08/01/2016	Regular	0	20.94	85339
00136	BENCHS	08/01/2016	Regular	0	125.00	85340
02037	BOBCAT OF MANKATO	08/01/2016	Regular	0	60.30	85341
00174	BOLTON & MENK, INC.	08/01/2016	Regular	0	3,815.76	85342
00176	BORDER STATES ELECTRIC SUPPLY	08/01/2016	Regular	0	367.87	85343
00216	C & S SUPPLY CO, INC.	08/01/2016	Regular	0	216.61	85344
00227	CARQUEST AUTO PARTS STORE	08/01/2016	Regular	0	129.59	85345
00232	CEMSTONE CONCRETE MATERIALS, LLC	08/01/2016	Regular	0	248.75	85346
00233	CEMSTONE PRODUCTS COMPANY	08/01/2016	Regular	0	320.00	85347
00234	CENTER POINT ENERGY	07/20/2016	Regular	0	44.76	85321
00255	CITY OF MANKATO	08/01/2016	Regular	0	79,000.00	85348
00303	CRAWLER WELDING, INC.	08/01/2016	Regular	0	1,082.93	85349
00305	CROP PRODUCTION SERVICES, INC.	08/01/2016	Regular	0	403.40	85350
00310	CRYSTEEL TRUCK EQUIPMENT, INC	08/01/2016	Regular	0	121.00	85351
00312	CULVER'S OF NORTH MANKATO	08/01/2016	Regular	0	120.00	85352
00336	DELTA DENTAL	07/20/2016	Regular	0	947.40	85322
02388	DESIGN RUBIC INC	08/01/2016	Regular	0	225.00	85353
00343	DH ATHLETICS LLC	08/01/2016	Regular	0	230.35	85354
00364	DRUMMER'S GARDEN CENTER & FLORAL	08/01/2016	Regular	0	5.97	85355
02237	EMERGENCY RESPONSE SOLUTIONS	08/01/2016	Regular	0	29.48	85356
00401	EXPRESS SERVICES, INC.	08/01/2016	Regular	0	13.70	85357
00432	FLEETPRIDE	08/01/2016	Regular	0	5.91	85358
02389	FLOOR TO CEILING	08/01/2016	Regular	0	833.00	85359
00447	FREE PRESS	08/01/2016	Regular	0	493.13	85360
00462	G & K SERVICES	07/14/2016	Regular	0	237.72	85314
00462	G & K SERVICES	08/01/2016	Regular	0	107.36	85361
00463	G & L AUTO SUPPLY, LLC	08/01/2016	Regular	0	59.00	85362
02390	GAME TIME	08/01/2016	Regular	0	3,760.77	85363
00473	GENERATOR SYSTEM SERVICES, INC.	08/01/2016	Regular	0	3,392.89	85364
00508	GREEN TECH RECYCLING, LLC	08/01/2016	Regular	0	8,772.00	85365
00525	HANCOCK CONCRETE PRODUCTS LLC	08/01/2016	Regular	0	2,287.52	85366
00538	HAWKINS, INC.	08/01/2016	Regular	0	3,861.06	85367
00595	HY-VEE, INC.	08/01/2016	Regular	0	202.50	85368
00600	ICMA RETIREMENT TRUST ROTH IRA	07/20/2016	Regular	0	650.00	85316
00601	ICMA RETIREMENT TRUST-457	07/20/2016	Regular	0	2,615.00	85317
00608	INGRAM LIBRARY SERVICES	08/01/2016	Regular	0	1,455.06	85369
00609	INMAN, RICH	08/01/2016	Regular	0	35.00	85371
00612	INTECH WORLDWIDE LP	08/01/2016	Regular	0	4,795.00	85372
00680	J.J. KELLER & ASSOCIATES, INC.	08/01/2016	Regular	0	1,166.50	85373
01275	JADD SEPPMANN & SONS, LLP	08/01/2016	Regular	0	1,300.00	85374
02387	JEFFERSON FIRE & SAFETY	08/01/2016	Regular	0	2,530.00	85375
00639	JOHN DEERE FINANCIAL	08/01/2016	Regular	0	292.23	85376
00657	JT SERVICES	08/01/2016	Regular	0	6,344.00	85377
02291	KEEPRS, INC.	08/01/2016	Regular	0	933.99	85378
02209	KRAL, JACOB	08/01/2016	Regular	0	131.05	85379
00733	LAKES GAS CO #10	08/01/2016	Regular	0	131.00	85380
00746	LAW ENFORCEMENT LABOR SERVICES, INC.	07/20/2016	Regular	0	441.00	85318

00776	LLOYD LUMBER CO.	08/01/2016	Regular	0	1,419.30	85381
00789	LOWRY, LUCY	08/01/2016	Regular	0	31.32	85383
00796	MAC QUEEN EQUIPMENT, INC.	08/01/2016	Regular	0	681.39	85384
00805	MAGFA	07/20/2016	Regular	0	324.40	85323
00812	MANKATO BEARING COMPANY	08/01/2016	Regular	0	50.66	85385
00857	MC GOWAN WATER CONDITIONING, INC.	08/01/2016	Regular	0	33.28	85386
00874	MENARDS-MANKATO	08/01/2016	Regular	0	251.65	85387
00935	MINNESOTA PIPE & EQUIPMENT	08/01/2016	Regular	0	441.60	85388
00966	MINNESOTA PUBLIC FACILITIES AUTHORITY	08/01/2016	Regular	0	149,488.91	85389
00953	MINNESOTA UI FUND	07/14/2016	Regular	0	1,492.47	85315
00910	MINNESOTA VALLEY TESTING LAB, INC.	08/01/2016	Regular	0	218.00	85390
00997	MTI DISTRIBUTING CO	08/01/2016	Regular	0	1,550.57	85391
01003	MUNICIPAL BUILDERS, INC.	08/01/2016	Regular	0	23,017.89	85392
01010	NATIONAL INSURANCE SERVICES OF WI, INC.	07/20/2016	Regular	0	586.32	85324
01010	NATIONAL INSURANCE SERVICES OF WI, INC.	07/20/2016	Regular	0	110.50	85325
01010	NATIONAL INSURANCE SERVICES OF WI, INC.	07/20/2016	Regular	0	1,149.54	85326
01018	NCPERS MINNESOTA-UNIT 662400	07/20/2016	Regular	0	192.00	85319
01083	OVERDRIVE, INC.	08/01/2016	Regular	0	1,591.25	85393
02005	PANTHEON COMPUTERS	08/01/2016	Regular	0	5,847.20	85394
01099	PET EXPO DISTRIBUTORS	08/01/2016	Regular	0	50.00	85395
01106	PETTY CASH	08/01/2016	Regular	0	46.67	85396
01133	POWERPLAN/RDO EQUIPMENT	08/01/2016	Regular	0	610.66	85397
01142	PREMIER VETERINARY CENTER - MANKATO	08/01/2016	Regular	0	818.87	85398
01179	RED FEATHER PAPER CO.	08/01/2016	Regular	0	584.73	85399
02043	RED POWER DIESEL SERVICE, INC.	08/01/2016	Regular	0	630.47	85400
01190	REINHART FOODSERVICE LLC	08/01/2016	Regular	0	1,309.77	85401
02325	RIVER REGION COOPERATIVE - BCA	08/01/2016	Regular	0	2,333.00	85402
01278	SHERWIN-WILLIAMS CO.	08/01/2016	Regular	0	60.96	85403
01286	SKARPOHL PRESSURE WASHER SALES	08/01/2016	Regular	0	125.35	85404
01079	SMC-SOUTHERN MINNESOTA CONSTRUCTION	08/01/2016	Regular	0	9,165.44	85405
01317	SPINNER'S BAR	08/01/2016	Regular	0	240.00	85406
01335	STAPLES ADVANTAGE	08/01/2016	Regular	0	250.03	85407
01377	TELRITE CORPORATION	07/20/2016	Regular	0	213.75	85327
01402	TIRE ASSOCIATES	08/01/2016	Regular	0	1,713.84	85408
02190	TONKAWATER	08/01/2016	Regular	0	445.41	85409
01407	TOOL SALES COMPANY	08/01/2016	Regular	0	10.00	85410
01411	TOSTENSON, PHILLIP	08/01/2016	Regular	0	33.48	85411
01419	TRAVERSE DES SIOUX LIBRARY COOPERATIVE	08/01/2016	Regular	0	40.00	85412
01419	TRAVERSE DES SIOUX LIBRARY COOPERATIVE	08/01/2016	Regular	0	9.50	85413
01438	UNIFORMS UNLIMITED INC	08/01/2016	Regular	0	854.58	85414
01441	UNITED RENTALS, INC.	08/01/2016	Regular	0	377.97	85415
01445	UNITED WAY INC	07/20/2016	Regular	0	166.47	85320
01477	VIKING ELECTRIC SUPPLY, INC.	08/01/2016	Regular	0	107.85	85416
01486	VON BERGE, DAVID	08/01/2016	Regular	0	33.73	85417
00486	W.W. GOETSCH ASSOCIATES, INC.	08/01/2016	Regular	0	3,423.69	85418
01500	WASECA COUNTY HUMANE SOCIETY	08/01/2016	Regular	0	125.00	85419
01503	WASSMAN PLUMBING & HEATING LLC	08/01/2016	Regular	0	429.59	85420
01523	WENZEL AUTO ELECTRIC CO	08/01/2016	Regular	0	214.97	85421
01552	WW BLACKTOPPING, INC	08/01/2016	Regular	0	2,479.18	85422
01557	XCEL ENERGY	08/01/2016	Regular	0	12.50	85423
01562	ZAHL EQUIPMENT SERVICE, INC.	08/01/2016	Regular	0	92.85	85424
00012	ABDO, EICK & MEYERS, LLP	07/21/2016	Bank Draft	0	825.00	DFT0000425
00241	CHARTER COMMUNICATIONS	07/21/2016	Bank Draft	0	7.76	DFT0000426
02058	CONSOLIDATED COMMUNICATIONS	07/21/2016	Bank Draft	0	209.70	DFT0000427
02058	CONSOLIDATED COMMUNICATIONS	07/26/2016	Bank Draft	0	32.09	DFT0000433
02058	CONSOLIDATED COMMUNICATIONS	07/26/2016	Bank Draft	0	29.94	DFT0000434
02058	CONSOLIDATED COMMUNICATIONS	07/26/2016	Bank Draft	0	52.47	DFT0000435
02058	CONSOLIDATED COMMUNICATIONS	07/26/2016	Bank Draft	0	159.44	DFT0000436
00749	LAWSON PRODUCTS, INC	07/26/2016	Bank Draft	0	459.66	DFT0000432
00815	MANKATO CLINIC, LTD.	07/21/2016	Bank Draft	0	30.00	DFT0000428
01322	SPRINT	07/21/2016	Bank Draft	0	75.05	DFT0000430
01449	UNIVERSITY OF MINNESOTA	07/21/2016	Bank Draft	0	185.00	DFT0000429

Bank Code APBNK Summary

	Payable	Payment		
Payment Type	Count	Count	Discount	Payment
Regular Checks	285	106	0.00	351,723.55
Manual Checks	0	0	0.00	0.00
Voided Checks	0	2	0.00	0.00
Bank Drafts	11	11	0.00	2,066.11
EFT's	0	0	0.00	0.00
	296	119	0.00	353,789.66

Authorization Signatures

All Council

The above manual and regular claims lists are approved by:

MARK DEHEN- MAYOR

KIM SPEARS- COUNCIL MEMBER

DIANE NORLAND- COUNCIL MEMBER

WILLIAM STEINER- COUNCIL MEMBER

ROBERT FREYBERG- COUNCIL MEMBER

RESOLUTION NO.

RESOLUTION APPROVING DONATIONS/CONTRIBUTIONS/GRANTS

WHEREAS, the Minnesota Statute 465.03 and 465.04 allows the governing body of any city, county, school district or town to accept gifts for the benefit of its citizens in accordance with terms prescribed by the donor;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH MANKATO, MINNESOTA, that the following donations/contributions/grants are approved as follows:

Donor	Restriction	Amount
Weilage Corp.	Donation for Ringhofer Memorial	\$50.00
		\$50.00

Adopted by the City Council this 1st day of August 2016.

Mayor

City Clerk

APPLICATION FOR LICENSE
CITY OF NORTH MANKATO

TYPE OF LICENSE: Cigarette and Soft Drink

Application Fee: \$175.00

BUSINESS NAME: <u>Tip Top Tobacco LLC</u>
BUSINESS ADDRESS: <u>1710 Commerce Dr Ste 130 N. Mankato 56003</u>
MINNESOTA TAX I.D. # <u> </u> FEDERAL TAX I.D. # <u> </u>

Applicant's Name: Husein Yousef Saramah
(Include full middle name)

Applicant's Social Security #: Citizenship Status: USA

Applicant's Present Address: 105 Oriole path
Mankato MN 56001

Length of time at this address: 2 years

Applicant's Occupation: Manager

Applicant's Place of Employment: Super America Mankato/Wacenia

Length of time so engaged: 8 years

Applicant's addresses and occupations for the three (3) years prior to the date of application
(if different from above):

1301 Oak Ave Wacenia MN 55387

Has applicant ever been convicted of a felony, gross misdemeanor, or misdemeanor, including violation of a municipal ordinance but excluding traffic violations, and if so, the date and place of conviction and the nature of the offense:

NO

List four (4) character references if applicant has not resided in the City for two (2) years prior to the date of application:

I lived in Mankato 6 years, 1 year in Wacenia

27 years in Hawaii

References continued ---

I, the applicant, understand that it is unlawful to intentionally make a false statement or omission upon this application form. Further, I understand that any false statement in such application, or any willful omission to state any information called for on such application form, shall, upon discovery of such falsehood, work an automatic refusal of license, or if already issued, shall render any license or permit issued pursuant thereto, void, and of no effect to protect me from prosecution for violation of Chapter 6, or any part hereto, of the City Code for the City of North Mankato.

H w
Signature of Applicant
11-24-1961
Date of Birth
7-22-16
Date of Signing

Subscribed and sworn to before me this
22nd day of July, 2016.
City Clerk

OFFICE USE If needed:

POLICE Chief Chris Boyer #701 approved X not approved ____ Date: 07-25-16

COUNCIL ACTION approved ____ not approved ____ Date: _____

Application Fee paid on: _____

License Issued on: _____



Minnesota
NORTH MANKATO

PARK PERMIT

1001 Belgrade Ave
North Mankato, MN 56003
507-625-4141
www.northmankato.com

Permit #: 95-2016 Start time: 3:00 pm Fee: \$ 80.00
Date: 8/4/16 Stop time: 9:00 pm
Shelter: ☐ Spring Lake Shelter #1 ☐ Spring Lake Shelter #2 ☒ Wheeler Park Indoor Shelter

Event Name:

Vacation Bible School

Name:

Kelsey O Donnell

Address:

325 Sherman St. N. Mankato

Phone:

507-995-2237

of People:

150

Use of Tents (or anything requiring staking) ☒ No ☐ Yes **If Yes, Please contact Gopher State One Call 800-252-1166 one week prior to event.*
**Bounce House requires waiver*

Notes:

Alcoholic Beverages (wine & beer only) ☒ No ☐ Yes **\$250 refundable deposit and \$25 keg permit*

Please specify: Cans Keg Catering* (must contact City Hall)

Audio (requires audio permit)

☒ Yes

☐ No

Allowed

- Personal grills
- Keg beer provided a permit is obtained
- Fishing/ice fishing on Ladybug Lake and Spring Lake only
- Pets in Benson Park and Bluff Park provided they are on a 6' leash
- Canoes and kayaks on Ladybug Lake and Spring Lake (children under 12 must be accompanied by an adult and wear a life preserver)
- Hog roasts provided they are on a hard-surfaced lot

Prohibited

- Vehicles are not allowed to be parked or driven on the grass for any reason unless permission is given from the Parks Department.
- Pets (allowed in Benson Park and Bluff Park only)
- Glass containers
- Campfires / Bonfires / Fire Rings
- Snowmobiles, ATVs, golfing, swimming, boating and motorized flotation devices
- Dunk Tanks
- Audio equipment may not be played so loud as to interfere with the reasonable use of the park by others. All audio devices must end at 10 PM

☒ I, the undersigned, understand that the park shelter reservation fee is non-refundable. If prior approval is not obtained for the installation of additional tents or stakes and causes disruption of utility services, I agree to be held liable for any repairs to service lines.

☒ I, the undersigned, have received the Audio Permit Instructions and understand that failure to comply with the audio instructions may terminate the event and prevent future ability to obtain an audio permit.

SIGNED:

Kelsey O Donnell
Applicant

7/13/16

Date

☐ APPROVED ☐ DENIED

☒ REFER TO COUNCIL

City Clerk

Date

Receipt # _____

_____ Book

_____ Online

_____ Park

☒ Police

Staff Initials _____

CB #701



1001 Belgrade Avenue
North Mankato, MN 56003
507-625-4141 Fax: 507-625-4151
www.northmankato.com

Audio Permit 95
Park Permit 95

Audio Permit

About:

An audio permit is required for anyone operating outdoor amplified sound (i.e a loudspeaker, public address system, or sound amplifying equipment). The sound system cannot be operated before 7:00 am or after 10:00 pm.

Audio Permit Responsibilities:

- An onsite event coordinator must be available by mobile during the event.
- An applicant will provide a schedule of any music or entertainment proposed to occur during the event.
- A beginning and end time must be supplied on the application and the event coordinator must ensure compliance.
- Applicants must comply with City Code Ordinance 90.045 and Minnesota Rules Chapter 7030 which limits noise.
- Noise levels cannot exceed 60 dBA more than 50 percent of the time.

What happens if there is a noise complaint?

- A North Mankato Patrol Officer will meet with the complainant and evaluate and measure the noise using a decibel reader at the location of the complainant.
- If the noise is found out of compliance the Patrol Officer will contact the onsite event coordinator and the amplified sound must be turned down.
- If the onsite event coordinator does not comply, the event will be immediately terminated and the group will be disbursed.
- Failure to comply will affect future ability to obtain an audio permit.

AMPLIFIED SOUND:

☐

LIVE MUSIC/BAND

☐

DJ/KARAOKE MACHINE

☒

OTHER: micro phone / speakers

LOCATION: Wheeler

BEGIN TIME: 5:00 pm

ONSITE COORDINATOR MOBILE NUMBER: 507-995-2237

END TIME: 8:00 pm

☒ I, THE UNDERSIGNED, HAVE RECEIVED THE AUDIO PERMIT AND UNDERSTAND THAT FAILURE TO COMPLY WITH THE AUDIO POLICY MAY TERMINATE THE EVENT AND PREVENT FUTURE ABILITY TO OBTAIN AN AUDIO PERMIT.

PRINT NAME: Kelsey O'Donnell

DATE: 7/13/16

SIGNATURE: Kelsey O'Donnell

CITY CLERK

☐ BOOK ☐ POLICE ☐ ONLINE ☐ DENIED ☐ APPROVED STAFF INITIALS



Application for Temporary 3.2 Permit

Name of Organization

North Mankato Firefighter's Relief

Date Organized

Tax exempt Number

41-6058900

Address

1001 Belgrade Ave

City

North Mankato

State

Zip Code

MN 56003

Name of Person Making Application

Mike Fasnacht

Business Phone

Home Phone

507-351-5213

Date (s) of event

Type of Organization



Club



Charitable



Religious



Other non-profit

Organization Officer's Name

Mike Fasnacht

City

North Mankato

State

Zip

MN 56003

Ed Hoffman

North Mankato

MN 56003

Location where permit will be used. If an outdoor area, describe.

Caswell Softball Complex

If the applicant will contract for intoxicating liquor service give the name and address of the liquor license providing the service. N/A

If the applicant will carry liquor liability insurance please provide the carrier's name and amount of coverage.

Weir Insurance
\$ 300,000



1001 Belgrade Avenue, P.O. Box 2055 • North Mankato, MN 56002-2055 • Telephone 507-625-4141

An Equal Opportunity - Affirmative Action Employer



20% Post-Consumer Waste

APPROVAL

Application must be approved by the City or County before submitting to Alcohol and Gambling Enforcement.

North Mankato/Nicollet County

City/County

Date Approved

August 6-7, 11-14

City Fee Amount

Permit Date

Date Fee Paid

Signature of City Clerk

 #701
Signature of Police Chief

RESOLUTION NO.

RESOLUTION APPROVING
CONSENT ASSESSMENT AGREEMENT

WHEREAS, the City of North Mankato has, at the property owner's request, paid for certain improvements that will benefit such property, specifically repair/replacement of sewer line and sidewalk damaged when replacing the line on the property for the following described real estate:

410 Sherman Street
PIN#18.792.0030
Cost: \$14,411.79

WHEREAS, the property owner desires that the cost of the repair/replacement of the sewer line to the property be made as a special assessment against the property; and

WHEREAS, the property owner has executed a consent assessment agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH MANKATO, MINNESOTA, as follows:

That the attached consent assessment agreement is approved and that the City Clerk is directed to forward a certified copy of this resolution along with a copy of the consent assessment agreement to the Nicollet County Auditor.

Adopted by the City Council this 1st day of August 2016.

Mayor

ATTEST:

City Clerk

CONSENT ASSESSMENT AGREEMENT

This Agreement is made between the City of North Mankato (City) and Twin Rivers Investments, LLC (Owner).

The parties are guided in reaching this agreement by the following facts:

1. Owner's property is described as follows:

410 Sherman Street

PIN # 18.792.0030

LOT N 40' OF LOTS 4 & 5 SUBDIVISIONCD 18792 SUBDIVISIONNAME SHULL'S ADD

2. Owner desires to repair/replace sewer line and sidewalk damaged when replacing the line to the property.
3. Owner desires to waive all of the procedures mandated by Chapter 429 of Minnesota Statutes and to consent to the imposition of an assessment directly upon the described property.
4. City is willing to pay for the repair in consideration for the owner's consent to the assessments.

The parties therefore make the following agreement:

1. As a result of the improvement, a special assessment shall be filed against owner's land in the amount of \$14,411.79. The assessment shall be payable in equal installments extending over a period of five (5) years and bear interest at the rate of 7.00% per annum from the date of this agreement. The City may transmit notice of this assessment to the County Auditor.

Adopted this 22 day of July, 2016

City of North Mankato

By: [Signature]

Its: City Clerk

[Signature] P.O.A.

Property Owner

Leon's Custom Backhoe,
 59988 - 206th Street
 Eagle Lake, MN 56024
 507-345-L-E-O-N
 (5 3 6 6)

Invoice

Date	Invoice #
7/18/16	2131

Bill To
MLB PROPERTIES WILL DALLENBACH 526 S. 2ND STREET APT 3 MANKATO, MN 56001

P.O. No.	Terms	Due Date	Project
410 SHERMAN	NET 10	7/28/16	

Serviced	Item	Description	Qty	Rate	Amount
2/17/16	SEWER R...	410 SHERMAN STREET EXCAVATE AND BACKFILL FOR SEWER LINE REPAIR - REPLACE THE WYE ON THE MAIN IN STREET	1	3,088.80	3,088.80
	INCLUDES	INCLUDES: EQUIPMENT, LABOR, PLUMBERS BILL, CITY PERMIT, AGGREGATE, COMPACTION			
6/9/16	SEWER I.L...	EXCAVATE AND BACKFILL FOR THE INSTALLATION OF NEW SEWER LINE - FROM HOUSE INTO STREET TO MEET THE NEW LINE FROM 2-17-16	1	3,899.80	3,899.80
	INCLUDES	INCLUDES: EQUIPMENT, LABOR, AGGREGATE, COMPACTION		0.00	0.00
	OTHER	AMERICAN CONCRETE BILL - SAME PRICE THAT I PAID	1	1,191.59	1,191.59

THANK YOU, PLEASE CALL AGAIN! LEON

Not responsible for settling in the yard

Sales Tax \$0.00

Total \$8,180.19

Balance Due \$8,180.19

Eckert Plumbing & Heating, Inc.
P.O. Box 7
St. Peter, MN 56082

Invoice

Date	Invoice #
6/13/2016	4991

Bus	: 507-387-7688
Fax	: 507-934-5638
Cell	: 507-327-7219

BILL TO
Twin Rivers Investments % Will Dallenbach 526 So. 2nd St. #3 Mankato, MN 56001

JOB LOCATION
Rental 410 Sherman St. North Mankato, MN 56003

Terms	Due Date
Due on receipt	6/13/2016

Description	Amount
6/9-2016 Replace sewer from house to street Replace curb box Materials & Labor - Chris & Jake	1,336.60
Thank you.	Total \$1,336.60

Payments/Credits	\$0.00
Balance Due	\$1,336.60

Nielsen Blacktopping, Inc

PO Box 70

Kasota, MN 56050

Phone #

(507) 931-6115

Invoice

Date

Invoice #

7/11/2016

16-266

Bill To

Will Dallenbach
526 S. 2nd St., #3
Mankato, MN 56001

Description	Amount
JOB LOCATION: 410 Sherman Street	
135 SF Furnish & place asphalt curb patch	675.00
400 SF Furnish & place asphalt to patch road (match existing depth)	1,800.00

Total balance due upon completion. After 30 days a finance charge of 1.5% per month (18% annual) will be applied to the unpaid balance.

Total	\$2,475.00
--------------	------------

Payments/Credits	\$0.00
------------------	--------

Balance Due	\$2,475.00
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STEVE STARRETT CONSTRUCTION, LLC

104 Viking Drive
MANKATO, MN 56001-4183
(507) 625-9257
(507) 317-5831

CUSTOMER'S ORDER NO.		PHONE	DATE
NAME		6-1-16	
ADDRESS			
Mr Dolenback 415 Sherman St. North Mankato, MN 56003			
SOLD BY	CASH	C.O.D.	CHARGE
		ON ACCT.	MDSE. RET'D.
PAID OUT			
QTY.	DESCRIPTION	PRICE	AMOUNT
	Curb		400 00
	Side walk		525 00
	APPROX		320 00
	Curb By House		675 00
RECEIVED BY		TOTAL	2475 --
		TAX	

A PRODUCT 610SW

2672

Thank You

RESOLUTION NO.

RESOLUTION DECLARING SURPLUS VEHICLES AND EQUIPMENT

WHEREAS, the City of North Mankato owns the following vehicles and equipment; and

1982 Hendrickson 3-D Pumper Truck	20,635 Miles	11HFT4288CLZ15895
1993 Ford Styleside ½ Ton Truck	119,312	2FTDF16N4PCA94672
2010 Ford Crown Victoria	114,350	2FABP7BV4AX129924
EX60-11 Horizontal Material Baler Model #EX3002		

WHEREAS, these vehicles and equipment have been replaced, causing them to become surplus;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH MANKATO, MINNESOTA, that the aforementioned vehicles and equipment be declared surplus and that the sale of said vehicles and equipment is hereby authorized.

Adopted by the City Council this 1st day of August 2016.

Mayor

ATTEST:

City Clerk

CITY OF NORTH MANKATO

REQUEST FOR COUNCIL ACTION



Agenda Item: #12A	Department: Administration	Council Meeting Date: 08/01/2016																											
TITLE OF ISSUE: Consider Adopting Ordinance No. 77, Amending City Code Chapter 111, Alcoholic Beverages.																													
BACKGROUND AND SUPPLEMENTAL INFORMATION: City Staff is recommending the City Council consider allowing qualifying temporary 3.2 liquor license applicants the opportunity to qualify for 12 days in any calendar year as allowed by State Statute 340A.410 Subd. 10. Temporary licenses; restrictions. A public hearing was held earlier in the evening.																													
<i>If additional space is required, attach a separate sheet</i>																													
REQUESTED COUNCIL ACTION: Adopt Ordinance No. 77, Amending City Code Chapter 111, Alcoholic Beverages.																													
For Clerk's Use: Motion By: _____ Second By: _____ Vote Record: <table style="margin-left: 40px; border: none;"> <tr> <td style="text-align: center;">Aye</td> <td style="text-align: center;">Nay</td> <td></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Spears</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Steiner</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Norland</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Freyberg</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Dehen</td> </tr> </table>	Aye	Nay		_____	_____	Spears	_____	_____	Steiner	_____	_____	Norland	_____	_____	Freyberg	_____	_____	Dehen	SUPPORTING DOCUMENTS ATTACHED <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">Resolution</td> <td style="text-align: center;">Ordinance</td> <td style="text-align: center;">Contract</td> <td style="text-align: center;">Minutes</td> <td style="text-align: center;">Map</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> Other (specify) _____ _____ _____ _____	Resolution	Ordinance	Contract	Minutes	Map	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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ORDINANCE NO. 77, FOURTH SERIES

**AN ORDINANCE OF THE CITY OF NORTH MANKATO, MINNESOTA,
AMENDING NORTH MANKATO CITY CODE, TITLE XI, BUSINESS
REGULATIONS, CHAPTER 111, ALCOHOLIC BEVERAGES**

THE CITY COUNCIL OF THE CITY OF NORTH MANKATO, MINNESOTA,
ORDAINS:

Section 1. Sections of North Mankato City Code, Title XI, Business Regulations, Chapter 111, Alcoholic Beverages are hereby amended as follows:

**§ 111.054 TEMPORARY 3.2% MALT LIQUOR LICENSE, ON-SALE, FOR SPECIAL
EVENTS**

A club or charitable, religious, or non-profit organization may be issued a temporary on-sale 3.2% malt liquor license for special events. The temporary license may authorize sale in a school building. No applicant shall qualify for a temporary license for more than 12 days in any calendar year. The Council may impose other restrictions.

Adopted by the City Council this 1st day of August 2016.

Mayor

ATTEST:

City Clerk

PROPOSED CHANGES TO CHAPTER 111 OF THE NORTH MANKATO CITY CODE

§111.054 TEMPORARY 3.2% MALT LIQUOR LICENSE, ON-SALE, FOR SPECIAL EVENTS

A club or charitable, religious, or non-profit organization may be issued a temporary on-sale 3.2% malt liquor license for special events. The temporary license may authorize sale in a school building. No applicant shall qualify for a temporary license for more than ~~10~~12 days in any calendar year. The Council may impose other restrictions.

(Ord. 121, passed 9-16-1992)

340A.410 LICENSE RESTRICTIONS; GENERAL.

Subdivision 1. **Counties; town consent.** A county may not issue a retail license to sell any alcoholic beverage within an organized town unless the governing body of the town has consented to the issuance of the license.

Subd. 2. **Counties; recommendation and review of applicants.** (1) No county may issue or renew a retail license to sell any alcoholic beverage until the county board has received a written recommendation from the sheriff and county attorney stating that to the best of their knowledge that the applicant is eligible to be licensed under section 340A.402. A copy of the statements must be given to the town board if a town's consent is required for issuance of the license under subdivision 3.

(2) The county board shall consider the recommendations of the sheriff and county attorney, the character and reputation of the applicant, and the nature and location of the business prior to issuance of any license.

Subd. 3. **License extension; death of licensee.** In the case of the death of a retail licensee to sell alcoholic beverages, the personal representative is authorized to continue operation of the business for not more than 90 days after the death of the licensee.

Subd. 4. **License posting.** A retail license to sell alcoholic beverages must be posted in a conspicuous place in the premises for which it is used.

Subd. 4a. [Repealed, 1996 c 418 s 18]

Subd. 4b. **Notice posting.** (a) A premises licensed for the retail sale of alcoholic beverages and a municipal liquor store must post and maintain in a conspicuous place within the licensed premises clearly visible to consumers: one sign 14-1/2 inches wide by 8 inches high as designed by the commissioners of health and public safety, which incorporates the following information:

(1) the penalties of driving while under the influence of alcohol;

(2) penalties for serving alcoholic beverages to a person who is obviously intoxicated or under 21 years of age; and

(3) a warning statement regarding drinking alcohol while pregnant.

(b) The commissioners of health and public safety shall design a sign that complies with this subdivision and shall make the sign available for reproduction. A retail licensee or municipal liquor store may not modify the sign design but may modify the color.

Subd. 5. **Gambling prohibited.** (a) Except as otherwise provided in this subdivision, no retail establishment licensed to sell alcoholic beverages may keep, possess, or operate, or permit the keeping, possession, or operation on the licensed premises of dice or any gambling device as defined in section 349.30, or permit gambling therein.

(b) Gambling equipment may be kept or operated and raffles conducted on licensed premises and adjoining rooms when the use of the gambling equipment is authorized by (1) chapter 349, (2) a tribal ordinance in conformity with the Indian Gaming Regulatory Act, Public Law 100-497, or (3) a tribal-state compact authorized under section 3.9221.

(c) Lottery tickets may be purchased and sold within the licensed premises as authorized by the director of the lottery under chapter 349A.

(d) Dice may be kept and used on licensed premises and adjoining rooms as authorized by section 609.761, subdivision 4.

Subd. 6. **Racial discrimination; clubs.** No retail license to sell alcoholic beverages may be issued or renewed by a municipality or county to a club which discriminates against members or applicants for membership or guests of members on the basis of race.

Subd. 7. **License limited to space specified.** A licensing authority may issue a retail alcoholic beverage license only for a space that is compact and contiguous. A retail alcoholic beverage license is only effective for the licensed premises specified in the approved license application.

§ Subd. 8. **Copy of summons.** Every application for the issuance or renewal of intoxicating or 3.2 percent malt liquor licenses must include a copy of each summons received by the applicant under section 340A.802 during the preceding year.

Subd. 9. **Coin-operated devices.** Coin-operated amusement devices may not be made available in establishments licensed solely for the off-sale of intoxicating liquor or municipal stores which sell only at off-sale. An establishment holding a combination on-sale and off-sale license or a municipal liquor store which sells at on-sale and off-sale which makes coin-operated devices available shall keep such devices to the greatest extent practicable in that area of the establishment where on-sales are made.

Subd. 10. **Temporary licenses; restrictions.** (a) A municipality may not issue more than three four-day, four three-day, six two-day, or 12 one-day temporary licenses, in any combination not to exceed 12 days per year, under section 340A.404, subdivision 10, for the sale of alcoholic beverages to any one organization or registered political committee, or for any one location, within a 12-month period.

(b) A municipality may not issue more than one temporary license under section 340A.404, subdivision 10, for the sale of alcoholic beverages to any one organization or registered political committee, or for any one location, within any 30-day period unless the licenses are issued in connection with an event officially designated a community festival by the municipality.

This restriction does not apply to a municipality with a population of 5,000 or fewer people.

(c) A municipality that issues separate temporary wine and liquor licenses may separately apply the limitations contained in paragraphs (a) and (b) to the issuance of such licenses to any one organization or registered political committee, or for any one location.

History: 1985 c 305 art 6 s 10; 1Sp1986 c 3 art 1 s 39; 1987 c 152 art 1 s 1; 1987 c 381 s 4; 1989 c 334 art 6 s 5; 1991 c 178 s 1; 1991 c 249 s 12; 1993 c 350 s 10; 1994 c 611 s 21; 1995 c 42 s 2; 1996 c 323 s 1,4; 1996 c 418 s 8; 1998 c 364 s 5; 1999 c 187 s 1

CITY OF NORTH MANKATO

REQUEST FOR COUNCIL ACTION



Agenda Item: #12B	Department: City Attorney	Council Meeting Date: 08/01/2016																											
TITLE OF ISSUE: Consider Adopting Ordinance No. 78, Opting-Out of the Requirements of Minnesota Statutes, Section 462.3593.																													
BACKGROUND AND SUPPLEMENTAL INFORMATION: Please review the letter from Attorney Kennedy.																													
<i>If additional space is required, attach a separate sheet</i>																													
REQUESTED COUNCIL ACTION: Adopt Ordinance No. 78, Opting-Out of the Requirements of Minnesota Statutes, Section 462.3593.																													
For Clerk's Use: Motion By: _____ Second By: _____ Vote Record: <table style="margin-left: 40px; border: none;"> <tr> <td style="text-align: center;">Aye</td> <td style="text-align: center;">Nay</td> <td></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Spears</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Steiner</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Norland</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Freyberg</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Dehen</td> </tr> </table>	Aye	Nay		_____	_____	Spears	_____	_____	Steiner	_____	_____	Norland	_____	_____	Freyberg	_____	_____	Dehen	SUPPORTING DOCUMENTS ATTACHED <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">Resolution</td> <td style="text-align: center;">Ordinance</td> <td style="text-align: center;">Contract</td> <td style="text-align: center;">Minutes</td> <td style="text-align: center;">Map</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> Other (specify) <u>Letter, Information from the League of Minnesota Cities</u> _____ _____ _____	Resolution	Ordinance	Contract	Minutes	Map	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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ORDINANCE NO. _____

CITY OF NORTH MANKATO

**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;

WHEREAS, the City Council of the City of North Mankato after deliberation has considered this legislation and beleives that it is overbroad in itsapplication,

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH MANKATO, ORDAINS as follows:

SECTION I. OPT-OUT OF MINNESOTA STATUTES, SECTION 462.3593:

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

SECTION 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 North Mankato.

CITY OF NORTH MANKATO

By: _____

ATTEST:



Michael H. Kennedy
Christopher M. Kennedy*

July 21, 2016

Mayor & City Council Members
City of North Mankato
1001 Belgrade Ave.
North Mankato, MN 56003

Re: Ordinance Opting Out of the Requirements of Minnesota Statute §462.3593

Dear Mayor and Council Members:

As requested, I have done some additional study regarding opting out of Minnesota Statute §462.3593. First of all, I would call your attention to the memo from the League of Minnesota Cities included in your last packet. As noted, if the City wishes to opt out of the statute, this should be treated as the adoption of an amendment of the zoning ordinance requiring a public hearing with ten days' published noticed. It is recommended by the League to treat this with an abundance of caution and proceed as if it were a zoning provision change. Since posting a question asking how other cities are handling this, I have received responses from numerous cities indicating that they recently had passed opt out ordinances. I have not received any report of a city that has chosen specifically to not opt out.

The purpose of the opt out is to adopt an ordinance opting out of recently approved legislation requiring cities to allow temporary family healthcare dwellings in North Mankato. If the City does not adopt the opt out ordinance, starting September 1, 2016, people will be able to move in temporary buildings (similar to a "tiny house") onto a lot that has an existing home.

The current legislation is written so that cities have little review or enforcement authority, and are limited to charging a \$100.00 permit fee at most. They are not able to require the applicants to submit a survey or to have the structure removed in less than 60 days and cannot charge an escrow deposit to cover staff time for permit administration, inspections or enforcement action. The legislation may be well-intended, but does not adequately address the concerns of the City. There are provisions within the legislation that are in conflict with other statutes. Some of the information required for permits is private and as such there are HIPPA data handling concerns. The legislation requires the City to review and enforce its provisions but does not provide the tools and finances to do so.

(Page 2 of 2)

The law also has many implications to the City and neighborhoods as it creates higher densities by allowing two dwelling units on lots zoned for only one dwelling unit. Based on North Mankato's adopted policies, ordinances, and codes, the provisions of this legislation are not consistent with our objectives. The legislation allows people to live in a structure that does not have to meet state building, plumbing, electrical code or building permit requirements.

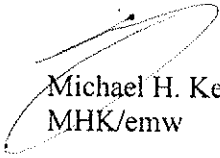
There are existing alternatives in North Mankato to house those needing temporary housing for health reasons. Those include family member spare bedrooms, apartments that are conveniently located throughout the City, assisted living facilities, short term health care facilities, hotels and various group homes.

I have heard from no cities where they have felt the new statute was a good idea.

If there are further questions, let me know.

Sincerely,

KENNEDY & KENNEDY



Michael H. Kennedy
MHK/emw



CONNECTING & INNOVATING
SINCE 1913

Temporary Family Health Care Dwellings of 2016 Allowing Temporary Structures – What it means for Cities

Introduction:

On May 12, 2016, Governor Dayton signed, into law, a bill creating a new process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling.¹ Community desire to provide transitional housing for those with mental or physical impairments and the increased need for short term care for aging family members served as the catalysts behind the legislature taking on this initiative. The resulting legislation sets forth a short term care alternative for a “mentally or physically impaired person”, by allowing them to stay in a “temporary dwelling” on a relative’s or caregiver’s property.²

Where can I read the new law?

Until the state statutes are revised to include bills passed this session, cities can find this new bill at [2016 Laws, Chapter 111](#).

Does the law require cities to follow and implement the new temporary family health care dwelling law?

Yes, unless a city opts out of the new law or currently allows temporary family health care dwellings as a permitted use.

Considerations for cities regarding the opt-out?

These new temporary dwellings address an emerging community need to provide more convenient temporary care. Cities may want to consider the below when analyzing whether or not to opt out:

- The new law alters a city’s level of zoning authority for these types of structures.
- While the city’s zoning ordinances for accessories or recreational vehicles do not apply, these structures still must comply with setback requirements.
- A city’s zoning and other ordinances, other than its accessory use or recreational vehicle ordinances, still apply to these structures. Because conflicts may arise between the statute and a city’s local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.
- Although not necessarily a legal issue for the city, it seems worth mentioning that the permit process does not have the individual with the physical or mental impairment or that

¹ [2016 Laws, Chapter 111](#).

² Some cities asked if other states have adopted this type of law. The only states that have a somewhat similar statute at the time of publication of this FAQ are North Carolina and Virginia. It is worth noting that some states have adopted Accessory Dwelling Unit (ADU) statutes to allow granny flats, however, these ADU statutes differ from Minnesota’s Temporary Health Care Dwelling law.

individual's power of attorney sign the permit application or a consent to release his or her data.

- The application's data requirements may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act.
- The new law sets forth a permitting system for both cities and counties³. Cities should consider whether there is an interplay between these two statutes.

Do cities need to do anything to have the new law apply in their city?

No, the law goes into effect September 1, 2016 and automatically applies to all cities that do not opt out or don't already allow temporary family health care dwellings as a permitted use under their local ordinances. By September 1, 2016, however, cities will need to be prepared to accept applications, must have determined a permit fee amount⁴ (if the city wants to have an amount different than the law's default amount), and must be ready to process the permits in accordance with the short timeline required by the law.

What if a city already allows a temporary family health care dwelling as a permitted use?

If the city already has designated temporary family health care dwellings as a permitted use, then the law does not apply and the city follows its own ordinance. The city should consult its city attorney for any uncertainty about whether structures currently permitted under existing ordinances qualify as temporary family health care dwellings.

What process should the city follow if it chooses to opt out of this statute?

Cities that wish to opt out of this law must pass an ordinance to do so. The statute does not provide clear guidance on how to treat this opt-out ordinance. However, since the new law adds section 462.3593 to the land use planning act (Minn. Stat. ch. 462), arguably, it may represent the adoption or an amendment of a zoning ordinance, triggering the requirements of Minn. Stat. § 462.357, subd. 2-4, including a public hearing with 10-day published notice. Therefore, cities may want to err on the side of caution and treat the opt-out ordinance as a zoning provision.⁵

Does the League have a model ordinance for opting out of this program?

Yes. Link to opt out ordinance here: [Temporary Family Health Care Dwellings Ordinance](#)

Can cities partially opt out of the temporary family health care dwelling law?

³ See Minn. Stat. §394.307

⁴ Cities do have flexibility as to amounts of the permit fee. The law sets, as a default, a fee of \$100 for the initial permit with a \$50 renewal fee, but authorizes a city to provide otherwise by ordinance.

⁵ For smaller communities without zoning at all, those cities still need to adopt an opt-out ordinance. In those instances, it seems less likely that the opt-out ordinance would equate to zoning. Because of the ambiguity of the statute, cities should consult their city attorneys on how best to approach adoption of the opt-out ordinance for their communities.

Not likely. The opt-out language of the statute allows a city, by ordinance, to opt out of the requirements of the law but makes no reference to opting out of parts of the law. If a city wanted a program different from the one specified in statute, the most conservative approach would be to opt out of the statute, then adopt an ordinance structured in the manner best suited to the city. Since the law does not explicitly provide for a partial opt out, cities wanting to just partially opt out from the statute should consult their city attorney.

Can a city adopt pieces of this program or change the requirements listed in the statute?

Similar to the answer about partially opting out, the law does not specifically authorize a city to alter the statutory requirements or adopt only just pieces of the statute. Several cities have asked if they could add additional criteria, like regulating placement on driveways, specific lot size limits, or anchoring requirements. As mentioned above, if a city wants a program different from the one specified in the statute, the most conservative approach would involve opting out of the statute in its entirety and then adopting an ordinance structured in the manner best suited to the city. Again, a city should consult its city attorney when considering adopting an altered version of the state law.

What is required in an application for a temporary family health care dwelling permit?

The mandatory application requests very specific information including, but not limited to:⁶

- Name, address, and telephone number of the property owner, the resident of the property (if different than the owner), and the primary care giver;
- Name of the mentally or physically impaired person;
- Proof of care from a provider network, including respite care, primary care or remote monitoring;
- Written certification signed by a Minnesota licensed physician, physician assistant or advanced practice registered nurse that the individual with the mental or physical impairment needs assistance performing two or more “instrumental activities of daily life;”⁷
- An executed contract for septic sewer management or other proof of adequate septic sewer management;
- An affidavit that the applicant provided notice to adjacent property owners and residents;
- A general site map showing the location of the temporary dwelling and the other structures on the lot; and
- Compliance with setbacks and maximum floor area requirements of primary structure.

⁶ New Minn. Stat. § 462.3593, subd. 3 sets forth all the application criteria.

⁷ This is a term defined in law at Minn. Stat. § 256B.0659, subd. 1(i) as “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.”

The law requires all of the following to sign the application: the primary caregiver, the owner of the property (on which the temporary dwelling will be located) and the resident of the property (if not the same as the property owner). However, neither the physically disabled or mentally impaired individual nor his or her power of attorney signs the application.

Who can host a temporary family health care dwelling?

Placement of a temporary family health care dwelling can only be on the property where a “caregiver” or “relative” resides. The statute defines caregiver as “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.” The definition of “relative” includes “a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew or niece of the mentally or physically impaired person. Relative also includes half, step and in-law relationships.”

Is this program just for the elderly?

No. The legislature did not include an age requirement for the mentally or physically impaired dweller.⁸

Who can live in a temporary family health care dwelling and for how long?

The permit for a temporary health care dwelling must name the person eligible to reside in the unit. The law requires the person residing in the dwelling to qualify as “mentally or physically impaired,” defined as “a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified by a physician, a physician assistant, or an advanced practice registered nurse, licenses to practice in this state.” The law specifically limits the time frame for these temporary dwellings permits to 6 months, with a one-time 6 month renewal option. Further, there can be only one dwelling per lot and only one dweller who resides within the temporary dwelling

What structures qualify as temporary family health care dwellings under the new law?

The specific structural requirements set forth in the law preclude using pop up campers on the driveway or the “granny flat” with its own foundation as a temporary structure. Qualifying temporary structures must:

- Primarily be pre-assembled;
- Cannot exceed 300 gross square feet;
- Cannot attach to a permanent foundation;
- Must be universally designed and meet state accessibility standards;

⁸ The law expressly exempts a temporary family health care dwelling from being considered “housing with services establishment”, which, in turn, results in the 55 or older age restriction set forth for “housing with services establishment” not applying.

- Must provide access to water and electrical utilities (by connecting to principal dwelling or by other comparable means⁹);
- Must have compatible standard residential construction exterior materials;
- Must have minimum insulation of R-15;
- Must be portable (as defined by statute);
- Must comply with Minnesota Rules chapter 1360 (prefabricated buildings) or 1361 (industrialized/modular buildings), “and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2”¹⁰; and
- Must contain a backflow check valve.¹¹

Does the State Building Code apply to the construction of a temporary family health care dwelling?

Mostly, no. These structures must meet accessibility standards (which are in the State Building Code). The primary types of dwellings proposed fall within the classification of recreational vehicles, to which the State Building Code does not apply. Two other options exist, however, for these types of dwellings. If these structures represent a pre-fabricated home, the federal building code requirements for manufactured homes apply (as stated in Minnesota Rules, Chapter 1360). If these structures are modular homes, on the other hand, they must be constructed consistent with the State Building Code (as stated in Minnesota Rules, Chapter 1361).

What health, safety and welfare requirements does this new law include?

Aside from the construction requirements of the unit, the temporary family health care dwelling must be located in an area on the property where “septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.”

What local ordinances and zoning apply to a temporary health care dwelling?

The new law states that ordinances related to accessory uses and recreational vehicle storage and parking do not apply to these temporary family health care dwellings. However, unless otherwise provided, setbacks and other local ordinances, charter provisions, and applicable state laws still apply. Because conflicts may arise between the statute and one or more of the city’s other local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.

What permit process should cities follow for these permits?

The law creates a new type of expedited permit process. The permit approval process found in Minn. Stat. § 15.99 generally applies; however, the new law shortens the time frame for which the local governmental unit has to make a decision on granting the permit. Due to the time sensitive

⁹ The Legislature did not provide guidance on what represents “other comparable means”.

¹⁰ ANSI Code 119.2 has been superseded by NFPA 1192. For more information, the American National Standards Institute website is located at <https://www.ansi.org/>.

¹¹ New Minn. Stat. § 462.3593, subd. 2 sets forth all the structure criteria.

nature of issuing a temporary dwelling permit, the city has only 15 days (rather than 60 days) (no extension is allowed) to either issue or deny a permit. The new law waives the public hearing requirement and allows the clock to restart if a city deems an application incomplete. If a city deems an application incomplete, the city must provide the applicant written notice, within five business days of receipt of the application, telling the requester what information is missing. For those councils that regularly meet only once a month, the law provides for a 30-day decision.

Can cities collect fees for these permits?

Cities have flexibility as to amounts of the permit fee. The law sets the fee at \$100 for the initial permit with a \$50 renewal fee, unless a city provides otherwise by ordinance

Can cities inspect, enforce and ultimately revoke these permits?

Yes, but only if the permit holder violates the requirements of the law. The statute allows for the city to require the permit holder to provide evidence of compliance and also authorizes the city to inspect the temporary dwelling at times convenient to the caregiver to determine compliance. The permit holder then has sixty (60) days from the date of revocation to remove the temporary family health care dwelling. The law does not address appeals of a revocation.

How should cities handle data it acquires from these permits?

The application data may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act. To minimize collection of protected health data or other nonpublic data, the city could, for example, request that the required certification of need simply state “that the person who will reside in the temporary family health care dwelling needs assistance with two or more instrumental activities of daily living”, without including in that certification data or information about the specific reasons for the assistance, the types of assistance, the medical conditions or the treatment plans of the person with the mental illness or physical disability. Because of the complexities surrounding nonpublic data, cities should consult their city attorneys when drafting a permit application.

Should the city consult its city attorney?

Yes. As with any new law, to determine the potential impact on cities, the League recommends consulting with your city attorney.

Where can cities get additional information or ask other questions.

For more information, contact Staff Attorney Pamela Whitmore at pwhitmore@lmc.org or LMC General Counsel Tom Grundhoefer at tgrundho@lmc.org. If you prefer calling, you can reach Pamela at 651.281.1224 or Tom at 651.281.1266.

CITY OF NORTH MANKATO

REQUEST FOR COUNCIL ACTION



Agenda Item: #12C	Department: City Planner	Council Meeting Date: 08/01/2016																											
TITLE OF ISSUE: Consider Adopting Ordinance No. 79, Amending City Code Chapter 156 Neighborhood Business District.																													
BACKGROUND AND SUPPLEMENTAL INFORMATION: Please review the report and Planning Commission Minutes.																													
<i>If additional space is required, attach a separate sheet</i>																													
REQUESTED COUNCIL ACTION: Adopt Ordinance No. 79, Amending City Code Chapter 156 Neighborhood Business District.																													
For Clerk's Use: Motion By: _____ Second By: _____ Vote Record: <table style="margin-left: 40px; border: none;"> <tr> <td style="text-align: center;">Aye</td> <td style="text-align: center;">Nay</td> <td></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Spears</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Steiner</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Norland</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Freyberg</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Dehen</td> </tr> </table>	Aye	Nay		_____	_____	Spears	_____	_____	Steiner	_____	_____	Norland	_____	_____	Freyberg	_____	_____	Dehen	SUPPORTING DOCUMENTS ATTACHED <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">Resolution</td> <td style="text-align: center;">Ordinance</td> <td style="text-align: center;">Contract</td> <td style="text-align: center;">Minutes</td> <td style="text-align: center;">Map</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> Other (specify) <u>Planning Commission Minutes, Report</u> <u>Tract Changes to 156.042, 156.043, 156.044</u> _____ _____ _____	Resolution	Ordinance	Contract	Minutes	Map	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/> Workshop <input checked="" type="checkbox"/> Regular Meeting <input type="checkbox"/> Special Meeting	<input type="checkbox"/> Refer to: _____ <input type="checkbox"/> Table until: _____ <input type="checkbox"/> Other: _____																												

ORDINANCE NO. 79, FOURTH SERIES

AN ORDINANCE OF THE CITY OF NORTH MANKATO, MINNESOTA, AMENDING NORTH MANKATO CITY CODE, CHAPTER 156, ZONING CODE

THE CITY COUNCIL OF THE CITY OF NORTH MANKATO, MINNESOTA,
ORDAINS:

Section 1. North Mankato City Code, Section 156.02, entitled B-1, Neighborhood Business District, is hereby amended by incorporating the following changes:

(H) *Yard regulations.* The minimum yard regulations are as follows:

Front Yard:	
Main and Accessory Buildings	20 feet
Parking Areas	10 feet
Side Yards:	
Main and Accessory Buildings	10 feet
Parking Areas	10 feet
Rear yard:	
Main and Accessory Buildings	15 feet
Parking Areas	10 feet

(1) Where a lot is located at the intersection of two or more streets there shall be a front yard on each street side.

(4) *Transitional yards.* There are no requirements

Section 2. North Mankato City Code, Section 156.03, entitled B-2 Community Business District, is hereby amended by incorporating the following changes:

(H) *Yard regulations.* The minimum yard regulations are as follows:

Front Yard:	
Main and Accessory Buildings	20 feet
Parking Areas	10 feet
Side Yards:	
Main and Accessory Buildings	10 feet
Parking Areas	10 feet

Rear yard:	
Main and Accessory Buildings	15 feet
Parking Areas	10 feet

(1) Where a lot is located at the intersection of two or more streets there shall be a front yard on each street side.

Section 3. North Mankato City Code, Section 156.04, entitled B-3 General Commercial District, is hereby amended by incorporating the following changes:

(H) *Yard regulations.* The minimum yard regulations are as follows:

Front Yard	
Main and Accessory Buildings	20 feet
Parking Areas	10 feet
Side Yards	
Main and Accessory Buildings	10 feet
Parking Areas	10 feet
Rear Yard	
Main and Accessory Buildings	15 feet
Parking Areas	10 feet

(1) Where a lot is located at the intersection of two or more streets there shall be a front yard on each street side.

Section 4. After adoption, signing and attestation, this Ordinance shall be published once in the official newspaper of the City and shall be in effect on or after the date following such publication.

Adopted by the City Council this 1st day of August 2016.

Mayor

ATTEST:

City Clerk

Minutes
of the
NORTH MANKATO PLANNING COMMISSION MEETING
North Mankato, Minnesota
July 14, 2016

A regular meeting of the North Mankato Planning Commission was held at 7 p.m., July 14, 2016 in the Council Chambers of the Municipal Building.

Planning Commission members present: Chair Stephanie Stoffel, Commissioners Corey Brunton, Jason Beal and Nick Meyer. Staff members present: City Attorney Michael Kennedy and City Planner Michael Fischer.

A motion was made by Commissioner Beal, seconded by Commissioner Brunton to approve the minutes of the June 9, 2016 regular meeting of the Planning Commission. Vote on the motion: all ayes, 0 nays; motion carried.

Z-4-16. A request to Rezone Lot 1, Block 1, Schorn Subdivision from I-1, Planned Industrial, to B-3, General Commerical. A request from Kottke Investments.

Staff presented a request from Kottke Investments to rezone Lot 1, Block 1, Schorn Subdivision from I-1 Planned Industrial to B-3, General Commercial for the reuse of the former Spring Touch Building for a graphics and sporting goods store. Staff summarized the existing area zoning and how the rezoning request is consistent with the Future Land Use Plan. It was noted that sporting goods stores are permitted within B-1, B-2 and B-3 zoning districts. Staff expressed potential concerns with the availability of adequate off-street parking based on the proposed use of the building. Marv Kottke, 1420 Lookout Drive, estimated there are approximately twenty off-street parking spaces on the property with the ability to create more. Troy Russell, United Team Elite, stated 25% to 35% of the building would be used for retail purposes and the remaining as warehouse. Mr. Russell indicated there would be approximately 6 employees working at the site on a daily basis. After a brief discussion of other zoning options, it was moved by Commissioner Beal, seconded by Commissioner Meyer to approve Z-4-16. Vote on the motion: all ayes, 0 nays; motion carried.

Consider Setback Changes in B-1, B-2, and B-3 Zoning Districts.

Staff summarized previous formal discussions held by the Planning Commission regarding the reduction of setbacks in commercial districts and recommended the following setbacks:

	<u>Front</u>	<u>Side</u>	<u>Rear</u>	<u>Parking</u>
B-1	15 ft	10 ft	15 ft	10 ft
B-2	15 ft	10 ft	15 ft	10 ft
B-3	15 ft	10 ft	15 ft	10 ft

Staff also summarized a proposal by Casey's Convenience Store to expand using current setbacks and a proposal by Mankato Clinic to redevelop their property. The Planning Commission held considerable discussion regarding setbacks used by other cities, setbacks on corner lots, sight triangles at street intersections, right of ways, and setbacks where commercial property is adjacent to residential property. Matthias Leyrer, 526 Wall Street, stated economic reasons for support of reduced setbacks and that there is no harm in reducing or eliminating setbacks to maximize the use of land. Steve Hatkin, Mankato Clinic, indicated that reduced setback would provide Mankato Clinic greater options for the design of their new building and the challenges Mankato Clinic has had in other cities with expansions based on setbacks. Barb Church, 102 Wheeler Avenue questioned why all proposed setbacks are the same in all commercial zoning districts and the use of setbacks when commercial property is adjacent to residential property. Ms. Church stated there should be additional discussion and research before making any changes. The Planning Commission held considerable discussion regarding economic impact based on setbacks, effective use of land, setbacks for corner lots, use of various business expansions with new setbacks and use of setbacks on corner lots. It was moved by Commissioner Brunton, seconded by Commissioner Meyer to amend the setbacks in B-1, B-2, and B-3 zoning districts as follows:

Front-20 feet

Side-10 feet

Rear-15 feet

Parking-10 feet.

Vote on the motion: all ayes, 0 nays, motion carried.

Consider changing the regular scheduled August Planning Commission meeting date from August 11, 2016 to August 18, 2016.

At the request of staff, it was moved by Commissioner Meyer, seconded by Commissioner Beal, to change the August 2016 Planning Commission meeting date from August 11, 2016, to August 18, 2016. Vote on the motion: all ayes, 0 nays; motion carried.

It was moved by Commissioner Brunton, seconded by Commissioner Beal to adjourn. Vote on the motion; all ayes, 0 nays; motion carried. The meeting was adjourned at 8:30 p.m.

Chairperson

Secretary

§ 156.042 B-1, NEIGHBORHOOD BUSINESS DISTRICT.

(A) *Purpose.* The Neighborhood Business District is intended to establish an area for the convenience of persons residing in adjacent residential areas and to permit such uses as are necessary to satisfy basic needs by encouraging an optimum mix of office, institutional, and retail in proximity to places of residence.

(B) *Special requirements.*

(1) Business establishments are restricted to a maximum floor area of 5,000 square feet each so as to limit the volume of vehicular and pedestrian traffic in and around their function and location. Business establishments are restricted to a minimum floor area of 800 square feet. All business establishments shall be retail or service establishments dealing directly with consumers.

(2) Every use, unless expressly exempted by this subdivision shall be operated in its entirety within a completely enclosed structure-, the exemption of a use from the requirement of enclosure will be indicated by the phrase "need not be enclosed" appearing after any use exempted.

(3) Every use shall be connected to municipal utilities and be constructed on a permanent foundation.

(4) Only one business permitted per lot except when located within the same structure.

(C) *Permitted uses.*

(1) The following are permitted uses:

- (a) Antique store.
- (b) Apparel store.
- (c) Appliance store.
- (d) Art gallery, studio, school or supply store.
- (e) Bakeries, retail.
- (f) Banks, savings and loans or finance companies.
- (g) Barber and beauty shops.
- (h) Book store.
- (i) Business machine store.
- (j) Camera and photographic studio and supply.
- (k) Candy, ice cream, confectionary store.
- (l) Caterer.
- (m) Cemetery, memorial garden, need not be enclosed.
- (n) Churches.
- (o) Clinic, dental or medical, but not animal clinic.
- (p) Club or lodge.
- (q) Community centers, parks or public buildings.
- (r) Convent, monastery or similar institution for religious training.
- (s) Dairy store.
- (t) Day cares.
- (u) Delicatessen.
- (v) Driveways.
- (w) Drug store.
- (x) Dry cleaning.
- (y) Essential public utility and service structures.
- (z) Fences.
- (aa) Floral and garden supply including nursery, need not be enclosed.

- (bb) Gift, novelty or souvenir store.
- (cc) Grocery store.
- (dd) Hardware store.
- (ee) Hobby store.
- (ff) Institution of religious, charitable or philanthropic nature.
- (gg) Interior decorating store and supply.
- (hh) Laboratory, medical or dental.
- (ii) Laundromat.
- (jj) Leather goods store - retail only.
- (kk) Libraries, auditoriums, museums, or other cultural institutions.
- (ll) Locksmith or key stand, need not be enclosed.
- (mm) Medical intern or resident doctor's quarters.
- (nn) Office of any type.
- (oo) Optical services and supply.
- (pp) Parking of vehicles, need not be enclosed.
- (qq) Private recreation facilities; tennis court, golf club, swimming pool.
- (rr) Rehabilitation center for handicapped persons.
- (ss) Restaurants or other eating places including drive-ins.
- (tt) School, public or private.
- (uu) Shoe repair shops.
- (vv) Sporting goods store.
- (ww) Stationery store.
- (xx) Tailor shops.
- (yy) Toy store.
- (zz) Travel bureau or ticket agency.
- (aaa) Variety stores.

(2) Every permitted use allowed shall be constructed on a permanent foundation and be connected to municipal utilities.

(3) Only 1 business permitted per lot except when located in the same structure.

(D) *Conditional uses.* The following uses may be permitted:

(1) Hotels and motels.

(2) Dwelling units located in business establishments above the ground floor as regulated by this chapter.

(3) Home occupations.

(4) Public development.

(E) *Accessory uses.* The following is a permitted use: Storage structure not to exceed 600 square feet.

(F) *Lot area.*

(1) For each permitted or conditional use there shall be provided not less than 9,000 square feet of lot area except as may be required with respect to dwelling units located in business establishments above the ground floor.

(2) For each dwelling unit located in business establishments above the ground floor there shall be provided 1,000 square feet of lot area in addition to that amount required for the business establishment.

(G) *Lot width and depth.*

(1) *Lot width.* Every lot upon which there is a permitted or conditional use shall require a minimum width of 75 feet at the building setback line.

(2) *Lot depth.* Every lot upon which there is a permitted or conditional use shall require a minimum depth of 120 feet.

(H) *Yard regulations.* The minimum yard regulations are as follows:

<u>Front Yard:</u>	
<u>Main and Accessory Buildings</u>	<u>20 feet</u>
<u>Parking Areas</u>	<u>10 feet</u>
<u>Side Yards:</u>	
<u>Main and Accessory Buildings</u>	<u>10 feet</u>
<u>Parking Areas</u>	<u>10 feet</u>
<u>Rear yard:</u>	
<u>Main and Accessory Buildings</u>	<u>15 feet</u>
<u>Parking Areas</u>	<u>10 feet</u>

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~~(1) *Front yard.* For all uses allowed there shall be a front yard of not less than 30 feet.~~

(1) Where a lot is located at the intersection of two or more streets there shall be a front yard on each street side.

~~(2) *Side yard.* For all uses allowed there shall be a side yard, on each side of the building, each not less than 10 feet in width, plus 1 additional foot for each side yard required for each 1 foot or fraction thereof of building height in excess of 45 feet.~~

~~(3) *Rear yard.* For all uses allowed there shall be a rear yard of not less than 25 feet.~~

~~(4) *Transitional yards.* Transitional yards shall be required. There are no requirements~~

(I) *Ground coverage.* Not more than 60% of a lot shall be covered by all main and accessory buildings.

(J) *Height regulations.* No structure hereafter erected or altered shall exceed three stories or 45 feet in height, except as may be permitted in subsection (D)(1) of this section, as regulated by this chapter. Accessory buildings shall not exceed one story in height.

(1975 Code, § 11.12) (Am. Ord. 8, 4th series, passed 1-16-2007; Am. Ord. 17, 4th series, passed 1-17-2008; Am. Ord. 30, 4th series, passed 1-4-2010)

§ 156.043 B-2, COMMUNITY BUSINESS DISTRICT.

(A) *Purpose.* The Community Business District is intended to establish a shopping district for the convenience of persons residing in nearby residential areas and, thereby, provides a broad range of services and goods for both daily and occasional shopping and service needs in a contiguous location.

(B) *Special requirements.* Every use, unless expressly exempted by this subdivision, shall be operated in its entirety within a completely enclosed complex of structures; the exemption of a use from the requirement of enclosure will be indicated by the phrase "need not be enclosed" appearing after any use exempted.

(C) *Permitted uses.*

(1) The following are permitted uses:

- (a) Antique store.
- (b) Apparel store.
- (c) Appliance store.
- (d) Art gallery, studio, school or supply store.
- (e) Bakeries, retail.
- (f) Banks, savings and loans or finance companies.
- (g) Barber and beauty shops.
- (h) Book store.
- (i) Bowling alley.
- (j) Business machine store.
- (k) Business, trade or commercial school.
- (l) Camera and photographic studio and supply.
- (m) Candy, ice cream, confectionary store.
- (n) Caterer.
- (o) Cemetery, memorial garden, need not be enclosed.
- (p) Churches.
- (q) Clinic, dental or medical, but not animal clinic.
- (r) Club or lodge.
- (s) Community centers, parks or public buildings.
- (t) Convent, monastery or similar institution for religious training.
- (u) Dairy store.
- (v) Day cares.
- (w) Delicatessen.
- (x) Driveways.
- (y) Drug store.
- (z) Dry cleaning.
- (aa) Essential public utility and service structures.
- (bb) Fences.
- (cc) Floral and garden supply including nursery, need not be enclosed.
- (dd) Gift, novelty or souvenir store.
- (ee) Grocery store.
- (ff) Hardware store.
- (gg) Hobby store.
- (hh) Hotels and motels.
- (ii) Institution of religious, charitable or philanthropic nature.
- (jj) Interior decorating store and supply.
- (kk) Laundromat.
- (ll) Laboratory, medical or dental.
- (mm) Libraries, auditoriums, museums, or other cultural institutions.
- (nn) Leather goods store – retail only.
- (oo) Locksmith or key stand, need not be enclosed.
- (pp) Medical intern or resident doctor's quarters.
- (qq) Mortuary, funeral home.
- (rr) Office condominium.
- (ss) Office of any type.
- (tt) Optical services and supply.

- (uu) Parking of vehicles, need not be enclosed.
- (vv) Private recreation facilities; tennis court, golf club, swimming pool.
- (ww) Rehabilitation center for handicapped persons.
- (xx) Restaurants and other eating places, excluding drive-ins.
- (yy) Restaurants or other eating places including drive-ins.
- (zz) School, public or private.
- (aaa) Shoe repair shops.
- (bbb) Sporting goods store.
- (ccc) Stationery store.
- (ddd) Tailor shops.
- (eee) Theaters, excluding drive-in type service.
- (fff) Toy store.
- (ggg) Travel bureau or ticket agency.
- (hhh) Variety stores.

(2) Every permitted use allowed shall be constructed on a permanent foundation and be connected to municipal utilities.

(3) Only 1 business permitted per lot except when located in the same structure.

(D) *Conditional uses.* The following uses may be permitted pursuant to division (B) of this section.

(1) Auto service.

(2) Automobile wash.

(3) Bar and cocktail lounges or similar uses offering alcoholic beverages for consumption on the premises.

(4) Public uses.

(E) *Accessory uses.* The following is a permitted use: Storage structure not to exceed 600 square feet.

(F) *Lot area.* All permitted or conditional uses shall require a lot area of at least 15,000 square feet.

(G) *Lot width and depth.* Minimum lot width of 100 feet and a minimum lot depth of 150 feet.

(H) *Yard regulations.* The minimum yard regulations are as follows:

Front Yard:	
Main and Accessory Buildings	4020 feet
Parking Areas	10 feet
Side Yards:	
Main and Accessory Buildings	10 feet
Parking Areas	10 feet
Rear yard:	
Main and Accessory Buildings	215 feet
Parking Areas	10 feet

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(1) Where a lot is located at the intersection of two or more streets there shall be a front yard on each street side.

(I) *Ground coverage.* Maximum ground coverage allowed shall be 65% of a lot.

(J) *Height regulations.* No structure hereafter erected or altered shall exceed 3 stories or 45 feet in height. Accessory buildings shall not exceed 1 story in height.
(1975 Code, § 11.13) (Am. Ord. 8, 4th series, passed 1-16-2007; Am. Ord. 17, 4th series, passed 1-17-2008; Am. Ord. 30, 4th series, passed 1-4-2010)

§ 156.044 B-3, GENERAL COMMERCIAL DISTRICT.

(A) *Purpose.* The General Commercial District is intended to establish a district of providing the broadest range of retail, wholesale, service, and commercial activities.

(B) *Special requirements.* Every use, unless expressly exempted by this division, shall be operated in its entirety within a completely enclosed structure; the exemption of a use from the requirement of enclosure will be indicated by the phrase "need not be enclosed" appearing after any use exempted.

(C) *Permitted uses.*

(1) The following are permitted uses:

- (a) Antique store.
- (b) Apparel store.
- (c) Appliance store.
- (d) Art gallery, studio, school or supply store.
- (e) Bakeries, retail.
- (f) Banks, savings and loans or finance companies.
- (g) Barber and beauty shops.
- (h) Bars, taverns and cocktail lounges licensed to sell soft drinks, beer malt, or alcoholic beverages on sale, off sale or both.
- (i) Book store.
- (j) Bowling alley.
- (k) Business machine store.
- (l) Business, trade or commercial school.
- (m) Camera and photographic studio and supply.
- (n) Candy, ice cream, confectionary store.
- (o) Car sales lots, need not be enclosed.
- (p) Catalog service and mail order house.
- (q) Caterer.
- (r) Cemetery, memorial garden, need not be enclosed.
- (s) Churches.
- (t) Clinic, dental or medical, but not animal clinic.
- (u) Club or lodge.
- (v) Community centers, parks or public buildings.
- (w) Convent, monastery or similar institution for religious training.
- (x) Conventions, or meeting facility.
- (y) Dairy store.
- (z) Dance studio.
- (aa) Day cares.
- (bb) Delicatessen.

- (cc) Driveways.
- (dd) Drug store.
- (ee) Essential public utility and service structures.
- (ff) Fences.
- (gg) Floral and garden supply including nursery, need not be enclosed.
- (hh) Gift, novelty or souvenir store.
- (ii) Grocery store.
- (jj) Hardware store.
- (kk) Hobby store.
- (ll) Hotels and motels.
- (mm) Institution of religious, charitable or philanthropic nature.
- (nn) Interior decorating store and supply.
- (oo) Janitorial services.
- (pp) Laboratory, medical or dental.
- (qq) Laundry or dry-cleaning.
- (rr) Leather goods store - retail only.
- (ss) Libraries, auditoriums, museums, or other cultural institutions.
- (tt) Locksmith or key stand, need not be enclosed.
- (uu) Medical appliance sales and fittings.
- (vv) Medical intern or resident doctor's quarters.
- (ww) Mortuary, funeral home.
- (xx) Motorcycle shop.
- (yy) Office condominium.
- (zz) Office of any type.
- (aaa) Optical services and supply.
- (bbb) Parking of vehicles, need not be enclosed.
- (ccc) Pet store, including animal clinic.
- (ddd) Private recreation facilities; tennis court, golf club, swimming pool.
- (eee) Public and private utilities.
- (fff) Rehabilitation center for handicapped persons.
- (ggg) Restaurants or other eating places including drive-ins.
- (hhh) School, public or private.
- (iii) Shoe repair shops.
- (jjj) Sporting goods store.
- (kkk) Stationery store.
- (lll) Tailor shops.
- (mmm) Theater.
- (nnn) Toy store.
- (ooo) Travel bureau or ticket agency.
- (ppp) Variety stores.

(2) Every permitted use allowed shall be constructed on a permanent foundation and be connected to municipal utilities.

(3) Only 1 business permitted per lot except when located in the same structure.

(D) *Conditional uses.* The following uses may be permitted:

- (1) Automobile wash, service or repair;
- (2) Convenience store;

(3) Taxidermist;
 (4) Home and building supply store;
 (5) Pawnshop;
 (6) Dwelling units located in business establishments above the ground floor as regulated by this section;

(7) Landing or take-off area for rotorcraft, not including maintenance, repair, fueling, or hangar facilities;

(E) *Accessory uses.* The following is a permitted use: Storage building not exceeding 600 square feet.

(F) *Lot area.*

(1) For each permitted or conditional use there shall be provided not less than 15,000 square feet of lot area.

(2) For each dwelling unit located in business establishments above the ground floor there shall be provided 1,000 square feet of lot area in addition to that amount required for the business establishment.

(G) *Lot width and depth.*

(1) *Lot width.* Every lot upon which there is a permitted or conditional use shall require a minimum width of 100 feet at the building setback line.

(2) *Lot depth.* Every lot or plot upon which there is a permitted or conditional use shall require a minimum depth of 150 feet.

(H) *Yard regulations.* The minimum yard regulations are as follows:

Front Yard	
Main and Accessory Buildings	420 feet
Parking Areas	10 feet
Side Yards	
Main and Accessory Buildings	10 feet plus 1 additional foot or fraction thereof of building in excess of 45 feet
Parking Areas	10 feet
Rear Yard	
Main and Accessory Buildings	215 feet
Parking Areas	10 feet

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(I) Where a lot is located at the intersection of two or more streets there shall be a front yard on each street side.

(I) *Ground coverage.* Not more than 70% of a lot shall be covered by all main and accessory buildings.

(J) *Height regulations.* No structure hereafter erected or altered shall exceed 3 stories or 45 feet in height. Accessory buildings shall not exceed 1 story in height.
(1975 Code, § 11.14) (Am. Ord. 30, passed 2-22-1983; Am. Ord. 8, 4th series, passed 1-16-2007; Am. Ord. 17, 4th series, passed 1-17-2008; Am. Ord. 30, 4th series, passed 1-4-2010)

PROPOSED AMENDMENTS TO B-1, B-2 and B-3 BUILDING SETBACKS

A REQUEST FROM THE CITY OF NORTH MANKATO

THE CITY OF NORTH MANKATO

SUBJECT: Proposed Setback Amendments in B-1, B-2 and B-3 Zoning Districts

APPLICANT: City of North Mankato

LOCATION: B-1, B-2 and B-3 Zoning Districts

EXISTING ZONING:

DATE OF HEARING: July 14, 2016

DATE OF REPORT: July 7, 2016

REPORTED BY: Michael Fischer, City Planner

APPLICATION SUBMITTED

Request to consider setback changes within B-1, B-2 and B-3 zoning districts

COMMENT

In March of 2016, staff presented a request to the Planning Commission to consider the reduction of building setbacks in commercial zoning districts. Information was provided on the City's current commercial building setbacks as well as a survey of setbacks used by other cities. After discussion of the request, the Planning Commission took no formal action.

In June of 2016, staff asked the Planning Commission to again consider amendments to building setbacks in commercial zoning districts. After continued discussion, the Planning Commission recommended that staff present options for commercial setback changes at a future meeting.

In 2006, a major recodification of the City Code occurred. As a result, there were many changes made throughout the City Code including changes to commercial setbacks. Specifically, increasing the front yard setback in the B-3 district from 15 feet to 40 feet. The following are the current setbacks in B-1, B-2 and B-3 zoning districts as well as the setbacks prior to 2006:

Current Commercial Setbacks

	<u>Front</u>	<u>Side</u>	<u>Rear</u>
B-1	30 feet	10 feet	25 feet
B-2	40 feet	10 feet	25 feet
B-3	40 feet	10 feet	25 feet

Commercial Setbacks Prior to 2006

	<u>Front</u>	<u>Side</u>	<u>Rear</u>
B-1	30 feet	10 feet	25 feet
B-2	Determined by Planning Commission and City Council		
B-3	15 feet	10 feet	15 feet

The following are two examples of properties/projects in B-2 and B-3 zoning districts effected by the increased front yard setback changes:

Casey's Convenience Store – 1375 Lookout Drive

In 1998, Casey's built a store on Lookout Drive using the following B-3 setbacks:

Front - 15 feet

Side - 10 feet

Rear - 15 feet

As Casey's has frontage on two street sides, there are two front yard setbacks. Attached as Exhibit A is site plan showing the placement of the building on the property as well as the current building setbacks.

Recently, Casey's has contacted the City about constructing an addition to the south side of the building. As the front yard setback has changed from 15 feet to 40 feet since construction of the building, expansion issues have developed due to the number a street frontages.

Mankato Clinic – 1575 Lookout Drive

In 1984, Mankato Clinic built a facility using the following B-1 setbacks:

Front – 30 feet

Side – 10 feet

Rear – 25 feet

The current setbacks are:

Front – 40 feet

Side – 10 feet

Rear – 25 feet

Parking – 10 feet

In 2016, the Mankato Clinic replatted and rezoned their property to accommodate the demolition of the existing building and construction of a new building. Using the current setbacks in a B-2 zoning district, Exhibit B shows the location of a future clinic building on the Lookout Drive property. Due the fact the property has frontage on three (3) street sides, the property is subject to three (3) front

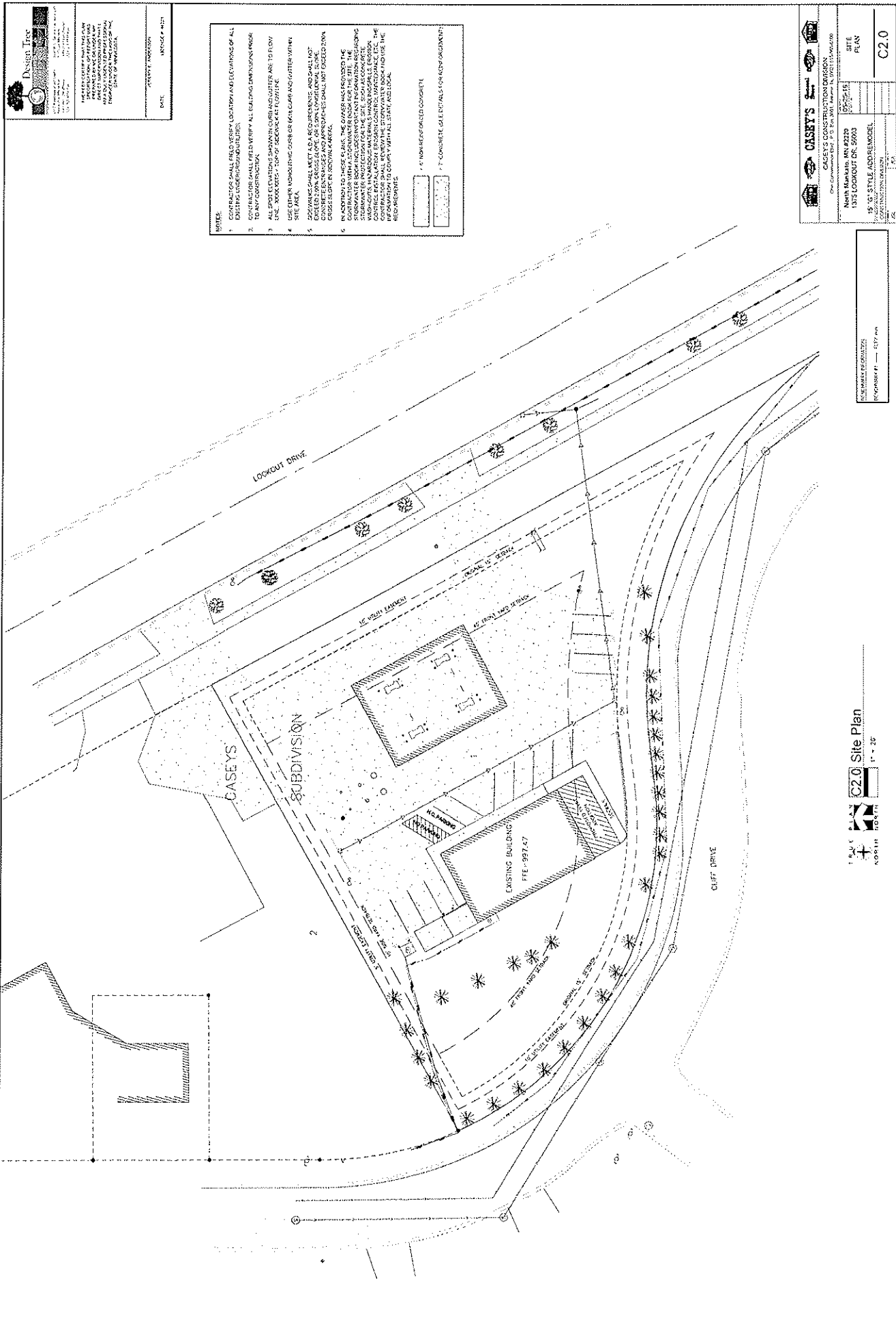
yard setbacks, each forty (40) feet in distance. Attached as Exhibit C is a site plan showing the location of the clinic building utilizing a 15 foot front yard setback along Lookout Drive.

Attached as Exhibit D is a survey of commercial setbacks used by other comparable cities.

RECOMMENDATION

After review of the current building setbacks in commercial zoning districts in comparison to those used prior to 2006, staff recommends amending the current setbacks in B-1, B-2 and B-3 zoning districts as follows:

	<u>Front</u>	<u>Side</u>	<u>Rear</u>	<u>Parking</u>
B-1	15 feet	10 feet	15 feet	10 feet
B-2	15 feet	10 feet	15 feet	10 feet
B-3	15 feet	10 feet	15 feet	10 feet





1 Site Concept with 40' Setbacks

No Scale



2 Site Concept with 15' Setbacks

No Scale

EXHIBIT D

CITY	ZONE	FRONT YARD	SIDE YARD	REAR YARD
<u>North Mankato</u>	B-1	30'	10'	25'
	B-2	40'	10'	25'
	B-3	40'	10'	25'
<u>Mankato</u>	B-1	15'	3' impervious surface; 6' building portion	3' impervious surface; 6' building portion
	B-2	15'	3' impervious surface; 6' building portion	3' impervious surface; 6' building portion
	B-3	15'	3' impervious surface; 6' building portion	3' impervious surface; 6' building portion
<u>New Ulm</u>	B-1	20'	10'	20'
	B-2	20'	10'	10'
	B-3	0'	0'	0'
<u>St. Peter</u>	C-3	20'	15'	25'
	C-4	20'	10'	10'
	C-5	20'	25'	25'
<u>Fairbault</u>	C-1	25'	10'	10'
	C-2	25'	10'	10'
	C-3	25'	10'	10'
	CBD	0'	0'	10'
<u>Owatonna</u>	B-1	30'	15'	20'
	B-2	30'	10'	20'
	B-3	0'	0'	12'
<u>Shakopee</u>	B-1	30'	20'; 75' from residential zones	30'; 75' from residential zones
	B-2	30'	20'; 50' from residential zones	30'; 50' from residential zones
	B-3	0'	0'	0'
<u>Belle Plaine</u>	B-2	35'	20' interior; 35' abutting a residential district	20'; 35' abutting residential district
	B-3	0'	0'	20'
<u>Jordan</u>	C-1	20'	10' Interior Lot; 20' Corner Lot	20'
	C-2	0'	0'	0'
	C-3	20'	15' Interior Lot; 20' Corner Lot	20'
<u>Brainerd</u>	B-1	20'	5' internal lot; 20' corner lot	25'
	B-2	20'	5' internal lot; 20' corner lot	10'
	B-3	0'	0'	0'
	B-4	30'	20' internal lot; 30' corner lot	20'
	B-5	50'	25' internal lot; 50' corner lot	50'

CITY OF NORTH MANKATO

REQUEST FOR COUNCIL ACTION



Agenda Item: #12D	Department: Finance	Council Meeting Date: 08/01/2016																												
TITLE OF ISSUE: Consider Resolution Awarding the Sale of General Obligation Bonds, Series 2016A, in the Original Aggregate Principal Amount of \$1,805,000; Fixing their Form and Specifications; Directing their Execution and Delivery; and Providing for their Payment.																														
BACKGROUND AND SUPPLEMENTAL INFORMATION: Tammy Omdal from Northland Securities will be present to discuss the sale. The sale of the bonds will occur on August 1, 2016 and an updated resolution will be provided to Council.																														
<i>If additional space is required, attach a separate sheet</i>																														
REQUESTED COUNCIL ACTION: Adopt Resolution Awarding the Sale of General Obligation Bonds, Series 2016A, in the Original Aggregate Principal Amount of \$1,805,000; Fixing their Form and Specifications; Directing their Execution and Delivery; and Providing for their Payment.																														
For Clerk's Use: Motion By: _____ Second By: _____ Vote Record: <table style="margin-left: 40px; border: none;"> <tr> <td style="text-align: center;">Aye</td> <td style="text-align: center;">Nay</td> <td></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Spears</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Steiner</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Norland</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Freyberg</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td>Dehen</td> </tr> </table>	Aye	Nay		_____	_____	Spears	_____	_____	Steiner	_____	_____	Norland	_____	_____	Freyberg	_____	_____	Dehen	SUPPORTING DOCUMENTS ATTACHED <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">Resolution</td> <td style="text-align: center;">Ordinance</td> <td style="text-align: center;">Contract</td> <td style="text-align: center;">Minutes</td> <td style="text-align: center;">Map</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> Other (specify) _____ _____ _____ _____ _____		Resolution	Ordinance	Contract	Minutes	Map	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/> Workshop <input checked="" type="checkbox"/> Regular Meeting <input type="checkbox"/> Special Meeting	<input type="checkbox"/> Refer to: _____ <input type="checkbox"/> Table until: _____ <input type="checkbox"/> Other: _____																													

RESOLUTION NO. _____

**A RESOLUTION AWARDING THE SALE OF GENERAL
OBLIGATION BONDS, SERIES 2016A, IN THE ORIGINAL
AGGREGATE PRINCIPAL AMOUNT OF \$1,805,000; FIXING
THEIR FORM AND SPECIFICATIONS; DIRECTING THEIR
EXECUTION AND DELIVERY; AND PROVIDING FOR THEIR
PAYMENT**

BE IT RESOLVED By the City Council of the City of North Mankato, Nicollet County, Minnesota (the "City") as follows:

Section 1. Sale of Bonds.

1.02. Authorization. Pursuant to a resolution adopted by the City Council of the City on July 5, 2016 (the "Intent Resolution"), the City Council of the City provided preliminary approval to the issuance of the City's General Obligation Bonds, Series 2016A (the "Bonds"). Proceeds of the Bonds will be used to finance (i) the construction of certain assessable public improvements in the City designated as the 2016 Roe Crest Drive Improvement Project (Project No. 15-02ABCDE) (the "Assessable Improvements"), pursuant to Minnesota Statutes, Chapters 429 and 475, as amended (collectively, the "Improvement Act"); (ii) the construction of various improvements to the City's water and sewer systems (the "Utility Improvements"), pursuant to Minnesota Statutes, Chapters 444 and 475, as amended (collectively, the "Utility Revenue Act"); and (iii) the acquisition of items of capital equipment provided in Exhibit A of the Intent Resolution or similar authorized equipment (the "Equipment"), pursuant to Minnesota Statutes, Chapter 475, as amended, and Minnesota Statutes, Section 412.301 (collectively, the "Equipment Acquisition Act").

1.02. Award to the Purchaser and Interest Rates. The proposal of _____ (the "Purchaser") to purchase the Bonds is hereby found and determined to be a reasonable offer and is hereby accepted, the proposal being to purchase the Bonds at a price of \$_____ (par amount of \$1,805,000, [plus original issue premium of \$_____,] [less original issue discount of \$_____,] less underwriter's discount of \$_____), plus accrued interest to date of delivery, for Bonds bearing interest as follows:

<u>Year</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Interest Rate</u>
2018	%	2026	%
2019		2027	
2020		2028	
2021		2029	
2022		2030	
2023		2031	
2024		2032	
2025			

1.03. Purchase Contract. The sum of \$_____, being the amount proposed by the Purchaser in excess of \$1,782,437.50, shall be credited to the accounts in the Debt Service Fund hereinafter created or deposited in the accounts of the Project Fund hereinafter created, as determined by the City Administrator in

consultation with the City's municipal advisor. The City Administrator is directed to retain the good faith check of the Purchaser, pending completion of the sale of the Bonds. The Mayor and City Administrator are directed to execute a contract with the Purchaser on behalf of the City.

1.04. Terms and Principal Amounts of the Bonds. The City will forthwith issue and sell the Bonds pursuant to the Improvement Act, the Utility Revenue Act, and the Equipment Acquisition Act (collectively, the "Act"), in the total principal amount of \$1,805,000, originally dated as of August 15, 2016, in the denomination of \$5,000 each or any integral multiple thereof, numbered No. R-1, upward, bearing interest as above set forth, and maturing serially on February 1 in the years and amounts as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2018	\$	2026	\$
2019		2027	
2020		2028	
2021		2029	
2022		2030	
2023		2031	
2024		2032	
2025			

(a) \$920,000 of the Bonds (the "Improvement Bonds"), maturing on February 1 of the years and in the amounts set forth below, are being used to finance the construction of the Assessable Improvements:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2018	\$	2026	\$
2019		2027	
2020		2028	
2021		2029	
2022		2030	
2023		2031	
2024		2032	
2025			

(b) \$420,000 of the Bonds (the "Utility Revenue Bonds"), maturing on February 1 of the years and in the amounts set forth below, are being used to finance the construction of the Utility Improvements:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2018	\$	2026	\$
2019		2027	
2020		2028	
2021		2029	
2022		2030	
2023		2031	
2024		2032	
2025			

(c) The remainder of the Bonds in the principal amount of \$465,000 (the "Equipment Certificates"), maturing on February 1 of the years and in the amounts set forth below, are being used to finance the acquisition of the Equipment:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2018	\$	2023	\$
2019		2024	
2020		2025	
2021		2026	
2022			

1.05. Optional Redemption. The City may elect on February 1, 2024, and on any day thereafter to prepay Bonds due on or after February 1, 2025. Redemption may be in whole or in part and if in part, at the option of the City and in such manner as the City will determine. If less than all Bonds of a maturity are called for redemption, the City will notify DTC (as defined in Section 7 hereof) of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interests in such maturity to be redeemed. Prepayments will be at a price of par plus accrued interest.

[1.06. Mandatory Redemption; Term Bonds. To be completed if Term Bonds are requested by the Purchaser.]

Section 2. Registration and Payment.

2.01. Registered Form. The Bonds will be issued only in fully registered form. The interest thereon and, upon surrender of each Bond, the principal amount thereof, is payable by check or draft issued by the Registrar described herein.

2.02. Dates; Interest Payment Dates. Each Bond will be dated as of the last interest payment date preceding the date of authentication to which interest on the Bond has been paid or made available for payment, unless (i) the date of authentication is an interest payment date to which interest has been paid or made available for payment, in which case the Bond will be dated as of the date of authentication, or (ii) the date of authentication is prior to the first interest payment date, in which case the Bond will be dated as of the date of original issue. The interest on the Bonds is payable on February 1 and August 1 of each year, commencing August 1, 2017, to the registered owners of record thereof as of the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day.

2.03. Registration. The City will appoint a bond registrar, transfer agent, authenticating agent and paying agent (the "Registrar"). The effect of registration and the rights and duties of the City and the Registrar with respect thereto are as follows:

(a) Register. The Registrar must keep at its principal corporate trust office a bond register in which the Registrar provides for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

(b) Transfer of Bonds. Upon surrender for transfer of a Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar will authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the fifteenth day of the month preceding each interest payment date and until that interest payment date.

(c) Exchange of Bonds. When Bonds are surrendered by the registered owner for exchange the Registrar will authenticate and deliver one or more new Bonds of a like aggregate principal amount and maturity as requested by the registered owner or the owner's attorney in writing.

(d) Cancellation. Bonds surrendered upon transfer or exchange will be promptly cancelled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When a Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the Bond until the Registrar is satisfied that the endorsement on the Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar will incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name a Bond is registered in the bond register as the absolute owner of the Bond, whether the Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on the Bond and for all other purposes, and payments so made to a registered owner or upon the owner's order will be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. The Registrar may impose a charge upon the owner thereof for a transfer or exchange of Bonds sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to the transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. If a Bond becomes mutilated or is destroyed, stolen or lost, the Registrar will deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of the mutilated Bond or in lieu of and in substitution for any Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that the Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar an appropriate bond or indemnity in form, substance and amount satisfactory to it and as

provided by law, in which both the City and the Registrar must be named as obligees. Bonds so surrendered to the Registrar will be cancelled by the Registrar and evidence of such cancellation must be given to the City. If the mutilated, destroyed, stolen or lost Bond has already matured or been called for redemption in accordance with its terms it is not necessary to issue a new Bond prior to payment.

(i) Redemption. In the event any of the Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by the Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) to the registered owner of each Bond to be redeemed at the address shown on the registration books kept by the Registrar and by publishing the notice if required by law. Failure to give notice by publication or by mail to any registered owner, or any defect therein, will not affect the validity of the proceedings for the redemption of Bonds. Bonds so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

2.04. Appointment of Initial Registrar. The City appoints U.S. Bank National Association, Saint Paul, Minnesota, as the initial Registrar. The Mayor and the City Administrator are authorized to execute and deliver, on behalf of the City, a contract with the Registrar. Upon merger or consolidation of the Registrar with another corporation, if the resulting corporation is a bank or trust company authorized by law to conduct such business, the resulting corporation is authorized to act as successor Registrar. The City agrees to pay the reasonable and customary charges of the Registrar for the services performed. The City reserves the right to remove the Registrar upon 30 days' notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar must deliver all cash and Bonds in its possession to the successor Registrar and must deliver the bond register to the successor Registrar. On or before each principal or interest due date, without further order of the City Council, the City Administrator must transmit to the Registrar moneys sufficient for the payment of all principal and interest then due.

2.05. Execution, Authentication and Delivery. The Bonds will be prepared under the direction of the City Administrator and executed on behalf of the City by the signatures of the Mayor and the City Administrator, provided that those signatures may be printed, engraved or lithographed facsimiles of the originals. If an officer whose signature or a facsimile of whose signature appears on the Bonds ceases to be such officer before the delivery of a Bond, that signature or facsimile will nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until delivery. Notwithstanding such execution, a Bond will not be valid or obligatory for any purpose or entitled to any security or benefit under this resolution unless and until a certificate of authentication on the Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificates of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on a Bond is conclusive evidence that it has been authenticated and delivered under this resolution. When the Bonds have been so prepared, executed and authenticated, the City Administrator will deliver the same to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed, and the Purchaser is not obligated to see to the application of the purchase price.

2.06. Temporary Bonds. The City may elect to deliver in lieu of printed definitive Bonds one or more typewritten temporary Bonds in substantially the form set forth in EXHIBIT B attached hereto with such changes as may be necessary to reflect more than one maturity in a single temporary bond. Upon the execution and delivery of definitive Bonds the temporary Bonds will be exchanged therefor and cancelled.

Section 3. Form of Bond.

3.01. Execution of the Bonds. The Bonds will be printed or typewritten in substantially the form set forth in EXHIBIT B.

3.02. Approving Legal Opinion. The City Administrator is authorized and directed to obtain a copy of the proposed approving legal opinion of Kennedy & Graven, Chartered, Minneapolis, Minnesota, which is to be complete except as to dating thereof and cause the opinion to be printed on or accompany each Bond.

Section 4. Payment; Security; Pledges and Covenants.

4.01. Debt Service Fund. The Bonds will be payable from the General Obligation Bonds, Series 2016A Debt Service Fund (the "Debt Service Fund") hereby created. The Debt Service Fund shall be administered and maintained by the City Administrator as a bookkeeping account separate and apart from all other funds maintained in the official financial records of the City. The City will maintain the following accounts in the Debt Service Fund: the "Assessable Improvements Account," the "Utility Improvements Account," and the "Equipment Account." Amounts in the Assessable Improvements Account are irrevocably pledged to the Improvement Bonds, amounts in the Utility Improvements Account are irrevocably pledged to the Utility Revenue Bonds, and amounts in the Equipment Account are irrevocably pledged to the Equipment Certificates.

(a) Assessable Improvements Account. The proceeds of special assessments levied or to be levied (the "Assessments") and general taxes hereinafter levied for the Assessable Improvements described herein are hereby pledged to the Assessable Improvements Account of the Debt Service Fund. There is also appropriated to the Assessable Improvements Account a pro rata portion of (i) amounts over the minimum purchase price paid by the Purchaser, to the extent designated for deposit in the Debt Service Fund in accordance with Section 1.03 hereof; and (ii) accrued interest paid by the Purchaser upon closing and delivery of the Bonds.

(b) Utility Improvements Account. The City will continue to maintain and operate its Water Fund and Sewer Fund to which will be credited all gross revenues of the water system and sewer system, respectively, and out of which will be paid all normal and reasonable expenses of current operations of such systems. Any balances therein are deemed net revenues (the "Net Revenues") and will be transferred, from time to time, to the Utility Improvements Account of the Debt Service Fund, which Utility Improvements Account will be used only to pay principal of and interest on the Utility Revenue Bonds and any other bonds similarly authorized. There will always be retained in the Utility Improvements Account a sufficient amount to pay principal of and interest on all the Utility Revenue Bonds, and the City Administrator must report any current or anticipated deficiency in the Utility Improvements Account to the City Council. There is also appropriated to the Utility Improvements Account a pro rata portion of (i) amounts over the minimum purchase price paid by the Purchaser, to the extent designated for deposit in the Debt Service Fund in accordance with Section 1.03 hereof; and (ii) accrued interest paid by the Purchaser upon closing and delivery of the Bonds.

(c) Equipment Account. The proceeds of general taxes hereinafter levied for the acquisition of the Equipment are hereby pledged to the Equipment Account of the Debt Service Fund. There is also appropriated to the Equipment Account a pro rata portion of (i) amounts over the minimum purchase price paid by the Purchaser, to the extent designated for deposit in the Debt

Service Fund in accordance with Section 1.03 hereof; and (ii) accrued interest paid by the Purchaser upon closing and delivery of the Bonds.

4.02. Project Fund. The City hereby creates the General Obligation Bonds, Series 2016A Project Fund (the "Project Fund"). The City will maintain the following accounts in the Project Fund: the "Assessable Improvements Account," the "Utility Improvements Account," and the "Equipment Account." Amounts in the Assessable Improvements Account are irrevocably pledged to the Improvement Bonds, amounts in the Utility Improvements Account are irrevocably pledged to the Utility Revenue Bonds, and amounts in the Equipment Account are irrevocably pledged to the Equipment Certificates.

(a) Assessable Improvements Account. Proceeds of the Improvement Bonds, less the appropriations made in Section 4.01(a) hereof, together with any other funds appropriated for the Assessable Improvements and Assessments and taxes collected during construction of the Assessable Improvements, will be deposited in the Assessable Improvements Account of the Project Fund to be used solely to defray expenses of the Assessable Improvements and the payment of principal of and interest on the Improvement Bonds prior to the completion and payment of all costs of the Assessable Improvements. Any balance remaining in the Assessable Improvements Account after completion of the Assessable Improvements may be used to pay the cost in whole or in part of any other improvement instituted under the Improvement Act under the direction of the City Council. When the Assessable Improvements are completed and the cost thereof paid, the Assessable Improvements Account is to be closed and subsequent collections of special assessments and ad valorem taxes for the Assessable Improvements are to be deposited in the Assessable Improvements Account of the Debt Service Fund.

(b) Utility Improvements Account. Proceeds of the Utility Revenue Bonds, less the appropriations made in Section 4.01(b) hereof, will be deposited in the Utility Improvements Account of the Project Fund to be used solely to defray expenses of the Utility Improvements. When the Utility Improvements are completed and the cost thereof paid, the Utility Improvements Account of the Project Fund is to be closed and any funds remaining may be deposited in the Utility Improvements Account of the Debt Service Fund.

(c) Equipment Account. The proceeds of the Equipment Certificates, less the appropriations made in Section 4.01(c) hereof, together with any other funds appropriated for the purchase of Equipment, will be deposited in the Equipment Account of the Project Fund to be used solely to defray expenses of the Equipment. When the Equipment is purchased and the cost thereof paid, the Equipment Account of the Project Fund is to be closed and any moneys remaining therein shall be transferred to the Equipment Account of the Debt Service Fund.

4.03. City Covenants with Respect to the Improvement Bonds. It is hereby determined that the Improvements will directly and indirectly benefit abutting property, and the City hereby covenants with the holders from time to time of the Bonds as follows:

(a) The City has caused or will cause the Assessments for the Assessable Improvements to be promptly levied so that the first installment will be collectible not later than 2017 and will take all steps necessary to assure prompt collection, and the levy of the Assessments is hereby authorized. The City Council will cause to be taken with due diligence all further actions that are required for the construction of each Assessable Improvement financed wholly or partly from the proceeds of the Improvement Bonds, and will take all further actions necessary for the final and valid levy of the Assessments and the appropriation of any other funds needed to pay the Bonds and interest thereon when due.

(b) In the event of any current or anticipated deficiency in Assessments and ad valorem taxes, the City Council will levy additional ad valorem taxes in the amount of the current or anticipated deficiency.

(c) The City will keep complete and accurate books and records showing receipts and disbursements in connection with the Assessable Improvements, Assessments and ad valorem taxes levied therefor and other funds appropriated for their payment, collections thereof and disbursements therefrom, monies on hand, and the balance of unpaid Assessments.

(d) The City will cause its books and records to be audited at least annually and will furnish copies of such audit reports to any interested person upon request.

(e) At least twenty percent (20%) of the cost of the Assessable Improvements described herein will be specially assessed against benefited properties.

4.04. City Covenants with Respect to the Utility Revenue Bonds. The City Council covenants and agrees with the holders of the Bonds that so long as any of the Utility Revenue Bonds remain outstanding and unpaid, it will keep and enforce the following covenants and agreements:

(a) The City will continue to maintain and efficiently operate the water system and sewer system as public utilities and conveniences free from competition of other like municipal utilities and will cause all revenues therefrom to be deposited in bank accounts and credited to the Water Fund and the Sewer Fund, respectively, as hereinabove provided, and will make no expenditures from those accounts except for a duly authorized purpose and in accordance with this resolution.

(b) The City will also maintain the Utility Improvements Account of the Debt Service Fund as a separate account and will cause money to be credited thereto from time to time, out of Net Revenues from the water system and the sewer system in sums sufficient to pay principal of and interest on the Utility Revenue Bonds when due.

(c) The City will keep and maintain proper and adequate books of records and accounts separate from all other records of the City in which will be complete and correct entries as to all transactions relating to the water system and the sewer system and which will be open to inspection and copying by any Bondholder, or the Bondholder's agent or attorney, at any reasonable time, and it will furnish certified transcripts therefrom upon request and upon payment of a reasonable fee therefor, and said account will be audited at least annually by a qualified public accountant and statements of such audit and report will be furnished to all Bondholders upon request.

(d) The City Council will cause persons handling revenues of the water system and the sewer system to be bonded in reasonable amounts for the protection of the City and the Bondholders and will cause the funds collected on account of the operations of such systems to be deposited in a bank whose deposits are guaranteed under the Federal Deposit Insurance Law.

(e) The City Council will keep the water system and the sewer system insured at all times against loss by fire, tornado and other risks customarily insured against with an insurer or insurers in good standing, in such amounts as are customary for like plants, to protect the

holders, from time to time, of the Bonds and the City from any loss due to any such casualty and will apply the proceeds of such insurance to make good any such loss.

(f) The City and each and all of its officers will punctually perform all duties with reference to the water system and the sewer system as required by law.

(g) The City will impose and collect charges of the nature authorized by Section 444.075 of the Utility Revenue Act, at the times and in the amounts required to produce net revenues adequate to pay all principal and interest when due on the Utility Revenue Bonds and to create and maintain such reserves securing said payments as may be provided in this resolution.

(h) The City Council will levy general ad valorem taxes on all taxable property in the City when required to meet any deficiency in net revenues.

4.05. General Obligation Pledge. For the prompt and full payment of the principal and interest on the Bonds, as the same respectively become due, the full faith, credit and taxing powers of the City will be and are hereby irrevocably pledged. If the balance in the Debt Service Fund is ever insufficient to pay all principal and interest then due on the Bonds and any other bonds payable therefrom, the deficiency will be promptly paid out of monies in the general fund of the City which are available for such purpose, and such general fund may be reimbursed with or without interest from the Debt Service Fund when a sufficient balance is available therein.

4.06. Pledge of Tax Levy. For the purpose of paying the principal of and interest on the Equipment Certificates and a portion of the principal of and interest on the Improvement Bonds, there is levied a direct annual irrepealable ad valorem tax (the "Taxes") upon all of the taxable property in the City, which will be spread upon the tax rolls and collected with and as part of other general taxes of the City. The Taxes will be credited to the Assessable Improvements Account of the Debt Service Fund above provided and will be in the years and amounts as attached hereto as EXHIBIT C.

4.07. Certification to Manager of Public Services as to Debt Service Fund Amount. It is hereby determined that the estimated collections of Assessments, Net Revenues, and Taxes will produce at least five percent in excess of the amount needed to meet when due the principal and interest payments on the Bonds. The tax levy herein provided is irrepealable until all of the Bonds are paid, provided that at the time the City makes its annual tax levies the City Administrator may certify to the Manager of Public Services of Nicollet County, Minnesota (the "Manager of Public Services") the amount available in the Debt Service Fund to pay principal and interest due during the ensuing year, and the Manager of Public Services will thereupon reduce the levy collectible during such year by the amount so certified.

4.08. Registration of Resolution. The City Administrator is authorized and directed to file a certified copy of this resolution with the Manager of Public Services and to obtain the certificate required by Section 475.63 of the Act.

Section 5. Authentication of Transcript.

5.01. City Proceedings and Records. The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to the attorneys approving the Bonds, certified copies of proceedings and records of the City relating to the Bonds and to the financial condition and affairs of the City, and such other certificates, affidavits and transcripts as may be required to show the facts within their knowledge or as shown by the books and records in their custody and under their control, relating to the

validity and marketability of the Bonds, and such instruments, including any heretofore furnished, will be deemed representations of the City as to the facts stated therein.

5.02. Certification as to Official Statement. The Mayor and the City Administrator are authorized and directed to certify that they have examined the Official Statement prepared and circulated in connection with the issuance and sale of the Bonds and that to the best of their knowledge and belief the Official Statement is a complete and accurate representation of the facts and representations made therein as of the date of the Official Statement.

5.03. Other Certificates. The Mayor and the City Administrator are hereby authorized and directed to furnish to the Purchaser at the closing such certificates as are required as a condition of sale. Unless litigation shall have been commenced and be pending questioning the Bonds or the organization of the City or incumbency of its officers, at the closing the Mayor and the City Administrator shall also execute and deliver to the Purchaser a suitable certificate as to absence of material litigation, and the City Administrator shall also execute and deliver a certificate as to payment for and delivery of the Bonds.

Section 6. Tax Covenant.

6.01. Tax-Exempt Bonds. The City covenants and agrees with the holders from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder, in effect at the time of such actions, and that it will take or cause its officers, employees or agents to take, all affirmative action within its power that may be necessary to ensure that such interest will not become subject to taxation under the Code and applicable Treasury Regulations, as presently existing or as hereafter amended and made applicable to the Bonds.

6.02. No Rebate Required.

(a) The City will comply with requirements necessary under the Code to establish and maintain the exclusion from gross income of the interest on the Bonds under Section 103 of the Code, including without limitation requirements relating to temporary periods for investments, limitations on amounts invested at a yield greater than the yield on the Bonds, and the rebate of excess investment earnings to the United States, if the Bonds (together with other obligations reasonably expected to be issued in calendar year 2016) exceed the small-issuer exception amount of \$5,000,000.

(b) For purposes of qualifying for the small issuer exception to the federal arbitrage rebate requirements, the City finds, determines and declares that the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the City (and all subordinate entities of the City) during the calendar year in which the Bonds are issued and outstanding at one time is not reasonably expected to exceed \$5,000,000, all within the meaning of Section 148(f)(4)(D) of the Code.

6.03. Not Private Activity Bonds. The City further covenants not to use the proceeds of the Bonds or to cause or permit them or any of them to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

6.04. Qualified Tax-Exempt Obligations. In order to qualify the Bonds as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code, the City makes the following factual statements and representations:

- (a) the Bonds are not “private activity bonds” as defined in Section 141 of the Code;
- (b) the City designates the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code;
- (c) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) which will be issued by the City (and all subordinate entities of the City) during calendar year 2016 will not exceed \$10,000,000; and
- (d) not more than \$10,000,000 of obligations issued by the City during calendar year 2016 have been designated for purposes of Section 265(b)(3) of the Code.

6.05. Procedural Requirements. The City will use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designations made by this section.

Section 7. Book-Entry System; Limited Obligation of City.

7.01. DTC. The Bonds will be initially issued in the form of a separate single typewritten or printed fully registered Bond for each of the maturities set forth in Section 1.04 hereof. Upon initial issuance, the ownership of each Bond will be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York, and its successors and assigns (“DTC”). Except as provided in this section, all of the outstanding Bonds will be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC.

7.02. Participants. With respect to Bonds registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC, the City, the Registrar and the Paying Agent will have no responsibility or obligation to any broker dealers, banks and other financial institutions from time to time for which DTC holds Bonds as securities depository (the “Participants”) or to any other person on behalf of which a Participant holds an interest in the Bonds, including but not limited to any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant or any other person (other than a registered owner of Bonds, as shown by the registration books kept by the Registrar), of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any Participant or any other person, other than a registered owner of Bonds, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The City, the Registrar and the Paying Agent may treat and consider the person in whose name each Bond is registered in the registration books kept by the Registrar as the holder and absolute owner of such Bond for the purpose of payment of principal, premium and interest with respect to such Bond, for the purpose of registering transfers with respect to such Bonds, and for all other purposes. The Paying Agent will pay all principal of, premium, if any, and interest on the Bonds only to or on the order of the respective registered owners, as shown in the registration books kept by the Registrar, and all such payments will be valid and effectual to fully satisfy and discharge the City’s obligations with respect to payment of principal of, premium, if any, or interest on the Bonds to the extent of the sum or sums so paid. No person other than a registered owner of Bonds, as shown in the registration books kept by the Registrar, will receive a certificated Bond evidencing the obligation of this resolution. Upon delivery by DTC to the City Administrator of a written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the words “Cede & Co.” will refer to such new nominee of DTC; and upon receipt of

such a notice, the City Administrator will promptly deliver a copy of the same to the Registrar and Paying Agent.

7.03. Representation Letter. The City has heretofore executed and delivered to DTC a Blanket Issuer Letter of Representations (the "Representation Letter") which will govern payment of principal of, premium, if any, and interest on the Bonds and notices with respect to the Bonds. Any Paying Agent or Registrar subsequently appointed by the City with respect to the Bonds will agree to take all action necessary for all representations of the City in the Representation Letter with respect to the Registrar and Paying Agent, respectively, to be complied with at all times.

7.04. Transfers Outside Book-Entry System. In the event the City, by resolution of the City Council, determines that it is in the best interests of the persons having beneficial interests in the Bonds that they be able to obtain Bond certificates, the City will notify DTC, whereupon DTC will notify the Participants, of the availability through DTC of Bond certificates. In such event the City will issue, transfer and exchange Bond certificates as requested by DTC and any other registered owners in accordance with the provisions of this resolution. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and discharging its responsibilities with respect thereto under applicable law. In such event, if no successor securities depository is appointed, the City will issue and the Registrar will authenticate Bond certificates in accordance with this resolution and the provisions hereof will apply to the transfer, exchange and method of payment thereof.

7.05. Payments to Cede & Co. Notwithstanding any other provision of this resolution to the contrary, so long as a Bond is registered in the name of Cede & Co., as nominee of DTC, payments with respect to principal of, premium, if any, and interest on the Bond and all notices with respect to the Bond will be made and given, respectively in the manner provided in DTC's Operational Arrangements, as set forth in the Representation Letter.

Section 8. Continuing Disclosure.

8.01. Execution of Continuing Disclosure Certificate. "Continuing Disclosure Certificate" means that certain Continuing Disclosure Certificate executed by the Mayor and City Administrator and dated the date of issuance and delivery of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

8.02. City Compliance with Provisions of Continuing Disclosure Certificate. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this resolution, failure of the City to comply with the Continuing Disclosure Certificate is not to be considered an event of default with respect to the Bonds; however, any Bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this section.

Section 9. Defeasance. When all Bonds and all interest thereon have been discharged as provided in this section, all pledges, covenants and other rights granted by this resolution to the holders of the Bonds will cease, except that the pledge of the full faith and credit of the City for the prompt and full payment of the principal of and interest on the Bonds will remain in full force and effect. The City may discharge all Bonds which are due on any date by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full. If any Bond should not be paid when due, it may nevertheless be discharged by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

The motion for the adoption of the foregoing resolution was duly seconded by Member _____, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

EXHIBIT A
PROPOSALS

EXHIBIT B
FORM OF BOND

No. R- _____

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF NICOLLET
CITY OF NORTH MANKATO

\$ _____

GENERAL OBLIGATION BOND
SERIES 2016A

<u>Rate</u>	<u>Maturity</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
	February 1, 20__	August 15, 2016	

Registered Owner: Cede & Co.

The City of North Mankato, Minnesota, a duly organized and existing municipal corporation in Nicollet County, Minnesota (the "City"), acknowledges itself to be indebted and for value received hereby promises to pay to the Registered Owner specified above or registered assigns, the principal sum of \$ _____ on the maturity date specified above, with interest thereon from the date hereof at the annual rate specified above, payable February 1 and August 1 in each year, commencing August 1, 2017, to the person in whose name this Bond is registered at the close of business on the fifteenth day (whether or not a business day) of the immediately preceding month. The interest hereon and, upon presentation and surrender hereof, the principal hereof are payable in lawful money of the United States of America by check or draft by U.S. Bank National Association, Saint Paul, Minnesota, as Bond Registrar, Paying Agent, Transfer Agent and Authenticating Agent, or its designated successor under the Resolution described herein. For the prompt and full payment of such principal and interest as the same respectively become due, the full faith and credit and taxing powers of the City have been and are hereby irrevocably pledged.

The City may elect on February 1, 2024, and on any day thereafter to prepay Bonds due on or after February 1, 2025. Redemption may be in whole or in part and if in part, at the option of the City and in such manner as the City will determine. If less than all Bonds of a maturity are called for redemption, the City will notify The Depository Trust Company ("DTC") of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interests in such maturity to be redeemed. Prepayments will be at a price of par plus accrued interest.

This Bond is one of an issue in the aggregate principal amount of \$1,805,000 all of like original issue date and tenor, except as to number, maturity date, redemption privilege, and interest rate, all issued pursuant to a resolution adopted by the City Council on August 1, 2016 (the "Resolution"), for the purpose of providing money to defray the expenses incurred and to be incurred in the construction of certain assessable public improvements, the construction of certain improvements to the City's water system and sewer system, and the acquisition of certain items of capital equipment pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes,

Chapters 429, 444, and 475, as amended, and Section 412.301, as amended. The principal hereof and interest hereon are payable in part from special assessments levied against property specially benefited by improvements, net revenues of the City's water system and sewer system, and ad valorem taxes, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. The full faith and credit of the City are irrevocably pledged for payment of this Bond and the City Council has obligated itself to levy additional ad valorem taxes on all taxable property in the City in the event of any deficiency in special assessments, net revenues, and taxes pledged, which additional taxes may be levied without limitation as to rate or amount. The Bonds of this series are issued only as fully registered Bonds in denominations of \$5,000 or any integral multiple thereof of single maturities.

The City Council has designated the issue of Bonds of which this Bond forms a part as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code") relating to disallowance of interest expense for financial institutions and within the \$10 million limit allowed by the Code for the calendar year of issue.

IT IS HEREBY CERTIFIED AND RECITED That in and by the Resolution, the City has covenanted and agreed that it will continue to own and operate the water system and sewer system free from competition by other like municipal utilities; that adequate insurance on said systems and suitable fidelity bonds on employees will be carried; that proper and adequate books of account will be kept showing all receipts and disbursements relating to the Water Fund and Sewer Fund, into which it will pay all of the gross revenues from the water system and sewer system, respectively; that it will also create and maintain a Utility Improvements Account within the General Obligation Bonds, Series 2014A Debt Service Fund, into which it will pay, out of the net revenues from the water system and sewer system, a sum sufficient to pay principal of the Utility Revenue Bonds (as defined in the Resolution) and interest on the Utility Revenue Bonds when due; and that it will provide, by ad valorem tax levies, for any deficiency in required net revenues of the water system and sewer system.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the principal office of the Bond Registrar, by the registered owner hereof in person or by the owner's attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or the owner's attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Bond Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Bond Registrar will be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed preliminary to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done, do exist, have happened and have been performed as so required, and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional or statutory limitation of indebtedness.

This Bond is not valid or obligatory for any purpose or entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon has been executed by the Bond Registrar by manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of North Mankato, Nicollet County, Minnesota, by its City Council, has caused this Bond to be executed on its behalf by the facsimile or manual signatures of the Mayor and City Administrator and has caused this Bond to be dated as of the date set forth below.

Dated: August 15, 2016

**CITY OF NORTH MANKATO,
MINNESOTA**

(Facsimile)
Mayor

(Facsimile)
City Administrator

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds delivered pursuant to the Resolution mentioned within.

U.S. BANK NATIONAL ASSOCIATION

By _____
Authorized Representative

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Bond, will be construed as though they were written out in full according to applicable laws or regulations:

TEN COM -- as tenants in common

UNIF GIFT MIN ACT

Custodian _____
(Cust) (Minor)

TEN ENT -- as tenants by entireties

under Uniform Gifts or Transfers to Minors
Act, State of _____

JT TEN -- as joint tenants with right of
survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Bond and all rights thereunder, and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration of the within Bond, with full power of substitution in the premises.

Dated: _____

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a financial institution that is a member of the Securities Transfer Agent Medallion Program ("STAMP"), the Stock Exchange Medallion Program ("SEMP"), the New York Stock Exchange, Inc. Medallion Signatures Program ("MSP") or other such "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, SEMP or MSP, all in accordance with the Securities Exchange Act of 1934, as amended.

The Registrar will not effect transfer of this Bond unless the information concerning the assignee requested below is provided.

Name and Address: _____

(Include information for all joint owners if this Bond is held by joint account.)

Please insert social security or other identifying number of assignee

PROVISIONS AS TO REGISTRATION

The ownership of the principal of and interest on the within Bond has been registered on the books of the Registrar in the name of the person last noted below.

Date of Registration

Registered Owner

Signature of
Officer of Registrar

Cede & Co.
Federal ID #13-2555119

EXHIBIT C
TAX LEVY SCHEDULES

Tax Levy Schedule for Improvement Bonds

<u>YEAR *</u>	<u>TAX LEVY</u>
2017	
2018	
2019	
2020	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	

** Year tax levy collected.*

Tax Levy Schedule for Equipment Certificates

<u>YEAR *</u>	<u>TAX LEVY</u>
2017	
2018	
2019	
2020	
2022	
2023	
2024	
2025	

** Year tax levy collected.*

STATE OF MINNESOTA)
)
COUNTY OF NICOLLET) SS.
)
CITY OF NORTH MANKATO)

I, being the duly qualified and acting City Clerk of the City of North Mankato, Nicollet County, Minnesota (the "City"), do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular meeting of the City Council of the City held on August 1, 2016, with the original minutes on file in my office and the extract is a full, true and correct copy of the minutes insofar as they relate to the issuance and sale of the City's General Obligation Bonds, Series 2016A, in the original aggregate principal amount of \$1,805,000.

WITNESS My hand officially as such City Clerk and the corporate seal of the City this _____ day of August, 2016.

(SEAL)

City Clerk
City of North Mankato, Minnesota

STATE OF MINNESOTA
COUNTY OF NICOLLET

CERTIFICATE OF MANAGER OF
PUBLIC SERVICES AS TO
TAX LEVY AND REGISTRATION

I, the undersigned Manager of Public Services of Nicollet County, Minnesota, hereby certify that a certified copy of a resolution adopted by the governing body of the City of North Mankato, Minnesota (the "City"), on August 1, 2016, levying taxes for the payment of the City's General Obligation Bonds, Series 2016A (the "Bonds"), in the original aggregate principal amount of \$1,805,000, dated as of August 15, 2016, has been filed in my office and said Bonds have been entered on the register of obligations in my office and that such tax has been levied as required by law.

WITNESS My hand and official seal this _____ day of August, 2016.

**MANAGER OF PUBLIC SERVICES,
NICOLLET COUNTY, MINNESOTA**

By _____

Its _____

(SEAL)

Extract of Minutes of Meeting
of the City Council of the City of
North Mankato, Nicollet County, Minnesota

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of North Mankato, Minnesota, was duly held in the City Hall in said City on Monday, August 1, 2016, commencing at 7:00 P.M.

The following members were present:

and the following were absent:

* * *

* * *

* * *

The Mayor announced that the next order of business was consideration of the proposals which had been received for the purchase of the City's General Obligation Bonds, Series 2016A, to be issued in the original aggregate principal amount of \$1,805,000.

The City Administrator presented a tabulation of the proposals that had been received in the manner specified in the Notice of Sale for the Bonds. The proposals are attached hereto as EXHIBIT A.

After due consideration of the proposals, Member _____ then introduced the following resolution and moved its adoption:

CITY OF NORTH MANKATO

REQUEST FOR COUNCIL ACTION



Agenda Item: #12E	Department: Administration	Council Meeting Date: 08/01/2016																												
TITLE OF ISSUE: Receive Rental Density Study.																														
BACKGROUND AND SUPPLEMENTAL INFORMATION: Matt Lassonde from Bolton and Menk will present the study.																														
<div style="text-align: right; font-size: small; color: gray;">If additional space is required, attach a separate sheet</div>																														
REQUESTED COUNCIL ACTION: None.																														
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City of North Mankato

RENTAL DENSITY STUDY

September 2016

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Executive Summary

This document explores the effects of rental properties within the community and recommends policy resolutions to address the increasing conversion of single-family, owner-occupied, residential homes to renter-occupied homes in R-A, R-1, R1-S and R-2 residential zoning districts in the City of North Mankato.

The City undertook this study to gain an understanding of the issues associated with the increasing conversions of single-family homes to rentals in the community and to appropriately address those issues with a strong, informed rental density ordinance that will prevent the deterioration of neighborhood quality of life.

Rental restrictions have come to the forefront of municipal planning efforts in Minnesota as cities realize increased rates of conversion of single-family homes to rentals. Several studies have documented potential adverse effects associated with concentrations of rental properties and cities have found resolve with the establishment of ordinances regulating the number of rental licenses that can be issued on a given block. Research shows that rental concentrations are linked to increases in nuisances, City Code violations, and calls to the Police Department and data findings in North Mankato give merit to those claims.

The key findings of this study are outlined below:

- Annual rental license issuance is trending upward on average of 4.3% per year in North Mankato and, if left unregulated, will allow for the addition of roughly 70 new licenses in the next 5-year period.
- Rental density regulation is rooted in the North Mankato Comprehensive Plan which contains a policy to *“create a policy that permits a limited number of rental units in a specified area to minimize turnover of owner-occupied single-family homes to rental units within established neighborhoods.”*
- The literature review demonstrates a relationship between homeownership and neighborhood stability suggesting that homeowners have more at stake with their properties and spend more time and resources on maintaining them. In doing so, property values are maintained and social conditions may improve.
- Four Minnesota cities, including Mankato, West St. Paul, Northfield, and Winona have established successful rental density ordinances.
- Research supports and data findings suggest that a clear problem exists with unregulated rental concentrations in urban environments. In North Mankato, data collection and analysis has revealed that the issues exist in the City.
- Lower North Mankato is almost fully developed and stands to be altered by increased rental license issuance without intervention. Without offsetting factors such as new development, Lower North could see the addition of 50 new licenses in a 5-year period raising the percentage to nearly 19%.
- North Mankato data suggests that increased crime, nuisances and complaints are linked to concentrations of rental properties in the community. Renter-occupied homes represent approximately 8% of the housing stock in relevant zoning districts as well as 22% of all police call occurrences.
- In Lower North, renter-occupied homes represent 16% of properties and are responsible for 31% of all police calls.
- City wide, there is one police call to every 4.15 owner-occupied homes and one to every 1.51 renter-occupied homes. In Upper North, there is one occurrence to every 5.55 owner-occupied homes and one to every 3.22 renter-occupied home. Finally, in Lower North, there is one to every 2.86 owner-occupied homes and one to every 1.28 renter-occupied homes.
- Rental strikes highlight areas of repeat offenders in the City and those areas are connected to the densest areas of rental concentrations in the community.

Policy Recommendations from this study are outlined below:

Policy 1: *The City should pursue the establishment of §151.18 Rental Density Ordinance (Appendix B.1).*

A rental density ordinance limiting rental license issuance to 10% per block in the community will increase the potential for successful achievement of neighborhood stability in North Mankato. This ordinance may consider the differences within Upper and Lower North Mankato and address them separately with different limitations for each.

Policy 2: *The City should pursue the establishment of § 151.19 Temporary Rental Licenses (Appendix B.1).*

Other communities have suggested that the establishment of a temporary rental license ordinance alleviates some unforeseen circumstances that may occur in relation to homeowners who are unable to sell properties but cannot afford the property or do not reside there.

Policy 3: *The City should adopt increased parking requirements for rental properties (Appendix B.1).*

As illegal parking is an issue associated with rental concentrations, the City should pursue increased parking requirements that will assist with controlling offenders at rental properties.

Policy 4: *The City should increase efforts for documenting grass, weed, and nuisance complaints.*

The City should set up a spreadsheet database to enhance documentation and better monitor grass, weed, and nuisance complaints to increase understanding of the adverse effects of these complaints on the community.

Section 1: Purpose and Intent

1.1 Study Purpose

The purpose of this document is to document and recommend policy actions to address the increasing conversion of single-family and two-family, owner-occupied, residential homes to renter-occupied homes in R-A, R-1, R-1S, and R-2 residential zoning districts in the City of North Mankato. These trends were identified in a presentation to the City Council on September 2015. While the City values providing opportunities for renters, research shows that concentrations of rental properties may lead to undesirable conditions posing a threat to neighborhood quality of life. These conditions include increased nuisance complaints, City Code violations, and calls to the Police Department (**Appendix E**) that impact the public welfare of citizens who both own and rent homes. Data collected in North Mankato demonstrate a connection between concentrations of renter-occupied homes and increased incidents of these actions.

1.2 Study Intent

This study provides background information, supporting data, and policy recommendations that work toward a shared community vision as identified in the goals of the Comprehensive Plan and Strategic Plan aimed at maintaining quality of life in the City of North Mankato and its neighborhoods. In this context, the City approaches rental regulation in a nondiscriminatory manner, appropriately considering the rights of property owners, renters, and their neighbors similarly. Regulations such as this are naturally conflictual because of the effect such regulations have on individuals and property rights. With these values in mind this report recommends additional regulation based on peer reviewed empirical research, data collection and analysis specific to North Mankato and input from other Cities in Minnesota who have enacted similar regulations.

This study illustrates the role of rental restrictions in maintaining quality of life standards, provides scenarios of other cities and strategies they are using to control undesirable effects of rental concentrations, provides a description of the constitutional validity of a rental density ordinance, provides supporting recommendations from the North Mankato Comprehensive Plan and other policy documents, contains various data analyses that describe the implications of rental restrictions in communities, and provides policy recommendations for implementation of a rental density ordinance. The information described in the study supports the adoption of revisions to Chapter 151, Section 18 of the City Code by the North Mankato City Council.

Section 2: Background

2.1 North Mankato Rental Licensing Moratorium

On September 21st, 2015, the North Mankato City Council issued a one year moratorium on the granting of new rental licenses throughout the City in response to an upward trend of issued licenses that predicted densities of rentals in Lower North would exceed maximum densities set in other communities in Minnesota.

Local government action to regulate rental density has recently come to the forefront of planning in Minnesota as cities implement rental density caps to restrict the percentage of single-family residential conversions to rental properties to protect neighborhood quality of life. Cities such as Winona, Northfield, Mankato, and West St. Paul have all established similar ordinances (**Table 1**). While Winona, Mankato, and Northfield acted to regulate rentals in response to the concentration of students living off campus, West St. Paul acted in response to an increasing amount of foreclosed properties.

Winona	Limits allowable rental lots on a block to 30%
Mankato	Limits 25% of lots on a block to be eligible to obtain rental licenses
Northfield	Limits 20% of all lots on a block able to receive rental licenses
West St. Paul	Limits 10% of lots on a block to receive rental licenses

Table 1. Minnesota communities regulating rental density through city ordinance.

2.2 Policy Background

2.2.1 2015 Strategic Plan

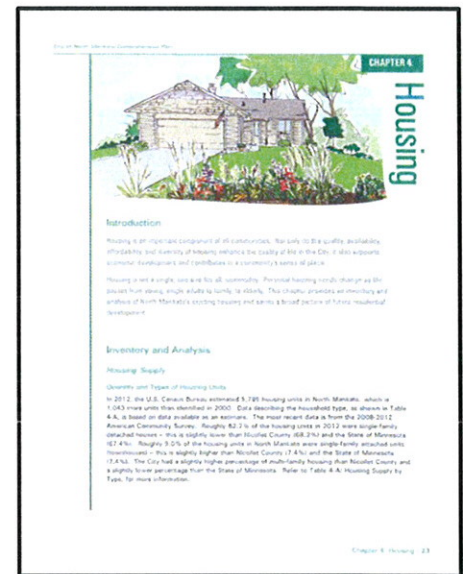
The 2015 North Mankato Strategic Plan was developed as framework for a shared community vision of what the community wants to be and direction on how to get there.

A major goal of the North Mankato Strategic Plan is "Growing & Vibrant Residential Districts" in the community. By achieving the balance between owner-occupied and renter-occupied residential homes, the City will be closer to achieving and maintaining this goal.

2.2.2 City of North Mankato Comprehensive Plan

2.2.2.1 A Vision for North Mankato

The City of North Mankato strives to protect and enhance the quality of life for residents as the City grows. Through the Comprehensive Planning Process, the City has identified a vision (**Figure 1**) that "gives the community a stated goal of what their future will be and is paramount in managing



A VISION FOR NORTH MANKATO

"North Mankato is a growing and safe community with outstanding recreational assets, well maintained infrastructure, vibrant business districts and neighborhoods, and provides residents with an excellent quality of life."

Values

Adaptability: The ability to adjust means and methods to resolve changing situations

Excellence: Going above and beyond expectations

Responsibility: Taking ownership and being accountable for performance

Integrity: Being honest, impartial and aligning actions with principles

Leadership: Achieving a common goal by motivating others

Figure 1. A Vision for North Mankato. (Source: North Mankato Comprehensive Plan, 2014)

the growth and development within the community.” The vision statement for the community captures the overarching, “Big Picture,” aspirations of the City.

The proposed rental density ordinance will assist in achieving this vision for the community.

2.2.2.2 Comprehensive Plan – Chapter 4: Housing

According to Chapter 4 from the North Mankato Comprehensive Plan, “The City is open to creatively seeking opportunities to meet our housing needs and responsibly providing our share of affordable housing. Housing in North Mankato continues to be a strength in attracting young families to the area.”

The City recognizes that areas like Lower North have high concentrations of rental properties. The majority of Lower North is also recognized as an ideal location for starter homes for young families, located in neighborhoods that have been well maintained and contribute to community character. As evidenced by the Comprehensive Plan, the City would like to preserve this neighborhood quality of life and continue to provide ideal housing options for starter families as well as additional members of the local workforce that will meet the workforce needs of the region in the future given the projected deficit of 2,800 workers by 2025. The following goal and policies were included in Chapter 4: Housing to guide housing to this end:

1. Goal—Provide attractive and desirable residential properties

- **Policy 2.1.2:** Monitor “at risk” or “blighted” properties or areas and connect property owners to housing improvement programs, loans and assistance opportunities for rehabilitation.
- **Policy 2.1.5:** Consider a policy that permits a limited number of rental units in a specified area to minimize turnover of owner-occupied single-family homes to rental units within established neighborhoods.

This document and the proposed ordinance revision it recommends provides an implementation plan for these policies. As the Comprehensive Plan serves as the guiding document for the achievement of the shared vision for the community, adherence to the goals, objectives, and policies outlined in the plan is vital to that achievement.

Section 3: Studies Conclude Issues Exist When Rentals are Concentrated in Single-Family Neighborhoods

Studies give merit to the claim of adverse effects associated with increased concentrations of rental properties in neighborhoods. Adverse effects identified in the literature from a concentrated conversion of single-family homes to rentals include declining neighborhood stability, increased nuisances, property maintenance complaints, police calls, and declining property values. A discussion of this literature is presented in this section.

3.1 Homeownership and Neighborhood Stability are Affected

An article entitled "Homeownership and Neighborhood Stability"¹ gives merit to conventional thinking that increased homeownership leads to greater neighborhood stability. Authors focused research efforts on a conceptual model (Figure 3) outlining the effects of homeownership rates on various indicators of neighborhood stability and found support for that model within existing literature.

At least four aspects of neighborhoods might be stabilized by homeownership (Figure 2). These include:

1. Length of tenure of the current residents
2. Property values
3. Physical condition of properties
4. Social conditions in the neighborhood, such as school dropout or crime rates

At least four aspects of neighborhoods might be stabilized by homeownership:

- Length of tenure of the current residents
- Property values
- Physical condition of properties
- Social conditions in the neighborhood, such as school dropout or crime rates

Figure 2. Four Aspects of Neighborhoods Stabilized by Homeownership (Source: Rohe & Stewart, 1996).

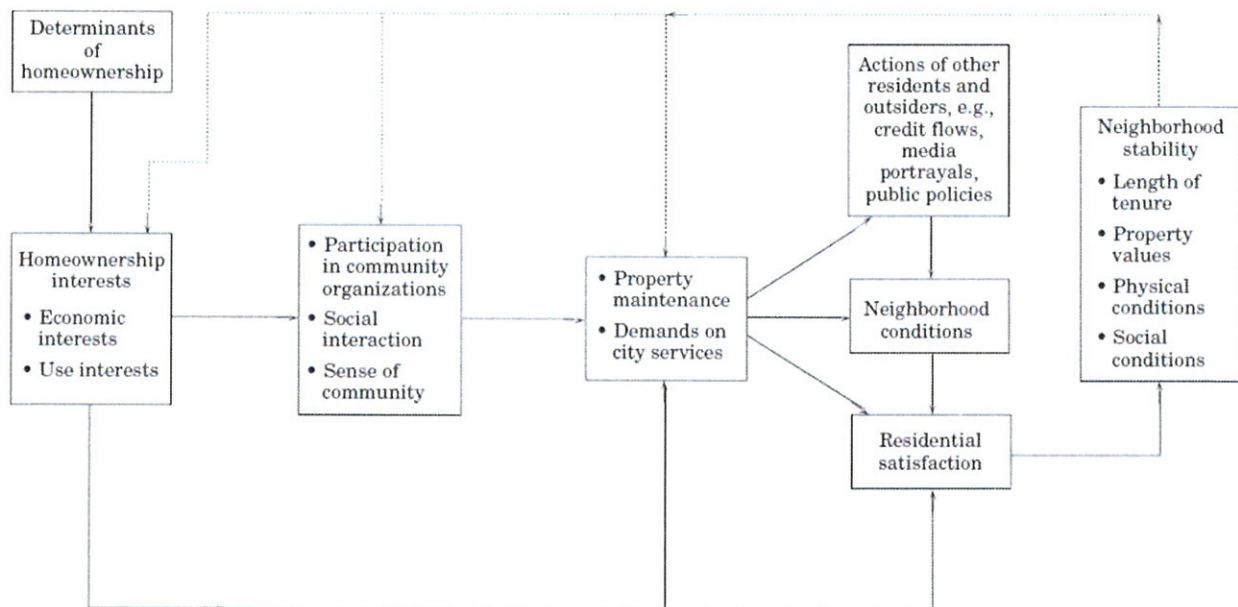


Figure 3. Conceptual Model: Effect of Homeownership on Neighborhood Stability. (Rohe & Stewart, 1996)

¹William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," Housing Policy Debate (Volume 7, Issue 1). 1996: 48.

Rohe and Stewart advance a model that provides evidence of a link between homeownership and neighborhood stability. Those opting for homeownership differ from those opting to rent in a number of social characteristics. Homeowners are more likely stable defined in terms of length of residence and property maintenance. Homeowners possess both economic and use interests in their properties which leads to increased support for increased property maintenance standards. These interests also lead to greater social interaction within, and psychological identification with, the neighborhood as a whole. With this, homeowners may be more likely to join area organizations that protect neighborhood interests. Research also suggests that “homeowners are more likely than landlords to undertake repairs and spend more on them.” It is these interests homeowners have in their property that fosters a vested interest in the quality of the neighborhood as a whole.²

The article further suggests that homeownership can be an indicator of a family’s status and offers great control over one’s living environment. These represent important social and psychological benefits that are closely guarded by individuals. The deterioration of surrounding homes within neighborhoods can affect their property and may be interpreted as threats to their status and security.²

Rohe & Stewart also developed a property value model and found this to suggest that changes in the homeownership rate have a positive association with property value changes; suggesting that even modest increases in homeownership rates may increase neighborhood property values over time.² Increases in nuisance and property maintenance complaints, City code violations and police calls associated with rental concentrations are discussed in the following sections.

3.2 Negative Impacts Associated with Rental Concentrations in Single-Family Neighborhoods

The Hoisington Koegler Group (HKGI) was solicited by the City of Winona in 2012 to conduct a literature review relating to rental housing concentrations and associated negative impacts on neighborhood quality and livability. This review found several studies containing empirical analyses linking higher concentrations of rental houses to negative impacts on surrounding neighborhoods. Findings concluded that over-concentrations of rental houses in single-family residential neighborhoods have the following negative impacts on surrounding residential properties and neighborhoods: noise, increased traffic, litter, illegal parking, inadequate property maintenance, and a general decrease in quality of life for permanent residents of the neighborhood (Figure 4).

Negative Impacts Associated with Rental Concentrations:

- Noise
- Increased Traffic
- Litter
- Illegal Parking
- Inadequate Property Maintenance
- General Decrease in Quality of Life for Permanent Residents of the Neighborhood

Figure 4. Negative Impacts Associated with Rental Concentrations (Source: HKGI Memorandum to Winona City Council, Planning Commission, and City Staff).

Nuisance complaints, code violations, and crime incidents are key indicators of a neighborhood’s livability and residents’ satisfaction with their neighborhood. The literature supports claims of increased occurrences of these in areas of rental concentrations. Likewise, data collected in the City of North Mankato provides evidence of this locally and is further explored in section four of this report.

3.3 Decreased Property Values

HKGI identified several studies through their research (Wang, et al; Rohe and Stewart; Janmaat, Pindell) containing empirical analyses linking higher concentrations of rentals to decreases in property values of nearby homes. One study

²William M. Rohe and Leslie S. Stewart, “Homeownership and Neighborhood Stability,” Housing Policy Debate (Volume 7. Issue 1). 1996.

in particular, “The Impact of Rental Properties on the Value of Single-Family Residences,”³ concluded that “an inverse relationship exists between the value of a house and the presence of rental properties in the study area.” Data used in this study included over 23,000 single-family residences and over 1,100 home sales in San Antonio, Texas. The other studies researched by HKGI supported these findings (Rohe and Stewart⁴; Janmaat⁵, Pindell⁶). A Memorandum from HKGI to the Winona City Council, Planning Commission, and City Staff outlining these findings was presented at the Minnesota Association of City Attorneys Educational Conference in February of 2014. The Conference Agenda can be seen in **Appendix A**. No such analysis was conducted assessing the impact of property values in single-family neighborhoods with a high concentration of rentals in North Mankato as part of this review.

SECTION 4: Peer Cities Review Offer Best Practices for Rental Density Ordinance Revision

4.1 Peer cities

Several Cities are considered comparable to North Mankato in population size, area, and existing amenities. When considering policy changes, the City observes these cities for insight on their efforts towards similar initiatives; observing the successes and challenges they may have encountered. These cities include:

- Albert Lea
- Belle Plaine
- Brainerd
- Faribault
- Hutchinson
- Jordan
- New Ulm
- Northfield
- Owatonna
- Red Wing
- Shakopee
- St. Peter
- West St. Paul
- Winona

These cities were contacted to gain an understanding of the effects of rentals on others and how they deal with issues. The following questions were sent to comparable cities:

1. If your City has considered a rental density ordinance, will you tell us why?
2. Has your City seen property values decrease in those neighborhoods where single-family conversion to rentals has increased?
3. Has your community experienced increases in police calls, nuisances and complaints in those neighborhoods associated with rental concentrations?
4. Can you provide information as to how your community monitors single-family conversion to rental properties?
5. If you have statistical information illustrating the single-family rental housing stock would you be willing to share?
6. Does your City have specific ordinances that regulate single-family rentals for the protection of neighborhood quality of life?

Several of the cities that responded don't view increases in rental properties/concentrations as an issue in their community. Most have a type of rental ordinance in place such as a rental registration program or a rental inspection program but nothing that limits the amount of rental licenses that can be issued. However, several of the communities have also experienced increased police calls, nuisances and absentee/problem landlords among renter-occupied units.

³Ko Wang, Terry V. Grissom, James R. Webb and Lewis Spellman, “The Impact of Rental Properties on the Value of Single-Family Residences,” *Journal of Urban Economics*, Volume 30, Issue 2 (1991)

⁴William M. Rohe and Leslie S. Stewart, “Homeownership and Neighborhood Stability,” *Housing Policy Debate* (Volume 7, Issue 1), 1996.

⁵John Janmaat, “The Curse of Student Housing: Evidence from Wolfville, Nova Scotia,” 2010.

⁶Ngai Pindell, “Home Sweet Home? The Efficacy of Rental Restrictions to Promote Neighborhood Stability,” *Scholarly Works* (Paper 57), 2009.

Qualitatively, these responses confirm the findings of the literature associated with the consequences of a higher concentration of rentals in single-family neighborhoods.

Two communities that have established rental density ordinances, Northfield and West St. Paul, responded to questions regarding the success of their respective ordinances in the community. The City of Northfield stressed that there may be a perceived benefit provided by the ordinance but that the most measurable improvement related to improving neighborhood quality of life can be attributed to the City's Rental Licensing and Inspection Program as a whole. Northfield limits rentals to 20% of homes per block. City Staff mentioned that foreclosures increased following the recession as owners could not convert the property to rental; a problem in which temporary licensing has provided a solution.

West St. Paul found success since the implementation of their ordinance in 2006. The City limits rental licenses to 10% per block in order to keep diversity in housing stock in the community by allowing some rentals while maintaining a well-established owner-occupied presence. The City applies a tiered fee system to renter-occupied homes that receive police calls and nuisances. As a result, rentals with the more valid police calls and complaints on a property, pay more for their licenses renewal. Provisional licenses are assigned to those who pose excessive problems and licenses are revoked if issues persist. The City has adopted the International Property Maintenance Code (IPMC) as the guiding document for all rental inspections, they have implemented mandatory Phase I: Management/Owner Training and have changed the licensing term to a rolling calendar. Overall, the City is very happy with the outcome of the rental density regulation in the community. Staff suggests that property values have been stabilized and rental numbers are controlled. West St. Paul is a City of approximately 20,000 residents and the factors leading to the establishment of their successful ordinance fall in line with the desires of North Mankato. Cities like West St. Paul will serve as a model for North Mankato to follow to ensure the appropriate measures are taken to establish an appropriate ordinance. Comments received from Peer Cities can be reviewed in **Appendix C**.

Section 5: Legal Framework Enabling Rental Restrictions

Restrictions on the issuance of rental licenses in a municipality brings several constitutional issues into question regarding equal protection, procedural due process, and substantive due process rights under the Minnesota Constitution. Additionally, Appellants questioned the level of zoning power provided cities under **Minn. Stat. § 42.357**, Minnesota's zoning enabling statute, to regulate housing in a municipality. Recent proceedings involving property owners and the City of Winona, Minnesota have given new light to the constitutional validity of a municipality's efforts to control the quantity of rentals in the City.

As discussed before, a common reaction of many individuals when discussing regulating rental density in a municipality is that regulations such as this violate property rights of individuals. However, if a municipality has more to gain regarding the general welfare of its citizens, the Minnesota Constitution (according to the Court of Appeals of Minnesota) upholds this as a valid use of police power (**Figure 5**) that is not in violation of property rights.

5.1 Constitutional Validity: Case Study - Dean v. The City of Winona

In 2005, the City of Winona enacted an ordinance restricting rental units on a given block to 30-percent in certain zoning districts. This was prompted by increased parking demands in the neighborhood and concerns of rental concentrations leading to neighborhood blight. Ethan Dean, among others, sued the City after a request for a rental license was rejected. The group alleged the Winona City Council exceeded legislative authority with the 30% rental license per block rule claiming the ordinance was unconstitutional. The Minnesota Court of Appeals easily concluded against this, finding that the public's interest in regulating rental housing was sufficient to justify municipality's police power delegated by the State of Minnesota to regulate property.

POLICE POWER

"...the power to impose such restrictions upon private rights as are necessary for the general welfare."

Figure 5. Definition of Police Power (Source: *Dean v. City of Winona*, 843 NW 2d 249 – Minn. Court of Appeals 2014).

Dean and others also raised claims that equal protection, substantive due process, and procedural due process rights had been violated by the imposition of the ordinance. In the case of equal protection, "A party may raise an equal protection challenge to a statute based on the statute's express terms, that is, a 'facial' challenge, or based on the statute's application, that is, an 'as-applied' challenge." *State v. Richmond*, 730 N.W.2d 62.71 (Minn.App.2007) "A facial challenge to a statute on equal protection grounds asserts that at least two classes are created by the statute, that the classes are treated differently under the statute and that the treatment cannot be justified." *In re McCannel*, 301 N.W.2d 910, 916 (Minn.1980). Within this context, an equal-protection challenge requires an initial showing that "similarly situated persons have been treated differently." Based on this information, the Court of Appeals of Minnesota rejected equal protection challenges concluding the rule to be facially neutral and that no similarly situated groups were treated differently; the rule was not applied in an arbitrary manner, and in any event would not have resulted in "invidious" discrimination even if similarly situated persons were treated differently.⁷

Substantive due process rights require that "only that a statute not be arbitrary or capricious; the statute must provide a reasonable means to a permissible objective." *Stat v. Behl*, 564 N.W.2d 560, 567 (Minn. 1997).³ The Court of Appeals of Minnesota found that substantive due process rights weren't violated because the ordinance promoted a valid public purpose of controlling rental density; was enacted after considerable deliberation and analysis, didn't unreasonably, arbitrarily, or capriciously interfere with private interests, and was rationally related to the purpose served.⁷

Appellants also contended that the 30% rule violates their "procedural due process right by unconstitutionally delegating legislative power to a property owner's neighbors." Arguments that the rule delegated legislative power to the neighboring property owner's was also rejected finding that neighbors don't vote on how the rule is applied nor do they make decisions regarding its application.⁷

This case became moot while on appeal to the Supreme Court of Minnesota. The appellants were found to "no longer have an interest in the outcome of the litigation" as the properties in which rental licenses were being sought for were sold. Appellants attempted to raise claims that this issue was of statewide significance and should be ruled on in anticipation of future events to others. Supreme Court Justices found no support for this determination and suggested that these claims would not be pursued. In light of this, the Supreme Court declined to reach the merits of the appellants' claims and dismissed the appeal.⁸

⁷Dean v. City of Winona, 843 NW 2d 249 – Minn. Court of Appeals 2014

⁸Dean v. City of Winona, 868 NW 2d 1 – Supreme Court of Minnesota 2015

The facts and rulings for the case of Dean v. The City of Winona can be seen in **Appendix D**. The breakdown of each Court's ruling (the Court of Appeals of Minnesota and the Minnesota Supreme Court) are located there.

Section 6: North Mankato Trends in Neighborhood Conversion to Rental Property

6.1 Zoning Districts Affected by Regulation

The residential properties being considered for further regulation in this study are those family dwellings containing 1 – 4 rental units located in the following residential zoning districts within the City of North Mankato (Figure 6):

1. R-A: Residential Agricultural District
2. R-1: One-Family Dwelling District
3. R1-S: One-Family Dwelling, Small Lot District
4. R-2: One- and Two-Family Dwelling District

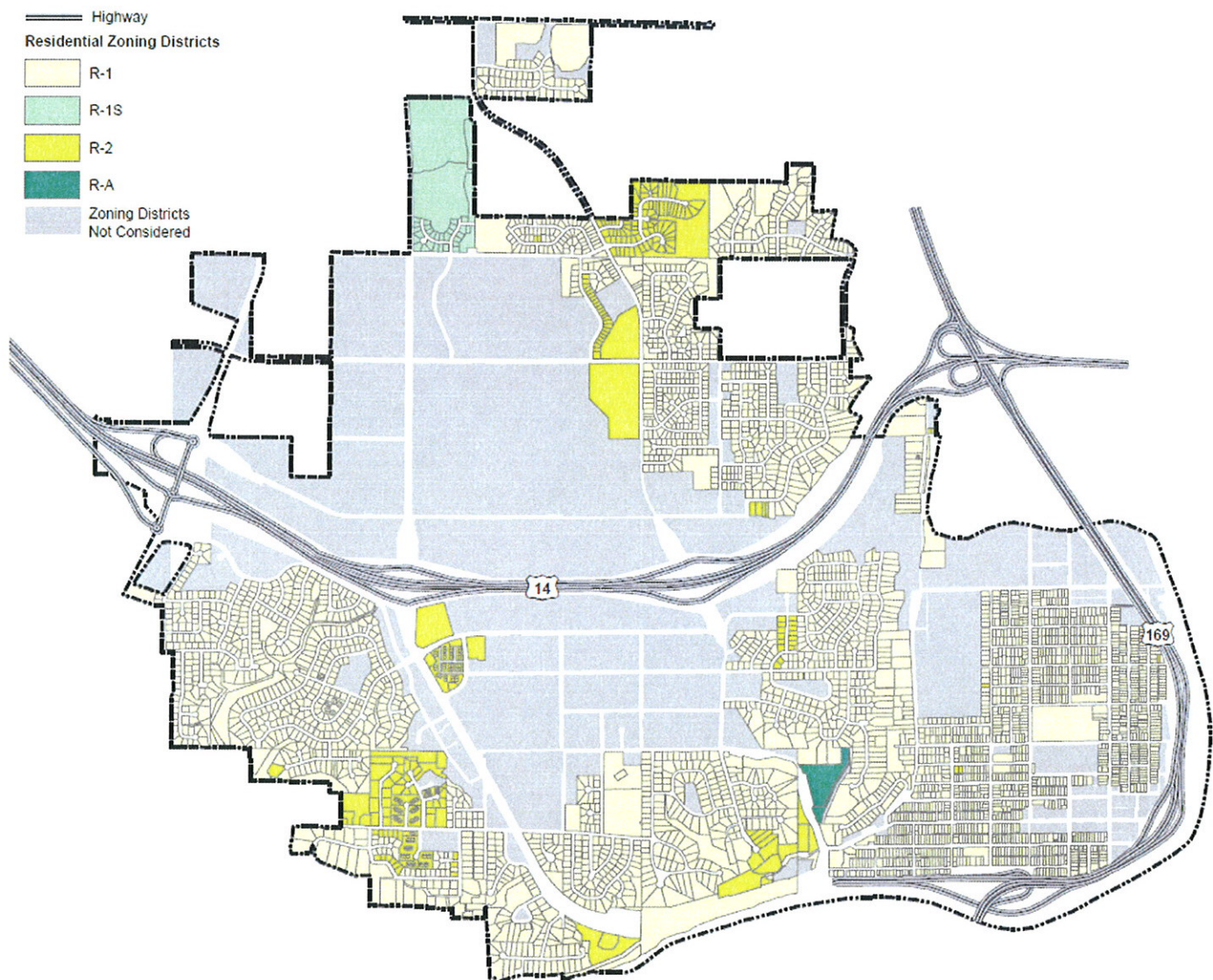


Figure 6. North Mankato Residential Zoning Districts Subject to Rental Density Regulation: R-A, R-1, R1-S, R-2

A Geographic Information System (GIS) was used for data analysis utilizing parcel data acquired through the City of North Mankato and the Nicollet County Assessor's Office. Only properties within those effected residential districts were taken into consideration.

Table 3 provides an assessment of properties containing one- and two-family dwellings in R-A, R-1, R1-S, and R-2 zoning districts in the City. The total number of properties within those districts increased steadily over the 5-year period between 2010 and 2014, adding 19 homes per year on average. In 2014, there were 3,757

CITY OF NORTH MANKATO Assessment of Relevant Properties in R-A, R-1, R-1S, and R-2 Zoning Districts (2010 - 2014)						
Properties	2010	2011	2012	2013	2014	5-year Average
Total # of Properties	3670	3689	3721	3753	3757	3718
# Owner-Occupied Homes	3363	3380	3412	3440	3444	3407.8
# Renter-Occupied Homes	307	309	309	313	313	310.2
% Owner-Occupied Homes	92%	92%	92%	92%	92%	92%
% Renter-Occupied Homes	8%	8%	8%	8%	8%	8%
# of Residences Built	8	19	32	32	4	19
# Built Owner-Occupied Homes	8	17	32	28	4	18
# Built Renter-Occupied Homes	0	2	0	4	0	1

Table 3. Assessment of Properties in R-A, R-1, R1-S, and R-2 Zoning Districts from 2010 – 2014 in North Mankato. (Source: City of North Mankato, Nicollet County Assessor)

properties within the designated districts. Properties that were vacant, contained more than 4 rental units, or were built in 2015 or later were removed from the analysis to ensure data integrity. The ratio of owner-occupied homes to renter-occupied homes in 2014 was approximately 34:3 with rental properties representing approximately 8% of properties in the residential districts.

In the City of North Mankato, there is a clear distinction between what is known as Lower North Mankato and Upper North Mankato. Lower North consists of the southeastern portion of the City at the bottom of a large bluff and containing the Central Business District, City Hall, and various residential neighborhoods, parks, and schools and some highway commercial and industrial. The opportunity to develop within this area is extremely limited as it contains the oldest housing stock in the City and is at full capacity. Upper North Mankato, on the other hand, represents a much larger area extending northwest at the top of the bluff and contains highway commercial, regional softball and soccer complexes, most of the industrial uses in the City, and some residential. Upper North contains most of the developable land in the City.

Along with the physical separation of Lower North Mankato and Upper North Mankato comes other distinctions as well. Trends in rental licensing, the proportion of renter-occupied single-family to owner-occupied single-family homes, and police calls and associated crime distribution all present differences that distinguish the two geographic areas. Data analysis considered both areas separately when accounting for these factors and based recommendations accordingly. **Section 3.1.2** outlines the distribution of properties in Upper and Lower North.

6.2 Rental Licensing Status

There are 4,166 total residential parcels in the City of North Mankato with 654 total rental licenses. The City has 1,576 total rental units representing almost 15% of total residential properties. As described in **Section 6.1**, the analysis in this study only takes into account those family dwellings containing 1 – 4 rental units within the R-A, R-1, R1-S, and R-2 residential zoning districts. Within those zones, there are 391 total rental licenses (2016) among 3,757 parcels (**Table 3**). Renter-occupied properties represent approximately 8% of the total within those zoning districts throughout the City. However, there is a distinction between Upper and Lower North when

observing how these numbers are distributed for each. **Figure 10** illustrates the distribution of rentals between Upper and Lower North Mankato.

Though Upper North contains a much larger area, there are only 104 total rental licenses present among the 2,312 parcels. This is a much lower distribution than that of Lower North which is subject to smaller lots and older housing stock. Renter-occupied homes represent just under 4% of homes within relevant zoning districts in Upper North. See **Table 5** for more information regarding rental licenses and properties in Upper North.

Lower North contains 287 total licenses (more than double that of Upper North) among 1,445 parcels (only 63% of Upper North parcels). Renter-occupied homes represent 16% of the housing stock within relevant zoning districts which is significantly greater than the level that the City desires. **Table 6** shows this distribution.

These numbers identify a clear distinction between Upper and Lower North Mankato. Lower North has a greater rental concentrations of rentals in single-family neighborhoods. *The immediate need for limitations on rental license issuance is clear in Lower North.* However, a closer look at the trends in rental licensing reveal increases in the issuance of licenses in Upper and Lower North that could lead to high percentages in the future.

6.3 Trends in Rental Licenses

The conversation of single-family homes to rental properties is trending upward and projections show that these trends will continue. Keeping in mind the purpose of this study is to find the appropriate balance for owner/renter-occupied single-family homes, upward trends in license issuance should be observed carefully for decision making purposes. If left unchanged, upward trends in rental licenses will lead to increased concentrations in renter-occupied properties.

Figures 7 – 9 show trends in rental licensing and an average annual growth rate for each. Overall, the amount of licenses is increasing annually at 4.2% representing an approximate increase of 14 licenses per year. If this trend persists, there will be 70 new licenses in the next five years raising the

Rental licenses in R-A, R-1, R1-S, and R-2 Zoning Districts City Wide	
Total # Licenses	391
Total # Parcels	3,757
Properties Containing More than One License	85
Total Owner-Occupied Parcels	3,444
Total Renter-Occupied Parcels	313
% Rental	8%

Table 4. Rental License Distribution in R-A, R-1, R1-S, and R-2 Residential Zoning Districts. (Source: City of North Mankato).

Rental Licenses in R-A, R-1, R1-S, and R-2 Zoning Districts in Upper North Mankato	
Total # Licenses	104
Total # Parcels	2,312
Properties Containing More than One License	20
Total Owner-Occupied Homes	2,229
Total Renter-Occupied Homes	83
% Rental	3.6%

Table 5. Rental License Distribution in R-A, R-1, R1-S, and R-2 Residential Zoning Districts in Upper North Mankato (Source: City of North Mankato).

Rental Licenses in R-A, R-1, R1-S, and R-2 Zoning Districts in Lower North Mankato	
Total # Licenses	287
Total # Parcels	1,445
Properties Containing More than One License	65
Total Owner-Occupied Parcels	1,215
Total Renter-Occupied Parcels	230
% Rental	16%

Table 6. Rental License Distribution in R-A, R-1, R1-S, and R-2 Residential Zoning Districts in Lower North Mankato (Source: City of North Mankato).

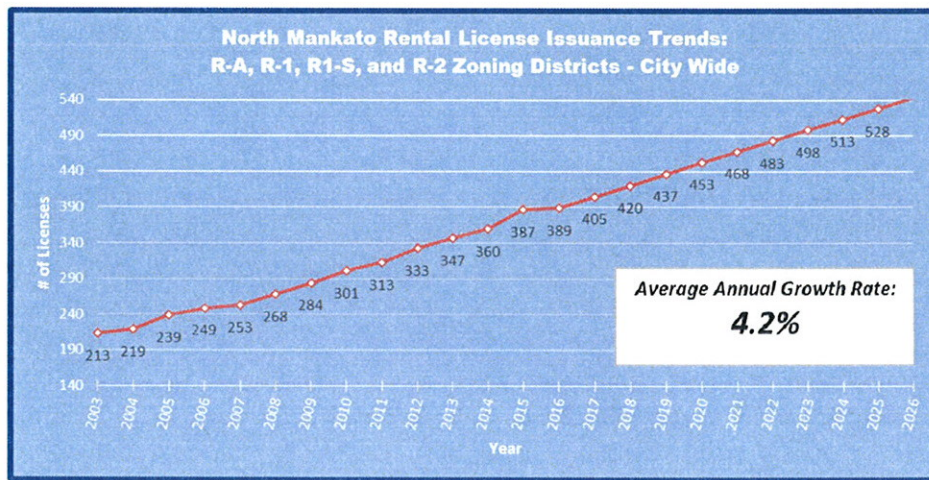


Figure 7. Trends in Rental License Issuance – City Wide (Source: City of North Mankato).

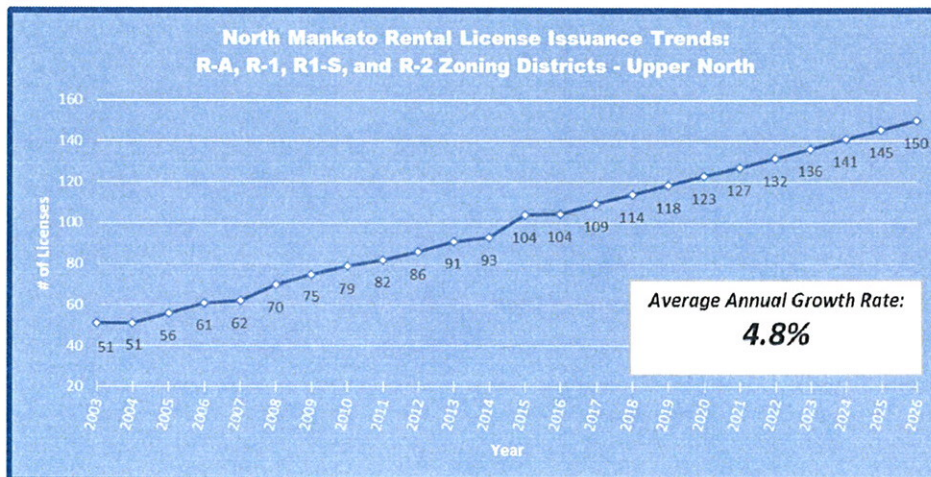


Figure 8. Trends in Rental License Issuance – Upper North (Source: City of North Mankato).

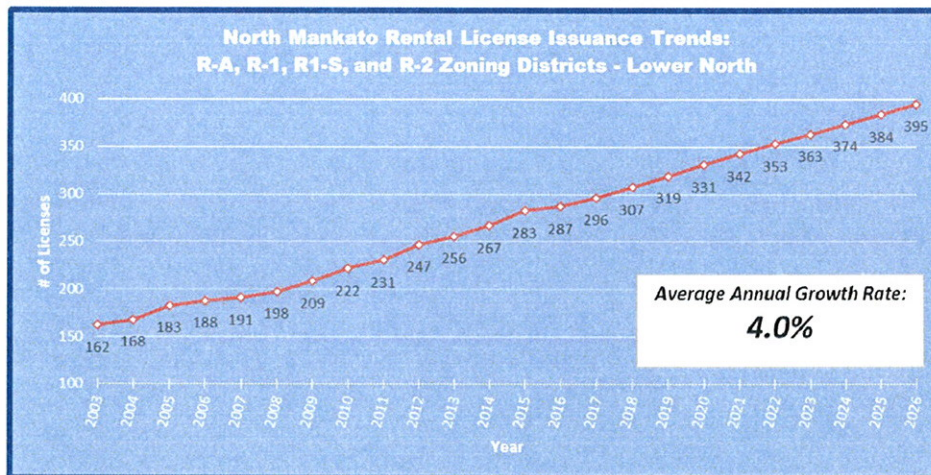


Figure 9. Trends in Rental License Issuance – Lower North (Source: City of North Mankato).

percentage of renter-occupied homes from 8% to nearly 10%. Within a 10 year period, these numbers will rise to a potential 150 new licenses raising the percentage to nearly 12% within the City.

Though Upper North has a smaller percentage of rental properties overall (approximately 4% for Upper North vs. 16% for Lower North), license issuance is increasing at a faster rate (4.8%) than Lower North (4.0%) annually. This growth is something that staff recommends be addressed in the ordinance revision to maintain a serviceable balance of renter-occupied homes in Upper North. With the current 4.8% average annual growth rate, Upper North adds on approximately 4.3 rental licenses per year, but the development of 19 new homes per year in the specified zoning districts offsets the proportion of renter-occupied homes in Upper North so rental concentrations have not approached levels like those exhibited in Lower North.

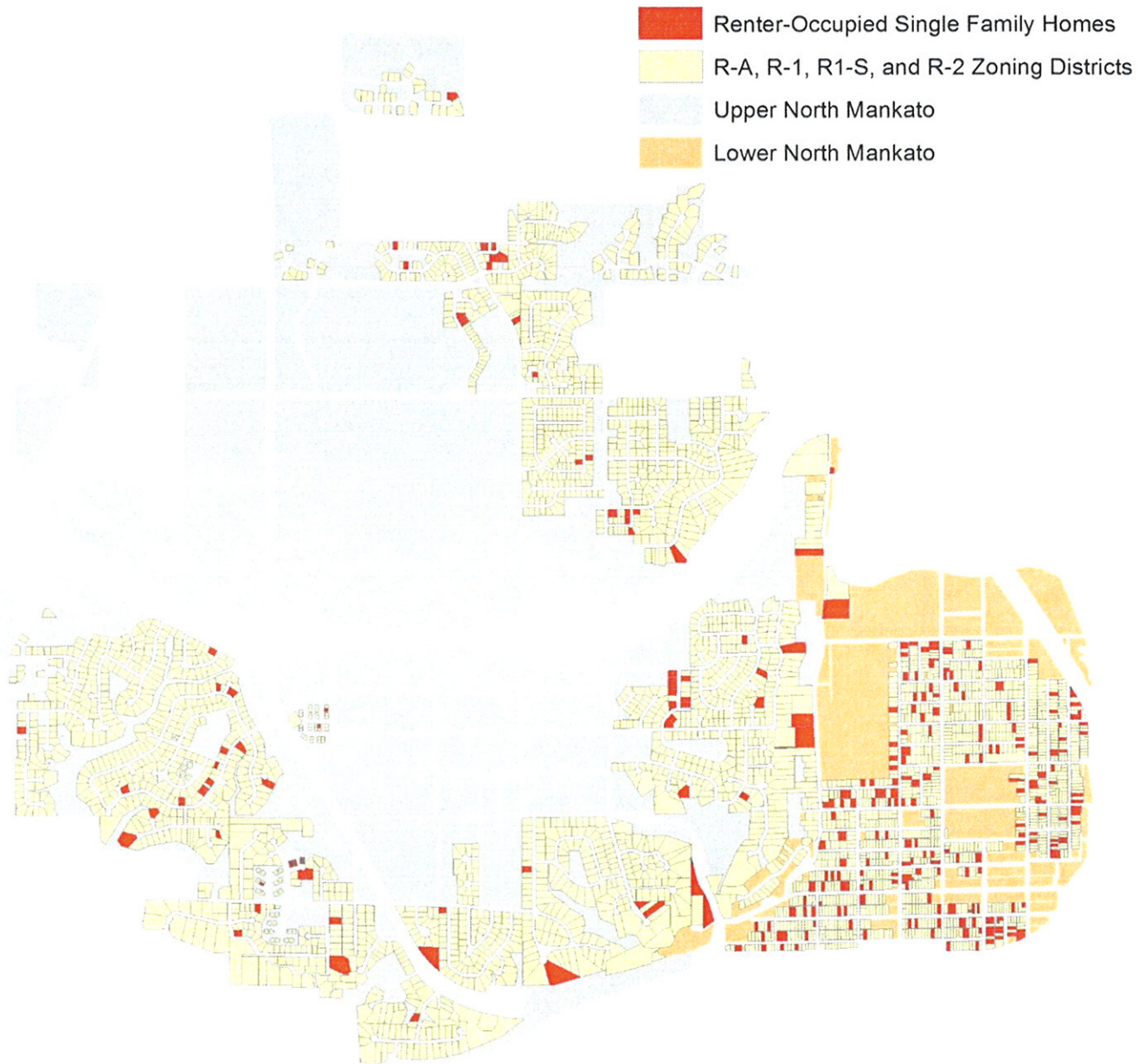


Figure 10. Distribution of Rental Properties in Upper and Lower North Mankato (Source: City of North Mankato, Nicollet County Assessor).

Rates of increases in Lower North present a different scenario that raises concerns. With existing trends, Lower North will acquire approximately 10 more licenses per year, leading to approximately 50 new licenses in five years. Though some properties contain more than one license, it is more likely that this will mean the conversion of 50 more homes to renter-occupied and will raise the amount of renter-occupied to approximately 280 properties or 19.4% from 16%.

Trends from 2010-2014 show that once a rental license is obtained, renter-occupied properties seldom convert back to owner-occupied. With the unlikelihood of properties converting back to owner-occupied and no new construction to add more housing stock, the threat of rental properties overtaking Lower North is real and the application of the rental density ordinance is a necessary measure to maintain neighborhood stability.

6.4 Police Calls and Associated Crime Distribution

Police call data was collected for the years 2010 through 2014 to remain consistent with property data. Through GIS analysis, only calls occurring at properties contained in the relevant zoning districts were used to determine police call significance. Police calls at renter-occupied homes were compared to those at owner-occupied homes and a ratio of occurrences to properties was developed to show the impacts of increased police activity with rental properties (See **Tables 11 – 14** for more information on ratios).

Tables 7 - 9 provide comparison of the number of properties in the residential zones susceptible to the rental density regulation. The number of homes in these districts has increased slowly but steadily over the past five years with percentages of police calls to owner- and renter-occupied homes growing similarly. While upward trends in police calls in the City are steady, *what is more significant is that renter-occupied homes represent approximately 8% of the housing stock in these zones while also representing 21% of police calls in the districts City wide. Of even more significance is that Lower North renter-occupied homes are responsible for approximately 31% of total police calls within relevant residential zoning districts.* This represents a much higher occurrence of police calls to rentals in



Figure 11. Renter-Occupied Home in Lower North Mankato. The stairs leading to the front entryway are broken and do not have a railing, paint is in poor condition, front window to home is in disrepair, and lawn is in poor condition among other things.

NORTH MANKATO: CITY WIDE % Properties and Police Calls in R-A, R-1, R-1S, and R-2 Zones: 2014 - 2015					
Properties	2010	2011	2012	2013	2014
Total # of Properties	3670	3689	3721	3753	3757
% Owner-Occupied Homes	92%	92%	92%	92%	92%
% Renter-Occupied Homes	8%	8%	8%	8%	8%
% PC at Owner-Occupied Homes	78%	83%	82%	79%	78%
% PC at Renter-Occupied Homes	22%	17%	18%	21%	22%

Table 7. Percentages of Owner- and Renter-Occupied Homes and Associated Police Call Percentages in North Mankato. (Source: City of North Mankato, Nicollet County Assessor).

NORTH MANKATO: UPPER NORTH % Properties and Police Calls in R-A, R-1, R-1S, and R-2 Zones: 2014 - 2015					
Properties	2010	2011	2012	2013	2014
Total # of Properties	2229	2247	2277	2308	2312
% Owner-Occupied Homes	97%	96%	97%	96%	96%
% Renter-Occupied Homes	3%	4%	3%	4%	4%
% PC at Owner-Occupied Homes	94%	95%	96%	93%	93%
% PC at Renter-Occupied Homes	6%	5%	4%	7%	7%

Table 8. Percentages of Owner- and Renter-Occupied Homes and Associated Police Call Percentages in Upper North Mankato. (Source: City of North Mankato, Nicollet County Assessor).

NORTH MANKATO: LOWER NORTH % Properties and Police Calls in R-A, R-1, R-1S, and R-2 Zones: 2014 - 2015					
Properties	2010	2011	2012	2013	2014
Total # of Properties	1442	1444	1445	1445	1443.4
% Owner-Occupied Homes	84%	84%	84%	84%	84%
% Renter-Occupied Homes	16%	16%	16%	16%	16%
% PC at Owner-Occupied Homes	67%	73%	72%	70%	69%
% PC at Renter-Occupied Homes	33%	27%	28%	30%	31%

Table 9. Percentages of Owner- and Renter-Occupied Homes and Associated Police Call Percentages in Lower North Mankato. (Source: City of North Mankato, Nicollet County Assessor).

NORTH MANKATO POLICE CALL CATEGORIES	
Personal Crime	Juvenile Offenses
Homicide	Alcohol
Terroristic Threats	Runaways
Criminal Sexual Conduct	Curfew
Robbery	Tobacco
Assault	All Other Reports
Domestic Assault	
Harassment	Traffic Related
Harassing Communications	Accident Reports on Public Property
Child/Vulnerable Adult Protection	Accident Reports on Private Property
Domestic Disturbance	Bicycle Accidents (No Motor Vehicle)
Disorderly Conduct	Driving Under the Influence
All Other Reports	Parking Violations
	Violation Road & Driving Complaints
Property Crimes	Neighborhood Support
Residential Burglaries	Medicals
Non-Residential Burglaries	Animal Control
Theft from Building	Public Assists
Theft from Vehicle	Suspicious Activity
Motor Vehicle Theft	Assist Other Law Enforcement Agencies
Motor Vehicle Tampering	Gun Purchase Permits Applications
Financial Theft	Information Only
Shoplifting	Civil Complaints
Property Damage	Alarm Calls
Arson/Negligent Fires	Welfare Checks
Trespassing	Residence Checks
All Other Reports	Funeral Escorts
	All Other Reports
Other Crimes	
Narcotics	
Underage Consumption	
Weapons	
Liquor Violations	
All Other Reports	

Table 10. North Mankato Police Call Categories. (Source: North Mankato Police Department 2015 Year End Report).

NORTH MANKATO Ratio of Police Calls: 5-Year Averages			
	City Wide	Upper North	Lower North
Ratio of Police Calls to Owner-Occupied Homes	1 : 4.15	1 : 5.55	1 : 2.86
Ratio of Police Calls to Renter-Occupied Homes	1 : 1.51	1 : 3.22	1 : 1.28

Table 11. Ratio of Police Calls to Owner-Occupied and Renter-occupied properties in North Mankato (Source: City of North Mankato).

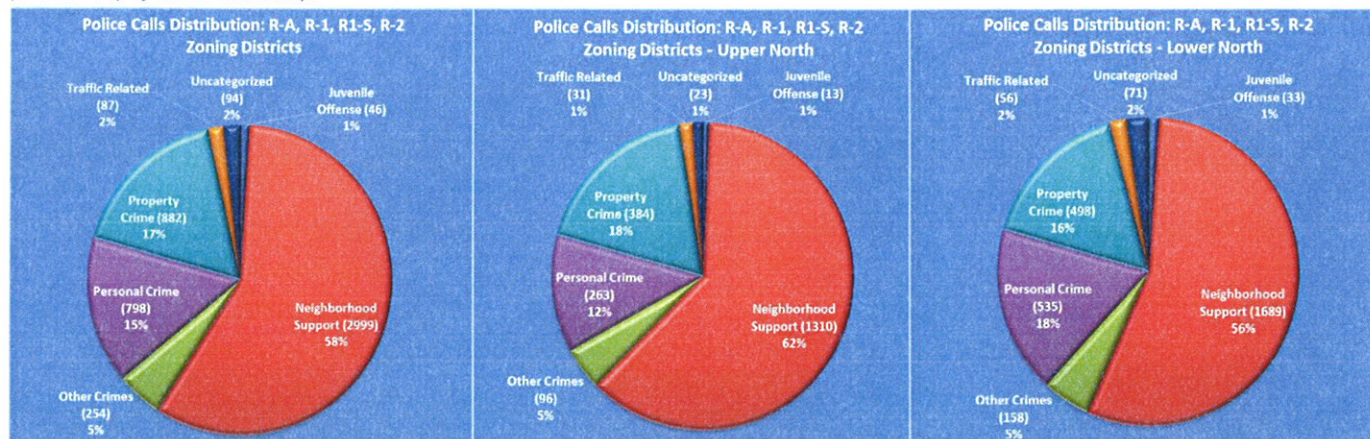


Figure 12. Distribution of Police Call Types in R-A, R-1, R1-S, and R-2 Residential Zoning Districts; City Wide (left), Upper North (middle), and Lower North (right) Mankato. (Source: City of North Mankato).

Lower North than in Upper North which has only 7% of police calls occurring at renter-occupied properties. This further reinforces the need to regulate and monitor Lower North properties using a different approach to ensure these numbers do not increase.

Police call data in this study illustrates perhaps the most compelling evidence of the effects of rental concentrations on neighborhood quality of life. Police call categories considered in the analysis include personal crime, property crime, juvenile offenses, traffic related crimes, neighborhood support, and other crimes.

A breakdown of data categories and associated actions can be seen in **Table 10** and the distribution of occurrences City Wide, in Upper North, and in Lower North can be seen in **Figure 12**. Further detail on police calls can be seen in the North Mankato Police Department's 2015 Year End Report in **Appendix E**.

Not all police calls are associated with crime. Some are for assistance, funeral escorts and information. However, these represent a small portion of calls (See **Appendix E** for more detail). A deeper review of the distribution of types of police calls can be seen in **Figure 12** which addresses these occurrences as they happen City Wide as well as in Upper and

Lower North Mankato.

Figure 12 suggests that percentages of call occurrences are similar among Upper and Lower North, although, the amount of occurrences is significantly higher in Lower North in every category. How does this relate to levels of rental property concentrations? Ratios were developed, as discussed previously, to show a call occurrence per property relationship **Table 11**.

In **Tables 14 – 15**, the “Ratio of PC” rows represent the number of homes impacted by one call. For example, in Upper North in 2014, there was one police call per every 5.94 owner-occupied home and 1 police call per every 2.77 renter-occupied homes. This ratio provides evidence that rental properties in North Mankato, specifically in R-A, R-1, R1-S, and R-2 zoning districts, exhibit higher occurrences of crime. City wide, the data suggests that there is one occurrence for every 4.15 owner-occupied properties and one occurrence per ever 1.66 renter-occupied properties.

Upper and Lower North exhibit different ratios but succeed in maintaining higher occurrences of police calls to renter-occupied homes. Upper North exhibits one occurrence for every 5.55 owner-occupied homes and one occurrence for every 3.22 renter-occupied homes. Lower North exhibits one occurrence per every 2.86 owner-occupied and one per every 1.28 renter-occupied.

This evidence supporting increased police calls to renter-occupied homes is an important factor in neighborhood quality of life and the determination of regulating rental density in the City. It is clear that increased rental concentrations will lead to deterioration of neighborhoods if left unchecked and unregulated.

6.5 Rental Strikes

Rental Strikes are regulated under **City Code Section § 151.11**

Conduct on Licensed Premises

(Appendix B). Rental Strikes are

issued in response to occurrences of crimes and disturbances. If an occupant receives three strikes against them within 12 months after any two previous instances for which notices were sent, the license for the rental unit may be denied, revoked, suspended, or be subject to another penalty imposed by City Council.

NORTH MANKATO: City Wide						
Police Calls to Properties						
Police Call Considerations	2010	2011	2012	2013	2014	5-Year Average
Total # of Police Calls (PC)	945	1088	982	1086	1059	1032
PC at Owner-Occupied Homes	738	900	801	857	827	824.6
PC at Renter-Occupied Homes	207	188	181	229	232	207.4
% PC at Owner-Occupied Homes	78%	83%	82%	79%	78%	80%
% PC at Renter-Occupied Homes	22%	17%	18%	21%	22%	20%
# PC per Owner-Occupied Homes	0.3	0.3	0.3	0.3	0.3	0.3
# PC per Renter-Occupied Homes	0.7	0.6	0.6	0.7	0.7	0.7
Ratio of PC to Owner-Occupied Homes*	4.6	3.8	4.3	4.0	4.2	4.2
Ratio of PC to Renter-Occupied Homes*	1.5	1.6	1.7	1.4	1.3	1.5

Table 12. Police Calls to Properties City Wide (Source: City of North Mankato).

NORTH MANKATO: UPPER NORTH						
Police Calls to Properties						
Police Call Considerations	2010	2011	2012	2013	2014	5-Year Average
Total # of Police Calls (PC)	384	490	409	432	405	424
PC at Owner-Occupied Homes	360	464	391	401	375	398.2
PC at Renter-Occupied Homes	24	26	18	31	30	25.8
% PC at Owner-Occupied Homes	94%	95%	96%	93%	93%	94%
% PC at Renter-Occupied Homes	6%	5%	4%	7%	7%	6%
# PC per Owner-Occupied Homes	0.2	0.2	0.2	0.2	0.2	0.2
# PC per Renter-Occupied Homes	0.3	0.3	0.2	0.4	0.4	0.3
Ratio of PC to Owner-Occupied Homes*	6.0	4.7	5.6	5.5	5.9	5.6
Ratio of PC to Renter-Occupied Homes*	3.2	3.0	4.4	2.7	2.8	3.2

Table 13. Police Calls to Properties in Upper North (Source: City of North Mankato).

NORTH MANKATO: LOWER NORTH						
Police Calls to Properties						
Police Call Considerations	2010	2011	2012	2013	2014	5-Year Average
Total # of Police Calls (PC)	561	598	573	654	654	608
PC at Owner-Occupied Homes	378	436	410	456	452	426.4
PC at Renter-Occupied Homes	183	162	163	198	202	181.6
% PC at Owner-Occupied Homes	67%	73%	72%	70%	69%	70%
% PC at Renter-Occupied Homes	33%	27%	28%	30%	31%	30%
# PC per Owner-Occupied Homes	0.3	0.4	0.3	0.4	0.4	0.4
# PC per Renter-Occupied Homes	0.8	0.7	0.7	0.9	0.9	0.8
Ratio of PC to Owner-Occupied Homes*	3.2	2.8	3.0	2.7	2.7	2.9
Ratio of PC to Renter-Occupied Homes*	1.3	1.4	1.4	1.2	1.1	1.3

Table 14. Police Calls to Properties in Lower North (Source: City of North Mankato).

⁹Sage Policy Group, “There is a Rational Basis for Rent Stabilization in College Park, Maryland,” April 2005.

¹⁰Terance J. Rephann, “Rental Housing and Crime: The Role of Property Ownership and Management,” *The Annals of Regional Science* (43), 2009.

¹¹Duncan Associates, “Analysis of Issues Regarding Student Housing Near the University of Florida,” April 2002.

¹²State College Burrough Staff, “Sustainable Neighborhoods in State College Borough,” June 8, 2009.

The City logs rental strikes specific to properties to monitor compliance. Figure 13 illustrates the areas of high occurrences of rental strikes in relationship to rental license concentrations within the City. This confirms North Mankato's experience with findings of the literature reviewed that suggests rental concentrations can lead to increases in nuisance complaints, City Code violations and crime incidents (Sage Policy Group⁹, Rephann¹⁰, Duncan Associates¹¹, State College Borough¹²). Many of the clusters represent repeat offenders and high concentrations of offenders. This provides further evidence of the correlation between rental concentrations and decreases to neighborhood stability. Specifically, this reinforces that the problems are greater in respect to Lower North Mankato lending to suggestions that a different approach be taken within that area.

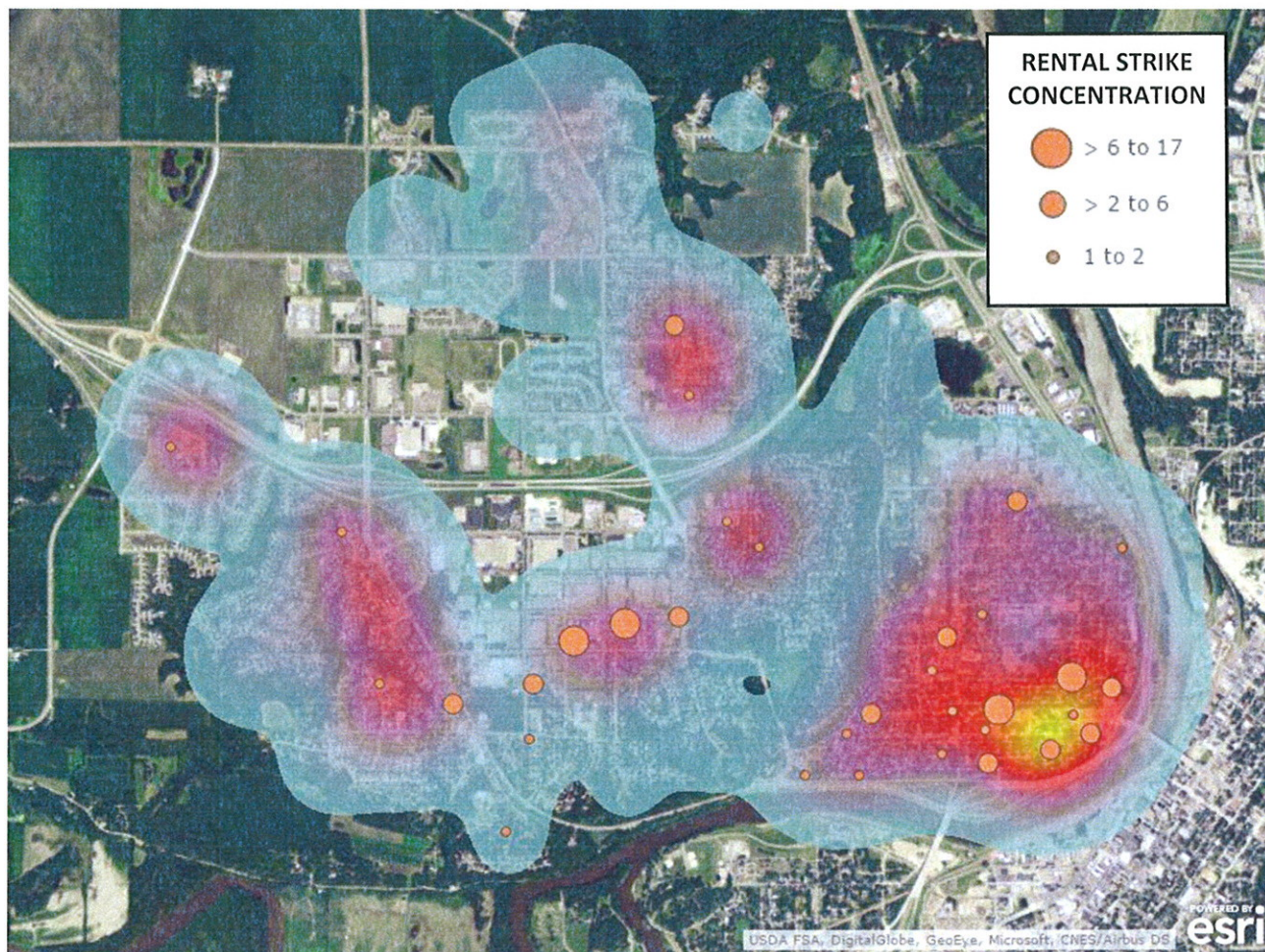


Figure 13. Clusters of Rental Strikes in Relation to Areas of High Concentrations of Rental Licenses (Source: City of North Mankato).

6.6 Nuisances and complaints in single-family residential neighborhoods

Over a five-year period, from 2011 to 2015, there were 77 nuisance violations reported to the City of North Mankato that required action from City Staff. Rental properties represent 8% of properties in relevant zoning districts in the City and over 10% of these were calls to rental properties in response to violations of City Code consisting of (but not limited to) improper storage of materials; illegal parking of vehicles, trailers, boats, etc.; lack of maintenance to buildings, fences, etc.; and storage of unlicensed or inoperable vehicles.

City Staff have expressed these numbers represent only events on record. In previous years, staff has not recorded nuisances. Instead, the City is in frequent, direct phone contact with landlords and property management companies to resolve nuisance violations and complaints. Staff suggests increases in numbers outlined in Table 15 would occur if all events were recorded. Discussion of these events, though not recorded, gives further indication of adverse impacts of rental properties within North Mankato neighborhoods.

Year	Total # of Nuisance Violations	Owner-Occupied Homes	Renter-Occupied Homes	Percentage Renter-Occupied Homes
2015	24	22	2	8%
2014	7	5	2	29%
2013	19	19	0	0%
2012	12	10	2	17%
2011	15	13	2	13%
Totals	77	69	8	10%

Table 15. City of North Mankato Nuisance Violations on Record: 2011 – 2015. (Source: City of North Mankato).

Another adverse effect was analyzed considering the number of complaints for lack of grass and weed maintenance on properties (Table 16). Again, not all occurrences of grass and weed complaints are recorded unless they persist. The City's policy is to mow the property and charge the owner for the mowing in the event that requests for compliance are ignored.

Data supports claims of renter-occupied properties contributing to a higher percentage of nuisances and complaints in North Mankato. Renter-occupied homes represent 15% of properties sited for poor grass and weed maintenance.

Year	Total # of Grass and Weed Complaints	Owner-Occupied (OO) Homes	Renter-Occupied (RO) Homes	Percentage Renter-Occupied Homes
2015	51	45	6	12%
2014	50	41	9	18%
2013	26	22	4	15%
2012	51	42	9	18%
2011	21	19	2	10%
Totals	199	169	30	15%

Table 16. City of North Mankato Grass and Weed Complaints on Record: 2011 – 2015. (Source: City of North Mankato)

Section 7: Seeking a Right Balance of Owner- and Renter-Occupied Homes

A healthy mix of owner- and renter-occupied units is important for a community and many communities strive to maintain 65 – 70% of their housing units owner-occupied.¹³ The North Mankato Comprehensive Plan identifies conditions in 2012 utilizing 2008 to 2012 estimates from the American Community Survey by the U.S. Census Bureau (Table 17). 2012 data suggests roughly 4,012, or 73.1%, of housing units in North Mankato were owner-occupied, generally meeting the 65 – 70% goal and giving greater cause to seek a policy that ensures this stability continues. More

Housing Tenure by Type - 2012								
Units per Structure	Owner Occupied Units	Percent Owner Occupied	Percent Owner Occupied County	Percent Owner Occupied State	Renter Occupied Units	Percent Renter Occupied	Percent Renter Occupied County	Percent Renter Occupied State
Single-Family Detached	3,350	83.5%	85.5%	85.0%	143	9.7%	19.0%	20.0%
Single-Family Attached	298	7.4%	5.3%	7.7%	148	10.0%	12.1%	7.9%
2-4 Unit Multi-Family	87	2.2%	1.4%	1.2%	332	22.4%	20.5%	12.8%
5+ Unit Multi-Family	37	0.9%	0.6%	2.6%	796	53.8%	45.4%	57.5%
Mobile Home	240	6.0%	7.2%	3.5%	60	4.1%	3.0%	1.8%
Total Units	4,012	100%	100%	100%	1,479	100%	100%	100%

Table 17. North Mankato Comprehensive Plan: Housing Tenure by Type (Source: U.S. Census Bureau, 2008-2012 American Community Survey 5-Year Estimates).

Housing Tenure by Type - 2014								
Units per Structure	Owner Occupied Units	Percent Owner Occupied	Percent Owner Occupied County	Percent Owner Occupied State	Renter Occupied Units	Percent Renter Occupied	Percent Renter Occupied County	Percent Renter Occupied State
Single-Family Detached	3433	84.4%	88.0%	85.1%	179	11.0%	19.9%	20.7%
Single-Family Attached	260	6.4%	4.9%	7.7%	167	10.3%	10.4%	8.3%
2-4 Unit Multi-Family	130	3.2%	1.5%	1.2%	349	21.5%	20.0%	12.6%
5+ Unit Multi-Family	16	0.4%	0.3%	2.6%	824	50.8%	45.0%	56.7%
Mobile Home	228	5.6%	5.2%	3.5%	102	6.3%	4.7%	1.6%
Total Units	4,068	100%	100%	100%	1,623	100%	100%	100%

Table 18. Housing Tenure by Type (Source: U.S. Census Bureau, 2010-2014 American Community Survey 5-Year Estimates).

recently, 2010 to 2014 American Community Survey 5-Year estimates suggest the City has increased its housing stock by approximately 56 owner-occupied and 144 renter-occupied units. This identifies an almost 10% increase in renter-occupied units in the community in comparison to a 1.3% increase in owner-occupied units (Table 18). During the two-year period between 2012 and 2014, the City issued 27 new rental licenses within the R-A, R-1, R1-S, and R-2 zoning districts alone issuing approximately 14 new licenses per year in these districts, as mentioned previously in Section 6.3.

While conversion of some owner-occupied homes to rental housing is necessary to accommodate market forces and provide housing choices, too much turnover within established neighborhoods can result in the adverse impacts described in Section 3. For these reasons and to prevent the effects of the potential problems discussed in Section 3, the North Mankato Comprehensive Plan recommends a policy that permits a limited number of rental units within a specified area be adopted.

7.1 Addressing Potential Concerns Raised by Citizens

The purpose of the ordinance is to ensure rental regulation allows a management balance among the mix of owner- and renter-occupied homes that will allow continued increase of rental opportunities while not forcing permanent residents out of neighborhoods as a result of rental concentrations. The draft rental density ordinance can be seen in **Appendix B**.

Though literature suggests that rental concentrations lead to increases in adverse effects, it should not be overlooked that many neighborhoods dominated by rental properties are stable and attractive places to live. Not everyone is capable of owning a home and others may not desire homeownership for a variety of reasons. Researchers caution against the perception that increased owner-occupied properties in a neighborhood will remedy all neighborhood problems. Factors contribute to neighborhood issues and, likewise, some owner-occupied properties are also responsible for increases in nuisance complaints and police call incidence. In regulating rental license issuance, the City desires to maintain and support what they feel to be a healthy mix of existing property tenure while considering the aforementioned factors.¹⁴

¹⁴William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," Housing Policy Debate (Volume 7, Issue 1), 1996.

Section 8: Findings and Conclusion

The findings of this study support the City's decision to establish a moratorium on the issuance of rental licenses and to pursue the adoption of revisions to Chapter 151, Section 18 of the City Code by the North Mankato City Council. Annual licenses issued are trending upward and police calls, rental strikes, and nuisance violations are greater among rentals than owner-occupied housing. Further, the ability of a municipality to regulate rental density is engrained in the police powers delegated to that community through the State Constitution which is defined as: **"...the power to impose such restrictions upon private rights as are necessary for the general welfare."**

The key findings of this study are outlined below:

The rental density ordinance is rooted in the North Mankato Comprehensive Plan which contains a goal in Chapter 4 – Housing to "Provide attractive and desirable residential properties" with policy 2.1.5 to "Consider a policy that permits a limited number of rental units in a specified area to minimize turnover of owner-occupied single-family homes to rental units within established neighborhoods."

The literature review demonstrates that there are relationships between homeownership and neighborhood stability. Homeowners have more at stake with their properties and, in turn, take better care maintaining them. In doing so, property values are maintained and may increase and social conditions may be improved as another result. Along with the maintenance of property values comes maintenance of property tax revenues collected by the City benefitting all in the community.

Other Minnesota cities have adopted similar ordinances for various reasons and have found success. Cities like Northfield and West St. Paul have found that the combination of the rental density ordinance along with a rental licensing and inspection program has led to improvements in their communities. Furthermore, the four cities identified, established their ordinances many years ago and continue to maintain them. This shows that they are indeed working in the community.

Research supports and data findings suggest that a clear problem exists with unregulated rental concentrations in urban environments. In North Mankato, data collection and analysis has revealed that the issues exist in the City.

Rental license issuance is trending upward on average of 4.3% per year City Wide with no signs of slowing down in the future. At this rate, the City would see increases the number of renter-occupied properties amounting to roughly 70 new rental licenses in the next 5-year period.

Upper North Mankato is positioned to better absorb additional rental licenses (currently exhibiting only 104 rental licenses; 4% rental properties) than Lower North as the rate of new development and currently low numbers of renter-occupancy assist to offset any effects. However, Upper North Mankato licenses are increasing at faster rate (4.8%) than Lower North (4.2%) annually and this growth may spur the need for enhanced monitoring in the future to maintain the desired balance of renter-occupied homes in Upper North.

Almost fully developed, Lower North stands to be altered by increased rental licenses without regulation. At 16% renter-occupancy, Lower North currently exceeds the level determined by the City as a benchmark for neighborhood stability (10% per block). If rental licensing trends continue in Lower North, the current rate of growth could add 50 new licenses in a 5-year period, raising that percentage to over 19%. That figure will only increase as offsetting factors of new development and low numbers of renter-occupied properties are not applicable to the area.

North Mankato data also suggests that increased crime, nuisances and complaints are linked to concentrations of rental properties in the community. Renter-occupied homes represent 8% of the housing stock in R-A, R-1, R1-S, and R-2 zoning districts throughout the community as well as 22% of all police call occurrences. In Lower North, renter-occupied

homes represent 16% of properties and are responsible for 31% of all police calls. When compared to Upper north (renter-occupied homes representing 3.6% and responsible for 7.2% of police calls), the disparity between the two areas increases and it becomes clear that there is a real issue surrounding detrimental effects of rental concentrations community wide, but more so in Lower North Mankato.

The ratios developed to show the relationship between the occurrence of police calls to owner-occupied and renter-occupied housing units helps to reinforce these findings. City wide, there is one police call to every 4.15 owner-occupied homes and one police call to every 1.51 renter-occupied homes. In Upper North, this relationship is one police call to every 5.55 owner-occupied homes and one to every 3.22 renter-occupied home. Finally, in Lower North, there is one police call to every 2.86 owner-occupied homes and one to every 1.28 renter-occupied homes.

Rental strikes highlight areas of repeat offenders in the City and those areas are connected to the densest areas of rental concentrations in the community. This provides yet another measure of the effects of rentals on the community as well.

These findings give merit to the literature that suggests there are adverse effects associated with rental property concentrations and provide further evidence of the presence of those effects in North Mankato. In light of these findings, efforts to establish an ordinance in the community that will limit the issuance of rental licensing to protect neighborhood stability seem to be warranted and should be pursued by the City of North Mankato.

Section 9: Policy Recommendations

In response to growing trends of residential conversion to rental, staff recommend the City Council consider amendments to the rental licensing ordinance to limit home rentals to 10% per block within R-A, R-1, R-1S, and R-2 residential zoning districts. The City believes this regulation will balance two goals of the Governing Body: First, it will continue achieve accessibility for all people of all incomes to reside in North Mankato because rental licenses will continue to be available. Second, it will apply a ceiling on the total amount of property that may be converted to rentals in the R-A, R-A, R-1S, and R-2 zoning districts so that increased cost of service associated with these properties does not accelerate at a faster rate than resources available to service the properties. Third, the increase in conversion of single and two family homes to rentals is especially active in Lower North Mankato. For several years the City and Community has invested in neighborhood and regional projects with the goal of maintaining the attractiveness of Lower North Mankato as a neighborhood for families and seniors of all ethnicities and income levels. The return on this investment may be more difficult to obtain as homes occupied by families and seniors increasingly become converted to rentals.

Based on the findings of this study the following recommendations are provided for the City of North Mankato for the establishment of a strong rental property licensing and Inspection Program:

Policy 1: *The City should pursue the establishment of §151.18 Rental Density Ordinance.*

A rental density ordinance limiting rental license issuance to 10% per block in the community will increase the potential for successful achievement of neighborhood stability in North Mankato. This ordinance may consider the differences within Upper and Lower North Mankato and address them separately with different limitations for each.

Policy 2: *The City should pursue the establishment of § 151.19 Temporary Rental Licenses.*

Other communities have suggested that the establishment of a temporary rental license ordinance alleviates some unforeseen circumstances that may occur in relation to homeowners who are unable to sell properties but cannot afford the property or do not reside there.

Policy 3: *The City should adopt increased parking requirements for rental properties.*

As illegal parking is an issue associated with rental concentrations, the City should pursue increased parking requirements that will assist with controlling offenders at rental properties.

Policy 4: *The City should increase efforts for documenting grass, weed, and nuisance complaints.*

The City should set up a spreadsheet database to enhance documentation and better monitor grass, weed, and nuisance complaints to increase understanding of the adverse effects of these complaints on the community.

Appendices

A. Minnesota Association of City Attorneys Educational Conference (2014) –
Conference Agenda



Minnesota Association of City Attorneys Educational Conference

February 7-8, 2014 Sheraton, Bloomington



Conference Agenda

Saturday, February 8, 2014

Moderator for the Day: Michael Couri, President, Minnesota Association of City Attorneys

8:00 AM Check-in and Refreshments

Grand Ballroom Foyer

8:30 **Ethical Issues Faced by Governmental Attorneys — What, me worried?**

Grand Ballroom

- ✦ Organization as client
- ✦ Representing multiple clients
- ✦ Client contact issues

Craig Klausung, Senior Assistant Director, Office of Lawyers Professional Responsibility

9:30 **Regulation of e-Cigarettes and Synthetic Drugs**

Grand Ballroom

- ✦ Prohibition on use, sale, etc.
- ✦ Are e-cigarettes bannable?
- ✦ Duluth example

Gunnar Johnson, City Attorney, City of Duluth

Nathan LaCoursiere, Assistant City Attorney, City of Duluth

Justin Templin, Attorney, Hoff, Barry & Kozar, P.A.

Eileen Wells, City Attorney, City of Mankato

10:30 Refreshment Break

Grand Ballroom Foyer

10:45 **Short Shots**

Grand Ballroom

Participating Moderator: Terry Adkins, City Attorney, City of Rochester

✦ "And you thought the 60-day rule only applied to zoning matters"

Erik Nilsson, Assistant City Attorney, City of Minneapolis

✦ "Sittin' On the Dock of the Bay (of delinquent water and sewer bills)"

Jeanette Behr, Research Manager, League of Minnesota Cities

✦ "Campgrounds to rental housing: Are there no limits?"

George Hoff, Attorney, Hoff, Barry and Kozar, P.A.

✦ "You Got A Warrant?"

Bridget McCauley Nason, Attorney, LeVander, Gillen & Miller, P.A.

✦ "Tim's favorites from the listserv"

Timothy Kuntz, Attorney, LeVander, Gillen & Miller, P.A.

12:00 NOON Wrap-up and Questions/Comments

Grand Ballroom Foyer

12:15 PM Adjournment

Mark your calendars now for the Legislative Update ...

Thursday, June 12, 2014 — Minneapolis Marriott Northwest, Brooklyn Park

GTS EDUCATIONAL EVENTS — KNOWLEDGE TO ACTION



GTS Educational Events is a non-profit organization dedicated to helping those who provide services to Minnesota citizens and communities meet current needs for knowledge and skills and prepare for the changes to come. Since 1976 we have been collaborating with policymakers, staff, appointed officials from all levels of government and all types of nonprofit agencies — and their collaborators in associations, business, higher education and community groups.

ANCIENT CAMPGROUNDS/RENTAL HOUSING -- LIMITS

By George C. Hoff and Shelley M. Ryan

Hoff, Barry & Kozar, P.A.

775 Prairie Center Drive, Suite 160

Eden Prairie, MN 55344

(952) 941-9220

I. CAN THE DENSITY OF RENTAL HOUSING IN TRADITIONAL SINGLE FAMILY NEIGHBORHOODS BE CONTROLLED?

- A. Increasing interest by some communities in slowing the conversion of single family homes to rental
 - 1. Stability
 - 2. Improve quality of life for families
 - 3. Lessened nuisance complaints caused by concentration
 - 4. Improved property maintenance
- B. Methods of control
 - 1. Condition of rental license
 - 2. Zoning control
- C. Dean, et al. v. City of Winona, Third District Court File No. 85-CV-11-2329; currently pending before the Minnesota Court of Appeals as No. A13-1028¹
 - 1. Brought by the Institute for Justice in the name of three parties who, at least initially, did not have rental licenses based on the rental limitation
 - 2. City has wrestled with the problems caused by rental concentration since at least 2005; record before the City demonstrated various impacts by police and other calls, including nuisance
 - 3. When the case was initiated, the rental provision was in the zoning code; it was then moved to the licensing code
 - 4. Study done by Hoisington Koegler Group showing the effect of concentration of rental housing based on a national literature review and local data. Conclusion was that the concentration of rental "results in a negative impact to the quality and livability of residential neighborhoods"²
 - 5. Study used as findings to support the adoption of rental limitation in the licensing ordinance (however, the wording and impact were identical to that when in the zoning ordinance)
 - 6. Sued under the Minnesota Constitution only, with several theories:
 - a. Ultra Vires
 - 1) Zoning ordinance in disguise
 - 2) Under Minn. Stat. § 462.357, City is limited to regulating "use." This ordinance controls the occupant, not use of residential property

¹ Several years ago, the City of Mankato rental limitation ordinance was challenged. The case was dismissed in its entirety, including the rental challenge (on some of the same theories as presented in Dean). Plaintiff lacked standing to challenge the rental ordinance because the building was hazardous and could not be rented. Mankato v. Dickie, 2011 WL 589613 (Feb. 22, 2011).

² The Study is attached.

- b. Procedural Due Process – the City unlawfully delegated its licensing authority to residents
 - c. Equal Protection – first come first serve issuance of licenses results in some getting licenses, others not, even though all are similarly situated
 - d. Substantive Due Process – regulation is arbitrary and capricious
7. Defenses and District Court³
- a. Ultra Vires
 - 1) Plaintiff argued that the City's only authority emanates from zoning and Minn. Stat. § 462.357, which does not allow the regulation of a class of occupant – i.e. rental as opposed to owner-occupied
 - 2) City argued that the use controlled is the "commercial use" of the premises, not the occupant, therefore within its zoning authority
 - 3) Alternatively, if it does not fall within authority given for zoning, it is a general police power regulation analyzed as to whether the object is a matter of promoting public welfare and whether the regulation is reasonably related to that end
 - 4) District Court dismissed claim finding a valid zoning ordinance, and even if not, authorized under broad police power
 - b. Equal Protection
 - 1) Plaintiff argued under State v. Russell that the state constitution imposes a 3 part test – distinctions drawn must be genuine and not "fanciful;" class must be relevant to purpose and there must be an "evident connection" between the class and the remedy; and purpose must be one state can legitimately seek to achieve
 - 2) City argued that similar situated persons are not treated differently and even so, the ordinance satisfies the Russell test
 - 3) District Court agreed with both of the City's arguments and dismissed the claim
 - c. Substantive Due Process
 - 1) Plaintiff conceded promoting livability is a legitimate object of government, argued the density control was not sufficiently related to a legitimate goal. They offered an affidavit which challenged the methodology for the first time in court (they were invited to the city council meetings at which the regulation and study were adopted)
 - 2) City argued that if the ordinance satisfies the heightened state equal protection test, then substantive due process is satisfied; disagreement over which expert to follow does not constitute a basis to find that no "substantial relationship" between goal and regulation can be found
 - 3) District Court agreed with the City and dismissed the claim
 - d. Procedural Due Process
 - 1) Plaintiff argued that by limiting the number of licenses and providing a first come first serve standard for issuance, a neighbor who chooses to apply gives the neighbor legislative control over who subsequently gets a license, and as such is an unlawful delegation of legislative authority

³ District Court Decision is attached.

- 2) City argued that the first come first serve standard is neutral and not a delegation; there must be some limitation; and any due process issues relate to the City action in the adoption of the regulation (no such challenge was made)
- 3) District Court agreed with the City and dismissed the claim
- 8. Court of Appeals
 - a. Argued on December 12, 2013. Decision by March 12, 2014.
 - b. Active panel
 - 1) Focused primarily on two issues and seemed to agree with the City
 - a. If not authorized under zoning, proper police power regulation
 - b. If neutral classification in legislation, uneven results of uniform application cannot give rise to equal protection claim

II. WAPITI V. ELK RIVER, 840 N.W.2D 43 (MINN. 2103)⁴

- A. Campground in the City of Elk River operating in some form back to the 1970's when in a township
- B. Annexed into the City in early 1980's
- C. Voluntarily applied for a CUP to allow continued operation as a campground; CUP issued in 1984
- D. CUP became non-conforming in 1988, but campground continued to operate
- E. Fire destroyed central store/bar and sanitary building in 1999
- F. Because use was non-conforming, City allowed the building to be rebuilt with a ten year IUP, which expired in 2010
- G. City imposed conditions on a new IUP, which were not met by the Campground, and the IUP expired
- H. City revoked the CUP following a hearing for violating permit conditions, including the allowance of permanent residents
- I. Plaintiff sued on the theory that once the CUP became non-conforming, it could not be revoked; the termination provisions of Minn. Stat. § 462.357 must be used (i.e. abandonment, etc.); and that they retained their alleged non-conforming use rights predating 1984
- J. Before both the District Court and the Court of Appeals, Plaintiff conceded that its nonconforming use rights emanated from the 1984 CUP; consequently, there was no need for discovery or litigation as to the claimed pre-1984 nonconforming use rights
- K. District Court, with no rationale, ruled against the City
- L. Court of Appeals reversed, holding that the CUP continued; the City had the authority to revoke the permit under Minn. Stat. § 462.3595; and that revocation was proper based on the record before the City. Because the CUP was no longer in existence, the accessory building could no longer be used
- M. Despite express concessions by Plaintiff in both the District Court and the Court of Appeals as to the basis of its nonconforming use rights and lack of discovery or litigation of those issues (i.e. Plaintiff had the burden of establishing the claimed rights), the Supreme Court reached the issue of whether pre-CUP nonconforming use

⁴ Copy of Court of Appeals' Decision and Supreme Court Opinion attached.

rights remained after a CUP is applied for an accepted. The Court held that absent a clear waiver of the claimed pre-existing nonconforming use rights, the right continues to exist. While not a holding in the case, the Court highlighted Minn. Stat. § 462.357, subd. 1e(b) allowing cities to impose "reasonable regulations" on nonconformities

N. The Court held that the City could require the IUP for the building under the language of the City Code in effect in 2000 and that a new IUP must be issued before the building can be used

O. Practical application of the case:

1. If there is a nonconforming use that converts to a CUP, obtain an express waiver from the property owner and any other interested parties of any claimed nonconforming use rights
2. Because the Court found no waiver, it did not reach the Court of Appeals' determination that a nonconforming CUP can be revoked, and that portion of the case is arguably good law



MEMORANDUM

To: Winona City Council, Planning Commission and City Staff
From: Mark Koegler and Jeff Miller (HKGi)
Date: February 21, 2012
Re: Winona Rental Housing Restriction Ordinance – Literature Review & Data Analysis Findings

Holsington Koegler Group Inc. (HKGi) has conducted a literature review relating to rental housing concentration and its negative impacts on neighborhood quality and livability. This literature review included rental housing's relationship with increased nuisance complaints, increased police incidents, decreased property maintenance levels, decreased homeownership levels, and decreased property values. Although there is a substantial amount of literature that addresses rental housing issues, much of the literature does not contain empirical analysis. Through our literature review, we were able to identify empirical studies of five cities that have faced rental housing issues that are relevant to Winona. Based upon our findings from the literature review, HKGi then compiled and analyzed detailed data related to Winona's rental housing concentration levels and its relationship to nuisance and police violations. Based on our findings from the literature review and city-level empirical studies that nuisance and police violations are key indicators of neighborhood quality and livability, we focused our data analysis on the relationships between concentrated rental housing and nuisance/police violations in Winona. This memo summarizes our literature review and data analysis findings.

I. Literature Reviewed

1. Craig Raborn, "Coping With Colleges: How Communities Address the Problems of Students Living Off-Campus," *Zoning News* (May 2002).
2. Duncan Associates, "Analysis of Issues Regarding Student Housing Near the University of Florida," April 2002.
3. Jack S. Frierson, "How Are Local Governments Responding to Student Rental Problems in University Towns in the United States, Canada, and England?" *Georgia Journal of International and Comparative Law* (Winter 2005).
4. John Janmaat, "The Curse of Student Housing: Evidence from Wolfville, Nova Scotia," 2010.
5. Ko Wang, Terry V. Grissom, James R. Webb and Lewis Spellman, "The Impact of Rental Properties on the Value of Single-Family Residences," *Journal of Urban Economics*, 1991.
6. Mayor's Commission on Housing & Home Ownership, "Promotion of Home Ownership in the City of Binghamton: A Report of the Mayor's Commission on Housing and Home Ownership," 2008.
7. Ngai Pindell, "Home Sweet Home? The Efficacy of Rental Restrictions to Promote Neighborhood Stability," *Scholarly Works* (Paper 57), 2009.
8. Terance J. Rephann, "Rental Housing and Crime: The Role of Property Ownership and Management," *The Annals of Regional Science* (43), 2009.
9. Sage Policy Group, "There is a Rational Basis for Rent Stabilization in College Park, Maryland," April 2005.

10. Sage Policy Group, "There Remains a Rational Basis for Rent Stabilization in College Park, Maryland," August 2009.
11. State College Borough Staff, "Sustainable Neighborhoods in State College Borough," June 8, 2009.
12. West Urbana Neighborhood Association, "What Other College Communities Have Done: Examples of Regulatory Actions to Preserve the Single-Family Residential Character of a Campus Neighborhood," January 2005.
13. William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," *Housing Policy Debate* (Volume 7, Issue 1), 1996.
14. *Farley v. Zoning Hearing Board of Lower Merion Township*, 1994.
15. *Lantos v. Zoning Hearing Board of Haverford Township*, 1993.

II. Issues with Concentration/ Density of Rental Housing in Single-Family Neighborhoods

Regulating the concentration or density of rental housing in single-family residential neighborhoods is a particular issue that the City of Winona is addressing with its 30% limit of rental housing properties per block. Specifically, the City's low and medium density residential zoning districts allow rental units as a permitted use but limit the number of residentially-zoned lots on any block that can obtain rental housing certification to a maximum of 30%. According to City Planning Commission Meeting Minutes, the Parking Task Force concluded that housing density, property maintenance, off-street parking and deteriorating residential community character were major problems "resulting from the extensive number of homes which have been converted to rental purposes"¹ in some areas of the community. Based on this finding, the task force proposed to establish a limitation on the number of rental houses that could be concentrated within each block within all residential zoning districts, with the exception of the R-3 zoning district.

The literature review supports the City's concerns with an over-concentration of rental houses in single-family residential neighborhoods. Many university towns face the problem of large numbers of single-family houses being converted to rental houses in single-family residential neighborhoods, thereby, creating a high concentration of student rental houses within single-family residential neighborhoods. The literature reviewed supports the argument that over-concentrations of rental houses have negative impacts on surrounding residential properties and neighborhoods in general, including noise, increased traffic, litter, illegal parking, inadequate property maintenance, and a general decrease in the quality of life for permanent residents of the neighborhood.² The impacts typically fall into three primary categories:

- Increased nuisance and property maintenance complaints,
- Increased City Code violations and police citations,
- decreased property values.

Thus, the impacts are physical, economic and social, ultimately contributing to decreases in the quality and livability of neighborhoods.

¹ City of Winona Planning Commission Meeting Minutes, October 24, 2005: 5.

² Jack S. Frleron, "How Are Local Governments Responding to Student Rental Problems in University Towns in the United States, Canada, and England?" *Georgia Journal of International and Comparative Law* (Winter 2005): 1.

In general, the studies found that rental residential properties, particularly, rental single-family houses, are generally maintained at a lower level than owner-occupied houses. Property maintenance issues often include building repairs, yard care, and snow removal. The "Homeownership and Neighborhood Stability" article cites several studies that show "that homeowners are more likely than landlords to undertake repairs and that they spend more on them."³ This same article also asserts that owner-occupied housing units are generally maintained at a higher level because homeowners, unlike landlords and renters, possess both an economic and use interest in their homes. "The Impact of Rental Properties on the Value of Single-Family Residences" article cites several studies that have empirically demonstrated this situation. Inadequate property maintenance issues often result in increased levels of nuisance complaints and City Code violations, as well as decreases in property values of nearby housing.

Several studies (Wang, et al; Rohe & Stewart, Janmaat, Pindell) contain empirical analyses that linked higher concentrations of rental houses to decreases in nearby property values. The most direct study of those reviewed relating to impacts on property values was "The Impact of Rental Properties on the Value of Single-Family Residences" study, which concluded that "an inverse relationship exists between the value of a house and the presence of rental properties in the study area."⁴ This study analyzed data from 23,119 single-family residences and 1,162 single-family sales in San Antonio (TX). Another study found that "after controlling for housing stock characteristics, household characteristics, and MSA-level economic factors, a 5-percentage-point change [increase] in the homeownership rate of a tract would be associated with about a \$4,000 increase in mean single-family property value over a 10-year period of time."⁵ A subsequent impact of decreased property values is the decrease in property tax revenues for the City, County and other taxing jurisdictions.

Several studies (Sage Policy Group, Rephann, Duncan Associates, State College Borough) contain empirical analyses that link the concentration of rental houses to increases in nuisance complaints, City Code violations, and crime incidents. Nuisances typically include yard care (e.g. weed control, grass cutting), snow removal, refuse, illegal parking, noise, disorderly conduct, liquor and over-occupancy. Section III of this memo describes the empirical analyses linking the concentration of rental houses with nuisance complaints and City Code violations in five cities. Nuisance complaints, code violations and crime incidents are key indicators of a neighborhood's livability and residents' satisfaction with their neighborhood. The literature reviewed indicates increased incidences of nuisances, code violations and crimes in renter-occupied houses versus owner-occupied houses. A subsequent impact of increased complaints, violations and crime incidents is the additional costs incurred by a city to observe, address and process them.

³ William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," *Housing Policy Debate* (Volume 7, Issue 1), 1996: 48.

⁴ Ko Wang, Terry V. Grissom, James R. Webb and Lewis Spellman, "The Impact of Rental Properties on the Value of Single-Family Residences," *Journal of Urban Economics*, Volume 30, Issue 2 (1991): 164.

⁵ William M. Rohe and Leslie S. Stewart, "Homeownership and Neighborhood Stability," *Housing Policy Debate* (Volume 7, Issue 1), 1996: 71-72.

III. Empirical Studies of Rental Housing Impacts on Community Livability in Five Cities

Through the literature review, we were able to identify empirical studies in five cities that show a correlation between the concentration of rental housing and negative impacts on community livability. The five cities are Gainesville (FL), State College (PA), College Park (MD), Cumberland (MD), and Chapel Hill (NC). Specifically, these five empirical studies identify a link between the concentration of rental housing and increases in nuisance complaints, code violations and police incidents.

Gainesville, FL

In 2002, the City of Gainesville conducted an analysis of student housing issues in the neighborhoods around the University of Florida, which were identified as the study's University of Florida (UF) Context Area. The City's Comprehensive Plan specifically contains a policy calling for such a study in its Future Land Use chapter. Policy 5.1.7 states that "The City shall prepare a study of the impacts of rentals on single-family neighborhoods and shall implement additional programs as necessary and appropriate to stabilize and enhance these neighborhoods."⁶ Based on Census data for the Census tracts that make up the UF Context Area, the study estimated that approximately 75% of the residences in this area are used as rental housing. Using code and noise complaint data from the City's Code Enforcement Division, the study tabulated and compared the number of complaints from the UF Context Area with the overall city. Although the UF Context Area represents 23% of the households in the city, the study found that approximately 51% of the noise complaints came from this area, 46% of the over-occupancy complaints, 50% of the "vision triangle" (obstructed views at intersection corners) complaints, 43% of the sign violations, and 37% of the minor housing code violations.⁷

State College, PA

In 1994 and 2007, the Borough of State College compiled "Violations by Housing Type" reports. The housing types include apartments, duplexes, fraternities, single-family houses, rental houses, rooming houses and townhouses. This analysis showed that rental single-family houses had the highest average number of nuisance violations per unit, followed by duplexes and fraternities.⁸ The top four violations for rental single-family houses were snow, refuse, weeds and noise. The record does not show any evidence that the maximum of three unrelated persons rule, which was enacted in 1979, reduced the number of conversions of owner-occupied single-family houses to student rental houses. In 1997, State College Borough established a minimum spacing ordinance between student rental houses. The record suggests that the minimum distance between student rental single-family homes has resulted in a decrease in conversion of owner-occupied homes to rental homes.⁹

College Park, MD

In 2005, the City of College Park conducted a rental housing study that looked at declining homeownership, an increasing trend in conversions of owner-occupied single-family housing being to rental housing, and the

⁶ Duncan Associates, "Analysis of Issues Regarding Student Housing Near the University of Florida," April 2002: 1.

⁷ Ibid: 24.

⁸ Staff of State College Borough, "Sustainable Neighborhoods in State College Borough," June 8, 2009: 7.

⁹ Ibid: 8-9.

concentration of City Code violations occurring in rental single-family housing. In 2004, the study calculated that the average number of first notice code violations per residential rental unit was 0.78 compared to 0.21 first notice code violations for owner-occupied residential units, which equates to 3.7 times more violations for rental housing¹⁰. In 2008, there were 0.92 violations per rental housing unit compared to 0.38 for owner-occupied housing unit.¹¹ This study found an increasing trend in conversions of owner-occupied single-family homes to rental housing and a corresponding higher rate of City Code violations in rental single-family housing. In addition to the negative impact on neighborhood quality and livability, this significant higher level of nuisance violations also results in additional costs for the City to process code violations, including observation, recording, communicating and rectifying them.

Cumberland, MD

This paper analyzes the links between residential rental properties and crime incidents in the City of Cumberland, MD, which has a population of approximately 21,000 residents. Using police incident report data for privately owned rental properties, the type (disturbances, assaults and drug activity) and frequency of crime incidents were analyzed. The study selected these crimes because "they are frequently found in a residential setting and are considered important measures or indicators of neighborhood quality of life."¹² This study found that increases in crime were linked to residential rental properties, in particular rental properties where the landlord does not live on-site, properties that are part of larger rental property holdings, properties that use Section 8 vouchers, and properties in neighborhoods with a lower percentage of owner-occupied houses.

Chapel Hill, NC

Chapel Hill's 2000 Comprehensive Plan "is organized around twelve major themes, each growing out of the community values that have been identified and which, taken together, form a strategy for Chapel Hill's future."¹³ One of these major themes is to conserve and protect existing neighborhoods. The Comprehensive Plan contains an entire chapter devoted to community character, including goals, strategies and actions to conserve and protect the character of the community's neighborhoods. "The central purpose of the strategies and actions contained in the Comprehensive Plan is to manage growth and change so that Chapel Hill will continue to have a special community character and quality of life in the future."¹⁴

One of these strategies is to address the neighborhood impacts of the conversion of owner-occupied housing to rental housing, including nuisance complaints. The City has identified community indicators that are monitored annually as a means for tracking progress of the implementation of its Comprehensive Plan strategies. For the rental housing strategy, the corresponding community indicator is the percentage of loud noise complaints that occur in neighborhoods that touch and circle the downtown and central campus, which have been designated Residential Conservation Areas in the City's Land Use Plan. In 2004, 33% of loud noise complaints occurred in these neighborhoods, which have concentrations of residential

¹⁰ Sage Policy Group, "There Is a Rational Basis for Rent Stabilization in College Park, Maryland," April 2005: 17.

¹¹ Sage Policy Group, "There Remains a Rational Basis for Rent Stabilization in College Park, Maryland," April 2009: 11.

¹² Terance J. Rephann, "Rental Housing and Crime: The Role of Property Ownership and Management," *The Annals of Regional Science* (43), 2009: 2.

¹³ Town of Chapel Hill (NC), "Planning for Chapel Hill's Future: The Comprehensive Plan," May 8, 2000: i.

¹⁴ *Ibid*: 11.

rental housing.¹⁵ Since these neighborhoods represent approximately 20% of the total housing units within Chapel Hill, they are responsible for a disproportionate share of the loud noise complaints in the community. The City of Chapel Hill clearly links and monitors rental housing nuisance incidents with neighborhood character and quality of life.

IV. Minnesota Examples of Cities with Rental Housing Concentration Regulations

At the state level, in addition to Winona's rental housing concentration ordinance, we are aware of three other Minnesota cities that have established ordinances to address the issue of concentrated rental housing – Northfield, Mankato and West St. Paul. While Winona's ordinance established a maximum of 30% rental housing properties per residential block, the other cities' maximums are all lower including 25%, 20% and 10%. These three ordinances were all established after Winona's ordinance was in place – Northfield (2007), Mankato (2008) and West St. Paul (2012).

- Northfield, MN: Located in Businesses Ordinance (not Zoning Ordinance), Rental Housing (Chapter 14, Article III). Limits the percentage of houses on a single block that can be granted rental housing licenses to 20% in low density neighborhoods (R-1 and R-2 zoning districts).
- Mankato, MN: Located in Business Regulations & Licensing Ordinance (not Zoning Ordinance), Dwelling Unit Rental (Section 5.42, Subdivision 20). Limits the number of lots on any block that are eligible to obtain a rental license or to be licensed as a rental property to 25%.
- West St. Paul, MN: Located in Building, Housing & Construction Regulations Ordinance (not Zoning Ordinance), Rental Dwellings (Section 435). Limits single-family rental properties to 10% per block in an R1 zoning district.

¹⁵ Town of Chapel Hill (NC), "2004 Chapel Hill Data Book," July 2004: S-8.

V. Analysis of Winona Nuisance and Police Violations Data

In order to compare Winona's rental housing situation with the findings from other cities' empirical studies related to rental housing concentration issues, which are described in Section III, an analysis was conducted of Winona's nuisance and police violations data. Since the City's "30% Rule" zoning ordinance was adopted at the end of 2005, this data analysis covers the time period of 2006-2011 for nuisance complaints. Police citation data was analyzed for the 2009-2010 time period. The intent of this analysis is to calculate and compare violations data for rental housing vs. owner-occupied housing within non-multifamily residential areas, as well as concentrated rental residential blocks (blocks currently over the 30% maximum) vs. all other residential blocks.

This analysis of nuisance and police violations was limited to properties within the City's residential zoning districts, except for R-3, since the "30% Rule" is only applicable to these zoning districts. Properties in the following zoning districts are exempt from the "30% Rule": B-1, B-2, B-3, R-3, M-1, and M-2. Within the applicable residential zoning districts, there are currently 7,383 properties. Some of these residential properties have not been developed with a residential building yet, therefore, the more relevant total residential properties number that we used is 6,557 developed residential properties, not including R-3 properties. In 2011, 1,161 properties had rental housing certification, which means rental housing certified properties represented 17.7% of the non-multifamily residential properties within Winona.

In 2011, there were a significant number of blocks that exceeded the maximum level of 30% rental housing. These blocks contain 1,528 residential properties, including both rental and owner-occupied housing, and represent 23.3% of the non-multifamily residential properties within Winona. 676 of the 1,528 properties on the "over 30%" blocks had rental housing certification, which translates to an average of 44.2% rental housing properties on the "over 30%" blocks. Although many blocks exceed the maximum level of 30% rental housing, many blocks do not. Within the city's area of traditional square blocks, approximately 700 additional rental housing certifications are permitted on blocks that currently have less than 30% rental housing. Within the entire city, approximately 1,400 additional rental housing certifications could be permitted. In other words, less than half of the possible rental housing certifications are currently being used since 1,171 rental housing certifications currently exist compared to the possibility of an additional 1,400 that could be permitted.

The first type of analysis looks at nuisance complaints for the time period of 2006-2011 for all properties within residential zoning districts, except R-3. The types of nuisance complaints included the following: uncontrolled weeds, grass/lawn maintenance, garbage, junk, vehicles, vehicles parked in yard, furniture in yard, snow/ice, no building permit, building deterioration, fence deterioration, and other. Table 1 below summarizes total number of residential property complaints, number & percentage of rental property complaints, and number & percentage of non-rental property complaints. The major finding is that rental housing properties, which represent just 17.7% of all non-multifamily residential properties within Winona, were responsible for 51% of the residential nuisance complaints from 2006-2011.

Table 1: Nuisance Complaints – Rental Residential Properties vs. Non-Rental Properties (2006-2011)

Year	Total Number of Residential Property Complaints	Number of Rental Property Complaints	% Associated w/ Rental Properties	Number of Non-Rental Property Complaints	% Associated w/ Non-Rental Properties
2011	345	133	39%	212	61%
2010	414	194	47%	220	53%
2009	492	249	51%	243	49%
2008	413	232	56%	181	44%
2007	416	255	61%	161	39%
2006	236	108	46%	128	54%
2006-2011	2,316	1,171	51%	1,145	49%

Note: Rental housing properties represent 17.7% of all non-multifamily residential properties in Winona, not including residential properties in the following exempted zoning districts – B-1, B-2, B-3, R-3, M-1 and M-2.

The second type of analysis looks at nuisance complaints for the time period of 2006-2011 comparing blocks with over 30% rental housing to blocks with less than 30% rental housing. Table 2 below summarizes total number of residential property complaints, number & percentage of complaints associated with blocks having over 30% rental housing, and number & percentage of complaints associated with blocks having less than 30% rental housing. The major finding is that blocks with over 30% rental housing, which represent just 23.3% of all non-multifamily residential properties within Winona, were responsible for 47% of the residential nuisance complaints from 2006-2011.

Table 2: Nuisance Complaints – Concentrated Rental Blocks vs. Other Residential Blocks (2006-2011)

Year	Total Number of Residential Property Complaints	Number of Complaints in Blocks OVER 30% Rental Housing	% Associated w/ Blocks OVER 30% Rental Housing	Number of Complaints in Blocks LESS THAN 30% Rental Housing	% Associated w/ Blocks LESS THAN 30% Rental Housing
2011	345	131	38%	214	62%
2010	414	187	45%	227	55%
2009	492	233	47%	259	53%
2008	413	203	49%	210	51%
2007	416	228	55%	188	45%
2006	236	102	43%	134	57%
2006-2011	2,316	1,084	47%	1,232	53%

Note: Blocks with over 30% rental housing represent 23.3% of all non-multifamily residential properties in Winona, not including residential properties in the following exempted zoning districts – B-1, B-2, B-3, R-3, M-1 and M-2.

The third type of analysis delves deeper into nuisance complaints for the time period of 2006-2011 to compare rental/non-rental properties on "over 30% rental blocks" with rental/non-rental properties on "less than 30% rental blocks". Table 3 below summarizes this data. The analysis in the upper half of Table 3 shows that rental housing properties on concentrated rental blocks had an average number of nuisance complaints per property of 1.16 vs. 0.80 for rental housing properties on non-concentrated rental blocks. This difference translates to a 45% higher rate of nuisance complaints for rental housing properties that are located on concentrated rental blocks. Another way to look at it is that rental housing properties located on concentrated rental blocks, which represent 10% of all residential properties, are responsible for 34% of residential nuisance complaints. Furthermore, the analysis in the lower half of Table 3 shows that non-rental housing properties on concentrated rental blocks had an average number of nuisance complaints per property of 0.35 vs. 0.19 for non-rental housing properties on non-concentrated rental blocks. Thus, the concentration of rental housing creates a spillover effect on non-rental housing to increase its rate of average nuisance complaints per property more than 80%.

Table 3: Nuisance Complaints -- Rental/Non-Rental Properties & Concentrated Rental Blocks (2006-2011)

<i>Type of Properties</i>	<i>Total Number of Properties</i>	<i>Number of Nuisance Complaints 2006-2011</i>	<i>Average Number of Nuisance Complaints per Property</i>	<i>% of Total Residential Properties</i>	<i>% of Nuisance Complaints</i>
Rental Housing Properties on Over 30% Rental Blocks	676	783	1.16	10%	34%
Rental Housing Properties on Less Than 30% Rental Blocks	485	388	0.80	8%	17%
Total Rental Housing Properties	1,161	1,171	1.00	18%	51%
Non-Rental Housing Properties on Over 30% Rental Blocks	852	301	0.35	13%	13%
Non-Rental Housing Properties on Less Than 30% Rental Blocks	4,544	844	0.19	69%	36%
Total Non-Rental Housing Properties	5,396	1,145	0.21	82%	49%
Total	6,557	2,316	0.35	100%	100%

The fourth type of analysis looks at police citations for the 2009-2010 time period. The types of police citations analyzed included primarily loud party, minor consumption, social host ordinance, public urination, criminal damage to property, and theft/burglary. Table 4 below compares the number of police citations associated with rental/non-rental properties on "over 30% rental blocks" with rental/non-rental properties on "less than 30% rental blocks". The analysis in the upper half of Table 4 shows that rental housing properties on concentrated rental blocks had an average number of police citations per property of 0.0533 vs. 0.0206 for rental housing properties on non-concentrated rental blocks. This difference translates to a 160% higher rate of police citations for rental housing properties that are located on concentrated rental blocks. Another way to look at it is that rental housing properties located on

concentrated rental blocks, which represent 10% of all residential properties, are responsible for 55% of residential nuisance complaints.

Table 4: Police Citations – Comparison of Rental Properties & Blocks (2009-2010)

Type of Properties	Total Number of Properties	Number of Police Citations 2009-2010	Average Number of Police Citations per Property	% of Total Residential Properties	% of Police Citations
Rental Properties on Over 30% Rental Blocks	676	36	0.0533	10%	55%
Rental Properties on Less Than 30% Rental Blocks	485	10	0.0206	8%	15%
Non-Rental Properties on Over 30% Rental Blocks	852	3	0.0035	13%	4%
Non-Rental Properties on Less Than 30% Rental Blocks	4,544	17	0.0037	69%	26%
Total	6,557	66	.0100	100%	100%

Note: The police citations data for 2009-2010 above does not include nine (9) of the citations because no address was indicated on these citations for the actual location of the crime incident.

VI. Conclusion

Our literature review of rental housing concentration and its effects, including the empirical studies of five cities, supports the conclusion that the concentration of rental housing results in negative impacts to the quality and livability of residential neighborhoods. In addition, our compilation and analysis of the relationship between Winona's rental housing concentration and nuisance complaints/police violations data parallels the findings of the literature review. In particular, we find that concentrated rental housing in Winona has resulted in a much higher rate of nuisance complaints and police violations in concentrated rental housing blocks, impacting both rental and non-rental residential properties. Thus, based upon the literature review, including the empirical studies of five cities relevant to Winona's rental housing issues, and the detailed analysis of Winona data, we conclude that the concentration of rental housing in Winona results in increased levels of nuisance and police violations in those neighborhoods. As these violations are indicators of increased nuisances and decreased property maintenance levels that negatively affect neighborhood quality and livability, we also conclude that the concentration of rental housing leads to decreased neighborhood quality and livability.

STATE OF MINNESOTA

COUNTY OF WINONA

FILED ^{WLL}
April 17, 2013
DISTRICT COURT
WINONA, MN 55987

DISTRICT COURT

THIRD JUDICIAL DISTRICT

Court File No.: 85-CV-11-2329

Ethan Dean, Holly Richard,
Ted Dzierzbicki, and Lauren Dzierzbicki,

Plaintiffs,

vs.

**SUMMARY
JUDGMENT ORDER
AND JUDGMENT**

City of Winona, a municipality,

Defendant.

This case was heard by District Judge Jeffrey D. Thompson on January 23, 2013, on cross motions for summary judgment. Plaintiffs (hereafter "Homeowners") were represented by Anthony B. Sanders and Katelynn K. McBride, 527 Marquette Ave., Ste. 1600, Minneapolis, MN 55402. Defendant (hereafter "the City") was represented by George C. Hoff, 160 Flagship Corporate Center, 775 Prairie Center Dr., Eden Prairie, MN 55344. All parties assert that there are no genuine issues of material fact and that this matter is appropriately decided as a matter of law. The Court allowed the City additional time to respond to Homeowners' affidavits and took this matter under advisement on January 31, 2013.

Upon the pleadings, affidavits, exhibits, and filed discovery, the Court having considered the arguments of counsel and being otherwise fully advised in the premises, finding no genuine issues of material fact,

It Is Ordered That:

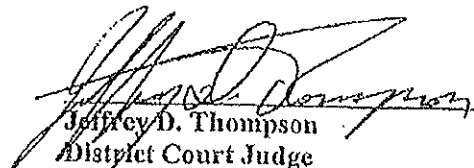
1. The City's motion to strike the Second Affidavit of David Phillips is **DENIED**.
2. Homeowners' motion for summary judgment is **DENIED**.

3. The City's motion for summary judgment is **GRANTED**.
4. The following Memorandum is herein incorporated by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED: April 17, 2013

BY THE COURT:


Jeffrey D. Thompson
District Court Judge

JUDGMENT

I hereby certify that the foregoing Order constitutes the Judgment of the Court.

DATED: April 17, 2013
(COVER SEAL)

SALLY A. CUMISKEY
COURT ADMINISTRATOR

by Mary K. Keller
Deputy Clerk

MEMORANDUM

Statement of Undisputed Facts

Winona City Rental Property Code § 33A.03(i) provides in relevant part: "In R-R, R-S, R-1, R-1.5 and R-2 districts of the city, no more than 30 percent (rounded up) of the lots on any block shall be eligible to obtain certification as a rental property, including homes in which roomers and/or boarders are taken in by a resident family." There is an exemption for grandfathered-in lots and for certain zoning districts. There is also a temporary rental license available to a homeowner who is actively trying to sell his or her house for one year. This rule

("the 30% Rule") was adopted in 2005 in Chapter 43 of the city code, which deals with zoning. The 30% Rule was moved to the "Housing Rental Property" chapter in 2012, after this matter had commenced. There were some changes to the wording of the rule, but none relevant to this dispute.

History of the 30% Rule

In 2003, the Winona City Council requested that the Planning Commission consider the effectiveness of the City's off-street parking regulations, particularly regarding rental properties and most significantly around the Winona State University ("WSU") campus. Members of the Commission noted that the number of residential properties being converted from single-family to rental usage was increasing and that the parking demands for owner-occupied dwelling units is often different than rental dwellings. Suggested solutions to this growing problem included changing the definition of "family" as it pertains to single-family occupancy and limiting the number of rental properties per block in residential areas.

In December of 2004, the City Council adopted a resolution that put a moratorium on the certification of "new" rental housing units for a six-month period. During the moratorium, the Planning Commission initiated discussions and developed a tentative list of proposed code modifications pertaining to rental housing density and off-street parking issues. The Commission then held a series of public input meetings with rental landlords, homeowners, and others. In April of 2005, Mayor Jerry Miller, in conjunction with the Commission discussions, initiated a series of town meetings designed to deal with "density, parking, and aesthetic issues within the 'area' of the university." The meetings were attended by landlords, homeowners, students, and others. Following the last meeting, in late May of 2005, the Mayor created a core study group to identify issues and possible solutions pertaining to university neighborhoods to

forward to the Commission. The moratorium was extended another 6 months until December of 2005 to allow the study group and the Commission to complete their review, planning, and implementation.

A Parking Advisory Task Force was also formed in 2005 to consider these same issues and consider the Planning Commission's proposals. The Task Force noted that 39% of the City's dwelling units were rental, but 52% of the complaints received by the Community Development Department relate to rental occupancies. Due to this, it was suggested that the number of rentals in the City be restricted, perhaps on a "per block" basis. Concerning the Commission's proposals, the Task Force agreed that the definition of "family" should be modified so that only 3 unrelated persons can live in a single dwelling unit; it agreed that the number of roomers a resident family can keep be reduced from 4 to 2; and the Task Force agreed that the number of required off-street parking spaces per dwelling unit be increased from 1.5 to 2. In August of 2005, the Task Force began discussing the idea of restricting the number of rental units per block. Because rental housing units comprised approximately 39% of the total housing units in the City at the time, it was suggested that the number of rental units be restricted to 30% of the total properties on any given block.

At the August 2005 Task Force meeting, Committee Member Don Leaf emphasized that the ratio of rental properties to total properties represents community "character" and that such a restriction could protect inner city neighborhoods from heavy concentration of rental housing. After some debate, the Task Force adopted a motion to forward the 30% Rule to the Planning Commission for consideration, though it was discussed again at the September 1, 2005 meetings. There it was noted that the 30% Rule could prevent out-of-town people from purchasing residential property within the City and that it could hinder current residents' ability to sell their

property. These issues were noted and acknowledged, and the Task Force decided that it was in favor of the 30% Rule and would seek studies and findings on the effect of rental housing on the area.

On October 1, 2005, the Planning Commission discussed the 30% Rule. The Commission noted that the Parking Task Force believes that landlords and students often do not have any interest in how their properties appear and the effect they have on the community. Therefore, the Task Force believes that neighborhoods heavily populated with student rentals tend to become run-down and unattractive and a 30% per-block restriction on rental housing is appropriate. Some city staff were concerned that the rule might not be legal, but the City Attorney indicated that if the City Council finds that such a restriction will promote the public health, safety, morals and general welfare of the City's residents, it would be legal. It was also noted that some exceptions should be allowed for, such as a professor leaving the area for a year or two, for which a one-year exception or "special case clause" could be established. In an October 24, 2005 meeting, the Planning Commission noted that according to County data, in 2004, the Department of Community Development found that of the 99 addresses that had two or more calls for service that police responded to for noise and party complaints, 95 were rental units. The Commission also noted that 52% of the zoning violations that resulted in written violations during 2004 were for rental units while 39% of the City's housing units are rental. After further discussion, a public hearing was scheduled for November 14, 2005 on the issue. At the public hearing, the Commission voted 6 to 3 to recommend the 30% Rule to the City Council.

The City Council held a public meeting on November 21, 2005. At the meeting, the City Council discussed and adopted some of the other recommendations of the Task Force and the

Planning Commission, as well as opening a public hearing on the 30% Rule. Several members of the community spoke for and against the proposed rule. Most of the negative comments revolved around concerns that property values would suffer; most of the positive comments revolved around protecting neighborhoods and preventing areas from becoming completely dominated by rental units. The 30% Rule was passed at the November 21, 2005 meeting and adopted on December 5, 2005.

The 30% Rule was again raised at a February 23, 2009 Planning Commission meeting. The City Planner noted that since the rule was enacted, 142 dwelling units had been certified for rental and that they were dispersed throughout the City rather than concentrated. There was some disagreement among the Commission members as to whether the Rule was "working." The City Planner also noted that the City Council was in the process of creating a new task force to examine the 30% Rule. This task force was created by the City Council in March of 2009 with the goal of focusing on potential ways for residents to rent their homes on blocks over 30% in extraordinary circumstances and potential ways to encourage the conversion of rental properties into owner occupied structures. The task force conducted a study of a particular area around the WSU campus and determined that 48% of the 775 dwelling units were certified as rental and that if the 30% Rule was lifted, that number would increase to 67%. Ultimately, in February of 2010, the task force recommended that the City retain the 30% Rule. It was noted that "[a]lthough the general consensus of the Task Force was that the Rule has, since adoption, had the intended affect [sic] of dispersing rental patterns away from core university neighborhoods, not all were supportive of the method." The Program Development Director for the Department of Community Development characterized the 30% Rule as having "preserved affordable housing and reduced conversions as intended."

In February of 2012, a few months after Plaintiffs filed their complaint in this matter, the Planning Commission met to discuss moving the 30% Rule from Chapter 43 to Chapter 33A. The stated purpose of moving the Rule is that "other cities have included similar provisions in their housing codes—not in their zoning codes" and "the move is also recommended because the City's charter grants additional legal authority for ordinances such as the 30% rule." A memorandum was also prepared by the consulting firm Hoisington Koegler Group, Inc. ("HKG") in conjunction with this issue. In general, the memorandum supported the idea that there is a correlation between rental properties, particularly rentals to single family dwellings, and increased behaviors that lead to a decline in neighborhood livability. Specific to Winona, the HKG memorandum stated:

We conclude that the concentration of rental housing in Winona results in increased levels of nuisance and police violations in those neighborhoods. As these violations are indicators of increased nuisance and decreased property maintenance levels that negatively affect neighborhood quality and livability, we also conclude that the concentration of rental housing leads to a decreased neighborhood quality and livability.

The 30% Rule was moved to Chapter 33A, where it is currently placed, in March of 2012.

Homeowners' Situations

Homeowners Dean and Richard each own a residential property in the City of Winona and the Dzierzbickis, a married couple, jointly own a residential property. Dean purchased a house near WSU in 2006 with the intention of residing there with his girlfriend and her family. By 2009, however, that relationship had ended and Dean was preparing for another tour in Iraq with the US Department of Justice. Because the market at the time made selling the house undesirable, Dean hoped to rent it out, but the 30% Rule prevented him from obtaining a rental license. Dean has been able to obtain temporary rental licenses and has been renting the home since 2010, but asserts that attempts to sell the property are often hindered when the potential

buyer learns that a long-term rental license is not available. Dean's property also does not comply with the City's off-street parking requirements, but he has been allowed to provide a second parking space by leasing an adjacent space while attempting to sell the house.

Ted and Lauren Dzierbicki live in Illinois. They purchased a house near WSU in 2007, when their daughter was attending school, and made significant improvements to the property. They planned to have their daughter live in the house and rent it out to other students. The house, however, is on a block in which more than 30% of the houses have rental licenses, so this plan could not come to fruition. Their daughter lived there until she graduated in May of 2010. Other students lived in the house paying only utilities and not rent until the fall of 2010, when the City determined that arrangement was also a violation. The house has been empty since May of 2010 and on the market since December of 2009. The Dzierbickis assert that the value of the property is significantly lower than it would be if a rental license were possible.

Richard purchased a house in December of 2006 while she was working at St. Mary's University in Winona. In 2009, she accepted an offer from the University of South Dakota to pursue a Ph.D. and put her house up for sale. After receiving no offers, she decided to rent. When Richard inquired about getting a rental license, she was informed that she was on a block in which more than 30% of the properties had a rental license, so her house was ineligible. She entered rent-with-option-to-buy with a potential purchaser, but in February of 2010, the City discovered this arrangement and ordered the renter out. Richard obtained a temporary license in April of 2010 and has had it renewed. The house went unrented for March and April. She also believes the inability to obtain a long-term rental license hindered her attempts to sell. After this lawsuit was filed, however, Richard discovered that another rental license on her block had lapsed and that she was eligible for a standard rental license. She obtained a license and has

been renting her home since.

Legal Analysis and Conclusion

Here, both parties have moved for summary judgment. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; *Offerdahl v. Univ. of Minn. Hosps. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). The evidence must be viewed in the light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). "A moving party is entitled to summary judgment when there are no facts in the record giving rise to a genuine issue for trial as to the existence of an essential element of the nonmoving party's case." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 847 (Minn. 1995).

Standing

The City argues that Homeowners Dean and Richard's claims should be dismissed for lack standing. "Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citing *Sierra Club v. Morton*, 405 U.S. 727, 731-32 (1972)). A plaintiff has standing if the plaintiff has suffered some "injury-in-fact." *Id.*

The City argues that Dean lacks standing because his property does not have a second off-street parking space, thus, even without the 30% Rule, he would still be ineligible for a standard rental license. This argument fails. Dean may, as he has been doing while obtaining temporary rental licenses, lease an off-street parking space from someone else. Dean or a subsequent purchaser of his property could make a permanent or long-term arrangement for a

second space or possibly add another space to the property. Thus, there remains an issue of fact as to whether the 30% Rule has negatively affected the value of Dean's property and/or prevented him from selling it.

The City argues that Richard lacks standing because she was ultimately able to get a standard rental license when her block dropped below 30%, making her claims moot. This argument also fails. There is evidence that the 30% Rule caused Richard to lose at least two months of rental income. If Homeowners prevail and the 30% Rule is deemed unlawful, Richard will have a valid claim to at least the nominal damages requested in her prayer for relief. The Homeowners have standing in this matter.

In the interests of simplicity, the Court will refer to "Homeowners" hereafter as though they are each ineligible to obtain a standard rental license because of the 30% Rule.

Equal Protection and Substantive Due Process

"We presume statutes to be constitutional and exercise the power to declare a statute unconstitutional with extreme caution and only when absolutely necessary." *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 421 (Minn. 2005) (internal quotation marks omitted). The party challenging an ordinance or statute's constitutionality bears the burden of establishing that the statute is unconstitutional beyond a reasonable doubt. *Greene v. Comm'r of Minnesota Dept. of Human Services*, 755 N.W.2d 713, 724-25 (Minn. 2008) (citing *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 719 (Minn. 2007)). The Fourteenth Amendment to the United States Constitution guarantees that no state will "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The Minnesota Constitution also guarantees that "[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of

the land or the judgment of his peers." Minn. Const. art. 1, § 2. Minnesota courts have observed that "[b]oth clauses have been analyzed under the same principles and begin with the mandate that all similarly situated individuals shall be treated alike, but only invidious discrimination is deemed constitutionally offensive." *Kolton v. County of Anoka*, 645 N.W.2d 403, 411 (Minn. 2002) (internal quotation marks omitted).

Courts apply strict scrutiny to a legislatively-created classification that involves a suspect classification or a fundamental right. *Greene*, 755 N.W.2d at 725 (citing *Bituminous Cas. Corp. v. Swanson*, 341 N.W.2d 285, 289 (Minn.1983)). If strict scrutiny applies, the classification must be "narrowly tailored and reasonably necessary to further a compelling governmental interest." *Hennepin County v. Perry*, 561 N.W.2d 889, 897 n. 7 (Minn. 1997). If a constitutional challenge does not involve either a suspect classification or a fundamental right, courts are to review the challenge using a rational-basis standard. *Gluba*, 735 N.W.2d at 719. The parties agree that a rational-basis standard is appropriate in this case.

Under the federal constitution, the same rational-basis standard of review applies to due process and equal protection challenges to a statute or ordinance:

The examining court must merely inquire whether (1) the act serves to promote a public purpose, (2) it is an unreasonable, arbitrary or capricious interference with a private interest, and (3) the means chosen bear a rational relation to the public purpose sought to be served.

Grussing v. Kvam Implement Co., 478 N.W.2d 200, 202 (Minn. App. 1991). In applying that test, a court need not agree with the legislative body's determination, rather "those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decision-maker" and "they cannot prevail so long as it is evident from all the considerations presented to [the legislative body], and those of which we may take judicial

notice, that the question is at least debatable.” *Id.* (citing *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981)).

Minnesota courts, however, apply a less deferential rational-basis review for challenges to a statute or ordinance under the Minnesota Constitution’s equal protection clause. The Minnesota rational-basis test provides:

(1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Studor, Inc. v. State, 781 N.W.2d 403, 408 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). “The distinction between the two tests is that under the Minnesota test we have been unwilling to hypothesize a rational basis to justify a classification, as the more deferential federal standard requires . . . Instead, there must be a reasonable connection between the actual, as opposed to the theoretical, effect of the classification and the statutory goals.” *Id.* Thus, to determine if the 30% Rule violates the federal or state equal protection or substantive due process clauses, the Court need only analyze Plaintiffs’ claim under the Minnesota equal protection standard. If the 30% Rule does not pass the Minnesota rational-basis test, it is unlawful and the Court need go no further; if it does pass the less deferential Minnesota rational-basis test, it also passes the rational-basis test used to analyze federal equal protection claims, as well as state and federal substantive due process claims. *See Id.* at 410 (“[I]f legislation does not violate equal protection, it does not violate substantive due process.”) (quoting *Everything Etched, Inc. v. Shakopee Towing, Inc.*, 634 N.W.2d 450, 453 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001)).

Before getting to the rational-basis test, “the threshold question is whether the claimant is treated differently from others who are similarly situated, because the equal protection clause does not require the state to treat differently situated people the same.” *Odunlade v. City of Minneapolis*, 823 N.W.2d 638, 647 (Minn. 2012). The “Equal Protection Clause does not forbid classifications. It simply keeps governmental decision-makers from treating differently persons who are in all relevant aspects alike.” *State v. Johnson*, 813 N.W.2d 1, 12 (Minn. 2012) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)). On its face, the 30% Rule treats all of those to whom it applies—private, residential property owners in low density residential zones—equally. Homeowners argue that they are similarly situated to all residential property owners in low density residential zones, but are treated differently because some can get rental licenses (or have licenses and may add another renter) and they cannot. The City argues that owners on blocks with less than 30% rental are not similarly situated to those on blocks over 30% as it pertains to a rental-density regulation. Homeowners counter that the City’s argument that people are not similarly situated because they are separated by the distinction created by the challenged legislation begs the question.

Homeowners slightly mischaracterize this argument. By creating the 30% Rule, the City set the line of demarcation at 30%, but the difference in the composition of city blocks exist with or without a legislatively defined trait. As noted above, the City is allowed to classify, but it may not treat “differently persons who are in all relevant aspects alike.” The relative number of rental licenses on a property’s block is relevant to whether or not that property should be issued a rental license. Thus, someone on a block with less than 30% rental and someone on a block with more than 30% rental are not alike in that relevant aspect. Fellow property owners on over 30% blocks that have rental licenses are similarly situated except that they were either grandfathered

in by having a rental license before 2005 or got a rental license before their block got up to 30%. In each case, that property owner obtained a rental license before the Rule was enacted or while his or her block had less than 30% rental. Those property owners are also not similarly situated.

Moreover, Homeowners cannot meet their burden of showing that the 30% Rule fails the Minnesota rational-basis test. Homeowners do not contest that the purposes of the Rule are legitimate; they argue it cannot meet the first two requirements of the Minnesota rational-basis test.

The distinctions are genuine and substantial. The City's purposes in enacting the 30% Rule include avoiding further concentration of rental properties and conversions from owner-occupied homes into rental properties. The goals are to serve the ultimate purpose of preserving the "character" of neighborhoods, maintaining affordable single-family housing, limiting deterioration of housing conditions, reducing on-street parking, and maintaining neighborhood "livability," which includes minimizing nuisance complaints and anti-social behavior.

Limiting the number of rental licenses per block is not an arbitrary or fanciful means of achieving these goals. Homeowners argue the "first-come, first-serve" nature of the Rule renders it inherently arbitrary, but that is just a symptom of genuine and substantial distinctions. There is a genuine distinction between someone on a block with over 30% rental and someone on a block with below 30% rental. When the person on the block below 30% applies for and receives a license, it could push that block to over 30%. This change in block composition may prevent an otherwise qualified renter from obtaining a license, but it is not arbitrary that the "first-comer" got the license. That person applied for a rental license on a block with less than 30% rental, so issuing that license conforms with the City's purpose of dispersing rentals to blocks at less than 30%. Regarding the actual number settled upon, which Homeowners

acknowledge is not a basis for their challenge, "numbers chosen as legal limitations are often arbitrary: e.g., speed limits, building ordinances, statutes of limitation . . . [t]he necessity of selecting some number arbitrarily does not render an ordinance itself arbitrary." *Holt v. City of Sauk Rapids*, 559 N.W.2d 444, 446 (Minn. App. 1997).

The classification is also genuine and relevant to the purposes of the Rule. There is evidence to suggest that the 30% Rule has dispersed rentals throughout the City and there is no real question that it has slowed the conversion of owner-occupied homes to rentals; Homeowners inability to convert their single-family homes to rental housing caused them to bring this lawsuit. It is reasonable for the City to conclude that the 30% Rule will ultimately have a positive effect on the character and livability of neighborhoods, particularly those around the WSU campus.

Homeowners offer alternative suggestions toward livability and anti-social behavior and assert that the Rule is overbroad in some respects while under-inclusive in others. They note that allowing already-licensed properties to add rental units can increase population density and burden on-street parking as much as licensing another property for rental; they argue that when more rigorously analyzed, the crime statistics in higher rental areas are not significantly different; and they argue that nuisance complaints, anti-social behavior, and housing deterioration could be more directly addressed by more strict enforcement of law, rules, and codes related to those specific issues. These may be legitimate critiques of the City Council's thought process and may weaken some of the Council's conclusions in adopting the 30% Rule, but they do not meet Homeowners substantial burden of establishing that the 30% Rule's classification is not genuine or relevant to the purpose of the Rule. Even if the Rule does not go as far as Homeowners suggest it could to reduce population density and on-street parking, it does curb rental-property density by preventing entire properties, such as those of the Homeowners,

from becoming full-time rentals. While there may be other ways to accomplish these goals, the City can articulate genuine reasons for maintaining a percentage of owner-occupied homes (or year-to-year rentals that are actively being sold) in an area can be expected to better discourage deterioration and preserve the character of the neighborhood. Homeowners may have created a fact issue on whether the 30% Rule is narrowly tailored to a compelling governmental interest, but that is not the applicable standard here.

Homeowners have not met their burden of showing that the 30% Rule is in violation of the Minnesota constitution's equal protection clause, nor have they raised a genuine issue of fact on that question. Consequently, Homeowners also cannot show that the 30% Rule violates the federal equal protection clause or the state and federal substantive due process clauses.

Equal Protection—As Applied

Homeowners' equal protection claims, as applied to them, are not substantially different than their facial equal protection claims addressed above. Essentially, Homeowners cannot get a rental license (or were delayed in getting it), but some lots on the same block with a rental license may expand to add additional rental units and lots on adjacent blocks that have less than 30% rental, sometimes just across a street, may obtain a rental license. As noted above, Homeowners are not similarly situated to property owners who already have a rental license or owners of properties on blocks with less than 30% rental. Even if they are considered similarly situated for these purposes, Homeowners cannot show that the 30% Rule lacks a rational basis for treating them differently for the same reasons articulated above.

Procedural Due Process

Homeowners argue that their state and federal procedural due process rights are infringed upon by the 30% Rule because it unconstitutionally delegates legislative authority to the other

property owners on their blocks. The argument is that fellow property owners have the power to prevent Homeowners from being able to rent by obtaining their own license, whether or not they intend to rent. Thus, the argument goes, the 30% of property owners that have obtained a standard rental license are given the authority to decide if any of the non-licensed properties on the block have any possibility of getting a rental license.

This argument relies on somewhat strained logic. The City has determined that to promote the public welfare, rental licenses should be a limited per block. As noted above, this is a reasonable determination. Because rental licenses are limited per block, as with anything limited to a finite amount, some people will necessarily have a rental license and others will not. It is a leap to view those who have obtained or retained licenses as operating in a legislative capacity simply by keeping their licenses. The incongruity of this view can be seen by the fact that on a block at or near 30%, it would only take one "vote" to allow a new renter, and the "voter," who votes by not renewing his or her license, has no input on which property may get the available license. This process is not analogous to 30% of the block being able to vote on how a neighbor uses his or her property, as Homeowners claim.

Regardless, even if one does view the 30% limit as providing that the rental license holders on a block must "consent" to a new rental license, Homeowners' claim fails. Homeowners rely heavily on *State ex rel. Foster v. City of Minneapolis*, 97 N.W.2d 273 (1959). There, the court held that a statute with a "consent" provision allowing a city to rezone property only after written consent of owners of two-thirds of the property within 100 feet of the property was invalid in the case where a property owner's right to use his property for commercial purposes was taken away upon application of his neighbors to rezone it to residential. If one were to view the 30% Rule as a "consent provision," it is more analogous to the one upheld in

Leighton v. City of Minneapolis, 16 F. Supp. 101 (D. Minn. 1936) and distinguished by the *Foster* court. There, the plaintiff was prevented from having her property rezoned from "multiple dwelling" to "commercial" because she could not obtain the required written consent of two-thirds of those within 100 feet of the property.

The *Leighton* court noted that the property would likely double in value if it were zoned commercial, but that the statute did not violate the plaintiff's substantive due process rights. *Id.* at 102, 106. The court distinguished the facts in *Leighton* from violations of the due process clause in which similar statutes and ordinances were not enacted with the express purpose of furthering the public health, safety, morals or the general welfare. *Id.* at 104-05. The purposes of the 30% Rule include curbing nuisance complaints and property deterioration and preserving neighborhood character. These purposes fall under the general umbrella of "the public health, safety, morals or the general welfare." The *Foster* court distinguished itself from *Leighton* because, while *Leighton* involved someone being unable to have her rights regarding use of the property expanded, *Foster* involved restricting a property's use to less than what was legal when it was purchased. *Foster*, 97 N.W.2d at 276 ("a purchaser of real property is entitled to place some reliance upon zoning ordinances which have classified the property being purchased.").

Here, Homeowners purchased homes without rental licenses on blocks with 30% or higher rental concentration after the 30% Rule was in place. Thus, each Homeowner would only need the "consent" of a neighbor to expand the legal uses of his or her property beyond what was available when the property was purchased. Homeowners purchased homes without rental licenses or the eligibility to obtain one. The 30% Rule, for reasons related to the general welfare of the City, is complete in and of itself and not dependent upon the vote or act of anyone. At most, the Rule provides for the removal or modification of its prohibition by the act of those

with rental licenses. See *Leighton*, 16 F.Supp. at 104. Even if the 30% Rule is somewhat awkwardly fit into the “consent provision” analysis, it does not violate Homeowners’ right to procedural due process.

Ultra Vires

Homeowners also argue that the 30% Rule is invalid because it exceeds the scope of the City’s authority. They argue that the Rule is an exercise of the City’s zoning power under Minn. Stat. § 462.357, but it is unlawful because it does not regulate the “use” of the property, it regulates who uses the property. The City argues that the 30% Rule was enacted under the City’s broad police powers, not its zoning authority or, in the alternative, the 30% Rule is a valid zoning regulation.

Ordinances are presumed to be valid, and are not to be set aside by the courts unless their invalidity is clear. *Bolen v. Glass*, 755 N.W.2d 1, 5 (Minn. 2008). Minn. Stat. § 462.357 provides in part:

For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth’s surface, in the air space above the surface, and in subsurface areas, the location, height, width, . . . the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, . . . The regulations shall be uniform for each class or kind of buildings, structures, or land and for each class or kind of use throughout such district . . .

Homeowners argue that a rental regulation concerns who owns and occupies property, not the “use” of the property. If the 30% Rule regulates the “use” of property, it is authorized by Minn. Stat. § 462.357 and within the City’s authority, provided its purpose is promoting the public health, safety, morals, and general welfare. As noted above, the 30% Rule’s purposes qualify as promoting the public health, safety, morals, and general welfare.

Both parties appear to agree that Minnesota courts have not directly ruled on the issue of whether rental regulations concern "use" or "occupancy." Homeowners cite to a number of cases from other jurisdictions to show that residential rental restrictions relate to occupancy and not to "use." The City cites to other foreign cases in which rental restrictions are allowed under zoning authority. Homeowners characterize this as a "very minority rule." Without an applicable "rule" on this question, the Court must look at the specific ordinance challenged here and make its own determination.

Again, Homeowners strain logic to fit the 30% Rule into a categorization that serves their purposes. The 30% Rule is not about occupancy or who occupies a property, it is about how the property is used for residence. The Rule does not address who can rent a house, who can buy a house, or even who can live in a house, provided that person is not paying rent to the owner. The issue addressed by the 30% Rule is whether or not a home is being rented, it is completely silent on who lives there as long as that person is not renting. This particular rental regulation is more reasonably viewed as regulating the "use" of property than the "occupancy" of it.

Homeowners contend the Rule still runs afoul of Minn. Stat. § 462.357's requirement that the regulations be uniform because it allows some to rent and prohibits others from renting. The 30% Rule applies uniformly. If one is on a block with less than 30% rental, he or she is eligible for a rental license; if one is on a block with more than 30% rental, he or she is not eligible for a standard rental license. When there is a legitimate distinction, the fact that one person is eligible and another is ineligible does not mean the regulation is not uniform. As noted above, there is such a distinction in this case.

Further, if the 30% Rule falls under the City's broad police powers, it is valid. For a home rule charter city, such as Winona, "[a] city exercises police power within its jurisdiction to

practically the same extent as the state itself. This power is not confined to the narrow limits of precedents based on conditions of a past era. Rather, it is a power which changes to meet changing conditions, which call for revised regulations to promote the health, safety, morals, or general welfare of the public." *City of Duluth v. Cerveney*, 16 N.W.2d 779, 783 (Minn. 1944). "It is well established that an exercise of the 'police power' will be upheld where it has for its object the public health, safety, morality, or welfare, and where it is reasonably related to the attainment of those objectives." *State ex rel. Gopher Sales Co. v. City of Austin*, 75 N.W.2d 780, 783 (Minn. 1956). Because the Court has already noted that it considers the 30% Rule a "use" restriction, the zoning analysis and the "police powers" analysis are quite similar. The 30% Rule is a restriction put in place to advance the general welfare, to put it broadly. Whether the 30% Rule is considered a zoning ordinance or a "police powers" ordinance, it is valid.

Conclusion

In a prior order in this matter, this Court quoted Chief Justice John Roberts in a recent opinion: "We do not consider whether the Act embodies sound policies. That judgment is entrusted to the Nation's elected leaders." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2576 (2012). A year earlier, Minnesota Supreme Court Justice Paul H. Anderson quoted Chief Justice John Marshall:

The question, whether a law be void for its repugnancy to the constitution, is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case. The [C]ourt, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.

Limmer v. Swanson, 806 N.W.2d 838, 841 (Minn. 2011) (quoting *Fletcher v. Peck*, 10 U.S. 87, 128, 3 L.Ed. 162 (1810)). The same considerations apply to this Court's review of an ordinance passed by the City's elected leaders. Homeowners must overcome a substantial burden to have the Court hold that an ordinance passed by the City Council is illegal or invalid.

There is no indication that the 30% Rule was enacted or conceived as an insidious means of keeping certain constitutionally protected classes of people out of certain neighborhoods or any other improper purpose. It is a good-faith attempt to address real problems. Homeowners articulate several ideas that they argue would better address the issues the 30% Rule is designed to address and note many reasons the Rule may not eliminate all of the ills the City hopes it will eliminate. The Court's role in this case is not to decide if the 30% Rule is a good idea, that decision belongs to the City Council. Some of the issues raised by Homeowners were also raised in the meetings and hearings in which the 30% Rule was considered. The City's elected leaders decided those issues did not outweigh the potential benefits of the 30% Rule. If Homeowners or some other interested party articulates the same ideas, issues, concerns, studies, and opinions regarding the 30% Rule to the City Council at some future meeting, perhaps with newly elected members, they may convince enough council members that the Rule does not serve the City well. That is the proper venue for arguing whether the 30% embodies sound policies.

The Court's role is to decide if Homeowners can meet their burden of showing that the 30% Rule is unconstitutional or otherwise invalid. Not only have Homeowners not shown they are entitled to summary judgment, they have not raised any genuine issues of material fact on the legality of the Rule. Separation-of-powers principles require that the ordinance be presumed constitutional and valid. Homeowners' attacks on the legality of the Rule are largely based on somewhat clever characterizations of the Rule and/or foreign case-law. These attacks are not

enough to overcome the presumption of legality and have this Court set aside the conclusions reached by the City's elected representatives.

For the above reasons, Homeowners' motion for summary judgment must be denied and the City's motion for summary judgment must be granted.

B. City of North Mankato Documents

B.1 – Draft Rental Density Ordinance

§151.18 RENTAL DENSITY

(A) In R-A, R-1, R-1S and R-2 zoning districts, no more than 10% of the single-family lots on any block shall be eligible to obtain a rental license, unless a temporary license is granted by the City Council as provided herein. Table 1 indicates how many single-family lots per block are able to be licensed as a rental property based on the number of lots that exist in a block.

<i>Table 1</i>	
<i>Lots/Block</i>	<i>Rental Units Allowed</i>
1-14	1
15-24	2
25-34	3
35-44	4
45-54	5
55-64	6
65-74	7
75-84	8
85-94	9

(B) The following guidelines shall apply to determine eligible blocks and lots.

(1) For the purposes of this subchapter, a **BLOCK** shall be defined as an area of land enclosed within the perimeter of streets, watercourses, public parks, municipally owned lots and city boundaries.

(2) This subchapter shall apply to legally conforming lots of record and legally nonconforming lots of record. For the purposes of this subchapter, lots of record may also be referred to as **PROPERTIES, PROPERTY** or **LOTS**.

(3) If a block contains more than one type of zoning district, only R-A, R-1, R-1S and R-2 zoning district lots shall be included in the calculation of the total number of lots per block.

(4) Legal nonconforming rental property shall be allowed to continue as long as the legal nonconforming use complies with § 151.13 and 156.052 of the Zoning Code.

(5) Commercial or industrial uses located in an R-A, R-1, R-1S and R-2 zoning districts shall not be included in the calculation of the total number of lots per block.

(6) Properties that are exempt pursuant to § 151.18 (A) shall not be included in the calculation of the total number of lots per block.

(C) If the number of rental properties meets or exceeds the permitted number of rental properties per defined block on the effective date of this subchapter, no

additional rental licenses shall be approved for the block, unless a temporary license is granted by the City Council as provided herein. Existing rental licenses may be renewed; however, should a rental license not be renewed, or if the rental license is revoked or lapses, the rental license shall not be reinstated unless it is in conformance with this subchapter and other applicable sections of the city code.

(D) *Exceptions*

- (1) *Parcels zoned CBD, R-3, R-4, OR-1, B-1, B-2, B-3, M-1, M-2, I-1, TUD, P-1*
- (2) Single-family homes or duplexes in which the owner resides within a portion of the building are exempt unless an unrelated person resides within the owner's dwelling unit. If the building is a duplex, only that portion of the building in which the owner resides alone or with related persons is exempt. The other portion of the duplex requires a rental license.
- (3) Rental licenses for State Licensed residences shall be exempt from this subdivision. If the property is no longer licensed by the State of Minnesota, a new rental license application shall be submitted and reviewed for compliance with this subdivision and other applicable City and Building Code sections.

(E) Properties eligible to receive a rental license in R-A, R-1, R-1S, and R-2 zoning districts will be determined as follows:

- (1) Any property zoned R-A, R-1, R-1S, RS, and R-2 is eligible to receive a rental license until the number of single-family and two-family dwellings issued rental licenses exceeds 10% of all the single-family and two-family dwellings in the City of North Mankato.
- (2) This Subdivision shall apply to legally conforming properties of record and legally nonconforming properties of record, as defined in Chapter 156, in existence at that time of the effective date of this ordinance or approved by new subdivision of unplatted and undeveloped property after the effective date of this ordinance.

(F) For the purposes of this Subdivision, the following shall apply:

- (1) Properties licensed for rental purposes on the effective date of this ordinance shall be included in the calculation of the number of permitted rental properties.
- (2) Existing rental licenses may be renewed or transferred per Subdivision 151.07, 151.08 and 151.09.

§ 151.19 TEMPORARY RENTAL LICENSES.

(A) A temporary rental license may be granted by the City for unlicensed properties to an

owner of a property for a period not to exceed (12) months for the following circumstance(s):

- (1) The property is listed for sale and the owner and the owner's family are not residing at the property.
- (2) The owner and the owner's family are not residing at the property and the occupants are providing a caretaking function for the property.
- (3) The City Administrator or his designee is granted authority to extend the temporary rental license for two consecutive six (6) month periods as long as the home is actively marketed for sale.
- (4) Twelve (12) months from the date of issuance, a temporary rental license shall expire and is not subject for renewal unless granted an extension by the City Administrator or his designee as outlined in chapter 151, section 19, subsection 3.

§ 151.20 GRANTING RENTAL LICENSES.

(A) Granting of additional rental licenses in R-A, R-1, R-1S, and R-2 shall be subject to the following:

- (1) On or by March 1st of each year, the City Administrator or his designee shall determine the number of rental licenses available in R-A, R-1, R-1S, and R-2 zoning districts based on the number of single-family and two-family dwellings that have not renewed or transferred a rental license and the number of newly constructed single-family and two-family dwellings in the city.
- (2) A waiting list for property owners seeking to obtain a rental license will be maintained by the City Administrator or his designee. All individuals on the waiting list will be notified by official mail of the process of bidding on newly available rental licenses.
- (3) Licenses will be issued for one year periods to property owners prioritized on the waiting list. After purchased, licenses may be renewed at the standard renewal rate.

§ 151.21 RENTAL PROPERTY PARKING REQUIREMENTS

A minimum of two (2) off-street parking spaces are required to accommodate all rental dwelling units containing one (1) or two (2) bedrooms. Each successive bedroom requires the addition of one (1) off-street parking space. The location of any off-street parking area shall be hard surfaced and meet all applicable setbacks.

§ 151.99 PENALTY.

(A) Any violation of this chapter is a misdemeanor and is subject to all penalties provided for such violations.

(B) It is a misdemeanor for any person to prevent, delay, or provide false information to any city official, or his or her representative, while they are engaged in the performance of their duties as set forth in this chapter.

(C) In addition to bringing criminal charges for violation of this chapter, the city may seek a civil injunction against any licensee or occupant who violate any terms of this chapter.

(D) All applicants must include in any lease (written or oral) a copy of this chapter and must further advise all tenants that a violation of this code by the applicant (landlord) or any occupant of the premises could result in termination or revocation of the rental license and immediate eviction of all tenants.

(Ord. 234, passed 12-1-2003; Am. Ord. 264, passed 11-21-2005)

B.2 – Moratorium Resolution

RESOLUTION ORDERING A MORATORIUM
ON THE GRANTING OF NEW RENTAL LICENSES
WITHIN THE CITY OF NORTH MANKATO, MINNESOTA

WHEREAS, The City of North Mankato is conducting a study relating to limiting the number of rental housing licenses within areas zoned RA, R1S, R1 or R2; and

WHEREAS, it will take approximately six to nine months to complete such study; and

WHEREAS, The City of North Mankato wishes to complete the study prior to issuing any new rental licenses in the above zoned areas;

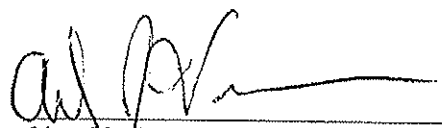
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH MANKATO, MINNESOTA, as follows:

1. The City of North Mankato hereby adopts a Moratorium on accepting applications for rental housing licenses in areas zoned RA, R1S, R1 or R2 for a period of twelve (12) months unless earlier ended by action of the City Council.
2. The Moratorium includes single family dwellings in R3 and R4 districts.
3. The City Administrator, in consultation with the City Attorney, is allowed to waive the Moratorium for up to three licenses that may have been contemplated in a sale initiated by signing a purchase agreement prior to the date of this action.

Adopted by the City Council this 21st day of September, 2015.



Mayor



City Clerk

B.3 – City Code Section § 151.11 Conduct on Licensed Premises

§ 151.11 CONDUCT ON LICENSED PREMISES.

(A) It shall be the responsibility of the licensee to take appropriate action following conduct by occupant(s) or guest of the occupant(s) which is in violation of any of the following:

(1) Anytime, day or night, that the premises are involved in any of the following:

(a) Unlicensed sale of intoxicating liquor or non-intoxicating malt beverages.

(b) Furnishing intoxicating liquor or non-intoxicating malt beverages by persons under the age of 21 years.

(c) Consumption of intoxicating liquor or non-intoxicating malt beverages by persons under the age of 21 years.

(d) Vice crimes.

(e) Sale or use of illegal drugs by any person on the premises.

(f) Storage of unlicensed or inoperable vehicles, trailers, boats, RVs and campers.

(g) Allowing grass or weeds to exceed 6 inches in height.

(h) Failure to remove ice or snow on adjacent sidewalks within 48 hours after snow or ice has ceased to fall.

(i) Parking of any vehicles in front yard areas, except permitted driveways.

(j) Failure to pay monthly utility bill by the due date.

(2) Anytime, day or night, that the premises are involved in a manner affecting the neighborhood and a citation, arrest or letter of transmittal is made for any of the following:

(a) Disorderly conduct.

(b) Disturbing the peace.

(c) Obstructing an officer.

(d) Assault (including domestic assault).

(e) Criminal damage to property.

(f) Vice crimes.

(3) Between the hours of 7:00 a.m. and 10:00 p.m. for any of the following:

(a) Where the police respond initially and describe the activity as "loud and intrusive" or in any manner affecting the tranquility of the neighborhood (such as, excessive littering, public urination, and the like) and persons involved refusing to comply with police directive to curtail the behavior within 10 minutes.

(b) Where the police respond a second time and describe the activity as "loud and intrusive" or in any manner affecting the tranquility of the neighborhood (such as, excessive littering, public urination, and the like) on both occasions.

(c) Where the police respond on 3 separate dates and describe the activity as "loud and intrusive" or in any manner affecting the tranquility of the neighborhood (such as, excessive littering, public urination, and the like).

(4) Between the hours of 10:00 p.m. and 7:00 a.m. for any 1 or more of the following:

(a) Where police describe the noise level outside of the confines of the dwelling unit as "loud and intrusive." This description should give some indication of the distance that the noises are heard.

(b) Where people are using profanity that can be heard outside the confines of the dwelling unit.

(c) Where music, either from the confines of the dwelling unit, the yard area of the dwelling unit or any parking area defined for the dwelling unit, can be heard from the street, alley or neighboring yards.

(d) Where a gathering is going on either in and/or out of the dwelling unit in a manner that involves any of the following:

1. Disruption of the neighbors, such as, revving of cars, squealing of tires, loud shouting, and the like.

2. Littering.

3. Inappropriate behavior, such as, urinating in yards, persons passed out, and the like.

4. Damaging of property: and where after investigation the officer(s) can show that the inappropriate activity was directly related to the licensed premises. Proof may include, but is not limited to, direct observation by officers, admissions by persons present or testimony/statements by complainants and witnesses.

(e) Where officers are unable to personally verify the existence of any of the criteria listed in 1. through 4. above, but complainants/witnesses are willing to testify to 1 or more of those facts at a criminal or civil proceeding.

(B) The Chief of Police or his or her designee shall be responsible for enforcement and administration of this section.

(C) Upon determination by the Chief of Police that a licensed premises was involved in a violation of division (A) of this section, the Chief of Police shall notify the licensee by first class mail of the violation and direct the licensee to take steps to prevent further violations. A copy of said notice shall be sent by first class mail to the occupant in violation of division (A) of this section.

(D) Upon a second violation within 12 months of division (A) of this section involving a guest or an occupant of a licensed premises, the notice provided under division (C) of this section shall require the licensee to submit a written report of the action taken to prevent further violations on the premises. This written report shall be submitted to the Police Chief within 5 days of request of the report and shall detail all actions taken by the licensee in response to all notices regarding violations to division (A) of this section within the preceding 12 months. If the licensee fails to comply with the requirements of the subsection, the rental dwelling license for

the individual licensed premises may be denied, revoked, suspended, or such other penalty imposed by the City Council. An action to deny, revoke, suspend or renew a license under this section shall be initiated by the City Council at the request of the Police Chief.

(E) If a third or subsequent violation of division (A) of this section involving a guest of or an occupant of a licensed premises occurs within 12 months after any 2 previous instances for which notices were sent to the licensee regarding the same licensed premises, the rental dwelling license for the individual rental unit may be denied, revoked, suspended, or such other penalty not imposed by the City Council. An action to deny, revoke or suspend a license or impose any other penalty under this section shall be initiated by the City Council at the request of the Police Chief.

(F) No adverse license action shall be imposed if the violation to division (A) of this section occurred during the pendency of eviction proceedings (unlawful detainer) or within 30 days of notice given by the licensee to an occupant to vacate the premises, where the violation was related to conduct by that occupant, other occupants, or the occupant's guests. Eviction proceedings shall not be a bar to adverse license action, however, unless they are diligently pursued by the licensee. Further, an action to deny, revoke, suspend, or not renew a license based upon violations of this section may be postponed or discontinued at any time if it appears that the licensee has taken appropriate measures which will prevent further violations to division (A) of this section.

(G) A determination that the licensed premises has been used in violation of division (A) of this section shall be made by the Council upon substantial evidence to support such a determination. It shall not be necessary that criminal charges be brought to support a determination of violation to division (A) of this section, nor shall the facts of dismissal or acquittal of criminal charges operate as a bar to adverse license action under this section.

(Ord. 234, passed 12-1-2003; Am. Ord. 264, passed 11-21-2005; Am. Ord. 8, 4th series, passed 1-16-2007; Am. Ord. 17, 4th series, passed 1-17-2008; Am. Ord. 21, 4th series, passed 1-20-2009)

C. Peer City Survey Responses

City	Feedback	Ordinance Type
Belle Plaine	<ul style="list-style-type: none"> Have not considered Density Ordinance Have not experienced decreased property values in neighborhoods where single-family conversion to rentals has increased Have not experienced increased police calls, nuisances and complaints in rental concentrations Don't track single family conversion to rental; real change is from single family that is owned to single family rental 	Simple Rental Ordinance
Brainerd	<ul style="list-style-type: none"> Have not considered Density Ordinance Have not experienced decreased property values in neighborhoods where single-family conversion to rentals has increased Have data that suggests increased police calls, nuisances and complaints in rental concentrations Don't track single family conversion to rental; inspect single-family rental property on a three year basis 	Rental Inspection Program
Brooklyn Center	<ul style="list-style-type: none"> Ordinance was tabled by City Council; appears it isn't going to pass Higher number of code enforcement complaints and police calls at rental properties Rental license program and the initial license has a \$500 conversion fee. 	Rental License Program (Pending Density Ordinance)
Faribault	<ul style="list-style-type: none"> Faribault doesn't regulate conversion to rental other than through Rental Registration Program and Crime Free Rental Housing Program 	Rental Registration Program; Crime Free Rental Housing Program
Hutchinson	<ul style="list-style-type: none"> Have not considered Density Ordinance Have not experienced decreased property values in neighborhoods where single-family conversion to rentals has increased Have not experienced increased police calls, nuisances and complaints in rental concentrations Don't track single family conversion to rental; real change is from single family that is owned to single family rental 	Rental Registration Ordinance
Jordan	<ul style="list-style-type: none"> Recently adopted first rental ordinance Implemented to protect building values in downtown commercial district Rental units in downtown with many police calls Require registration of renters 	Rental Ordinance
New Ulm	<ul style="list-style-type: none"> Have not considered Density Ordinance Have not experienced decreased property values in neighborhoods where single-family conversion to rentals has increased Have not experienced increased police calls, nuisances and complaints in rental concentrations Don't track single family conversion to rental; real change is from single family that is owned to single family rental 	Rental Inspection Program for life-safety purposes
Northfield	<ul style="list-style-type: none"> May be perceived benefit Most improvement related to maintaining neighborhood quality of life can be attributed to Northfield's Rental Licensing and Inspection Program in its entirety Maximum density limitation on rentals has been controversial since its adoption in 2008. 20% of homes on block: Issue with small number of homes on some blocks not allowing for more than one rental 	Density Ordinance: 20% per block

	<ul style="list-style-type: none"> Increased number of foreclosures for property owners underwater on mortgage following the recession and could not obtain a rental license; Temporary licensing solution Rental properties have continued to increase since 	
Owatonna	<ul style="list-style-type: none"> Not many renters with lack of college. No issues Have not considered Density Ordinance Have not experienced decreased property values in neighborhoods where single-family conversion to rentals has increased Have not experienced increased police calls, nuisances and complaints in rental concentrations Don't track single family conversion to rental; real change is from single family that is owned to single family rental Has been successful and is managed by Police Department Rental Properties have not been a problem Have had issues dealing with absentee landlords and problem landlords 	Rental Registration Program
Shakopee		Rental Registration Program
St. Peter	<ul style="list-style-type: none"> City Planning Commission considering establishing minimum density for residential construction in proximity to the City core. No effort to undertake analysis on property values in relation to rentals Any single-family home can be converted to a rental following inspection, licensure, and payment of the established fee. Life/safety inspections 	
West St. Paul	<ul style="list-style-type: none"> First established 2006/7 Higher demand for rentals and cheap housing toward urban core of Minneapolis/St. Paul General interest: home flippers rent leading to revitalization and preserves the affordable housing factor Annual inspections done by a City Official To control police/nuisance calls there is a tiered fee system; the more valid police calls received on the property, the more the renewal fees are for that license. If there is an exceptionally difficult property, City Council can choose to place that owner on a provisional license and review the progress as often as they see fit City department annual reports track progress Monthly meetings with property managers to maintain relationships. 2605 licenses issued since 2007; 143 expired or changed to ownership. Changes: <ol style="list-style-type: none"> Adoption of the International Property Maintenance Code (IPMC) as the guiding document for all rental inspections; Elimination of the third party inspection process and implementation of a new in-house city inspection process; Elimination of the Alternative Inspection Reports, with the exception of the HUD, Housing Choice Voucher inspection reports; Implementation of mandatory Phase I: Management/Owner Training; Implementation of a Tiered Fee System; Changing the license term to a rolling calendar. 	Density Ordinance:

D. Legal Framework – Dean vs. City of Winona, MN

D.1 – 843 N.W.2d 249 (2014) – Ethan DEAN, et al., Appellants, v. CITY OF WINONA, Respondent. – No. A13-1028 – Court of Appeals of Minnesota – February 24, 2014

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1028**

Ethan Dean, et al.,
Appellants,

vs.

City of Winona,
Respondent.

**Filed February 24, 2014
Affirmed
Larkin, Judge**

Winona County District Court
File No. 85-CV-11-2329

Lee U. McGrath, Anthony Sanders, Katelynn McBride, Institute for Justice, Minneapolis,
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(for respondent)

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Daniel E. Frank, (pro hac vice), Sutherland Asbill & Brennan LLP, Washington, D.C.
(for amicus curiae The Minnesota Free Market Institute at Center of the American
Experiment)

Jarod M. Bona, Ann A. Parmley, Alvin Johnson Jr., DLA Piper LLP, Minneapolis,
Minnesota (for amicus curiae Minnesota Vacation Rental Association)

Teresa J. Nelson, American Civil Liberties Union of Minnesota, St. Paul, Minnesota (for
amicus curiae American Civil Liberties Union of Minnesota)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Larkin, Judge.

S Y L L A B U S

1. A municipality may use its police power to limit the number of lots on a block that are eligible to obtain certification as a rental property.
2. An ordinance that establishes a neutral, numerical limit on the number of lots on a block that are eligible to obtain certification as a rental property does not violate equal protection or due process under the Minnesota Constitution.

O P I N I O N

LARKIN, Judge

Appellants, owners of residential properties in respondent municipality, challenge the summary judgment upholding respondent's ordinance that limits, to 30%, the number of lots on a block that are eligible to obtain certification as a rental property. Because respondent's adoption of the ordinance was an authorized exercise of its police power and because appellants have not met their burden to show that the ordinance is unconstitutional, we affirm.

F A C T S

This case stems from respondent City of Winona's adoption of an ordinance that limits, in certain districts of the city, the number of lots on a block that are eligible to obtain certification as a rental property. In 2003, respondent's city council requested that its planning commission consider the effectiveness of respondent's off-street parking regulations, particularly regarding rental properties, and most significantly around the

Winona State University campus. Members of the planning commission noted that an increasing number of residential properties were being converted from single-family usage to rental usage, which resulted in increased parking demands. One of the suggested solutions to the problem was limiting the number of rental properties per block in residential areas.

In December 2004, respondent's city council issued a six-month moratorium on the certification of new rental housing. During the moratorium, the planning commission initiated discussions and developed a list of proposed code modifications pertaining to rental housing density and off-street parking issues. Later, the planning commission held a series of public-input meetings with landlords, homeowners, and others. In April 2005, in conjunction with the planning-commission discussions, respondent's mayor initiated a series of town meetings designed to address "density, parking, and aesthetic issues within the 'area' of the university." Landlords, homeowners, students, and others attended the meetings. After the last meeting, the mayor created a core study group to identify issues and possible solutions pertaining to university neighborhoods for the planning commission's consideration. The council extended the moratorium for an additional six months to allow the study group and planning commission to complete their work.

A Parking Advisory Task Force was also formed in 2005 to consider the same issues and the planning commission's proposals. The task force noted that at that time, rental-housing units comprised about 39% of respondent's total housing units, but 52% of the complaints received by the Community Development Department (CDD) related to rental properties. In August of 2005, the task force began discussing the idea of

restricting the number of rental properties per block. Because rental housing units comprised approximately 39% of the total housing units, it was suggested that the number of rental units be restricted to 30% of the total properties on any given block. The task force adopted a motion to forward a "30% rule" to the planning commission for its consideration. The task force acknowledged that such a rule could prevent out-of-town individuals from purchasing residential property in Winona and that it could hinder the ability of current residents to sell their properties. Nonetheless, the task force favored the 30% rule and decided to seek studies and findings on the effect of rental housing on the area.

The planning commission discussed the 30% rule at two meetings in October 2005. It noted that the task force believed that neighborhoods heavily populated with student rental housing tend to become run-down and unattractive. The planning commission noted that according to county data from 2004, the CDD found that 95 of the 99 addresses that had two or more calls for police service based on noise and party-related complaints were rental properties. The planning commission also noted that 52% of the zoning violations that resulted in written violations during 2004 were for rental properties. After holding a public hearing on the issue, the planning commission voted six to three to recommend the 30% rule to respondent's city council.

The city council held a public meeting regarding the rule in November 2005. Several members of the community spoke for and against the rule. Opponents voiced concern that property values would suffer. Proponents voiced a desire to protect

neighborhoods and prevent areas from becoming dominated by rental units. The city council passed the 30% rule at the meeting and adopted the rule on December 5.

In February 2009, the planning commission once again considered the 30% rule. The city planner noted that 142 residential properties had been certified for rental since the rule was enacted and that those units were dispersed throughout Winona rather than concentrated. But planning-commission members disagreed regarding whether or not the rule was working.

In March, the city council created a new task force to examine the 30% rule. Its goal was to consider ways for residents to rent their homes in extraordinary circumstances despite the 30% cap, as well as ways to encourage the conversion of rental properties into owner-occupied properties. In February 2010, the task force recommended that respondent retain the 30% rule. The task force noted that “[a]lthough the general consensus of the Task Force was that the Rule has, since adoption, had the intended [effect] of dispersing rental patterns away from core university neighborhoods, not all were supportive of the method.” The CDD’s program development director described the 30% rule as having “preserved affordable housing and reduced conversions as intended.”

In October 2011, appellants Ethan Dean, et al., filed the underlying lawsuit. Appellants, collectively, were the owners of three houses purchased after adoption of the 30% rule. Appellant Ethan Dean purchased his house in 2006, planning to live in it. In 2009, Dean was preparing for a military tour in Iraq and wanted to rent the house out. He could not obtain rental certification because of the 30% rule. At the time of the

summary-judgment proceeding in district court, Dean had obtained temporary certification and had been renting his house out since 2010.

Appellant Holly Richard also purchased her house in 2006. In 2009, she accepted a job in another state. She tried to sell her house, but after receiving no offers, she decided to rent it out. She was unable to obtain rental certification because of the 30% rule. Richard entered into a rent-with-the-option-to-buy agreement with a tenant. In February 2010, respondent discovered the rental arrangement and ordered the tenant to vacate the property. At the time of the summary-judgment proceeding, Richard had been renting her house out since April 2010. She first obtained temporary certification. Later, she obtained standard rental certification after the license of another property on her block lapsed.¹

Appellants Ted and Lauren Dzierzbicki, Illinois residents at the time of the summary-judgment proceeding, purchased a house in Winona in 2007, where their daughter attended college. They made improvements to the house, intending that their daughter would live in it and rent space in the house to other students. The Dzierzbickis could not obtain rental certification because of the 30% rule. Their house has been empty since the spring of 2010, when their daughter graduated.

Appellants' lawsuit challenges the 30% rule as an *ultra vires* act exceeding respondent's zoning powers and as unconstitutional under the Minnesota Constitution. Appellants seek declaratory and injunctive relief, as well as nominal damages.

¹ Appellants Dean and Richard remain in this lawsuit with claims for nominal damages. Respondent moved to dismiss them from the suit for lack of standing. That motion was denied, and the denial is not challenged on appeal.

In February 2012, the planning commission received the report of a consulting firm, the Hoisington Koegler Group Inc. (HKG), which had been retained to review the literature on the impact of rental-housing concentration on neighborhood quality and liveability. The HKG report considered five other cities in addition to Winona and concluded that “the concentration of rental housing in Winona results in increased levels of nuisance and police violations in those neighborhoods” and that “the concentration of rental housing leads to a decreased neighborhood quality and liveability.”

Also in February 2012, the planning commission discussed moving the 30% rule from chapter 43, the zoning chapter of respondent’s code, to chapter 33A, the rental-housing chapter, partly because respondent’s charter provided additional legal authority for the 30% rule and partly because other cities codified similar provisions in housing codes instead of in zoning codes. The 30% rule was moved to its present location in respondent’s rental-housing code in March 2012.

In 2012, all parties moved for summary judgment. They agreed that there were no genuine issues of material fact and that the matter would be appropriately decided as a matter of law. After a January 2013 hearing, the district court denied appellants’ motion and granted summary judgment to respondent.

ISSUES

- I. Is the 30% rule an *ultra vires* act that exceeds the powers delegated to respondent by the Minnesota legislature?
- II. Have appellants shown that the 30% rule is unconstitutional?

ANALYSIS

The case comes before us on appeal of the district court's award of summary judgment. The standard of review in an appeal from summary judgment is *de novo*. *Allen v. Burnet Realty, LLC*, 801 N.W.2d 153, 156 (Minn. 2011).

The ordinance giving rise to the underlying dispute provides in relevant part:

33A.03 – RENTAL HOUSING LICENSE

....

(i) Limitation of rental housing in low density neighborhoods. In [certain] districts of the city, no more than 30 percent (rounded up) of the lots on any block shall be eligible to obtain certification as a rental property, including homes in which roomers and/or boarders are taken in by a resident family. . . . When determining the number of eligible properties on a block, the number shall be the lowest number that results in 30 percent or more of the residential lots being rental.

Winona, Minn., City Code ch. 33A.03(i) (2013).

There is an exception for rental properties that were certified when the 30% rule was adopted, but such properties are counted among the 30% of allowable rental properties for purposes of determining whether new properties may be certified. *Id.* The ordinance also allows for temporary certification under limited circumstances. *Id.*

Appellants argue that the 30% rule is an *ultra vires* act that exceeds the powers delegated to respondent by the Minnesota legislature. Appellants also argue that the 30% rule violates their rights, under the Minnesota Constitution, to equal protection, substantive due process, and procedural due process. We address each argument in turn.

I.

Appellants argue that respondent “lacks the power to enact the 30 percent rule.” Respondent counters that the 30% rule is a valid exercise of its broad police power under the “all powers” grant in the City of Winona Charter.

Respondent, a home rule charter city, has by virtue of its charter “all powers, rights, privileges and immunities granted to it by this Charter and by the constitution and laws of the State of Minnesota and all powers existing in a municipal corporation at common law.” Winona, Minn., City Charter ch. 1.02 (1983). “[A home rule charter city] may provide . . . for the regulation of all local municipal functions as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896.” Minn. Stat. § 410.07 (2012). “[I]n matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld.” *Bolen v. Glass*, 755 N.W.2d. 1, 4-5 (Minn. 2008) (quotation omitted).

Generally, police power “refers to the power of the state and its political subdivisions to impose such restraints upon private rights as are necessary for the general welfare. This government power is essential and difficult to limit, as it includes all matters of public welfare.” *In re 1994 and 1995 Shoreline Improvement Contractor Licenses of Landview Landscaping, Inc.*, 546 N.W.2d 747, 750 (Minn. App. 1996) (quotations omitted), *review denied* (Minn. June 11, 1996).

The concept of police power has a long history in Minnesota. “The term ‘police power’ . . . means simply the power to impose such restrictions upon private rights as are

practically necessary for the general welfare of all.” *State ex rel. Beek v. Wagener*, 77 Minn. 483, 494, 80 N.W. 633, 635 (1899).

[I]n the exercise of its police powers a state is not confined to matters relating strictly to the public health, morals, and peace, but, as has been said, there may be interference whenever the public interests demand it; and in this particular a large discretion is necessarily vested in the legislature, to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests. If, then, any business becomes of such a character as to be sufficiently affected with public interest, there may be a legislative interference and regulation of it in order to secure the general comfort, health, and prosperity of the state, provided the measures adopted do not conflict with constitutional provisions, and have some relation to, and some tendency to accomplish, the desired end.

Id. at 495, 80 N.W. at 635 (citation omitted).

The breadth of police power is equally well established. “The development of the law relating to the proper exercise of the police power of the state clearly demonstrates that it is very broad and comprehensive, and is exercised to promote the general welfare of the state And the limit of this power cannot and never will be accurately defined” *Id.*, see also *City of St. Paul v. Dalsin*, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (1955) (“Judicial concepts of what is a sufficient public interest to invoke the police power, and of whether a certain remedy is reasonably appropriate to accomplish its purpose without going beyond the reasonable demands of the occasion so as to be arbitrary, are not static but are geared to society’s changing conditions and views.”).

We easily conclude that the public has a sufficient interest in rental housing to justify a municipality’s use of police power as a means of regulating such housing. See

City of Morris v. Sax Investments, Inc., 749 N.W.2d 1, 13-14 n.7 (Minn. 2008) (recognizing that there are “many permissible areas” for “municipal regulation of rental housing”). In fact, the landlord-tenant relationship is currently subject to extensive government regulation. *See* Minn. Stat. §§ 504B.001-.471 (2012) (governing landlord-tenant relationships). In this case, the record establishes that respondent determined that the conversion of owner-occupied homes to rental properties and the concentration of such properties in some neighborhoods began to have a negative impact on the quality and liveability of those neighborhoods. That occurrence implicated the public interest and welfare. Because “there may be interference whenever the public interests demand it,” respondent was authorized to address the circumstances through its police power so long as, “the measures adopted [did] not conflict with constitutional provisions, and [had] some relation to, and some tendency to accomplish, the desired end.” *Wagener*, 77 Minn. at 495, 80 N.W. at 635.

Appellants do not persuasively dispute respondent’s authority to regulate rental housing within its borders through its police power. Instead, appellants contend that the ordinance was an exercise of respondent’s statutory zoning power and not an exercise of its police power. Appellants further contend that the ordinance was not a valid exercise of zoning authority. *See* Minn. Stat. § 462.357, subd. 1 (2012) (setting forth municipal zoning authority). Because we conclude that respondent’s adoption of the ordinance was an exercise of its police power, it is not necessary to determine whether it was also an exercise of its zoning authority. We therefore do not address appellants’ zoning arguments.

In sum, respondent's adoption of the 30% rule was an authorized exercise of police power, subject to constitutional limitations. *See Wagener*, 77 Minn. at 495, 80 N.W. at 635. Because the validity of respondent's exercise of police power is determined under the analysis applicable to appellants' constitutional claims, we turn our attention to those claims.

II.

Appellants argue that the 30% rule "conflict[s] with constitutional provisions." *Id.* Specifically, they argue that it violates their rights to equal protection, substantive due process, and procedural due process under the Minnesota Constitution. *See* Minn. Const. art. I, §§ 2 ("No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."), 7 (stating that no person shall "be deprived of life, liberty or property without due process of law). Appellants state that their constitutional claims "are both facial and as applied."

"The constitutionality of an ordinance is a question of law[,] which this court reviews de novo." *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001) (quotation omitted). A municipal ordinance is presumed to be constitutional, and the burden of proving that it is unconstitutional is on the party challenging it. *Minnesota Voters Alliance v. City of Minneapolis*, 766 N.W.2d 683, 688 (Minn. 2009); *see also Bodin v. City of St. Paul*, 305 Minn. 555, 558, 227 N.W.2d 794, 797 (1975) ("A successful challenge to . . . legislation [allegedly resulting in unequal treatment of persons similarly situated] requires proof of unconstitutionality beyond a

reasonable doubt. The burden to overcome this stringent presumption is upon the party alleging the unconstitutionality of the provision at issue.” (footnote omitted)). “If the reasonableness of an ordinance is debatable, the courts will not interfere with the legislative discretion.” *Holt v. City of Sauk Rapids*, 559 N.W.2d 444, 445 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. Apr. 24, 1997).

A. Equal Protection

“A party may raise an equal protection challenge to a statute based on the statute’s express terms, that is, a ‘facial’ challenge, or based on the statute’s application, that is, an ‘as-applied’ challenge.” *State v. Richmond*, 730 N.W.2d 62, 71 (Minn. App. 2007), *review denied* (Minn. June 19, 2007). “By definition, a facial challenge to a statute on equal protection grounds asserts that at least two classes are created by the statute, that the classes are treated differently under the statute, and that the difference in treatment cannot be justified.” *In re McCannel*, 301 N.W.2d 910, 916 (Minn. 1980). A facially neutral statute can violate equal protection if it is applied in a way that creates an impermissible classification or discriminates in practice. *See State v. Frazier*, 649 N.W.2d 828, 833-34 (Minn. 2002) (explaining that to prevail on an equal-protection challenge where the challenged statute did not, on its face, classify on the basis of race, the challenger had to “demonstrate that the statute create[d] a racial classification in practice”); *McCannel*, 301 N.W.2d at 916 (stating that “the equal protection clause provides protection against arbitrary discrimination resulting from the express terms of a statute as well as from a statute’s improper execution”); *State v. Stewart*, 529 N.W.2d 493, 497 (Minn. App. 1995) (holding that an ordinance violated due process and equal

protection rights based on the city's arbitrary application and enforcement of the ordinance).

An equal-protection challenge requires an initial showing that “similarly situated persons have been treated differently.” *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011) (quotation omitted). In determining whether two groups are similarly situated, the focus is on “whether they are alike in all relevant respects.” *Id.* at 522. Appellate courts “routinely reject equal-protection claims when a party cannot establish that he or she is similarly situated to those whom they contend are being treated differently.” *Schatz v. Interface Care Ctr.*, 811 N.W.2d 643, 656 (Minn. 2012) (quotation omitted).

The 30% rule is unlike laws that expressly identified groups that were to be treated differently and therefore violated equal protection under the Minnesota Constitution. *See State v. Russell*, 477 N.W.2d 886, 887, 889 (Minn. 1991) (holding that Minn. Stat. § 152.023, subd. 2 (1990), violated equal protection because it imposed disparate treatment on two similarly situated groups: possessors of three or more grams of crack cocaine were guilty of a third-degree offense and possessors of less than ten grams of cocaine powder were guilty of a fifth-degree offense); *see also Weir v. ACCRA Care, Inc.*, 828 N.W.2d 470, 476 (Minn. App. 2013) (holding that Minn. Stat. § 268.035, subd. 20(20) (2012), violated equal protection because it provided that immediate-family-member caregivers were not covered under the unemployment statutes but non-immediate-family-member caregivers were covered); *Healthstar Home Health, Inc. v. Jesson*, 827 N.W.2d 444, 447, 449, 453 (Minn. App. 2012) (holding that a pay cut imposed on relative caregivers but not on caregivers who were not related to their

patients violated equal protection because both groups were “required to comply with the same statutes, rules and regulations” and therefore were similarly situated).

The 30% rule does not set forth any facial classification providing a basis for disparate treatment, and it does not describe any particular group of property owners for whom certification is or is not available. The ordinance is facially neutral and applies equally to all property owners in the regulated districts. The ordinance sets a 30% cap, but it does not define or predetermine which lots will be certified. That determination is made based on the changing facts and circumstances on each block, and not based on the ordinance or the characteristics of lot owners. The fact that the number of lots that may be certified might be less than the number of property owners who desire certification is not a class-based distinction between two groups of property owners. Because the 30% rule does not provide that certification will be available to one particular group of property owners instead of to another, appellants fail to meet the threshold requirement of a facial equal-protection challenge by showing that the 30% rule treats similarly situated groups differently. *See Cox*, 798 N.W.2d at 521.

Appellants also fail to present evidence of discrimination resulting from arbitrary application of the 30% rule. Appellants have not shown that respondent has done anything other than apply the mathematical formula on a first-come, first-served basis. Appellants’ real complaint is about the effect of an otherwise neutral ordinance on their particular circumstances, which does not give rise to an equal-protection claim. *See John Hancock Mut. Life Ins. Co. v. Comm’r of Revenue*, 497 N.W.2d 250, 254 (Minn. 1993) (stating that “any difference of effect” that is the result of the unique circumstances of

those affected by legislation does not give rise to an equal-protection claim). Appellants complain that the 30% rule unevenly affects owners who want to rent their properties. But any uneven effects are the result of the order in which property owners attempted to have their lots certified as rental properties and not the result of discriminatory treatment stemming from respondent's application of the ordinance. "The possibility that a law *may* actually fail to operate with equality is not enough to invalidate it." *Id.* (quotation omitted). Thus, appellants' as-applied equal-protection challenge is also unavailing.

Lastly, even if appellants did show that the 30% rule resulted in different treatment of similarly situated property owners, they would also have to show that the treatment was not merely different: only "invidious discrimination is deemed constitutionally offensive." *Scott v. Minneapolis Police Relief Ass'n, Inc.*, 615 N.W.2d 66, 74 (Minn. 2000) (quotation omitted). Limiting the number of lots on a block that are eligible to obtain certification as a rental property does not rise to the level of invidious discrimination.

In sum, the 30% rule establishes a neutral, numerical limit on the number of lots that are eligible to obtain certification as a rental property and applies uniformly throughout the affected districts on a first-come, first-served basis. Because appellants did not make the necessary threshold showing that the 30% rule treats them differently than other similarly situated individuals, their equal-protection claim fails as a matter of law.

B. Substantive Due Process

Appellants assert that the 30% rule violates their right to rent their property, asserting that such a right is “guaranteed by the substantive component of the Due Process Clause of Article I, Section 7 of the Minnesota Constitution.” Appellants acknowledge that no published Minnesota case has “addressed the specific contours of how the clause protects that right.” For the purpose of our analysis we assume, without deciding, that the right to rent is protected by the Due Process Clause of the Minnesota Constitution.

Unless a fundamental right is at stake, judicial scrutiny is not exacting and substantive due process requires only that the statute not be arbitrary or capricious; the statute must provide a reasonable means to a permissible objective. *State v. Behl*, 564 N.W.2d 560, 567 (Minn. 1997). Appellants do not argue that a fundamental right is at stake, so the rational-basis standard applies. *See Boutin v. LaFleur*, 591 N.W.2d 711, 717 (Minn. 1999) (stating that “even if a fundamental right is not implicated, in order to pass constitutional muster [a] registration statute must still meet the rational basis standard of review”). The rational-basis standard requires that: (1) “the act serve to promote a public purpose,” (2) the act “not be an unreasonable, arbitrary or capricious interference” with a private interest, and (3) “the means chosen bear a rational relation to the public purpose sought to be served.” *Contos v. Herbst*, 278 N.W.2d 732, 741 (Minn. 1979). For the reasons that follow, we conclude that the rational-basis standard is met.

First, the 30% rule serves to promote a public purpose. The purpose of the ordinance is to control the number of owner-occupied homes that are converted to rental

properties and to avoid heavy concentrations of such converted properties. As we concluded in section I of this opinion, that purpose serves the public interest.

Second, the ordinance is not an unreasonable, arbitrary, or capricious interference with private interests. The 30% cap² was adopted after a long, deliberate information-gathering process that considered public input, data, and expert review, including the HKG memorandum. Appellants attempted to refute the HKG memorandum by arguing that it was based on the number of rental properties and that it should have been based on the number of rental units. But respondent's concern was not the number of renters in an area; it was the number of properties that went from being owner-occupied to rental properties. Appellants' adverse expert provided data based only on the density of rental units, not the density of rental properties, which is not relevant to the 30% rule or to the purpose for which it was enacted.³

Third, the 30% rule bears a rational relation to the public purpose sought to be served. There is an evident connection between the imposition of a numerical cap on the number of lots that may convert from owner-occupied properties to rental properties and

² Appellants do not argue that respondent should have used some percentage other than 30%. They argue that not having certification available for every residential property violates equal protection. We therefore do not address the propriety of the 30% cap as opposed to some other percentage. *See Holt*, 559 N.W.2d at 445 ("If the reasonableness of an ordinance is debatable, the courts will not interfere with the legislative discretion." (quotation omitted)).

³ In any event, the decision regarding whether certification is granted to properties or to individual rental units belongs to respondent's city council, not to this court. *See Holt*, 559 N.W.2d at 445 ("If the reasonableness of an ordinance is debatable, the courts will not interfere with the legislative discretion." (quotation omitted)). For the same reason, we do not address appellants' arguments that the 30% rule is not an effective means of improving parking or controlling student behavior. These issues are not within our scope of review. *See id.*

the desire to control the number and concentrations of such converted properties. It is undisputed that the 30% rule has limited the number and location of converted properties, as it was intended to do.

In arguing their substantive-due-process claim, appellants primarily rely on two cases from other jurisdictions: *Gangemi v. Zoning Bd. of Appeals of Fairfield*, 763 A.2d 1011, 1017-18 (Conn. 2001) (invalidating a no-rental condition that applied to only one property and therefore served no purpose and unfairly restricted the owners' ability to sell) and *Kirsch Holding Co. v. Borough of Manasquan*, 281 A.2d 513, 519-20 (N.J. 1971) (invalidating ordinance prohibiting rental of seaside properties to groups of unrelated adults). Those cases are not binding on this court. See *Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (noting that opinions of courts of other states may be persuasive but are not binding on Minnesota courts). Moreover, *Gangemi* is distinguishable because the 30% rule applies to all properties in the district, not to only one. *Kirsch Holding* is distinguishable because the 30% rule is not a restriction on who rents properties but on how many properties can be rented.

The only Minnesota case that appellants cite, *City of St. Paul v. Dalsin*, is also distinguishable. In *Dalsin*, the supreme court held that

[t]he requirement that a roofer must qualify himself in warm air heating and ventilation has no reasonable relation to any justifiable regulation of the roofing trade. Since the ordinance embraces unnecessary, unreasonable, and oppressive requirements as a prerequisite to a license to install sheet metal flashings as an incidental part of the process of laying a roof, it must be held unconstitutional *insofar* as applies to the roofing trade.

245 Minn. at 330, 71 N.W.2d at 859. Unlike the requirement in *Dalsin*, the 30% cap on the number of lots that are eligible to obtain certification as a rental property has a reasonable relation to respondent's justifiable regulation of rental housing.

In sum, the ordinance provides a reasonable means to a permissible objective and appellants have not met their burden to show that the ordinance violates their substantive right to due process under the Minnesota Constitution.

C. Procedural Due Process

Lastly, we consider appellants' procedural-due-process claim. Appellants contend that the 30% rule violates their "procedural due process right by unconstitutionally delegating legislative power to a property owner's neighbors." They argue that "[l]egislatures cannot delegate their power to a group of citizens," and that "[t]his rule of law is over 100 years old and guaranteed by the Minnesota Constitution." They assert that the 30% rule unconstitutionally transforms city blocks "into mini-republics, delegating the power to ban additional licenses to the [license-holding] property owners on each block."

Appellants primarily rely on *State ex rel. Foster v. City of Minneapolis*, 255 Minn. 249, 97 N.W.2d 273 (1959). *Foster* involved a piece of land that was originally zoned as commercial. 255 Minn. at 250, 97 N.W.2d at 274. The property was rezoned as residential after satisfaction of a statutory requirement that the owners of two-thirds of the properties "within 100 feet of the real estate affected" give their written consent. *Id.* When the owners of the property applied for a permit to construct an office building on the property, their request was denied based on the new zoning classification. *Id.*, 97

N.W.2d at 273-74. *Foster* held that the statutory requirement of consent of the owners of two-thirds of the properties “within 100 feet of the real estate affected” was “an unlawful delegation of power to impose restrictions on real property” and noted that “[w]him or caprice may [have been] the sole motivating factor” in the rezoning decision that “divested [the] property of all substantial value without compensation to [the purchasers].” *Id.* at 252, 254, 97 N.W.2d at 275-76.

In holding that the ordinance violated due process under the federal constitution, the supreme court explained:

We are of the opinion that the consent clause of § 462.18, as a prerequisite to the exercise of the city council’s legislative authority to amend the comprehensive zoning ordinance, constitutes an unlawful delegation of power to impose restrictions on real property, and renders this provision of the statute invalid. It is well settled that a municipal corporation may not condition restricted uses of property upon the consent of private individuals such as the owners of adjoining property; and that it is an unreasonable exercise of police power to rest control of property uses in the hands of the owners of other property.

Id. at 252-53, 97 N.W.2d at 275.

Foster is readily distinguishable. Under the 30% rule, the owners of certified rental properties do not determine which other lots may be certified. The certified-property owners’ views regarding whether a particular lot should be certified as a rental property are irrelevant; they can neither grant certification by consenting to it nor prevent certification by denying consent. Thus, respondent’s limit on the number of lots on a block that are eligible to obtain rental certification is not a delegation of legislative power.

In sum, appellants have not shown that the 30% rule violates their right to procedural due process. Although we reject appellants' assertion that "the actions of [their] neighbors have denied them the right to rent," we in no way mean to diminish the impact of the 30% rule on appellants' ability to use their properties as they would like, and we are sympathetic to their circumstances. But appellants' dissatisfaction with the local majority's adoption of an ordinance limiting their ability to rent their residential properties is not a basis for the judiciary to strike down the ordinance as unconstitutional.

DECISION

Respondent was authorized, under its broad police power, to adopt an ordinance limiting by percentage the number of lots on a block that are eligible to obtain certification as a rental property. Because the ordinance does not discriminate against any class of property owners, either on its face or in its application, and there is a rational basis for the ordinance, the ordinance does not violate equal protection or substantive due process. And because the ordinance does not delegate legislative power to other property owners, it does not violate procedural due process. We therefore affirm the district court's award of summary judgment to respondent.

Affirmed.

D.2 – 868 N.W.2d 1 (2015) – Ethan DEAN, et al., Appellants, v. CITY OF WINONA, Respondent. – No. A13-1028 – Supreme Court of Minnesota – February 24, 2014

868 N.W.2d 1 (2015)

**Ethan DEAN, et al., Appellants,
v.
CITY OF WINONA, Respondent.**

No. A13-1028.

Supreme Court of Minnesota.

August 5, 2015.

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OPINION

WRIGHT, Justice.

Appellants Ethan Dean, Holly Richard, and Ted and Lauren Dzierzbicki brought this action, challenging a rental ordinance enacted by respondent City of Winona (the City). The ordinance, referred to as the "30-percent rule," limits the number of lots on a block in certain areas of the City that are eligible for certification as rental properties. Appellants assert that the 30-percent rule is a zoning law that exceeds the City's power authorized by Minn.Stat. § 462.357 (2014).

Appellants also contend that the 30-percent rule violates their rights to equal protection and substantive due process guaranteed by the Minnesota Constitution. On cross-motions for summary judgment, the district court granted summary judgment to the City. The court of appeals affirmed, concluding that the adoption of the ordinance was a valid exercise of the City's police power and that appellants did not meet their burden of establishing that the ordinance is unconstitutional. After we granted appellants' petition for review, the City moved to dismiss for lack of jurisdiction, asserting that the case had become moot while on appeal. We conclude that the challenge to the ordinance does not present a justiciable controversy because appellants no longer have an interest in the outcome of the litigation. We, therefore, decline to reach the merits of appellants' claims and dismiss the appeal.

I.

At the heart of this dispute is the City's policy limiting the number of rental licenses available to homeowners in Winona. The City requires its homeowners to obtain rental licenses before they are permitted to rent their properties to tenants. In 2005, the City enacted the 30-percent rule, currently codified as Winona, Minn., Code § 33A.03 (2014), to regulate the density of rental properties in certain residential zones. The purpose of the rule, when enacted, was to decrease conversions from owner-occupied properties to rental properties, which, the City reasoned, would decrease crime and nuisance complaints and improve the quality of life in Winona. In residential zones subject to the 30-percent rule, homeowners generally may not obtain rental licenses for their properties if more than 30 percent of the lots on that block already are licensed as rental properties. For example, on a 12-property block subject to the rule, only four lots may be licensed as rental properties.^[1]

⁴⁷⁴ Appellants sued the City in 2011 after each sought and was denied a standard rental license. Appellant Holly Richard purchased a house in Winona in December 2006. When

she attempted to obtain a rental license in 2009, the City erroneously told her that no licenses were available for her block. After Richard filed the lawsuit, the City issued a standard rental license to her. Appellant Ethan Dean bought a house near Winona State University in 2006. He rented his house without a license after his job required him to work in Iraq in 2009. The City granted Dean a temporary, nontransferable rental license in 2010, but declined to issue a standard rental license. In November 2012, after failing to sell the home, Dean transferred it to Wells Fargo Bank by warranty deed to avoid foreclosure. Appellants Ted and Lauren Dzierzbicki purchased a house in 2007 near the university for their daughter and student renters to live in while attending college. After the Dzierzbickis learned that they could not rent the home as planned because of the 30-percent rule, they put the house on the market in December 2009.

The parties filed cross-motions for summary judgment in January 2013. In their cross-motion, appellants sought a declaratory judgment that the 30-percent rule violates their equal-protection, procedural-due-process, and substantive-due-process rights under the Minnesota Constitution. Appellants also alleged that the ordinance exceeds the City's zoning power under Minn.Stat. § 462.357, Minnesota's zoning enabling statute. See *id.* (describing a municipality's authority for zoning and the limitations of that authority). Specifically, appellants claimed that the ordinance is unlawful under section 462.357 because it impermissibly regulates the ownership or occupancy of property, rather than the use of property. Appellants sought injunctive relief and nominal damages. The district court granted the City's motion for summary judgment in April 2013, concluding that the 30-percent rule is not unconstitutional and that the City had authority to enact it. The court of appeals affirmed. *Dean v. City of Winona*, 843 N.W.2d 249, 263 (Minn.App.2014).

The Dzierzbickis sold their house in March 2014, one month after the court of appeals issued its decision. At that time, the Dzierzbickis were the only appellants still seeking a rental license from the City. Appellants filed a petition for review, which we granted in May 2014. After we granted appellants' petition for review, the City moved to dismiss the appeal for lack of jurisdiction.

II.

We first consider the City's motion to dismiss. The City argues that dismissal is warranted because the case is not justiciable and nominal damages cannot be recovered under the Minnesota Constitution.

Justiciability is an issue of law, which we review de novo. McCaughtry v. City of Red Wing, 808 N.W.2d 331, 337 (Minn.2011). In the context presented here, the jurisdictional question is one of mootness. See In re Schmidt, 443 N.W.2d 824, 826 (Minn.1989) (observing that when we are unable to grant relief, the issue raised is deemed moot). The mootness doctrine is not a mechanical rule that is automatically invoked whenever the underlying dispute between the parties is settled or otherwise resolved. State v. Rud, 359 N.W.2d 573, 576 (Minn.1984). Rather, it is a "flexible discretionary doctrine." *Id.* Mootness has been described as "'the doctrine of standing set in a time frame: The requisite personal interest that must exist ^{5*5} at the commencement of the litigation (standing) must continue throughout its existence (mootness).'" Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (citation omitted). An appeal should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible. In re Minnegasco, 565 N.W.2d 706, 710 (Minn.1997).

Appellants acknowledge that they do not have a current interest in the litigation beyond their claim for nominal damages under the Minnesota Constitution and that their claims for declaratory and injunctive relief are moot. Nonetheless, they argue that we should apply two discretionary exceptions to our mootness doctrine. First, appellants maintain that the issues raised are capable of repetition, yet likely to evade review. See Kahn v. Griffin, 701 N.W.2d 815, 821 (Minn.2005). Second, appellants contend that this case is "functionally justiciable" and of "statewide significance." See Rud, 359 N.W.2d at 576. The City counters that neither exception applies. We address each argument in turn.

A.

We begin by considering the exception to the mootness doctrine for issues that are capable of repetition, yet evade review. This two-pronged exception applies to issues that are likely to reoccur, but also would continue to evade judicial review. Kahn, 701 N.W.2d at 821. These circumstances exist when there is a reasonable expectation that a complaining party would be subjected to the same action again *and* the duration of the challenged action is too short to be fully litigated before it ceases or expires. *Id.*

This case does not meet the "evading-review" prong of the exception because the City's enforcement of the ordinance is ongoing. The constitutionality of the 30-percent rule is not an issue that, by its character, is "too short to be fully litigated prior to its cessation or expiration." *Id.* (citation omitted); see State v. Brooks, 604 N.W.2d 345, 348 (Minn.2000) (noting that future defendants might have "no remedy" if the case were not

decided because "[m]ost pretrial bail issues are, by definition, short-lived"). Traditionally, cases that have been found to evade review involve disputes of an inherently limited duration, such as prior restraints on speech, see Neb. Press Ass'n v. Stuart, 427 U.S. 539, 546-47, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976) (holding that a judge's order limiting the press's reports about a trial would escape judicial scrutiny because such orders would always expire before appellate review), and short-term mental-health confinement orders, see In re Blilie, 494 N.W.2d 877, 879-81 (Minn.1993) (concluding that the issue of whether plaintiff's treatment by neuroleptic medication upon her guardian's consent was constitutional was capable of repetition yet evaded review because, although plaintiff had been discharged from state custody, she could again be subjected to 90 days of treatment with the medication if her guardian admitted her to a treatment center); State ex rel. Doe v. Madonna, 295 N.W.2d 356, 361 (Minn.1980) (reviewing the constitutionality of three-day-hold orders for mentally ill appellants who were no longer subject to confinement at the time of their challenge).

The time frame of this case makes clear that a challenge to the 30-percent rule is not, by definition, "short-lived." Brooks, 604 N.W.2d at 348. The last of the property owners seeking a rental license here sold their property after the court of appeals' opinion was issued and shortly before we granted appellants' petition for further review. Appellants' case had been initiated three years earlier, a duration 6*6 that typically would provide ample time for judicial review. In fact, if appellants had pleaded additional claims or joined plaintiffs while their case was pending before the district court, this case may have reached us before becoming moot. Because there is nothing about this case that is of inherently limited duration, this dispute is not capable of repetition, yet evading review.

B.

We have the discretion to consider a case that is technically moot when the case is "functionally justiciable" and presents an important question of "statewide significance that should be decided immediately." Rud, 359 N.W.2d at 576. "A case is functionally justiciable if the record contains the raw material (including effective presentation of both sides of the issues raised) traditionally associated with effective judicial [decision-making]." *Id.* Although the record here is well-developed, this case does not present an urgent question of statewide significance.

We apply this exception narrowly. In Rud, for example, the issue was whether defendants accused of sexual abuse of children should be allowed to call child witnesses and victims at a hearing on a motion to dismiss criminal charges. *Id.* at 575. The court of appeals held that

defendants had a limited right to call the children as witnesses, depending on several factors. *Id.* at 577. After we granted the State's petition for further review, the State dismissed the charges. *Id.* at 576. We proceeded with the case, however, because "a failure to decide [the issues when presented] could have a continuing adverse impact in other criminal trials." *Id.* Had we not decided the substantive issue in *Rud* immediately, the court of appeals' holding, which was erroneous in light of our decision in *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892 (1976), could have resulted in the broad use of probable cause hearings as "a substitute for disclosure and discovery." *Rud*, 359 N.W.2d at 578 (quoting *Florence*, 306 Minn. at 450, 239 N.W.2d at 898).

Other instances in which we have found cases to be functionally justiciable also involved matters of statewide significance. In *Jasper v. Commissioner of Public Safety*, for example, we concluded that the proper approval by the Commissioner of Public Safety of a breath-testing instrument for suspected impaired drivers was an issue of statewide significance because the model was "the only breath-testing instrument currently in use in this state and there [had] been substantial litigation in the district courts as to whether the instrument was properly approved." 642 N.W.2d 435, 439 (Minn.2002); see also *Kahn*, 701 N.W.2d at 823 (reaching the merits on a challenge to election procedures in Minneapolis because the procedures were similar to those used in other Minnesota cities, impacting almost 14 percent of the state's population). Similarly in *Brooks*, the issue of cash-only bail orders reached our court a second time within one year after we dismissed *State v. Arens*, 586 N.W.2d 131 (Minn.1998), as moot. See 604 N.W.2d at 348. We reached the merits in *Brooks* because the failure to do so posed the risk of creating "a class of defendants with constitutional claims but no remedy." *Id.*

Most recently, in *In re Guardianship of Tschumy*, we addressed whether a court-appointed guardian may consent to removing a ward from life support, even though the issue was technically moot because the ward's life-support systems had been disconnected as authorized by a district court order. 853 N.W.2d 728, 741 (Minn.2014) (plurality opinion). We reached the merits in part because the central issue, whether 7*7 a guardian needs prior court approval to consent to the removal of life-sustaining treatment, implicated the State's *parens patriae* power "to protect `infants and other persons lacking the physical and mental capacity to protect themselves,'" *id.* at 740 (quoting *In re Pratt*, 219 Minn. 414, 422, 18 N.W.2d 147, 152 (1945)), and because more than 12,000 Minnesotans were wards under State supervision and a decision was needed to "clarify for the guardians and their wards the scope of the guardians' authority to make one of life's most fundamental decisions," *id.*

This case does not present the urgency or significance that underpinned *Jasper*, *Rud*, and *Tschumy*. The decision of the court of appeals does not affect the efficiency and validity of criminal proceedings across the state, for example, nor do the issues presented involve a special area of law or vital "issues of life and natural death." *Tschumy*, 853 N.W.2d at 740 (plurality opinion). Moreover, there is no inherent limitation on the time available for appeal as there was for cash-only bail orders in *Brooks*, 604 N.W.2d at 348. In sum, this case does not present an issue that must "be decided immediately." *Rud*, 359 N.W.2d at 576.

The right to rent one's property is an important property interest. But this case does not present the urgency and broad impact that were present in cases determined to be functionally justiciable and of statewide significance that required an immediate decision. Other municipalities impose rental limitations. However, they do not operate in an identical fashion.^[2] When, as here, the issues presented are limited to the homeowners of one municipality, the case does not present the urgency and impact that were present in other cases that we have found functionally justiciable and of statewide significance. Accordingly, we decline to apply this limited exception here.

III.

Appellants also maintain that this case is not moot because they seek nominal damages based on an implied cause of action under the Remedies Clause of the Minnesota Constitution.^[3] See Minn. Const. art. I, § 8. Under this theory, appellants contend that the Remedies Clause provides an independent cause of action for constitutional violations.^[4] Arguing that they seek nominal damages under this cause of action, appellants contend that this case remains a live controversy.

However, appellants raised their "implied cause of action" theory for the first time only after their appeal had reached our court. Appellants referenced the Remedies Clause in their second amended complaint as a jurisdictional basis for declaratory and injunctive relief, but they never advanced a claim or an argument for nominal damages at the district court founded on the Remedies Clause. Appellants' jurisdictional allegations tied *only* their claims for declaratory and injunctive relief to the Remedies Clause. "It is well established that where a plaintiff litigates his case on one theory only, he is precluded from asserting new theories on appeal." *John W. Thomas Co. v. Carlson-LaVine, Inc.*, 291 Minn. 29, 33, 189 N.W.2d 197, 200 (1971). In particular, the appellants did not plead a cause of action for nominal damages under the Remedies Clause in their complaint. The Minnesota Rules of Civil Procedure require that a civil complaint "contain a short and plain statement of the

claim showing that the pleader is entitled to relief." Minn. R. Civ. P. 8.01. A complaint should put a "defendant on notice of the claims against him." Mumm v. Mornson, 708 N.W.2d 475, 481 (Minn.2006). Here, appellants pleaded constitutional claims of equal protection, substantive due process, and procedural due process, and made a statutory claim that the City exceeded its zoning authority. While appellants' prayer for relief included a generalized request for "nominal damages of \$1.00 for violations of their constitutional rights," that request, untethered to a specific claim or constitutional provision, was not enough to implicate the Remedies Clause. In other words, it did not put respondents on notice of the cause of action for nominal damages under the Remedies Clause, which appellants now present to our court.

Only on June 26, 2014, in response to respondent's motion to dismiss on mootness grounds before our court, did appellants advance the argument that their request for nominal damages presented an implied cause of action under the Remedies Clause of the Minnesota Constitution. That argument came too late. Amendments to pleadings, which "range from a simple clarification to a whole new theory of the case," Nw. Nat'l Bank of Minneapolis v. Shuster, 388 N.W.2d 370, 372 (Minn.1986), generally must occur before the action has been placed on the trial calendar, unless the amending party is given leave to amend by the district court or the adverse party, see Minn. R. Civ. P. 15.01 (stating that a party may amend a pleading by leave of court, and amendments should be freely granted when justice so requires); see also Shuster, 388 N.W.2d at 372 ("[F]airness demands recognition of the right to respond and to raise any defense to the newly pleaded material without seeking the court's permission.").

Therefore, we decline to consider appellants' Remedies Clause theory at this juncture. We do not reach constitutional claims unless required to do so. See Brayton v. Pawlenty, 781 N.W.2d 357, 363 (Minn.2010). Under the facts and circumstances of this case, the alleged harm to appellants' interests has ceased. There is no live case or controversy regarding the 9th claims that appellants actually pleaded in their complaint. In short, this case is moot. We will not consider issues of constitutional interpretation in a case that we have no power to decide.

IV.

In conclusion, appellants' claims are moot. Because no exception to our mootness doctrine applies, we grant the City's motion to dismiss.

Appeal dismissed.

Concurring, ANDERSON and STRAS, JJ.

Concurring, LILLEHAUG, J.

ANDERSON, Justice (concurring).

I concur in the result.

STRAS, Justice (concurring).

I join in the concurrence of Justice Anderson.

LILLEHAUG, Justice (concurring).

I agree that the case must be dismissed as moot. I join Parts I and II and the result of the opinion of the court, departing only from the analysis in Part III.

Part III is premised on the majority's understanding that appellants now seek nominal damages based on an implied cause of action under the Remedies Clause. Based on this understanding, and because the Remedies Clause was not pleaded as a cause of action, the majority avoids the question of whether the prayer for nominal damages saves the case from mootness.

As I understand appellants' position, they do not allege, and have never alleged, that their *injury or wrong*—their cause of action—is based on the Remedies Clause. Instead, I understand appellants to seek nominal damages as a *remedy* for alleged injury or wrong to their Minnesota constitutional rights of equal protection, substantive due process, and procedural due process.

Analytically, then, we cannot avoid appellants' argument that, even if their three constitutional claims otherwise have been mooted—making equitable and declaratory relief unavailable—the case lives on because they prayed for "nominal damages of \$1.00."^[1] Their novel theory is that the Remedies Clause requires the availability of a nominal damages remedy. I disagree.

Appellants have not drawn to our attention any Remedies Clause precedent that resuscitates an otherwise moot case, and I am aware of none. And I see nothing in the Remedies Clause as commanding (at least in the absence of implementing legislation) that the judicial remedy of purely nominal damages be available against a municipality.

This is not a situation where appellants had no remedy whatsoever. Equitable and declaratory relief, which appellants sought in their prayer for relief, were available. Such relief became unavailable because of appellants' own strategic litigation choices. At no point did appellants seek to amend their complaint to add plaintiffs with live claims. Nor did appellants seek expedited relief. Minnesota procedure provides for temporary remedies such as restraining orders and injunctions, see Minn. R. Civ. P. 65, and declaratory relief, which, "liberally construed and administered" under Minn.Stat. § 555.12 (2014), may be secured by "speedy hearing," Minn. R. Civ. P. 57.

^{10*10} Nor did appellants invoke Minnesota's constitutional and statutory remedies for the municipal taking, destruction, or damage of private property. See Minn. Const., art. I, § 13 ("Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured."); Minn. Stat. ch. 117 (2014) (governing eminent domain); Wegner v. Milwaukee Mut. Ins. Co., 479 N.W.2d 38, 42 (Minn.1991) ("Once a 'taking' is found, compensation is required by operation of law"). Nor did appellants seek compensation for actual damages; rather, they sued only the municipality. See Thiede v. Town of Scandia Valley, 217 Minn. 218, 231-33, 14 N.W.2d 400, 408-09 (1944) (damages awarded against individual defendants for eviction in violation of Minnesota Constitution, but, "in the absence of statute," township had no liability for damages). Nor did appellants plead any federal constitutional claim, whether under 42 U.S.C. § 1983 (2012) or otherwise. See Carey v. Piphus, 435 U.S. 247, 266-67, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978) (nominal damages available under section 1983).

As Part III notes, we do not reach the merits of constitutional claims unless we are required to do so. See Brayton v. Pawlenty, 781 N.W.2d 357, 363 (Minn. 2010). In the circumstances of this case, the Remedies Clause does not require that we reach the merits.

[1] An exception exists for blocks in which more than 30 percent of the properties were licensed as rental properties before the rule took effect in 2005. Winona, Minn., Code § 33A.03(i)(i). Homeowners who had rental licenses before the 30-percent rule was enacted may continue to renew those licenses, even if the percentage of rental property on their blocks is above 30 percent. *Id.*

[2] At least three other municipalities have enacted similar percentage-based rental ordinances with varying limitations on rental property. See, e.g., Mankato, Minn., Code § 5.42, subd. 20 (2014) (requiring additional procedures for new owners of an already licensed property to maintain a rental license and imposing a 25-percent rental cap); Northfield, Minn., Code § 14-97 (2015) (requiring additional procedures for a new owner of an already licensed property to obtain a new license and imposing a 20-percent rental cap); W. Saint Paul, Minn., Code, § 435.05, subd. 11 (2014) (disallowing the transfer of licenses to new owners and imposing a 10-percent rental cap). Additionally, the circumstances under which these ordinances were enacted vary and, when challenged, require independent consideration by a district court.

[3] The text of the Remedies Clause provides:

Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.

Minn. Const. art. I, § 8.

[4] In two section headings of their response to the City's motion to dismiss, appellants explicitly state that they seek a private cause of action under the Remedies Clause. Appellants also argue that "the Minnesota Constitution, through its Remedies Clause, provides a cause of action for constitutional torts by which [appellants] are entitled to nominal damages," and state that the "Remedies Clause protects rights ... by providing an independent basis for seeking relief, i.e., a private cause of action." Clearly, appellants are requesting that we recognize a private cause of action under the Remedies Clause. Contrary to the concurrence's characterization, this is not merely our "understanding" of appellants' position—rather, it is the express argument that appellants make multiple times in their response to the City's motion to dismiss.

[1] Nominal damages are "[a] trifling sum awarded when a legal injury is suffered but there is no substantial loss or injury to be compensated." *Black's Law Dictionary* 473 (10th ed.2014).

E. North Mankato Police Department's 2015 Year End Report



Pictured: Officer Vonberge

North Mankato Police Department

2015 Year End Report

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General Information

North Mankato Police Department

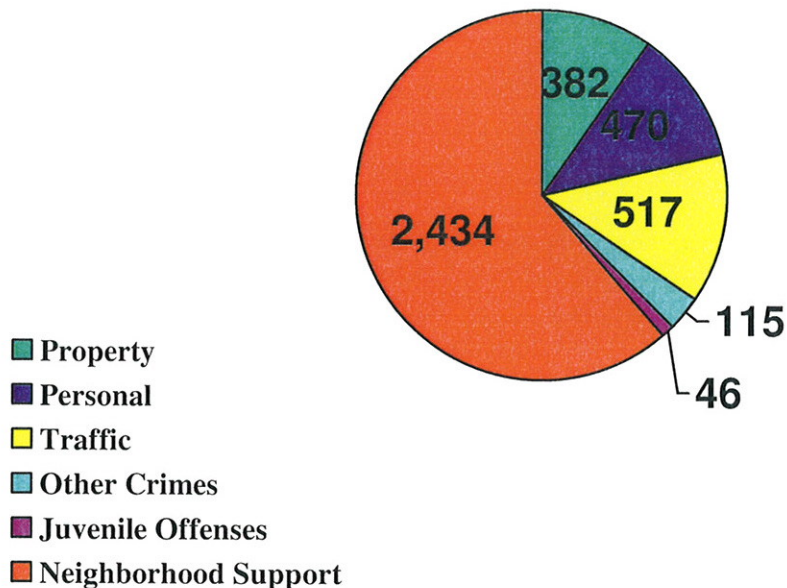
1001 Belgrade Avenue
P.O. Box 2055
North Mankato, MN 56002-2055

Emergency Number: 911
Non-Emergency Dispatch Number: (507) 931-1570
Office Number: (507) 625-4141

Email: nmpd@nmpd.org
Tip Information Email: tips@nmpd.org

The City of North Mankato Code of Ordinances Access: http://www.amlegal.com/northmankato_mn/
Court Records Access: <http://pa.courts.state.mn.us/default.aspx>.

2015 Police Reports





2015 Statistics at a Glance



Personal Crimes	2015	2014	2013
Homicide (includes attempts)	0	0	0
Terroristic Threats	8	16	12
Criminal Sexual Conduct	11	14	8
Robbery	1	3	2
Assault	17	31	40
Domestic Assault	38	48	41
Harassment	17	35	27
Harassing Communications	35	48	36
Child/Vulnerable Adult Protection	197	239	247
Domestic Disturbance	92	82	80
Disorderly Conduct	31	32	17
All other reports	40	41	31
Total Personal Crime Reports	470	589	541

Property Crimes	2015	2014	2013
Residential Burglaries	22	28	42
Non-Residential Burglaries	13	16	23
Theft from Building	53	43	54
Theft from Vehicle	45	66	53
Motor Vehicle Theft	6	14	15
Motor Vehicle Tampering	12	19	7
Financial Theft	40	47	28
Shoplifting	2	7	4
Property Damage	86	86	97
Arson / Negligent Fires	8	3	5
Trespassing	24	12	11
All other reports	71	103	81
Total Property Crime Reports	382	444	420

Other Crimes	2015	2014	2013
Narcotics	43	33	34
Underage Consumption	6	3	9
Weapons	11	7	8
Liquor Violations	7	8	2
All other reports	48	41	25
Total Other Crime Reports	115	92	78

Juvenile Offenses	2015	2014	2013
Alcohol	4	3	1
Runaways	28	15	16
Curfew	9	4	1
Tobacco	3	1	0
All Other reports	2	5	3
Total Juvenile Offense Reports	46	28	21

Traffic Related	2015	2014	2013
Accident Reports on Public Property	173	167	138
Accident Reports on Private Property	47	53	58
Bicycle Accidents (No Motor Vehicle)	3	4	1
Driving Under the Influence	48	36	25
Parking Violations	88	37	28
Violation Road & Driving Complaints	158	53	59
Total Traffic Related Reports	517	350	309

Neighborhood Support	2015	2014	2013
Medicals	401	382	383
Animal Control	220	153	155
Public Assists	186	93	97
Suspicious Activity	177	66	121
Assist Other Law Enforcement Agencies	281	105	123
Gun Purchase Permits Applications	151	123	168
Information Only	75	42	45
Civil Complaints	129	86	86
Alarm Calls	119	89	81
Welfare Checks	100	78	58
Residence Checks	102	45	54
Funeral Escorts	12	16	23
All other reports	482	347	342
Total Neighborhood Support Reports	2,435	1,625	1,736

The North Mankato Police Department takes all reports very seriously and diligently investigates each report.

TOTAL REPORTS	4,600	3,128	3,105
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Personal Crime Statistics

Type of Complaint	2015	2014	2013
Homicide	0	0	0
Attempted Homicide	0	0	0
Robbery	1	3	2
Criminal Sexual Conduct	11	14	8
Terroristic Threats	8	16	12
Assault	16	30	37
Assault/Domestic Assault with a Deadly Weapon	3	3	6
Domestic Assault	36	46	38
Bomb Threat	0	1	0
Child Protection	183	221	231
Vulnerable Adult Protection	14	18	16
Domestic Disturbance	92	82	80
Obscenity	2	4	1
Indecent Exposure	0	3	3
Peeping Tom	1	2	0
Kidnapping/Abduction/False Imprisonment	0	1	0
Disorderly Conduct	31	32	17
Harassment	17	35	27
Harassing Communications	35	48	36
Violation Court Order / Order for Protection	20	30	27
TOTAL PERSONAL CRIME CALLS:	470	589	541

*The title obscenity replaces the title of pornography from the 2014 and 2013 year-end reports.



Property Crime Statistics

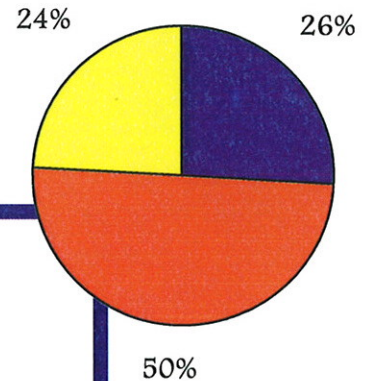
Type of Complaint	2015	2014	2013
Arson / Negligent Fires	8	3	5
Burglary Residence	22	28	42
Burglary Non-residence	13	16	23
Financial Theft			
Fraud/Identity Theft	16	9	8
Forgery/Counterfeiting	4	12	1
Theft by Check	1	0	1
Credit Card Fraud	18	25	16
Fraud/NSF Checks	1	1	2
Property Damage			
Business Damage	4	8	6
Private Damage	65	71	83
Public Damage	17	7	8
Property Theft			
Theft of Motor Vehicle	6	14	15
Theft of ATV/MC/Moped	1	1	1
Theft of Trailers/Snowmobile/Boat	0	1	1
Tamper with Motor Vehicle	12	19	7
Theft from Building	53	43	54
Theft from Yard	19	21	21
Theft from Motor Vehicle	45	66	53
Theft from Boat	1	5	2
Theft from Coin Machine	0	3	0
Theft of Self-Serve Gas	9	20	16
Shoplifting	2	7	4
Bicycle Theft	16	23	31
Theft of Mail	1	1	0
Theft of Services	6	4	3
Theft by Swindle/Scam	17	21	5
Possession of Stolen Property	1	4	1
Trespassing/Prowlers	24	12	11
TOTAL PROPERTY CRIME CALLS:	382	444	420



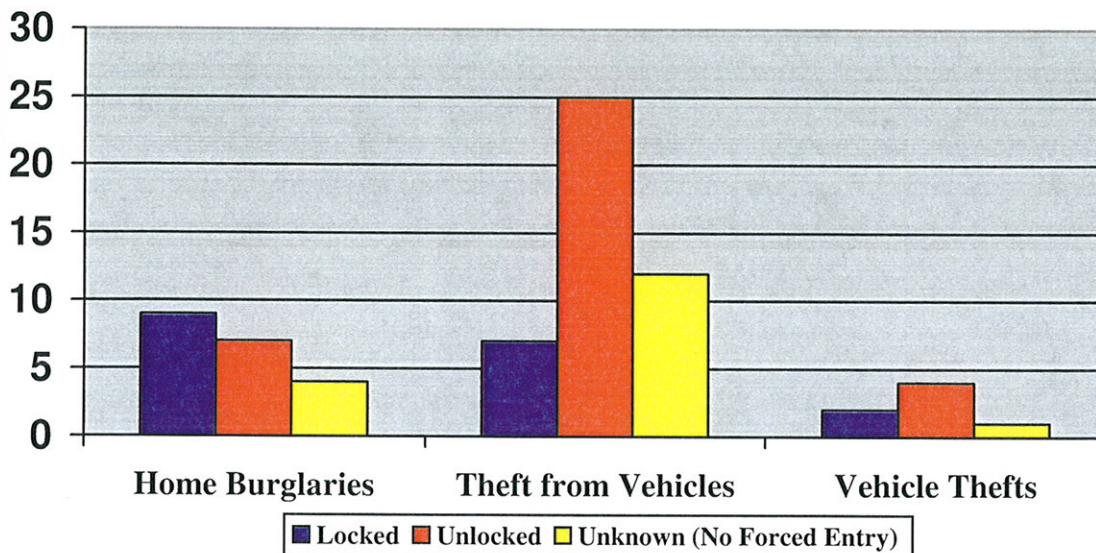
The North Mankato Police Department had 6 vehicles stolen in 2015. After investigation, two vehicles still remain missing; one was unlocked with the keys inside and one was stolen during a test drive. Four vehicles were recovered. One vehicle was parked on private property and towed by the property owner, one was stolen by a family member, two were recovered in another jurisdiction.

The Police Department encourages residents to keep valuables out of sight and secure their homes, garages, and motor vehicles at all times.

Any suspicious activity should be reported immediately by calling 9-1-1 or the non-emergency dispatch number (507) 931-1570.



Theft/Burglary Report Comparison



Other Crime Statistics

Type of Complaint	2015	2014	2013
Fleeing Police	3	7	2
False Information to Police	3	4	3
Illegal Kennel	0	0	1
Impersonating a Police Officer	0	0	1
Narcotics	43	33	34
Obstructing Legal Process	0	3	1
Public Nuisance	26	16	11
Underage Consumption of Alcohol (18 – 21 years)	6	3	9
Liquor Hours of Sale	5	4	2
Liquor Furnishing to Minors	0	1	0
Liquor Possession	2	3	0
Littering	10	8	3
Fireworks Discharge/Possession	6	3	3
Weapons Violations	11	7	8
TOTAL OTHER CRIME CALLS:	115	92	78

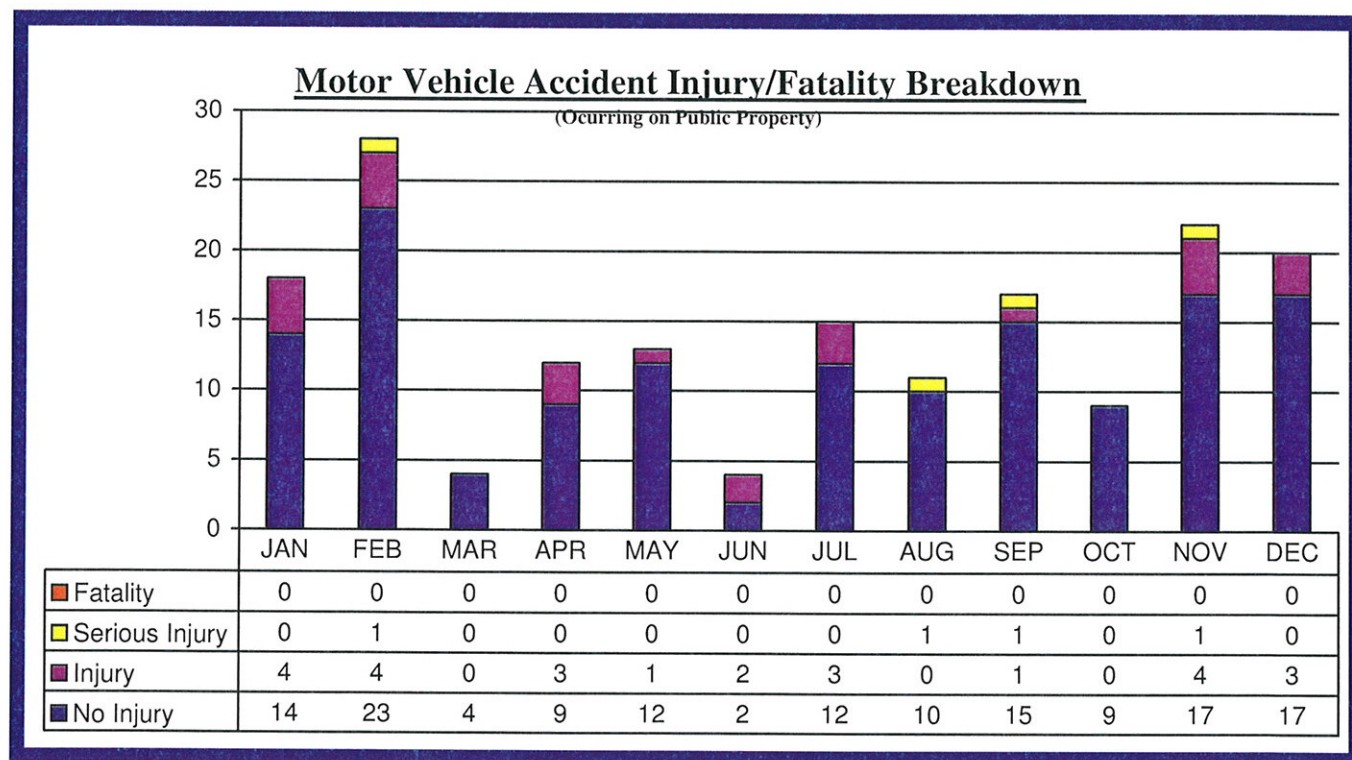


Juvenile Status Statistics

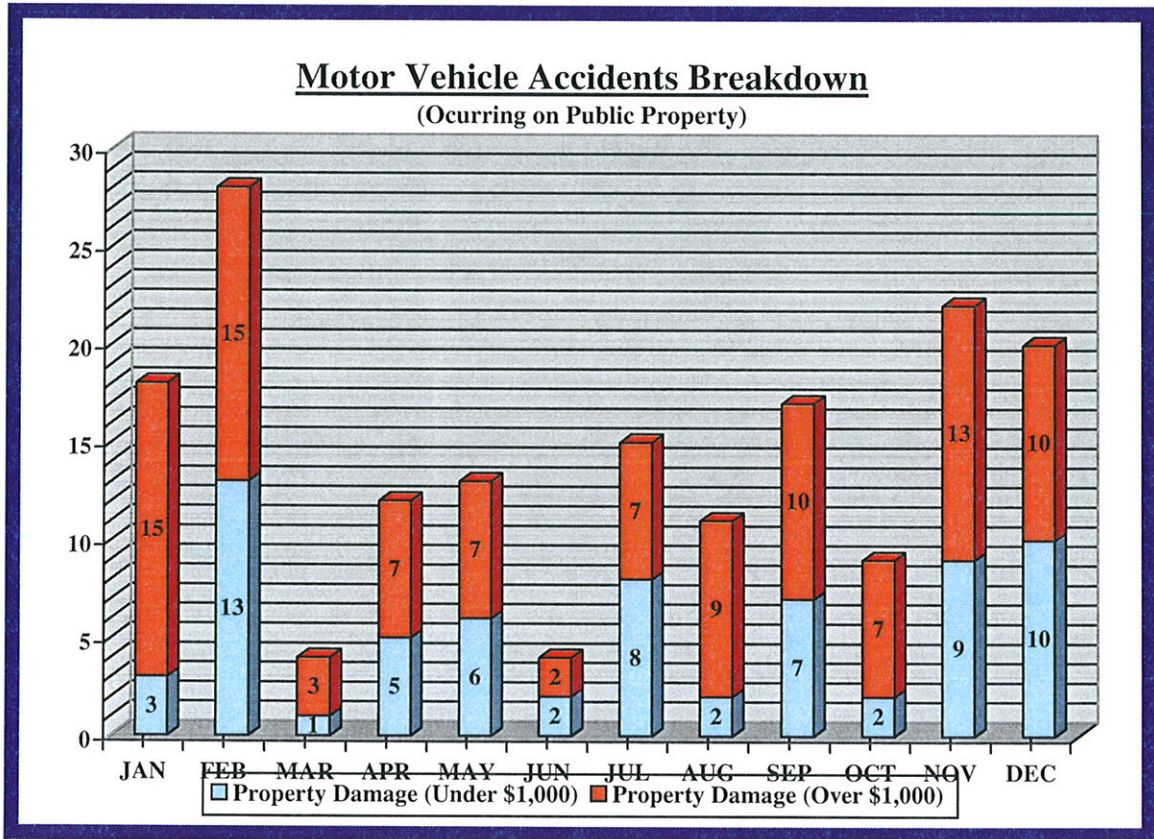
Type of Complaint	2015	2014	2013
Curfew Violations	9	4	1
Incorrigible Juvenile	1	3	3
Runaways	28	15	16
Truancy Reports	1	2	0
Underage Consumption of Alcohol (Under 18)	4	3	1
Underage Tobacco Possession/Use	3	1	0
TOTAL JUVENILE STATUS OFFENSES:	46	28	21

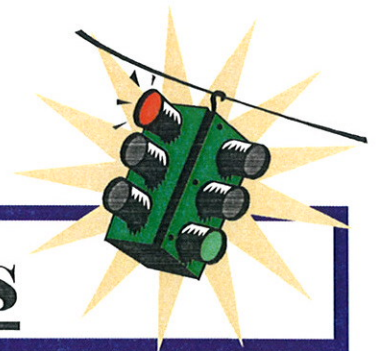
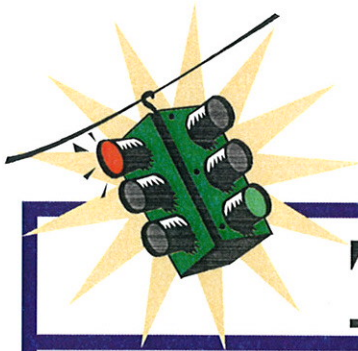
Traffic Related Statistics

Traffic Related Statistics	2015	2014	2013
Motor Vehicle Accident Reports	220	220	196
Occurring on Public Property	173	167	138
Occurring on Private Property	47	53	58
Bicycle Accidents (No Motor Vehicle Involvement)	3	4	1
Driving While Under the Influence	48	36	25
Violations Road & Driving Complaints	158	53	59
Parking Violations/Complaints	88	37	28
TOTAL TRAFFIC RELATED CALLS:	517	350	309



Total Public Motor Vehicle Accidents	173
Accidents involving an Under the Influence Driver	5
Involving a Pedestrian	2
Involving Bicycle	1





Traffic Citations

<u>Violation</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>
Careless/Exhibition/Reckless Driving	12	11	4
Child Restraint	1	1	0
Driver's License Violation	32	19	23
Driving After Revocation/Cancellation/Suspension of License	91	42	38
Driving While Intoxicated	63	49	31
Equipment Violation	1	8	1
Failure to Yield Right of Way	6	12	13
Fail to Use Due Care	14	12	5
Improper Registration	17	26	8
Leaving the Scene of Accident	5	6	2
No Insurance/No Proof of Insurance	99	52	62
Open Bottle/Allow Open Bottle	5	4	2
Parking Tickets	74	90	47
Seatbelt	81	93	121
Speeding	98	108	90
Semaphore/Stop Sign Violation	33	24	21
All Other Violations	3	4	16
Total:	635	561	484



Neighborhood Support Statistics

Type of Complaint	2015	2014	2013
911 Verifications	65	11	20
Alarm Calls	119	89	81
Animal Control			
Animal Complaints	209	144	140
Animal Bites	11	9	15
Assist Other Law Enforcement Agencies	281	105	123
Civil Complaints	129	86	86
Fire Calls	67	54	43
Found Property	67	69	60
Funeral Escorts	12	16	23
Gun Purchase Permits Applications	151	123	168
Information Only	75	42	45
Lost Property	33	12	10
Medicals			
Sick Cared For	287	252	267
Home Accidents	50	72	60
Occupational Accidents	4	3	7
Public Accidents	6	8	3
Intoxicated Individuals	54	47	46
Mentally Ill Persons	26	28	22
Missing Persons	14	8	7
Neighborhood Problems	12	15	25
Noise Complaints	70	72	48
Open Door/Window	19	5	4
Public Assists			
Motorist Assist	52	14	16
Public Education	24	16	18
All Other Public Assists	109	63	63
Residence Checks/Extra Patrol Requests	102	45	54
Predatory Offender Notification/Total Predatory Offenders	23	22/16	23/34
Solicitors/Scam Complaints	23	2	2
Sudden Death	14	15	13
Suicides	1	1	1
Suicides Attempts	16	12	11
Suicide Threats	33	27	42
Suspicious Activity	177	66	121
Welfare Checks	100	78	58
TOTAL NEIGHBORHOOD SUPPORT CALLS:	2,435	1,625	1,736

***The speed trailer was retired in 2014. Speed trailer reports from the 2013 year-end reports have been added to the all other public assist category.

The North Mankato Police Department prides itself in providing superior law enforcement services to the community. Some of the ways that this is done is through neighborhood support activities such as but not limited to medication collection, animal control and public education.

Medication Collection

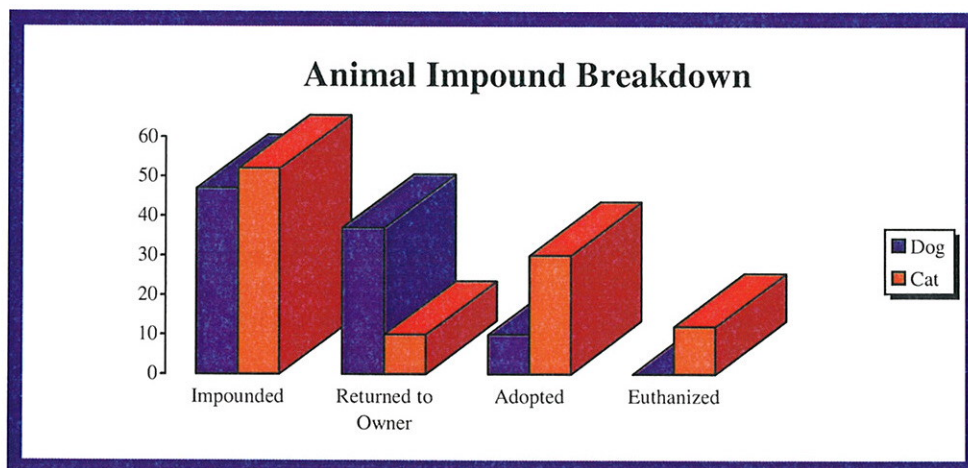
In 2015, the North Mankato Police Department installed a medication disposal box in the lobby of the Police Department and properly disposed of 349 pounds of medicine to protect human health and the environment.



Animal Control

The North Mankato Patrol Officers are responsible for responding to all animal control issues. This includes animals at-large, animal abuse/neglect, and animals disturbing the peace.

In 2015, the North Mankato Police Department responded to 209 animal related reports and impounded 99 animals compared to 83 impoundments in 2014 for a cost of \$3,813.40 compared to \$2,761.84 in 2014.



The City of North Mankato maintains an Impound Agreement with Premier Veterinary Center of Mankato.

Public Education

The North Mankato Police Department conducted the following public education in 2015:

DATE	LOCATION	TOPIC	OFFICER	ATTENDANCE
1/19	Good Shepherd Church	Race Relations	701	30
1/20	Mankato Clinic	Sexual Assault Training for Nurses	710	20
2/10	Belgrade Methodist Church	Law Enforcement for Cub Scouts	704	6
2/27	Garfield Elementary	Making Positive Decisions	710	275
4/17	Crossview Covenant Church	Public Safety for Tapestry	710/711	30
4/23	Hoover Elementary	Severe Weather	715	77
4/23	Monroe Elementary	Severe Weather	715	80
5/7	Children's Museum	Bike Safety	801/802/820	100
5/12	Mankato Civic Center	Emergency Management and Senior Safety for Senior Expo	701	200
5/15	Crossview Covenant Church	Tapestry Graduation	701/710/711	20
6/15	Taylor Library	Read with a Hero	706	15
6/22	Safety Camp at Fire Station	Personal Safety	706	25
7/8	Police Department	Daycare Police Department Tour	700/712	15
8/4	North Mankato Neighborhoods	Night to Unite	706/703/701	100
10/25	Nicollet County	ATV Safety	704	12
10/30	South Central College	Domestic Violence	716	40
11/3	Best Western	Human Trafficking	710	60
11/10	Mayo Clinic Health System	Sexual Assault Training for Nurses	710	13
11/12	Monroe Elementary	Winter Safety	715	100
11/12	Hoover Elementary	Winter Safety	715	95
11/19	Girl Scouts/Nicollet	Female Police Officer	709	7
12/18	Police Department	Boy Scouts Police Department Tour	704	30
12/18	Lincoln School	Tapestry Graduation	701	24
12/30	Mayo Clinic Health System	Sexual Assault Training for Nurses	710	10
2015 Total Public Education: 24		2014 Total Public Education: 16		



North Mankato Police Reserves

FOR THE YEAR ENDING DECEMBER 31, 2015



Photo Taken 1965

The North Mankato Police Department has a long history of having a reserve program. The Special Police Reserve Unit was established during the Minnesota River Floods of April of 1965. The Special Police were formed to patrol the City to secure the homes and businesses. The dikes were patrolled and inspected and assistance was given to many volunteers who helped build and maintain the dikes. First aid, meals, and transportation were also provided by the Reserves.

The Reserve unit was made permanent in the fall of 1965 and training was established for traffic control along with crowd control. North Mankato Fun Days and other events were provided with policing to supplement the regular police force.

Today, our reserve officers are still a volunteer position with the City of North Mankato. Reserve officers provide the City with traffic and crowd control during the many parades and races held throughout the year. All of our reserve officers have other employment and we are very grateful for the time and service they provide us.

We currently have 15 Reserve Officers dedicated to the community. These Reserve Officers collectively volunteered over 1,200 hours this past year.

In 2015, The North Mankato Police Reserves assisted the community with a variety of events including but not limited to the following; North Mankato Fun Days, Fun Days Triathlon, Kiwanis Holiday Lights, MCHS Bike

Safety Rally, Taylor Library Fun Run, Gorilla Run, A.B.A.T.E Parade, Movies in the Park, Bier of Belgrade, Girls State Softball Tournament, Mankato Marathon, Blues of Belgrade and YMCA Fun Run.

E. 1 North Mankato Police Department: Distribution of Police Calls

CITY OF NORTH MANKATO DISTRIBUTION OF POLICE CALLS: 2010 - 2014				
Offense by Year	Single-Family: Owner Occupied	One to Two Family: Renter Occupied	Ratio of Occurrence to Owner Occupied*	Ratio of Occurrence to Renter Occupied*
2010 Types of Police Calls (# of Properties: 3,656)				
Juvenile Offense	6	2	560.50	153.50
Neighborhood Support	468	118	7.19	2.60
Other Crimes	28	7	120.11	43.86
Personal Crime	102	43	32.97	7.14
Property Crime	112	31	30.03	9.90
Traffic Related	12	3	280.25	102.33
Uncategorized	10	3	336.30	102.33
2011 Types of Police Calls (# of Properties: 3,675)				
Juvenile Offense	6	2	563.33	154.5
Neighborhood Support	512	98	6.60	3.15
Other Crimes	50	7	67.60	44.14
Personal Crime	105	46	32.19	6.72
Property Crime	197	32	17.16	9.66
Traffic Related	17	0	198.82	0.00
Uncategorized	13	3	260.00	103.00
2012 Types of Police Calls (# of Properties: 3,707)				
Juvenile Offense	6	3	568.67	103.00
Neighborhood Support	505	101	6.76	3.06
Other Crimes	20	10	170.60	30.90
Personal Crime	121	31	28.20	9.97
Property Crime	126	28	27.08	11.04
Traffic Related	11	6	310.18	51.50
Uncategorized	12	2	284.33	154.50
2013 Types of Police Calls (# of Properties: 3,739)				
Juvenile Offense	9	3	382.22	104.33
Neighborhood Support	518	113	6.64	2.77
Other Crimes	49	14	70.20	22.36
Personal Crime	114	62	30.18	5.05
Property Crime	130	31	26.46	10.10
Traffic Related	14	4	245.71	78.25
Uncategorized	23	2	149.57	156.50
2014 Types of Police Calls (# of Properties: 3,743)				
Juvenile Offense	6	3	574.00	104.33
Neighborhood Support	454	112	7.59	2.79
Other Crimes	44	25	78.27	12.52
Personal Crime	121	53	28.46	5.91
Property Crime	159	36	21.66	8.69
Traffic Related	18	2	191.33	156.50
Uncategorized	25	1	137.76	313.00
*Ratio of Police Call occurrences per property. In 2010, for example, there were six Juvenile Offenses that occurred among 3,656 properties. This is a ratio of 6:3,656 or 1:558.8. There was one occurrence for every 558.8 properties in Single-Family:Owner Occupied vs. one occurrence for every 151.5 Renter Occupied Units.				

CITY OF NORTH MANKATO: UPPER NORTH DISTRIBUTION OF POLICE CALLS: 2010 - 2014				
Offense by Year	One- to Two-Family: Owner Occupied	One- to Two-Family: Renter Occupied	Ratio of Occurrence to Owner Occupied*	Ratio of Occurrence to Renter Occupied*
2010 Types of Police Calls (# of Properties: 3,656)				
Juvenile Offense	4	0	538.00	0.00
Neighborhood Support	233	15	9.24	5.13
Other Crimes	12	0	179.33	0.00
Personal Crime	50	4	43.04	19.25
Property Crime	56	5	38.43	15.40
Traffic Related	4	0	538.00	0.00
Uncategorized	1	0	2152.00	0.00
2011 Types of Police Calls (# of Properties: 3,675)				
Juvenile Offense	4	0	542.00	0.00
Neighborhood Support	254	10	8.54	7.90
Other Crimes	28	1	77.43	79.00
Personal Crime	46	6	47.13	13.17
Property Crime	116	8	18.69	9.88
Traffic Related	10	0	216.80	0.00
Uncategorized	6	1	361.33	79.00
2012 Types of Police Calls (# of Properties: 3,707)				
Juvenile Offense	0	1	0.00	79.00
Neighborhood Support	271	8	8.11	9.88
Other Crimes	7	3	314.00	26.33
Personal Crime	47	3	46.77	26.33
Property Crime	58	3	37.90	26.33
Traffic Related	6	0	366.33	0.00
Uncategorized	2	0	1099.00	0.00
2013 Types of Police Calls (# of Properties: 3,739)				
Juvenile Offense	2	1	1112.50	83.00
Neighborhood Support	270	19	8.24	4.37
Other Crimes	20	2	111.25	41.50
Personal Crime	45	4	49.44	20.75
Property Crime	52	4	42.79	20.75
Traffic Related	4	1	556.25	83.00
Uncategorized	8	0	278.13	0.00
2014 Types of Police Calls (# of Properties: 3,743)				
Juvenile Offense	1	0	2229.00	0.00
Neighborhood Support	216	14	10.32	5.93
Other Crimes	18	5	123.83	16.60
Personal Crime	51	7	43.71	11.86
Property Crime	78	4	28.58	20.75
Traffic Related	6	0	371.50	0.00
Uncategorized	5	0	445.80	0.00

CITY OF NORTH MANKATO: LOWER NORTH DISTRIBUTION OF POLICE CALLS: 2010 - 2014				
Offense by Year	One- to Two- Family: Owner Occupied	One- to Two- Family: Renter Occupied	Ratio of Occurrence to Owner Occupied*	Ratio of Occurrence to Renter Occupied*
2010 Types of Police Calls (# of Properties: 3,656)				
Juvenile Offense	2	2	605.50	115.00
Neighborhood Support	235	103	5.15	2.23
Other Crimes	16	7	75.69	32.86
Personal Crime	52	39	23.29	5.90
Property Crime	56	26	21.63	8.85
Traffic Related	8	3	151.38	76.67
Uncategorized	9	3	134.56	76.67
2011 Types of Police Calls (# of Properties: 3,675)				
Juvenile Offense	2	2	606.00	115.00
Neighborhood Support	258	88	4.70	2.61
Other Crimes	22	6	55.09	38.33
Personal Crime	59	40	20.54	5.75
Property Crime	81	24	14.96	9.58
Traffic Related	7	0	173.14	0.00
Uncategorized	7	2	173.14	115.00
2012 Types of Police Calls (# of Properties: 3,707)				
Juvenile Offense	6	2	202.33	115.00
Neighborhood Support	234	93	5.19	2.47
Other Crimes	13	7	93.38	32.86
Personal Crime	74	28	16.41	8.21
Property Crime	68	25	17.85	9.20
Traffic Related	5	6	242.80	38.33
Uncategorized	10	2	121.40	115.00
2013 Types of Police Calls (# of Properties: 3,739)				
Juvenile Offense	7	2	173.57	115.00
Neighborhood Support	248	94	4.90	2.45
Other Crimes	29	12	41.90	19.17
Personal Crime	69	58	17.61	3.97
Property Crime	78	27	15.58	8.52
Traffic Related	10	3	121.50	76.67
Uncategorized	15	2	81.00	115.00
2014 Types of Police Calls (# of Properties: 3,743)				
Juvenile Offense	5	3	243.00	76.67
Neighborhood Support	238	98	5.11	2.35
Other Crimes	26	20	46.73	11.50
Personal Crime	70	46	17.36	5.00
Property Crime	81	32	15.00	7.19
Traffic Related	12	2	101.25	115.00
Uncategorized	20	1	60.75	230.00

Legend



• Licensed

Exempt Areas

Properties per Block



Lots/Block	Rental Units Allowed
1 - 14	1
15 - 24	2
25 - 34	3
35 - 44	4
45 - 54	5
55 - 64	6
65 - 74	7
75 - 84	8
85 - 94	9

0 0.5 Miles

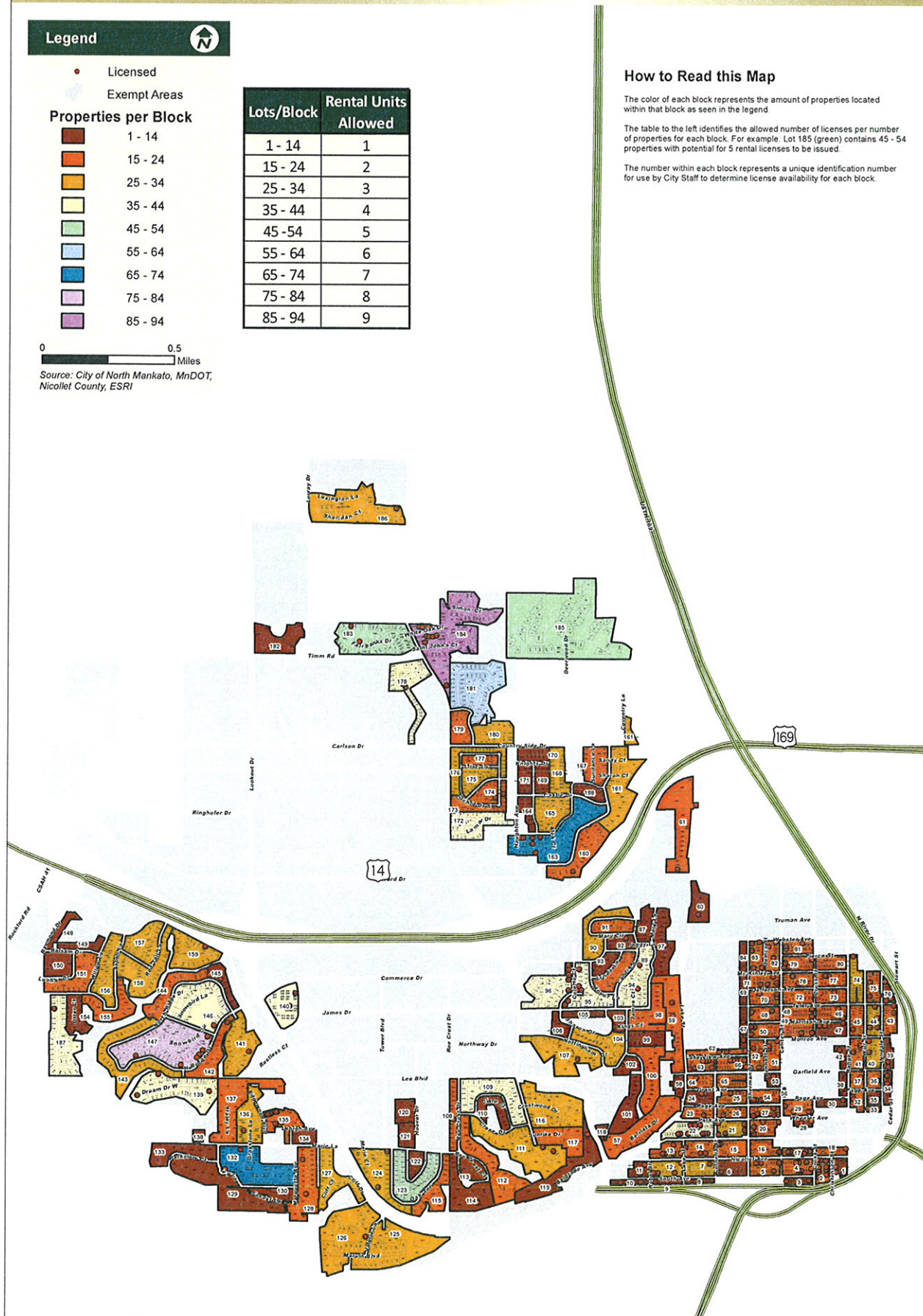
Source: City of North Mankato, MnDOT, Nicollet County, ESRI

How to Read this Map

The color of each block represents the amount of properties located within that block as seen in the legend.

The table to the left identifies the allowed number of licenses per number of properties for each block. For example, Lot 185 (green) contains 45 - 54 properties with potential for 5 rental licenses to be issued.

The number within each block represents a unique identification number for use by City Staff to determine license availability for each block.



CITY OF NORTH MANKATO
REQUEST FOR COUNCIL ACTION



Agenda Item #12F		Department: Administration	Council Meeting Date: 8/1/16
TITLE OF ISSUE: A. Consider Adopting Resolution Specifying Proposed Use of Revenues from the Extension of the Local Sales and Use Tax.			
BACKGROUND AND SUPPLEMENTAL INFORMATION:			
<i>If additional space is required, attach a separate sheet</i>			
REQUESTED COUNCIL ACTION: Adopt Resolution Specifying Proposed Use of Revenues from the Extension of the Local Sales and Use Tax.			
Motion By: _____ Second By: _____		SUPPORTING DOCUMENTS ATTACHED	
Vote Record:		Resolution Ordinance Contract Minutes Map	
Aye Nay		<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
_____ Spears		Other (specify) _____	
_____ Steiner		_____	
_____ Norland		_____	
_____ Freyberg		_____	
_____ Dehen		_____	
<input type="checkbox"/> Workshop		<input type="checkbox"/> Refer to: _____	
<input checked="" type="checkbox"/> Regular Meeting		<input type="checkbox"/> Table until: _____	
<input type="checkbox"/> Special Meeting		<input type="checkbox"/> Other: _____	

**RESOLUTION SPECIFYING PROPOSED USE OF REVENUES
FROM THE EXTENSION OF THE LOCAL SALES AND USE TAX**

WHEREAS, The City of North Mankato wishes to extend the local option sales and use tax approved by the voters of North Mankato in 2006 and authorized by the Legislature in 2008; and

WHEREAS, Many improvements in the public interest could be funded from such a local option sales tax; and

WHEREAS, Pursuant to Minnesota Statutes 297A.99 upon approval by voters at the November 8th, 2016 general election and authorization by the Minnesota State Legislature, the one-half of one percent local option sales and use tax will be extended by the City.

NOW THEREFORE, be it resolved by the City Council of the City of North Mankato Minnesota, the City proposes to extend the one-half local option sales tax through 2038 if authorized by the Minnesota Legislature and to use the proceeds not to exceed \$9 million dollars as follows:

1. Development of Regional Parks and Hiking and Biking Trails
2. New and Existing Recreational Facilities
3. Expansion of the North Mankato Taylor Library
4. Riverfront Redevelopment
5. Lake Improvement Projects

Adopted this 1st day of August 2016.

Mayor

ATTEST:

City Clerk

CITY OF NORTH MANKATO

REQUEST FOR COUNCIL ACTION



Agenda Item #12G		Department: Administration		Council Meeting Date: 8/1/16																																																	
TITLE OF ISSUE: Consider Resolution Determining the Necessity for the Extension of a Sales and Use Tax and Calling a Special Election Thereon.																																																					
BACKGROUND AND SUPPLEMENTAL INFORMATION: City Staff, following consultation with the City's Bond Counsel, is presenting the attached resolution for discussion.																																																					
<i>If additional space is required, attach a separate sheet</i>																																																					
REQUESTED COUNCIL ACTION: Adopt Resolution Determining the Necessity for the Extension of a Sales and Use Tax and Calling a Special Election Thereon.																																																					
<p>Motion By: _____ Second By: _____</p> <p>Vote Record:</p> <table><thead><tr><th>Aye</th><th>Nay</th><th></th></tr></thead><tbody><tr><td>_____</td><td>_____</td><td>Spears</td></tr><tr><td>_____</td><td>_____</td><td>Steiner</td></tr><tr><td>_____</td><td>_____</td><td>Norland</td></tr><tr><td>_____</td><td>_____</td><td>Freyberg</td></tr><tr><td>_____</td><td>_____</td><td>Dehen</td></tr></tbody></table>			Aye	Nay		_____	_____	Spears	_____	_____	Steiner	_____	_____	Norland	_____	_____	Freyberg	_____	_____	Dehen	SUPPORTING DOCUMENTS ATTACHED <table><thead><tr><th>Resolution</th><th>Ordinance</th><th>Contract</th><th>Minutes</th><th>Map</th></tr></thead><tbody><tr><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr><tr><td colspan="5">Other (specify) _____</td></tr><tr><td colspan="5">_____</td></tr><tr><td colspan="5">_____</td></tr><tr><td colspan="5">_____</td></tr></tbody></table>			Resolution	Ordinance	Contract	Minutes	Map	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other (specify) _____					_____					_____					_____				
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**RESOLUTION DETERMINING THE NECESSITY FOR THE EXTENSION OF A SALES AND USE TAX
AND CALLING A SPECIAL ELECTION THEREON**

BE IT RESOLVED by the City Council of North Mankato, Nicollet County, Minnesota, as follows:

1. The City Council hereby finds and determines that:

- a. The City of North Mankato wishes to extend the local option sales and use tax approved by the voters of North Mankato in 2006 and authorized by the Legislature in 2008.
- b. Pursuant to Minnesota Statutes 297A.99 upon approval by voters at the November 8th, 2016 general election and authorization by the Minnesota State Legislature, the one-half cent local option sales and use tax will be extended by the City.
- c. The City's proposal for an extension of the sales and use tax to fund certain projects was not adopted by the 2016 session of the Minnesota State Legislature.
- d. The City Council finds and determines that it is necessary and desirable for the sound financial management of the City that the sales and use tax extension be resubmitted to the Legislature at the 2017 Legislative Session (the Extension).
- e. The Special Law will authorize, among other things, the City to extend until 2038 the existing sales and use tax of one-half of one percent to pay for capital and administrative expenses not exceeding \$9,000,000 for the following projects:
 1. Development of Regional Parks and Hiking and Biking Trails
 2. New and Existing Recreational Facilities
 3. Expansion of the North Mankato Taylor Library
 4. Riverfront Redevelopment
 5. Lake Improvement Projects
- f. The City Council further finds and determines that it is necessary and desirable that the question of the Extension of the sales and use tax be submitted to the voters of the City in anticipation of the enactment of the Extension during the 2017 Legislative Session.
- g. It is necessary and expedient to the sound financial management of the affairs of the City that the projects be financed in whole or in part by the extension of the sales and use tax. The City expects to finance some of the projects by the issuance of general obligation bonds supported by the revenue produced by the sales and use tax.

2. The Proposition for the extension of the sales and use tax will be submitted to the voters of the City at the general election to be held on Tuesday, November 8, 2016. The election will be held and conducted in accordance with the laws of the state of Minnesota related to municipal elections.

3. The City Clerk is directed to cause a notice of election to be posted and published as required by law as follows:

a. The notice of election will be published in the official newspaper of the City once each week for at least two consecutive weeks, with the last publication being at least one week prior to the date of the election.

b. The notice of election and a sample ballot will be posted in the office of the City Administrator at least two weeks before the date of the special election and posted in the polling place on election day.

c. The sample ballot will be published in the official newspaper at least two weeks prior to the election.

d. The City Clerk has provided or will provide written notice of the election to the County Auditor of Nicollet County at least 74 days before the election, including the date of election and title and language of the ballot for the ballot question.

4. The polling places, hours of election, and respective judges for the election will be those established by the City for general elections. The polls will be open from 7:00 a.m. to 8:00 p.m.

5. The City Clerk is authorized and directed to prepare the ballot in substantially the form attached hereto as Exhibit A.

6. The City Council will meet to canvass the results of the election and to declare the results thereof between the third and tenth day following the election.

Adopted this 1st day of August 2016.

Mayor

ATTEST:

City Clerk

EXHIBIT A

CITY BALLOT QUESTION

CITY OF NORTH MANKATO
STATE OF MINNESOTA
SPECIAL ELECTION

November 8, 2016

INSTRUCTIONS TO VOTERS: To vote for a question, fill in the oval next to the word 'Yes' on that question. To vote against a question, fill in the oval next to the word 'No' on that question.

CITY QUESTION 1:

EXTENSION OF SALES AND USE TAX

Should the City of North Mankato be authorized to extend the one-half of one percent (0.5%) local option sales and use tax through 2038 and issue general obligation bonds to which the sales and use tax shall be pledged in an aggregate amount not to exceed \$9,000,000, plus the cost of issuing the bonds, to finance the acquisition and development of regional parks, hiking and biking trails, existing and new recreational facilities, expansion of the North Mankato Taylor Library, riverfront redevelopment and lake improvement projects?

An affirmative vote would extend the tax through 2038 or until an additional \$9,000,000 plus an amount equal to interest and issuance costs associated with the bonds hereby authorized to be issued is raised.

☐

YES

☐

NO



1001 Belgrade Avenue
North Mankato, MN 56003
507-625-4141 Fax: 507-625-4151
www.northmankato.com

Audio Permit Instructions

About:

An audio permit is required for anyone operating outdoor amplified sound (i.e a loudspeaker, public address system, or sound amplifying equipment). The sound system cannot be operated before 7:00 am or after 10:00 pm.

Audio Permit Responsibilities:

- An onsite event coordinator must be available by mobile during the event.
- An applicant will provide a schedule of any music or entertainment proposed to occur during the event.
- A beginning and end time must be supplied on the application (a portion of the Park Permit application) and the event coordinator must ensure compliance.
- Applicants must comply with City Code Ordinance 90.045 and Minnesota Rules Chapter 7030 which limits noise.
- Noise levels cannot exceed 60 dBA more than 50 percent of the time.
- Speakers should not be placed under a shelter.
- Speakers should be positioned in the direction indicated on the map attached to the instruction sheet for audio permits.
- Applicants are instructed to not position speakers facing the hillside or bluff.

What happens if there is a noise complaint?

- A North Mankato Patrol Officer will meet with the complainant and evaluate and measure the noise using a decibel reader at the location of the complainant.
- If the noise is found out of compliance the Patrol Officer will contact the onsite event coordinator and the amplified sound must be turned down.
- If the onsite event coordinator does not comply, the event will be immediately terminated and the group will be disbursed.
- Failure to comply will affect future ability to obtain an audio permit.

Spring Lake Park

- Please review the provided map indicating appropriate speaker direction.

