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Cities are getting in on community solar gardens. PAGE 8

## City Finance

Would you recognize a structural budget imbalance? PAGE 12

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# 'Aha' Moments and Aspirations

BY DAVID UNMACHT

I completed my first year with the League of Minnesota Cities (LMC) in August. I have now experienced a full slate of LMC Regional Meetings, our Annual Conference, legislative policy committee meetings, the budget process, the fall Board retreat, and of course, my performance evaluation.

There are too many highlights to mention, but certainly my visits to Mountain Iron, Battle Lake, Crookston, Becker, Montevideo, Springfield and Austin—all 2015 Regional Meeting sites—were great experiences. Connecting with members in their cities and communities is a high priority for the League. And I wrote this column while in Bemidji and Fergus Falls for our 2016 Regional Meetings.



Routinely during the past few months, colleagues and city officials have asked me if I had any “aha” or surprise moments in my first year. In fact, Mike Mornson, city manager of Hopkins and LMC Board member, and Heather Corcoran, of the LMC Intergovernmental Relations team, each recently asked me that question. My usual response has been, “Nothing obvious, but I do want to give it thoughtful consideration.” Well, I can’t ignore the questions forever; it’s time for my *thoughtful* answer.

## Aha moments

Before my interview for this position, I studied hard and conducted extensive research on the organization. I

also had previous firsthand experiences with the League. Those two things minimized surprises. Nonetheless, here are a few observations that fit the “aha” category:

- *Volume of questions and inquiries we receive.* There is no way to fully understand the significance of the role we play with our cities until you see the number of questions we receive about the wide-ranging and diverse topics members deal with.
  - *Member satisfaction surveys are historically very positive.* Having spent one year with our team, I now understand why this is true—because the commitment to serving our cities is unwavering and unmistakable.
  - *The National League of Cities (NLC) is a prominent partner with state municipal leagues.* I was not aware of how intricately involved state leagues are with NLC.
  - *The position I have has a tri-fold function.* My position actually serves multiple organizational roles: (1) executive director; (2) voting member of the League of Minnesota Cities Insurance Trust Board of Trustees; and (3) president of the League Building Company, an entity created when the League built its current building, which it owns along with most of the remaining land on its block. Each of these roles is distinct yet important to the overall function of the League.
  - *We’re just like our members.* Every member of our team is invested in providing direct service to our members. Like you, we are resourceful and assign internal talent to complete routine work and special projects.
- Finally, the last aha moment I want to share is the experience of getting to know personally each of the League staff members. From a handful of brand new employees to Pete Tritz—a 41-year veteran of the League and Insurance Trust—the individuals serving you are excellent people with strong values and a positive work ethic. Quite simply, they are fun to be around.

## Goals for my second year

My experiences over the past year clearly frame my goals for the second. With strong support from the Board and staff, my overall objective for 2017 and beyond is to provide strategic leadership to our

There is no way to fully understand the significance of the role we play with our cities until you see the number of questions we receive.

highest priorities. Some of the work that is specific to our members includes:

- *Strengthening our annual conference and regional meetings.* We always encourage any ideas you may have.
  - *Conducting successful conferences in 2017 for new and experienced elected officials.* The election is over, and we have great training opportunities ahead.
  - *Creating forums for members to participate* in conversations that will explore long-term solutions to present-day challenges.
  - *Enhancing our strategic use of information technology (IT)* and exploring ways to provide IT services to our members.
- With the aha question behind me, history suggests there is a logical second question that is forthcoming. If it sounds familiar, it’s because all of us have heard it at one time or another: “What have you done for me lately?” I hope to always have a good answer for that question. 



David Unmacht is executive director of the League of Minnesota Cities. Contact: [dunmacht@lmc.org](mailto:dunmacht@lmc.org) or (651) 281-1205.

## On the web

Share comments about this topic at [www.mncities.org](http://www.mncities.org). Click on “St. Paul to City Hall,” and post your comments below the story.

# Tuning in to Your Neighbors

“Community Sings” have been enjoying a revival in Minnesota. If the term doesn’t sound familiar, back up 60 years to when they were commonplace: the Minneapolis-based organization Minnesota Community Sings touts a local history of singing in city parks that lasted well into the 1950s. This practice of inviting the public, anyone and everyone, to warm up their pipes and create music together is a time-tested way to release the stress of the daily grind and make new friends.

Cities can benefit from these informal events, as they help build community and



allow residents a fun way to get to know each other better. And cities can be involved by providing space to gather—such as a city park or community center. The gathering can happen anywhere large enough to accommodate your crowd and maybe a crock of apple cider during these winter months. Several organizations in the Twin Cities are reviving this tradition, bringing folks together for a range of music, from sea shanties to choral masterworks. Check out Minnesota Community Sings for an example at <http://mnsings.com>.



## The Public Library Still Gets Rave Reviews

Libraries are viewed as a safe place to spend time, connect with educational opportunities, and spark creative thinking among young people—those are just a few of the conclusions reported by a Pew Research Center spring 2016 phone survey. The survey, conducted annually since 2011, tracks how respondents use and think about their local libraries. Other interesting data highlighted by researchers: 80 percent of respondents said libraries should “definitely” offer services in the future to help people learn digital tools, but the majority of respondents said they still enjoy traditional library features and are unsure of whether physical books should be moved to make more room for additional meeting spaces or tech resources. To see all the questions and responses, view the report at <http://www.pewinternet.org/2016/09/09/libraries-2016>.

## Ely Thrills National Geographic

The City of Ely was recently listed as one of *National Geographic’s* “World’s Best Towns for Outdoor Thrills.” The northern Minnesota city is one of only two locales named from North America. Why did Ely catch the eye of the iconic publication? It’s location in the Superior National Forest didn’t hurt. Neither did its proximity to the Boundary Waters Canoe Area Wilderness. But Ely’s outfitters and hospitality businesses got special recognition for whole-heartedly embracing their adventuresome clientele, ensuring travelers get a dose of Minnesota nice to pack for the miles ahead. See the full list by *National Geographic* at <http://on.natgeo.com/2dZN4dl>.

PHOTO COURTESY ELY CHAMBER OF COMMERCE



## Point-of-Last-Drink Report

The City of Excelsior, a hotspot for boater revelry and lakeshore hospitality, adopted a Liquor Control Policy in 2016 that incorporates data from a “point-of-last-drink report” to help cut down on over-serving. The city developed the policy with input from the South Lake Minnetonka Police and local businesses, according to the *Sun Sailor*. Police officers have been collecting point-of-last-drink information since 2014. When



officers come in contact with someone with a blood alcohol content of .20 or higher, they ask the person where he or she took the last drink, and they document the location. And while the data may not perfectly capture where a particular person did the bulk of their imbibing, when paired with the Liquor Control Policy, it does give the city an aggregate look at over-serving and an opportunity to check in quarterly with businesses that exceed a threshold of reports based on venue capacity. If a business calls 911 for assistance, that contact will not be counted toward the threshold. The city used these check-ins last summer to help identify causes of over-serving and encourage additional training and monitoring.

# Need Help? Apply for a MnTAP Intern by Feb. 1



You need time to think outside the box, but you're busy just keeping the wheels turning. The Minnesota Technical Assistance Program's (MnTAP) intern program hears that, and can offer cities an opportunity to put a student to work on those "nice-to-have" projects that could someday redefine your city operations for the better. Through MnTAP intern assistance, businesses and organizations, including local governments, have been able to streamline processes, inspect where energy waste may be occurring, and put innovative and sometimes darn simple solutions in place. MnTAP is a non-regulatory program in the School of Public Health at the University of Minnesota and is funded by the Minnesota Pollution Control Agency. Past local government intern recipients are the cities of Woodbury, St. Cloud, Hutchinson, and Rogers, as well as the Southwest Regional Solid Waste Commission. Learn more and apply by Feb. 1 at [www.mntap.umn.edu/intern](http://www.mntap.umn.edu/intern).



## Happy 10th Anniversary, Local Government Innovation Awards!

The Local Government Innovation Awards will celebrate their 10th year of promoting effective government redesign at an awards event on Dec. 6. Hosted annually by the Humphrey School of Public Affairs in partnership with the Bush Foundation, the LGIAs recognize projects that move the needle on vexing problems facing today's communities. The four 2016 winners will receive a professional video and a \$5,000 Bush Foundation grant. Learn more at <http://lgia.umn.edu>.



## LMC TRAINING & EVENTS

### Newly Elected Officials: 2017 Leadership Conference

- Jan. 20-21—Mankato
- Jan. 27-28—Bloomington
- Feb. 24-25—Brainerd

### Experienced Officials: 2017 Leadership Conference

- Jan. 27-28—Bloomington

### 2017 Safety & Loss Control Workshops

- March 29—Mahnomen
- March 30—Alexandria
- April 5—Morton
- April 6—North Mankato
- April 12—Rochester
- April 18—St. Cloud
- April 20—Brooklyn Park
- April 25—Cohasset
- April 27—St. Paul

### On the web

Learn more about these and other events at [www.lmc.org/events](http://www.lmc.org/events).



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# How Does Your City Manage Feral Cats?



## SHAWNA JENKINS

CITY CLERK  
PRINCETON (POPULATION 4,732)

Many of us are animal lovers, but at the same time, we understand stray and feral cats can present a real problem for cities and their residents. In the City of Princeton, we were hearing more and more complaints from residents about feral cats and, about two years ago, we realized we

needed to figure out a solution.

We found there are two trains of thought for dealing with the problem. One was a trap, neuter, and release program, and the other was to trap and euthanize the feral cats.

### Trap, neuter, release

For those cities or residents that wish to trap, neuter, and release, the cost can be quite large. At a local veterinary clinic, the charge for spaying or neutering and giving a rabies shot is almost \$120 per cat. The obvious downfalls of this method are the cost; cats continuing to roam the city freely and hunting songbirds that people feed and enjoy; and the possibility of residents being bitten or scratched.

However, if you are interested in this route, there is a more economical option. The Minnesota Spay Neuter Assistance Program ([www.mnnap.org](http://www.mnnap.org)) offers a discounted rate and no income qualifications for feral cats. The program will charge \$50-60 per cat to spay/neuter and provide a rabies vaccination. They also “tip” one of the cat’s ears, which is a universal sign that the cat has been spayed/neutered and vaccinated for rabies.

### Princeton’s solution

The other option—to trap and euthanize these cats—isn’t a pleasant one. The City of Princeton did go with this option, but with a slight twist. We purchased five live traps that residents can borrow to trap feral and stray cats.

The cats that are caught are taken to the local veterinary clinic, where they are held for a few days to see if their owners can be found. Most unclaimed cats are adopted out to new homes. However, cats that are too feral and unfriendly to be adopted are, unfortunately, euthanized. The clinic charges the city \$60 for each cat that is impounded.

### Program works

This program is working well for Princeton. Our leaders feel this option is better than a trap, neuter, release program because the cats are no longer roaming the streets. In the past year, 57 cats have been impounded; 40 of those were picked up by their owners or adopted to new homes, and 17 were euthanized. The cost to the city in the past year has been \$3,420 for feral and stray cats.

## KYLE MORELL

CITY CLERK-ADMINISTRATOR  
HINCKLEY (POPULATION 1,794)

Feral cats became an issue for the City of Hinckley in the fall of 2014, when a resident began feeding stray cats near his home. Very quickly, the number of stray cats soared from three to more than 50 at one point. As you can imagine, this led to numerous complaints from neighbors regarding both the wandering cats and foul odor emanating from the property. The city had to take action.

### Seeking compliance

The City of Hinckley’s Animal Ordinance language does not require a license for cats, but it does limit the number of cats and/or dogs per household to two animals. Our first attempt to address the ordinance violation was through the city’s Administrative Penalty Ordinance. This proved unsuccessful, as the resident did not respond to the city’s warning and violation letters.

I then set up a meeting with the resident, the mayor, and myself to see if the situation could be resolved without further administrative action. The resident professed a desire to reduce the number of cats on his property, and we agreed to give him 60 days to come into compliance with the ordinance. However, at the end of the allotted time frame, the resident had made no positive steps toward abating the ordinance violation. We then proposed a referral to a free service that would humanely trap cats and remove them, which the resident declined.

### County’s help needed

Having exhausted the limits of our Administrative Penalty Ordinance, we turned the matter over to the Pine County Sheriff’s Office (our contracted police service) and the Pine County Attorney’s Office (our contracted criminal prosecutor). The county attorney charged the resident with a misdemeanor offense, and he was tried in court.

In March 2016, more than a year after our initial contact, the resident was sentenced for a public nuisance violation. He received a stayed sentence of 30 days, one year of probation, and a small fine, and was given one year to comply with the ordinance.

### Ongoing issue

While there has been some improvement with respect to the reduction of the number of feral cats on the property, the resident is still far from compliant with the ordinance, and city administrative time continues to be spent on routine check-ins with both the resident and County Attorney’s Office. If the resident remains in violation in March 2017, the city might hire a service to remove the cats. 



# here comes the SUN

## Cities Partner on Community Solar Gardens

BY MARY JANE SMETANKA

**A**s proposals for community solar gardens reach fever pitch in Minnesota, developers are dangling a big carrot to get cities to subscribe to their projects: up to 25 years of energy savings.

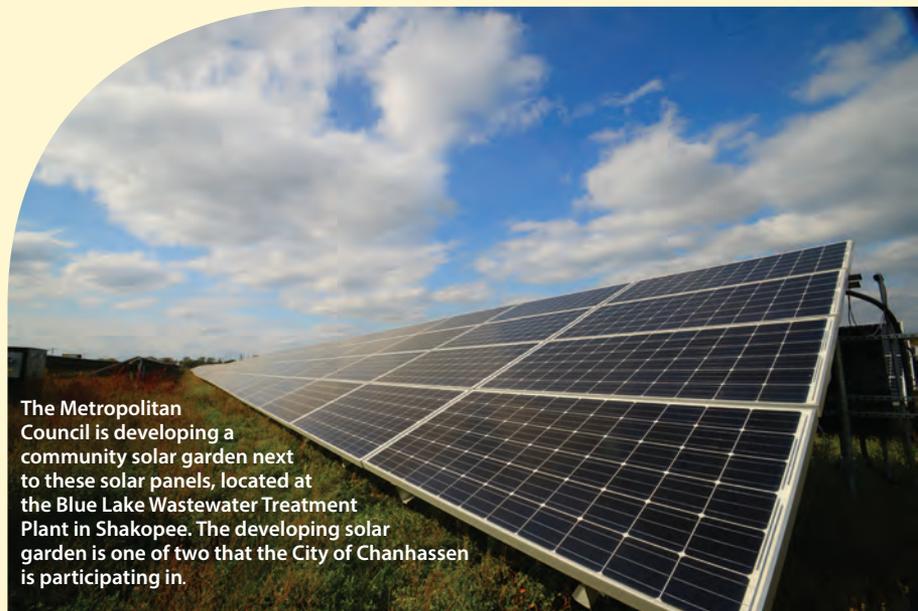
That money-saving lure and the attraction of being seen as environmentally conscious have enticed more than 20 Minnesota cities to sign agreements to be either subscribers or partners in an industry that is still in its infancy in the state. Taylors Falls, Chanhassen, and Mankato are among the cities that have signed agreements with community solar garden developers.

Lissa Pawlisch, who as statewide director of Clean Energy Resource Teams (CERTs) works to connect people with resources to develop clean energy projects, says one reason that usually cautious cities are getting involved is the clear budget advantages.

“From a local government perspective, if you know you can control some part of your cost portfolio, that’s great,” she says. “For developers, they get a big partner and ensure that a large part of the energy will be subscribed. And local governments usually don’t move, they don’t die, and they don’t go out of business.”

### State laws spur solar activity

The boom in proposals for community solar gardens is linked to a 2013 state law that required Xcel Energy to develop such offerings. Another state law requires investor-owned utilities to get 1.5 percent of their energy from solar by 2020. (However,



The Metropolitan Council is developing a community solar garden next to these solar panels, located at the Blue Lake Wastewater Treatment Plant in Shakopee. The developing solar garden is one of two that the City of Chanhassen is participating in.

PHOTO COURTESY METROPOLITAN COUNCIL

the Public Utilities Commission recently issued decisions that may reduce interest in solar gardens, at least for cities; see the sidebar on page 9.)

Solar garden developers responded with enthusiasm, bombarding cities with proposals to build solar arrays on city land and inviting them to subscribe to the power produced by solar projects. Chris Smith, risk management attorney with the League of Minnesota Cities (LMC), says he has talked to at least 20 cities that have been asked to subscribe to community solar gardens, “so I’m guessing there are many more.”

# Recent Changes to Solar Garden Program

BY DOUGLAS D. SHAFTEL

The state Public Utilities Commission (PUC) has unfortunately issued recent decisions that may discourage cities from subscribing to community solar gardens. On Sept. 6, the PUC adopted the value-of-solar, or VOS, rate for solar garden subscribers' bill credits, and affirmed the 1 megawatt (MW) cap on the size of co-located gardens.

## VOS rate

Xcel Energy customers who subscribe to a garden receive bill credits for the energy the garden generates. The subscriber's credit for each kilowatt hour (kWh) generated is a combination of the applicable retail rate and \$.02/kWh for the associated renewable energy credit. For commercial subscribers like cities, the credit would currently be \$0.11740/kWh. Xcel believes this pricing structure does not reflect market forces and causes non-participating ratepayers to subsidize the program.

A 2013 state law on community solar gardens envisioned that the bill credit would eventually reflect the value of solar to the utility, its customers, and society. The concept behind this price model is that utilities should pay a transparent and market-based price for solar energy based on (1) avoiding the purchase of energy from polluting sources; (2) avoiding the need to build power plant capacity; and (3) avoiding costs associated with wear and tear on distribution and transmission facilities.

In September, the PUC adopted the VOS rate and required that Xcel use it for all garden applications submitted after Dec. 31, 2016. Each year, Xcel will have to recalculate the VOS rate by adjusting for inflation, but Xcel calculates that a 2016 VOS rate would be \$0.09950, substantially less than the existing bill credit for cities. On Sept. 26, Xcel asked the PUC to reconsider its decision.

## Cap on solar gardens

The 2013 law also included a 1 MW cap on the size of gardens, but it was silent on how many gardens developers could "co-locate" to maximize economies of scale. The PUC initially refused to cap such co-locations and, as a result, Xcel received many applications for co-located projects that resembled utility scale projects. By July 2015, Xcel had received applications with a combined capacity in excess of 900 MW.

In August 2015, in response to Xcel's concerns that adding so much power would strain the grid and cause bill increases for non-participating ratepayers, the PUC put a 5 MW cap on all co-located projects. It further ordered that all project applications submitted after Sept. 25, 2015, must comply with the statutory 1 MW cap. In its recent order, the PUC affirmed the 1 MW cap on all projects, noting that to do otherwise would "undermine the legislative intent to foster small, widely distributed solar gardens." Since Sept. 25, 2015, applications for new solar garden projects have decreased substantially.

Douglas D. Shaftel is an attorney with Kennedy & Graven, Chartered.

Usually, Smith says, a for-profit company develops, owns, operates, and maintains the community solar garden. The energy that is produced is delivered to a utility via the electric grid. The utility calculates the value of the electricity and converts that into credits per kilowatt hour.

Cities subscribe to and pay for a portion of the solar garden's capacity based on their desired subscription size. Cities then get a credit on their electric bill from their utility company for their share of the electricity generated by the solar garden.

In Minnesota, contracts signed by cities generally last 25 years. While some solar developers offer contracts with credits that could change over time and could result in more dramatic savings—or cost increases—most cities have opted for a more conservative approach that guarantees a set savings rate for the length of the contract.

"Assuming that electricity rates continue to go up for the next 25 years, I think it's safe to assume that cities will save money with the potential for fairly significant savings over the course of the subscription agreement," Smith says.

Over 25 years, Taylors Falls expects to save more than \$200,000 in electric costs. Over the same period of time, Mankato anticipates \$1.25 million in savings, and Chanhassen expects savings of about \$1.1 million.

## One-acre garden in Taylors Falls

The City of Taylors Falls in Chisago County is allowing Community Green Energy to lease a one-acre site to build a solar garden. City Coordinator Adam Berklund says the city is considered a partner in the project with the opportunity to subscribe.

"It's very small compared to other solar sites," he says. "It's out by our sewer pond. Nobody will see it and it is being done at no cost to the city. It's unused land and just works perfectly. We will save about a month's worth of electricity every year, about \$8,000."

Berklund says the contract was approved because the Council for this city of just under 1,000 was interested in green initiatives and "anything we can do to lower taxes is in the best interest of residents."

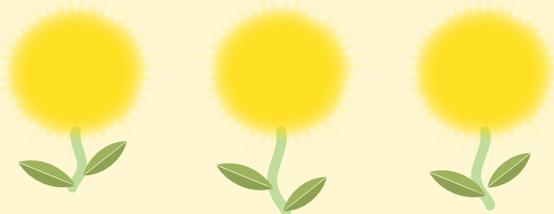
Before approving the deal, Taylors Falls checked with other cities that had worked with Community Green Energy. All said they'd do it again, Berklund says. The city's contract includes a surety bond to cover the cost of removing the solar array if the firm goes out of business.

## Mankato's garden set to start in 2017

In Mankato, city officials endured a barrage of solar garden proposals starting last year.

"We struggled to get our arms around it at the beginning," says Mankato Public Works Director Jeffrey Johnson. After

*(continued on page 10)*



feeling a bit overwhelmed by the number of calls and the complexity of the issue, he says the city “shut it down and reviewed three proposals very closely, doing a lot of review in the city and with our legal team.”

Mankato (population 41,000) chose a proposal from Geronimo Energy, the only one of the three that wanted to build a solar garden using city land. Mankato sold about 60 acres of long-idle industrial park property to Geronimo for \$1.19 million. The solar garden is expected to be operating by spring 2017.

**“Local governments are your perfect subscriber. Like Macy’s in a shopping mall, they play the anchor role.”**

– LISSA PAWLISCH, CERTS

As subscribers to the project, the city will get a penny back for each kilowatt hour their portion of the solar garden produces. There is no other cost to the city; energy savings average about \$50,000 a year over the 25-year contract. Still, some city councilmembers were a little skeptical about being tied to the project for such a long time. The city held two work sessions with Geronimo and reviewed the contract and project in two Council meetings. In the end, the subscription agreement was approved.

“The agreement is pretty straightforward; I don’t believe there’s any downside to it,” Johnson says. “If there’s a default, there are contingencies in there. The city is absolutely safe. We took the most conservative approach to it. We don’t want to put citizens at risk for losing money.”

### Two gardens in Chanhassen

By next year, the City of Chanhassen (population 24,500) expects to get about 30 percent of its power from two community solar gardens. While some cities are aiming to get a greater share of power from alternative sources, that level is what Chanhassen councilmembers are comfortable with now, says city Finance Director Greg Sticha.

After developers contacted the city last year to gauge interest in community solar garden involvement, Sticha spent months educating himself on the issue. One source of information was the Metropolitan Council, which was developing a community solar garden at its Blue Lake Wastewater Treatment Plant in Shakopee. Chanhassen became a subscriber to that project and later subscribed to a U.S. Solar project. Both solar gardens will be open next year.

“We picked the most financially beneficial contracts,” Sticha says. With both agreements, the city locked in its electric rates for the duration of the 25-year contract, guaranteeing savings. “It’s fantastic from a budgeting standpoint,” he says.

While that’s the safest route for the city, community solar gardens are so new that the city’s decision to rely on traditional

energy sources for 70 percent of its power leaves room for more participation in solar if the city wants it.

“With technological change, the pricing on these contracts could change, too,” Sticha says. “If a smart financial opportunity came before us, we would certainly take it to the Council.”

So long as contracts are carefully written, Sticha sees little risk in subscribing to community solar gardens. The developers pay the cost of the projects, so the city’s only costs are staff time and paying for an attorney to review contracts. Future administrative costs should be small, he says, with savings exceeding the cost of staff time.

If a solar garden went out of business, the only impact on the city would be that it goes back to paying its old electric rates.

“From a business standpoint, it makes sense for us to be involved, and from an environmental standpoint, it makes sense,” Sticha says.

### Considerations for cities

Smith, of LMC, says cities that are asked to allow solar garden construction within their boundaries should consider land use, zoning, and resident concerns. Cities may want to designate certain areas of the city for solar garden projects.

While cities are often concerned about the length of the subscription agreements, solar garden developers need the long-term commitment to justify the cost of projects, he says. Most agreements include a performance guarantee by the owner, such as a city getting at least 90 percent of its expected credits.

“Under most contracts, I don’t see much risk to the city based on an owner’s bankruptcy or financial problems,” Smith says.

Cities that subscribe to a community solar garden won’t get any of their savings until the projects are up and running. Pawlisch, of CERTs, says many more solar projects have been proposed than officials anticipated, and how many will actually be built has yet to be seen.

### Cities make the perfect partner

But, Pawlisch says, local government will continue to be a target for community solar garden developers. Developers are required to have at least five subscribers for each garden they build, and getting a big partner like a city uses up a lot of the energy that will be produced.

“Local governments are your perfect subscriber,” Pawlisch says. “Like Macy’s in a shopping mall, they play the anchor role.”

Mankato’s Johnson says the city won’t market the solar garden to residents, letting them make their own decisions. But he thinks the city’s investment in alternative energy is a wise one.

“Given our current environment and our dependence on various fossil fuels, I think this is a good thing,” Johnson says. “You need power in Minnesota when it is hot and humid and there is no wind. Solar panels can play a huge role in our state, and diversifying is something we all need to do.” 

Mary Jane Smetanka is a Minneapolis-based freelance writer.



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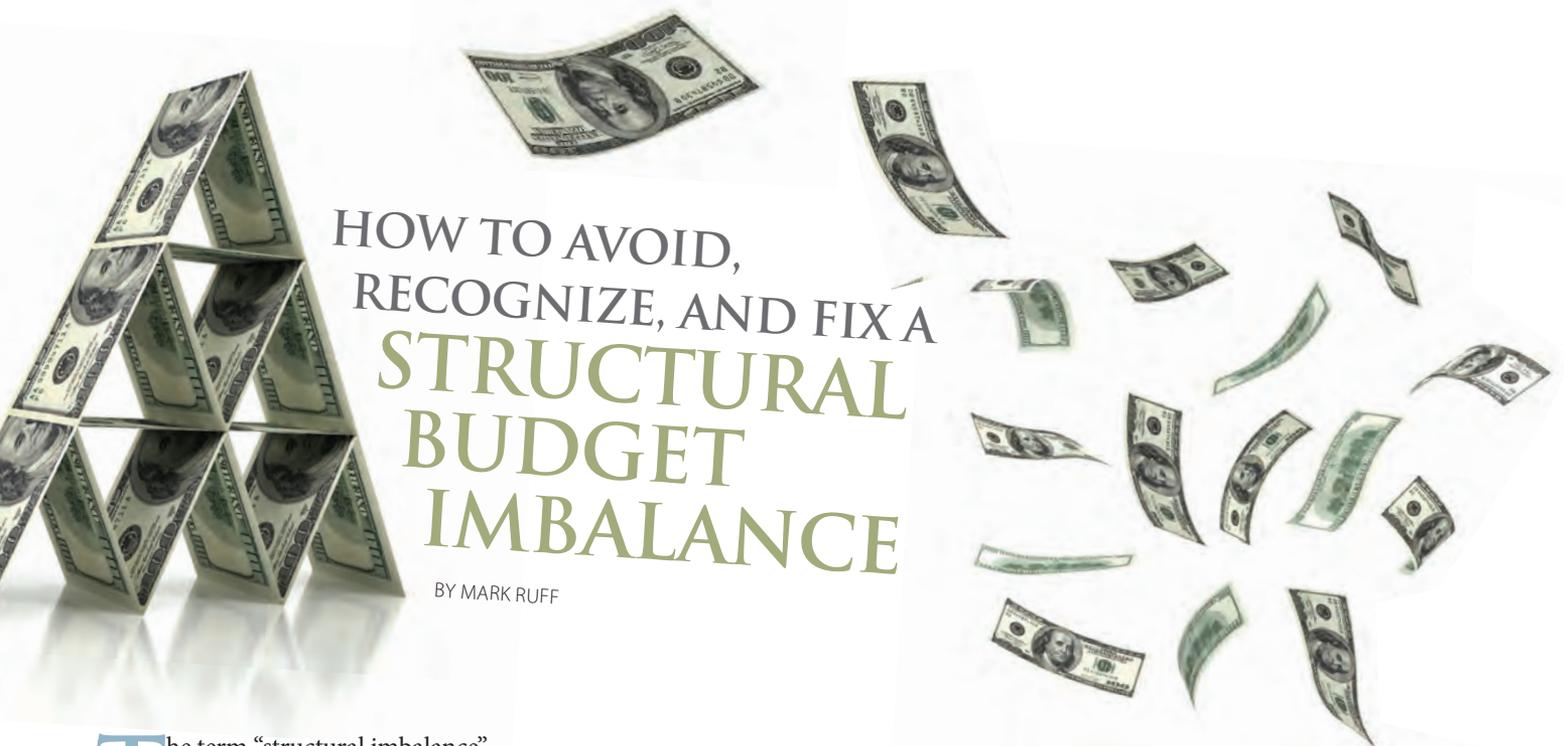
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# HOW TO AVOID, RECOGNIZE, AND FIX A STRUCTURAL BUDGET IMBALANCE

BY MARK RUFF

The term “structural imbalance” conjures up images of the Leaning Tower of Pisa. Even today, we hear about buildings that are damaged because they are built with foundations in unstable soils. Like a building that is improperly designed and constructed, a city’s finances can be structurally imbalanced.

These imbalances may not be easily detectable and may cause a city to tip financially, year by year, until it becomes difficult and expensive to correct. Like a slowly tilting building, the impact of a city’s financial imbalances may take years to recognize and fix.

According to the Government Finance Officers Association, “A true structurally balanced budget is one that supports financial sustainability for multiple years into the future. A government needs to make sure that it is aware of the distinction between satisfying the statutory definition [of a balanced budget] and achieving a true structurally balanced budget.”

ways: by intentional actions, or by the gradual degradation of financial performance.

Intentional structural imbalance occurs most often when a city council is intent on lowering taxes or fees without offsetting reductions in expenses. For example, let’s assume a city council wants to lower its tax rate for 2017. During the budget process, the city council may direct staff to lower the tax levy by 10 percent by using cash in the general fund reserve to pay for ongoing staff costs.

The budget is legally balanced because there are enough revenues to pay for expenses. But the longer-term prognosis could be grim. What happens when a few years of using reserves to pay operating costs depletes the general fund balance? A future city council will need to increase its levy dramatically in one or two years, or cut 10 percent or more of the staff. Or worse, the city may need to issue bonds to cover costs between property tax settlements.

balance a budget could pose problems for future councils if the decision to use the reserves is not in the context of a five- or 10-year financial forecast that shows how long the cash will last and how the council plans to eventually end the use of reserves or repay the reserves.

Plugging a hole in the budget with reserves is also reasonable when it is used for capital costs that do not occur annually. Structural imbalances can occur in a city’s general fund, or they can occur in a special revenue fund or enterprise fund.

For example, many cities build up reserves in a water fund with the plan to pay for a major plant expansion with cash. Or a city may save for a firetruck over a decade and pay most of it with cash. This use of reserves is very logical and financially sound when the capital expenses come up once every five or 10 years. In Minneapolis, for example, there has been a long tradition of using one-time revenues for one-time expenses.

Structural imbalances could occur if reserves are used to pay for annual or biannual capital costs—unless the city has a longer-term plan. For example, in early 2016, the City of Minneapolis approved a doubling of funding for annual street



## CAUSES OF STRUCTURAL IMBALANCE

So how does a city know if it has a structural imbalance hidden in its finances? The first place to evaluate the financial health of a city is during the budget process. Structural imbalances can start to occur in two



## PROPER USE OF RESERVES

Occasional use of reserves to balance a budget hole is not in itself an inherently bad thing. A city may have a temporary crisis or end up with more reserves than it needs. But persistent use of reserves to

improvements and park capital improvements for the next 20 years.

A portion of the increased cost will be paid with reserves, which are being used in the next few years until a large tax increment financing district is decertified and the levy will be increased. This use of reserves is in the context of a 20-year financial plan that the mayor and City Council endorsed in the ordinance approving the program. A detailed financial plan was embedded in the ordinance.

### POOR FINANCIAL PERFORMANCE

Structural imbalances can also be caused by overly optimistic revenue forecasts or underestimating expenses. This is often the case for cities with new or expanded recreational facilities. Every year, a council may approve a balanced budget without any planned use of reserves for its community center or golf course. But each year something may come up that impairs financial performance. Maybe a bad weather year reduces revenues by 25 percent or pool maintenance costs are higher than usual, resulting in a deficit.

These events are bound to occur. However, two or three of these bad years will result in structural imbalance. These shortfalls may not appear to be a concern in small increments. They can often be hidden, unintentionally, by a loan from another city fund or account to cover the shortfalls.



### RECOGNIZING THE SIGNS

How can a council or staff recognize the signs of an imbalance in these situations? Most of us are not accountants. We stumble when we are asked to explain the difference between fund balance and cash balance. But all of us know how to ask good questions.

Here are a few ways you can stay on top of budget issues and avoid a structural imbalance:

- *Check in with the auditor.* A city's audit should tell us how much in deficits a recreation or other fund may be accumulating. And each year, if not more often, council and staff can ask the auditor questions like, "Which of

the city's funds are going in a direction that concerns you?"

- *Get regular updates from staff.* Ask staff to provide mid-year or even quarterly reports comparing the budget numbers to actual numbers to see if you are not on track with expected revenues and expenses. This allows you to make real-time adjustments rather than over a year later when your audit is presented.
- *Ask good questions (with very little cost) during a bond sale.* Council and staff can ask rating agencies or a municipal advisor if there are areas of concern for a particular city's financial operations. Asking an advisor to compare you to three or four other cities is always a reasonable and worthwhile request and should be included in the cost of their activities during a sale.



### FIXING STRUCTURAL IMBALANCES

Like steering a barge on a river, changing the course of a general or other city fund will take more than a few months  
*(continued on page 14)*



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or even a few years. In some cases, there are deliberate actions you can take to start turning things around. For example, one metro-area city has reduced the number of holes in its golf operation in recent years while increasing the size of its more profitable driving range. And an outstate city reduced its expenses for health care benefits to retirees through negotiations and a court case.



The first step to correcting an imbalance is creating a long-term financial plan for all funds. These plans do not need to be complicated multi-page spreadsheets. A simple summary should be available, but there should also be an explanation behind each of the assumptions. In addition, it should include projected cash balances in each fund.

A good second step is to approve financial policies for all funds. These policies should address procedures for inter-fund loans, mid-year reporting to elected officials, and minimum and maximum fund balances.

Over 20 years ago, a Greater Minnesota city had to ask the Public Facilities Authority (PFA) to restructure its debt because it could not meet its obligations for its water and sewer fund. Although restructuring debt can help solve a structural imbalance, it should typically be done only as a last resort. And when it is done, other actions should go along with it. Since this city restructured its PFA debt, the city has been very disciplined about following its financial policies in the context of long-term planning.

For example, the city has set priorities for any annual surplus in a fund. These surpluses are primarily used to either pay off existing debt early or to pay for the general fund portion of its street projects to avoid issuing debt in future years. As a result, the city's bond rating has increased five times over the past several years.

The third and perhaps most important step in fixing a structural imbalance is making sure that the staff and council "own" their financial plans and policies.

Consultants may be helpful in jumpstarting the process or doing the math, but only staff and council can make plans become reality.

We all need to plan for the future and be prepared to handle the occasional financial surprises. A good financial foundation is established for cities when the staff and council engage in regular and honest dialogue about financial challenges and find ways to mitigate them. 

Mark Ruff is the chief financial officer with the City of Minneapolis. Contact: [mark.ruff@minneapolismn.gov](mailto:mark.ruff@minneapolismn.gov) or (612) 673-3554.



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# Avoiding Pitfalls

## in Contracting for Building Projects

BY JAMES M. STROMMEN AND  
ANDREW M. BIGGERSTAFF

**W**hen cities make the decision to undertake large building projects, they are confronted with a library of documents that outline the scope of the project. Among those documents are often the standard uniform agreements prepared by the American Institute of Architects (AIA).

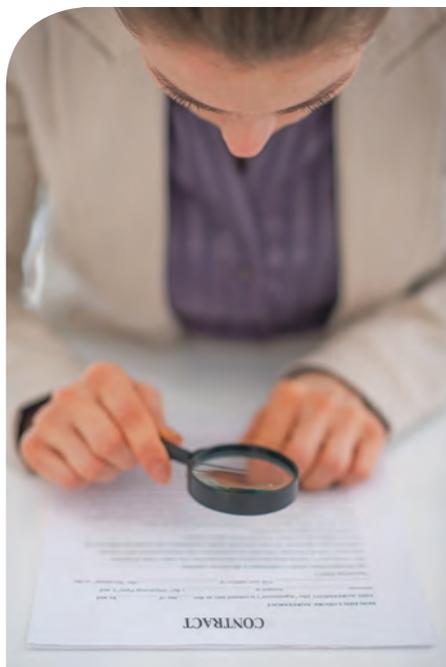
While cities may rely on the uniform nature of these agreements and conclude that they need not be reviewed, that would be a mistake. A city may find itself at a significant disadvantage if it fails to carefully review these agreements as they relate to public projects.

This article will address three common provisions in the AIA family of contracts that could pose added legal and cost risk to the unsuspecting public entity:

- Provisions that assign full authority to an owner's representative, who may arguably bind the public entity to contract changes. (In this article, the "owner" always refers to the city.)
- The detailed reciprocal claims process, which applies not only to the contractor, but also to the owner, often inappropriately.
- Use of arbitration for dispute resolution, or combining arbitration for some contracts with litigation (state or federal court) in others.

### Limit the authority of the owner's representative

The off-the-shelf AIA General Conditions (A201-2007) include a provision that delegates full decision-making authority from the city council to a designated third party known as the



"owner's representative," such as a city staff member or a contractor the city has hired for this purpose. The design team and contractors alike often seek to shift the owner's authority from the city council because it helps speed up the decision-making process on public projects.

One of the major risks posed to cities under this provision is that an inexperienced individual owner's representative may commit the city to pay additional contract sums, or increase the amount of time that the contractor has to complete the work. This may happen as a result of a statement or alleged statement by the owner's representative, unbeknownst to the city council, which would not approve such a commitment itself.

The solution is to modify the above-mentioned provision to limit the authority of the owner's representative to those matters that the city council expressly delegates to the owner's representative by written resolution.

### The general condition "claim" provisions

The AIA General Conditions also define how claims for things like extra time or extra money may be instituted by either the owner or the contractor. Delayed claims of the contractor brought well after the fact are unfair to the owner because they do not allow immediate attention to the issue. The remedy or payment

becomes more complicated if the problem is raised only after project completion.

These General Condition terms also require the owner to bring its "claims" shortly after it discovers such a claim. The AIA provides for a claim within 21 days of the event, but that provision should be applicable only to the contractor. While it makes sense for the contractor to act in that time frame, the owner's claims should be governed by the statutes of limitation applicable to a contractor's failure to complete the work, or defective work.

The 21-day contract limitation period is unreasonable and impractical for the owner. The city's attorney should also look at this series of claim provisions and modify them to protect the city from losing a claim right.

### Use litigation to resolve disputes

For several reasons, cities should select litigation for any necessary dispute resolution. In a large project, the city will have contracts with its architect, a construction manager, and possibly multiple prime contractors. The architect and construction manager will often select arbitration in their proposed contract with the city, but propose litigation between the city and its contractors.

If the city ignores these selections, it will be faced with different disputes with its contractors and design team, even though the issues involve both aspects of the project. This will be much more expensive for the city and can result in inconsistent decisions to the detriment of the city. While arbitration enables the disputing parties to hire experienced construction practitioners, it is an expensive process between the hourly rates of the arbitrator and the filing and management fees required for arbitration.

State court in or near the city will be more convenient and will require all potentially liable parties to be joined. The owner must have this complete group to obtain the proper measure of recovery to which it is entitled. 

James M. Strommen and Andrew M. Biggerstaff are attorneys with Kennedy & Graven, Chartered ([www.kennedy-graven.com](http://www.kennedy-graven.com)). Kennedy & Graven is a member of the League's Business Leadership Council ([www.lmc.org/sponsors](http://www.lmc.org/sponsors)).

# WORKING TOGETHER

## Duluth's 'Embedded Social Worker' Program

BY MARY JANE SMETANKA



Social Worker Ona Filipovich and Lt. Chad Nagorski agree the embedded social worker program is good for the community.

PHOTO BY CLINT AUSTIN

Each morning, the senior citizen called the Duluth Fire Department, saying he had fallen out of bed. Day after day, fire personnel responded. But they soon realized the man's real problem was not safety, but loneliness. He was looking for someone to talk to.

Fire officials called Duluth police for help, and police turned to their in-house social worker for a solution. Ona Filipovich got on the case, talking to the man and then to his home health aides, who agreed to spend more time with him.

"It was a huge quality-of-life issue for him, a small thing for us, and it greatly cut down on the calls," says Lt. Chad Nagorski, east area commander for the Duluth Police Department. "Obviously, that was not a good use of Fire Department resources."

### A bridge for people in need

Since June 2015, Duluth police have partnered with St. Louis County to have Filipovich act as a bridge between law enforcement and county social services, arranging help for people involved in police calls and incidents that involve issues like mental illness, homelessness, and drug addiction. Duluth is believed to be the first city in Minnesota to embed a social worker in the Police Department, an approach that was pioneered in Houston, Texas.

The Duluth effort, which began as a \$75,000 pilot program, has been approved for a second year and this year won the Excellence in Innovation Award from the Minnesota Chiefs of Police Association.



PHOTO BY CLINT AUSTIN

Linda Curran, St. Louis County's adult mental health and adult protection supervisor, says Filipovich "straddles both worlds." The social worker has a desk at the Police Department and at county offices, attends meetings at both to track what's going on with cases that involve mental health issues, and when she can, responds to calls on her cell phone and goes out with police.

"Police know they can call her; they feel like she's theirs," Curran says. "It's worked really well."

### Increase in mental health-related calls

According to Nagorski, who supervises Filipovich in her police work, since 2007 Duluth has seen a 50 percent increase

in calls for service that involve mental health. In 2014, a mentally ill man stabbed a stranger to death in a grocery store. In another case, an unstable man murdered his mother.

While both men had limited contact with authorities before they became violent, Nagorski says, police felt they needed a more effective response when they dealt with people in crisis. Taking people to hospitals usually didn't solve long-term problems. And who to call at the county for help was a mystery.

"We thought that if we could get some kind of intervention going, that makes the community safer and improves the quality of life for people dealing with mental illness," Nagorski says. "We wanted to find another way to deal with mental issues, and give a hand up to people who were falling between the cracks."

There are many reasons for the increasing number of police encounters with people who have mental health issues. The reasons include substance abuse, the closure of state hospitals, and group homes that can't always cope with difficult issues involving mental health and substance abuse.

### The role of the embedded social worker

Filipovich previously worked as a homeless-outreach worker on the Iron Range and also worked in violence prevention.

She is not a crisis negotiator, doesn't wear a police uniform or vest, and isn't called into situations that police know are dangerous. Sometimes she rides with police and goes along on calls, or has them accompany her if she thinks it may help with a situation. She describes her role as a "one-stop shop" to get immediate help for people who need it, jump starting the sometimes lengthy process of getting county social services help, which has eligibility requirements and can take time.

"My job is to hook people up with services," she says. "The other part of my role is if an officer is having difficulty connecting with people out in the community, they might call me. Some people just don't want to talk to the police."

"A lot of time we just stand back and let Ona do her thing," Nagorski says. "Sometimes she does stuff on her own; often she takes direction from a police officer. We want it to be fluid. We wanted someone who could think on their feet, be creative, someone who truly enjoyed people and wanted to get them to a better place."

Filipovich was perfect for the job, he says. "She's bubbly and happy when she comes to work, and she's been accepted into our culture."

### Types of calls

While it's the violent cases that grab the headlines, more common are police calls about dementia patients wandering the streets, bizarre public behavior, minor criminals who turn out to be mentally ill, and welfare checks that reveal homes with hungry children.

So when police found a combative and confused elderly man looking to buy a bus ticket in the tourist area of Canal Park, they called Filipovich. The man, who had a military background, wouldn't deal with police but talked to Filipovich, who dresses casually in jeans and a shirt that has her name and position embroidered on it.

"I went out there right away, and he really wasn't talking to police," Filipovich says.

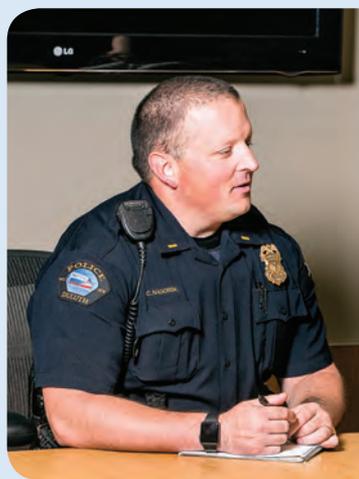
The man was trying to get to St. Cloud. He had wandered away from his son's Duluth home, where he was living. After he opened up to Filipovich, she called his family, and they came and picked him up.

"These are not wow, front-page stories, but they happen frequently in the city," Nagorski says. "When we have someone

acting erratically on the street, we give it to [Filipovich]. Sometimes when police officers show up, it gets people thinking they're in trouble, they're going to jail, it amps them up. She has a good ability to calm them down."

### A team effort

In her first year, Filipovich handled more than 150 cases. Though most of her cases are police referrals, it's up to the people she visits to decide if they want her help. Sometimes she works with people for a short time; other times she reconnects people with social service professionals who were already familiar with them.



"We wanted to find another way to deal with mental issues, and give a hand up to people who were falling between the cracks."  
—LT. NAGORSKI



PHOTOS BY CLINT AUSTIN

And some people just need to be directed to an agency that can offer help.

"A lot of times I work as a collaborative with other partner agencies," Filipovich says. "It's a team effort."

When police called her about a man who was yelling at an ATM downtown, Filipovich found he was a diagnosed schizophrenic. He went to the hospital for evaluation, and she worked on getting him a long-term case manager, housing, and medication. Going forward, she plans to periodically check on him.

In another case, a woman had been arrested for theft after stealing from the apartment building she'd been evicted from. She also had mental illness.

The woman stayed with a friend, and Filipovich connected her with adult rehab mental health services to try to help her develop the skills to live independently while getting support for her mental health.

"Every day is a little different," Filipovich says. "I think it's a big impact, to see social workers and police work together. I know where to go; the police have contact with everyone. They have so many calls a day, but sometimes they need a little help."

### Effective program

Curran says Filipovich has educated police on social work details, like what it takes to commit someone to a mental health institution. She has also worked on building trust with "high-use individuals"—people with mental health issues who have repeated police contact.

"She really is the right person for the job," Curran says. "She's given police another option. One of the best things is her short-term case management. Not everyone needs help for life. Sometimes she just directs people to the help they need now."

Though Nagorski says the police-county partnership is still "a huge work in progress," he has no doubt it is doing good for both people in the community and the police department.

"We all hope to save the world, but that's not really possible. If you can make your chunk of the world better for a day, you've done your job," Nagorski says. "I think this [program] is highly effective. We're never going to be mental health experts. Now, we just call Ona." 

Mary Jane Smetanka is a Minneapolis-based freelance writer.



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# Regulating Cell Towers and Small Cell Technology

BY PAMELA WHITMORE

The emergence of personal communications services, the increased number of cell providers, and the growing demand for better coverage means cities are receiving more siting requests. Companies want to build new cell towers or place antennas or small cell equipment in city rights of way, on water towers, or on other city property.

## Be aware of changes in siting requests

The variety of companies submitting siting requests has grown over time, with companies calling themselves resellers or wholesalers now also submitting requests. Initially, the market consisted of tower owners (whether the cell provider themselves, like AT&T or Verizon, or an independent tower company) that sought to lease city-owned property on which to construct large cell towers.

Now, with wireless carriers needing to increase data network coverage capacity, cities have started receiving siting requests for equipment other than towers—specifically for placement of small cell equipment or distributed antenna systems (DAS) on buildings, poles, and other structures in the public right of way. These smaller, easier-to-install systems support cell coverage either within a large cell area with high coverage needs or, in the alternative, at sites within large geographic areas with poor cell coverage.

## Understand the city's authority

Many of these cellular carriers, telecommunications wholesalers/resellers, or tower companies claim that federal law requires cities to allow construction or placement of towers, antennas, or small cell equipment in rights of way. With little to no experience with the federal laws, many cities struggle with these requests, especially with the pressure of Minnesota's 60-Day Rule.

The Telecommunications Act is the controlling federal law and, though it does encourage development and entry of telecommunications/mobile services into marketplaces, it does not take away local zoning and land use authority completely. In fact, it states that local government still has authority to manage public rights of way, to require fair and reasonable compensation, and to make decisions over placement, construction, and modification of personal wireless facilities.

As a result, cities can regulate (but likely not completely prohibit) the placement of towers and other personal wireless service facilities. City regulations can include controlling height, exterior materials, accessory buildings, and even location.

Federal law does place some limits on local authority, however. Cities:

- Cannot unreasonably discriminate among providers of functionally equivalent services.

- Cannot prohibit or pass regulations that have the effect of prohibiting telecommunications or personal wireless services.
- Must act on applications within a reasonable time (easily met when cities comply with Minnesota's 60-Day Rule).
- Must document denials in writing supported by "substantial evidence."

Also, municipalities cannot deny a request for environmental reasons when the antennas comply with the Federal Communications Commission (FCC) rules on radio emissions.

Modifications to existing FCC-regulated structures, however, are a different story. If a siting request proposes modifications to and/or collocations of wireless transmission equipment on existing FCC-regulated towers or base stations, then federal law further limits local municipal control.

With modifications, cities cannot ask an applicant for documentation, other than that which relates to the impact on the physical dimensions of the structure. Accordingly, documentation illustrating the need for such wireless facilities or justifying the business decision likely cannot be requested. So if a city owns a pole that has small cell equipment on it and another request for additional equipment comes in, the city must allow it unless it *substantially* changes the physical dimensions of the structure.

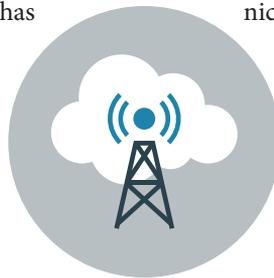
## Ways to regulate

Cities regulate cell towers and personal wireless services in a variety of different ways, including with rights-of-way management ordinances and specific cell tower/telecommunication ordinances. Many cities recognize these structures as conditional uses, often requiring a permit.

With the emergence of small cell/DAS technologies, cities have started to amend their zoning and ordinances to account for more expedited decisions on these siting requests, including establishing a separate administrative approval process for these less burdensome technologies. Because small cell/DAS equipment attach to existing structures, cities often need additional documents for managing these relationships, including a master licensing agreement; license supplement (or lease); pole attachment application (if the city's ordinance so requires in its permit process); and bill of sale (for the sale of a pole from carrier to city).

For more details, see the League of Minnesota Cities information memo at [www.lmc.org/celltowers](http://www.lmc.org/celltowers). 

Pamela Whitmore is a research attorney with the League of Minnesota Cities. Contact: [pwhitmore@lmc.org](mailto:pwhitmore@lmc.org) or (651) 281-1224.



# Is Engineering Contractor Entitled to Official Immunity?

## GOVERNMENTAL IMMUNITIES

### Official immunity

Nathan and Sanna Kariniemi sued the City of Rockford, claiming that its negligence in designing and overseeing the construction of a stormwater drainage system created a nuisance that resulted in the flooding of their property. The city made a motion for summary judgment, claiming it was entitled to vicarious official immunity because the city engineer's decisions in designing and overseeing the system's construction were discretionary decisions requiring the exercise of professional judgment. The Kariniemis argued that official immunity did not apply because the city engineer was not a city employee, but was a private engineering firm that performed engineering services under a contract.



The district court granted summary judgment in the city's favor on the negligent design claim, but did not address the nuisance claim. The Minnesota Court of Appeals reversed in part and granted summary judgment in the city's favor on both claims. The Minnesota Supreme Court affirmed and held that the city was entitled to vicarious official immunity on both claims because the private engineering firm performed discretionary governmental functions in close coordination with the city, and therefore, qualifies as a public official eligible for official immunity. The Supreme Court noted that the contract between the city and the engineering firm provided that the firm would act as the city's agent and perform the official functions of "city engineer" on the city's behalf regarding the feasibility, design, and progress of the system's construction. *Kariniemi v. City of Rockford*, 863 N.W.2d 430 (Minn. 2016). The League of Minnesota Cities Insurance Trust represented the city.

## ROAD LAW

### Road acquisition

In 2003, as part of a project to upgrade trunk highway 169, the Minnesota Department of Transportation (MnDOT) condemned a strip of property and constructed a new road, Hanlon Drive. The state later conveyed Hanlon Drive to Belle Plaine Township under Minnesota Statutes, section 161.16, subdivision 4(b), which authorizes MnDOT to convey to a county, city, or other political subdivision all or part of the right of way of an existing road that is no longer part of the trunk highway system by reason of MnDOT order.

In 2014, the owner of J&W Asphalt, which abuts Hanlon Drive, sued the township, seeking: (1) a declaratory judgment

providing that Hanlon Drive is a public road, and (2) temporary and permanent injunctive relief ordering the township to maintain Hanlon Drive. The township argued that Minnesota Statutes, section 161.16, subdivision 4(b) contains an implicit acceptance requirement, and that because the township had never formally accepted Hanlon Drive, it is not responsible for its maintenance. The district court issued an order concluding that the township is responsible for maintaining Hanlon Drive. The Minnesota Court of Appeals affirmed and held that the statute is unambiguous and does not contain a requirement that a political subdivision must accept MnDOT's conveyance of a road for it to be effective. The Court of Appeals also held that Hanlon Drive is a public road and ordered the township to maintain it. *J & W Asphalt, Inc. v. Belle Plaine Township*, N.W.2d (Minn. Ct. App. 2016).

## WORKERS' COMPENSATION LAW

### Settlement agreement

After injuring her back at work, Virginia Ryan entered into a "full, final, and complete settlement" of her claims for workers' compensation benefits related to the injury with her employer, Potlatch Corporation in 2003. In 2013, Ryan filed a petition seeking additional benefits, claiming her back injury had resulted in depression and anxiety and the need for bariatric surgery. Potlatch moved to dismiss the petition on the grounds that Ryan was required to first bring a motion to set aside the 2003 settlement agreement before bringing a new claim for additional benefits.

The workers' compensation judge denied the motion, reasoning that the 2003 settlement agreement does not foreclose claims for the same incident that are not mentioned in the agreement unless there is evidence that those claims were contemplated by the parties at the time they entered into the agreement. The Workers' Compensation Court of Appeals affirmed. The Minnesota Supreme Court reversed and remanded the case, holding that Ryan must petition to vacate the 2003 settlement agreement before proceeding with her current claim. The Supreme Court reasoned that a workers' compensation settlement agreement may close out not only the benefits claim for the compensable injury, but also claims for conditions and complications arising out of that injury that the parties reasonably anticipated at the time of the settlement agreement. *Ryan v. Potlatch Corp.*, 882 N.W.2d 220 (Minn. 2106).

**In 2013, Ryan filed a petition seeking additional benefits, claiming her back injury had resulted in depression and anxiety and the need for bariatric surgery.**

## LAND USE

**60-Day Rule**

John Perschbacher applied to Freeborn County for a conditional use permit (CUP) to construct a barn capable of housing 2,490 swine. On Feb. 3, 2015, the county voted on a resolution “to approve the conditional use request,” and the resolution failed on a 2-3 vote. That same day, the planning and zoning administrator wrote a letter to Perschbacher stating that “the board voted and did not approve your conditional use permit request” and that the “board will notify you in writing of their decision after the next scheduled meeting.” The letter also notified Perschbacher that the county was exercising its right under state law to extend the 60-day statutory period for completing the CUP application process by an additional 60 days. At its meeting

on Feb. 17, 2015, the county unanimously voted to approve a statement of reasons for the CUP denial that summarized the comments that had been made against the application at the meeting on Feb. 3.

Perschbacher appealed, claiming two things: (1) that his application was automatically approved under the 60-Day Rule because the county failed to contemporaneously state the

reasons for the denial on the record at the Feb. 3 meeting, and (2) that the county’s decision was arbitrary, capricious, and unreasonable. The 60-Day Rule provides in part that “when a vote on a resolution ... to approve a request fails for any reason, the failure shall constitute a denial of the request provided that those voting against the motion state on the record the reasons why they oppose the request.” The Minnesota Court of Appeals ruled in the county’s favor, holding that the 60-Day Rule does not require that board members who vote against a resolution to approve a request state their reasons for opposing the request on the record at the same time of the vote. The Court of Appeals also concluded that the county had a rational basis for denying the application. *Perschbacher v. Freeborn County Bd. of Comm’rs*, N.W.2d (Minn. Ct. App. 2016).

## DATA PRACTICES ACT

**Conflicting data classifications**

Michael Harlow was fired from his job as a psychiatrist at the Minnesota Security Hospital after an incident with a patient. Harlow sued the Minnesota Department of Human Services (DHS); David Proffitt, the hospital administrator; and Ann Barry, DHS deputy commissioner, alleging violations of the Minnesota Government Data Practices Act (MGDPA) and defamation based on statements Proffitt and Barry made

(continued on page 26)



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about the incident and Harlow’s termination. The DHS conducted both an employment investigation and a licensing investigation. Under Minnesota Statutes, section 13.43, subdivision 2a, “the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action” are public data. But under Minnesota Statutes, section 13.41, subdivision 4, “active investigative data relating to the investigation of complaints against any licensee” is confidential data.



The district court denied the summary judgment motion made by the DHS, Proffitt, and Barry. The Minnesota Court of Appeals reversed, holding that the data in the employment investigation became public at the time of Harlow’s firing, regardless of the ongoing licensing investigation. The Court of Appeals also held that Proffitt and Barry were entitled to absolute immunity from the defamation claim. The Minnesota Supreme Court affirmed in part, and remanded in part. The Supreme Court held that personnel data consisting of an employment investigation report that is reclassified as public upon the final

disposition of an employee disciplinary action remains public, even though the data is duplicative of data that is part of a licensing investigation. The Supreme Court also held that Barry, as DHS deputy commissioner, is entitled to absolute privilege when making statements within the scope of her statutory authority because a deputy commissioner functions as a top-level, cabinet-equivalent official. However, the Supreme Court concluded that Proffitt, as hospital administrator, was not entitled to absolute immunity and remanded the case to the Court of Appeals for a determination of whether Proffitt is entitled to qualified immunity. *Harlow v. Minnesota Dept. of Human Servs.*, N.W.2d (Minn. 2016). [MC](#)

## The Minnesota Court of Appeals reversed,

holding that the data in the employment investigation became public at the time of Harlow’s firing, regardless of the ongoing licensing investigation.

Written by Susan Naughton, research attorney with the League of Minnesota Cities. Contact: [snaughto@lmc.org](mailto:snaughto@lmc.org) or (651) 281-1232.

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# How Will the New Body Cam Law Affect Our City?

## Public Safety

**Q** Our council budgeted last year to purchase body cameras for our police department. We are just about to buy and deploy them. How will the new law on body cameras affect us?

**LMC** The new law passed by the 2016 Legislature went into effect on Aug. 1, 2016. As a result, even though you budgeted for the cameras prior to that, your recent purchase makes you subject to the new law. Under the new law, you must seek public input—minimally allowing for electronic or mailed comments. And the city council must also provide an opportunity for public comment at a regularly scheduled meeting. In addition, you must adopt a written policy governing the use of the cameras before deployment. The League of Minnesota Cities Insurance Trust recently updated its model policy on body-worn cameras to reflect the new law. The model policy is available at [www.lmc.org/bodycampolicy](http://www.lmc.org/bodycampolicy).



## Sale of Property

**Q** When a city sells land, does it need to use competitive bidding? Also, can the city sell land to one of its councilmembers?

**LMC** Bids are not required for the sale of land. However, the city should be diligent about getting a good price for the land sold. Cities may only give land away (or sell land for a nominal amount) in very limited circumstances. For more information about this topic, see page 15 of the LMC information memo at [www.lmc.org/realproperty](http://www.lmc.org/realproperty).

As for the question about selling land to one of your city councilmembers, the answer is no. The Minnesota attorney general has concluded that cities may not contract to purchase land from or sell land to their city councilmembers. For more information, see page 15 of the LMC information memo at [www.lmc.org/conflict](http://www.lmc.org/conflict).

## City Types

**Q** How many charter cities and how many statutory cities are there in Minnesota?

**LMC** Minnesota currently has 107 home rule charter cities, commonly referred to as “charter cities.” In these types of cities, the resident voters adopt a local charter, and the

city can exercise any powers in its adopted charter as long as they do not conflict with state laws. Conversely, charter provisions can specifically restrict the powers of a city. As a result, voters in home rule charter cities have more control over their city’s powers.

The other 746 Minnesota cities are statutory cities. There are three types of statutory city:

- **Standard Plan.** This is a city with three or five councilmembers and a mayor, as well as an elected clerk who sits on the council. There is also an elected treasurer who does not sit on the council. The clerk and treasurer positions may be combined into one elected position. Minnesota has 96 Standard Plan statutory cities.
- **Statutory Optional Plan A (SC-A).** This is a city with four or six councilmembers and a mayor. The clerk and treasurer are appointed positions. Minnesota has 632 SC-A cities.
- **Statutory Optional Plan B (SC-B).** This is a city with four or six councilmembers and a mayor. All policy and legislative decisions are the responsibility of the council. The council delegates the administrative duties to an appointed city manager. A city must have a population of at least 1,000 to use this form of organization. Minnesota has only 18 SC-B cities.

To request a lists of Minnesota cities by type, contact Rachel Walker, LMC policy analysis manager, at [rwalker@lmc.org](mailto:rwalker@lmc.org).

## Human Resources

**Q** I’ve heard that full-time employees will need to earn about \$47,000/year to be considered exempt from federal overtime requirements starting in December 2016. What about part-time employees—how much do they need to earn?

**LMC** Part-time employees must meet the same requirements as full-time employees to be considered exempt, including the requirement to be paid at least \$455/week. This amount increases to \$913/week (\$47,476/year) effective Dec. 1, 2016. There are other requirements that need to be met as well, associated with both the duties performed by the employee and how the salary is paid out each week. For more information, see the LMC information memo at [www.lmc.org/flsaexempt](http://www.lmc.org/flsaexempt).



**Got questions for LMC?**

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# CITY BUDGET: Making It RELEVANT TO RESIDENTS

BY ANDREW TELLUJOHN

Communicating with residents about city budgets and other financial information can be a challenge. The key, city leaders and consultants say, is to emphasize the big picture. Focus on a few of the big ticket items, find simple ways to illustrate the impact on citizens, and get away from presentations based solely on pages filled with dense numbers.

It's also important to be open, honest, and transparent with residents about long-term plans, says Nick Anhut, a municipal advisor with financial consulting firm Ehlers Inc.

"The focus of the discussion becomes a little more personal and more salient when it focuses on what type of goals we're trying to achieve," Anhut says. "What do we have to pay for? What is the tangible benefit? You tend to get a better response when you focus on those and when you focus on not just the near term, but four or five years out."

## Getting past the numbers

In some cases, it can be difficult for cities to get residents to pay attention during the budget process. If you're just throwing out numbers and giant spreadsheets, eyes tend to glaze over and people tune out.

It's important to make sure information is communicated in a way that engages people, Anhut says. Instead of focusing on budget books in their complex entirety, cities can provide shorter summary documents that hit on high points.

The presentations also should focus more on the fundamental reasons why budgets, levies, or property taxes may have changed. Citing a couple examples of budget drivers may produce better results.

Graphics or short blogs on your website are examples of good ways to get your budget messages out in simple, easy-to-read formats.

Make sure you're "describing where the pressure is coming from," Anhut says. "I think people only require [financial] information when something is being asked of them, or when there is actually an increase proposed and it becomes real and tangible."

## St. Peter communicates in many ways

Whether it's the web or more traditional methods of communication, some city officials say they try to communicate to their residents in multiple ways and have found at least some level of success in doing so.

With a population of just under 12,000 residents, the City of St. Peter is relatively small, but it puts a big effort into communicating with its residents. It has an electronic newsletter called the *Hot Sheet*,

where it publishes information on many issues, including the budget. Each issue has two to four articles explaining specific issues, such as local government aid from the state and how the city's allotment affects residents' property taxes.

The *Hot Sheet* has been around for nearly two decades. It has wide distribution—local newspapers often pick up items almost word for word, and some local businesses and business organizations print and redistribute the information. Gustavus Adolphus College, located in St. Peter, also distributes it to employees.

The *Hot Sheet* comes out about 50 times per year—and when it doesn't, the city's residents notice.

"If we have a week when it doesn't come out, during the holidays, we do get people who call or ask where the *Hot Sheet* is this week," says City Administrator Todd Prafke.

## Small, digestible pieces

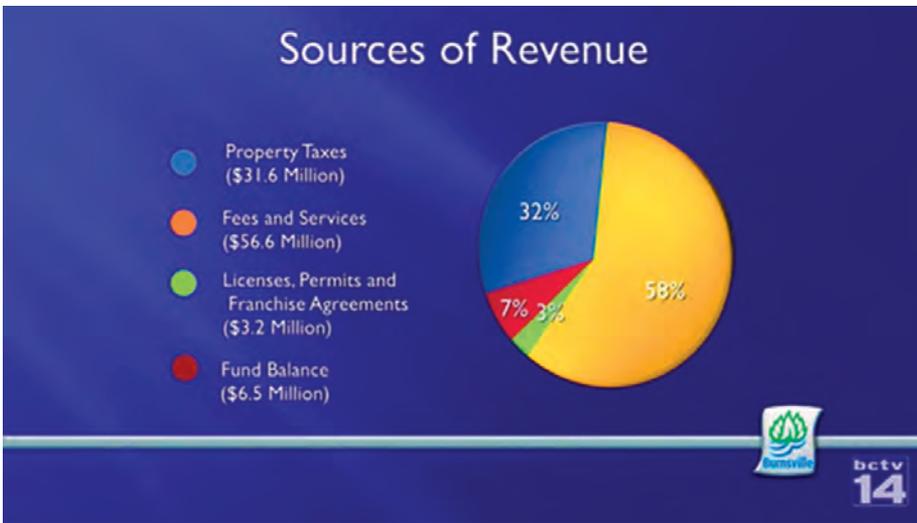
Recently the City Council discussed an aggressive sidewalk replacement program that would have a significant impact on its levy. That issue was covered in the newsletter. As the annual budget dates approach, St. Peter staff will begin writing articles on various aspects of how that is being assembled.

"We cut up that budget narrative and put it in a little less wordy, more easily digestible format," Prafke says.

It's one of several steps the city staff take to communicate important financial issues and other topics to the city's residents. They also use a public access bulletin board, their local public access channel, Facebook, a video blog on the city website, and the St. Peter YouTube channel.

And the city puts audit reports and other financial documents on its website for those who want to read through them in their entirety. Prafke admits the messaging doesn't reach everyone, but for those who are paying attention, they can usually find the information they want.

It's a challenge determining which issues to cover, he adds. Big-ticket items aren't always the ones the community finds most important. At times, it could be the replacement of a squad car or the replacement of a roof on a public building that pushes buttons. But St. Peter officials put a lot of effort into being



Burnsville’s budget “open house” videos include a few charts like this one, along with plain language, to help residents understand how their tax dollars will be used.

transparent and giving residents budget information in a variety of ways.

**Budget open house video**

A few years ago, when tried-and-true measures were becoming consistently unsuccessful in communicating with

residents, Burnsville city officials decided to seek out new methods.

The city of nearly 62,000 residents stopped conducting its annual budget “open house” meeting—which typically required around 16 employees, but drew less than a handful of people—and replaced it with a 15-minute video

open house that provides an overview of the city’s budget for the coming year. City communications employees work with Burnsville Community Television to produce the short budget videos.

The video open houses use lots of visuals and layman’s terms so residents know how their tax dollars will be used to fund city services. Over the last couple years, the video presentations have drawn more than 100 views on the city’s website, says City Manager Heather Johnston.

Burnsville also announces its budget hearings well in advance so residents can engage in the discussions, Johnston says. The talks start with general overviews as early as June and, as the City Council hones in on decisions, the meetings get more specific on how the typical taxpayer might be affected.

Video recordings of these meetings, along with PowerPoint slides, are available on the city’s budget process web page, which features information about the budget for the upcoming year. Other features of the page include an invitation for residents

*(continued on page 32)*



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to submit comments on the budget, the schedule of budget meetings, and property tax assistance resources.

In addition, Burnsville includes a link to the League of Minnesota Cities video *Special Delivery: City Services and Your Property Taxes*, which is designed to help residents better understand the local property tax system.

“The key is to do a combination of approaches,” says Johnston. “We do get a few comments on the budget every year. That shows we’re getting the information out to make sure we’re being transparent.”

### Building trust in Two Harbors

Transparency has been one of the key drivers behind Dan Walker’s efforts since he became city administrator in Two Harbors about two years ago.

City staff have been working on establishing a capital improvement plan for street repairs and capital purchases. And Walker has proactively reached out to have discussions with a local reporter to ensure that the city’s newspaper gets the word out about the capital improvement plan to as many people in the community as possible.

## PLAIN-LANGUAGE EXPLANATION OF TAX SYSTEM

The League’s video, *Special Delivery: City Services and Your Property Taxes*, is designed to help residents understand the local property tax system. City officials are encouraged to use the video in a variety of ways—post it on your city website, share it via social media, and show it at budget meetings and other public gatherings. Access the video at [www.lmc.org/taxvideo](http://www.lmc.org/taxvideo).

This city of 3,700 has never had a capital improvement plan, and Walker wants to help build trust within the community.

He welcomes discussions with the reporter because it will help ensure she’s getting accurate information, he says. “That’s kind of my philosophy. She’s going to write a story about it anyway. Give her enough information to write facts rather than coming up with a conclusion of her own.”

Planning has been in the works on this capital improvement plan for about a year. It’ll cover the city’s plans for about a five-year period. Walker knows that many residents are intensely curious about what is going on, especially with him being new, and he knows from previous experience that, especially in small communities, word travels fast.

With open resident communication, he can relay an accurate message before a false rumor “gets down to the cafe,” he says. “By the time it gets down to Judy’s for coffee, it’s 10 steps from the truth.” ☞

Andrew Tellijohn is a freelance writer based in Richfield, Minnesota.

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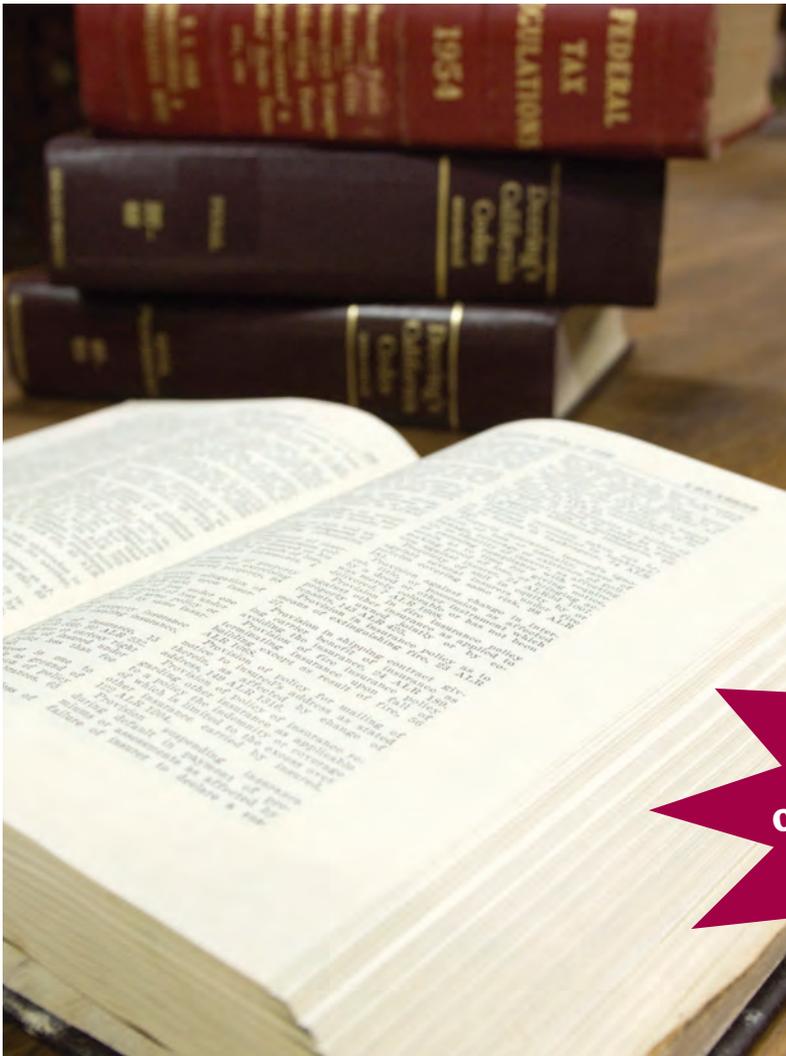
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## Hastings' 'Riverfront Renaissance' Brings New Vitality

BY JANET CASS



The Chris Hawkey Band performs at Hastings' new Rotary Pavilion on Sept. 20, 2016.

PHOTO BY KELLY KAMISH, KIX PHOTOGRAPHY

**H**astings, a city of 22,000 people 30 miles south of St. Paul, has for years been a quiet place with a historic downtown area near the Mississippi River. It was very nice, but the community had a vision for a downtown and riverfront area that offered so much more—a place that would provide activities and attractions for residents and visitors alike.

Now, that vision is reality. After years of planning, the first two phases of the three-phase “Riverfront Renaissance” project are complete, and the last phase will be done soon. The project was the winner of a League of Minnesota Cities 2016 City of Excellence Award.

In the 1980s, the city began investing in the downtown area. Providing funding to renovate historic buildings and to purchase industrial sites along the riverfront created an attractive situation for new development. In 2003, the city adopted the Heart of Hastings Plan to reinvigorate its downtown and riverfront, a plan spurred forward by the 2013 completion of the new U.S. Highway 61 bridge that passes right over the edge of downtown.

### Other developments add to excitement

In addition to the Riverfront Renaissance, other public/private redevelopment efforts were underway. Those partnerships leveraged significant remediation and development grants worth over \$4.5 million.

The Riverfront Renaissance has facilitated private investment, including transformation of a vacant 100,000-square-foot manufacturing plant, which the city’s economic development authority purchased several years ago with a vision for an active, vibrant addition to downtown. This redevelopment—called Great River Landing—will be a mixed-use space designed to house 60 new apartments and 24,000 square feet of commercial space.

Also due to begin this year is construction of Hastings Artspace Lofts, a three-story mixed-use building on the east end of downtown that will contain 37 live-work artist units and 2,200 square feet of commercial space.

### New business, more visitors

Wasn’t there pushback to new businesses in Great River Landing from established businesses in the city? “Not at all,” recalls Mayor Paul Hicks. “Our downtown businesses realize the potential benefit of having new residents move into the area in the newly created housing that’s part of the Great River Landing project. The new businesses that will be a part of that project will complement the downtown business environment.”

In fact, a primary reason to renovate the manufacturing site was to use its visibility from the Highway 61 bridge to entice potential visitors into Hastings, and to provide housing for new residents who will patronize existing downtown businesses. Plans for Great River Landing limit small retail space in order to avoid competing directly against existing businesses.

“We view development of our downtown ‘bookends’—Great River Landing to the west and Artspace to the east—as growth of the downtown area,” explains John Hinzman, community development director and executive director of the Hastings Economic Development and Redevelopment Authority (HEDRA). By way of proof, “There’s been a definite increase in people coming [to downtown],” reports Tony Berens, president of the Downtown Business Association.

Funds for reinvigoration elsewhere in the city included those raised by the local Rotary Club to build an amphitheater-style pavilion in the city’s Veterans Memorial Levee Park. Local fundraising is one measure of community buy-in, as was the composition of the project’s vision committee, which included representatives from all sectors of the community. Support for Riverfront Renaissance from elected officials was another factor facilitating seamless collaboration between the city and HEDRA, notes Hinzman, who adds that two city councilmembers serve on HEDRA.

### Downtown improvements

The first and third phases of Riverfront Renaissance focused on downtown infrastructure, streetscapes, and redevelopment of vacant space within the core downtown area. One infrastructure improvement was retrofitting all existing light fixtures—

including the old-fashioned streetlamps that contribute to Hastings' historic character—with LED lighting. This is expected to pay for itself in four years.

Streetscape improvement included installing trees and plantings along sidewalks to encourage strolling, while private improvements adjacent to the project footprint included rehabilitating a long-vacant church into an arts center. In addition, small parks were renovated or created to make downtown more family-friendly and to encourage movement within the area to support businesses.

The existing Oliver's Grove Park was renovated, and vacant land next to a parking lot was reborn as Depot Park, complete with children's play equipment. Next to Depot Park, a bicycle fix-it station was installed to promote bicycling, a popular Hastings-area activity that takes advantage of the city's location alongside the Mississippi River Trail.

### Reviving nearby park

A major aim of the second phase was to increase the use of the three-acre Veterans Memorial Levee Park. Since the park neighbors the downtown business district, attracting more visitors to the park was envisioned as a way to increase spillover traffic into the downtown district to support businesses. Because the park also abuts the river, the park's existing river overlook was resurfaced and received new railing and picnic tables.

On one edge of the park, additional parking for people with disabilities was added at the park's new drop-off spot, installed next to a new heated bathroom that is accessible to people with disabilities, as are all new amenities installed at the park.

The drop-off marks the entrance to a new walkway that invites visitors farther into the park. Following that path leads to the Rotary Pavilion and the surrounding amphitheater, which gives audiences a view of the river.

The city hired a recreation programming specialist specifically to plan pavilion-based events last summer, says City Administrator Melanie Mesko Lee. The specialist's directive was to spark a new focus on park activity, accomplished by programming "no- and low-cost activities for our residents and visitors as a way to highlight Riverfront Renaissance's new features and to bring attention to this investment as a destination for residents and visitors," she explains.

City seed money was designated for the 30-plus events planned for the inaugural season. The city engaged with local sponsors to help offset some of the expense, with a goal of eventually reducing its programming costs through sponsorships. "We were well aware

that additional resources may be warranted with the new park and built in additional staff resources to accommodate trash removal, maintenance, etc.," Mesko Lee says.

Phase 2 also moved the existing trail from its location along the edge of the river to one farther inland, creating space between the trail and river for native plants to be planted to buffer surface water runoff. The new buffer area protects human safety as well as water quality by separating the trail and the river, while allowing unfettered visual access to the river.



PHOTO BY MICHAEL BRAUN

Mayor Paul Hicks and City Administrator Melanie Mesko Lee are excited about the early success of the Riverfront Renaissance.



PHOTO BY MICHAEL BRAUN

Public Works Director Nick Egger, center, and Parks & Recreation Director Chris Jenkins, right, consult with construction workers in downtown Hastings.

### Early success

"From my perspective, the initial impact and potential future impact on tourism is an immediate ROI," reports Hastings Communications Coordinator Lee Stoffel, who announced the grand reopening of Levee Park on Facebook in May.

Since then, "We've had a 37 percent increase in Facebook followers and a 48 percent jump on Twitter," Stoffel says. "We have seen a major jump in our online following, with increased

interaction and much further reach, evidence of an increased interest in Hastings as a destination for visitors. Prior to this effort, our social media saw slow, but steady growth—never a huge jump like this, and never so many new followers from outside of Hastings."

According to Mesko Lee, increased use of Levee Park and an uptick in downtown visitors have been reported anecdotally; Hastings' tourism bureau is in the process of measuring increased spending by visitors.

### Look back, move forward

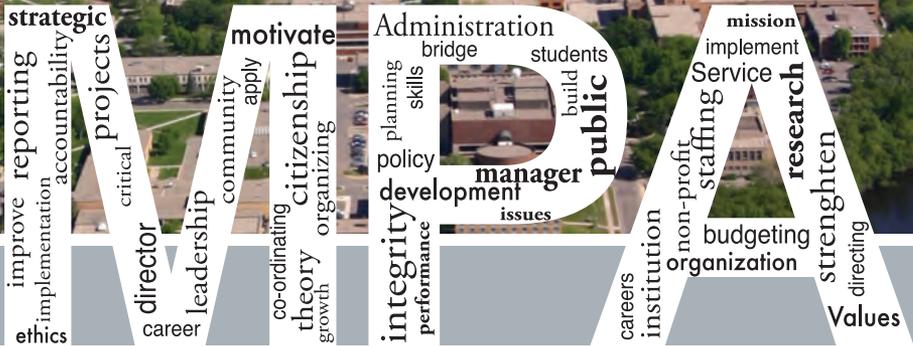
In 2017, and beyond, Hastings plans to broaden its reputation as a destination by drawing from surrounding communities as well as from the Twin Cities metro area, says Mesko Lee.

Riverfront Renaissance has increased awareness of and appreciation for Hastings, both within the city and among its visitors. It accomplished this by renewing the city's historical identity as a river town, and by creating new and more ways for people to appreciate the riverfront where Hastings originated. 

Janet Cass is a St. Paul-based freelance writer.

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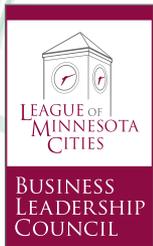
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