

# FAIRMONT CITY COUNCIL AGENDA

## 1. CALL TO ORDER -

- Regular meeting of the Fairmont City Council held on

**MONDAY, MAY 11, 2020**

at **5:30 p.m.** in the City Hall Council Chambers

## 2. ROLL CALL -

Mayor Foster

Councilors:

Cyphers

Hasek

Hawkins

Lubenow

Peters

## 3. DETERMINATION OF QUORUM -

## 4. PLEDGE OF ALLEGIANCE -

## 5. APPROVAL OF AGENDA -

## 6. READING OF MINUTES –

6.1 Minutes of Regular Meeting, April 27, 2020 (01-02)

## 7. OPEN DISCUSSION (03)

## 8. SCHEDULED HEARINGS –

8.1 Public Hearing – First Reading of Proposed Ordinance 2020-06 (04)  
Fire Prevention and Protection

8.1a Hearing Notice (05-06)

8.1b Proposed Ordinance 2020-06 (07-09)

**9. CONSENT AGENDA** – These items are considered noncontroversial and will be approved with one motion; there will be no discussion. If a council member or staff member would like to ask a question or discuss a specific item, that item will be removed and placed elsewhere on the agenda by the presiding officer.

- 9.1 2020/2021 Beverage License Renewals (10)
  - 9.1a List of 2020/2021 Beverage License Renewals (11-12)
- 9.2 Fairmont Opera House (13)
- 9.3 Jakes Pizza City of Lakes, Inc. (14)
- 9.4 Approve Temporary Construction Easement with Profinium Financial (15)
  - 9.4a Temporary construction easement (16-22)
- 9.5 Approve Temporary Construction Easement and Deed with Martin County (23)
  - 9.5a 2 – Temporary construction easements (To be distributed prior to the meeting)
  - 9.5b Quit claim deed for right-of-way acquisition (To be distributed prior to the meeting)

**10. ADMINISTRATIVE APPEALS –**

**11. FINANCIAL REPORTS –**

**12. REPORTS OF BOARDS, COMMITTEES, AND DEPARTMENT HEADS –**

**13. LICENSES AND PERMITS –**

**14. OLD BUSINESS –**

- 14.1 City Attorney Search (24)

**15. NEW BUSINESS –**

- 15.1 Aquatic Park Opening (25)
  - 15.1a League of Cities Email, April 27, 2020 (26-27)
  - 15.1b Flaherty-Hood Email, May 4, 2020 (28)
  - 15.1c Betsy Steuber Email, May 5, 2020 (29-32)
- 15.2 City Administrator Search (33)
- 15.3 Award Contract for 2020-A Improvement Project (Lake Ave.) (34)
  - 15.3a Resolution 2020-26 (To be distributed prior to the meeting)

**16. REGULAR AND LIQUOR DISPENSARY BILLS –**

**17. STATUS REPORTS/COUNCIL/STAFF INFORMATION**

**18. ADJOURNMENT –**

**ADDITIONAL ATTACHMENTS –**

The minutes of the Fairmont City Council meeting held on Monday, April 27, 2020 at the City Hall Council Chambers.

Due to the COVID-19 pandemic, and the peace time emergency declared by Governor Walz, the meeting was held by teleconferencing pursuant to Minn. Stat. § 13D.021.

Mayor Deborah J. Foster called the meeting to order at 5:30 p.m.

Council Members Ruth Cyphers, Wayne Hasek, Tom Hawkins, Randy Lubenow and Bruce Peters were present. Also, in attendance: Interim City Administrator Mark Sievert, Public Works Director/City Engineer Troy Nemmers, Finance Director Paul Hoyer, City Clerk Patricia J. Monsen, Police Chief Mike Hunter, City Attorney Robert Scott.

Council Member Hasek made a motion to approve the agenda with the addition of a discussion about the tree dump site. Council Member Cyphers seconded the motion. On roll call: Council Members Hasek, Hawkins, Lubenow, Peters and Cyphers all voted aye. No one voted nay. Mayor Foster declared said motion passed.

Council Member Cyphers made a motion to approve the minutes of the April 13, 2020 City Council meeting. Council Member Hawkins seconded the motion. On roll call: Council Members Hawkins, Lubenow, Peters, Cyphers and Hasek all voted aye. No one voted nay. Mayor Foster declared said motion passed.

During open discussion, Staci Thompson, Executive Director for Habitat for Humanity spoke regarding the sale of 512 North Elm Street. Lowell Abelson of 522 North Elm Street attempted to speak, but was having problems with his audio.

There were two items on the consent agenda: School Resource Officer Memorandum of Understanding and an Updated Engineering Services Contract for the Lime Pond Closure. Council Member Hasek made a motion to approve the Consent Agenda. Council Member Peters seconded the motion. On roll call: Council Members Lubenow, Peters, Cyphers, Hawkins and Hasek all voted aye. No one voted nay. Mayor Foster declared said motion passed.

At the request of Councilor Hawkins, Hoyer gave an update on the Fairmont Municipal Liquor Store and how it was doing financially during the COVID-19 pandemic.

The second reading of **Ordinance 2020-05**, sale of 512 North Elm Street to Habitat for Humanity was held. Lowell Abelson of 522 North Elm Street was able to phone in and be heard regarding his desire to purchase 512 North Elm Street. After much discussion, Council Member Hawkins made a motion to approve **Ordinance 2020-05**. Council Member Cyphers seconded the motion. On roll call: Council Members Cyphers and Hawkins voted aye. Council Members Peters, Hasek and Lubenow voted nay. Mayor Foster declared said motion failed. Direction was given to staff to keep this matter moving forward and to work with Lowell Abelson and Staci Thompson, Executive Director of Habitat for Humanity.

Council Member Peters made a motion to approve **Resolution 2020-24**, awarding contract to construct hangar taxilanes and apron at the Fairmont Municipal Airport to M.R. Paving and Excavating, Inc. of New Ulm, MN in the amount of \$370,271.09, contingent on the City receiving a federal grant. Council Member Cyphers seconded the motion. On roll call: Council

Members Lubenow, Peters, Cyphers, Hasek and Hawkins all voted aye. No one voted nay. Mayor Foster declared said motion passed.

Council Member Hawkins made a motion to adopt **Resolution 2020-25**, approving the advertising of 2019-A construction project, the multi-purpose trail and pedestrian bridge to Torgerson Drive. Council Member Hasek seconded the motion. On roll call: Council Members Peters, Cyphers, Hasek, Hawkins and Lubenow all voted aye. No one voted nay. Mayor Foster declared said motion passed.

Council Member Hawkins made a motion to approve **Resolution 2020-23**, with modifications to appoint the seven incumbents and Chuck Omvig to the Charter Commission with all others being appointed as alternates. Council Member Lubenow seconded the motion. There was much discussion with Council Member Peters stating that he did not like Council Member Hawkins hand picking the members to be reappointed. On roll call: Council Members Hawkins, Lubenow and Cyphers all voted aye. Council Members Peters and Hasek voted nay. Mayor Foster declared said motion passed.

Council Member Lubenow made a motion to approve the payment of the April 2020 bills in the amount of \$1,028,296.02. Council Member Peters seconded the motion. On roll call: Council Members Lubenow, Peters, Cyphers, Hasek and Hawkins all voted aye. No one voted nay. Mayor Foster declared said motion passed.

Discussion was held regarding the tree dump site.

Mayor Foster announced that the Council's scheduled meeting of May 18<sup>th</sup>, with Pamela Whitmore from the League of MN Cities has been cancelled. A new date will be set once the new City Administrator has been hired.

Mayor Foster reminded Council of the City Administrator interviews scheduled for Monday, May 4, 2020.

Council Member Hawkins asked if interviews had been scheduled for the new civil city attorney. Mayor Foster stated she felt that this was something that should wait until the new city administrator was hired. Hawkins stated he doesn't see why the council cannot move forward with this.

A motion was made by Council Member Peters, seconded by Council Member Lubenow to adjourn the meeting at 6:41 p.m. On roll call: Council Members Peters, Cyphers, Hasek, Hawkins, and Lubenow all voted aye. No one voted nay. Mayor Foster declared said motion passed.

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Deborah J. Foster, Mayor

ATTEST:

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Patricia J. Monsen, City Clerk

**CITY OF FAIRMONT----AGENDA CONTROL SHEET----AGENDA ITEM NO. 7.1**

**MEETING DATE:** May 11, 2020

**SUBJECT:** Open Discussion

*MS*

**REVIEWED BY:** Mark Sievert, Interim City Administrator

**SUBJECT INITIATION BY:**

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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**SUBJECT BACKGROUND:**

**INTRODUCED BY:** Mayor Deborah J. Foster

**COUNCIL LIAISON:**

**TYPE OF ACTION:**

<input type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input checked="" type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

**RECOMMENED ACTION BY:**

<input type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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<input type="checkbox"/>	Issuance	<input type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input checked="" type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** Prior to regular business, is there any open discussion?

**MOTION:** None

**VOTE REQUIRED:**

**ATTACHMENTS:**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

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Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

MEETING DATE: May 11, 2020

SUBJECT: Public Hearing – First Reading of Proposed Ordinance 2020-06 – Fire Prevention and Protection

REVIEWED BY: Mark Sievert, Interim City Administrator

*MS*

SUBJECT INITIATION BY:

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input type="checkbox"/>	Staff	<input checked="" type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Mark Sievert, Interim City Administrator

INTRODUCED BY: Mark Sievert, Interim City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

<input type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input checked="" type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input checked="" type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENED ACTION BY:

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

STATEMENT: At the January 27, 2020 City Council meeting, the council instructed the City Administrator and Fire Chief to work with Legal Counsel on proper language to change control of the Fire Department to the City Administrator instead of the City Council. Ordinance 2020-06 accomplishes this goal.

MOTION #1: To close Public Hearing

VOTE REQUIRED MOTION #1: Simple majority

ATTACHMENTS:

- Hearing Notice
- Proposed Ordinance 2020-06

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Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

OFFICIAL PUBLICATION

NOTICE OF HEARING

TO WHOM IT MAY CONCERN:

**NOTICE IS HEREBY GIVEN** that the City Council of the City of Fairmont will hold a public hearing to consider proposed Ordinance No. 2020-06.

**AN ORDINANCE AMENDING FAIRMONT CITY CODE, CHAPTER 2 – ADMINISTRATION, AND CHAPTER 10 – FIRE PREVENTION AND PROTECTION**

**THE CITY OF FAIRMONT DOES ORDAIN** (new material is underlined; deleted material is lined out; sections which are not proposed to be amended are omitted; sections which are only proposed to be re-numbered are only set forth below as to their number and title):

SECTION 1. Fairmont Code, Chapter 2 – Administration, Article IV. - Departments and Divisions, Division 5. - Public Safety Division, Sec. 2-161. - Departments, is hereby amended to read as follows:

Sec. 2-161. - Departments.

The public safety division shall consist of the following departments:

- (1) Police.
- (2) Civil defense.
- (3) Fire.

SECTION 2. Fairmont Code, Chapter 2 – Administration, Article IV. - Departments and Divisions, Division 5. - Public Safety Division, is hereby amended to add a new Section 2-163 as follows:

Sec. 2-162. - Fire chief. Subject to city charter, section 2.11, and city code, section 2-57:

- (a) The fire chief shall provide administration, coordination and overall direction of the fire prevention and protection services and functions of the city. The fire chief shall supervise the employees and volunteers of the fire department. The fire chief shall direct and control the training of employees and volunteers of the fire department and all activities of employees and volunteers of the department and other individuals engaged in fire prevention and protection services and functions. The fire chief shall be subordinate to and report to the city administrator.

Secs. 2-163~~4~~—2-180. - Reserved.

SECTION 3. Fairmont Code, Chapter 10 – Fire Prevention and Protection, Article II. - Fire Department, Section 10-16, is hereby amended to read as follows:

Sec. 10-16. - Generally.

The fire department shall be subordinate to and under the supervision and control of the ~~council~~ city administrator. The size, composition (including, but not limited to, a determination as to the number of employees and volunteers ~~permanent and volunteer members~~), and remuneration, shall all be ~~established~~ approved by the council, which may be changed from time to time. The ~~council~~ fire chief, with the approval of the city administrator, shall ~~also~~ establish written rules and regulations of the fire department, a copy of which shall be distributed to each of its ~~members~~ employees and volunteers. ~~Members~~ Employees and volunteers of the fire department shall fulfill all job requirements adopted by the council.

SECTION 4. Fairmont Code, Chapter 10 – Fire Prevention and Protection, Article II. - Fire Department, Section 10-18, is hereby amended to read as follows:

Sec. 10-18. - Fire Chief.

- (a) The chief of the fire department shall have general superintendence of the fire department and the custody of all property used and maintained for the purposes of said department. ~~He~~ The fire chief shall see that the same are kept in proper order and that all rules and regulations and all provisions of the laws of the state and ordinances of the city relative to a fire department and to the prevention and extinguishment of fires are duly observed. ~~He~~ The fire chief shall superintend the preservation of all property endangered by fire and shall have control and direction of all persons engaged in preserving such property.
- (b) In case of the absence or disability of the fire chief for any cause, the assistant fire chief shall exercise all the powers, perform all the duties, and be subject to all the responsibilities of the fire chief. It is the duty of the fire chief ~~of the fire department~~ on or before July 1 of each year to file a detailed inventory with the city administrator of all property used and maintained for said department, together with its projected needs for the ensuing fiscal year. It is also the duty of the fire chief ~~of the fire department~~, on or before the date of the first regular council meeting in each month, to file with the city clerk a report as to all fires occurring during the previous month stating the probable cause thereof and estimated damages. Such reports shall also state the other activities of the department. The fire chief ~~of the fire department~~ shall also make and file such other reports as may be requested by the city administrator or council.

SECTION 5: This Ordinance shall take effect immediately after its publication.

**You are further notified** said hearing will be held in the **City Council Chambers of City Hall**, 100 Downtown Plaza, Fairmont, Minnesota on Monday, May 11, 2020, at 5:30 p.m.

BY ORDER OF THE CITY OF FAIRMONT

/s/ Patricia J. Monsen

Patricia J. Monsen, City Clerk

**ORDINANCE NO. 2020-06**

**AN ORDINANCE AMENDING FAIRMONT CITY CODE, CHAPTER 2 – ADMINISTRATION, AND CHAPTER 10 – FIRE PREVENTION AND PROTECTION**

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- (b) In case of the absence or disability of the fire chief for any cause, the assistant fire chief shall exercise all the powers, perform all the duties, and be subject to all the responsibilities of the fire chief. It is the duty of the fire chief ~~of the fire department~~ on or before July 1 of each year to file a detailed inventory with the city administrator of all property used and maintained for said department, together with its projected needs for the ensuing fiscal year. It is also the duty of the fire chief ~~of the fire department~~, on or before the date of the first regular council meeting in each month, to file with the city clerk a report as to all fires occurring during the previous month stating the probable cause thereof and estimated damages. Such reports shall also state the other activities of the department. The fire chief ~~of the fire department~~ shall also make and file such other reports as may be requested by the city administrator or council.

SECTION 5: This Ordinance shall take effect immediately after its publication.

Passed by the City Council of the City of Fairmont, Minnesota, this \_\_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_  
Deborah J. Foster, Mayor

ATTEST:

\_\_\_\_\_  
Patricia J. Monsen, City Clerk

*First Reading:*

Date: May 11, 2020

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Abstain \_\_\_\_\_

*Second Reading:*

Date: June 8, 2020

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Abstain \_\_\_\_\_

*Published:*

Date: \_\_\_\_\_

**CITY OF FAIRMONT----AGENDA CONTROL SHEET----AGENDA ITEM NO. 9.1**

**MEETING DATE:** May 11, 2020

**SUBJECT:** 2020/2021 Beverage License Renewals

*MS*

**REVIEWED BY:** Mark Sievert, Interim City Administrator

**SUBJECT INITIATION BY:**

<input checked="" type="checkbox"/>	Petition		Board		Staff		Council		Commission		Committee
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**SUBJECT BACKGROUND:** Patricia J. Monsen, City Clerk

**INTRODUCED BY:** Mark Sievert, Interim City Administrator

**COUNCIL LIAISON:**

**TYPE OF ACTION:**

<input checked="" type="checkbox"/>	Motion (Voice Vote)		Resolution (Roll Call)		Discussion
	Ordinance 1 <sup>st</sup> Reading (Introduction only)		Set Public Hearing (Motion)		Information Only
	Ordinance 2 <sup>nd</sup> Reading (Roll call)		Hold Public Hearing (Motion to close)		

**RECOMMENED ACTION BY:**

<input checked="" type="checkbox"/>	City Staff		Board		Commission		Committee
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	Issuance	<input checked="" type="checkbox"/>	Approval		Authorization		No recommendation
	Denial		Rejection		No action needed		

**STATEMENT:** The attached list of establishments have beverage licenses that expire as of June 30, 2020 and are requesting renewal of their licenses. Council approval is requested pending receipt of all required applications, proof of liquor liability insurance, workers' compensation insurance, fees and a satisfactory police investigation report.

**MOTION:** To approve renewal of the attached list of beverage licenses that expire June 30, 2020, on condition that all required documentation is received.

**VOTE REQUIRED:** Simple majority

**ATTACHMENTS:**

1. List of 2020/2021 Beverage License Renewals
- 2.
- 3.

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

## 2020/2021 Beverage License Renewals

<u>Establishment</u>	<u>Type of License</u>
Ambiance on Albion, Inc. 2321 Albion Avenue	On Sale Liquor/Sunday
Bean Town Grill, LLC 1400 N. State St.	On Sale Liquor/Sunday
The Blazer Bar and Grill 106 E. 1 <sup>st</sup> Street	On Sale Liquor/Sunday
Bowlmor Lanes & Lounge 617 S. State St.	On Sale Liquor/Sunday
Fairmont Channel Inn 330 W. Lair Rd.	On Sale Liquor/Sunday
El Agave 62 Downtown Plaza	On Sale Liquor/Sunday
Fraternal Order of Eagles 1228 W. Lake Ave.	On Sale Liquor/Sunday
Torgerson Properties, Inc., d/b/a Torge's Fairmont Hwy. 15 & Jct. I-90	On Sale Liquor/Sunday
Interlaken Golf Course 227 Amber Lake Dr.	On Sale Liquor/Sunday
Martin County Knights of Columbus, Inc. 920 E. 10 <sup>th</sup> St.	On Sale Liquor/Sunday
The Marina Lodge 501 Lake Ave.	On Sale Liquor/Sunday
Schmitz Management Co., d/b/a The Ranch 1330 N. State St.	On Sale Liquor/Sunday
Shenanigans Cheer & Chow 115 E. Third St.	On Sale Liquor/Sunday
Tami's on the Ave. 2710 Albion Ave.	On Sale Liquor/Sunday 3.2% Off Sale Beer
Mc Corkell Racing, Inc., d/b/a Fairmont Raceway 1300 Bixby Road	On Sale Liquor

**2020/2021 Beverage License Renewals – page 2**

<b><u>Establishment</u></b>	<b><u>Type of License</u></b>
Fareway Stores, Inc. 500 S. State	3.2% Off Sale Beer
Applegreen Midwest, LLC, d/b/a Freedom Value Center 407 E. Blue Earth Ave.	3.2% Off Sale Beer
K & W Stores – Fairmont Shell #1 1552 Albion Ave.	3.2% Off Sale Beer
Hy-Vee Food Store 907 S. State St.	3.2% Off Sale Beer
Hy-Vee C-Store #5183 907 S. State St.	3.2% Off Sale Beer
Poppe, Brian, d/b/a Poppe's 1317 N. State St.	3.2% Off Sale Beer
Vet's Oil Company, Inc., d/b/a Whoa N' Go 2197 N. State St.	3.2% Off Sale Beer
Vet's Oil Company, Inc., d/b/a Whoa N' Go South 307 N. State St.	3.2% Off Sale Beer
Casey's General Store 202 E. Blue Earth Ave.	3.2% Off Sale Beer
Wal-Mart 1250 Goemann Rd.	3.2% Off Sale Beer
Kwik Trip, Inc. 217 S. State St.	3.2% Off Sale Beer
Jakes Pizza 211 Downtown Plaza	3.2% On Sale Beer

**CITY OF FAIRMONT----AGENDA CONTROL SHEET----AGENDA ITEM NO. 9.2**

**MEETING DATE:** May 11, 2020

**SUBJECT:** Fairmont Opera House

**REVIEWED BY:** Mark Sievert, Interim City Administrator

*MS*

**SUBJECT INITIATION BY:**

<input checked="" type="checkbox"/>	Petition		Board		Staff		Council		Commission		Committee
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**SUBJECT BACKGROUND:** Patricia J. Monsen, City Clerk

**INTRODUCED BY:** Mark Sievert, Interim City Administrator

**COUNCIL LIAISON:**

**TYPE OF ACTION:**

<input checked="" type="checkbox"/>	Motion (Voice Vote)		Resolution (Roll Call)		Discussion
	Ordinance 1 <sup>st</sup> Reading (Introduction only)		Set Public Hearing (Motion)		Information Only
	Ordinance 2 <sup>nd</sup> Reading (Roll call)		Hold Public Hearing (Motion to close)		

**RECOMMENED ACTION BY:**

<input checked="" type="checkbox"/>	City Staff		Board		Commission		Committee
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	Issuance	<input checked="" type="checkbox"/>	Approval		Authorization		No recommendation
	Denial		Rejection		No action needed		

**STATEMENT:** The Fairmont Opera House has had a 3.2 On Sale License and a Wine License for many years. They would like to have an On Sale Liquor License this year. They have completed all the required applications, provided proof of liquor liability insurance, workers' compensation insurance and have paid the fees.

**MOTION:** To approve the On Sale Liquor License for the Fairmont Opera House.

**VOTE REQUIRED:** Simple majority

**ATTACHMENTS:**

- 1.
- 2.
- 3.

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Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

**CITY OF FAIRMONT---AGENDA CONTROL SHEET---AGENDA ITEM NO. 9.3**

**MEETING DATE:** May 11, 2020

**SUBJECT:** Jakes Pizza City of Lakes, Inc.

*MS*

**REVIEWED BY:** Mark Sievert, Interim City Administrator

**SUBJECT INITIATION BY:**

<input checked="" type="checkbox"/>	Petition		Board		Staff		Council		Commission		Committee
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**SUBJECT BACKGROUND:** Patricia J. Monsen, City Clerk

**INTRODUCED BY:** Mark Sievert, Interim City Administrator

**COUNCIL LIAISON:**

**TYPE OF ACTION:**

<input checked="" type="checkbox"/>	Motion (Voice Vote)		Resolution (Roll Call)		Discussion
	Ordinance 1 <sup>st</sup> Reading (Introduction only)		Set Public Hearing (Motion)		Information Only
	Ordinance 2 <sup>nd</sup> Reading (Roll call)		Hold Public Hearing (Motion to close)		

**RECOMMENED ACTION BY:**

<input checked="" type="checkbox"/>	City Staff		Board		Commission		Committee
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	Issuance	<input checked="" type="checkbox"/>	Approval		Authorization		No recommendation
	Denial		Rejection		No action needed		

**STATEMENT:** Jakes Pizza City of Lakes, Inc. currently has a 3.2 On Sale License. They would like to add a Wine License with Strong Beer. They have completed all the required applications, provided proof of liquor liability insurance, workers' compensation insurance and have paid the fees.

**MOTION:** To approve the Wine License with Strong Beer for Jakes Pizza City of Lakes, Inc.

**VOTE REQUIRED:** Simple majority

**ATTACHMENTS:**

- 1.
- 2.
- 3.

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Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

MEETING DATE: May 11, 2020

SUBJECT: Approve Temporary Construction Easement with Profinium Financial

REVIEWED BY: Mark Sievert, Interim City Administrator

*MS*

**SUBJECT INITIATION BY:**

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Troy Nemmers, PE, Director of Public Works/ City Engineer

INTRODUCED BY: Troy Nemmers, PE, Director of Public Works/ City Engineer

COUNCIL LIAISON:

**TYPE OF ACTION:**

<input checked="" type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

**RECOMMENED ACTION BY:**

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
-------------------------------------	------------	--------------------------	-------	--------------------------	------------	--------------------------	-----------

<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

STATEMENT: City staff and our consultant have been working with Profinium Financial on a temporary construction easement to relocate one of their existing driveways at south Main Street as part of the Lake Avenue improvement project. Profinium Financial has approved the agreement and staff is recommending approval.

MOTION: To authorize the Mayor to sign the temporary construction easement with Profinium Financial for the Lake Avenue reconstruction project.

VOTE REQUIRED: Simple majority

**ATTACHMENTS:**

1. Temporary construction easement
2. \_\_\_\_\_
3. \_\_\_\_\_

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

## TEMPORARY CONSTRUCTION EASEMENT

This Agreement is made this 28<sup>th</sup> day of APRIL, 2020, by and between Profinium Financial, Inc., a Minnesota corporation, referred hereinafter as "Grantor," and the City of Fairmont, a Minnesota municipal corporation, referred to hereinafter as "Grantee"; (collectively referred to herein as the "parties").

### AGREEMENT

That for the mutual promises and obligations contained herein, and other good and valuable consideration, the Grantor and Grantee do hereby agree as follows:

1. The Grantor hereby grants and conveys to the Grantee a Temporary Construction Easement, depicted on Exhibit A, which is attached hereto and incorporated herein by reference, for construction purposes (the "Temporary Construction Easement") over, under and across that part of the tract of the real property legally described on Exhibit B, in the City of Fairmont, Martin County, Minnesota, as legally described on Exhibit C, which is attached hereto and incorporated by reference (the "Temporary Construction Easement Area").
2. As consideration for the Temporary Construction Easement, the Grantee hereby covenants to complete the following improvements, to the benefit of the Grantor, on and adjacent to the real property legally described on Exhibit B: installation of a new driveway, widening of the existing drive through, and installation of a new curb and gutter within the Temporary Construction Easement Area.
3. The Temporary Construction Easement shall expire no later than the earlier of (a) one year following the date on which the Grantee's work within the Temporary Construction Easement Area begins, or (b) two years from the date of this Agreement.
4. The Grantor states and hereby covenants that the Grantor is the lawful owner of the above-described real property, is lawfully seized and possessed of said real property, and that the Grantor has good and lawful right to grant the Temporary Construction Easement described herein.
5. The Grantee shall have the right to use the Temporary Construction Easement Area for the purposes of constructing, excavating, grading, inspecting, installing, operating, maintaining, placing, reconstructing, improving, removing, enlarging and repairing as it may find reasonably necessary or convenient the facilities, improvements, and such other improvements appurtenant thereto for the Lake Avenue improvement project.
6. The Grantee and its employees, agents, permittees, contractors and licensees shall have the right of ingress and egress to and from the Temporary Construction Easement Area, including but not limited to for equipment, materials, supplies and vehicles, at all times and without notice to Grantor by such route as shall occasion the least practical damage and inconvenience to the Grantor.

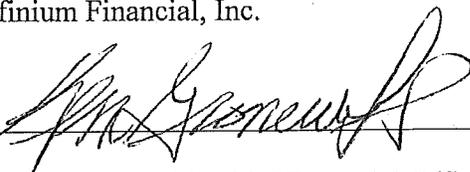
7. The Grantee shall have the right to trim, remove and keep the Temporary Construction Easement Area clear of all buildings, structures, roots, shrubbery, trees, bushes, undergrowth and all other obstructions that may interfere with or endanger the Grantee's exercise of any of the rights pursuant to this Temporary Easement.
8. The Grantor shall not erect, construct or locate in the Temporary Construction Easement Area any new structure or object that was not in existence on the date of this Temporary Construction Easement, which would prevent the Grantee's reasonable access to the Temporary Construction Easement Area or prevent the public's full enjoyment of the rights granted hereunder, without the written consent of the Grantee.
9. The Grantee shall install new sod as practicably reasonable in the areas disturbed by the Grantee's work. However, the Grantee will not be responsible for any other landscape related installation, replacement, or removal, during or as a result of its work within the Temporary Construction Easement Area.
10. The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.
11. The Grantor shall disclose to the Grantor's successors in title the existence of the Temporary Construction Easement if the real property described herein, or any part thereof, is conveyed prior to the expiration of the Temporary Construction Easement.
12. Grantor and Grantee agree to correct any legal descriptions contained herein if there is a mistake discovered, including any mistakes or discrepancies revealed by an accurate survey of the property identified herein.

*[Signature pages to follow]*

IN WITNESS WHEREOF, the parties have hereunto executed this document the day and year first above written.

**GRANTOR:**

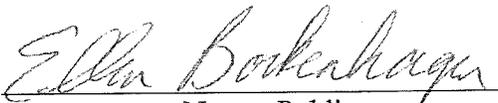
Profinium Financial, Inc.

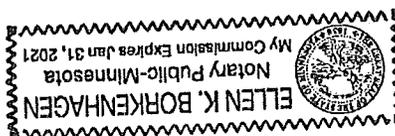
By: 

Ken Gronewold, Chief Financial Officer

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF Martin    )

The foregoing instrument was acknowledged before me this 28<sup>TH</sup> day of April, 2020, by Ken Gronewold the Chief Financial Officer of Profinium Financial, Inc., a Minnesota corporation, on behalf of the corporation.

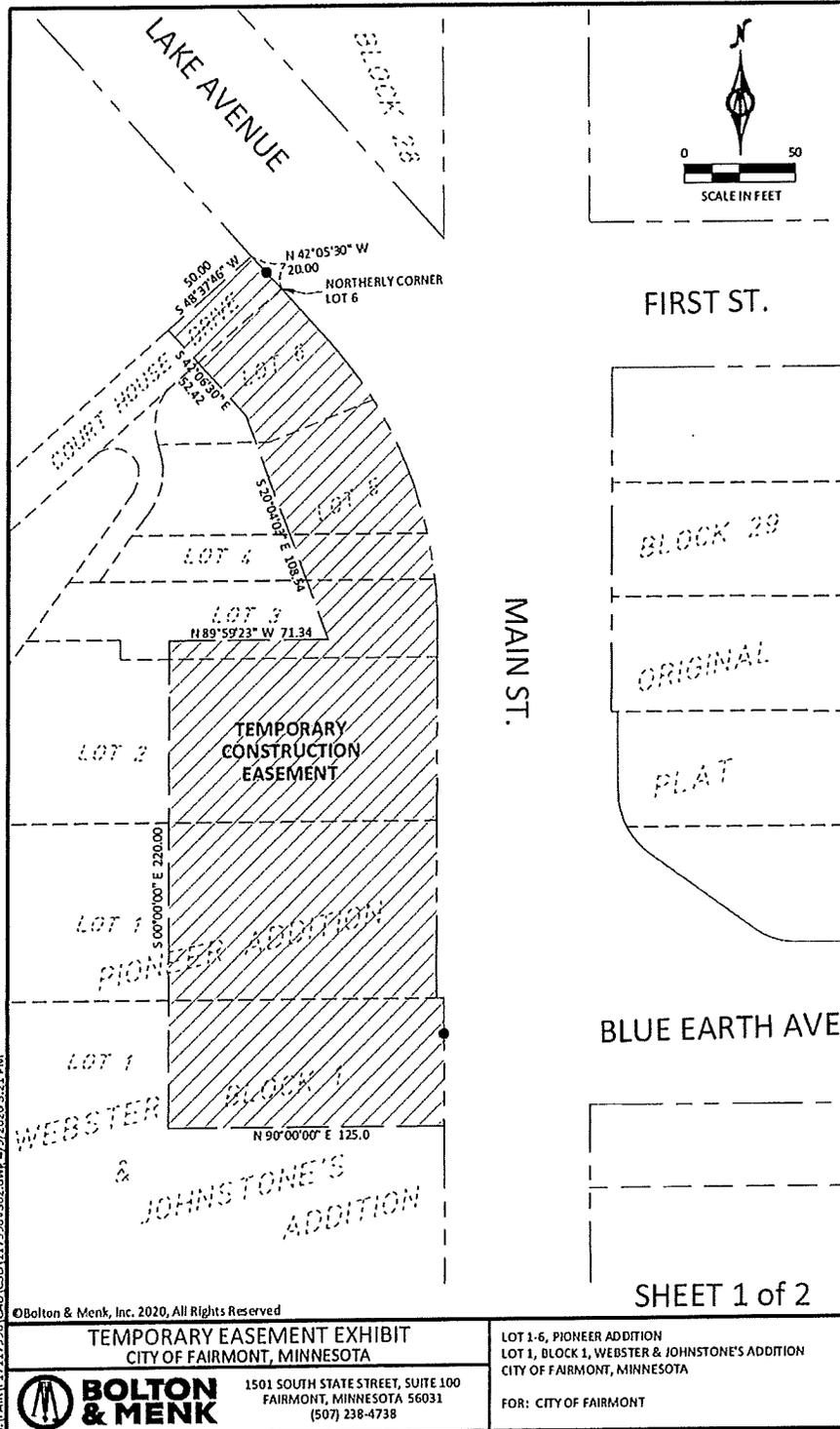
  
Notary Public





**EXHIBIT A**

**DEPICTION OF TEMPORARY CONSTRUCTION EASEMENT**



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**TEMPORARY EASEMENT EXHIBIT**  
**CITY OF FAIRMONT, MINNESOTA**

**BOLTON & MENK**  
 1501 SOUTH STATE STREET, SUITE 100  
 FAIRMONT, MINNESOTA 56031  
 (507) 238-4738

LOT 1-6, PIONEER ADDITION  
 LOT 1, BLOCK 1, WEBSTER & JOHNSTONE'S ADDITION  
 CITY OF FAIRMONT, MINNESOTA

FOR: CITY OF FAIRMONT

JOB NUMBER: F17117990

FIELD BOOK:

DRAWN BY: DJ

**EXHIBIT B**

**LEGAL DESCRIPTION OF REAL PROPERTY**

The real property referenced in this Temporary Construction Easement is legally described as follows:

**LEGAL DESCRIPTION:**

Lots 1, 2, 3, 4, 5 and 6 PIONEER ADDITION and in Lot 1, Block 1, WEBSTER AND JOHNSTONE'S ADDITION according to the recorded plats thereof on file and of record in the office of the County Recorder, in the City of Fairmont, Martin County, Minnesota.

EXHIBIT C

**LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT**

LEGAL DESCRIPTION:

A Temporary Construction Easement over, under and across Lots 1, 2, 3, 4, 5 and 6 PIONEER ADDITION and in Lot 1, Block 1, WEBSTER AND JOHNSTONE'S ADDITION according to the recorded plats thereof on file and of record in the office of the County Recorder, in the City of Fairmont, Martin County, Minnesota describes as follows:

Commencing at the most northerly corner of Lot 6, of said PIONEER ADDITION; thence North 42 degrees 05 minutes 30 seconds West, along the northwesterly extension of the Northeasterly Line of said Lot 6, a distance of 20.00 feet to the point of beginning; thence South 48 degrees 37 minutes 46 seconds West, a distance of 50.00 feet; thence South 42 degrees 06 minutes 30 seconds East, a distance of 52.42 feet; thence South 20 degrees 04 minutes 03 seconds East, a distance of 108.54 feet; thence North 89 degrees 59 minutes 23 seconds West, a distance of 71.34 feet; thence South 00 degrees 00 minutes 00 seconds East, a distance of 220.00 feet; thence North 90 degrees 00 minutes 00 seconds East, a distance of 125.0 feet to the westerly right-of-way of Main Street; thence northerly and northwesterly along the westerly right-of-way line of Main Street and the westerly right-of-way line of Lake Avenue to the point of beginning.

MEETING DATE: May 11, 2020

SUBJECT: Approve temporary construction easement and deed with Martin County

REVIEWED BY: Mark Sievert, Interim City Administrator

*M9*

SUBJECT INITIATION BY:

	Petition		Board	<input checked="" type="checkbox"/>	Staff		Council		Commission		Committee
--	----------	--	-------	-------------------------------------	-------	--	---------	--	------------	--	-----------

SUBJECT BACKGROUND: Troy Nemmers, PE, Director of Public Works/ City Engineer

INTRODUCED BY: Troy Nemmers, PE, Director of Public Works/ City Engineer

COUNCIL LIAISON:

TYPE OF ACTION:

<input checked="" type="checkbox"/>	Motion (Voice Vote)		Resolution (Roll Call)		Discussion
	Ordinance 1 <sup>st</sup> Reading (Introduction only)		Set Public Hearing (Motion)		Information Only
	Ordinance 2 <sup>nd</sup> Reading (Roll call)		Hold Public Hearing (Motion to close)		

RECOMMENED ACTION BY:

<input checked="" type="checkbox"/>	City Staff		Board		Commission		Committee
	Issuance	<input checked="" type="checkbox"/>	Approval		Authorization		No recommendation
	Denial		Rejection		No action needed		

STATEMENT: City staff and our consultant have been working with Martin County on two temporary construction easements for work on County property as well as a deed to acquire right-of-way to accommodate the new intersection configuration at north Main Street and Lake Avenue. All of this work would be completed with the Lake Avenue reconstruction project. The Martin County Board has approved the agreement and staff is recommending approval.

MOTION #1: To approve the temporary construction easements with Martin County for the Lake Avenue reconstruction project, and authorize the Mayor and City Clerk to sign said easements.

MOTION #2: To approve the quit claim deed acquiring right-of-way at Main St. and Lake Ave.

VOTE REQUIRED: Simple majority

ATTACHMENTS:

- 2 - Temporary construction easements (to be distributed prior to the meeting)
- Quit claim deed for right-of-way acquisition (to be distributed prior to the meeting)

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

(Top 3 inches reserved for recording data)

**QUIT CLAIM DEED**

**Business Entity to Business Entity**

eCRV number: N/A

DEED TAX DUE: \$ 1.65

DATE: \_\_\_\_\_, 2020

FOR VALUABLE CONSIDERATION, the **County of Martin** ("Grantor"), a political subdivision of the State of Minnesota with its offices at 201 Lake Avenue, Fairmont, Minnesota 56031, hereby conveys and quitclaims to the **City of Fairmont** ("Grantee"), a Minnesota municipal corporation with its offices at 100 Downtown Plaza, Fairmont, Minnesota 56031, real property in Martin County, Minnesota, legally described on the attached Exhibit "A," together with all hereditaments and appurtenances belonging thereto.

The total consideration for this transfer is \$500.00 or less.

The Seller certifies that the Seller does not know of any wells on the described real property.

Grantor

COUNTY OF MARTIN

By:



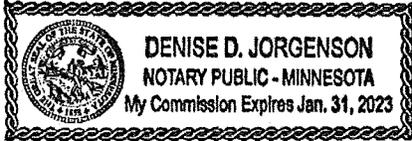
STEVEN O. FLOHRS

Its: Board Chair

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF Martin )

This instrument was acknowledged before me on May 5, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of the County of Martin, a political subdivision of the State of Minnesota, Grantor, on behalf of the Grantor.

(Stamp)



Denise D. Jorgenson  
(signature of notarial officer)

Title (and Rank): \_\_\_\_\_

My commission expires: Jan 31 2023  
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:

FLAHERTY & HOOD, P.A.  
525 Park Street, Suite 470  
St. Paul, MN 55103  
(651) 225-8840

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT SHOULD BE SENT TO:

City of Fairmont  
100 Downtown Plaza  
Fairmont, Minnesota 56031

---

**EXHIBIT A  
LEGAL DESCRIPTION**

That part of Block 28, ORIGINAL PLAT, in the City of Fairmont, according to the recorded plat thereof on file and of record in the office of the County Recorder, Martin County, Minnesota described as follows:

Commencing at the most westerly corner of said Block 28; thence South 42 degrees 00 minutes 43 seconds East, along the southwesterly line of said Block 28, a distance of 154.45 feet; thence South 77 degrees 00 minutes 06 seconds East, a distance of 12.96 feet; thence North 47 degrees 59 minutes 18 seconds East, a distance of 47.0 feet to the east line of said Block 28; thence south, along said east line, to the most southerly corner of said Block 28; thence northwesterly, along the southwesterly line of said Block 28 to the point of beginning.

## **TEMPORARY CONSTRUCTION EASEMENT**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the County of Martin, a political subdivision of the State of Minnesota, referred hereinafter as “Grantor,” and the City of Fairmont, a Minnesota municipal corporation, referred to hereinafter as “Grantee”; (collectively referred to herein as the “parties”).

### **AGREEMENT**

That for the mutual promises and obligations contained herein, and other good and valuable consideration, the Grantor and Grantee do hereby agree as follows:

1. The Grantor hereby grants and conveys to the Grantee a Temporary Construction Easement, depicted on Exhibit A, which is attached hereto and incorporated herein by reference, for construction purposes (the “Temporary Construction Easement”) over, under and across that part of the tract of the real property legally described on Exhibit B, in the City of Fairmont, Martin County, Minnesota, as legally described on Exhibit C, which is attached hereto and incorporated by reference (the “Temporary Construction Easement Area”).
2. As consideration for the Temporary Construction Easement, the Grantee hereby covenants to complete the following improvements, to the benefit of the Grantor, upon the real property legally described on Exhibit B: reconfiguration of the existing parking lot, which will include new pavement markings, replacement of certain curb and gutter sections, and installation of new pavement in certain areas to match the existing pavement.
3. The Temporary Construction Easement shall expire no later than the earlier of (a) one year following the date on which the Grantee’s work within the Temporary Construction Easement Area begins, or (b) two years from the date of this Agreement.
4. The Grantor states and hereby covenants that the Grantor is the lawful owner of the above-described real property, is lawfully seized and possessed of said real property, and that the Grantor has good and lawful right to grant the Temporary Construction Easement described herein.
5. The Grantee shall have the right to use the Temporary Construction Easement Area for the purposes of constructing, excavating, grading, inspecting, installing, operating, maintaining, placing, reconstructing, improving, removing, enlarging and repairing as it may find reasonably necessary or convenient the facilities, improvements, and such other improvements appurtenant thereto for the Lake Avenue improvement project.
6. The Grantee and its employees, agents, permittees, contractors and licensees shall have the right of ingress and egress to and from the Temporary Construction Easement Area, including but not limited to for equipment, materials, supplies and vehicles, at all times and without notice to Grantor by such route as shall occasion the least practical damage and inconvenience to the Grantor.

7. The Grantee shall have the right to trim, remove and keep the Temporary Construction Easement Area clear of all buildings, structures, roots, shrubbery, trees, bushes, undergrowth and all other obstructions that may interfere with or endanger the Grantee's exercise of any of the rights pursuant to this Temporary Easement.
8. The Grantor shall not erect, construct or locate in the Temporary Construction Easement Area any new structure or object that was not in existence on the date of this Temporary Construction Easement, which would prevent the Grantee's reasonable access to the Temporary Construction Easement Area or prevent the public's full enjoyment of the rights granted hereunder, without the written consent of the Grantee.
9. The Grantee shall restore any and all disturbed areas within the Temporary Construction Easement Area back to as close to original condition as is reasonably practicable given the rights granted hereunder.
10. The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.
11. The Grantor shall disclose to the Grantor's successors in title the existence of the Temporary Construction Easement if the real property described herein, or any part thereof, is conveyed prior to the expiration of the Temporary Construction Easement.
12. Grantor and Grantee agree to correct any legal descriptions contained herein if there is a mistake discovered, including any mistakes or discrepancies revealed by an accurate survey of the property identified herein.

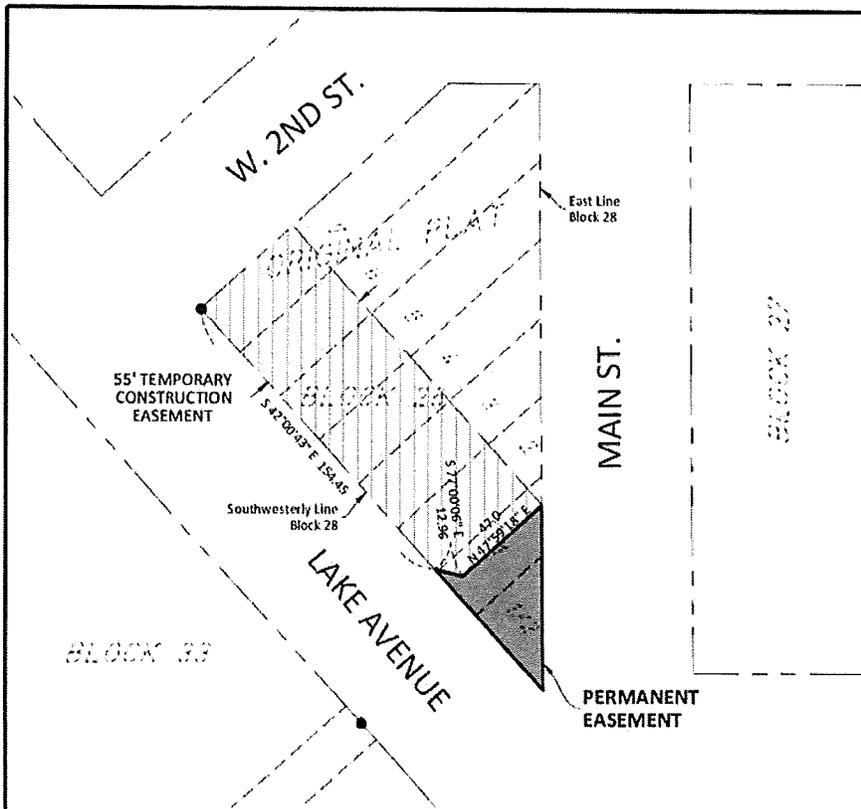
*[Signature pages to follow]*





# EXHIBIT A

## DEPICTION OF TEMPORARY CONSTRUCTION EASEMENT



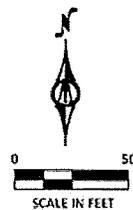
### TEMPORARY CONSTRUCTION EASEMENT

The southwesterly 55.00 feet of Block 28, ORIGINAL PLAT in the City of Fairmont, according to the plat thereof on file and of the County Recorder, Martin County, Minnesota.

### PERMANENT EASEMENT

A permanent easement in Block 28, ORIGINAL PLAT, in the City of Fairmont, according to the recorded plat thereof on file and of record in the office of the County Recorder, Martin County, Minnesota described as follows:

Commencing at the most westerly corner of said Block 28; thence South 42 degrees 00 minutes 43 seconds East, along the southwesterly line of said Block 28, a distance of 154.45 feet; thence South 77 degrees 00 minutes 06 seconds East, a distance of 12.96 feet; thence North 47 degrees 59 minutes 18 seconds East, a distance of 47.0 feet to the east line of said Block 28; thence south, along said east line, to the most southerly corner of said Block 28; thence northwesterly, along the southwesterly line of said Block 28 to the point of beginning.



### SURVEYOR'S CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

*Joseph A. Hefner*  
 Joseph A. Hefner  
 License Number 43909

04/09/2020  
 Date

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<b>EASEMENT EXHIBIT</b> CITY OF FAIRMONT, MINNESOTA	BLOCK 28 ORIGINAL PLAT CITY OF FAIRMONT, MINNESOTA
<b>BOLTON &amp; MENK</b> 1501 SOUTH STATE STREET, SUITE 100 FAIRMONT, MINNESOTA 56031 (507) 238-4738	FOR: CITY OF FAIRMONT

FIELD BOOK:

DRAWN BY: DJ

JOB NUMBER: PL1717960

**EXHIBIT B**

**LEGAL DESCRIPTION OF REAL PROPERTY**

The real property referenced in this Temporary Construction Easement is legally described as follows:

**LEGAL DESCRIPTION:**

Block 28, ORIGINAL PLAT, in the City of Fairmont, according to the recorded plat thereof on file and of record in the office of the County Recorder, Martin County, Minnesota.

**EXHIBIT C**

**LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT**

**LEGAL DESCRIPTION:**

A temporary easement in Block 28, ORIGINAL PLAT, in the City of Fairmont, according to the recorded plat thereof on file and of record in the office of the County Recorder, Martin County, Minnesota described as follows:

The southwesterly 55.00 feet of Block 28, ORIGINAL PLAT in the City of Fairmont, according to the plat thereof on file and of the County Recorder, Martin County, Minnesota.

## **TEMPORARY CONSTRUCTION EASEMENT**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the County of Martin, a political subdivision of the State of Minnesota, referred hereinafter as "Grantor," and the City of Fairmont, a Minnesota municipal corporation, referred to hereinafter as "Grantee"; (collectively referred to herein as the "parties").

### **AGREEMENT**

That for the mutual promises and obligations contained herein, and other good and valuable consideration, the Grantor and Grantee do hereby agree as follows:

1. The Grantor hereby grants and conveys to the Grantee a Temporary Construction Easement, depicted on Exhibit A, which is attached hereto and incorporated herein by reference, for construction purposes (the "Temporary Construction Easement") over, under and across that part of the tract of the real property legally described on Exhibit B, in the City of Fairmont, Martin County, Minnesota, as legally described on Exhibit C, which is attached hereto and incorporated by reference (the "Temporary Construction Easement Area").
2. As consideration for the Temporary Construction Easement, the Grantee hereby covenants to install the following improvements to the benefit of the Grantor: two new parking stalls and a sidewalk adjacent to the real property legally described on Exhibit B.
3. The Temporary Construction Easement shall expire no later than the earlier of (a) one year following the date on which the Grantee's work within the Temporary Construction Easement Area begins, or (b) two years from the date of this Agreement.
4. The Grantor states and hereby covenants that the Grantor is the lawful owner of the above-described real property, is lawfully seized and possessed of said real property, and that the Grantor has good and lawful right to grant the Temporary Construction Easement described herein.
5. The Grantee shall have the right to use the Temporary Construction Easement Area for the purposes of constructing, excavating, grading, inspecting, installing, operating, maintaining, placing, reconstructing, improving, removing, enlarging and repairing as it may find reasonably necessary or convenient the facilities, improvements, and such other improvements appurtenant thereto for the Lake Avenue improvement project.
6. The Grantee and its employees, agents, permittees, contractors and licensees shall have the right of ingress and egress to and from the Temporary Construction Easement Area, including but not limited to for equipment, materials, supplies and vehicles, at all times and without notice to Grantor by such route as shall occasion the least practical damage and inconvenience to the Grantor.
7. The Grantee shall have the right to trim, remove and keep the Temporary Construction Easement Area clear of all buildings, structures, roots, shrubbery, trees, bushes, undergrowth

and all other obstructions that may interfere with or endanger the Grantee's exercise of any of the rights pursuant to this Temporary Easement.

8. The Grantor shall not erect, construct or locate in the Temporary Construction Easement Area any new structure or object that was not in existence on the date of this Temporary Construction Easement, which would prevent the Grantee's reasonable access to the Temporary Construction Easement Area or prevent the public's full enjoyment of the rights granted hereunder, without the written consent of the Grantee.
9. The Grantee shall restore any and all disturbed areas within the Temporary Construction Easement Area back to as close to original condition as is reasonably practicable given the rights granted hereunder.
10. The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.
11. The Grantor shall disclose to the Grantor's successors in title the existence of the Temporary Construction Easement if the real property described herein, or any part thereof, is conveyed prior to the expiration of the Temporary Construction Easement.
12. Grantor and Grantee agree to correct any legal descriptions contained herein if there is a mistake discovered, including any mistakes or discrepancies revealed by an accurate survey of the property identified herein.

*[Signature pages to follow]*

IN WITNESS WHEREOF, the parties have hereunto executed this document the day and year first above written.

**GRANTOR:**

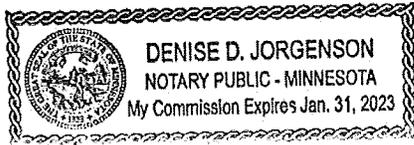
County of Martin, Minnesota

By: Steven O. Flohrs

STEVEN O. FLOHRS, the Board Chair

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF Martin )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of May, 2020, by \_\_\_\_\_ the \_\_\_\_\_ of Martin County, Minnesota, on behalf of Martin County, Minnesota.



Denise D. Jorgenson  
Notary Public

**GRANTEE:**

City of Fairmont, Minnesota

By: \_\_\_\_\_  
Deborah Foster, Mayor

By: \_\_\_\_\_  
Patty Monsen, City Clerk

STATE OF MINNESOTA )

) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Deborah Foster as Mayor and Patty Monsen as City Clerk of the City of Fairmont, a Minnesota municipal corporation, on behalf of the municipal corporation.

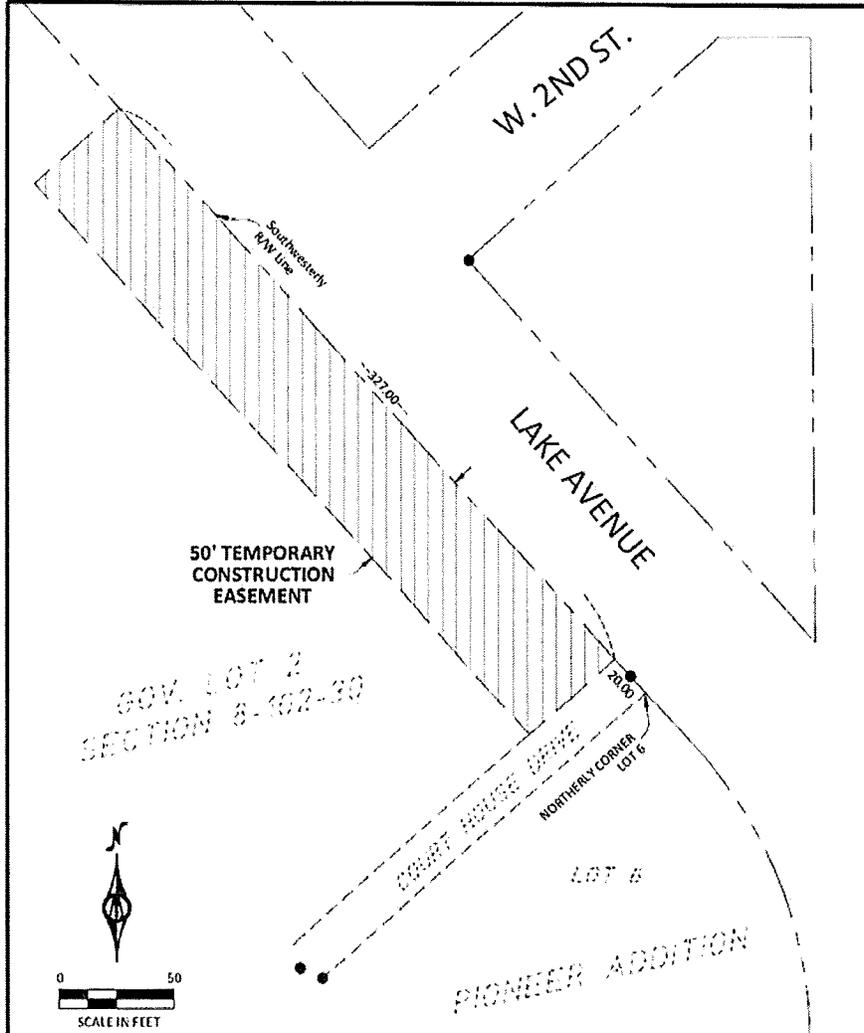
\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

FLAHERTY & HOOD, P.A.  
525 Park Street, Suite 470  
St. Paul, MN 55103  
(651) 225-8840

**EXHIBIT A**

**DEPICTION OF TEMPORARY CONSTRUCTION EASEMENT**



**TEMPORARY CONSTRUCTION EASEMENT**

A Temporary Construction Easement 50.00 feet in width over, under, and across a strip of land in Government Lot 2, Section 8, Township 102 North, Range 30 West, in the City of Fairmont, Martin County, Minnesota lying 50.00 feet southwesterly of and adjoining the following described Line A.

Line A: Commencing at the most northerly corner of Lot 6, PIONEER ADDITION according to the recorded plat thereof on file and of record in the office of the County Recorder, thence Northwesterly, along the southwesterly right-of-way line of Lake Avenue, a distance of 20.00 feet to the point of beginning of Line A; thence continuing Northwesterly, along said southwesterly right-of-way line, a distance of 327.00 feet and said Line A there terminating.

**SURVEYOR'S CERTIFICATION**

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly licensed Land Surveyor under the laws of the State of Minnesota.

*Joseph A. Haefner* 04/09/2020  
 Date  
 Joseph A. Haefner  
 License Number 43909

14:54:51 1717950 CAD\CED\117590\301.dwg 4/9/2020 3:13 PM

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<p><b>TEMPORARY EASEMENT EXHIBIT</b>                  CITY OF FAIRMONT, MINNESOTA</p> <p><b>BOLTON &amp; MENK</b>                  1501 SOUTH STATE STREET, SUITE 100                  FAIRMONT, MINNESOTA 56031                  (507) 238-4738</p>	<p>GOV LOT 2                  SECTION 8-102-30                  CITY OF FAIRMONT, MINNESOTA</p> <p>FOR: CITY OF FAIRMONT</p>
--	--

FIELD BOOK:

DRAWN BY: DJ

JOB NUMBER: F17-117950

**EXHIBIT B**

**LEGAL DESCRIPTION OF REAL PROPERTY**

The real property referenced in this Temporary Construction Easement is legally described as follows:

**LEGAL DESCRIPTION:**

Government Lot 2, Section 8, Township 102 North, Range 30 West, in the City of Fairmont, Martin County, Minnesota.

**EXHIBIT C**

**LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT**

**LEGAL DESCRIPTION:**

A Temporary Construction Easement 50.00 feet in width over, under, and across a strip of land in Government Lot 2, Section 8, Township 102 North, Range 30 West, in the City of Fairmont, Martin County, Minnesota lying 50.00 feet southwesterly of and adjoining the following described Line A.

Line A: Commencing at the most northerly corner of Lot 6, PIONEER ADDITION according to the recorded plat thereof on file and of record in the office of the County Recorder, thence Northwesterly, along the southwesterly right-of-way line of Lake Avenue, a distance of 20.00 feet to the point of beginning of Line A; thence continuing Northwesterly, along said southwesterly right-of-way line, a distance of 327.00 feet and said Line A there terminating.

**CITY OF FAIRMONT---AGENDA CONTROL SHEET---AGENDA ITEM NO. 14.1**

**MEETING DATE:** May 11, 2020

**SUBJECT:** City Attorney Search

MS

**REVIEWED BY:** Mark Sievert, Interim City Administrator

**SUBJECT INITIATION BY:**

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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**SUBJECT BACKGROUND:** Mark Sievert, Interim City Administrator

**INTRODUCED BY:** Mark Sievert, Interim City Administrator

**COUNCIL LIAISON:**

**TYPE OF ACTION:**

<input type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input checked="" type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Informational
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

**RECOMMENED ACTION BY:**

<input type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input checked="" type="checkbox"/>	Direction to staff

**STATEMENT:** At the April 27<sup>th</sup> council meeting, you asked that this issue be placed on the agenda for discussion; either to proceed with scheduling interviews or wait for the new city administrator to be on board.

At the writing of this memo, you have tentatively selected a city administrator candidate. That candidate is an attorney and may possibly start rather soon. Given that, I would recommend waiting for that person to be on board before proceeding any further.

**MOTION:** Provide direction to staff.

**VOTE REQUIRED:**

**ATTACHMENTS:**

- 1.

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

MEETING DATE: May 11, 2020

SUBJECT: Aquatic Park Opening

MS

REVIEWED BY: Mark Sievert, Interim City Administrator

**SUBJECT INITIATION BY:**

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Mark Sievert, Interim City Administrator

INTRODUCED BY: Mark Sievert, Interim City Administrator

**COUNCIL LIAISON:**

**TYPE OF ACTION:**

<input type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input checked="" type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

**RECOMMENED ACTION BY:**

<input type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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<input type="checkbox"/>	Issuance	<input type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input checked="" type="checkbox"/>	Direction to Staff

**STATEMENT:** Currently under the Governor’s executive order we cannot open the aquatic park (please refer to attachments 1 and 2). However, things can change quickly, and we may get some direction soon as the Governor gradually approves the opening of various nonessential businesses. As such, the opening of those nonessential businesses is contingent upon the development of a reopening plan which is, primarily, predicated on maintaining social distance. For us, that will be a challenge (please refer to attachment 3).

I have asked Betsy Steuber, our Aquatic Park Manager, to call in to the meeting so that she may answer your questions.

We continue to prepare to open either the entire park or, most likely, just a portion. I don’t know what more we can do without further direction/approval from the Governor. I suggest you consider your meeting date of June 8<sup>th</sup> as a drop-dead date – open or close. At that rate we could still salvage part of the summer season.

**MOTION:**

**VOTE REQUIRED:**

**ATTACHMENTS:**

1. League of Cities Email, April 27, 2020
2. Flaherty-Hood Email, May 4, 2020
3. Betsy Steuber Email, May 5, 2020

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

MS

attachment 1.

## Mark Sievert

---

**From:** Van Nevel, Christina <CVanNevel@lmc.org>  
**Sent:** Monday, April 27, 2020 11:54 AM  
**To:** Mark Sievert  
**Subject:** Executive Orders 20-38 & 20-40

Good afternoon Mark,

Thank you for contacting the League of Minnesota Cities for guidance on Executive Order 20-38 and 20-40.

Starting with order 20-38:

Many cities have closed their park shelters. Specific guidance on 20-38 is available from the DNR's COVID-19 Outdoor Recreation, Facilities and Public Guidelines available here:  
<https://www.dnr.state.mn.us/aboutdnr/covid-19-outdoor-recreation-guidelines.html>.

Though it is slightly different, guidance has changed on the issue of playgrounds. The Governor's Office's most recent communication is that the executive order does not prohibit the use of public playgrounds. Cities and counties can choose to close playgrounds for health and safety reasons. If your city allows play equipment to remain open in addition to open areas, residents must still maintain at least six feet of distance from anyone not in their household and avoid group play. Cities can help residents comply with this by sharing this message and posting signs on equipment.

Additionally, the MDH recommends postponing 1) events where 50 people or more would gather, 2) smaller events held in crowded venues that do not allow social distancing of six feet, and 3) events with more than 10 people where the participants are at high risk for severe illness. However, organizers may need to take unique risks into consideration. Gov. Walz has declared a peacetime emergency and implemented community-level strategies to slow the COVID-19 spread in Minnesota. This may be taken into consideration when making a determination on the closure of park shelters.

Overall, when it comes to making specific legal determinations, your city attorney is best equipped to review the specifics of the facility to make a legal determination.

Second, order 20-40

We recently published an article that discusses both the opening/closing of parks and the canceling of parks and recreation activities available here: [https://www.lmc.org/news-publications/news/all/managing-parks-and-rec-summer-covid-19/?utm\\_source=April+20%2C+2020+Bulletin+CHLZDC&utm\\_campaign=Cities+Bulletin+4-6-2020&utm\\_medium=email](https://www.lmc.org/news-publications/news/all/managing-parks-and-rec-summer-covid-19/?utm_source=April+20%2C+2020+Bulletin+CHLZDC&utm_campaign=Cities+Bulletin+4-6-2020&utm_medium=email).

To clarify, executive order 20-40 allows workers at non-critical sector industrial and office-based businesses that are non-customer facing are allowed to go back to work as long their employer has met a series of criteria, it would not apply to an aquatic park. Considerations for the city to determine whether to open their aquatic park later this summer are available in the article above. For now,

Your city attorney is best equipped to determine the eligibility of certain facilities to open depending on the circumstances of the time including new/current executive orders. However, 20-40 does not apply to a city's aquatic center because it is neither an industrial or office based business. Exec. Order 20-40:  
[https://mn.gov/governor/assets/EO%2020-40%20Final\\_tcm1055-429564.pdf](https://mn.gov/governor/assets/EO%2020-40%20Final_tcm1055-429564.pdf). More information on 20-40 is available on our website here: <https://www.lmc.org/resources/return-to-work-guidance-covid/>

I hope this information is helpful to you, please let me know if you have further questions on the matter.

Sincerely,

**Christina Van Nevel | Research Dept. Law Clerk**

Phone: (651) 281-1246

[cvannevel@lmc.org](mailto:cvannevel@lmc.org)

League of Minnesota Cities | 145 University Ave. West | St. Paul, MN 55103

[www.lmc.org](http://www.lmc.org) | [Facebook](#) | [Twitter](#) | [Podcast](#)

This response is intended to convey general information and should not be taken as legal advice or as a substitute for competent legal guidance. Consult your city attorney for advice regarding specific situations.

attachment 2.

## Mark Sievert

---

**From:** David A. LaBerge <dalaberge@flaherty-hood.com>  
**Sent:** Monday, May 4, 2020 1:13 PM  
**To:** Mark Sievert  
**Cc:** Brandon Fitzsimmons; Chelsea J. Bodin; Robert Scott  
**Subject:** RE: Aquatic Park

Hi Mark,

Per Executive Order 20-48, issued by the Governor this past Friday, all Minnesotans are still ordered to “stay at home” subject to certain exemptions. E.O. 20-48, paragraph 1. Consequently, employees (including city employees) are not allowed to physically show up for work unless they qualify as an exempt Critical Sector employee and are unable to perform their work from home. E.O. 20-48, paragraph 6. The order lists several Critical Sector categories under which an employee may fall.

The most relevant category for aquatic center staff is titled “outdoor recreational facilities.” E.O. 20-48, paragraph 6(kk). Under this category “private, state and local government workers” who support “publicly and privately maintained or operated outdoor recreational facilities” may be considered exempt, so long as the facility does not involve gatherings. The order specifically names pool workers as an example of workers who would not be exempt under this category.

The only other relevant category for aquatic center staff is titled “Other community-based government operations and essential functions.” Under this category cities are allowed to determine for themselves which of their employees are exempt. However, those employees are limited to “the minimum personnel necessary” to “ensure the health safety, and welfare of the public, to preserve the essential elements of the financial system of government, and to continue priority services as determined by [the city].” E.O. 20-48, paragraph 6(i). It seems unlikely aquatic center employees would fall under this category.

In sum, because the order does not clearly exempt aquatic center staff, they would most likely not be allowed to return to work.

In his recent press conferences, Governor Walz has been using a “dial” metaphor, and indicating that as the state gets a better handle on the pandemic, the state may begin “turning up the dial,” thus opening up more facilities and businesses. Right now, things like malls, sporting venues, and concerts are examples of things that will open when the dial is turned all the way up. Based on the order, an aquatic center appears closer to that side of things. As the dial turns, we’ll hopefully get a more clear timeline on when facilities like the aquatic center could open.

Please reach out with any other questions.

Best,  
David

David A. LaBerge, Associate Attorney  
Flaherty & Hood, P.A.  
525 Park Street, Suite 470  
St. Paul, MN 55103  
Phone: (651) 259-1915  
Fax: (651) 225-9088

**Mark Sievert**

---

**From:** Betsy Steuber  
**Sent:** Tuesday, May 5, 2020 1:23 PM  
**To:** Troy Nemmers; Mark Sievert; Paul Hoyer; Nick Lardy  
**Subject:** Pool Status for the Summer

I have been reaching out to several of the local community pools in regards to summer operations and COVID19. Here is some additional correspondence and information from the Minnesota Safety Council regarding pools and COVID 19. While this information is quite lengthy, it is very informative.

**Winnebago:** waiting at this time with the anticipation of receiving some guidance from the Governor. The Administrator indicated "it is not looking good, but we are waiting for some clarification". They will be meeting on Tuesday, May 12. Originally planned to start training staff May 18, but that will not happen. No date indicated of when that is rescheduled to occur.

**Madelia:** closed: see information below.

"The Council decided to close the pool for the summer last night. We are closing the pool for maintenance. We have been working with an aquatic engineer this winter to develop plans and specs to sandblast the pool and paint. Our plan was to complete this in September. If we close the pool we can do it sooner and let the everything cue properly. We are also looking at adding additional features to the pool – like a rock wall. We have never been able to do this because of running out of time each year. We will be looking at everything and taking advantage of the time/staff and funds. I just talked to the newspaper and we will be doing a progress report to update everyone on what is being done. It was a very hard decision but we feel it will be the best for the community!"

**Truman:** waiting at this time – have approved purchasing supplies knowing they could hold them over, if necessary. Next meeting is May 18.

**Blue Earth:** waiting. We have been in frequent contact.

**New Ulm:** closed – see emails below

**Wells:** I have not had direct contact with any City staff.

Should I be aware of any further changes, I will keep you posted.



100 Downtown Plaza Fairmont, MN 56031  
[www.fairmont.org](http://www.fairmont.org) 507-238-9461  
Direct Line: 507-238-3949

---

**From:** Cheryl Kormann <CherylK@newulmmn.gov>  
**Sent:** Tuesday, May 5, 2020 12:13 PM  
**To:** Betsy Steuber <bsteuber@fairmont.org>  
**Subject:** Pool Status for the Summer

Good morning, Betsy:

It was nice visiting with you this morning about the fate of our pools for the summer.

The City of New Ulm is likely going to keep our 2 small wading pools located in our parks closed for the summer because they are not very large spaces; it would be very difficult to enforce physical distancing with toddlers and small children. Also, since the main age group of users of these facilities is toddlers (they are open to 8 and under), we don't think it is wise to open at this point (dealing with swimmers diapers, sanitation requirements, physical distancing requirements, etc.), plus, we don't know enough about the water born transmission.

Our brand new splash pad that we built last fall will not open this year, due to COVID-19, as it won't be possible to sanitize the push buttons to turn on the spray features. 😞

We are going to ask City Council to drain our indoor pool. We were planning on closing it in July, due to construction of our new aquatic center. With all of the lifeguard reviews (they haven't worked in over two months), regulations and unknowns surrounding the virus, it just doesn't pay to keep treating and heating the water. This is not an easy decision for many other cities and has been the discussion among us at many Zoom meetings. I believe many cities will close their pools and likely their beaches as well. Many have already made that announcement, including the Minneapolis Park Board.

The Chair of the MN Recreation and Parks Association Aquatics Section requested guidelines from the MN Safety Council regarding labor and patron safety in pool settings, and what guidelines and recommendations from the Minnesota Department of Health for lifeguards or swim instructors coming into contact with someone who has COVID-19. His response enforces our desire to drain the pool now, since we have to for construction anyway. He said, "In the water, personal protection and disinfection become difficult at best. Distancing may be possible but the potential water-born transmission makes that questionable as well. To further complicate matters, if your lifeguards and instructors are minors, then they couldn't legally release the employer (the City) from the risks described above, even if they wanted to." He also makes reference to lifeguards and instructors as practitioners, balancing life saving actions and disease exposure. A lifeguard is not going to know someone's health status if and when the swimmer needs assistance, so the LG would have to assume all victims are a potential risk and act accordingly.

I am including the links he makes reference to below, in case you would like additional information.

I wish you luck in the decision making process. I know it's not easy and I know people won't be happy, but my gut is telling me that it's probably the only thing we CAN do is keep them closed for the summer. It's a terribly sad situation.

Cheryl Kormann, Assistant Director  
New Ulm Park and Recreation Department  
122 S. Garden St.  
New Ulm, MN 56073  
507.359.8340 Voice  
507-359-8342 Fax

Question on Staff safety

All,  
I have attached a response from Minnesota Safety Council President based on the question I posed below his response. I thought it was a really interesting response to share. If anyone has a contact with MDH to elaborate on these decisions and provide extra guidance that would be much appreciated!

**Katie Yandell | Recreation Supervisor**  
City of Plymouth  
3400 Plymouth Boulevard  
Plymouth, MN 55447  
Phone: 763.509.5222

**From:** Paul Aasen [<mailto:Paul.Aasen@minnesotasafetycouncil.org>]  
**Sent:** Monday, May 4, 2020 2:57 PM  
**To:** Katie Yandell <[kyandell@plymouthmn.gov](mailto:kyandell@plymouthmn.gov)>  
**Subject:** RE: Question on Staff safety

Hi Katie,

Thanks for reaching out. You raise an interesting question that raises other questions...

First, below are links to some specific guidance on CPR, state guidance on outdoor activities (many of the same principles apply) and the general MDH COVID site.

<https://www.nsc.org/work-safety/safety-topics/coronavirus/interim-cpr-guidelines>

<https://www.dnr.state.mn.us/aboutdnr/covid-19-outdoor-recreation-guidelines.html#orf>

<https://www.health.state.mn.us/diseases/coronavirus/index.html>

I believe there are two fundamental layers you need to consider.

First is the lifeguard/instructor as an employee. All of the guidance recommends a minimum set of common practices that includes distancing practices, disinfection (applies to whole work place), and personal protective equipment. I would start by considering how each of these apply to lifeguards versus instructors versus customers/patrons. While a lifeguard may be able to distance while wearing PPE and managing the cleanliness of their area or station, I think an instructor is in a different situation. I don't think a reasonable level of distancing, disinfection or personal protection is possible for swim class in the water together. I would also have a concern about enhanced disease transmission for people in the same water body (normal pool disinfectants clearly help but maintaining a sufficient residual to rapidly kill the virus might be hard to do). The challenges hold for the patron/student. In the water, personal protection and disinfection become difficult at best. Distancing may be possible but the potential water-borne transmission makes that

questionable as well. To further complicate matters, if your lifeguards and instructors are minors, then they couldn't legally release the employer from the risks described above even if they wanted to.

Second is lifeguard (and maybe instructor) as a practitioner. The first link above connects to guidance on CPR during COVID. It describes the balance between life saving actions and disease exposure. The goal is to render aid without taking extraordinary risks. Given the lifeguard is unlikely to know someone's health status when they need assistance, the safe procedure is to assume all victims are potential exposures and to act accordingly.

I have not seen anything more specific for your situation. I'd encourage you to reach out to the contacts on the MDH page to see if they have other advice.

Thanks, Paul

Paul Aasen  
President  
Minnesota Safety Council  
[minnesotasafetycouncil.org](http://minnesotasafetycouncil.org)  
612-309-5440

Connect with us:



**From:** Katie Yandell <[kyandell@plymouthmn.gov](mailto:kyandell@plymouthmn.gov)>  
**Sent:** Monday, May 04, 2020 1:06 PM  
**To:** Paul Aasen <[Paul.Aasen@minnesotasafetycouncil.org](mailto:Paul.Aasen@minnesotasafetycouncil.org)>  
**Subject:** Question on Staff safety

Good afternoon,

I realize you are probably extremely busy during this time trying to determine future recommendations for safety of employees. I am the chair of the Minnesota Parks and Recreation Aquatics Network and we are working hard to determine the fate of programs, facilities, all while trying to protect staff and patrons. With regard to labor safety, what are the guidelines and recommendations from the Minnesota Department of Health for those that such as lifeguards or swim instructors that are most likely minors coming into contact with someone who has COVID-19?

I found your information online in hopes of choosing the correct contact to ask some of these questions, however if you are not the best contact person could you direct to someone maybe better suited?

Thank you again for your assistance,

**Katie Yandell | Recreation Supervisor**  
City of Plymouth  
3400 Plymouth Boulevard  
Plymouth, MN 55447  
Phone: 763.509.5222

MEETING DATE: May 11, 2020

MS

SUBJECT: City Administrator Search

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Mark Sievert, Interim City Administrator

INTRODUCED BY: Mark Sievert, Interim City Administrator

COUNCIL LIAISON:

TYPE OF ACTION:

<input checked="" type="checkbox"/>	Motion (Roll Call)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENED ACTION BY:

<input type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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<input type="checkbox"/>	Issuance	<input type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

STATEMENT: At the special council meeting on May 5<sup>th</sup>, you authorized the search consultant to negotiate an employment agreement with your preferred candidate. Subject to those negotiations and your acceptance I have placed this on the agenda for possible approval.

MOTION: TBD

VOTE REQUIRED:

ATTACHMENTS:

1.  
\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

MEETING DATE: May 11, 2020

MS

SUBJECT: Award Contract for 2020-A Improvements

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Troy Nemmers, Director of Public Works/City Engineer

INTRODUCED BY: Troy Nemmers, Director of Public Works/City Engineer

COUNCIL LIAISON:

TYPE OF ACTION:

<input type="checkbox"/>	Motion (Voice Vote)	<input checked="" type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENED ACTION BY:

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

STATEMENT: Bids for the Lake Avenue Reconstruction Project (2020-A) will be opened at 10:00 a.m. on Friday, May 8, 2020. Information will be emailed out Monday ahead of the council meeting. The email will include a recommendation to award the project to the lowest responsible bidder. The Engineer's estimate on this project is \$3,447,806.00.

MOTION: To adopt resolution 2020-26

VOTE REQUIRED: Roll call - Simple majority

ATTACHMENTS:

1. Resolution 2020-26
2. \_\_\_\_\_
3. \_\_\_\_\_

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_



# BOLTON & MENK

Real People. Real Solutions.

1501 South State Street  
Suite 100  
Fairmont, MN 56031-4467  
Ph: (507) 238-4738  
Fax: (507) 238-4732  
Bolton-Menk.com

May 8, 2020

Troy Nemmers, Public Works Director/City Engineer  
City of Fairmont  
100 Downtown Plaza  
Fairmont, MN 56031

RE: Project Recommendation and Bid Abstract  
Lake Avenue Improvements (MSAS 111), S.A.P. No. 123-111-010  
Fairmont, Minnesota  
BMI Project No.: F17.117990

Dear Mr. Nemmers:

The bid letting for the above-referenced project was held on May 8, 2020, at 10:00 a.m. Four bids were received and read. In accordance with contract requirements, a unit price bid tabulation was prepared. Based upon the tabulation of actual unit prices, the low bidder for the project is Crow River Construction of New London, Minnesota. A breakdown of the total bid amounts and engineer's estimate is as follows. A detailed tabulation of the bids is also included.

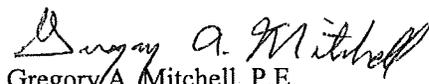
Bidders	Total Amount Bid
Crow River Construction	\$4,090,241.25
R & R Excavating	\$4,447,460.97
Duininck, Inc.	\$4,577,267.00
Minnesota Paving & Materials	\$4,941,186.85
<i>Engineer's Estimate</i>	<i>\$3,566,106.00</i>

The total amount of the low bid is \$4,090,241.25, which is \$524,135.25 above the engineer's estimate. Based on the age and condition of Lake Avenue, we believe it would be in the City's best interest to proceed with these improvements at this time. We believe that the bids received are competitive and responsive.

Therefore at this time, and with the understanding that the contractor will provide the necessary bonds and insurance as required by the contract, we recommend that the City proceed with this project and award the contract to Crow River Construction in the amount of \$4,090,241.25.

Please feel free to contact me with any questions or if you need additional information.

Sincerely,  
Bolton & Menk, Inc.

  
Gregory A. Mitchell, P.E.  
Principal Engineer

Encl.

**RESOLUTION NO. 2020-26**

STATE OF MINNESOTA )  
COUNTY OF MARTIN ) SS  
CITY OF FAIRMONT )

**RESOLUTION ACCEPTING BID**

**LAKE AVENUE IMPROVEMENTS – 2020-A  
S.A.P. NO. 123-111-010  
CITY OF FAIRMONT, MINNESOTA**

WHEREAS, pursuant to an advertisement for bids for the Lake Avenue Improvement Project, 2020-A, bids were received, opened and tabulated according to law, and the following bids were received complying with the advertisement:

<u>BIDDER</u>	<u>AMOUNT OF BID</u>
Crow River Construction New London, MN	\$4,090,241.25
Duininck, Inc. Prinsburg, MN	\$4,577,267.00
Minnesota Paving & Materials Mankato, MN	\$4,941,186.85
R & R Excavating, Inc. Hutchinson, MN	\$4,447,460.97

WHEREAS, it appears that Crow River Construction, of New London, MN, is the lowest responsible bidder; and,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRMONT, MINNESOTA:

1. The Mayor and Clerk are hereby authorized and directed to enter into the contract for the Lake Avenue Improvement Project, 2020 -A with Crow River Construction in the name of the City of Fairmont, contingent on receiving a federal grant, for the improvements according to the plans and specifications therefore approved by the City Council and on file in the office of the City Clerk at a cost of \$4,090,241.25.

2. The City Clerk is hereby authorized and directed to return forthwith to all bidders the deposits made with their bids, except that the deposits of the successful bidder and the next lowest bidder shall be retained until a contract has been signed.

Motion by:  
Seconded by:  
All in favor:  
Opposed:  
Abstained:  
Absent:

ADOPTED by the City Council this 11th day of May 2020.

---

Deborah J. Foster, Mayor

ATTEST:

---

Patricia J. Monsen, City Clerk

(SEAL)

MEETING DATE: May 11, 2020

SUBJECT: Appoint Troy Nemmers as Interim City Administrator

REVIEWED BY: Mark Sievert, Interim City Administrator

SUBJECT INITIATION BY:

<input type="checkbox"/>	Petition	<input type="checkbox"/>	Board	<input checked="" type="checkbox"/>	Staff	<input type="checkbox"/>	Council	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
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SUBJECT BACKGROUND: Mayor Deborah J. Foster

INTRODUCED BY: Mayor Deborah J. Foster

COUNCIL LIAISON:

TYPE OF ACTION:

<input checked="" type="checkbox"/>	Motion (Voice Vote)	<input type="checkbox"/>	Resolution (Roll Call)	<input type="checkbox"/>	Discussion
<input type="checkbox"/>	Ordinance 1 <sup>st</sup> Reading (Introduction only)	<input type="checkbox"/>	Set Public Hearing (Motion)	<input type="checkbox"/>	Information Only
<input type="checkbox"/>	Ordinance 2 <sup>nd</sup> Reading (Roll call)	<input type="checkbox"/>	Hold Public Hearing (Motion to close)	<input type="checkbox"/>	

RECOMMENED ACTION BY:

<input checked="" type="checkbox"/>	City Staff	<input type="checkbox"/>	Board	<input type="checkbox"/>	Commission	<input type="checkbox"/>	Committee
<input type="checkbox"/>	Issuance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Authorization	<input type="checkbox"/>	No recommendation
<input type="checkbox"/>	Denial	<input type="checkbox"/>	Rejection	<input type="checkbox"/>	No action needed	<input type="checkbox"/>	

**STATEMENT:** Interim City Administrator Mark Sievert sent Mayor Foster his letter of resignation effective today, May 11, 2020 (copy attached). In light of Sievert’s resignation and our new City Administrator not beginning her position until May 20<sup>th</sup>, Mayor Foster would like to get Council direction to work with Flaherty and Hood to create a satisfactory agreement with Troy Nemmers to act as Interim City Administrator from May 12 to May 19.

**MOTION:** To authorize Flaherty and Hood to work with Troy Nemmers, Public Works Director/City Engineer to create an agreement to act as Interim City Administrator from May 12 to May 19, with complete powers of the City Administrator during this time frame.

**VOTE REQUIRED:** Simple majority

**ATTACHMENTS:**

1. Mark Sievert’s Resignation
2. \_\_\_\_\_
3. \_\_\_\_\_

\*\*\*\*\*

Council Action: \_\_\_\_\_ Date: \_\_\_\_\_

## Patty Monsen

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**From:** Mark Sievert  
**Sent:** Monday, May 11, 2020 12:02 PM  
**To:** Deborah Foster  
**Cc:** Patty Monsen  
**Subject:** Resignation

Mayor,

As per your request, please accept my resignation as Interim City Administrator effective today. I'm sorry that my personal situation will not allow me to continue to serve until your new administrator arrives.

It has been a pleasure serving you, the council and staff. All the best.

Sincerely, Mark Sievert

Sent from my Verizon, Samsung Galaxy smartphone