Carver County Board of Commissioners

Regular Session April 13, 2010

County Board Room

Carver County Government Center

Human Services Building Chaska, Minnesota

			PAGE
9:15 a.m.	1.	a)	CONVENE
		b)	Pledge of Allegiance
		c)	Public participation (comments limited to five minutes)
		d)	Introduction of New Employees
	2.	Agei	nda review and adoption
	3.	Appı	rove minutes of April 6, 2010 Regular Session1-2
	4.	Com	munity announcements
9:15 a.m.	5.	CON	SENT AGENDA
		5.1	Payment of emergency claim
		5.2	Approval of an additional .4 FTE position to the Jail
			pre-release program4
		5.3	Approval of out of state travel to attend 39th Annual
			Washington, D.C. Fly-In5
		5.4	Project SP 10-611-06 architectural/history survey 6-7
		5.5	Administrative permit for special event - St. Peter Church
			Maifest Celebration
		5.6	Acceptance of Emergency Management Equipment
			(bi-directional amplifier system) on behalf of the Metropolitan
			Regional Homeland Security & Emergency Management
			Committee
		5.7	2010 crack sealing agreement (CP #1012) 12
		5.8	Community Social Services' warrants NO ATT
		5.9	Commissioners' warrants
9:20 a.m.	6.	SHE	RIFF
		6.1	Approval of Sheriff's Office Proclamations
9:25 a.m.	7.	PUBI	LIC HEALTH AND ENVIRONMENT DIVISION
		7.1	Public hearing - Ordinance #66-2010-Adult Use
			Business Regulations, Amend County Code and
			Fee Schedule

		7.2	MPCA grant agreement to implement Lake Burandt
			TMDL
		7.3	TMDL priority subwatersheds and direct discharge program
			for 2010
		7.4	Approve release of draft CCWMO Water Management Plan
			for review
11:10 a.m.	8.	TAX	PAYER SERVICES
		8.1	Approval of organizational restructure in Taxpayer Services
			Department
11:30 a.m.		ADJO	DURN REGULAR SESSION
		BOA	RD REPORTS
11:30 a.m.		1.	Chair
		2.	Board Members
		3.	Administrator
12:00 p.m.		4.	Adjourn

David Hemze County Administrator

UPCOMING MEETINGS

April 13, 2010	1:00 p.m. Joint Transit Workshop with Scott County Board (see
	attached agenda)
April 20, 2010	4:00 p.m. Work Session
April 22, 2010	10:00 a.m. Lake Waconia Regional Park Tree Planting
April 27, 2010	9:15 a.m. Board Meeting
May 4, 2010	9:15 a.m. Board Meeting





Joint Transit Workshop of the Scott and Carver County Boards

Tuesday, April 6, 2010

1:00 p.m. to 3:30 p.m.

1:00 p.m.

Introductions

Board Chairs

Smart Link Transit

- Statistics
- 2009 Actual /2010 Funding/Budget
- New Freedom Grant
- Transit Link
- Medical Assistance
- Additional Contracted Services
- System Concerns
- Future endeavors

3:30 p.m.

Adjourn

A Regular Session of the Carver County Board of Commissioners was held in the County Government Center, Chaska, on April 6, 2010. Chair James Ische convened the session at 9:17 a.m.

Members present: James Ische, Chair, Gayle Degler, Vice Chair, Tim Lynch, Randy Maluchnik and Tom Workman.

Members absent: None.

Workman moved, Degler seconded, to approve the agenda. Motion carried unanimously.

Lynch moved, Maluchnik seconded, to approve the minutes of the March 22, 2010, Emergency Meeting and March 23, 2010, Regular Session. Motion carried unanimously.

Community announcements were made by the Board.

Maluchnik moved, Workman seconded, to approve the following consent agenda items:

Adopted the Findings of Fact and issued Order #CU-PZ20100004 for the issuance of Conditional Use Permit #PZ20100004, Mark Halla, Dahlgren Township.

Approved the donation of gift cards given by the VFW to support uniform and equipment purchases for the Sheriff's Reserves.

Approved \$800 memorial fund donation to the Posse.

Authorized Sheriff's Detective to attend the ICAC training in New Jersey in May.

Accepted all quotes for Carver County Project No. 1003, metal culverts and corrugated polyethylene pipe.

Approved reducing the retainage to \$69,483.30 allowing the release of corresponding retainage amount of \$69,483.29 to SM Hentges, Inc. for Project 10-618-09.

Awarded Carver County Project No. 1004, mineral aggregates, to Wm. Mueller & Sons, Inc., and Sibley Aggregates.

Awarded Carver County Project No. 1005, limestone rock, to Bryan Rock Products.

Awarded Carver County Project No. 1006, plant mixed asphalt, to Commercial Asphalt, Sibley Aggregates and Wm. Mueller & Sons.

Awarded Carver County Project No. 1008, application of reflectorized pavement markings, to AAA Striping Service.

Accepted all quotations for Carver County Project No. 1009, rental equipment.

Directed staff to request regional status for the extension of the Minnesota River Bluffs Regional Trail, the Union Pacific Rail Line corridor, Waconia to Carver Trail and the County Road 10 alignment.

Community Social Services' actions.

Approved payment of the following Commissioners' warrants:

INSERT

Motion carried unanimously.

LaVonne Kroells, Carver County Red Cross Chapter Manager, appeared before the Board to update them on their activities and needs. She thanked the Board for the opportunity educate residents on what the Red Cross does and pointed out the Red Cross has been around since 1917.

She stated the blood drives were the most well known services they provide and although 48% of the population is eligible to participate, only 4% actually do it. Kroells stated they collected 3,400 pints a year in Carver County. Kroells explained they respond to single family fires and provide food, clothing and shelter for three days if families are unable to get back in. In addition, she stated they help the Sheriff in searches and provide meal assistance to emergency management when they are out for an extended period of time.

Kroells pointed out the health and safety services provided through CPR and swimming lessons. She noted health and safety services was one area where they can gain revenue. She stated they do not receive any federal funding and rely on safety revenue and donations. She indicated, due to financial issues, they will have to do some fundraising and were looking for Red Cross Board members.

Mark Muhlenkort, Red Cross Board Chairperson, explained he has been their Board Chair for almost three years. He stated they were a unique organization because they rely on volunteers. He pointed out their annual meeting at the end of April and invited Commissioners to attend. He indicated they were looking for more community minded members to join their Board.

The Board thanked Kroells and Muhlenkort for their update.

Degler moved, Maluchnik seconded, to go into closed session according to MSA 13D.05, subd. 3 (c) (3) to develop or consider offers or counteroffers for the purchase of real estate located at 523 East 4th Street, Chaska, Minnesota. Motion carried unanimously.

The Board adjourned the closed and Regular Session at 10:55 a.m.



Office of Finance Director

Carver County Government Center Administration Building 600 East Fourth Street Chaska, MN 55318-1202

Phone: 952 361-1509 Fax: 952 361-1308

AUTHORIZATION

PAYMENT OF EMERGENCY CLAIM

Motion passed by the Board of County Commissioners at their February 24, 1987 meeting has authorized the issuance of a check upon the consensus of the Chairman of the Board, County Administrator and the County Attorney (with a minimum of two).

VENDOR: Strenhouse Recovery Center				
ACCOUNT: 01-090-000-1101-6379				
AMOUNT: \$230.00	_			
REASON: rept for Cryme Victing	$\left(\ \ \right)$			
Department Head Signature:	4			
Chairman of County Board				
County Administrator Twown David Hemzer David Hemzer James W. Keeler, Jr. James W. Keeler, Jr.	1			



AGENDA ITEM: Approve of an additional .4 FTE positions to the Jail Pre-release Program			
Originating Division: Community Social Services	Meeting Date: April 13, 2010		
Amount of Time Requested: XX minutes	Attachments for packet: ☐Yes ☒ No		
Item Type: ⊠Consent □Regular Session □Closed Sess	sion		
BACKGROUND/EXPLANATION OF AGENDA ITEM: The County was awarded the Jail Pre-release Program Grant from the Department of Justice. The employee that was hired and currently in place in the .8 FTE Jail Pre-Release Coordinator position has to decrease her hours to a .2 FTE to be in compliance with PERA rules. This situation has been discussed with the Grant Manager from the Department of Justice and they believe that a full time position should be part of the Grant to insure the success of the program. There is sufficient money in the grant to support a 1.0 FTE and a .2 FTE.			
ACTION REQUESTED: To create a .2 FTE Jail Pre-release Coordinator and increase the existing .8 FTE to a 1.0 FTE Jail Pre-release Coordinator (.4 total increase in FTE's).			
FUNDING County Dollars = \$0 Other Sources & Amounts = All Grant funded = \$0 TOTAL = \$0 Related Financial Comments: No impact financial impact other decreases recidivism to the jail population.	FISCAL IMPACT None Included in current budget Budget amendment requested Other: then cost savings in those cases where this grant		
⊠Reviewed by Division Director	Date: 4/05/2010		



1			
AGENDA ITEM: Approval of out-of-state travel to attend	39 th Annual Washington, D.C. Fly-In		
Originating Division: Public Works	Meeting Date: April 13, 2010		
Amount of Time Requested:	Attachments for packet: ☐Yes ☒ No		
ltem Type: ⊠Consent □Regular Session □Closed Ses	sion		
BACKGROUND/EXPLANATION OF AGENDA ITEM: Transportation Alliance.	Carver County is a member of the Minnesota		
The Minnesota Transportation Alliance remains the recogni officials, advocates and government entities. Their strong repuland innovative policy initiatives have made them the organization concerns arise.	itation for providing accurate, up-to-date information		
One event the Minnesota Transportation Alliance organizes each year is the Washington D.C. Fly-in. The Annual Washington D.C. Fly-in provides MTA members a chance to be heard on transportation issues at the nation's Capital. At Washington D.C. meetings are set up with Minnesota's Congressional delegation to discuss transportation issues in Carver County and the State.			
This year's annual Washington, D.C. Fly-In will be held June 8	~ 10, 2010.		
In a number of other Minnesota County's the County Engineer to the Fly-in.	r accompanies one or more County Commissioners		
ACTION REQUESTED: Approval for County Engineer Lyndor	n Robjent to attend the 2010 Washington, DC Fly-in.		
FUNDING County Dollars = \$1,600 Other Sources & Amounts = \$	FISCAL IMPACT □None □Included in current budget □Budget amendment requested □Other: hight + txs (\$557.63); airfare/approx. \$400/roundtrip. Francis reviewed itemized list to make decision for		
Reviewed by Division Director	Date: 4/7/10		

S:\Lyndon\2010 Washington DC Fly-In - baf

Report Date: April 7, 2010



AGENDA ITEM: Project SP 10-611-06 Architectural/Histor	ry Survey			
Originating Division: Public Works	Meeting Date: April 13, 2010			
Amount of Time Requested: NA	Attachments for packet: ⊠Yes ☐ No			
Item Type: ⊠Consent □Regular Session □Closed Sess	sion			
BACKGROUND/EXPLANATION OF AGENDA ITEM: Project SP 10-611-06 includes the reconstruction of CSAH 11 beginning at CSAH 61 just west of Chaska and continuing Northerly to CSAH 10 west of Chaska. The 2006-2008 State Transportation Program awarded \$2.81 million to the County for this project. The project is included in the program for 2011 construction. Since this project will receive Federal funding, and includes approximately 0.75 miles of new alignment, an Environmental Assessment (EA) needs to be completed and reviewed by FHWA. As part of the EA, a "Phase I and II Architectural/History Study" must be done along the entire corridor. The analysis must be completed before the EA can be finalized and the project awarded. By having this study completed through this Mn/DOT agreement the State cost shares on 80% of the contract with the County assuming the remainder 20% cost.				
ACTION REQUESTED: It is requested that the County Board approve the attached resolution that authorizes the Board Chair and the County Administrator to sign and submit the MnDOT contract No. 95964 and authorize payment for 20 percent (\$5,170.40) of the total \$25,852.01 for the "Phase I and II Architectural History Survey".				
FUNDING County Dollars = \$ 5,170.40 Other Sources & Amounts = \$20,681.61 = \$ TOTAL = \$ 25,852.01 Related Financial Comments:	FISCAL IMPACT □ None □ Included in current budget □ Budget amendment requested □ Other:			
Reviewed by Division Director Westman	Date: 4/1/10			

S:S:\Projects\SP 10-611-06\1106 BAF historical survey.docx

Report Date: April 1, 2010

BOARD OF COUNTY COMMISSIONERS CARVER COUNTY, MINNESOTA

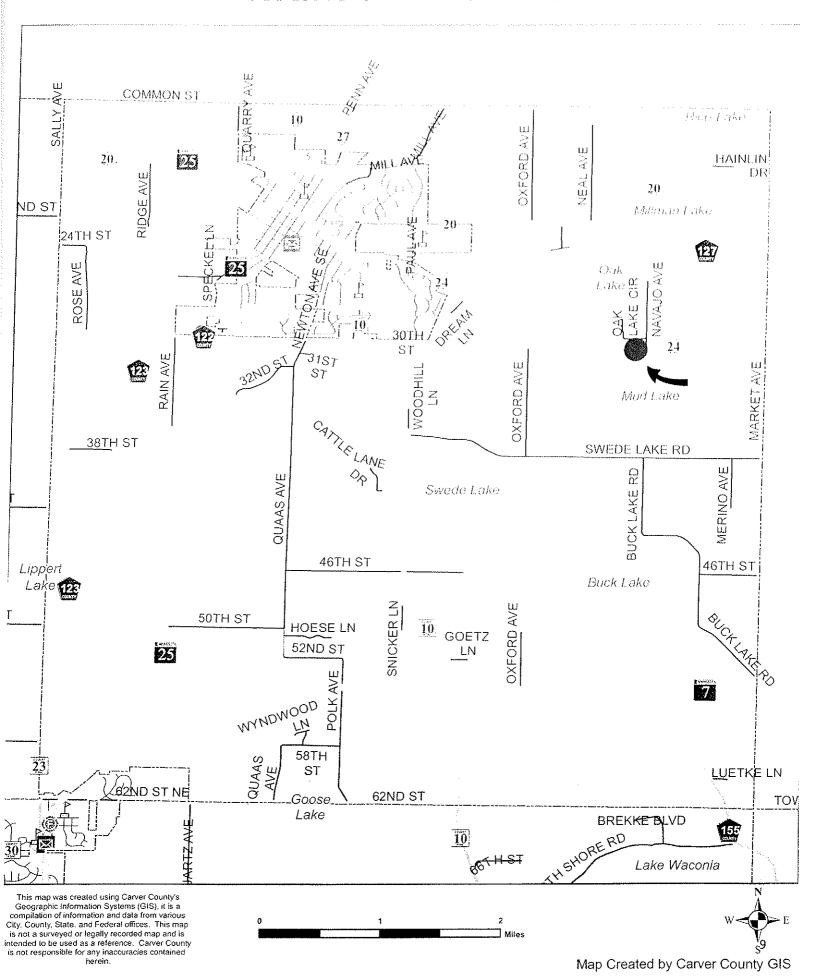
Date: <u>April 13, 2010</u>	Resolution No:	
Motion by Commissioner:	Seconded by Co	ommissioner:
F	Professional and Technical Service	es Contract
Carver C	Between ounty and Minnesota Departmen	t of Transportation
	For	
	Phase I Architectural History Preformed By	Survey
	Summit Envirosoloutions,	Inc.
	For	
	S.P. 10-611-06	
the MnDOT contract between the County Architectural History BE IT FURTHER RESOLVED to to execute such agre	: No. 95964 Professional and Te of Carver and the Minnesota Dep Survey done by Summit Envirosoli that the Carver Board Chair and t	he County Administrator are authorized d thereby assume for and on behalf of
YES	ABSENT	NO
STATE OF MINNESOTA COUNTY OF CARVER		
ertify that I have compared the foregoing	copy of this resolution with the origina , at its session held on the <u>13th</u> day	he County of Carver, State of Minnesota, do hereby I minutes of the proceedings of the Board of County of <u>April</u> , 2010, now on file in the of.
ated this 13th day of April	, 2010.	
	Dave Hem	ze County Administrator



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AGENDA ITEM: Administrative Permit for Special Event – St. Peter Lutheran Church Maifest Celebration			
Originating Division: Public Health & Environment Meeting Date: April 13, 2	010		
Amount of Time Requested: None Attachments for packet: [⊠Yes [] No		
ftem Type: ⊠Consent □Regular Session □Closed Session □Work Session □I	Ditch/Rail Authority		
BACKGROUND/EXPLANATION OF AGENDA ITEM: File #A20100352. This request is for an Administrative Special Event Permit for a Maifest Celebration to be held on Sunday, May 23, 2010 at St. Peter Lutheran Church, Watertown. Watertown Township has been contacted and no objections were raised. The permit application has been reviewed by Land Management, Public Works and the Sherriff's Office. The event will be held entirely on the St. Peter Lutheran Church property, with the exception of parking which will be done on the two parcels adjacent to the west. Written permission has been submitted by both neighboring property owners. Festivities at the property will run from 7:00 a.m. – 6:00 p.m. and includes: a flea market, German meal in the dining halt, children's games, silent auction and music entertainment. The applicant is working with the appropriate parties to obtain the necessary liquor licenses to allow for the serving of beer and brats. The applicant has also personally notified neighbors about the upcoming event. The conditions on the permit will be similar to that of other one-day events in the county including, but not limited to: a Carver County Agreement for Law Enforcement Services if deemed appropriate by the Sheriff's Office; copy of liquor licenses; as per Public Works, no parking on County Road 24 and in the event of wet weather language that states the applicant is responsible for keeping County Road 24 clear of mud and debris; submittal of Certificate of Liability Insurance for the church as well as portable restroom and waste disposal contracts for the event.			
ACTION REQUESTED: A motion authorizing the issuance of a Certificate of Zoning Compliance (#A20100352) for the St. Peter Lutheran Church Maifest Celebration.			
FUNDING County Dollars = \$-0-			
Reviewed by Division Director Date: 4/5/2010			

Report Date: April 5, 2010

WILLERION Z TOWNSILL



St. Peter Lutheran Church

3030 Navajo Rd. Watertown MN 55388

St Peter Lutheran Church will be holding a German Maifest (May Festival) Sunday May 23, 2010. Special Accordion and Alphorn Church Service will start at 9am. Flea Market vendors will be setting up at 7am and the Flea Market will run from 10am to 4pm on the east outside edge of the Church property. A German meal is served in the church dining hall from 11am to 2pm. A silent auction will also be held inside the church. Tents will be set up in the church's parking lot to accommodate musical entertainment and seating. Music will run from 11am to 5pm. Brats and beer will be served outside from 10am to 5pm. There will also be several games for the children to play outside(i.e. fishing pond, pick a duck, bean bag toss, jumping castle, etc.....). At 3pm there will be a May Pole Raising Ceremony.

Rented portable toilets will be on site as well as 3 indoor toilets. Commercial dumpster services are being hired for waste.

Township, County, and State liquor permits are being applied for as well as Liquor Liability Insurance with Minnesota Joint underwriters Association.

Neighbors have been notified of the event. Parking will be on the hayfield to the west of the property with owner's approval. To accommodate higher then normal traffic, vehicles will enter on the west side of the church to limit activity on the gravel road to the east (Navajo Ave).



AGENDA ITEM: Acceptance of Emergency Management Equipment (bi-directional amplifier system) on behalf of the Metropolitan Regional Homeland Security & Emergency Management Committee (MRHSEMC)			
Originating Division: Public Health & Environment Meeting Date: 4/13/10			
Amount of Time Requested; Attachments for packet: ☐Yes ☒ No			
Item Type: ☑Consent ☐Regular Session ☐Closed Session ☐Work Session ☐Ditch/Rail Authority			
BACKGROUND/EXPLANATION OF AGENDA ITEM:			
The Metropolitan Regional Homeland Security & Emergency Management Committee (MRHSEMC) was formed by a Joint Powers Agreement between the County governments of the 10-county Metropolitan Emergency Management Region and the Cities of Minneapolis and Saint Paul to coordinate, plan and execute the procurement of regional planning, training and equipment to build the region's ability to prevent, prepare, respond, and recover from disasters and emergencies of all hazards.			
MRHSEMC has received grant funds from the Federal Emergency Management Agency (FEMA) to be spent toward the goal to develop regional interoperable capabilities, so all member jurisdictions can mutually support each other in times of crisis or in daily emergency management and homeland security endeavors. Anoka County is MRHSEMC's fiscal agent, authorized to disburse funds as contractually obliged. The equipment purchased for each County will be owned and maintained by the County it was purchased for.			
Carver County is in the final stage of completion of its new emergency operations center (EOC) and the Emergency Management department has determined that cell phone coverage is inadequate in its below-ground location. The purchase of a bi-directional amplifier system is needed to achieve adequate cell phone coverage in the EOC.			
ACTION REQUESTED: Motion to accept bi-directional amplifier system for the EOC, in the approximate amount of \$29,750, purchased by the Metropolitan Regional Homeland Security & Emergency Management Committee (MRHSEMC) with grant funds from the Federal Emergency Management Agency (FEMA) to be used for emergency management in Carver County.			
FUNDING County Dollars = \$			
☑Reviewed by Interim Public Health Division Director (Carolyn Schmidt) Date: 3/31/10			

E136

CARVER COUNTY

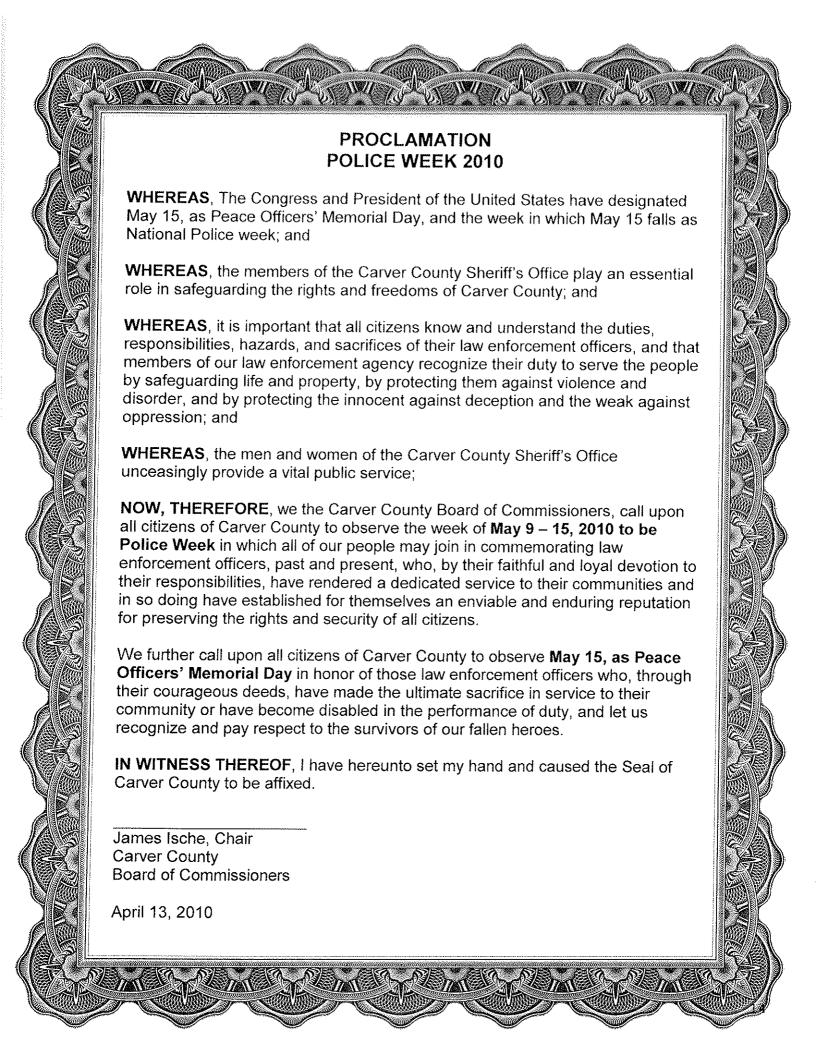
COUNTY			
AGENDA ITEM: 2010 CRACK SEALING AGREEMENT (CP #1012)			
Originating Division: Public Works	Meeting Date: April 13, 2010		
Amount of Time Requested; n/a	Attachments for packet: ⊠Yes ☐ No		
ltem Type: ⊠Consent □Regular Session □	Closed Session		
approximately 45,000 lbs. of rubberized crackl	EM: This proposal is for labor and equipment to place filler, that the County has purchased, on various county udget for this work. Proposals are based on per pound ollows -		
* Northwest Asphalt & Maintenance (\$0.63/lb.) * Precision Sealcoating (\$0.649/lb.) * Astech Asphalt Surface Technologies Corp. (\$0.83/lb.)			
between Carver County and Northwest Asphalt	at the County Board approve this service agreement t & Maintenance from Goodridge, MN and authorize the to sign this agreement, contingent on approval of the		
FUNDING County Dollars = \$28,350.00 Other Sources & Amounts = =\$ TOTAL =\$28,350.00 Related Financial Comments:	FISCAL IMPACT ☐None ☑Included in current budget ☐Budget amendment requested ☐Other:		
Reviewed by Division Director	Date: 4/8//0		

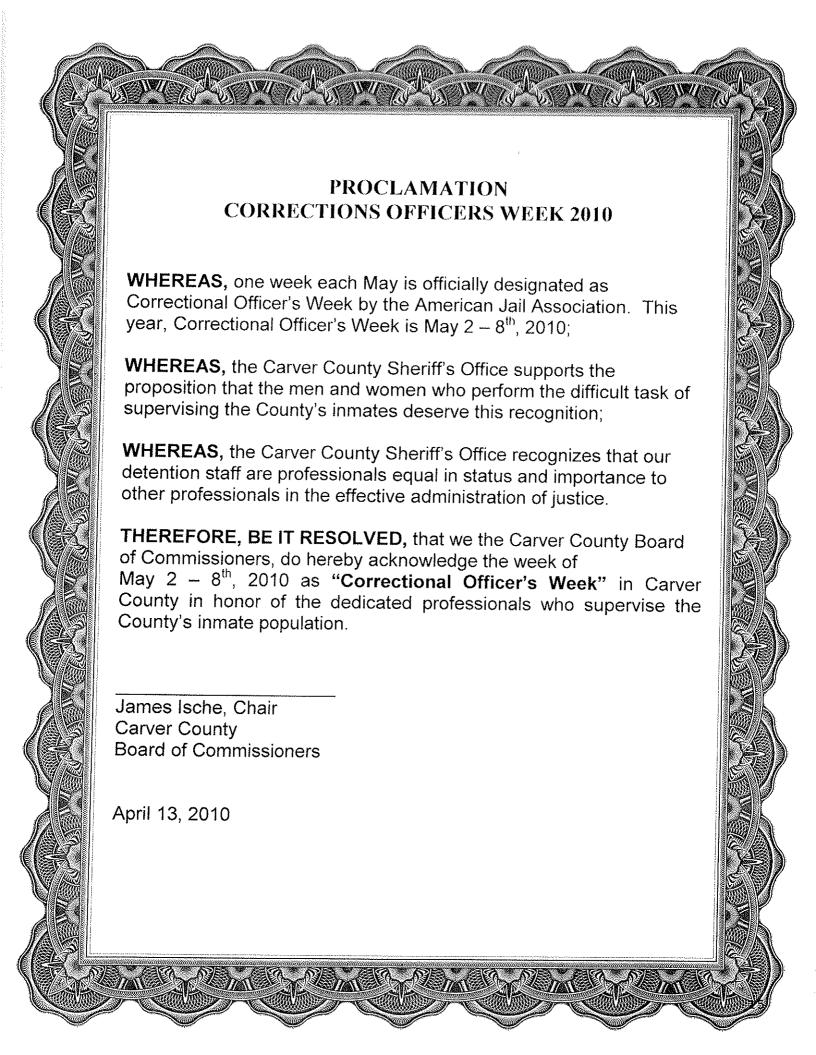
S:\Seasonals\BAF-Award\2010\1012 - Cracksealing - NW Asphalt

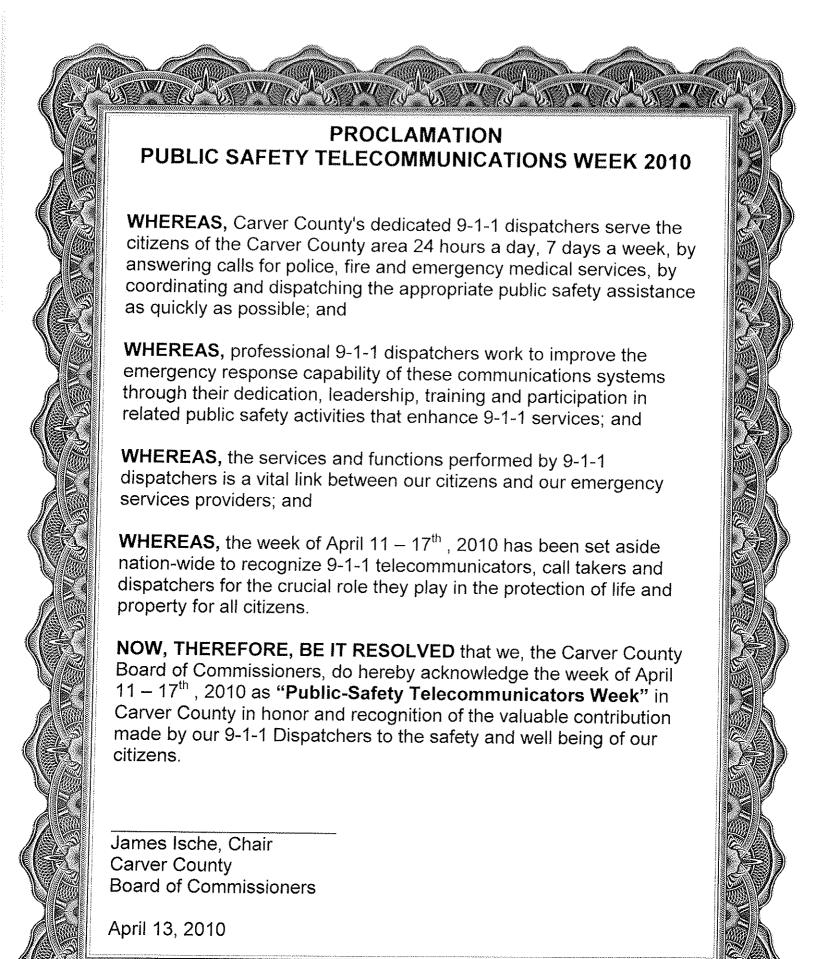


AGENDA ITEM: Approval of Sheriff's Office	Proclamation's			
Originating Division: Sheriff's Office	Meeting Date: April 13, 2010			
Amount of Time Requested: 5 minutes	Attachments for packet: XX Yes No			
	Closed Session			
April 11-17 th is National Public Safety Telecomm and honor the men and women who provide the responders.	ITEM: hunications Week. The week has been designated to recognized vital link between those in need of help and our Police-Fire-EMS			
May 2-8 th is National Correction Officers Week. This week has been designated to recognize and honor the men and women who perform the difficult task of supervising the County's inmate population and are professionals in the effective administration of justice.				
designated May 15 as Peace Officer Memorial Daguardians of life and property and their dedication	k by the Congress of the United States. They have also ay. This is a time to honor our law enforcement officers, the n to the preservation of life, liberty and the pursuit of happiness.			
ACTION REQUESTED: Make a motion to adopt the attached Proclamatio	ons and authorize their signature by the County Board Chair.			
FUNDING County Dollars = \$None Other Sources & Amounts = = \$ TOTAL = \$None Related Financial Comments:	FISCAL IMPACT X None ☐ Included in current budget ☐ Budget amendment requested ☐ Other:			
⊠Reviewed by Division Director	Date: March 15, 2010			

Report Date: March 11, 2010









AGENDA ITEM: Public Hearing- Ordinance #66-2010 ~ Adult Use Business Regulations, Am & Fee Schedule	end County Code
Originating Division: Public Health & Environment, Carver Meeting Date: April 13, 2010 County Attorney's Office	
Amount of Time Requested: 1 hour Attachments for packet: 🛛 Yes	No No
ltem Type: ☐Consent ☑Regular Session ☐Closed Session ☐Work Session ☐Ditch/	Rail Authority
BACKGROUND/EXPLANATION OF AGENDA ITEM: File #PZ20100003. On March 16 th , the Planning Commission recommended approval of a Zoning amendment and a new Chapter 113 of the County Code, addressing the regulation of adult use (AUBs) in the Agriculture "A" District of the County. There are currently no regulations in the unit of the County for this type of land use, which is protected by the First Amendment and may not a zoning. The proposed Zoning Code amendment and Chapter 113 would require an AUB license use permit. The proposed licensing regulations include, but are not limited to, 1,000' setbacks, and prohibition of liquor licenses. AUBs would also need to meet all of the other zoning subdivision and environmental code standards. The proposed AUB regulations would apply to F Districts (approx. 70 acres meeting the setbacks) rather than the "A" District as a whole (approx The Planning Commission Resolution addressing the proposed ordinance is attached. The prop #66-2010, including the fee schedule change of \$500 plus cost of background check for the AUE resolution for the adoption of the Ordinance are attached for the Board's consideration.	businesses ncorporated areas be banned by local e and a conditional background , access, building, Rural Service 9,500 acres).
ACTION REQUESTED: Open the public hearing. A motion to close the public hearing. A motion to adopt a resolution adopting Ordinance #66-2010 amending the County Code and Fe	ee Schedule.
FUNDING County Dollars = \$ \\ Other Sources & Amounts = Included in current budget = \$ \\ TOTAL = \$ \\ Related Financial Comments:	d
□ Reviewed by Division Director Date: April 5, 2010	

COUNTY OF CARVER PLANNING COMMISSION RESOLUTION

FILE #: PZ20100003

RESOLUTION#: 10-02

WHEREAS, the following request for an ordinance amending the Carver County Code, to regulate adult use businesses, has been submitted and accepted:

FILE #: PZ20100003

COUNTY STAFF: Land Management Department, County Attorney's Office

SUBJECT: Adult Use Business Regulations

PURSUANT TO: County Code, Chapter 152, amendment to Section 152.097, proposed Chapter 113

LEGAL DESCRIPTION: Rural Service Overlay Districts (RSDs) - Assumption, Bongards, East Union, Gotha,

Hollywood (Sports), Hollywood Station, Maple (Creamery)

WHEREAS, said request was duly considered at a public hearing held by the Carver County Planning Commission at its regular meetings of February 16, 2010 and March 16, 2010; and,

WHEREAS, the Carver County Planning Commission finds as follows:

- 1. The purpose of the proposed Ordinance is to enact regulations to license and regulate adult use businesses (AUBs), which could be located in the unincorporated areas of the County. The County currently does not have any type of adult use regulations for the Agriculture "A" District, dramatically increasing the potential for the establishment of an unregulated land use of this type. Such adult use businesses include, but are not limited to, adult bookstores, motion picture theaters, adult massage parlors, adult cabarets and other similar businesses in which there is an emphasis on the presentation or description of sexual activities or specific anatomical areas.
- 2. US Supreme Court decisions prohibit a local government from banning the establishment of adult uses, as such a ban would violate the First Amendment of the US Constitution. However, the Court does give local government the power to regulate the "adverse secondary effects" of adult uses. Such regulations typically include setbacks from homes, churches, parks, public trails, establishments serving alcoholic beverages, and other adult uses; limits on operations such as prohibiting the sale or consumption of alcoholic beverages, hours of operation, and requiring a license. Court cases have indicated that requiring a setback of 1000 feet is justified to minimize adverse secondary effects. In developing an ordinance, staff has tried to be as restrictive as possible while following the guidelines provided by past court rulings. The proposed ordinance establishes a set of regulations that protect the public to the maximum extent possible while not infringing on First Amendment rights.
- 3. The public hearing notification included the publishing of 10 legal notices (Chaska Herald twice) and 2 mass mailings to the townships, cities, and landowners within, and 1/4 mile surrounding, the Rural Service Overlay Districts (RSDs) (approximate total- 480 individual notices). The notice(s) and draft ordinance language has been posted on the Planning Commission's website. A separate article was published in the February 11th edition of the Waconia Patriot regarding the public hearing. The County Board will also conduct a public hearing on the adoption of the proposed Ordinance that will again be preceded by publication of legal notices and mass mailings to the townships, cities, and landowners within, and 1/4 mile surrounding, the RSDs.
- The aerial maps illustrating the approximate 1,000 foot setback areas within the RSDs were developed with the assistance of the County's Geographic Information Systems (GIS). The maps are not intended to be zoning maps and should only be used as a general reference. The purpose of the illustrations was to assist staff in making a

determination on whether the proposed Ordinance would be constitutional. There would be no restrictions on the placement of new homes (or the removal of old homes); therefore potential areas for AUBs would need to be reviewed periodically to ascertain whether the regulations are still compatible with the First Amendment. The RSD maps reflect that approximately 6% to 7% of the RSD acres would meet the 1,000 foot setback (approximately 64-79 acres). Currently, there are no existing structures within the RSDs that would meet the 1,000 foot setback requirement.

- 5. County Board Resolution #13-04 was adopted on February 10, 2004 regarding adult uses. The premise, based on the 2020 Comp Plan and limited commercial development in the townships, was that the County could rely on the municipalities to satisfy the First Amendment requirement(s) related to AUBs. Based on Court rulings, the resolution is not consistent with the requirements of the First Amendment and should not be relied upon.
- 6. In 2006, Minnesota Statute §617.242 was adopted restricting solely adult entertainment establishments and stating "the county board is not required to provide by zoning or otherwise for a location..." if there is an existing adult use establishment within 50 miles. Based on the Minnesota Federal District Court's conclusions in Northshor Experience, Inc. v. City of Duluth, MN, 442 F.Supp.2d 713, (D.Minn. 2006), the Statute may be unconstitutional and should not be relied upon.
- 7. The Carver County Building Official stated that a new AUB facility would be classified A-1 or A-2 (Occupancy Classification: Assembly). A new operation would need to meet current Building Code, which would include all of the required life-safety items such as accessibility, fire code, lighting, etc. The Building Code does not include more stringent standards specifically for AUBs.
- 8. Adult use business regulations are intended to prevent or minimize adverse secondary effects associated with adult use businesses. The Planning Commission accepts the recommendations of staff that have studied the experiences of other areas about such businesses. Studies conducted by the Minnesota Attorney General, and the cities of St. Paul, Indianapolis, Phoenix, Los Angeles, Houston, Newport News, and Scattle have studied the impacts that adult use businesses have had in those communities. These studies have concluded that adult use businesses have adverse impacts on the surrounding neighborhoods, including, but not limited to, increased crime rates, lower property values, increased transiency, neighborhood blight, and potential health risks. Based on these studies, the Planning Commission concludes that adult use businesses have clearly identified adverse secondary effects as set forth above. The adverse secondary effects resulting from such adult use businesses are decreased if such businesses are governed by location and licensing requirements.
- 9. Based on the proposed regulations, adult use businesses would be prohibited in the "A" District, except for very limited areas of the Rural Service Overlay Districts. A Conditional Use Permit and an Adult Use License would be required and an adult use business would be restricted to a 1,000 foot setback from residences, schools, churches, parks, etc.
- 10. RSDs were selected over the "A" District as a whole because a greater variety of businesses are already allowed in RSDs. All of the RSDs have experienced new commercial activities in the last 8-10 years. Most notably, a number of new businesses and improvements have developed in the Gotha, Bongards, Maple, and Hollywood RSDs. Ultimately, adult use proprietors would have to negotiate in the real estate market to find a willing seller. In addition to licensing requirements, such as background checks and prohibition of liquor licenses, a proposed site and establishment would need to meet all of the other zoning, access (e.g. turn lanes), building, subdivision and environmental code standards.
- 11. The Planning Commission has determined that there is a need to be proactive on this issue by enacting AUB regulations as soon as possible. Carver County is vulnerable and in a significant minority by not having regulations for these types of land uses. Fifty nine other counties have ordinances to regulate AUBs. Carver County is the only county adjacent to the metropolitan area without AUB regulations. The proposed AUB regulations address the adverse secondary effects with such businesses, yet are legally defensible, and they are based on model ordinances and current ordinances from a number of Minnesota counties and cities. The draft Adult Use Business regulations (proposed Chapter 113) and the proposed Zoning Code Amendment were prepared based on the County's regulatory

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framework, which generally require conditional use permits for commercial activities. A provision would be added to Section 152.097 of the Zoning Code to incorporate the new Adult Use Business chapter into the Rural Service Overlay District regulations.

THEREFORE, BE IT RESOLVED, THAT The Carver County Planning Commission hereby recommends the adoption of an ordinance amending the County Code, to enact adult use business regulations, as follows:

CARVER COUNTY, MINNESOTA

ORDINANCE # 66-2010

AMENDING CHAPTER 152, THE ZONING CODE; AND ADOPTING CHAPTER 113, ADULT USE BUSINESSES

THE CARVER COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS:

SECTION 1. Carver County Code, Section §152.097 shall be amended to include new subpart (D), as follows:

(D) Adult Uses. A conditional use permit shall be required for the establishment of an adult use business pursuant to Chapter 113 of the Carver County Code. A conditional use permit pursuant to this provision shall not be issued until the proposed adult use has an approved provisional adult use license pursuant to Chapter 113. In considering a conditional use permit pursuant Chapter 113 of the Carver County Code: (1) only the definite, objective guidelines and standards of §152.245 through §152.251 apply; and (2) no general health, safety and welfare requirements shall apply, as adult use businesses as defined in Chapter 113 are protected by the First Amendment of the United States Constitution. The requirements of this chapter which may not be constitutionally applied shall be severed from the requirements which may be constitutionally applied and those applicable shall remain in full force and effect.

SECTION 2. Carver County Code, Chapter # 113 - Adult Use Businesses is hereby adopted, as follows:

Chapter # 113 - ADULT USE BUSINESSES

SECTION 1 - Preamble

- 1.1. STATUTORY AUTHORIZATION. This chapter is adopted pursuant to the authority delegated to Carver County by Minnesota Statutes, Chapter 394.
- 1.2. FINDINGS AND PURPOSE. This chapter is intended to regulate "adult uses," those premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public.

The nature of adult uses is such that they are recognized as having adverse secondary effects, based upon studies of the effects that adult establishments have on the surrounding areas. These studies have been conducted by the Minnesota Attorney General, and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Phoenix, Arizona; Los Angeles, California; Houston, Texas; Newport News, Virginia; and Seattle, Washington.

The adverse secondary effects found in the studies include increased crime rates, decreased property values, increased transiency, neighborhood blight, and potential health risks. These effects are particularly apparent when they are accessible to minors and located near residential properties or residential uses such as schools, day care centers, libraries or parks. The nature of the adult uses requires that they not be allowed within certain zoning districts, or set back a minimum distance from each other, or other residential uses. Special regulation of these uses is necessary to ensure that the adverse secondary effects will not contribute to or enhance criminal activity in the area of such uses, nor will it contribute to the blighting or downgrading of the surrounding property and lessening of its value.

It is therefore in the best interest of the public health, safety and welfare of the citizens of Carver County that certain types of activities, as set forth in this chapter, are prohibited upon the premises of licensed liquor, wine and beer establishments so as to best protect and assist the owners and operators and employees of these premises, as well as patrons and the public in general. This chapter is intended to prevent harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Carver County Board of Commissioners also desires to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various acts of criminal conduct such as prostitution, sexual assault, and disorderly conduct.

SECTION 2 - TITLE AND SHORT TITLE

- **2.1 TITLE.** The title of this chapter is Carver County Code, Chapter #113, Carver County Adult Use Businesses.
- **2.2 SHORT TITLE.** This chapter shall be known, and may be referred to, as Adult Use Businesses. When used herein, it shall be known as "this chapter."

SECTION 3 - IMPLEMENTATION

- **3.1 JURISDICTION.** The provisions of this chapter shall apply to all adult uses located in the un-incorporated areas within the boundaries of Carver County.
- **3.2 COMPLIANCE.** All adult uses shall be in full compliance with requirements of this chapter, the Carver County Zoning Code, the Carver County Individual Sewage Treatment System Ordinance, other applicable provisions of County, State or Federal laws, and applicable fire, health, and/or safety codes.
- **3.3 NON-CONFORMING USES.** Any adult use business existing on the effective date of the adoption of this Ordinance may be continued subject to the following provisions:
- Subpart 1. No such adult use business shall be expanded or enlarged except in conformity with this Ordinance.
- Subpart 2. A non-conforming adult use business shall be required to comply with this ordinance, and apply for and receive an Adult Use License and conditional use permit from the County within six (6) months of the date of this Ordinance. The County does not require a public hearing before issuing a license for the non-conforming adult use business.
- **3.4 ENFORCEMENT.** The Carver County Board of Commissioners, the Carver County Sheriff, and the Carver County Land Management Department, or their designee, shall have authority to enforce this chapter.

3.5 PENALTY

- Subpart 1. Violation a Misdemeanor. Any person who fails to comply with the terms of this chapter is guilty of a misdemeanor. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.
- Subpart 2. Injunctive Relief. In the event of a violation or threat of a violation of this chapter, the County may institute appropriate actions or proceedings, including injunctive relief to prevent, restrain, correct or abate such violations or threatened violations. If a person fails to comply with the provisions of this chapter, the County

may recover fees and costs, including costs incurred by the County for corrective action. Such fees and costs may be certified by the Court as a special tax against the real property.

- 3.6 INTERPRETATION. In the interpretation and application, the provisions of this chapter shall be interpreted to protect the public health, safety and welfare of the citizens of Carver County by providing for the regulation of adult uses in an effort to prevent or minimize adverse secondary effects associated with such adult uses. This chapter is not intended to limit or repeal any other powers granted to Carver County by the State of Minnesota.
- 3.7. INAPPLICABILITY OF MINNESOTA STATUTE. § 617.242. Section 617.242 of the Minnesota Statutes does not apply to or in the unincorporated areas of Carver County. Said section is also inapplicable to or in the unincorporated areas of Carver County as to any portion of the operations of sexually-oriented businesses that are not regulated by this ordinance but which may otherwise have been subject to it.
- 3.8 SEVERABILITY. If any section, clause, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.
- 3.9 ABROGATION AND GREATER RESTRICTIONS. It is not intended by this chapter to repeal, abrogate, or impair any existing ordinances, or laws. If this chapter is inconsistent with any other ordinance or law, that which imposes the greater restriction shall prevail.
- 3.10 REFERRAL TO OTHER LAWS. If any section of this chapter references another Ordinance, Statute, Rule or other provision of law, the reference shall be for that other provision of law as is currently enacted and as it may be amended or re-codified in the future.

SECTION 4 - DEFINITIONS

- 4.1 WORD USAGE. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this chapter its most reasonable application. For the purposes of this chapter, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.
- 4.2 PERMITTED USES. Permitted uses of land or buildings as hereinafter listed shall be permitted only in the districts indicated, and under the conditions specified.

4.3 DEFINITIONS.

Subpart 1. Adult Uses. Adult uses include, but are not limited to, adult bookstores, adult motion picture theaters, adult picture rental, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public. This definition does not apply to the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry by State licensed registered persons. Activities classified as obscene are defined by Minnesota Statutes Section 617.241 and are not lawful and are not included in the definitions of adult uses.

Subpart 2. Adult Uses-Accessory. A use, business, or establishment having ten percent (10%) or less of its stock in trade or floor area allocated to, or twenty percent (20%) or less of its gross revenues derived from, the sale or rental of adult merchandise.

Subpart 3. Adult Uses-Principal. A use, business, or establishment meeting any of the definitions of Adult

Uses excepting those uses that meet the definition of Adult Use - Accessory.

Subpart 4. Adult Use – Body Painting Studio. A business or establishment if such building or portion of a building excludes minors by virtue of age, and which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body's specified anatomical areas are displayed, or the application of paint or other substance by a patron to the body of another person if such body's specified anatomical areas are displayed.

Subpart 5. Adult Use – Bookstore. A building or portion of a building, establishment, or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if such building or portion of a building excludes any minor by reason of age, and if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the presentation, display, depiction, or description of "specified sexual activities" or "specified anatomical areas."

Subpart 6. Adult Use – Cabaret. A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age and if such dancing or live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction, or description of "specified sexual activities" or "specified anatomical areas."

Subpart 7. Adult Use—Companionship Establishment. A companionship establishment which excludes minors by reason of age and which provides the service of listening to or engaging in conversation, talk, or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Subpart 8. Adult Use – Conversation/Rap Parlor. A conversation/rap parlor which excludes minors by reason of age and which provides the service of fistening to or engaging in conversation, talk, or discussion, if such service is distinguished by or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Subpart 9. Adult Use – Health/Sport Club. A health/sports club which excludes minors by reason of age and such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Subpart 10. Adult Use – Hotel/Motel. A hotel or motel which excludes minors by reason of age and wherein material is presented which is distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

Subpart 11. Adult Use – Massage Parlor, Health Club. A massage parlor or health club which excludes minors by reason of age, and which regularly provides the service of massage if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Subpart 12. Adult Use – Mini Motion Picture Theater. A building or portion of a building with a capacity of less than fifty (50) persons used for presenting material if such building or portion of a building excludes minors by reason of age and if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

Subpart 13. Adult Use – Modeling Studios. An establishment which excludes minors by reason of age and whose major business is the provision to customers of figure models who are provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in "specified sexual activities" or exhibit "specified anatomical areas" while being observed, painted, painted upon, sketched, drawn, sculpted, photographed, or otherwise depicted by such customers.

Subpart 14. Adult Use – Motion Picture Arcade. Any place to which the public is permitted or invited wherein minors are excluded by reason of age, and where coin operated or slug operated or electronically,

electrically or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

Subpart 15. Adult Use ~ Motion Picture Theater. A building or portion of a building with a capacity of more than fifty (50) persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by reason of age or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observations by patrons therein.

Subpart 16. Adult Use – Novelty Business. A business which excludes minors by reason of age, and which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation

Subpart 17. Adult Use – Sauna/Steam Room/Bathhouse Facility. A building or portion of a building used for providing a sauna, steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing, or reducing agent, if such building or portion of a building excludes minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Subpart 18. County. The County of Carver, Minnesota, or any department or representative of the county who is authorized by this chapter or otherwise by the County Board to represent the county in the administration or enforcement of this chapter.

Subpart 19. County Board. The Carver County Board of Commissioners or its designee.

Subpart 20. Department. The Carver County Land Management Department.

Subpart 21. Liquor License. Any of the following licenses issued or approved pursuant to Minnesota Statute, Chapter 340A.

Subpart 22. Minor. Person(s) under eighteen (18) years of age.

Subpart 23. Specified Anatomical Areas:

- A. Human genitals, pubic region, buttocks, anus, or female breast(s) below a point immediately above the top of the areola, unless completely and opaquely covered.
- **B.** Erect penis, even if completely and opaquely covered.

Subpart 24. Specified Criminal Activity:

- A. Prostitution or promotion of prostitution; dissemination of obscenity or illegal pornography; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; lewdness; sexual battery; rape; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that, if the acts would have constituted any of the foregoing offenses if the acts had been committed in Minnesota; for which:
 - 1. less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or
 - 2. less than five years have elapsed since the date of conviction or the date of release from

confinement for the conviction, whichever is the later date, if the conviction is of a gross misdemeanor or felony offense; or

3. less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24 month period.

Subpart 25. Specified Sexual Activities.

- A. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexual-oriented acts or conduct: analingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoocrasty; and/or.
- **B.** Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence; and/or,
- C. Use of human or animal ejaculation or ejaculate, sodomy, oral copulation, coitus, or masturbation; and/or,
- D. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s); and/or.
- E. Situations involving a person or person, any of whom are nude, clad in undergarments, or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical constraint of any such persons; and/or,
- **F.** Erotic or nude touching, fondling or other sexually oriented contact with an animal by a human being; and/or,
- G. Human erection, urination, menstruation, vaginal or anal irrigation.

SECTION 5 - ADMINISTRATION

5.1 ADULT USE LICENSE & CONDITIONAL USE PERMIT REQUIRED. No person shall own or operate an Adult Use - Principal without first having secured an Adult Use License and a conditional use permit from Carver County pursuant to this chapter and Chapter 152 of the Carver County Code.

Subpart 1. Application. The application for issuance of an Adult Use License (and renewal) shall be submitted on forms provided by Carver County Land Management and shall include:

- A. If the applicant is an individual: the name, residence, phone number and birth date of the applicant. If the applicant is a partnership: the name, residence, phone number, and birth date of each general and limited partner. If the applicant is a corporation: the name, residence, phone numbers, and birth dates of all persons holding more than five (5) percent of the issued outstanding stock of the corporation.
- B. The name, address, phone number, and birth date of the operator and manager of such operation, if different from the owner(s).
- C. The address and legal description of the premises where the adult establishment is to be located.
- **D.** Proof of ownership interest in the land or premises where the adult establishment is to be located or a signed purchase agreement or other authorization from the owner(s) of the land or premises.
- E. A statement detailing each specified criminal activity, as defined in this chapter, for which persons required to be disclosed in 5.1, subp. 1A, operator, or manager above have been convicted and whether or not the applicant has ever applied for or held a license to operate a similar type business in any other community(s).
- **F.** The activities and types of business to be conducted.
- **G.** The hours of operation.

- П. Provisions to be utilized to restrict access by minors.
- Ĭ. A building plan of the premises detailing all internal operations and activities.

Subpart 2. Responsibility to Obtain Other Permits/Licenses. The granting of any permit or license pursuant to the requirements of this chapter, or other applicable Carver County ordinances, shall not relieve the applicants of their responsibility to obtain any required state or federal permits.

5.2 LICENSE FEES

Subpart 1. Submittal of Fees, Each application for an Adult Use License shall be submitted to the Land Management Department and shall be accompanied by payment in full of the required fee for the Adult Use License.

Subpart 2. Fee. The fee for the Adult Use License application and Adult Use License renewal application shall be as detailed in the fee schedule established by the County Board. The fee may be adjusted from time to time by Board action.

Subpart 3. Refund of Fee. If any application for a license is rejected, the license fee shall not be refunded. No part of the fee paid for any license issued under this chapter shall be refunded.

5.3 GRANTING OF ADULT USE LICENSE.

Subpart 1. Investigation by Sheriff. The Carver County Sheriff and the Department have authority to investigate all facts set out in the application. The applicant(s), operator, and each owner of the establishment shall be subject to a criminal history background investigation by the Sheriff or his/her designee. Cost of the criminal history investigations shall be borne by the applicant according to the Carver County fee schedule. The application for the Adult Use License shall not be considered complete until all required information has been furnished, the investigation has been completed by the Sheriff, and a report provided to the Department by the Sheriff.

Subpart 2. Granting of Adult Use License. Upon receipt of a completed application pursuant to Section 5.3, subp. 1, the Department shall forward its findings on the application to the County Board. The County Board shall grant or deny the application in a timeframe so as to comply with Minn. Stat. § 15.99. The County Board shall deny the application if any of the ineligibility conditions in Section 5.4 exist, or if the proposed location does not meet the requirements set forth in Section 5.5. If the application is granted, a Provisional Adult Use License will be issued by the County Board. The issuance of a Provisional Adult Use License does not automatically result in a conditional use permit being issued, and the applicant must follow the procedures set forth in Chapter 152 in order to obtain a conditional use permit. The County Board shall change the Provisional Adult Use License to an Adult Use License immediately following the granting of the conditional use permit if all requirements have been met.

Subpart 3. Expiration of Provisional Adult Use License. A Provisional Adult Use License shall expire 120 days from the date the license is granted unless an extension is granted by the County Board.

Subpart 4. Adult Use License is Non-transferable. The Provisional Adult Use License and Adult Use License shall be issued only to the applicant and only for the premises described in the application. No more than one adult use premises may be listed on each application. No license may be transferred to another premises or person without the written approval of the County Board. If the licensee is a partnership or corporation, a change in the identity of any of the general or limited partners or a change in persons holding more five (5) percent or more of the issued and outstanding stock of the corporation shall be deemed to be a transfer of the license.

5.4 PERSONS INELIGIBLE FOR ADULT USE LICENSE. A license shall not be issued to any person:

Subpart 1. Under twenty-one (21) years of age.

- **Subpart 2.** Who is overdue in payments to a city, county, state, or federal government of taxes, fees, fines or penalties, or charges for municipal services and utilities assessed against him/her or imposed upon him/her.
- Subpart 3. Who has been convicted of a specified criminal activity, as defined in this chapter.
- Subpart 4. Who is not the owner of the establishment for which the license is issued.
- **Subpart 5.** To any applicant who is acting as an agent for an individual who would be disqualified pursuant to the criteria in this section.
- Subpart 6. Who has not paid the required investigation/licensing fees required by this chapter.
- **Subpart 7.** No license shall be granted for an adult use business on any premises where a licensee has been convicted of a violation of this chapter, or where any license hereunder has been revoked for cause, until one (1) year has elapsed after such conviction or revocation.
- **Subpart 8.** No Adult Use License shall be granted for any adult use business which is not in compliance with the County's land use regulations, or fire, health, and safety codes and all provisions of federal and state law.

5.5. PERMITTED LOCATIONS FOR ADULT-USE PRINCIPAL.

- **Subpart 1.** Adult Use-Principal shall only be allowed in the Rural Service Districts as defined in Chapter 152.
- **Subpart 2.** Adult Use-Principal shall be located at least one thousand (1000) lineal feet as measured in a straight line from the nearest point of the business premises and associated parking lot of the Adult Use-Principal to the nearest structure associated with:
 - A. Any single or multiple family residence or farmstead.
 - **B.** Any licensed daycare facility.
 - C. Any public or private educational facility classified as an elementary, junior high, or senior high school.
 - **D.** Any hotel or motel.
 - **E.** Any public park or trails system.
 - **F.** Any nursing home.
 - **G.** Any church or church related organization.
 - H. Another adult use business. No Adult Use-Principal shall be located in the same building or upon the same property as another Adult Use-Principal.
 - I. Any establishment that has a liquor license or serves alcoholic beverages.
- Subpart 3. All adult uses shall meet the required access, parking, screening, lighting, and other relevant site related criteria as set forth in the Carver County Code of Ordinances.

5.6. CONDITIONS OF ADULT USE LICENSE.

- Subpart 1. All licensed premises shall have the license posted in a conspicuous place at all times.
- Subpart 2. No minor shall be permitted on the premises.
- Subpart 3. Any designated inspection officer of the County shall have the right to enter, inspect, and search the premises of a licensee during business hours. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the County to authorize reasonable inspections of the

licensed premises pursuant to this chapter, but not to authorize an excessive pattern of inspections or violations of constitutional rights.

Subpart 4. No adult goods or material shall be offered, sold, transferred, conveyed, given, displayed, or bartered to any minor.

Subpart 5. The licensee must keep itemized written records of all transactions involving the sale or rental of all items or merchandise for at least one year after the transaction. At a minimum, those records must describe the date of the transaction, a description of the transaction, the purchase or rental price, and a detailed description of the item or merchandise that is being purchased or rented. These written records must be provided to the Department or the Department's designee(s) upon request.

Subpart 6. The licensee must cover or otherwise arrange all windows, doors, and apertures to prevent any person outside the licensed premises from viewing any items or merchandise inside the premises depicting "specified sexual activities" or "specified anatomical areas".

Subpart 7. All adult use businesses shall prominently display a sign at the entrance and located within two (2) feet of the door opening device of the adult use business or section of the establishment devoted to adult use which states: "This business sells or displays material containing adult themes. Persons under eighteen (18) years of age shall not enter".

5.7. EXPIRATION AND RENEWAL

Subp. 1. Expiration. Each license shall expire one year from the date the license is granted and may be renewed only by making application as provided in Sections 5.1 through 5.3. Application for renewal must be submitted to the Department at least 60 days before the expiration date.

Subpart 2. Denial of Renewal. When the County Board denies the renewal of a license, the applicant shall not be issued a license for one year from the date of denial. The license applicant may appeal the decision to a court of law within thirty (30) days of the final decision of the County Board or its designee. Any decision adverse to the licensee shall be deemed final immediately upon its issuance, but shall not take effect for thirty (30) days. If, subsequent to denial, the County Board finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

5.8. SUSPENSION AND REVOCATION

Subpart 1. Suspension. The County Board may issue a letter of intent to suspend, for up to 30 days, an Adult Use License if a licensee knowingly commits, or allows an employee to commit, a violation of this ordinance.

Subpart 2. Revocation. The County Board may issue a letter of intent to revoke an adult use business license, if a licensee knowingly commits, or allows an employee to commit, three or more violations of this ordinance within a one year period, or if one or more of the following occurs:

- A. a licensee or an employee of the licensee has committed fraud, or a material misrepresentation in securing the Adult Use License;
- B. a licensee or an employee of the licensee has knowingly allowed possession, use, or sale of controlled substances, including alcohol, on the premises;
- C. a licensee or an employee of the licensee has engaged in or allowed prostitution on the premises;
- **D.** a licensee or an employee knowingly operated the adult use business during a period of time when the licensee's license was suspended; and/or,
- E. a licensee has been convicted of a specified criminal activity.

5.9. HEARING; DENIAL, SUSPENSION, REVOCATION OF LICENSE; APPEAL

Subpart 1. Written Notice. Denial, revocation or suspension shall be preceded by written notice to the applicant or licensee and a public hearing before the County Board or its designee. The notification shall be directed to the most current business address or other mailing address on file with the Department for the applicant or licensee and shall state the grounds for which a denial, revocation, or suspension is being requested. The notice shall be delivered by certified mail or personal service.

Subpart 2. Hearing. Within twenty (20) days of the written notice to the applicant or licensee, the County Board shall conduct a hearing for the purpose of determining whether to deny, revoke, or suspend the license. Applicant or licensee may be represented by counsel and may submit all relevant evidence or arguments. The County Board or its designee shall issue a written decision within ten (10) days after the hearing, which decision shall deny, suspend, revoke, or grant the license, and state the reasons for such action. Any decision adverse to the applicant or licensee shall be deemed final immediately upon its issuance, but shall not take effect for thirty (30) days.

Subpart 3. Appeal of Suspension or Revocation. If the County Board or its designee orders the suspension or revocation, the applicant or licensee may appeal the decision to a court of law within 30 days of the final decision of the County Board or its designee and the licensee may continue in business until the conclusion of the action.

Subpart 4. Appeal of Denial. If the County Board or its designee orders the denial of a new Adult Use License, the license applicant may appeal the decision to a court of law within thirty (30) days of the final decision of the County Board or its designee. The applicant may not commence doing business unless the action is concluded in its favor.

SECTION 6 - ADULT USE OPERATIONAL RESTRICTIONS

6.1 ADULT USE - PRINCIPAL.

Subpart 1. General Provisions. Adult uses as defined in Section 4.3, subp. 3 of this chapter shall be subject to the following general provisions:

- A. An adult use which does not qualify as an accessory use pursuant to Section 6.2 below shall be classified as an Adult-Use Principal.
- B. No person(s) under eighteen (18) years of age shall be permitted in any Adult Use-Principal premises, enterprise, establishment, business or place.
- C. No liquor license shall be issued to any Adult Use-Principal.
- D. No adult use related premises, enterprise, establishment, business or place shall allow or permit the sale or service of set ups to mix alcoholic drinks. No alcoholic beverages shall be consumed on the premises of such premises, enterprise, establishment, business, or place.
- E. Activities classified as obscene as defined in Minn. Stat. § 617.241 are not permitted and are prohibited. In no instance shall the application or interpretation of this chapter be construed to allow an activity otherwise prohibited by law.
- **F.** Adult Use- Principal shall be prohibited from locating in any building which is also utilized for residential purposes.
- G. Any Adult Use-Principal having available for customers, patrons, or employees, a booth, room or cubicle for the private viewing of any "specified anatomical areas" or "specified sexual activities" must comply with the following requirements:
 - 1. Each booth, room or cubicle shall be without doors and the occupant must be visible at all times.
 - 2. Only one person may be in a booth, room, or cubicle at a time.
 - 3. Walls separating booths, rooms, or cubicles must be such that the occupants cannot engage in sexual activity.

- 4. Each booth, room, or cubicle must be kept clean and sanitary.
- 5. Minimum lighting requirements in accordance with the Carver County Code of Ordinances must be maintained.
- **H.** Illumination of the premises exterior shall be adequate to observe the location and activities of all persons on the exterior premises.
- I. The owner/operator shall hire and employ their own security personnel who shall maintain orderly conduct at such Adult Use-Principal. These employees are not required to be licensed peace officers.

Subpart 2. Hours of Operation. No adult use shall be open to the public from the hours of 12:00 midnight to 10:00 a.m. weekdays and Saturday, nor between 12:00 midnight and 12:00 noon on Sunday.

Subpart 3. Sign Regulation. Adult Use-Principal shall adhere to the following sign regulations in addition to those set forth in Chapter 154 of the Carver County Code.

- A. Sign messages shall be generic in nature and shall only identify the name and type of business.
- B. Signs shall not be obscene and/or graphic depictions of "specified anatomical areas" or "specified sexual activities" as defined by this chapter.
- C. Signs shall be limited to the size, location, and number of signs permitted in the district in which the use is located.

Subpart 4. Adult Use-Cabaret Regulations. The following additional restrictions apply to Adult Use-Cabarets:

- A. No person, firm, partnership, corporation or other entity shall advertise, or advertised, an adult cabaret without a valid Adult Use License.
- B. An adult use licensee shall maintain and retain for a period of two (2) years the names, addresses, and ages of all persons engaged, hired, or employed as dancers or performers by the licensee.
- C. No owner, operator, or manager of an adult cabaret shall permit or allow any dancer or other live entertainer to perform nude unless as provided in subparts F & G below.
- **D.** No patron or other person other than a dancer or live entertainer, as provided in subparts F & G below, shall be nude in an adult cabaret.
- E. No dancer, live entertainer, or performer shall be under eighteen (18) years of age.
- **F.** All dancing shall occur on a platform intended for that purpose which is raised at least two (2) feet above the level of the floor.
- G. No dancer or performer shall perform or dance closer than ten (10) feet from any patron unless such dancer or performer is enclosed behind a floor to ceiling glass.
- H. No dancer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
- I. No person under eighteen (18) years of age shall be admitted to an adult cabaret.
- J. No patron shall pay or give any gratuity directly to any dancer or performer.

6.2 ADULT USE-ACCESSORY.

Subpart 1. Permitted Locations for Accessory Adult Uses. Adult Use-Accessory shall be permitted in the Rural Service Districts as defined in Chapter 152 at establishments where there is an existing permitted retail establishment. Adult Use-Accessory shall conform to the following provisions:

- A. A use, business, or establishment having ten percent (10%) or less of its stock in trade or floor area allocated to, or twenty percent (20%) or less of its gross revenues derived from, the sale or rental of adult merchandise.
- B. Not include any adult use activity except the sale or rental of adult merchandise.
- C. Adult use- accessory shall be prohibited from locating in any building which is also utilized for

residential purposes.

Subpart 2. Separation of Areas. Adult Use-Accessory shall be restricted from, and prohibit access to minors, by physically separating the following and similar items from areas of general public access:

- A. Movie rental display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view of, and under the control of, the person(s) responsible for the operation. All Adult Use-Accessory shall prominently display a sign at the entrance and located within two (2) feet of the door opening device of the Adult Use-Accessory establishment or section of the establishment devoted to adult use which states: "Persons under eighteen (18) years of age shall not enter".
- B. Magazines or publications containing "specified anatomical areas" or "specified sexual activities" shall not be physically accessible to minors and shall be covered with a wrapper or other means to prevent display of any material other than the publication title.

Subpart 3. Advertising. Adult Use-Accessory shall be prohibited from both internal and external advertising and signing of adult materials and products.

<u>SECTION 3</u> - **EFFECTIVE DATE.** This Ordinance shall be in full force and effect upon the date of its passage and publication.

	Date:	
County Board Chair		
	Date;	
County Administrator		

ADOPTED by the Carver County Planning Commission this 16th day of March, 2010.

Ted Beise

Planning Commission Chair

COUNTY OF CARVER

BOARD OF COMMISSIONERS

DATE April , 2010	RESOLUTION NO.
MOTION BY COMMISSIONER	SECONDED BY COMMISSIONER

A RESOLUTION ADOPTING ORDINANCE 66-2010

AMENDING CHAPTER 152, THE ZONING CODE; AND ADOPTING CHAPTER 113, ADULT USE BUSINESSES, AND AMENDING ORDINANCE #48, CARVER COUNTY FEE SCHEDULE

WHEREAS, the Planning Commission's recommendation and testimony were duly considered at a public hearing held by the Carver County Board at its regular meeting of April 13, 2010; and,

WHEREAS, the Planning Commission adopted Resolution #10-02 recommending an amendment to Chapter 152, the Zoning Code; and the adoption of Chapter 113, Adult Use Businesses, of the County Code; and,

WHEREAS, The United States Supreme Court has recognized a constitutional right for adults to access sexually oriented activities and materials, but the court has also recognized the public's equal and corresponding right to be secure from unwanted exposure to sexually oriented activities and materials; and,

WHEREAS, studies conducted by the Minnesota Attorney General, and the cities of St. Paul, Indianapolis, Phoenix, Los Angeles, Houston, Newport News, and Seattle have reviewed the impacts that adult use businesses have in those communities. These studies have concluded that adult use businesses have adverse impacts on the surrounding neighborhoods, including, but not limited to, increased crime rates, lower property values, increased transiency, neighborhood blight, and potential health risks; and,

WHEREAS, adult use businesses when located in close proximity to each other contribute to the blight and downgrade the quality of life in the surrounding area; and,

WHEREAS, based on the cited studies, the County Board concludes that adult use businesses have clearly identified adverse secondary effects as set forth above. The adverse secondary effects resulting from such adult use businesses are decreased if such businesses are governed by location and licensing requirements; and,

WHEREAS, Carver County wishes to minimize and control these adverse secondary effects and thereby protect the health, safety, and general welfare of the citizenry; protect the citizens from increased crime; preserve our quality of life; preserve property values and the character of surrounding neighborhoods; and deter the spread of blight; and,

WHEREAS, licensing of adult use businesses holds owners and operators accountable and helps assure that such establishments are not used as places of illegal activity; and,

WHEREAS, the proposed adult use business regulations are intended to prevent or minimize adverse secondary effects associated with adult use businesses; and,

WHEREAS, the Comprehensive Plan must be in conformance with the laws of this state and the First Amendment of the United States Constitution and the amendments to the zoning code are in conformance with the Comprehensive Plan; and.

WHEREAS, the amendments to the zoning code are not in conflict with any other official controls; and,

WHEREAS, the amendments to the zoning code are intended to protect and promote the health, safety, and general

welfare of the citizens of Carver County; and,

WHEREAS, it is not the intent of either Chapter 113 Adult Use Businesses or the amendment to Chapter 152 regarding adult use businesses to suppress activity protected by the First Amendment, but to enact regulations which address the adverse secondary effects of adult use businesses; and,

WHEREAS, it is not the intent of the County Board of Commissioners to condone or legitimize obscene acts or the distribution of obscene material, and Carver County expects and encourages state and local law enforcement officials to enforce state and federal obscenity statutes in the County.

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I, Dave Hen certify that I have co	nze, duly appointed and ompared the foregoing	g copy of this resolution with the	f the County of Carver, State of Minnesota, do hereby original minutes of the proceedings of the Board of the day of April, 2010, now on file in the

CARVER COUNTY, MINNESOTA

ORDINANCE # 66-2010

AMENDING CHAPTER 152, THE ZONING CODE; ADOPTING CHAPTER 113, ADULT USE BUSINESSES; AND AMENDING THE COUNTY FEE SCHEDULE

THE CARVER COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS:

SECTION 1. Carver County Code, Section §152.097 shall be amended to include new subpart (D), as follows:

(D) Adult Uses. A conditional use permit shall be required for the establishment of an adult use business pursuant to Chapter 113 of the Carver County Code. A conditional use permit pursuant to this provision shall not be issued until the proposed adult use has an approved provisional adult use license pursuant to Chapter 113. In considering a conditional use permit pursuant Chapter 113 of the Carver County Code: (1) only the definite, objective guidelines and standards of §152.245 through §152.251 apply; and (2) no general health, safety and welfare requirements shall apply, as adult use businesses as defined in Chapter 113 are protected by the First Amendment of the United States Constitution. The requirements of this chapter which may not be constitutionally applied shall be severed from the requirements which may be constitutionally applied and those applicable shall remain in full force and effect.

SECTION 2. Carver County Code, Chapter # 113 – Adult Use Businesses is hereby adopted, as follows:

Chapter # 113 - ADULT USE BUSINESSES

SECTION 1 – Preamble

- **1.1. STATUTORY AUTHORIZATION.** This chapter is adopted pursuant to the authority delegated to Carver County by Minnesota Statutes, Chapter 394.
- 1.2. FINDINGS AND PURPOSE. This chapter is intended to regulate "adult uses," those premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public.

The nature of adult uses is such that they are recognized as having adverse secondary effects, based upon studies of the effects that adult establishments have on the surrounding areas. These studies have been conducted by the Minnesota Attorney General, and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Phoenix, Arizona; Los Angeles, California; Houston, Texas; Newport News, Virginia; and Seattle, Washington.

The adverse secondary effects found in the studies include increased crime rates, decreased property values, increased transiency, neighborhood blight, and potential health risks. These effects are particularly apparent when they are accessible to minors and located near residential properties or residential uses such as schools, day care centers, libraries or parks. The nature of the adult uses requires that they not be allowed within certain zoning districts, or set back a minimum distance from each other, or other residential uses. Special regulation of these uses is necessary to ensure that the adverse secondary effects will not contribute to or enhance criminal activity in the area of such uses, nor will it contribute to the blighting or downgrading of the surrounding property and lessening of its value.

It is therefore in the best interest of the public health, safety and welfare of the citizens of Carver County that certain types of activities, as set forth in this chapter, are prohibited upon the premises of licensed liquor, wine

and beer establishments so as to best protect and assist the owners and operators and employees of these premises, as well as patrons and the public in general. This chapter is intended to prevent harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Carver County Board of Commissioners also desires to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various acts of criminal conduct such as prostitution, sexual assault, and disorderly conduct.

SECTION 2 - TITLE AND SHORT TITLE

- **2.1 TITLE.** The title of this chapter is Carver County Code, Chapter #113, Carver County Adult Use Businesses.
- **2.2 SHORT TITLE.** This chapter shall be known, and may be referred to, as Adult Use Businesses. When used herein, it shall be known as "this chapter."

SECTION 3 - IMPLEMENTATION

- **3.1 JURISDICTION.** The provisions of this chapter shall apply to all adult uses located in the un-incorporated areas within the boundaries of Carver County.
- **3.2 COMPLIANCE.** All adult uses shall be in full compliance with requirements of this chapter, the Carver County Zoning Code, the Carver County Individual Sewage Treatment System Ordinance, other applicable provisions of County, State or Federal laws, and applicable fire, health, and/or safety codes.
- **3.3 NON-CONFORMING USES.** Any adult use business existing on the effective date of the adoption of this Ordinance may be continued subject to the following provisions:
- Subpart 1. No such adult use business shall be expanded or enlarged except in conformity with this Ordinance.
- **Subpart 2.** A non-conforming adult use business shall be required to comply with this ordinance, and apply for and receive an Adult Use License and conditional use permit from the County within six (6) months of the date of this Ordinance. The County does not require a public hearing before issuing a license for the non-conforming adult use business.
- **3.4 ENFORCEMENT.** The Carver County Board of Commissioners, the Carver County Sheriff, and the Carver County Land Management Department, or their designee, shall have authority to enforce this chapter.

3.5 PENALTY

- **Subpart 1. Violation a Misdemeanor.** Any person who fails to comply with the terms of this chapter is guilty of a misdemeanor. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.
- **Subpart 2. Injunctive Relief.** In the event of a violation or threat of a violation of this chapter, the County may institute appropriate actions or proceedings, including injunctive relief to prevent, restrain, correct or abate such violations or threatened violations. If a person fails to comply with the provisions of this chapter, the County may recover fees and costs, including costs incurred by the County for corrective action. Such fees and costs may be certified by the Court as a special tax against the real property.
- **3.6 INTERPRETATION.** In the interpretation and application, the provisions of this chapter shall be interpreted to protect the public health, safety and welfare of the citizens of Carver County by providing for the regulation of adult uses in an effort to prevent or minimize adverse secondary effects associated with such adult uses. This chapter is not intended to limit or repeal any other powers granted to Carver County by the State of Minnesota.

- **3.7. INAPPLICABILITY OF MINNESOTA STATUTE. § 617.242.** Section 617.242 of the Minnesota Statutes does not apply to or in the unincorporated areas of Carver County. Said section is also inapplicable to or in the unincorporated areas of Carver County as to any portion of the operations of sexually-oriented businesses that are not regulated by this ordinance but which may otherwise have been subject to it.
- **3.8 SEVERABILITY.** If any section, clause, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.
- **3.9 ABROGATION AND GREATER RESTRICTIONS.** It is not intended by this chapter to repeal, abrogate, or impair any existing ordinances, or laws. If this chapter is inconsistent with any other ordinance or law, that which imposes the greater restriction shall prevail.
- **3.10 REFERRAL TO OTHER LAWS.** If any section of this chapter references another Ordinance, Statute, Rule or other provision of law, the reference shall be for that other provision of law as is currently enacted and as it may be amended or re-codified in the future.

SECTION 4 - DEFINITIONS

- **4.1 WORD USAGE.** Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this chapter its most reasonable application. For the purposes of this chapter, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.
- **4.2 PERMITTED USES.** Permitted uses of land or buildings as hereinafter listed shall be permitted only in the districts indicated, and under the conditions specified.
- **4.3 DEFINITIONS.** Any words not defined in this section shall have the meanings given them in *Merriam-Webster's Collegiate Dictionary*, Tenth Edition or most recent edition. The following words and terms, whenever they occur in this chapter are defined as follows:
- Subpart 1. Adult Uses. Adult uses include, but are not limited to, adult bookstores, adult motion picture theaters, adult picture rental, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture areades, adult modeling studios, adult hotel/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public. This definition does not apply to the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry by State licensed registered persons. Activities classified as obscene are defined by Minnesota Statutes Section 617.241 and are not lawful and are not included in the definitions of adult uses.
- Subpart 2. Adult Uses-Accessory. A use, business, or establishment having ten percent (10%) or less of its stock in trade or floor area allocated to, or twenty percent (20%) or less of its gross revenues derived from, the sale or rental of adult merchandise.
- **Subpart 3.** Adult Uses-Principal. A use, business, or establishment meeting any of the definitions of Adult Uses excepting those uses that meet the definition of Adult Use Accessory.
- Subpart 4. Adult Use Body Painting Studio. A business or establishment if such building or portion of a building excludes minors by virtue of age, and which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body's specified anatomical

areas are displayed, or the application of paint or other substance by a patron to the body of another person if such body's specified anatomical areas are displayed.

Subpart 5. Adult Use – Bookstore. A building or portion of a building, establishment, or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if such building or portion of a building excludes any minor by reason of age, and if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the presentation, display, depiction, or description of "specified sexual activities" or "specified anatomical areas."

Subpart 6. Adult Use – Cabaret. A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age and if such dancing or live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction, or description of "specified sexual activities" or "specified anatomical areas."

Subpart 7. Adult Use —Companionship Establishment. A companionship establishment which excludes minors by reason of age and which provides the service of listening to or engaging in conversation, talk, or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Subpart 8. Adult Use — Conversation/Rap Parlor. A conversation/rap parlor which excludes minors by reason of age and which provides the service of listening to or engaging in conversation, talk, or discussion, if such service is distinguished by or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Subpart 9. Adult Use – Health/Sport Club. A health/sports club which excludes minors by reason of age and such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Subpart 10. Adult Use – Hotel/Motel. A hotel or motel which excludes minors by reason of age and wherein material is presented which is distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

Subpart 11. Adult Use – Massage Parlor, Health Club. A massage parlor or health club which excludes minors by reason of age, and which regularly provides the service of massage if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Subpart 12. Adult Use – Mini Motion Picture Theater. A building or portion of a building with a capacity of less than fifty (50) persons used for presenting material if such building or portion of a building excludes minors by reason of age and if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

Subpart 13. Adult Use – Modeling Studios. An establishment which excludes minors by reason of age and whose major business is the provision to customers of figure models who are provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in "specified sexual activities" or exhibit "specified anatomical areas" while being observed, painted, painted upon, sketched, drawn, sculpted, photographed, or otherwise depicted by such customers.

Subpart 14. Adult Use – Motion Picture Arcade. Any place to which the public is permitted or invited wherein minors are excluded by reason of age, and where coin operated or slug operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

Subpart 15. Adult Use – Motion Picture Theater. A building or portion of a building with a capacity of more than fifty (50) persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by reason of age or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observations by patrons therein.

Subpart 16. Adult Use – Novelty Business. A business which excludes minors by reason of age, and which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation

Subpart 17. Adult Use – Sauna/Steam Room/Bathhouse Facility. A building or portion of a building used for providing a sauna, steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing, or reducing agent, if such building or portion of a building excludes minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Subpart 18. County. The County of Carver, Minnesota, or any department or representative of the county who is authorized by this chapter or otherwise by the County Board to represent the county in the administration or enforcement of this chapter.

Subpart 19. County Board. The Carver County Board of Commissioners or its designee.

Subpart 20. Department. The Carver County Land Management Department.

Subpart 21. Liquor License. Any of the following licenses issued or approved pursuant to Minnesota Statute, Chapter 340A.

Subpart 22. Minor. Person(s) under eighteen (18) years of age.

Subpart 23. Specified Anatomical Areas:

- A. Human genitals, pubic region, buttocks, anus, or female breast(s) below a point immediately above the top of the areola, unless completely and opaquely covered.
- **B.** Erect penis, even if completely and opaquely covered.

Subpart 24. Specified Criminal Activity:

- A. Prostitution or promotion of prostitution; dissemination of obscenity or illegal pornography; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; lewdness; sexual battery; rape; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that, if the acts would have constituted any of the foregoing offenses if the acts had been committed in Minnesota; for which:
 - 1. less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or
 - 2. less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a gross misdemeanor or felony offense; or
 - 3. less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within

Subpart 25. Specified Sexual Activities.

- Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexual-oriented acts or conduct: analingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoocrasty; and/or,
- **B.** Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence; and/or,
- C. Use of human or animal ejaculation or ejaculate, sodomy, oral copulation, coitus, or masturbation; and/or,
- **D.** Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s); and/or,
- E. Situations involving a person or person, any of whom are nude, clad in undergarments, or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical constraint of any such persons; and/or,
- F. Erotic or nude touching, fondling or other sexually oriented contact with an animal by a human being; and/or,
- G. Human erection, urination, menstruation, vaginal or anal irrigation.

SECTION 5 – ADMINISTRATION

5.1 ADULT USE LICENSE & CONDITIONAL USE PERMIT REQUIRED. No person shall own or operate an Adult Use - Principal without first having secured an Adult Use License and a conditional use permit from Carver County pursuant to this chapter and Chapter 152 of the Carver County Code.

Subpart 1. Application. The application for issuance of an Adult Use License (and renewal) shall be submitted on forms provided by Carver County Land Management and shall include:

- A. If the applicant is an individual: the name, residence, phone number and birth date of the applicant. If the applicant is a partnership: the name, residence, phone number, and birth date of each general and limited partner. If the applicant is a corporation: the name, residence, phone numbers, and birth dates of all persons holding more than five (5) percent of the issued outstanding stock of the corporation.
- **B.** The name, address, phone number, and birth date of the operator and manager of such operation, if different from the owner(s).
- C. The address and legal description of the premises where the adult establishment is to be located.
- **D.** Proof of ownership interest in the land or premises where the adult establishment is to be located or a signed purchase agreement or other authorization from the owner(s) of the land or premises.
- A statement detailing each specified criminal activity, as defined in this chapter, for which persons required to be disclosed in 5.1, subp. 1A, operator, or manager above have been convicted and whether or not the applicant has ever applied for or held a license to operate a similar type business in any other community(s).
- **F.** The activities and types of business to be conducted.
- G. The hours of operation.
- **H.** Provisions to be utilized to restrict access by minors.
- I. A building plan of the premises detailing all internal operations and activities.

Subpart 2. Responsibility to Obtain Other Permits/Licenses. The granting of any permit or license pursuant to the requirements of this chapter, or other applicable Carver County ordinances, shall not relieve the applicants

of their responsibility to obtain any required state or federal permits.

5.2 LICENSE FEES

Subpart 1. Submittal of Fees. Each application for an Adult Use License shall be submitted to the Land Management Department and shall be accompanied by payment in full of the required fee for the Adult Use License.

Subpart 2. Fee. The fee for the Adult Use License application and Adult Use License renewal application shall be as detailed in the fee schedule established by the County Board. The fee may be adjusted from time to time by Board action.

Subpart 3. Refund of Fee. If any application for a license is rejected, the license fee shall not be refunded. No part of the fee paid for any license issued under this chapter shall be refunded.

5.3 GRANTING OF ADULT USE LICENSE.

Subpart 1. Investigation by Sheriff. The Carver County Sheriff and the Department have authority to investigate all facts set out in the application. The applicant(s), operator, and each owner of the establishment shall be subject to a criminal history background investigation by the Sheriff or his/her designee. Cost of the criminal history investigations shall be borne by the applicant according to the Carver County fee schedule. The application for the Adult Use License shall not be considered complete until all required information has been furnished, the investigation has been completed by the Sheriff, and a report provided to the Department by the Sheriff.

Subpart 2. Granting of Adult Use License. Upon receipt of a completed application pursuant to Section 5.3, subp. 1, the Department shall forward its findings on the application to the County Board. The County Board shall grant or deny the application in a timeframe so as to comply with Minn. Stat. § 15.99. The County Board shall deny the application if any of the ineligibility conditions in Section 5.4 exist, or if the proposed location does not meet the requirements set forth in Section 5.5. If the application is granted, a Provisional Adult Use License will be issued by the County Board. The issuance of a Provisional Adult Use License does not automatically result in a conditional use permit being issued, and the applicant must follow the procedures set forth in Chapter 152 in order to obtain a conditional use permit. The County Board shall change the Provisional Adult Use License to an Adult Use License immediately following the granting of the conditional use permit if all requirements have been met.

Subpart 3. Expiration of Provisional Adult Use License. A Provisional Adult Use License shall expire 120 days from the date the license is granted unless an extension is granted by the County Board.

Subpart 4. Adult Use License is Non-transferable. The Provisional Adult Use License and Adult Use License shall be issued only to the applicant and only for the premises described in the application. No more than one adult use premises may be listed on each application. No license may be transferred to another premises or person without the written approval of the County Board. If the licensee is a partnership or corporation, a change in the identity of any of the general or limited partners or a change in persons holding more five (5) percent or more of the issued and outstanding stock of the corporation shall be deemed to be a transfer of the license.

5.4 PERSONS INELIGIBLE FOR ADULT USE LICENSE. A license shall not be issued to any person:

Subpart 1. Under twenty-one (21) years of age.

Subpart 2. Who is overdue in payments to a city, county, state, or federal government of taxes, fees, fines or penalties, or charges for municipal services and utilities assessed against him/her or imposed upon him/her.

Subpart 3. Who has been convicted of a specified criminal activity, as defined in this chapter.

- Subpart 4. Who is not the owner of the establishment for which the license is issued.
- **Subpart 5.** To any applicant who is acting as an agent for an individual who would be disqualified pursuant to the criteria in this section.
- **Subpart 6.** Who has not paid the required investigation/licensing fees required by this chapter.
- **Subpart 7.** No license shall be granted for an adult use business on any premises where a licensec has been convicted of a violation of this chapter, or where any license hereunder has been revoked for cause, until one (1) year has elapsed after such conviction or revocation.
- **Subpart 8.** No Adult Use License shall be granted for any adult use business which is not in compliance with the County's land use regulations, or fire, health, and safety codes and all provisions of federal and state law.

5.5. PERMITTED LOCATIONS FOR ADULT-USE PRINCIPAL.

- **Subpart 1.** Adult Use-Principal shall only be allowed in the Rural Service Districts as defined in Chapter 152.
- **Subpart 2.** Adult Use-Principal shall be located at least one thousand (1000) lineal feet as measured in a straight line from the nearest point of the business premises and associated parking lot of the Adult Use-Principal to the nearest structure associated with:
 - **A.** Any single or multiple family residence or farmstead.
 - **B.** Any licensed daycare facility.
 - C. Any public or private educational facility classified as an elementary, junior high, or senior high school.
 - **D.** Any hotel or motel.
 - **E.** Any public park or trails system.
 - **F.** Any nursing home.
 - **G.** Any church or church related organization.
 - H. Another adult use business. No Adult Use-Principal shall be located in the same building or upon the same property as another Adult Use-Principal.
 - I. Any establishment that has a liquor license or serves alcoholic beverages.
- **Subpart 3.** All adult uses shall meet the required access, parking, screening, lighting, and other relevant site related criteria as set forth in the Carver County Code of Ordinances.

5.6. CONDITIONS OF ADULT USE LICENSE.

- Subpart 1. All licensed premises shall have the license posted in a conspicuous place at all times.
- Subpart 2. No minor shall be permitted on the premises.
- **Subpart 3.** Any designated inspection officer of the County shall have the right to enter, inspect, and search the premises of a licensee during business hours. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the County to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize an excessive pattern of inspections or violations of constitutional rights.
- **Subpart 4.** No adult goods or material shall be offered, sold, transferred, conveyed, given, displayed, or bartered to any minor.

Subpart 5. The licensee must keep itemized written records of all transactions involving the sale or rental of all items or merchandise for at least one year after the transaction. At a minimum, those records must describe the date of the transaction, a description of the transaction, the purchase or rental price, and a detailed description of the item or merchandise that is being purchased or rented. These written records must be provided to the Department or the Department's designee(s) upon request.

Subpart 6. The licensee must cover or otherwise arrange all windows, doors, and apertures to prevent any person outside the licensed premises from viewing any items or merchandise inside the premises depicting "specified sexual activities" or "specified anatomical areas".

Subpart 7. All adult use businesses shall prominently display a sign at the entrance and located within two (2) feet of the door opening device of the adult use business or section of the establishment devoted to adult use which states: "This business sells or displays material containing adult themes. Persons under eighteen (18) years of age shall not enter".

5.7. EXPIRATION AND RENEWAL

Subpart 1. Expiration. Each license shall expire one year from the date the license is granted and may be renewed only by making application as provided in Sections 5.1 through 5.3. Application for renewal must be submitted to the Department at least 60 days before the expiration date.

Subpart 2. Denial of Renewal. When the County Board denies the renewal of a license, the applicant shall not be issued a license for one year from the date of denial. The license applicant may appeal the decision to a court of law within thirty (30) days of the final decision of the County Board or its designee. Any decision adverse to the licensee shall be deemed final immediately upon its issuance, but shall not take effect for thirty (30) days. If, subsequent to denial, the County Board finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have clapsed since the date denial became final.

5.8. SUSPENSION AND REVOCATION

Subpart 1. Suspension. The County Board may issue a letter of intent to suspend, for up to 30 days, an Adult Use License if a licensee knowingly commits, or allows an employee to commit, a violation of this ordinance.

Subpart 2. Revocation. The County Board may issue a letter of intent to revoke an adult use business license, if a licensee knowingly commits, or allows an employee to commit, three or more violations of this ordinance within a one year period, or if one or more of the following occurs:

- A. a licensee or an employee of the licensee has committed fraud, or a material misrepresentation in securing the Adult Use License;
- **B.** a licensee or an employee of the licensee has knowingly allowed possession, use, or sale of controlled substances, including alcohol, on the premises;
- C. a licensee or an employee of the licensee has engaged in or allowed prostitution on the premises;
- **D.** a licensee or an employee knowingly operated the adult use business during a period of time when the licensee's license was suspended; and/or,
- **E.** a licensee has been convicted of a specified criminal activity.

5.9. HEARING; DENIAL, SUSPENSION, REVOCATION OF LICENSE; APPEAL

Subpart 1. Written Notice. Denial, revocation or suspension shall be preceded by written notice to the applicant or licensee and a public hearing before the County Board or its designee. The notification shall be directed to the most current business address or other mailing address on file with the Department for the

applicant or licensee and shall state the grounds for which a denial, revocation, or suspension is being requested. The notice shall be delivered by certified mail or personal service.

Subpart 2. Hearing. Within twenty (20) days of the written notice to the applicant or licensee, the County Board shall conduct a hearing for the purpose of determining whether to deny, revoke, or suspend the license. Applicant or licensee may be represented by counsel and may submit all relevant evidence or arguments. The County Board or its designee shall issue a written decision within ten (10) days after the hearing, which decision shall deny, suspend, revoke, or grant the license, and state the reasons for such action. Any decision adverse to the applicant or licensee shall be deemed final immediately upon its issuance, but shall not take effect for thirty (30) days.

Subpart 3. Appeal of Suspension or Revocation. If the County Board or its designee orders the suspension or revocation, the applicant or licensee may appeal the decision to a court of law within 30 days of the final decision of the County Board or its designee and the licensee may continue in business until the conclusion of the action.

Subpart 4. Appeal of Denial. If the County Board or its designee orders the denial of a new Adult Use License, the license applicant may appeal the decision to a court of law within thirty (30) days of the final decision of the County Board or its designee. The applicant may not commence doing business unless the action is concluded in its favor.

SECTION 6 -- ADULT USE OPERATIONAL RESTRICTIONS

6.1 ADULT USE - PRINCIPAL.

Subpart 1. General Provisions. Adult uses as defined in Section 4.3, subp. 3 of this chapter shall be subject to the following general provisions:

- A. An adult use which does not qualify as an accessory use pursuant to Section 6.2 below shall be classified as an Adult-Use Principal.
- **B.** No person(s) under eighteen (18) years of age shall be permitted in any Adult Use-Principal premises, enterprise, establishment, business or place.
- C. No liquor license shall be issued to any Adult Use-Principal
- D. No adult use related premises, enterprise, establishment, business or place shall allow or permit the sale or service of set ups to mix alcoholic drinks. No alcoholic beverages shall be consumed on the premises of such premises, enterprise, establishment, business, or place.
- E. Activities classified as obscene as defined in Minn. Stat. § 617.241 are not permitted and are prohibited. In no instance shall the application or interpretation of this chapter be construed to allow an activity otherwise prohibited by law.
- **F.** Adult Use- Principal shall be prohibited from locating in any building which is also utilized for residential purposes.
- G. Any Adult Use-Principal having available for customers, patrons, or employees, a booth, room or cubicle for the private viewing of any "specified anatomical areas" or "specified sexual activities" must comply with the following requirements:
 - 1. Each booth, room or cubicle shall be without doors and the occupant must be visible at all times.
 - 2. Only one person may be in a booth, room, or cubicle at a time.
 - 3. Walls separating booths, rooms, or cubicles must be such that the occupants cannot engage in sexual activity.
 - 4. Each booth, room, or cubicle must be kept clean and sanitary.
 - 5. Minimum lighting requirements in accordance with the Carver County Code of Ordinances must be maintained.
- **H.** Illumination of the premises exterior shall be adequate to observe the location and activities of all persons on the exterior premises.

The owner/operator shall hire and employ their own security personnel who shall maintain orderly conduct at such Adult Use-Principal. These employees are not required to be licensed peace officers.

Subpart 2. Hours of Operation. No adult use shall be open to the public from the hours of 12:00 midnight to 10:00 a.m. weekdays and Saturday, nor between 12:00 midnight and 12:00 noon on Sunday.

Subpart 3. Sign Regulation. Adult Use-Principal shall adhere to the following sign regulations in addition to those set forth in Chapter 154 of the Carver County Code.

- A. Sign messages shall be generic in nature and shall only identify the name and type of business.
- B. Signs shall not be obscene and/or graphic depictions of "specified anatomical areas" or "specified sexual activities" as defined by this chapter.
- C. Signs shall be limited to the size, location, and number of signs permitted in the district in which the use is located.

Subpart 4. Adult Use-Cabaret Regulations. The following additional restrictions apply to Adult Use-Cabarets:

- A. No person, firm, partnership, corporation or other entity shall advertise, or cause to be advertised, an adult cabaret without a valid Adult Use License.
- **B.** An adult use licensee shall maintain and retain for a period of two (2) years the names, addresses, and ages of all persons engaged, hired, or employed as dancers or performers by the licensee.
- C. No owner, operator, or manager of an adult cabaret shall permit or allow any dancer or other live entertainer to perform nude unless as provided in subparts F & G below.
- **D.** No patron or other person other than a dancer or live entertainer, as provided in subparts F & G below, shall be nude in an adult cabaret.
- **E.** No dancer, live entertainer, or performer shall be under eighteen (18) years of age.
- F. All dancing shall occur on a platform intended for that purpose which is raised at least two (2) feet above the level of the floor.
- G. No dancer or performer shall perform or dance closer than ten (10) feet from any patron unless such dancer or performer is enclosed behind a floor to ceiling glass.
- **H.** No dancer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
- I. No person under eighteen (18) years of age shall be admitted to an adult cabaret.
- J. No patron shall pay or give any gratuity directly to any dancer or performer.

6.2 ADULT USE-ACCESSORY.

Subpart 1. Permitted Locations for Accessory Adult Uses. Adult Use-Accessory shall be permitted in the Rural Service Districts as defined in Chapter 152 at establishments where there is an existing permitted retail establishment. Adult Use-Accessory shall conform to the following provisions:

- A. A use, business, or establishment having ten percent (10%) or less of its stock in trade or floor area allocated to, or twenty percent (20%) or less of its gross revenues derived from, the sale or rental of adult merchandise.
- B. Not include any adult use activity except the sale or rental of adult merchandise.
- C. Adult use- accessory shall be prohibited from locating in any building which is also utilized for residential purposes.

Subpart 2. Separation of Areas. Adult Use-Accessory shall be restricted from, and prohibit access to minors, by physically separating the following and similar items from areas of general public access:

- A. Movie rental display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view of, and under the control of, the person(s) responsible for the operation. All Adult Use-Accessory shall prominently display a sign at the entrance and located within two (2) feet of the door opening device of the Adult Use-Accessory establishment or section of the establishment devoted to adult use which states: "Persons under eighteen (18) years of age shall not enter".
- B. Magazines or publications containing "specified anatomical areas" or "specified sexual activities" shall not be physically accessible to minors and shall be covered with a wrapper or other means to prevent display of any material other than the publication title.

Subpart 3. Advertising. Adult Use-Accessory shall be prohibited from both internal and external advertising and signing of adult materials and products.

<u>SECTION 3.</u> Ordinance #48, the Carver County Fee-For-Service Schedule, shall be amended to include: Adult Use Business license application and renewal fee of \$500; and the addition of Adult Use Business Licenses in the Sheriff's Office Background Fees for New Establishment/New Owner of \$250 and Renewal of \$100.

<u>SECTION 4</u> - **EFFECTIVE DATE.** This Ordinance shall be in full force and effect upon the date of its passage and publication.

Adopted by the County Board of C Chaska, Minnesota, this day o	ommissioners at a meeting held at the Carver County Government Center, 2010
County Board Chair	Date:
County Administrator	Date:



REQUEST FOR BOARD ACTION

AGENDA ITEM: MPCA Grant Agreement to Implement L	.ake Burandt TMDL
Originating Division: PEH Division	Meeting Date: 04/13/10
Amount of Time Requested: 5 minutes	Attachments for packet: Tyes X No
Item Type: ☐ Consent_x Regular Session ☐Closed Sess	sion
BACKGROUND/EXPLANATION OF AGENDA ITEM: Burance final Total Maximum Daily Load study and subsequent implementation 2009 Federal EPA 319 Non-point Source Restoration and Protection Pollution Control Agency in 2009. The County applied for and receive Total Maximum Daily Load Plan (TMDL). The Carver County request is aimed at funding on the ground project nutrient pollutant loads - primarly phosphorous. Some funding will be Key steps of the workplan include 1) coordination with landowners; 2) and other); 3) continue monitoring inlets and outlets; 4) provide in-lake Staff is requesting that the Board accept the MPCA funds, approve the	on plan was approved by the MPCA and EPA in 2009. The Grant and Loan (CWL) funds were distributed by the MN ed \$230,000 to begin implementation of the Burandt Lake is which are aimed at reducing external and internal aused to offset seasonal staff for the monitoring program. Install urban stormwater runoff treatment (raingardens treatment (ALUM or similar); and 5) evaluation.
amendments.	
ACTION REQUESTED: Motion to authorize the chair to sign the grant agreement with the Burandt Lake TMDL; and authorize the following budget amend Increase Year 2010 Budget Item 01-123-127-1526-5820 by Increase Year 2010 Budget Item 01-123-127-1526-6111 by Increase Year 2010 Budget Item 01-123-127-1526-6260 by lake treatment.)	dments to the 2010 budget: \$ 230,000 (MPCA Funds) \$ 15,000 (PEH seasonal staff)
FUNDING County Dollars = \$ 75,500 in-kind (staff time & equip) \$ 30,500 CCWMO Funds Other Sources = \$ 230,000 MPCA FUNDS = \$ 84,000 BWSR FUNDS TOTAL = \$,420,000 Related Financial Comments: Grant Match includes Board of V grant upon receipt. Board action accepting these funds will occurred action accepting these funds will occur accepting these funds will occurred action accepting these funds will occur accept the acceptance acceptanc	cur through a separate approval. Match also
(Reviewed by Division Director	Date: 04/05/10

BUDGET AMENDMENT REQUEST FORM

Division: PEH Division Date of County Board Sess	sion: 4/1	13/10		Fund	
Description of Revenue Account funds are to Increased/(Decreased):		Amount	Description of Revenue Account funds are to Increased/(Decreased):		Amount
MPCA Funds	\$	230,000	Seasonal Staff	\$	15,000
			Burandt Lake Project	\$	215,000
TOTAL: A. Reason for Request:	\$ See Bo	230,000 T	OTAL:	\$	230,000
3. Financial Impact: (To be filled	out by F	inance Directo	r)		
Contingency Acct. Beginning	Bal.:	<u>\$</u>	300,000		
. Contingency Acct. Current Ba	1.:				
. Current Balance After Adj.:		<u>\$</u>	300,000		
Requested By:	<u>Dave Di</u>	realan - Land &	Water Services		
Recommend Approval:	<u>Finance</u>	Director			
County Board Decision:	Approxa	1/Digannrayal			

S:\Excel\SHELLS\[Budget Amendment Forms.xls]Expenditure Form



REQUEST FOR BOARD ACTION

AGENDA ITEM: TMDL Priority Subwatersheds and Direct	Discharge Program for 2010	
Originating Division: Public Health and Environment	Meeting Date: 13 Apr 2010	
Amount of Time Requested: 10 minutes	Attachments for packet: ⊠Yes ☐ No	
Item Type: ☐Consent ☑Regular Session ☐Closed Sess	ion	
BACKGROUND/EXPLANATION OF AGENDA ITEM: TMDL IMPLEMENTATION PROGRAM—the Total Maximum Daily Load (TMDL) Implementation Plan for the Bevens, Carver, & Silver Creek Watersheds was approved by the state (MPCA) and the County Board in 2007. The implementation plan calls for a reduction of fecal loads sources in the watersheds, mainly agricultural manure source runoff and direct dicharge SSTS systems. The County Board approved an landowner incentive program for 2008 and 2009 implementation that has proved successful The attached memo provides some highlights of the 2009 program.		
In order to continue the TMDL implemenation plan, staff is proposing to continue to build on this success, and offer the incentive program in the next priority sub-watersheds for 2010, as well as providing minimal funds to areas outside of the focus sub-waterhseds. The attached memo also highlights the recommended 2010 program including a map showing the priority sub-watersheds.		
Funding is derived from the CCWMO levy funds (for direct incenmemo also describes potential additional grant funding which co	tive) and state grants (for the loan portion). The uld be used for incentives.	
ACTION REQUESTED: Motion to continue implementation of the 2010 with focus on the identified priority sub-watersheds; author program: \$10,000 from BWSR low cost conservation fund to fund incentive	ize expenditures from the following funds to the epayments across the county.	
\$32,000 from budgeted Bevens Creek funds to fund incentive payments in the Bevens Creek priority sub- watersheds.		
\$32,000 from budgeted Carver Creek funds to fund incentive payments in the Carver Creek watershed. dentify the Priority Sub-watersheds as outlined in the attached memo and map		
County Dollars = \$64,000 CCWMO funds	FISCAL IMPACT None ⊠Included in current budget Budget amendment requested Other: Dept of Agriculture revolving loan funds.	
X Reviewed by Division Director	Date: 5 Apr 2010	

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Carver County Water Management Organization

Planning and Water Mgmt Dept Government Center - Administration Building 600 East 4th Street Chaska, Minnesota 55318

Phone: (952)361-1820 Fax: (952)361-1828

www.co.carver.mn.us/water

Memo

To: County Commissioners

From: Paul Moline, Carver County Water Management

Date: 4/6/10

Re: 2009 DIRECT DISCHARGE SSTS COST SHARE PROGRAM SUMMARY; PROPOSED 2010

PROGRAM

CC.

David Hemze, County Administrator Dave Drealan, LWS Director

Enclosures:

Priority sub-watershed map

2009 PROGRAM SUMMARY:

The 2009 DIRECT DISCHARGE SSTS COST SHARE PROGRAM was another success, with 44 systems utilizing some aspect of the program in one way or another.

Total participants: 44

Number in TMDL area: 24

Number outside TMDL: 20

Loans Taken: 31 totaling an estimated \$465,000

Identified potential DD Systems with no response: 2

These numbers build off of the 2008 program in which 59 landowners participated.

2010 PROPOSED PROGRAM

Priority sub watersheds

The Water, Environment, and Natural Resource (WENR) Committee recommended that the County Board identify the following areas in the Carver and Bevens/Silver Creek watersheds as priority sub watersheds: Co Rd 33 & Tacoma, part of Bevens Creek; CC12, H1 and H2 (Hydes Lake), part of Carver Creek (see attached map). The total "likely systems" for 2010 is 37. A map is attached.

Based on those numbers and a \$2,000 payment, a maximum of \$38,000 for incentive payments in Carver Creek and \$36,000 for incentives in Bevens Creek would be needed. If every "likely system" took out the maximum loan (15K), that would total \$555,000.

- Must be voluntary with no previous trigger (ie. Current enforcement, compliance inspection as a result of property transfer, complaint, or building permit).
- County will pay 25% of the SSTS replacement cost up to a maximum of \$2000 per SSTS.
- The owner may apply for a low interest loan with up to a ten year payback. Maximum Loan Amount -\$15,000 maximum
- Volunteer by Aug 31, 2010. After that owner will be required to have a compliance inspection completed within ten months with no cost share and only low interest loan with four year payback (as funds are available).
- Payment will be issued to the SSTS contractor upon successful completion of the project (determined by Environmental Services).

Systems located outside of the TMDL Priority Sub-Watersheds

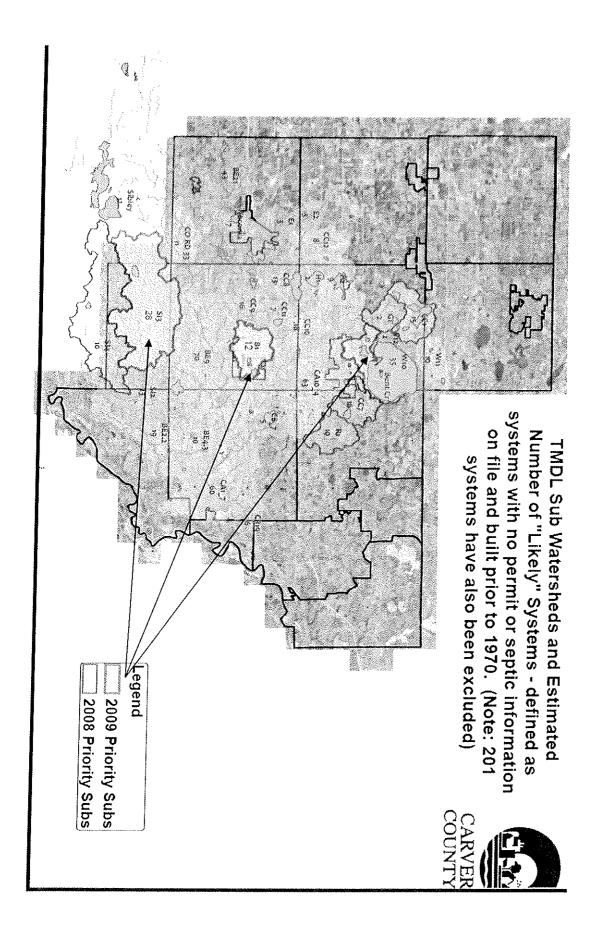
- Must be voluntary with no previous trigger (ie. Current enforcement, compliance inspection as a result
 of property transfer, complaint, or building permit).
- County will pay 25% of the SSTS replacement cost up to a maximum of \$2000 per SSTS (FIRST COME FIRST SERVE).
- The owner may apply for a low interest loan with up to a ten year payback. Maximum Loan Amount -\$15,000 maximum (FIRST COME FIRST SERVE).
- Volunteer by Aug 31, 2010.
- Payment will be issued to the SSTS contractor upon successful completion of the project (determined by Environmental Services).
- Owner would be required to replace SSTS within ten months of completing Cost Share Form.

INCENTIVE FUNDS ESTIMATE

- Carver Creek Priority Subs = \$32,000 budgeted WMO funds; \$6,000 BWSR NRBG funds
- Bevens Creek Priority Subs = \$32,000 budgeted WMO funds; \$4,000 BWSR NRBG funds
- Areas outside the Priority Subs
 - o Crow River = \$14,000 budgeted WMO funds
 - o West Chaska Creek = \$6,000 budgeted WMO funds
- Potential additional grant funding The CCWMO has received notification of an additional \$50,000 grant as part of Clean Water Legacy Funding. This grant should come before the board for approval by June 2010. The funds are to be used as follows per the grant: "As part of this project we are seeking additional funding (\$50K) to offset the staff costs of inspecting and managing the direct discharge program. The 50K saved by offsetting staff costs will be used to offer additional incentives payments to homeowners with "likely" systems." Board approval of this grant and the approach will allow for up to an additional 25 systems to be fixed. Staff will include a recommendation of where to target these systems at that time.
- Unused funds If number of likely systems is reduced, the above identified funds can be re-allocated as follows:
 - BWSR funds available County-Wide
 - WMO funds spent within the same watershed

LOAN FUNDS ESTIMATE

• There is approximately \$600,000 available for loans in 2010, enough to fund 40 systems at the maximum loan amount. Based on past performance the average loan taken is about \$12,000 which would cover about 50 systems. Past average participation in the loan program of near 50% indicates that the funds will be enough to cover the 2010 program goals. Staff is, however, recommending the use of AGBMP loans administered by the SWCD to provide an additional \$100,000 in loans to cover a full-loan participation scenario.





REQUEST FOR BOARD ACTION

AGENDA ITEM: Approve Release of DRAFT CCWMO Wa	ater Management Plan for Review	
Originating Division: Public Health & Environment	Meeting Date: April 13, 2010	
Amount of Time Requested 25 minutes	Attachments for packet: X Yes \(\sigma \) No	
Item Type: ☐Consent X Regular Session ☐Closed Se	ession	
BACKGROUND/EXPLANATION OF AGENDA ITEM: A draft of the updated 2010 Carver County Water Management Organization (CCWMO) Water Management Plan has been recommended by the Water, Environment and Natural Resource Committee (WENR) Committee, for consideration by the Board. The next step in the process is to release the DRAFT for official review and input from residents, townships, cities and state agencies. See Attached memo for more detail.		
ACTION REQUESTED: Motion to authorize release of the DRAFT 2010 CCWMO Water	er Management Plan for 60-day review.	
FUNDING County Dollars = \$0 Other Sources & Amounts = 0 = \$0 TOTAL = \$0 Related Financial Comments:	FISCAL IMPACT X None Included in current budget Budget amendment requested Other:	
X Reviewed by Division Director	Date: April 5, 2010	



Carver County Water Management Organization

Planning and Water Mgmt Dept Government Center - Administration Building 600 East 4th Street Chaska, Minnesota 55318

Phone: (952)361-1820 Fax: (952)361-1828 www.co.carver.mn.us/water

Memo

To: County Commissioners

From: Paul Moline, Carver County Water Management

Date: 04/05/10

Re: Approval of CCWMO Draft Water Management Plan for Review

CC. Dave Drealan Dave Hemze

Randy Wolf

Enclosures:

None

At previous County Board work sessions including in Feb 2010, staff have summarized key issues of the Carver County Water Management Organization (CCWMO) water management plan update including TMDL 's, Stormwater Mgmt, Wetland Mgmt, Cost-share & capital project funding, and Watershed taxing jurisdictions.

The current DRAFT is ready for Board consideration at this time. It has been recommended by the Water, Environment and Natural Resource Committee (WENR) to the Board for authorization to open the public and agency review period. A copy of the latest <u>DRAFT CCWMO PLAN HAS BEEN SENT SEPARATELY.</u>

Background

The Plan is required under MN statute 103B.231 covering WMO's within the metropolitan area. The County assumed control as the WMO authority in 1996 and subsequently adopted the first water management plan in 2001. The plan is in need of an update for the following reasons:

- State statute requires and update of the WMO plan every 10 years.
- The state Board of Water and Soil resources has considered the existing CCWMO plan to be partially expired which has affected funding of grants.
- The current plan does not address Total Maximum Daily Loads (TMDL's)
- The current plan does not address the federal and state required National Pollutant Discharge Elimination System (NPDES) goals
- The annual distribution of state Clean Water Legacy funding favors projects identified in the WMO plan.
- Data collected on physical features and water resources in the WMO since 2001 is significant.
- The implementation of the first plan since 2001 has provided more focus on the needed implementation to protect the County's water resources.

Key changes in the CCWMO plan

- Impaired Waters & TMDLs incorporating required state Total Maximum Daily Load efforts, studies
 and approved plans. This water management plan adopts by reference any TMDL Implementation
 Plans applicable to waters within the CCWMO completed or approved by the County, the State of
 Minnesota, or the Environmental Protection Agency (EPA). Plan amendments will be needed as future
 TMDL's are adopted. (See Chapter 3B)
- Stormwater Runoff In order to comply with NPDES standards, TMDL plans and to reduce offsite impacts of new development, the plan calls for greater mitigation of site runoff (treating more water on-site) through a variety of available flexible options. (See Chapter 3C Urban Stormwater Mgmt)
- NPDES requirements incorporating required state and federal standards. The county is required to obtain a National Pollutant Discharge Elimination System (NPDES) Phase II Storm Water permit under

the Clean Water Act and needs to reflect those requirements in the plan. (See Chapter 3C- Urban Stormwater Mgmt)

- Clarification of Wetland Standards 2001 WMO plan calls for wetland buffers and specifies distances.
 Proposed language calls for wetland setbacks to be developed in rules that
 - Create more flexible standards in order to balance environmental protection with sound science and the rights of the private landowner.
 - Provide uniform setbacks between 20 and 50 feet that mirror some current city standards.
 - o Allow the standard setback to be decreased and mitigated based on total site design.
 - o Maintains function of wetland transition areas: water quality protection, flood storage.
 - Account for the type of land altering activity (new construction vs. redevelopment);
 - Exempt most linear projects.

(See chapter 3D-Wetland Mgmt)

- Recognition of Cost share & Project Funding categories layout funding approach for 10-year period (See Chapter 4-Implementation). CCWMO Implementation is carried out through three main areas: Programs, Cost Share Projects and Capital Projects
 - Programs many of the implementation strategies described in the plan chapters and summarized in the implementation section are dependent on the continuation of established county-wide or WMO programs.
 - Cost Share Funds Establish in the plan and recognize current cost share funding efforts including: Low
 Cost Landowner Cost Share Fund; LGU/Organization Cost Share Fund; Well Sealing Fund; and the SSTS
 direct discharge program.
 - "Capital" projects Projects which are non-LGU projects, require cross-boundary collaboration (e.g Regional Storage, lake outlets, stream restorations), are part of a County/State public works /parks projects, or are broader in nature as identified in TMDL Implementation Projects, will be included in the County's annual 5year CIP process.
- Reduction in taxing districts combination of historic six WMO taxing districts into one unit. (See Chapter 5 - Administration) Staff discussed the issue in detail with the Board in February and in a follow up memo.
- Clarification of the relationship between the CCWMO and local cities & townships, including the
 process for LGU's to assume more local control.

Review Process and Next Steps

State statute requires that "the organization must submit the draft plan for a 60-day review and comment period to all counties, the metropolitan council, the state review agencies, the board of water and soil resources, soil and water conservation districts, towns, and statutory and home rule charter cities having territory within the watershed". (statute attached)

Review of the full DRAFT CCWMO plan by residents, landowners, cities, townships, state agencies and other entities is appropriate at this time as the committee and staff are seeking more input of draft language. Input and involvement to date include:

- County Board Work sessions in 2008, 2009 and 2010.
- WENR Advisory committee meetings since late 2007, including review of draft language since 2009.
- State agency meetings.
- Local Cities and adjacent watershed meetings.
- Township meeting.
- Inter-departmental Staff meetings (primarily in Land & Water Services)

Staff is proposing the following steps during the "60-day" review period.

- Public open house(s).
- All Township Meeting.
- City and Agency meeting (TAC).
- Website dissemination .
- Individual city and two meeting attendance as needed or requested.

- Futher County level staff meetings.

Following this period, staff will respond to and address comments and present a revised DRAFT plan to the WENR Committee, and the Board. Following this, the next major steps will be to 1) hold a public hearing to consider submittal of the revised DRAFT CCWMO Plan to the State – Board of Water and Soil Resources, 2) further revisions of the plan based on state review, and 3) adoption of the final plan. These steps could be completed by late fall of this year.

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Portion of MN Statute 103B.231 (describes review process)

Subd. 7. Review of the draft plan.

- (a) Upon completion of the plan but before final adoption by the organization, the organization must submit the draft plan for a 60-day review and comment period to all counties, the Metropolitan Council, the state review agencies, the Board of Water and Soil Resources, soil and water conservation districts, towns, and statutory and home rule charter cities having territory within the watershed. A local government unit that expects that substantial amendment of its local comprehensive plan will be necessary to bring local water management into conformance with the watershed plan must describe as specifically as possible, within its comments, the amendments to the local plan that it expects will be necessary. If the county has a groundwater plan, the county must review and comment on the consistency of the watershed plan with the county groundwater plan. Differences among local governmental agencies regarding the plan must be mediated. Notwithstanding sections 103D.401, 103D.405, and 473.165, the council shall review the plan in the same manner and with the same authority and effect as provided for the council's review of the comprehensive plans of local government units under section 473.175. The council shall comment on the apparent conformity with metropolitan system plans of any anticipated amendments to local comprehensive plans. The council shall advise the Board of Water and Soil Resources on whether the plan conforms with the management objectives and target pollution loads stated in the council's water resources plan and shall recommend changes in the plan that would satisfy the council's plan.
- (b) The watershed management organization must respond in writing to any concerns expressed by the review agencies within 30 days of receipt thereof.
- (c) The watershed management organization must hold a public hearing on the draft plan no sooner than 30 days and no later than 45 days after the 60-day review period of the draft plan. The board or boards of the affected counties shall approve or disapprove projects in the capital improvement program which may require the provision of county funds pursuant to section 103B.251 or 103D.901, subdivision 2. Each county has up until the date of the public hearing on the draft plan to complete its review of the capital improvement program. If the county fails to complete its review within the prescribed period, unless an extension is agreed to by the organization the program shall be deemed approved. If the watershed extends into more than one county and one or more counties disapprove of all or part of a capital improvement program while the other county or counties approve, the program shall be submitted to the Board of Water and Soil Resources for review pursuant to subdivision 9.

Subd. 8. Review by Metropolitan Council and state review agencies.

After completion of the review under subdivision 7, the draft plan, any amendments thereto, all written comments received on the plan, a record of the public hearing, and a summary of changes incorporated as a result of the review process shall be submitted to the Metropolitan Council, the state review agencies, and the Board of Water and Soil Resources for final review. The state review agencies shall review and comment on the consistency of the plan with state laws and rules relating to water and related land resources. The state review agencies shall forward their comments within 45 days after they receive the final review draft of the plan to the board. A state review agency may request and receive up to a 30-day extension of this review period from the board.

Subd. 9. Approval by board.

After completion of the review under subdivision 8, the board shall review the plan for conformance with the requirements of sections 103B.205 to 103B.255, and chapter 103D. The board shall not prescribe a plan, but may disapprove all or parts of a plan which it determines is not in conformance with the requirements of sections 103B.205 to 103B.255, and chapter 103D. If the capital improvement program is the subject of a dispute between counties, the Board of Water and Soil Resources shall make a final decision on the issue. The decision shall be binding on the organization and the counties involved. The board shall complete its review under this section within 90 days. Subd. 10.Adoption and implementation.

(a) The organization shall adopt and implement its plan within 120 days after compliance with the provisions of subdivision 9 and approval of the plan by the Board of Water and Soil Resources. A watershed district may implement its approved plan and approved capital improvement program by resolution of the majority of the board of managers and without respect to the provisions of chapter 103D requiring the managers to wait upon petitions for projects, to submit projects for review by the Board of Water and Soil Resources, and to limit the cost and purposes of projects.

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REQUEST FOR BOARD ACTION

AGENDA ITEM: Approval of organizationa	ll restructure in Taxpayer Services Department	
Originating Division: Taxpayer Services	Meeting Date: April 13, 2010	
Amount of Time Requested: 20 minutes	Attachments for packet: ⊠Yes ☐ No	
ltem Type: ☐Consent ⊠Regular Session	Closed Session	
BACKGROUND/EXPLANATION OF AGENDA	ITEM:	
This proposal defines enhanced efficiencies and accountability within the Taxpayer Services Department. It provides the base structure to meet future needs and results in an overall cost savings. This proposal recognizes the continuance of prior reorganizational plans and demonstrates a proactive departmental effort to provide key strategies and goals. The reorganization will, in an efficient and effective manner, allow a higher level of accountability and communication in the delivery of improved customer service in the elections, taxation and deed processing areas.		
ACTION REQUESTED:		
Motion to authorize the reorganizational restruct	ure as presented.	
FUNDING County Dollars = \$ Other Sources & Amounts = = \$ TOTAL = \$ Related Financial Comments: This will provide a	FISCAL IMPACT ☐ None ☐ Included in current budget ☐ Budget amendment requested ☑ Other: See below comments a savings of \$64,251.77 to the departmental budget.	
⊠Reviewed by Division Director	Date: 4/5/2010	

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Phase 2

DEPT: Taxpayer Services FUND: Revenue

	Position	Requiected ETE	D. C.
Ne	New Positions		(e) law nesten wer
New Sr.	Sr. Licensing Clerk	100	\$F1 3/7 00
New Sr.	Sr. Licensing Clerk	080	\$51,206.03
New Re	Records & Elections Supervisor	100	\$59,230.83
S	Suhintal	1.00	\$65,432.72
EII	Eliminated Vacant Positions		\$155,929.59
Eliminate II.ic		(00)	
Himinoto Lionoita Class		(1.00)	(\$54,871.32)
בווווווומוב דונ	censing cierk	(1.00)	(\$48,414.45)
Eliminate Licensing Clerk	censing Clerk	(0.50)	(\$18.578.48)
Eliminate Licensing Clerk	censing Clerk	(0.50)	(\$18 578 48)
Eliminate Licensing Clerk	censing Clerk	(0.50)	(\$10,000)
15.	Suhtnis	(20:2)	(310,370.48)
4			(\$159,021.20)
Ke	Kestructuring - Reorganization		
Eliminate Ele	Eliminate Elections Technician	(1.00)	(\$61.160.15)
	Elections Clerk	(1.00)	(\$48,414,45)
Reclass Ta	Taxpayer Services Clerk	1.00	\$48 414 45
Retitle La	Land Records Clerk	(3.00)	(\$145 242 00)
Retitle Ta	Taxpayer Services Clerk	3.00	\$145,243.00
Su	Subtotal		(\$61,160.15)

	(\$64,251.77)
Total	

