Wayzata City Council Workshop Meeting Agenda
Wayzata City Hall Community Room, 600 Rice Street
Tuesday, September 18, 2018

WORKSHOP TOPICS FOR DISCUSSION:

1. Fire Department Structure and Bylaws (5:15 p.m.) Page 2
2. Presentation of Conceptual Plan for the Redevelopment of 294 Grove Lane E---Boatworks Building (6:00 p.m.) Page 51

City Council
Mayor Ken Willcox
Dan Koch
Johanna McCarthy
Alex Plechash
Steven Tyacke

City Manager
Jeffrey Dahl

Date: **September 13, 2018**

To: **The Honorable Mayor and Members of the City Council**

From: **Jeffrey Dahl, City Manager and Julie Kaufman, Human Resources Coordinator**

Work Shop: **Fire Department Structure and Bylaws**

Update

Please see the attached general information from the League of Minnesota Cities regarding best practices of paid on-call Fire Departments all over the State. I will be joined by Chief Klapprich, Lieutenant John Berns, and Fire Service Specialist, John Ehret at the State's Fire Marshal Division.

At the meeting, our objective will be to:

- highlight the current concerns of the existing structure;
- provide examples of what other departments are doing;
- summarize possible changes to the structure;
- discuss the need for additional resources; and
- outline possible next steps/engagement.

Background

One of the City's Strategic Initiatives of its 2017-2020 Strategic Plan is to ensure sustainability of each of its departments and exploration of shared services. Staff has met with Chief Klapprich and other members of the Fire Department over the past year and have come to the conclusion that it is time to explore updating the structure of the Fire Department.

Updating the structure, and potentially amending or doing away with the bylaws, will require a collaborative approach with the Chief and others in the Fire Department leading the effort. In addition to additional resources it will also require reaching a delicate balance of respecting the rich culture and tradition of the Wayzata Fire Department, while at the same time, updating practices and policies to ensure a progressive and sustainable department long in to the future.

Attachments

1. Fire Department Best Practices from the League of Minnesota Cities

INFORMATION MEMO

Fire Department Management and Liability Issues

Outlines the structure of city volunteer or paid-on-call fire departments and their basic management challenges in personnel, finances, and facility safety. Discusses optional organization as a consolidated department, powers of volunteer fire relief association members contrasted with city fire department employees, the Insurance Services Office (ISO) fire protection rating system, and links to model documents for fire charges, management policies, and fire service contracts.

The League of Minnesota Cities Insurance Trust gratefully acknowledges the assistance of the Minnesota State Fire Department Association, the Minnesota State Fire Chiefs Association, and the Minnesota Professional Fire Fighters in the original development of materials for this memo.

RELEVANT LINKS:

For a general discussion of fire services see the League's Handbook, *Public Safety and Emergency Management*.

I. Fire services

Residents in communities throughout Minnesota benefit from the services provided by fire departments. Sometimes services are provided to residents directly by the city. City departments may be staffed with volunteers, full-time paid firefighters, or a combination. Cities may also collaborate or contract with one another or another governmental entity (such as a township) for fire services. Each of these options presents a unique set of management and liability issues.

This discussion of management and liability issues applies primarily to city department operation and liability. Independent joint powers or independent nonprofit firefighting corporations providing fire services in this state are discussed only briefly as a management option.

"*Volunteer Fire Departments: The Difference Between Municipal Departments and Independent Nonprofit Firefighting Corporations,*" Office of the State Auditor, Statement of Position, Aug. 2015.
See Section VI, *Considerations in fire department consolidation*.

II. Managing city fire department employees

Given today's complex management environment, most departments now appreciate firsthand that running a tight and efficient operation is at the center of their success. The social and fraternal fire organizations of the past have been taken over by professional fire operations that are true arms or departments of city government. In most cities, only the city council is authorized to hire, terminate, or promote employees, including volunteer firefighters.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

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RELEVANT LINKS:

In some cities, the city manager or administrator might be authorized to hire, terminate, or promote employees, but in no case may employees be hired by a vote of other employees. The city council also is the only body authorized to adopt, change, or discontinue personnel policies (sometimes referred to as bylaws).

A. Bylaws versus personnel policies

Generally speaking, bylaws are the fundamental rules that define a company or organization, such as a nonprofit entity. A city fire department, however, is not a separate organization or stand-alone agency. Rather, it is a part or department of the city. The fire department therefore does not need its own bylaws.

Typical provisions of fire department bylaws include how many members a fire department has, how far away from the fire hall a firefighter should live, when and how department meetings will be conducted, how new fire department members and officers will be selected, and how firefighter discipline will be handled.

See the League's HR Reference Manual, Chapter 7.

This does not mean that fire department policies currently contained in the bylaws are necessarily inappropriate. It may simply mean that some provisions are better placed somewhere else. For example, for the most part, firefighter personnel policies are better housed with the city's human resources (HR) practices and policies. While there may be certain policies that apply only to firefighters, this does not mean the fire department personnel policies should be kept separate from all other city personnel policies. Regardless of a firefighter's status–whether full-time paid, paid on call, or volunteer–firefighters are considered city employees for most purposes, including things such as workers' compensation insurance and various employment laws.

Maintaining all HR practices and policies in one place will ensure adequate policy updates, necessary training, and consistency among employees. Note, however, that if the city has a collective bargaining agreement in place for firefighters, some of these items may also be subject to contract language.

Another important consideration is removing those bylaw provisions that are better placed within Standard Operating Procedures or Guidelines (SOPs or SOGs). Finally, the fire relief association (if one exists) will typically operate under the guidance of bylaws. However, these bylaws should be limited strictly to pension matters.

RELEVANT LINKS:

B. Selection versus election

Membership elections, a tradition held over from the social group philosophy of fire departments in the past, continue to exist in varying forms in some fire departments across the state. Using election, or rule by majority vote, to make membership and promotional decisions creates risks every department should be aware of and should not take.

The business of municipal firefighting has seen a multitude of changes in recent years, from technical advances in rescue and emergency equipment and a dwindling pool of potential applicants who are willing to commit the time and dedication necessary to serve their community to the increased emphasis on skills and training for departments of every shape and size. Commendably, though faced with declining applicant interest, increased citizen expectations, and stressed city budgets, volunteer fire departments have continued to operate and provide the most essential of city services.

1. Most qualified candidates

For comprehensive information on the hiring process, see the League's HR Reference Manual, Chapter 2.

LMC information memo, *Physical Ability Tests for Firefighters.*

For criminal background check requirements see LMC information memo, *Background Checks: The ABC'S of BCA Data.*

Many departments have established specific membership criteria including minimum qualifications and written job/position descriptions. Oftentimes the process for membership will require a formal application and the ability to pass both written and physical examinations. The days when a resident can become a volunteer firefighter by simply walking into the fire station and meeting the minimum age requirements are long gone. This is because every fire administrator knows that performing firefighting duties is serious, dangerous business that requires certain measurable skills and abilities. The best way to determine if someone meets the minimum requirements is through an objective selection process involving applications and testing.

While some departments have adopted what they feel is a thorough and objective selection procedure, if there is any element of voting by the department membership, it is no longer truly "objective." Importantly, if the vote can reverse the results of the preliminary selection process (i.e., the objective part), the legitimacy of the entire process is subject to attack. For example, if Applicant A not only meets but exceeds all of the "objective" skills and training criteria, but due to unfamiliarity with the members is voted down, and Applicant B who just barely passes the skills tests is voted in because everyone knows and trusts him, the department is not making the best selection choice.

RELEVANT LINKS:

This is not to ignore the real motivations behind a membership vote. Fire departments are still a place where everyday heroes put their lives on the line, and, in doing so, they need to trust that those who are working beside them are doing the same. And, when the fire is out, volunteer firefighters should be able to unwind and celebrate their victories with those they can call their friends. These concerns and desires are understandable, but voting does not guarantee these bonds between firefighters. If anything, making sure only the best, most qualified individuals are performing the high-risk duties of firefighters will move a fire department closer to the goals of security and compatibility within their ranks.

Election of department officers may be even more ingrained than in elections for initial membership. The ideas expressed above, regarding making decisions based on qualifications, applies equally to promotional/leadership positions. However, an additional emphasis is often placed on a membership vote for officers because of the need for "respect" among the rank and file. A well-drafted promotional process can encompass leadership skills and other criteria that will help a department find the candidate most likely to succeed in an officer position. Note, however, that officer elections for relief associations, which are independent and separate legal entities, are entirely appropriate.

See Section VII, *Fire Relief Associations*.

In addition, a popularity vote for officer positions can result in a contentious political process where individuals are voted into leadership roles not based on qualifications, but because of the personalities of those in the running. The Minnesota Supreme Court artfully identified the potential impact on the community when politics are allowed to take over a fire department. In a case in which several volunteer firefighters alleged they were the victims of retaliation for, among other things, supporting the wrong candidate in a fire chief election, the court stated:

"It is unfortunate the members of the ****** fire department allowed this situation to escalate to the point where it likely reduced the effectiveness of fire protection in the ***** area and is now consuming judicial resources in order to be resolved."

It's perfectly fine–and even desirable–to have firefighters give input as to who might make a good fire department employee or officer, but ultimately the hiring decision rests outside of the firefighters.

2. Reducing legal liability

For a listing and summary of state and federal laws applicable to the hiring process see the League's HR Reference Manual, Chapter 2 Hiring – Section I.

When membership and promotional decisions are made on the basis of a majority vote, legal issues are automatically created. Foremost of which is the potential for discrimination claims.

RELEVANT LINKS:

LMC information memo, *Physical Ability Tests for Firefighters.*

State and federal law prohibit cities from making employment and public service decisions based on an individual's protected status. The most commonly asserted protected classes are gender, disability, age, race, national origin, sexual orientation, and marital status. Minnesota fire departments have been subjected to discrimination claims in all of these areas.

A fire department charged with discrimination can successfully defend itself if it can show that the membership or promotional decision was based on legitimate business reasons, not because of discrimination. An extremely difficult situation is created when the decision being challenged was the result of a popular vote. Because it is not possible to read the minds and prove the motivations behind each individual vote, a city is prevented from clearly articulating legitimate, nondiscriminatory business reasons for its decisions.

LMC information memo, *Veterans' Preference in Hiring.*

In addition to the difficulties created in defending membership and promotional decisions in discrimination claims, voting creates additional legal issues with respect to compliance standards for public appointments under the Veterans Preference laws. Minnesota law requires all cities to offer preference to veterans when hiring or appointing for most positions. In order to comply with statutory requirements, a fire department must have a rating scale in place that allows for the allotment of additional (preference) points to qualified veterans. Membership procedures that include a vote as one step in the process may run afoul of the requirement to set up an objective 100-point system under Veterans Preference. The consequences of failing to meet the statutory requirements for Veterans Preference include civil penalties and injunctive relief such as a "redo" of the hiring or membership process.

3. Transition to a new system

Doing away with all membership elections in your fire department will not be easy or happen overnight. It may take intense planning and policy development as well as structured discussion with current members who have strong feelings in support of the existing system. However, as time goes on, more and more fire departments will see that elections are no longer feasible in the professional world of volunteer fire fighting. As one Minnesota fire chief recently commented when asked about the proposed transition from election to selection in his fire department: "It's long overdue."

RELEVANT LINKS:

C. Age requirements

Minn. R. 5200.0910 L.

Employee policies often establish a minimum and maximum age for firefighters. A minimum age standard can be established. In fact, state law generally prohibits hiring someone under age 18 to be a firefighter due to the hazardous nature of firefighting duties. Some minors may participate in firefighting activities as part of certain training programs authorized by state law.

29 U.S.C. § 623(j).

Minn. Stat. § 181.81.
Minn. Stat. § 423.076.
Minn. Stat. § 363A.20, subd. 9.

Establishing a maximum age for firefighters is more questionable. Federal law allows mandatory retirement for public safety officials, including firefighters, at age 55 or after. Minnesota laws are ambiguous regarding a mandatory retirement age for firefighters. A city interested in establishing a mandatory retirement age for firefighters should seek legal advice prior to implementing such a policy.

Note that a city may lawfully establish a maximum age for entry into employment as a firefighter. And it's important to distinguish between minimum and maximum age limits allowed in conjunction with employment practices versus those that may be allowed by Minnesota statutes governing relief association benefits and eligibility.

D. Response distance

Minn. Stat. § 415.16.

Employee policies sometimes establish a radius within which firefighters are expected to live. Cities are prohibited from requiring residency as a condition of employment. This includes and applies to volunteer firefighters. Cities can impose a reasonable response time, but it should be based on minutes rather than miles.

Remember that there are no exceptions to Minnesota traffic laws for firefighters driving to the station in their own private vehicles. When reporting to the station for a call, firefighters should follow all traffic laws, including posted speeds. Policies related to response time should be based on normal driving behavior.

E. Minimum run standards

Fire department employee policies might include a minimum number of runs firefighters need to attend in order to remain "eligible" for continued membership in the fire department and/or for accumulating a year of pension service (if a pension is offered). Good standing as an employee and the criteria for earning pension credit are set by the city council through its policies and not by the fire department members themselves or by the relief association. Relief association bylaws should work in harmony with city employment policies for awarding pension credit.

RELEVANT LINKS:

See League HR Reference Manual, Chapter 2, Hiring – Section III-B, *Job descriptions*.

F. Job duties

Any definition of firefighter job duties belong with the city's other job descriptions in HR policies. There's no reason to have job duties defined or described in fire department bylaws.

G. Code of conduct and behavior standards

Old bylaw provisions sometimes include appropriate behavior for firefighters, whether on or off duty. These standards are typically ill-defined and hard to measure, such as language requiring firefighters to "perform in a manner likely to support efficient fire operations" while on duty or act "appropriately" when off duty and in public.

Performance standards established in a code of conduct need to be measurable and applied consistently among all members of the department, and any resulting discipline needs to be handled in accordance with city policy. In short, these bylaw provisions are really employee performance criteria and belong with the city's human resources policies.

H. Discipline

Many old bylaws contain provisions allowing some group–maybe the executive committee of a fire department, officers, or even the whole of fire department members–to administer discipline against a firefighter for failure to follow bylaw rules or for other inappropriate behavior. This is inappropriate. Voting on discipline may create the same legal liability problems and claims of discrimination as voting on hiring and promotions.

See League HR Reference Manual, Chapter 3.

It's very important that employee discipline policies be clear and applied fairly and justly across the board. Similar to hiring, only a city council or its designee is authorized to discipline employees. Discipline by other measures needs to be eliminated unless it's part of an authorized city human resources policy. Under no circumstances should the discipline of a firefighter be determined by a vote of other firefighters.

I. Officer roles

Fire department bylaws may provide for election of officers and may define the roles of such officers. The first issue here relates back to department elections. Fire department elections need to be eliminated altogether, whether it is the election of new firefighters or officers.

RELEVANT LINKS:

The issue of establishing and defining officer roles is perhaps more difficult to consider. Bylaws often set forth the typical roles of chief, assistant chief, captain, etc., but then also provide for a president, vice-president, secretary, and treasurer. If there is a fire department president or vice-president, how does that role differ from the chief and assistant chief? If there is need for both roles, then job descriptions should clearly define these roles and prevent overlapping duties. And the proper place for all job descriptions is with the city human resources department, not in fire department bylaws.

If the purpose of these bylaw provisions is to address officers of the relief association, the appropriate place to document the roles is in relief association materials. The relief association, unlike the fire department, is a separate legal entity. Descriptions of officer positions related to the relief association should not be intermingled with matters related to the fire department.

See Section IV, *Managing city fire department finances.*

"Fire Departments, Fire Relief Associations and Checking Accounts," Office of the State Auditor, Statement of Position, Aug. 2015.

Establishing the role of a fire department treasurer is particularly concerning. In the past, some fire departments have operated somewhat autonomously from the city. For example, some fire departments receive funds into their own checking accounts and independently authorize the expenditures of public funds. Such practices, however, are not legal. Fire departments are not allowed to have separate checkbooks under state laws governing expenditures of public funds. Accordingly, a fire department treasurer is truly unnecessary.

J. Management provisions

Fire department bylaws are often used to codify policies and practices related to how the department is managed, such as how many firefighters are on the roster and how department meetings are conducted. While it may be entirely appropriate to seek input and support from firefighters on these kinds of decisions, there isn't a need to have these practices formalized in department bylaws.

1. Membership numbers

Old bylaw provisions and some fire department employee policies might contain a minimum and maximum number of firefighters to be on the fire department. This is not recommended. This provision was probably implemented with a number of considerations in mind, such as the area to be served, the kinds of equipment used, whether or not the department runs emergency medical services (EMS), etc.

RELEVANT LINKS:

The problem with having a minimum and maximum number of firefighters delineated in the bylaws is that it forces a bylaw change every time there's an emerging need and may not allow the department adequate flexibility to manage in the community's best interest. For instance, a new person may move to town with existing training and availability for day and night fires. If the fire department is at its maximum roster size, how will the new firefighter be added?

See Section II-L, *Staffing levels.*

There may also be concerns about dropping below the stated minimum roster size. Someone in the community could make a negligence claim based on the city's fire response if it operates below the minimum stated in bylaws.

See Section II-L-1, *National Fire Protection Association standards.*

The decision about adequate roster size is certainly one to pay attention to and to adjust accordingly with any community changes or response needs. These decisions are most appropriately made by the fire chief and city council as part of overall department management.

Roster size may have different implications for the relief association membership and assets. It's important to keep the considerations of relief association business separate from fire department management and operations.

2. Department meetings

Fire department bylaws frequently establish a regularly scheduled meeting of firefighters and the agenda format to be followed at each meeting. Some bylaws are detailed enough to specify start and end times of department meetings and even provide for posting of fire department meetings to the public.

The fire department is a part of the city, not a stand-alone governing body or corporate entity. The Open Meeting Law does not apply to fire department meetings. In addition, there are no requirements that a fire department make decisions by majority vote, use a formal agenda for meetings, or operate according to Robert's Rules of Order.

See Section VII, *Fire Relief Associations*.

By way of contrast, the relief association is a separate entity that is subject to the Open Meeting Law (as well as other laws and regulations such as the Minnesota Government Data Practices Act) and makes decisions by vote of the board of directors.

Certainly a fire department needs adequate communication among members and from the fire chief. If the chief wants to establish a regular meeting time and agenda, that's probably a good idea. If the chief wants to poll firefighters on their opinions about a particular issue, that's fine too. But these are management tools and techniques, not required bylaw provisions.

RELEVANT LINKS:

3. Response and scene management

Some old bylaw provisions include specific scene management details, such as how many firefighters need to respond on which kind of truck, what the incident command structure should be at different types of fires, and what certain roles should be on scene.

These are, of course, very important considerations for adequate response to fires and good scene management and critical decisions for firefighter safety. The appropriate place for these details is in the fire department standard operating procedures or guidelines (SOPs or SOGs), not in fire department bylaws.

K. Special personnel policies to reduce risk

Because of traditions held over from the social group philosophy of fire departments in the past, certain policies may need emphasis to ensure fire department employees understand and follow these best practices. Other policies relate specifically to fire department liability issues.

1. Alcohol use response policy

Every fire department should have a policy on whether and when a firefighter should respond to a fire call if s/he has been drinking. This is important for several reasons:

- A firefighter who is impaired by alcohol or drugs is a potential danger both to him/herself and to other firefighters.
- An impaired firefighter's actions or poor judgment could result in damage to other persons or property and result in city liability.
- There's a risk of damage to city equipment. (In one LMCIT case, for example, an intoxicated driver totaled a $250,000 fire truck.)
- A firefighter, like any employee, is not entitled to work comp benefits for an injury that was caused by his/her own intoxication.

Since some prescription, nonprescription, and illegal drugs can cause problems similar to alcohol use, the policy should address these as well.

With the high risks inherent in firefighting, the ideal would be that no firefighter who has consumed alcohol would ever be called upon to act in an emergency situation. But an alcohol response policy has to fit the needs and the situation of the specific department. The International Fire Chiefs Association recommends a "zero tolerance" policy. That is certainly appropriate for paid full-time firefighters, and it may very well make sense for larger volunteer departments as well.

Zero Tolerance Firefighter Response, LMC Model Policy.

RELEVANT LINKS:

But for a smaller department, a "zero tolerance" policy may simply not be practical, since it could mean that sometimes there simply aren't enough firefighters available to respond to an emergency call.

An alcohol response policy has two basic goals:

- To help ensure the safety of the firefighters and the public and the ability of the fire department to do its job.
- To give both the firefighters and the department officers clear guidance on what is and isn't permitted, what is expected of each member, and how any questions, issues, or grey areas will be addressed and resolved.

If the department determines that a "zero tolerance" policy wouldn't be workable in its situation, a good alternative approach is to couch the policy in terms of the number of drinks consumed in a specific time period. The commercial driver's license (CDL) rules, which prohibit a driver from operating a vehicle if s/he has consumed alcohol within the preceding four-hour period, are a reasonable starting point.

Alcohol and Drug Use Firefighter Response, LMC Model Policy. Based on CDL rules.

Another approach some departments take is to require the officer in charge to evaluate the individual firefighter's condition and determine what duties s/he can safely perform. Unfortunately, experience has shown that this can be difficult to apply in practice. Any bartender or police officer will tell you that accurately judging an individual's sobriety is very difficult, even with training and experience. To expect a fire department officer, who doesn't do this all the time and who is under the pressure of an emergency situation, to be able to accurately evaluate whether an individual is capable of safely and competently doing the job may not be realistic. This approach might work for screening the obvious problems, but there's a good chance you'll miss some cases that aren't obvious to the untrained eye where the individual's judgment, coordination, and reflexes are significantly impaired.

Another possible solution might be to purchase a portable, breath-testing device, like the units police officers use for roadside testing, and require any firefighter who's had a drink in the previous four hours to be tested before going on an emergency response. Any firefighter who either declines to be tested or who is over a reasonable, pre-established standard–perhaps a .04 percent blood alcohol content–would not go on the response. The cost to purchase and maintain the equipment would be an issue, of course, although it's now possible to buy a consumer-type, breath-testing unit for under $100.

Minn. Stat. §§ 181.950-181.957.

LMC information memo, *Drug and Alcohol Testing Toolkit for the City Workplace*.

A potentially more serious difficulty with using breath-testing equipment arises from the statute that governs alcohol and drug testing by employers. The problem is that the statute specifies that whenever an employer requires drug or alcohol testing, the testing must be done by a certified, licensed, or accredited testing laboratory. Obviously, an in-the-field breath test doesn't meet that requirement.

RELEVANT LINKS:

A positive breath test or a refusal to take a breath test cannot and should not be used as the basis for any disciplinary action, penalty, or termination or as the basis for requiring or recommending substance abuse treatment or evaluation.

It may be allowable for a volunteer fire department to use portable, breath-testing equipment, provided the testing is used only for the purposes of screening whether the firefighter is immediately capable of safely performing his/her duties.

While using portable, breath-testing devices is arguably a very reasonable measure to protect the safety of the firefighter being tested, the other members of the department, and the public, a department that adopts this approach should be aware that this practice potentially could be determined to be prohibited by state law. If you're considering this approach, you should discuss it with your city attorney before purchasing the equipment or implementing the policy.

Minn. Stat. § 181.951.

Some departments that adopt the "zero tolerance" approach may want to include provisions for blood and/or urine testing as part of the mechanism for enforcing the policy. (Obviously, this type of testing won't be of any use for helping determine whether or not an individual firefighter is immediately capable of performing his/her duties safely.) If these kinds of testing provisions are included, the city must have in place a written policy as required by statute. The statute also requires the employer to establish chain-of-custody procedures, give various notifications to the employee, provide posted notices, etc. Unless the city has a written policy and complies with the other requirements of Minnesota's Drug and Alcohol in the Workplace Testing Law, the city cannot require an employee to submit to testing, cannot use test results or the refusal to submit to testing as the basis for any disciplinary action, and could be held liable for damages and attorneys' fees.

Minn. Stat. § 181.952.

Minn. Stat. §§ 181.950-181.957.

LMC information memo, *Drug and Alcohol Testing Toolkit for the City Workplace.*

The model "zero tolerance" policy linked above assumes that the city has a policy and procedures already in place for drug and alcohol testing of city employees and simply makes reference to that policy. The League's Human Resources and Benefits Department can provide samples of employer drug and alcohol testing policies on request.

LMC Human Resources and Benefits Department
(800) 925-1122
(651) 281-1200
HRbenefits@lmc.org

The key point is that every department should have a policy spelling out whether and when a firefighter should respond to calls after consuming alcohol or anything else that can lead to mental or physical impairment. And it goes without saying that regardless of what policy the department adopts, just having a policy is not enough. You also have to apply and enforce it.

RELEVANT LINKS:

2. Alcohol in the fire hall

Consumption of alcohol in the fire hall is discouraged for a number of reasons. It can increase the city's liability exposure in some circumstances. For example, if a firefighter causes harm while responding to a call after drinking, it could be argued that by allowing alcohol use by firefighters in the fire hall the city condoned or encouraged firefighters to mix drinking and firefighting. It can create public relations issues, if the public sees the fire hall not as a public and professional place of business but rather as a place for the department members to hang around and drink beer. It can also create some practical management problems and legal issues that need to be addressed if alcohol is allowed in the fire hall, as discussed below. The state fire marshal also strongly discourages alcohol in fire halls for similar reasons, as does the International Fire Chiefs Association.

Each city needs to think this issue through carefully and decide what the city's policy will be on alcohol in the fire hall. But regardless of whether or not the city decides to permit alcohol in the fire hall, it's extremely important to have and to enforce a policy on response after alcohol use as discussed above.

If a city does decide to allow alcohol, the city's policy should make it clear that absolutely no consumption of alcohol is allowed during or before any department meeting or training session, and include at a minimum the other major precautions described below.

a. Sales of alcohol

Absolutely do not allow anything that even remotely looks like a "sale" of alcohol to take place in the fire hall. This includes the pop machine that's loaded with beer, or the "toss a dollar in the coffee can when you take a beer from the fridge" system, or the "you only get to have a beer if you've thrown your $5 a month into the beer fund" system, or any of the many variations. Here's why it's important to avoid any sale of alcohol:

Minn. Stat. § 340A.401.

- It's illegal to sell beer or liquor without a license. Selling alcohol without a license is a gross misdemeanor. The penalty is a fine of up to $3,000 and/or up to a year in prison.

Minn. Stat. § 340A.503, subd. 2.
Minn. Stat. § 340A.502.
Minn. Stat. § 340A.504, subd. 1, 2.

- Anyone who causes the intoxication of another person by illegally selling alcohol to that person can be held liable for damages resulting from that illegal sale. It's illegal to sell without a license, to sell to a person under 21, to sell to a person who is already intoxicated, or to sell after hours, among other things. Any of these can lead to liability.

RELEVANT LINKS:

The risk of liability for an illegal sale should be taken very seriously. If it were the city that is deemed to have made the sale, the city's LMCIT liability insurance would not respond to that claim. If it were an individual accused of having made the sale, the city's LMCIT liability coverage would not protect him/her either. And since selling beer or liquor (especially illegally) probably can't be considered to be part of the firefighter's city duties, the city probably doesn't have any responsibility to defend and indemnify the firefighter for that suit. In other words, an individual firefighter who makes an illegal sale of alcohol in the fire hall may very well be on his/her own if s/he gets sued.

Koehnen v. Dufuor, 590 N.W.2d 107 (1999).

There have been some cases in which the courts decided that an unlicensed person who sold an alcoholic beverage in a casual situation wasn't subject to liability under the civil damages law because he wasn't "in the business" of selling alcohol. While it's possible that a city or firefighter who was sued based on a "throw a dollar into the coffee can" or similar type beer sale might be able to successfully use that defense, that's a pretty fine distinction to rely on–and of course you also have to think about the legal costs of defending that suit and/or the criminal prosecution, even if you're successful. For this reason, LMCIT very strongly recommends that cities and fire departments always err on the side of caution and not allow anything that could arguably be construed to be a sale of alcohol to take place in the fire hall.

b. Alcohol and minors

Make sure that alcohol isn't furnished to or available to persons under the age of 21. Keep in mind that even if you don't now have any firefighters who are under 21, you might in the future. And of course you can't limit membership eligibility to persons over 21, since that would violate the age discrimination provisions of the Minnesota Human Rights Act.

Minn. Stat. § 363.08A, subd. 2.

There are a couple reasons why it's extremely important to make sure that under-age persons can't get access to alcohol in the fire hall:

Minn. Stat. § 340A.90, sub. 1.

- There's a risk of liability for both the city and for the individual members of the fire department, if you furnish alcohol to an under-age person or if you "knowingly or recklessly permit" an under-age person to consume alcohol on the premises.
- It's a gross misdemeanor to furnish alcohol to an under-age person. It becomes a felony if the under-age person becomes intoxicated and either suffers or causes death or great bodily harm.

RELEVANT LINKS:

See Section II-K-1, *Alcohol use response policy*.

c. Alcohol and responding to emergency calls

Make sure you have a plan for how you'll be able to respond to emergency calls. Where beer is permitted in the fire hall, it's common for the firefighters to relax and "debrief" after a fire run by having a couple beers. But you still need to be able to respond if there should happen to be a second emergency call. If everybody's having a beer or two, you may not be able to respond and stay in compliance with the department's alcohol response policy.

Unless you have a mutual aid agreement with another department that you can rely on to respond to that second call if it occurs, the department should make sure to always have some "designated drivers" who are not drinking in these situations. We also suggest that the department set some explicit limits; e.g., no more than two beers at the fire hall after a run.

3. Sexual harassment prevention

For information on policy content and model language see the League's HR Reference Manual, Chapter 7, Personnel Policies, Section XV-A, Sexual harassment prevention.

All cities should take steps to provide a work environment free from sexual and other illegal harassment. Both state and federal law make sexual harassment illegal. Cities should have a policy statement on sexual harassment to sensitize employees to the issue and to inform them of their rights and obligations.

As a city department, the fire service should be included in city-sponsored training and policies that a city adopts regarding sexual harassment prevention. Training helps ensure that employees are aware of their responsibilities in preventing sexual harassment, as well as the consequences for committing sexual harassment in the workplace.

4. Responding to emergencies while off duty

It is up to the city council to define the duties of the city's fire and emergency personnel. The city council could determine that as a matter of public policy the city wishes to encourage them to provide assistance at the scene of an emergency when off duty, and that the city actually considers it to be within their duties to provide emergency assistance in such situations.

LMC information memo, *Providing Assistance in Emergencies: Coverage and Liability Issues*, Section V – Responding to emergencies while off-duty.

This decision has implications for city and firefighter liability and any workers' compensation claims that might arise from the response.

RELEVANT LINKS:

5. Minnesota Government Data Practices Act

Minn. Stat. ch. 13.
For more information, see LMC information memo, *Data Practices: Analyze, Classify and Respond.*
Concerning personnel data, see LMC information memo, *Management of Personnel Files.*

The Minnesota Government Data Practices Act (MGDPA) controls how government data are collected, created, stored (maintained), used, and released (disseminated). Most city clerks know the MGDPA requirements so well that they could recite them in their sleep. Does the fire chief have the same level of awareness? This is important because the MGDPA applies equally to the clerk and chief. The fire chief likely has a trove of employment data (hiring information, leave requests, the results of discipline, or even medical information) about the members of his or her department. This data is considered personnel data and is most often classified as private or nonpublic. In addition, the fire department likely has information about members of the public–particularly if the department provides rescue and emergency response.

Rob Boe, *Smartphones, Social Media, and Digital Cameras*, On the Line: Public Safety Risk Management (April 18, 2014).

It is essential for fire departments to understand that in this day and age the MGDPA applies to video and digital images. For example, the MGDPA applies equally to a photo of an accident scene and the written report created about the incident. The MGDPA applies whether or not the image is taken with a city-owned device or a privately owned device (for example, a fire fighter's cell phone). Civil and criminal penalties can apply to the inappropriate release of data under the MGDPA, including on social media.

LMC information memo, *Computer and Network Loss Control*.

Social Media and Digital Images, LMC Model Policy for Fire Departments and Emergency Medical Services.

All fire departments should have a policy on taking images (digital, video, or otherwise) while on duty and the dissemination of those images, including on social media.

L. Staffing levels

1. National Fire Protection Association standards

NFPA Standard 1710 for career fire departments (free access requires you to create an account).
NFPA Standard 1720 for volunteer fire departments (free access requires you to create an account).

The National Fire Protection Association (NFPA), a nonprofit organization that develops life-safety standards, recently revised fire operating standards relating to staffing and deployment for both career fire departments and volunteer fire departments. While such standards might suggest a one-size-fits-all approach to fire department operations, the reality is that what works for one fire department might not work for all fire departments in all cities. The end result is that cities and their fire departments might face greater legal risks because they cannot or will not meet the NFPA standards.

RELEVANT LINKS:

Even though the NFPA standards are not mandated regulations, they do have the appearance of being generally accepted industry standards. From a liability standpoint, this means that they imply a performance norm to which a fire department can be held. Also, such standards can create a sense of obligation or duty with which a fire department might need to comply. The hitch is that many fire departments lack the staff and financial resources necessary to implement the standards the NFPA has set.

In such instances, discretionary immunity, with its recognition that local governments have to prioritize decisions and make the best use of resources, can help address the issue of risk.

2. Discretionary immunity

Minn. Stat. § 466.03, subd. 6.

While state law suggests that a city is immune from liability for "any claim based upon the performance or failure to exercise or perform a discretionary function or duty whether or not the discretion is abused," as a practical matter, the more you show you exercised your judgment or applied discretion, the more likely a court will be able to determine that immunity from liability exists.

Discretionary immunity exists because local governments must make decisions on how best to spend public money and to prioritize the use of limited financial, personnel, and other resources. Cities constantly make decisions about which services, programs, or facilities should be provided or which should be improved. Often, there are competing policy considerations surrounding such decisions. Therefore, immunity applies because a city often has to make decisions that involve the weighing of competing political, social, economic, and safety factors.

While discretionary immunity probably does not protect operational or day-to-day decisions, it can provide protection for planning level, tactical, and allocation-of-resource decisions. These sorts of decisions can be made in such areas as land use, personnel, permits, and street construction, as well as in capital expenditures and use of staff and policies related to responses to emergencies.

One important aspect to consider is who is making the decision. Generally, the higher up you go the easier it is to prove that a decision was made at a planning or policy-making level. However, this is not to say that all decisions made by the city council, mayor, or city administrator are automatically entitled to discretionary immunity. Similarly, some decisions made by lower level employees may also be discretionary. The key principle is that discretionary immunity protects planning or policy-level decisions.

RELEVANT LINKS:

Another aspect is whether or not a decision or policy involves weighing of social, political, safety, or economic considerations. A case in point might be a standard operating procedure or tactical operating guidelines used by a fire department. Many cities have such policies and they frequently involve weighing the above factors. For example, economic factors might include maintenance and availability of equipment or public safety budget. Political factors could include the expectations the community has for fire services. Safety consideration could include the response to the fire, personnel, and management of fireground operations.

a. Importance of records

Discretionary immunity absolutely requires good record development and retention. Keeping records of policy and planning decisions not only helps to implement those policies and plans, but also helps to provide guidance and direction to employees, set levels of expectation for service, and help measure performance and effectiveness of that policy or plan.

Part of policy or planning should include developing records that show the weighing of social, political, economic, and safety factors as a part of the decision-making process. In addition, even if a city is not entirely immune from liability pursuant to discretionary immunity, the existence of and adherence to a policy helps to prove that the city exercised ordinary and reasonable care and is therefore not liable.

As previously mentioned, the NFPA standards can create a certain level of expectation and duty for fire departments. Immunity furthers this by presupposing a duty exists and that there was a breach of that duty. However, if there is no duty and no evidence exists of a breach, then it would stand to reason that the city is not liable. If the city is not liable, there is no liability from which the city needs to be immune. This means that a city could have a successful result at trial if it has records showing it is not liable or negligent. One way to do this is to have a record showing that the city understands the NFPA standards exists, but that those standards cannot be implemented by the city because of certain social, political, economic, or safety factors.

b. Guarding discretionary immunity in records

Number of Firefighters and Response Policy, LMC Model Resolution.

One way to show that a city council exercised discretion is through accurate and complete meeting minutes. If the city council ratifies or approves a plan or policy drafted or prepared by others (department head, city advisory board, etc.), the council meeting minutes should reflect that the policy or plan development authority was delegated to the person or entity making the decision, and that the city council reviewed the decision that was made or recommended.

RELEVANT LINKS:

Furthermore, the minutes should indicate that the entity responsible for the policy or plan weighed competing political, social, economic, and safety factors.

If the council does not need to ratify or approve a final plan or policy, a discretionary immunity record could show that the council delegated planning or policy development to the decision-making person, department, or board. Such action should be reflected in minutes and should clearly indicate that council expectations included weighing of competing interests in the creating, development, or changing of plans and policies.

Decisions protected by discretionary immunity statute may sometimes be made by city administration staff, department heads, or others to whom policy or planning development authority has been granted. In such instances, the person exercising discretion must be the one to create the immunity record. This might include correspondence or memoranda indicating who directed them or, if not explicitly directed by another, why planning or policy development is within the authority given to them by their position or job description. Notes regarding the decision-making process should be kept, which can also be used in introducing the plan or policy or in a preamble to the policy itself.

Memorandum on NFPA Staffing Standards, LMC Model Form.

Fire department and public safety immunity records will likely include incident or response reports. In cases of substantial damages or injuries or the fire decision maker believes that someone may second guess a tactical decision made by them, a supplemental report should be prepared as soon as possible. This report can set forth the political, social, economic, or safety factors that were weighed as well as the time parameters for deliberation and decision making. Sometimes, the actual decisions have to be made quickly. However, after the incident or emergency, the decision maker can document specifically the competing considerations that went into their decision at the time the decision was made.

III. Liability concerns in disaster assistance

LMC information memo, *Providing Assistance in Emergencies: Coverage and Liability Issues.*

When disaster strikes in Minnesota, the response is always the same. Cities and other local governments around the state pitch in to help, sending equipment and crews of firefighters as well as police officers, public works and utilities workers, building inspectors, and whatever other help is needed. That same spirit of emergency assistance sometimes reaches beyond the borders of Minnesota, whether that means helping out with floods in Iowa or sending assistance to the coastal states impacted by a hurricane. Fire departments providing and receiving disaster assistance need to understand insurance coverage and liability issues for Minnesota cities for responses both inside Minnesota and out of state.

RELEVANT LINKS:

IV. Managing city fire department finances

Since fire departments are a department of the city, all department funds are the city's responsibility. If they exist, independently managed fire department bank accounts need to be closed and the funds turned over to the city treasurer and controlled by the city council. The fire department does not have any independent authority to accept, control, or spend "department" funds or to enter into contracts. The city council must accept any donations or other contributions.

"Fire Departments, Fire Relief Associations and Checking Accounts," Office of the State Auditor, Statement of Position, Aug. 2015.

City fire departments have historically operated with considerable autonomy; however, where public funds are concerned, that autonomy is limited. Minnesota's statutes are clear: city councils must control the city's finances. All city funds must be received and accounted for by the city treasurer. Fire department expenditures must also be treated the same as expenditures for any other city department. The fire chief has no authority to authorize city expenditures or to sign city checks. Instead, the expenditures for the fire department, as with any other city department, must be approved by the city council in a manner that conforms to the city's established purchasing and claims procedures.

See Section IV-E, *Fundraisers and donations* and SectionVII-B-2, *Fundraising.*

Unlike the city fire department, volunteer fire relief associations will have their own financial accounts. A volunteer fire relief association is a governmental entity separate from the city. It receives and manages public money to offer retirement benefits for those individuals who provide firefighting and emergency first response services.

Minn. Stat. § 609.456.

Local government officials and employees must notify the Office of the State Auditor (OSA) whenever evidence of theft, embezzlement, or the unlawful use of public funds or property is discovered. The reporting requirement also applies to officers and employees of local public pension plans, including volunteer firefighter relief associations.

State Auditor Reporting forms and due dates.

A detailed description of the alleged incident(s) must be made to the OSA "promptly" and in writing. The description may include information that is classified as not public data. "Prompt" reporting means that the OSA should be contacted when the evidence is first discovered. Information that could reasonably be used to determine the identity of an individual providing the required notice is classified as private.

A. Charging for fire calls

Minn. Stat. § 415.01, subd. 2.

Fees for Fire Services within the City, LMC Model Ordinance.

Cities have express authority to impose fees for emergency services, including fire protection. A city's ability to charge fire fees involves interplay between three statutes. The first, Minn. Stat. § 415.01, subd. 2, allows cities to charge for emergency services by passing an ordinance that specifies the amount and manner of the charge.

RELEVANT LINKS:

Fees for Fire Services Under Contract, LMC Model Ordinance. Establishes fees for emergency protection fire services outside the city pursuant to a fire protection contract.

Minn. Stat. § 366.011.

Minn. Stat. § 366.012.

It provides "[A] city may exercise the power under sections 366.011 and 366.012 relating to charges for emergency services only if the city adopts an ordinance authorizing the manner and amount of charging for those services."

The other two, Minn. Stat. §§ 366.011 and 366.012, apply to towns. Under Minn. Stat. § 366.011, a town can impose fees for fire protection services provided by or contracted for by the town. If the charge is not paid, the town can use any means available to private parties to collect it or may certify the unpaid charge with the county auditor for collection with taxes to any real property within the state. Minn. Stat. § 366.012 explains the process for certifying charges with the county auditor. By its terms, Minn. Stat. § 415.01, subd. 2, gives cities these same powers.

Cities also have the authority to certify the unpaid charge to the auditor of any county in the state in which the person who received fire protection services owns real property. The county auditor is responsible for remitting to the city all charges collected on behalf of the city. Therefore, a city can certify unpaid fees regardless of where the property is located in the state.

An important note to remember is that fire services generally include not only firefighting, but first responders as well. Any ordinance authorizing fire service charges should define fire services broadly enough to include both of these activities.

1. Providing service to property outside the city

Many cities contract with towns or other cities to provide fire protection, requiring the city fire department to provide service outside of the city. These contracts typically authorize cities to bill the recipient of the fire protection service who lives outside the city. Cities have the authority to use any means available to private parties to collect unpaid charges, regardless of where the property is located. State law also gives cities the ability to certify for collection with taxes the unpaid fire charges on property located outside of city limits that is anywhere within the state. It provides that cities may exercise the "power under sections 366.011 and 366.012 relating to charges for emergency services." One of these powers is certifying unpaid fire charges. This power is not limited to charges to property within a city's borders.

Minn. Stat. § 415.01, subd. 2.

2. Different rate structures

Fire departments often respond to car fires, sometimes to nonresidents of the city, or to another entity covered by a fire protection contract. Cities have inquired whether they can charge higher rates for these calls. Unequal fees implicate several constitutional concerns.

Mem'l Hosp. v. Maricopa County, 415 U.S. 250 (1974) (denying non-residents free non-emergency medical care violated the right to travel).

RELEVANT LINKS:

State v. Kolla, 672 N.W.2d 1 (Minn. Ct. App. 2003) (charging higher state license fee to non-residents violated commerce clause); 9 McQuillin, Municipal Corporations, § 26.48 (3rd ed. Revised 1995).

The U.S. Supreme Court ruled that denial of "basic necessities of life" impedes the constitutional right to travel. Fire protection might be a basic necessity and unequal charges may be a form of denying this basic necessity. Additionally, higher taxes and more stringent licensing requirements imposed on nonresidents have run afoul of both the Constitution's equal protection and commerce clauses. Because of the possible constitutional implications resulting from different rates, it is probably preferable to have a uniform policy when charging for fire calls.

3. Policy considerations

Many cities have passed ordinances charging fire fees and more are considering this option. Aside from the concerns mentioned above, cities should consider whether charging fire fees is the best choice. Some citizens may argue that the mechanisms for collecting and enforcing property taxes are already in place and that paying for fire services out of general revenue may be a better option than charging for fire calls.

The city should also decide whether it is prepared to collect charges when the fee is not covered by insurance. Some insurance policies will only pay if the property owner has an obligation to the city. If the city only collects fees in limited instances, the insurance company could argue that the property owner does not really have an obligation to the city. Furthermore, if the city aggressively attempts to collect fees from persons having insurance but looks the other way for persons not having insurance, the city could be committing insurance fraud.

If the city decides to charge fire fees, the statutes do not limit the amount of fees a city may charge. However, as is usually true for city fees, the fee should be reasonably related to the city's cost in providing the service.

Finally, keep in mind that all fire fee collections belong to the city, not the fire relief association or fire department, and should be deposited in the city's accounts.

B. Contracting out city fire services

LMC information memo, *Intergovernmental Cooperative Agreements.*

Fire protection is the most commonly contracted-for service between cities and towns. These contracts will typically fall into some kind of intergovernmental cooperation agreement such as contract-for fire service, a mutual aid agreement, or an agreement for shared personnel or resources such as equipment, facilities, or specialty operations; rescue teams are a common example. Each of these contracts presents unique considerations, especially in terms of liability and risk management, which are discussed in a separate Information Memo.

RELEVANT LINKS:

See Section VI, *Considerations in fire department consolidation*.

Less commonly, fire departments may actually consolidate under a joint powers agreement to create a separate entity, a subordinate service district, or a separate nonprofit corporation. Consolidations are discussed below as a fire service management option.

In most cases, existing contracts have long and unique histories resulting in widely varying contract provisions. Many have long terms and are often renewed without giving much attention to their content beyond the provisions dealing with the cost of the service. The result can be contracts with outdated provisions that do not adequately protect the interests of either the city or town. In other cases, the parties are keenly aware of the contract provisions and disagree over its wording.

LMCIT Contract Review Service.
Chris Smith,
Risk Management Attorney
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The League of Minnesota Cities Insurance Trust (LMCIT) can assist cities in reviewing fire-related contracts to help ensure insurance and liability provisions adequately protect the city's interests.

City-Town Fire Service, LMC and Township Assn. Model Contract.

LMCIT and the Minnesota Association of Townships developed a model fire contract to assist cities and towns when contracting for services. Public officials with questions regarding this model are encouraged to contact their respective organizations and, as always, have the contract reviewed by their local attorney before its adoption. Although this model agreement is between a city and town, most of the terms would apply equally to a fire-related contract between any two governmental units.

The model was developed with the following goals in mind (this model does not, and is not intended to, address all the unique circumstances that may exist in a particular situation):

- To encourage the use of written contracts.
- To provide language that reflects current approaches to issues such as liability and indemnification.
- To address issues that may have been overlooked in local contracts.
- To offer language that attempts to protect the interests of both cities and towns.
- To ultimately provide a platform from which cities and towns can build their own contract to fit their particular circumstances and interests.

One of the most important issues from the city's perspective is how much to charge for providing the fire protection services. For many years, cities have provided fire protection services to outside areas at charges which were far under actual costs. These charges often had little relation to the real cost of providing the service. In effect, cities have often subsidized their neighbor's fire protection. Many cities, however, are reconsidering this approach and are adopting a more business-like approach toward providing fire protection.

RELEVANT LINKS:

The Safety Center states the cost of fire protection is not significantly related to the number of calls the fire department makes. There are capital costs, operational costs, and personnel costs incurred regardless of the number of calls. To ensure itself of being adequately compensated, a city should adopt a formula to determine its charges for outside service.

Because each situation is unique, there is no one correct method to establish fire service charges. Each city will have to determine for itself whether it should subsidize its neighbor's fire protection, furnish fire services at cost, or generate a slight surplus to re-invest in capital equipment.

City-Town Fire Service, LMC and Township Assn. Model Contract.

To assist cities in recouping the cost of providing fire protection services, the Safety Center has established a formula to aid cities in determining the actual cost of providing services. This payment formula has been simplified in the League/Township Association model contract. For example, the model uses the number of calls to a jurisdiction to reflect the level of department use instead of attempting to develop a method for determining the percentage of use of the fire department for each call as suggested in the Safety Center's document.

While some calls certainly involve more fire department resources than others, it was felt the level of use is balanced out over the three-year average used in the formula. Not only is this approach simpler, it also reduces the ongoing administrative burdens on the fire department to track the more detailed information needed to determine the percentage of use per call. In addition, the model contract has an alternative annual flat fee payment provision. Because each situation is unique, there is no one correct method for a city to establish fire service charges.

C. Contracting to purchase equipment

LMC information memo, *Competitive Bidding Requirements in Cities*.

Just as only the city council is authorized to hire firefighters, enter into fire service contracts, and control all city fire department funds, it is only the city council (or in some cases a city manager) that has the authority to solicit and enter into contracts for fire department equipment. Fire chiefs or other fire staff may assist in the development of equipment specifications, however. Cities must be careful to follow all competitive bidding requirements of state law.

See Section VII-B, *Relief associations and finances*.

Minn. Stat. § 465.03.

Sometimes firefighters, acting through their fire relief associations, would like to assist in purchasing fire equipment. A fire relief association may not purchase fire equipment unless it is permitted in their bylaws. If permitted, likely a monetary donation to the city with a restricted purpose is the preferred method of assistance. This avoids the appearance the city is trying to evade bid laws. It also ensures city ownership which is important for maintenance and risk management of the equipment.

RELEVANT LINKS:

LMC information memo, *Fair Labor Standards Act (FLSA): Police and Fire Employees.*

Find current withholding information in the LMC information memo, *Budget Guide for Cities.*

26 C.F.R § 31.3121(b)(7)-(2)(d)(2).

26 U.S.C.A. § 3401(a).

D. Compensating firefighters

The minimum wage and overtime provisions of the Federal Fair Labor Standards Act (FLSA) apply to paid firefighters, and there are special considerations under this act for determining whether firefighters may be designated as volunteers.

Carefully consider these rules as you determine your firefighter pay practices.

If firefighters are deemed employees (not true volunteers) under the FLSA, remember that Social Security and Medicare withholdings must be made from compensation unless the volunteer firefighters' relief association plan would be a "qualified" retirement plan under IRS criteria.

Most relief association plans in the state would likely not be "qualified" because they fail to meet the 100 percent non-forfeitable benefit requirement necessary for part-time, seasonal, and temporary employees. This requirement means that the plan must allow the retirement withholdings to be returned to the employee if the employee has not yet vested 100 percent. Relief association retirement plans do not typically allow this type of refund and do not fully vest until a firefighter has participated for many years.

Although there is an exception to withholdings for employees hired temporarily to handle disaster emergencies, this would not appear to exempt volunteer firefighters from Social Security and Medicare withholdings. The ongoing and continuous relationship volunteer firefighters have with their cities in providing firefighting services probably precludes a "temporary" relationship.

Fire departments and relief association plans can differ substantially from city to city in Minnesota. Because of these differences, a city will have to look closely at its particular situation to determine whether or not its volunteer firefighters would be exempt from withholdings. Cities that believe they have special circumstances may want to request a revenue ruling or a private letter ruling from the IRS. (There may be a fee for such rulings.)

If firefighters are employees under IRS rules, they should receive a W-2 form after the end of each year. The W-2 is a statement of the employee's earnings and withholdings for the year. City employees should not receive IRS Form 1099, which should be given only to individuals who have an independent contractor relationship with the city.

RELEVANT LINKS:

See SectionVII-B-2, *Fundraising.*

See Section IV-A, *Charging for fire calls.*

Minn. Stat. § 465.03.

E. Fundraisers and donations

The city, the fire department, and firefighters have no authority to conduct fundraising activities for the city fire department. The appropriate home for any fundraising is with the fire relief association.

Fire service charges are not fundraising. Cities are allowed to charge for services, but those charges have to be established by city ordinance. Income from fire service charges cannot be paid to the relief association or the firefighters and shouldn't be deposited anywhere except with the city.

Donations to the city must be accepted via city council resolution passed by a two-thirds majority. The requirement to accept donations in this way isn't dependent on the types of donations–it applies to money as well as equipment or services. A donor can specify the intent of how a donation to the city should be used and the city council should note it as such in the resolution accepting the gift.

V. Managing city fire department safety

A. Facility safety

Because of their unique function, city fire stations have exposures to both the public and city employees for accidental injury or loss. Cities have an obligation to maintain these facilities in reasonably safe condition for both their employees and the public. One of the best ways to evaluate your city's fire department facilities is to conduct regular documented safety inspections. Many of these exposures can be identified and removed or mitigated in this way. Records of these activities should be kept and analyzed to identify potential safety issues. The following topics are some of the items to be addressed in a fire department facility review.

1. Premises liability

At first glance, fire department facilities might not be considered to be public buildings which would need to be concerned with the potential for injuries to the public at large. However, many fire department buildings are used for a variety of purposes that bring the public into the facility and create the potential for public liability claims. Public meetings, tours, visits by department family members, retired firefighters, and vendors servicing the facility represent some of the public premise liability issues that must be considered.

Probably the most common type of accident associated with premise liability is slips, trips, and falls. Therefore, it is important to recognize the factors that contribute to these types of accidents and the methods to minimize the risk.

RELEVANT LINKS:

- Inside the building the condition of floors, stair treads, carpets, and floor mats should be evaluated.
- Stairs and walkways should be kept clear to prevent tripping accidents.
- Loose power cords, hoses, or other similar items should also be stored properly.
- If fire department buildings have mezzanines, stairs or ladders, proper guardrails, handrails, and step treads provide protection against falls from elevation.
- Lighting is also important. Poor lighting inside or outside may create more hazardous walkways by making it more difficult to see objects, ice, etc.
- Outside the building, parking lot and sidewalks need to be free of ice and snow, excessive damage, or other conditions that could lead to a same-level fall.
- Equipment, props, and items, such as damaged vehicles used for extraction training, that are left outside after hours create risks. Children or others may climb on them and get hurt. Removal of the items or installation of barricades or warnings may be necessary to lessen the risk.
- Traffic control in emergency vehicle entrances and exits is also important to protect against accidents with other vehicles or pedestrians. Proper design of emergency routes, warning signage, opticon systems, or other controls may be necessary to protect against this exposure.
- Other liability exposures include fire poles, filling non-department air tanks, and special events held on the fire department premises.

2. Employee safety

Workplace safety should also be a focus of your inspections. OSHA requirements, including machine guarding, garage ventilation, and chemical use and storage are some of the applicable standards. Employees are also exposed to the same hazards as others visiting the facility as described above. This includes fall hazards and vehicle-related accidents associated with entering and exiting emergency equipment.

3. Exercise rooms

Many fire stations have exercise rooms with a variety of equipment and free weights. The following are some of the issues to address:

- Exercise equipment should be designed for the intended use and maintained in good repair.
- Draft a policy that states whether non-fire department members may use the facility. If nonmembers use the facilities, there should be controlled access to the facility and training for the equipment.

RELEVANT LINKS:

- Employees should be properly trained in the use of the equipment, and the training should be documented.
- Employees should not workout alone to ensure that assistance is available in the event of an injury and to provide spotters for free weight use.
- Exercise rooms should be kept locked to prevent unauthorized use.

4. Security

Basic security programs should be in place for any public facility. Controlled access, good lighting, and scheduled site checks of unoccupied facilities can help to prevent theft, unauthorized entry, vandalism, and property damage related to freeze-ups caused by failed heating systems. Electric monitoring systems, or at a minimum a temperature-activated warning light, can help to catch problems early and prevent damage of sprinkler systems and fire equipment.

5. Other uses for fire hall

LMC information memo, *Park and Recreation Loss Control Guide,* VIII-C-1 Community center programs, use by outside groups.

Specific procedures should be established to control the use or rent of meeting rooms and facilities at fire stations by civic groups, community groups, and the general public. Specify the types of groups that can use the facilities and for what purpose. You may require the groups to fill out an application or rental contract. This agreement should spell out which equipment, such as kitchen facilities, may be used. The agreement should address who will be responsible for property loss, injury to the organization's members while using the facility, and specific rules to be followed.

6. Life safety

Fire stations, particularly those that provide living quarters for members, should have a detailed and rehearsed emergency evacuation plan. All members should be familiar with their responsibilities and building exits. Emergency lighting should be considered where internal hallways and large rooms might be blacked out if the electrical supply is interrupted. Self-illuminated exit signs should be located appropriately to direct occupants to exits. Don't block exits, leave objects or equipment in the path of egresses, or create an unnecessary fire load through poor storage practices.

7. Property protection

Other fire protection issues to be reviewed as part of inspecting your city's fire department facilities include the following:

RELEVANT LINKS:

- Check the location, condition, and type of alarms.
- Check the portable fire extinguishers.
- Look for defects or other problems with electrical wiring, fixtures, extension cords, and circuit protection.
- Review the practices for storage of flammable liquids and compressed gas cylinders.
- A qualified contractor should test fire extinguishers, alarms, and sprinkler systems at least once a year.

8. Documentation and recordkeeping

Maintaining records of inspections and evaluations of your fire department facilities is very important. First, these records provide evidence of your efforts to meet your obligations to provide safe premises. Second, analysis of these records can be of value in preventing future losses by uncovering potential hazards and patterns of neglect and by providing a training tool for new individuals who will be responsible for conducting these duties in the future.

B. Trends in firefighter injuries

In evaluating our data on fire fighter injuries, consistently over the years we see that four types of job duties create the majority of WC loss costs for firefighters: fireground, EMS, training, and fire station and maintenance. Typically 80 percent of all lost-time injury costs for firefighters can be classified into one of these four operational areas. Our research showed no significant differences in injuries based on firefighter status as full time, paid on call, or volunteer.

1. Fireground

Fireground injuries include almost any sort of injury that might happen during the course of activities at the fireground including burns, smoke inhalation, overexertion from lifting or pulling hoses, or tripping over hoses or equipment, etc.

Being injured in the course of duties at the fireground is the manner in which one might expect that most firefighters are injured. However, the data shows that burns and smoke inhalation injuries comprise a small proportion of injuries at the fireground. Instead, more than half of the WC claim costs for firefighters are from injuries caused by overexertion from lifting/pulling/pushing or a slip/fall. Not surprisingly, most of these injuries tend to be musculoskeletal (e.g., strains/sprains) in nature.

RELEVANT LINKS:

2. EMS operations

The amount and type of emergency medical services provided by fire departments in Minnesota varies from city to city. However, EMS operations continue to be a leading cause of injuries for firefighters in Minnesota. EMS operation injuries almost always involve some sort of patient-handling activity like lifting a patient onto a stretcher, carrying a patient on a stretcher down stairs, or lifting a stretcher (plus patient) into the back of an ambulance. These type of activities cause overexertion injuries (such as strains) from lifting/pushing/pulling.

3. Training

LMCIT Training Safety Officer (TSO) Program.

Training activities comprise a surprising portion of injury loss costs for firefighters. Training injuries include injuries ranging from a wide variety of training activities including controlled burns, climbing ladders, physical agility, or other scenario-based training. Among training injuries, slips or falls and overexertion caused by listing/pushing/pulling again lead the way.

4. Fire station and maintenance

Injuries at the fire station or while performing maintenance activities comprise a surprisingly consistent portion of losses.. Injuries in this category include a wide variety of activities that take place at the fire station like working on/around vehicles, rolling up hoses, maintenance around the fire station, and loading/unloading equipment. Injuries occurring at the fire station were most often caused by overexertion from lifting, pushing, or pulling and slips or falls

5. Loss control considerations and recommendations

The Loss Control Department has been studying firefighter injuries for more than a decade and has developed a number of resources and programs to assist departments in keeping their firefighters safe.

Below are a number of topics and issues that LMC has identified as possible injury prevention and reduction considerations for fire departments.

a. Physical fitness

Physical fitness is an important component in the overall effort to decrease injuries to firefighters. There is a great deal of research demonstrating that employees who are physically fit are less likely to have a work-related injury, including sprains/strains and injuries from lifting/pushing/pulling an object. In addition, a physically-fit employee is likely to be less severely injured than an employee who is not physically fit.

RELEVANT LINKS:

We know there are departments in Minnesota who have successfully integrated fitness and wellness into their departments. However, fitness and wellness programs are not a "one size fits all" thing. Fire departments across Minnesota have integrated physical fitness and wellness into their culture in a variety of ways. We know of groups of volunteer firefighters who do aerobics together two nights a week while another department does yoga as a group at their stations. One department emails a weekly "function workout" to their members to do on their own time. Ultimately, each department needs to figure out what sort of physical fitness and wellness program might work for them.

b. EMS operations

LMCIT has been monitoring the impact of emergency medical services (EMS) operations on injury rates in fire departments for a number of years now. We know patient extraction and patient transportation are some of the most injury-producing activities an employee can do. Firefighters are often called to assist moving patients who have fallen in tight spaces or lift patients who are morbidly obese. There is really no good way to "safely lift" a patient in either of these circumstances.

The number of EMS runs will likely continue to increase as the population of Minnesota ages. The state demographer predicts that Minnesota will have more people over the age of 65 than in K-12 schools by the year 2020.

One way to avoid some of these sorts of injuries might be to use an emergency rescue lift device. One device used by a number of police and fire departments in Minnesota is portable, can be set up in a tight space, and can lift up to 500 pounds. LMCIT Loss Control Consultants are able to advise fire departments who are considering the purchase of ergonomic equipment for patient handling.

LMCIT Loss Control Consultant Services.

c. Ergonomics

A municipal fire station isn't all that different from a city workshop. Many of the same risk factors exist in both environments. Some of the common musculoskeletal risk factors that firefighters face include awkward postures, prolonged postures, repetition, temperature extremes, vibration, and excessive force/weight. Common maintenance or fire station job duties include hose rolling, carrying heavy equipment, and physical exertion. We assume that many of the lifting/pushing/pulling injuries firefighters experience are the result of one or all of these musculoskeletal risk factors.

RELEVANT LINKS:

A solution to these injuries might involve job hazard evaluation and ergonomic guidelines. The purpose of ergonomics is to design the job to fit the worker–not make the worker fit the job. LMCIT already has a great deal of experience in job hazard analysis and workshop ergonomics and can help departments interested in this type of evaluation.

d. Slips or falls

A firefighter on the scene of a fire during winter in Minnesota faces a unique set of job hazards. Not only do firefighters carry around 50 to 60 pounds worth of gear, but they also have to walk on the ice that's been created by water used to put out the fire. The claims data shows that a slip or fall injury on the ice typically costs about 25 percent more than a normal slip or fall. One can easily see how a slip/fall injury can be aggravated when a firefighter falls to the ground with the weight of his/her own body plus the weight of equipment needed to do the job.

There are a few things that can be done to reduce ice- and snow-related slips and falls. Being aware of the danger of slipping and falling on ice and reminding each other to be careful is a simple way to try to reduce falls. There are also a variety of different footwear and accessories that might be considered for preventing falls. Making sure your footwear is in good working order is a good way to get ahead of the problem.

Additionally, there are a couple of different brands and models of ice cleats available on the market for very little cost. Lastly, use the three points of contact technique for getting in and out of vehicles.

The goal is to have at least three of a responder's arms and legs in contact with a solid surface, so this probably means climbing down backwards from a truck while making use of grab bars and steps.

e. Training

LMCIT Training Safety Officer (TSO) Program.

Training injuries to firefighters can be severe and quite costly. Training takes place in a controlled environment, and injuries during training activities should be completely amenable to loss control. The loss control department has been piloting a Training Safety Officer (TSO) Program aimed at trying to reduce training injuries in police and fire departments.

The program recommends that departments implement a safety officer assignment when engaged in active training to provide oversight, control, and guidance to ensure that all trainees have a professional and safe experience with reduced injuries. The goal is to make the experience safer without watering down good training.

RELEVANT LINKS:

A number of departments have begun using the TSO program with positive results, and we hope to expand the program to other departments across the state to help decrease training injuries to firefighters.

f. Traffic hazards

State Fire Marshall SceneSafe Training for EMS, firefighters and law enforcement officers.

Traffic hazards are also an area of concern for firefighters. There have been six firefighter deaths among LMCIT member cities over the past few decades. All but one of these deaths has been the result of an auto accident or a firefighter being struck by a vehicle while on the side of a roadway. We spend a lot of time training firefighters how to drive emergency vehicles safely. However, the auto accident deaths were the result of firefighters speeding to the fire station in their personal vehicles while responding to a call. Driver training and re-emphasizing roadway safety policies might help your department prevent firefighter injuries and deaths of these sorts.

6. Further assistance

Rob Boe, LMCIT Public Safety Project Coordinator
rboe@lmc.org
651.281.1238.
800.925.1122
Rob Boe, On the Line: Public Safety Risk Management Blog.

If your department would like to learn more about firefighter safety and how to prevent on-the-job injuries, please contact LMCIT's Public Safety Project Coordinator and follow his "On the Line" public safety risk management blog.

C. Fireworks safety

Fire departments may sometimes be the "operator" responsible for a community fireworks display. Alternatively, the fire chief must make sure an outside applicant and that the proposed display will meet the applicable safety requirements and guidelines. One important requirement is that the operator is properly certified. To be certified, a person must meet the following requirements:

Minn. Stat. § 624.22, subd. 2.

- Be at least 21 years old.
- Pass a written examination that tests the applicant's knowledge of statutes, codes, and nationally recognized standards of safe fireworks practices.
- Provide evidence of experience as an operator or assistant for at least five fireworks displays, at least one of which is within the past year.

Minn. Stat. § 624.22, subd. 3.

There is a $100 annual fee for certification, which is good for four years. To renew certification, the person must have participated in or supervised at least three displays within the previous four years.

RELEVANT LINKS:

LMC information memo, *LMCIT Liability Coverage Guide*, Section III-G, Fireworks.

Cities and their fire departments should be aware of liability coverage provisions for fireworks displays for themselves and that others have adequate insurance limits and the city is named as an "additional insured" under the contractor's insurance.

D. Workers' compensation

LMC information memo, *LMCIT Workers' Compensation Coverage Guide.*

In general, workers' compensation for firefighters is the same as workers' compensation for other employees. However, there are some special provisions concerning how lost wage benefits are calculated for volunteer firefighters, and there are also provisions specifying that certain diseases are presumed to be job related for all firefighters. There are also some special issues that arise with regard to when a firefighter is considered to be on duty for workers' compensation purposes when responding to a fire or other emergency call when off duty. Finally, LMCIT's workers' compensation premium rating system has some unique features that reflect the unique aspects of workers' compensation for firefighters.

LMC information memo, *Providing Assistance in Emergencies: Coverage and Liability Issues*, Section V – Responding to emergencies while off-duty.

VI. Considerations in fire department consolidation

See Section IV-B, Contracting out city fire services.

Combining two or more fire departments into a single agency can offer advantages to the communities those departments serve. Planning and negotiating an agreement to combine services is a big task and there are many issues to deliberate.

Methods of cooperation short of consolidation, such as service contracts for resources or personnel, mutual aid, or fire service agreements, are discussed elsewhere. In the process of identifying structure, cities could agree to start with a lesser model with the goal of working towards fuller integration. For example, they might start out by contracting for some services with a goal of complete merger several years down the line.

A. Threshold questions

Cooperation is not always an easy task. Consider some threshold questions as you begin, such as what you want to accomplish, what problems are you trying to solve through cooperation, and do the communities see the benefit and support it. Successful cooperative agreements reach consensus on these points.

RELEVANT LINKS:

For a fire service example, see "Blueprint for Shared Services," a report of the Governor's Fire and Rescue Shared Services Task Force, 2010.

1. Saving money

Financial considerations will likely form at least part of the answer to the three threshold questions above. For example, experts report that intergovernmental cooperative agreements do not generate significant cost savings for cities in cooperative fire service agreements, which is the most commonly contracted-for service between cities and towns. Cities who have merged do report some increased efficiencies with financial benefits, but not in such overwhelming amounts that it could solely justify the merger.

2. Better service

While most experts agree that mergers don't save money, they do agree that successful mergers can generate better service to the community. It is important to have some community discussion about what this means because better service can mean a lot of different things to different people. For example, in the context of a fire service contract or merger it might mean the following:

- Faster response times.
- 24-hour coverage or simply more comprehensive coverage.
- More responders available to answer a call.
- Better training resources through pooled funding.
- Better equipment through pooled funding.
- Managing the growing gap in younger persons entering the volunteer ranks.

3. Community support

The pulse of a community can be hard to judge. Some communities place an enormous amount of local pride in their city. Other residents may feel less attached to civic identity and more concerned about faster response times. A community survey or community forum may help the city determine residents' feelings about the proposed cooperative venture. Cities might also hold open houses on the issue to garner feedback

Whether residents are pro, against, or neutral to the issue, it is important to be able to communicate clearly with residents the reasons for the proposal. Having resolved the threshold questions will put the city in a better position to explain the merger to residents.

B. Joint powers consolidation

Minn. Stat. § 471.59.

LMC information memo, *Intergovernmental Cooperative Agreements.*

In a consolidated joint powers department approach, two or more cities agree under the joint powers law to create a joint board consisting of one or more representatives from each of the participating units with the effective power to do all of the following:

RELEVANT LINKS:

- Receive and expend funds.
- Enter contracts.
- Hire employees.
- Purchase or otherwise acquire and hold real or personal property.
- Sue and be sued.

Each city provides financial support to the joint board. In turn the board is responsible for running the newly merged fire department, not the city councils of the constituent members. The merged fire department is a new legal entity, separate from the cities, requiring it to procure its own insurance.

LMC information memo, *LMCIT Liability Coverage Guide*, Section III-I, Joint powers entities.

C. Independent nonprofit consolidation

Minn. Stat. ch. 317A.

Governmental units can also form a nonprofit entity to provide fire protection. With this model, two or more cities/townships would create a nonprofit firefighting corporation under state law in the control of a joint board of representatives from each of the participating units. In turn the board hires the chief and the officers, owns the equipment, and generally manages the operations.

D. Subordinate service districts

Minn. Stat. § 473.121, subd. 4, defining metropolitan counties.

Nonmetropolitan counties have the power to establish subordinate service districts to provide and finance any governmental service or function which it is otherwise authorized to perform.

Minn. Stat. ch. 357B.

Joint powers entities or independent nonprofit firefighting corporations may work with the county to create a fire protection Subordinate Service District and seek its taxing authority to fund some or all of fire department operations.

Typically the way this is done is to go through the joint powers agreement process and work out the details of how you want to manage the combined fire department. Then, when you have the details worked out, form the Subordinate Service District.

E. Governance and management issues

The structure chosen will in some circumstances affect management of the newly merged fire entity. However, even within these formal legal structures a tremendous amount of variety can occur.

1. Board composition and finances

Governance should be spelled out explicitly in the written agreement related to the consolidation. Questions to consider include the following:

RELEVANT LINKS:

- Will the governing board consist of elected officials, appointed city officials, citizen appointees, or some combination?
- Do all the cities have equal representation?
- How are the members appointed, for what terms, etc.?
- Are there certain specific types of decisions that will need to be approved by the participating city councils, in addition to (or instead of) by the joint board?
- What will each city's financial contribution be?
- How will any unexpected or unbudgeted costs or uninsured/unfunded liabilities be handled?
- Who approves budget, purchases, etc. and how?
- When may a city withdraw, how much notice is required, etc.?
- In a multi-party joint department, will/can the department continue with the now-reduced number of participating cities?
- If the department is dissolved, how are the equipment, assets and liabilities allocated?

2. Human resources

Often the success of a merged entity will depend on how well employment and human resources concerns are addressed and resolved. Human resources issues can be tricky even in single city departments. It is important to note that merging departments rarely solves human resources problems, but may exacerbate existing ones. Here are some questions to consider:

- How big will the new department be? Will the complement of officers/firefighters be equal to, less than, or greater than the combined totals of the existing departments?
- Will all the current members be guaranteed a job or will each member have to apply individually for a job with the new department?
- What labor agreements, if any, are in force in the different departments and how might those agreements affect what changes can be made and when?
- What union, if any, will represent the members in the combined department?
- What changes in health coverage and other benefits may be necessary or desirable?
- Do any of the cities have a civil service system or a local fire relief association?
- What happens to the support staff?
- How will personnel records and files be handled for both current and future members?
- Do any of the cities have all volunteer, part-time paid, or fully paid members? Will the new department?

RELEVANT LINKS:

- How will personnel records and files be handled for both current and future members?

3. Policy and operations concerns

Neighboring cities can have very different approaches to handling training, equipment maintenance, rescue operations, and even putting out fires. For example, neighboring fire departments (who have the same colored trucks, the same looking buildings, and the identical equipment) can have radically different opinions about interior attacks on fires. Some departments will enter no matter what, some departments won't at all. These types of differences can be located in a department's written policies and operational procedures. To make sure things match up it is important to consider the following:

- What policies and procedure manuals will be used and how will that be determined? The departments that are combining may have different policies in general.
- Do we have consistent Standard Operating Procedures?
- Where will the department be housed? Will there be only one or could there be "substations" in the individual cities?
- How will fire department records be handled? Will the existing departments' records be combined, and if so where and how?
- How will complaints be handled?
- Do any of the departments have grant-funded operations?
- How will those responsibilities and that funding be handled?
- What mutual aid agreements are in place? What do they say and commit the contracting parties to?
- How will those commitments be managed?
- Do any of the departments have other non-fire department responsibilities, such as emergency management?
- How will the new department be identified; e.g., name, vehicle colors and markings, uniforms, etc.?

4. Pensions

Attempting to merge pension plans can be the downfall of many consolidation plans. There are many ways to structure and offer pensions across Minnesota fire relief associations and differing philosophies about benefits levels and years of service to vest. Help of a skilled accountant may be needed to work out all the details related to a pension plan merger. One acceptable solution may be to join the Statewide Volunteer Firefighter Retirement Plan developed by the Minnesota Public Employees Retirement Association specifically for volunteer firefighters.

Information about the Statewide Volunteer Firefighter Retirement Plan.

RELEVANT LINKS:

LMC information memo, *LMCIT Property Appraisal Program.*

VII. The ISO Fire Protection Rating System

The premium that cities pay for LMCIT property coverage is largely based on the estimated replacement cost figures of cities' property. In most cases, these figures are established by LMCIT's professional appraisal program.

LMCIT also uses the ISO fire suppression rating schedule as a factor in determining premiums. This schedule is used to rate a community's fire protection.

Insurance Services Office.

The ISO has for many years done evaluations and ratings of the fire protection provided in communities. This system is called the ISO Public Protection Classification (PPC) program. The PPC grades a community's fire protection based on ISO's Fire Suppression Rating Schedule (FSRS). The better the community's PPC grade, the lower the premium is for property coverage. ISO's data on fire losses indicates that communities with better fire protection as evaluated by the PPC do in fact tend to have fewer losses from fire damage than other communities.

A. PPC rating factors

Fire Suppression Rating Schedule.

ISO's PPC system has been in use since the early 1900s, and has been continuously modified and refined over that time. The Fire Suppression Rating Schedule (FSRS) looks at a great deal of specific information about the fire department, the water supply, and the types of property in the community, and uses a fairly complex process to evaluate that information. Following are three of the major factors the PPC system looks at.

1. Water supply

ISO will look at whether the community has sufficient water supply for fire suppression beyond daily maximum consumption. It also reviews fire hydrant inspections and frequency of flow testing, as well as the number of fire hydrants that are no more than 1,000 feet from the representative locations.

2. Fire department

ISO reviews the distribution of fire companies throughout the area and checks that the fire department tests its pumps regularly and inventories each engine and ladder company's equipment. ISO also reviews the fire company records to determine factors such as type and extent of training provided to fire company personnel, number of people who participate in training, and firefighter response to emergencies.

RELEVANT LINKS:

3. Emergency communications

ISO reviews how well the fire department receives and dispatches fire alarms. It will evaluate the emergency reporting system; the communications center, including the number of telecommunicators; and the computer-aided dispatch facilities.

B. ISO reports

When ISO rates a community's fire protection, it will prepare a "Classification Detail Report." This report shows in detail how much credit the city received in the rating process for each item reviewed, compared to the maximum credit possible for that item. ISO will also prepare an "Improvement Statement," which identifies what changes a city would need to make in order to move up to a particular grade. A fire chief may request these reports from ISO, but they are not available to the general public.

ISO Fire Chief portal.

Moving forward, the ISO will periodically send the city a "Community Outreach Questionnaire" asking for information about the city's fire protection system. If the city completes and returns the questionnaire, ISO will check for significant changes in the city's fire protection system that might merit a review of the city's current classification.

Changes in the area served, improvements in the city's water system, additional fire stations constructed, new equipment added, and improvements in the city's emergency communications are some of the items most likely to trigger a review. If the city has made improvements in any of these areas, it may be worthwhile to contact ISO to request a survey.

C. Further assistance

ISO Mitigation.

For additional information, contact the ISO Mitigation.

VIII. Fire relief associations

Because the city fire department members are almost always also members of the fire relief association, it may be helpful to understand the powers and responsibilities available to the relief association that fire department employees do not possess. It is important for the city, the fire department employees, and the fire relief association members to understand which entity is involved in any activity so that the proper group understands and can address any risks associated with it.

RELEVANT LINKS:

A. Nature of relief associations

Minn. Stat. § 424A.001, subd. 4.
Minn. Stat. § 424A.05.
Minn. Stat. § 424A.06.

Under state law, a fire relief association is a nonprofit corporation, separate from the city, with the authority to provide pension, disability, and death benefits to its members through special funds (restricted) and to engage in other activities and spend other monies out of their general funds (nonrestricted) that the corporation's bylaws permit. Under federal law, relief associations may apply for and be granted federal tax-exempt status as a nonprofit entity. A fire relief association should work with both its accountant and attorney to determine and maintain its federal nonprofit status.

Minn. Stat. § 424A.04, subd. 1(a).

The relief association is governed by a board of directors. Because the relief association is a mechanism to provide pension and other benefits to city employees (the firefighters), its board is required to include full participation on the board by officials of the municipality (or municipalities) served by the fire department to which the relief association is directly associated. There must be three city trustees:

- An elected official.
- Another elected or appointed official.
- The chief of the city fire department.

The elected and appointed officials are chosen by the city council annually. These city members must be informed of and should attend all relief association board meetings. They are full members with voting rights.

Minn. Stat. § 13D.01, subd. 1(d)(2).
For a general discussion of the open meeting law requirements see Handbook, *Meetings, Motions, Resolutions, and Ordinances*.

Because of its quasi-public purpose in providing pension and other benefits to city employees, meetings of the relief association board are subject to the state's Open Meeting Law.

Minn. Stat. § 424A.05, subd. 2.

Likewise, the records of special fund transactions (those relating to pensions and other benefits) and the relief association bylaws are public and must be open for inspection by any member of the relief association, any officer or employee of the state or of the municipality, or any member of the public at reasonable times and places.

The trustees of a relief association board, including the three city officials, have specific fiduciary duties. They must act in good faith and exercise the degree of judgment and care that a person of prudence, discretion, and intelligence would exercise in the management of their own affairs. As fiduciaries, they must avoid conflicts of interest. They must make a reasonable effort to obtain knowledge and skills sufficient to perform their fiduciary responsibilities.

RELEVANT LINKS:

B. Relief associations and finances

Because a relief association is a nonprofit corporation, separate from the city, it has some duties and privileges that the fire department does not.

1. Control of relief association funds

Unlike fire department money, which is collected and disbursed by the city, the relief association collects money from certain other sources and controls their investment and payout as set out in state law.

Minn. Stat. § 424A.05.

Volunteer firefighter relief associations who operate a pension fund are required to maintain a special fund. Certain dedicated revenues must be deposited in this fund and paid out only for service pensions, annuities, disability benefits, survivor benefits, and other similar restricted purposes.

Minn. Stat. § 424A.06.

Relief associations may, but do not have to, establish and maintain a general fund into which certain other money must be credited. Disbursements from this fund may be made for any purpose that is authorized either by the articles of incorporation or the bylaws of the relief association.

Local government officials and employees must notify the Office of the State Auditor (OSA) whenever evidence of theft, embezzlement, or the unlawful use of public funds or property is discovered. The reporting requirement also applies to officers and employees of local public pension plans, including volunteer firefighter relief associations

State Auditor Reporting form.

A detailed description of the alleged incident(s) must be made to the OSA "promptly" and in writing. The description may include information that is classified as not public data. "Prompt" reporting means that the OSA should be contacted when the evidence is first discovered. Information that could reasonably be used to determine the identity of an individual providing the required notice is classified as private.

2. Fundraising

As a separate, nonprofit corporation, the relief association may engage in some fundraising activities that the city fire department may not. It is important to be clear on roles and responsibilities of the fire relief association and the city. Event marketing materials should be clear that fundraising events are sponsored by the relief association. Typical relief association fundraisers include the following:

- An event such as a booya, spaghetti dinner, or pancake breakfast.
- Lawful gambling activities, like bingo, pull tabs, or raffles. Lawful gambling activities are subject to state law, even if they only occur once a year.

Minn. Stat. § 349.16, subd. 1, and Minn. Stat. § 349.12, subd. 28.
LMC information memo, *Lawful Gambling*.

RELEVANT LINKS:

Minn. Stat. § 340A.404, subd. 10.
Minn. Stat. § 340A.403, subd. 2.

- Alcohol sales may also be used to raise funds, such as a beer tent at the local community festival.

3. Alcohol as a fundraiser

There are several special considerations when using alcohol sales as a fundraiser. It is important for relief associations to understand that significant liability risk comes along with any sale of alcoholic beverages.

The liquor laws make it clear that persons who sell or serve alcoholic beverages have a responsibility to avoid making sales that are illegal. Two of the most important responsibilities are to avoid selling or serving alcohol to anyone who is obviously intoxicated and to avoid selling or serving anyone under age 21. Anyone who illegally sells or furnishes alcohol is potentially subject to both criminal prosecution and civil liability.

a. Criminal penalties

The criminal penalties for violating liquor sale laws can be very severe. For example:

Minn. Stat. § 340A.702(7).

- It's a gross misdemeanor to sell, give, or furnish alcoholic beverages to an obviously intoxicated person. The penalty for a gross misdemeanor is a fine of up to $3,000, imprisonment for up to a year, or both.

Minn. Stat. § 340A.702(8).

- It's a gross misdemeanor to sell, give, or furnish alcohol to a person under the age of 21.

Minn. Stat. § 340A.701, subd. 1(4).

- It's a felony to sell, give, or furnish alcohol to a person under 21 if that person becomes intoxicated and causes or suffers death or grave bodily harm as a result.

b. Civil penalties

Violating liquor laws can also subject the organization to civil liability. Anyone who causes the intoxication of another person by illegally selling alcohol to that person can be held liable for damages resulting from that illegal sale. It's illegal to sell under the following conditions:

- Without a license.
- To a person under 21.
- To a person who is already intoxicated.
- After hours.

Minn. Stat. §§ 340A.801-.802 (also known as the Dram Shop Law).
Minn. Stat. § 340A.90.

Any of these can lead to liability under Minnesota's Civil Damages Act. In addition to liability for illegally selling alcohol, a person can also be held liable for furnishing or permitting the consumption of alcohol by persons under 21.

RELEVANT LINKS:

The typical way the Civil Damages Act comes into play is that the licensee sells a drink to an intoxicated person, who then gets into his car and causes an accident. By law, the seller is liable for the injuries resulting from that accident.

There are no dollar limits on how much the seller can be held liable for and the potential exists for that liability to be very large. A young person who's left a paraplegic for life or a well-paid breadwinner who's killed and leaves several young dependents behind are a couple examples that could easily result in a multimillion dollar damage award.

c. Reducing risks in alcohol sales

There are two components to managing that risk: server training and adequate liquor liability insurance limits.

(1) Server training

To reduce the risks of criminal penalties and civil liability, it's extremely important that everyone who will be involved in selling or serving beer be aware of and understands the risks and their own responsibilities under the law. In other words, training is critical. Formal alcohol server training is available through a number of sources.

Alcohol Awareness Training: LMCIT Liquor Liability Program.

For organizations seeking liquor liability coverage through LMCIT for special event sales, LMCIT requires at least one supervisor to have completed a formal server training course and be present and in charge at each location at all times while beer sales are being conducted. While LMCIT does not require each individual server complete a formal training course, each server must receive instruction, either from the supervisor or from another competent person, as to their responsibilities.

LMCIT strongly recommends fire relief associations follow similar training guidelines even if purchasing liquor liability insurance from a private insurer. The insurer may have other specific requirements of its own for server training, which is why it's important to make sure the relief association is aware of and complies with those requirements.

(2) Adequate liquor liability insurance

LMC information memo, *LMCIT Liability Coverage Guide*, Section III-K, Liquor liability.

Regardless of how well servers are trained and how carefully the beer sales are managed, the risk of dram shop liability can never be completely eliminated. If liability occurs, the dollar amount of the liability is really a matter of the luck of the draw. The possibility of a multimillion dollar liability judgment is very real.

RELEVANT LINKS:

Minn. Stat. § 340A.409, subd. 1.

Minn. Stat. § 340A.409, subd. 4.

Minn. Stat. § 340A.509.

The statutes only require liquor licensees to have minimum insurance limits of $50,000 per person and $100,000 per occurrence (this limit is not required for a beer licensee whose annual sales were less than $25,000 in the previous year). Cities can require a licensee to carry higher limits than what the statute requires. In any event, one of these "minimum limits" policies is clearly nowhere near enough to adequately cover the risk.

The next question, of course, is "How much is enough?" Unfortunately, this is one of those "How high is up?" questions. No matter how much insurance is purchased, one can never be absolutely sure it will be enough. Given the nature of the risk, a $500,000 insurance limit should probably be considered an absolute minimum any time a city or city-related entity is involved in liquor sales. If it is decided to operate under a low limit, everyone involved should be aware there's a very real risk of liability that's greater than the coverage limits.

LMCIT recommends the relief association carefully consider carrying at least a $1,000,000 limit for liquor liability, and even then there's still a very real risk it might not be enough.

Of course, one objection might be that by the time premiums are paid for limits that high, it will eat up all the profit and the organization won't make any money on the fundraiser. But if that's the case, the response should probably be to look for a different way to raise funds and to not proceed with cheap, low-limit insurance.

The organization might consider how many years of beer sale profits it might take to pay off $100,000 or $500,000 or $1,000,000 of uninsured liability.

d. Parties at risk

The risk that potential liability could be more than the organization's insurance limits should be a serious concern to all parties involved: the relief association, the city, and the individual firefighter. As described below, it's in everybody's interest to make sure there are reasonable insurance limits in place if the fire department is involved in beer sales.

(1) Relief association risks

From the standpoint of the relief association (assuming the relief association is the licensee), the concern is that the relief association's assets are at risk. If the association were held liable for an amount greater than its liquor liability insurance limits, the association's general fund could certainly be at risk. It's possible that a claimant might also try to get at the money in the association's special fund.

While the statutes say the special fund can only be used to pay pensions and certain specific other expenses, it's at least conceivable that a court might order those funds to be applied to what the association owes on a liquor liability claim. That could affect the association's ability to meet its pension obligations to its members. If the association uses the "defined contribution" or "split the pie" pension system, it would mean much smaller pensions for future retirees.

(2) City risks

From the city's standpoint, an excess judgment against the relief association on a liquor liability claim potentially could affect the city in several different ways.

The claimant could argue that the relief association was really ultimately acting on behalf of the city in conducting the beer sales, and that the city should therefore be held liable for the relief association's actions in illegally selling beer. Since under the statutes the relief association has a very direct and close special relationship to the city, a court might well be sympathetic to this argument and conclude the city should be vicariously liable for the relief association's actions. That might be particularly true if the profits from the beer sales were being used to cover costs the city might otherwise bear, such as acquiring new fire equipment.

If the claimant were able to get at the assets in the relief association's special fund to satisfy the judgment, it would increase the city's future costs if the association uses the "defined benefit" approach to pensions. Since the city is require by law to provide enough funds from property taxes or other sources to enable the relief association to meet its pension obligations, the city would ultimately have to make up the loss if the claimant were able to get at the relief association pension funds.

If the insurance and other assets of the relief association weren't sufficient, the claimant would very likely look for a way to make a claim directly against the city. They might try to argue, for example, the city was negligent in failing to adequately oversee and control the relief association's activities.

Keep in mind, of course, that if the city does end up being liable and there isn't insurance to cover it, the taxpayers will ultimately have to pay for it. Unlike a private corporation, the city doesn't have the option to simply declare bankruptcy, hand over its assets, and walk away.

(3) Individual firefighter risks

From the individual firefighter's standpoint, there's a concern about personal liability as well. While liquor liability claims are typically brought against the licensee, the statute actually refers to "a person" who makes an illegal sale.

RELEVANT LINKS:

There seems no reason why the claimant couldn't sue the individual who actually served or sold the beer in addition to suing the licensee. Depending on the circumstance, there could be a question of whether selling beer is part of the firefighter's city duties as a city employee and, therefore, whether s/he would be entitled to be defended and indemnified by the city. And even if it were considered part of the firefighter's city duties, if the firefighter's actions in selling beer were outrageous enough, it might be considered to be "malfeasance, willful neglect of duty, or bad faith" in which case the firefighter would be on their own for any damages awarded against them.

4. Pension highlights

Managing pension funds is a detailed process beyond the scope of this discussion. Highlighted here are a few key areas that can result in liability for the relief association and the city.

a. Fiduciary duty

Minn. Stat. § 424A.04, subd. 2.

Minn. Stat. ch. 356A.

The members of the relief association board of trustees have a fiduciary duty to act in good faith and exercise the degree of judgment and care that persons of prudence, discretion, and intelligence would exercise in the management of their own affairs, not for speculation, considering the probable safety of the plan capital as well as the probable investment return to be derived from the assets.

Minn. Stat. § 424A.095.
Minn. Stat. § 356A.06, subd. 6 or 7.

The trustees also have investment-related fiduciary requirements. As with city funds, Minnesota statutes specify where the relief funds may be invested. The permissible investments for relief association funds are broader than the investment options available to the city. Even so, fiduciaries must consider the probable safety of the funds as well as the probable investment return to be derived from the assets. The investments should not be made for speculation. They should be properly diversified among investment types to minimize the risk of substantial investment losses. Sufficient assets must be invested in cash-equivalent securities to meet immediate liquidity needs and to avoid losses from forced early liquidation of other securities.

b. Benefit increases

Keep your fiduciary duties in mind especially when considering benefit increases. Benefits should not be raised without a thorough review of all finances involved, including expected increase in the accrued liability and annual accruing liability of the relief association attributable to the amendment. Some relief associations have been adversely affected by downturns in financial markets.

RELEVANT LINKS:

Minn. Stat. § 424A.092, subd. 6.

"Required Municipal Contributions to Volunteer Firefighters' Pension Plans," Office of the State Auditor, Statement of Position, Oct. 2014.

Minn. Stat. ch. 353G.

LMC Hot Topics: Volunteer Firefighter Retirement Plan.

Public Employees Retirement Association (PERA).

Minn. Stat. § 353G.13.

Rob Boe, LMCIT Public Safety Project Coordinator
rboe@lmc.org
651.281.1238.
800.925.1122
On the Line, LMC Blog

Past performance is never an indication of future returns, and relief association investments may be more volatile than city funds, given their wider range of permitted investments.

Pension benefit increases generally require an amendment to the bylaws of the relief association and may require ratification by the city council. Cities must make their own determination of the financial soundness of a benefit increase proposal. In some circumstances the relief association may be able to increase their benefits without city council approval, but if the financial requirements of the special fund subsequently require financial support from the city, the provisions implemented without city ratification are no longer effective, and any service pensions or retirement benefits payable after that date may be paid only at the previous benefit level.

c. Statewide volunteer firefighter retirement plan

A fairly new option available to municipalities that do not have a volunteer firefighter retirement plan but would like to start one, and for existing relief associations seeking an alternative to their existing plan, is the Statewide Volunteer Firefighter Retirement Plan (SVFRP) operated by the Minnesota Public Employees Retirement Association (PERA).

Participation in this plan has the advantages of shifting investment decisions to a knowledgeable and experienced pension board and allows benefits to be portable if a firefighter works in more than one city's fire service.

IX. Further assistance

If your department would like to learn more about fire department management, please contact LMCIT's Public Safety Project Coordinator and follow his "On the Line" public safety risk management blog.

City Council
Mayor Ken Willcox
Dan Koch
Johanna McCarthy
Alex Plechash
Steven Tyacke

City Manager
Jeffrey Dahl

Date: **September 13, 2018**

To: **The Honorable Mayor and Members of the City Council**

From: **Jeffrey Dahl, City Manager**

Work Shop: **Presentation of Conceptual Plan for the Redevelopment of 294 Grove Lane E---Boatworks Building**

Update

Please see the attached project narrative and conceptual plan for the redevelopment of the Boatworks Site at 294 Grove Lane E. The objective of this agenda item will be for the development group to present and receive comments regarding their goals of the site, public benefits, and future public process.

Given the impacts and magnitude of this potential redevelopment, staff has invited all members of the Planning Commission, Housing and Redevelopment Authority (HRA), and Parks and Trails Board to observe the discussion. If the development group continues to pursue the redevelopment, there will be many additional opportunities for public feedback over the next several months.

The next step that requires City action would be to approve a “blight study” that would determine if the site would qualify to be a part of Tax Increment Financing (TIF) District #6. If the property is TIF eligible, TIF could be utilized to help pay for significant public improvements in and around the site.

Background

Earlier this summer, a group led by property and business owner, Rick Born, contacted staff regarding the potential redevelopment of the Boatworks Site. Staff relayed information to him regarding land use, zoning, parks and trails, economic development, and other variables in and around the site.

Given the size of the site and its key location on Lake Minnetonka, bookended by Wayzata Beach and the Depot, abutting the railroad, and adjacent to Lake Street, City staff recommended that the development team take a step back and closely consider the potential public benefits prior to requesting any public discussion of the project. Also, staff has requested the development process entail collaboration from the HRA, Planning Commission, and Parks and Trails Board.

Attachments

1. Boatworks Re-imagined Narrative, dated September 11, 2018
2. Boatworks Re-imagined Conceptual Site Plan and Renderings

Boatworks Re-Imagined 9/11/18

Past – Present – Future

Much more than redevelopment – A toast toward the "best is yet to come!"

A special and unique "Century" opportunity. Few properties deserve the attention that could span more than 100 years of future use and enjoyment. Looking back, Lake Minnetonka's history can give us a wink into what the future can be for such a rare property. Vision, Careful Design & Enhancement of this lake property aligned with other lake front initiatives can ensure that this property will be the best it can be for many-many years.

The Wayzata Real Estate market may change, but the past indicates that the demand for Lake Front Commercial use including Executive Offices and an opportunity for Dining along with Luxury Residences are the best uses for the future of this site.

The historical evolution of the current use and site layout began as a boat building and repair work building fulfilling that business need and character of Wayzata's lake front. As times changed, it set into motion a remodel after remodel of a building to try and adapt to revised "best uses". Unfortunately, today the building is a series of remodel projects that leaves a building that is outdated, not functional, poorly designed for parking and its span of asphalt, inefficient in use and is in need of continuous repair and economically challenged for tenants and value for the building.

This valuable property is worthy of, and deserving of, a "World Class" change for the future.

The proposed Boatworks Redevelopment balances the appropriate scale of building size and design and a better re-positioning of parking, and equally important is to maintain the public experience and access to the Public Beachfront and its benefits to the community.

The redevelopment ideas for the site began with the following primary criteria and considerations; Development Design – Architecture & Use – Site Conditions & Planning, but it all began with the forethought of Community Benefit. The categories reflect the thinking that helped us create a well-balanced redevelopment plan.

Development Design Criteria:

1. **Community Benefit & Enhancement: "100 year Opportunity"**

- Community significance - Arguably the most valuable commercial property on Lake Minnetonka. One of the most premier and unique lake front re-development opportunity in the Midwest.
- Public Circulation and pedestrian spaces; Beach Enhancement, Relationship to Depot
- Potential Tax Increment Financing to assist in the following areas:

- ✓ Funding to help complete the Lake Front goals.
- ✓ Improve water quality treatment from storm water run-off from the building and parking area.
- ✓ Potential to raise portions of parking area, portions of Grove Lane East, beach and marina areas out of flood prone areas.
- ✓ Potential to re-design municipal marina and surrounding area to provide for a more enhanced public park/beach experience.
- ✓ Enhanced public experience along Lake Front with significant public focal point at central thru lobby area, and re-design of Lake Walkway to emulate Lake Front Effect design concept.

- Enhanced long term tax value of project to city.

2. Architecture and Use:

- Must be outstanding and compelling architecture.
- Replacing a "too may time remodeled" building that is poorly utilized and very inefficient building
- Office – Residential -Restaurant
- Mass and Height - goal to stay within a reasonable scale due to height limitations
- Parking redesign with a significant advantage to transfer of location of building parking.
- Alignment with Lake Front Initiatives. "World Class". When complete, will be the most respected and enjoyed commercial building in Wayzata with circular public pedestrian traffic. Continuation and 'west anchor' for Lake Effect.
- Dock use and new spaces. Consider opportunity to better utilize dock slips and create better access and use for both private and public dock spaces.

3. Site Conditions & Planning

- Must show that we are not limiting perception or actual public access, but enhancing the beach and surrounding uses.
- There are significant advantages for public benefit to tie-together the common area.
- Storm water quality improvements
- Soil Conditions and Water Table Design
- Site area comparable of existing to new pedestrian access and acceptability
- Inviting – encouraging – exciting element on Wayzata's Lakefront
- Fully encompasses Lake Front Initiative
- Enhance public use in design
- Underground parking replacing majority of existing use parking balance for public use
- Multi-use for benefit for community, business, character of beach location
- Ability to raise parking and portions of Grove Lane East out of a flood prone area.
- Incorporate a workable delivery, boat launch, trash collection area.

- Move building back from street/rail road at main entry to the site to provide a more aesthetic view from Lake Street. Include a meaningful sculpture piece at entry to site.
- Enhance connection of lake front boardwalk to the east lake front boardwalk, and provide better access to the lake.

Timing and Development Scheduling:

Our goal is to meet a timeline that would allow for the redevelopment to begin the fall of 2019.

2018

September
- Council and Planning Workshop

October
- Submission of Concept Plan

November
- Concept Review Planning Commission
- Concept Review City Council

December
- Submission of Development Plans

2019

1st Quarter
- City Final Plan Review
- Site and Architectural DD Plans

2nd & 3rd Quarter
- Completion of City Staff Review
- Preparation of Site Planning Coordination

4th Quarter
- Begin Construction

2019 – Fall 2021
- Construction and Completion fall of 2021

Thank you for your review and consideration of the Wayzata Boatworks Re-imagined.

Wayzata Boatworks Re-imagined

City Workshop - Sept 18, 2018

CUNINGHAM GROUP

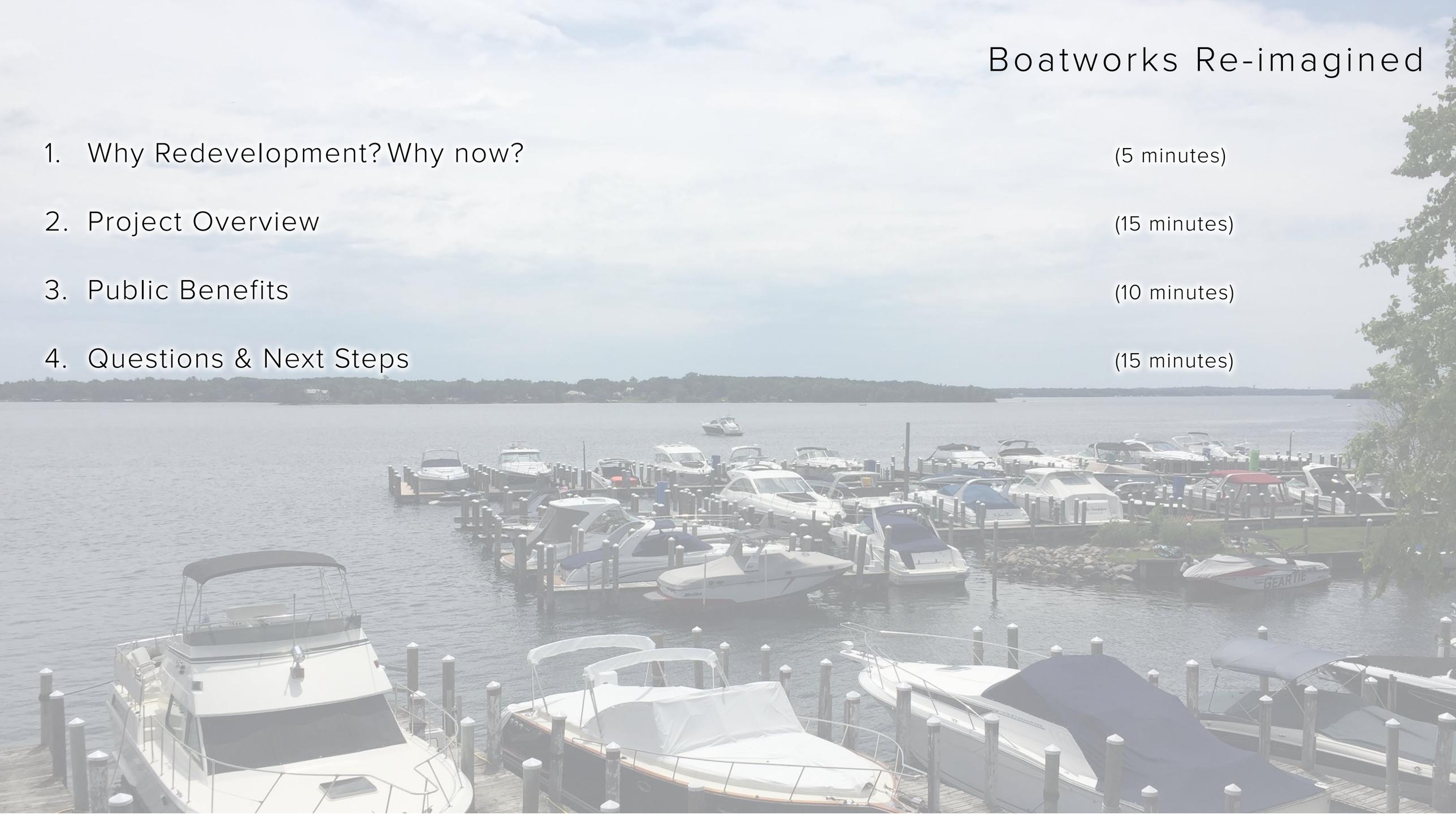
BOHLAND Development, Inc

Boatworks II LLC

18 - 0108

Boatworks Re-imagined

1. Why Redevelopment? Why now? (5 minutes)
2. Project Overview (15 minutes)
3. Public Benefits (10 minutes)
4. Questions & Next Steps (15 minutes)



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The Wayzata Real Estate market may change, but the past indicates that the demand for Lake Front Commercial use including Executive Offices and an opportunity for Dining along with Luxury Residences are the best uses for the future of this site.

The historical evolution of the current use and site layout began as a boat building and repair work building fulfilling that business need and character of Wayzata’s lake front. As times changed, it set into motion a remodel after remodel of a building to try and adapt to revised “best uses”. Unfortunately, today the building is a series of remodel projects that leaves a building that is outdated, not functional, poorly designed for parking and its span of asphalt, inefficient in use and is in need of continuous repair and economically challenged for tenants and value for the building.

This valuable property is worthy of, and deserving of, a “World Class” change for the future.

The proposed Boatworks Re-Imagining balances the appropriate scale of building size and parking reconfiguration. It also maintains and enhances the public experience and access to the Public Beach front and connectivity to the rest of the downtown area.

The redevelopment ideas for the site began with the following primary criteria and considerations; Development Design – Architecture & Use – Site Conditions & Planning, but it all began with the forethought of Community Benefit. The categories reflect the thinking that helped us create a well-balanced redevelopment plan.

Development Design Criteria:

1. Community Enhancement: “100 year Opportunity”

- Public Circulation and pedestrian spaces; Beach enhancement, Relationship to Depot
- Opportunities to assist in the following areas:
  - + Improve water quality treatment from storm water run-off.
  - + Potential to raise portions of parking area, portions of Grove Lane East, beach and marina areas out of flood prone areas.
  - + Enhanced public experience along Lake Front with significant public focal point at central thru lobby area.
- Enhanced long term tax value of project to city.

2. Architecture and Use:

- Must be outstanding and compelling architecture.
- Uses: Office – Residential - Restaurant
- Mass and Height - a design that fits into the visual aesthetic of Wayzata while recognizing the need for some height flexibility to make the economics of Re-Imagining work.
- Parking redesign to increase number of on-site parking spaces and better clarify public vs Boatworks building parking.

3. Site Conditions & Planning

- Must show that we are not limiting perception or actual public access, but enhancing the beach and surrounding uses.
- Inviting – encouraging – exciting element on Wayzata’s Lake front
- Structured parking supplementing existing on-grade This also allows for a significant improvement in storm water runoff treatment.
- Ability to raise parking and portions of Grove Lane East out of a flood prone area.
- Incorporate a workable delivery, boat launch, trash collection area.
- Move building back from street/rail road at main entry to the site to provide a more aesthetic view from Lake Street. Include a meaningful sculpture piece at entry to site.
- Enhance connection of lake front boardwalk to the east lake front boardwalk, and provide better access to the lake.

Existing Conditions

Existing Building Quantified

100% Commercial

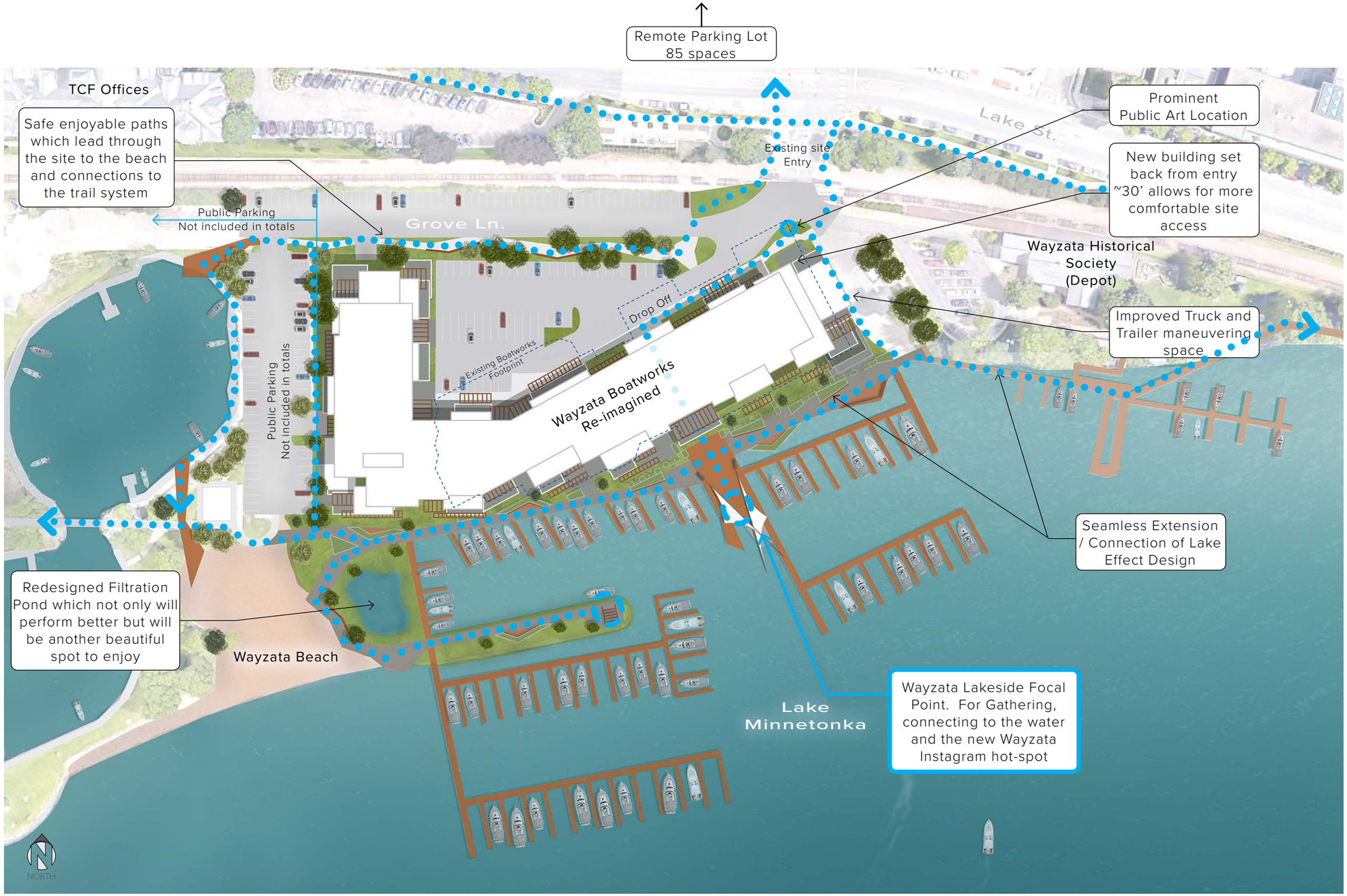
Level 1:	~47,000 SF
Level 2:	~36,000 SF
Total:	~83,000 Gross SF

Parking:

Remote Lot:	85	
Surface Lot:	139	
Below Grade:	0	
Total:		224

Property line:

Concept Site Plan



Existing Building Quantified

Level 1:	~47,000 SF
Level 2:	~36,000 SF
Total:	~83,000 Gross SF

100% Commercial

Parking:

Remote Lot:	85
Surface Lot:	139
Below Grade:	0
Total:	**224**

New Building:

	(approx)
Level 0:	40,000 SF
Level 1:	44,000 SF
Level 2:	55,000 SF
Level 3:	41,000 SF
Total:	180,000 Gross SF

Residential: (24-28 units)

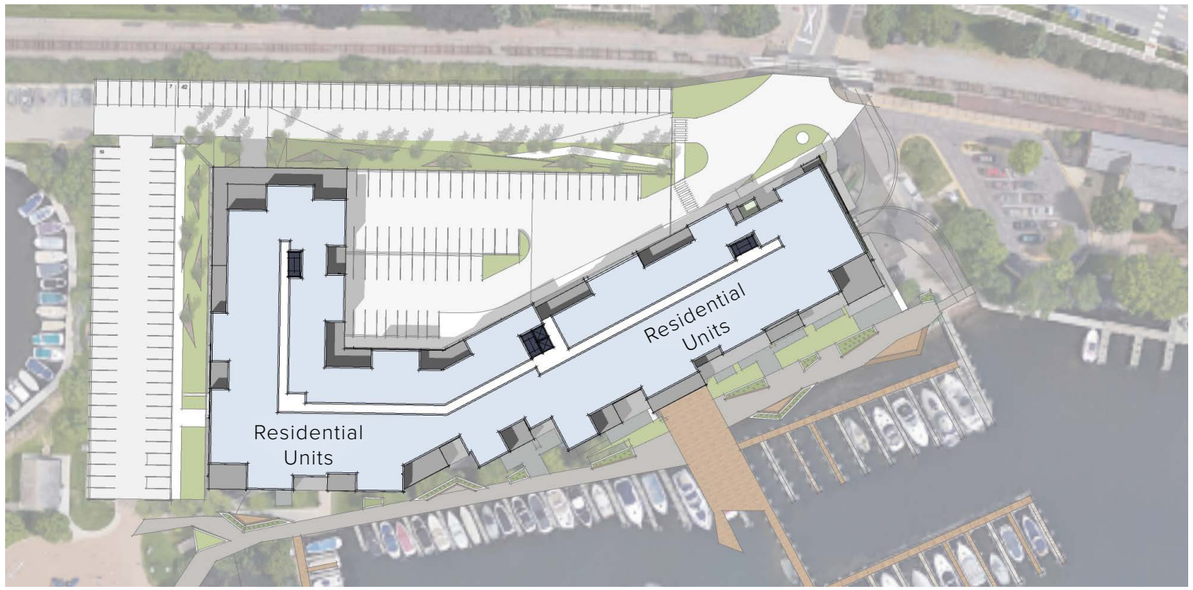
Parking:

Remote Lot:	85
Along Tracks	42
Level 0:	120
Level 1:	94
Total	341

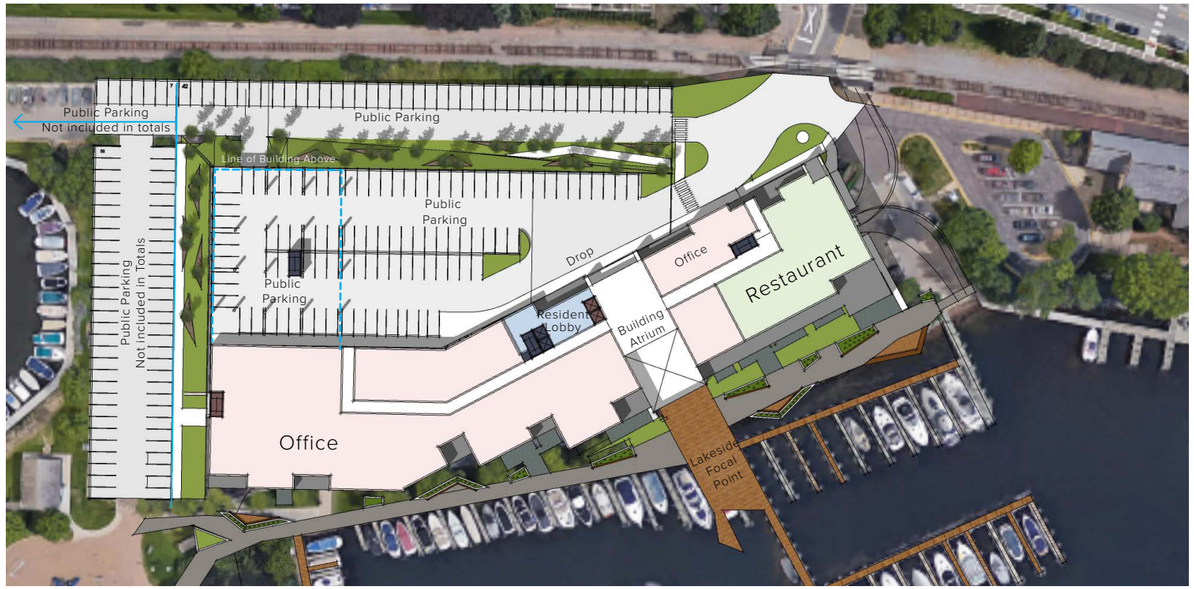
Pedestrian Circulation:

Concept Floor Plans

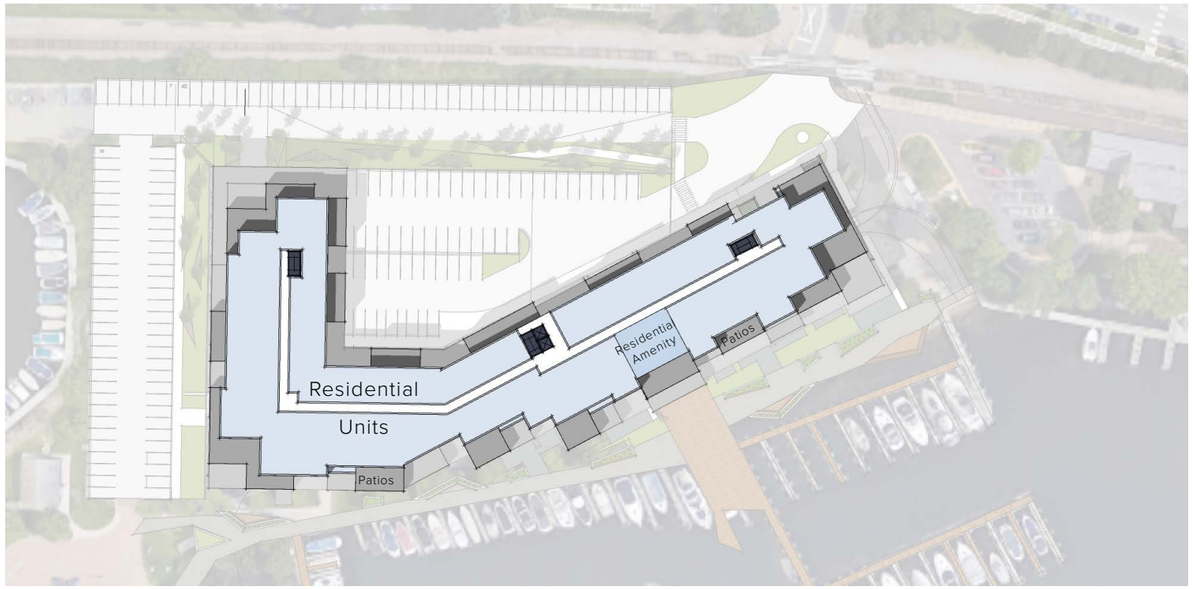
Level 0 - Walk Out



Level 2



Level 1 - Street Side Grade Level

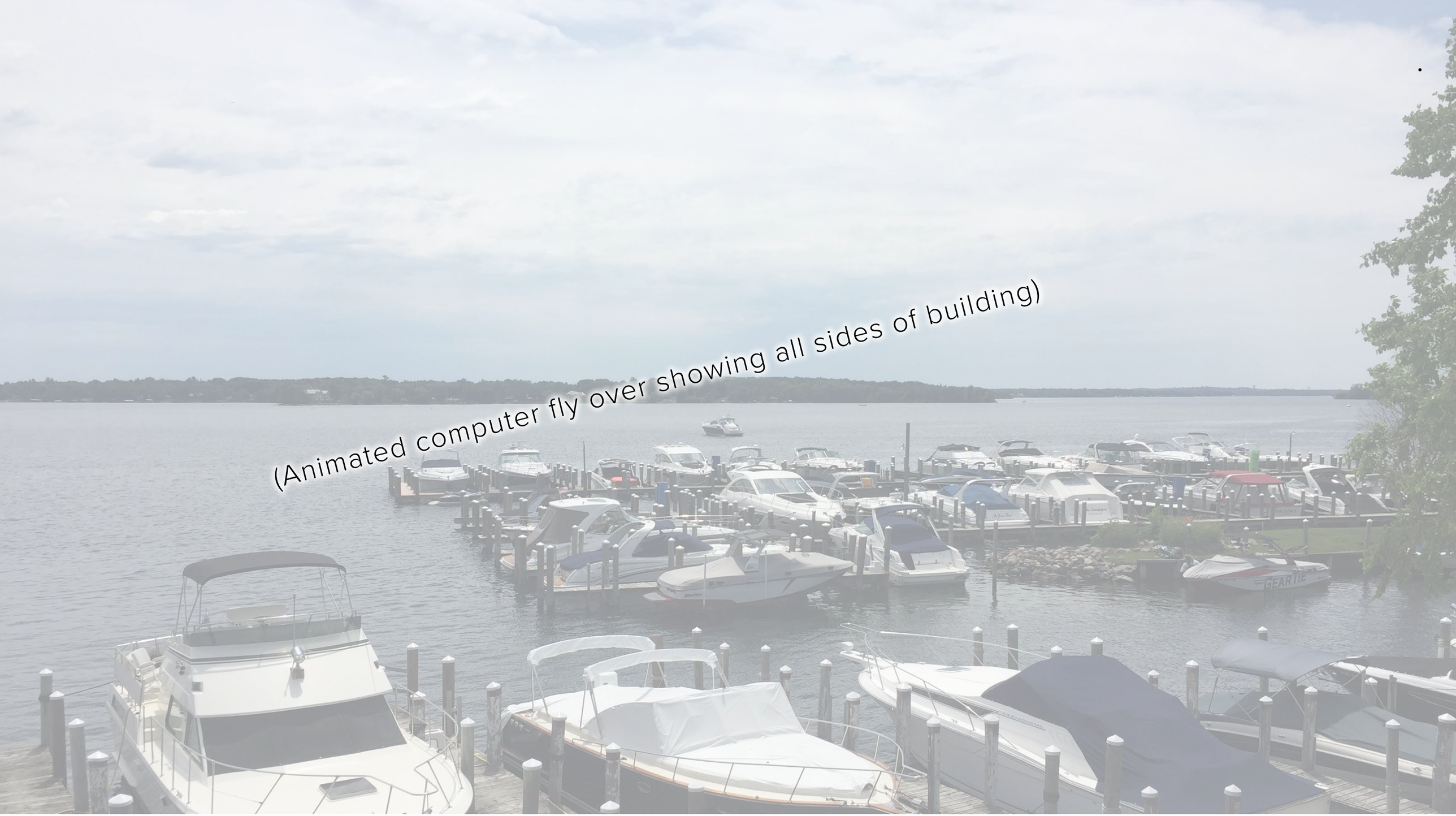


Level 3

Site Section with Approximate Building Heights

Boatworks Concept - Entry at Rail Road Crossing

Boatworks Concept - East End - Lake Side



Wayzata Boatworks Re-Imagined - Initial City Workshop Meeting

Wayzata | MN

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