



**REGULAR CITY COUNCIL MEETING
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS
JULY 26, 2022
7:00 PM**

INTRODUCTORY PROCEEDINGS

Call to order

Pledge of Allegiance

Open forum

Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the Council. Please refer to the Council Agenda & Minutes web page for additional ways to submit comments. You may also call 612-861-9711 or email kwynn@richfieldmn.gov with questions. Call into the open forum by dialing 1-415-655-0001 Use webinar access code: 2454 528 1902 and password: 1234.

Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the Council on items not on the agenda. Individuals who wish to address the Council must have registered prior to the meeting.

Approve the Minutes of the: (1) Special Closed City Council Session of July 12, 2022; and (2) Regular City Council Meeting of July 12, 2022.

AGENDA APPROVAL

1. Approval of the Agenda
2. **Consent Calendar contains several separate items, which are acted upon by the City Council in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further Council action on these items is necessary. However, any Council Member may request that an item be removed from the Consent Calendar and placed on the regular agenda for Council discussion and action. All items listed on the Consent Calendar are recommended for approval.**
 - A. Consider approval of the amended rental agreement between the City of Richfield and the MN Whitecaps Professional Women's hockey team for use of a locker room, ice time for practices and games, concessions, and alcohol sales.

Staff Report No.106
 - B. Consider approval of the establishment of a Recreation Special Revenue Fund for the Sustainability Program that includes organized collection.

Staff Report No. 107
 - C. Approval of the first reading of an ordinance amending the term of the Existing Franchise Agreement from August 1, 2022, to January 31, 2023, and schedule a second reading for August 10, 2022.

3. Consideration of items, if any, removed from Consent Calendar

CITY MANAGER'S REPORT

4. City Manager's Report

CLAIMS AND PAYROLLS

5. Claims and Payroll

COUNCIL DISCUSSION

6. Hats Off to Hometown Hits

7. Adjournment

Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9738.



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

Special Closed City Council Meeting

July 12, 2022

CALL TO ORDER

The special closed meeting was called to order by Mayor Regan Gonzalez at 5:45 p.m. in the Babcock Room.

Council Members Present: Maria Regan Gonzalez, Mayor; Mary Supple; Simon Trautmann (5:46); Sean Hayford Oleary

Council Members Absent: Ben Whalen

Staff Present: None

ITEM #1

CONDUCT A PERFORMANCE EVALUATION OF CITY MANAGER KATIE RODRIGUEZ, PURSUANT TO MINN. STAT. 13D.05, SUBD. 3(A).

The Special Closed Session was conducted pursuant to Minnesota State Statute 13D.05, subd. 3(a).

ADJOURNMENT

The special closed meeting was adjourned by unanimous consent at 5:55 p.m.

Date Approved: July 26, 2022

Maria Regan Gonzalez
Mayor

Kari Sinning
City Clerk

Katie Rodriguez
City Manager



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

Regular Council Meeting

July 12, 2022

CALL TO ORDER

The meeting was called to order by Mayor Regan Gonzalez at 7:00 p.m. in the Council Chambers.

Council Members Present: Maria Regan Gonzalez, Mayor; Mary Supple; Simon Trautmann; and Sean Hayford Oleary

Council Members Absent: Ben Whalen

Staff Present: Katie Rodriguez, City Manager; Mary Tietjen, City Attorney; Jennifer Anderson, Support Services Supervisor; and Kari Sinning, City Clerk

Others Present: Nick Kelley and Blair Harrison, Bloomington Public Health;

PLEDGE OF ALLEGIANCE

Mayor Regan Gonzalez led the Pledge of Allegiance.

OPEN FORUM

Mayor Regan Gonzalez reviewed the options to participate:

- Participate live by calling 1-415-655-0001 during the open forum portion
- Call prior to meeting 612-861-9711
- Email prior to meeting kwynn@richfieldmn.gov

Karin Wolverton, 1001 Rae Dr, shared comments and the need to help people struggling with homelessness in Richfield and the surrounding communities.

Iris Graham, 7717 Chicago Ave, expressed immense gratitude to our emergency responders and service members.

APPROVAL OF MINUTES

M/Hayford Oleary, S/Trautmann to approve the minutes of the: (1) City Council Work Session of June 28, 2022; and (2) Regular City Council Meeting of June 28, 2022.

Motion carried: 4-0

ITEM #1	PROCLAMATION OPPOSING CONVERSION THERAPY IN THE CITY OF RICHFIELD
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Mayor Regan Gonzalez invited Human Rights Commissioner Mara Glubka to the podium and read aloud the proclamation.

Commissioner Glubka shared the importance of this proclamation as it has a personal importance to her and thanked Management Analyst Swanson for the push to make it happen.

ITEM #2	BLOOMINGTON PUBLIC HEALTH ANNUAL PRESENTATION FROM NICK KELLEY AND BLAIR HARRISON
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Mayor Regan Gonzalez invited Nick Kelley and Blair Harrison to the podium who gave a presentation regarding Bloomington Public Health as an organization, the annual report, a brief covid update, and the upcoming work within the City.

Council Member Supple thanked the presenters and asked if their upcoming work in mental health would help those struggling with addiction as well. Nick Kelley stated that they plan on covering the gap between the county and the providers to offer resources regarding mental health. Blair Harrison commented on homelessness and substance abuse by stating that housing and mental health continue to be a top priority; how to address the drug overdose problem within the homeless community; and how we have to work as partners to address the issue.

Council Member Trautmann thanked them for their work and asked about their outreach and using telehealth to provide care. Nick Kelley stated that they ran the WIC clinic virtually for almost two years and a hybrid model is what they predict for the future.

Mayor Regan Gonzalez thanked the presenters and encouraged our three cities and health commissions to work together instead of separately since Bloomington Public Health oversees Bloomington, Edina, and Richfield. She shared an interest in being involved in the focus on health and housing as the Mayor and also as a public health professional. She also encouraged Bloomington Public Health to support community members identifying and leading their own solutions. She stated that Richfield has opportunities within health in all policies and prevention that we should focus on to better the health and wellness of our community members.

ITEM #3	APPROVAL OF THE AGENDA
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M/Trautmann, S/Hayford Oleary to approve the agenda.

Motion carried: 4-0

ITEM #4	CONSENT CALENDAR
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City Manager Rodriguez presented the consent calendar.

- A. Consider a resolution approving the conveyance of 1710 - 78th Street East from the City of Richfield to the Housing and Redevelopment Authority. (Staff Report No. 101)

RESOLUTION NO. 11987

**RESOLUTION AUTHORIZING CONVEYANCE OF PROPERTY TO
THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR
THE CITY OF RICHFIELD, MINNESOTA**

- B. Consider a request for an interim use permit allowing Minnesota Independence College and Community to continue to use the property at 2000 - 76th Street West for social, meeting, and office space for their Community Program. (Staff Report No. 102)

RESOLUTION NO. 11988

**RESOLUTION APPROVING AN INTERIM USE PERMIT TO ALLOW
SOCIAL, MEETING, AND OFFICE SPACE FOR USE BY MINNESOTA
INDEPENDENCE COLLEGE AND COMMUNITY AT 2000 - 76TH
STREET WEST**

- C. Consider approval of the:
1. Memorandum of Amendment No. 1 to Site License Agreement; and
 2. Amendment No. 1 to Site License Agreement between the City of Richfield and Cellco Partnership d/b/a Verizon Wireless which governs the installation and operation of telecommunications equipment on the Penn Avenue Water Tower. (Staff Report No. 103)
- D. Consider approval of the purchase of a Mack tandem-axle cab/chassis from Nuss Truck & Equipment for \$120,584 and dump box/snow fighting equipment from Towmaster Truck Equipment for \$145,532, totaling \$266,116 plus taxes and licensing in 2023 for use by the Public Works Department and authorize the City Manager to approve contract changes not to exceed \$10,000 without further City Council consideration. (Staff Report No. 104)

M/Supple, S/Trautmann to approve the consent calendar.

Council Member Hayford Oleary applauded the brochure attached to item A.

Council Member Trautmann lifted up Minnesota Independence College and Community (MICC) and the successes that they provide for neurodivergent people.

Motion carried: 4-0

ITEM #5	CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM CONSENT CALENDAR
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None.

ITEM #6	SUMMARY REVIEW OF THE CITY MANAGER'S ANNUAL PERFORMANCE EVALUATION FOR 2021 AND THE FIRST 6 MONTHS OF 2022, HELD ON JUNE 28 AND JULY 12, 2022, AS REQUIRED BY MINN. STATUTES 13D.05 SUBD. 3(A), AND CONSIDERATION OF A RESOLUTION AMENDING EMPLOYMENT AGREEMENT BETWEEN CITY OF RICHFIELD AND CITY MANAGER KATIE RODRIGUEZ. (STAFF REPORT NO. 105)
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Mayor Regan Gonzalez presented Staff Report No. 105 and summarized the discussion from the closed sessions. In summary, the Council was thankful for the leadership that City Manager Rodriguez has shown in the past three years and happy with her performance.

Council Member Trautmann appreciated City Manager Rodriguez's leadership and expressed his confidence in City Manager Rodriguez's role.

M/Regan Gonzalez, S/Supple to approve the resolution amending the City's Manager's employment agreement with the City reflecting a salary adjustment as amended.

RESOLUTION NO. 11989

**RESOLUTION AMENDING THE EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF RICHFIELD AND CATHERINE RODRIGUEZ, CITY MANAGER**

Mayor Regan Gonzalez added that the City Manager position will be included in the upcoming compensation study performed for the City and the City Manager shall continue to participate in a facilitated peer city managers group. She also read aloud the amended resolution.

Motion carried: 4-0

ITEM #7	CITY MANAGER'S REPORT
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City Manager Rodriguez expressed a heartfelt thank you to Council for their support and recognized all those that help her in her role. She responded to the open forum comment from Ruane Onesirosan regarding the sale of lots owned by the HRA.

City Manager Rodriguez commented on the passing of the State law allowing the sale of limited THC products. Support Services Supervisor Anderson stated the considerations that we may need to talk about with licensing and permitting establishments to sell these products and the compliance of the establishments much like alcohol sales. City Attorney Tietjen stated that the State law does not help a lot with regulation and cities will have the final say in the zoning and permitting.

Council Member Hayford Oleary commented on the age control of the delta-8 products already widely available and stated that he would not support a moratorium. He asked how zoning would work for gas stations that are currently selling edibles. City Attorney Tietjen stated that to her knowledge there isn't anything in the zoning code that prohibits sales. Council Member Hayford Oleary shared that the zoning restrictions placed upon medical dispensaries should be lightened if gas stations are going to sell the products.

Council Member Trautmann shared that he is not enthusiastic about a moratorium either and asked about a possible work session regarding this topic. City Manager Rodriguez stated that it could be brought to a work session in the next three months.

Mayor Regan Gonzalez thanked staff for keeping them updated on the issue.

ITEM #9	CLAIMS AND PAYROLL
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M/Trautmann, S/Supple that the following claims and payrolls be approved:

<u>U.S. BANK</u>	<u>7/12/2022</u>
A/P Checks: 307370 – 307716	\$3,800,828.18
Payroll: 171474 – 171837, 43473 – 43477	<u>\$748,742.69</u>
TOTAL	\$4,549,570.87

Motion carried: 4-0

ITEM #10	HATS OFF TO HOMETOWN HITS
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Council Member Supple expressed condolences to the family of Nel Swanson, who was an educator, historian, and mentor for many years.

Council Member Trautmann lifted up the Urban Wildland Half Marathon and the Richfield Leadership Network basketball tournament at Donaldson Park on July 23.

Mayor Regan Gonzalez mentioned National Night Out on August 2.

ITEM #10	ADJOURNMENT
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The meeting was adjourned by unanimous consent at 8:08 p.m.

Date Approved: July 28, 2022

Maria Regan Gonzalez
Mayor

Kari Sinning
City Clerk

Katie Rodriguez
City Manager



STAFF REPORT NO.106
CITY COUNCIL MEETING
7/26/2022

REPORT PREPARED BY: Amy Markle, Recreation Services Director

DEPARTMENT DIRECTOR REVIEW: Amy Markle
7/18/2022

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
7/19/2022

ITEM FOR COUNCIL CONSIDERATION:

Consider approval of the amended rental agreement between the City of Richfield and the MN Whitecaps Professional Women's hockey team for use of a locker room, ice time for practices and games, concessions, and alcohol sales.

EXECUTIVE SUMMARY:

The Richfield Ice Arena is home of Minnesota's Tier 2 Junior Hockey Team, the Minnesota Magicians. To accommodate the Team, the City constructed an additional locker room to Rink One in 2013. The locker room has been used by the team now for nine years. The Minnesota Magicians have recently sold and relocated the team. We were able to secure our next rental agreement with the addition of the MN Whitecaps. Highlights of the attached rental agreement:

- Base rent - \$4,166 per month
- Term - The term of the Rental Agreement shall commence on September 1, 2022 with two remaining five-year intervals and shall terminate on August 31, 2025.
- Ice Time - The Team will be provided free ice time for 15 games each year between October 1 and May 1. The team will also be given 3.75 practices hours per week during prime time hours.
- Whitecaps will operate and receive all proceeds from the sale of strong beer and wine in Rink One during games.
- The City will operate and receive all proceeds from the sale of concessions during games.
- The Whitecaps will hold sole advertising rights in Rink 1 and Rink 2 that includes dasher boards, player benches, seating sections, nets, Zamboni, scoreboard, etc., and also includes Rink One bathrooms.
- The City will receive 14 percent of all advertising receivables.
- The City will hold sole advertising rights to the Lobby area.
- The Whitecaps will pay a pro-rata fee of \$1,600 per year for utility use of the rented premises, subject to up to a 2 percent increase each year.

RECOMMENDED ACTION:

By Motion: Approve the rental agreement between the City of Richfield and the MN Whitecaps.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

About the Minnesota Whitecaps

The Minnesota Whitecaps are a professional women’s ice hockey team based in Minneapolis, Minnesota and competing in the Premier Hockey Federation (formerly the National Women’s Hockey League). The Whitecaps are the PHF’s first expansion team, joining the league in the 2018-19 season after operating as an independent team since 2004. Minnesota won the league championship, the Isobel Cup, in their first season in the PHF. The team is owned and operated by NLTT Hockey Ventures. Visit whitecaps.premierhockeyfederation.com to learn more.

About the Premier Hockey Federation

The PHF is the leading home of professional women’s ice hockey in North America. Established in 2015 as the National Women’s Hockey League, the NWHL rebranded to become the PHF in 2021 and maintains the mission to provide strong role models and fuel the continued growth of the sport. The league is made up of the Boston Pride, Buffalo Beauts, Connecticut Whale, Metropolitan Riveters, Minnesota Whitecaps, and the Toronto Six, who all compete annually for the Isobel Cup.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

Contracts require Council approval.

C. CRITICAL TIMING ISSUES:

The MN Whitecaps next season starts in October 2022.

D. FINANCIAL IMPACT:

The locker room project was funded by an internal loan in the amount of \$600,000 and will be paid back by rental payments received by the Magicians over a fifteen-year period. There's currently six years remaining on the internal loan and this will agreement will cover three of them.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed and prepared the agreement.

ALTERNATIVE RECOMMENDATION(S):

Delay or reject approval of the amended rental agreement.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
□ Whitecaps agreement	Contract/Agreement

AMENDED RENTAL AGREEMENT

This amended rental agreement is made this ____ day of May, 2022, by and between THE CITY OF RICHFIELD ("Landlord") and NLTT Hockey Ventures, LLC operating as the Minnesota Whitecaps ("Tenant").

RECITALS

WHEREAS, Landlord and Tenant desire to enter into a Rental Agreement for ice facilities; and

Landlord and Tenant, intending to be legally bound, hereby covenant and agree as follow:

ARTICLE I. Rented Premises

1.1 Landlord does hereby rent demise, and let unto Tenant, and Tenant does hereby hire and take from Landlord, upon the terms and conditions set forth herein (the Rental Agreement), the premises shown cross-hatched on Exhibit A attached hereto and incorporated herein, consisting of 2,000 square feet of locker room space (Rented Premises), located on the level of the Richfield Ice Arena Building located at 636 East 66th Street situated in the City of Richfield, Hennepin County, Minnesota (the "Building").

ARTICLE II. Term

2.1. The term of the Rental Agreement shall commence on May ____, 2022 (the Commencement Date), and shall consist of three (3) five-year intervals and shall terminate on April 30, 2038. Either party may terminate the Agreement at the end of each five-year interval upon giving a written 90-day notice to the other party. Unless notice to terminate is given, the Agreement will automatically extend for the next five-year interval.

2.2. If, at the termination of this Rental Agreement for reasons other than default or breach by Tenant, Landlord decides to rent the Rented Premises to a third party, Tenant shall have the right, for a period of one year after the termination date, to match or exceed any proposed and/or actual Rental Agreement for the Rented Premises which is acceptable to the Landlord, and if the Tenant elects in writing within 15 days of the date of receipt of the proposed and/or actual Rental Agreement, then the parties hereto shall execute such a rental agreement.

ARTICLE III. Rent

3.1 Tenant shall pay to Landlord as the "Base Rent" monthly rent in the amount of \$4,166.00 per month. Said Base Rent shall be payable in advance, on or before the first (1st) day of each and every month, commencing on the Commencement Date, and continuing during the Term.

ARTICLE IV. Nonpayment

4.1 Except as otherwise expressly provided herein, Tenant covenants and agrees

that if at any time it fails to pay any amount required by the Rental Agreement, or to obtain, pay for, maintain, or deliver any of the insurance policies herein provided for, or fails to make any other payment or perform any other act required to be made or performed by the Rental Agreement, then Landlord, without notice to or demand upon Tenant, without waiving or releasing Tenant from any obligation of Tenant contained in the Rental Agreement, and without any obligation to do so, may effect any such insurance coverage and pay premiums therefor and may make any other payment or perform any other act on the part of Tenant to be made and performed as provided in the Rental Agreement, in such manner and to such extent as Landlord may deem reasonably desirable, and in exercising such right to pay necessary and incidental costs and expenses. All sums so paid by Landlord and all necessary and any such act by Landlord, together with interest thereon at the maximum rate permitted by law, whichever is less, from the date of making of such expenditure by Landlord, shall be payable to Landlord as Additional Rent, and except as otherwise provided for in the Rental Agreement, shall be payable on demand or at the option of Landlord may be added to any monthly rental then due or thereafter becoming due under the Rental Agreement. Tenant covenants to pay any such sum or sums with interest as aforesaid and Landlord shall have (in addition to any right or remedy of Landlord) the same rights and remedies in the event of nonpayment by Tenant as in the case of default by Tenant in payment of rent.

ARTICLE V.

Ice Rental, Concessions, and Alcohol Sales

5.1 As part of this agreement, Landlord will provide Tenant free ice time for games each year between October 1st and May 15th (20 weekend games a year, Saturday nights at 7:00PM and Sunday mid-afternoons between the start time of Noon-2:00PM. Game warm-up ice will need to be ready 40 minutes before game time. Landlord reserves the right to exclusively operate the concessions out of the existing concession facility during all games. The ice time in this section applies only to the Minnesota Whitecaps of the Premier Hockey Federation.

5.2 Landlord will provide free practice ice time for Tenant each year between September 1 and May 15th during non-prime hours and for up to three (3) 75 minute slots during prime time hours as defined in section 5.3. The Tenant will also need a few morning sessions each week during the season. The ice time in this section applies only to Minnesota Whitecaps of the Premier Hockey Federation.

5.3 The Landlord will hold sole concession rights in the lobby concession stand. The Tenant MN Whitecaps will have the rights to bring in food/pizza to set up areas in the seating arena for group seating events/party decks.

5.4 The Tenant will hold sole alcohol rights in Rink One during Whitecap games in accordance with State Statutes.

ARTICLE VI.

Utilities and Maintenance Expense

6.1. Tenant shall pay its pro rata share of all charges for electricity, light, air conditioning and power with the rented premises and the charges thereof shall be deemed additional rent. Because the Rented premises are not metered separately, the prorated share shall be \$1,600 per year, subject to a 2% increase per year beginning January 1, 2023, and

payable in two annual payments on August 1 and February 1.

ARTICLE VII.

Repairs, Cleaning, Maintenance and Alterations

7.1 Tenant shall perform regular cleaning duties to the Rented Premises. Tenant, during the Term and at Tenant's expense, will keep the Rented Premises and appurtenances and every part thereof in good order, condition, cleanliness, and repair, including, without limitation, the maintenance, repair, and replacement, if necessary, of all interior walls, partitions, doors, and windows, including the regular painting thereof. Tenant shall promptly notify Landlord of any necessary maintenance, repairs, or replacements. Landlord will arrange repairs that are covered under construction warranty of the Rented Premises. When used in this provision, the term repairs shall include replacements or renewals when necessary, and all such repairs made by the Tenant shall be equal in quality and class to the original work. If Tenant does not keep and maintain the Rented Premises as herein provided, Landlord may, but need not, make such repairs and replacements, and Tenant shall pay Landlord, as Additional Rent, the cost thereof forthwith, plus interest at the rate of 10% per annum from the date of making such expenditure by Landlord, upon being billed for the same. All damage or injury to the Rented Premises and to its fixtures, appurtenances, and equipment caused by Tenant moving property in or out of the Rented Premises or by installation, removal of furniture, fixtures, equipment, or other property by Tenant, its agents, contractors, servants, or employees, or resulting from any other cause of any other kind or nature whatsoever due to carelessness, omission, neglect, improper conduct, or other causes of Tenant, its servants, employees, agents, visitors, or licensees, shall be repaired, restored, or replaced promptly by Tenant at its sole cost and expense to the satisfaction of Landlord. If Tenant fails to make such repairs, restorations, or replacements, the same may be made by Landlord and the same shall be at the expense of Tenant and collectible as Additional Rent or otherwise, and shall be paid by Tenant to Landlord within five (5) days after rendition of a bill or statement therefor.

7.2 A list of initial improvements by Tenant includes signage replacement, cleaning, painting, floor update and other equipment installation as needed in the locker room. Except as otherwise provided herein, no additional improvements, alterations, or replacements shall be made to the Rented Premises or any portion thereof without the prior written consent of Landlord. Such written consent will indicate the owner of such improvements, alterations and replacements if removed from the rented premises or building after termination of the rental agreement.

7.3 Notwithstanding any other provision contained herein to the contrary, Landlord shall repair, at its expense, the structural portions of the Building; provided, however, where structural repairs are required to be made by reason of the acts of Tenant, the costs thereof shall be borne by Tenant and payable by Tenant to Landlord upon demand.

7.4 Landlord covenants to Tenant that it will continue to reasonably provide for the removal of snow from the parking lot and sidewalks and for the maintenance and repair work on the building exterior all for the benefit of users of the building, including Tenant.

ARTICLE VIII.

Insurance

8.1 Landlord shall at all times during the Term keep the Building insured against loss or damage by fire and against those perils included from time to time in the standard form of

extended coverage insurance endorsement, including but without limiting the generality of the foregoing, wind storm, hail, explosion, vandalism, riot and civil commotion, damage from vehicles, and smoke damage, and such other coverage as may be deemed necessary by Landlord.

8.2 Tenant shall insure the contents of the Rented Premises owned by Tenant, for the benefit of Tenant, against loss or damage by fire, windstorm, or other casualty for such amount as Tenant may desire.

8.3 Mutual Waiver of Subrogation. Landlord and Lessee hereby waive any and all rights of recovery against each other for any loss or damage to the Rented Premises and/or the Building or the contents contained therein on account of fire or other casualty or for injuries sustained on the Rented Premises and/or the Building, provided such loss or damage is insured under a policy carried by Lessor or Lessee at the time of such loss or damage. The aforesaid policies of insurance shall contain appropriate provisions recognizing this mutual release and waiving all rights of subrogation on behalf of the respective insurance carriers.

8.4. Tenant shall also, as Additional Rent hereunder and at Tenant's sole cost and expense, but for the mutual benefit of Landlord and Tenant, as named insureds, maintain during the Term (a) general public liability insurance against claims for personal injury, death, or property damage occurring upon, in, or about the Rented Premises, and on, in, or about the adjoining lands, such insurance to afford protection to the limit of not less than Five Hundred Thousand and no/100 Dollars (\$500,000.00) in respect to injury or death to a single person, and to the limit of not less than one Million and no/100 Dollars (\$1,000,000.00) in respect to any one (1) accident and to the limit of not less than Three Hundred Thousand and no/100 Dollars (\$300,000.00) in respect to any property damage; and (b) steam boiler insurance on all steam boilers, pressure boilers, or other such apparatus as Landlord may deem necessary to be covered by such insurance and in such amount or amounts as Landlord may from time to time reasonably require.

8.5 All policies of insurance required to be maintained by Tenant shall be written in companies satisfactory to Landlord, and shall be written in such form and shall be distributed in such companies as shall be reasonably acceptable to Landlord. Such policies shall be delivered to Landlord endorsed "premium paid" by the company or agency issuing the same or accompanied by another evidence satisfactory to Landlord that the premiums thereon have been paid, not less than (10) days prior to the expiration of any then current policy.

ARTICLE IX. Quiet Enjoyment

9.1 Landlord represents and warrants that it is the lawful owner of the Rented Premises; that it has the full right and power to make the Rental Agreement; that if and so long as Tenant shall not be in default hereunder, Tenant shall quietly hold, occupy, and enjoy the Rented Premises during all of the Term.

ARTICLE X. Destruction By Fire

10.1 If the Building or any portion thereof is damaged or destroyed by fire or other casualty, however or by whomever caused, Landlord shall repair, rebuild, and restore the same with due diligence and dispatch (subject to the approval of the holders of any mortgages

on the Building) so that the Building will be restored to at least the same good order and condition as existed prior to damage or destruction. If more than twenty five percent (25%) of the Rented Premises is damaged or destroyed by fire or other casualty, Landlord shall have the option, in its sole discretion, to decline to rebuild. If Landlord so declines, this Rental Agreement shall terminate as of the date of such damage or destruction. If Landlord elects to repair the Building, and if such damage in the reasonable opinion of the Landlord renders the entire Rented Premises unfit for Tenant's normal business purposes, and Tenant by reason thereof discontinues business in the Rented Premises, Base Rent and Additional Rent shall be abated for a period during which no part of the Rented Premises is fit for such business purposes and during which time Tenant discontinues business. If such damage renders only part of the Rented Premises unfit for Tenant's normal business purposes, Base Rent shall be apportioned on a square foot of Rented Premises area basis and the proportion thereof applicable to each part of the Rented Premises upon which Tenant discontinues its business operations shall be abated for the period during which such part is not fit for Tenant's normal business purposes and during which Tenant discontinues such business operations.

10.2 Tenant will repair and replace all improvements and betterments placed upon the Rented Premises by it, and such repair and replacement shall be made at its own expense and not at the expense of Landlord.

ARTICLE XI.

Assignment and Subletting

11.1 Tenant shall not assign or sublease any of its rights under the Rental Agreement of any part of the Rented Premises without prior written consent from Landlord, which consent shall not be unreasonably withheld by Landlord. No such assignment or subleasing shall in any event relieve Tenant from any of its obligations contained in the Rental Agreement, nor shall any assignment or transfer of the Rental Agreement be effective unless the assignee or transferee shall, at the time of such assignment or transfer, assume in writing all the terms, covenants, and conditions of the Rental Agreement to be performed thereafter by Tenant and shall agree in writing to be bound thereby. Tenant agrees to pay on behalf of Landlord any and all costs of Landlord, including reasonable attorneys' fees occasioned by such assignment or transfer.

ARTICLE XII.

Defaults of Tenant

12.1 If during the Term Tenant shall default in fulfilling any of the covenants of the Rental Agreement (other than the covenants for the payment of Base Rent or Additional Rent), Landlord shall give Tenant notice of any default or of the happening of any contingency referred to in this paragraph, and if at the expiration of twenty (20) days after the service of such notice the default or contingency upon which said notice was based shall continue to exist, or in the case of a default or contingency which cannot with due diligence be cured within a period of twenty (20) days, if Tenant fails to proceed promptly after the service of such notice and with all due diligence to cure the same and thereafter to prosecute the curing of such default with all due diligence, Landlord, at its option, may terminate the Rental Agreement, and upon such termination, Tenant will quit and surrender the Rented Premises to Landlord, but Tenant shall remain liable as hereinafter provided.

12.2 If Tenant shall default in the payment of the Base Rent or Additional Rent expressly reserved hereunder, or any part of the same, and such default shall continue for ten

(10) days after notice thereof by Landlord, or if the Rental Agreement shall expire as provided in Paragraph 12.1 of this Article, Landlord or Landlord's agents and servants may immediately or at any time thereafter re-enter the Rented Premises and remove all persons and any or all property therefrom, either by summary dispossession proceedings or by any suitable action or proceedings at law or by force or otherwise and repossess and enjoy said Rented Premises, together with all additions, alterations and improvements, without reentry and repossession working forfeiture or waiver of the rents to be paid and the covenants to be performed by Tenant during the Term hereof. Upon the expiration of the Term of the Rental Agreement by reason of any of the events described in Paragraph 12.1, or in the event of termination of the Rental Agreement by summary dispossession proceedings or under any provision of law now or hereafter in force by reason of or based upon or arising out of a default under or a breach of the Rental Agreement on the part of Tenant (except where such breach or default is determined by a court of competent jurisdiction to be justified because of Landlord's acts or omissions), or upon Landlord recovering possession of the Rented Premises in the manner or in any of the circumstances whatsoever, whether with or without legal proceedings, by reason of or based upon or arising out of a default under or a breach of the Rental Agreement on the part of Tenant, Landlord may, at its option, at any time and from time to time, relet the Rented Premises, or any part thereof, for the account of Tenant or otherwise, and receive and collect the rents therefor, applying the same first to the payment of such expenses as Landlord may have incurred in recovering possession of the Rented Premises, including legal expenses and attorneys, fees, and for putting the same into good order or condition or preparing or altering the same for re-rental and all other expenses, commissions, and charges paid, assumed, or incurred by Landlord in reletting the Rented Premises and then to the fulfillment of the covenants of Tenant hereunder. Any such reletting herein provided for may be for the remainder of the Term of the Rental Agreement as originally granted or for a longer or shorter period. In any such case or whether or not the Rented Premises, or any part thereof, is relet, Tenant shall pay to Landlord the Base Rent and the Additional Rent required to be paid by Tenant up to the time of such termination of the Rental Agreement, as the case may be, and thereafter, Tenant covenants and agrees, if required by Landlord, to pay to Landlord until the end of the Term of the Rental Agreement the equivalent of the amount of all the Base Rent and Additional Rent reserved herein less the net proceeds of reletting, if any. Landlord shall have the election, in place and stead of holding Tenant so liable, forthwith to recover against Tenant, as damages for loss of the bargain and not as penalty, an aggregate sum which at the time of such termination of the Rental Agreement for such recovery of possession of the Rented Premises by Landlord, as the case may be, represents the then present worth of the excess, if any, of the aggregate of the Base Rent and Additional Rent payable by Tenant hereunder that would have accrued for the balance of the Term, over the aggregate rental value of the Rented Premises for the balance of such Term.

12.3 The specified remedies to which Landlord may resort under the terms of the Rental Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Landlord may be lawfully entitled in case of any breach or threatened breach by Tenant of any provision of the Rental Agreement. The failure of Landlord to insist in any one or more cases upon the strict performance of any of the covenants of the Rental Agreement or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or option. A receipt by Landlord of Base Rent or Additional Rent, with knowledge of breach of any covenant hereof (other than the payment of Base Rent or Additional Rent) shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Rental Agreement shall be

deemed to have been made unless expressed in writing and signed by Landlord. In addition to other remedies provided in this Rental Agreement, Landlord shall be entitled to the restraint by injunction for the violation or attempted or threatened violation of the covenants, conditions, or provisions of the Rental Agreement.

**ARTICLE XIII.
Attorneys' Fees**

13.1 If it is necessary for Landlord to retain the services of an attorney at law to enforce any of the terms, covenants, or provisions hereof, or to collect any sums due hereunder, Tenant shall pay to Landlord upon demand, as Additional Rent hereunder, the reasonable cost of such services.

**ARTICLE XV.
Condition of Rented Premises at Termination**

15.1 At the termination of the Rental Agreement by lapse of time or otherwise, Tenant shall return the Rented Premises in as good a condition as when Tenant took possession, excepting only ordinary wear and tear, damage, or destruction as described in Article 10 herein.

**ARTICLE XVI.
Holding Over**

16.1 In the absence of any written agreement to the contrary, if Tenant should continue to occupy the Rented Premises following the expiration of the Term of the Rental Agreement, Tenant shall so remain as a tenant from month to month and all provisions of the Rental Agreement applicable to such tenancy shall remain in full force and effect. During such tenancy, the same Base Rent and the same terms and conditions as prevailed during the last month of the Term demised shall prevail. In any such event, Tenant shall be liable to Landlord for damages which Landlord may incur as a result of such holding over, including but not limited to damages incurred because of loss of a prospective successor tenant. If Tenant is a holdover tenant and if Tenant continues to ' occupy the Rented Premises following the termination of such holdover (by a proper notice as to such month to month tenancy), then the foregoing provisions of this Article shall apply in the same manner as when Tenant continued in occupancy following the expiration of the Term of the Rental Agreement.

**ARTICLE XVII.
Use of Rented Premises**

17.1 The Rented Premises shall be used only for the operation of the Minnesota Whitecaps. Tenant shall not use or occupy the Rented Premises or knowingly permit the Rented Premises to be used or occupied contrary to any statute, rule, order, ordinance, requirement, or regulation applicable thereto or in any manner which would violate any certificate of occupancy affecting the same, or which would cause structural injury to the Rented Premises or cause the value or usefulness of the Rented Premises or any part thereof to substantially diminish (reasonable wear and tear excepted) or which would constitute a public or private nuisance or waste. Tenant shall promptly upon discovery of any such use, take all necessary steps to compel the discontinuance of such use.

**ARTICLE XVIII.
Permits**

18.1 Tenant shall maintain in force and effect all permits, licenses, and similar

authorizations to use the Rented Premises for the aforesaid purposes required by any governmental authority having jurisdiction over the use thereof. Tenant's failure to maintain such permits, licenses, and similar authorizations shall not relieve Tenant from the performance of its obligations and covenants hereunder (except obligations and covenants as may be prohibited by law), nor from the obligations to pay Base Rent or Additional Rent, as set forth herein. Tenant shall, at Landlord's request, in its capacity as Tenant, and not in its capacity as owner of the land underlying the Building, join with Landlord in executing, acknowledging, and delivering any and all petitions, consents, subordinations, plats, or easement deeds that may be required for the installation of any utilities, public improvements, roads, water lines, sewer lines, storm drainage facilities, subdivision, rezoning, special use, platting, or other similar development of the Rented Premises, which do not affect Tenant's use of the Rented Premises during the Term of the Rental Agreement.

ARTICLE XIX.

Compliance with Law

19.1 Tenant, at its sole expense, shall promptly comply with all laws, ordinances, and requirements of federal, state, county, and municipal authorities relating to Tenant's use and occupation of the Rented Premises, and with any lawful order or direction of any public officer relating to Tenant's use and occupation of the Rented Premises during the Term of the Rental Agreement. Nothing herein contained, however, shall prohibit Tenant from appealing from or contesting the validity or legality of such laws, ordinances, requirements, orders, or directions and, notwithstanding the foregoing provisions of this Article, Tenant shall not be deemed to be in default hereunder so long as Tenant diligently prosecutes such appeal or contest.

ARTICLE XX.

Lessor's Access to Premises

20.1 Tenant shall permit Landlord and the authorized representatives of Landlord to enter the Rented Premises at all times during usual business hours for the purpose of inspecting the same and making any necessary repairs to comply with any laws, ordinances rules, regulations, or requirements of any public authority. Nothing herein shall imply any duty upon the part of Landlord to do any such work which, under any provision of the Rental Agreement, Tenant may be required to perform, and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord may, during the progress of any work in the Rented Premises, reasonably keep and store upon the Rented Premises all necessary materials, tools, and equipment. Landlord shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage to Tenant by reason of making repairs or the performance of any work in the Rented Premises, or on account of bringing materials, supplies, and equipment onto or through the Rented Premises during the course thereof, and the obligations of Tenant under the Rental Agreement shall not hereby be affected in any manner whatsoever. Landlord shall, however, in connection with the doing of any such work cause as little inconvenience, annoyance, disturbance, loss of business, or other damage to Tenant as may reasonably be possible in the circumstances.

ARTICLE XXI.

Indemnity

21.1 Tenant shall indemnify and save harmless Landlord against and from any and all claims by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from the conduct or management of or from any work or thing whatsoever done by Tenant, or any of its agents, contractors, employees, or licensees in, on or about the Rented

Premises, and will further indemnify and save Landlord harmless against and from any and all claims arising during the Term of the Rental Agreement from any condition of the Rented Premises arising from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed, pursuant to the terms of the Rental Agreement, or arising from any act of negligence of Tenant, or any of its agents, contractors, employees, or licensees, or arising from any accident, injury, or damage whatsoever caused to any person, firm, or corporation occurring during the Term of the Rental Agreement, in the Rented Premises, and from and against all costs, reasonable attorneys, fees, expenses, and liabilities incurred in or about any such claim or action or proceeding brought thereon; and in case any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall resist or defend such action or proceeding by counsel reasonably satisfactory to Landlord. However, nothing in this Rental Agreement shall require the Tenant to indemnify and save harmless Landlord from any claim caused by or occasioned by actions of the Landlord, its agents, contractors, employees or licensees.

ARTICLE XXII.

Estoppel Certificate

22.1 Tenant shall, at any time and from time to time, upon not less than twenty (20) days' prior notice by Landlord, execute, acknowledge, and deliver to Landlord a statement in writing certifying that the Rental Agreement is unmodified and in full force and effect (or if there shall have been modifications that the Rental Agreement is in full force and effect as modified and stating the modifications) and the dates to which the Base Rent and Additional Rent have been paid in advance, if any, and stating whether or not (to the best knowledge of Tenant) Landlord is in default in the performance of any covenant, agreement, or condition contained in the Rental Agreement and, if so, specifying each such default of which Tenant may have knowledge, it being intended that any such statement delivered pursuant to this Article shall be in a form approved by and may be relied upon by any prospective assignee of Landlord's interest in the Rental Agreement or any mortgagee of the Rented Premises or any assignee of any mortgage upon the Rented Premises.

ARTICLE XXIII.

Subordination

23.1 The Rental Agreement shall, at Landlord's election, be subject and subordinate to the terms and conditions of all mortgages which may now or hereafter encumber the Rented Premises and to all renewals, modifications, consolidations, replacements, and extensions of such mortgages. In confirmation of such subordination, Tenant shall promptly execute any certificate of subordination or other such documents which Landlord or its mortgagees may request.

ARTICLE XXIV.

Landlord's Use of Rented Premises

24.1 Tenant shall grant Landlord the use of the Rented Premises between June 1st and September 30th to accommodate skate related events for up to 20 days per year. Tenant's Base Rent shall be prorated on a daily basis to account for Landlord's use of the Rented Premises during this period.

ARTICLE XXV.

Entire agreement

25.1 The Rental Agreement contains the entire agreement between the parties, and there are no other terms, obligations, covenants, representations, statements, or conditions, oral or otherwise, of any kind whatsoever. Any agreement hereafter made shall be ineffective to change, modify, discharge, or effect an abandonment of the Rental Agreement in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge, or abandonment is sought.

ARTICLE XXVI.

Release of Lessor

26.1 If Landlord sells or otherwise transfers all of its interest in the Rented Premises, Landlord shall, without further action by any party, be released and discharged from any further obligation or duty under the Rental Agreement, and no claim or demand upon Landlord shall thereafter be made by Tenant arising out of any such prospective obligation or duty of Landlord hereunder. Upon request by Landlord, Tenant shall execute an attornment agreement with Landlord's transferee in form satisfactory to such transferee.

ARTICLE XXVII.

Severability

27.1 If any term, condition, or provision of the Rental Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder thereof and the application of such terms, provisions, and conditions to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and the Rental Agreement and all the terms, provisions, and conditions hereof shall, in all other respects, continue to be effective and to be complied with to the full extent permitted by law.

ARTICLE XXVIII.

Short Form Rental Agreement

28.1 At the request of either party hereto, a short form Rental Agreement shall be prepared in form and substance reasonably satisfactory to each of the parties and shall be executed by each of the parties in duplicate, such Rental Agreement to be filed for record in Hennepin County, Minnesota.

ARTICLE XXIX.

Notices

29.1 Any notice or election herein requested or permitted to be given or served by either party hereto upon the other, shall be deemed given or served in accordance with the provisions of the Rental Agreement if delivered to either party hereto and receipt is obtained therefor, or if mailed in a sealed wrapper by United States registered or certified mail, postage prepaid, properly addressed to such other party at the address hereinafter specified. Unless and until changed by notice as herein provided, notices and communications shall be addressed as follows:

If to Landlord: City of Richfield, 6700 Portland Avenue, Richfield, MN 55423

If to Tenant: NLTT Hockey Ventures, LLC/Minnesota Whitecaps, 20888 Ashley Way, Saratoga, CA 95070

Each such mailed notice or communication shall be deemed to have been given to, or served upon the party to which addressed, on the date the same is deposited in the United States registered or certified mail, postage prepaid, properly addressed in the manner above provided. Each such delivered notice or communication shall be deemed to have been given to, or served upon, the party to whom delivered, upon delivery thereof in the manner above provided. Either party may change the address to which mailed notice is to be sent to it by giving to the other party hereto not less than thirty (30) days, advance written notice thereof. All payments of Base Rent or Additional Rent hereunder shall be made to Landlord at the address above designated, or as may be hereafter designated.

ARTICLE XXX.

Headings

30.1 The headings incorporated in the Rental Agreement are for convenience in reference only and are not a part of the Rental Agreement and do not in any way limit or add to the terms and provisions hereof.

ARTICLE XXXI.

Binding Effect

31.1 All of the covenants, conditions, and agreements herein contained shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

ARTICLE XXXII.

Advertising Rights

32.1 Tenant will hold sole advertising rights in Rink 1 and Rink 2 that includes dasher boards, player benches, seating sections, nets, Zamboni, scoreboard, etc., and also includes Rink One bathrooms. Tenant will give advertising revenue percentage of 14% of sponsorship revenue. Minnesota Whitecaps will be able to place Home of Minnesota Whitecaps over front doors of arena. Landlord will hold sole advertising rights in the Arena lobby.

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

LESSOR/LANDLORD:

CITY OF RICHFIELD, a Minnesota municipal corporation

By: _____
Its Mayor, Maria Regan Gonzalez

And By: _____
Its City Manager, Katie Rodriguez

LESSEE/TENANT:

NLTT Hockey Ventures, LLC operating as the Minnesota Whitecaps, a Delaware limited liability corporation

By: _____

Its Owners

This instrument was drafted by:

Kennedy & Graven, Chartered
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
612-337-9300



STAFF REPORT NO. 107
CITY COUNCIL MEETING
7/26/2022

REPORT PREPARED BY: Amy Markle, Recreation Services Director

DEPARTMENT DIRECTOR REVIEW: Amy Markle, Recreation Services Director
7/20/2022

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
7/20/2022

ITEM FOR COUNCIL CONSIDERATION:

Consider approval of the establishment of a Recreation Special Revenue Fund for the Sustainability Program that includes organized collection.

EXECUTIVE SUMMARY:

The City of Richfield's Sustainability Program which includes organized collection has financially been included in the Wood Lake Nature Center budget. For transparency and separate tracking of this program, staff recommends establishing a new fund. This change will also help track several of the grants that support components of this permanent City program.

RECOMMENDED ACTION:

Staff recommends that all sustainability related funding be separated into a new Fund called Recreation Special Revenue Fund (20040).

The following business units under that new Fund:

- 20041 Sustainability**
- 20042 Recycling**
- 20043 Organics**

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The City Code requirement: Section 7.12 – Funds to be kept – under subd. 2

This section of code requires a new fund to be established by Council.

C. CRITICAL TIMING ISSUES:

Staff would like to make this change for the 2023 budget season.

D. FINANCIAL IMPACT:

None

E. LEGAL CONSIDERATION:

None

ALTERNATIVE RECOMMENDATION(S):

Reject recommendation and additional alternatives will be pursued.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

	Description	Type
▣	Resolution establishing a Recreation Special Revenue Fund	Resolution Letter

RESOLUTION NO.

RESOLUTION AUTHORIZING ESTABLISHMENT OF NEW SPECIAL REVENUE FUNDS FOR THE CITY'S ORGANIZED HAULING PROGRAM, INCLUDING RECYCLING, ORGANICS, AND SUSTAINABILITY PROGRAMS.

WHEREAS, the City of Richfield has a Sustainability and Organized Hauling Program, managed by a Sustainability Specialist, that includes organized trash hauling, organic waste drop-off, and sustainability promotion; and

WHEREAS, management of these programs includes grants from Hennepin County and other entities; and

WHEREAS, prior to the approval of organized hauling, the Recreation Services general fund budget is where expenses were budgeted while the program was being established; and

WHEREAS, for transparency and accurate tracking of revenue and expenditures, staff recommends the establishment of a new fund; and

WHEREAS, this fund will separate this financial activity by sub-program and will include the following business units: Sustainability (20041), Recycling (20042), and Organics (20043); and

WHEREAS, Section 7.12 of the City Code requires Council approval by resolution of the establishment of new funds in the City of Richfield budget; and

WHEREAS, staff recommends the establishment of these funds in 2022 to coincide with the assembly of the 2023 proposed budget.

NOW, THEREFORE, BE IT RESOLVED the City Council approves the establishment of three new funds for the City's Sustainability and Organized Hauling Program, for transparent and accurate tracking of financial activity to operate these programs.

Adopted by the City Council of the City of Richfield, Minnesota this 26th day of July, 2022.

Maria Regan Gonzalez, Mayor

ATTEST:

Kari Sinning, City Clerk



STAFF REPORT NO. 108
CITY COUNCIL MEETING
7/26/2022

REPORT PREPARED BY: Chris Swanson, Management Analyst

DEPARTMENT DIRECTOR REVIEW:

OTHER DEPARTMENT REVIEW: Sam Ketchum, City Attorney

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
7/20/2022

ITEM FOR COUNCIL CONSIDERATION:

Approval of the first reading of an ordinance amending the term of the Existing Franchise Agreement from August 1, 2022, to January 31, 2023, and schedule a public hearing and second reading for September 13, 2022.

EXECUTIVE SUMMARY:

The Southwest Suburban Cable Commission ("Commission") consists of the cities of Eden Prairie, Edina, Hopkins, Minnetonka and Richfield, Minnesota ("Member Cities"). The Commission administers and enforces the cable franchises on behalf of its Member Cities.

On or about January 1, 1997, each of the Member Cities granted a Cable Television Franchise to KBL Cable systems of the Southwest, Inc ("Existing Franchise"). At that same time the Member Cities each adopted a Cable Television Regulatory Ordinance ("Regulatory Ordinance") to be incorporated into the City Code of each Member City. In 2000, the Commission and Member Cities approved a transfer of the Existing Franchise to Time Warner, Inc. In June of 2005, Time Warner transferred the Existing Franchise to Comcast Communications ("Comcast"). Comcast currently operates the cable systems in each of the Member Cities under authority granted in the Existing Franchise.

The initial term of the Existing Franchise ran for fifteen years and was extended by the Member Cities to expire on July 31, 2012. Each member city adopted a cable franchise in 2012 which granted Comcast a 10 year franchise with an effective date of August 1, 2012. Due to delays finalizing the Needs Assessment Report and related matters, negotiations of the renewed franchise will obviously not be completed before the existing franchise expires on August 1, 2022.

Expiration of an existing cable franchise during renewal proceedings is not unusual for cable commission franchise renewals nor is it unusual in the cable industry. Even if the member cities took no action to extend the existing franchise, the Comcast franchise would remain in place, Comcast would continue to have authority to operate, and would be required to remit applicable fees to each city. Federal law provides that cable franchises remains in effect until a city denies a franchise renewal request under 47 USC 546.

The Commission and Comcast, pursuant to 47 U.S.C. §546(h), are currently conducting informal franchise renewal negotiations in an attempt to reach a mutually acceptable terms for franchise renewal.

Both the Commission and Comcast are interested in continuing informal renewal negotiations and desire to extend the Franchise term from August 1, 2022, to January 31, 2023. The attorney representing the Commission has provided all five Member Cities the attached draft ordinance amendment which will allow the Commission to continue these discussions.

Staff recommends approval of the draft ordinance amendment as is. All five Member Cities are taking action on the Model Franchise simultaneously. Any proposed revisions from one of the Member Cities may require the Commission to seek agreement not only from Comcast but from the other four Member Cities.

A public hearing is required for this under City Code, Section 10.05

RECOMMENDED ACTION:

By Motion: Approve the first reading of an ordinance amending the term of the Existing Franchise Agreement from August 1, 2022, to January 31, 2023, and schedule a public hearing and second reading for September 13, 2022.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

Included in Executive Summary

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

C. CRITICAL TIMING ISSUES:

The cable television franchise renewal should be extended as soon as possible because the existing franchise extension expires on August 1, 2022.

D. FINANCIAL IMPACT:

All current franchise fees remain in place.

E. LEGAL CONSIDERATION:

The franchise ordinance was negotiated and drafted by legal counsel for the Southwest Cable Communications Commission, Brian Grogan.

Under the City Charter, the new ordinance will not be effective until 30 days after publication of the ordinance.

The SWCCC has negotiated that the new rates will be applied retroactively to August 1, 2022.

The attached draft ordinance amendment was review and finalized by the City Attorney.

ALTERNATIVE RECOMMENDATION(S):

The City Council could choose to not adopt the proposed ordinance amendment, however, its adoption has been recommended by the Board of the SWSCC.

Failure to adopt the ordinance will not nullify our franchise agreement with Comcast. Even if the member cities took no action to extend the existing franchise, the Comcast franchise would remain in place, Comcast would continue to have authority to operate, and would be required to remit applicable fees to each city. Federal law provides that cable franchises remains in effect until a city denies a franchise renewal request under 47 USC 546.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

	Description	Type
▣	AN ORDINANCE EXTENDING THE TERM OF THE FRANCHISE HELD BY COMCAST OF MINNESOTA, INC	Ordinance

BILL NO. _____

TRANSITORY ORDINANCE NO. _____

**AN ORDINANCE EXTENDING THE TERM OF THE FRANCHISE
HELD BY COMCAST OF MINNESOTA, INC.**

WHEREAS, on June 25, 2012, the City of Richfield, Minnesota ("City") granted a cable television franchise pursuant to Ordinance No. 2012-10 ("Franchise"), which is currently held by Comcast of Minnesota, Inc. ("Comcast"); and

WHEREAS, the City and Comcast, pursuant to 47 U.S.C. § 546(h), are currently conducting informal franchise renewal negotiations in an attempt to reach a mutually acceptable terms for franchise renewal; and

WHEREAS, the City and Comcast are interested in continuing informal renewal negotiations and desire to extend the Franchise term from August 1, 2022, to January 31, 2023; and

WHEREAS, the City and Comcast have determined that an extension of the Franchise term is reasonable and in the best interest of the City, and its residents, to ensure uninterrupted cable television services; and

WHEREAS, the City and Comcast desire to expressly reserve all of their respective rights under state and federal law; and

WHEREAS, the City and Comcast continue to be governed by the formal renewal process pursuant to 47 U.S.C. § 546(a-g) and nothing contained herein shall in anyway diminish either party's rights under the formal renewal process.

NOW THEREFORE, THE CITY OF RICHFIELD DOES ORDAIN:

1. The Franchise is hereby amended by extending the term of the Franchise from August 1, 2022, through January 31, 2023.
2. Except as specifically modified hereby, the Franchise shall remain in full force and effect.
3. This Ordinance shall become effective upon adoption by the City, in accordance with Section 3.09 of the City Charter, and acceptance by Comcast.

Adopted by City of Richfield, Minnesota, this 26th day of July, 2022.

Maria Regan Gonzalez, Mayor

ATTEST:

Kari Sinning, City Clerk

ACCEPTANCE

Comcast of Minnesota, Inc. hereby accepts this Ordinance and agrees to be bound by the terms and conditions of the Franchise, as amended.

COMCAST OF MINNESOTA, INC.

By: _____

Its: _____

Sworn to before me this _____
day of _____, 2022.

Notary Public