



**AGENDA ITEM # 6.4**

**REPORT TO CITY COUNCIL**

**Report Prepared by: Dawn Bittner**

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**Date:** January 8, 2019

**Subject:** Small Wireless Facility Design Guidelines

**Report:** The Federal Communications Commission (FCC) issued an order December 10, 2018 regarding aesthetic standards/guidelines for the deployment of small cell wireless facilities. Pequot Lakes does not have a right-of-way ordinance or aesthetic guidelines for small cell wireless facilities. If aesthetic standards/guidelines are not adopted by April 15, 2019, we will be prohibited from imposing such requirements on applicants seeking to deploy such facilities in Pequot Lakes thereafter.

In addition, the FCC Order takes effect January 14, 2019. Even if we intend to adopt aesthetic standards ahead of the April 15 deadline, if we receive applications after January 14 and we do not have standards in place, we will be unable to impose such standards on those applications.

The City Attorney recommends we adopt the attached aesthetic standards/guidelines prior to January 14. This will preserve regulatory authority with respect to any applications submitted before the final standards are approved. These standards can be reviewed and amended before the April 15 deadline. I have included the emails from the City Attorney.

**Council Action Requested:** Council motion adopting the attached Small Wireless Facility Design Guidelines.

## **CITY OF PEQUOT LAKES**

### **SMALL WIRELESS FACILITY DESIGN GUIDELINES**

#### **I. PURPOSE AND COMPLIANCE**

In implementing City Code, the City Council of the City of Pequot Lakes (the “City”) finds that in order to protect the public health, safety and welfare of its citizens and to reasonably manage and protect the public rights-of-way (the “ROW”) and its uses in the City, it is in the best interest of the City and its residents and businesses to establish Small Wireless Facility Design Guidelines (the “Guidelines”) to provide the aesthetic requirements and other specifications and reasonable conditions that small wireless facilities and wireless support structures installed within the public ROW must meet prior to and following installation.

The objective of these Guidelines is to strike a balance between preserving and protecting the character of the City through careful design, siting, and camouflaging techniques to blend these facilities into their surrounding environment and provide other reasonable conditions upon such placement and use of the ROW, while enhancing the ability of small wireless facilities carriers to deploy small wireless facilities and wireless support structures in the City effectively and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability.

These Guidelines apply to requests to locate small wireless facilities in the ROW and ongoing use of the ROW for such purposes. These Guidelines are established pursuant to City Code and applicable law. These Guidelines are administered through the permitting process contained therein as conducted by the Public Works and/or Planning and Zoning Departments.

Placement or modification of a small wireless facilities and/or wireless support structures shall comply with these Guidelines at the time the permit for installation or modification is approved and as amended from time to time. Wireless service providers and permittees are required to comply with the City Code.

#### **II. DEFINITIONS**

The definitions contained in Minn. Stat. § 237.162 are incorporated into this policy by reference as though fully set forth herein.

#### **III. APPLICATION REQUIREMENTS**

Prior to placing, installing, modifying, relocating or removing a small wireless facility or wireless support structure in the ROW, or to collocating a wireless facility on an existing wireless support structure in the ROW, the operator shall apply for and receive a permit from the City. In addition to the application requirements established in the City Code the information identified in this Section III must be included for the application to be considered complete, except that where such information is already in the City's possession from previous applications, or where the applicant previously filed information and specifications for standard materials that are being utilized in the new application, such information shall be referenced but need not be resubmitted. The City may require additional information as reasonably necessary to evaluate the application and the impact of the proposed installation(s) on the public health, safety and welfare or on use or management of the ROW.

**A. PROOF OF AGENT DESIGNATION (IF APPLICABLE):**

If the applicant is serving as an agent of a small wireless operator, the applicant must provide written documentation of the agent designation signed by the operator.

**B. MAP**

The applicant must include an aerial map showing the location of the proposed or existing support structure to which the small wireless facility is proposed to be attached, or from which a small wireless facility is proposed to be removed.

**C. PHOTO SIMULATIONS**

For all applications to locate small wireless facilities in the ROW, the applicant shall provide photo simulations from at least two reasonable line-of-site locations near the proposed project site. The photo simulations must be taken from the viewpoints of the greatest pedestrian or vehicular traffic.

**D. CONSOLIDATED APPLICATIONS**

An applicant seeking to construct, modify, collocate or replace more than one small wireless facility or more than one wireless support structure within the City may file a consolidated application for multiple small wireless facility requests or wireless support structure requests provided the requests grouped on a consolidated application only address substantially the same type of small wireless facilities or substantially the same type of wireless support structures. (Note: The City may treat each request individually during application review and processing and when issuing a determination or applying these guidelines.)

**E. SITE AND OTHER PLANS AND STRUCTURAL CALCULATIONS**

The applicant must include fully dimensioned site plans, elevation drawings and structural calculations that depict any known existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements, and the legal boundaries of the existing right-of-way and any associated access and utility easements. Fully dimensioned site plans shall indicate the spacing from existing curb, driveways, sidewalks, light poles and any other poles or appurtenances.

**F. FULL DESCRIPTION OF NUMBER AND DIMENSIONS OF FACILITIES AND/OR STRUCTURES TO BE INSTALLED**

The applicant must include a full description of the number and dimensions of all small wireless facilities proposed to be installed and the wireless support structure, either new or existing, to be utilized for each small wireless facility. For all equipment proposed to be installed, the applicant must include: (1) the manufacturer's name and model number; (2) physical dimensions, including without limitation, height, width, depth and weight with mounts and other necessary hardware; and (3) the ambient noise level generated from the equipment, if any.

**G. OWNER'S AUTHORIZATION**

For any application to attach a small wireless facility to a wireless support structure that is not owned by the City, the applicant must submit evidence sufficient to show that either: (1) applicant owns the proposed support structure; or (2) applicant has obtained the owner's written authorization to file the application.

**IV. AESTHETIC REQUIREMENTS FOR SMALL WIRELESS FACILITIES**

**A. ANTENNAS**

1. Each small wireless antenna shall be located entirely within a shroud or canister type enclosure.
2. The diameter of the antenna enclosure at its widest point should not be wider than two times the diameter of the top of the wireless support structure. The enclosure shall not exceed six cubic feet in volume.
3. All antenna enclosures shall either be mounted to the top of the wireless support structure pole and aligned with the centerline of the wireless support structure, or mounted to the side of the wireless support structure such that the vertical centerline of the antenna enclosure shall be parallel with the wireless support structure with the height of the side mounted antenna being at a location on the wireless support structure noted in the application and approved by the City, but at least 10 feet above ground level at its lowest point.

4. Tree “topping” or the improper pruning of trees is prohibited. Any proposed pruning or removal of trees, shrubs or other landscaping already existing in the ROW must be noted in the application and must be approved by the City.

#### **B. CABLES AND WIRES**

All cables, wires and connectors related to the small wireless facility must be fully concealed on the wireless support structure and shall match the color of the wireless support structure. There shall be no external cables and wires related to the small wireless facility hanging off or otherwise exposed on the wireless support structure.

#### **C. COLORS**

All colors shall match the background of any wireless support structure that the facilities are located upon, including equipment cabinets. Notwithstanding the foregoing, in the case of existing wood utility poles, finishes of conduit shall be zinc, aluminum or stainless steel, or colored to match those metal finishes, and equipment cabinets shall be the color of brushed aluminum.

#### **D. EQUIPMENT ENCLOSURES/CONCEALMENT**

1. Equipment enclosures, including electric meters, shall be as small as possible, but in no event larger than 28 cubic feet in volume. Ground-mounted equipment shall incorporate concealment elements into the proposed design matching color and materials of the wireless support structure, unless other materials or colors are approved by the City. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.
2. Radio equipment shall be fully enclosed within an equipment cabinet or concealed within the antenna shroud enclosure matching the color and materials of the wireless support structure, unless other materials or colors are approved by the City.
3. Landscaping concealing equipment enclosures shall be planted in such quantity and size such that 100% screening is achieved within two years of installation.

#### **E. SIGNAGE/LOGOS/LIGHTS/DECALS/COOLING FANS**

1. Signage: The small wireless facility permittee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility that is visible to the public. Signage required under this section shall not exceed 4 inches by 6 inches, unless otherwise required

by law (e.g. radio-frequency (RF) ground notification signs) or the City. If no cabinet exists, the signage shall be placed at the base of the pole.

2. **Lights:** New small wireless facilities and wireless support structures shall not be illuminated, except in accord with state or federal regulations, or unless illumination is integral to the camouflaging strategy such as design intended to look like a street light pole.
3. **Logos/Decals:** The small wireless facility operator/permittee shall remove or paint over unnecessary equipment manufacturer decals. The color shall match or shall be as approved by the City. Small wireless facilities and wireless support structures shall not include advertisements and may only display information required by a federal, state or local agency. The small wireless facility operator/permittee shall utilize the smallest and lowest visibility RF warning sticker required by government or electric utility regulations. Placement of the RF sticker shall be as close to the antenna as possible.
4. **Cooling Fans:** In residential areas, the small wireless facility operator/permittee shall use a passive cooling system. In the event that a fan is needed, the small wireless facility operator/permittee shall use a cooling fan with a low noise profile.

## **V. LOCATION REQUIREMENTS**

### **A. MOST PREFERABLE LOCATIONS**

The following are the most preferred areas for new small wireless facilities in the order of preference (1 being most preferable):

1. *Industrial Districts* if not adjacent to a park, residential district or historic district.
2. *Highway Rights of Way* areas if not adjacent to a park or residential district.  
  
*Retail and Commercial Districts* if not adjacent to a park or residential district.

### **B. COLLOCATION PREFERENCE**

It is the City's strong preference that whenever an applicant proposes to place a new small wireless facility that the applicant collocate the same on existing wireless support structures.

### **C. LEAST PREFERABLE LOCATIONS**

The following are the least preferred areas for new small wireless facilities in the order of preference (2 being least preferable).

1. *Residential Districts*
2. *Parks*

#### D. CONSIDERATION OF ALTERNATE LOCATIONS

The City reserves the right to propose an alternate location for a small wireless facility and/or wireless support structure to the location proposed in the application within one hundred feet of the proposed location or within a distance that is equivalent to the width of the ROW in or on which the small wireless facility and/or wireless support structure is proposed, whichever is greater, which the operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.

#### E. GUIDELINES ON PLACEMENT

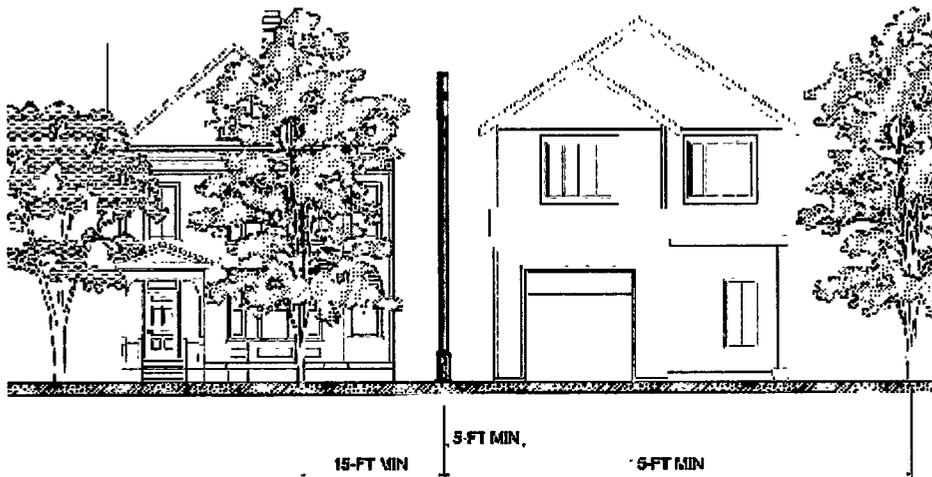
The City desires to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. Generally, a small wireless facility and/or wireless support structure shall match and be consistent with the materials and finish of the wireless support structure, adjacent City poles, and of the surrounding area adjacent to their location. In the absence of adjacent City poles, the wireless support structure shall match the materials and finish of the adjacent utility poles.

The following additional guidelines on placement shall apply:

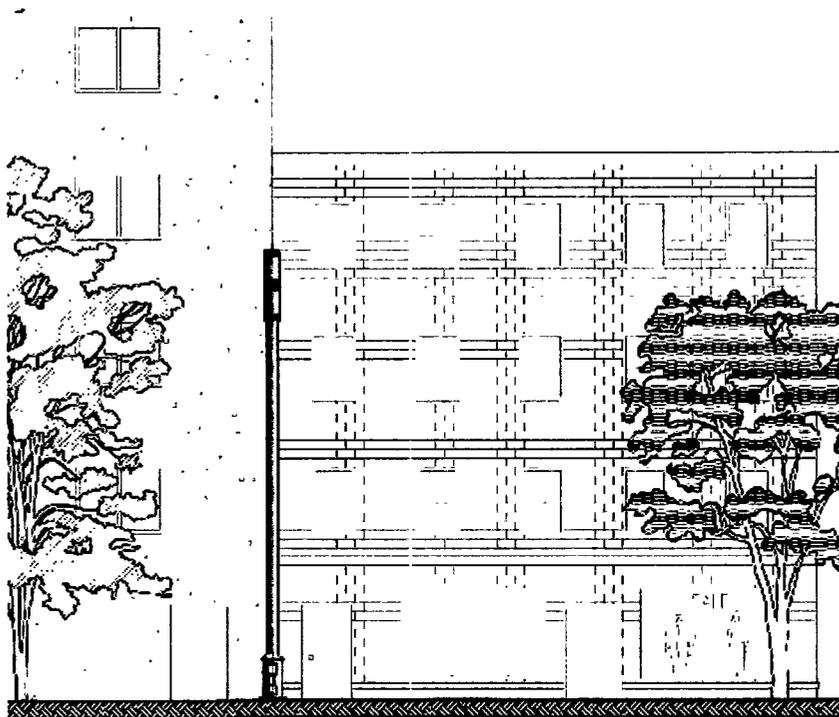
1. Small wireless facilities and wireless support structures shall be located no closer than 150 feet away, radially, from another small wireless facility and wireless support structure.
2. A combination wireless support structure and streetlight pole should only be located where an existing pole (usually Crow Wing Power or Minnesota Power) can be removed and replaced, or at a new location where it has been identified that a streetlight is necessary.
3. Small wireless facilities and wireless support structures shall be located in a manner that does not impede, obstruct, or hinder usual public pedestrian or vehicular travel or public safety on a ROW.
4. Small wireless facilities and wireless support structures shall be located in a manner that does not obstruct the legal use of a ROW by a utility provider.

5. Small wireless facilities and wireless support structures shall be located in a manner that does not violate or conflict with the City Code or these Guidelines.
6. Small wireless facilities and wireless support structures shall be located in a manner that does not violate the federal Americans with Disabilities Act.
7. Small wireless facilities and wireless support structures shall be located in a manner that does not negatively impact the structural integrity of the associated wireless support structure.
8. Small wireless facilities and wireless support structures shall be located in alignment with existing trees, utility poles, and streetlights.
9. Small wireless facilities and wireless support structures shall be located equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
10. Small wireless facilities and wireless support structures shall be located with appropriate clearance from existing utilities.
11. Small wireless facilities and wireless support structures shall be located so as not to be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.
12. Small wireless facilities and wireless support structures shall be located not within sight triangles at street intersections.
13. New wireless support structures shall not be located directly in front of any existing residential, commercial or industrial structure.
14. To the greatest extent possible, new wireless support structures shall be located in line with existing lot lines or an equidistance from any two existing structures. In areas of the City where multiple structures abut each other and/or where no side lot setback requirements exist, new wireless support structures shall not be located directly in front of an entrance or window of any existing structure.

*Figure 1 – Example of Acceptable Location Between Residential Homes:*



*Figure 2 – Example of Acceptable Location Between Commercial Buildings:*



## **VI. LIMITATIONS**

While the City fully intends to apply the guidelines established in this policy uniformly to all small wireless facility applications, there may be circumstances where not every specific guideline may be met. In these case, City staff will use its reasonable discretion in approving small wireless facilities permit applications that deviate from the strict application of this policy.

## **VII. EFFECTIVE DATE OF POLICY**

This Policy will be effective as of January 8, 2019. Modifications of the Policy will be effective on the date said modifications are approved by the City Council.

## **EMAILS FROM CITY ATTORNEY CHRISTOPHER HOOD**

**From:** Chris Hood

**Sent:** Friday, December 28, 2018 4:32 PM

**Subject:** RE: Deadline to Set Standards for Small Cell Wireless Facilities - Action Necessary by January 14, 2019

Good afternoon,

In follow-up to the below email, please see attached for your review a draft policy/guidelines containing aesthetic standards for the deployment of small cell wireless antennas on power or light poles in rights-of-way in your community.

We are recommending the attached aesthetic standards be adopted as a placeholder policy (not as an ordinance) by your City Council prior to January 14, 2019. This will allow your city to protect its ability to manage the use of your rights-of-way in the short term after the FCC Order (discussed in more detail in the below email) takes effect, while providing us an opportunity to assess making other changes and to review the model recommendations from the League of Minnesota Cities once they are developed and prior to the April 15, 2019 deadline.

As a result, in order to proceed, please complete the attached template aesthetic standards document to be applicable to your specific city and have your City Council adopt the same at its first meeting in January. Please feel free to use portions of this and the below email to develop your staff report explaining to Council the need to adopt these aesthetic standards if that is the policy direction that Council desires. Please note that there is no requirement that your city adopt aesthetic standards for deployment of small cell wireless antennas in your community, but the FCC Order may eliminate your right to do so if the same are not adopted by April 15, 2019.

Please note that the attached aesthetic standards primarily relate to your city's rights-of-way ordinance governing the placement of facilities and the use of your municipal rights-of-way. We have advised previously that if you have not reviewed and amended your rights-of-way ordinance for the deployment of small cell wireless facilities, it is advisable that you also do that in addition to adopting the attached aesthetic standards policy.

The League of Minnesota Cities has updated its model rights-of-way ordinance to coincide with recent (2017) changes to State law (but not based on the September 2018 FCC Order), and if you have not adopted this ordinance or a modified version of it, you should seriously consider doing so. The link to the League's guidelines for regulating rights-of-way with links to the model right-of-way ordinance is: <https://www.lmc.org/media/document/1/regulatingcityrightsofway.pdf?inline=true>.

Please note further that if you plan to adopt the League's model rights-of-way ordinance, there are portions of it that you may not want to include, and there may be some regulations from your existing ordinance that you may want to include. Finally, as mentioned above, the recent FCC Order throws additional confusion on this process in that the FCC Order appears to conflict with the State's 2017 small cell wireless facilities law (Minn. Stat. Secs. 237.162 - 237.163). As a result, review of both your existing rights-of-way ordinance and the League's model is recommended noting that additional changes may be needed to your rights-of-way ordinance in the future based on the FCC Order. It is our understanding that

the League is evaluating its existing model rights-of-way ordinance at this time based on the September 2018 FCC Order.

**Recommended Actions:** In summary, we are recommending your city consider taking two actions:

1. Adopt the attached template aesthetic standards (completed by you for your specific city) as a city policy by January 14, 2019 with the understanding that there may need to be some additional review, modifications and/or amendments to the same prior to April 15, 2019 once the League releases its model aesthetic standards recommendations; and
2. Review and amend your rights-of-way ordinance to address small cell wireless antennas and the FCC Order (this second action is not contingent upon the first nor does this need to be completed by January 14, 2019).

**Aesthetics Policy Implementation:** Once you have adopted your aesthetic standards policy, the FCC Order requires such standards to be published, but does not specify what that means. As a result, once adopted your aesthetic standards should be published on your city website with a link to the same so they are accessible not only to the public, but also to any companies desiring to make application in your community for deployment of small cell wireless facilities. Additionally, at the time a telecommunications company contacts the city about making an application in your community for deployment of small cell wireless facilities, the aesthetic standards policy should be provided to the company along with your other application materials and forms.

Please contact us if you have questions or need additional assistance.

Thank you and have a Happy New Year!

Chris

Christopher M. Hood  
FLAHERTY & HOOD, P.A.

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**From:** Chris Hood  
**Sent:** Thursday, December 20, 2018 2:01 PM  
**Subject:** Deadline to Set Standards for Small Cell Wireless Facilities - Action Necessary by January 14, 2019

**IMMEDIATE RESPONSE REQUESTED**

Good afternoon,

We are sending you this email because you have an ongoing legal services arrangement with our firm. As many of you know, the laws, rules and regulations associated with the deployment of small cell wireless antennas and related facilities throughout the state and country has been a continually changing playing-field for cities since approximately 2015. The National League of Cities has been involved in this process representing city regulatory issues at a federal level. We learned yesterday that the playing-field is now once again shifting, and this email is to inform you of the impact and the need for cities to act now if they want to preserve regulatory authority on the appearance/aesthetics of such facilities.

**Specifically, the most recent change in the playing-field came on December 10, 2018 when the Federal Communications Commission (FCC) denied a petition from the National League of Cities to stay its Declaratory Ruling and Third Report and Order (FCC Order) regarding small wireless deployment. This means the order is set to go into effect on January 14, 2019.**

Attached is a link to an article from the League of Minnesota Cities (LMC), published December 17, 2018, which provides some additional explanation and links to associated documentation for your review and information:

[https://www.lmc.org/page/1/FCCRulingSmallCellUpdate.jsp?ssl=true&utm\\_source=Bulletin+Dec.+17+Cities&utm\\_campaign=Bulletin+12%2F17%2F18&utm\\_medium=email](https://www.lmc.org/page/1/FCCRulingSmallCellUpdate.jsp?ssl=true&utm_source=Bulletin+Dec.+17+Cities&utm_campaign=Bulletin+12%2F17%2F18&utm_medium=email)

What the FCC Order means for your city is that if you do not have aesthetic standards/guidelines for the deployment of small cell wireless facilities within your city adopted by April 15, 2019 (180 days after the FCC Order was published in the Federal Register), you will be prohibited from imposing such requirements on applicants seeking to deploy such facilities in your city thereafter.

Further, the FCC Order takes effect January 14, 2019. This means that even if your city intends to establish/adopt aesthetic standards ahead of the April 15, 2019 deadline, if you receive an application(s) after January 14 and you do not have standards/guidelines adopted by the time you receive such application(s), you will be unable to impose such standards on the facilities or deployments that are the subject of such application(s) **As a result, we are recommending that cities adopt aesthetic standards/guidelines for their cities by no later than January 14, 2019.** (Even if standards are adopted on a preliminary basis pending review and amendment before the April 15, 2019 deadline, such preliminary adoption would preserve important regulatory authority with respect to any applications submitted before the final standards are approved).

The aesthetic standards/guidelines you adopt must also be “published” within the above time period so that applicants know and understand such requirements. As a result, to be validly applied, we recommend that you publish the standards/guidelines, once adopted by the city council and utilities commission, to your website with an obvious link thereto and provide a copy of the same to all applicants as part of your application packet.

We are currently reviewing this matter for all of our legal services clients. Please let us know as soon as possible if you would like us to provide you assistance in drafting aesthetic standards/guidelines. If you respond to this email that you desire such services, we intend to spread the billing amongst all of our legal services clients desiring such services to reduce the cost for all affected. Whatever you desire to do on this, we need you to communicate with us by no later than December 27, 2018 so that we have sufficient

time to respond in order for you to get this on your meeting agenda for your first meeting in January. If you do not want us to provide such services for your city, please also respond to me via email and let me know that you are declining such services.

**Time is of the essence on this matter, so please provide me with your response as soon as possible, but no later than December 27, 2018.**

Please note that there are over 20 cities and utilities being provided this email and that in researching this matter and preparing this email for your consideration, we have had to spend about 12 hours of time to research the law, review the FCC order and prepare this email. It is our belief that given the deadlines and loss of your regulatory rights as presented herein that we had an obligation as your legal counsel to inform you of the issues and undertake this work on your behalf. Based on this, it is our intention to bill each of you a small amount of time on this matter unless you let us know otherwise.

Finally, we have made some additional contacts on this matter and are aware that the League of Minnesota Cities has retained a law firm to develop model standards/guidelines for cities to use in response to the above. At this point there is not a projected time for release of the same. As a result, we are still recommending that cities retain us to develop standards/guidelines that you can put in place before January 14 and then within the sixth month period thereafter make any changes if needed based on what the LMC later develops and releases.

Let me know if you have questions or comments. Thank you for your consideration.

Chris

Christopher M. Hood  
FLAHERTY & HOOD, P.A.