

# E Environment Committee

Meeting date: August 25, 2009

For the Metropolitan Council Meeting of September 9, 2009

## ADVISORY INFORMATION

<b>Date:</b>	August 19, 2009
<b>Subject:</b>	Adoption of Changes to Service Availability Charge (SAC) Criteria for Outdoor Spaces
<b>District(s), Member(s):</b>	All
<b>Policy/Legal Reference:</b>	Council Admin. Policy 3-2-5; Water Resources Management Policy Plan, Policy on Rates and Charges, and MN Statute 473.517 subd. 3
<b>Staff Prepared/Presented:</b>	Jason Willett 651-602-1196
<b>Division/Department:</b>	MCES c/o William G. Moore, General Manager

### Proposed Action

That the Metropolitan Council approves a 50% discount for the Service Availability Charge (SAC) for any outdoor spaces that will be exposed to wet weather conditions, with an implementation date of October 1, 2009.

### Background

The Service Availability Charge (SAC) is a one-time fee imposed by MCES to Local Government Units for each new connection, or changes to existing uses, that reflect an increased demand for which the metropolitan disposal system must stand ready to serve. Current SAC criteria are based on maximum potential capacity demand during the busiest day of the year.

MCES has received numerous complaints about the application of current SAC criteria to outdoor seating areas from restaurants, particularly since the advent of the state-wide indoor smoking ban. Currently and historically, outdoor seating areas are assessed SAC the same as indoor seating based on the rationale that on a potential peak service day both areas could be used at their full capacity and thus MCES must stand ready to serve that larger capacity need. Some communities find the current criteria difficult to enforce due to building code applicability for outdoor seating areas or simply fail to see the justification for the charge. Many restaurant owners feel that this is unfair as the outdoor seating is used only during a small portion of the year and when it is used they report it mostly as a relocation of their customers from indoor areas to outdoor areas rather than additional capacity. In response to the complaints, MCES staff have developed an alternate SAC approach for the calculation of outdoor space SAC.

On August 11, 2009, MCES held a public meeting, chaired by Council Member Wendy Wulff, to solicit public comments on proposed criteria change for outdoor spaces. The meeting was attended by 51 people (and MCES staff). The proposed criteria change requirements and limitations that were presented at the meeting are listed below.

1. A 50% reduction for all outdoor space use that is subject to wet weather events.
2. Outdoor spaces affected include: food and drink outdoor seating areas, golf courses and driving ranges, outdoor pools and water parks, park shelters, outdoor tennis courts, drive-in restaurants and theaters, and outdoor public areas such as zoo exhibits.

3. Outdoor space reduction was proposed to be implemented January 1, 2010. Permits issued prior to the implementation date but not yet paid would not receive the 50% discount.

## **Rationale**

Problematic demand on the metropolitan wastewater facilities is experienced mostly during significant wet weather events. During such events, the use of outdoor areas is significantly reduced thereby contributing little or no additional wastewater to the system's peak flow. Thus, if SAC is fundamentally based on maximum capacity demand *during wet weather days* versus that of any day, then it is reasonable to allow a discount for outdoor spaces that will have limited use and generate little or no wastewater demand during those wet times.

In response to the main concerns raised by the public:

1. The implementation date should be earlier than January 1, 2010 – MCES staff agrees and will change the implementation date to October 1, 2009. This will result in MCES not having the usual 3-month notice to municipalities for rate design changes. However, staff will send out a letter to municipalities if and when adopted and, given the press, this should be adequate. We will then incorporate it into the 2010 procedure manual on line and that is mailed to each municipality in December.
2. The discount should be greater than 50%. If restaurants and other outdoor space establishments pay less, then other types of development or regular sewer rates must pay more. The basis of the fee is designed as best as we can to reflect the cost of service – in this case the availability of service which MCES serves. Occasionally, restaurants do use both indoor and outdoor space at their full potential but that is not likely during wet weather and therefore this is simply a compromise.
3. SAC should be based on use data (or sales receipts). Use is different than availability (which is capacity demand that we stand ready to serve). If restaurants and other outdoor areas rarely use these outdoor spaces they do get a break for that decreased use on their sewer bills from their host municipality.

## **Funding**

The SAC required in total is set by statute (on computed reserve capacity). A reduction in SAC collected for outside spaces will eventually require a small increase in the SAC rate. It is projected that SAC revenue will decrease approximately \$268,275 per year due to this change. This equates to approximately 1.4% of annual SAC revenue.

## **Known Support / Opposition**

Several communities and food and drink establishments have recently advocated for some kind of relief from SAC for outdoor seating space. City of Saint Paul, City of Roseville, Seward Civic and Commerce Association, Minneapolis resident Barry Hickethier, business owner Terry Keegan, developer Kurt Williamson and business owner Camille Myser have written comments (attached). The comment period ends August 21, and comments received after the posting of this item will be brought to the committee on August 25.

Staff summary of questions/comments at public meeting:

- Minneapolis said it was not mandatory to charge for outdoor spaces prior to this year and defined SAC for outdoor seating as a brand new fee.
- Outdoor patios are an amenity and are encouraged; it increases livability and “eyes on the street” thus improving downtown area.
- Outdoor seating does not expand restaurant business – only relocates customers from the inside.
- A 50% discount doesn’t go far enough to help businesses.
- Met Council’s plight of lower fee collections should not offset concern about financial problems of small businesses.
- There should be a broader look at how SAC is funded.
- The Council should reconsider issue of charging outdoor spaces at all.
- Someone said their largest water use is in fall and winter. (St. Paul and Minneapolis offered to collect and share data.)
- Charges should be on actual use, not max capacity.
- 25% for this space would be more realistic.
- The Council was asked to explain what is meant by structural covers.
- Council should not punish businesses for smoking patios.
- A few have asked to allow a refund for those businesses that have already paid SAC on their outdoor patios that would allow them to “catch up” to those new businesses that would receive the discount.
- This discount should start immediately - not 1/1/10.
- High fees are a hardship on small family run restaurants; some restaurants have cancelled patio plans because of this fee.
- There are only 60 days of summer so a 50% discount not justified.
- Ideally fees should be based on consumption.
- Covered seating areas should be included in discount because they are seasonal.
- One claimed they typically have only about 3 weeks of cumulative outdoor seating because of bugs, humidity, winds, rain, etc.
- One claimed to have lost business because they did not have a patio and could not afford the SAC for one.
- One claimed that SAC fees are some of the highest in US besides Arizona, California and Florida.
- Outdoor sales are roughly 5 – 7% of sales so fee should be 5 – 7% of SAC rate.

- SAC credits should go to whomever paid the SAC in the first place.
- SAC fees very contentious with landlords/tenant negotiations.
- There are too many taxes on restaurants now.
- There should be a 50% reduction for 50% of the year.
- Kitchens were not built to handle both indoor and outdoor seating at maximum capacity.
- SAC makes it difficult for restaurants to improve.
- This is penalizing businesses with outdoor seating.
- The Council should have different models for small and large restaurants.
- Outdoor seating is for attracting customers, it is advertising.
- Need better information for non-English speaking customers about SAC fees.
- Outdoor seating was not charged because it was not clear in the manual.
- Council should not go back 15 to 20 years if SAC was not paid on a patio.
- Very difficult for restaurants to obtain loans now and SAC on patios makes this harder.
- This system is against business owners.

DEPARTMENT OF SAFETY AND INSPECTIONS  
Bob Kessler, Director



CITY OF SAINT PAUL  
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220  
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989  
Facsimile: 651-266-9124  
Web: [www.stpaul.gov/dsi](http://www.stpaul.gov/dsi)

August 11, 2009

Mr. Jason Willets, MCES Finance Director  
Metropolitan Council  
390 Robert Street  
Saint Paul, MN 55101-1805

**Re: Comments on Proposed Changes to the Service Availability Charge (SAC) Rules**

Dear Mr. Willets:

We are pleased to have the opportunity to comment on the proposed changes to the Service Availability Charges (SAC) Rules regarding outdoor spaces. We believe that the Metropolitan Council should reconsider the whole issue of charging for outdoor dining space because our research shows that summertime water usage does not consistently increase in the summer months for most of the establishments, whether they have outdoor service areas or not.

We have examined water usage for a number of restaurants in the City based on data provided by the Saint Paul Regional Water Utility. We found that, by in large, the greatest amount of water and sewer usage at Saint Paul restaurants occurs in the fall and winter when there is no outdoor service at all. We suspect that most outdoor seating simply replaces indoor seating, and that outdoor dining does not result in additional business or water or sewer usage in the summer months. Knowing the unpredictability of Minnesota weather, we doubt that most establishments serve more than 60 days a summer outside anyway; therefore a 50% charge for SAC can not be justified.

We would be happy to assist in the independent collection of sufficient detailed information to verify our conclusion and we would be willing to share the information that we have on this matter to assist the Metropolitan Council in rethinking its position.

Please let me know if you have any questions regarding this matter or contact Mr. Robert Humphrey at 651-266-9123 to arrange a convenient time to meet.

Sincerely,

Bob Kessler  
Director of Safety and Inspections

- c: Mayor Chris Coleman & Saint Paul City Councilmembers
- Cecile Bedor, Director of Planning and Economic Development.
- Mr. Dave Baker, Chair, Saint Paul Business Review Council

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Roseville\_FW Outdoor Space Proposal.txt  
From: Gammon, Kathy on behalf of datacenter  
Sent: Monday, July 27, 2009 1:05 PM  
To: Nye, Jessica  
Subject: FW: Outdoor Space Proposal

Attachments: image001.gif; Outdoor Space\_Full Proposal.pdf

-----Original Message-----

From: Don Munson [mailto:don.munson@ci.roseville.mn.us]  
Sent: Monday, July 27, 2009 12:23 PM  
To: datacenter  
Subject: FW: Outdoor Space Proposal

A good rule change. Make sense.  
Don M.



Jessica Nye  
Metropolitan Council  
390 North Robert St.  
St. Paul, MN 55101

Dear Ms Nye:

I am writing to you on behalf of the Seward Civic and Commerce Association regarding the proposed changes to the SAC/WAC fees for outdoor seating. The Board of Directors of SCCA urges you to reduce the proposed fees imposed on outdoor seating. These costs should be tied to the actual benefit derived not to exceed 25% of the cost of indoor seating.

SCCA has many members who are restauranteurs in our community. We feel strongly that outdoor seating at these restaurants is an amenity that adds value to their business but also to the attractiveness, walkability and general business climate of our neighborhood. We understand the importance of users paying for the infrastructure they use; however, we find a number of the arguments for minimizing the cost of SAC/WAC fees for outdoor seating to be compelling, including:

- Outdoor seating is used only a fraction of the year in Minnesota, perhaps ¼ of the year at best;
- Even during summer months, outdoor seating is not used on rain days and thereby, these seats are not contributing to the peak usage of sewer and water systems; and
- Many outdoor cafes do not add to the capacity of restaurants in the summer, but rather replace indoor seating on good days.

Our association encourages you to base the proposed SAC/WAC charges on actual increased usage taking into consideration our comments listed above. We appreciate the opportunity to provide you with our views on the topic. Please contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Jim Welna'.

Jim Welna  
President, SCCA

2619 E. Franklin Avenue ✦ Minneapolis, MN 55406 ✦ 612-435-0276 ✦ [info@sewardbusiness.org](mailto:info@sewardbusiness.org)

Seward Civic and Commerce Association

**From:** Barry Hickethier [barryth03@netzero.net]  
**Sent:** Tuesday, August 11, 2009 12:57 PM  
**To:** Wittsack, Lynette  
**Subject:** Bar / Restaurant Patio Fees

Ms. Wittsack,

My name is Barry Hickethier. I am a resident of NE Minneapolis and am a semi-regular customer at several NE eating and/or drinking establishments such as Mack's, Keegans, Whitey's, The Bulldog, Legends and others. I talk with the owners or managers and have learned that those who are charged for patio usage are definitely feeling the effects. One in particular, Keegan's Pub, could not even afford to keep their patio open. I, as a customer, can personally attest that I have been to Keegan's about 1/3 as much as I did last summer simply because there is no patio. The same is true of the friends I would usually meet there. Many of whom were from outside the city, bringing revenue into Minneapolis.

From a tax revenue, business owner or jobs perspective, what is worse is that I didn't just switch to a different establishment. I stayed home on my own patio. I'm not a smoker, so I have no dog in that fight. I simply like to enjoy what little summer we have in Minneapolis.

There is one other thing to consider that is visible at more than one establishment affected by the patio usage fee / tax. There are fewer staff. At a time when unemployment is near 10% and college kids are starving for summer jobs (I'm the father of a college student), it makes little sense to enact a policy that cuts jobs.

I don't know whether this policy was enacted as a way to increase tax collections or whether it is motivated by the desire to socially engineer away smoking or if there was another reason. I only know that the punitively high fee is hurting small business owners and the young people who depend on them for jobs.

If you can't repeal the policy all-together, please at least consider cutting the rates to 1/3 or 1/2 so they are in line with services used.

Thank you.  
Sincerely,

Barry Hickethier  
3301 Lincoln St NE  
Mpls, MN 55418  
612-703-2632



Comments about proposed changes to SAC charge rules  
From Terry Keegan, Keegan's Pub, 16 University Ave, Minneapolis, MN 55413  
August 18, 2009

At Keegan's Pub we applaud the council proposal to allow a reduction in the rate charged for outdoor patios at restaurants. While any reduction is good, we feel that 50% is inadequate and leaves us with an expense we cannot afford for a patio that is necessary for survival.

We opened our business in 2002 and performed at or above projections until the smoking ban took effect in 2004. While not a Met Council action, the smoking ban was a governmental action that had a severe impact on our business. The smoking ban made outdoor seating for smokers a necessity, not a luxury. We provided outdoor seating behind the pub in a parking lot with moderate success until 2008 when the City of Minneapolis informed us that we need a permanent expansion of premises to keep the patio. We applied and learned that the Met Council needs 4 SAC units for our application to proceed. We had to withdraw the application.

Since then, our business has suffered even more. Customers that once used our patio can be seen on patios at other area restaurants. I have no idea if they paid SAC charges or not but many have large outdoor dining areas.

We attended the hearing on August 11 and learned about maximum flow potential. We understand the logic but disagree with it for the following reasons:

1. This is Minnesota. Patios have a four to five month annual usefulness
2. During those four to five months many days are lost to cold, heat, rain, wind, and bees.
3. The four to five months fall during the summer, our slowest season because many customers are on vacation, playing golf, barbecuing on their own patios, walking around lakes, at a Twins game, at the Aquatennial, Taste of Minnesota, Basilica Block Party, Grand Old Days, etc. They are not at our restaurant using water and sewer.
4. Customers who sit outside are not new customers. They are simply indoor customers who take advantage of brief periods when outdoor seating is available and comfortable.

While adding outdoor seats creates a potential for more water and sewer use it is clear and easily documented that during summer months we actually use less. During hard economic times all governmental entities, including the Metropolitan Council, should consider exercising flexibility that is good for small business (jobs, sales tax collections, etc.) rather than adhering to rules that are detrimental.

We feel that the Met Council should waive all SAC charges for restaurant patios.

Thank you for your consideration,

Terry Keegan

**Nye, Jessica**

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**From:** Kurt Williamson [Kurt.Williamson@jltgroupinc.com]  
**Sent:** Thursday, August 13, 2009 12:05 PM  
**To:** Nye, Jessica; Cappaert, Karon  
**Cc:** Kurt Williamson  
**Subject:** FW: Scanned image from AR-M450 Met Council - Proposed Changes to SAC rules  
presented 8-11-09 8-13-09

**Attachments:** AR-M450\_20090813\_120735.pdf



AR-M450\_20090813\_120735.pdf (9...

Ms Nye / Ms Cappaert - the JLT Group comments are basically the same as presented by a number of restaurant operators and various cities . Some of those comments are 1 - adjust to the fee at 50 % is good but should probably be a little more for the following reasons A - you have limited year round use of the outside patio snow , rain , bugs , wind , nice weather , short season B - if outside seating is full inside will have some bodies but will be very limited and the kitchens are not designed to handle both crowds C - need to have a reasonable fee for all and for all cities to collect the SAC as many outside areas develop after the fact and have paid no fees and now if charged is too costly so need a reasonable fee for new to older spaces . Thank you Kurt Williamson 651-641-1111 or 612-701-8095

**From:** Camille Myser [mailto:camillemyser@yahoo.com]  
**Sent:** Tuesday, August 18, 2009 1:14 PM  
**To:** datacenter  
**Cc:** Camille Myser; John Myser  
**Subject:** Comments for SAC / WAC proposed outdoor seating review

**As a small business owner and tax paying citizen I am tired of sac/wac taxing businesses based on an artificial formula of what *might happen* as opposed to what *does happen*!**

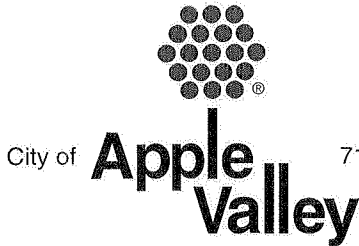
If I use more water than the next business then charge me more tax based on my usage, not some artificial formula. The idea of taxing a business more because of what might happen due to the season is not fair (people sitting outside and eating and drinking in a Minnesota summer, instead of doing the same inside). According to SAC/WAC officials the capacity of the business and therefor the business in general has theoretically expanded with additional seats outside. That is just not true. Our customers decide when they arrive whether they will sit inside or out. I hear the conversations all the time. My sales #'s don't show business increasing when we have outdoor seating vs the same season business with no outdoor seating but the sales #'s certainly do show lack of business on a snowy or stormy day in the winter *or* the summer. Is anyone recommending "credits" for SAC / WAC usage on those days which are numerous and unpredictable in MN?

If people eat and drink at my establishment instead of their home and use my restroom instead of theirs, where have we generated a net increase for SAC/WAC to take care of it? People are going to eat and eliminate somewhere. If they do it at my establishment, then give the homeowner a credit for their SAC/WAC. Bottom line, it will net out. I doesn't make sense to double charge consumers and the businesses they support.

The current strategy sounds nice by saying the SAC / WAC charges will be discounted by 50% in Jan. 2010 but in actuality it is just another formula to increase taxation under the guise of solving the problem of fairness. The only "fair way" among businesses to allocate the infrastructure cost associated with SAC/WAC is by usage. **Use more, pay more. Use less, pay less.**

Thank you for listening and asking for feedback.  
Sincerely,

Camille & John Myser  
Jazz Company *Casual Dining*  
4616 Colorado Street  
Prior Lake, MN 55372  
(952)440-3278



7100 147th Street West  
Apple Valley, MN 55124-9016

Telephone (952) 953-2500  
Fax (952) 953-2515  
www.cityofapplevalley.org

August 21, 2009

Ms. Jessica Nye  
Environmental Services Division  
Metropolitan Council  
390 North Robert Street  
St. Paul, MN 55101

**Subject: Comments on Proposed Changes to SAC Charges Regarding Outdoor Spaces**

Dear Ms. Nye,

The City of Apple Valley is concerned that the revised SAC criteria for measuring sewer capacity in outdoor seating needs further downward adjustment to reflect actual patio use and customer behavior. A reduction to 25 percent of patio seating is requested.. Experience in Apple Valley indicates that higher fees are detrimental to business development and retention of a very small user group.

Presently outdoor patios and sidewalk seating are charged fees using the same sewer capacity criteria as indoor seating. The Metropolitan Council is proposing to reduce the measure by 50 percent for "certain" outdoor space. The stated reasons for adjusting by 50 percent include:

- Complaints of excessive fees required with the present criteria.
- Outdoor seating is connected primarily to the advent of the statewide smoking ban.
- The criteria should be based on a measure of wet weather events for which data is not available to provide an objective measure.
- The only relief from the fee is if the patio is uncovered and/or designated for "smoking only".
- Restaurants with patios are charged these fees because sanitary and storm sewer cross connections may cause potential sanitary sewer capacity issues.

The challenge is to correctly interpret capacity. This includes collecting historical and usable data based on actual water/sewer utility use in restaurants adding patio dining and reporting user patterns which are not solely tied to smoking events. Factors to consider include: temperature, rain, wind, sun, shade, darkness, insects, odors, smoking and traffic which may all influence a patio users decision. A patio is used, or not, for many reasons and rarely to capacity.

Taking behaviors to the individual level, homeowners and renters have balconies and patios. How often do they use them for dining in an outdoor space? Certainly not a daily event. For entire communities, patio dining is being encouraged even more than the sought after table cloth restaurant. It also appears that the Metropolitan Council has policies in direct conflict with patio related SAC fees with their goals of creating livable, pedestrian-friendly neighborhoods.

Apple Valley's input during the public comment period:

- Dining outdoors is a choice, not added capacity. Outdoor spaces fill on nice days but leave indoor spaces vacant.
- This issue has arisen because of the new concepts in community building and the sought after dining trend toward urban and suburban outdoor patio experiences in walkable neighborhoods. Smoking preferences are not the primary driver to outdoor dining.
- Summer and winter water and sewer usage history is readily available to more accurately define, rather than assume, that outdoor dining is used much less than half of the year. The actual capacity additions are less and data that can support this needs to be assembled by MCES. We believe it is used much less, no more than 25 percent of the time.
- When restaurants fail to grow or close because of the impact of fees, business expansion and development and quality of life/community building are harmed.

Two Apple Valley examples follow:

- El Toro restaurant at 14638 Cedar Avenue is a small existing family restaurant that was just approved for an outdoor patio with 22 seats. When they apply for a building permit, the SAC fee for this addition was approximately \$6,000. The owners plan to wait until spring before moving forward. The City is requiring limited service hours and no more than 5 months of service given proximity to a residential area.
- La Luz restaurant, written up in local newspapers as the new "hot spot", at 15322 Galaxie Avenue, opened in the summer of 2008. In addition to their restaurant seating they had a small indoor atrium and outdoor patio area shared by non-food service tenants in a multi-tenant building. The additional SAC charges for this "choice" to dine outside the restaurant after counter pick-up of the food was \$6,500. This amount was part of the total \$16,000 to be paid for all seats when the building permit was applied for. The restaurant wasn't in business long enough in part because of this front-end fee. The restaurant closed in the fall of 2008.

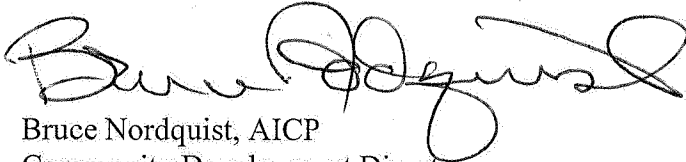
The City of Apple Valley has modified parking standards, encouraged shared parking, and made adjustments to building standards as new design concepts are introduced. The strict interpretation of increased capacity by the Metropolitan Council by any amount more than 25 percent for outdoor dining harms business and community building.

Ms. Jessica Nye  
August 21, 2009  
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Please contact me at (952) 953-2576 to discuss further. My email address is [bnordquist@ci.apple-valley.mn.us](mailto:bnordquist@ci.apple-valley.mn.us).

Sincerely,

CITY OF APPLE VALLEY



Bruce Nordquist, AICP  
Community Development Director

**Business Item 2009-304**

(Additional comments received  
following publication of agenda.)

From: Doug Whitney [mailto:Whitney@coonrapidsmn.gov]  
Sent: Wednesday, August 19, 2009 1:41 PM  
To: Heather Rodgers; Barnebey, Kelly  
Subject: Re: Date change for Environment Committee's review of SAC Outdoor Spaces Proposal

We feel all outdoor seating areas should be charged at one unit per 44 seats, since it can add slightly to maximum capacity of the restaurant.  
And most of the time the inside seating is not used when people are outside; or they outside having drinks until a table is ready inside.

Finally adding only a few tables outside to a small restaurant would result in a charge os less than 0.50, if the rate was one per 44 seats for all dining facilities.

Using 15 square feet per person is reasonable.

Douglas K. Whiney, P.E  
Chief Building Official  
Coon Rapids MN

(Additional comments received following publication of agenda.)

**Nye, Jessica**

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**From:** Ellen Muller [Ellen.Muller@ci.stpaul.mn.us]  
**Sent:** Thursday, August 20, 2009 12:29 PM  
**To:** Nye, Jessica; Barnebey, Kelly  
**Cc:** Cappaert, Karon  
**Subject:** Written Response regarding the SAC Outdoor Spaces Proposal

In addition to the the comments made at the public meeting last week regarding the SAC Outdoor Space proposal, I want to also offer the hardship these charges would take in Saint Paul's commercial corridors experiencing heavy road construction, particularly along University Avenue with the Central Corridor Light Rail Project.

These businesses are concerned about diminished access and earnings. Additional SAC charges on top of these challenges would prove to be difficult to those with patio and/or outdoor sidewalk cafe space. And it is unlikely they would even be able to utilize these options during road construction or light rail construction.

Thoughtfully,

Ellen J. Muller  
Economic Development Manager  
Planning and Economic Development Office City of Saint Paul  
25 West Fourth St.  
1300 City Hall Annex  
St. Paul, MN 55102-1622  
651-266-6605  
612-743-9918 Cell  
651-228-3261 Fax  
ellen.muller@ci.stpaul.mn.us

Saint Paul - The Most Livable City in America



**Business Item 2009-304**

(Additional comments received  
following publication of agenda.)

**From:** David Frank [mailto:dfrank@sr-re.com]  
**Sent:** Friday, August 21, 2009 10:59 AM  
**To:** datacenter  
**Cc:** mmichalski@sr-re.com; Nye, Jessica  
**Subject:** SAC rule change regarding outdoor spaces

To whom it may concern:

Schafer Richardson is a commercial development firm based in Minneapolis, and we believe that policies which create more vital urban areas are beneficial to everyone. As such, we support the proposed rule change. Outdoor seating areas make for active and interesting streets and plazas, and we would like to see more of them.

Please let me know if you have any questions.

David R. Frank  
Schafer Richardson, Inc.  
612.359.5844  
[dfrank@sr-re.com](mailto:dfrank@sr-re.com)



THE ACKERBERG GROUP

LAKE CALHOUN CENTER

Suite 10  
3033 Excelsior Boulevard  
Minneapolis, Minnesota 55416

TEL 612.824.2100  
FAX 612.924.6499

www.ackerberg.com

Thatcher Imboden  
612.924.6411  
thatcher@ackerberg.com

August 21, 2009

**Re: Proposed Changes to SAC Rules Regarding Outdoor Spaces**

Jessica Nye  
Metropolitan Council  
390 North Robert Street  
St. Paul, MN 55101

Dear Ms. Nye,

On behalf of The Ackerberg Group, I would like to urge the Metropolitan Council to reduce the required SAC units for outdoor, uncovered restaurant or café seating. The Ackerberg Group is a property management company, property owner, and real estate developer primarily operating in the Uptown and North Minneapolis markets.

Our experience is that restaurants and cafes offer outdoor seating as a way to lure customers to their business during nice weather. The tremendous competition in the restaurant and café industries and the demand for outdoor dining experiences creates significant demand for outdoor seating while not necessarily increasing total consumer demand for a particular restaurant or café.

While the business will have the capacity to serve more people than without the outdoor seating, the majority of the time will likely result in a similar quantity of wastewater creation. The business is thereby penalized because they currently pay a SAC fee that considers each seat of outdoor seating as equivalent as an indoor seat. The indoor seat is far more used throughout the year than the outdoor seat and the likelihood of both the indoor and outdoor seats being completely occupied is far more of an abnormality than the norm.

Metropolitan Council staff have indicated that the times that the water treatment system is at its highest is during rain events, which is when outdoor seating is unused. There lacks a correlation between water generation of outdoor, uncovered seating and the ability of the water treatment system to accommodate the water generated by that seating.

It is our opinion that the Metropolitan Council should significantly discount the number of units of SAC it charges for outdoor, uncovered seating to a level beyond what staff is proposing. It is our opinion that the discount rate should be no higher than 25% of the total SAC charge that would have applied to outdoor seating, as the correlation between peak demand and outdoor, uncovered seating is negatively related. This discount would take into account possible regional weather impacts and the indoor/outdoor preference of consumers.

Best Regards,

Thatcher Imboden

# METRO CITIES

Association of Metropolitan Municipalities

August 21, 2009

Mr. Jason Willett  
Finance Director  
Metropolitan Council Environmental Services  
390 North Robert Street N  
St Paul, MN 55101

Dear Mr. Willett:

Thank you for the opportunity to comment on the proposed changes to the Sewer Availability Charge (SAC) criteria for outdoor spaces to be considered next week by the Met Council's Environmental Services (MCES) Committee. We appreciate your consideration of our comments.

Metro Cities supports the 50% reduction proposed by MCES for outdoor space SAC criteria. We believe this reduction is a step in the right direction in addressing the complaints regarding the outdoor seating charge. The concerns raised around the fact that most outdoor seating is used for only a small portion of the year and is often a relocation, not an increase, in seating, we believe, are valid ones. We would also support the implementation date for this proposed change being moved to October 1, 2009, from January 1, 2010.

In general, Metro Cities recognizes the serious challenges currently facing the SAC fund, and appreciates your re-consideration of these charges in light of these challenges. As we recommended in our August 19<sup>th</sup> letter regarding the proposed reserve capacity methodology changes, Metro Cities supports an in-depth analysis of the SAC funding structure overall, which could include the issue of outdoor seating criteria.

Again, we appreciate this opportunity to comment as you move forward on these changes, and look forward to continuing work with you and your staff on these issues.

Sincerely,



Patricia A. Nauman  
Executive Director