

METROPOLITAN COUNCIL
390 Robert Street North, Saint Paul, Minnesota 55101

RESOLUTION NO. 2010-08

**GRANTING THE CITY OF LAKE ELMO'S REQUEST FOR TEMPORARY
RELIEF
FROM THE "WASTEWATER INEFFICIENCY FEE" IMPOSED UNDER
METROPOLITAN COUNCIL RESOLUTION NO. 2005-20**

WHEREAS, in February 1997 the Metropolitan Council submitted to the City of Lake Elmo a system statement that advised the City of the Metropolitan Council's recently adopted policy planning documents and metropolitan system plans and identified population projections and other planning elements the City should incorporate into its plan as the City fulfilled its 2008 decennial review obligations under section 473.864 of the Metropolitan Land Planning Act; and

WHEREAS, in September 2002, the Metropolitan Council found that the proposed plan update submitted by the City may substantially depart from and may have a substantial impact on metropolitan system plans, and subsequently required the City to modify its proposed plan update to ensure the City's proposed plan update did not have a substantial impact on or contain a substantial departure from metropolitan system plans; and

WHEREAS, the City appealed the Metropolitan Council's "final decision" to the Minnesota Court of Appeals and ultimately the Minnesota Supreme Court; and

WHEREAS, in August 2004, the Minnesota Supreme Court concluded the Metropolitan Council has the statutory authority to require modifications to the City's proposed plan update and affirmed the Metropolitan Council's "final decision"; and

WHEREAS, in January 2005, the Mayor of Lake Elmo and the Chair of the Metropolitan Council signed a Memorandum of Understanding, subsequently ratified by their respective governing bodies, that outlined certain criteria for guiding the City and the Metropolitan Council as the City modified its proposed plan update to ensure conformity with metropolitan system plans; and

WHEREAS, in June 2005, the City requested the Metropolitan Council to allow the City additional time within which to submit its updated comprehensive plan to the Metropolitan Council; and

WHEREAS, on July 27, 2005 the Metropolitan Council granted the City's extension request when it adopted Council Resolution No. 2005-20, but the Council deemed it appropriate and necessary to attach certain conditions and requirements to the time extension to ensure the Memorandum of Understanding is successfully implemented over time and ensure costly regional infrastructure is used effectively and efficiently; and

WHEREAS, Paragraph 3(i) of Council Resolution No. 2005-20 establishes certain population, household and residential equivalent unit (REC) levels the City is required to meet beginning in 2010 and extending through 2030; and

WHEREAS, Paragraph 3(i)(iii) of Council Resolution No. 2005-20 requires the City to pay the Metropolitan Council by January 31, 2011 a “wastewater inefficiency fee” (WIF) if the City does not meet its REC commitments in the 2007 to 2010 timeframe; and

WHEREAS, the WIF is intended to help pay the operation, maintenance, and capital costs of underutilized regional wastewater infrastructure and the costs of providing regional sewer service for development elsewhere in the region that would have occurred within the City; and

WHEREAS, the City has requested temporary relief from the WIF payment due in January 2011 because the prolonged downturn of the economy has made it difficult for the City to meet its population, household and REC commitments for the 2007 to 2010 timeframe; and

WHEREAS, the Metropolitan Council and the City also desire to continue good faith discussions regarding practical issues related to the implementation of the Memorandum of Understanding in light of current economic conditions and changing demographics; to include the possibility of interim or “in lieu” arrangements for development not immediately accessible to, but ultimately designated for, sewer connection; and

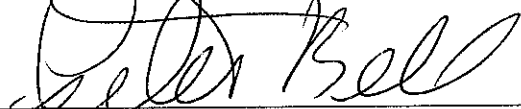
WHEREAS, in light of the adverse economic conditions it is appropriate to provide the City with its requested relief and modify the WIF requirements in Council Resolution No. 2005-20.

NOW THEREFORE, BE IT RESOLVED:

1. Council Resolution No. 2005-20 is modified as follows: The population, household and residential REC levels stated in Paragraph 3(i) of Council Resolution No. 2005-20 will be extended one year for each year the regional residential Service Availability Charge (SAC) units collected is less than fifty percent (50%) of the rolling ten-year average.
2. This change to the WIF requirement is effective on the date the Metropolitan Council and the City enter into a binding Memorandum of Understanding under which the City acknowledges the WIF modification and states its continued agreement to comply with the requirements and conditions stated in Council Resolution No. 2005-20.

3. The Regional Administrator is authorized to negotiate and execute on behalf of the Metropolitan Council a Memorandum of Understanding consistent with this resolution.
4. Except for this WIF modification, the requirements and conditions of Council Resolution No. 2005-20 shall remain in force and effect without change

Adopted this 24th day of March, 2010.


Peter Bell, Chair


Pat Curtiss, Recording Secretary