

**ELYSIAN CITY COUNCIL
AUGUST 10, 2009
REGULAR MEETING
MINUTES
6:00 P.M.**

The Elysian City Council met in regular session on Monday, August 10 2009, at City Hall at 6:00 p.m.

Members present were: Mayor David Rager; Councilmembers Tiffani Atherton, Roger Hanson, Mary Opsahl, Clinton Stoen; Clerk Administrator Patricia Nusbaum; City Attorney Jason Moran, Public Works Director John Roessler, and Administrative Assistant Lorri Kopischke.

Meeting was opened with the Pledge to the US Flag.

On motion by Hanson, seconded by Stoen, all voting in favor, minutes of July 13, 2009 regular council meeting were approved as presented.

On motion by Hanson, seconded by Opsahl, all voting in favor, the agenda was approved as presented.

(Attorney Moran arrived at the meeting at 6:02 p.m.)

On motion by Atherton, seconded by Hanson, all voting in favor, to close the meeting and go to a public hearing.

**ELECTRIC FRANCHISE ORDINANCE
ORDINANCE NO. 66/09.**

CITY OF ELYSIAN, LESUEUR COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF ELYSIAN, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES; AND

**GAS FRANCHISE ORDINANCE
ORDINANCE NO. 67/09**

CITY OF ELYSIAN, LESUEUR COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF ELYSIAN, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

Dave Pearson, Xcel Energy representative was present to explain the updating of the gas and electrical franchise with the City of Elysian.

No one from the public had comment and no written comments were received. ON motion by Stoen, seconded by Hanson, all voting in favor, hearing closed at 6:06 p.m.

On motion by Opsahl, seconded by Stoen, all voting in favor, Ordinance # 66/09 and Ordinance # 67/09 were approved as follows:

ELECTRIC FRANCHISE ORDINANCE
ORDINANCE NO. 66/09.

CITY OF ELYSIAN, LESUEUR COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF ELYSIAN, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF ELYSIAN, LESUEUR COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- 1.1 City. The City of Elysian, County of Le Sueur, State of Minnesota.
- 1.2 City Utility System. Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3 Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 Company. Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy its successors and assigns.
- 1.5 Electric Facilities. Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.
- 1.6 Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City Hall, P.O. Box 246, Elysian, MN 56028-0246. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
- 1.7 Public Ground. Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
- 1.8 Public Way. Any street, alley, walkway or other public right-of-way within the City.

SECTION 2. ADOPTION OF FRANCHISE.

- 2.1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.
- 2.2 Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.
- 2.3 Service and Rates. The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.
- 2.4 Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.
- 2.5 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

SECTION 3. LOCATION, OTHER REGULATIONS.

- 3.1 Location of Facilities. Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.
- 3.2 Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.
- 3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate

ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

- 3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.
- 3.5 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.
- 3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.
- 3.7 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions acceptable to Company whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

SECTION 4. RELOCATIONS.

- 4.1 Relocation of Electric Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Electric Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Electric Facilities at its own expense.

The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

- 4.2 Relocation of Electric Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.
- 4.3 Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Electric Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.
- 4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

SECTION 5. TREE TRIMMING.

Company may trim all trees and shrubs in the Public Grounds and Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

SECTION 6. INDEMNIFICATION.

- 6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City

after notice of Company's determination.

- 6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

SECTION 7. VACATION OF PUBLIC WAYS.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 9. FRANCHISE FEE.

The City at the time of adopting this franchise agreement does not desire to require that Company collect a franchise fee from its customers in the City. At a future date during the term of this franchise agreement, the City may determine that it desires Company to collect a franchise fee. If so, the City may give Company Notice to amend this franchise agreement to authorize collection of a franchise fee by separate ordinance in an amount and upon such terms and conditions as Company at that time is willing to incorporate in its electric franchise agreements with other cities. Upon receipt of such Notice Company shall negotiate in good faith with City to so amend this franchise agreement.

SECTION 10. PROVISIONS OF ORDINANCE.

- 10.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.
- 10.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 11. AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This franchise supersedes any previous electric franchise granted to Company or its predecessor.

Passed and approved: August 10, 2009.

Attest:

Patricia Nusbaum, Clerk Administrator

David Rager, Mayor

Date Published: August 20, 2009

GAS FRANCHISE ORDINANCE
ORDINANCE NO. 67/09

CITY OF ELYSIAN, LESUEUR COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF ELYSIAN, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF ELYSIAN, LESUEUR COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- 1.1 City. The City of Elysian, County of Le Sueur, State of Minnesota.
- 1.2 City Utility System. Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3 Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate Gas retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 Company. Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy

its successors and assigns.

- 1.5 Gas. "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.
- 1.6 Gas Facilities. Pipes, mains, regulators, and other facilities owner or operated by Company for the purpose of providing gas service for public use.
- 1.7 Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City Hall, P.O. Box 246, Elysian, MN 56028-0246. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
- 1.8 Public Ground. Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
- 1.9 Public Way. Any street, alley, walkway or other public right-of-way within the City.

SECTION 2. ADOPTION OF FRANCHISE.

- 2.1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish Gas energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.
- 2.2 Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.
- 2.3 Service and Rates. The service to be provided and the rates to be charged by Company for Gas service in City are subject to the jurisdiction of the Commission.
- 2.4 Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.
- 2.5 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

SECTION 3. LOCATION, OTHER REGULATIONS.

- 3.1 Location of Facilities. Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Gas Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place, provided, at City's request, Company will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project.
- 3.2 Field Locations. Company shall provide field locations for its underground Gas Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.
- 3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Gas Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.
- 3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.
- 3.5 Avoid Damage to Gas Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.
- 3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to

permit Company to make any necessary additions, alterations or repairs to its Gas Facilities.

SECTION 4. RELOCATIONS.

- 4.1 Relocation of Gas Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City shall reimburse Company for Non-Betterment Costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Gas Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.
- 4.2 Relocation of Gas Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.
- 4.3 Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment Costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.
- 4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

SECTION 5. TREE TRIMMING.

Company is also granted the permission and authority to trim all shrubs and trees, including roots, in the Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of Gas Facilities, provided that Company shall save City harmless from any liability in the premises.

SECTION 6. INDEMNIFICATION.

- 6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.
- 6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

SECTION 7. VACATION OF PUBLIC WAYS.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 9. FRANCHISE FEE.

The City at the time of adopting this franchise agreement does not desire to require that Company collect a franchise fee from its customers in the City. At a future date during the term of this franchise agreement, the City may determine that it desires Company to collect a franchise fee. If so, the City may give Company Notice to amend this franchise agreement to authorize collection of a franchise fee by separate ordinance in an amount and upon such terms and conditions as Company at that time is willing to incorporate in its gas franchise agreements with other cities. Upon receipt of such Notice Company shall negotiate in good faith with City to so amend this franchise agreement.

SECTION 10. PROVISIONS OF ORDINANCE.

- 10.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall

be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

- 10.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 11. AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This franchise supersedes any previous Gas franchise granted to Company or its predecessor.

Passed and approved: August 10, 2009.

Attest:

Patricia Nusbaum, Clerk Administrator

David Rager, Mayor

Representatives of Chesnut #3 Development were present with Dr. Mark Berg, property owner, speaking on behalf of the other property owners of Chesnut's #3. Dr. Berg presented the Developer's Agreement for privately financed improvements on Chesnut's Lakeshore Subdivision #3. Discussion was held on costs accumulated in 2007 for a similar project as is now being proposed. Total costs of 2007 project are in the amount of \$28,463.66. Dr. Berg and property owners made an offer to pay the publication fees, \$581.84; Professional Fees, \$4,790.00; and one half of the Engineering fees in the amount of \$11,545.96.

Meeting was opened to public:

John Sandquist – 107 Willow Point Drive – questioned the city taking over the roadway after the project was finished. Concern that Willow Point Drive is a private drive, if part of it is taken over by the City then the balance of the roadway should also. Dr. Berg informed Mr. Sandquist the consideration of the City taking over the roadway had been in an earlier version of the agreement, but since it had been removed.

Mack Evans – 103 Park Avenue NW – the 2007 project was paid out of tax payers money and the balance of the \$11,000 should not have to be paid by the taxpayers.

Wayne Unke – 124 Willow Point Drive – questioned if the wells in Chesnut's #3 will have to be closed as they were in the rest of Willow Point Drive? John Roessler, Water Operator responded with the wells closed in 1998 were sandpoint wells, except for one well, and at that time all were closed.

Discussion by the Council was held. Member Stoen indicated that he was very much for the project but was concerned about the city allowing the Development members to pay for only ½ of the engineer costs of 2007. Member Hanson indicated that he felt since the request from the Developers was to pay for only ½ of the engineer costs from 2007, that, if in fact, they used more than ½ of the engineering from 2007 that maybe in fairness more than ½ should be paid by the Developers to the city. Member Opsahl felt that this project had been going on for a long time and to go to condemnation would be costly, felt that each case has to be treated individually. Member Atherton was concerned about the fees from 2007 since no easements had been obtained at that time and felt that if the development would pay the ½ of the engineer fees, that would be great. Mayor Rager indicated that he would like the project to proceed and that there would be four new water and sewer hookups when project was completed. On motion by Atherton, seconded by Opsahl, the Council accepted the Developer Agreement as proposed with the inclusion of the Developers accepting the 2007 fees as follows: Publication \$581.84; Professional Fees \$4,790.00; and one half of the Engineering fees in the amount of \$11,545.96. Vote being taken: Yes: Atherton, Opsahl, Hanson, Rager. No: Stoen. Motion declared carried.

John Roessler report:

1. Still working on hydrants; Park update – question of whether one larger grill be placed in the Lake Francis Park or 2 smaller grills. Contact will be made as to cost for 2 smaller grills. Presently jetting the sewer lines.
2. Asked the council to consider an additional \$2,500 for crack filling on Main Street. On motion by Hanson, seconded by Opsahl, all voting in favor, approval was given to allow an additional \$2,500 to finish the patching of the street areas most in need of repair.

Clerk Administrator updates:

1. Thanks to Jan and Mack and their crew for all of their work putting together the National Night Out; Thank you to Fischer's Corner Bar and their crew for setting up, cooking, and serving food; Thank you to all of the attractions, Fire Department, Sheriff's Department, State Patrol; those who sponsored door prizes; special thank you to the monetary donors in support of the evening, and big thank you to all who attended. It was a huge success.
2. Thank you to Anne Davies for tending to the flowers at the North lift station and to Sylvia Hewitt and Dorothy Reinartz for tending to the flowers at the Tourism Center.
3. Date for budget workshop – August 26, 2009 – 6:00 p.m.
4. Consent agenda – consider in future agenda to place regular meeting items as a grouping to be approved in one motion.
5. MN Boundary and Adjustment – meeting – August 13th. – 9:00 a.m. Evidentiary hearing – September 10th. – 10:00 a.m.

Clerk Administrator Nusbaum explained a program, Le Sueur County Small Cities Development Program funding for housing, rental, and commercial rehabilitation. Program allows for low to moderate income property owners to seek help in repair to their homes and businesses. Because Le Sueur County is supportive of the program, all cities in Le Sueur County may participate. On motion by Hanson, seconded by Stoen, all voting in favor, to approve the City of Elysian's participation in the Le Sueur County Small Cities Development Program.

Budget work shop was scheduled for Wednesday, August 26, 2009, at City Hall at 6:00 p.m.

Councilmember Stoen updated the Council on the quotes on the proposed council chamber sound system. Quotes: Electrical & Communication Specialists, Inc. - \$2,675.00; Technical solutions; \$2,920.80. Questions as to whether meetings should be recorded were brought up with no action being taken at this time on the quotes presented.

On motion by Hanson, seconded Stoen, all voting in favor, to approve resolution #329/09 - certification of delinquent utility bills to be placed on property taxes in the amount of \$6,999.59 as follows:

RESOLUTION 329/09
AUTHORIZING ASSESSMENT OF UNPAID BILLS
FOR COLLECTION IN 2010

BE IT RESOLVED by the City Council of the City of Elysian, County of Le Sueur, Minnesota that the unpaid bills (attached as Exhibit A) shall constitute a special assessment against the lands. Such assessments shall be payable with property taxes payable in 2010.

The City Clerk Administrator is hereby instructed to transmit a certified copy of the assessments to the County Auditor to be extended on the property tax lists of the County. Such assessments shall be collected and paid over in the same manner as other municipal taxes. Total amount of Exhibit A - \$6,999.59.

The motion for the adoption of the foregoing resolution was presented by Member Hanson and seconded by Member Stoen, and after full discussion, therefore, and upon vote being taken, the vote is as follows:

Voting Yes: Hanson, Stoen, Atherton, Opsahl, Rager

Voting No: None

Thereupon, said Resolution was declared passed and adopted this 10th day of August, 2009.

Attest:

Patricia Nusbaum, Clerk Administrator

David Rager, Mayor

On motion by Stoen, seconded by Opsahl, all voting in favor, to approve resolution #330/09 - one day off site gambling for American Legion Post # 311 for fishing contest February 7, 2010 with inclement weather to February 14, 2010 as follows:

RESOLUTION 330/09

WHEREAS; THE ELYSIAN CITY COUNCIL WAS PRESENTED WITH A REQUEST FROM THE ELYSIAN AMERICAN LEGION POST #311 FOR ONE DAY OFF SITE LAWFUL GAMBLING,

WHEREAS; STATE LAWS OF MINNESOTA REQUIRE APPROVAL BE GRANTED BY THE LOCAL GOVERNING BODY, THUS THE CITY OF ELYSIAN,

WHEREAS; THE REQUEST WAS MADE AT A REGULAR MEETING OF THE ELYSIAN CITY COUNCIL,

NOW THEREFORE, BE IT RESOLVED; THAT THE ELYSIAN CITY COUNCIL GRANTED APPROVAL FOR A ONE DAY OFF SITE LAWFUL GAMBLING LICENSE TO

THE ELYSIAN AMERICAN LEGION POST #311, WITH A FISHING CONTEST TO BE HELD ON

FEBRUARY 7, 2010, OR IN THE CASE OF INCLEMENT WEATHER, TO BE HELD ON FEBRUARY 14, 2010.

THE MOTION FOR THE ADOPTION OF THE FOREGOING RESOLUTION WAS PRESENTED BY MEMBER STOEN AND SECONDED BY MEMBER OPSAHL, AND AFTER FULL DISCUSSION THEREOF AND UPON VOTE BEING TAKEN THEREON, THE FOLLOWING VOTED IN FAVOR THEREOF;

STOEN, OPSAHL, ATHERTON, HANSON, RAGER

AND THE FOLLOWING VOTED AGAINST THE SAME:

NONE

WHEREUPON SAID RESOLUTION WAS DECLARED DULY PASSED AND ADOPTED.

DATED THIS 10th. DAY OF AUGUST, 2009.

Attest:

Patricia Nusbaum, Clerk Administrator

David Rager, Mayor

On motion by Hanson, seconded by Opsahl, all voting in favor, to approve of 2009 Le Sueur County Municipal Agreement in the amount of \$7,661.70.

Mayor Rager presented his appointments to EDA – Tiffani Atherton, Councilmember and Bob Frechette, member at large. On motion by Rager, seconded by Atherton, to approve the above named appointments to the EDA. Voting Yes: Rager, Atherton. Voting No: Hanson, Opsahl, Stoen. Motion failed.

Clerk Administrator Nusbaum, on behalf of the city employees, presented to the Council a request for a salary increase for 2009. In December 2008, the Council decided to wait 6 months to consider a salary increase for 2009 and if an increase was approved it would be retroactive to January 1, 2009. Nusbaum asked for a cost of living increase for the 4 full time employees of 3% and step increase of 4%. Asked for a \$1.00 increase for the part time employees from \$8.50 to \$9.50 per hour. Also stated that the very part time employees who worked at the city brush pile received minimum wage plus \$.30 per hour. Due to increase in minimum wage to \$7.25 per hour plus \$.30, these employees salary are now \$7.55 per hour. After council discussion, on motion by Stoen, seconded by Hanson, council voted to allow an increase in salary for full time employees: cost of living at 3%, and a 1% step change, to allow a \$1.00 per hour increase for the part time employees, and to allow the wage of the employees working at the brush pile to be \$7.55 per hour. Voting yes: Stoen, Hanson, Opsahl. Voting no: Atherton, Rager. Motion declared carried.

Councilmember Hanson reported that Clerk Administrator and he attended a County Commissioners meeting regarding the request for consideration of using County road #11, #50, #13, and #14 within the city limits for golf cart usage. The request was considered, but the Commissioners will be researching whether the golf carts can use all county roads, whether it should be only within the city limits, and what are the legal and safety ramifications of having an ordinance throughout the county. County Attorney will draft an ordinance for the Commissioners consideration. Matter will be revisited at a future meeting.

Councilmember Hanson was concerned about the fact that the EDA is thought by some of the public to be a secret organization. He felt that when funds of the EDA are being considered to be

moved from the oversight of the city and be placed in other accounts and handled strictly by the EDA, that in his opinion things become secret. He felt that the funds from the EDA should stay in the city accounting system, since they are controlled by the City. He was also very concerned about not having the two additional members on the EDA Board in order to function properly. He felt that maybe two Councilmembers and one member at large should be considered and be appointed.

Councilman Hanson was concerned about the budget process. He stated that the Clerk Administrator prepares the budget, Council reviews and makes any changes needed. No one person of the council is in any position to make contact with any department head and try to influence that department in any manner prior to a budget being presented. Hanson would also like to see a report given at each month's council meeting from all committees who have met within the month.

On motion by Hanson, seconded by Stoen, all voting in favor, bills, payroll, and transfers were approved in the amount of \$60,177.05.

Attorney Moran comments:

1. Chesnut #3 update, Lake Tustin Annexation, prosecutions are down along with bad checks.
2. Working on one loan document for EDA.

Request for proposal for consideration to do 2009 audit were opened. Responses were as follows: Burkhardt & Burkhardt, LTD - \$7,500 plus \$250 for state reporting form; EideBailly - \$13,125 plus \$500 for state reporting form; Abdo Eick & Meyers - \$15,550 plus \$500 for state reporting form. Clerk Administrator Nusbaum will contact Burkhardt & Burkhardt LTD as to any unanswered concerns regarding proposal.

Visitors Comments:

1. Edna Thayer – 7 Roots Beach Lane – regarding the employee salary increases, she commented that the 1% step increase she would like to have had it be a merit increase not a step increase, many times steps are no longer given after 15 years of service.
2. Jan Evans – 103 park Avenue NW – Thanked the city for participating monetarily in National Night Out. It was a great success, with 450 people in attendance. She thanked those who gave monetary donations, Jason Moran, Edna Thayer, Marge Pribyl, John Roessler, Chuck Taylor, Max Venero, and Jerry Ellingsworth. She also thanked the Council for giving the city employees a raise. She stated that her husband and she appreciated the work that the employees do. Since moving to this community in 2000, we have watched it grow, and believe most people including visitors, who are so impressed with our community, want to see the city grow and be prosperous.
3. Tom Crawmer – 501 Lake Avenue NW – City guys do an excellent job for the city with snow removal. Golf carts – his golf cart has a capacity for five people on his cart.
4. Anne Davies – 2 Egret Lane – as part of the Horizons Program a committee has developed a resource booklet with area services that Elysian citizens can participate in or find of use for them. The brochures are available at various area businesses in the community. A smaller pamphlet was handed given to the Council.

On motion by Hanson, seconded by Opsahl, all voting in favor, meeting adjourned at 7:55 p.m.

Attest:

Patricia Nusbaum, Clerk Administrator

David Rager, Mayor

(Mayor's comments follow on next page – added 2/3/10)

Mayor's comments:

I want the people of Elysian to know how much I support the EDA and am proud of all it has accomplished. The City in recent years has been funding \$20,000 a year to this organization. They have an accumulated balance in their account now and with prudent management will likely have ample operating money for years to come without further assistance. The EDA has been meeting monthly with 100% attendance, and every issue that has come before us including previous compliance issues are being addressed in a professional manner.

The Elysian community has a tremendous asset in its library, and efforts to retain and improve it are in the works. A new expanded location would allow more programs and services to the entire area. It will come as no surprise to those who know me that my concern is cost, specifically, cost to the taxpayers of Elysian. I support and encourage the Library Board to raise funds through grants and donations. If the use of City funds is requested, I personally will ask for a voter referendum before committing tax dollars to any capital outlay. The culmination of the Horizons project may result in a grant of \$10,000 to be used to combat poverty in our area. Although we are many months away from the possible award, using that grant for the library is one of several good suggestions that are being discussed.

Our Personnel Committee consisting of Edna Thayer, Clint Stoen, Tiffany Atherton and volunteer Cristina James has been working for months on the new personnel handbook. We look forward to the presentation of their results at the September Council meeting. Our Budget and Finance Committee worked very hard with many meetings and travel to other cities to find ways to economize while not losing any of the necessary services in our city. These appointed committees work entirely without compensation and are a fine example of cooperation and volunteerism in our community.

The Council is now starting on the budget process for 2010, and I believe that by working together we can come up with a budget that works very well while lowering the burden that taxes put on us all.

I want to offer a special thanks to **Atherton Walls** for volunteering his time and equipment Saturday to tear down the building where the feral cars were such a problem. Also thanks to Tiffany Atherton, Jason Coon and Katy Anttila for assisting. It was a hot and dirty job but a rewarding one for everyone in the area.

David