

**Meeting Title: SAC Task Force Meeting #1**

**Date: December 1, 2016**

**Time: 8:30 – 11AM**

**Room: League of MN Cities**

**Members in Attendance:** Wendy Wulff, Metropolitan Council Member; Patricia Nauman, Metro Cities; James Dickinson, City of Andover; David Englund, City of Roseville; Ron Hedberg, City of Apple Valley; Brian Hoffman, City of St. Louis Park; Brian Hoffman, City of St. Louis Park; Katrina Kessler, City of Minneapolis; Merrill King, City of Minnetonka; Kyle Klatke, City of Brooklyn Park; Tony Kwilas (representing Dan McElroy at meeting 1), MN Restaurant Association; Loren Olson, City of Minneapolis; Kevin Schmieg, City of Eden Prairie; Tom Thomasser, MN Chamber of Commerce; Steve Ubl, City of St. Paul; Sue Virnig, City of Golden Valley;

**Non-Task Force Members in Attendance:** Jan Rosemeyer, City of Roseville; Adeel Ahmed, City of Brooklyn Park

**Members Absent:** Bob LaBrosse, Cottage Grove

**Staff in Attendance:** Cara Letofsky, Metropolitan Council Member; Ned Smith, MCES; Jessica Nye, MCES; Kyle Colvin, MCES; Sara Running, MCES

**Meeting Notes:**

Item	Notes
1. Welcome & Introductions	Metropolitan Council Member and Task Force Co-Chair, Wendy Wulff, asked participants to introduce themselves. Task Force Co-Chair Patty Nauman of Metro Cities was thanked for hosting.
2. MCES Overview	<p>A member (Loren O.) asked, what are you thinking in terms of recommendations? Chair Wendy Wulff answered that we won't decide on issue 1 today. Members will have the opportunity to talk with their community before any final recommendation is made.</p> <p>A member (Merrill K.) asked, is there a portion of the infrastructure general maintenance that is paid for by SAC fees? Ned Smith answered, 35% of the debt for capital rehabilitation projects are paid for with SAC. Wendy added that the interceptor system is planned out for 70 years. Some pipes are over 100 years old. No major expansion is currently planned. There are capital rehabilitation projects that takes place, such as a sleeve in the pipe. Plants are planned out for 15-20 years, they expand as needed.</p> <p>A member (Jim D.) asked about the history of MCES as it existed in the mid-1970s - what was the debt that existed then and how is it assumed? Ned answered that we bought it. Kyle Colvin added that</p>

the sewer board was created by the legislature in 1969. There were 37 existing treatment plants at that time, and most were not meeting standards. The system was acquired with a combination of an initial payment to the community and a credit that went on the communities wastewater bill. The credit ran out in early 90s.

A member (Tony K.) asked, have you ever looked at any other variables as a basis to charge SAC? Ned answered that the last Task Force looked at various options and settled on looking further into water meters. We found that water meter assignments (size of the pipes) is not a precise science. It could depend on what is in the warehouse. When you get detailed and complicated, it is more fair. A laundromat should pay more than a candle shop.

A member (Merrill K.) asked Ned to talk about how the Metropolitan Council estimates the cost of a SAC unit. Ned answered that the unit cost is based on an estimated trend, and we look at one year at a time for costing, but also project five years out for SAC debt and units.

A member (Brian H.) asked what is the ratio of new construction vs. development and residential vs. commercial. Ned and Jessie Nye stated they would find that information for Brian.

**Action item:** Follow-up with Brian on his question above.

A member (Katrina K.) asked if the \$37.5 million is on a 2% projection. Ned stated it's on a 6-8% increase in the next few years then will level off around 2022 at 2-3%. He also stated we are on track for about \$17,500 units for 2016. Wendy added that we keep a reserve to help with the bubble (development decline).

A member (Tom T.) asked if in a recession, we use that reserve to pay our debt? Ned stated yes, and our current reserve is \$52 million. It was around \$100 million before our recession. *(Note, in checking the records, the actual peak over the last 10 years is closer to \$82M)*

A member (Merrill K.) asked how do we determine the structure and goal of our reserve. Ned answered by law we need to keep a 1-year reserve (approximately \$38 million). The member further asked what we would consider too much, and Ned replied with \$100 million (a made-up number). Wendy added that if the reserve gets too big it becomes a target.

<p>3. Task Force Charter, Meeting Plan, History of SAC Work Groups/Task Forces</p>	<p>Patty indicated our original reason for this task force was representatives from the Minneapolis area (Senator Torres-Ray) and (House Representative Wagenius) introduced legislation to exempt outdoor seating from SAC. The bills were presented but did not progress. From Metro Cities' perspective, having SAC addressed legislatively in that way (how SAC is charged or granting exemptions) is fairly unprecedented. SAC doesn't involve state taxes of funding and so shouldn't be presented to the legislature. If you grant an exemption in this way, then you set precedent for further exemptions by legislative order. It was reiterated that task force recommendations will be reported back to the legislature.</p> <p>A member (Katrina K.) asked if the legislature asked we come back with recommendations in all SAC task forces or just this one. Patty replied we don't always go back to the legislature but Senator Torres-Ray asked we get back to her for this specific issue.</p> <p>A member (Merrill K.) asked if we bring it to the Council as well and we can choose to adopt a portion or all of it. Wendy replied it depends on if they require legislative authority or not. Patty added that most recommendations from past task forces were adopted by the Council.</p> <p>A member (Ron H.) asked when the outdoor seating policy (75% discount) was enacted. Wendy answered October 2009 and that she was part of that group to enact the policy.</p> <p>A participant (Cara L.) asked if SAC has ever been litigated. Jessie and Kyle C. answered yes, that it was litigated by Brooklyn Center in the early 1970's, and it went all the way to the Supreme Court. <b>Action item:</b> Send Cara information regarding the court case.</p> <p>A member (Merrill K.) asked if customers are really using the worth of, for example, 10 SAC units. Ned answered when we get a redevelopment we start from a clean slate. We reassess an entire property even if the whole property is not changing (to make sure we have record of current capacity needs).</p> <p>A member (Kevin S.) expressed that the concern with issue 4 is a previous tenant had a space done and a new tenant comes in and modified an existing space. The biggest dilemma is when the new tenant comes in and doesn't understand why they should have to pay SAC when the old tenant didn't pay it when they were supposed to. As an encouragement if there would be a length of</p>
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	<p>time where there is don't ask don't tell policy that would be reasonable.</p> <p>Wendy stated we have made a number of tweaks in the past to be fair and we haven't come up with a way for it to be fair for everyone.</p> <p>A member (Merrill K.) (passed on from a coworker) stated that community development officials were not well represented in our group. Ned and Wendy invited those voices to attend as non-task force members.</p>
<p>4. Issue 1 – Outdoor Seating Policy</p>	<p>Ned presented an overview of the outdoor seating policy. He remarked that with the 75% discount, and if all you're doing is adding a patio, the first 19 seats are free.</p> <p>A member (Tony K.) asked how did MCES account for that discount. Wendy answered it was balanced out by the number of patios that weren't built at all because of the cost (in 2009). He also asked if that was when the first 19 seats were free as well. Ned answered yes.</p> <p>A member (Katrina K.) remarked that the whole 75% discount is a total flow argument (if it's not raining then there is no flow then no discount is needed). Ned replied we are trying to capture what is capacity demand when looking at the seat count. The member also remarked we should acknowledge these are being added so people are paying for them, there is no money going away; it is only additional money being made.</p> <p>A member (Merrill K.) asked if small businesses can't pay, shouldn't they get a discount? Wendy answered there is the deferral program to pay their SAC over time with a small rate of interest.</p> <p>A participant (Cara L.) asked if the representatives from the legislature acknowledged the 75% discount existing or just asking to wipe out flow altogether. Ned answered they wanted a 100% discount. He added that when he followed up with the people that testified, most ended up NOT having an issue as they weren't aware of the discount, received incorrect information, or tried to do the determination themselves.</p> <p>A member (Loren O.) wondered if people are not adding the value of 19 seats into the calculation. Wendy replied, as an example</p>

there are cases where a sandwich shop wants to put in 2 chairs and 2 tables on a sidewalk, it doesn't cost anything like it did in the past. Ned answered that the 19 seats is due to the rounding. 0.49 rounds down to 0 SAC due. *(Note – although Ned could not come up with the calculation in the meeting: the math is – 0.49 SAC X 10 Seats/SAC = 4.9 Seats X 4 (75% discount) = ~19)*

A member (Kevin S.) asked if we are looking at eliminating outdoor SAC altogether, or changing SAC determination criteria. Ned answered determination criteria is based on flow studies and therefore, not being considered. We are here to decide if we should eliminate SAC for outdoor altogether.

A member (Kyle K.) asked when the SAC issue was brought up at the legislative session if the problem was most people were not understanding what the issue was. Ned said yes. The member then said it brings up the bigger question of a communication disconnect, and said his customers have told him if they even call the SAC staff they can't reach them. Ned replied we are now fully staffed so our communication should improve.

A member (Sue V.) asked if the smoking ban affected the outdoor seating. Wendy answered that it prompted more patios. Kyle C. added that if the patio was exclusive to smoking only, there is no additional SAC charge.

A member (Kevin S.) remarked the concern is that rates for restaurants keep changing. Everything else can be explained away but a mom and pop shop says they can't handle it. It is the start-up costs that hurt the businesses. Outdoor seating with a discount is an easy one to sell. Kevin also asked if 1 SAC per 10 seats is valid anymore given the low flow toilets being used more now. Kyle C. said we changed criteria in approximately 2010 and it was based on a study of water consumption of restaurants in the area. The study found little differentiation between eatery establishments. The driving factor of consumption was location. The highest water consumption business was a Subway in Minneapolis by University of Minnesota. Statistically speaking they all used the same amount of water. The Met Council feels that would still be accurate today.

Wendy remarked we did look at what a SAC unit really is (274 gallons per day) but when we looked at that if we lowered that amount, then it increases for businesses/industries because you are using a smaller unit.

A member (Brian H.) remarked the discount seems fair and reasonable. The seating does add potential capacity. The discount is reasonable. But one downside is people saying it's temporary, not a permanent structure; if it's temporary, how does the system look when the temporary is removed.

A member (Merrill K.) asked if the question was the high capacity during rain, what is that relative to the seating capacity. What kind of capacity is there to handle that when it is not raining. What if we charged them nothing?

A member (Katrina K.) thought maybe there was another answer besides 75% and 100%. You could do some kind of discount by prorating by months of the year. Ned remarked that the system isn't based on months of the year, but a single day when all seats are filled. We don't get that capacity back and SAC is based on capacity.

A member (Kyle K.) asked if there had been any thought of using different criteria for outdoor seating (ex. 40 seats). Ned thought that was a good idea but the math would be murky. In addition, the current criteria (10 Seats / SAC) is based on flow studies.

A member (Merrill K.) remarked we should have a clean mathematical argument and not "just a discount". If it's about capacity then why even pay anything. That was the rationale for the discount.

Patty remarked the 75% discount was part science, part political in the end and it does push the envelope. The way Metro Cities looks at the issue is trying to get a structure of SAC that is most equitable. It could be argued outdoor seating is a little off kilter with the discount, so any more discount has more of a financial impact on other businesses. We need to have something that is perceived as fair as possible but also scientific. Ned and Wendy added that the 75% is not definitively scientific. While we know there is a tradeoff between rain events and outdoor seating, we have no way of calculating the precise difference between rain vs. capacity for outdoor seating. The science isn't clear.

Member (Brian H.) remarked there is a set amount of cost per year and it has to be paid for and forget about capacity. This is trying to

figure out an equitable way to distribute costs. The bottom line is if someone doesn't pay, then someone else pays more.

A member (Loren O.) remarked Minneapolis supports not paying outdoor seating, and it is based on a capacity argument and there is not enough evidence that outdoor seating affects capacity. They feel a vast majority of their businesses just transfer customers from one location to another. There is not enough evidence that both are being used. She also added that the 75% discount is misleading and we should be cautious of using the word discount. This is a capacity based argument, not an equity. They are not trying to incentivize or subsidize it but they think SAC should operate as a utility.

Member (Tom T.) asked if there were any case studies such as putting a flow meter on 10 sites and looking at changes. We could look at flow over a period of time on rainy versus dry days at "Bob's Pub" to really determine usage. Kyle C. remarked that measuring the impact of I/I on individual properties is nearly impossible as the flow is too small. With assistance from communities we have asked them to provide daily water readings. It is a fairly significant time commitment from local communities. Whenever we do water studies we want to do it for a long period of time; however, with technology now you can do remote reads. There are ways to collect data to determine what a peak day is but it does require partnership with communities and commitment from them to provide a labor intensive effort to do that.

A member (Katrina K.) remarked they are doing flow metering in Minneapolis and they could pull that data. The community measures I/I and could look at rainy day versus dry day periods. Kyle C. replied that this is for a community-wide perspective, not individual sites.

Member (Steve U.) remarked it sounds like we have a barometer for volume of water usage. He asked if we have ever looked at water volume before outdoor seating versus what is it after. Kyle C. remarked that we have not done such a study and this would look at an average, not a peak day. Another member (Tom T) commented that not all flow is based on water usage. Some of the flow comes from kegs and bottles.

Member (Kevin S.) remarked the issue is that the information is based on peak demand day, and at a different point we should talk

	<p>about is that valid to have the basis be peak demand. If the baseline of 274 gallons is based on an average instead of a peak demand day, it might be easier. Kyle C. replied the problem with that model is that doesn't work for buildings such as the U.S. Bank Stadium where peak demand, like on Super Bowl Day, would not be covered. Wendy added that peak is a measurement for computing, and when we build the pipes we are conservative. The member argued that if you take U.S. Bank Stadium on Super Bowl Day divided by the number of seats that might be more reasonable. Wendy remarked there is a constant tension in simplifying how we do it versus what is fair.</p> <p>A member (Katrina K.) agrees and said we should keep it about capacity and we could look at 75% being applied to when people are sitting outside in the year versus sitting inside. Wendy argued that SAC is all the time not just part of the year. The member argued we should factor in that it is not equivalent to being year-round and subject to rain flow. She also added we could raise the minimum of outdoor seats for the discount.</p> <p>Member (Kevin S.) remarked the reason we are talking about this is it seems terminology was placed there to appease the legislature.</p> <p>Patty asked if it would be useful to bring back any 2009 information on the outdoor discount. Ned pointed out that the 2009 policy paper is in their binder.</p> <p>A member (Brian H.) asked if there is a reason it doesn't say 1 SAC per 40 seats instead of a discount in the manual. Ned and Wendy said perhaps we could write this into the manual.</p> <p>An informal vote was taken to see where people were sitting at this time regarding going to 100% discount vs status quo. There were more people raising their hands to leave it as status quo.</p>
Next Steps	<p>Send out next agenda</p> <p>Start out with an outdoor seating vote next meeting</p>