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MEMORANDUM

To: Mayor and City Council

From: Ron Batty, city attorney

Date: September 29, 2020

Re: Livingston Strong Donation

Minnesota Statutes, section 465.03 allows cities to accept donations of real or personal property (including cash) for the benefit of its citizens in accordance with the terms prescribed by the donor. The only restrictions are that the donation may not be used for religious or sectarian purposes and that it must be accepted by a resolution adopted by 2/3 of the city council and express the terms of the donation in full.

In October, 2019, the city council adopted an amended and restated Donation Policy which details the types of donations the City will accept, the process by which they will be evaluated and includes certain limitations on the forms of acknowledgement of the donors. Donations for any public purpose may be considered but those relating to “trees on City property, park benches, playground equipment, picnic tables, flowers, plants and other beautification of the City” are specifically called out. Donations are to be evaluated, in part, on the maintenance and other long-term costs to the City which may result. Donated items become the property of the City and the City has no obligation to repair or replace them if damaged or destroyed.

Donations may be unrestricted or restricted by the donor. The larger the donation, the more typical it is to involve conditions. It is not uncommon for cities to enter into agreements with donors making substantial contributions to ensure the parties have a full understanding of the terms of the donation. The City’s donation policy explicitly authorizes donation agreements.

Donations of any amount may be accepted. Those in excess of \$100 will be acknowledged by a letter to the donor. For donations above \$1,000, the donor may request and pay for an “unobtrusive plaque.” The plaque is subject to approval by the City as to location, design, material, inscription and appropriateness. Plaques are further limited to ten words in a maximum of three lines. The size of the plaque may not exceed 10” x 3”.

It should be noted that there is no requirement that a city have a donation policy and many cities do not. While a formal policy may be useful in evaluating potential donations, state law prescribes the only required limitations. Cities are free to accept or decline donations without having a policy.

The City has recently been approached regarding a large donation involving playground equipment. The prospective donor has also requested that a memorial sign be erected in the area of the park where the equipment is proposed to be located. The requested sign which would exceed the size limitation for plaques outlined in the City's donation policy.

I have reviewed an undated letter addressed to the Parks Commission and a September 28, 2020 email from Alan Carlson. In his letter and email Mr. Carlson argues against acceptance of the proposed donation and points out ways in which it is inconsistent with the City's donation policy, specifically with regard to the quid pro quo aspect and the size of the requested identifying sign. Mr. Carlson accurately details ways in which this donation would not be consistent with current City policy. The Parks Commission should adhere to City policy. However, there is a larger issue in play here. The city council is free to accept any donation it believes to be in the public interest, subject only to statutory limitations. All other conditions, including those in any policy, are self-imposed.

The City's policy goes beyond anything required by state law and should reflect the will of a majority of the city council. It apparently did late last year when it was adopted; perhaps it still does. If so, it need not be amended. If it does not fully reflect the will of the city council it may be modified by a majority vote. It might be helpful to conceive of the policy as a guideline, not a straightjacket for the council. If the city council wishes to allow greater flexibility under the policy, a way to do so while leaving the procedural provisions in place might be to add a section similar to the following: Notwithstanding anything herein to the contrary, the City may accept any donation it deems to be in the best interest of its citizens and on such terms and conditions as may be acceptable to the donor and the city council.

It is also important to recognize that the city council has the authority to name or rename playgrounds or other public spaces independent of the donation policy. Article IV, section 3 of the city charter says the city council "shall have the power to . . . lay out . . . public ways and grounds, to name and change the names thereof." The charter is silent on how the naming or renaming is to be accomplished. Minnesota Statutes, Chapter 410, which applies to charter cities, contains what is called a savings clause at 410.33. That section says that if a charter is silent with regard to something that is addressed in Chapter 412, which applies to statutory cities, or in general law and nothing prevents the charter from addressing the matter, the City MAY (emphasis added) apply the general law. Minnesota Statutes, section 412.221, subd. 18 says that in a statutory city the council "shall have the power by ordinance to name or rename the streets and public places of the city . . ."

In 2011 the city council named an unopened street by resolution and thus did not follow the requirement for statutory cities. This is acceptable for a charter city and provides guidance as to how the playground in question could be renamed if desired by the city council. Finally, section 4.5 of the City code includes Table 4.1 which regulates signs. The code provides that the number and size of signs for parks and playgrounds "shall be as determined by the city council."

The City is under no obligation to accept any donation regardless of how closely it adheres to state law or the City's policy. The city council has absolute discretion to decline any donation. The statutory requirement that a donation be accepted by a 2/3 vote of the city council is intended to ensure broad agreement on the donation, including any restrictions. On the other hand, the City's donation policy includes many self-imposed restrictions which are not required by state law and which may be revised or eliminated by the city council.

I have one final thought to offer. This is not legal advice per se but is a practical suggestion based on having worked with local governments in Minnesota for over 40 years. In order to be effective, local governments need to be able to make decisions and move on. I do not have an opinion as to whether the proposed donation is a good or bad idea. What I do understand is that the debate over the matter has been protracted and emotional and has caused serious strain in the community. That is not good. If the donation is not appropriate and cannot be made so in the opinion of the city council, it should be declined politely. On the other hand, if the council believes that it is in the best interest of the city to accept the donation, including the sign, the council should feel free to take whatever steps are necessary to accomplish that, subject to statutory limitations. The City's current donation policy should not be a bar to doing what the council deems to be in the public interest.