

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, JUNE 8, 2015 - 8150 BARBARA AVENUE**

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Monday, June 8, 2015, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:00 p.m. Present were Council members Bartholomew, Hark, Mueller and Piekarski Krech; City Administrator Lynch, City Attorney Kuntz, Community Development Director Link, Parks and Recreation Director Carlson, Finance Director Smith, Chief Stanger, Chief Thill, and Recording Secretary Fox

3. PRESENTATIONS:

Mayor Tourville announced that an open house was scheduled to discuss a potential off-leash dog park on Tuesday, June 23rd at 6:30 pm at Veterans Memorial Community Center.

4. CONSENT AGENDA:

Councilmember Piekarski Krech removed Item 4D from the Consent Agenda.

- A. Minutes – May 26, 2015 Regular City Council Meeting
- B. **Resolution No. 15-92** Approving Disbursements for Period Ending June 2, 2015
- C. Approve Transfer to City of Inver Grove Heights Economic Development Authority (EDA)
- E. **Resolution No. 15-93** Approving 2015-2016 Non-Union Compensation Plan
- F. Approve City Administrator's 2015 Salary Adjustment
- G. Approve Temporary Liquor License – Church of St. Patrick
- H. Approve Temporary Extension of Licensed Premises for King of Diamonds
- I. Approve Custom Grading, Drainage, and Utility Easement Agreements for 7102 Bester Avenue
- J. **Resolution No. 15-94** Receiving and Accepting Proposal for Professional Services from Kimley-Horn and Associates, Inc. for City Project No. 2014-11, Argenta Trail and Trunk Highway 55
- K. Accept Proposals for Professional Services for Valuation of Blackstone Ridge Right-of-Way and Easements for Future Argenta Trail
- L. Approve Release of Escrow and Custom Grading Agreement for Inver Hills Ninth Addition
- M. **Resolution No. 15-95** Approving Two-Year Renewal of Advertising Bench Permits
- N. Personnel Actions

Motion by Bartholomew, second by Hark, to approve the Consent Agenda

Ayes: 5

Nays: 0 Motion carried.

- D. Approve Purchase of Park and Recreation Software

Councilmember Piekarski Krech expressed concerns regarding the difference in price between the two vendors and questioned if the City was going to continue to purchase new software on a regular basis.

Mr. Carlson explained the software was used by staff on a regular basis for program registration, facility and field reservations, and ice time rentals. He added that the software also served as the POS system at the Community Center to process over the counter transactions. He stated this particular software was separate and performed a different function than the Green City GIS software that was approved at the last meeting. He explained the software currently utilized by staff was purchased in 2007 and resided on a server that would no longer be supported at the end of the year by Microsoft. The Technology Manager recommended purchasing replacement software that was cloud-based to avoid the need to purchase and maintain a server in-house.

Councilmember Piekarski Krech questioned if the City would need to purchase software for other

departments as well.

Mr. Lynch stated the City was attempting to reduce the number of servers that needed to be maintained in-house. He explained as software was scheduled for replacement the Technology Manager would seek out new software that was cloud-based.

Councilmember Piekarski Krech questioned if the cloud-based software was secure enough to manage financial transactions.

Mr. Carlson stated the proposed software was PCI compliant and met the security requirements for financial transactions.

Mayor Tourville suggested providing the Council with a list of planned software purchases for the rest of the year and for 2016.

Councilmember Bartholomew questioned if the annual maintenance included free upgrades.

Mr. Carlson replied in the affirmative.

Councilmember Hark questioned if staff felt the recommended software was more robust than the less expensive option.

Mr. Carlson replied in the affirmative.

Motion by Bartholomew, second by Hark, to approve the purchase of Park & Recreation Software

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC COMMENT: None.

6. PUBLIC HEARINGS:

A. CITY OF INVER GROVE HEIGHTS: Consider Application of AMC Theatres dba MacGuffin's Bar & Lounge for an On-Sale Intoxicating/Sunday Liquor License for premises located at 5567 Bishop Ave. and the First Reading of an Ordinance Amending Inver Grove Heights City Code Title 4, Chapter 1, Section 2 related to the Definition of a Restaurant

Frank Lewis, AMC Theatres, provided an overview of the investment AMC made to upgrade and remodel the Inver Grove Heights location. He stated AMC was committed to improving the guest experience at the theatre. The introduction of more food and drink options, including alcoholic beverages, was part of the effort to draw more adults to the movies. He noted the food and beverage program kept the theatre profitable. He reviewed the policies and procedures in place to ensure that the sale and service of alcohol was done in a safe and secure manner.

Councilmember Piekarski Krech questioned if the areas in which alcohol was allowed would be designated as "over 21" seating.

Mr. Lewis responded in the negative. He stated the auditoriums were all mixed age seating.

Councilmember Piekarski Krech questioned how many drinks would be sold per person.

Mr. Lewis stated the policy was that two drinks could be purchased per person, per id, per transaction. He noted that AMC had a business obligation to ensure that guests were not overserved. He added it would be pretty obvious if the same individual was continuously returning to the bar area to purchase more drinks and the staff would respond and act accordingly to that situation.

Councilmember Piekarski Krech questioned why the City Code definition of a restaurant included a requirement that the establishment have non-plastic eating utensils.

Mr. Kuntz explained the City adopted some standards that were more restrictive than the statutory definition of a restaurant to ensure that those establishments seeking to obtain a full on-sale intoxicating liquor license were legitimate restaurants and not simply a bar that only served chips or frozen pizzas.

Mayor Tourville questioned if the background investigation had been completed.

Chief Stanger stated the background investigation was completed and nothing was found that would warrant denial of the license.

Motion by Piekarski Krech, second by Mueller, to close the public hearing

Ayes: 5

Nays: 0 Motion carried.

Councilmember Piekarski Krech suggested waiving the requirement for three readings of the ordinance since the proposed change was non-substantive in nature.

Motion by Piekarski Krech, second by Mueller, to suspend the rules and waive the requirement for three readings of the proposed ordinance amendment

Ayes: 5

Nays: 0 Motion carried.

Motion by Piekarski Krech, second by Hark, to adopt Ordinance No. 1295 amending Inver Grove Heights City Code Title 4, Chapter X, Section X related to the Definition of a Restaurant

Ayes: 5

Nays: 0 Motion carried.

Motion by Piekarski Krech, second by Mueller, to approve an On-Sale Intoxicating/Sunday Liquor License for AMC Theatres dba MacGuffin’s Bar & Lounge for premises located at 5567 Bishop Ave.

Ayes: 5

Nays: 0 Motion carried.

B. CITY OF INVER GROVE HEIGHTS: Consider Waiver Agreement relating to Special Assessments for City Project No. 2015-09E, 47th Street Area Reconstruction, for Bethesda Evangelical Lutheran Church property located at 2855 47th Street

Mr. Lynch stated an agreement was reached with Bethesda Evangelical Lutheran Church for a special assessment in the amount of \$45,000. The assessment term was extended to 15 years at an interest rate of 4.1%. He noted the terms of the agreement also require the property owner to waive all rights to appeal the proposed assessment.

Motion by Piekarski Krech, second by Bartholomew, to close the public hearing

Ayes: 5

Nays: 0 Motion carried.

Motion by Bartholomew, second by Piekarski Krech, to adopt Resolution No. 15-97 approving a Waiver Agreement with Bethesda Evangelical Lutheran Church of So. St. Paul relating to Special Assessments for City Project No. 2015-09E, 47th Street Area Reconstruction

Ayes: 5

Nays: 0 Motion carried.

Motion by Piekarski Krech, second by Mueller, to approve Resolution No. 15-98 adopting Final Assessment against Dakota County Tax Parcel Nos. 20-44400-03-060; 20-44400-03-050; 20-44400-03-040; 20-44400-03-030; 20-44400-02-040; and 20-44400-02-030 for City Project No. 2015-09E, 47th Street Area Reconstruction

Ayes: 5

Nays: 0 Motion carried.

7. REGULAR AGENDA:

FINANCE:

A. CITY OF INVER GROVE HEIGHTS: Consider Resolution Calling for a Public Hearing on the Intent to Issue General Obligation Street Reconstruction Plan Bonds and the Proposal to Adopt a Street Reconstruction Plan Thereafter

Ms. Smith explained Council was asked to call for a public hearing on July 13th to consider the adoption of a street reconstruction plan and the intent to issue general obligation street reconstruction plan bonds. She noted the street reconstruction plan would be available for review no later than June 21st. She added issuance of street reconstruction bonds would require a unanimous vote of the Council.

Motion by Bartholomew, second by Piekarski Krech, to adopt Resolution No. 15-96 Calling for a Public Hearing on the Intent to Issue General Obligation Street Reconstruction Plan Bonds and the Proposal to Adopt a Street Reconstruction Plan Thereafter

Ayes: 5

Nays: 0 Motion carried.

COMMUNITY DEVELOPMENT:

B. MATTHEW GENS: Consider the Third Reading of an Ordinance Amendment to Title 10 of the City Code (Zoning Ordinance) to amend the definition of Single Family Dwelling and to add the use of Supervised Student Housing as an Interim Use in Single Family Residential Zoning Districts

Mr. Link stated the applicant was New Aspiration International House, a non-profit organization that established a program that offers students from Mongolia the opportunity to further their education at Inver Hills Community College in preparation for attendance at a four-year university. The program allows students to live with a family in a single family home. Under current zoning code regulations the proposed use would not be allowed. The City Council previously directed staff to make three changes to the ordinance. The first change was to add single family PUD zoning to the approved zoning districts. The second change was to add a requirement that the single family home be inspected on an annual basis by the Chief Building Official. The third change was a slight modification to the formula for square footage requirements for the students. He stated the last issue to be considered was whether or not additional staff would be allowed to live in the home. After further discussion with the applicant, the proposed ordinance was drafted to provide for additional staff to live in the home with the condition that each additional staff member living in the home would reduce the maximum number of students allowed to live in the home. Planning staff recommended approval of the ordinance as proposed.

Matthew Gens, 16856 Whitewood Avenue, Prior Lake, advocated for the ability to have additional staff living in the home to provide additional supervision and assistance to the students during evening hours. He noted the additional staff person would also assist with the organization and management of extracurricular activities for the students outside of the home.

Mayor Tourville suggested including a requirement that staff members would live in an area separate from the students.

Councilmember Piekarski Krech opined that the proposed use was evolving into something that resembled a dormitory or group home that would be better suited for a multi-family property.

Councilmember Mueller expressed concerns about the bathroom arrangements and providing separate facilities for male and female students. He opined the proposed use was not a good fit for a single family home.

Hillary Hintner, 9127 Alger Court, questioned why the applicant would not pursue licensure as a group home.

Jessica Gens, 16856 Whitewood Avenue, Prior Lake, stated the organization looked into that option and their program did not currently meet the qualifications to be recognized as a group home by the State.

Councilmember Bartholomew opined that the proposed use was a difficult fit for a single family residential neighborhood. He expressed concerns regarding the impact on the dynamic of a single family neighborhood. He suggested that the use may be a better fit on a larger property or in a more rural area.

Mayor Tourville stated the size of the home would ultimately dictate whether or not the use would work in a residential area. He added the organization would still need to obtain an interim use permit once a property was selected.

Councilmember Bartholomew questioned the recourse would be if there were issues at the home and the City determined that the use was not a good fit for the neighborhood.

Mr. Link stated the interim use permit could be revoked if there were ongoing issues or problems at the residence.

Councilmember Hark stated he would support the ordinance amendment and noted the interim use permit process would allow the City to review the property that was selected and determine if the size was appropriate for the program.

Motion by Hark, second by Piekarski Krech, to adopt Ordinance No. 1294 amending Title 10 of the City Code (Zoning Ordinance) to amend the definition of Single Family Dwelling and to add the use of Supervised Student Housing as an Interim Use in Single Family Residential Zoning Districts and to include the proposed language related to guidelines pertaining to additional staff living in the home and a requirement that staff would have to occupy the dwelling in a bedroom separate from the students

Ayes: 4

Nays: 1 (Mueller) Motion carried.

ADMINISTRATION:

C. CITY OF INVER GROVE HEIGHTS: Consider Draft Tobacco Licensing and Inspection Ordinance and Resolution Amending Fee Schedule

Mr. Lynch stated the City was informed that Dakota County no longer wanted to be responsible for tobacco licensing beginning January 1, 2016. Following discussion with the Council at a work session a draft ordinance was prepared for Council consideration.

Heather Botten, Associate Planner, explained the City Code did not currently contain provisions related to the licensing, inspection, or regulation of businesses where tobacco or tobacco-related products are sold. She reiterated Dakota County was currently responsible for the licensing and inspection of such establishments. Staff prepared a draft tobacco licensing ordinance containing provisions related to licensing, training, fees, compliance checks, and sampling. She noted the proposed ordinance prohibited the sampling of tobacco, tobacco-related devices, and electronic delivery devices within the indoor area of any establishment. She explained notice of the meeting was sent to the 39 establishments currently licensed in the City.

Councilmember Piekarski Krech questioned if Rosemount was still going to have Dakota County handle the licensing for the establishments in their City.

Mr. Lynch stated the City of Rosemount had not had any discussions regarding the topic at the Council level.

Hillary Hintner, 9127 Alger Court, stated she worked professionally in the field of chemical health and wellness and was concerned with preventing nicotine addiction. She opined that the sampling of e-cigarettes influences addiction in terms of accessibility and normalizing behavior. She expressed concerns that e-cigarettes were easy for youth to acquire. She stated that e-cigarettes were not regulated and should not be marketed as a cessation product. She encouraged the Council to support the proposed ordinance prohibiting sampling.

Jacob Figueroa, 712 Granite Drive, Eagan, stated he was a patron of a vape shop in the City and he had successfully used e-cigarettes to quit smoking regular cigarettes. He noted he had the option to have no

nicotine in his e-cigarettes.

Jason Downing, 56 Wentworth Court, Minneapolis, spoke on behalf of Minnesota Vapers Advocacy. He explained the organization worked to promote the benefits of electronic cigarette use and prevent inappropriate policies from being adopted. He noted that he had also used e-cigarettes to quit smoking. He referenced the Minnesota Adult Tobacco Survey and stated that 90% of e-cigarette users were either former or current smokers. He explained his organization did not have a position on the licensing aspects of the proposed ordinance, nor did they have a position on the regulation of combustible tobacco products. He opined sampling was a basic concept for consumers and many of the devices required an educational component when purchased. He added that there had been no studies proving that the use of e-cigarettes would lead to addiction.

Councilmember Mueller questioned how a ban on sampling would affect the businesses selling tobacco and tobacco-related products.

Mr. Downing stated a ban on sampling negatively impacted businesses because customers were unable to try the products prior to purchasing and the business could not provide the services consumers wanted. He suggested that the Council consider an exemption from the sampling prohibition for vaping products.

Mayor Tourville questioned if sampling of other vaping products would still be allowed if the ordinance solely prohibited the sampling of tobacco.

Councilmember Mueller questioned if e-cigarettes were the same as a vaping product.

Mr. Downing stated e-cigarettes and hookah were very different because hookah was still fundamentally a tobacco product. He explained vaping products would just be the liquid used in e-cigarettes.

Cap O'Rourke, Independent Vapor Retailers Association of Minnesota, stated the organization was comprised of both retailers and manufacturers of e-cigarettes and vaping products. He asked that the City support an ordinance that would allow for sampling of e-cigarettes and vaping products. He noted that sampling was a key component of the retailer's business and a prohibition would negatively impact the viability of such businesses.

Councilmember Bartholomew questioned if the organization had an official position on sampling as it relates to the issue of lounges.

Mr. O'Rourke stated the organization's position was that sampling should be allowed at retail businesses. He explained the organization had previously worked with communities to develop ordinance language that would prevent lounges from operating. He suggested reviewing the ordinance that was drafted and adopted by Hennepin County.

Mike Harris, 2921 50th St. E., stated he was an e-liquid vendor. He explained he used e-cigarettes to quit smoking traditional cigarettes. He noted that customers went to the retail vape shops specifically to sample products. He opined that sampling should be allowed at such retail establishments.

Sarah Hammad, 1563 116th Avenue, stated she owned an e-liquid company and the presence of nicotine within vaping liquid was 100% optional.

Councilmember Piekarski Krech stated her preference would be that the County continue to handle the licensing aspect because it was statutorily within their purview. She expressed concern that taking over licensing would require additional staff.

Mayor Tourville suggested staff have further discussion with the County regarding licensing.

Councilmember Hark questioned if the Police Department would have the resources available to enforce the licensing provisions. He noted one benefit of taking over the licensing provisions would be to guarantee that enforcement and compliance checks were getting done.

The City Council directed the City Administrator to invite Dakota County to a meeting to further discuss licensing of retail establishments.

Councilmember Mueller questioned how many vape shops were currently located in the City.

Ms. Botten stated there were two (2) vape shops, two (2) tobacco shops, and one (1) hookah lounge.

Councilmember Mueller stated he received an email from the existing shop owners who had invested in their businesses and signed multi-year leases.

Councilmember Hark suggested that existing businesses could be grandfathered in as non-conforming uses.

Mayor Tourville stated he had an issue with the sampling of tobacco products.

Councilmember Piekarski Krech questioned if any of the existing businesses in the City allowed the sampling of tobacco products.

Ms. Botten stated she was not aware of that occurring at either of the existing tobacco shops.

Councilmember Piekarski Krech opined that she had an issue with regulating adult activities.

Councilmember Hark noted that alcohol was not as inherently addictive as nicotine.

Mayor Tourville stated his preference would be to start with prohibiting the indoor sampling of tobacco.

Councilmember Bartholomew stated he was opposed to sampling because the activity could not be delineated from that of a lounge. He added it was impossible to define at what point sampling became a Lounge for patrons.

Mayor Tourville stated tobacco sampling was different than vaping and much easier to define.

Councilmember Bartholomew reiterated sampling was hard to define and regulate. He expressed concerns regarding the abuse of sampling. He stated he would not be opposed to limiting the sampling to those establishments that already existed in the City and not allowing any new establishments to have sampling.

Councilmember Hark opined that the City should ban sampling with the exception of the existing establishments. He stated he did not see the benefit of distinguishing between the sampling of tobacco and the sampling of vaping products.

Mayor Tourville stated the sampling of tobacco was easier to define.

Councilmember Hark stated he was not interested in closing an existing business, but still wanted to address the issue of sampling going forward.

Councilmember Mueller suggested option #3 outlined in the memo.

Ms. Botten explained if Council favored option #3 on page 2 of the memo from the City Attorney's office, the sampling of e-cigarettes would be allowed but the sampling of tobacco products, including hookah, would be prohibited.

Councilmember Hark stated he was not in favor of sampling, but he did not want to punish the existing businesses that were established before the regulations existed.

Councilmember Piekarski Krech stated a new ordinance would be required to simply address sampling.

Ms. Botten stated a new section would be added under the business regulations section of the code.

Councilmember Hark suggested that the sampling of tobacco be prohibited and that the sampling of e-cigarettes and vaping products be prohibited with the exception of activity at the existing retail vaping establishments.

Ms. Botten stated staff would return with a new ordinance with the direction provided by Council.

8. MAYOR & COUNCIL COMMENTS:**A. WATRUD PROPERTIES:** Consider Amendment to Improvement Agreement

Mr. Kuntz stated the proposed second building on the property required a site plan. The site plan approval process required review by the Planning Commission. He explained the Planning Commission was scheduled to consider the matter on June 16, 2015. He noted the City Council could not grant site plan approval until after the Planning Commission had completed its review.

Steve Watrud, 9070 90th Ct., opined this was a unique situation. He expressed frustration that he had to go through the site plan approval process when he was not deviating from the guidelines set forth in the improvement agreement.

Councilmember Mueller apologized for the delays and stated it was unfortunate that the item was not ready to be heard at the first Planning Commission meeting in June.

Councilmember Bartholomew stated the City needed to be more flexible in terms of working with local businesses and promoting development in the area.

Mayor Tourville stated the City was acting in accordance with the opinion of the City Attorney that the site plan approval process was required.

Mr. Link stated the building permit would be able to be issued immediately, assuming Council approved the site plan at the meeting on June 22nd.

Vance Grannis, Jr., 9249 Barnes Avenue, stated he represented Watrud Properties and was also sincerely interested in the City's overall well-being. He opined it was regrettable that the City's ordinances had been written in such a way that there was no flexibility or opportunity for staff to use common sense. He urged the City to change its ordinances to eliminate unnecessary red tape and expense for developers. He explained the development perceived the City as being very difficult and expensive to work with.

The City Council recessed at 10:00 p.m.

9. EXECUTIVE SESSION:

The Council entered Executive Session at 10:05 p.m. to discuss property acquisitions.

A. Consider Acquisition of Property located at 6140 Doffing Avenue**B. Consider Acquisition of Property located at 6455 Doffing Avenue****C. Consider Acquisition of Properties located at 6863 Dickman Trail, 6840 Dixie Avenue, and 6900 Dixie Avenue****D. Consider Property Acquisition of 9250 Courthouse Boulevard**

The Council exited Executive Session and reconvened in Regular Session at 11:12 pm.

The City Council directed Mr. Link to communicate with the owner of River View Auto that the City would accept the offer made related to the purchase of the property, with a contingency that the City could pay for any remediation required and could successfully obtain a letter from the MPCA indicating that "no action" was required for the parcel.

10. ADJOURN: Motion by Hark, second by Mueller, to adjourn. The meeting was adjourned by a unanimous vote at 11:15 pm