

INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, August 8, 2022 - 6:00 P.M. - 8150 BARBARA AVENUE

1. Call to Order: The City Council of Inver Grove Heights met in regular session on Monday, August 8, 2022, in person. Mayor Bartholomew called the meeting to order at 6:00 p.m. The Pledge of Allegiance was recited.

2. Roll Call: Present In-Person: Mayor Bartholomew, Council Members: Murphy Piekarski Krech, Dietrich, Gliva; City Attorney McCauley Nason, City Administrator Wilson, City Clerk Kiernan, Police Chief Chiodo, Community Development Director Rand.

3. PRESENTATIONS:

4. CONSENT AGENDA:

- A.** Approve minutes for the July 11, 2022 City Council meeting
- B.** Approval of disbursements **Resolution 2022-159**
- C.** Approval of Personnel Actions
- D.** School Resource Officer Contract with ISD #199 for the 2022-23 School Year **Resolution 2022-160**
- E.** Setback and Accessory Structure Variance for 8008 River Road **Resolution 2022-161**
- F.** Accessory Structure Variance for 9580 Baker Court **Resolution 2022-162**
- G.** Accessory Dwelling Unit Variance for 7301 Babcock Trail **Resolution 2022-163**
- H.** Approve Exempt Gambling Permit for IGH Best Foundation for Class of 2002 Class Reunion August 20, 2022 at Drkula's
- I.** Approval of 2022 Fiber Build Out Projects
- J.** Award Contract for Park Design Services for Two New Northwest Area Parks
- K.** Rejection of All Bids for Heritage Village Park Phase 4 **Resolution 2022-164**
- L.** Order Assessment Hearing, Declare Costs to be Assessed, and Order Preparation of Proposed Assessments for Carleda Way Area Improvements (City Project No. 2016-09F) **Resolutions 2022-165; 2022-166**

Motion by Dietrich, second by Murphy, to approve the Consent Agenda as presented.

Ayes: 4

Nays: 0 Motion carried.

5. PUBLIC HEARING:

6. REGULAR BUSINESS:

A. Second Reading of Ordinance Amending the City Code Related to the Discharge of Bows and Arrows (continued from July, 25, 2022 meeting)

Police Chief Melissa Chiodo presented a time line of the history of discussions of the ordinance. The issue was first brought to Council at the 9/9/2019 council meeting. Each time there has been an update regarding proposed changes is has been posted on the city website and Insights. Publication. There was a resident survey in the Insight and social media 7/2021 and 7/2022. There were over 700 responses to the survey There was also a resident meeting organized by residents that Chief Chiodo

attended 7/12/22. July 17 chief Chiodo presented update to council with feedback from resident meeting.

Chief Chiodo discussed facts or reasons for deer hunting.

- The city is in DPA 701(deer permit area) area set by DNR.
- There is currently no factual evidence or flags to determine deer overpopulation in the city.
- The city is not a current chronic waste syndrome area.
- Archery hunting season is set by DNR not the city.
- Controlled archery hunt must have a wildlife management plan. The city does not have a wildlife management plan. Chief Chiodo will be receiving a template from the DNR.
- 50% of harvest meet must go to food shelf
- Council must approve map by sept of hunting year

Chief Chiodo listed points of current ordinance.

Where/When Bow Hunting would be allowed:

- Permitted on a parcel within the designated map and must also be:
- At least 2.5 acres in size for the owner or resident of the property
- At least 5 acres in size for someone other than the property owner or resident to bow hunt on, then only with written permission of the property owner
- Parcel must be located in the designated portion of the map, and
- Hunter must carry written permission of the property owner (if it is not the property owner) with specific dates noted, and
- Hunter must be licensed and follow all DNR hunting rules and requirements
- Deer management activities pursuant to a Council resolution specifically authorizing such activities.

Restrictions on Bow and Arrow use:

- No shooting or discharge of any bow and arrow within 300 feet of any residential or commercial structure unless the person owns the residential or commercial property
- No shooting or discharge of any bow and arrow within 200 feet of any driveway not owned by the person shooting/discharging
- No shooting or discharge of any bow and arrow within 200 feet of any public street, private roadway, or city/county/state park land

Exemptions:

- Target Practice: In enclosed structures, posted/designated park areas (Currently no parks allow archery and there are no archery lanes), allowed if approved official school/college, supervised program, licensed commercial archery range, owner, or resident of at least 2.5 acres on the maps designated area.

Changes in the Police Department Role:

- Hunters no longer need to register with the IGH Police Department
- Police Department would not be required to determine hunter proficiency
- No process for requesting exemptions
- Police will respond to calls reporting bow hunting in violation of the ordinance
 - Outside the designated area of the city, on parcels of 5 acres or less, hunting without

land owners' permission

Changes that were being made on the proposed designated map was shown and include:

- Northwest corner above Courthouse Boulevard has been eliminated.
- If owning 2.5 acres or more, can hunt your own land/people that live with you can hunt it.
- Owning 5 acres or more, can give permission to whoever you want to hunt the land.

Chief Chiodo requested a motion to approve the second reading of Ordinance 5-6-1 use of Firearms and Bow and Arrow and approval of maps designating hunting boundaries.

Mayor Bartholomew asked for clarification from Chief Chiodo regarding the changed boundaries from the 1st reading map area and the second reading map area. Chief Chiodo responded by showing the changes on the presentation maps.

Mayor Bartholomew asked if anyone present had questions or comments. Each person wanting to speak would have 3 minutes. After comments are heard by those present emails would be received into record.

1. Greg Sperl -1705 93rd Circle E

Mr. Sperl was concerned about the county park land restrictions being detrimental to his hunting area. He stated restrictions on who could hunt on his property is a problem. Noted that he had also wrote a letter to council requesting the city follow the DNR rules.

2. Willie Krech - 9574 Inver Grove Trail

Mr. Krech, comment he thought 5 acres was a small area. He doesn't feel the area north of Hwy 55 and Hwy 52 should be open to hunting any longer. He feels there is still plenty of open space in the southern part of the city

3. Ruth Rechtzigel -10620 Courthouse Blvd

Ms. Rechtzigel stated she and her husband originally purchased 102 acres and sold 100 acres to the DNR. She stated she has had nothing but problems with people coming on her property without permission to hunt. She stated she should be able to feel safe.

4. Muriel Carlson -9175 Dalton Ct & 9886 Anawanda Path

Ms. Carlson stated she like Map 2 that was shown. She does not think there should be any hunting on 2.5-acre parcels. She doesn't see any Inver Grove Heights rules. Some houses are too close to the 300 ft. structure line. Would like clarification on the structure line. She doesn't believe 14-year-olds should not be allowed to hunt without supervision. She believes the only property owners should be able to give permission to hunt on a parcel not tenants.

5. Karen Taylor - 8815 River Heights Way

Ms. Taylor stated she opposes the 2.5-acre parcels. Would like same consideration for safety as the other side of River Heights Road were given. She feels hunting is happening all around River Heights Park and residents that live around the park and walk on the trails are unaware of the hunting that is going on. She feels it is not the responsibility of a landowner to give others the space to hunt. She would like clarification on the current policy states no bowhunting within 300 ft of any structure.

Mayor Bartholomew stated he would get clarification before the end of the meeting.

6. Levi Hinton -8985 Aralia Court

Mr. Hinton stated he felt the comments by prior residents refer to people that are already breaking the law. He doesn't feel that will change if the laws are changed. Those people will continue to break the law. Mr. Hinton addressed the statement made that there are other places for people to go hunt and if the law is changed to take more area away eventually there will be no place in IGH to hunt. Thanks to the Chief for addressing CWD. Mr. Hinton is in zone 701 which does not currently have CWD. But zone 605 which does have CWD is only 5 miles away. Mr. Hinton addressed the comment the Chief made about the reason for the changes was due to construction in other areas and should not affect hunting in the entire city. Mr. Hinton would like to see a wildlife plan in place for the city.

7. Bill Carlson - 9175 Belton Court

Mr. Carlson stated he is the owner of the property at 9186 Anawanda Path which is 5 acres. He stated that with the lines the only way to hunt on that property would be to hunt from the house. He stated that until he heard Mrs. Rechtzigel's comments he was not aware of the encroachment issues or the removal of the posted signs. Mr. Carlson believes that 2.5 acres is too small of an area to be hunted on.

8. Patrick Gustafson - 8865 River Heights Way

Mr. Gustafson stated his land backs up to the river and the railroad tracks. He does post his property and has never had a problem with anyone taking his signs down. He thinks hunting in IGH is important for the community. He suggested that everyone post their property and if they have problems to go to the Chief or to the DNR and let them take care of the problem.

9. James Taylor - 8850 River Heights Way

Mr. Taylor stated there are 26 houses on River Heights Way. If you take 200ft from back of parcel and 300ft from street there would be 4 parcels that would be able to hunt. Mr. Taylor does not think there should be hunting on any 2.5-acre parcels.

10. Bradley Hapka - 9330 Inver Grove Trail

Mr. Hapka stated he and his wife have been residents of Inver Grove Trail for 21 years. He and his wife have both hit deer driving on Inver Grove Trail. Mr. Hapka is concerned that if deer hunting is not allowed there will be more accidents. He is concerned about the safety also of school busing hitting deer.

11. Amy Hunting -2645 96th St E

Ms. Hunting stated she was not able to be at the last meeting but has watched the video. She is concerned that the original 4 proposals at the last meeting seem to have disappeared. Ms. Hunting stated that option 4 is her preference. She is not a hunter but grew up in a hunting family. She is an archer. IGH has changed and believes this is the time for a change in the ordinance. Ms. Hunting

stated she lives in a 2.7-acre parcel in Marcotte Woods and doesn't feel 2.5 acres is big enough parcels. She stated there is hunting accruing in the park and wounded deer have been seen. Ms. Hunting stated option 4 meets in the middle and addresses safety.

12. Steve Woog -2927 96th St

Mr. Wood stated he lives in the Marcotte Woods neighborhood. He wanted to address 3 points, safety, changes, and over legislation of something that is not or doesn't seem to be a major problem. Mr. Woog stated to his knowledge there has never been an arrow in a deer, neighbor or injury reported to the city. He stated that yes there has been change in the city. He asked the question of what those changes are. He doesn't feel this is the time to be making changes to the policy. Mr. Woog stated he doesn't want to lose the opportunity to hunt and does not feel there has been a problem, but he doesn't.

13. Muriel Carlson - 9886 Anawanda Tr

Mayor Bartholomew stated Ms. Carlson should keep it brief. MS. Carlson stated she thinks the 2.5 acres should definitely be eliminated. Asked if combining lots to make area bigger was still an option. Mayor Bartholomew stated that was no longer an option. Ms. Carlson state she has lived in IGH all her life and has never hit a deer. Hitting a deer can happen anywhere including St. Paul. She stated she will continue to confront hunters found on her property trespassing and plans to patrol more the property her family owns.

Mayor Bartholomew asked Chief Chiodo to approach to clarify some questions for Council
Mayor Bartholomew stated he would like clarification on 2 points, what is option 4 and what is the 300ft setback. Mayor Bartholomew stated he agreed 300ft would eliminate a lot of properties. Chief Chiodo stated the current ordinance states the 300 ft is for owners of property and 300 ft to 200 ft the owners can give permission for others to hunt on their property and not abide by the 300ft. She stated the new ordinance would eliminate others from hunting. Only the property owner would be able to not abide by the 300 ft provision. Chief Chiodo showed map of option 2 and how the map would change in option 4.

Councilor Dietrich asked Chief Chiodo to clarify if there were properties along the river that are 5 acres that would be eliminated. Chief Chiodo stated yes. Councilor Dietrich asked when working within the 3 criteria how did the park language come about to be put into the ordinance. Chief Chiodo stated the language came about after finding deer stands and trail cameras in the parks and a resident with a deer stand on their property line. That was a concern for Parks & Recreation. Councilor Piekarski Krech asked Chief Chiodo is we are allowed to put insurance policies on property owners that allow hunting on their property. City Attorney Bridget McCauley Nason responded to the question stating in theory the city could require property owners to carry insurance. The that would bring 2 issues. One there is a statutory protection for landowners in the state of MN that open their properties for recreation use. The city could require hunters to carry insurance but who would keep track of that. City Attorney McCauley Nason stated in theory potentially yes but is not sure if it would lend itself to practicality.

One very good question came up wanting to know why if this problem originated in the NW corner why is it including the entire city. The Chief stated she was asked in 2019 to take resident feedback regarding this

issue. A lot of the concerns came from residents all over the city. She was also asked to look into what all the other cities in Dakota County are doing. Chief Chiodo stated she researched the issue in 2019 and again before it was presented at the work session. Chief stated she has asked people who have reached out to her if she could share their comments with the City Clerk's Office and has done so when given permission. Mayor Bartholomew thanked Chief Chiodo and asked if there was anything anyone else wanted to add.

Motion by Piekarski Krech, second by Gliva, to accept all correspondence into the record.

Ayes: 5

Nays: 0 Motion carried.

Mayor Bartholomew addressed Councilor Murphy and stated he wanted to hold off on discussion so that Councilor Murphy could be a part of the conversation. The mayor stated he felt 2.5 acres is too small and he supports option 4.

Councilor Piekarski Krech asked if you own land is it a privilege or a right to hunt on your own property. Mayor Bartholomew said safety is an issue. You should be able to do what you want as long as it doesn't endanger other people.

Councilor Murphy stated that the 2.5 acres is causing the issue. If you follow the distance requirements it shouldn't be an issue. He asked if there was an option of 2.5 and 5 acres south of the river. Mayor Bartholomew couldn't recall that option. Chief Chiodo couldn't recall if option 3 had less than 5 acres south of the river. Showed map to clarify areas. Stated there has been feedback from longtime residents on both sides.

Mayor Bartholomew asked Councilor Murphy if he was asking about 2.5 acres south of the river. Councilor Murphy stated the option didn't include by river but south of 55. Chief Chiodo showed the map to clarify the area in question. She stated she has received feedback on both side for and against. Councilor Dietrich - Stated if people follow the distance requirements it's not an issue. Unlawfulness is the issue at hand and that won't be solved. Mayor Bartholomew asked Councilor Dietrich to be clear she was referring to option 2 with the 3 changes discussed tonight. Councilor Dietrich Responded correct.

Councilor Piekarski Krech asked Councilor Dietrich if she felt hunting, is a right. Councilor Dietrich stated she doesn't want to take away rights of people not that in specific. Councilor Murphy stated he is curious what Councils' definition of tenant is in option 2. Councilor Murphy stated landowner should be able to give permission. Mayor Bartholomew that could be stated in the lease agreement. Councilor Piekarski Krech said permissions to hunt should be given on homestead property only. Councilor Murphy Stated he is leaning toward tenants not being able to give permission at all.

Chief Chiodo clarified the original plan doesn't give permission other than family in 2.5 acres, on 5 acres tenant can hunt but only owner could give permission.

Motion by Dietrich, second by Gliva, to move the second reading of ordinance amending city code related to the discharge of bows and arrows with revisions outlined in the packet and language regarding tenants.

Ayes: 3 Gliva; Murphy; Dietrich
Nays: 2 Piekarski Krech; Bartholomew Motion carried.

B. Interim Ordinance Prohibiting the Establishment of New Uses or the Expansion of Existing Uses Related to the Sale, Testing, Manufacturing and Distribution of THC Products (Edible Cannabinoid Products) Resolution 2022-167

City Attorney Bridget McCauley Nason presented a slide show explaining what cannabinoids are, explained the new legalization of eatable cannabinoids and what they are. She stated the city at this point should be possibly considering a moratorium that would prohibit sales. She is attending meetings hosted by the League of MN Cities weekly for guidance. Stated that most cities are doing nothing at this point. City Attorney Bridget McCauley Nason stated the moratorium would not affect businesses already selling THC products.

Mayor Bartholomew asked what if wanted to do nothing? How would the city enforce this? City Attorney Bridget McCauley Nason stated the city could identify which businesses are already selling. Councilor Murphy asked if an interim moratorium would stop a business who sells outside of manufacturing? City Attorney McCauley Nason stated yes, they can't manufacturer per state statute.

Councilor Gliva asked if the moratorium was adopted if we have timeline for licensing. City Attorney McCauley Nason stated yes, it would give time to prepare licensing with a month or 2. Councilor Dietrich asked what the cost of staff time would be to identify license violations. City Attorney McCauley Nason stated she doesn't have that answer. It would depend on how proactive the city wants to be. Councilor Dietrich is concerned about safety. City Attorney Bridget McCauley Nason replied driving under the influence has not changed. Councilor Dietrich asked if there a test. City Attorney Bridget McCauley Nason replied yes. Chief Chiodo said the test is similar to alcohol compliance checks - drug recognition technology hasn't caught up - the cities do not have testing like for drivers.

Councilor Dietrich asked the chief how to identify who is selling THC edibles. Chief Chiodo stated businesses are advertising so it would be a matter of following the advertisements.

Mayor Bartholomew asked City Attorney Bridget City Attorney McCauley Nason to give a reason the city would want a moratorium or to license THC edible products. City Attorney McCauley Nason replied that if no action were taken now, there may not be the opportunity to able to in the future. The purpose of the moratorium is to hit pause so it gives time to investigate.

Administrator Wilson added there is an argument to be made to license THC edible products. These are age restricted businesses. There is a greater risk of theft, and we want to know where this is being sold. A moratorium give chance to put licensing in place.

Councilor Murphy likes the pause and licensing. He asked if the city can revisit sooner than a year? Councilor Piekarski Krech asked if they are currently selling, how were they zoned. City Attorney McCauley Nason replied that typically they are zoned commercial but not sure what else Mayor Bartholomew asked if state laws regulate where can sell? City Attorney McCauley Nason replied no regulations exist as of yet.

Councilor Piekarski Krech asked if a moratorium is for licensing is for current businesses or stopping more sales. Chief Chiodo replied there is one business that is currently violating state law and has already had an armed robbery. A moratorium will not stop the sale for those businesses that are already selling since July 2022 laws were enacted. There are businesses currently violating package requirements.

Councilor Piekarski Krech asked if the city can do a three-to-six-month moratorium instead of twelve months. City Attorney Bridget McCauley Nason stated twelve months is the maximum, but 9 months is suggested.

City Attorney Bridget McCauley Nason mentioned she feels the state moved too fast with no regulations in place and that this moratorium would give staff time to prepare for licensing this type of business. A moratorium would only affect those that want to start a business in the city.

Mayor Bartholomew - Asked for motion to suspend rules for three readings of ordinance. Motion by Murphy; second by Piekarski Krech

Ayes 5

Nays 0 Motion carried

Motion by Piekarski Krech second by Gliva to approve Interim Ordinance Prohibiting the Establishment of New Uses or the Expansion of Existing Uses Related to the Sale, Testing, Manufacturing and Distribution of THC Products (Edible Cannabinoid Products) Resolution 2022-167

Ayes 5

Nays 0 Motion carried

C. First Reading of Ordinance Amending City Code Chapter 5, Section 12 Related to Unnecessary Noise

Community Development Director Heather Rand - Presented an explanation for the reason for amendment to the ordinance. Director Rand stated the city has had complaints from residents regarding construction noise and the proposed changes will give clarity to the ordinance. The Chief Building Official requested to change the times in the ordinance to 7pm - 7am 7 days a week. Director Rand stated there is also an exemption proposed for making emergency repairs when approved in advance by the Chief Building Official. Background Information City Code

Section 5-5-12 prohibits unnecessary noise as follows: No person shall make, continue, permit or cause to be made or continued any loud, unnecessary, unusual noise or any noise within the City that would be likely to annoy, disturb, injure, or endanger the comfort, repose, health, peace, or safety of a reasonable person of ordinary sensibilities.

Both a person making unnecessary noise as well as a property owner or person in control of the property is required to stop unnecessary noise occurring on a property:

Any owner, tenant, resident, occupant or manager of a building, property location, site, or vehicle, who has the legal authority to control the activities and who knows or has reason to know of the disturbance and fails to immediately take reasonable steps to abate the disturbance is guilty of violating this section. City Code Section 5-5-12 defines unnecessary noise as a noise that creates an amplified sound that is audible above the level of conversational speech at a distance of fifty feet (50') or more from the point of origin of the amplified sound. This section would apply to but is not limited to, large assemblies, live music, music from electronic devices, music from motor vehicles, radio, tape player, disc player, speaker /loudspeakers, horns, and similar devices; or

Unless exempted in subsection C of this section, involves the operation of domestic power equipment, construction, and demolition equipment between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M. during weekdays and nine o'clock (9:00) P.M. and seven o'clock (7:00) A.M. on the weekends and holidays

Proposed Code Amendment broadens the scope of construction-related activity that constitutes "unnecessary noise." Currently "... involves the operation of domestic power equipment, construction and demolition equipment..." Proposed "Construction-related activity involving the operation of domestic power equipment, commercial tools, power tools, motorized equipment, landscaping equipment, or demolition equipment; or the construction, remodeling, repair or maintenance of structures, except for work done entirely inside a structure that is not audible on adjacent properties; or the delivery or unloading of equipment and machinery or building, construction, or landscaping materials weighing more than 50 lbs."

Proposed Code Amendment revises the hours during which construction-related noise is prohibited. Currently our ordinance states no noise after 10:00 p.m. and before 7:00 a.m. on weekdays and no noise after 9:00 p.m. and before 7:00 a.m. on weekends and holidays. The change proposed is no noise after 7:00 p.m. and before 7:00 a.m., 7 days a week adding exemptions for the performance of emergency work necessary to restore a public service, make emergency repairs, or eliminate a public hazard. For construction or repair work in response to a significant storm or other natural disaster, when approved in advance by the Chief Building Official.

The benefits of the proposed code amendment will clear code language is beneficial to IGH police officers working to enforce the requirements outside of normal office hours. A broader and more specific definition of what constitutes construction noise helps protect neighbors from unnecessary noise, consistent hours, 7 days per week, are easier for everyone to understand and

follow.

City Council is asked to approve a first reading of the ordinance amending the City Code provisions related to unnecessary noise.

Mayor Bartholomew stated he likes the changes. It is clearcut and gives leeway to the building inspector.

Councilor Murphy asked what is the noise level maximum and Director Rand replied 50 decibels which is standard and also pointed out the changes do not impact residential noise provisions Mayor Bartholomew asked City Administration Kris Wilson if she felt 3 reading are necessary Administrator Wilson suggested 2 readings. She also stated the Public Works Director has a possible tweak. Administrator Wilson suggested passing the first reading and then suspend rules if choose to at time of second reading.

Motion by Gliva; second by Piekarski Krech to approve First Reading of Ordinance Amending City Code Chapter 5, Section 12 Related to Unnecessary Noise

Ayes 5

Nays 0 Motion carried

D Setback Variance at 3635 78th Street Resolution 2022-168

Associate Planner Heather Botten gave background on the property the resident is requesting a variance for driveway to be located up to the side property line. Planner Botten explained the dimensions of the request for widening of and the location of a portion of the driveway. Planner Botten stated that driveway setback has historically been in city code. In 2010 the city 1st started requiring driveway permits and decide encroachments would be grandfather in. Staff recommends denial of variance. Staff does not believe the resident shows practical difficulty. At the Planning Commission Public Hearing on 7-19-22 Planning Commission approved the request. Councilor Piekarski Krech asked why the resident wants to expand the driveway. Planner Botten replied the resident wants an additional 3rd parking spot. Councilor Murphy asked if the resident would be able to expand on the other side and Planner Botten replied that is correct. Mayor Bartholomew stated that would mean removing a tree. Planner Botten Showed an arial view of what would be in compliance with setback requirements.

Councilor Dietrich asked if that would put driveway in front of the home and Planner Botten stated that is correct. Councilor Gliva asked if there have been any complaints from neighbors and Planner Botten replied no. Included in Council packet is a letter of support from one of the neighbors. The planning commission approved the variance based on three criteria. Council should note there are 2 resolutions in their packet. A denial and an approval with the 3 conditions.

Councilor Murphy asked what is the definition of a heritage tree? Councilor Piekarski Krech stated based on the value and Planner Botten stated it is also based on the years. Mayor Bartholomew asked in the applicants were present.

Applicants Steve and Monica Buenzow 3635 78th St E - Approached and stated the tree is an ash tree they have been treating and would like to keep. They would not like to have a parking pad in front of the house. The lots are very narrow, and the driveway is barely wide enough for 2 cars. They have lots of people visiting and need additional parking. Stated that this approval would bring them in line with all the other neighbors that were grandfathered in. They would be the last property. Applicants Responded said they are ok with the three conditions as set for the in the variance request.

Applicant Monica Buenzow thanked the Council for their service.

Motion by Piekarski Krech; second by Gliva to approve Setback Variance at 3635 78th Street Resolution 2022-168

Ayes 5

Nays 0

Motion carried

E Rental License Application for 5975 Concord Blvd. Resolution 2022-169

City Attorney McCauley Nason introduced Assistant City Attorney Aaron Price from her office Attorney Price presented background information relating to the time line of previous and current application by Mr. Grover related to the property at 5975 Concord Blvd. Attorney Price listed 5 violations as reason for denial of which he addressed items 1-3 and Chief Chiodo addressed items 4-5. Atty Price stated staff recommends denial and adoption of resolution.

- Application for Rental License: 5975 Concord Boulevard East
- February 10, 2020: Gregory Grover submitted a rental license application to the City for 5975 Concord Boulevard East ("Property").
- Due to the COVID-19 pandemic, Mr. Grover's February 10, 2020, rental license application was put on hold and later withdrawn on February 2, 2021, at Mr. Grover's request, with a full refund of the rental license application fee.
- May 3, 2021: Mr. Grover submitted another rental license application to the City for the same Property.
- August 10, 2021: Mr. Grover requested the rental license application submitted on May 3, 2021, for the Property be withdrawn, with City staff confirming Mr. Grover's request through a written notice.
- April 5, 2022: City staff received a third rental license application from Mr. Grover for the Property, which is the current application before the Council.
- City Staff Review of Rental License Application
- City staff received a completed rental license application, including all required documentation and payment of the appropriate fees, from Mr. Grover on April 5, 2022, for the Property.
- The rental license application was reviewed by City staff in order to make a recommendation to the Council.

- Based on a review of the application and the information submitted by Mr. Grover pursuant to City Code § 4-13-3, City staff is recommending DENIAL of Mr. Grover's rental license application for the Property.
- Grounds for Denial: City Code § 4-13-8B
- City Code § 4-13-8B outlines fourteen reasons that provide sufficient grounds to deny a license application.
- In addition to the reasons stated in City Code § 3-2-10, any license may be denied for one or more of the reasons stated in City Code § 4-13-8B.
- Based on its review of Mr. Grover's license application and background investigation, the recommendation of City staff for denial is based on the following five violations of City Code § 4-13-8B:
 1. The proposed use does not comply with the zoning code in violation of City Code § 4-13-8B-1.
 2. Mr. Grover has made fraudulent statements, misrepresentations, or false statements in the application or investigation for or in the course of Mr. Grover's business in violation of City Code § 4-13-8B-4.
 3. Mr. Grover has been conducting rental activity without a license in violation of City Code § 4-13-8B-13.
 4. Mr. Grover is conducting a licensed activity in such a manner as to constitute a breach of the peace, or a menace to the health, safety and welfare of the public, or a disturbance of the peace or comfort of the residents of the City, upon recommendation of the public health authorities or other appropriate City official in violation of City Code § 3-2-10-A-3.
 5. Other good cause in violation of City Code § 4-13-8B-14.

Reason #1

Violation of City Code § 4-13-8B-1:

The proposed use does not comply with the zoning code.

- Proposed Use Does Not Comply with Zoning Code
- The Property is currently zoned R-1C, one-family residential district. Only single-family homes or single-family dwellings are allowed in this zoning district.
- December 18, 2019: Mr. Grover's tenant on the Property advised City staff that Mr. Grover was renting his single-family home as a duplex.
- February 10, 2020: Rental license application for the Property listed the property type as a duplex, with the total number of units as two.
- May 3, 2021: Rental license application for the Property listed the property type as a duplex but did not list the total number of units.
- April 5, 2022: Current rental license application lists the property type as a single-family home with one unit, however, the application was a duplicate of one that was previously submitted by Mr. Grover and dated March 6, 2020.
- The Property has been designed as a duplex and occupied by more than one family, in violation of City Code § 4-13-8B-1.

Reason #2

Violation of City Code § 4-13-8B-4:

Mr. Grover has made fraudulent statements, misrepresentations, or false statements in the application or investigation for or in the course of Mr. Grover's business.

- Fraudulent statements, misrepresentations or false statements in the application or investigation
- In the three rental license applications submitted by Mr. Grover for the Property, the property type has been listed as a single-family home and a duplex with a total number of units as either one or two.
- December 31, 2020: Mr. Grover filed an eviction action that stated the tenant occupied the Property's "lower" apartment.
- August 31, 2020: Mr. Grover filed a claim seeking compensation for tenant's damage to the Property. Mr. Grover's claim included a sworn statement from the other tenant on the Property that stated they rented the "upper" apartment.
- The property type and total number of units listed in Mr. Grover's rental license applications has changed from year-to-year, but Mr. Grover's own civil case filings have consistently referred to the Property as a duplex with an upper and lower unit which Mr. Grover rents to the public.

Reason #3

Violation of City Code § 4-13-8B-13:

Mr. Grover has been conducting rental activity without a license.

- Conducting Rental Activity without a License
- From at least 2014, Mr. Grover has been conducting rental activity in the city.
- From the time the current rental license ordinance was adopted in October of 2016, Mr. Grover has rented the Property without having first obtained a rental license from the City.
- The City has learned of Mr. Grover's rental activities through City staff and Police Department contacts with his tenants, Mr. Grover's request for assistance from the Police Department at the Property for issues involving his tenants, and through Conciliation Court and Dakota County District Court civil case filings.
 - Mr. Grover has initiated at least seven Conciliation Court and Dakota County District Court actions relating to the rental of the Property. These include eviction actions, monetary recovery for property damage caused by tenants, breach of lease agreement, defended against claim from tenant involving withholding of security deposit and housing lockout.
 - These civil court actions establish Mr. Grover's ongoing rental activity at the Property without first having obtained a rental license from the City.

Reason #4

Violation of City Code § 3-2-10A-3:

Mr. Grover is conducting a licensed activity in such a manner as to constitute a breach of the peace, or a menace to the health, safety and welfare of the public, or a disturbance of the peace or comfort of the residents of the City, upon recommendation of the public health authorities or other appropriate City official.

- Breach of the Peace, Menace to the Health, Safety and Welfare of the Public, Disturbance of

Peace or Comfort of Residents

- Tenants at the Property have had numerous contacts with the Police Department over the past several years involving issues of domestic assault, verbal altercations between tenants, property damage, intoxicated tenants, tenants with active arrest warrants.
- Since January 1st of 2020, the Police Department has been called to the Property or completed incident reports related to the Property over twenty-five times, an unusually high number for one residence.
- Mr. Grover has initiated numerous email communications with Police Chief Chiodo making demands of the Police Department to provide assistance with his problem tenants.

Reason #5

Violation of City Code § 4-13-8B-14:

Other good cause.

- Other Good Cause
- The Police Department has received several complaints from former tenants alleging that Mr. Grover has harassed them and even a family member by text and Facebook message.
- Mr. Grover attempted to illegally evict a tenant while she was staying at a women's shelter by changing the locks and removing her belongings from the Property and placing them in a trailer in the front yard.
- Mr. Grover has either used or attempted to use the Police Department to handle rent collection from tenants, various civil court issues including testimony from City staff, and made requests to Police Department officers to draft incident reports for his personal use in actions directed at his tenants.
- Mr. Grover has photographed his tenant's open mail while inside tenant's apartment while the tenant was not home.
- October 8, 2021: Mr. Grover entered a guilty plea in Dakota County District Court to misdemeanor operating a rental dwelling in the city without a license in violation of City Code § 4-13-3; received a stay of adjudication.
- Reasons for Denial of License
- Any license may be denied for one or more of the reasons articulated in City Code § 4-13-8B.
- City staff and the Police Department have documented Mr. Grover's failure to follow the conditions set forth in the City's rental license ordinance:
 - Applicant's use of a single-family residence in the R-1C zoning district as a duplex.
 - Applicant's misrepresentations in his 2020, 2021 and 2022 rental license applications.
 - Applicant's failure to properly address his tenant's behavior constituting a breach of the peace or menace to the health, safety, and welfare of the public.
 - Conducting rental activity on the Property without a license.
 - Engaging in harassing behavior towards his tenants and their families, engaging the Police Department for personal actions directed toward tenants, and pleading guilty to conducting rental activity without a license.

- All of these activities constitute a violation of City Code § 4-13-8B and create valid grounds to deny Mr. Grover's 2022 rental license application.
- Staff Recommendation
- Based on the information presented this evening and Agenda Report and Exhibits submitted into the record, it is the recommendation of City staff, including the Police Chief, that the rental license application for 5975 Concord Boulevard East submitted by Gregory Grover be DENIED.
- Motion to adopt Resolution denying the rental license at 5975 Concord Boulevard East.

Applicant Greg Grover approached along with his Attorney Greyson St Martin appearing on Mr. Grover's behalf. Attorney St Martin stated the City has the authority to approve so that Mr. Grover is under the same umbrella as other renters. Mr. Grover has provided data requests showing no other applicants have been denied a rental license. Attorney St Martin takes issue with the 5 points outlined.

Councilor Piekarski Krech Asked if the upper and lower are under one agreement and paying with separate checks. Mr. Grover replied sometimes. Mayor Bartholomew asked if there was a written agreement and Mr. Grover stated yes.

Attorney St Martin quoted the definition of a rental unit based on code and stated Mr. Grover was not notified he needed a rental license until 2019 and applied for the 1st time in February 2020. Atty St Martin again asked that the city approve the application so that Mr. Grover can be in compliance under the same umbrella as other applicants.

Mayor Bartholomew Asked Attorney McCauley Nason what the zoning of the property is and make sure that property is only rented to a single family not individuals. Mr. Grover stated he has never rented to more than 4 individuals at a time.

Mayor Bartholomew would like input from the city attorney as far as tenant behavior. Mr. Grover stated he understood that during Covid there were only 3 reasons he could evict a tenant. He took a tenant to court, but the judge didn't feel the reason was excessive. Councilor Piekarski Krech asked Mr. Grover how long has the house been rented, 1990? Mr. Grover replied he hasn't owned the house since 1990. Councilor Piekarski Krech stated that is the last recorded sale. She asked if the basement and main level are the areas rented. Mr. Grover replied the basement has two bedrooms and bath and kitchen are on the main floor.

Community Development Director Rand stated about a year ago the applicant that did withdraw his application. Mayor Bartholomew stated he has several concerns. Would like to know if the statute permits room by room rentals. Attorney McCauley Nason explained the definition if a family depends on how the house is structured. Councilor Piekarski Krech asked if only one person signed contract and another person paid was the person on the contract.

Councilor Gliva Asked if anyone has seen the inside of the house. Mr. Grover replied state inspectors. Mayor Bartholomew asked Mr. Grover if he had inspections and he replied, "yes when he bought the house 12 years ago." Councilor Gliva asked again has anyone been inside the

house. Mr. Grover replied, "you can take a look."

Motion by Gliva; second by Dietrich to accept all materials as part of the official record for Rental License Application for 5975 Concord Blvd

Ayes: 5

Nays: 0 Motion carried

Mayor Bartholomew asked for clarification that the applicant, if denied, could reapply Attorney McCauley Nason replied that was correct. The applicant can reapply only if conditions previously mentioned were addressed. Mr. Grover stated he had a question for Attorney McCauley Nason and Mayor Bartholomew asked Mr. Grover not to point. Attorney St Martin approached Mr. Grover and asked him to sit down.

Motion by Gliva; second by Dietrich to deny the Rental License Application for 5975 Concord Blvd. Resolution 2022-169

Ayes 5

Nays 0 Motion carried

Chiodo wanted to clarify that Mr. Grover continued to rent his property after a court order was issued for him not to rent his property. Councilor Dietrich wanted to know what would be done in the future since this applicant went against a court order. Councilor Piekarski Krech asked if we procure background checks and Chief Chiodo stated we do criminal background checks but that does not include civil cases.

Councilor Dietrich asked how we will know if there has been a civil action and Chief Chiodo replied the city would only know because of other contacts with the applicant civil background checks are not routine. Councilor Dietrich Stated maybe this needs to be looked into for future discussion.

F. LMCIT Insurance Renewal Resolution 2022-170

Insurance policies are obtained through the League of Minnesota Cities Insurance Trust (LMCIT) Property/Casualty renewal requires use of insurance agent. The City's current agent is Arthur J. Gallagher Risk Management Services, Inc. Staff intend to put out an RFP for agent services towards the end of 2022. Workers Compensation renewal does not require the use of insurance agent. Policy period for both renewals is Sept. 1, 2022 through Sept. 1, 2023.

Types of Coverage Included in P/C: Property & Mobile Equipment. Includes buildings and contents (including vacant buildings and buildings under construction), property-in-the-open, and mobile equipment.

Municipal Liability provides protection for claims someone else makes against the city, an officer or employee of the city for actions arising from the course and scope of normal duties.

Automobile Covers auto liability, damage, no-fault personal injury protection, uninsured/underinsured

coverage.

First Party Cyber - provides \$250,000 in to cover the cost of data security breach response costs, loss of revenue, data restoration, computer equipment restoration. LMCIT insurance pool shares a \$10 million event limit and a \$25 million aggregate limit over the year. According to the FBI's 2020 Internet Crime Report, 2020 saw a record 69% increase in cybercrime over 2019.

Equipment Breakdown policy protects the city from the unexpected cost and expense associated with equipment and machinery breakdowns. Examples: air conditioning, refrigeration, heating equipment, water system pumps and motors, compressors, boilers.

Crime policy automatically included in the P/C policy; Crime coverage provides \$250,000 of coverage for crime losses by non-city employees. Examples: non-employee theft, forgery, fraudulent instruction claims.

Petro fund policy is automatically included in the P/C policy. Petro fund coverage provides reimbursement for 90% of the clean-up and liability costs from a petroleum products storage tank leak or spill, up to \$1 million. LMCIT property coverage provides reimbursement for the remaining 10% of the costs related to a tank leak or spill.

Municipal Bond policy covers the city in the event an employee does not perform their duties in good faith. Examples: Losses related to investments not in accordance with state statute, losses, and penalties due to theft of funds to be remitted to a taxing agency, losses due to an employee who harms a member of the public and the act is clearly malfeasance, willful neglect, or bad faith.

Assistant Finance Director Hosszu went over the percent increases for the 2023 Budget.

Property and Casualty will be 4.12% proposed premium increase. 2023 property/casualty insurance allocations have been budgeted at a 5% increase. Allocation also covers any deductibles Allocation also covers staff time allocated to these insurance activities (5% of Finance Director, 5% of Assistant Finance Director's time). Staff believe 2023 allocations are sufficient to meet the proposed premium increase.

Additional Coverage Options

1. Primary Vehicle Use. This option makes LMCIT the primary coverage on employee's personal vehicles while the employee is driving as part of their job duties. Note this is only for liability insurance. Cost of this coverage - \$1,161. The city has been carrying this type of coverage. Staff recommend continuation of this coverage.
2. Enhanced Auto Physical Damage Coverage. If a vehicle with this coverage is considered a loss, the coverage will pay the amount to purchase an equivalent new auto rather than the cost of a new auto less depreciation. Cost is ~\$1,200 total. This covers 23 vehicles: fire trucks and plow trucks. The city has been carrying this coverage on fire trucks and plow

trucks aged less than 10 years. Staff recommend continuation of this coverage.

3. Premises Medical Coverage. Premises medical coverage provides a relatively small amount of coverage for medical expenses to anyone who may be injured by a condition on city-owned property. This is no-fault coverage which means the injured person receives the benefit without having to show the injury resulted from the city's negligence. The coverage limits are \$2,500 per person and \$10,000 per occurrence. Cost would be \$971 for the year but claims are included in our claim history. The city has not carried this coverage in the past. Staff recommends the city not elect this coverage due to the increased exposure from potential claims in this area.
4. Excess Liability Coverage. The city's current limits are between \$100,000 and \$3 million depending on the claim type. Excess liability coverage would provide an additional \$2 million in coverage in an umbrella like policy. The premium for this optional coverage is \$63,988. The city has not carried this coverage in the past. Staff recommend the city not elect this coverage as it increases premium cost by 15% and likelihood of need is minimal.

Not Available Coverages

1. First-Party Cyber Insurance Coverage Limits. Historically, LMCIT has allowed cities to request increased limits for Cyber Coverage. Current Limit is \$250,000. Staff requested a quote for \$500,000 in Cyber Coverage however the League is currently declining any requests for additional Cyber coverage due to increased exposure throughout the trust membership. This optional coverage is not available with the 2022-2023 policy renewal.
2. No Fault Sewer Backup Coverage. This coverage will reimburse a property owner for cleanup costs and damages resulting from a city sewer backup or from a city water main break, irrespective of whether the backup was caused by city negligence. The city requested a quote for this coverage. Per LMCIT, the city does not qualify as the following conditions must be met. City must have televised all sewer pipes within the last 10 years and maintained a record of those activities. City must have and maintain a written inspections program. Currently, the city does not qualify for this type of coverage.

Deductible Options. Staff recommends the city continue with the \$15,000 deductible per claim.

Workers' compensation premium increase is 41% (2021/22 \$534,132; 2022/2023 \$750,527)
Premium Increase Drivers were due to the increase in public safety rates tied to PTSD; Police rate increased by 30%; Full time Fire rate increased by 18%; Paid-on-call Fire rate increased by 11%; Addition of 17 employees not included in the previous renewal.

The Trust is seeing an increase in claims related to PTSD. Since 2013 the Trust has incurred roughly \$36,000,000 in PTSD Claims. Currently PTSD claims make up ~30% of the annual claims. If the Trust did not pay out PTSD claims, rates would decrease by ~25% this year. This statewide trend has led to increased costs for insuring employees in public safety categories (greater exposure).

Budget Assumptions are 2022 budget allocation was held flat (0%). This would accommodate the decrease in premium and increase in staffing. 5% increase assumed for 2023 budget as staff anticipated larger increase to this premium. Recommendation to utilize fund balance (2022 premium savings) to cover 2022-2023 shortfall.

Staff recommends approval of Resolution for renewal of Property and Casualty and Workers Compensation insurances. This resolution is inclusive of the primary vehicle use and enhanced auto physical damage coverage and excludes the excess liability and premises medical coverage. LMCIT Renewal Deadline: Sept. 1, 2022.

Motion by Murphy; second by Piekarski Krech to approve LMCIT Insurance Renewal Resolution 2022-170

Ayes 5

Nays 0

Motion carried

7. Public Comments - none

8. Mayor and Council Comments

Mayor Bartholomew wants to remind everyone to vote in the primary tomorrow

9. Adjourn

Motion by Piekarski Krech; second by Gliva to adjourn the meeting at 10:04 p.m.

Ayes: 5

Nays: 0

Motion carried.

Minutes prepared by Administrative Support Specialist Judy Wonick