

INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, SEPTEMBER 11, 2023 - 6:00 P.M. - 8150 BARBARA AVENUE

1. CALL TO ORDER:

The City Council of Inver Grove Heights met in regular session on Monday, September 11th, 2023, in person. Mayor Dietrich called the meeting to order at 6:04 p.m. The Pledge of Allegiance was recited.

2. ROLL CALL:

Present In-Person: Mayor Dietrich; Council Members: Murphy, Gliva, T’Kach, Scales; City Administrator Wilson, City Attorney McCauley Nason, City Clerk Kiernan, Finance Director Hove, Assistant Finance Director Hosszu, Environmental Specialist Sutherland, City Engineer Merchlewicz, Human Resources Manager Shefchik, Communications Manager Looze, Police Chief Chiodo, Parks and Recreation Director Lares, Public Works Director Connolly

3. PRESENTATIONS:

A. Proclamation Congratulating the River Heights Chamber of Commerce on their 120th Anniversary

Mayor Dietrich presented a Proclamation to congratulate the River Heights Chamber of Commerce on their 120th Anniversary.

The Mission of the River Heights Chamber of Commerce is to foster and promote the interests of local business community through advocacy, partnership, member services, networking events, and educational and workforce seminars and resources.

The River Heights Chamber of Commerce is supported by the financial and volunteer resources of businesses located and operating in the cities it serves.

The City Council of Inver Grove Heights extends its sincere congratulations to the River Heights Chamber of Commerce on the remarkable accomplishment of its 120th Anniversary and thanks them for their valuable contribution to the business and civic life of our community. Proclaimed this 11th day of September, 2023.

Mayor Dietrich presented Chairman Joe Harms with the plaque.

4. CONSENT AGENDA:

A. Minutes of the August 14, 2023 City Council Meeting

B. Approval of Disbursements. **Resolution 2023-192**

C. Personnel Actions

D. Approval of New Massage Business and Therapist License

E. Renewal of Rubbish Hauler License

F. Resolution 2023-193 Accepting Work and Approving Final Contractor Payment for City Project No. 2023- 09A – Crack Seal

G. Resolution 2023-194 Accepting Work and Approving Final Contractor Payment for City Project No. 2023- 09B – Seal Coat

H. Resolution 2023-195 Accepting Work and Approving Final Contractor Payment for City Project No. 2020-12 - Argenta Trail Drainage

I. Resolution 2023-196 & 2023-197 Awarding Contract and Approving Budget for City Project No. 2023- 18 - South Grove Ultra-Thin Bonded Wear Course

J. Resolution 2023-198 Approving Contract with AE2S, LLC for Citywide Lead Service Line Inventory (City Project No. 2023-17)

K. Resolution 2023-199 Approving Submission of Public Comments on the Metropolitan Solid Waste Management Policy Plan 2022-2042

L. Resolution 2023-200 Approving Natural Resource Management Plan for Seidls Lake Park

M. Authorization to Submit CVB Grant Application for 2024 Recovery Grant From Explore MN

N. Order Assessment Hearings, Declare Costs to be Assessed, and Order Preparation of Proposed Assessments for 2023 Pavement Management Projects 2022-09 I, J and L. **Resolutions 2023-201, 2023-202, 2023-203, 2023-204, 2023-205, 2023-206**

O. Resolution 2023-207 Authorizing Release of Non-Public Appraisal Data

Councilmember T'Kach requested pulling Agenda Item 4K.

Motion by Scales, second by Murphy, to approve the Consent Agenda as presented with exception to Agenda Item 4K.

Ayes: 5

Nays: 0 Motion carried.

Agenda Item 4K. Resolution 2023-199 Approving Submission of Public Comments on the Metropolitan Solid Waste Management Policy Plan 2022-2042

Councilmember T'Kach stated this is in regard to items staff will be submitting to the Minnesota Pollution Control Agency (MPCA) regarding the Metropolitan Solid Waste Management Policy Plan. She mentioned that staffs' comments are appropriate and work well for the city. She said as a community that is home to three landfills, she believes they want to make sure to hold the state accountable for putting into place the legislative and financial resources that are needed to reflect the waste hierarchy about how to manage waste from source reduction and waste prevention down through waste to energy and landfilling. There are public and environmental health consequences in waste. She said if wanting to do that, a comment should be added as follows: "The City of Inver Grove Heights as a community that receives vast quantities of garbage generated in and around the metro area, encourages the MPCA and Dakota County to adequately fund and put into place the legislative and financial resources needed to ensure that the number one strategy of the waste hierarchy is prioritized over the other strategies of the waste hierarchy including recycling, waste to energy, and landfilling".

City Administrator Kris Wilson stated there were no issues from a legal perspective. She said Environmental Specialist Ally Sutherland, has worked on the initial draft with the Environmental Advisory Commission.

Environmental Specialist Ally Sutherland provided the following background:

- The MPCA prepares a plan that is included in the Council packets.
- It is prepared every 6 years. Dakota County plans and updates along with a stakeholder process.

This is when the city also weighs in on the plan.

- The framework determines how to manage solid waste within the 7-county area over the next 20 years.
- Includes 70 broad strategies for counties to choose from and incorporate into their Solid Waste Management Plan.
- Public comments are currently being accepted through September 17th.

- Once the State plan is approved, Dakota County will go through their stakeholder engagement process (Inver Grove Heights also weighs in).
- Waste Hierarchy:
 - Reduce, Reuse, Recycle, and Organics Recycling (most preferred)
 - Landfill (least preferred)

She mentioned what Councilmember T'Kach was referencing is that funding not only go to disposal methods, but also to prioritizing funding toward reducing and reusing strategies.

Mayor Dietrich asked if there were any implications to adding the language.

Environmental Specialist Sutherland replied there was not; she believes it makes sense. She stated that SCORE is funding the legislature provides annually to counties to implement these strategies. SCORE funding does not designate how to use them proportionally; it says it can be used towards any eligible activities. Organics was the only portion set aside. She believes it makes sense for the city to make a comment such as the one recommended by Councilmember T'Kach. The plan's objective goes up to a 5% increase and states changes such as less landfilling. She said it makes sense to request that funding follows that from the legislature.

Councilmember Murphy said 5% does not seem like a lot in waste reduction. He supports adding the language.

Motion by T'Kach, second by Scales, to add comments to the current staff comments such as: "The City of Inver Grove Heights as a community that receives vast quantities of garbage generated in and around the metro area, encourages the MPCA and Dakota County to adequately fund and put into place the legislative and financial resources needed to ensure that the number one strategy of the waste hierarchy is prioritized over the other strategies of the waste hierarchy including recycling, waste to energy, and landfilling", along with what was referenced by the Environmental Specialist for Resolution 2023-199, Approving Submission of Public Comments on the Metropolitan Solid Waste Management Policy Plan 2022-2042.

Ayes: 5

Nays: 0 Motion carried.

5. Public Hearing:

6. Regular Business:

A. Adoption of Preliminary 2024 Budgets & Tax Levy for Taxes Payable 2024. Resolutions 2023-208, 2023-209, 2023-210, 2023-211

Finance Director Amy Hove discussed 2024 Budgets and the Tax Levy for taxes payable 2024.

Council actions needed:

- Adopt Citywide Preliminary Tax Levy
 - By September 30th, the Council is required to adopt a preliminary levy. When passing a final levy in December, the levy cannot be any higher than what is passed but can be lowered. The proposed notice will be based on the preliminary levy set this evening.
- Adopt Preliminary General Fund Budget
- Adopt Special Taxing District Preliminary Levies
- Set the date, time, and place for the statutorily required public meeting on the city's proposed budget and levy.

2024 Budget - Included in Base (4.8%)

- 3% wage increase, plus step increases for all full-time staff.
- 10% to the city's costs for employee health insurance.
- 5% increase in the Pavement Management Levy.
- Slight increases to the amount of the levy transfer to the EDA and Parks Capital Replacement Fund.
- Reduced revenue assumptions from permits due to lower level of building and development projections.
- Obligation for tax abatement levy for the Crossings apartment building.
- Ongoing SAFER Savings Plan; increase of \$200,000 for 2024.

Additional needs/challenges to consider:

- Staffing levels have not always kept up with the workloads and demands of a growing city.
- Some pay structures are not as competitive to keep people in part time, seasonal, and temporary positions. Adjust pay structures.
- Costs of goods and supplies have increased significantly.
- City has deferred maintenance on facilities and infrastructure.

1st Draft presented at the July 31, Council Work Session:

- 2023 approved budget passed in November 2022: \$30,334,795
- Draft received on July 31st showed a total levy of \$33 million dollars; an 8.9% increase

City Administrator and Department Heads came up with reductions:

- Updated information/improved estimates
- Other funding sources for one-time costs
- Some use of fund balances (EDA & Technology)
- Reducing requested amounts to better follow historical needs
 - Total of \$654,052 in reductions

City Administrator Recommendations for Additions for New Staff:

- Park Maintenance Worker
- Street Maintenance Worker - funding 20% General Fund, 80% Stormwater Fund
- Finance Utility Billing Coordinator
- 1 full time Firefighter
 - Total of \$365,000
 - Proposed 7.9% preliminary levy includes funding for the 4 positions

City Administrator Recommendations Levy Scenario - September 5th Work Session:

- First Draft Budget = 8.9%
- With \$654,000 in cuts, brings the preliminary levy down to 6.7%
- With cuts and layering in 4 additional staffing for \$365,000, brings the levy to 7.9%
 - Total proposed levy: \$32,741,394

Comparison of Dakota County Cities Preliminary Levies:

- Varies from 1.19% in South St. Paul, to 13.37% in Rosemount
- Lakeville, Rosemount, and South St. Paul all have mitigating factors with their levy
- Average of all Dakota County cities: 8.18%

Impact on Median Valued Homestead Property:

- Scenarios were run from 7.7% to 8.9%
- 7.9% is the Work Session figure
- Levy increase of \$2.4 million dollars over last years
- Tax rate of 50.434
- Average increase for a median valued property = \$86.00

- Median valued property for 2024 is \$343,000

Motion by Gliva, second by T’Kach, to set the city’s total Preliminary 2024 Levy. Resolution 2023-208

Ayes: 5

Nays: 0 Motion carried.

Finance Director Amy Hove presented on the Preliminary General Fund Budget: Budgets are preliminary, they can be revised until final adoption and are not locked in at this time. One item to note: Public Works shows zero; this was budgeting for the Public Works Director expenses relating to conferences and travel. This has been reallocated across other Public Works Divisions. The 2024 Preliminary Budget Proposed: \$32,964,994

Bill Pringle, 1805 63rd Street, asked if snow removal was included in the increase.

Public Works Director Brian Connolly replied snow removal is under street maintenance and parks.

Mr. Pringle asked if that would cover roads, park trails, and sidewalks.

Public Works Director Connolly replied yes, the portions that are planned to be plowed.

Motion by Gliva, second by Scales, to approve the Preliminary 2024 General Fund Budget. Resolution 2023-209

Ayes: 5

Nays: 0 Motion carried.

Finance Director Hove stated the city has three (3) Special Taxing District Levies.

- Stormwater Special Taxing District Levy
 - Established under MN Statute 444
 - Used to fund storm sewer improvements
 - Contains approximately 3,000 parcels
 - 10-Year Term (2018-2027)
 - Annual Levy of \$79,394

This amount does not change, it is the same throughout the 10-year repayment cycle. The city did this in lieu of assessing individual parcels within these areas

Motion by Scales, second by T’Kach, to approve the Special Taxing District Levies as presented. Resolution 2023-210

Ayes: 5

Nays: 0 Motion carried.

Finance Director Hove requested approval of the Time, Date, and Place for the statutorily required public meeting on the city’s proposed budget and levy. (Formerly known as the Truth in Taxation meeting). This notice information is placed on the proposed property tax notices.

Monday, December 4th, 2023 at 6:00 p.m.

City Council Chambers – 8150 Barbara Avenue, Inver Grove Heights

Motion by Murphy, second by T’Kach, to approve the public meeting (Truth in Taxation) for Monday, December 4th, 2023 at 6:00 p.m. as presented. Resolution 2023-211

Ayes: 5

Nays: 0 Motion carried.

Finance Director Hove invited the public to comment on any of the budget work sessions at any time.

B. Second Reading of Ordinance Amending Snow Removal Provisions of the City Code

Motion by Scales, second by T’Kach, to receive two (2) emails into the record.

Ayes: 5

Nays: 0 Motion carried.

Public Works Director Brian Connolly presented the 2nd Reading of the Snow Removal Ordinance:
Background:

- Winter Maintenance Policy revisions and a 1st Reading of the Sidewalk Snow Removal Ordinance was presented to the City Council on August 14, 2023.
- Staff reviewed recommendations and Council discussed modifications on the city’s past sidewalk and trail snow removal practices.
- Council requested staff provide notice to impacted properties and notify property owners of the proposed Ordinance changes.
 - Staff established a GIS web page and posted information on the website
 - Notices were sent out to 541 potentially impacted property owners
- The Winter Maintenance Policy was initially adopted in January 2011
- Goal of the Policy: Address snow and ice removal objectives and establish procedures for winter weather events
- Noted shortcomings in the 2011 policy:
 - Has not been updated to reflect changes in staffing, equipment, and infrastructure expansion
 - Lacks procedures for use of staffing across divisions
 - Lacks clarity for sidewalk and trail snow removal responsibility
 - City does not clear snow unilaterally from all public sidewalks
- Current Sidewalk Ordinance dates back to 1974
- Key Ordinance Details:
 - Places responsibility for sidewalk maintenance and repair on abutting property owners. (City does do maintenance on sidewalks along with street/capital improvement projects)
 - Ordinance states responsibility for maintenance (heaving/broken) is the property owner’s responsibility.
 - Identifies what a “nuisance” is on public sidewalks such as ice, dirt, and rubbish. (Does not state snow).
 - Identifies triggers for abatement of nuisances and tracking/payment of costs.
- Noted Shortcomings:
 - Does not address “snow” removal specifically
 - This was adopted at a time the city had substantially less infrastructure and very few public sidewalks and trails

Importance of Updates:

Winter Maintenance Policy: Impacts city maintenance processes and practices.

Snow Removal Ordinance: Impacts private property owners, detailing their responsibilities for the maintenance of abutting sidewalks.

The policy and ordinance are intertwined; changes in one impacts the other.

Having clarity in the policy and ordinance affords Code Enforcement and Public Works staff to effectively address complaints and maintenance activities equitably across the community.

System Statistics:

- 150 miles of city streets to plow/maintain
- 270 cul-de-sacs
- 78 miles of sidewalks and trails
 - City staff currently clears snow from 50 miles of sidewalks/trails along public roadways (64%)
 - 27 miles along city roadways
 - 5 miles in city parks
 - 18 miles along with County and MnDOT roadways (Maintenance Agreement to plow)

Proposed Changes in Sidewalk Plowing:

- Remove 4.2 miles of sidewalk from the current plowing routine:
 - South Grove (0.1 mile), portion of 63rd Street (east of Babcock Trail, 0.5 miles), 55th Street (west of Babcock Trail, 500 feet), Blaine Avenue (north of Seidl's Park, 0.5 miles), Argenta Trail/Yankee Doodle Road (west of Trunk Highway 55, 0.8 miles), Arbor Pointe (College Trail east of Cahill Avenue, Bechtel Avenue/Brewster Avenue/85th Street, Branson Drive, 2.3 miles).
 - Mainly residential parcels, some are adjacent to commercial properties.
- Add 4.25 miles of new County Trail:
 - Argenta Trail/70th Street/65th Street (working with the City of Eagan to determine what they would be plowing)

The parks department determines which trails to plow/not plow.

In the northwest area, nearly every street has sidewalks, most are residential. The city has not plowed them. The city takes responsibility for anything abutting city property.

City Code Modifications:

- Title 5, Chapter 9, Section 6(A):
Public Nuisance Code. Added definition regarding what is considered "Immediate Abatement."
 - Situation with plowing/snow removal, due to immediate danger to health, safety, and welfare. General clause.
- Title 7, Chapter 1, Section 2:
 - Adds term of "snow" to the current "ice, dirt, and rubbish on sidewalks" clause. Makes clarification of abatement requirements and costs.
 - Allows the streets superintendent and designated staff (code compliance coordinator) to provide notice and coordinate corrective action as necessary.

City Code Modifications: Enforcement:

- Current Code Requirements: 24 hours to remove ice, dirt, and rubbish.
- Proposed Code Clarifications:
 - 24 hours to remove snow, ice, dirt, and rubbish
 - Provide notice of non-compliance and 24 hours to correct the issue
 - If after 24 hours the issue is not addressed, the city can abate the issue and charge the property owner
- Soft Enforcement in 2023/2024:

- Focus on education of property owners regarding code
- Provide more leeway for compliance/correction
- Only abate if considered an emergency or the property owner is non-responsive/uncooperative

Property Owner Feedback:

Notices were sent to 541 property owners the week of August 21, 2023

- Emails/comments were received from three different property owners (1 phone call/2 emails)
- All correspondence was from residential properties
- Noted property owner's objections were to the recommendations for clearing responsibilities (for differing reasons).

Next Steps:

- Take Council feedback
 - Additional modifications can be made to the Ordinance language at Council's request
 - Any policy related items can be coordinated into the current draft
 - Staff can consider implementation of revised/updated sidewalk/trail plowing maps
 - Updates are tied to the Winter Maintenance Policy
 - If Council wishes to have more input, that can be taken into advisement this year and future years
 - Implementing Council changes and requests into the ordinance
- Proposed follow up date for adoption of the updated Winter Maintenance Policy and Snow Removal Ordinance would be October 9th, for the Third Reading and Summary Publication.

Action Requested: Council is asked to act on the Second Reading of the proposed Ordinance revisions related to snow removal. Staff recommends approval of the Second Reading.

Mayor Dietrich appreciated the education initiative for residents for the first season.

Councilmember Murphy commented that in 2025 and after, in a worst-case scenario, residents would have 48 hours to clear their sidewalks.

Public Works Director Connolly replied correct.

Councilmember T'Kach asked if this speaks to the winter of 2023/2024 or 2024/2025.

Public Works Director Connolly replied the soft enforcement would be done in 2023/2024. If things go well, it will be tightened up each year thereafter.

Jeff Jones, 4556 Blaylock Way, lives on the north end of Blaine, one of the routes eliminated. He has lived there since winter 2004; the sidewalks have always been done by the city. The area is 4/10 of a mile from Seidl's Lake Park to the north end of Blaine. Blaine is a main thoroughfare. 3.7 miles from the north end of Blaine to 80th Street, the sidewalks are done. The proposed map would stop about 100 feet short. It would knock 4/10 of a mile off of 3.7 miles. With the two associations there are likely 260 units/600 voters. People use the area. He said he tried to look at the cost savings, but it said, "not available." He was unsure of the amount; it didn't make sense. He referenced the 24-48 hours to clear and asked what they were being charged if they don't do it. He questioned if they were not already getting assessed for the sidewalks on the main thoroughfare.

Public Works Director Connolly replied that staff could check into the cost savings. It is system-based plowing. It has to do with ability of service and how many walks they can get to. The reason it stopped at Seidl's Park is because that is a city parcel, the city has responsibility. The other reason is because Blaine Avenue dead ends in a homeowner's association. He was unsure

on the charge for failure to comply. The fee schedule is based on actual remediation costs, it would vary. For example, two inches versus two feet of snow. The city is not set up to abate. It is the cost and time to hire a contractor to abate the issue.

Mr. Jones asked if this has been a problem for the last 19 years. He questioned why the city wants to stop clearing the sidewalks; if it just became a problem, has always been a problem, or if it is a cost saving measure. He asked if getting 48 hours to get snow off a sidewalk, why the city gets 4-5 days, or whatever is convenient. He said some people are on vacation, some are older. The reason he moved into a townhome was, so he didn't have to snow shovel anymore.

Bill Pringle, 1805 63rd Street, said it was mentioned during the preliminary budget discussion that new staff was approved in parks maintenance and streets maintenance. Both positions would be clearing streets. He noticed this year's street maintenance was \$3,316 and next year's budget was \$3,373. It did not go down. Street maintenance is not going down, staff is going up. He noticed they are removing 4.2 miles of sidewalks from plowing private residences and adding 4.25 miles of new county trail. He asked why they were taking from one and doing for another. He said there is no change in the number of miles being done, two staff members have been approved, maintenance went up, and there were no budget cuts. He did not understand why they are losing the privilege of the city clearing their private sidewalks. He asked the Council to consider this, it does not make any sense to him. He referenced the letter to residents stating there were no specifics as to why they were getting rid of the snow removal.

Mayor Dietrich stated one of the reasons was that staff is trying to clean up a very archaic code. When people call, the department does not know what to do with it because it is not consistent.

Public Works Director Connolly shared there is no fiscal discussion, it is based on policy and what the practice has been. It is a matter of not having enough staff or equipment to be able to do as much as they are doing. He agreed there were more trails coming online that they may be taking responsibility for. This would put the focus on trails that are on primary roadways and state aid routes. Many county roads are adjacent to city property or are back yard frontage that people are not expected to clear. Staff looks at areas where plowing is already being done in residential neighborhoods and where there are areas in homeowner associations that may already be partially or fully plowed.

City Administrator Kris Wilson stated the city is not being consistent, not treating all residents with sidewalks in front of their homes consistently. Some have them plowed by the city, others do not. They are not talking about cuts. If treating all of the city fairly, there would be a greater increase in staff and equipment in order to do a consistent job. This would require a higher property tax levy to be applied to all in the city including those who do not have sidewalks. The city is trying to have current staff and equipment spread as far and as efficiently as possible and be fair to those in different parts of town. There is a lack of fairness that would have a significant cost if going in the direction of doing all.

Mr. Pringle asked how they could vote on this before the budget is approved. If the budget is approved with two workers, there is additional staff. He questioned if this wasn't being done out of order.

Cindy Schmidt, 1915 55th Street East, read from a letter she sent to all Councilmembers. She stated 55th Street East is the only entrance/exit to Lake Cove Apartments which has 487 units with thousands of people. When proposing the street, they were told there would be a sidewalk. There has never been a sidewalk, people walk on the grass. She said they have had problems with theft and trespassing;

problems with people living in Lake Cove. When the sidewalk was placed, she asked Steve Dodge who would be legally and physically responsible for the sidewalk. The reply was that the city is responsible, the city would have total responsibility if sued. She did not get that in writing and did not believe she needed to, this was an integrity and business issue. She mentioned that the only reason the sidewalk is there was for Lake Cove. She does not use it, but her husband clears it; for her it's a liability. She said she would have used an attorney back then over the sidewalk had she not been promised that the city would be legally responsible if she were sued. It's 500 feet, but it's the people that walk-in front of her house using it that is her concern. She said it wasn't fair for the city to change it.

John Kindem, 8674 Collin Way, said the list of streets and the map are different. Their street wasn't listed but is on the map. He lives in a cul-de-sac, it's an HOA on a private road. They pay for all plowing for the area, there are no sidewalks. He said they are inheriting a sidewalk. He asked if there was a legal responsibility if someone falls and gets hurt on the sidewalk. They have insurance for their property but not the sidewalk.

Chuck Brostrom, 4585 Blaine, shared from Seidl's Lake Park north to the end of the cul-de-sac, is the end of the driving lane. There is a well-worn path that intersects 21st Avenue in South St. Paul. There is a lot of foot traffic going up and down Blaine Avenue to get to 21st and to Southview Boulevard where city buses run. A lot come south in the morning to go to Gertens and the restaurants. A lot of people use the area. There is value for people that walk all year long.

Heather Thornton, 7621 Addison Path, asked how the city would become aware of someone who isn't removing snow or ice and how the homeowner would be notified. She said doesn't like gray areas, that is how it ends in confusion such as this. She suggested during the interim, they move to a two strikes and then a fine. It would be more clearly defined than having an education year and then hardening it. She said it would be nice to have something more concrete to help with the change.

Mayor Dietrich asked Public Works Director Connolly if the Council can be kept updated on the responses and staff recommendations back to residents.

City Administrator Wilson asked if the Council was willing to approve the Second Reading or if there should be a 2nd, Second Reading.

Councilmember T'Kach referenced sidewalks and asked who is responsible in general.

City Attorney Bridget McCauley Nason replied it depends. Slips and falls on sidewalks with liability cases are complicated. If someone slips and falls on a sidewalk, the person can sue the city and the homeowner. With regards to snow and ice, there are state statutes that determine how long you have to remove snow and ice. She said she would be open to providing additional clarification to the Council ahead of final discussion on the matter.

Councilmember Murphy stated this is about taxpayers in one part of the city paying for work being done in another part of the city and may not be getting that work done on their sidewalks. He believes it's about leveling the playing field. Knowing there is a Third Reading and time for more input, he would move the Second Reading on this item.

Motion by Murphy, second by Scales, to approve the Second Reading of an Ordinance Amending Snow Removal Provisions of the City Code.**Ayes: 5****Nays: 0 Motion carried.****C. Comprehensive Plan Amendment for Outlot D, Argenta Hills. Resolution 2023-212**

City Planner Allan Hunting presented a proposed Comprehensive Plan Amendment for Outlot D of Argenta Hills. It is a vacant parcel west of Target that had been planned for regional commercial. The applicant is looking to guide the balance of 2.37 acres so the entirety of Outlot D would be 12.37 acres for high density residential. The concept is for a 200-unit market rate apartment building and 30 units of townhomes.

Background:

- Outlot D is 12.37 acres
- In 2018 the City Council approved a resolution which conditionally guided the westerly 10 acres from regional commercial to high density residential. The applicant is proposing to reguide the balance of Outlot D, so it is all guided high density residential.
- The Argenta Hills development was approved in 2007. At that time, it was a mixed-use PUD that was approved for 410,000 square feet of commercial and 154 residential units.
- There have been some changes to the plan:
 - The parcels have remained vacant.
 - Councils have looked at three different requests to change this to residential.
 - In 2017 there was a request for Outlot C and D for a 400-unit apartment building. Council denied the application.
 - In 2018, the Council reviewed a plan showing 220 high end apartments on Outlot D, 10 acres. Outlot C was to remain commercial.
 - Council conditionally approved a comprehensive plan amendment to the west 10 acres.
 - Council at that time felt it was reasonable to change the guiding to high density residential.
 - Before it took effect, the Council had to approve a site plan. This did not occur after Council took action.
 - The conditional guiding remains in effect but was not put into place/action.
 - The Comprehensive Plan map still shows regional commercial. A developer could follow the conditionally approved amendment to high density residential (as is this request).
 - In 2021 there was a request over both Outlots C and D, for 320 units of a townhome development. Council denied based on direction to provide some type of commercial component. The developer did not do this, therefore Council denied.

Discussion Points:

- Amending the comprehensive plan would allow the density back to anticipated levels when all of the northwest area was looked at.
- Goals in the comprehensive plan: An apartment project would be consistent with those goals by providing different housing types and densities.
- Retaining commercial outlots would leave designations in place to provide additional land for the potential to provide goods and services.
- Original approved PUD was mixed use development.

Action Requested:

- Determine if the request to amend the additional/balance of Outlot D, 2.37 acres, is a benefit to the city.
- If so, should the whole Outlot be changed?

The Planning Commission recommends approval of the balance of the comprehensive amendment extension.

If the Council supports this amendment before it's officially enacted and does not change on a map, a developer would have to come back through to request and be approved for a rezoning, preliminary PUD, site plan approval, and platting.

Councilmember Scales asked if they know exactly where the 2.37 acres is.

City Planner Hunting replied with the maps at the time, the developer was showing development over the westerly 10. There were no defined dimensions based on a map that was presented to Council with the balance of 2.37 acres.

Councilmember Scales said they do not know exactly what the line is.

City Planner Hunting replied there is no legal description defining it.

David Fisher, 6718 Cove Point Road, Minnetrista, Minnesota, confirmed that Outlot D is the 2.73 acres, Outlot C is the portion next to it. Hempel currently owns the entire site. He said his company, Rise Capital, is under contract with Outlot D, the proposed site to develop.

- Rise Capital Partners is a family development business.
- BJ Baas Builders is their development partner.
- INH Properties out of St. Cloud, Minnesota, would be the property managers.

Their intent is not to develop, build, or sell. They are an ownership group; they want to develop and be long term parts of the community. They seek opportunities to build a property and own it for 10-20+ years. Their group has 880 total units. They have projects in Cambridge, Andover, and Monticello. A second one is under construction in Cambridge. This project, if approved, and one in Rochester would be built next year.

Why they are here:

- The legal description is unclear. They do not really need the 2.37 acres to develop what they would like to develop.
- There is a mismatch between the comprehensive plan and what is in the legal description of Outlot D. This causes a problem.

Conceptual Site Plan: Leaves 3+ acres of green space.

He said it is a bit problematic. Some of the prior proposals in front of the City Council were not buildable. As Hempel disclosed to them, approximately 3.5 acres of this land is unbuildable. It is a former quarry with depths between 30-48 feet of loose fill dirt. In order to build on it they would have to dig it out, put in compact dirt, or put pillars down. Either is prohibitively expensive for this type of building. The site constrains the development to more than the 2.37-acre addition being requested.

Design Considerations:

- Request involves Outlot D only.
- Their preliminary plan is lower density than some of the other plans.
 - 200 apartment units, 30 townhome units.
 - Market rate, no subsidy being requested.
- Will work on site lines, tucking the parking lot in. (Part of site plan approval).
- Intend to keep a portion for some type of greenspace.
 - Undetermined who would own/maintain with public access
 - Or donate a portion to the city

How this benefits the City of Inver Grove Heights:

- Helps meet unmet housing needs in the city
 - Engaged Viewpoint Consulting, who determines project availability, need, and demand.
 - Their view is that there is over 1,000 renter households coming by 2023, to the city that would need a place to live.
 - Current comparable properties: 1,200 units were looked at, have over 98% occupancy. 95% is considered full in their business, 98% is considered overfull/too much demand.
- Their development of apartments and townhomes would stimulate an area of the city that has sat dormant for quite some time and boost this section of the city.
- The project would add \$500,000 of property tax to the city.
- Provides significant parks and recreation contributions.

There are three different places within the 2040 Plan. They believe this type of development fits and is consistent with the 2040 Plan.

In Summary:

- They are a capable, proven team that can get this job done.
- This is a fiscal benefit to the city.
- Going to be good for neighborhood businesses. (Empty places/empty land).
- Will help stimulate the area for commercial.
- Fits with the comprehensive plan and the housing charter.
- Ask that the additional 2.37 acres be guided toward high density residential.

Councilmember Gliva said it is unknown exactly where the 2.37 acres is. With a map comparison, it looks like it would be imperative to have it all be high density in order to get all buildables.

Mr. Fisher replied with the 2.37 acres, the last three or four townhome blocks would sit on that conceptually. A lot more than 2.37 acres would be left unbuilt.

Samantha Fitzgerald, 7668 Addisen Path, requested the Council deny this proposed change to high density. She shared that in 2018 the Council voted to conditionally change the westerly 10 acres of Outlot D. It was made clear to Council who voted on it, and the residents, that it was based on McGough coming back with a plan. McGough did not come back with a plan; the resolution is for McGough until 2021. She said they came back with a land use designation change for Outlot C and D in its entirety. She questioned if the 2018 Council decision was in place, why McGough had to request a change for Outlot C and D in its entirety, and why they did not come back and ask for the 2.37 acres of Outlot D and then Outlot C.

She mentioned at the 2021 meeting, the Mayor asked for status on the 2018 conditional change. Staff was unsure of the answer and requested a legal memo. The memo, which residents had not seen prior to last month, was based on a 2018 resolution, prior to the 2021 Council vote. She said the memo should not be touted as law of the land. She asked Council/Staff to request a new memo based on the actual 2021 City Council decision which denied a resolution relating to the Comprehensive Plan Amendment to change the land use designation from regional commercial to high density. She asked if the 2021 decision by the City Council supersedes the 2018 Council decision on the partial conditional change for Outlot D.

She said as stated by Planning Commissioner Weber at a previous meeting, many other apartment plans have been approved in the city; why are they not breaking ground? If there is a demand for apartments in the northwest quadrant and the city, why are they not being built, they are already approved. She asked if the city could work with those developers to discuss this and get the approved

plans in motion to be built. She said she does not believe that anyone disagrees that there is a need for different styles of housing in the city, just not here.

She said the highest and best use of the lot is what the comprehensive plan states. She mentioned that many Councils, such as in 2019 and 2021, have started to leave the area for regional commercial. She questioned how many times the Council has to state this. She asked to please vote to deny this change. They cannot go back after this vote; she cannot stress enough the permanence of this vote.

Mayor Dietrich mentioned some of this information was news to her. She requested additional information relating to 2018.

City Attorney McCauley Nason addressed the 2018 resolution and why the 2021 Comprehensive Plan update request regarding for all of Outlot C plus Outlot D, if Outlot C was already conditionally regulated for HDR. She could not speak specifically to the application regarding Outlot D in 2021. She was unsure if it was for clarity for the applicant at the time.

She addressed the question regarding if the 2021 decision supersedes the 2018 decision, her opinion was no. The 2021 decision did not abrogate, rescind, revoke, or change the decision granted in 2018 to regulate that portion of the westerly 10 acres. If Council wanted an updated written memo or recommendation, she would prepare it and bring it forward.

The question regarding other areas and developers was appropriate for planning to address. City Administrator Wilson stated the planning department meets with every applicant that calls and is interested. There have been multiple conversations with developers preliminarily considering other places zoned for apartments. She was unsure why those do not proceed forward, that would be a question for those applicants.

Councilmember T'Kach asked if there were currently any approved apartment development plans in the city.

City Planner Hunting replied there are two projects that received preliminary approval. Canvas on the northeast quadrant of Highway 3 and 70th for detached rental townhomes. The preliminary plan had approval for a 180-unit apartment building. There has not been any action in pursuing this further. The other is in Peltier Reserve, south side of 70th, west of Argenta. It is currently under construction. There was an apartment pad that was approved as a part of the preliminary PUD.

Mayor Dietrich asked if the City Planner could speak regarding the confusion with 2018 and 2021.

City Planner Hunting replied that an application came in looking at the two outlots. Council took action on it. He did not believe anyone thought it had any impact on the previous 2018 plan.

Katie Pluff, 7670 Addisen Path, asked how they could be voting on a parcel of land when they don't know what the parcel of land is. If going by 2018, nothing was defined as to what the 10 acres were and what the 2.37 is.

Lisa Nathe, 7650 Addisen Path, said they have heard a lot about how creative Hempel is. There has been no creativity and forward thinking for this project. It is another apartment complex. She asked if they work together on what is best for the lot, not what's best for the developer. She suggested something good for the community. She said they cannot keep allowing small pockets of retail. This is an opportunity to have a thriving commercial and community area for the city. This cannot be had if rezoning all commercial lots. She asked the Council to vote to deny the request change.

Dick Monson, 8953 Almquist Way, Chief Operating Officer, Hempel Real Estate, stated he was present to discuss the property to the left and right of this site. He said he cannot stress enough how this is a lynchpin to bringing commercial and retail development to these outlots. With highest and best use, if parceling it off and selling as commercial, the city stands to make a lot more money (if the market would bear). The problem is many have stated the need to have density. He mentioned they also own the two outlots south of the two existing retail buildings. They also purchased 10 acres west of this, called Outlot E. The 2018 resolution plays into their decision to buy this piece of land. When doing a title and survey review, that resolution comes up as conditionally approved. He said their commitment to neighbors and Council is to come about this transparently. They take feedback into consideration as they develop a plan going forward. Multiple users have come through interested in the outlots, but not this site. The question comes up about when housing would get there. He said that retail patterns have changed, strip malls don't exist in the same way they used to. They are committed to filling these. They would not have purchased the additional 10 acres next door knowing the Council's appetite for commercial in the area and multifamily. They have had one of the one-acre outlots under contract twice, both cancelled stating they would wait until density is determined. He shared that he personally lives in the area and is excited about what will happen here, he hoped the Council agrees.

Devendra Gajway, 7676 Addisen Path, said the highest and best use of this lot is what the 2040 Comprehensive Plan states. He said the city recently hired a retail consultant. He suggested taking a step back and not losing that investment. This space could be lost to retail forever. He said this is the best use of this lot. He asked to deny this as a comprehensive plan change.

Ms. Thornton agrees with what the others have said. She asked what the Council is voting on, what it means, and what the next step might be. Her understanding was the 2.37 acres is being voted on as being added to the conditional approval for the existing outlot. That already has conditional approval to be changed to high density residential, contingent upon Met Council approval and site plan approval. She asked what common reasons there would be for a site plan to be refused and if criteria was needed. She referred to the plan in front of the Council and stated they could come back with a greater density. If no variances are requested and everything is compliant, she asked if the community can state it was too much density for the area, if that could be grounds for refusal. She questioned if it could be stated they want to stay in alignment with the comprehensive plan and believe in the commercial possibilities for the land. She said she is stuck with the permanence of this being rezoned to density. She believes in the opportunity for the area. She referenced Eagan's area right off the highway and stated this area is off a growing highway too. This is one of the remaining valuable portions of property in the city. She urged the Council to vote no. She sees this as a correction of a problem made with the 10 acres that was approved. If there is not a viable path to refuse without grounds that are acceptable, she suggested voting no and giving more time to consider what should be done with this property long term. She questioned if they were ready to give up commercial ideas for this land. She urged the Council to vote no.

Mr. Fisher addressed some of the questions raised. Regarding density, they have 230 with this site plan, they will not come with anything more than 230. This would be the largest density they would propose making. He said he wanted to separate reality from hope. There is a lot of hope that this entire parcel will become some retail destination. The reality is that Target was built in 2008 with the other buildings, not long after. One has sat empty since it was developed. Density is missing to create the rest of the land to be vibrant commercial. Their proposal brings density to bring the traffic to help other retail visions come to life. There has been hope for 15 years, it is not happening. He said the city has to do

something to make the two mesh up. He referenced the areas in Eagan as being mixed use, very high density along with retail, which has brought those developments.

Ms. Thornton said she has attended many of these meetings, lives in the area, and has a lot of background. The other thing missing is someone who has done a good job of selling some of those buildings. There was a poor job of selling and marketing. She said friends have called to begin businesses there, calls were not returned. She questioned how much was a sales problem. This would probably turn it over, or others that have been approved north of this location. She said they have to trust that those marketing the area are doing a good job selling to the right places.

Mayor Dietrich said there is renewed interest from the current Council in getting retail in this area. A consultant has been hired. She said it may not have been the case of predecessors; it is difficult to lump all of those years together.

Councilmember Scales referenced the 2.37 acres and the 10 acres and questioned if not approved, could they come to split the lot so they could take the 10 acres with the high density and put the 2.37 elsewhere. He asked if the lot was split able once the line is determined.

City Planner Hunting replied yes, replatting or a boundary change could be requested.

Councilmember Gliva asked if the 2.37 acres is buildable, if retail could be placed if housing could not be. She was thinking of the unsuitable soil underneath.

City Planner Hunting replied it is a long and skinny parcel. He was unsure about the soil. The original plan showed buildings on the perimeter, this would be the parking area. It would depend on the developer and how much money they wanted to put into soil correction. He said what may happen is the 2.37 blends into the rest of Outlot C, becomes larger, and a part of open space on a development plan, if going retail.

Councilmember Scales thought it could be greenspace on Outlot C or D. Either way it's probably not buildable.

Councilmember Murphy said statistics were heard that there is a need for 1,000 rental households coming to the city in the near future. He was sure it was true because in July, Fannie Mae said it was 11 million single family homes short. He addressed renting the units stating part of the development team makes light of it, but he was part of an organization trying to rent a place and they did a very poor job trying to rent it. He would like to give the retail consultant some time. He said if this isn't a perfect example of continually changing the comprehensive plan, he was unsure what is. He believes denying the change to the 2.37 acres makes the most sense, this Council has spoken about preserving retail. He said they have heard from the development team two different times that they do not need the 2.37 acres. He was more concerned, if this were to get approved or not approved, this acknowledges the supposed change to the original 10. Despite the letter and legal opinion, he does not personally believe there is a deal. He said the notes he took included the 2018 vote that Council conditionally approved the comprehensive plan change on the westerly 10 acres. In the minutes of that meeting of which he was in attendance, one Councilmember reiterated that the developer needs to come up with an approved site plan and staff agreed. The Mayor at the time stated there is no plan yet, and if one isn't approved there is no rezoning; staff agreed. He said this is how they cleared the room of residents. No plan was submitted for the 10 acres. What has not been noted in 2019 was that the Council re-voted on the current Comprehensive Plan which has this as regional commercial. In 2021, McGough and Lennar submitted it for all of Outlot C and D, not the 10 acres and not just 2.37, which is confusing

to him. In 2021 the Council denied the site plan brought forth by McGough and Lennar. In his opinion, it ends the conditional rezoning. He said he wants to preserve retail in the city, there isn't much zoning left to preserve. He is not willing to give up 2.37 acres. He does not believe there is a rezone on the original 10 acres. He believes that may be something legal that needs to address. He said this development team needs to be asking for all of the lots, not just for the 2.37 acres. He said he cannot support the change on the 2.37 acres.

Councilmember T'Kach asked Councilmember Murphy for clarification on "all of the lots."

Councilmember Murphy replied in 2021, the McGough/Lennar deal requested all of C and D.

Mayor Dietrich agreed this was confusing.

Councilmember Scales agreed it is very confusing. He was frustrated with the fast counsel on this. He believes some things were said that came from a sense of not understanding what should have been said and the legal ramifications. He is concerned about the 10 acres. He believes it will stand and said 2.37 is the issue. They will have to define a line on the 2.37, they cannot keep referring to it. His opinion is that someone would split the property, take the 10 acres, and build high density. He does not believe they can stop that. Moving forward, he said these would either have to be together or have a path for splitting.

Councilmember T'Kach trusts the attorney on this. She is concerned about the news she keeps hearing on the radio that some developer group is predicting that within 10 years 1/3 of all strip malls in the country would be gone because it's not the way people shop anymore. She said it's surprising all over, how many vacant places there are. She agrees the 10 acres is zoned high density. The project would go forward with or without the 2.37. She was unsure what someone would do with the 2.37, it could be water basin and/or greenspace. She wasn't sure it makes a difference either way regarding what happens here. Having had conversations with the developer, she said it sounds like they have interesting plans for the south part of the lot. She said she would like to ask the developers what they think about the other land in the area.

Mr. Monson said he cannot speak to specific uses, they are under negotiations with various parties, and there is confidentiality. The concept he asked the Council to think about is called "Entertainment." Retail that is working now is where a person can actively participate in something, grab a beer, food, is family friendly and may have sporting. Bigger uses that could use more than a couple of acres. He said they think of it as something people would drive 20 minutes to get to. A concept unique to the area would drive traffic. He agreed with Councilmember Murphy on the approvals and the way he described it. He said nobody has come back with a plan; they are conditional. Those approvals are valid as long as they come back with a plan the Council can review and make sure it complies with code. He said the request is to clean up the title issue. He referenced splitting the property and stated that is what they would do if this isn't approved. They would have to come back and have some process to determine where the line is. The city recorded the resolution in the title records. They have reviewed and approved it; it was taken into consideration when they bought the property. He said the Council has the opportunity to rescind/revoke but there are ramifications. He requested the Council believe in them. This site has been vacant for 15 years. Someone is not going to put a restaurant out there on 20 acres. He said they have plans to hopefully start to grow into Targets parking lot, increasing the retail footprint.

Councilmember T'Kach felt it was a done deal on the 10 acres. She said they seem to be faced with a high-density development from the previous Council. She does not disagree that higher density in the area is appropriate. She said it is difficult, but they should move forward with the 2.37. She has not heard a reason what difference it would make to move forward or not move forward. If it cleans up the title for the developer so they can move forward faster, she suggested getting something done and seeing if what is said comes to fruition. She commented that the developer has been working with the community to try to keep open space/green space and is pushing the development back as far towards the freeway as possible. This shows good faith efforts on their part.

Mayor Dietrich said her concern is the confusion about where the lines are and what exactly they were voting on. She does not have a lot of confidence in something where she does not have all of the data. It is not the kind of policymaker she wants to be.

Councilmember Scales said the property line may not be anything anyone can answer. The city does not know where it is, it has never been surveyed. In order to place lines, someone would have to have the property surveyed, which could be months down the road. His personal opinion is whether he likes the idea of high density or not, one way or another it cannot be changed. He said it is their job to make as good of a development/process as they can.

Mr. Fisher addressed the confusion stating they are not being asked to figure out which of the 2.37 acres is at question. They are asking to expand from 10 acres to 12.37 acres, which is Outlot D. The request is to change it from westerly 10 to 12.37 to match the lot. The line does not need to be determined as long as the Council states the existing 10 acres is already approved. It is on the title legally. The request is if the Council is willing to expand it from 10 acres to the full lot.

Mayor Dietrich asked the City Attorney if this was something the Council could address.

City Attorney McCauley Nason replied because the property is one parcel that was conditionally/contingently approved regarding. What was presented in 2018 when the original approval went through for the 10 acres, is the best information the city has as to what constitutes the western 2.37 acres.

City Planner Hunting responded that he has the site plan from that time to see what was meant. The concept plan showed the general line and a concept of retail, consistent with the 2007 plan with anchor tenants and 10 junior tenants. When the Council used that as a description, it was based on a plan for the westerly area with apartment/multifamily with the balance left for regional commercial. He stated when adopting a comprehensive plan land use plan, nothing is adopted by legal description. There are multiple properties that have two/three separate guiding's, those are a line on a map. When it is time to develop, the developer uses that general area and purchases land/subdivides to lines as consistent as possible to what the comprehensive plan shows. This was the plan that the Council used at the time.

Councilmember Scales asked if they come before the Council with a plan to split off the 2.37, do they grab a line so far over that, and say that is the line and cut it.

City Planner Hunting replied yes because there is no defined line. If the developer and land owner agree to that, they would purchase 10, replat the property, and the land owner can choose to decide how to treat the 2.37 acres. There are no minimum lot sizes in the northwest area.

Councilmember Murphy said it could be a random line on the map, it does not have to be straight, it could be curved, whatever adds up to 2.37 acres.

City Planner Hunting replied the map showed a generally straight line on the westerly side. Councilmember Murphy said the 10 acres from the 2.37 would have to be a straight line if previous Councils said the westerly most 10 acres.

Councilmember Scales replied it's assuming the compass would lay flat on the property.

City Administrator Wilson said if subdividing this into two lots, the only way to accomplish that in the northwest area is through platting. The City Council approves plats. This body determines if those two lots meet a standard this Council sets as being consistent with past action. This Council would have the approval to approve that plat.

Councilmember T'Kach said the underlying zoning is still there. The previous approval still sits.

City Administrator T'Kach replied this is about guiding, not zoning. Guiding is the first broad step; zoning is a more specific step with more detail. If platting under the current guiding, it would need to be consistent.

Ms. Pluff wanted to confirm if the land was still zoned retail.

City Attorney McCauley Nason replied it is currently guided for retail commercial. It is subject to contingent approval from 2018.

Ms. Pluff said she wanted to confirm that things can still be changed because it is still guided by retail. She said that what was put on was conditional, which did not get approved. She questioned if retail was still over all of the land.

City Attorney McCauley Nason replied retail is still over all the land. The 2018 approval is a valid approval, it is not an effective approval. It does not become effective until if/when all of the conditions in that approval are met. Conditions include rezoning, plat, PUD approval. This has not yet taken place because the conditions have not been met.

Councilmember Murphy said someone could get conditional approval, walk away from the project, and sell the land at an increased value with different conditional zoning on it. He asked if it was accurate and normal for the city to do.

City Attorney McCauley replied it is contingent approval, not reguided. Someone could come in tomorrow and bring forward a development that is consistent with the comprehensive plan and zoning. The property has two different possibilities for development based on the contingent approval. The resolution did not include any specific expiration date. Unless/until it is revoked/rescinded or otherwise terminated by the Council, that resolution still maintains that conditional contingent reguiding approval still remains in effect.

Councilmember Murphy clarified there is no expiration date, it can keep going even though they reaffirmed the comprehensive plan, there are different owners, and they have already said no to one or two different plans.

City Attorney McCauley Nason replied yes. The City Council has not taken specific action to rescind the resolution. In order to terminate the conditional "no sunset date included in the resolution" approval, the City Council would have to take some type of affirmative action in order to effectuate a rescission, or revocation, or termination of that prior approval.

Councilmember Murphy commented that was a battle for a different day.

Motion by Murphy, second by Dietrich, to deny the Comprehensive Plan Amendment for Outlot D, Argenta Hills, 2.37 acres and to preserve as much retail as possible. The current zoning of commercial is the best use for the 2.37 acres. Resolution 2023-212

City Attorney McCauley Nason clarified the motion made stating the motion was made to approve the resolution of denial for the reasons articulated as well as those found within the Resolution.

Councilmember Murphy and Mayor Dietrich agreed.

The reworded motion is as follows to reflect the above-mentioned clarification:

Motion by Murphy, second by Dietrich, to approve Resolution 2023-212 to deny the Comprehensive Plan Amendment for Outlot D, Argenta Hills, 2.37 acres, to preserve as much retail as possible. The current zoning of commercial is the best use for the 2.37 acres.

Ayes: 3

Nays: 2 (T'Kach, Scales) Motion carried.

City Attorney McCauley Nason stated the motion to deny passed 3/2, it is an effective denial. The motion to approve would require a 4/5 vote.

D. Third Reading of Interim Ordinance Temporarily Prohibiting the Establishment and Operation of Cannabis Businesses within the City. Resolution 2023-213

City Attorney Bridget McCauley Nason discussed the following related to the Third Reading of an Interim Ordinance Prohibiting the Establishment of Cannabis Businesses in Inver Grove Heights.

Background:

- In 2022, the MN Legislature legalized the sale and consumption of hemp-derived cannabinoids
- Allowed edibles, beverages, and topical products with a limited amount of THC in the product
- There was no established state licensing structure at the time
- In 2023, legislature moved forward to adopt Chapter 342, the Regulation of Adult Use Cannabis
- This built off the 2022 legislation by adopting a broader/uniform regulation and structure
- Legislation created the Office of Cannabis Management (OCM). Tasked with developing, maintaining, and enforcing an organized system for the cannabis and hemp consumer industry
- OCM is authorized to issue licenses for all different types of cannabis businesses
- Cities are prohibited from issuing licenses to cannabis businesses

Edible cannabinoid products (lower potency hemp) is not one of them.

There are 14 different types of cannabis business licenses, the moratorium would prohibit the establishment of any one of these. There is much left to be developed by the OCM.

City role is limited:

- When a cannabis business seeks a license, they would seek it from the OCM
- OCM would consult with the city
- City can offer and require registration and conduct compliance checks
- City may collect registration fees, set by statute, and 10% of the tax revenue

Legislative Details:

- Allowed local units of government to adopt reasonable restrictions to the time, place, and manner of the operation of the cannabis business, provided they do not prohibit the establishment or operation of the cannabis business.
- Cities can adopt reasonable, rational, regulations
 - Can include limiting the number of cannabis retailers and distance of locations

- Authorized cities to adopt an interim ordinance or moratorium
 - Moratorium runs through January 1, 2025
 - City has the option to revoke/rescind the moratorium if adopting regulations prior to the expiration of the moratorium

Other Cities:

- Many cities are adopting interim ordinances
- Gives time to evaluate options, ordinances, and regulations from OCM, LMNC, and other cities

Council Options:

- Take No Action. Cannabis businesses will not open in Inver Grove Heights.
 - Could potentially impact the city's ability to regulate cannabis businesses in the future if regulations are not adopted before businesses open in the city.
- Adopt the Interim Ordinance. Direct staff to complete the required study.
 - City has the opportunity to consider adopting local regulations before cannabis licenses are issued.

Requested Council Action:

- Consider the Third Reading of the Ordinance
- If approved, consider approval of the Summary Publication Resolution

Motion by Gliva, second by Scales, to approve the Third Reading of the Interim Ordinance Temporarily Prohibiting the Establishment and Operation of Cannabis Businesses within the City.

Ayes: 5

Nays: 0 Motion carried.

Motion by T'Kach, second by Gliva, to approve the Summary Publication Resolution 2023-213.

Ayes: 5

Nays: 0 Motion carried.

E. Third Reading of Ordinance Prohibiting Cannabis and Tobacco Smoking and Vaping In Public Places

City Attorney McCauley Nason presented the Third Reading of an Ordinance Prohibiting Cannabis, Tobacco, and THC Products in Public Places.

Background:

- Legislature took action to legalize adult use cannabis. This does not specifically prohibit the use of cannabis products in public places. The city is authorized to prohibit certain cannabis products use in public places.
- Specific language in the statute authorizes the local unit of government to establish a petty misdemeanor offense (non-criminal offense).

What other cities are doing:

- Some are taking no action
- Some are adopting smoking and vaping only restrictions for cannabis products
- Some are focusing on limiting where they do/do not want to prohibit these products, such as public parks, while others are using a broader definition of a public place
- Some are copying existing smoking regulations

Ordinance Background:

- This ordinance was presented for a first reading at the July 24th City Council meeting.

- Council requested revisions be made to address tobacco smoking and use in public.
- Revised ordinance was presented for a second reading at the August 14th City Council meeting. Council approved the second reading.
- Staff completed additional research, brought forward points for discussion at the August 28th City Council Meeting. Council provided direction on those discussion points.
- Revised ordinance presented for consideration at the September 11th, City Council meeting.

Changes from the Second Reading to the Third Reading:

- Minor modifications were made to the definition of public place.
- Revised prohibition to include a prohibition on the consumption of alcoholic beverages and beverages containing THC in public places except as otherwise permitted under the code.
 - City code already prohibits the consumption of alcoholic beverages in public places with a number of exceptions.
- An exemption was created to the smoking restrictions for smoking occurring in parking lots, under the control of other governmental entities.

Summary of the Definition of Public Place:

- All city and other publicly owned buildings and all of the land they are on
 - Including parking lots, golf course, pathways, and trails.
 - Includes right of ways, traveled portion, abutting boulevard, sidewalks and trails for right of way.
 - Also includes personal property such as motor vehicles, under the control of the city.

Areas not included in the definition of a Public Place:

- Private residence, including curtilage
- Private property not generally accessible to the public and the premises of an establishment or an event licensed to permit on-site consumption

Restrictions on Smoking and Vaping:

- No smoking of tobacco or any cannabis flower in any public place
- No vaping of any product that contains nicotine or cannabis flower in any public place

Exemptions include:

- Smoking or vaping of tobacco and nicotine products in a motor vehicle that is within a public right of way (does not apply to city vehicles).
- Parking lots of properties owned, leased, or controlled by governmental units other than the city.

Restriction on the consumption of alcoholic beverages and beverages containing THC:

- Mirrors what is allowed under the city code for alcoholic beverages

Requested Council Action and Options:

- Take No Action
 - Existing regulations related to alcohol consumption in public will remain in effect
 - Will not be any prohibitions on the use or consumption of THC products or cannabis products within public places
 - It is still illegal under State Statute to smoke or vape cannabis products in any location
 - Currently illegal under State Statute to consume cannabis products within a motor vehicle
- Consider approval of the third reading of the ordinance with any modifications

Councilmember T’Kach asked why THC beverages are not being put into the alcohol ordinance.

City Attorney McCauley Nason replied the alcohol ordinance specifically speaks to alcoholic beverages and licenses. There is a separate section that deals with the use of public places.

Councilmember T’Kach said it would make more sense for intoxicating beverages to be in one place while smoking in another place.

City Attorney McCauley Nason replied it can be placed where the Council wishes. She noted that alcoholic beverages are under the licensing section.

Councilmember T’Kach asked if the city would license THC beverages.

City Attorney McCauley Nason responded no. Selling THC edibles or beverages does not need any type of license issued by the city.

Councilmember T’Kach asked if that would be anticipated going forward.

City Attorney McCauley Nason responded no. The conversation was had a few months ago. Direction at the time was that the city was not looking to license those products.

Motion by Gliva, second by Scales, to approve Third Reading of Ordinance Prohibiting Cannabis and Tobacco Smoking and Vaping In Public Places.

Councilmember T’Kach commented that she will not support the third reading of this ordinance. She believes it is a solution looking for a problem when it’s focused on sidewalk and right of way areas. She believes it would be difficult to enforce and does not see the purpose of it.

Ayes: 4

Nays: 1 (T’Kach) Motion carried.

7. Public Comment:

There was no public comment

8. Mayor and Council Comments:

Councilmember Gliva said it was another successful Inver Grove Heights Days. She thanked community volunteers, staff, and public safety, both from the city and surrounding communities.

City Administrator Wilson stated there are two opportunities coming up for resident input:

Tuesday, September 12th from 4:00 to 6:00 p.m. the city will be hosting an open house at the Community Center’s Community Room 1, regarding development, planning, and transportation in the area north of 70th Street, East of Highway 3, for the considered alignment of 65th Street.

Wednesday, September 13th, from 5:00 to 7:00 p.m. in the West Arena of the Community Center, an open house will be held regarding proposed pavement management projects for construction season 2024.

People living in the area have received a direct invitation via mail.

F. Closed Session Pursuant to Minn. Stat. Sec. 13D.05, subd. (3)(c)(3).

City Attorney McCauley Nason requested Council make a Motion to move to Closed Session Pursuant to Minnesota Statute Sec. 13D.05, subd. (3)(c)(3) to develop or consider offers or counteroffers for the purchase of real property located at 6840 Dixie Avenue.

Motion by Gliva, second by T’Kach, to move into Closed Session at 9:13 p.m.

Ayes: 5

Nays: 0 Motion carried.

Motion by T’Kach, second by Gliva, to come out of Closed Session.

Ayes: 5

Nays: 0 Motion carried.

Motion by T'Kach, second by Scales, to approve the Executive of Letter of Intent.

Ayes: 5

Nays: 0 Motion carried

9. Adjourn:

Motion by T'Kach, second by Scales, to adjourn the meeting at 9:27 p.m.

Ayes: 5

Nays: 0 Motion carried.

Minutes prepared by Recording Secretary Sheri Yourczek