

Council Study Session

VIRTUAL meeting being
conducted by electronic
means in accordance with
Minnesota Statutes, section
13D.021 Public portion
available for connection by
calling 1-312-535-8110
Access Code: 133 316
6939

November 23, 2020

AGENDA

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- 1. City Council Discussion of Agenda Items and Questions - 6 p.m.**
 - 2. Miscellaneous**
 - 3. Discussion of Work Session Agenda Item as Time Permits**
 - 4. Adjourn**

CITY COUNCIL MEETING

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AGENDA



1. Informal Open Forum with City Council - 6:45 p.m.

Provides an opportunity for the public to address the Council on items which are not on the agenda. Open Forum will be limited to 15 minutes, it is not televised, and it may not be used to make personal attacks, to air personality grievances, to make political endorsements, or for political campaign purposes. Council Members will not enter into a dialogue with presenter. Questions from the Council will be for clarification only. Open Forum will not be used as a time for problem solving or reacting to the comments made but, rather, for hearing the presenter for informational purposes only.

I will first call on those who notified the Clerk that they would like to speak during open forum, and then I will ask if anyone else connected to this meeting would like to speak. When I do, please indicate your name and then proceed when I call on you. Please be sure to state your name and address before speaking.

2. Invocation - 7 p.m. - Lawrence-Anderson

3. Call to Order Regular Business Meeting

This meeting is being conducted electronically under Minnesota Statutes, section 13D.021 due to the pandemic. For those who are connected to this meeting, please keep your microphone muted. If there is an opportunity for public comment, you may unmute and speak when called upon. Please do not talk over others and anyone being disruptive may be ejected from the meeting. The packet for this meeting is on the City's website, which is linked on the calendar or can be found on "City Council" page.

4. Roll Call

5. Pledge of Allegiance

6. Approval of Agenda and Consent Agenda

The following items are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which event the item will be removed from the consent agenda and considered at the end of Council Consideration Items.

a. Approval of Minutes

- *Motion to approve minutes for the following meetings:*
 - *November 9, 2020 Study Session*

- November 9, 2020 Regular Session
 - November 9, 2020 Work Session
- b. Approval of Licenses
 - *Motion to approve licenses as presented.*
 - c. Extension of Audit Service Professional Contract
 - *Consider directing staff to enter into a one year audit contract for 2020 audit services with Malloy, Montague, Karnowski, Radosevich & Co. (MMKR) and complete a full request for proposal for audit services in 2021*
 - d. Resolution Authorizing the Execution of a Four Year Contract with Hennepin County for Assessing Services
 - *It is recommended that the City Council consider approval/adoption of a Resolution Authorizing the Execution of a Four Year Contract with Hennepin County for Assessing Services*
 - e. Resolution Accepting Work Performed and Authorizing Final Payment, Municipal Liquor Store #1 Construction
 - *Motion to approve a resolution accepting work performed and authorizing final payment, Municipal Liquor Store #1 Construction*
 - f. Resolution Ratifying the Approval of the Preliminary and Final Plat for Brooklyn Center EDA First Addition and Authorizing Final Plat Recording
 - *It is recommended that the City Council consider approval of the resolution ratifying the approval of the preliminary and final plat for BROOKLYN CENTER EDA FIRST ADDITION and authorizing final plat recording*
 - g. Resolution Expressing Appreciation of the Donation of a Grill from Mills Fleet Farm to the Brooklyn Center Fire Department
 - *It is recommended that the City Council adopt the resolution expressing appreciation of the donation of a grill from Mills Fleet Farm to the Brooklyn Center Fire Department*
 - h. An Ordinance Amending Ordinance No. 2018-08 Regarding Council Salaries for 2021-2022
 - *It is recommended by the Financial Commission that the salaries for the Mayor and City Council increase by two percent above their current compensation levels for 2021 and 2022. Proposed action to approve the first reading of this ordinance and set a Public Hearing for Monday, December 14, 2020 for the second reading and final adoption*

7. Presentations/Proclamations/Recognitions/Donations

- a. COVID-19 Impact on Hennepin County and Brooklyn Center
 - *Staff ask the City Council to hear a presentation on the subject of COVID-19 and it's impact to date in Hennepin County and Brooklyn Center*
- b. Brooklyn Center BCTC Public Art Initiative
 - *Staff ask the City Council to hear presentation regarding the Brooklyn Center BCTC Public Art Initiative*

8. Public Hearings

The public hearing on this matter is now open. I will first call on those who notified the Clerk that they would like to speak to this matter, then I will ask if anyone else on this meeting would like to speak during this hearing. When I do, please indicate your name and then proceed when I call on you. Please be sure to state your name and address before speaking.

9. Planning Commission Items

- a. Resolution Requesting Approval of the Preliminary and Final Plat for Mound Cemetery Second Addition (3515 69th Avenue North and County Identified as 6705 Beard Avenue N)
- Motion to adopt a resolution approving Planning Commission Application No. 2020-009 for preliminary and final plat approval of Mound Cemetery Second Addition (located at 3515 69th Avenue North and County identified as 6705 Beard Avenue North), based on the findings of fact and submitted documentation, as amended by the conditions of approval in the resolution

10. Council Consideration Items

11. Council Report

12. Adjournment

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: Dr. Reggie Edwards, Deputy City Manager

BY: Barb Suciu, City Clerk

SUBJECT: Approval of Minutes

Background:

In accordance with Minnesota State Statute 15.17, the official records of all meetings must be documented and approved by the governing body.

Budget Issues:

-None.

Strategic Priorities and Values:

Operational Excellence

ATTACHMENTS:

Description	Upload Date	Type
11/9 Study Session	11/17/2020	Backup Material
11/9 Regular Session	11/17/2020	Backup Material
11/9 Work Session	11/17/2020	Backup Material

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL
OF THE CITY OF BROOKLYN CENTER IN THE COUNTY
OF HENNEPIN AND THE STATE OF MINNESOTA

STUDY SESSION
NOVEMBER 9, 2020

CALL TO ORDER

The Brooklyn Center City Council met in Study Session called to order by Mayor Mike Elliott at 6:00 p.m. The meeting was conducted via Webex.

ROLL CALL

Mayor Mike Elliott and Councilmembers Marquita Butler, April Graves, Kris Lawrence-Anderson, and Dan Ryan. Also present were City Manager Curt Boganey, Deputy City Manager Reggie Edwards, Community Development Director Meg Beekman, City Clerk Barb Suci, and City Attorney Troy Gilchrist.

CITY COUNCIL DISCUSSION OF AGENDA ITEMS AND QUESTIONS

Mayor Elliott requested that Consent Agenda Item 6c related to Radisson Hotel Brooklyn Center be moved from the Consent Agenda and addressed as Regular Session Agenda Item 10a. He added the hotel's owner plans to join the meeting.

MISCELLANEOUS

-None.

DISCUSSION OF WORK SESSION AGENDA ITEMS AS TIME PERMITS

EDA-OWNED SCATTERED SITE DEVELOPMENT DISCUSSION

Community Development Director Meg Beekman requested City Council feedback and comment regarding potential divestment strategies for several EDA-owned sites around the City. She added, for many years, the City acquired properties for neighborhood revitalization and development of owner-occupied housing. She noted these properties were not acquired through that process.

Ms. Beekman reviewed the properties:

- 902 53rd Avenue N, a small lot that is currently zoned R-2, was acquired in 2014.
- 3401 53rd Avenue N, currently zoned R-5, was acquired in 2012. This parcel is adjacent to the Lake Pointe Apartments.

- 4800 and 4812 71st Avenue N, two separate lots zoned R-1, were created when the roadway was diverted, would need to be combined due to street access and could be a location for a single-family home, duplex or triplex, given the size of the lot.
- 5401, 5407, and 5415 Brooklyn Boulevard were re-platted and combined as part of the Brooklyn Boulevard frontage realignment for nearby school access. This property, approximately 1.5 acres, could accommodate 6 units of housing. The lots are zoned C-1 and R-2.
- A unique parcel, (PID 3311921430087) owned by the Village of Brooklyn Center, was probably part of the City at its origination and was never developed. This parcel, near the airport, is a legal single-family lot that is zoned R-1.
- Another unique parcel, (PID 3611921120008) owned by the Village of Brooklyn Center, with river frontage, is zoned R-1 but was not developed by the City as it was seen as a potential water source access. The Public Works Director has indicated it is unlikely that this property would ever be required for water access.

Ms. Beekman stated City Staff receives regular inquiries from interested parties on these properties, which are low priority development sites due to targeted redevelopment of other areas. She added City Council direction is requested regarding divesting these properties. She noted City Staff does not have the resources or capacity to complete a consolidated RFP.

Ms. Beekman stated the options available to the City are to hold off on developing these sites until City Staff has the capacity to issue an RFP for development, to be reviewed again in one year (Option 1); or the City Council could identify priorities and development goals for the sites to assist City Staff in evaluating development opportunities on a case-by-case basis through the typical development process (Option 2).

Mayor Elliott stated he would like to hold onto the properties while waiting for the results of the Housing Study that the City has commissioned from Dr. Brittany Lewis, to assess the needs of the community. He added one thing he hears a lot is the need for multi-generational housing. He noted he would like to see some data to help shape policy around how to use the City's available land as it is a great asset.

Councilmember Graves stated she agrees with the Mayor not to go too far with these properties. She added development of these properties does not seem like the correct use of City resources right now, although she would be interested in hearing proposals from developers proposing affordable housing that is below 50% AMI, which she does not believe would fit any of these properties. She noted she is okay with waiting and being more strategic about an overall housing policy and reviewing gaps that need to be filled.

Councilmember Ryan stated he is leaning towards Option 2, identifying development goals for these sites. He added the number of parcels is relatively few and could return something to the City in terms of development, with the exception of 3401 53rd Avenue that is imbedded in the Lake

Pointe Apartments site. Asked whether City Staff has contacted the apartment complex about this property. Ms. Beekman stated there have not been any discussions about selling that property.

Councilmember Ryan stated the City should consider reasonable development opportunities for these smaller sites. He added the City's broader housing goals can be accommodated by several other large-scale development opportunities. He noted this is an opportunity to increase the tax base and develop more owner-occupied units, of which the City has relatively low numbers.

Councilmember Lawrence-Anderson stated she has heard from constituents that they want to see more owner-occupied housing in Brooklyn Center. She added she would like to see the City take advantage of opportunities to build single family homes for ownership.

Councilmember Butler stated she supports Option 2, identifying development goals and priorities. She added she agrees with the Mayor's comments about the Housing Study. She stressed the importance of identifying priorities before moving forward with developing these properties. She noted this is a combination of both options, to hold onto the properties but also identify priorities through the Housing Study.

Mr. Boganey stated there seems to be a consensus of the City Council to hold off on establishing priorities for these lots until after the Housing Study has been completed. Mayor Elliott agreed.

Councilmember Graves stated she mostly agrees but if City Staff comes across a developer that they feel is too good to pass up, proposals should be brought to the City Council for review and consideration. She added, in general, she agrees with Mayor Elliott and Councilmember Butler. She noted she would like to wait until there is more direction, but she trusts City Staff to make decisions and provide recommendations.

Councilmember Ryan stated infill housing through the City's financing mechanism has been a successful and ongoing program in Brooklyn Center. He stressed the importance of considering all such opportunities, including multi-family housing. He added this is a relatively few numbers of sites, and the City could gain a return, as well as acquiring housing types that are in limited supply in Brooklyn Center.

Councilmember Lawrence-Anderson stated she would support having a sit-down restaurant in Brooklyn Center, like Manny's or Pittsburg Blue, if land sales are being considered and an opportunity comes along. She added she trusts City Staff to pursue potential opportunities.

Mayor Elliott stated the City Council consensus is to wait for the results of housing research by Dr. Brittany Lewis that will guide land use policies for City-owned property, and instruct City Staff to bring forward any really good proposals. Mr. Boganey agreed.

ADJOURN STUDY SESSION TO INFORMAL OPEN FORUM WITH CITY COUNCIL

Mayor Elliott adjourned the Study Session to Informal Open Forum at 6:50 p.m.

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)
CITY OF BROOKLYN CENTER)

ss. Certification of Minutes

The undersigned, being the duly qualified and appointed City Clerk of the City of Brooklyn Center, Minnesota, certifies:

1. That attached hereto is a full, true, and complete transcript of the minutes of a Study Session of the City Council of the City of Brooklyn Center held on November 9, 2020.
2. That said meeting was held pursuant to due call and notice thereof and was duly held at Brooklyn Center City Hall.
3. That the City Council adopted said minutes at its November 23, 2020, Regular Session.

City Clerk

Mayor

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL
OF THE CITY OF BROOKLYN CENTER IN THE COUNTY
OF HENNEPIN AND THE STATE OF MINNESOTA

REGULAR SESSION
NOVEMBER 9, 2020

1. INFORMAL OPEN FORUM WITH CITY COUNCIL

CALL TO ORDER INFORMAL OPEN FORUM

The Brooklyn Center City Council met in Informal Open Forum called to order by Mayor Mike Elliott at 6:50 p.m. The meeting was conducted via Webex.

ROLL CALL

Mayor Mike Elliott and Councilmembers Marquita Butler, April Graves, Kris Lawrence-Anderson, and Dan Ryan. Also present were City Manager Curt Boganey, Deputy City Manager Reggie Edwards, Community Development Director Meg Beekman, Fire Chief Tim Gannon, City Clerk Barb Suciu, and City Attorney Troy Gilchrist.

Mayor Mike Elliott opened the meeting for the purpose of Informal Open Forum.

Simone Chambliss, Jambo Africa, stated she was informed by the City Clerk that she was on tonight's meeting agenda, but she is not on the agenda. She asked why she is not on the agenda.

City Clerk Barb Suciu stated she tried to call Ms. Chambliss earlier that day to inform her that she was not on the agenda. She added Ms. Chambliss will need to work with the City Manager regarding her request.

Mr. Boganey stated it is his understanding that the Community Development Director has been attempting to schedule a conversation with Ms. Chambliss about this issue as well as development of her property in general, but there has been difficulty in making that connection, and the meeting agenda had to be completed. He noted this issue was added to the City Council's next Work Session Agenda.

Councilmember Graves apologized to Ms. Chambliss. She added Ms. Chambliss can speak and address whatever she wants to since it is Open Forum. She noted Ms. Chambliss can provide the City Council with additional information to prepare for the Work Session.

Ms. Chambliss stated she wants to have hookah in her restaurant. She added she spoke with the City Clerk the other day, who indicated she was on tonight's agenda, and would be able to be heard today. She added Ms. Beekman had scheduled a meeting but had to postpone due to conflicts, but that was pertaining her deck and other issues, and not the hookah license. She noted she has been asking for a hookah license for years because her customers want it, and it would bring in more daytime traffic to her restaurant.

Ms. Chambliss stated she recently stopped at Casey's and they are selling tobacco. She added her restaurant has been in Brooklyn Center longer than Casey's. She added she makes sure her patrons are orderly and she follows all rules and regulations. She noted her restaurant has been in Brooklyn Center for almost 9 years, and she would not do anything that will be disruptive for the community.

Edmond Borboh stated he has worked with Ms. Chambliss for almost 2 years, and customers are asking for hookah. He added they would appreciate it if the City would grant their request.

Mayor Elliott asked whether Jambo Africa has a tobacco license. Ms. Chambliss stated she does not have a tobacco license. Mayor Elliott asked when Casey's opened. Mr. Boganey stated Casey's was the last tobacco license to be issued before legislation that limited the number of tobacco licenses that could be granted in Brooklyn Center.

Mr. Boganey stated the City Council requested that a representative from the Non-Smokers Association should be invited to participate in this discussion. He added that is part of the delay, and there was limited time to complete everything that was necessary to have a discussion regarding Jambo Africa at tonight's meeting. He noted this issue will be included on the next Work Session agenda.

Melissa Carey stated the City often posts comments and photos in the form of PDFs and JPEGs on social media that are not accessible for blind or visually impaired people. She asked that important information like COVID-19 testing be shared in text form to be more inclusive of and improve accessibility for disabled people.

Ms. Carey requested consideration of lit crosswalk signs in Brooklyn Center. She added she crosses 67th Avenue to get to Palmer Lake which is a busy and congested road, and drivers often do not see the crosswalk. She added installing flashing lights on the City's crosswalks will prevent accidents.

Nupen Patel asked whether he should speak now regarding the Radisson Hotel Brooklyn Center Agenda Item. Mayor Elliott stated Mr. Patel will be able to speak when this issue is reviewed under Agenda Item 10a.

Mayor Elliott moved and Councilmember Ryan seconded to close the Informal Open Forum at 7:05 p.m.

Motion passed unanimously.

2. INVOCATION

Councilmember Butler offered two quotes as an Invocation:

“When you see something that is not right, not fair, or not just, you have to speak up. You have to say something. You have to do something.”

-Hon. John Lewis

Councilmember Butler stated this quote speaks to the record number of voters who turned out in Brooklyn Center but also nationally.

“Women belong in all places where decisions are being made. It shouldn’t be that women are the exception.”

-Hon. Ruth Bader Ginsburg

Councilmember Butler stated this quote celebrates the first Woman Vice President-Elect, which is very exciting.

3. CALL TO ORDER REGULAR BUSINESS MEETING

The Brooklyn Center City Council met in Regular Session called to order by Mayor Mike Elliott at 7:00 p.m.

4. ROLL CALL

Mayor Mike Elliott and Councilmembers Marquita Butler, April Graves, Kris Lawrence-Anderson, and Dan Ryan. Also present were City Manager Curt Boganey, Deputy City Manager Reggie Edwards, Community Development Director Meg Beekman, Fire Chief Tim Gannon, City Clerk Barb Suci, and City Attorney Troy Gilchrist.

5. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

6. APPROVAL OF AGENDA AND CONSENT AGENDA

Councilmember Ryan moved and Mayor Elliott seconded to approve the Agenda and Consent Agenda, as amended, to remove Item 6c for consideration as Item 10a, and the following consent items were approved:

6a. APPROVAL OF MINUTES

1. October 26, 2020 – Study Session
2. October 26, 2020 – Regular Session
3. October 26, 2020 Work Session

6b. LICENSES

Gasoline Service Station

Two Rivers Investment Inc
6840 Humboldt Ave N

1525 120th Ln NE
Blaine 55449

Mechanical Licenses

C&M Heating and Air Conditioning Inc

13862 Wintergreen St.

Furnace Pro

Andover 55304
290 109th Ln NW
Coon Rapids 55433

Tobacco Related Product

Two Rivers Investment
6840 Humboldt Ave N

1525 120th Ln NE
Blaine, Mn 55449

RENTAL

INITIAL (TYPE IV – one-year license)
6424 Girard Ave

Rashidat Sowemimo

INITIAL (TYPE III – one-year license)
3307 Ohenry Rd

6430 Toledo Ave N

5949 Vincent Ave N

Assata Sheriff /
Divine Home Care Services
David Habimana /
Touchstone Properties
Olaleye Olagbaju /
Royal Priesthood

INITIAL (TYPE II – two-year license)
5333 James Ave N
5913 Vincent Ave N

Jacob Sphatt
HPA US1 LLC

RENEWAL (TYPE IV – one-year license)
509 61st Ave N
6015 Dupont Ave N
5914 Fremont Ave N

Tim Daniel - met all requirements
SFR Borrower LLC
Alaafia Homecare

RENEWAL (TYPE III – one-year license)
3224 62nd Ave N
5254 Ewing Ave N

4207 Lakeside Ave #322

Michael Mills
My Truong / J&M Homes -
Met Requirements
Maie White

RENEWAL (TYPE II – two-year license)
4408 69th Ave N Northwest Residence
4200 Lakebreeze Ave
3024 Nash Rd
6812 Scott Ave N
4913 Winchester La

Eugene & Diane Wright
Todd Bertelson /CPP3 LLC
James Morgan
Lankia Lartey
Huda Hassen - missing CPTED & CFH

RENEWAL (TYPE I – three-year license)
4210 Lakebreeze Ave
2802 Northway Dr Gateway Commons
2701 65th Ave N

Bobbie & James Simons
Gary Brummer
Trinh Vu

6445 James Cir N
6430 Lee Ave N
7212 Lee Ave N
6736 Perry Ave N

Kasawa Hospitality Super 8
Infinite Property / Xian Qiang Lin
Qiang Fang - met requirements
Mark Coville -
Missing CPTED Inspection

- 6c. RESOLUTION NO. 2020-108 ISSUING A HOSPITALITY ACCOMMODATIONS LICENSE TO RADISSON HOTEL BROOKLYN CENTER WITH CONDITIONS – This item was considered as Item 10a**
- 6d. RESOLUTION NO. 2020-102 AUTHORIZING ACQUISITION OF EASEMENTS FOR BROOKLYN BOULEVARD CORRIDOR PROJECT PHASE 2 IMPROVEMENTS, PROJECT NO. 2021-05**
- 6e. RESOLUTION NO. 2020-103 AUTHORIZING ACQUISITION BY EMINENT DOMAIN AND APPROVAL OF APPRAISED VALUES OF EASEMENTS FOR BROOKLYN BOULEVARD CORRIDOR PROJECT PHASE 2 IMPROVEMENTS, PROJECT NO. 2021-05**
- 6f. RESOLUTION NO. 2020-104 ESTABLISHING INTEREST RATE FOR 2021 SPECIAL ASSESSMENTS**
- 6g. RESOLUTION NO. 2020-105 ESTABLISHING 2021 STREET AND STORM DRAINAGE SPECIAL ASSESSMENT RATES**
- 6h. RESOLUTION NO. 2020-106 DECLARING COSTS TO BE ASSESSED AND CALLING FOR A PUBLIC HEARING ON PROPOSED SPECIAL ASSESSMENTS FOR IMPROVEMENT PROJECT NOS. 2021-01 AND 02, GRANDVIEW SOUTH AREA STREET AND STORM DRAINAGE IMPROVEMENTS.**
- 6i. RESOLUTION NO. 2020-107 ELECTING TO PARTICIPATE IN THE LOCAL HOUSING INCENTIVES ACCOUNT PROGRAM UNDER THE METROPOLITAN LIVABLE COMMUNITIES ACT**
- 6j. MOTION TO APPROVE THE AMENDMENTS TO THE CITY COUNCIL CALENDAR**

Motion passed unanimously.

7. PRESENTATIONS/PROCLAMATIONS/RECOGNITIONS/DONATIONS

-None.

8. PUBLIC HEARINGS

-None.

9. PLANNING COMMISSION ITEMS

-None.

10. COUNCIL CONSIDERATION ITEMS

10a. RESOLUTION NO. 2020-108 ISSUING A HOSPITALITY ACCOMMODATIONS LICENSE TO RADISSON HOTEL BROOKLYN CENTER WITH CONDITIONS

City Manager Curt Boganey stated the City Council held a public hearing on September 12, 2020 regarding the issuance of a hospitality accommodations license with conditions. He added, after a lengthy discussion and comments from the hotel owner, the City Council directed City Staff to provide a Resolution approving the license with conditions as recommended by City Staff. He noted the City Council also proposed modifications related to the number of units that can be made available and the extension of the license.

Nupen Patel, the hotel's owner, stated he would like to clarify that this is not a homeless shelter operation. He added he does not see the point in the City using so much time and resources for something that is not an issue. He requested that there be no restrictions placed on his hotel operation, and hopefully an agreement can be reached. He reiterated that he is not running a homeless shelter.

Cameron Corrigan, the hotel's General Manager, stated there are restrictions in place at the hotel, and 24/7 security services. He added there were only 9 police calls in October, due to strict protocols that are in place for guests at the property.

Mr. Patel stated he does not understand the point of the limitation on the number of units he can make available. He added his client is the State of Minnesota, and he is trying to fulfill his side of the contract with his client. He noted the State can use the hotel for whatever needs they may have, related to the pandemic, and the people who come to stay there are long-term guests.

Mayor Elliott requested clarification regarding the 9 police calls in October 2020, and how that differs from other months.

Mr. Corrigan stated some of the police calls are related to trespassing or medical calls. He added there was one call related to a weapon, but no one was there when the police officers arrived.

Mr. Patel stated there was a false alarm when a fire alarm went off accidentally.

Mr. Corrigan stated he reviewed previous records, and in October 2019 there were 8 police calls for many of the same reasons. He added this shows there is not much change over the past year.

Police Chief Tim Gannon, stated, for purposes of clarification, he agrees that there has been a significant reduction in calls for service to the hotel in October and November 2020. He added

that is a result of fewer number of occupants that are being serviced by the third-party provider, Second Chance. He noted, however, from June-August 2020 there was a surge in calls that were related to crime, although the previous service provider was not acclimated to the situation. He expressed his appreciation for Second Chance, as well as Mr. Corrigan and his staff, for doing a great job in managing the clients over the past few months due to the low numbers.

Chief Gannon stated the hotel may not be a homeless shelter, but Second Chance is providing services to the homeless under a State contract, and they have full control over the number of people that are housed at the hotel at any given time. He added the Police Department expects to continue to see improvements as long as the numbers are kept at a reasonable amount for Second Chance to be able to provide services, which is between 30-50 clients.

Mr. Corrigan stated the hotel currently has strict protocols in place, including a “no guest” policy, and 24/7 security. He added he believes the reduction in police calls is due to these measures and not the number of clients.

Mayor Elliott asked whether the third-party provider has indicated their maximum capacity.

Mr. Patel stated the hotel has a contract with the State of Minnesota and is not involved in Second Chance operations.

Mayor Elliott asked Mr. Patel what he believes will be the impact of the proposed restrictions.

Mr. Patel stated a rise in COVID-19 cases is predicted during the winter months, and the State will probably need more rooms to put people for quarantine. He added his business will suffer if the City restricts the number of rooms, and he will not be able to fulfill his contract with the State, which could create legal issues for him. He noted he does not believe other cities try to tell business owners how to run their business.

Councilmember Graves asked whether the hotel has had to turn away anyone who was sent to them by the State. Mr. Patel stated no one has been turned away.

Councilmember Graves asked whether Mr. Patel’s contract with the State prohibits him from renting out rooms to typical hotel guests. Mr. Patel stated the contract does not limit him from renting out rooms.

Mr. Boganey asked Mr. Patel if his hotel is designated by the State as a COVID hotel. Mr. Patel stated the hotel is not currently a COVID hotel, but the State can use the hotel for whatever they need.

Councilmember Ryan asked what Mr. Patel wants to change in the Resolution, and what City Staff’s response would be to that request.

Mr. Patel stated he would like to remove the 50-room limit.

Mr. Boganey stated City Staff's recommendation was significantly less than 50 rooms, but the City Council, after listening to Mr. Patel, agreed to a Resolution expanding the number to 50 rooms. He added, in City Staff's view, a higher number of rooms that are used for this purpose will mean more difficulties and problems, and more staff resources will have to be assigned. He noted 50 units is a significant number, and City Staff does not recommend a higher number.

Councilmember Graves asked whether the State pays the same rate for a room as a regular hotel guest. Mr. Patel stated the State pays about \$60 per room, which is a little lower than the regular rate.

Councilmember Graves stated she supports the Resolution as proposed and the recommendations of City Staff. She added she would be interested in having a conversation with the State and third-party provider regarding potentially raising the cap above 50 units.

Mayor Elliott stated this issue raises serious concerns about maintaining security and safety in Brooklyn Center, which is a priority of the City Council. He added he would also like to hear from Second Chance regarding their capacity. He noted the hotel is making an effort to work with the City by instituting a strict no guests policy and having 24-hour security. He expressed concern that there may be a real need, or an emergency situation, as COVID numbers increase.

Mayor Elliott stated he is hesitant to move forward without additional information. He expressed concern that the hotel owner feels he will be unable to legally fulfill his contract with the State.

Councilmember Butler stated she agrees with Councilmember Graves' comments and would like to hear from the other stakeholders. She added she feels comfortable moving forward with the Resolution.

Councilmember Graves asked City Attorney Troy Gilchrist for clarification regarding the legal ramifications of the Resolution restricting the number of rooms related to the hotel owner's contract with the State.

Mr. Gilchrist stated the hotel's operations are subject to federal, State and local laws, by which he is bound. He added it would be difficult for a 3rd party to say he is breaching his contract by complying with regulations. He noted City Staff has indicated that the current use is inconsistent with the PUD for the property and allowing this use to continue requires regulatory flexibility.

Councilmember Ryan asked to be acknowledged.

Mayor Elliott asked whether Mr. Gilchrist believes that the hotel owner is in a difficult position as the City wants to restrict the number of individuals he can have in his hotel, but the rooms are paid for by the State.

Mr. Gilchrist stated discussions at the staff level focused on the length of stay and not how the rooms are paid for. He added this program tends to have people for long-term stays, which can create issues that run contrary to local zoning. He noted the City is inclined to grant flexibility in

this case due to the pandemic, allowing the use to extend 90 days past the end of the emergency declaration, and a 50-unit cap.

Councilmember Graves stated the hotel owner has indicated that the State contract does not prevent him from renting rooms to other guests. She added a group could rent 20 rooms which would decrease the number of rooms that are available for the State contract. She noted there would be no liability issues on the part of the State if the hotel owner is not prohibited from renting to others.

Mr. Patel stated, for purposes of clarification, this is not a long-term stay arrangement. He added people come for a few weeks, and not more than 30 days. He noted the facts need to be cleared up.

Mayor Elliott asked Mr. Gilchrist whether a 2-3-week stay is a permitted use for this property.

Mr. Gilchrist stated, according to the record of the previous meeting at which this issue was discussed, Mr. Patel indicated that people stay “between 1 week to 2 months”. He added, according to City Ordinance, stays of over 30 days are not allowed.

Mr. Boganey stated City Staff believes the hotel owner has violated the City’s licensing Ordinance, and extended stays violate the PUD. He added large numbers of individuals who are using the hotel for extended periods have proven to be difficult and problematic in a number of ways, including Code violations. He noted there is evidence of an extreme increase in police calls on the property.

Mr. Boganey stated it is more than appropriate for City Council to take action with respect to licensing violations and conditions on the property and allow the use to continue with a limit of 50 units. He added the City Council is exercising a good deal of discretion and compassion under the current emergency situation, and the conditions are reasonable, fair and appropriate. He noted City Staff recommends adoption of the Resolution.

Councilmember Ryan stated he appreciates Mr. Boganey’s comments. He added he agrees the City Council has been more than flexible and compassionate considering the extraordinary circumstances. He noted he supports the Resolution as written.

Mr. Patel stated there have only been a handful of people who stayed for a long time. He added most stays are under 30 days, and he does not believe the hotel is violating any regulations.

Mayor Elliott stated there are security issues. He added he would like the City Council to receive information from representatives from the State and the third-party provider before these limitations are put in place. He added if the majority of the City Council wants to adopt the Resolution, that can be done tonight, but his preference would be to review this issue with the providers.

Councilmember Lawrence-Anderson stated she supports City Staff’s recommendation on this issue. She added she believes it is important to respect their advice and expertise.

Councilmember Ryan moved and Councilmember Lawrence-Anderson seconded to adopt RESOLUTION NO. 2020-108 Issuing a Hospitality Accommodations License to Radisson Hotel Brooklyn Center with Conditions.

Motion passed 4-1 (Mayor Elliott voted nay).

Councilmember Graves stated she would still be willing to hear from the other stakeholders at a Work Session, to find out what their experience has been, and their expectations for the contract.

Mayor Elliott agreed, stating that was his reason for voting against the Resolution. He requested that representatives of the State and the third-party provider invited to an upcoming Work Session.

Mr. Boganey stated, for clarification, an amendment to the Resolution would be appropriate at any time, if the City Council decides to modify the conditions. Mr. Gilchrist agreed.

Mr. Patel requested clarification regarding procedures and timelines for getting a modification.

Mr. Gilchrist stated the City Council can pass a Resolution at any City Council meeting modifying the conditions, as long as there is advanced notice for City Staff to draft the amendment.

Mayor Elliott stated the City Council meets every other week, so that would be two weeks at the earliest.

City Clerk Barb Suciu clarified that the City Council meets on 2nd and 4th Mondays.

11. COUNCIL REPORT

-None.

12. ADJOURNMENT

Councilmember Elliott moved and Councilmember Ryan seconded adjournment of the City Council meeting at 8:05 p.m.

Motion passed unanimously.

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL/ECONOMIC
DEVELOPMENT AUTHORITY OF THE CITY OF BROOKLYN CENTER
IN THE COUNTY OF HENNEPIN AND
THE STATE OF MINNESOTA

WORK SESSION
NOVEMBER 9, 2020

CALL TO ORDER

The Brooklyn Center City Council/Economic Development Authority (EDA) met in Work Session called to order by Mayor/President Mike Elliott at 8:27 p.m. The meeting was conducted via Webex.

ROLL CALL

Mayor/President Mike Elliott and Councilmembers/Commissioners Marquita Butler, April Graves, Kris Lawrence-Anderson, and Dan Ryan. Also present were City Manager Curt Boganey, Deputy City Manager Reggie Edwards, Community Development Director Meg Beekman, City Clerk Barb Suciu, and City Attorney Troy Gilchrist.

SNOWMOBILE AND RECREATIONAL VEHICLE ORDINANCE DISCUSSION

Community Development Director Meg Beekman stated, at a recent Work Session, the City Council discussed a potential Ordinance restricting the use of snowmobiles and recreational vehicles on private property. She added the City Council requested that the Housing Commission review the proposed policy and provide feedback and comments. She noted this issue is related to a particular property, but a review was necessary as City Code does not limit the operation or use of snowmobiles or other recreational vehicles on private property.

Ms. Beekman stated the draft Ordinance was discussed by the Housing Commission who felt that use of recreational vehicles should be allowed on private property with certain exceptions, including residents who have direct lake access. She added the Housing Commission provided recommendations and added an exemption allowing for the use of recreational vehicles on private property between hours of 7:00 a.m. – 10:00 p.m. She noted the Housing Commission stated this issue is related to excessive noise which can be addressed and restricted under the Noise Ordinance Section 27-903.

Ms. Beekman stated, from City Staff's perspective, the primary issue is that a difficult enforcement issue could be the result of prohibiting or regulating an activity that is allowed by Code. She added the complaint-based process puts the burden of enforcement on neighbors to call in the complaint and provide testimony if the matter goes to court. She noted City Staff are concerned about the language and the City's ability to enforce it, and additional language is recommended to allow the use of recreational vehicles on private property with additional exceptions – on lake properties, for snow removal and landscape work.

Ms. Beekman stated this issue was reviewed by the City Attorney and the City's prosecuting attorney, who agreed with City Staff's concerns regarding the difficulty of enforcing a Noise Ordinance.

Ms. Beekman requested feedback and comments from the City Council before a first reading of the Ordinance amendment is scheduled.

Councilmember/Commissioner Graves asked what issues would not be adequately addressed by the Housing Commission's recommendations.

Ms. Beekman stated the Housing Commission's recommendation was to allow use of recreational vehicles on private property between hours of 7:00 a.m. – 10:00 p.m. She added they acknowledged that using recreational vehicles during those hours could create a disturbance due to noise and small lot sizes and recommended a provision within the Nuisance Ordinance that would prohibit annoying and disturbing noises. She noted the Housing Commission felt that would be sufficient to manage any complaints received by City Staff related to noise and annoyance.

Ms. Beekman stated, from a staff perspective, it would be difficult to enforce a Noise Ordinance based on behavior that the City Code specifically allows. She added the burden of proof would be upon whether the noise is annoying to neighbors, which can lead to situations where the Code is not enforced consistently or fairly. She noted it is unclear whether the complaint would hold up in court if the Ordinance is enforced.

Councilmember/Commissioner Graves stated she supports the Housing Commission's recommendation. She added she exceptions for lakeside properties would favor certain property owners. She noted she does not feel more regulation is the route to take, especially if it can be addressed under the Noise Ordinance.

Ms. Beekman stated, due to the Housing Commission's discussion on this matter, they seemed to assume their concerns regarding noise could be remedied or managed through the City's Noise Ordinance regulations, which City Staff and the City Attorney feel is a separate, immaterial issue.

Ms. Beekman stated it is within the City Council's purview to allow use of recreational vehicles on private property. She added, to be clear, it is City Staff's opinion that it would not be the correct path to enforce noise complaints against individuals who are exercising their right to use recreational vehicles under the Ordinance.

Councilmember/Commissioner Graves stated she understands Ms. Beekman's point, that it would be difficult to prohibit something that is allowed under Ordinance. She added, however, if a resident were making noise, their neighbors could complain about it. She noted it feels like an overreach to prohibit activity on private property but agreed steps should be taken.

Mr. Boganey stated the threshold issue is not about exceptions but rather about whether residents should be allowed to use recreational vehicles in residential neighborhoods. He requested feedback and comment from the City Council regarding whether it is appropriate to introduce this type of activity as an approved use in residential neighborhoods.

Councilmember/Commissioner Ryan stated, with regard to Mr. Boganey's point, the City Council should consider whether the use of recreational vehicles is an appropriate use in a built-out, urban community. He added homes are placed relatively close together, and there are very few areas in the community where this type of use would be appropriate. He noted he questions why this type of use should be allowed at all, except to plow driveways when there is a heavy snowfall. He expressed his opposition to allowing this use in Brooklyn Center as there will be inevitable intended nuisances.

Councilmember/Commissioner Lawrence-Anderson stated she respects the opinions of her peers but feels that residents who pay property taxes should not be told what kind of motorized vehicles they can have. She added she has a 35-foot recreational vehicle parked on her property. She noted tax-paying citizens should have the ability to own recreational vehicles, but not drive them around in their front yard.

Mr. Gilchrist stated, for purposes of clarification, the proposed Ordinance would prohibit the use of recreational vehicles but not their ownership. He added operation of these vehicles on City streets or private property, except in limited circumstances, would not be allowed.

Mayor/President Elliott asked how many resident complaints have been received by City Staff regarding the property in question. Ms. Beekman stated there were numerous complaints about the property in question over the past few winter seasons, and approximately 8 complaints over the past 6 years about other properties.

Mayor/President Elliott stated he agrees with Councilmember/Commissioner Grave's comments. He added this is a noise issue, which could be any type of activity that people do on their property. He added the Noise Ordinance should be drafted so that it fairly deals with noise but does not regulate what people do in their back yards. He noted he supports the recommendations of the Housing Commission.

Councilmember/Commissioner Ryan asked whether the use of snowmobiles on frozen lakes is a matter of local regulation. He added he does not believe there are any other areas in Brooklyn Center, which is an urban community, where there is sufficient open space for snowmobiles.

Mr. Gilchrist stated the City can regulate the use of snowmobiles on the lake, under State Statute 84.87.

Councilmember/Commissioner Ryan stated people in outstate Minnesota can use snowmobile in a responsible manner with regulatory restrictions. He added the City of Brooklyn Center does not have open spaces. He noted he would add a provision for the use of recreational vehicles for the sole purpose of landscaping or snow removal, but otherwise prohibited.

Councilmember/Commissioner Graves stated she does not disagree with Councilmember/Commissioner Ryan's statements, but feels that residents should be able to use their property however they see fit. She added she understands that the noise issue could be annoying, but this is just one household, and some neighbor complaints can be petty. She noted

she is supportive of the Housing Commission's recommendations, but she does not believe there is a perfect solution. She noted, however, this provides a method for residents who want to make a complaint.

Mayor/President Elliott stated he supports the Housing Commission's recommendations.

Councilmember/Commissioner Butler stated she supports the recommendation of the Housing Commission.

FAIR HOUSING POLICY

Ms. Beekman stated the creation of a Fair Housing policy was proposed by the City Council at their March 9, 2020 meeting. She added the City Council requested that the Housing Commission be instructed to review this issue and draft a Fair Housing policy.

Ms. Beekman stated a Fair Housing policy is required for the City to participate in the Metropolitan Council's Livable Communities account, a program that provides funding for development projects. She added it is a good idea to have a Fair Housing policy in any event, to outline the City's housing policies and provide an outline for addressing fair housing complaints. She noted the policy should identify a location or person within the City who is responsible for housing issues, to support residents and manage the complaints process.

Ms. Beekman stated the Housing Commission reviewed housing policies from other cities throughout Minnesota, and drafted a policy mostly based on policies from the cities of Bloomington and Richfield, which are similarly situated cities with comparable housing stock, capacity and community. She noted the draft policy was reviewed by Robert Alsop, an attorney with Kennedy & Graven, at a recent Housing Commission meeting, and was found to be well-written and comprehensive.

Ms. Beekman stated the draft policy was forwarded to multiple agencies for feedback and comment, including ACER, the Housing Justice Center, and HomeLine. She added feedback was received from HomeLine and reviewed by the Housing Commission. The Housing Commission reviewed online content related to available fair housing resources, and information has been published on the City's website.

Ms. Beekman stated the draft policy will require staff training including complaint and referral processes; adoption of additional policies that support fair housing practices; internal review of existing ordinances and policies related to fair housing; and expectations for community engagement. The proposed policy affirms the City's commitment to fair housing and creates a more transparent process to ensure that the necessary resources are available to residents, both online and in person.

Ms. Beekman requested feedback and comment from the City Council regarding the draft Fair Housing Policy.

Mayor/President Elliott asked whether the agencies who received the draft policy were given a time frame in which to return their comments and feedback to City Staff. Ms. Beekman stated

HomeLine is the only group that responded in writing. She added their comments were shared with the Housing Commission and incorporated into the draft policy. She agreed to email HomeLine's comments to the City Council.

Mayor/President Elliott asked how much time the agencies were given to review the draft policy. Ms. Beekman stated City Staff requested a response within a few months, but the Housing Commission has been working on the draft policy for quite a while. She added she is unsure why they did not send in any comments, but the draft policy can be resent to them.

Councilmember/Commissioner Ryan asked Ms. Beekman whether, in her opinion, the cluster of issues around affordable and equitable housing could be considered a regional issue, requiring regional solutions.

Ms. Beekman the issue of fair housing and the access to affordable housing is really a national issue, as a similar pattern and trend is happening in metropolitan areas throughout the country. She added the vast majority of funding for affordable housing comes from the federal government, and it is an issue of supply and demand. She noted this is a complex problem and too unfair and unrealistic to place it at any single agency's feet.

Councilmember/Commissioner Ryan stated this issue has been a difficult challenge for Brooklyn Center as well as the entire metropolitan area and is a consequence of wage inequity that has been evolving over the last four decades. He expressed concern that the City will create a greater burden for itself, and increase the number of lower income households, by trying to take on more than its fair share of solutions for affordable housing. He added he hopes the City can partner with other metro area cities to address this issue fairly and equitably. He noted he has voted in support of every affordable housing proposal that has come before the City Council.

Councilmember/Commissioner Ryan stated he supports a supply of affordable housing proportionate to the City's needs without providing more than that which is the City's fair and equitable share. He added the City Council must address this issue in a fair and sustainable manner, keeping in mind the greater interests of the City of Brooklyn Center for years to come.

Mr. Boganey stated it is important to distinguish between fair housing and affordable housing, which is a regional and national issue. He added the City's proposed Fair Housing policy speaks more directly to civil rights requirements, prohibiting discrimination against those seeking housing.

Councilmember/Commissioner Graves stated this is an important first step, although there may be room for more nuance. She added she supports sending the draft documents to local organizations to get some feedback on what is proposed now. She noted she is ready to move the Fair Housing Policy forward.

Councilmember/Commissioner Graves asked whether Brooklyn Center ever had a Human Rights Commission, and why the City does not have one now. She added Brooklyn Park has a Human Rights Commission, and another local city just added one.

Mr. Boganey stated there was Brooklyn Center Human Rights Commission. He added he is unsure about why it was disbanded, although there was some sense that its mission and work were duplicative of what was being offered by the State of Minnesota.

Councilmember/Commissioner Graves stated she would be interested in having a Work Session discussion about the potential for a Human Rights Commission.

City Clerk Barb Suciu stated a Resolution was passed in 2003 establishing a Human Rights Resources Commission. Mr. Boganey agreed to do more research. He added he believes the Commission was dissolved by the City Council.

Mayor/President Elliott stated this is a good starting point to move forward with the Fair Housing Policy. He expressed his appreciation for the work that has been done by the Housing Commission and City Staff.

ADJOURNMENT

Councilmember/Commissioner Graves moved and Mayor/President Elliott seconded adjournment of the City Council/Economic Development Authority Work Session at 9:27 p.m.

Motion passed unanimously.

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)
CITY OF BROOKLYN CENTER)

ss. Certification of Minutes

The undersigned, being the duly qualified and appointed City Clerk of the City of Brooklyn Center, Minnesota, certifies:

1. That attached hereto is a full, true, and complete transcript of the minutes of a Work Session of the City Council of the City of Brooklyn Center held on November 9, 2020.
2. That said meeting was held pursuant to due call and notice thereof and was duly held at Brooklyn Center City Hall.
3. That the City Council adopted said minutes at its November 24, 2020, Regular Session.

City Clerk

Mayor

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: Dr. Reggie Edwards, Deputy City Manager

BY: Alix Bentrud, Deputy City Clerk

SUBJECT: Approval of Licenses

Background:

The following businesses/persons have applied for City licenses as noted. Each business/person has fulfilled the requirements of the City Ordinance governing respective licenses, submitted appropriate applications, and paid proper fees.

Applicants for rental dwelling licenses are in compliance with Chapter 12 of the City Code of Ordinances, unless comments are noted below the property address on the attached rental report.

Gasoline Service Station

Casey's Retail Company DBA Casey's General Store #3823 211 Freeway Blvd	1 SE Convenience Blvd Ankeny IA 50321
Northern Tier Retail LLC DBA Speedway - 1901 57th Ave N	500 Speedway Dr Enon OH 45323
Northern Tier Retail LLC DBA Speedway - 6950 Brooklyn Blvd	500 Speedway Dr Enon OH 45323
Northern Tier Retail LLC DBA Speedway - 6545 West River Rd	500 Speedway Dr Enon OH 45323
YD Holdings LLC DBA Holiday Stationstore #3808 5710 Xerxes Ave N	12500 Empress Ct Apple Valley 55124

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Mechanical Licenses

BSI Mechanical Inc	10327 Flanders St NE Blaine 55449
Erickson Plumbing Heating Cooling	1471 92nd Lane NE Blaine 55449
NAC Mechanical and Electrical Services	1001 Labore Industrial Court Ste B Vadnais Hgts 55110

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Secondhand Goods Dealer

GameStop #535 6068 Shingle Creek Pkwy	625 Westport Parkway Grapevine TX 76051
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Tobacco Related Product

Burr St Market Inc DBA Quick Shop	5808 Xerxes Ave N Brooklyn Center 55429
Casey's Retail Company DBA Casey's General Store #3823 211 Freeway Blvd	1 SE Convenience Blvd Ankeny IA 50321
Leng Ku DBA Sun Foods	6350 Brooklyn Blvd Brooklyn Center 55429
Royal Tobacco	5625 Xerxes Ave N Brooklyn Center 55430
Walgreens Company 6390 Brooklyn Blvd	PO Box 901 Deerfield IL 60015
YD Holdings LLC DBA Holiday Stationstore #3808 5710 Xerxes Ave N	12500 Empress Ct Apple Valley 55124

Strategic Priorities and Values:

Safe, Secure, Stable Community, Operational Excellence

ATTACHMENTS:

Description	Upload Date	Type
Rental Criteria	7/7/2020	Backup Material
11-23-2020 Rentals	11/17/2020	Backup Material

Property Code and Nuisance Violations Criteria		
License Category (Based on Property Code Only)	Number of Units	Property Code Violations per Inspected Unit
Type I – 3 Year	1-2 units	0-2
	3+ units	0-0.75
Type II – 2 Year	1-2 units	Greater than 2 but not more than 5
	3+ units	Greater than 0.75 but not more than 1.5
Type III – 1 Year	1-2 units	Greater than 5 but not more than 9
	3+ units	Greater than 1.5 but not more than 3
Type IV – 6 Months	1-2 units	Greater than 9
	3+ units	Greater than 3

b. Police Service Calls.

Police call rates will be based on the average number of valid police calls per unit per year. Police incidences for purposes of determining licensing categories shall include disorderly activities and nuisances as defined in Section 12-911, and events categorized as Part I crimes in the Uniform Crime Reporting System including homicide, rape, robbery, aggravated assault, burglary, theft, auto theft and arson.

Calls will not be counted for purposes of determining licensing categories where the victim and suspect are "Family or household members" as defined in the Domestic Abuse Act, Minnesota Statutes, Section 518B.01, Subd. 2 (b) and where there is a report of "Domestic Abuse" as defined in the Domestic Abuse Act, Minnesota Statutes, Section 518B.01, Subd. 2 (a).

License Category	Number of Units	Validated Calls for Disorderly Conduct Service & Part I Crimes (Calls Per Unit/Year)
No Category Impact	1-2	0-1
	3-4 units	0-0.25
	5 or more units	0-0.35
Decrease 1 Category	1-2	Greater than 1 but not more than 3
	3-4 units	Greater than 0.25 but not more than 1
	5 or more units	Greater than 0.35 but not more than 0.50
Decrease 2 Categories	1-2	Greater than 3
	3-4 units	Greater than 1
	5 or more units	Greater than 0.50

Rental Licenses for Council Approval on November 23, 2020								
Property Address	Dwelling Type	Renewal or Initial	Owner	Property Code Violations	License Type	Police CFS *	Final License Type **	Previous License Type ***
5415 69th Ave N Maranatha Place	Multi 1 Bldg 63 Units 16 inspected	Renewal	Center Park Senior Apartments	7 .43 per unit	I	1 valid .02 per unit 6/1/2020 theft	I	I
5240 Drew AVE N	Multi 1 Bldg 10 Units	Renewal	Bradley J Schumacher - met requirements	6 .6 per unit	I	0	I	III
6737 Humboldt Ave N Humboldt Square Apartments	Multi 2 Blgs 18 Units	Renewal	Todd Glorvick / Humboldt Square Ventures	43 2.4 per unit	III	0	III	II
6915 Humboldt Ave N Lynwood Pointe Apartments	Multi 2 Bldgs 50 Units	Renewal	Steven Scott Management	5 .1 per unit	I	1 valid .02 per unit 10/10/2019 disturbing peace	I	III
3614-16 50th Ave N	2 Family 2 Units	Renewal	William Lang / WLG Holdings LLC	7	III	0	III	II
2307-09 54th Ave N	2 Family 2 Units	Renewal	James Johnson	2	I	0	I	I
3819 61st Ave N	Single	Renewal	Fred Hanus	2	I	0	I	II
5101 63rd Ave N	Single	Renewal	Adedamola Ogundipe	2	I	0	I	II
3224 67th Ave N	Single	Renewal	Haymant Dasarth - met requirements	0	I	0	I	I
6261 Brooklyn Dr	Single	Renewal	Ruben Zempoaltecatl	0	I	0	I	II
7025 Drew Ave N	Single	Renewal	Dave Swartout	5	II	0	II	II
7048 France Ave N	Single	Renewal	Tai Hon	0	I	0	I	I
7031 Humboldt Ave N	Single	Renewal	IH3 Property Ilinois	3	II	0	II	II
2913 Nash Rd	Single	Renewal	Chen Zhou	16	IV	0	IV	II
6670 Xerxes Pl	Single	Renewal	Dolores Ann Fischer	1	I	0	I	I

* CFS = Calls For Service for Renewal Licenses Only (Initial Licenses are not applicable to calls for service and will be listed N/A.)

** License Type Being Issued

*** Initial licenses will not show Type 1 = 3 Year Type II = 2 Year Type III = 1 Year

All properties are current on City utilities and property taxes

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Mark Ebensteiner, Finance Director

SUBJECT: Extension of Audit Service Professional Contract

Background:

As part of the Finance Policies Manual there are adopted procedures identified for request for proposals for financial services. The purpose of this policy is to provide for the orderly conduct of requesting proposals for professional services for handling financial affairs, to ensure that all services will be periodically reviewed, and that the proper balance will be maintained between cost and quality of services.

Audit Services

In 2014, after a formal request for proposal process, the Council maintained audit services with Malloy, Montague, Karnowski, Radosevich & Co. (MMKR) and have maintained that relationship through the 2019 fiscal year audit. The current policy dictates that audit services go out for requests for proposals every six years, which was scheduled for 2020. With that current challenges with the pandemic, staff is requesting that the City enter into a one year contract with MMKR to provide continuity with these challenges. Considering the time and effort involved in transitioning to a new audit firm, staff recommends this one year extension and completing a full request for proposal process in 2021. Staff has been satisfied with the high-quality work, integrity, professionalism and industry knowledge display by MMKR during the prior annual audits.

Budget Issues:

Audit fees are budgeted in the department budgets. Total 2020 audit cost proposal of \$42,000 based on one major federal program.

Strategic Priorities and Values:

Safe, Secure, Stable Community, Operational Excellence

ATTACHMENTS:

Description	Upload Date	Type
2020 MMKR Audit Proposal	11/18/2020	Backup Material



**PROPOSAL
FOR
CITY OF BROOKLYN CENTER, MINNESOTA
FOR
PROFESSIONAL AUDITING SERVICES**

**FOR FISCAL YEAR ENDING
DECEMBER 31, 2020**

**JAMES H. EICHEN, CPA
PRINCIPAL
E-MAIL: JEICHEN@MMKR.COM
952.545.0424**

MMKR
CERTIFIED PUBLIC
ACCOUNTANTS

MALLOY
MONTAGUE
KARNOWSKI
RADOSEVICH
& Co., P.A.

5353 Wayzata Boulevard • Suite 410 • Minneapolis, MN 55416
Telephone: 952-545-0424 Fax: 952-545-0569
website: www.mmkra.com



PRINCIPALS

Thomas A. Karnowski, CPA
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William J. Lauer, CPA
James H. Eichten, CPA
Aaron J. Nielsen, CPA
Victoria L. Holinka, CPA/CMA
Jaclyn M. Huegel, CPA
Kalen T. Karnowski, CPA

November 17, 2020

Mr. Mark Ebensteiner
Finance Director
City of Brooklyn Center
6301 Shingle Creek Parkway
Brooklyn Center, Minnesota 55430

Dear Mark:

We are pleased to submit this proposal to provide auditing services for the City of Brooklyn Center, Minnesota (the City) for the year ending December 31, 2020.

Our audits will be conducted in accordance with auditing standards generally accepted in the United States of America and the provisions of the *Legal Compliance Audit Guide*, promulgated by the Office of the State Auditor pursuant to Minnesota Statutes § 6.65. Our audits will also be conducted in accordance with the standards for financial and compliance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act; the provisions of the Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance); and any other applicable state or federal audit guide.

We anticipate issuing the following report letters in relation to the City's audit:

1. An opinion on the fair presentation of the City's basic financial statements in conformity with accounting principles generally accepted in the United States of America, with an "in relation to" opinion on the combining and individual fund financial statements and supporting schedules.
2. A report on compliance and internal control over financial reporting based on an audit of financial statements performed in accordance with *Government Auditing Standards*.
3. A report on compliance with Minnesota State Laws and Regulations.
4. A report on the Schedule of Expenditures of Federal Awards.
5. A report on compliance with requirements applicable to each major program and internal control over compliance with the Uniform Guidance.

We will also provide a management report to communicate comments and recommendations as a result of the audit. Our management report will include the formal communications to the City's audit/finance committee or its equivalent as required by Statement on Auditing Standards No. 114, *The Auditor's Communication With Those Charged With Governance*, including:

- The auditor's responsibility under auditing standards generally accepted in the United States of America,
- Planned scope and timing of the audit,
- Significant findings from the audit,
- Significant accounting policies,
- Management judgments and accounting estimates,
- Significant audit adjustments,
- Other information in documents containing audited financial statements,
- Disagreements with management,
- Management consultation with other accountants,
- Major issues discussed with management prior to retention, and
- Difficulties encountered in performing the audit.

The management report will also contain a discussion of any financial reporting, internal control, and compliance-related findings; an analysis of the City's financial condition; recommendations to management on improving its accounting system and financial reports; and updates on any prior year audit issues.

We understand that you will provide us with the basic information required for our audit and that you are responsible for the accuracy and completeness of that information. The assistance to be supplied by your personnel, including the preparation of schedules, analysis of accounts, preparation of confirmations, and locating documentation for transactions selected for testing, will be discussed and coordinated with you.

We understand that the City will be responsible for preparing the initial draft of the City's Comprehensive Annual Financial Report (CAFR); as well as editing the CAFR. We understand that we will be responsible for printing and binding the CAFR. Prior to issuance of the final audit reports, we shall review the management report, internal control letters, and any other required state or federal compliance reports with the City's management.

If our audit procedures indicate that material errors, illegal acts, or other irregularities might exist, we will make an immediate written report to the City's management, and/or other city officials as appropriate. We will not perform extended services at a cost to the City unless they are so authorized by the appropriate city officials.

We believe we are best qualified to perform the engagement for the following reasons:

- Our wealth of experience providing auditing, accounting, and consulting services to Minnesota municipalities with similar operations.
- Our proficiency performing numerous Single Audits of Federal Awards Programs for Minnesota local governmental entities.
- Our thorough and efficient audit process, which emphasizes effective client communications and limited disruptions to client operations.
- Experience with and expert knowledge of governmental financial reporting, including the standards of the Governmental Accounting Standards Board (GASB); and the requirements of the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting Program.

- Experience with Minnesota city public finance and various municipal enterprise operations, including, water, sewer, storm drainage, street light, liquor, event centers and a variety of other operations.
- Experience with growing metropolitan municipalities, including those with significant development.
- Ability to communicate and work with you.

To help with your evaluation, the following is a “Summary of Key Qualifications” for quick reference. Please refer to other sections of our proposal for more detailed information.

SUMMARY OF KEY QUALIFICATIONS

A. Quality

- Malloy, Montague, Karnowski, Radosevich & Co., P.A. (MMKR) emphasizes quality service, accomplished by recruiting and developing high-quality personnel.
- We are a member of the Governmental Audit Quality Center of the American Institute of Certified Public Accountants (AICPA), which maintains standards for quality control in governmental audits for CPA firms nation-wide.

B. Experience and Expertise

- Our firm has specialized in providing audit services to governmental entities for over 60 years. Last year, we audited over 25 cities and approximately 30 school districts and 50 other governmental entities of varying size.
- Because of this specialization, we have a large pool of knowledgeable and experienced governmental auditors that possess significant knowledge of the complexities of municipal finance in the state of Minnesota. Our governmental auditors work with many cities with operations similar to yours. MMKR professionals also receive extensive continuing education, with internal and external seminars specifically for governmental audits.
- MMKR is an industry leader in providing guidance to Minnesota local governments on the accounting and reporting standards established in GASB Statements. We have assisted our local governments with the successful and often early implementation of several complex new GASB standards that have become effective in recent years. This process has provided us with a practical understanding of these new standards that can only be gained by firsthand experience.
- Our firm performs dozens of Single Audits of Federal Awards expenditures each year.
- In addition to audits, we provide our clients with a wide range of consulting services, including management and operational reviews, budget development and monitoring, cash flow projections, human resources consulting, and payroll tax and employee benefit-related matters.
- MMKR professionals are active members of many professional organizations and committees, including the Minnesota Government Finance Officers Association (MnGFOA) and the Minnesota Society of Certified Public Accountants (MNCPA). Our professionals have held various leadership positions on the MNCPA Board of Directors, including past chairman. We are also active in various MNCPA committees, which include planning, moderating, and presenting at the annual city, charter school, and school district audit workshops, committee work on Single Audit implementation, and quality reviews.

SUMMARY OF KEY QUALIFICATIONS (CONTINUED)

- On our staff, we have reviewers for both the Government Finance Officers Association (GFOA) and the Association of School Business Officials (ASBO) International Certificate of Excellence in Financial Reporting Programs. We have assisted numerous clients with obtaining certificates on first-time submissions and with retaining certificates in subsequent years.
- MMKR professionals are also active members of the AICPA. This active role includes being a member of the AICPA Council; a 400-member group representing members from around the country that provides strategic planning and direction to the AICPA Board of Directors.
- Over the years, we have developed many customized audit tools, techniques, and paperless workpaper and report formats, which allow us to perform our audits efficiently and with minimal disruption to our clients' operations.

C. Service

- Excellent client satisfaction supported by a very high client retention record.
- We are much more than an audit firm; our clients receive many additional benefits and services.
- Our client references are our best proof of service commitment; most additions to our governmental client group are the direct result of recommendations from existing clientele who are more than satisfied with our services. A listing of our governmental audit and consulting clients is included in this proposal; please feel free to contact them.

We hope you will give our firm and proposal due consideration. We will provide the administration and City Council with the quality and timely service you expect and demand from your auditors. If you have any questions, please contact James H. Eichten, Principal. This proposal is a firm and irrevocable offer for ninety (90) days covering the fiscal year ending December 31, 2020.

Sincerely,

MALLOY, MONTAGUE, KARNOWSKI, RADOSEVICH & CO., P.A.



James H. Eichten, CPA
Principal

JHE:lmb

APPENDIX A

PEER REVIEW

MMKR
CERTIFIED PUBLIC
ACCOUNTANTS

MALLOY
MONTAGUE
KARNOWSKI
RADOSEVICH
& Co., P.A.

5353 Wayzata Boulevard • Suite 410 • Minneapolis, MN 55416
Telephone: 952-545-0424 Fax: 952-545-0569
website: www.mmkz.com



Report on the Firm's System of Quality Control

To the Principals of Malloy, Montague, Karnowski, Radosevich, and Co., P.A. and the Peer Review Committee of the Minnesota Society of CPAs

We have reviewed the system of quality control for the accounting and auditing practice of Malloy, Montague, Karnowski, Radosevich, and Co., P.A. (the firm) in effect for the year ended May 31, 2019. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at www.aicpa.org/prsummary. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

Required Selections and Considerations

Engagements selected for review included engagements performed under *Government Auditing Standards*, including compliance audits under the Single Audit Act and an audit of an employee benefit plan.

As part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

Opinion

In our opinion, the system of quality control for the accounting and auditing practice of Malloy, Montague, Karnowski, Radosevich, and Co., P.A. in effect for the year ended May 31, 2019 has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Malloy, Montague, Karnowski, Radosevich, and Co., P.A. has received a peer review rating of *pass*.


KerberRose SC
September 25, 2019

APPENDIX B

RÉSUMÉS

JAMES H. EICHEN, CPA

MANAGING PARTNER



PROFESSIONAL SUMMARY

Since the start of his career in 1989, Jim Eichen has specialized in providing accounting, auditing, and consulting services for clients in governmental, nonprofit, and commercial industries, among others. During this time, Jim has provided service to a variety of institutions; helped organizations earn and retain industry certifications, and consulted on financial management issues. In each of these situations, and for every client project, his focus is to provide solutions that are thorough, tailored to clients' unique needs, and that adhere to the most stringent standards.

To keep his skills current, Jim receives at least 40 hours annually of continuing professional education, a significant portion of which are related specifically to governmental issues. Jim holds a Bachelor of Arts degree in business administration, with an accounting emphasis, from the College of St. Thomas.

PROFESSIONAL HISTORY

- Present: Managing Partner – Malloy, Montague, Karnowski, Radosevich & Co., P.A., Minneapolis, Minnesota
- Previous: Senior Accountant – Pannell Kerr Forster, Minneapolis, Minnesota

MAJOR ASSIGNMENTS

- Annual audits of Minnesota school districts, municipalities, and various other governmental entities
- Audits of federal financial assistance programs of Minnesota school districts, municipalities, and various other governmental entities
- Assists city clients to obtain and retain the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting
- Assists school district clients to obtain and retain the Association of School Business Officials (ASBO) International Certificate of Excellence in Financial Reporting
- Management consulting services, including internal control studies, operational reviews, and cash flow projections
- Assistance in the development of audit manuals for cities, school districts, fire reliefs, and federal financial assistance programs
- Audits of various nonprofit organizations, including rural electric cooperatives, nursing homes, churches, and educational foundations
- Annual audits of commercial entities, including preparation of tax returns and monthly compilations

EDUCATION

- College of St. Thomas
Bachelor of Arts in Business Administration with an Emphasis in Accounting

JAMES H. EICHEN, CPA (CONTINUED)

PROFESSIONAL QUALIFICATIONS

- Certified Public Accountant in Minnesota
- Receives at least 40 hours per year of continuing professional education, of which a portion of those hours are related specifically to governmental issues. This is in compliance with *Government Auditing Standards*

PROFESSIONAL MEMBERSHIPS

- American Institute of Certified Public Accountants (AICPA)
- Minnesota Society of Certified Public Accountants (MNCPA)
- Minnesota Association of School Business Officials (MASBO)
- ASBO International
- Minnesota Chapter of Government Finance Officers Association (MnGFOA)
- GFOA of the United States and Canada

PROFESSIONAL ACTIVITIES

- Board Member of the MNCPA, including chairperson
- Member of the Council of the AICPA
- Served in many capacities on the MNCPA's Governmental Accounting and Auditing Committee
- Chairperson of the MNCPA's Professional Standard Strategic Council
- Served on committees of the Office of the State Auditor (OSA) and the Minnesota Department of Education (MDE), including implementation issues of Governmental Accounting Standards Board (GASB) Statements
- Special review committee member for the GFOA Certificate of Achievement for Excellence in Financial Reporting Programs
- Has made presentations to organizations such as the MNCPA, AICPA, MnGFOA, MASBO, OSA, and MDE on subjects such as legislative issues, compliance requirements, implementation issues of GASB Statements, technical reviews, quality reviews, and obtaining a Certificate of Achievement for Excellence in Financial Reporting

JACLYN M. HUEGEL, CPA

PRINCIPAL



Jackie Huegel specializes in meeting the unique accounting, auditing, and consulting needs of school districts, municipalities, and other governmental entities. Jackie has conducted audits of these groups, including those required for their associated federal financial assistance programs. Jackie has also conducted commercial audits, compiled tax returns, and performed monthly compilations.

To ensure she stays current with the latest in accounting practices, Jackie receives at least 40 hours annually of continuing professional education, a portion of which are focused on government auditing standards. This training is added to an educational foundation of Jackie's Bachelor of Arts degree in accounting and management from St. Mary's University in Winona.

PROFESSIONAL HISTORY

- Present: Principal – Malloy, Montague, Karnowski, Radosevich & Co., P.A., Minneapolis, Minnesota

MAJOR ASSIGNMENTS

- Annual audits of Minnesota school districts, municipalities, and various other governmental entities
- Audits of federal financial assistance programs of Minnesota school districts, municipalities, and various other governmental entities
- Assists city and school district clients to obtain and retain the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting
- Assists school district clients to obtain and retain the Association of School Business Officials (ASBO) International Certificate of Excellence in Financial Reporting
- Assistance in the development of audit manuals for cities, school districts, fire reliefs, and federal financial assistance programs
- Various commercial and nonprofit audits and tax returns

EDUCATION

- St. Mary's University – Winona, Minnesota
Bachelor of Arts in Accounting and Management

PROFESSIONAL QUALIFICATIONS

- Certified Public Accountant in Minnesota
- Receives at least 40 hours per year of continuing professional education, of which a portion of those hours are related specifically to governmental issues. This is in compliance with *Government Auditing Standards*

JACLYN M. HUEGEL, CPA (CONTINUED)

PRINCIPAL

PROFESSIONAL MEMBERSHIPS

- American Institute of Certified Public Accountants (AICPA)
- Minnesota Society of Certified Public Accountants (MNCPA)
- Minnesota Association of School Business Officials (MASBO)
- ASBO International
- Minnesota Chapter of Government Finance Officers Association (MnGFOA)
- GFOA of the United States and Canada

PROFESSIONAL ACTIVITIES

- Active member of the MNCPA, participating in various committees
- Special review committee member for the GFOA Certificate of Achievement for Excellence in Financial Reporting Program
- Has made presentations at various functions for boards, councils, and conference attendees

JESSICA A. BORGLUM

SENIOR CONSULTANT

PROFESSIONAL HISTORY

- Present: Senior Consultant – Malloy, Montague, Karnowski, Radosevich & Co., P.A., Minneapolis, Minnesota

MAJOR ASSIGNMENTS

- Annual audits of Minnesota school districts, municipalities, and various other governmental entities
- Audits of federal financial assistance programs of Minnesota school districts, municipalities, and various other governmental entities
- Assists city clients to obtain and retain the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting
- Assists school district clients to obtain and retain the Association of School Business Officials (ASBO) International Certificate of Excellence in Financial Reporting
- Assistance in the development of audit manuals for cities, school districts, fire reliefs, and federal financial assistance programs

EDUCATION

- University of Wisconsin – Eau Claire
Bachelor of Arts in Business
Double Major in Accounting and Finance

PROFESSIONAL QUALIFICATIONS

- Receives at least 40 hours per year of continuing professional education, of which a portion of those hours are related specifically to governmental issues. This is in compliance with *Government Auditing Standards*

PROFESSIONAL MEMBERSHIPS

- Minnesota Society of Certified Public Accountants (MNCPA)
- Minnesota Association of School Business Officials (MASBO)
- Minnesota Chapter of Government Finance Officers Association (MnGFOA)

APPENDIX C
LISTING OF GOVERNMENTAL AUDIT CLIENTS

The following is a complete list of governmental entities for which we have performed/are performing audit and accounting services within the last year. Audit clients that have applied for or been awarded the ASBO International or GFOA Certificate of Excellence in Financial Reporting are identified with an asterisk ("*").

Cities		
* City of Apple Valley	* City of Golden Valley	* City of Robbinsdale
* City of Arden Hills	* City of Monticello	* City of Rosemount
* City of Bloomington	* City of Mounds View	City of Saint Peter
* City of Brooklyn Center	* City of New Hope	* City of Shoreview
* City of Burnsville	City of Newport	City of Spring Park
* City of Chaska	* City of North St. Paul	* City of South St. Paul
City of Circle Pines	* City of Plymouth	* City of St. Michael
* City of Coon Rapids	City of Prior Lake	City of Wayzata
* City of Farmington	* City of Ramsey	* White Bear Township
Fire Reliefs		
Andover Firefighters' Relief Association	Farmington Firefighters' Relief Association	Roseville Firefighters' Relief Association
Apple Valley Firefighters' Relief Association	Golden Valley Fire Department Relief Association	Savage Fire Department Firefighters' Relief and Pension Association
Centennial Fire District	Ramsey Firefighters' Relief Association	St. Michael Firemen's Relief Association
Centennial Fire Fighters' Relief Association	Rosemount Firefighters' Relief Association	West Metro Fire-Rescue District
Chaska Fire Department Relief Association		
Other Governmental Entities		
Bassett Creek Watershed Management Commission	Equity Alliance MN	Metropolitan Library Service Agency
Black Dog Watershed Management Organization	Golden Valley – Crystal – New Hope Joint Water Commission	Minnesota River Valley Transit
Centennial Lakes Police Department	Housing and Redevelopment Authority of South St. Paul	Minnesota State Fair
East Central Minnesota Educational Cable Cooperative	Local Government Information Systems Association (LOGIS)	Oak Land Cooperative Center
		Rum River Special Education Cooperative
Charter Schools		
Achieve Language Academy	El Colegio Charter School	New City School
Aurora Charter School	Higher Ground Academy	New Heights Schools, Inc.
BlueSky Charter School, Inc.	International Spanish Language Academy	Northwest Suburban Integration District
City Academy	Laura Jeffrey Academy	Scitech Academy
Crosslake Community School, Inc.	Lionsgate Academy	St. Paul School of Northern Lights
Cyber Village Academy	Metro Deaf School, Inc.	Twin Cities Academy
DaVinci Academy	Minnesota Math and Science Academy	Twin Cities Academy High School
East Range Academy of Technology and Science		Universal Academy
Independent School Districts		
* ISD No. 11, Anoka-Hennepin	* ISD No. 279, Osseo – Maple Grove	* ISD No. 728, Elk River
ISD No. 12, Centennial	ISD No. 280, Richfield	ISD No. 831, Forest Lake
ISD No. 15, St. Francis	* ISD No. 281, Robbinsdale Area Schools	* ISD No. 832, Mahtomedi
* ISD No. 16, Spring Lake Park	ISD No. 283, St. Louis Park	* ISD No. 833, South Washington County Schools
ISD No. 139, Rush City	* ISD No. 284, Wayzata	
ISD No. 197, West St. Paul	ISD No. 286, Brooklyn Center	* ISD No. 911, Cambridge Intermediate District No. 287
* ISD No. 199, Inver Grove Heights	ISD No. 578, Pine City	Intermediate School District No. 917
ISD No. 200, Hastings	* ISD No. 621, Mounds View	Northeast Metropolitan Intermediate School District No. 916
* ISD No. 272, Eden Prairie	* ISD No. 622, North St. Paul	SSD No. 6, South St. Paul
ISD No. 273, Edina	* ISD No. 624, White Bear Lake	
* ISD No. 278, Orono	ISD No. 625, Saint Paul Public Schools	

APPENDIX D
DOLLAR COST PROPOSAL

City of Brooklyn Center, Minnesota

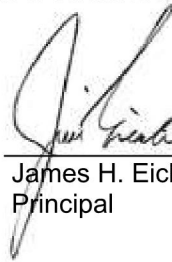
Schedule of Professional Fees and Expenses
For Professional Auditing Services

Estimated fees for the year ending December 31, 2020

Year Ending December 31,	Basic Audit	Single Audit Estimate
2020	<u>\$ 37,500</u>	<u>\$ 4,500</u>

I certify that I am entitled to represent Malloy, Montague, Karnowski, Radosevich & Co., P.A., (MMKR), empowered to submit this proposal, and authorized to sign a contract with the City of Brooklyn Center, Minnesota (the City).

Signed:



James H. Eichten, CPA
Principal

Additional services hourly rates:

If it should become necessary for the City to request the auditor to render any additional service to either supplement the services requested in this proposal or to perform additional work as a result of the specific recommendations included in any report issued on this engagement or as a result of new standards, then such additional work shall be performed only if set forth in an addendum to the contract between the City and MMKR. Any such additional work agreed to between the City and MMKR shall be performed at the same rates set forth in the Schedule of Professional Fees and Expenses included in this Dollar Cost Proposal.

MMKR does not charge its audit clients for inquiries and technical assistance during the year that are minor in nature (those that would not require a significant amount of research or result in the issuance of a separate report letter or letter).

Since the Single Audit work is based on the requirements of individual grants, which can vary, the cost of the Single Audit is stated separately, and is based on estimated minimum hours to complete a basic Single Audit with one major program.

City of Brooklyn Center, Minnesota

Schedule of Professional Fees and Expenses
For Professional Auditing Services

Estimated fees for the year ending December 31, 2020:

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Basic audit				
Principals	30	\$ 280	\$ 240	\$ 7,200
Managers and Senior Consultants	55	170	170	9,350
Senior Associates	90	120	115	10,350
Associates and Staff Accountants	115	105	85	9,775
Other – Clerical	10	55	55	550
Subtotal	300			37,225
Reimbursable expenses (photocopies, mileage, etc.)				275
Total not-to-exceed base fee for the 2020 audit				\$ 37,500
Single Audit estimate (based on one major program)				\$ 4,500

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Mark Ebensteiner, Finance Director

SUBJECT: Resolution Authorizing the Execution of a Four Year Contract with Hennepin County for Assessing Services

Background:

On July 11, 2016, the City Council adopted Resolution No. 2016-103 a Resolution Authorizing the Execution of a Four-Year Contract with Hennepin County (the County) for Assessing Services for the 2017, 2018, 2019 and 2020 property assessments. The current contract expired on July 31, 2020.

Attached for your reference is a copy of the resolution and the July 11th staff memorandum.

Contract for Continuation of Assessing Services with Hennepin County

Hennepin Contract No. A2010403 is a continuation of the assessing services provided within the current four-year contract and follows the County standard agreements for assessing services which operate on a four-year extension/renewal cycle.

The County's assessment services identified in the contract includes:

1. Physically inspect and revalue 20% of the real property, as required by law.
2. Physically inspect and value all new construction, additions and renovation.
3. Adjust estimated market values on those properties not physically inspected as deemed necessary per sales ratio analysis.
4. Prepare the initial assessment roll.
5. Print and mail valuation notices.
6. Respond to taxpayers regarding assessment or appraisal problems or inquiries.
7. Conduct valuation reviews prior to Board of Review or Open Book Meetings, as determined by the City – approximate dates: March through May 15.
8. Attend Board of Review or conduct Open Book Meeting. Prepare all necessary review appraisals. Approximate dates: April 1 – May 31.
9. Maintain an updated property file – current values, classification data and characteristic data.
10. Prepare divisions and combinations as required.
11. Administer the abatement process pursuant to Minn. Stat. §375.192.
12. Prepare appraisals; defend and/or negotiate all Tax Court cases.
13. Provide all computer hardware and software applications necessary to complete contracted services.
14. Process all homestead and special program applications.

The fee associated with these contract services is identified inclusively as \$248,000 for each assessment and includes the provision that any payment for the current year's assessment may be increased or decreased by that amount which exceeds or is less than the County's estimated cost of printing/ mailing value notices, Chapter 278 tax court petitions, processing all homestead applications, appraising new construction and new parcels for the current year's assessment. The amount of any increase or decrease shall be specified in the billing for the current year's assessment.

In addition, said assessments may also be increased by the County if: 1) The County determines that any cost to the County in carrying out any aspect of this Agreement has increased, including but not limited to the following types of costs: new construction and new parcel appraisals, mileage, postage, supplies, labor (including fringe benefits) and other types of costs, whether similar or dissimilar; and/or 2) The County reasonably determines that other costs should be included in the costs of assessment work.

The payment schedule corresponds with the City's receipt of annual property taxes with annual installment payments on July 15th and December 15th.

Budget Issues:

The proposed contract for the continuation of assessing services by Hennepin County is consistent with the City's budgeting for the Assessing Division. The prior estimated budgeted costs for the annual assessment services was \$205,000. The revised annual contract budget is \$248,000, which is a \$43,000 (21%) increase from the prior contract. The revised budget amount is included in the 2021 budget.

A portion of the increase, \$8,000 involves the County completing the homesteading duties on behalf of the City, which is a change from the prior contract. The City will see an offsetting decrease in part-time wages and benefits of approximately \$25,000, as the position that previously completed homesteading is no longer necessary.

Since the initial decision to transfer assessing from City staff to HC contract we estimate the total savings at more than \$900,000.

Strategic Priorities and Values:

Safe, Secure, Stable Community, Operational Excellence

ATTACHMENTS:

Description	Upload Date	Type
Prior Assessment Memo and Support	11/17/2020	Backup Material
2021 - 2024 Assessment Contract Resolution	11/17/2020	Resolution Letter
Contract A2010403 - 2021 - 2024 Assessing Services	11/17/2020	Backup Material

COUNCIL ITEM MEMORANDUM

DATE: July 11, 2016

TO: Curt Boganey, City Manager

FROM: Gary Eitel, Director of Business & Development *AE*.

SUBJECT: Resolution Authorizing the Execution of a Four Year Contract with Hennepin County for Assessing Services

Recommendation:

It is recommended that the City Council consider approval/adoption of a Resolution Authorizing the Execution of a Four Year Contract with Hennepin County for Assessing Services.

Background:

On April 14, 2014, the City Council adopted Resolution No. 2014-54 a Resolution Authorizing the Execution of a Two Year Contract with Hennepin County for Assessing Services for the 2015 and 2016 property assessments. The current contract expires on July 31, 2016.

Attached for your reference is a copy of the resolution and the April 14th staff memorandum.

Contact for Continuation of Assessing Services with Hennepin County

Hennepin Contract No. 165520 is a continuation of the assessing services provided within the current two year contract and follows the County standard agreements for assessing services which operate on a four year extension/renewal cycle.

The County's assessment services identified in the contract includes:

1. Physically inspect and revalue 20% of the real property, as required by law.
2. Physically inspect and value all new construction, additions and renovation.
3. Adjust estimated market values on those properties not physically inspected as deemed necessary per sales ratio analysis.
4. Prepare the initial assessment roll.
5. Print and mail valuation notices.
6. Respond to taxpayers regarding assessment or appraisal problems or inquiries.
7. Conduct valuation reviews prior to Board of Review or Open Book Meetings, as determined by the City – approximate dates: March through May 15.
8. Attend Board of Review or conduct Open Book Meeting. Prepare all necessary review appraisals. Approximate dates: April 1 – May 31.
9. Maintain an updated property file – current values, classification data and characteristic data.
10. Prepare divisions and combinations as required.
11. Administer the abatement process pursuant to Minn. Stat. §375.192.
12. Prepare appraisals; defend and/or negotiate all Tax Court cases.

COUNCIL ITEM MEMORANDUM

13. Provide all computer hardware and software applications necessary to complete contracted services. (additional provision from the 2014 contract)

The City's responsibilities identified in the contract include:

1. Providing office personnel to receive, evaluate, and organize homestead applications and to answer routine questions pertaining to homesteads and property assessment matters.
2. Provide a work space; including office equipment, supplies, and clerical/secretarial support, for the occasional use of two County appraisers.
3. Provide for secured storage of all homestead applications and homestead data which meets the requirements set by the County. (additional provision from the 2014 contract)

The fee associated with these contract services is identified inclusively as \$205,000 for each assessment and includes the provision that any payment for the current year's assessment may be increased or decreased by the amount which exceeds or is less than the County's estimating cost of printing/mailling value notices, Chapter 278 tax court petitions appraising new construction and new parcels for the current year's assessment. The amount of the increase or decrease shall be specified in the billing for the current year's assessment.

This provision has been modified from the previous two year contract, which identified the assessment services of \$161,000 plus the costs of printing and mailing of value notices and all costs associated with handling Chapter 278 tax court cases. [Estimating a Total cost of \$200,000 depending on postage and tax court petitions] for each assessment.

The payment schedule corresponds with the City's receipt of annual property taxes with annual installment payments on July 15th and December 15th.

Budget Issues:

The proposed contract for the continuation of assessing services by Hennepin County is consistent with the City's two year budgeting for the Assessing Division.

Member introduced the following resolution and moved its adoption:

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A FOUR YEAR CONTRACT WITH HENNEPIN COUNTY FOR ASSESSING SERVICES.

WHEREAS, the provisions of Minnesota Statutes, Section 273.072 and Minnesota Statutes, Section 471.59 permit the County Assessor to provide for the assessment of property; and

WHEREAS, in 2012, the City of Brooklyn Center contracted with the Hennepin County Assessor to provide appraisal reports and expert testimonies for tax court petitions; and

WHEREAS, in 2013, the City entered into an interim contract with Hennepin County to carry out the statutory responsibilities and duties of the City Assessor's position to complete the 2014 property assessment; and

WHEREAS, on April 14, 2014, the City Council adopted Resolution No. 2014-54, A Resolution Authorizing the Execution of a Two Year Contract with Hennepin county for Assessing Services (2015 & 2016); and

WHEREAS, Hennepin Contract No. A140394, an agreement between the City of Brooklyn Center and Hennepin County provided assessing services for the 2015 and 2016 property assessments; defined the roles and responsibilities of the City and Hennepin County; and established an estimated budget of \$200,000 for the annual cost of assessment services plus costs of printing and mailing of value notices and all Tax Court Costs; and

WHEREAS, Hennepin County has provided a contract to continue the roles and responsibilities of the City of Brooklyn Center and Hennepin County for assessing services for the 2017, 2018, 2019, and 2020 property assessments with an estimated annual budget of \$205,000.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Center, Minnesota that Hennepin Contract No. A165520, an agreement between the City of Brooklyn Center and Hennepin County to provide assessing services for the 2017, 2018, 2019, and 2020 property assessments, is hereby approved and the Mayor and City Manager are authorized to execute.

July 11, 2016

Date

Mayor

ATTEST: _____
City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member

and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.



Hennepin County Assessor Department

A-2103 Government Center
300 South Sixth Street
Minneapolis, Minnesota 55487-0213

www.co.hennepin.mn.us

Gary Eitel
Business and Development Director
City of Brooklyn Center
6301 Shingle Creek Pkwy
Brooklyn Center, MN 55430

RE: Assessment Services Agreement

Dear Gary Eitel,

Enclosed for your review and City Council approval is our Assessment Service Agreement (plus three copies) between the City of Brooklyn Center and Hennepin County. The approval of this agreement will continue our relationship as your City Assessor for the next four (4) years.

In the first year of the agreement we are estimating the cost to complete your 2017 assessment at \$205,000.00. This estimate includes the costs to deliver all of the services listed in Exhibit A of the agreement.

I want to assure you that we are making every effort to keep our costs to a minimum while still providing the best possible customer service to your taxpayers in setting and preserving your assessed values.

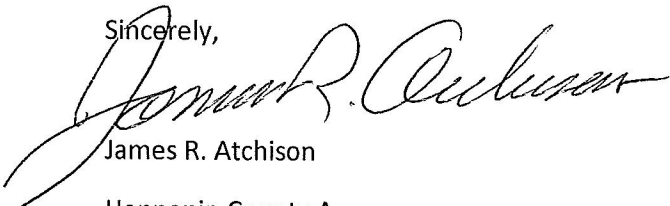
After City Council approval please return all three (3) signed original agreements by July 11, 2016, to:

James Atchison
c/o Hennepin County Assessor
A – 2103 Government Center MC 213
Minneapolis, MN 55487-0213

I have also enclosed the "Hennepin County Assessor's Office: At a Glance" document as a reminder of the assessment credentials and professional profile that the Hennepin County Assessor's Office brings to our collaborative relationship.

If you have any questions, or would like to further discuss any of these items, please contact me at James.Atchison@Hennepin.us or (612)348-4567.

Sincerely,



James R. Atchison

Hennepin County Assessor

Enc



HENNEPIN COUNTY

ASSESSORS OFFICE

June 1, 2016

At a Glance

Learn why the Hennepin County Assessor's Office should be your choice for your assessing needs.

Our mission is to value and classify property, uniformly and accurately.

Why Hennepin County?

- Customer Service
- Uniformity & Accuracy
- Trust & Transparency
- Resources & Tools
- Experience & Expertise
- Professional Staff

Customer Service

Customer service is an important core value of Hennepin County and is an integral part of the Hennepin County Assessor's practical vision and office values.

- We are committed to having professional employees that are equipped with the training and skills needed to effectively educate and serve our stakeholders.
- We strive for open communication with stakeholders for an effective partnership.
- We engage and respond to customers with care in all situations.
- We achieve excellence in valuation and classification at a reasonable cost.

Assessment Uniformity and Accuracy

Our informed staff are knowledgeable of regional and local markets, rather than just one city.

Trust and Transparency

We are committed to establishing a culture of trust and transparency by enforcing:

- Clear expectations for measurable success
- High level of assessment standards and professional conduct
- Required IT security training
- A commitment by staff to the function of valuing and classifying property for Hennepin County

Resources and Tools

- Our staff has access to tools such as Pictometry, Marshall & Swift, RecordEase, GIS and licensed valuation publications.
- We use Open Book resources and options including a 'regional' Open Book with multiple locations and times.
- Our data is digitized and secure.
- We have direct access to legal counsel.



HENNEPIN COUNTY

ASSESSOR'S OFFICE

Experience & Expertise

Our team consists of 50 plus staff that collectively has hundreds of years of service and experience in the assessing profession. This does not include additional years of fee appraisal, construction, property management and other real estate experience. In addition, all of our staff receive professional education and continuing assessment training. We have 38 team members with assessment designations through the Minnesota State Board of Assessors, 19 of which are Senior Accredited Minnesota Assessors, the highest level of accreditation given by the State Board of Assessors.

Our staff:

- Includes experts specializing in homesteads, exemptions, Veteran's Exclusions, Open Space, Green Acres, Local Board of Appeal and Equalization and tax court appeals
- Is qualified to appraise all property in Hennepin County
- Is specialized in dealing with executive homes, lakeshore and agricultural properties
- Has valuation modeling & statistical analysis experts
- Has direct access to IT/technical experts, legal experts, real estate tax experts, project managers, trainers and business analysts

Professional Staff

Our team consists of well-networked, well educated staff who have connections and resources with colleagues not only in the profession of assessing, but also with other county resources such as IT, project management, training and education. In addition:

- Many of our staff members are active in professional organizations, giving them better access to education and training resources, networking and a larger influence in guiding related state wide policies.
- You can have confidence and trust in staff that undergo background checks, driver's license validations and data security training.
- We engage our staff by offering fair compensation, good benefits, opportunities for growth and an inviting culture.
- We ensure stability and continuity of staff through mentoring and knowledge transfer.
- We do not use sub-contractors for appraisal staff.

AGREEMENT

THIS AGREEMENT, Made and entered into by and between the COUNTY OF HENNEPIN, a political subdivision of the State of Minnesota, hereinafter referred to as the "COUNTY", and the CITY OF BROOKLYN CENTER, a political subdivision of the State of Minnesota, hereinafter referred to as "CITY";

WHEREAS, said CITY lies wholly within the COUNTY OF HENNEPIN and constitutes a separate assessment district; and

WHEREAS, under such circumstances, the provisions of Minnesota Statutes, Section 273.072 and Minnesota Statutes, Section 471.59 permit the County Assessor to provide for the assessment of property; and

WHEREAS, said CITY desires the COUNTY to perform certain assessments on behalf of said CITY; and

WHEREAS, the COUNTY is willing to cooperate with said CITY by completing the assessment in a proper manner;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed as follows:

1. The COUNTY shall perform the 2017, 2018, 2019, and 2020 property assessment for the CITY OF BROOKLYN CENTER in accordance with property assessment procedures and practices established and observed by the COUNTY, the validity and reasonableness of which are hereby acknowledged and approved by the, CITY. Any such practices and procedures may be changed from time to time, by the COUNTY in its sole judgment, when good and efficient assessment procedures so require. The property assessment by the COUNTY shall be composed of those

assessment services which are set forth in Exhibit A, attached hereto and made a part hereof by this reference, provided that the time frames set forth therein shall be considered to be approximate only.

2. All information, records, data, reports, etc. necessary to allow the COUNTY to carry out its herein responsibilities shall be furnished to the COUNTY without charge by the CITY, and the CITY agrees to cooperate in good faith with the COUNTY in carrying out the work under this Agreement.

3. The CITY agrees to furnish, without charge, secured office space needed by the COUNTY at appropriate places in the CITY's offices. The keys thereto shall be provided to the COUNTY. Such office space shall be sufficient in size to accommodate reasonably two (2) appraiser and any furniture placed therein. The office space shall be available for the COUNTY's use at any and all times during typical business hours, and during all such hours the COUNTY shall be provided with levels of heat, air conditioning and ventilation as are appropriate for the seasons.

4. The CITY also agrees to provide appropriate desk and office furniture as necessary, clerical and secretarial support necessary and reasonable for the carrying out of the work herein, necessary office supplies and equipment, copying machines and fax machines and their respective supplies, and telephone and internet service to the COUNTY, all without charge to the COUNTY.

5. It shall be the responsibility of the CITY to have available at the CITY's offices a person who has the knowledge and skill to be able to answer routine questions pertaining to homesteads and property assessment matters and to receive, evaluate and organize homestead applications. The CITY shall store all homestead applications and homestead data in secure storage meeting the requirements set by the COUNTY.

It shall also be the responsibility of the CITY to promptly refer any homestead application which needs investigation to the COUNTY.

6. In accordance with Hennepin County Affirmative Action Policy and the County Commissioners' policies against discrimination, no person shall be excluded from full employment rights or participation in or the benefits of any program, service or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, ex-offender status or national origin; and no person who is protected by applicable Federal or State laws, rules and regulations against discrimination shall be otherwise subjected to discrimination.

7. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of joint venturers or co-partners between the parties hereto or as constituting the CITY as the agent, representative or employee of the COUNTY for any purpose or in any manner whatsoever. Any and all personnel of CITY or other persons, while engaged in the performance of any activity under this Agreement, shall have no contractual relationship with the COUNTY and shall not be considered employees of the COUNTY and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the CITY, its officers, agents, CITY or employees shall in no way be the responsibility of the COUNTY, and CITY shall defend, indemnify and hold the COUNTY, its officials, officers, agents, employees and duly authorized volunteers harmless from any and all such claims regardless of any determination of any pertinent tribunal,

agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Compensation, disability, severance pay and retirement benefits.

8. CITY agrees that it will defend, indemnify and hold the COUNTY, its elected officials, officers, agents, employees and duly authorized volunteers harmless from any and all liability (statutory or otherwise) claims, suits, damages, judgments, interest, costs or expenses (including reasonable attorney's fees, witness fees and disbursements incurred in the defense thereof) resulting from or caused by the negligent or intentional acts or omissions of the CITY, its officers, agents, contractors, employees or duly authorized volunteers in the performance of the responsibilities provided by this Agreement. The CITY's liability shall be governed by Minn. Stat. Chapter 466 and other applicable law, rule and regulation, including common law.

9. COUNTY agrees that it will defend, indemnify and hold the CITY, its elected officials, officers, agents, employees and duly authorized volunteers harmless from any and all liability (statutory or otherwise) claims, suits, damages, judgments, interest, costs or expenses (including reasonable attorney's fees, witness fees and disbursements incurred in the defense thereof) resulting from or caused by the negligent or intentional acts or omissions of the COUNTY, its officers, agents, contractors, employees or duly authorized volunteers in the performance of the responsibilities provided by this Agreement. The COUNTY's liability shall be governed by Minn. Stat. Chapter 466 and other applicable law, rule and regulation, including common law.

10. The COUNTY shall endeavor to perform all services called for herein in an efficient manner. The sole and exclusive remedy for any breach of this Agreement by the COUNTY and for COUNTY's liability of any kind whatsoever, including but not limited to liability arising out of, resulting from or in any manner related to contract, tort, warranty, statute or otherwise, shall be limited to correcting diligently any deficiency in said services as is reasonably possible under the pertinent circumstances.

11. Neither party hereto shall be deemed to be in default of any provision of this Agreement, or for delay or failure in performance, resulting from causes beyond the reasonable control of such party, which causes shall include, but are not limited to, acts of God, labor disputes, acts of civil or military authority, fire, civil disturbance, changes in laws, ordinances or regulations which materially affect the provisions hereof, or any other causes beyond the parties' reasonable control.

12. This Agreement shall commence on August 1, 2016, and shall terminate on July 31, 2020. Either party may initiate an extension of this Agreement for a term of four (4) years by giving the other written notice of its intent to so extend prior to March 1, 2020. If the party who receives said notice of intent to extend gives written notice to the other party of its desire not to extend prior to, April 15, 2020 this Agreement shall terminate on July 31, 2020.

Nothing herein shall preclude the parties, prior to the end of this Agreement, from agreeing to extend this contract for a term of four (4) years. Any extended term hereof shall be on the same terms and conditions set forth herein and shall commence on August 1, 2020. Either party may terminate this Agreement for "just cause" as determined by the Commissioner of Revenue after hearing for such a determination is held by the Commissioner of Revenue and which has been attended by representatives of COUNTY and CITY or which said

representatives had a reasonable opportunity to attend, provided that after such determination, any party desiring to cancel this Agreement may do so by giving the other party no less than 120 days' written notice. If the CITY should cancel this Agreement, as above provided, before the completion of the then current property assessment by the COUNTY, the CITY agrees to defend and hold the COUNTY, its officials, officers, agents, employees and duly authorized volunteers harmless from any liability that might ensue as a result of the non-completion of a property tax assessment.

For the purpose of this Agreement, the term "just cause" shall mean the failure of any party hereto reasonably to perform a material responsibility arising hereunder.

13.A. In consideration of said assessment services, the CITY agrees to pay the COUNTY the sum of Two Hundred Five Thousand Dollars (\$205,000) for each assessment, provided that any payment for the current year's assessment may be increased or decreased by that amount which exceeds or is less than the COUNTY's estimated cost of printing/mailling value notices, Chapter 278 tax court petitions, appraising new construction and new parcels for the current year's assessment. The amount of any increase or decrease shall be specified in the billing for the current year's assessment.

13.B. Regarding each assessment, in addition to being subject to adjustment in the above manner, said assessment cost of \$205,000 may also be increased by the COUNTY if:

- (1) The COUNTY determines that any cost to the COUNTY in carrying out any aspect of this Agreement has increased, including but not limited to the following types of costs: **new construction and new parcel appraisals, mileage, printing/mailling value notices, postage, supplies, labor (including fringe benefits) and other types of costs, whether similar or dissimilar; and/or**

- 2) The COUNTY reasonably determines that other costs should be included in the costs of assessment work.

If the COUNTY desires to increase the assessment cost pursuant to this paragraph 13(B), it shall give written notice thereof by June 15 of any year and such increase shall apply to the assessment for the calendar year next following the current calendar year. Any such notification shall specifically set forth the amount of any new construction and new parcel appraisal charges. Notwithstanding any provisions herein to the contrary, if any such increase, exclusive of any charge for the estimated costs of new construction and new parcel appraisals, exceeds seven and one half percent (7.5%) of the amount charged for the assessment for the then current calendar year, exclusive of any charge for the estimated costs of new construction and new parcel appraisals, the CITY may cancel this Agreement by giving to the COUNTY written notice thereof, provided that said cancellation notice must be received by the COUNTY not later than July 24 of the then current calendar year and said cancellation shall be effective no earlier than five (5) days after the receipt of said notice by the COUNTY and not later than July 31 of said next calendar year. Supportive records of the cost increase will be open to inspection by the CITY at such times as are mutually agreed upon by the COUNTY and CITY.

Failure of the COUNTY to give the CITY a price-change notice by June 15 shall not preclude the COUNTY from giving CITY such notice after said date but prior to September 1 of any year, provided that if such price increase exceeds said ten (10%) - all as above set forth - the CITY may cancel this Agreement if the COUNTY receives notice thereof not later than thirty-nine (39) days from the date of receipt by the CITY of any said late price-change notice, provided further that any such cancellation shall be effective not earlier than five (5) days after COUNTY's receipt of said cancellation notice and not later than forty-six (46) days after the CITY's receipt of any said price-increase

notice.

Payment for each assessment shall be made in the following manner:

Approximately one-half (1/2) of the cost of an assessment (the amount payable being set forth in a bill sent by the COUNTY to the CITY) shall be paid by the CITY no later than the fifteenth (15th) day of the December which precedes the pertinent assessment year; and the remaining portion of said cost (the amount payable being set forth in a bill sent by the COUNTY to the CITY) shall be paid by the CITY no later than July 15 of the pertinent year.

The COUNTY may bill the CITY after the aforesaid dates and in each such case, the CITY shall pay such bill within thirty (30) days after receipt thereof.

14. Any notice or demand, which may or must be given or made by a party hereto, under the terms of this Agreement or any statute or ordinance, shall be in writing and shall be sent registered or certified mail to the other party addressed as follows:

TO CITY: Mayor, City of Brooklyn Center
6301 Shingle Creek Parkway
Brooklyn Center, MN 55430

TO COUNTY: Hennepin County Administrator
2300A Government Center
Minneapolis, MN 55487

copies to: County Assessor
Hennepin County
2103A Government Center
Minneapolis, MN 55487

copies to: Assistant County Assessor
Hennepin County
2103A Government Center
Minneapolis, MN 55487

Any party may designate a different addressee or address at any time by giving written notice thereof as above provided. Any notice, if mailed, properly addressed, postage prepaid, registered or certified mail, shall be deemed dispatched on the registered date or that stamped on the certified mail receipt and shall be deemed received within the second business day thereafter or when it is actually received, whichever is sooner. Any notice delivered by hand shall be deemed received upon actual delivery.

15. It is expressly understood that the obligations of the CITY under Paragraphs 7, 8, 12, and 13 hereof and the obligations of the CITY which, by their sense and context, are intended to survive the performance thereof by the CITY, shall so survive the completion of performance, termination or cancellation of this Agreement.

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EXHIBIT A
CITY OF BROOKLYN CENTER

During the contract term, the County shall:

1. Physically inspect and revalue 20% of the real property, as required by law.
2. Physically inspect and value all new construction, additions and renovation.
3. Adjust estimated market values on those properties not physically inspected as deemed necessary per sales ratio analysis.
4. Prepare the initial assessment roll.
5. Print and mail valuation notices.
6. Respond to taxpayers regarding assessment or appraisal problems or inquiries.
7. Conduct valuation reviews prior to Board of Review or Open Book Meetings, as determined by the City – approximate dates: March through May 15.
8. Attend Board of Review or conduct Open Book Meeting. Prepare all necessary review appraisals. Approximate dates: April 1 – May 31.
9. Maintain an updated property file – current values, classification data and characteristic data.
10. Prepare divisions and combinations as required.
11. Administer the abatement process pursuant to Minn. Stat. §375.192.
12. Prepare appraisals; defend and/or negotiate all Tax Court cases.
13. Provide all computer hardware and software applications necessary to complete contracted services.

Member introduced the following resolution and moved its adoption:

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A FOUR YEAR CONTRACT WITH HENNEPIN COUNTY FOR ASSESSING SERVICES

WHEREAS, the provisions of Minnesota Statutes, Section 273.072 and Minnesota Statutes, Section 471.59 permit the County Assessor to provide for the assessment of property; and

WHEREAS, on July 11, 2016, the City Council adopted Resolution No. 2016-103, A Resolution Authorizing the Execution of a Four Year Contract with Hennepin county for Assessing Services (2017, 2018, 2019, and 2020); and

WHEREAS, Hennepin Contract No. A165520, an agreement between the city of Brooklyn Center and Hennepin County to provide assessing services for the 2017, 2018, 2019, and 2020 property assessments; defined the roles and responsibilities of the City and Hennepin County; and established an estimated budget of \$205,000 for the annual cost of assessment services plus costs of printing and mailing of value notices and all Tax Court Costs; and

WHEREAS, Hennepin County has provided a contract to continue the roles and responsibilities of the City of Brooklyn Center and Hennepin County for assessing services for the 2021, 2022, 2023, and 2024 property assessments with an estimated annual budget of \$248,000.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Center, Minnesota that Hennepin Contract No. A2010403, an agreement between the City of Brooklyn Center and Hennepin County to provide assessing services for the 2021, 2022, 2023, and 2024 property assessments, is hereby approved and the Mayor and City Manager are authorized to execute.

November 23, 2020
Date

Mayor

ATTEST: _____
City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member

and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

AGREEMENT

THIS AGREEMENT, made and entered into by and between the COUNTY OF HENNEPIN, a political subdivision of the State of Minnesota, hereinafter referred to as the "COUNTY", and the CITY OF "BROOKLYN CENTER", a political subdivision of the State of Minnesota, hereinafter referred to as "CITY";

WHEREAS, said CITY lies wholly within the COUNTY OF HENNEPIN and constitutes a separate assessment district; and

WHEREAS, under such circumstances, the provisions of Minnesota Statutes, Section 273.072 and Minnesota Statutes, Section 471.59 permit the County Assessor to provide for the assessment of property; and

WHEREAS, said CITY desires the COUNTY to perform certain assessments on behalf of said CITY; and

WHEREAS, the COUNTY is willing to cooperate with said CITY by completing the assessment in a proper manner;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed as follows:

1. The COUNTY shall perform the 2021, 2022, 2023, and 2024 property assessment for the CITY OF BROOKLYN CENTER in accordance with property assessment procedures and practices established and observed by the COUNTY, the validity and reasonableness of which are hereby acknowledged and approved by the CITY. Any such practices and procedures may be changed from time to time, by the COUNTY in its sole judgment, when good and efficient assessment procedures so require. The property assessment by the COUNTY shall be composed of those

assessment services which are set forth in Exhibit A, attached hereto and made a part hereof by this reference, provided that the time frames set forth therein shall be considered to be approximate only.

2. All information, records, data, reports, etc. necessary to allow the COUNTY to carry out its herein responsibilities shall be furnished to the COUNTY without charge by the CITY, and the CITY agrees to cooperate in good faith with the COUNTY in carrying out the work under this Agreement.

3. The CITY agrees to furnish, without charge, secured office space needed by the COUNTY at appropriate places in the CITY's offices. The keys thereto shall be provided to the COUNTY. Such office space shall be sufficient in size to accommodate reasonably two (2) appraiser and any furniture placed therein. The office space shall be available for the COUNTY's use at any and all times during typical business hours, and during all such hours the COUNTY shall be provided with levels of heat, air conditioning and ventilation as are appropriate for the seasons.

4. The CITY also agrees to provide appropriate desk and office furniture as necessary copying machines and fax machines and their respective supplies, and telephone and internet service to the COUNTY, all without charge to the COUNTY.

5. It shall be the responsibility of the CITY to have available at the CITY's offices, or via telephone or teleconference, a person who has the knowledge and skill to be able to answer routine questions pertaining to homesteads and property assessment matters.

6. In accordance with Hennepin County Affirmative Action Policy and the County Commissioners' policies against discrimination, no person shall be excluded from full employment rights or participation in or the benefits of any program, service or

activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, ex-offender status or national origin; and no person who is protected by applicable Federal or State laws, rules and regulations against discrimination shall be otherwise subjected to discrimination.

7. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of joint venturers or co-partners between the parties hereto or as constituting the CITY as the agent, representative or employee of the COUNTY for any purpose or in any manner whatsoever. Any and all personnel of CITY or other persons, while engaged in the performance of any activity under this Agreement, shall have no contractual relationship with the COUNTY and shall not be considered employees of the COUNTY and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the CITY, its officers, agents, CITY or employees shall in no way be the responsibility of the COUNTY, and CITY shall defend, indemnify and hold the COUNTY, its officials, officers, agents, employees and duly authorized volunteers harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Compensation, disability, severance pay and retirement benefits.

8. CITY agrees that it will defend, indemnify and hold the COUNTY, its elected officials, officers, agents, employees and duly authorized volunteers harmless from any and all liability (statutory or otherwise) claims, suits, damages, judgments, interest, costs or expenses (including reasonable attorney's fees, witness fees and disbursements incurred in the defense thereof) resulting from or caused by the negligent or intentional acts or omissions of the CITY, its officers, agents, contractors, employees or duly authorized volunteers in the performance of the responsibilities provided by this Agreement. The CITY's liability shall be governed by Minn. Stat. Chapter 466 and other applicable law, rule and regulation, including common law.

9. COUNTY agrees that it will defend, indemnify and hold the CITY, its elected officials, officers, agents, employees and duly authorized volunteers harmless from any and all liability (statutory or otherwise) claims, suits, damages, judgments, interest, costs or expenses (including reasonable attorney's fees, witness fees and disbursements incurred in the defense thereof) resulting from or caused by the negligent or intentional acts or omissions of the COUNTY, its officers, agents, contractors, employees or duly authorized volunteers in the performance of the responsibilities provided by this Agreement. The COUNTY's liability shall be governed by Minn. Stat. Chapter 466 and other applicable law, rule and regulation, including common law.

10. The COUNTY shall endeavor to perform all services called for herein in an efficient manner. The sole and exclusive remedy for any breach of this Agreement by the COUNTY and for COUNTY's liability of any kind whatsoever, including but not limited to liability arising out of, resulting from or in any manner related to contract, tort,

warranty, statute or otherwise, shall be limited to correcting diligently any deficiency in said services as is reasonably possible under the pertinent circumstances.

11. Neither party hereto shall be deemed to be in default of any provision of this Agreement, or for delay or failure in performance, resulting from causes beyond the reasonable control of such party, which causes shall include, but are not limited to, acts of God, labor disputes, acts of civil or military authority, fire, civil disturbance, changes in laws, ordinances or regulations which materially affect the provisions hereof, or any other causes beyond the parties' reasonable control.

12. This Agreement shall commence on August 1, 2020 and shall terminate on July 31, 2024. Either party may initiate an extension of this Agreement for a term of four (4) years by giving the other written notice of its intent to so extend prior to March 1, 2024. If the party who receives said notice of intent to extend gives written notice to the other party of its desire not to extend prior to, April 15, 2024 this Agreement shall terminate on July 31, 2024.

Nothing herein shall preclude the parties, prior to the end of this Agreement, from agreeing to extend this contract for a term of four (4) years. Any extended term hereof shall be on the same terms and conditions set forth herein and shall commence on August 1, 2024. Either party may terminate this Agreement: 1) immediately for "just cause", as defined herein, or 2) for any reason, upon providing 120 days prior written notice to the other party. If the CITY should cancel this Agreement, as above provided, before the completion of the then current property assessment by the COUNTY, the CITY agrees to defend and hold the COUNTY, its officials, officers, agents, employees and duly authorized volunteers harmless from any liability that might ensue as a result of the non-completion of a property tax assessment, to the extent the non-completion was not directly caused by a material breach of

this agreement by the County.

For the purpose of this Agreement, the term "just cause" shall mean the failure of any party hereto reasonably to perform a material responsibility arising hereunder.

13.A. In consideration of said assessment services, the CITY agrees to pay the COUNTY the sum of Two Hundred Forty Eight Thousand Dollars (\$248,000) for each assessment, provided that any payment for the current year's assessment may be increased or decreased by that amount which exceeds or is less than the COUNTY's estimated cost of printing/mailing value notices, Chapter 278 tax court petitions, processing all homestead applications, appraising new construction and new parcels for the current year's assessment. The amount of any increase or decrease shall be specified in the billing for the current year's assessment.

13.B. Regarding each assessment, in addition to being subject to adjustment in the above manner, said assessment cost of \$248,000 may also be increased by the COUNTY if:

- (1) The COUNTY determines that any cost to the COUNTY in carrying out any aspect of this Agreement has increased, including but not limited to the following types of costs: **new construction and new parcel appraisals, mileage, postage, supplies, labor (including fringe benefits) and other types of costs, whether similar or dissimilar;** and/or
- 2) The COUNTY reasonably determines that other costs should be included in the costs of assessment work.

If the COUNTY desires to increase the assessment cost pursuant to this paragraph 13(B), it shall give written notice thereof by June 15 of any year and such increase shall apply to the assessment for the calendar year next following the current calendar year. Any such notification shall specifically set forth the amount of any new construction and new parcel appraisal charges. Notwithstanding any provisions herein to the contrary, if any such

increase, exclusive of any charge for the estimated costs of new construction and new parcel appraisals, exceeds seven and one half percent (7.5%) of the amount charged for the assessment for the then current calendar year, exclusive of any charge for the estimated costs of new construction and new parcel appraisals, the CITY may cancel this Agreement by giving to the COUNTY written notice thereof, provided that said cancellation notice must be received by the COUNTY not later than July 24 of the then current calendar year and said cancellation shall be effective no earlier than five (5) days after the receipt of said notice by the COUNTY and not later than July 31 of said next calendar year. Supportive records of the cost increase will be open to inspection by the CITY at such times as are mutually agreed upon by the COUNTY and CITY.

Failure of the COUNTY to give the CITY a price-change notice by June 15 shall not preclude the COUNTY from giving CITY such notice after said date but prior to August 1 of any year, provided that if such price increase exceeds said seven and one half percent (7.5%) - all as above set forth - the CITY may cancel this Agreement if the COUNTY receives notice thereof not later than thirty-nine (39) days from the date of receipt by the CITY of any said late price-change notice, provided further that any such cancellation shall be effective not earlier than five (5) days after COUNTY's receipt of said cancellation notice and not later than forty-six (46) days after the CITY's receipt of any said price-increase notice.

Payment for each assessment shall be made in the following manner:

Approximately one-half (1/2) of the cost of an assessment (the amount payable being set forth in a bill sent by the COUNTY to the CITY) shall be paid by the CITY no later than the fifteenth (15th) day of the November which precedes the pertinent assessment year; and the remaining portion of said cost (the amount payable being set

forth in a bill sent by the COUNTY to the CITY) shall be paid by the CITY no later than July 15 of the pertinent year.

The COUNTY may bill the CITY after the aforesaid dates and in each such case, the CITY shall pay such bill within thirty (30) days after receipt thereof.

14. Any notice or demand, which may or must be given or made by a party hereto, under the terms of this Agreement or any statute or ordinance, shall be in writing and shall be sent registered or certified mail to the other party addressed as follows:

TO CITY: City Manager
 City of Brooklyn Center
 6301 Shingle Creek Parkway
 Brooklyn Center, MN 55430

TO COUNTY: Hennepin County Administrator
 2300A Government Center
 Minneapolis, MN 55487

copies to: County Assessor
 Hennepin County
 2103A Government Center
 Minneapolis, MN 55487

Any party may designate a different addressee or address at any time by giving written notice thereof as above provided. Any notice, if mailed, properly addressed, postage prepaid, registered or certified mail, shall be deemed dispatched on the registered date or that stamped on the certified mail receipt and shall be deemed received within the second business day thereafter or when it is actually received, whichever is sooner. Any notice delivered by hand shall be deemed received upon actual delivery.

15. It is expressly understood that the obligations of the respective parties under Paragraphs 7, 8, 9, 12, and 13 hereof and the obligations of each party which, by their sense and context, are intended to survive the performance thereof by the same party,

shall so survive the completion of performance, termination or cancellation of this Agreement.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its duly authorized officers and delivered on its behalf, this _____ day of _____, 2020.

COUNTY OF HENNEPIN
STATE OF MINNESOTA

Reviewed by County
Attorney's Office:

By: _____
Chair of the County Board

Date: _____

And: _____
Assistant/Deputy/County Administrator

ATTEST: _____
Deputy/Clerk of the County Board

CITY OF BROOKLYN CENTER

By: _____

Its _____

And: _____

Its _____

City organized under:

_____ Statutory _____ Option A _____ Option B _____ Charter

EXHIBIT A
CITY OF BROOKLYN CENTER

During the contract term, the County shall:

1. Physically inspect and revalue 20% of the real property, as required by law.
2. Physically inspect and value all new construction, additions and renovation.
3. Adjust estimated market values on those properties not physically inspected as deemed necessary per sales ratio analysis.
4. Prepare the initial assessment roll.
5. Print and mail valuation notices.
6. Respond to taxpayers regarding assessment or appraisal problems or inquiries.
7. Conduct valuation reviews prior to Board of Review or Open Book Meetings, as determined by the City – approximate dates: March through May 15.
8. Attend Board of Review or conduct Open Book Meeting. Prepare all necessary review appraisals. Approximate dates: April 1 – May 31.
9. Maintain an updated property file – current values, classification data and characteristic data.
10. Prepare divisions and combinations as required.
11. Administer the abatement process pursuant to Minn. Stat. §375.192.
12. Prepare appraisals; defend and/or negotiate all Tax Court cases.
13. Provide all computer hardware and software applications necessary to complete contracted services.
14. Process all homestead and special program applications.

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Mark Ebensteiner, Finance Director

SUBJECT: Resolution Accepting Work Performed and Authorizing Final Payment, Municipal Liquor Store #1 Construction

Background:

On June 24, 2019, the City Council awarded Municipal Liquor Store #1 Construction to B2 Builders LLC, of Burnsville, Minnesota for construction of the Municipal Liquor Store. B2 Builders LLC has successfully completed the construction work and is requesting final payment for the project.

Budget Issues:

The original contract amount with B2 Builders LLC for the project improvements was \$2,219,000. The City Council authorized change orders in the amount of \$82,113.65 which increased the contract amount to be \$2,301,113.65. The total value of work certified for final payment is \$2,301,113.65. The total project cost including contingencies/administration/engineering/legal is \$3,496,980.27 and was completed 3.1 percent under budget in the amount of \$111,019.73. The attached resolution provides a summary of the final amended costs and funding sources for the project.

Strategic Priorities and Values:

Safe, Secure, Stable Community

ATTACHMENTS:

Description	Upload Date	Type
Municipal Liquor Final Payment Resolution	11/17/2020	Resolution Letter

Member introduced the following resolution and moved its adoption:

RESOLUTION NO. _____

RESOLUTION ACCEPTING WORK PERFORMED AND AUTHORIZING FINAL PAYMENT, MUNICIPAL LIQUOR STORE #1 CONSTRUCTION

WHEREAS, pursuant to a written contract signed with the City of Brooklyn Center, Minnesota, B2 Builders LLC of Burnsville, Minnesota has completed the following project in accordance with said contract:

Municipal Liquor Store #1 Construction at 1350A Shingle Creek Crossing, Brooklyn Center, MN 55430

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Center, Minnesota, that

1. Final payment shall be made on Municipal Liquor Store #1 Construction, taking the contractor's receipt in full. The total amount to be paid for said improvements under said contract shall be \$2,301,113.65. Remaining balance currently outstanding is \$49,992.64.
2. The estimated project costs and revenues are hereby amended as follows:

COSTS	As Awarded + CO	As Final
Construction Contract (Award+ Change Order)	\$ 2,301,116.65	\$ 2,301,116.65
Property Acquisition	690,000.00	594,298.33
Other Construction/Admin/Legal	616,883.35	601,565.29
Total Project Costs	3,608,000.00	3,496,980.27
REVENUES	As Awarded	As Final
EDA Lease Revenue Bonds	\$ 2,618,000.00	\$ 2,520,000.00
Developer Contribution (Site Improvements)	90,000.00	90,000.00
Liquor Fund (Cash)	900,000.00	886,980.27
Total Revenues	3,608,000.00	3,496,980.27

RESOLUTION NO. _____

November 23, 2020

Date

Mayor

ATTEST: _____

City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member

and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: Meg Beekman, Community Development Director

BY: Ginny McIntosh, City Planner / Zoning Administrator

SUBJECT: Resolution Ratifying the Approval of the Preliminary and Final Plat for Brooklyn Center
EDA First Addition and Authorizing Final Plat Recording

Background:

BROOKLYN CENTER EDA FIRST ADDITION would re-plat approximately 3.1 acres of land that includes a portion of Registered Land Survey No. 0040, Hennepin County, Minnesota, and lands contained within Auditor's Subdivision No. 216, Hennepin County, Minnesota. The seven properties encompassed in the re-plat are under varying ownership by the City of Brooklyn Center, Economic Development Authority of Brooklyn Center, and Robbinsdale School District No. 281, and the plat request addresses additional needs to dedicate certain right-of-way.

These requests were initially discussed under Planning Commission Application No. 2019-016 and arose from infrastructure improvements that took place under the Phase I Brooklyn Boulevard reconstruction and modernization project, which resulted in the re-alignment of the Brooklyn Boulevard Frontage Road in the vicinity of 55th Avenue North to reduce confusion, congestion, and allow for improved stacking distances for motorists eastbound on 55th Avenue North.

City Council approved the preliminary and final plat based upon certain approval conditions on November 25, 2019 under City Council Resolution No. 2019-167.

In anticipation of the realignment and re-plat, City Council adopted Resolution No. 2018-25 on January 22, 2018, which authorized acquisition of a 0.03 acre sliver parcel (PID: 03-118-21-42-0024). This parcel was formally acquired in May 2018; however, the City Attorney recommended the City conduct a "proceeding subsequent" process, which is a special form of quiet title action for registering property that would allow the Registrar of Titles to cancel the old certificate and issue a new one in favor of the City. Although the original intent was to record the final plat per Chapter 15 (*Platting*) requirements, this process took substantially more time than was originally anticipated.

The City of Brooklyn Center ("the Applicant") has no plans to alter the approved preliminary and final plats for BROOKLYN CENTER EDA FIRST ADDITION; however, as Chapter 15 (*Platting*) of the City Code of Ordinances requires final plats to be recorded within 30 days from the date of City Council approval, the City Attorney has previously recommended that a resolution be prepared to reflect the intent to record the final plat with the County.

Should City Council approve the resolution ratifying the approval of the preliminary and final plat and authorization to record the final plat, the City intends to bring forward a request to convey said 0.03 acre sliver parcel to the Economic Development Authority of Brooklyn Center prior to recording the final plat

with the County.

Copies of the Report for Planning Commission Application No. 2019-016, and City Council Resolution Nos. 2018-25 and 2019-167 have been included as reference, along with a copy of the draft resolution ratifying the preliminary and final plat approvals for BROOKLYN CENTER EDA FIRST ADDITION and authorization for final plat recording.

Budget Issues:

None to consider at this time.

Strategic Priorities and Values:

Enhanced Community Image, Targeted Redevelopment, Key Transportation Investments

ATTACHMENTS:

Description	Upload Date	Type
PC Staff Report and Exhibits - Brooklyn Center EDA First Addition	11/17/2020	Backup Material
City Council Resolution No. 2018-25 (Authorizing Acquisition of a Tax Forfeited Parcel as Part of the Brooklyn Boulevard Corridor Project Phase I)	11/17/2020	Backup Material
City Council Resolution No. 2019-167 (Disposition of Planning Commission Application No. 2019-016 for Approval of Preliminary and Final Plat of Brooklyn Center EDA First Addition and Dedication of Certain Right-of-Way)	11/17/2020	Backup Material
Resolution - Ratifying Preliminary and Final Plat for BROOKLYN CENTER EDA FIRST ADDITION and Authorizing Final Plat Recording	11/17/2020	Resolution Letter

Planning Commission Report

Meeting Date: November 14, 2019

- Application Filed: 10/15/2019
- Review Period (60-day) Deadline: 12/14/2019
- Extension Declared: N/A
- Extended Review Period Deadline: N/A

Application No. 2019-016
Applicant: City of Brooklyn Center
Location: Vicinity of 55th Avenue North and Brooklyn Boulevard
 (Affected PIDs: 03-118-21-44-0011, 03-118-21-44-0010, 03-118-21-44-0009, 03-118-21-44-0005, 03-118 21-44-0004, 03-118-21-44-0003, and 03-118-21-42-0024)
Request: Preliminary/Final Plat of Brooklyn Center EDA First Addition

INTRODUCTION

The City of Brooklyn Center ("the Applicant") is requesting review and consideration of preliminary and final plat approval for a re-plat of an assemblage of lands ("the Subject Property") that comprise part of Auditor's Subdivision No. 216, and a sliver of land that is part of Registered Land Survey No. 0040, Hennepin County, Minnesota. These properties are commonly addressed as: 5401, 5407, 5415, 5455, and 5459 Brooklyn Boulevard. The two remaining properties do not currently possess addresses.

This request is associated with the City's Brooklyn Boulevard Phase I project, which resulted in the re-alignment of the Brooklyn Boulevard frontage road in order to reduce confusion, congestion, and improve vehicle stacking for motorists eastbound on 55th Avenue North. Previously, the alignment of the road only allowed for the stacking of approximately two vehicles before blocking the Brooklyn Boulevard Frontage Road from cross traffic. The new alignment, which was constructed this past year, is intended to allow for additional stacking, which is important due to this area serving as the sole access point to Northport Elementary as well as the main access to a number of residential, multi-residential, and office properties.

Map 1. Existing Parcels and Former Road Alignment with Overlay of New Road Alignment



 Previous Stacking Area for Eastbound Traffic on 55th Avenue North

Public Works Director Doran Cote provided an overview of the Brooklyn Boulevard Reconstruction/Modernization project in an email dated October 14, 2019 (Exhibit A). The land contemplated as part of the request for a re-plat includes property previously acquired by the Economic Development Authority of Brooklyn Center and City of Brooklyn Center for the anticipated alterations to the Brooklyn Boulevard Frontage Road, as well as land owned by Robbinsdale School District No. 281.

The intent at this time would be to convey the north portion (0.49 acres) of the Brooklyn Center EDA First Addition to the Robbinsdale School District. The south portion (1.13 acres) would be retained by the Economic Development Authority of Brooklyn Center, with the intent to sell at a later date. The identified 2040 future land use for this area is "Medium Density Residential (5.01-15 dwelling units per acre)." The properties contemplated as part of the re-plat are currently zoned R1 (One Family Residence), R2 (Two Family Residence), and C1 (Service/Office) District.

Requests for approval of the plat require that a public hearing be scheduled in accordance with Section 15-104 (*Preliminary Plan*) of the Platting Ordinance. An Affidavit of Publication confirmed publication of the public hearing notice in the Brooklyn Center *Sun Post* on October 31, 2019 (Exhibit B). Mail notices were also sent to neighboring property owners.

REQUESTS

Preliminary/Final Plat Approval and Dedication of Certain Right-of-Way (ROW)

As part of the City Platting Ordinance requirements, preliminary and final plat approval is required to formally re-plat the aforementioned properties located in the vicinity of 55th Avenue North and Brooklyn Boulevard.

Per Assistant City Engineer Andrew Hogg, in his memorandum dated October 31, 2019 (Exhibit C), the Applicant will ultimately need to provide a working copy of the preliminary plat for the Brooklyn EDA First Addition that identifies all vacated easements, proposed easements, and proposed utilities, as well as submit documentation, including legal descriptions, for any easements. Any proposed easements would need to be dedicated as part of the preliminary and final plat process.

As a portion of the Brooklyn Boulevard Frontage Road was re-aligned as part of the Brooklyn Boulevard Phase I reconstruction and modernization project, new City Right-of-Way will need to be dedicated as part of the plat approval. Regarding the former alignment of the Frontage Road, there are no plans to vacate that portion of City Right-of-Way as there is underground City infrastructure in existence.

Image 1. New Alignment of 55th Avenue North (Left) and Former Alignment of 55th Avenue North (Right)

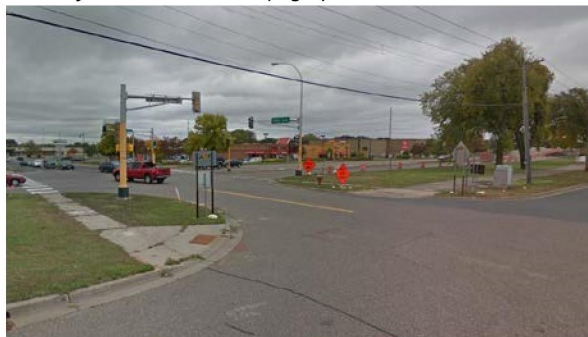
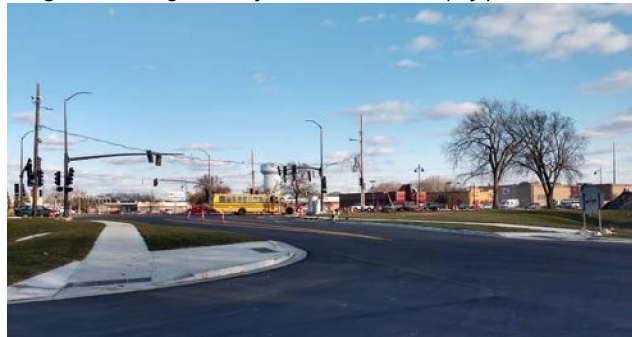


Image 2. New Alignment of Brooklyn Boulevard Frontage Road (North of 55th Avenue North)



APPROVAL CONDITIONS

Staff recommends the following conditions be attached to any positive recommendation on the approval of Planning Commission Application No. 2019-016 for Brooklyn Center EDA Addition:

1. Approval of the preliminary and final plats are contingent upon the addressing of comments by Assistant City Engineer Hogg in his memorandum dated October 31, 2019.
2. Final plat and mylar shall be subject to the provisions of Chapter 15 of the City Code of Ordinances (*Platting*).
3. Any comments and/or requirements as provided by Hennepin County.
4. Any comments and/or requirements from the City Attorney's office, and specifically regarding an updated certified abstract of title.
5. The successful recording of said plat (mylar) with Hennepin County.

RECOMMENDATION

Based on the above-noted findings, staff recommends the Planning Commission recommends:

1. *The Planning Commission recommends City Council approval of the requested preliminary and final plat for BROOKLYN CENTER EDA FIRST ADDITION, subject to the Applicant complying with the comments outlined in the Assistant City Engineer's memorandum October 31, 2019, Chapter 15 of the City Code of Ordinances (*Platting*), any comments provided by Hennepin County, and the successful recording of said plat with Hennepin County.*

Attachments

Exhibit A- Planning Commission Application No. 2019-016 submittal documents.

Exhibit B- Affidavit of Publication, published in the Brooklyn Center *Sun Post* on October 31, 2019.

Exhibit C-Memorandum, prepared by Assistant City Engineer Andrew Hogg, dated October 31, 2019.



For Office Use Only

Date Received: _____
 Date Application Complete: _____
 Letter of Completeness: _____
 PC App No. _____

2019 Planning Commission Application

Applicant Information:

Name: City of Brooklyn Center
 Address: 6301 Shingle Creek Parkway
 Office Phone: 7635693328 Cell: 7636001587
 Email: dcote@ci.brooklyn-center.mn.us FAX: 7635693440

Property Owner Information* (if different from Applicant):

Name: Robbinsdale School District, Brooklyn Center EDA and City of Brooklyn Center
 Property Owner Address: 6301 Shingle Creek Parkway, Brooklyn Center and 4148 Winnetka Avenue, New Hope
 Office Phone: 763.569.3328 Cell: 612..600.1587
 Email: dcote@ci.brooklyn-center.mn.us FAX: 763.569.3440

Project Information:

Provide a general description of your project and request(s): Platting of property to accomodate Brooklyn Boulevard frontage road realignment.

Address/Location of Property: 5421 Brooklyn Boulevard

Legal Description of Property: See attached

Application Type (Mark all that Apply)

☐	Comprehensive Plan Amendment	\$1,050	☐	Appeal	\$200
☐	Rezoning	\$1,050	☐	Zoning Code Text Amendment	\$500
☐	Special/Interim Use Permit	\$250	☐	Special/Interim Use Permit Amendment	\$150
☐	Site and Building Plan Review	\$750	☐	Variance	\$200
☐	Planned Unit Development	\$1,800	☐	Planned Unit Development Amendment	\$700
☒	Preliminary Plat	\$400	☒	Final Plat	\$200

IMPORTANT: All applications may be subject to additional fees for reimbursement of costs incurred by the City for filing, reviewing, and processing applications in the form of an escrow to the City.

Application Fee: \$ _____ Escrow Amount: \$ _____ Receipt No: _____

Escrows: All Planning Commission Applications shall be subject to a \$1,000 escrow deposit. Costs expended in reviewing and processing an application will be charged against the cash escrow and credited to the City. Charges to the escrow may include attorney and consulting fees and/or mailing and public notice costs. The escrow amount may be reduced or increased by the City Planner on a project by project basis. If at any time a required cash escrow is depleted the applicant shall deposit additional escrow funds as determined by the City. Unused portions of an escrow deposit shall be returned to the Applicant upon successful implementation of an approved application.

Complete/Incomplete Applications: A preliminary meeting with City Staff is required prior to the submission of a Planning Commission Application. No application will be considered complete prior to such meeting. Once an application is submitted, City Staff shall have fifteen (15) business days to determine if the application is complete. An incomplete application will delay process of the request. If incomplete, City Staff will notify the Applicant in writing that the application is incomplete and what information is needed in order to make the application complete. Once an application has been deemed complete it will be placed on the next available Planning Commission agenda.

Meeting Schedule: The deadline for submittal of Planning Commission Applications is outlined in the below schedule. Failure to submit all application materials, fees, and escrows by 4:30 p.m. on the application submittal deadline may delay the review process. Planning Commission meetings are typically held the Thursday following the second Monday of each month at 7:00 p.m. If a recommendation is made by the Planning Commission regarding the application it will typically be placed on the agenda of the next City Council meeting, which are held the fourth Monday of each month at 7:00 p.m. Meetings are held in the City Council Chambers at Brooklyn Center City Hall. Additional meetings and/or work sessions may be scheduled as necessary for the review of an application.

2019 Application Schedule (subject to change)

Application Submittal Deadline (30-Days Prior to Meeting)	Planning Commission Meeting Dates	City Council Meeting Dates (for application review)
December 18 (2018)	January 17	January 28
January 15	February 14	February 25
February 12	March 14	March 25
March 12	April 11	April 22
April 16	May 16	May 28 (Tuesday)
May 14	June 13	June 24
June 11	July 11	July 22
July 16	August 15	August 26
August 13	September 12	September 23
September 17	October 17	October 28
October 15	November 14	November 25
November 12	December 12	January 13 (2020)

Note: The above schedule is outlined for those submitting Planning Commission applications and *does not* outline all City Council meetings scheduled. Please access the City of Brooklyn Center's website at www.cityofbrooklyncenter.org to receive up to date meeting dates and notices of any changes made to this schedule. Individuals may also review and download meeting agendas and packets from the city website.

Meeting Attendance: In order for the Planning Commission and City Council to consider any application, the Applicant or a designated representative must be present at the scheduled meeting(s). If not, the matter may be tabled until the next available agenda.

Acknowledgement and Signature:

The undersigned acknowledges that they understand that before a Planning Commission application can be deemed complete, all required fees and escrows must be paid to the City. By signing and submitting this application, the Applicant agrees to pay to the City of Brooklyn Center the actual costs incurred for expenses reasonably and necessarily required by the City for the review, filing, and processing of the application. Such costs will be in addition to the application fee described herein. Withdrawal of the application will not relieve the applicant of the obligation to pay costs incurred prior to withdrawal. Any administrative fees paid as part of the submission of this application are nonrefundable.



Property Owner Signature (Required)

Date

Applicant Signature (If different than Property Owner)

Date

From: [Doran Cote](#)
To: [Ginny McIntosh](#)
Subject: EDA Addition Narrative
Date: Monday, October 14, 2019 4:36:50 PM

The Brooklyn Boulevard reconstruction/modernization project will improve roadway safety, enhance traffic operations, reduce access points to, and provide improved bicycle and pedestrian facilities for a 1.3-mile segment of the corridor in Brooklyn Center between 49th Avenue and 59th Avenue. More specifically, the project will enhance bicycle and pedestrian travel by adding a trail, improving sidewalks, adding streetscaping and landscaping, and improving the functionality of intersections with modified turn lanes. Several free right turn lanes will be reconfigured to improve sight lines. Brooklyn Boulevard is an "A" Minor Arterial roadway, which serves as a reliever route for TH 100 and serves as an important freight route for the northbound TH 100 to westbound I-94/694 movements. The proposed project also provides a direct connection to the former Brookdale Mall site and surrounding parcels, which is an identified job concentration center, as well as a manufacturing and distribution center. It is also within the one-mile threshold for an educational institution. Existing safety and geometric issues include the 51st Avenue and 55th Avenue intersections and insufficient turn lane configurations at multiple other intersections. The project is located within a Racially Concentrated Area of Poverty and will provide improvements for a range of mode choices to enable low-income populations and people of color to access jobs. The project will improve corridor access to Brooklyn Center Transit Center, a few blocks away from Brooklyn Boulevard, which provides connections to 15 bus routes. The Twin Lakes Regional Trail crosses Brooklyn Boulevard with a substandard trail crossing where the trail becomes a narrow sidewalk with insufficient ramps; the project will install a crosswalk and widen the sidewalk to a trail. The project will capitalize on recent and anticipated future investments within and adjacent to the project corridor, including:

- Bus Rapid Transit Transitway improvements (Chicago-Fremont and C Line Arterial BRT lines would run on Brooklyn Boulevard and terminate at Brooklyn Center Transit Center) would benefit from improved multimodal connections and streetscaping.
- Brooklyn Blvd/TH 100 bridge redecking (construction completed Fall 2014), which is located within the project area.
- The City of Minneapolis completed resurfacing of Osseo Road (CSAH 152) from 44th Ave to 49th Ave (southern project limits), which added a bike lane.
- Major redevelopment efforts in and around the former Brookdale Mall site (now Shingle Creek Crossing).
- The project will also improve bus stop amenities, relocate problematic (mid-block) bus stops, add streetscaping, a landscaped median, and gateway signage.

Specifically at the 55th Avenue intersection, the project will utilize previously purchased properties near the Northport Elementary School to relocate the frontage road further to the west to reduce confusion, congestion and improve stacking distances for eastbound motorists.

Doran M. Cote, P.E. | Public Works Director | City of Brooklyn Center

6301 Shingle Creek Parkway | Brooklyn Center, MN 55430-2199

www.cityofbrooklyncenter.org | 763.569.3328 | dcote@ci.brooklyn-center.mn.us

BROOKLYN CENTER EDA FIRST ADDITION

Preliminary Plat

Owners:

City of Brooklyn Center
6301 Shingle Creek Parkway
Brooklyn Center, MN 55430

Economic Development Authority of Brooklyn Center
6301 Shingle Creek Parkway
Brooklyn Center, MN 55430

Robbinsdale School District No. 281
4148 Winnetka Avenue North
New Hope, MN 55427

Property Is Zoned:

R1-One Family Residence
C1-Service/Office
R2-Two Family Residence

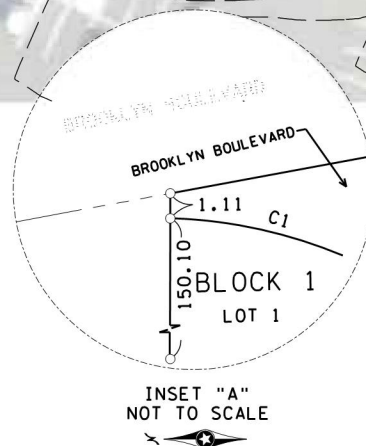
Property Contains 134,925Sq. Ft. (3.10 Ac.)

See Attached Draft Plat For Legal Description

See 2018 Brookly Blvd Construction Plans For
Utility Details.



CURVE	LENGTH	RADIUS	DELTA	CH. LENGTH	CH. BEARING
C1	93.54	152.00	35°15'36"	92.07	S19°12'35"W
C2	164.20	212.00	44°22'38"	160.13	S14°39'04"W
C3	40.14	330.00	06°58'08"	40.55	S11°01'20"E
C4	204.82	330.00	35°33'44"	201.55	S32°17'16"E
C5	135.57	270.00	28°46'05"	134.15	S35°41'05"E
C6	59.18	438.97	07°43'27"	59.13	N77°19'16"E



THE NORTH LINE OF TRACT F,
RLS NO. 40 HAS AN ASSUMED
BEARING OF S89°47'29"E

○ DENOTES IRON MONUMENT SET
1/2"X14" IRON MONUMENT
MARKED LS 16679

BROOKLYN CENTER EDA FIRST ADDITION

KNOW ALL PERSONS BY THESE PRESENTS: That The Economic Development Authority of Brooklyn Center, a body corporate and politic, fee owner of the following described property situated in the County of Hennepin, State of Minnesota to wit:

(Abstract Land)

The North 100 feet of that part of Lot 35, AUDITOR'S SUBDIVISION NO. 216, lying westerly of the center line of Minnesota State Highway No. 152; also the North 100 feet of the East 33 feet of Lot 34, in AUDITOR'S SUBDIVISION NO. 216, according to the recorded plat thereof, and situate in Hennepin County, Minnesota.

And

That part of the South 200 feet of the North 300 feet of Lots 34 and 35, AUDITOR'S SUBDIVISION NO. 216, Hennepin County, Minnesota lying north of the following described line: Commencing at a point in the west line of Lot 34 distant 256 feet south from the northwest corner thereof; thence easterly on a curve to the right having a radius 498.97 feet a distance of 127.17 feet; thence easterly on a tangent to said curve distant 35.68 feet to the east line of Lot 35, according to the recorded plat thereof, and situate in Hennepin County, Minnesota.

And

The North 95 feet of the South 230 feet of the North 755 feet of Lots 34 and 35, AUDITOR'S SUBDIVISION NO. 216, according to the plat thereof on file or of record in the Office of the County Recorder in and for Hennepin County, Minnesota.

And

The South 150 feet of the North 450 feet of Lots 34 and he South 150 feet of the North 450 feet of Lot 35 as measured on a line parallel with the west line of said Lot 35 all in AUDITOR'S SUBDIVISION NO. 26, Hennepin County, Minnesota EXCEPTING that part lying north of the following described line: Beginning at the point of intersection of southeasterly line of Lot 1, Block 3, BALFANY'S NORTHPORT 1ST ADDITION with the northeasterly line of Northport Drive as platted adjacent to Lots 1 and 2, Block 3, BALFANY'S NORTHPORT 1ST ADDITION; thence running northeasterly along the extension of the southeasterly line of said Lot 1 226.84 feet to the point of beginning of a curve to right having a radius of 438.97 feet and an arc length of 196.64 feet; thence running northeasterly along said curve to the right to its point of intersection with the west line of said Lot 34, said point of intersection being the actual point of beginning of the line to b described; thence continuing northeasterly along the arc of said curve to the end of said curve, said end of curve being a point in the south line of said North 300 feet of said Lots 34 and 35 and there terminating.

And

The South 75 feet of the North 525 feet of Lot 34 and the South 75 feet of the North 525 feet of Lot 35 as measured on a line parallel with the west line of said Lot 35, all in AUDITOR'S SUBDIVISION NO. 216, Hennepin County, Minnesota.

And

And that the City of Brooklyn Center, a Minnesota municipal corporation, fee owner of the following described property situated in the County of Hennepin, State of Minnesota to wit:

(Torrens Land)

Tract F, REGISTERED LAND SURVEY NO. 40, Hennepin County, Minnesota.

And that the Independent School District No. 281, a Municipal Corporation, fee owner of the following described property situated in the County of Hennepin, State of Minnesota to wit:

(Abstract Land)

That part of Lots 34 and 35 lying northerly of the following described line: Commencing at the southeast corner of Lot 1, Block 3, BALFANY'S NORTHPORT 1ST ADDITION; thence northeasterly along the extension of the southeasterly line of said lot distance 256.84 feet; thence northeasterly on a tangential curve to the right having a radius of 438.97 feet a distance of 196.64 feet; thence easterly along tangent to said curve to the east line of Lot 35 and southerly of the following described line: Commencing at a point in the west line of Lot 34 distant 256 feet south from the northwest corner thereof; thence easterly on a curve to the right having a radius 498.97 feet a distance of 127.17 feet; thence easterly on a tangent to said curve a distance of 35.68 feet to the east line of Lot 35, AUDITOR'S SUBDIVISION NO. 216, Hennepin County, Minnesota.

Has caused the same to be surveyed and platted as BROOKLYN CENTER EDA FIRST ADDITION and do hereby dedicate to the public for public use the public ways as created on this plat.

In witness whereof said The Economic Development Authority of Brooklyn Center, a body corporate and politic, has caused these present to be signed by its proper officer this ____ day of _____, 20____.

The Economic Development Authority of Brooklyn Center

(Signature)

(Print Name)

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this ____ day of _____, 20____ by _____.

(Signature)

(Print Name)
Notary Public, _____ County, _____
My Commission Expires _____

In witness whereof said City of Brooklyn Center, a Minnesota municipal corporation, has caused these present to be signed by its proper officer this ____ day of _____, 20____.

The City of Brooklyn Center

(Signature) _____ it's _____

(Print Name)

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this ____ day of _____, 20____ by _____.

(Signature)

(Print Name)
Notary Public, _____ County, _____
My Commission Expires _____

In witness whereof said Independent School District No. 281, a Municipal Corporation, has caused these present to be signed by its proper officer this ____ day of _____, 20____.

Independent School District No. 281

(Signature) _____ it's _____

(Print Name)

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this ____ day of _____, 20____ by _____.

(Signature)

(Print Name)
Notary Public, _____ County, _____
My Commission Expires _____

I Dean Dusheck do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.1, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this ____ day of _____, 20____.

Dean Dusheck, Licensed Land Surveyor
Minnesota License No. 16679

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this ____ day of _____, 20____ by Dean Dusheck, Land Surveyor.

(Signature)

(Print Name)
Notary Public, _____ County, _____
My Commission Expires _____

CITY OF BROOKLY CENTER, MINNESOTA

This plat of BROOKLYN CENTER EDA FIRST ADDITION was approved and accepted by the City Council of Brooklyn Center, Minnesota at a regular meeting thereof held this ____ day of _____, 20____. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 505.03, Subdivision 2.

Mayor

City Manager

SURVEY DIVISION, Hennepin County, Minnesota

Pursuant to MN. STAT. Sec. 383B.565 (1969), this plat has been approved this ____ day of _____, 20____.

Chris F. Mavis, County Surveyor by _____

HENNEPIN COUNTY BOARD

We do hereby certify that on the ____ day of _____, 20____, the Board of Commissioners of Hennepin County, Minnesota, approved this plat of BROOKLYN CENTER EDA FIRST ADDITION and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2, and pursuant to the Dakota County Contiguous Plat Ordinance.

By: _____
Chair, Hennepin County Board

Attest: _____

RESIDENT AND REAL ESTATE SERVICES, Hennepin County, Minnesota

I hereby certify that taxes payable in 20____ and prior years have been paid for land described on this plat, dated this ____ day of _____, 20____.

Mark V. Chapin, County Auditor by _____ Deputy
Department of Property Taxation and Records

REGISTRAR OF TITLES, Hennepin County, Minnesota

I hereby certify that the within plat of BROOKLYN CENTER EDA FIRST ADDITION was filed in this office this ____ day of _____, 20____, at ____ o'clock ____M.

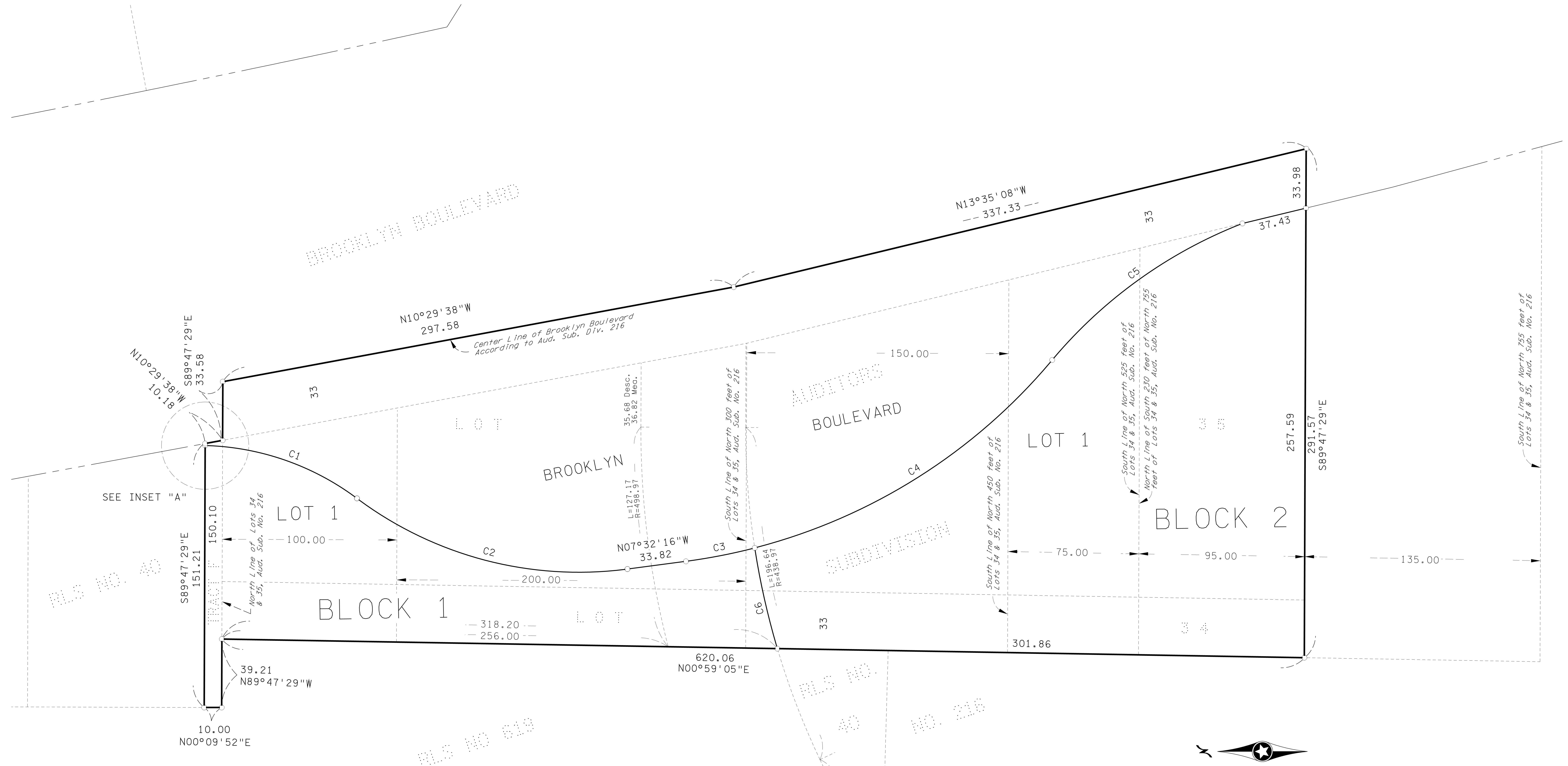
Martin McCormick, Registrar of Titles by _____ Deputy

COUNTY RECORDER, Hennepin County, Minnesota

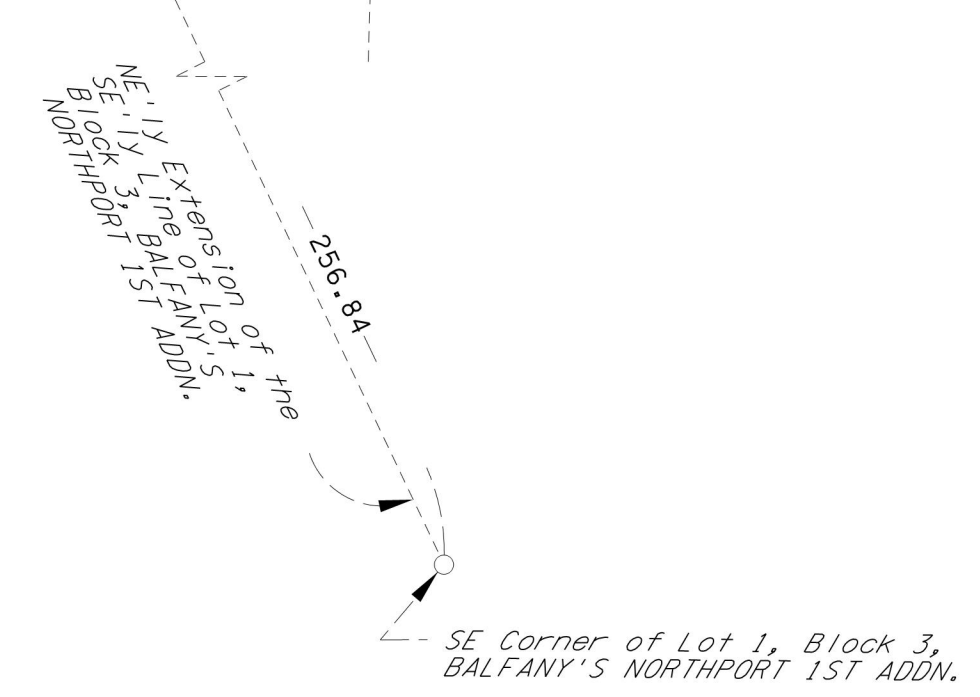
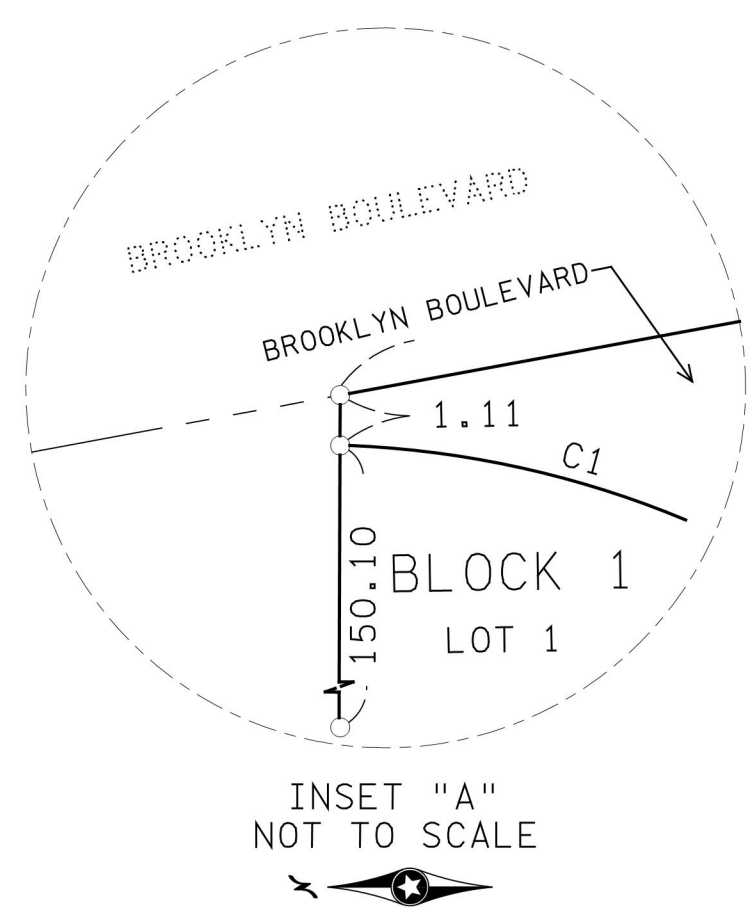
I hereby certify that the within plat of BROOKLY CENTER EDA FIRST ADDITION was recorded this ____ day of _____, 20____, at ____ o'clock ____M.

Martin McCormick, County Recorder by _____ Deputy

BROOKLYN CENTER EDA FIRST ADDITION



CURVE	LENGTH	RADIUS	DELTA	CH. LENGTH	CH. BEARING
C1	93.54	152.00	35°15'36"	92.07	S19°12'35"W
C2	164.20	212.00	44°22'38"	160.13	S14°39'04"W
C3	40.14	330.00	06°58'08"	40.55	S11°01'20"E
C4	204.82	330.00	35°33'44"	201.55	S32°17'16"E
C5	135.57	270.00	28°46'05"	134.15	S35°41'05"E
C6	59.18	438.97	07°43'27"	59.13	N77°19'16"E



THE NORTH LINE OF TRACT F, RLS NO. 40 HAS AN ASSUMED BEARING OF S89°47'29"E

○ DENOTES IRON MONUMENT SET 1/2"X14" IRON MONUMENT MARKED LS 16679

**CITY OF
BROOKLYN CENTER
NOTICE OF
PUBLIC HEARING**

TO WHOM IT MAY CONCERN:

Please take notice that the Planning Commission of the City of Brooklyn Center will hold a public hearing on **Thursday, November 14th, 2019**, at approximately 7:00 p.m., at Brooklyn Center City Hall, located at 6301 Shingle Creek Parkway, Brooklyn Center, Minnesota. A definite time for this application to be considered cannot be given as it will depend on the progression of the agenda items.

TYPE OF REQUEST:

Preliminary & Final Plat for Brooklyn Center EDA First Addition

PETITIONER:

City of Brooklyn Center

PROPERTY OWNERS:

City of Brooklyn Center, Economic Development Authority of Brooklyn Center, and Independent School District No. 281

PROPERTY IDS:

03-118-21-44-0011, 03-118-21-44-0010, 03-118-21-44-0009, 03-118-21-44-0005, 03-118 21-44-0004, 03-118-21-44-0003, and 03-118-21-42-0024

BRIEF STATEMENT OF CONTENTS OF PETITION: The Applicant is requesting review of a proposal to re-plat certain property located around the west side of 55th Avenue North and Brooklyn Boulevard. This request is associated with the Brooklyn Boulevard Phase I project and re-alignment of the Brooklyn Boulevard Frontage Road to reduce confusion, congestion, and improve vehicle stacking for motorists eastbound on 55th Avenue North.

Questions, comments, statements of support or objections should be directed to City Planner/Zoning Administrator Ginny McIntosh at (763) 569-3319 or email to gmcintosh@ci.brooklyn-center.mn.us.

Auxiliary aids for persons with disabilities are available upon request at least 96 hours in advance. Please contact the City Clerk at (763) 569-3300 to make arrangements.

Respectfully,

Ginny McIntosh

City Planner/Zoning Administrator

Published in the

Sun Post

October 31, 2019

990620

MEMORANDUM

DATE: October 31, 2019

TO: Ginny McIntosh, City Planner and Zoning Administrator

FROM: Andrew Hogg, Assistant City Engineering

SUBJECT: Public Works – Preliminary and Final Plat Review for EDA PLAT

Public Works Department staff reviewed the preliminary plat and final plat submittals dated September 9, 2019, for the proposed EDA PLAT and provide the following recommendations:

- Preliminary and Final Plats dated September 9, 2019

Subject to final staff final plat approval, the referenced plans must be revised in accordance with the following comments/revisions.

Preliminary Plat/Final

1. Need working copy of the preliminary plat to show all vacated easements, proposed easements, existing and proposed utilities and provide all easement documents for the City for review.
2. Legal descriptions and easement vacation documents must be obtained for all existing easements. Existing public easements as determined by the City must be vacated, and proposed easements must be dedicated as part of the preliminary and final platting process. The formal vacation document must contain an easement vacation description and depiction exhibit signed by a professional surveyor.
3. An updated certified abstract of title or registered property report must be provided to the City Planner and City Attorney for review at the time of the preliminary plat application (within 30 days of preliminary plat application). Additionally, this will need to stay current and be updated through the approval process as required to maintain and be current within 30 days of the release of final plat.
4. See attached plans with additional redlines

All aforementioned items, comments and recommendations are provided based on the information submitted by the applicant at the time of this review. The preliminary plan (and final plat must be developed and maintained in substantial conformance with the referenced plans, unless modified by the staff recommended conditions above. Subsequent approval of the final plat may require additional modifications based on the City Engineer and other public officials having jurisdiction over approval of the final site plans.

BROOKLYN CENTER EDA FIRST ADDITION

Preliminary Plat

Owners:

City of Brooklyn Center
6301 Shingle Creek Parkway
Brooklyn Center, MN 55430

Economic Development Authority of Brooklyn Center
6301 Shingle Creek Parkway
Brooklyn Center, MN 55430

Robbinsdale School District No. 281
4148 Winnetka Avenue North
New Hope, MN 55427

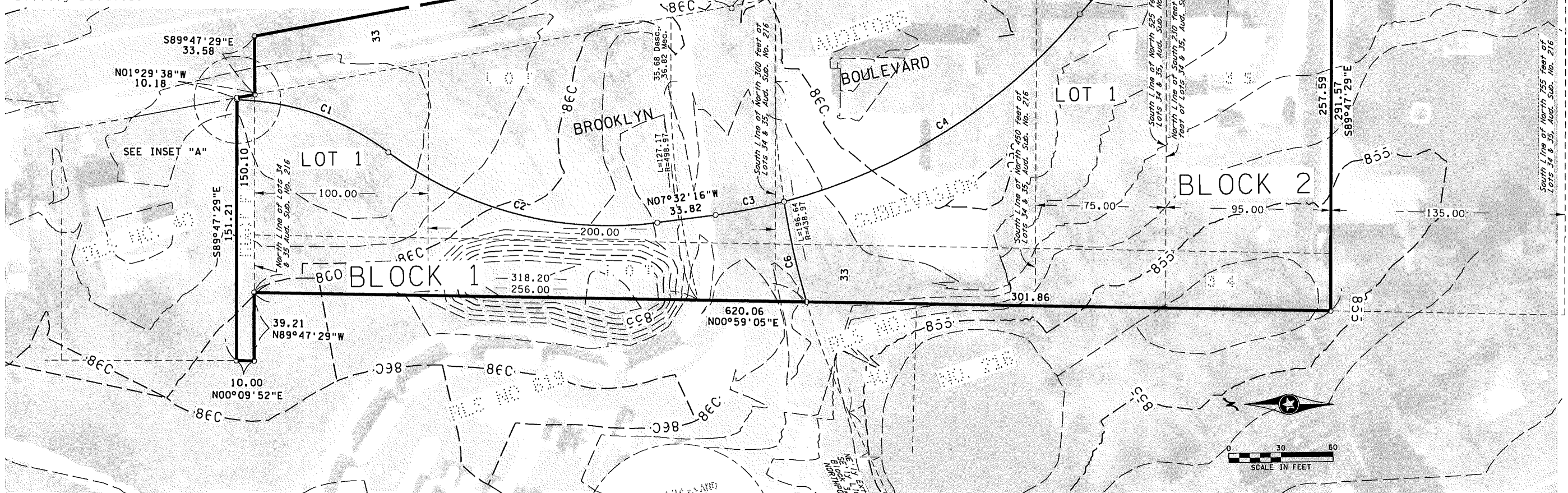
Property Is Zoned:

R1-One Family Residence
C1-Service/Office
R2-Two Family Residence

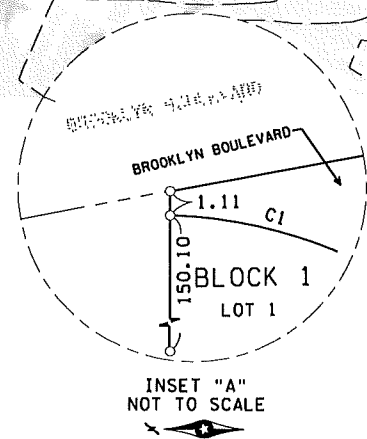
Property Contains 134,925Sq. Ft. (3.10 Ac.)

See Attached Draft Plat For Legal Description

See 2018 Brookly Blvd Construction Plans For
Utility Details.



CURVE	LENGTH	RADIUS	DELTA	CH. LENGTH	CH. BEARING
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C4	204.82	330.00	35°33'44"	201.55	S32°17'16"E
C5	135.57	270.00	28°46'05"	134.15	S35°41'05"E
C6	59.18	438.97	07°43'27"	59.13	N77°19'16"E



INSET "A"
NOT TO SCALE

THE NORTH LINE OF TRACT F,
RLS NO. 40 HAS AN ASSUMED
BEARING OF S89°47'29"E

○ DENOTES IRON MONUMENT SET
1/2"X14" IRON MONUMENT
MARKED LS 16679

BROOKLYN CENTER EDA FIRST ADDITION

KNOW ALL PERSONS BY THESE PRESENTS: That The Economic Development Authority of Brooklyn Center, a body corporate and politic, fee owner of the following described property situated in the County of Hennepin, State of Minnesota to wit:

(Abstract Land)

The North 100 feet of that part of Lot 35, AUDITOR'S SUBDIVISION NO. 216, lying westerly of the center line of Minnesota State Highway No. 152; also the North 100 feet of the East 33 feet of Lot 34, in AUDITOR'S SUBDIVISION NO. 216, according to the recorded plat thereof, and situate in Hennepin County, Minnesota.

And

That part of the South 200 feet of the North 300 feet of Lots 34 and 35, AUDITOR'S SUBDIVISION NO. 216, Hennepin County, Minnesota lying north of the following described line: Commencing at a point in the west line of Lot 34 distant 256 feet south from the northwest corner thereof; thence easterly on a curve to the right having a radius 498.97 feet a distance of 127.17 feet; thence easterly on a tangent to said curve distant 35.68 feet to the east line of Lot 35, according to the recorded plat thereof, and situate in Hennepin County, Minnesota.

And

The North 95 feet of the South 230 feet of the North 755 feet of Lots 34 and 35, AUDITOR'S SUBDIVISION NO. 216, according to the plat thereof on file or of record in the Office of the County Recorder in and for Hennepin County, Minnesota.

And

The South 150 feet of the North 450 feet of Lots 34 and 35, and the South 150 feet of the North 450 feet of Lot 35 as measured on a line parallel with the west line of said Lot 35 all in AUDITOR'S SUBDIVISION NO. 26, Hennepin County, Minnesota EXCEPTING that part lying north of the following described line: Beginning at the point of Intersection of southeasterly line of Lot 1, Block 3, BALFANY'S NORTHPORT 1ST ADDITION with the northeasterly line of Northport Drive as platted adjacent to Lots 1 and 2, Block 3, BALFANY'S NORTHPORT 1ST ADDITION; thence running northeasterly along the extension of the southeasterly line of said Lot 1 228.64 feet to the point of beginning of a curve to right having a radius of 438.97 feet and an arc length of 190.64 feet; thence running northeasterly along said curve to the right to its point of intersection with the west line of said Lot 34, said point of intersection being the actual point of beginning of the line to be described; thence continuing northeasterly along the arc of said curve to the end of said curve, said end of curve being a point in the south line of said North 300 feet of said Lots 34 and 35 and there terminating.

And

The South 75 feet of the North 525 feet of Lot 34 and the South 75 feet of the North 525 feet of Lot 35 as measured on a line parallel with the west line of said Lot 35, all in AUDITOR'S SUBDIVISION NO. 216, Hennepin County, Minnesota.

And

And that the City of Brooklyn Center, a Minnesota municipal corporation, fee owner of the following described property situated in the County of Hennepin, State of Minnesota to wit:

(Torrens Land)

Tract F, REGISTERED LAND SURVEY NO. 40, Hennepin County, Minnesota.

And that the Independent School District No. 281, a Municipal Corporation, fee owner of the following described property situated in the County of Hennepin, State of Minnesota to wit:

(Abstract Land)

That part of Lots 34 and 35 lying northerly of the following described line: Commencing at the southeast corner of Lot 1, Block 3, BALFANY'S NORTHPORT 1ST ADDITION; thence northeasterly along the extension of the southeasterly line of said lot distance 258.84 feet; thence northeasterly on a tangential curve to the right having a radius of 438.97 feet a distance of 190.64 feet; thence easterly along tangent to said curve to the east line of Lot 35 and southerly of the following described line: Commencing at a point in the west line of Lot 34 distant 256 feet south from the northwest corner thereof; thence easterly on a curve to the right having a radius 498.97 feet a distance of 127.17 feet; thence easterly on a tangent to said curve a distance of 35.68 feet to the east line of Lot 35, AUDITOR'S SUBDIVISION NO. 216, Hennepin County, Minnesota.

Has caused the same to be surveyed and platted as BROOKLYN CENTER EDA FIRST ADDITION and do hereby dedicate to the public for public use the public ways as created on this plat.

In witness whereof said The Economic Development Authority of Brooklyn Center, a body corporate and politic, has caused these present to be signed by its proper officer this ____ day of ____, 20__.

The Economic Development Authority of Brooklyn Center

(Signature) _____

(Print Name)

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this ____ day of ____, 20__ by _____.

(Signature)

(Print Name)
Notary Public, _____ County, _____
My Commission Expires _____
In witness whereof said City of Brooklyn Center, a Minnesota municipal corporation, has caused these present to be signed by its proper officer this ____ day of ____, 20__.

The City of Brooklyn Center

(Signature) _____

(Print Name)

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this ____ day of ____, 20__ by _____.

(Signature)

(Print Name)
Notary Public, _____ County, _____
My Commission Expires _____

In witness whereof said Independent School District No. 281, a Municipal Corporation, has caused these present to be signed by its proper officer this ____ day of ____, 20__.

Independent School District No. 281

(Signature) _____

(Print Name)

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this ____ day of ____, 20__ by _____.

(Signature)

(Print Name)
Notary Public, _____ County, _____
My Commission Expires _____

I Dean Dusheck do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.1, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this ____ day of ____, 20__.

Dean Dusheck, Licensed Land Surveyor
Minnesota License No. 16679

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this ____ day of ____, 20__ by Dean Dusheck, Land Surveyor.

(Signature)

(Print Name)
Notary Public, _____ County, _____
My Commission Expires _____

CITY OF BROOKLYN CENTER, MINNESOTA

This plat of BROOKLYN CENTER EDA FIRST ADDITION was approved and accepted by the City Council of Brooklyn Center, Minnesota at a regular meeting thereof held this ____ day of ____, 20__. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 505.03, Subdivision 2.

Mayor

City Manager

SURVEY DIVISION, Hennepin County, Minnesota

Pursuant to MN. STAT. Sec. 383B.565 (1969), this plat has been approved this ____ day of ____, 20__.

Chris F. Mavis, County Surveyor by _____

HENNEPIN COUNTY BOARD

We do hereby certify that on the ____ day of ____, 20__, the Board of Commissioners of Hennepin County, Minnesota, approved this plat of BROOKLYN CENTER EDA FIRST ADDITION and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2, and pursuant to the Dakota County Contiguous Plat Ordinance.

By: _____
Chair, Hennepin County Board

Attest: _____

RESIDENT AND REAL ESTATE SERVICES, Hennepin County, Minnesota

I hereby certify that taxes payable in 20__ and prior years have been paid for land described on this plat, dated this ____ day of ____, 20__.

Mark V. Chapin, County Auditor by _____ Deputy
Department of Property Taxation and Records

REGISTRAR OF TITLES, Hennepin County, Minnesota

I hereby certify that the within plat of BROOKLYN CENTER EDA FIRST ADDITION was filed in this office this ____ day of ____, 20__, at ____ o'clock __M.

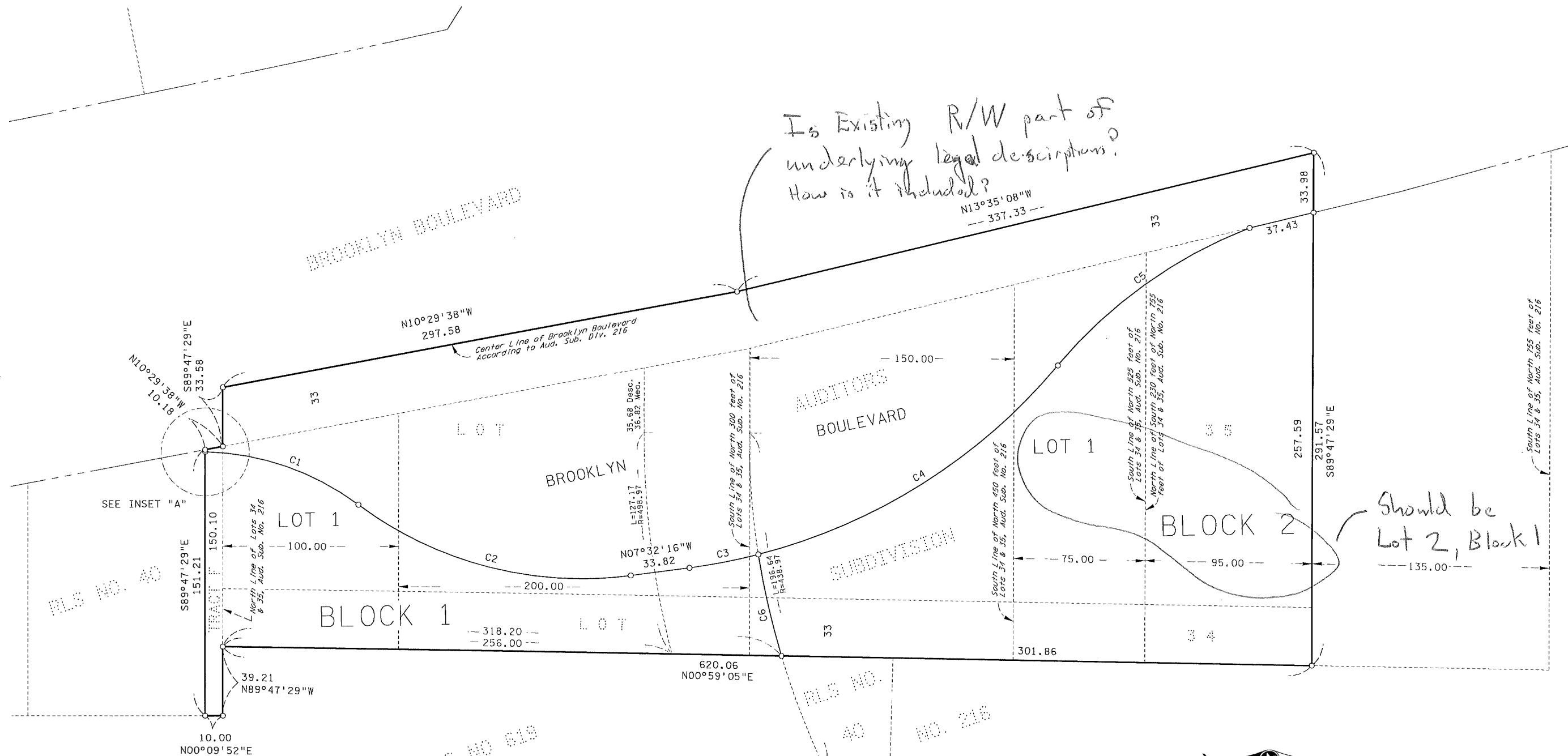
Martin McCormick, Registrar of Titles by _____ Deputy

COUNTY RECORDER, Hennepin County, Minnesota

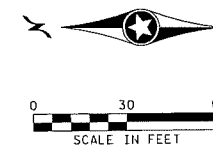
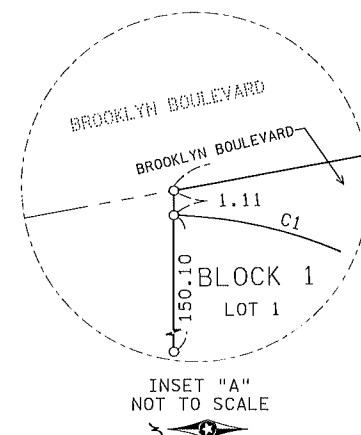
I hereby certify that the within plat of BROOKLYN CENTER EDA FIRST ADDITION was recorded this ____ day of ____, 20__, at ____ o'clock __M.

Martin McCormick, County Recorder by _____ Deputy

BROOKLYN CENTER EDA FIRST ADDITION



CURVE	LENGTH	RADIUS	DELTA	CH. LENGTH	CH. BEARING
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RLS NO. 40 HAS AN ASSUMED
BEARING OF S89°47'29"E

° DENOTES IRON MONUMENT SET
1/2"X14" IRON MONUMENT
MARKED LS 16679

Member Dan Ryan introduced the following resolution and moved its adoption:

RESOLUTION NO. 2018-25

RESOLUTION AUTHORIZING THE ACQUISITION OF A TAX FORFEITED PARCEL AS PART OF THE BROOKLYN BOULEVARD CORRIDOR PROJECT PHASE I

WHEREAS, the City Council has authorized the project titled Brooklyn Boulevard Corridor Project Phase I (the "Project"); and

WHEREAS, the Project area includes a 1.4-mile segment of Brooklyn Boulevard (County Road 152) between 49th Avenue and Bass Lake Road (County Road 10); and

WHEREAS, the Project scope includes reconstruction and streetscape improvements that will improve roadway and intersection safety, enhance traffic operations and provide improved bicycle and pedestrian facilities. The Project will enhance bicycle and pedestrian travel by adding a trail, improving sidewalks and transit stops, adding streetscaping and landscaping and improving the functionality of intersections with modified turn lanes; and

WHEREAS, as part of the Project the City needs to cross an approximately 0.03 acre tax forfeited parcel that is being managed by Hennepin County ("County") on behalf of the State of Minnesota and that is legally described as follows ("Parcel"): and

Tract F, Registered Land Survey No. 40, Hennepin County; and

WHEREAS, the City Council finds that acquiring the Parcel from Hennepin County is preferred to attempting to establish an easement over a portion of it as part of the Project; and

WHEREAS, as a tax forfeited property, under Minnesota Statutes, section 282.01, subdivision 1a(b) the City may request that Hennepin County sell the Parcel to the City for market value; and

WHEREAS, Hennepin County has determined the market value for the Parcel is \$129.20; and

WHEREAS, the City Council desires to formally request Hennepin County sell the Parcel to the City for market value.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Center, Minnesota, that:

1. The City Council hereby formally requests Hennepin County sell the Parcel to the City for the identified market value of \$129.20 to be used as part of the Project.

RESOLUTION NO. 2018-25

2. The Mayor and City Manager are authorized to take such actions and execute such documents as may be needed to accomplish the purpose of this Resolution.

January 22, 2018

Date

Tim Willson

Mayor

ATTEST: Sharon Krutson
City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member April Graves

and upon vote being taken thereon, the following voted in favor thereof:

Tim Willson, Marquita Butler, April Graves, Kris Lawrence-Anderson, Dan Ryan

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

Member Ryan
moved its adoption:

introduced the following resolution and

RESOLUTION NO. 2019-167

RESOLUTION REGARDING RECOMMENDED DISPOSITION OF PLANNING COMMISSION APPLICATION NO. 2019-016 SUBMITTED BY THE CITY OF BROOKLYN CENTER, REQUESTING APPROVAL OF THE PRELIMINARY AND FINAL PLAT FOR THE BROOKLYN CENTER EDA FIRST ADDITION AND DEDICATION OF CERTAIN RIGHT-OF-WAY (LOCATED IN VICINITY OF 55TH AVENUE NORTH AND BROOKLYN BOULEVARD FRONTAGE ROAD)

WHEREAS, Planning Commission Application No. 2019-016 was submitted by the City of Brooklyn Center, requesting preliminary and final plat approval to re-plat seven properties with varying ownership by the City of Brooklyn Center, Economic Development Authority of Brooklyn Center, and Robbinsdale School District No. 281, and the dedication of certain right-of-way; and

WHEREAS, the proposed re-plat would encompass approximately 134,925 square feet or 3.1 acres of land that includes a portion of Registered Land Survey No. 0040, Hennepin County, Minnesota; and lands contained within Auditor's Subdivision No. 216, Hennepin County, Minnesota; and

WHEREAS, these requests arose from infrastructure improvements that took place under the Phase I Brooklyn Boulevard reconstruction and modernization project, which resulted in the re-alignment of Brooklyn Boulevard Frontage Road in the vicinity of 55th Avenue North to reduce confusion, congestion, and allow for improved stacking distances for motorists eastbound on 55th Avenue North; and

WHEREAS, the re-aligned Brooklyn Boulevard Frontage Road will require dedication of new City right-of-way; and

WHEREAS, the existing City right-of-way for the former alignment of the Brooklyn Boulevard Frontage Road will remain in place and not be vacated due to the existence of City infrastructure; and

WHEREAS, on November 14, 2019, the Planning Commission of Brooklyn Center, Minnesota held a duly called public hearing, whereby this item was given due consideration, a staff report was presented, and a public hearing was opened to allow for public testimony regarding the plat and right-of-way dedication requests for the BROOKLYN CENTER EDA FIRST ADDITION, which were received and noted for the record; and

WHEREAS, the Planning Commission has determined during its review of the plat, right-of-way dedication, and materials submitted with Planning Commission Application No. 2019-016, that said plat and right-of-way dedication are in general conformance with the City of

RESOLUTION NO. 2019-167

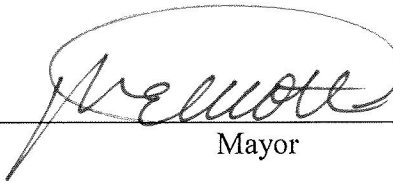
Brooklyn Center's City Code of Ordinances, and specifically Chapter 15 – Platting.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Brooklyn Center, Minnesota does hereby recommend that Planning Commission Application No. 2019-016, as submitted by the City of Brooklyn Center, and requesting preliminary and final plat approval for the BROOKLYN CENTER EDA FIRST ADDITION and dedication of certain right-of-way, may be approved based upon the following conditions:

1. Address the comments by Assistant City Engineer Hogg in his memorandum dated October 31, 2019;
2. Final plat and associated mylar shall be subject to and must comply with the provisions of Chapter 15 of the City Code of Ordinances (*Platting*);
3. Address any comments and/or requirements as provided by Hennepin County;
4. Address any comments and/or requirements from the City Attorney's office, and specifically regarding an updated certified abstract of title for the affected properties; and
5. The successful recording of said plat (mylar) with Hennepin County.

November 25, 2019

Date



Mayor

ATTEST:



City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member
Lawrence-Anderson

and upon vote being taken thereon, the following voted in favor thereof:

Butler, Elliott, Graves, Lawrence-Anderson, Ryan

and the following voted against the same: None

whereupon said resolution was declared duly passed and adopted.

Member
and moved its adoption:

introduced the following resolution

RESOLUTION NO.

A RESOLUTION RATIFYING APPROVAL OF THE PRELIMINARY AND FINAL PLAT FOR BROOKLYN CENTER EDA FIRST ADDITION AND AUTHORIZING FINAL PLAT RECORDING

WHEREAS, the City of Brooklyn Center (“the Applicant”) submitted an application for approval of a plat to be titled BROOKLYN CENTER EDA FIRST ADDITION, which would re-plat approximately 3.1 acres of land that includes a portion of Registered Land Survey No. 0040, Hennepin County, Minnesota; and lands contained within Auditor’s Subdivision No. 216, Hennepin County, Minnesota, and under varying ownership by the City of Brooklyn Center, Economic Development Authority of Brooklyn Center, and Robbinsdale School District No. 281, as well as the dedication of certain right-of-way; and

WHEREAS, these requests arose from infrastructure improvements that took place under the Phase I Brooklyn Boulevard reconstruction and modernization project, which resulted in the re-alignment of the Brooklyn Boulevard Frontage Road in the vicinity of 55th Avenue North to reduce confusion, congestion, and allow for improved stacking distances for motorists eastbound on 55th Avenue North; and

WHEREAS, the Planning Commission heard this matter under Planning Commission Application No. 2019-016 on November 14, 2019 and, after the public hearing, acted to forward the application to the City Council with a recommendation that it approve the preliminary and final plat for BROOKLYN CENTER EDA FIRST ADDITION; and

WHEREAS, on November 25, 2019, the City Council adopted Resolution No. 2019-167 to approve the preliminary and final plat with certain conditions; and

WHEREAS, Section 15-105.A.4 of the City Code of the City of Brooklyn Center indicates that a final plat must be recorded with the County within 30 days from the date of approval or the approval of the final plat shall be considered void; and

WHEREAS, the recording of BROOKLYN CENTER EDA FIRST ADDITION was delayed as the City of Brooklyn Center worked through the acquisition of a 0.03 acre tax forfeited parcel and quiet title action to allow the Registrar of Titles to cancel the old certificate in favor of a new one; and

WHEREAS, the City Council determines that requiring the Applicant to go through the entire plat approval process when there have been no changes to the approved plat is not in the public interest and is willing to ratify its earlier approval to allow the plat to be recorded without further process.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Center, Minnesota that the approval of the preliminary and final plat of BROOKLYN CENTER EDA FIRST ADDITION is hereby ratified, and authorization to record the final plat may occur subject to the following conditions:

1. The conditions established in the original approvals as outlined under City Council Resolution No. 2019-167 remain in effect;
2. Prior to recording, the Applicant shall provide the City updated evidence of title satisfactory to the City Attorney and City Planner.

November 23, 2020

Date

Mayor

ATTEST: _____
City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Todd Berg, Fire Chief

SUBJECT: Resolution Expressing Appreciation of the Donation of a Grill from Mills Fleet Farm to the Brooklyn Center Fire Department

Background:

The marketing director of the Brooklyn Park Fleet Farm store reached out to area community fire departments to donate a Weber smoker grill. They had four of them left over and the vendor wanted them donated or destroyed and didn't want them back. Fleet Farm decided to donate them to area fire departments in their appreciation of everything they do for our communities.

Budget Issues:

None

Strategic Priorities and Values:

Safe, Secure, Stable Community

ATTACHMENTS:

Description	Upload Date	Type
Resolution Expressing Appreciation for Donation	11/17/2020	Resolution Letter

Member _____ introduced the following resolution and moved its adoption:

RESOLUTION NO. _____

RESOLUTION EXPRESSING APPRECIATION FOR THE DONATION OF A GRILL TO THE BROOKLYN CENTER FIRE DEPARTMENT.

WHEREAS, Mills Fleet Farm has presented to the Brooklyn Center Fire Department a grill, and

WHEREAS, the grill will be used for on duty firefighters at the fire station in appreciation of community first responders, and

WHEREAS, the City Council is appreciative of these donations, and commends Mills Fleet Farm for its civic efforts.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Center, Minnesota:

1. Acknowledges the donations with gratitude.

November 23, 2020
Date

Mayor

ATTEST: _____
City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member

and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Mark Ebensteiner, Finance Director

SUBJECT: An Ordinance Amending Ordinance No. 2018-08 Regarding Council Salaries for 2021-2022

Background:

Every two years the Financial Commission is required by the City Council Code of Policies to review the salaries for the Mayor and City Council and recommend any changes that may seem appropriate. The Financial Commission has reviewed the salaries in comparison to a specified group of comparison cities as outlined by policy. The data on comparison with those cities for the years 2016 through 2020 is attached.

The Financial Commission met on Monday, November 16, 2020 to review the attached information and make their recommendation. Following a discussion the Commission unanimously recommended that the Mayor and City Council salaries increase by two percent for 2020 and 2021. The Commission cited that the two percent increases were consistent with recent staff wage adjustments. The Commission also suggested an increase would show appreciation to the City Council for the time spent attending meetings and their belief that the City has functioned well over the past two years.

According to Minnesota Statutes 415.11, such ordinance will be in effect for 12 months after which the salary reverts to the previously designated amount. In order to increase salaries for 2021 and 2022 the Council must adopt a new ordinance. The attached ordinance proposal calls for a public hearing to be held on Monday, December 14, 2020 on a new ordinance establishing 2021 and 2022 salaries.

Budget Issues:

Under the recommended proposal, the wage adjustments for the Mayor and City Council will increase in total by \$1,042 for 2021 and an additional \$1,063 for 2022. If approved, these amounts will be incorporated in the 2021 and 2022 budgets.

Strategic Priorities and Values:

Safe, Secure, Stable Community

ATTACHMENTS:

Description	Upload Date	Type
Council Wage Comparison	11/17/2020	Backup Material
MN Statute 415.11	11/17/2020	Backup Material
Council Wage Consideration	11/17/2020	Backup Material
AN ORDINANCE AMENDING ORDINANCE NO. 2018-08 REGARDING COUNCIL SALARIES FOR 2021-2022	11/17/2020	Backup Material



City of Brooklyn Center
Comparative Mayor and Council Wages

City	2010 Census Population	2016		2017		2018		2019		2020	
		Mayor	Council	Mayor	Council	Mayor	Council	Mayor	Council	Mayor	Council
Maplewood	38,018	\$ 13,618	\$ 11,986	\$ 13,479	\$ 11,864	\$ 13,958	\$ 12,286	\$ 13,958	\$ 12,286	\$ 13,958	\$ 12,286
Richfield	35,228	10,379	8,070	11,350	8,809	12,012	9,323	12,012	9,323	12,372	9,603
Roseville	33,660	9,300	7,020	9,300	7,020	9,300	7,020	9,300	7,020	9,300	7,020
Brooklyn Center	30,104	11,846	9,070	12,083	9,251	12,325	9,436	12,572	9,625	12,823	9,817
Fridley	27,208	10,689	8,270	10,689	8,779	10,689	8,779	10,689	8,779	10,689	8,779
Shoreview	25,043	9,348	6,936	9,540	7,080	9,540	7,080	9,828	7,296	9,828	7,296
White Bear Lake	23,797	9,600	7,500	9,600	7,500	9,600	7,500	9,600	7,500	9,600	7,500
Crystal	22,151	10,620	8,170	10,620	8,170	10,620	8,170	10,885	8,374	10,885	8,374
Golden Valley	20,371	12,207	9,136	12,207	9,136	12,825	9,598	12,825	9,598	13,530	10,126
New Hope	20,339	12,037	8,791	12,338	9,011	12,646	9,236	13,025	9,513	13,416	9,798
Average	27,592	\$ 10,964	\$ 8,495	\$ 11,121	\$ 8,662	\$ 11,352	\$ 8,843	\$ 11,469	\$ 8,931	\$ 11,640	\$ 9,060
Median	26,126	\$ 10,655	\$ 8,220	\$ 11,019	\$ 8,794	\$ 11,351	\$ 9,008	\$ 11,449	\$ 9,051	\$ 11,629	\$ 9,191

Brooklyn Center as a % of:

Average	109%	108%	107%	109%	107%	109%	107%	110%	108%	110%	108%
Median	115%	111%	110%	110%	105%	109%	105%	110%	106%	110%	107%

Notes:

Golden Valley: Pays per diem of \$50 per extra meeting, which is capped at a maximum of \$150 per month.
 Also provides city-owned tablet for Mayor/Council member use, which eliminated paper packets.

New Hope Members also receive \$25 per EDA meeting and have a city issued iPad with data plan

Maplewood: Members are provided a city iPad if needed.

Fridley: Members are provided a City issued laptop.
 Members are eligible for health insurance, with the same contributions as full-time employees.
 Council wage is the blended rate of: At Large (\$8,779) and Council (\$7,761).

Crystal: Members are provided a technology allowance, which will not exceed \$250 annually.

415.11 SECOND TO FOURTH CLASS CITIES; GOVERNING BODY SALARIES.

Subdivision 1. **Set by ordinance.** Notwithstanding the provisions of any general or special law, charter, or ordinance, the governing body of any statutory or home rule charter city of the second, third or fourth class may by ordinance fix their own salaries as members of such governing body, and the salary of the chief elected executive officer of such city, in such amount as they deem reasonable.

Subd. 2. **After next election.** No change in salary shall take effect until after the next succeeding municipal election.

Subd. 3. **Temporary reductions.** Notwithstanding subdivision 2 or a charter provision to the contrary, the governing body may enact an ordinance to take effect before the next succeeding municipal election that reduces the salaries of the members of the governing body. The ordinance shall be in effect for 12 months, unless another period of time is specified in the ordinance, after which the salary of the members reverts to the salary in effect immediately before the ordinance was enacted.

History: *Ex1967 c 42 s 1,2; 1976 c 44 s 34; 2009 c 152 s 17*

City of Brooklyn Center
Proposed Mayor and City Council Compensation for 2021-22

		Proposed 2021			Proposed 2022		
Current Compensation		1% Increase 2021	2% Increase 2021	3% Increase 2021	1% Increase 2022	2% Increase 2022	3% Increase 2022
Mayor	\$ 12,823	\$ 12,951	\$ 13,079	\$ 13,208	\$ 13,081	\$ 13,341	\$ 13,604
Council Member	\$ 9,817	\$ 9,915	\$ 10,013	\$ 10,112	\$ 10,014	\$ 10,214	\$ 10,415
Total Cost	\$ 52,091	\$ 52,612	\$ 53,133	\$ 53,654	\$ 53,138	\$ 54,195	\$ 55,263
Difference Year		\$ 521	\$ 1,042	\$ 1,563	\$ 526	\$ 1,063	\$ 1,610
Total Difference					\$ 1,047	\$ 2,104	\$ 3,172

CITY OF BROOKLYN CENTER

Notice is hereby given that a public hearing will be held on the 14th day of December 2020, at 7 p.m. or as soon thereafter as part of the regular City Council meeting. The WebEx meeting can be accessed electronically by

<https://logis.webex.com/logis/j.php?MTID=m4e2521c99a845acbd144c753f56caf69> or by calling 1-312-535-8110 Access Code: 133 791 1584

As City Hall is currently closed due to the COVID-19 pandemic, we strongly encourage you to forward your comments and questions to the City Clerk at bsuciu@ci.brooklyn-center.mn.us or by phone at 763-569-3306.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 2018-08 REGARDING COUNCIL SALARIES FOR 2021-2022.

THE CITY COUNCIL OF THE CITY OF BROOKLYN CENTER DOES ORDAIN AS FOLLOWS:

Section 1. City of Brooklyn Center Ordinance No. 2018-08 which amended the amount of the annual compensation to be paid to the Mayor and Council Members to become effective January 1, 2019, is hereby amended.

Section 2. Effective January 1, 2021, the annual salary for the Mayor shall be \$13,079 and the annual salary for Council Members shall be \$10,013.

Section 3. Effective January 1, 2022, the annual salary for the Mayor shall be \$13,341 and the annual salary for Council Members shall be \$10,214.

Section 4. This ordinance shall be effective after adoption and thirty days following its legal publication.

Adopted this _____ day of _____, 2020.

Mayor

ATTEST: _____
City Clerk

Date of Publication _____

Effective Date _____

(Underline indicates new matter.)

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Dr. Reggie Edwards, Deputy City Manager

SUBJECT: COVID-19 Impact on Hennepin County and Brooklyn Center

Background:

Hennepin County Public Health has collected data related to COVID-19 at various levels and has dispersed such information throughout the County.

Dave Johnson, COVID-19 Epidemiology Surveillance & Investigation Branch Leader, Hennepin County Public Health shall present COVID-19 related data covering the following areas:

- Hennepin County: current situation and trends
- Brooklyn Center: current situation and trends
- Impact on residents: hospitalization and mortality
- Disparities in impact: Race/Ethnicity and Age
- What are our thoughts/opinions about future scenarios
- High-level summary of Hennepin County's Public Health response

Mr. Johnson will be able to answer questions related to the surveillance data. Due to his position the COVID response team he will be able to provide answers to questions regarding contact tracing. He can cover other topics at a high level, but may need to bring back detailed questions to our response team that go beyond his level of knowledge and area of responsibility. Staff anticipates that this will be an 20 minute presentation approximately. .

Budget Issues:

N/A

Strategic Priorities and Values:

Safe, Secure, Stable Community

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Dr. Reggie Edwards

SUBJECT: Brooklyn Center BCTC Public Art Initiative

Background:

The City of Brooklyn Center has partnered with Metro Transit and the Brooklyn Center Community Schools to increase community engagement and build pride in our diverse, thriving city through a public arts initiative called the Brooklyn Center Transit Center Public Art Commission.

A Call for Artists was released Monday, September 14, 2020 on the city website and social media, as well as online on popular artist job sites. Artist-teachers who can facilitate an in-person/socially-distant, or online art-making event for youth and adults from the community of Brooklyn Center are encouraged to apply.

The public art created through this engagement centered on the theme of community pride and health in response to COVID-19. Beyond engagement via workshops with the artists, installation of the final public art created will occur this coming spring at BCTC.

The purpose of the presentation is to share the process, installation concepts and outline of next steps with the Council. Attached is a draft copy of the PowerPoint presentation.

Budget Issues:

\$25,000 CARES ACT FUNDING

Strategic Priorities and Values:

Enhanced Community Image, Resident Economic Stability, Inclusive Community Engagement, Safe, Secure, Stable Community

ATTACHMENTS:

Description	Upload Date	Type
Presentation	11/18/2020	Presentation

Brooklyn Center BCTC Public Art Initiative

Engaging Community through the Arts.

Project Goals



Beautify our community;



Address community concerns of health and safety during the pandemic;

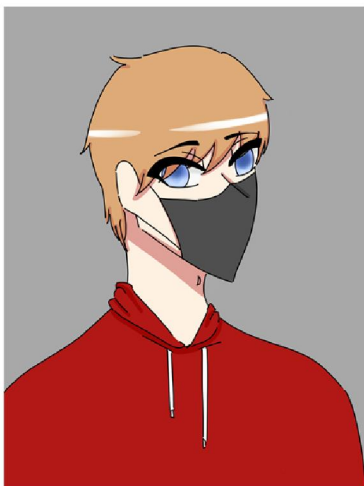


Encourage residents to take ownership and pride in our diverse and thriving community.

BC Art Showcase

- Community members and students of Brooklyn Center were invited to submit artwork for a special showcase to displayed on video monitors in the BCTC.
- We would like the BC Art Showcase to be an ongoing, semi-annual collection of the latest work of our community members.
- Art in this showcase addresses one or more of the following questions:
 - What makes you proud to be a part of the Brooklyn Center community?
 - How can we keep ourselves and each other safe during the pandemic?
 - What does belonging to a community feel/look like?







BCTC Public Art Artist-Teacher Commissions

■ Anika Schneider

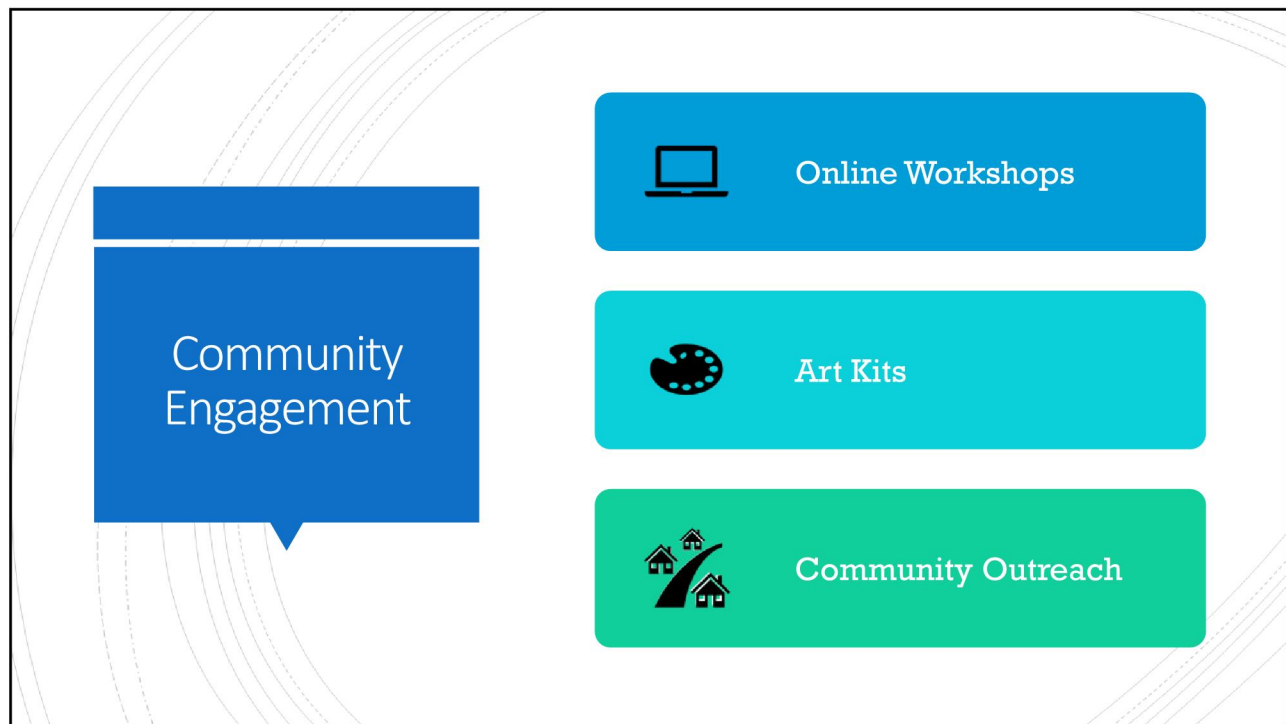
- Made and distributed 100 kits with sharpies, a cotton mask, and directions for creating a DIY mask design;
- Held two online workshops on “Pattern Making and Mask-Wearing;”
- Created an online forum (facebook.com/artatBCTC/) to share her video tutorials and developing public art piece, inspired by the community members of BC.



BCTC Public Art Artist-Teacher Commissions

■ Kao Lee Thao

- Made and distributed 100 kits with wooden silhouette cutouts paint, and paintbrush;
- Held two online workshops as a space to make art and discuss the effects of the pandemic on our lives and communities;
- Held a “Painting Workshop” in which participants painted silhouettes along with Kao Lee;
- Created an online forum to share her developing public art piece, inspired by the input of BC community members (innerswirlforum.com/).



City of Brooklyn Center & Metro Transit invite you to our Fall 2020

VIRTUAL ARTIST WORKSHOPS

Register at cityofbrooklyncenter.org

- Learn about and make art with local professionals.
- Lend your creativity to community-centered public artworks.
- Beautify our community

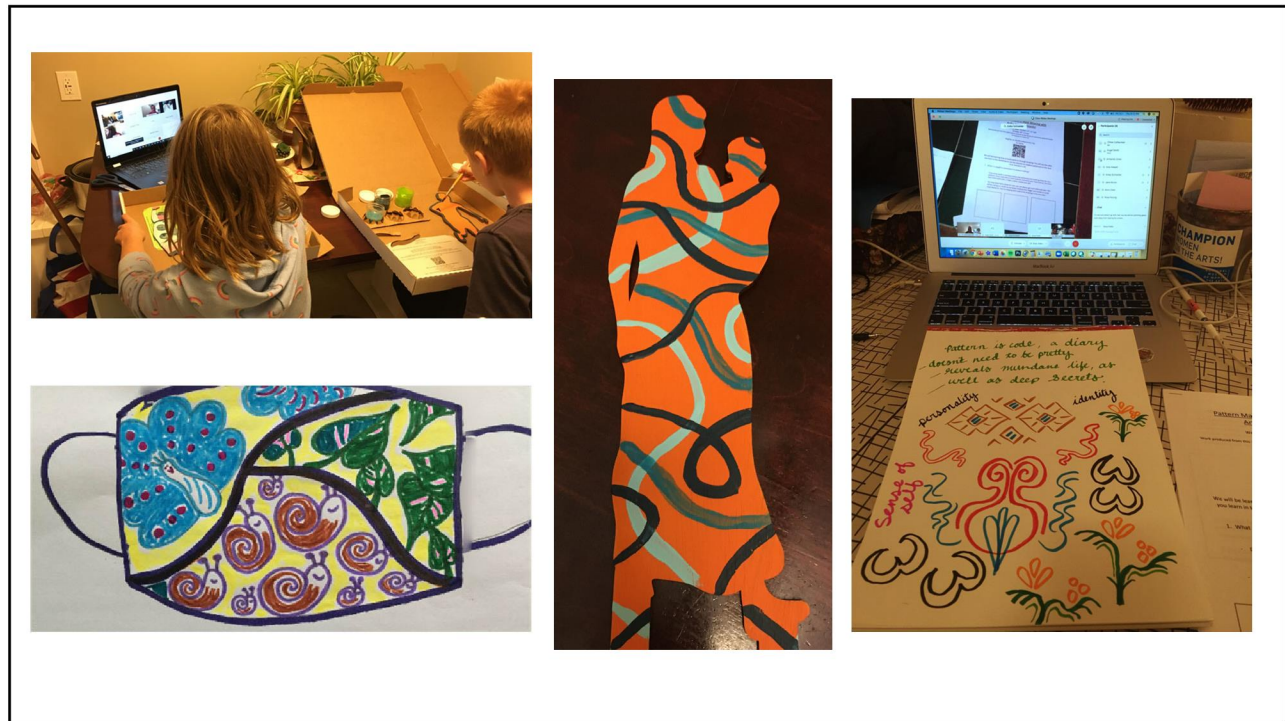
WHO IS BROOKLYN CENTER?
w/Kao Lee Thao
October 13th, 6-7 pm October 20th, 3-4 pm
Share your stories and ideas about safety and community during COVID-19. Discuss what community means to you and how it has been impacted by the pandemic. Inspire Kao Lee for her upcoming public art piece for the Brooklyn Center Transit Center.

COMMUNITY PAINTING WORKSHOP
October 27th, 6-7 pm
Join Kao Lee Thao in this community art event! Paint on silhouette cutouts inspired by the stories of Brooklyn Center residents. At-home art kits will be provided. Display your art at home and on the City of Brooklyn Center's social media.

PATTERN MAKING AND MASK-WEARING
w/Anika Hsiung Schneider
October 15th, 6-7 pm
October 16th, 3-4 pm
Create graphic pattern designs with Anika Hsiung Schneider. Patterns tell stories that are personal and cultural - and so do masks! Take time to learn and create, while inspiring Anika for her upcoming public art piece for the Brooklyn Center Transit Center.

facebook.com/BrooklynCenterMN/
twitter.com/BrklynCenterMN

twitter.com/BCCS286
facebook.com/BrooklynCenterCommunitySchools/



Art Kits

- Kits were distributed in the following ways:
 - Community Center front desk
 - Rec on the Go
 - Brooklyn Center Middle and High School STEAM from office
 - Community member special-delivery to students of Park Center
 - Delivery of over 30 kits to BC residents' homes
 - Delivery to Indigenous families in BC
 - Delivery to essential workers and residents of The Sanctuary assisted living home

Community Outreach

- Each artist created online forums for documenting their public artwork and gathering community input.
- Artists also spent time physically walking and driving around BC, taking photos, talking to community members, and generally getting to know the landmarks and culture of our community.
- 30 high school students at Brooklyn Center Middle and High School STEAM also gave feedback to the artists through a google form questionnaire, and by giving the artist's constructive criticism on their work in progress.

Have you seen any cool patterns on face masks that caught your attention or inspired you? What is a pattern design/motif that you'd like to see in a public art piece (for example, leopard print, plaid, flower, polka dots, etc.)?

27 responses

yeah, ive seen some art skills that i kinda wanna try to work on.

I really like the flower patterns there is.

To me i would say maybe like hearts , or zig zags

I have seen a lot of big designed face mask and I would to make my own but it is a little more difficult than it seems.

i like pink face mask

Yes i have seen face mask that inspired me.

No, I have not. I don't know because I don't go to museum or a place has art.

I saw a girl with a mask with her grandparents on the mask and that was so sweet.

I would like to see something we dont see often. Maybe a christmas one or something since Christmas

When you hear the word "community" what comes to mind?

28 responses

a group of people that agrees or something.

A lot of people who care about each other.

all together as one

group of people, or a company

a group of people

When I hear 'community' I think off a group of people who live in the same surrounding.

Keep safe and respect.

a league of different people with different ideas

Environment

When you hear the word "community" what comes to mind? 28 responses a group of people that agrees or something. A lot of people who care about each other. all together as one group of people, or a company a group of people When I hear "community" I think off a group of people who live in the same surrounding. Keep safe and respect. a league of different people with different ideas Environment	How do you say "hello," "community," and "love" in your native language? 20 responses im not sure, i can only think of is LGBTQ, theyre nicee, well i havent go to that community for awhile :(Mine is the same its regular , there's not really a difference of what we say different its all the same . nyob zoo (hello), hlub (love) My native language is english, but creolized. I don't know what to say to this family hello is "hola" community is "comunidad" and love is "amor" Nyob Zoo Hola, Comunidad, Amor
--	--

Constructive Criticism
Be honest, gentle, and specific!

Students, please right click on this image and choose "comment." Then use one of these sentence stems to make a comment on the art:

- One thing I like about your art is... because...
- One thing you could change/add is... because...
- One question I have is...



Martin McDonal
10:07 AM Nov 5

one thing i like about your art is that it looks like a toddler drew it.... in a good way though because it gives me a vibe that your still in touch with your child side

Olivia Wren
10:11 AM Nov 5

One thing I like about your art is the pattern, and different colors. One question I have what inspired you to create this the way you did?

Sarita Bendickson
4:03 PM Nov 9

One thing I liked about this was how you used different patterns and how the colors look almost childish, and kid-like

Emalena Thao
2:19 PM Nov 5

One thing I like about your art is the colors used into this artwork, it is vibrant and calming.

Sa'Nya Taylor
2:57 PM Nov 5

one thing i like about your art is how you used calm colors

Sabrina Boldra
4:11 PM Nov 9

One question, wher is the person going?

Jaden Nguyen
11:26 AM Nov 3

One thing I like about this art is the color choice because all of the different colors add some fun and diversity.

Kakabelle Vue
1:32 PM Nov 3

I like the silhouette you chose because it looks youthful.

Douszong Lee
1:35 PM Nov 3

I like how you painted the silhouette because it's very colorful and makes it look alive.

Shadiamond Willis
12:23 PM Nov 3

One thing I like about your art is the stars and how it blends in very well, also I think they are trying to send a message to wear a face mask to protect you and the people around you as well.

Mashahir Fadul
12:03 PM Nov 3

I really like this one. It is colorful and detailed and at the same time, it also seems to be sending a message to

Kakabelle Vue
1:29 PM Nov 3

I like the pattern mixing because it makes your artwork look lively.

Priscilla Lee
10:49 AM Nov 5

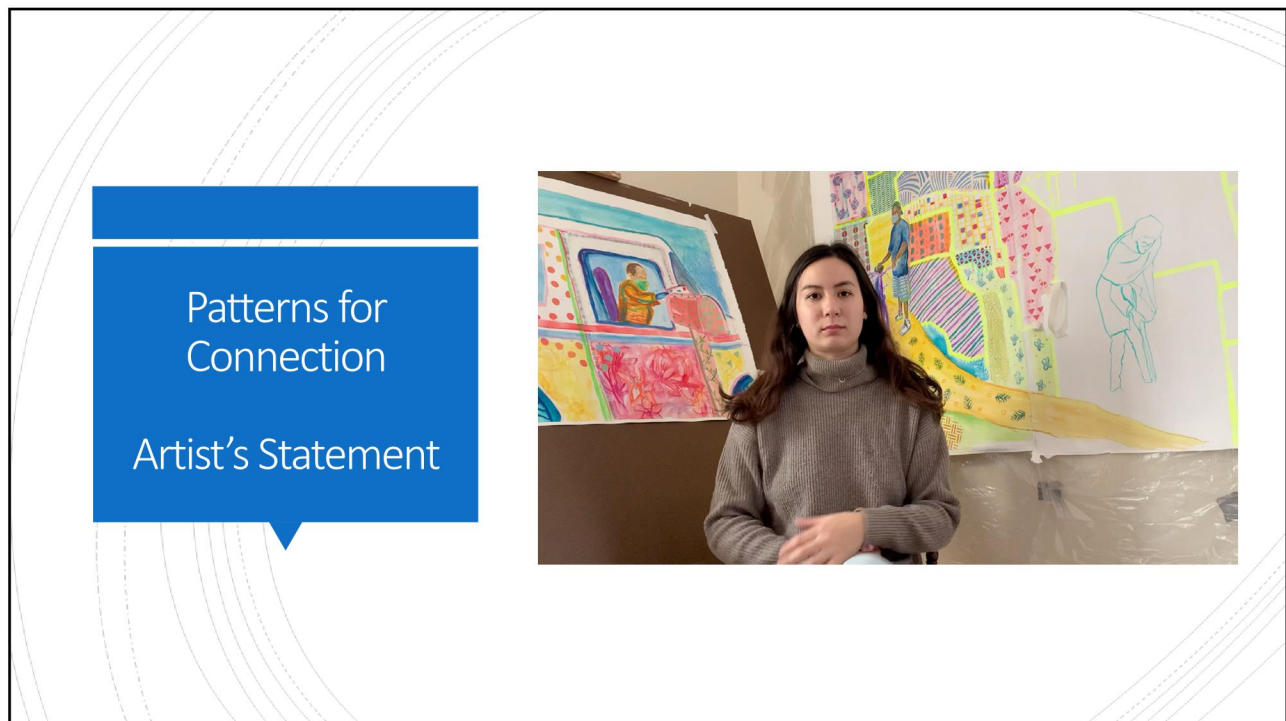
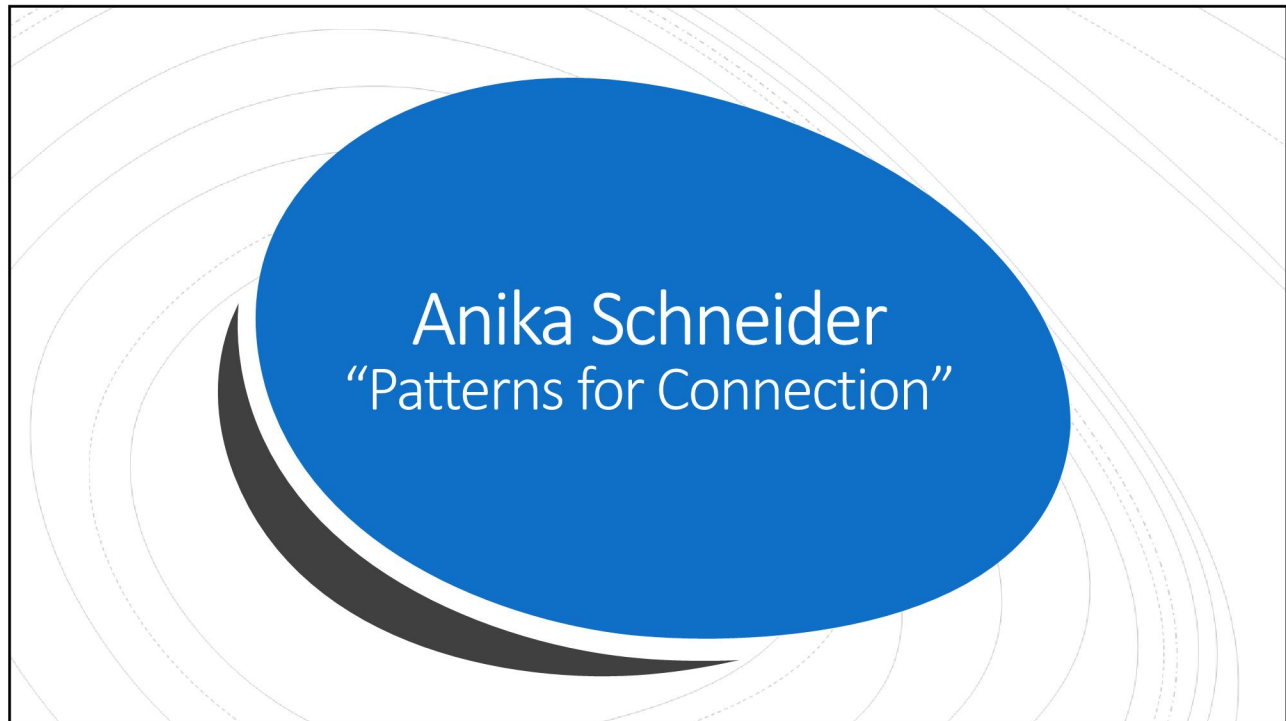
One question I have is why pick these scenes that express what is happening with covid nowadays.

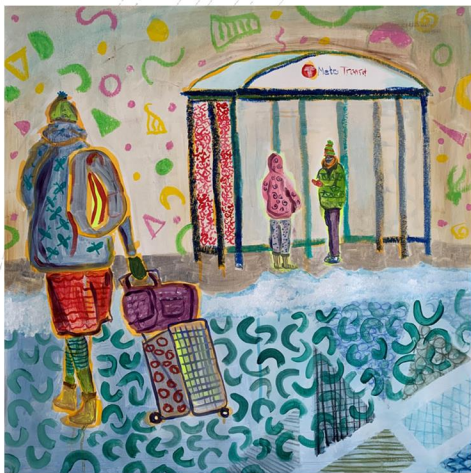
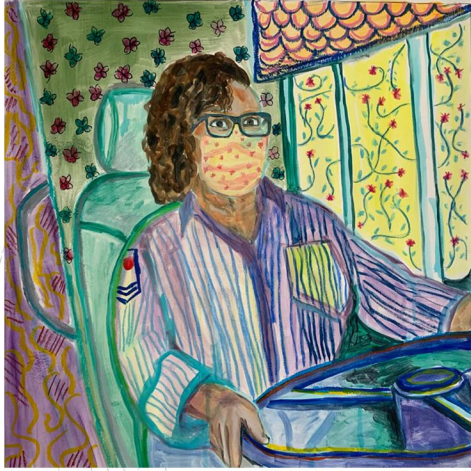
Neng Zong Xiong
3:00 PM Nov 5

one thing i like is how colorful it is one thing i would add is or change is the pattern because it look like this was created in a day one question i have is why did you draw this

Maria Bracho Diaz
4:28 PM Nov 5

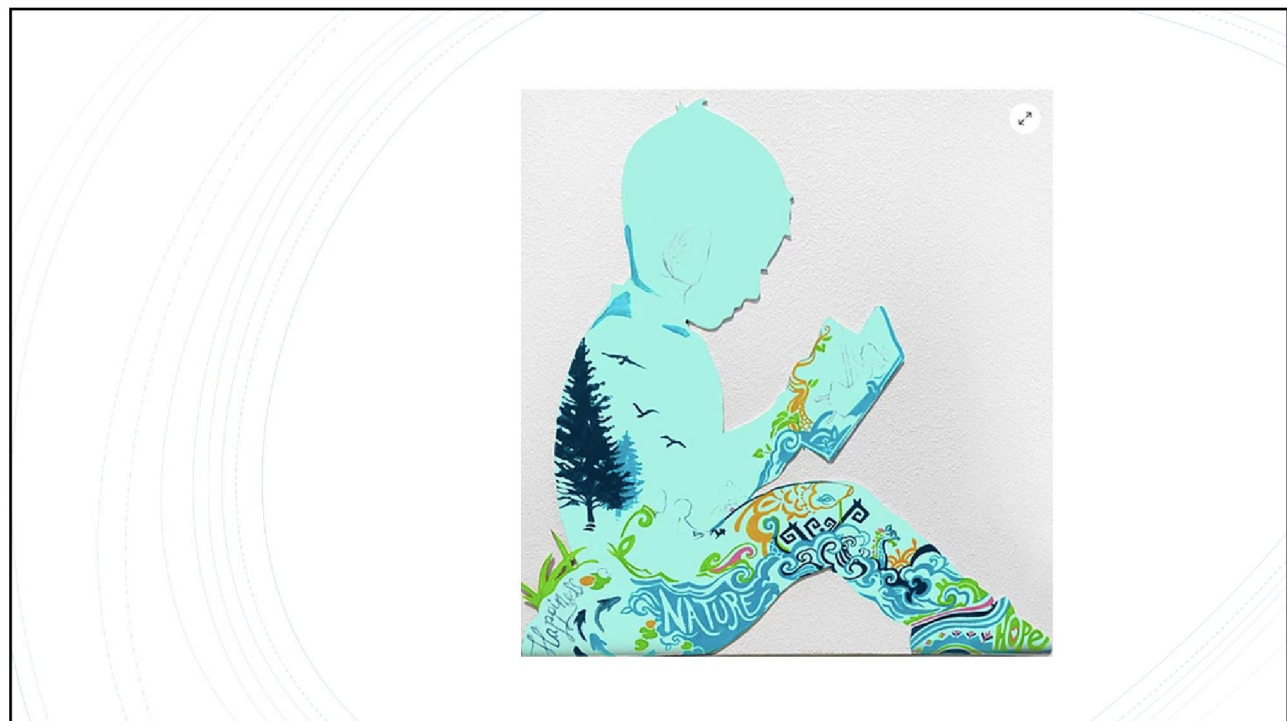
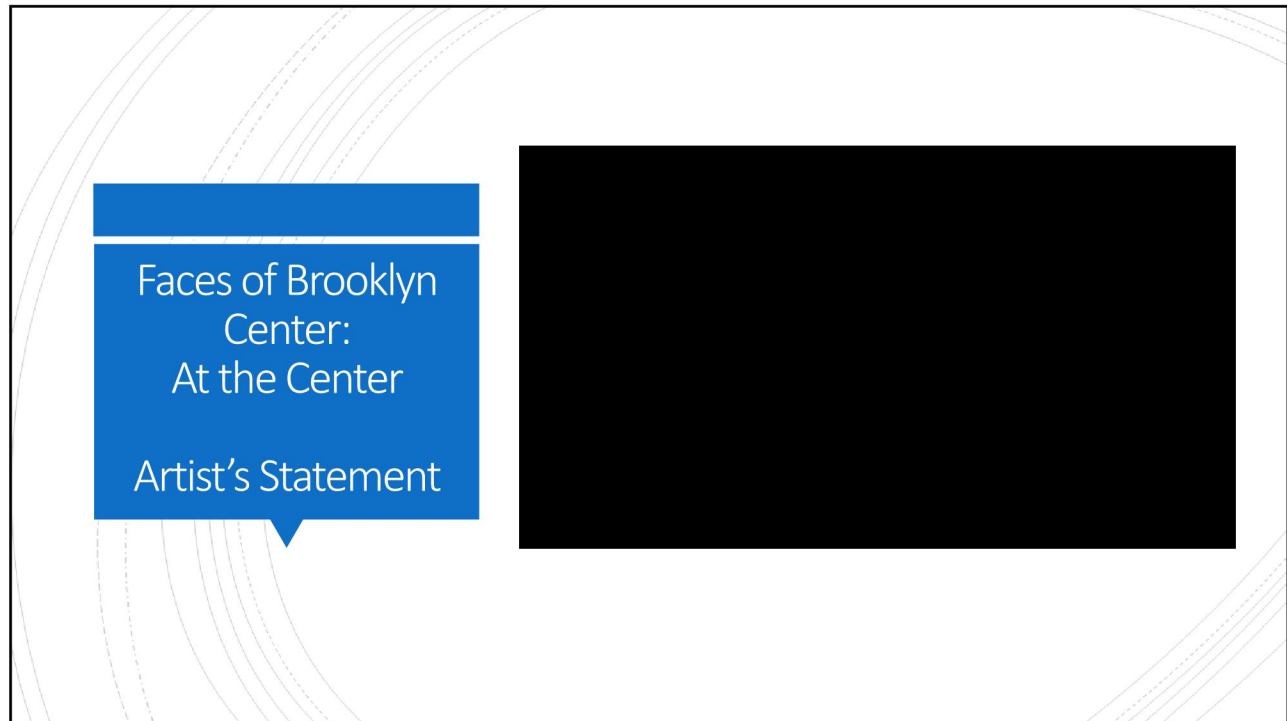
One thing you could add to your drawing is ... patterns and colors that would really give the drawing more life.







Kao Lee Thao
"Faces of Brooklyn Center:
At the Center"





Installation

- BCTC construction estimated to be complete by June of 2021.
- Artists and project coordinator will be on-site to oversee installation of the public artworks,
 - “Faces of Brooklyn Center: At the Center,” and
 - “Patterns for Connection”



Brooklyn Center Transit Center: South



Next Steps: BCTC Public Art Commissions

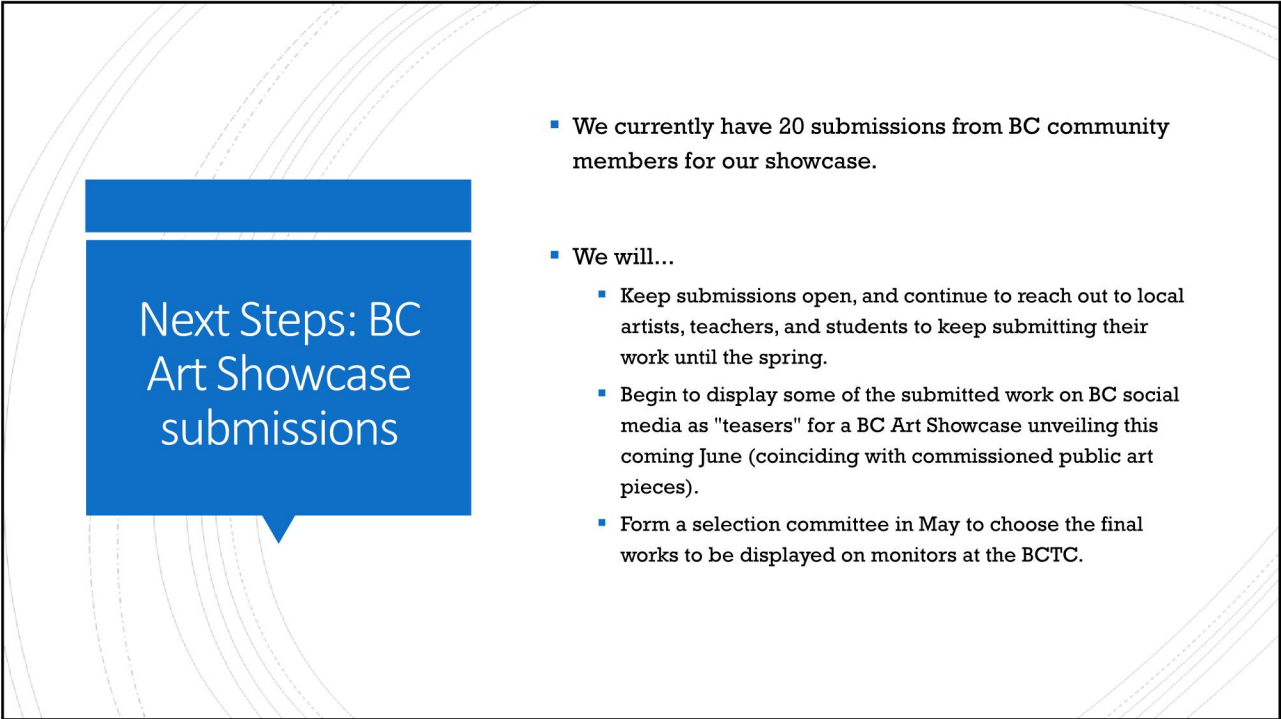
In the coming months before installation...

- Anika will

1. Complete finishing touch ups and details on her art pieces.
2. Get her work professionally scanned and printed onto substrates.
3. Getting work scanned.
4. Determine need for storage of pieces of the winter months if need be.
5. Hire professional installers for June.

- Kao Lee will

1. Connect with community leaders to translate words into native languages to include in her pieces.
2. Complete finishing touches and details to each of her pieces, incorporating community input.
3. Continue to post work's progress to her online forum.



Next Steps: BC Art Showcase submissions

- We currently have 20 submissions from BC community members for our showcase.
- We will...
 - Keep submissions open, and continue to reach out to local artists, teachers, and students to keep submitting their work until the spring.
 - Begin to display some of the submitted work on BC social media as "teasers" for a BC Art Showcase unveiling this coming June (coinciding with commissioned public art pieces).
 - Form a selection committee in May to choose the final works to be displayed on monitors at the BCTC.

Council Regular Meeting

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: Meg Beekman, Community Development Director

BY: Ginny McIntosh, City Planner / Zoning Administrator

SUBJECT: Resolution Requesting Approval of the Preliminary and Final Plat for Mound Cemetery Second Addition (3515 69th Avenue North and County Identified as 6705 Beard Avenue N)

Background:

Doran Cote, on behalf of the City of Brooklyn Center ("the Applicant") is requesting review and consideration of preliminary and final plat approval for MOUND CEMETERY SECOND ADDITION, which encompasses approximately 15 acres of the property located at 3515 69th Avenue North, and is County identified as 6705 Beard Avenue North ("the Subject Property").

City Council meeting minutes dated January 5, 1970 indicated at the time that the "City Attorney and the attorney for Mound Cemetery Association had tentatively agreed upon the language of a document through which the City of Brooklyn Center would obtain a 75-year lease of the southern four (4) acres of Mound Cemetery for park purposes at a cost of \$15,000." A 75-year lease was recorded in January 1970 and outlined a lease expiration of December 31, 2044; however, in December 2013, the Mound Cemetery Association approached City staff with a proposal to vacate the lease early and transition Freeway Park back to the cemetery for its originally intended purpose.

Between 2013 and 2018, the Mound Cemetery Association and City of Brooklyn Center met and discussed the remaining term of lease. The City had proposed retaining a portion of the cemetery for park purposes; however, the Mound Cemetery Association initially rejected the proposal, citing financial impracticalities in having a smaller cemetery, combined with the need for public utilities and a maintenance facility. In 2018, the City brought on ISG, a landscape architecture firm, to master plan Freeway Park. Following a review of the proposed options, the Mound Cemetery Association agreed to donate one (1) acre of the cemetery to facilitate the park master plan. City Council Resolution No. 2020-21, which authorized the execution of a Memorandum of Understanding (MOU) between the two parties, was approved on January 27, 2020.

The Planning Commission reviewed this request at their meeting via Webex on November 12, 2020, and held a public hearing. No public comments were provided by the public prior to the public hearing. During the public hearing portion, there were questions regarding the improvements that would fall outside the smaller one-acre park parcel, including the existing baseball field and basketball court, as well as the process in working with ISG to develop a master plan for Freeway Park, and the community engagement process.

The plat request was generally well-received and the Planning Commission ultimately made a recommendation to unanimously (6-0) recommend City Council approval of Planning Commission Application No. 2020-009 for preliminary and final plat approval of Mound Cemetery Second Addition for the property located at 3515 69th Avenue North and County identified as 6705 Beard Avenue North.

Attached for your review are copies of the November 12, 2020 staff report and a draft copy of the Council resolution.

Budget Issues:

None to consider at this time.

Strategic Priorities and Values:

Enhanced Community Image

ATTACHMENTS:

Description	Upload Date	Type
PC Staff Report and Exhibits - Mound Cemetery 2nd Addition	11/17/2020	Backup Material
Resolution - Disposition of Planning Commission Application No. 2020-009	11/17/2020	Resolution Letter

Planning Commission Report

Meeting Date: November 12, 2020

- Application Filed: 10/13/2020
- Review Period (60-day) Deadline: 12/12/2020
- Extension Declared: N/A
- Extended Review Period Deadline: N/A

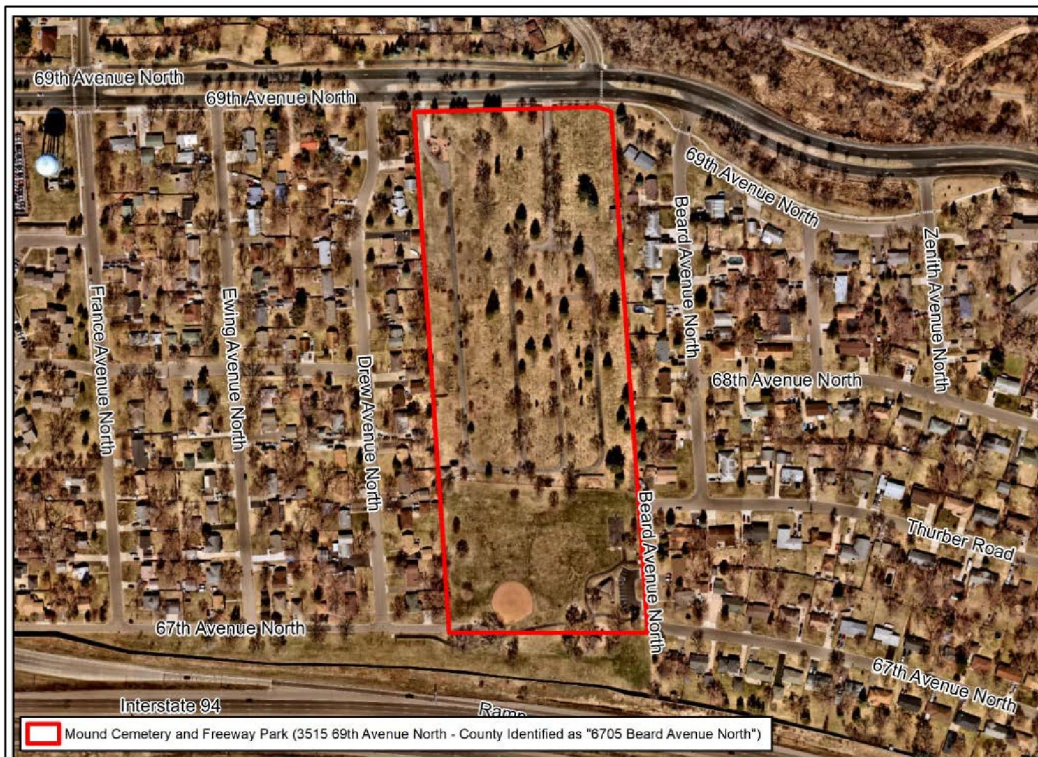
Application No. 2020-009
Applicant: Doran Cote (on behalf of the City of Brooklyn Center)
Location: 3515 69th Avenue North (County Identified as "6705 Beard Avenue North")
Request: Preliminary and Final Plat for Mound Cemetery Second Addition

INTRODUCTION

Doran Cote, on behalf of the City of Brooklyn Center ("the Applicant") is requesting review and consideration for approval of the preliminary and final plat for MOUND CEMETERY SECOND ADDITION, which encompasses approximately 15 acres of the property located at 3515 69th Avenue North and identified by Hennepin County as 6705 Beard Avenue North ("the Subject Property"). Refer to Exhibit A.

As the request is for a re-plat, a public hearing was published in the Brooklyn Center *Sun Post* on October 29, 2020, and mail notifications were sent to properties within vicinity of the Subject Property per City Code and State Statute requirements (Exhibit B).

COMPREHENSIVE PLAN AND ZONING STANDARDS



Map 1. Existing Configuration of Subject Property.

2040 Future Land Use Plan: Parks, Recreation, Open Space

Neighborhood: West Palmer Lake

Current Zoning: R1 (One Family Residence) District

Surrounding Zoning: North: R1 (One Family Residence) District
East: R1 (One Family Residence) District
South: R1 (One Family Residence) District
West: R1 (One Family Residence) District

Site Area: 14.8 acres (Proposed Lots 1 and 2)

BACKGROUND

City Council meeting minutes dated January 5, 1970 indicated at the time that the “City Attorney and the attorney for Mound Cemetery Association had tentatively agreed upon the language of a document through which the City of Brooklyn Center would obtain a 75-year lease of the southern four (4) acres of Mound Cemetery for park purposes at a cost of \$15,000.” The Subject Property represents the last parcel to be acquired under the 1966 HUD Open Space Program. A 75-year lease between the City and the Mound Cemetery Association was recorded in January 1970 and outlined a lease expiration of December 31, 2044.



Map 2. Freeway Park (Circa 1967)



Map 3. Freeway Park (Circa 1971)

In December 2013, the Mound Cemetery Association approached City staff with a proposal to vacate the lease and transition Freeway Park back to the cemetery to be used for its original purpose. The Association indicated an emerging interest in natural burials, more families with a desire for upright (vertical) monuments, and a growing religious community whose burial requirements vary from the traditional East-West rotation, as reasons for the request.

The City and the Mound Cemetery Association continued to meet and discuss the termination of the lease up until 2018. The City had proposed retaining a portion of the cemetery for park purposes, but the Association initially rejected the proposal, citing the financial impracticality of a smaller cemetery and the need for public utilities and a maintenance facility.

After meeting with the Mound Cemetery Association in July 2018, the City agreed to retain the services of a consultant to master plan the future of Freeway Park. In October 2018, the City brought on ISG, a

landscape architecture firm with a strong reputation in park planning and design and community engagement for the purposes of master planning Freeway Park.

On April 15, 2019, City staff and ISG met with the Mound Cemetery Association to discuss the outcome of the park planning process and the recommended option for Freeway Park. In response, the Mound Cemetery Association agreed to donate one (1) acre of the cemetery with some conditions to facilitate the master plan. After additional discussion with the Association, the City drafted a Memorandum of Understanding (MOU) to memorialize the parties' understanding of the terms of the vacation of the lease and the donation of the land.

On January 13, 2020, Doran Cote, Public Works Director, held a work session with the City Council and requested direction to City staff regarding the status of Freeway Park, and overall support for entering into a Memorandum of Understanding (MOU) with the Mound Cemetery Association for a smaller Freeway Park. A City Council Resolution (2020-21) authorizing the execution of a Memorandum of Understanding (MOU) between the City of Brooklyn Center and the Mound Cemetery Association was approved on January 27, 2020.

For your reference, a copy of of a Memorandum dated January 13, 2020, copy of City Council Resolution No. 2020-21, and Memorandum outlining the history of the cemetery and Freeway Park (dated December 20, 2019) have been attached as Exhibit C. The Memorandum dated December 20, 2019 contains additional information regarding the neighborhood engagement process to select a preferred master plan layout. "Option 1" was recommended as the preferred option by the Parks and Recreation Board—see below.



Image 2. Selected Option 1 Plan for the Freeway Park Master Plan.

PRELIMINARY AND FINAL PLAT REVIEW

Assistant City Engineer Andrew Hogg conducted a review of the application submittal and documentation (Exhibit A). Comments regarding this application can be found in the memorandum to City staff and dated November 6, 2020, attached hereto (Exhibit D).

It is noted within the memorandum that new right-of-way or road easement will need to be dedicated to cover missing portions along 67th Avenue North, as identified in the attached plat details, and that existing utility and street easements along the south portion of the Subject Property are to remain in place. The County Engineer may need to review the plat given 69th Avenue North's former identification as C.S.A.H. (County State Aid Highway) 130.

Finally, the Applicant will need to provide an updated certified abstract of title or registered property report to the City Planner and City Attorney for review.

APPROVAL CONDITIONS

City staff recommends the following conditions be attached to any positive recommendation on the approval of Planning Commission Application No. 2020-009 for the re-plat of certain property located at 3515 69th Avenue North and County identified as 6705 Beard Avenue North ("the Subject Property") to MOUND CEMETERY SECOND ADDITION:

1. Approval of the preliminary and final plats for MOUND CEMETERY SECOND ADDITION are contingent upon the addressing of comments by Assistant City Engineer Hogg in his memorandum dated November 6, 2020 and execution of a Memorandum of Understanding (MOU) between the City of Brooklyn Center and Mound Cemetery Association as stipulated under City Council Resolution No. 2020-21.
2. Final plat and mylar shall be subject to the provisions of Chapter 15 of the City Code of Ordinances (*Platting*).
3. Any comments and/or requirements as provided by Hennepin County.
4. Any comments and/or requirements from the City Attorney's office, and specifically regarding an updated certified abstract of title.
5. The successful recording of said plat (mylar) with Hennepin County.

RECOMMENDATION

Based on the above-noted findings and conditions, City staff recommends:

The Planning Commission recommend City Council approval of the requested preliminary and final plat for MOUND CEMETERY SECOND ADDITION for the Subject Property located at 3515 69th Avenue North and County identified as 6705 Beard Avenue North, subject to the Applicant complying with the Approval Conditions as noted above.

Attachments

Exhibit A - Planning Commission Application No. 2020-009 Application and Documentation.

Exhibit B - Public Hearing Notice, published in the Brooklyn Center *Sun Post*, and dated October 29, 2020.

Exhibit C - Memorandums regarding Mound Cemetery and Freeway Park, dated December 20, 2020, and January 13, 2020, and City Council Resolution No. 2020-21, dated January 27, 2020.

Exhibit D - Memorandum, prepared by Assistant City Engineer Andrew Hogg, dated November 6, 2020.



For Office Use Only

Date Received: 10/13/2020

Date Application Complete: _____

Letter of Completeness: _____

PC App No. 2020-009

2020 Planning Commission Application

Applicant Information:

Name: Doran M. Cote

Address: 6301 Shingle Creek Parkway

Office Phone: 7635693328 Cell: _____

Email: dcote@ci.brooklyn-center.mn.us FAX: 7635693440

Property Owner Information* (if different from Applicant):

Name: Mound Cemetery Association c/o Michael Howe, President

Property Owner Address: 3515 69th Avenue

Office Phone: 9529350097 Cell: _____

Email: dkantar@dankantar.com FAX: 9529350953

Project Information:

Provide a general description of your project and request(s): Preliminary Plat and Final Plat to subdivide one acre of Mound Cemetery property for dedication to the City of Brooklyn Center for continued use for park purposes. This agreement was reached by mutual consent of both parties and subject to a Memorandum of Understanding.

Address/Location of Property: 3515 69th Avenue

Legal Description of Property: Com At Se Cor Of Lot 2 Th W Along The S Line Thereof 494 64/100 Ft Th N To A Pt In N Line Of Said Lot 492 27/100 Ft W From Ne Cor Of Lot 1

Application Type (Mark all that Apply)

☐	Comprehensive Plan Amendment	\$1,050	☐	Appeal	\$200
☐	Rezoning	\$1,050	☐	Zoning Code Text Amendment	\$500
☐	Special/Interim Use Permit	\$250	☐	Special/Interim Use Permit Amendment	\$150
☐	Site and Building Plan Review	\$750	☐	Variance	\$200
☐	Planned Unit Development	\$1,800	☐	Planned Unit Development Amendment	\$700
☒	Preliminary Plat	\$400	☒	Final Plat	\$200

IMPORTANT: All applications may be subject to additional fees for reimbursement of costs incurred by the City for filing, reviewing, and processing applications in the form of an escrow to the City.

Application Fee: \$ _____ Escrow Amount: \$ _____ Receipt No: _____

Acknowledgement and Signature:

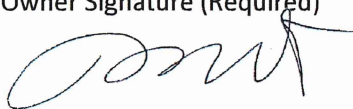
The undersigned acknowledges that they understand that before a Planning Commission application can be deemed complete, all required fees and escrows must be paid to the City. By signing and submitting this application, the Applicant agrees to pay to the City of Brooklyn Center the actual costs incurred for expenses reasonably and necessarily required by the City for the review, filing, and processing of the application. Such costs will be in addition to the application fee described herein. Withdrawal of the application will not relieve the applicant of the obligation to pay costs incurred prior to withdrawal. Any administrative fees paid as part of the submission of this application are nonrefundable.



Property Owner Signature (Required)

8/25/2020

Date



Applicant Signature (If different than Property Owner)

8/25/2020

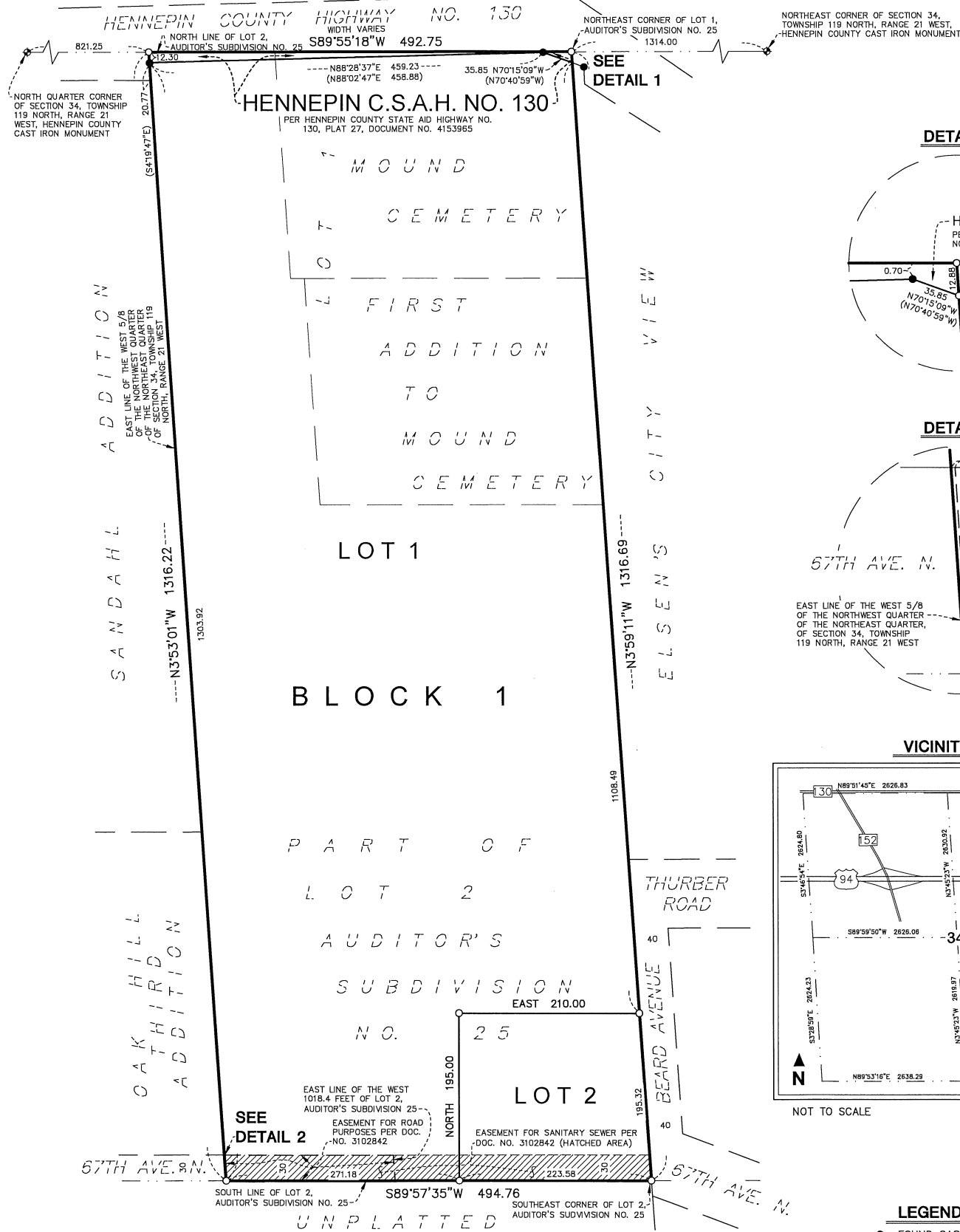
Date

C.R. DOC. NO. _____



MOUND CEMETERY SECOND ADDITION

C.R. DOC. NO. _____



KNOW ALL MEN BY THESE PRESENTS: That the Mound Cemetery Association, fee owner of the following described property situate in the County of Hennepin, State of Minnesota, to wit:

That part of Auditor's Subdivision No. 25 describes as follows:

Beginning at the Southeast corner of Lot 2; thence West along the South line thereof 494.76 feet, more or less to the east line of the West 5/8 of the Northwest Quarter of the Northeast Quarter of Section 34, Township 119, Range 21; thence north along said east line to the north line of said Lot 2; thence east, along said north lines of Lot 2 and Lot 1, of Auditor's Subdivision No. 25, a distance of 492.75, more or less, to the northeast corner of said Lot 1; thence south along the east lines of said Lot 1 and Lot 2 to the point of beginning, Hennepin County, Minnesota.

Abstract Property

Has caused the same to be surveyed and platted as MOUND CEMETERY SECOND ADDITION and does hereby dedicate to the public for public use the public way as created by this plat.

In witness whereof said Mound Cemetery Association, has caused these presents to be signed by its proper officer this _____ day of _____, 2020.
Signed:

by _____, its _____.

STATE OF MINNESOTA
COUNTY OF HENNEPIN
The foregoing instrument was acknowledged before me this _____ day of _____, 2020,

by _____, its _____ of Mound Cemetery Association on behalf of the Mound Cemetery Association.
Signed:

by: _____
(Notary Signature)

(Notary Printed Name)

Notary Public, Hennepin County, Minnesota.

My Commission Expires _____

I hereby certify that I have surveyed and platted the property described on this plat as MOUND CEMETERY SECOND ADDITION; that this plat is a correct representation of said survey; that all distances are correctly shown on the plat in feet and hundredths of a foot; that all monuments have been correctly placed in the ground as shown or will be placed as required by the local governmental unit; that the outside boundary lines are correctly designated on the plat; and that there are no wet lands as defined in MS 505.02 Subd. 1 or public highways to be designated on the plat except as shown.

David Anderson, Land Surveyor
Minnesota License No. 43501

STATE OF MINNESOTA
COUNTY OF HENNEPIN
The foregoing Surveyors Certificate was acknowledged before me this _____ day of _____, 2020, by David Anderson, Land Surveyor, Minnesota License No. 43501.
Signed:

by: _____
(Notary Signature)

(Notary Printed Name)

Notary Public, Hennepin County, Minnesota.

My Commission Expires _____

CITY COUNCIL, CITY OF BROOKLYN CENTER, MINNESOTA.
This plat of MOUND CEMETERY SECOND ADDITION was approved and accepted by the City Council of Brooklyn Center, Minnesota at a regular meeting thereof held this _____ day of _____, 2020. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 505.03, Subd. 2.
City Council, City of Brooklyn Center, Minnesota.

by: _____, Mayor by: _____, Manager

RESIDENT AND REAL ESTATE SERVICES, Hennepin County, Minnesota.
I hereby certify that taxes payable in _____ and prior years have been paid for land described on this plat. Dated this _____ day of _____, 2020.

Jill Alverson, Hennepin County Auditor by: _____, Deputy

SURVEY DIVISION, Hennepin County, Minnesota
Pursuant to MINN. STAT. Sec. 363B.565 (1969), this plat has been approved this _____ day of _____, 2020.

Chris F. Mavis, Hennepin County Surveyor by: _____

COUNTY RECORDER, Hennepin County, Minnesota.
I hereby certify that the within plat of MOUND CEMETERY SECOND ADDITION was filed in this office this _____ day of _____, 2020 at ____ o'clock ____m.

Martin McCormick, County Recorder by: _____, Deputy

LEGEND
● FOUND CAST IRON MONUMENT
○ SET IRON PIPE WITH P.L.S. NO. 43501
(N70°40'59"W) RECORD BEARINGS



0 80 160
SCALE IN FEET

ANDERSON
ENGINEERING • ARCHITECTURE • LAND SURVEYING
ENVIRONMENTAL SERVICES • LANDSCAPE ARCHITECTURE

Anderson Engineering of Minnesota, LLC
13605 1st Avenue North, Suite 100
Plymouth, MN 55441
763-412-4000 (o) 763-412-4090 (f)
www.ae-mn.com

**CITY OF BROOKLYN
CENTER
NOTICE OF PUBLIC
HEARING**

TO WHOM IT MAY CONCERN:

Please take notice that the Planning Commission of the City of Brooklyn Center will hold an **on-line public hearing on Thursday, November 12, 2020**, at approximately 7:00 p.m. Meeting materials can be accessed by visiting the City of Brooklyn Center's website at:

<https://www.cityofbrooklyncenter.org/index.aspx?NID=255>. A definite time for this application to be considered cannot be given as it will depend on the progression of the agenda items.

TYPE OF REQUEST: Preliminary & Final Plat for Mound Cemetery Second Addition

APPLICANT: Doran Cote (on behalf of the City of Brooklyn Center)

PROPERTY OWNER: Mound Cemetery

PROPERTY ADDRESS / ID: 3515 69th Avenue North, Brooklyn Center, MN 55429 (PID: 34-119-21-12-0002)

BRIEF STATEMENT OF CONTENTS OF PETITION: The Applicant is requesting review of a proposal to subdivide approximately one acre of the Mound Cemetery property, located at 3515 69th Avenue North, for dedication to the City of Brooklyn Center for continued use as Freeway Park. This agreement was reached through mutual consent of the City of Brooklyn Center and Mound Cemetery and is subject to a Memorandum of Understanding.

As City Hall is currently closed to the public due to the COVID-19 pandemic, we strongly encourage you to forward your comments and questions to gmcintosh@ci.brooklyn-center.mn.us up until noon on the day of the meeting, or contact Ginny McIntosh at (763) 569-3319. Your comments will be included in the record and addressed as part of the meeting. Alternatively, you may participate in the Planning Commission meeting via Webex at: logis.webex.com

Meeting Number (Access Code): 133 155 6179

Password: BCPC11122020

By Phone: 1 (312) 535-8110 (Enter Access Code)

Auxiliary aids for persons with disabilities are available upon request at least 96 hours in advance. Please contact the City Clerk at (763) 569-3300 to make arrangements.

Respectfully,
Ginny McIntosh, City Planner/
Zoning Administrator

Published in the
Sun Post
October 29, 2020
1087077

Member Graves introduced the following resolution and moved its adoption:

RESOLUTION NO. 2020-21

RESOLUTION AUTHORIZING EXECUTION OF A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF BROOKLYN CENTER AND THE MOUND CEMETERY ASSOCIATION OF BROOKLYN CENTER

WHEREAS, the city has met with the Mound Cemetery Association to discuss termination of an existing lease on 4.02 acres of Mound Cemetery for the purposes of providing a public park called Freeway Park; and

WHEREAS, the city hired a consultant to prepare a Master Plan for Freeway Park; and

WHEREAS, the one of the options developed by the city's consultant developed only requires approximately one acre of cemetery property; and

WHEREAS, the Mound Cemetery Association has agreed to dedicate approximately one acre of land to the city for park purposes subject to certain conditions; and

WHEREAS, the city agreed to draft an MOU memorializing the negotiated agreement between the two parties.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Center, Minnesota, that:

1. The Memorandum of Understanding between the City of Brooklyn Center and the Mound Cemetery Association of Brooklyn Center is hereby approved. The Mayor and City Manager are hereby authorized to execute said lease agreement.
2. All conditions of the Memorandum of Understanding will be carried out by the appropriate party.

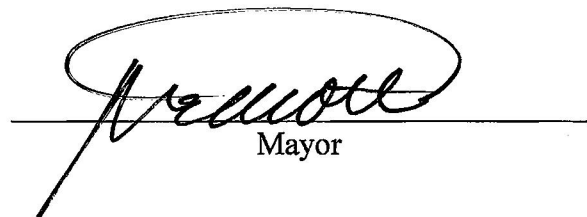
January 27, 2020

Date

ATTEST:



City Clerk


Mayor

RESOLUTION NO. 2020-21

The motion for the adoption of the foregoing resolution was duly seconded by member
Ryan
and upon vote being taken thereon, the following voted in favor thereof:
Elliott, Graves, Ryan
and the following voted against the same: None
whereupon said resolution was declared duly passed and adopted.

MEMORANDUM – COUNCIL WORK SESSION

DATE: January 13, 2020

TO: Curt Boganey, City Manager

FROM: Doran Cote, Public Works Director

SUBJECT: Freeway Park – Mound Cemetery Memorandum of Understanding (MOU)

Recommendation:

It is recommended that the City Council consider providing direction to staff regarding the status of Freeway Park.

Background:

The January 5, 1970 City Council meeting minutes indicate that the “City Attorney and the attorney for Mound Cemetery Association had tentatively agreed upon the language of a document through which the City of Brooklyn Center will obtain a 75 year lease of the southern 4 acres of Mound Cemetery for park purposes at a cost of \$15,000.00. The subject parcel represents the last parcel to be acquired under the 1966 HUD Open Space Program.” A 75 year lease between the city and the Mound Cemetery Association was recorded in January, 1970. The expiration of the lease is December 31, 2044.

In December, 2013, the Mound Cemetery Association approached staff with a proposal to vacate the lease and transition Freeway Park back to the cemetery to be used for its original purposes. The Association indicated an emerging interest in natural burials, more families who desire upright monumentation, and a growing religious community whose burial requirements vary from the traditional East-West rotation.

The city and the Mound Cemetery Association continued to meet and discuss the termination of the lease until 2018. The city had proposed retaining a portion of the cemetery for park purposes but the Association rejected the proposal. The Association cited the financial impracticality of a smaller cemetery and the need for public utilities and a maintenance facility.

After meeting with the Mound Cemetery Association in July, 2018, the city agreed to retain the services of a consultant to master plan the future of Freeway Park. In October, 2018, the city retained the services of ISG, a landscape architecture firm with a strong reputation for park planning and design and community engagement to prepare a Master Plan for Freeway Park.

On April 15, 2019, staff and ISG met with the Mound Cemetery Association to discuss the outcome of the park planning process and the recommended option for Freeway Park. The Association in response agreed to donate an acre of the cemetery with some conditions to facilitate the master plan. After additional discussion with the Association, the city drafted a Memorandum of Understanding (MOU) to memorialize the parties’ understanding of the terms of the vacation of the lease and the donation of the land.

Policy Issues:

MEMORANDUM – COUNCIL WORK SESSION

Does the City Council support entering into the MOU with the Association and creating a smaller Freeway Park?

Does the City Council desire to let the 1970 lease run until expiration after which there would be no Freeway Park as it exists today?

Are there any other conditions the City Council would like to see in the MOU?

Strategic Priorities:

- Enhanced Community Image



MEMORANDUM

DATE: December 20, 2019

TO: Curt Boganey, City Manager

FROM: Doran M. Cote, Public Works Director

SUBJECT: Freeway Park – Mound Cemetery Report

This Freeway Park – Mound Cemetery Report has been prepared to document the history of the cemetery and the park as well as provide possible direction moving forward.

Mound Cemetery History 1862 - 1970

- Mound Cemetery was established as a cemetery in 1862 by farmers and lumbermen who moved to Brooklyn Center and the surrounding area from New England. The earliest grave markers in Mound Cemetery are from 1855.
- The original Mound Cemetery was 2 acres in size and had 80 lots with 16 grave sites each. The first addition to Mound Cemetery added 2 acres plus a looping road network and flagpole. The cemetery is now 15 acres in size with a one-way road network.
- On May 14, 2012, the Brooklyn Center City Council adopted a proclamation declaring May 28, 2012, as Mound Cemetery Sesquicentennial Day.
- Attachment 1 included with this report is a historical perspective of the cemetery from the Mound Cemetery website.

Freeway Park 1968 - 2013

- On April 8, 1968, the City of Brooklyn Center initiated condemnation proceedings for the south 4.02 acres of Mound Cemetery for public use for park purposes (Attachment 2). Staff could not find a resolution authorizing the condemnation proceedings, however, the attached Notice of Lis Pendens (lawsuit pending) by the City of Brooklyn Center was recorded against the title of the property.
- The January 5, 1970 City Council meeting minutes indicate that the “City Attorney and the attorney for Mound Cemetery Association had tentatively agreed upon the language of a document through which the City of Brooklyn Center will obtain a 75 year lease of the southern 4 acres of Mound Cemetery for park purposes at a cost of \$15,000.00. The subject parcel represents the last parcel to be acquired under the 1966 HUD Open Space Program.” Attachment 3 is a copy of the January 5, 1970 minutes.
- After discussion among the City Council, a motion was made and seconded authorizing the Mayor and City Manager to execute the above referenced lease. The recorded January 27, 1970 Lease of Cemetery Land is included as Attachment 4. The expiration of the lease is December 31, 2044.

- Historic aerial photographs indicate that Freeway Park was developed and in use in 1971 (see below).



Freeway Park – Mound Cemetery Current Status 2013 - 2019

- In December, 2013, the Mound Cemetery Association approached staff with a proposal to vacate the lease and transition Freeway Park back to the cemetery to be used for its original purposes. The Association indicated an emerging interest in natural burials, more families who desire upright monumentation, and a growing religious community whose burial requirements vary from the traditional East-West rotation (see Attachment 5).
- The city and the Mound Cemetery Association continued to meet and discuss the termination of the lease until 2018. The city had proposed retaining a portion of the cemetery for park purposes but the Association rejected the proposal. The Association cited the financial impracticality of a smaller cemetery and the need for public utilities and a maintenance facility (see Attachment 6).
- After meeting with the Mound Cemetery Association in July, 2018, the city agreed to retain the services of a consultant to master plan the future Freeway Park. In October, 2018, the city retained the services of ISG, a landscape architecture firm with a strong reputation for park planning and design and community engagement to prepare a Master Plan for Freeway Park.
- ISG'S community engagement efforts included meeting with city staff and the Mound Cemetery Association, neighborhood surveys, post cards, an online survey, an on-site suggestion box and in February, 2019, a Public Open House was held at West Palmer Lake Park Building. The Open House was also the Parks and Recreation Board Meeting. ISG presented 3 Master Plan Options (Attachment 7). After considerable discussion, the Parks and Recreation Board recommended Option 1 as the preferred option (see below).



- On April 15, 2019, staff and ISG met with the Mound Cemetery Association to discuss the outcome of the park planning process and the recommended option for Freeway Park. The Association in response agreed to donate an acre of the cemetery with some conditions to facilitate Option 1 of the master plan. Attachment 8 is correspondence between staff and the Association which ultimately resulted in the city drafting a Memorandum of Understanding (MOU) to memorialize the parties' understanding of the terms of the vacation of the lease and the donation of the land.

Memorandum of Understanding Between the City of Brooklyn Center and Mound Cemetery Association

- Attachment 9 is the final negotiated MOU between the Association and the city for the termination of the lease and dedication of approximately 1 acre of land for Freeway Park purposes. The text in red in the recitals and conditions were added by the Association and agreed to by staff. The most significant provisions of the final MOU are as follows:
 - The formal termination of the lease;
 - The city's commitment to rename the park to better reflect the memory and legacy of the families who originally donated the property to the Association, subject to city council approval;
 - The city's willingness to pay all costs associated with the closing, including the state deed tax, recording fees, title insurance premiums, if any, and title company closing costs;
 - The city's construction of a fence between the new city-owned park property and the cemetery so that park visitors will not disturb the solitude of the cemetery with the Association owning the fence; and
 - The city's restoration of the park property being returned to the cemetery with appropriate soils and grass planting, as required in the original lease.

REVISED M E M O R A N D U M

DATE: November 6, 2020

TO: Ginny McIntosh, City Planner/Zoning Administrator

FROM: Andrew Hogg, Assistant City Engineer

SUBJECT: Preliminary/Final Plat Site Plat Review – Mound Cemetery

Public Works staff reviewed the following documents submitted for review for the proposed Mound Cemetery 2nd Addition plat:

- Preliminary/Final Plat dated October 27, 2020

Subject to final staff final plat approval, the referenced plans must be revised in accordance with the following comments/revisions.

Preliminary Plat/Final

1. Either new right of way or road easement should be dedicated to cover missing area as identified in Detail 2, to allow for the continuing of existing street extension & parking on 67th Ave.
2. The County Engineer may need to review plat as it is along a former C.S.A.H. 69th Avenue is no longer CSAH 130. However the right-of-way is still shown as CSAH in the county records.
3. The utility and street easements on the southern portion of the property shall remain.

General Comments

1. An updated certified abstract of title or registered property report must be provided to the City Planner and City Attorney for review at the time of the preliminary plat application (within 30 days of preliminary plat application). Additionally, this will need to stay current and be updated through the approval process as required to maintain and be current within 30 days of the release of final plat.

The aforementioned comments are provided based on the information submitted by the applicant at the time of this review. Other guarantees and site development conditions may be further prescribed throughout the project as warranted and determined by the City.

Member
moved its adoption:

introduced the following resolution and

RESOLUTION NO.

RESOLUTION REGARDING RECOMMENDED DISPOSITION OF PLANNING COMMISSION APPLICATION NO. 2020-009 SUBMITTED BY DORAN COTE ON BEHALF OF THE CITY OF BROOKLYN CENTER, REQUESTING APPROVAL OF THE PRELIMINARY AND FINAL PLAT FOR MOUND CEMETERY SECOND ADDITION (3515 69TH AVENUE NORTH AND COUNTY IDENTIFIED AS 6705 BEARD AVENUE NORTH)

WHEREAS, Planning Commission Application No. 2020-009 was submitted by Doran Cote on behalf of the City of Brooklyn Center (“the Applicant”), requesting preliminary and final plat approval to subdivide approximately one (1) acre of the approximately 15-acre property located at 3515 69th Avenue North and County identified as 6705 Beard Avenue North (“the Subject Property”) for continued use as Freeway Park; and

WHEREAS, discussions arose in 2013 between the City of Brooklyn Center and Mound Cemetery Association regarding a 75-year lease in place on the southern four (4) acres of the Subject Property for use as the City of Brooklyn Center’s Freeway Park; and

WHEREAS, said lease was recorded in January 1970 with an outlined lease expiration of December 31, 2044; and

WHEREAS, the Mound Cemetery Association initially requested a complete vacation of the lease to allow for a transition of the park land back to the cemetery for its originally intended use due to an emerging interest in natural burials, a desire for upright monuments, and a growing religious community whose burial requirements deviate from the traditional East-West rotation; and

WHEREAS, the City continued negotiations with the Mound Cemetery Association and ultimately brought on a consultant in October 2018 to develop a master plan for the future of Freeway Park; and

WHEREAS, following a review of the completed master plan, the Mound Cemetery Association agreed to donate one (1) acre of the Subject Property to facilitate the master plan and the continued existence of Freeway Park; albeit on a smaller scale; and

WHEREAS, an agreement to re-plat the Subject Property to MOUND CEMETERY SECOND ADDITION was reached between the City of Brooklyn Center and Mound Cemetery Association through a Memorandum of Understanding (MOU), and memorialized on January 27, 2020 under City Council Resolution No. 2020-21, which authorized the execution of said Memorandum of Understanding; and

WHEREAS, a review of the proposed re-plat identified the need to dedicate new

RESOLUTION NO.

right-of-way (ROW) or road easement to cover missing portions along 67th Avenue North, and that the existing utility and street easements along the south portion of the Subject Property are to remain in place; and

WHEREAS, on November 12, 2020, the Planning Commission of the City of Brooklyn Center, Minnesota held a duly called public hearing, whereby this item was given due consideration, a staff report was presented, and a public hearing was opened to allow for public testimony regarding the plat requests for MOUND CEMETERY SECOND ADDITION, which were received and noted for the record; and

WHEREAS, the Planning Commission has determined during its review of the plat and materials submitted with Planning Commission Application No. 2020-009, that said plat is in general conformance with the City of Brooklyn Center's City Code of Ordinances, and specifically Chapter 15 – Platting.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Brooklyn Center, Minnesota does hereby recommend that Planning Commission Application No. 2020-009, as submitted by Doran Cote on behalf of the City of Brooklyn Center, and requesting preliminary and final plat approval for MOUND CEMETERY SECOND ADDITION, and dedication of certain easements and/or right-of-way, may be approved based upon the following conditions:

1. Approval of the preliminary and final plats for MOUND CEMETERY SECOND ADDITION are contingent upon the addressing of comments by Assistant City Engineer Hogg in his memorandum dated November 6, 2020 and execution of a Memorandum of Understanding (MOU) between the City of Brooklyn Center and Mound Cemetery Association as memorialized under City Council Resolution No. 2020-21;
2. Final plat and Mylar shall be subject to the provisions of Chapter 15 of the City Code of Ordinances (*Platting*);
3. Any comments and/or requirements as provided by Hennepin County;
4. Any comments and/or requirements from the City Attorney's office, and specifically regarding an updated certified abstract of title; and
5. The successful recording of said plat (Mylar) with Hennepin County.

RESOLUTION NO.

November 23, 2020

Date

Mayor

ATTEST: _____
City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member
and upon vote being taken thereon, the following voted in favor thereof:
and the following voted against the same:
whereupon said resolution was declared duly passed and adopted.

**Council/EDA Work
Session**

VIRTUAL meeting being
conducted by electronic
means in accordance with
Minnesota Statutes, section
13D.021 Public portion
available for connection by
calling 1-312-535-8110
Access Code: 133 316
6939
November 23, 2020

AGENDA



ACTIVE DISCUSSION ITEMS

1. Discussion of Tobacco License for Jambo Africa
2. Civilian Review Board
3. Tobacco Ordinance Follow Up

PENDING LIST FOR FUTURE WORK SESSIONS

1. Pending Items
 - Council Retreat Follow-up
 - Council Policy for City Charter requirement of Mayor's signature on all contracts
 - Strategic Plans for years 2018-2020 and 2021-2023
 - NOAH Preservation Program
 - Review Special Assessment Policy
 - Opportunity Site Update
 - Earle Brown Name

MEMORANDUM - COUNCIL WORK SESSION

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Cornelius L. Boganey, City Manager

SUBJECT: Discussion of Tobacco License for Jambo Africa

Recommendation:

- Direction to staff regarding the adoption of a resolution authorizing a tobacco license application from Jambo Africa as an exception to current 15 tobacco license cap

Background:

On November 9, 2020, the City Council received a second request from Ms. Simone Chambliss to be heard regarding her desire for a tobacco license so that she may provide outdoor hookah service at her restaurant, Jambo Africa.

The Council agreed to hear Ms. Chambliss request at the November 23rd Council meeting. The Council asked the staff to provide a chronology of the events which affected the decision of the City not to issue a tobacco license for Jambo Africa.

I have enclosed a packet of information that provides a chronology and supporting documents related to the decision not to issue a tobacco license to Jambo Africa to date.

The packet provides for twelve events/documents related to the subject question. The Council will want to review each of these documents; but based on my review I would ask the Council to focus on the 6/26/18 emails between City Planner McIntosh and Attorney Gilchrist; the 8/8/19 emails between City Planner and the City Attorney and finally the August 8, 2019 emails between City Manager Boganey and City Planner McIntosh.

In my opinion these documents provided the best evidence as to what "probably" happened regarding the decision not to issue a tobacco license to Jambo Africa.

The June 26, 2018, memo acknowledges that the City was contacted by Jambo Africa expressing an interest in an outdoor hookah bar at the restaurant. The conclusion from the City Attorney was that "my initial impression is that providing hookahs to those who wish to smoke in the outdoor area may constitute a use that needs to be examined under the zoning ordinance to determine if it is allowed."...." It strikes me that such an activity may very well not be within the scope of a restaurant use. At a minimum, a tobacco license would be required, but we should look to see how the use fits under the code."

If we look at the August 9, 2019, email to Curt Boganey from the City Planner, to the best of her recollection she describes what she remembers from her discussions with Ms. Chambliss back in June of 2018. The City

Planner discussed numerous issues verbally with Ms. Chambliss presumably. According to Ms. McIntosh, following this June meeting(s) there was no further discussion about a tobacco license until after the T-21 ordinance took effect in December. If this account is reasonably accurate, it is quite understandable why Ms. Chambliss did not submit a tobacco license application at the time.

On August 8, 2019, the City Attorney advised staff that after reviewing the zoning issue in greater detail than his original 2018 "impression" the attorney concluded that an outdoor hookah bar with a tobacco license in all likely would be lawful under the City zoning codes.

Unfortunately, this opinion was too late to be considered in any decision making of Ms. Chambliss. It is my opinion that if the initial first impression from the attorney had concluded, the proposed use was likely to be lawful under the City zoning code, it may have shaped a different response from staff as well as from the applicant. It is important to keep in mind that the attorney stated at the time this was a matter which required further analysis.

Given all of the additional concerns raised with Ms. Chambliss during this period regarding the site plan, the proposed structure, fire access, parking issues, ADA compliance issues etc. along with the zoning uncertainty, it is impossible to know that a tobacco license application would have been submitted in June of 2018.

Yet, it seems that had staff known that the proposed use would indeed be allowable under the zoning code the applicant would have been so advised of that fact. The applicant would have been in a better position to make an informed decision in a timely manner. In light of this assessment, I have asked the City Attorney to prepare a resolution allowing the applicant to make application for a tobacco license for the purpose of operating an outdoor hookah service.

Policy Issues:

1. Is the City's best interest served by allowing Jambo Africa to apply for a tobacco license.

Strategic Priorities and Values:

Resident Economic Stability, Targeted Redevelopment

ATTACHMENTS:

Description	Upload Date	Type
Resolution to accept application	11/17/2020	Cover Memo
Jambo Documents Chronology	11/17/2020	Cover Memo

Member
resolution and moved its adoption:

introduced the following

RESOLUTION NO. 2020-____

RESOLUTION APPROVING A TOBACCO LICENSE FOR JAMBO AFRICA RESTAURANT

WHEREAS, Ms. Simone Chambliss (“Owner”), owner of the Jambo African Restaurant (“Restaurant”), inquired to the City in June 2018 about obtaining a tobacco license so customers can smoke hookah on the patio of the Restaurant; and

WHEREAS, staff was unclear whether hookah was allowed as it is not specially addressed in the City Code, and so engaged in internal discussions over whether the use is allowed; and

WHEREAS, on November 13, 2018 the City Council adopted Ordinance No. 2018-14 amending Chapter 23 of the City Code regarding tobacco; and

WHEREAS, the ordinance added language to Section 23-103 restricting the number of licenses the City may issue in a year to 15, but allowing those with licenses obtained as of October 1, 2018 to continue to renew them even if they are in excess of 15 license cap; and

WHEREAS, after the ordinance went into effect, the Owner once again inquired about obtaining a tobacco license to allow hookah at the Restaurant, but the cap prohibited the issuance of any additional licenses;

WHEREAS, the City Council hereby finds as follows:

- a. The Owner did not submit an application for a tobacco license;
- b. The Owner was clearly interested in obtaining a license prior to the adoption of the cap on the number of such licenses;
- c. Had the Owner applied for a tobacco license prior to the imposition of the cap it would have been issued;
- d. The uncertainty over whether hookah was allowed as part of a restaurant use under the City Code is likely why the Owner did not submit an application when she made her initial inquiry in June 2018;
- e. The City has determined the hookah use is currently not distinguishable from other tobacco uses allowed to occur at a restaurant with a tobacco license and would be allowed but for the cap on the number of licenses;
- f. Under the Clean Indoor Air Act, the use of tobacco is limited to outdoor spaces;
- g. While there was ample notice of the proposed amendments to the tobacco regulations, including the proposed cap, the City Council recognizes the Owner had sought out a license prior to the adoption of the cap and if the City had immediately responded to her about hookah being allowed at the Restaurant she would have likely obtained a license before the cap went into effect;

- h. The City Council supports the stricter regulations in Ordinance No. 2018-14, but does not want the timing of its adoption to result in the unfair treatment of the Owner in her on-going efforts to obtain a tobacco license for the Restaurant; and
- i. This is a unique situation and the approval of a tobacco license for the Restaurant does not serve as a basis for issuing a license to any other business in the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Brooklyn Center as follows:

- 1. The City may accept an application for a tobacco license from the Owner for the Restaurant and, if the Owner is eligible for the license, is authorized to issue the license notwithstanding the limit on the number of licenses allowed in the City.
- 2. If issued, the license will have the same status under Section 23-103(11) of the City Code as a license issued as of October 1, 2018 and is eligible for renewal in the same manner as other tobacco licenses.
- 3. The issuance of a tobacco license for the Restaurant does not relieve the Owner from having to comply with all applicable federal, state, and local laws, rules, regulations, codes, and ordinances regarding the Restaurant and the use of the patio for hookah.
- 4. This approval does not affect the status of any other tobacco license in the City and does not authorize the issuance of any other additional licenses.
- 5. The City Clerk is authorized to take such actions as may be needed to carry out the intent of this Resolution.

Date

Mayor

ATTEST: _____
City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member
and upon vote being taken thereon, the following voted in favor thereof:
and the following voted against the same:
whereupon said resolution was declared duly passed and adopted.

Jambo Africa Tobacco Timeline

Date	Action	Backup Information
5/14/2018	Brooklyn Youth Council and Hennepin County Public Health Department presented a report regarding T-21	Council Memo regarding T-21 and excerpt of minutes
6/26/18	Email from Ginny to Troy Gilchrist	• Asked about hookah bars and their allowance inside or outside of restaurant/bar establishments in MN, and the requirement under BC tobacco licensing. • Indicated Jambo Africa expressed interest in an outdoor hookah bar at her restaurant
6/26/18	Email from Troy to Ginny	• If the use is limited to outdoors, it appears it would not fall within the “public place” prohibition in MS§ 144.414, subd. 1; because definition of public place in MS§ 144.413, subd. 2 refers to an “outdoor area. • Initial impression is that providing hookahs to those who wish to smoke in the outdoor area may constitute a use that needs to be examined under the zoning ordinance to determine if it is allowed. • This activity may not be within the scope of a restaurant use. • Minimum a tobacco license would be required.
8/13/18	Jammin Wings received their tobacco license	Council Memo and excerpt from the 8/13 minutes
8/27/18	Study/work Session discussion regarding T-21	Council Memo regarding T-21 and excerpt of minutes
8/27/18	License approved for Two River Investment	Council Memo and excerpt from 8/27 minutes
9/24/18	Work Session discussion	Council Memo and excerpt from 9/24 minutes
9/24/18	License approved for Casey’s	Council Memo and excerpt from 9/24 minutes
10/8/18	Regular Meeting 1 st Reading	Council Memo and excerpt from 10/8 minutes
11/13/18	Regular Meeting 2 nd Reading	Council Memo and excerpt from 11/13 minutes
12/13/18	Tobacco Ordinance effective	
8/7/19	Email from Ginny to Troy	• Revisit Hookah • Another restaurant allowing Hookah; I-1 District does not allow for “tobacco shops” as other zoning district do. • Reviewed PUD
8/8/19	Email from Troy to Ginny	• Not changes in Minnesota Statutes or County Ordinance 24 but amendments to the Clean Indoor Air Act. • Establishment would need a tobacco license. • Not state or local prohibitions against smoking on the patio. • Hard to carve this use of the restaurant out and say it is not allowed.

Jambo Africa Tobacco Timeline

8/8/19	Email from Curt to Ginny	• Questioned if the patio for smoking Hookah outside her business, would not or could not be approved.
8/8/19	Email from Curt to Ginny	• Ginny had concerns of the location of the patio due to the fact that to access this area, people would need to walk from the restaurant area, through a door and into a proposed conference room and out another door.
8/8/19	Email from Simone to Curt	Email regarding the City of Minneapolis' Hookah policies

MEMORANDUM – COUNCIL WORK SESSION

DATE: May 10, 2018
TO: City Council
FROM: Curt Boganey, City Manager 
SUBJECT: City of Brooklyn Center Tobacco Policy Recommendations

Recommendation:

It is recommended that the City Council consider providing direction to staff regarding the information received and recommendations made regarding Tobacco Policy in Brooklyn Center

Background:

Nearly a year ago the City was contacted by representatives of Hennepin County Public Health department regarding tobacco sales to youth in Brooklyn Center. In particular they expressed an interest in having the City Consider adopting an ordinance that would restrict sales to individuals aged 21 or older. An outgrowth of that inquiry was a request made to the Brooklyn Youth Council; asking that they consider providing youth voice into this issue prior to the Council considering the request.

The BYC agreed to accept this project and has been engaged in an extensive process of research and analysis regarding the topic over last several months. On Monday to you will receive two presentations on this subject.

Hennepin County Public Health will provide a brief introduction of the issue of tobacco products and marketing at the point-of-sale, “why” this issue is being brought forward and briefly walk through the document with the City Council.

The BYC will follow with a 30-40 minute presentation of the project, recommendations and respond to any questions the Council may have.

Policy Issues:

Does the City Council desire additional information before considering the recommendations of the report?

Does the City Council wish to have staff take any action regarding the findings and recommendations i.e. ordinance preparation, work session review, further research?

Strategic Priorities:

- Safe, Secure, Stable Community

Our Vision: We envision Brooklyn Center as a thriving, diverse community with a full range of housing, business, cultural and recreational offerings. It is a safe and inclusive place that people of all ages love to call home, and visitors enjoy due to its convenient location and commitment to a healthy environment

EXCERPT FROM MAY 14, 2018 WORKSESSION

TOBACCO PURCHASE AGE 21 (BROOKLYNS YOUTH COUNCIL)

Mr. Boganey introduced this item and explained the reason it is being brought forward. He introduced Ms. Gretchen Garman, Hennepin County Public Health, to come forward and discuss this topic in depth.

Ms. Garman, 2056 Beard Street, addressed the City Council/EDA. She provided a presentation that reviewed data and trends on the dangers of tobacco use and how it is affecting the youth. She noted Minneapolis voted on this issue and it passed to move to the City Council on May 25, 2018.

Ms. Garman introduced the Brooklyns Youth Council (BYC) to come forward and present their findings on this topic. Femi Akirdumila, President of BYC, Amanda Engeman, Event Coordinator of BYC, Mosia Vankpanah, Intern for BYC, Marthaiyn Nehwah, Communication Coordinator for BYC, and Abas Saomahob of BYC, addressed the Councilmembers/Commissioners and provided a presentation on behalf of the Brooklyn Youth Council. Their presentation provided an overview of what the BYC does, provided a list of the businesses they partner with, explained the prevention project they created, provided different types of tobacco products for the City Council/EDA to look at, and provided a list of recommendations they would like the City Council/EDA to consider.

The BYC explained that the recommendations are listed in order of most urgent to least urgent, while noting all of the recommendations are important.

Mayor/President Willson stated he has been in recovery for over 30 years and that shows you can do anything you put your mind to. He stated the BYC did such a great job on this topic that gun control and opioid abuse are two items he would like to see them research next. The Councilmembers/Commissioners echoed Mayor/President Willson's sentiments and noted how great of a job the BYC did on this topic and presentation.

The majority consensus of the City Council/EDA was to continue with the recommendations provided.

From: Ginny McIntosh [<mailto:gmcintosh@ci.brooklyn-center.mn.us>]
Sent: Tuesday, June 26, 2018 2:56 PM
To: Gilchrist, Troy J.
Cc: Dan Grinsteinner; Barbara Suci; Brett Angell
Subject: Hookah Licensing for Restaurant/Bar Establishment
Importance: High

Hi Troy,

What do you know about hookah bars, their allowances inside or outside of restaurant/bar establishments in Minnesota, and the requirements under our tobacco licensing here in the City of Brooklyn Center?

Simon Chambliss of Jambo Africa expressed an interest in having an outdoor hookah bar outside her restaurant at 1601 Freeway Boulevard. I'm not sure how it would work space-wise, but she asked if I could inquire. The area highlighted below in red is approximately where she would want the hookah area. There is a proposed event center to the west of this area, and a Quality Inn & Suites hotel to the south.



It appears her intent would be to install a canopy-type pergola structure outside her restaurant for hookah. It would be something like this:



I know I ran into issues with hookah bars/enforcement/food to alcohol ratios, etc., back in Illinois relating to loopholes in the existing state laws, so I thought I should reach out to you first.

Could you let me know? I feel like she may show up at the front counter any day now...

-Ginny

Ginny McIntosh | City Planner and Zoning Administrator
City of Brooklyn Center

6301 Shingle Creek Parkway | Brooklyn Center, MN 55430-2199

www.cityofbrooklyncenter.org | 763.569.3319 | gmcintosh@ci.brooklyn-center.mn.us

From: Gilchrist, Troy J. [<mailto:TGilchrist@Kennedy-Graven.com>]
Sent: Tuesday, June 26, 2018 3:36 PM
To: Ginny McIntosh
Cc: Dan Grinstein; Barbara Suci; Brett Angell
Subject: RE: Hookah Licensing for Restaurant/Bar Establishment (BR291-16)

Hello Ginny,

I dealt with this issue briefly in Crystal, but there the proposal was to open a smoking lounge for use of hookahs. In that case we said no because it would violate the clean indoor air act and was not an allowed use under the zoning ordinance.

Here, if the use is limited to outdoors, it appears it would not fall within the "public place" prohibition in Minn. Stat. § 144.414, subd. 1 because the definition of public place in Minn. Stat. § 144.413, subd. 2 refers to an "indoor area" which is defined in subdivision 1a as "all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge window screen with an 18 by 16 mesh count is not a wall." The prohibition also applies to places of employment, but the definition of that term also refers to an indoor area.

My initial impression is that providing hookahs to those who wish to smoke in the outdoor area may constitute a use that needs to be examined under the zoning ordinance to determine if it is allowed. I suspect the idea is that this will be a business activity where the business would rent use of the hookahs and sell the tobacco and whatever else is used associated with smoking a hookah. It strikes me that such an activity may very well not be within the scope of a restaurant use. At a minimum a tobacco license would be required, but we should look to see how the use fits under the code. I can take a look as well, I just wanted to give you my initial impression before digging too deeply.

Hennepin County Ordinance 24 expands on the clean indoor air act to prohibit vaping and related electronic delivery devices anywhere smoking is prohibited, but such areas are limited to the same indoor areas as state law so that isn't much help. It appears the term "smoking" would include the use of hookahs, but that just means you cannot smoke hookahs in an indoor area of a public place or a place of employment.

I will take a look at the city's code both from the business use perspective as well as to see if the city is more restrictive than the state or county in a way that may impact the proposed use.

By the way, here is some information I found on hookah:

<http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-guide-reg-hookah-2016.pdf>. The public health law center is in St. Paul and they might be of assistance if we have specific questions.

Troy J. Gilchrist | Attorney at Law
Kennedy & Graven, Chartered
Direct: 612.337.9214
tgilchrist@kennedy-graven.com



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COUNCIL ITEM MEMORANDUM

DATE: 8/13/2018

TO: Curt Boganey, City Manager

THROUGH: Reggie Edwards, Deputy City Manager

FROM: Rozlyn Tousignant, Deputy City Clerk

SUBJECT: Licenses

Requested Council Action:

It is recommended that the City Council consider approval of the following licenses on August 13, 2018.

Background:

The following businesses/persons have applied for City licenses as noted. Each business/person has fulfilled the requirements of the City Ordinance governing respective licenses, submitted appropriate applications, and paid proper fees. Applicants for rental dwelling licenses are in compliance with Chapter 12 of the City Code of Ordinances, unless comments are noted below the property address on the attached rental report.

GARBAGE HAULER

Walters Recycling & Refuse 2830 101st Avenue NE, Blaine, MN 55449

MECHANICAL

All American Heating & Air Inc. 3600 72nd Ave N, Brooklyn Center, MN 55429

Metro Sheet Metal Inc. 3260 Fanum Road, St Paul, MN 55110

Minnesota Heating & AC Inc. 10701 93rd Ave N, Maple Grove, MN 55428

Musel Heating and Cooling LLC 311 East S Street, Amboy, MN 56010

Optimum Mechanical Systems, Inc. 3030 Centerville Road, Little Canada, MN 55117

Pioneer Power 2500 Ventura Dr., Woodbury, MN 55125

Sedgwich Heating 1408 Northland Dr., Suite 310, Mendota Heights, MN 55120

TOBACCO RELATED PRODUCTS

Jammin' Wings 2590 Freeway Blvd

Strategic Priorities and Values:

Safe, Secure, Stable Community

EXCERPT FROM AUGUST 13, 2018 WORKSESSION

TOBACCO RELATED PRODUCTS

Jammin' Wings

2590 Freeway Blvd

MEMORANDUM- COUNCIL WORK SESSION

DATE: 8/27/2018

TO: Curt Boganey, City Manager

THROUGH: N/A

FROM: Reggie Edwards, Deputy City Manager

SUBJECT: T-21 Issue Response

Recommendation:

It is recommended that the City Council consider providing direction to staff regarding the issue of T-21 tobacco.

Background:

In 2014, the City of Brooklyn Center took a leadership stance in the metro region by adopting an ordinance increasing the purchasing price for cigars to \$2.10 cents, which was the first jurisdiction in the region to take such action.

In 2017, the Council adopted a new strategic plan and priorities for the years 2018 - 2020. Two related strategic priorities adopted by the Council were "Safe, Secure, Stable Community" and "Resident Economic Stability." The deliberation of the issue of "they use of tobacco by youth" is a health, safety and economic issue.

On Monday, May 10, 2018, the Brooklyn Youth Council and the Hennepin County Public Health Department presented the City Council with a report and recommendations regarding the issue of T-21 tobacco in Brooklyn Center.

Key findings from the research conducted by the Brooklyn Youth Council and Hennepin County Public Health included:

- Youth tobacco use behavior
- Exposure to tobacco products and marketing
- Youth awareness to tobacco and perceptions of tobacco marketing
- The effects of tobacco

The recommendations presented by the Youth Council were:

1. Reduce youth access and exposure to flavored tobacco products
2. Increase the cost of tobacco products
3. Raise the minimum legal sells age to 21
4. Reduce the density of tobacco retailers
5. Restrict the sale of tobacco near youth serving facilities
6. Increase tobacco retail compliance with age verification to purchase tobacco products

In preparation for drafting a City response to the recommendations, a multi-departmental team (i.e. Department of Administration, Department of Community Development, Police Department and the City Attorney) took

the following steps:

- Review all presented material and associated research
- Interviewed the leadership of the Association for Nonsmokers-Minnesota
- Interviewed the leadership of the Hennepin County Public Health Department
- Conducted (to take place on Tues. Aug. 21st) listening session with the 21 tobacco licensed establishments located in Brooklyn Center
- Reviewed tobacco related ordinances passed by other Minnesota cities (i.e. Bloomington, Minneapolis, Plymouth, Richfield, Robbinsdale, St. Louis Park, Falcon Heights, Mendota Heights, St. Paul, and Shoreview)

The discovery process afforded staff the chance to view the issue from the various perspectives including:

- Youth
- Businesses and Economic Impact
- Community Health
- Public Safety
- Legal/Regulatory
- Rights

Given the research provided, interviews and information presented to the Council staff puts forth the following six T-21 Options (see attached report for details):

1. Support all recommendations presented by the Brooklyn Youth Council
2. Support a combination of recommendations presented by the Brooklyn Youth Council
3. Take no action on the recommendations
4. Partnering with the schools in Brooklyn Center, Hennepin County and the Brooklyn Youth Council to develop and fund a program to curtail peer pressure and
5. Establish continued city research and benchmarking in order to better assess behavior and changes of behavior with regard to youth and the use of tobacco in the City of Brooklyn Center.
6. Collaborating with cities to seek statewide legislation to raise age limit of the sale of all tobacco related products from 18 years of age to 21.

Strategic Priorities and Values:

Safe, Secure, Stable Community

EXCERPT FROM AUGUST 27, 2018 WORKSESSION

T-21 ISSUE RESPONSE

Deputy City Manager Reggie Edwards addressed the questions from the Council/EDA.

Mayor/President Willson asked if underage people will be cited for attempting to make a purchase, will they also then cite the underage folks who are caught actually in possession of tobacco. Mr. Edwards stated that is something they can define as they move forward with amending the ordinance.

City Attorney Troy Gilchrist stated there is current language that criminalizes possession and sale under state statutes so they will need to look at how to handle it if they move forward with this ordinance. He noted if other surrounding cities are selling tobacco items that Brooklyn Center decides to prohibit to people ages 18 and older, then it will be hard to regulate a possession citation.

Mayor Willson asked if the ordinance was amended, what happens with the tobacco license by an existing business, if that business was sold. It was confirmed the license would stay with the property.

Councilmember/Commissioner Graves stated she liked the idea of partnering with schools and youth councils to address peer pressure and stress to help the kids so it addresses the root problems according to the youth council research for tobacco use among youth. She stated she is in favor of not allowing purchasing of vaping products in fruity or menthol flavors because those seem more popular with kids. She noted this is going to be more effective if the State as a whole goes to 21 and older.

Councilmember/Commissioner Ryan stated he agrees to limiting flavors to tobacco only shops. He stated he would like to see this topic addressed with the schools as well. He stated he thinks the mini cigar prices should be raised and would like to see them not be able to use coupons for these items all together.

City Attorney Gilchrist stated the cities have been trying to address this issue and have started by saying that after coupons or deals the minimum price they sell these items for cannot be less than the price the city sets.

Recommendation #1 - Restrict the sale of flavored tobacco products to tobacco shops that restrict minors: has no consensus to move forward, the decision was unanimous.

Councilmember/Commissioner Graves stated she sees limiting coupons for regular tobacco products as a way of making lower income people pay more for their addictions and she isn't in favor of that. Councilmember/Commissioner Butler stated she agrees and thinks that kids aren't using coupons anyhow for these products in most cases.

Recommendation #2 - Increase the cost of tobacco products: had no majority consensus to move forward as Mayor/President Willson and Councilmember/Commissioner Ryan were in favor of moving forward with this item; however, Councilmembers/Commissioners Butler and Graves were not.

Recommendation #3 – Restrict the proximity of new tobacco retailers to within 1,000 feet of schools, parks, community centers, and libraries: had no consensus to move forward, the decision was unanimous.

Recommendation #4 – Reduce the number of tobacco retailers to 15 retail stores and #5 – Raise minimum legal sales age to 21: had consensus to move forward, the decision was unanimous.

Councilmember/Commissioner Graves stated she would like to see some deterrents in place so they can keep youth out of the justice system.

Mayor/President Willson stated once this comes back to the City Council/EDA, they can discuss the penalties at that time.

City Attorney Gilchrist noted State laws are on the same page with Councilmember/Commissioner Graves regarding minors and trying to keep them from getting a record, which is why currently it is a petty misdemeanor or a misdemeanor for that same reason.

Recommendation #6 – (A) Partner with the schools in Brooklyn Center, Hennepin County and the Youth Council to develop and fund a program to address peer pressure and stress; (B) Establish continued city/local research and benchmarking for behavior trends and changes of behavior of the use of tobacco by youth; (C) Partnering with other cities to seek statewide legislation to raise age to limit of sell of tobacco products from 18 to 21: had consensus to move forward, the decision was unanimous.

The City Council/EDA stated they would like to move forward with add-on Option A; and look into partnering with schools and counties to address the peer pressure issues youth face, to address the tobacco issue at the core.

Mayor/President Willson stated before he agreed with that part of this option, he would want to see specifics on what a fund would look like and what the criteria would. Dr. Edwards stated they can look at that part when staff brings back more information to the City Council/EDA.

Councilmember/Commissioner Graves stated both add-ons A and B could move forward together as a collaborative effort.

Mayor/President Willson stated the only issue he has is the additional investment of staff time and would like to see more about that before agreeing to any investments with staff time.

There was a consensus to move forward with add-on option C as well.

Dr. Edwards stated he will draft something with all these items and points for the City Council/EDA to review as a work session item in the future.

Emily Anderson, 4136 Columbus Avenue, addressed the City Council/EDA and stated the other 11 cities who have gone to T-21 have stricken the provision for anyone under age to get penalized for purchasing or possessing so they are not alone in wanting to make that change.

Gretchen Garmin, Hennepin County Public Health, addressed the City Council/EDA and stated she wanted to thank the staff for their work and looking at the things they can do within the community. She stated there are many tobacco products aside from the e-cig and vaping products that have many flavors that appeal to kids so they should look into those as well. She introduced two of her colleagues from the law center who she stated would be happy to speak to the City Council/EDA at any point, noting she can talk to them about how to make that happen if they wished to have that discussion as well.

COUNCIL ITEM MEMORANDUM

DATE: 8/27/2018

TO: Curt Boganey, City Manager

THROUGH: Reggie Edwards, Deputy City Manager

FROM: Rozlyn Tousignant, Deputy City Clerk

SUBJECT: Approval of Licenses

Requested Council Action:

It is recommended that the City Council consider approval of the following licenses on August 27, 2018.

Background:

The following businesses/persons have applied for City licenses as noted. Each business/person has fulfilled the requirements of the City Ordinance governing respective licenses, submitted appropriate applications, and paid proper fees. Applicants for rental dwelling licenses are in compliance with Chapter 12 of the City Code of Ordinances, unless comments are noted below the property address on the attached rental report.

GARBAGE HAULER

Sanimax USA LLC 505 Hardman Ave S, South St. Paul, MN 55075

MECHANICAL CONTRACTOR

General Heating & Air Conditioning 11081 Chaparral Ave, Shakopee, MN 55379

J Dubs LLC 11703 River Hills Dr., Burnsville, MN 55337

Matty V's Heating & Cooling 1052 93rd Lane NW, Coon Rapids, MN 55433

TOBACCO RELATED PRODUCTS

Two Rivers Investment, Inc. 6840 Humboldt Ave N, Brooklyn Center, MN 55430

Budget Issues:

There are no budget issues to consider.

Strategic Priorities and Values:

Safe, Secure, Stable Community

EXCERPT FROM AUGUST 27, 2018 REGULAR SESSION

TOBACCO RELATED PRODUCTS

Two River Investment, Inc.

6840 Humboldt Ave N, Brooklyn Center

MEMORANDUM - COUNCIL WORK SESSION

DATE: 9/24/2018

TO: Curt Boganey, City Manager

FROM: Reggie Edwards, Deputy City Manager

SUBJECT: City of Brooklyn Center T-21 Issue Response

Recommendation:

It is recommended that the City Council consider providing direction to staff regarding amendment of City Ordinance # _____, Chapter 23, Tobacco and Tobacco Related Products.

Background:

In 2017, the Council adopt a new strategic plan and priorities for the years 2018 - 2020. Two related strategic priorities adopted by the Council were "Safe, Secure, Stable Community" and "Resident Economic Stability." The deliberation of the issue of "the use of tobacco by youth" is a health, safety and economic issue.

On Monday, May 10, 2018, the Brooklyn Youth Council and the Hennepin County Public Health Department presented the City Council with a report and recommendations regarding the issue of T-21 tobacco in Brooklyn Center.

On Monday, August 27, 2018, the City Council heard a presentation from staff regarding possible options to address the issue regarding the use of tobacco by youth in the City of Brooklyn Center. Staff presented the options listed below, for which Council subsequently provided direction for each option. The options presented and direction of each individual option are as follows:

Options in Response to Brooklyn Youth Council:

1. Restrict the sales of flavored tobacco products to tobacco shops that restrict minors
Council's direction – No consensus, but consensus of restricting the sale of all electronic cigarettes and vaping products to adult tobacco shops
2. Increase the cost of tobacco products
Council's direction – No consensus
3. Restrict the proximity of new tobacco retailers to within 1,00 ft. of schools, parks community centers, and libraries
Council's direction – No consensus
4. Reduce the number of tobacco retailers to 15 retail stores
Council's direction - Consensus
5. Raise the minimum legal sales age to 21
Council's direction - Consensus
6. Increase tobacco retail compliance requirements and penalties for violation
Council's direction - No consensus on additional compliance checks, but consensus on retail training of staff, and increase application and penalty fees

Additional Options developed by staff:

- A. Partner with the schools in Brooklyn Center, Hennepin County, and the Brooklyn Youth Council to develop and fund a program to address peer pressure and stress
Council's direction – Consensus, bring back

with detail plan prior to funding a program

- B. Establish continued city/local research and benchmarking of for behavior trends and changes of behavior of the use of tobacco by youth in Brooklyn Center

Council's direction – Consensus, with the caveat that staff bring back with detail plan prior to funding a program

- C. Partner with other cities to seek statewide legislation to raise the age limit of the sale of tobacco related products from 18 to 21 years of age

Council's direction - Consensus

Based upon the direction set forth by the Council staff drafted an amendment City Ordinance # _____, Chapter 23, Tobacco and Tobacco Related Products, which is attached. The Council will also find an attached modified time schedule that outlines the process and when the amended Ordinance would go in affect, pending Council approval.

Policy Issues:

Is there a consensus among the Council with regard to the recap of Council's previous deliberation, the direction and intent outlined in the draft amended ordinance City Ordinance # _____, Chapter 23, Tobacco and Tobacco Related Products, and with the schedule outlined for amending the said ordinance.

Strategic Priorities and Values:

Safe, Secure, Stable Community

EXCERPT FROM SEPTEMBER 24, 2018 WORK SESSION

CITY OF BROOKLYN CENTER T-21 ISSUE RESPONSE

Deputy City Manager Reggie Edwards introduced the item and reviewed the background of this consideration. He stated the City Council is asked to review the draft ordinance and provide direction to staff regarding the amendment to the City ordinance. It was noted that in 2017, the Council adopted a new strategic plan and priorities for the years 2018-2020. Two related strategic priorities adopted were "Safe, Secure, Stable Community" and "Resident Economic Stability." The deliberation of the issue of the use of tobacco by youth is a health, safety, and economic issue. On May 10, 2018, the Brooklyn Youth Council and Hennepin County Public Health Department presented a report and recommendations regarding the issue of T-21 tobacco. On August 27, 2018, the City Council heard a presentation from staff regarding possible options to address the issue regarding the use of tobacco by youth in the City.

Dr. Edwards read the six options presented and Council direction on each. He stated based on the Council's direction, staff drafted an amendment to the ordinance for the Council's review. He detailed each significant change to the ordinance and noted staff also modified the time schedule.

Mayor/President Willson asked if the language should include the number of days it is suspended. Dr. Edwards stated staff will clarify that language.

Dr. Edwards presented the proposed ordinance amendment timeline, noting it would take effect December 21, 2018, if moved forward.

Councilmember/Commissioner Graves asked if the past ordinance cited underaged smokers, which was recommended. She stated other cities have stricken citing underaged smokers. City Attorney Troy Gilchrist referenced Page 12, subparagraph c) Minors, containing language citing underaged smokers, noting it has been deleted.

Mayor/President Willson stated the City can be more restrictive than State Statute but not less restrictive. Dr. Edwards explained if an underaged smoker was cited, it was in consultation with other jurisdictions to determine what was appropriate, but that language has been stricken from this draft ordinance.

Dr. Edwards asked if there is consensus on the City Council's recap of previous deliberation, direction and intent outlined in the draft amended ordinance, and the schedule as outlined to amend said ordinance.

Mayor/President Willson stated his support.

Councilmember/Commissioner Ryan stated the information provided is accurate as he remembers the discussion but he wished the City Council had agreed to restrict sale of all electronic cigarettes and vaping products to adult tobacco shops and that all flavored products had been restricted. He supported working in partnership with other cities in this effort. He

referenced American Cancer Society information on the amount of taxes collected on sale of tobacco products, noting it could be used for programs to promote cessation and prevent youth tobacco use.

Councilmember/Commissioner Lawrence-Anderson referenced an email from Emily Anderson, Association of Nonsmokers of Minnesota, noting the draft ordinance does not restrict other flavored tobacco products to adult only shops. Mayor/President Willson stated that is correct as there was not City Council/EDA consensus to support it.

The majority consensus of the City Council/EDA was to direct staff to move this item forward for first reading.

COUNCIL ITEM MEMORANDUM

DATE: 9/24/2018
TO: Curt Boganey, City Manager
THROUGH: Reggie Edwards, Deputy City Manager
FROM: Rozlyn Tousignant, Deputy City Clerk
SUBJECT: Approval of Licenses

Requested Council Action:

- Motion to approve of the presented licenses

Background:

The following businesses/persons have applied for City licenses as noted. Each business/person has fulfilled the requirements of the City Ordinance governing respective licenses, submitted appropriate applications, and paid proper fees. Applicants for rental dwelling licenses are in compliance with Chapter 12 of the City Code of Ordinances, unless comments are noted below the property address on the attached rental report.

MECHANICAL CONTRACTOR

AirTech Thermex, LLC 4918 W. 35th Street, St. Louis Park, 55416
Heating & Cooling Design Inc. 13234 Urbank Ct NE, Blaine, 55449
Knott Mechanical Inc. 3051 220th St. E, Prior Lake, 55372
MNP Mechanical LLC 16320 Harvard Dr., Lakeville, 55044
Pierce Refrigeration 1920 2nd Ave, Anoka, 55303

TOBACCO RELATED PRODUCTS

Casey's Retail Company 2101 Freeway Blvd, Brooklyn Center, MN 55430
dba: Casey's General Store

Strategic Priorities and Values:

Safe, Secure, Stable Community

ATTACHMENTS:

Description	Upload Date	Type
Rental Criteria Policy	9/18/2018	Backup Material
Rental Licenses	9/20/2018	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Administration	Suciu, Barb	Approved	9/19/2018 - 3:11 PM
Administration	Boganey, Curt	Approved	9/19/2018 - 6:49 PM

EXCERPT FROM SEPTEMBER 24, 2018 WORK SESSION

TOBACCO RELATED PRODUCTS

Casey's Retail Company 2101 Freeway Blvd., Brooklyn Center 55430
 Dba: Casey's General Store

COUNCIL ITEM MEMORANDUM

DATE: 10/8/2018

TO: Curt Boganey, City Manager

THROUGH: N/A

FROM: Dr. Reggie Edwards, Deputy City Manager

SUBJECT: An Ordinance Amending Chapter 23 of the City Code of Ordinances Regarding Tobacco and Tobacco Related Products

Requested Council Action:

- Motion to approve the first reading of the ordinance and call for a Public Hearing and second reading which will be held on November 13, 2018.

Background:

In 2017, the Council adopt a new strategic plan and priorities for the years 2018 - 2020. Two related strategic priorities adopted by the Council were "Safe, Secure, Stable Community" and "Resident Economic Stability." The deliberation of the issue of "the use of tobacco by youth" is a health, safety and economic issue.

On Monday, May 10, 2018, the Brooklyn Youth Council and the Hennepin County Public Health Department presented the City Council with a report and recommendations regarding the issue of T-21 tobacco in Brooklyn Center.

On Monday, August 27, 2018, the City Council heard a presentation from staff regarding possible options to address the issue regarding the use of tobacco by youth in the City of Brooklyn Center. Staff presented the options listed below, for which Council subsequently provided direction for each option. The options presented and direction of each individual option are as follows:

Options in Response to Brooklyn Youth Council:

1. Restrict the sales of flavored tobacco products to tobacco shops that restrict minors
Council's direction – No consensus, but consensus of restricting the sale of all electronic cigarettes and vaping products to adult tobacco shops
2. Increase the cost of tobacco products
Council's direction – No consensus
3. Restrict the proximity of new tobacco retailers to within 1,000 ft. of schools, parks community centers, and libraries
Council's direction – No consensus
4. Reduce the number of tobacco retailers to 15 retail stores
Council's direction - Consensus
5. Raise the minimum legal sales age to 21
Council's direction - Consensus
6. Increase tobacco retail compliance requirements and penalties for violation
Council's direction - No consensus on additional compliance checks, but consensus on retail training of staff, and increase application and penalty fees

Additional options developed by staff:

- A. Partner with the schools in Brooklyn Center, Hennepin County, and the Brooklyn Youth Council to develop and fund a program to address peer pressure and stress
Council's direction – Consensus, bring back with detail plan prior to funding a program
- B. Establish continued city/local research and benchmarking of for behavior trends and changes of behavior of the use of tobacco by youth in Brooklyn Center
Council's direction – Consensus, with the caveat that staff bring back with detail plan prior to funding a program
- C. Partner with other cities to seek statewide legislation to raise the age limit of the sale of tobacco related products from 18 to 21 years of age
Council's direction - Consensus

Based upon the direction set forth by the Council staff drafted an amendment City Ordinance 2018-14, Chapter 23, Tobacco and Tobacco Related Products, which is attached. The Council will also find an attached modified time schedule that outlines the process and when the amended Ordinance would go in effect on December 21, 2018.

On Monday, September 24, 2018, the City Council reached consensus and directed staff to proceed forward with the process to amend City Ordinance # _____, Chapter 23, Tobacco and Tobacco Related Products.

Strategic Priorities and Values:

Safe, Secure, Stable Community

ATTACHMENTS:

Description	Upload Date	Type
Ordinance Amending Chapter 23 of the City Code of Ordinances Regarding Tobacco and Tobacco Related Products	10/2/2018	Ordinance
Power Point	10/3/2018	Presentation

REVIEWERS:

Department	Reviewer	Action	Date
Administration	Answerer	Approved	10/2/2018 - 1:27 PM
Administration	Boganey, Curt	Approved	10/3/2018 - 10:57 AM

EXCERPT FROM OCTOBER 08, 2018 WORK SESSION

- 6e. AN ORDINANCE AMENDING CHAPTER 23 OF THE CITY CODE OF ORDINANCES REGARDING TOBACCO AND TOBACCO RELATED PRODUCTS**

COUNCIL ITEM MEMORANDUM

DATE: 11/13/2018

TO: Curt Boganey, City Manager

THROUGH: N/A

FROM: Dr. Reggie Edwards, Deputy City Manager

SUBJECT: An Amendment to City Ordinance 2018-14, Chapter 23, Tobacco and Tobacco Related Products

Requested Council Action:

- Motion to open a public hearing and take public comment
- Motion to close the public hearing
- Motion to approve the second reading and adopt an ordinance amending City Ordinance 2018-14, Chapter 23, Tobacco and Tobacco Related Products

Background:

In 2017, the Council adopted a new strategic plan and priorities for the years 2018 - 2020. Two of the six strategic priorities adopted by the Council were "Safe, Secure, Stable Community" and "Resident Economic Stability." The issue of "the use of tobacco by youth" relate to both City strategic priorities.

On Monday, May 10, 2018, the Brooklyn Youth Council and the Hennepin County Public Health Department presented the City Council with a report and recommendations regarding the issue of the use of tobacco by youth in Brooklyn Center.

On Monday, August 27, 2018, the City Council heard a presentation from staff regarding options to address the use of tobacco by youth in the City of Brooklyn Center.

Staff presented 9 options to the Council of which 6 of the options were originally provided by the Brooklyn Youth Council and the subsequent 3 options were added by staff. Council provided direction on each option. The options presented and direction provided by the Council were as follows:

Options in Response to Brooklyn Youth Council:

1. Restrict the sales of flavored tobacco products to tobacco shops that restrict minors

Council's direction – No consensus, but consensus of restricting the sale of all electronic cigarettes and vaping products to adult tobacco shops

2. Increase the cost of tobacco products

Council's direction – No consensus

3. Restrict the proximity of new tobacco retailers to within 1,000 ft. of schools, parks community centers, and libraries

Council's direction – No consensus

4. Reduce the number of tobacco retailers from 21 to 15 retail stores

Council's direction - Consensus

5. Raise the minimum legal sale of tobacco related products age limit from 18 to 21 years of age.

Council's direction - Consensus

6. Increase tobacco retail compliance requirements and penalties for violation

Council's direction - No consensus on additional compliance checks, but consensus on retail training of staff, and increase application and penalty fees

Additional options developed by staff:

7. Partner with the schools in Brooklyn Center, Hennepin County, and the Brooklyn Youth Council to develop and fund a program to address peer pressure and stress

Council's direction – Consensus, bring back with detail plan prior to funding a program

8. Establish continued city/local research and benchmarking of for behavior trends and changes of behavior of the use of tobacco by youth in Brooklyn Center

Council's direction – Consensus, with the caveat that staff bring back with detail plan prior to funding a program

9. Partner with other cities to seek statewide legislation to raise the age limit of the sale of tobacco related products from 18 to 21 years age

Council's direction - Consensus

Based upon the direction set forth by the Council staff drafted an amendment City Ordinance 2018-14, Chapter 23, Tobacco and Tobacco Related Products, which was presented in October, 2018.

On Monday, October 8, 2018 the council approved the first reading of the amended ordinance. If adopted tonight, a summary of this ordinance will be published November 22, 2018, and would be effective January 1, 2019.

Strategic Priorities and Values:

Safe, Secure, Stable Community

ATTACHMENTS:

Description	Upload Date	Type
Amended Ordinance	11/5/2018	Cover Memo
PowerPoint Presentation	11/5/2018	Cover Memo

REVIEWERS:

Department	Reviewer	Action	Date
Administration	Answerer	Approved	11/5/2018 - 3:18 PM
Administration	Boganey, Curt	Approved	11/6/2018 - 3:39 PM

EXCERPT FROM NOVEMBER 13, 2018 REGULAR SESSION

8a. ORDINANCE 2018-14, AMENDMENT TO CITY ORDINANCE NO. 2018-14, CHAPTER 23, TOBACCO AND TOBACCO RELATED PRODUCTS

City Manager Curt Boganey stated this is the second reading of a proposed Ordinance amendment that would change the age at which it is legal to purchase tobacco-related products in Brooklyn Center. He invited Police Chief Gannon to review this agenda item.

Police Chief Gannon stated the City of Brooklyn Center has engaged in the "T-21" movement, an initiative to raise the legal age for the purchase of tobacco-related products to 21 years old. He added this is the second hearing of the Ordinance amendment. He noted City Staff recommends approval of the second public hearing and adoption of the Ordinance amendment.

Police Chief Gannon stated there has been City Council consensus on some aspects of the proposed restrictions. He added changes to the current Ordinance include clarification of terms, including the definition "covered product"; maximum number of licenses within the City to sell tobacco-related products limited to 15; and clarification of administrative penalties. He noted City Staff will work with retail partners to estimate costs and develop a work plan.

Councilmember Graves asked whether the Ordinance still contains language that would prevent detrimental criminal response for a youth who is caught buying or using tobacco-related products. City Attorney Gilchrist stated that section was deleted from the last page of the Ordinance.

Councilmember Ryan moved and Councilmember Lawrence-Anderson seconded to open the Public Hearing at 7:10 p.m.

Motion passed unanimously.

Jess Nolan, 5827 Camden Avenue N, stated she and her husband have lived in their home for 8 years and are proud to be a part of the vibrant community of Brooklyn Center. She expressed her support of the changes to the City's tobacco ordinance. She added she cares deeply about preventing youth tobacco use. She noted the ordinance will save lives and reduce health care costs. She urged the City Council to give the next generation the support they need to lead tobacco-free lives. She thanked the City Council for sending a message about the importance of the youth in our community.

Sylvia Amos, 1404 14th Avenue N, representing Stair Step Foundation, a faith-based organization that serves the residents of Brooklyn Center, stated she wants to voice her support for raising the age to purchase tobacco to 21, and keeping tobacco out of the hands of young people. She added the proposed ordinance will help limit children's access to flavored tobacco products that are very popular.

Gretchen Garman, 2056 Baird Avenue, St. Paul, representing Hennepin County Public Health, thanked the City Council for supporting this initiative. She stated the City of Brooklyn Center should be commended for attempting to find ways to limit youth access to tobacco. She added the City Council also recently reviewed a comprehensive study of flavored tobacco. She urged the Council to revisit that issue. She thanked the City Council for their leadership in taking a stand on this important public health issue.

Emily Anderson, 4136 Columbus Avenue South, representing the Association for Nonsmokers-Minnesota, stated many local communities have voted to increase the purchase age to 21, and the T-21 movement puts the future of Minnesota's children over the tobacco industry. She added there is still work to be done at the State level as the tobacco industry has a lot of influence there, but cities should not wait for the State Legislature to act. She noted Brooklyn Center will become one of the leaders of the T-21 movement in Minnesota if this Ordinance is passed.

KheMee Yang, 7224 Major Avenue North, stated she has seen many kids use flavored e-cigarettes at their high school. She added the products are made with beautiful colors, cute shapes and sweet flavors that appeal to kids. She showed a hoodie that had a built-in hidden vaping mechanism.

Yong Cha Yang, 7224 Major Avenue North, stated students do not realize the harm and damage these products can cause to their health. She thanked the City Council for considering the Ordinance and taking action against tobacco companies that target kids. She expressed her pride in living in a community that takes care of its young people.

Amber Kerrigan, Twin Cities Medical Clinic, 14856 Evergreen Avenue, Andover, spoke on behalf of Dr. Nathan Chomilo of Brookdale Park Nicollet Clinic. She stated Dr. Chomilo, a pediatrician practicing in Brooklyn Center, was unable to attend tonight's meeting. She added Dr. Chomilo is proud that Brooklyn Center is considering an ordinance restricting sale of tobacco products to people under 21 years of age. She noted tobacco companies target communities at disproportionate rates, making it easier to start and harder to quit, and an ever-growing number of communities are increasing momentum toward a State-wide ban. She expressed Dr. Chomilo's appreciation of Brooklyn Center as a city with a history of being a leader in movement to end youth tobacco use.

Asafa Draga, 3008 Arliss Road, expressed his support of restricting sales of e-cigarettes to minors, as people can get addicted at a young age when they can obtain tobacco products from friends. He stressed the importance of doing this for the next generation, to help prevent children from ever getting started with the deadly habit of smoking in the first place.

Councilmember Ryan moved and Councilmember Butler seconded to close the Public Hearing at 7:30 p.m.

Motion passed unanimously.

Councilmember Lawrence-Anderson stated she is very proud of what the City Council's accomplishments in 2014. She added it is a personal issue for her as she lost her father at the age of 60, who died of smoking-related causes, and her mother is currently dealing with lung cancer. She thanked all the residents and supporters of the T-21 initiative who spoke during the public hearing.

Councilmember Ryan expressed his agreement with Councilmember Lawrence-Anderson's comments. He added it is a personal issue for him as well, as his father dealt with smoking-related illnesses for years and suffered the adverse effects of smoking on his health. He expressed disappointment that the City Council could not agree to raise the price of tobacco products. He stated restricting access to vaping devices is a critical feature, but he hopes other provisions can be revisited and consensus reached.

Mayor Willson stated he has heard from many organizations that care for people and understand that tobacco addiction is a very real and serious problem. He added the Federal Drug Administration (FDA) has been looking into vaping products and hopefully will take some regulatory action of the tobacco industry, which exploits citizens with their campaigns and lobbying efforts. He noted, in the past 12 years, there has only been one tobacco lobbyist who came to Brooklyn Center.

Mayor Willson stated he was a smoker for over 30 years and has been a non-smoker for the same amount of time. He added, when he was a smoker, he and his parents did not know the effects of tobacco and its addictive properties. He expressed his support of the Ordinance.

Councilmember Graves expressed her support of the T-21 initiative, which received impetus from members of the Youth Council. She stated this Ordinance is an important step toward reducing access to tobacco products.

Councilmember Graves moved and Councilmember Butler seconded to approve the second reading and adopt CITY ORDINANCE NO. 2018-14 Amending City Ordinance No. 2018-14, Chapter 23, Tobacco and Tobacco Related Products

Mayor Willson stated he hopes the Mayor-Elect and City Council will review and expand the Ordinance in the coming years.

Motion passed unanimously.

From: Ginny McIntosh <gmcintosh@ci.brooklyn-center.mn.us>
Sent: Wednesday, August 7, 2019 1:43 PM
To: Gilchrist, Troy J. <TGilchrist@Kennedy-Graven.com>
Cc: Dan Grinsteinner <dgrinsteinner@ci.brooklyn-center.mn.us>; Barbara Suciu <bsuciu@ci.brooklyn-center.mn.us>; Brett Angell <bangell@ci.brooklyn-center.mn.us>
Subject: **Input Requested**: Hookah Licensing for Restaurant/Bar Establishment (BR291-16)
Importance: High

Hi Troy,

It looks like it's time to circle back on hookahs and licensing! Barb (City Clerk) spoke to a local business owner the other day (Simone, Jambo Africa), who noted that there was another local business owner supposedly allowing hookah to be smoked on an outdoor patio at their restaurant (Jammin' Wings). She also said TopGolf was allowing hookah as well—I can't see this being part of their particular business model, but this is what was said. She was upset because the City had taken the position that she could not have hookah at her own restaurant.

However it came to be, Jammin' Wings is currently in possession of a tobacco license for their restaurant. The property, including the adjacent Country Inn & Suites, is zoned PUD/I1, and in looking at the Zoning Ordinance, the I-1 District does not allow for "tobacco shops," as some other districts do. Considering you need to purchase the tobacco for hookah, I would likely consider this to be a "tobacco shop use." Now, looking at the actual PUD, it looks like the PUD was approved back in 1996 for the establishment of a hotel and two restaurants. The second restaurant was never constructed, but the other one was, initially as a TGI Fridays. Today, it is Jammin' Wings. I have included a copy of the CC Resolution, but it doesn't offer much in the way of details—I'm not even quite sure why the property retained an I-1 District designation as hotels and restaurants aren't listed under the I-1.

From: Gilchrist, Troy J.
To: [Ginny McIntosh](#)
Cc: [Dan Grinsteiner](#); [Barbara Suci](#); [Brett Angell](#)
Subject: RE: **Input Requested**: Hookah Licensing for Restaurant/Bar Establishment (BR291-16)
Date: Thursday, August 8, 2019 11:35:12 AM
Attachments: [image009.png](#)

Hello Ginny,

I reviewed this issue again, including seeing if the statutes or County Ordinance 24 have changed. While there were amendments to the clean indoor air act ([https://www.revisor.mn.gov/laws/2019/1/9/%5E\(%3FPlaws.11.24.0%5B0-9%5C.a-zA-Z%5Cs/%5C/%5D+\)%5D%5E\(%3FPlaws.11.24.0\)](https://www.revisor.mn.gov/laws/2019/1/9/%5E(%3FPlaws.11.24.0%5B0-9%5C.a-zA-Z%5Cs/%5C/%5D+)%5D%5E(%3FPlaws.11.24.0))), the legislature did not change the limitation I identified last year of only applying to indoor areas. I did not see any change in the county ordinance in this regard either. Finally, the revised tobacco ordinance the city adopted also did not address this issue. I thought that perhaps we might have an argument on the e-liquid provisions, but in watching a video on how these things work it appears they use a type of leaf tobacco product rather than a juice.

We can certainly discuss this further, but my initial thoughts are:

- The establishment has a license to sell tobacco.
- There are no state or local prohibitions against smoking on the patio of a restaurant.
 - I could find no distance prohibition related to a hotel.
 - There is perhaps an argument that Section 23-106 prohibits smoking at the restaurant as it is a licensed premises. However, the language uses the word "in" a licensed premises. It would be difficult to argue a patio is in the establishment. Plus, this would likely create issues for any other restaurant that holds a tobacco license (if there are any others).

Section 23-106. SMOKING PROHIBITED. Smoking shall not be permitted in, and no person shall smoke in, any licensed premises. Smoking in any licensed premises for the purpose of sampling a covered product is prohibited under this Section.

- So, a person can lawfully buy tobacco from the establishment and smoke on its patio.
- The question becomes whether the fact the customers are presumably paying to rent a hookah to smoke the tobacco, rather than just buying and smoking cigarettes, somehow changes the equation.
 - I do not see that it does from the perspective of the clean indoor air act or the local ordinances.
 - The potential difference is if the rental of hookahs is somehow outside the scope of the

business allowed to occur on the property.

- The tobacco licensing section does not define or separately regulate tobacco shops. It instead limits the sale of electronic delivery devices and e-liquid to “retail establishments” that derive at least 90% of their revenue from selling tobacco (Section 23-105(3)).
 - Chapter 35 does, as you point out, refer to “tobacco shops”, but does not define that term. However, I would not be inclined to call the restaurant a tobacco shop just because it sells tobacco and rents hookah. If that were the case, then every gas station with a tobacco license becomes a tobacco shop.
 - I think the issue becomes whether the rental of hookahs is sufficiently outside the scope of a restaurant to consider it a separate use that somehow needs a separate permit. Or, in this case, whether that use falls outside the scope of the PUD. I do not see reference to a PUD agreement in the resolution. There is reference to a development agreement, but I suspect that if there is one, it does not address the on-going use of the property.
- The bottom line is that I think it will be difficult to carve this use of the restaurant out and say it is not allowed. How would we distinguish it from a restaurant that sells pipes and pipe tobacco? Additionally, it seems like saying this cannot occur would potentially create issues for other tobacco licensees. We could look at amending Chapter 35 to include a definition for tobacco shop that includes the use of hookahs on the property of the licensee.

Again, just my initial thoughts. I need to run to meetings that will extend into late this evening. However, I will be driving after 3:00 if you would like to call, and will also be in the car likely from 1:00 to 5:00 on Friday returning from my meetings. It is best if you call my cell (612-220-5723).

Thanks.

Troy J. Gilchrist | Attorney at Law
Kennedy & Graven, Chartered
Direct: 612.337.9214
tgilchrist@kennedy-graven.com



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From: Curt Boganey

Sent: Thursday, August 8, 2019 5:02 PM

To: Ginny McIntosh; Meg Beekman

Cc: Barbara Suci; Gilchrist, Troy J.

Subject: RE: **Input Requested**: Hookah Licensing for Restaurant/Bar Establishment (BR291-16)

Hello Ginny,

Thank you for your response. I have two questions.

Back in June of 2018, was Simone advised that her request to have a patio for smoking Hookah outside her business, would not or could not be approved?

From: Ginny McIntosh <gmcintosh@ci.brooklyn-center.mn.us>

Sent: Friday, August 9, 2019 10:28 AM

To: Curt Boganey <cboganey@ci.brooklyn-center.mn.us>; Meg Beekman <mbeekman@ci.brooklyn-center.mn.us>

Cc: Barbara Suci <bsuci@ci.brooklyn-center.mn.us>; Gilchrist, Troy J. <TGilchrist@Kennedy-Graven.com>; Dan Grinstein <dgrinstein@ci.brooklyn-center.mn.us>

Subject: RE: **Input Requested**: Hookah Licensing for Restaurant/Bar Establishment (BR291-16)

Hi Curt,

Just as a note, my conversations with Simone regarding the use of hookah were all verbal and the information contained below is all based off what Dan Grinstein and I can recall from our conversations with her. I have no emails directly from her regarding this particular use as she typically is one to physically come to City Hall for any questions she has.

Back in June 2018, Simone stopped by the counter with a picture of what appeared to be a covered structure and asked if she could have an outdoor hookah lounge on the back of her building. I was unaware of what Minnesota regulated as far as hookah, so I said I would look into it and get back to her.

In the meantime, I noted my concerns regarding the location of the proposed outdoor hookah lounge, as it is tucked back and not really visible to anyone utilizing the drive aisle (which is one way) along the back of the building, and Simone and other restaurant staff would not have any visibility of customers back there. Additionally, I had concerns as to the location as in order to access this area, you would need to walk from the restaurant area, through a door and into a proposed conference room (that to my knowledge is being used for storage), and out another door. The location has no grade separation from the parking lot area, which means cars could potentially back up towards the lounge area, and this area is already tight, because the drive aisle only meets the minimum 20-foot fire access lane width requirements.

Per my conversations with Dan Grinstein, we realize the Minnesota Clean Indoor Air Act covers indoor smoking specifically; however, there is a requirement in an FAQ sheet he has, that addresses "smoking allowances in sheltered areas located some distance away from a building." The FAQ notes that, "If it is your intention to provide shelter for smokers that complies with the new law, the structure must not meet the definition of an indoor area—it must, therefore, be an outdoor space. It can have a roof and floor, but the wall space (vertical plans of the perimeter) must be greater than 50% open or consist of standard window screen material. Actual windows (open or closed) are considered walls." Based on the covered structure she had an interest in using, and depending on the location (e.g., backed up to a building wall), we had concerns whether it would meet that requirement.

The structure she had an interest in would need to meet minimum Fire Code requirements for tent/membrane type structures (e.g., minimum flammability standards, away from combustibles, such as vehicles or heaters), and would need to be anchored to minimum wind load requirements. These types of structures are only permitted to be in place no more than 180 days per year, which should be sufficient given Minnesota weather. Her tent structure would also need to be a minimum of 20 feet away from parked vehicles and/or the property line. The space she proposed would only allow for approximately 11-12 feet of width for a lounge area given the aforementioned requirements.

From my recollection, Simone never came back to discuss the site plans after my discussion with her, and my sense was that the issues we outlined with her regarding the proposed lounge location and minimum requirements were more than she wanted to deal with at that time, particularly as she was still sorting out other issues regarding her business (e.g., SAC and multiple changes to her interior layout, ADA-compliant stage, parking lot striping).

Months later (just after T-21 was passed), a gentleman showed up at the counter and expressed interest in having a hookah lounge at Simone's other location (in Shingle Creek Center). To my knowledge, she still has a lease for that space. From what I recall, he specifically wanted an *indoor* hookah lounge. At that point, I referenced Troy's past email, Chapter 23 of our City Code (*General Licensing*), and the new T-21 Ordinance, which restricts the number of available tobacco licenses. He was very persistent, even after I told him that we were capped on the number of available tobacco licenses, and the fact that indoor smoking would not be permitted. I told him that, with regards to having a hookah lounge in general, he could always go to open forum (at City Council) to state his request to allow for more tobacco licenses; however, as the amendments to the ordinance had just gone through, I wasn't sure how City Council would take the request.

After the gentleman left, Simone never followed up with me, other than to apply for and receive issuance of a Special Use Permit for live entertainment at her restaurant, which took place in October of 2018. This is where things were left until now.

-Ginny

Ginny McIntosh | City Planner and Zoning Administrator
City of Brooklyn Center

6301 Shingle Creek Parkway | Brooklyn Center, MN 55430-2199

www.cityofbrooklyncenter.org | 763.569.3319 | gmcintosh@ci.brooklyn-center.mn.us



Barbara Suci

From: Curt Boganey
Sent: Friday, August 9, 2019 11:16 AM
To: Ginny McIntosh; Meg Beekman
Cc: Barbara Suci; Gilchrist, Troy J.; Dan Grinsteiner
Subject: RE: **Input Requested**: Hookah Licensing for Restaurant/Bar Establishment (BR291-16)

Thank you Ginny. This response is most helpful.

Cornelius Lycurtis Boganey
City of Brooklyn Center
City Manager
763-569-3303

From: Simone Acolatse <simoneacolatse@yahoo.com>
Sent: Thursday, August 8, 2019 9:08 AM
To: Curt Boganey <cboganey@ci.brooklyn-center.mn.us>
Subject: Fw: Hookah

----- Forwarded Message -----

From: Aaron D Arvold <Aaron.Arvoid@hennepin.us>
To: Simone Acolatse <simoneacolatse@yahoo.com>
Sent: Thursday, June 7, 2018, 12:11:23 PM CDT
Subject: Hookah



You can have a patio for smoking Hookah outside as long as it is not covered or enclosed (please send pictures). Make sure the city is okay with the distance from the building before proceeding.

Please also email me specification sheets for the portable ice bin.

Disclaimer: If you are not the intended recipient of this message, please immediately notify the sender of the transmission error and then promptly delete this message from your computer system.

MEMORANDUM - COUNCIL WORK SESSION

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Tim Gannon Chief of Police

SUBJECT: Civilian Review Board

Recommendation:

- City Council to provide direction to staff after receiving information and background material.

Background:

Earlier in 2020, the City Council advised police staff to research and evaluate local and national models for a civilian review board. Staff has prepared a PowerPoint presentation which will be presented by Commander Gabler, who oversees the community services unit within the police department. The information gathered includes both local and national models for such boards. It will also outline the roles and responsibilities of the various styles of review. Also included are links and references to the National Association for Civilian Oversight of Law Enforcement.

Policy Issues:

Does the City Council desire to see a Civilian Review Board be implemented in Brooklyn Center? If so what model and what purpose is that Board to be tasked with?

Strategic Priorities and Values:

Inclusive Community Engagement, Safe, Secure, Stable Community

ATTACHMENTS:

Description	Upload Date	Type
Powerpoint	11/18/2020	Presentation
Additional material	11/16/2020	Cover Memo

Civilian Review Boards Police Department



Brooklyn Center City Council Meeting, November 23, 2020
Richard Gabler, Commander

Background

- There are approximately 18,000 law enforcement agencies in the United States.
- As of 2019 there were estimated to be about 150- 200 Civilian Review Boards in the United States.
- There are approximately 422 law enforcement agencies in Minnesota.
- Only three Civilian Review Boards were found in Minnesota.
- National Association for Civilian Oversight of Law Enforcement (NACOLE) is the leading professional organization identifying best practices and resources for review boards.



Goals of Review Boards

1. To improve public trust in law enforcement
2. Ensuring public input in the police complaint process
3. Promoting fair and thorough investigations
4. Increased transparency in the complaint process
5. Deterring police misconduct

(Office of Justice Programs, 2016)



Types of Review Boards

1. Investigation Focused
2. Review Focused
3. Auditor/Monitor Focused



Investigation Focused Review Board Model

- Conducts independent investigations of police complaints.
 - Investigations may parallel or replace Internal Affairs (IA) investigations.
- Investigations typically completed by civilian investigators.
- Organization typically operates separately of Law Enforcement.

Examples: San Francisco, CA; Washington, D.C.; and San Diego County, CA



Review Focused Review Board Model

- Generally made up of a citizen-volunteer review board and often include police officers.
- Typically reviews completed IA and complaint investigations.
- Usually makes complaint finding recommendations to Chief.
- May receive complaints from the community.
- This is the most common type of review board.

Examples: St Paul, MN; Indianapolis, IN; and Albany, NY



Auditor/Monitor Focused Review Board Model

- May participate in the IA investigation process.
- May evaluate and review police policies and practices and make recommendations for change.
- May also evaluate for larger patterns of misconduct.
- Members are typically well-trained in analytics and tend to be experts in policing.

Examples: San Jose, CA; Los Angeles, CA; and New Orleans, LA



Types of Review Boards

	Investigation Focused Agencies	Review Focused Agencies	Auditor/Monitor Agencies
Receive Complaints	Frequently	Frequently	Frequently
Decide How to Handle a Complaint	Frequently	Rarely	Sometimes
Review Police Investigations	Sometimes	Frequently	Frequently
Conducts Independent Investigations	Frequently	Rarely	Sometimes



Types of Review Boards

	Investigation Focused Agencies	Review Focused Agencies	Auditor/Monitor Agencies
Recommend Findings	Frequently	Frequently	Frequently
Recommend Discipline	Sometimes	Sometimes	Sometimes
Have Civilians on a Board	Frequently	Frequently	Frequently
Have Paid Professional Staff	Frequently	Sometimes	Frequently
Costs	Most Expensive	Least Expensive	2 nd Most Expensive



City of St. Paul

Term:	3-Year terms; no members can serve more than two terms in lifetime.
Other Duties:	Advise on department policy and prepare an annual report.
Budget:	About \$16,000 (2019) and members receive \$50 per meeting attended.
Meeting Frequency:	Minimum of quarterly and up to twice a month. Meetings are subject to open meeting law.



City of St. Paul

Agency Size:	629 Officers
Review Board Type:	Review Focused
Authority:	Ordinance; Ord. No. 102
Dept. Responsibility:	Human Rights Department (full-time Review Coordinator)
Final Discipline Authority:	Chief of Police
Board Size:	9 Community Members. Officers were removed from the panel in late 2017/early 2018



St. Paul Complaint Process

Police Civilian Internal Affairs Review Board (PCIARC)

- Complaints can be received through the Police Department or the Human Rights Department.
- Initial complaints are reviewed by a Senior Commander and assessed for completeness and a policy violation.
- Investigations are completed by St. Paul Internal Affairs.



St. Paul Complaint Process

Police Civilian Internal Affairs Review Board (PCIARC)

- Review Board reviews all IA investigations involving external complaints regardless of nature and internal complaints related to:
 - Excessive Use of Force
 - Inappropriate Use of Firearms
 - Discrimination
 - Racial Profiling
 - Improper Conduct/Procedures
 - Poor Public Relations
 - Any other complaints referred to the group by Human Right Department, Mayor or Chief of Police



St. Paul Complaint Process

Police Civilian Internal Affairs Review Board (PCIARC)

- Review Board reviews the investigative file to include body-worn video and makes a recommendation to the Chief for complaint disposition and discipline, if any. Recommendation then forwarded to the Chief of Police. Board does not receive the IA Investigators recommendation. If the board sustains a complaint they are provided access to the officer's file to help inform a discipline decision.
- Complainant may offer testimony during the hearing. If this occurs the officer(s) may also offer testify.
- In 2019 the Chief of Police modified the PCIARC's discipline recommendation 7 times.



St. Paul Complaint Process

Police Civilian Internal Affairs Review Board (PCIARC)

- Possible Dispositions include
 - Unfounded-Allegation is false or not factual
 - Exonerated- Incident complained of occurred, but was lawful and proper
 - Not Sustained- Insufficient evidence to either prove or disprove the allegation
 - Sustained- The allegation is supported by sufficient evidence
 - Policy Failure- The allegation is factual. The officer followed proper department procedures, which have been proven to be faulty.
- Recommended discipline may include:
 - Oral Reprimand
 - Retraining
 - Written Reprimand
 - Suspension- not more than 30 days
 - Demotion



St. Paul PICARC Board Selection

Police Civilian Internal Affairs Review Board (PCIARC)

- Board Member Selection
 - Made by the Mayor based off recommendations from the Human Rights Department.
- Training (prior to assuming board duties):
 - Topics related to police work
 - Investigation
 - Relevant Law
 - Cultural Competency
 - Racial Equity
 - Implicit Bias
 - Participate in Ride Along with Patrol Officers



St. Paul PICARC Board Selection

Police Civilian Internal Affairs Review Board (PCIARC)

- Failure to complete the required training, data practices violation or missing more than three trainings will result in removal from the Board.



City of Minneapolis

Agency Size:	Approx. 800
Review Board Type:	Investigative and Review-focused
Authority:	Ordinance Ord. No. 172
Dept. Responsibility:	Department of Civil Rights
Final Discipline Authority:	Chief of Police
Board Size:	Minimum of seven members; four appointed by Council, and three appointed by mayor. Individual review panels consist of two citizen and two officers at Commander level. Panels rotate members based off meeting availability.



City of Minneapolis

Term:	2-4 years
Other Duties:	Prepares Annual Report
Budget:	Members receive \$50 per meeting, OPCR budget is \$1,036,000. OPCR consists of 5-6 full-time staff.
Meeting Frequency:	Minimum once per month and may meet more as necessary.



Minneapolis Complaint Process

Office of Police Conduct Review (OPCR)

- Complaints may be made through the OPCR or Minneapolis PD.
- Complaints internal and external are then forwarded to MPD IA.
- A preliminary investigation is conducted. This primarily consists of collecting data such as body-worn camera, CAD data etc....
- Preliminary investigation is forwarded to IA Commander and Director of OPCR (civilian) for review.
- Complaints may be either dismissed, result in non-disciplinary coaching, mediation (rare) or to an Investigation.



Minneapolis Complaint Process

Office of Police Conduct Review (OPCR)

- If the complaint is investigated then the complaint may be investigated by sworn MPD investigators or non-sworn OPCR investigators.
- OPCR will not investigate:
 - Complaints involving an officer(s) and/or civilian staff related protected class discrimination (such as harassment based on gender, race, sexuality etc....).
 - Complaints that are more than 270 days old or more.
 - Complaints only involving civilian Minneapolis Staff.
- Complaints are decided to either go to a civilian or sworn investigator based on background experience and any subject matter expertise the investigator possesses.



Minneapolis Complaint Process

Office of Police Conduct Review (OPCR)

- After an investigation is completed the following can occur:
 - Complaint may be dismissed, result in mediation or sent to the Precinct Commander for Coaching or;
 - The case may go to the OPCR review panel if the complaint involves:
 - Use of excessive force
 - Inappropriate language or attitude
 - Harassment
 - Discrimination of police services based on color, creed, religion
 - Theft
 - Failure to provide timely police protection
 - Retaliation
 - Criminal Misconduct (non-review for criminal charges)



Minneapolis Complaint Process

Office of Police Conduct Review (OPCR)

- Review panel determines merit or no merit on the complaint and forwards to the Office of the Chief of Police or the investigation may be sent back to IA for further investigation.
 - Merit- Recommendation indicating that a preponderance of the evidence supports an allegation in a complaint.
 - No Merit- Recommendation indicating that a preponderance of the evidence does not support an allegation in a complaint.
- Discipline recommendation is decided by police personnel usually at the Chief/Deputy Chief level.



Minneapolis Review Board

Board Member Selection

Seven members are appointed by the Council (4) and Mayor (3).

Training

Failure to complete the required training, by majority of City Council vote, incompetence, misconduct or neglect of duty will result in removal from the board.



Minneapolis Review Board

Training *Continued...*

- Attend annual training session arranged by Civil Rights Department
- Police Use of Force Training
- Data Practices Act
- Open Meeting Law
- Ethics and Conflict of interest
- Public Employee Labor Relations Act (PELRA)
- Complete portions on Minneapolis PD Citizen's Academy within two years of appointment.



City of St. Cloud

Agency Size:	111
Review Board Type:	Review-focused
Authority:	Ordinance; Ord. No. 260
Dept. Responsibility:	Police Department
Final Discipline Authority:	Chief of Police
Board Size:	9 (6 Citizens and 3 Officers)
Term:	Three years for both citizens and officers. No officer may serve more than two terms.



City of St. Cloud

Other Duties:	Annual Report
Budget:	Board members are not paid.
Meeting Frequency:	As Needed (Board met three times in 2019)



St. Cloud Complaint Process

- Civilian Review Board will review all external complaints and internal complaints related to:
 - Excessive Force
 - Inappropriate Use of Firearms
 - Discrimination
 - Other cases presented to the board at the discretion of the Chief of Police
 - The Board does not review internal complaints unless they meet the above categories.



St. Cloud Complaint Process

Complaints are filed with the police department.

- A preliminary investigation is done and then given to the Chief of Police.
- If the Chief determines more information is needed then an IA is completed.
- If the Chief determines no further information is needed then the complaint and preliminary findings go to the review board.
- The board then may concur with the Chief or send back the complaint for further investigation.



St. Cloud Complaint Process

- Review board does not recommend discipline. They only propose a complaint finding.
- Review board does not have access to the officer's file.
- In the past 5 years the review board and Chief of Police have agreed on all complaint findings.



St. Cloud Complaint Process

Board Member Selection

- Citizen members are appointed by the Mayor and approved by the Council. All officers shall be recommended to the Mayor for appointment. Two members must represent Law Enforcement Labor Services (LELS). At least one officer and one supervisor.
- Chief appoints a review coordinator to prep for meetings.



St. Cloud Complaint Process

Training (prior to assuming board duties)

- Topics related to police work
- Investigations
- Relevant Law
- Cultural Diversity
- Officer Ride Along



St. Cloud Complaint Process

Training Continued...

Failure to complete necessary training, violating data practices or non-attendance of three or more meetings may cause termination of appointment as recommended by the Chief of Police and concurred by the mayor.



Department Comparison

	St. Paul	Minneapolis	St. Cloud	Brooklyn Center
Agency Size	629 Officers	Est. 800	111	49
Ordinance	Yes; Ord. No. 102	Yes; Ord. No. 172	Yes; Ord. No. 260	* None as of yet
Department of Responsibility	Human Rights	Civil Rights	Police Department	Police Department
Final Discipline Authority	Chief of Police	Chief of Police	Chief of Police	Chief of Police
Size of Board	9	7 (2 Civilians and 2 Officers)	9 (3 Officers)	7 (2 officers and selection by each council member)
Term Lengths	3-Year Terms or 2 Lifetime Terms	2-4 Years	3 Years	TBD



Department Comparison

Continued

	St. Paul	Minneapolis	St. Cloud	Brooklyn Center
Frequency of Meetings	Quarterly (Min. or Twice per Month (Max.))	Once per Month or More as Necessary	As Needed	As needed
Training Required	Yes	Yes	Yes	Yes
Other Duties	Advise on Policy and Annual Report	Prepares Annual Report	Annual Report	Annual Report (other TBD)
Budget	\$16,000 / \$50 per member per meeting	\$50 per meeting OPCR \$1,036,000	Unpaid	TBD
Type of Board	Review-focused	Investigative and Review- focused	Review-focused	Review-focused



Notable Findings

1. St. Cloud and St. Paul both require the Chief and review board chair to meet within 5 days if the Chief disagrees with the boards complaint findings. Goal of this is an attempt to understand each others concerns.
2. Approximate national citizen complaint sustain rate is about 10%. No research was found to conclude that review boards sustain complaints at a higher rate than departments do. (*Walker*)
3. The Minnesota Police Officers Discipline Procedures Act (PODPA, MN. Stat. 626.89 Subd. 17) prohibits review boards from making a finding of fact on a complaint or imposing a discipline. Review boards recommendations are not binding.

Continued...



Notable Findings

4. The complaints St. Cloud, Minneapolis and St Paul's review board look at appear consistent with what other national review boards handle.
 - If a Brooklyn Center review board were to have the same criteria. 23 complaints would have been reviewed in 5.4 years or just over 4 complaints a year (External complaints only).
 - If you were to include internal complaints the board would have reviewed 27 complaints over 5.4 years or about 5 complaints a year.
5. Actual case discussions in Minneapolis, St. Paul and St. Cloud are closed to the public (Mn. Stat. 13D.05 Subd. 2).



Board Member Selection Criteria

- Must be willing to be impartial to ensure fairness.
- Communicate effectively with others.
- Make group decisions.
- Maintain confidentiality and be trusted with sensitive data.
- Commit time to attend meetings, attend trainings and review documentation.
- No minimum education needed.
- Resident of city.
- Complete background check (necessary in order to review sensitive CJIS data).



Board Member Selection Criteria

- At least 18 years of age.
- Must be willing to handle public scrutiny when making decisions.
- Complete application and potential interview or supplemental questions.

(St Paul PCIARC, Mpls)



Anticipated Costs

Staff Time

- All cities have a board coordinator. In Minneapolis and St. Paul this person is outside the police department and prepares meetings, handles administrative tasks during meetings, prepares recommendations and finding letters and assists with outreach and the annual report. In St. Cloud this appears to be a collateral duty for a department employee.
- Officer time to attend review board meetings (Complaint investigator or an officer speaking on his/her behalf).
- Minneapolis and St. Paul pay their commissioners \$50 a meeting. Overall costs to be determined by amount of meetings and number of commissioners. St. Cloud does not pay commissioners.



Anticipated Costs

Training Costs

To be determined based on identified training criteria and training time.

Equipment

St. Paul provides commissioners with laptops two weeks prior to the meeting. All investigative material is pre-loaded onto the laptop for commissioner review prior to the meeting. This is more efficient than printing multiple copies of a file. Cost per computer is about \$1,000-1,500 (BC IT).



Additional Consideration

- Ordinance should be well defined to explain role of review board and what complaints they will review. This has been an issue in other cities.
- Given the low volume of complaints what other tasks would a review board perform?
 - Policy Recommendations (non-binding)?
 - Community Outreach?
 - Public reading of Annual Report and overview/explanation of complaint process?



Additional Consideration

- Trust is Paramount
 - Officers, even in a minority role, should be on the panel in order to ensure buy-in with this process. Without officers on the panel increased police-community relations and cross dialogue becomes difficult to achieve. (21st Century Policing)
- Current Brooklyn Center Policy requires all complaint investigations be completed within three months of the department becoming aware of the allegation. Extensions may be granted by the Chief of Police (Personnel Complaints, 1010.6.5).
 - Does the added step of a review board give a perception of a delay in accountability?
 - Does the delay in complaint resolution adversely impact complainant/officer satisfaction?



Resources

NACOLE Website

https://www.nacole.org/about_us

Recommended Training Criteria

https://www.nacole.org/recommended_training_for_board_and_commission_members



Resources

Review Board Agency Websites

- Albany, NY
<https://www.albanycprb.org/>
- Indianapolis, IN
<https://www.indy.gov/agency/citizens-police-complaint-office>
- Los Angeles, CA
<https://www.oig.lacity.org/>
- New Orleans, LA
<http://nolaipm.gov/main/?page=home>
- San Diego County, CA
<https://www.sandiegocounty.gov/clerb/>
- San Francisco, CA
<https://sfgov.org/dpa>
- San Jose, CA
<https://www.sanjoseca.gov/your-government/appointees/independent-police-auditor>
- St. Paul, MN
<https://www.stpaul.gov/departments/human-rights-equal-economic-opportunity/police-civilian-internal-affairs-review-3>
- Washington, D.C.
<https://policecomplaints.dc.gov/>



Resources

Ordinances

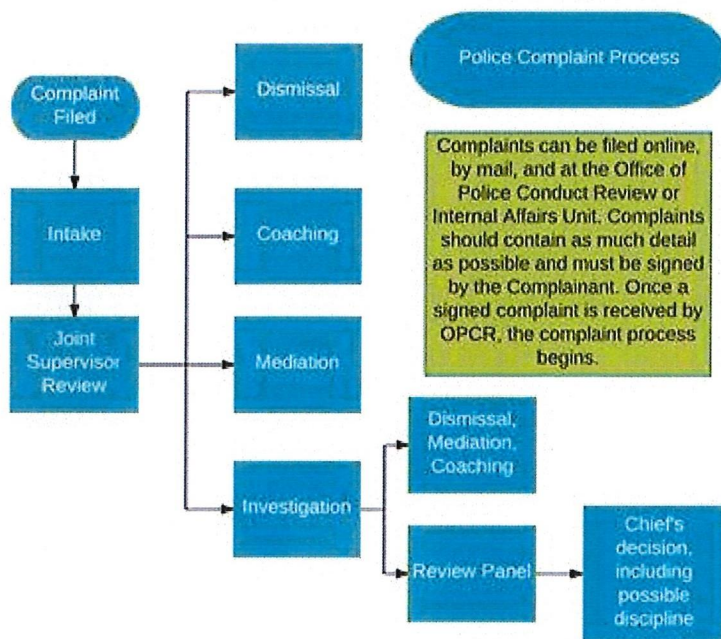
- St. Paul
https://library.municode.com/mn/st._paul/codes/code_of_ordinances?nodeId=PTIIIADCO_TITVCOCO_CH102POVIINAFRECO
- Minneapolis
http://minneapolis-mn.elaws.us/code/coor_title9_ch172
- St Cloud
<https://ci.stcloud.mn.us/DocumentCenter/View/367/260-St-Cloud-Police-Citizens-Review-Board?bidId=>

Statutes

- PELRA
<https://npelra.org/>
- PODPA
<https://www.revisor.mn.gov/statutes/cite/626.89>



Complaint Process



MEMORANDUM - COUNCIL WORK SESSION

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Cornelius L. Boganey, City Manager

SUBJECT: Tobacco Ordinance Follow Up

Recommendation:

- Staff seeks Council direction regarding a proposed amendment to the Tobacco Licensing Ordinance relating to a prohibition or restriction on the sale of all flavored tobacco products and/or the prohibition of tobacco coupons and price discounts and the establishment of minimum prices for cigarettes and chewing tobacco

Background:

On June 8, 2020, the Council received a presentation from Emily Anderson, Director of Policy for the Association for non smokers-MN, regarding to initiatives related to tobacco control in Brooklyn Center. The initiatives were:

1. Prohibit or restrict to adult-only shops the sale of ALL flavored tobacco products, including menthol tobacco.
2. Prohibit the redemption of tobacco coupons and price discounts and set a minimum price for standardized tobacco products (cigarettes and chewing tobacco)

At the meeting individual Councilmembers expressed varying degrees of support and concerns about the proposed ordinance amendments including the following;

- There was a request for further information related to the \$753 per household annual cost.
- Is there data that tracks results in cities that have taken these types of measures?
- A request for additional information on the issue around the flavored tobacco and the use of coupons
- What flavored products are currently banned in Brooklyn Center?
- Concerns regarding the financial impact on local businesses
- Data related to the impact of these prohibitions or price increases on specific communities not strictly state wide data.
- Concerns about how the proposed actions may inadvertently lead to an increase in smoking rather than a reduction
- How do we assure that the restrictions will lead to the intended results?
- There was an interest in revisiting the issue of cheap cigars pricing to determine if increasing these prices will be beneficial/effective.

Subsequent to the meeting Emily Anderson has provided the following additional information to answer as many questions as possible raised as concerns or questions of the Council. The exhibits are attached.

Healthy Lifestyle and Behavior Tables 46- 49 - This document describes Smoking Status by Communities within Hennepin County

Public Health Law Center, Point of Sale – This 25 page document presents a very comprehensive model ordinance produced by the Law Center regarding regulations that may be adopted in the State of Minnesota. This document includes sections on Sales of Flavored Products, Individual Low Cost Cigars and Product Discounts along with the policy basis for such regulations.

Price Discount FAQ - This document provides a response to many relevant questions including questions regarding, price discounting, the value of increased pricing, why coupon redemption should be prohibited, disparate effects on communities of color, low-income and other communities.

U.S. born African American Tobacco Pre-Survey Data Highlights - This 2016 survey produced by the African-American Leadership Forum and Hennepin County Public Health indicates indicate the appeal and impact of menthol tobacco specifically as it relates to African Americans in Minnesota.

U.S. born African American Menthol Tobacco Post Survey Data Highlights – This document provides results the indicate support among Minnesota African American Smokers for policies to restrict sale and availability of tobacco.

Death on a Discount: regulating Tobacco Pricing – This publication explains why and how cities may regulate Tobacco Product Coupons and Retail Promotions.

BYC – City of Brooklyn Center Tobacco Policy Recommendation – The report submitted to the City by BYC in 2018 outlines the findings and recommendations made to the City Council regarding the regulation of tobacco to benefit youth.

Since our meeting with the City Council the City of Edina has been sued after voting to ban the sale of flavored tobacco products. A copy of the article about the law suit is attached. It should also be noted the Cities of Golden Valley, Mendota Heights, Lilydale and Arden Hills have all passed the same kind of flavored tobacco prohibitions, with Arden Hills facing legal action.

As anticipated, the courts have affirmed the local flavored tobacco policies in district court. On August 31, 2020, the district court denied R.J. Reynolds’ motion for a preliminary injunction (to prevent Edina’s flavored tobacco regulation from going into effect) and granted the City of Edina’s motion to dismiss. This is a major win for public health in Minnesota and across the country. It should provide reassurance to other Minnesota communities considering or currently working on flavored tobacco regulation. Notably, the judge said in the Edina decision that “[t]he federal government has—through inaction [on menthol]—left countless matters to be regulated by state and local governments.”

R.J. Reynolds and the other industry plaintiffs did appeal the case to the 8th Circuit Court of Appeals on September 4, 2020. A decision from the appellate case may be anticipated by the end of this year or early next year, depending on the parties’ actions. The law is clear that flavored tobacco regulation is permissible under the law. We are confident the case law will continue to be upheld. The city of Arden Hills was also sued for its flavored tobacco regulation by the tobacco industry—a vape shop and gas station. That litigation involves arguments similar to the Edina case and a “kitchen sink” of state law claims. The decision from the district court out of the Edina decision, other relevant case law, and a lack of foundation should reassure communities that Arden Hills need not be a deterrent for continuing the work on flavored tobacco regulation.

A questions was asked if our current ordinance regulates the sale of flavored tobacco products. Our ordinance does not ban the sale of flavored tobacco products in Brooklyn Center. It does limit the sale of e-liquid products which includes flavors to Tobacco Shops as defined in the ordinance.

With regard to the request for more date regarding the \$753 per household tax burden, the impact on local retailers, youth access and use and preventing unintended consequences, Ms. Anderson has provided the following information.

\$753 Tax burden per household: Hennepin County Tobacco Profile, MN Dept of Health

Data sources: Campaign for Tobacco-free Kids: [Toll of Tobacco in Minnesota](#)

Smoking-Caused Monetary Costs in Minnesota*

Annual health care costs in Minnesota directly caused by smoking	\$2.51 billion
Medicaid costs caused by smoking in Minnesota	\$563.2 million
Residents' state & federal tax burden from smoking-caused government expenditures	\$767 per household
Smoking-caused productivity losses in Minnesota	\$1.54 billion

**Amounts do not include health costs caused by exposure to secondhand smoke, smoking-caused fires, smokeless tobacco use, or cigar and pipe smoking. Tobacco use also imposes additional costs such as workplace productivity losses and damage to property.*

Methods for Hennepin County Specific Data: State tax burden equals state residents' federal & state tax payments necessary to cover all state government tobacco-caused costs plus the residents' pro-rated share, based on state populations, of all federal tobacco-caused costs. This estimate was calculated at the state level, and thus, county estimates match the statewide figure. See Xu, X et al., "Annual Healthcare Spending Attributable to Cigarette Smoking: An Update," Am J Prev Med, 2014, with other state government tobacco costs taken to be 3% of all state smoking-caused health costs, as in CDC, "Medical Care Expenditures Attributable to Smoking—United States, 1993," MMWR 43(26):1-4, July 8, 1994. Cost data are based on 2009 dollars.

Impact of flavored tobacco restrictions: economics for local retailers, youth access and use, and preventing unintended consequences

Economic Impact for Retailers Data Sources and Avoiding Unintended Consequences:

1. [Institute for Global Tobacco Control. State of the Evidence: Flavored Tobacco Product Bans or Restrictions. January 2020.](#)

Economic research indicates that the impact of a ban on flavored tobacco products would be relatively narrow, for three reasons: 1. Most retailers selling flavored tobacco products do not rely on these products as their only or primary source of their revenue, 2. Consumers are likely to spend money originally intended for a banned tobacco product on other purchases, including tobacco products and other goods and services, and 3. Labor and other resources not used in the supply and sale of a banned product tend to be redirected to other uses.

Policies that include exemptions to particular flavors, such as menthol/mint, or to particular products, such as cigars, risk losing their effectiveness (e.g., youth e-cigarette users may switch to menthol flavor only) or risk funneling current users to exempted products (e.g., adult e-cigarette users may switch to cigars).

2. The Potential Impact of a Menthol Restriction on Convenience Stores , ANSR, April 2019. (attached)
National reports show that convenience stores make more money from prepared food, snacks and packaged beverages than tobacco. Purchasing these items is the primary reason customers shop at convenience stores. If Minnesota restricts menthol to adult-only tobacco shops, convenience stores would lose an estimated \$1,519 per store per month. In contrast, average monthly profits for convenience stores for non-tobacco items are: Salty snacks \$2,669, Candy \$2,662, Packaged beverages \$10,272. The estimated cost of a menthol restriction in Minnesota is small compared to the harmful effects of menthol tobacco.

Youth Access and Use Data Sources: [Flavored Tobacco Sales Restrictions: Promising Evidence For Reducing Youth Access And Tobacco Use, Campaign for Tobacco Free Kids, May 2020.](#)

“Because it is a relatively new strategy, data on the impact of flavored tobacco sale restrictions is still emerging. **However, the available data indicate that strong laws can be easily implemented and can help reduce youth access to and use of tobacco by removing from store shelves the products that are most attractive to youth and the products that youth use most often.** A 2020 Surgeon General report concluded that, “Prohibiting flavors, including menthol, in tobacco products can benefit public health by reducing initiation among young people and promoting cessation among adults.”¹ The above linked factsheets summarizes data on both retailer compliance and youth use rates from San Francisco, New York City, Providence, RI, Boston, MA, Minneapolis, Saint Paul and Duluth, and Ontario, Canada. **Together, these findings indicate that not only are retailers complying with the New York City ordinance, it is effectively reducing youth access to and use of these products.**

Policy Issues:

Are best interests of the residents served by the adoption of additional tobacco sale regulations?

Should additional regulations include:

1. Prohibition or restriction to adult-only shops the sale of All flavored tobacco products. including menthol tobacco
2. Prohibition on the redemption of tobacco coupons on price discounts and set a minimum price for standardized tobacco products

Strategic Priorities and Values:

Safe, Secure, Stable Community

ATTACHMENTS:

Description	Upload Date	Type
Exhibit 1	11/18/2020	Exhibit
Exhibit 2 6/8 Powerpoint	11/18/2020	Exhibit

DISCUSSION OF WORK SESSION AGENDA ITEMS AS TIME PERMITS

PRESENTATION BY EMILY ANDERSON, NON-SMOKERS MINNESOTA

Mr. Boganey introduced Emily Anderson, representing Non-Smokers Minnesota, a non-profit dedicated to tobacco use prevention and control.

Emily Anderson reviewed proposed policy initiatives that could help tackle the pervasive problem of tobacco use that continues in Minnesota despite years of work by advocates.

Ms. Anderson stated the cost for cigars was regulated by Minnesota in 2014 at \$2.10, and other communities followed. She added Brooklyn Center set the age to purchase tobacco at 21, and put a cap on the number of tobacco licenses in the community. She noted these efforts have made a difference, along with other restrictions, but the use of flavored products is still pervasive.

Ms. Anderson stated the federal government has acted to reduce the use of "Juul" products by temporarily banning the purchase of certain cartridges. She added users can still purchase vaping products, and many other areas of the tobacco market are not regulated. She noted the most effective policies will be those that tackle flavors and prices, and local government is able to restrict flavored products so they are less accessible and less affordable.

Ms. Anderson stated tobacco products that contain the chemical compound menthol are easier to get addicted to, and many young people are using menthol. She added menthol is used by African Americans more than any other ethnic group, and this has steadily increased in recent decades. She noted people who use menthol are less likely to be successful at quitting, and adult smokers have indicated they would quit smoking if they could not have menthol cigarettes.

Ms. Anderson stated the tobacco industry uses marketing strategies like coupons and in-store promotions to attract young tobacco users. She added the tobacco industry spends approximately \$8 billion on price discounting, deals, coupons and retailer specials. She noted coupons are a process that can be regulated by municipalities.

Ms. Anderson stated the cost of tobacco products could be increased, and Brooklyn Park raised the cost of cigars to \$2.10. He added that can also be done with other products.

Ms. Anderson stated cities can do something about menthol cigarettes and the price of tobacco to combat the coupons.

Ms. Anderson stated that while regulations have a positive public health benefit, there is also an effect on retailers. She added convenience stores could lose profits if these types of regulations go into effect. She noted, however, convenience stores make most of their money from prepared foods, snacks and beverages, while the majority of profits from tobacco sales goes back to the tobacco industry.

Ms. Anderson stated tobacco use costs our State approximately \$3 billion in health care costs each year, and every person in Minnesota is affected by tobacco costs. She added, in Hennepin County,

the average household pays \$753 annually in health care costs, while productivity and work issues double that amount. She stressed the importance of the cost/benefit analysis to the community, and the economic benefit to local businesses, as well as the tobacco industry.

Councilmember Ryan thanked Ms. Anderson for coming to speak to the City Council and for her hard work through her organization. He added the use of menthol cigarettes is a real problem that must be addressed.

Councilmember Graves requested clarification regarding the \$753 per household annual cost. Ms. Anderson stated that number relates to health care premiums that have increased due to tobacco-related illnesses and health care costs. She added she can share the data with the City Council.

Councilmember Graves asked whether there is any data that tracks results in cities that have taken these measures, and which specifically shows how whether businesses have lost revenue. She added she knows that the tobacco industry targets menthol products at the black community, and people have said they would quit if menthol was not available. She asked whether other cities that have passed legislation and do not allow sale of menthol products have done follow-up with smokers to see if they quit. She noted she is a smoker, and she is supportive of increasing prices. She asked whether Ms. Anderson's organization has had initiatives to help people quit smoking, or provide access to quit plans, or if their work is strictly at the policy level.

Ms. Anderson stated her organization does not offer cessation services. She added their outreach and policy work includes providing information about cessation programs and how to access those resources. She noted their goal is to hold the tobacco industry accountable for creating a public health problem through flavors, prices, and targeted advertising and coupons.

Ms. Anderson stated, in answer to Councilmember Grave's question Minneapolis and St. Paul have been collecting data on whether smokers have been affected by the legislative changes. She added the data is not yet available, but her organization is trying to track businesses with tobacco licenses. She noted store owners are reluctant to provide data to her organization, but the Councilmembers might have more luck with that.

ADJOURN STUDY SESSION TO INFORMAL OPEN FORUM WITH CITY COUNCIL

Mayor Elliott adjourned the Study Session to Informal Open Forum at 6:45 p.m.

RECONVENE STUDY SESSION

Mayor Elliott reconvened the Study Session at 6:46 p.m.

PRESENTATION BY EMILY ANDERSON, NON-SMOKERS MINNESOTA (continued)

Councilmember Ryan stated he would be interested in reviewing recommendations from Ms. Anderson's organization, specifically on flavored tobacco and the use of coupons. He added he would support regulation of those practices, with recommendations from City Staff about how to change the tobacco Ordinance.

Councilmember Butler stated she agrees with Councilmember Ryan's comments. She thanked Ms. Anderson for her presentation.

Mr. Boganey stated it would be helpful to determine whether there are any initiatives that the City Council is not interested in pursuing, or not particularly ready for.

Councilmember Graves asked what flavored products have been banned in Brooklyn Center. Mr. Boganey stated he did not have that information but would have to look at the record.

City Attorney Troy Gilchrist stated his recollection is that the Ordinance amendment was focused on vaping products and limited to tobacco-only stores. He added it was important to the City Council at the time to regulate flavors, but the consensus was to not address that due to regulations.

Councilmember Graves stated she is not convinced that there will not be a negative impact on corner stores and the people who live in Brooklyn Center, and she understands the dangers of smoking. She added she is interested in data related to specific communities, and not State statistics. She noted she would support looking at pricing and coupons, because it seems that will affect everyone. She added many of the flavored products are actually used to help people quit smoking.

Councilmember Ryan stated he would be supportive of restrictions on flavors, especially menthol, and restricting availability of coupons. He added he would like to revisit cheap cigar pricing. He noted he is interested in learning more about long-term benefits.

Councilmember Graves stated she is concerned that these efforts could inadvertently lead to an increase in smoking. She added she would want to ensure that restrictions lead to the intended result. She noted she would like to hear more data from Minneapolis.

ADJOURNMENT

Mayor Elliott adjourned the Study Session at 7:00 p.m.

Healthy Lifestyle and Behaviors



During the past 12 months, have you stopped smoking for one day or longer because you were trying to quit smoking?

Table 49	Sample Size	Among current smokers: Yes
	N	% ± 95% C.I.
Selected race/ethnicity		
Hispanic	57	73.8% ± 17.1
Non-Hispanic		
American Indian or Alaska Native	93	60.1% ± 16.0
Asian or Asian American	34	67.9% ± 28.5
Southeast Asian	< 30	
Black or African American	426	58.6% ± 7.4
US-born black	389	58.8% ± 7.8
Foreign-born black	< 30	
White	651	57.3% ± 5.7
Household income		
< 200% of Federal Poverty Level	930	60.2% ± 7.8
< 100% of Federal Poverty Level	602	60.2% ± 10.7
100 - 199% of Federal Poverty Level	301	61.1% ± 11.6
≥ 200% of Federal Poverty Level	404	58.3% ± 7.6
Educational attainment		
Less than high school	157	55.1% ± 18.1
High school or GED	398	52.5% ± 10.8
Some college	539	63.8% ± 7.9
College degree or higher	241	62.1% ± 11.2
Housing insecurity		
Yes	541	59.8% ± 11.2
No	805	59.5% ± 6.1
Self-reported disability		
Yes	569	56.4% ± 8.9
No	769	61.0% ± 6.7
Frequent mental distress		
Yes	444	59.5% ± 10.3
No	869	60.0% ± 6.4

NOTE: Definitions for the indicators are provided in Appendix A.

* Estimate is potentially unreliable and should be used with caution. (Relative Standard Error is > 30% and ≤ 50%)

^ Estimate does not meet criteria for statistical reliability and should be used with extreme caution. (Relative Standard Error > 50%)

Healthy Lifestyle and Behaviors



During the past 12 months, have you stopped smoking for one day or longer because you were trying to quit smoking?

Table 49	Sample Size N	Among current smokers: Yes % ± 95% C.I.
Hennepin County total	1,353	59.5% ± 5.3
Minneapolis	778	60.4% ± 7.5
Camden, Near North	337	49.6% ± 12.0
Central, Northeast, University, St. Anthony	152	63.4% ± 14.9
Phillips, Powderhorn	194	68.1% ± 14.1
Calhoun-Isles, Longfellow, Nokomis, Southwest	95	60.5% ± 21.8
Suburban Hennepin County	575	58.8% ± 7.6
Northwest suburbs	220	59.9% ± 12.1
Northwest - inner	172	55.0% ± 15.5
Northwest - outer	48	67.2% ± 19.1
West suburbs	157	58.0% ± 14.6
West - inner	106	59.2% ± 19.7
West - outer	51	56.6% ± 21.1
South suburbs	198	57.7% ± 13.2
South - east	126	66.1% ± 15.6
South - west	72	51.7% ± 18.5
Age		
18-24	83	48.8% ± 24.5
25-34	257	68.6% ± 12.8
35-44	233	66.9% ± 14.0
45-54	262	61.8% ± 11.3
55-64	325	48.6% ± 9.3
65-74	146	65.3% ± 13.0
75 and older	45	*32.5% ± 20.4
Gender		
Male	536	61.2% ± 8.1
Female	816	57.7% ± 6.8
Transgender	< 30	
LGBT self-identification		
LGBT self-identified	158	54.4% ± 15.4
Not LGBT self-identified	1,133	59.9% ± 5.8

Healthy Lifestyle and Behaviors



Menthol cigarette use

Table 48

	Among persons aged 18 and older: Currently smoke menthol cigarettes Yes		Among persons 18 and older and are current smokers: Menthol is usual cigarette brand Yes	
	N	% ± 95% C.I.	N	% ± 95% C.I.
Selected race/ethnicity				
Hispanic	539	7.6% ± 4.1	57	56.3% ± 18.1
Non-Hispanic				
American Indian or Alaska Native	221	19.9% ± 9.6	94	42.1% ± 15.7
Asian or Asian American	365	^6.4% ± 7.2	35	51.6% ± 24.5
Southeast Asian	174	^9.0% ± 12.5	< 30	
Black or African American	1,640	18.0% ± 2.7	436	83.3% ± 6.2
US-born black	1,114	30.1% ± 4.1	397	88.7% ± 5.0
Foreign-born black	445	*2.2% ± 2.0	< 30	
White	7,838	2.4% ± 0.6	667	24.1% ± 5.2
Household income				
< 200% of Federal Poverty Level	3,841	7.9% ± 1.9	943	43.8% ± 7.7
< 100% of Federal Poverty Level	1,993	10.5% ± 3.1	609	48.9% ± 10.3
100 - 199% of Federal Poverty Level	1,716	5.3% ± 2.6	307	35.2% ± 11.9
≥ 200% of Federal Poverty Level	6,760	1.6% ± 0.6	418	24.4% ± 7.2
Educational attainment				
Less than high school	663	8.8% ± 5.0	159	51.1% ± 17.6
High school or GED	1,751	7.6% ± 2.6	408	44.9% ± 10.6
Some college	3,017	3.6% ± 1.3	548	28.7% ± 7.8
College degree or higher	5,434	*0.7% ± 0.5	248	18.7% ± 10.0
Housing insecurity				
Yes	1,592	12.8% ± 4.3	549	47.8% ± 10.9
No	9,334	2.1% ± 0.5	825	28.4% ± 5.7
Self-reported disability				
Yes	3,147	5.7% ± 1.7	582	38.6% ± 8.6
No	7,721	2.3% ± 0.6	784	29.8% ± 6.6
Frequent mental distress				
Yes	1,535	9.4% ± 3.2	452	43.7% ± 10.3
No	9,115	2.1% ± 0.5	887	28.5% ± 5.9

NOTE: Definitions for the indicators are provided in Appendix A.

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^ Estimate does not meet criteria for statistical reliability and should be used with extreme caution. (Relative Standard Error > 50%)

Healthy Lifestyle and Behaviors



Menthol cigarette use

Table 48

	Among persons aged 18 and older: Currently smoke menthol cigarettes Yes		Among persons 18 and older and are current smokers: Menthol is usual cigarette brand Yes	
	N	% ± 95% C.I.	N	% ± 95% C.I.
Hennepin County total	10,964	3.1% ± 0.6	1,381	33.4% ± 5.1
Minneapolis	4,667	4.6% ± 1.2	792	37.8% ± 7.3
Camden, Near North	1,336	14.2% ± 4.5	340	64.0% ± 12.3
Central, Northeast, University, St. Anthony	1,113	*3.1% ± 2.1	157	26.1% ± 13.5
Phillips, Powderhorn	1,228	*6.4% ± 3.8	196	39.8% ± 14.8
Calhoun-Isles, Longfellow, Nokomis, Southwest	990	^0.9% ± 1.6	99	^14.6% ± 20.8
Suburban Hennepin County	6,297	2.3% ± 0.7	589	29.6% ± 7.4
Northwest suburbs	2,175	2.3% ± 1.2	224	30.7% ± 11.9
Northwest - inner	1,226	*3.4% ± 2.3	175	33.3% ± 15.6
Northwest - outer	949	^1.4% ± 1.5	49	*26.9% ± 19.6
West suburbs	1,944	*1.9% ± 1.6	160	*25.9% ± 15.6
West - inner	1,049	*4.3% ± 4.1	108	42.0% ± 20.9
West - outer	895	^0.5% ± 0.7	52	^7.6% ± 12.2
South suburbs	2,178	*2.4% ± 1.5	205	31.0% ± 13.2
South - east	1,088	*3.8% ± 3.6	132	32.4% ± 19.0
South - west	1,090	*1.8% ± 1.7	73	*29.8% ± 18.9
Age				
18-24	482	^2.0% ± 3.4	84	^22.3% ± 25.6
25-34	1,759	4.7% ± 2.0	261	52.7% ± 12.8
35-44	1,622	*2.8% ± 1.6	236	34.0% ± 13.9
45-54	1,471	2.5% ± 1.2	266	23.7% ± 9.6
55-64	2,078	4.3% ± 1.5	330	31.4% ± 8.8
65-74	1,977	1.9% ± 1.1	154	25.6% ± 11.5
75 and older	1,504	^0.7% ± 1.2	47	^26.7% ± 26.3
Gender				
Male	3,805	2.9% ± 1.0	552	26.5% ± 7.7
Female	7,146	3.3% ± 0.8	828	41.3% ± 6.8
Transgender	98	^9.2% ± 22.3	< 30	
LGBT self-identification				
LGBT self-identified	937	*4.2% ± 2.9	160	34.5% ± 16.2
Not LGBT self-identified	9,403	2.9% ± 0.6	1,157	32.5% ± 5.6

Healthy Lifestyle and Behaviors



Current smoking status

Table 47	Sample Size	Every day smoker	Some days smoker	Former smoker	Never smoked
	N	% ± 95% C.I.	% ± 95% C.I.	% ± 95% C.I.	% ± 95% C.I.
Selected race/ethnicity					
Hispanic	535	*7.4% ± 5.0	6.3% ± 3.3	10.8% ± 4.7	75.5% ± 6.0
Non-Hispanic					
American Indian or Alaska Native	220	29.2% ± 10.5	17.4% ± 8.8	13.3% ± 6.7	40.1% ± 9.9
Asian or Asian American	364	*6.0% ± 5.6	^6.4% ± 6.8	7.4% ± 3.9	80.1% ± 7.2
Southeast Asian	174	^7.9% ± 7.9	^5.9% ± 12.5	^5.4% ± 5.9	80.8% ± 10.8
Black or African American	1,615	15.3% ± 2.7	6.5% ± 1.6	7.4% ± 1.9	70.8% ± 3.2
US-born black	1,101	25.0% ± 4.1	9.3% ± 2.3	10.2% ± 2.6	55.6% ± 4.4
Foreign-born black	440	*2.0% ± 1.9	^1.9% ± 2.0	*4.1% ± 4.1	92.0% ± 4.1
White	7,827	7.1% ± 1.0	2.9% ± 0.6	23.3% ± 1.3	66.7% ± 1.5
Household income					
< 200% of Federal Poverty Level	3,807	12.7% ± 2.3	5.3% ± 1.7	15.3% ± 2.3	66.7% ± 3.1
< 100% of Federal Poverty Level	1,973	16.0% ± 4.0	5.4% ± 2.6	11.7% ± 3.6	66.9% ± 5.0
100 - 199% of Federal Poverty Level	1,707	9.8% ± 2.9	5.4% ± 2.5	18.0% ± 3.2	66.8% ± 4.2
≥ 200% of Federal Poverty Level	6,753	3.7% ± 0.8	2.6% ± 0.7	24.3% ± 1.5	69.4% ± 1.6
Educational attainment					
Less than high school	655	12.6% ± 5.7	^4.6% ± 5.0	13.4% ± 6.4	69.4% ± 7.7
High school or GED	1,733	12.4% ± 3.2	4.5% ± 2.2	24.3% ± 3.7	58.8% ± 4.3
Some college	3,005	8.8% ± 1.8	3.9% ± 1.2	29.7% ± 2.7	57.6% ± 2.9
College degree or higher	5,430	1.6% ± 0.6	2.3% ± 0.8	18.0% ± 1.5	78.1% ± 1.6
Housing insecurity					
Yes	1,579	17.5% ± 4.8	9.3% ± 3.9	19.6% ± 4.9	53.6% ± 5.7
No	9,304	4.8% ± 0.7	2.6% ± 0.6	22.3% ± 1.3	70.2% ± 1.4
Self-reported disability					
Yes	3,137	10.3% ± 2.2	4.5% ± 1.6	27.8% ± 2.7	57.3% ± 3.1
No	7,688	4.7% ± 0.8	2.9% ± 0.7	20.5% ± 1.4	72.0% ± 1.6
Frequent mental distress					
Yes	1,529	14.4% ± 3.6	7.1% ± 2.9	24.1% ± 4.1	54.4% ± 4.6
No	9,079	4.7% ± 0.8	2.7% ± 0.6	22.0% ± 1.3	70.5% ± 1.5

NOTE: Definitions for the indicators are provided in Appendix A.

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^ Estimate does not meet criteria for statistical reliability and should be used with extreme caution. (Relative Standard Error > 50%)

Healthy Lifestyle and Behaviors



Current smoking status

Table 47

	Sample Size	Every day smoker	Some days smoker	Former smoker	Never smoked
	N	% ± 95% C.I.	% ± 95% C.I.	% ± 95% C.I.	% ± 95% C.I.
Hennepin County total	10,920	6.0% ± 0.8	3.2% ± 0.6	22.1% ± 1.2	68.7% ± 1.4
Minneapolis	4,639	7.3% ± 1.4	4.9% ± 1.3	20.6% ± 2.0	67.3% ± 2.4
Camden, Near North	1,322	15.8% ± 4.9	6.4% ± 2.8	12.3% ± 3.9	65.4% ± 5.6
Central, Northeast, University, St. Anthony	1,108	7.0% ± 2.9	5.0% ± 2.8	17.1% ± 3.5	70.8% ± 4.4
Phillips, Powderhorn	1,224	8.6% ± 3.5	7.4% ± 3.7	17.9% ± 3.9	66.1% ± 5.1
Calhoun-Isles, Longfellow, Nokomis, Southwest	985	*3.2% ± 2.1	*2.7% ± 2.3	28.3% ± 4.1	65.7% ± 4.4
Suburban Hennepin County	6,281	5.2% ± 1.0	2.3% ± 0.7	22.9% ± 1.6	69.5% ± 1.8
Northwest suburbs	2,169	4.9% ± 1.6	2.7% ± 1.3	22.5% ± 2.6	69.9% ± 2.9
Northwest - inner	1,220	7.2% ± 2.9	*3.2% ± 2.3	20.4% ± 3.4	69.2% ± 4.2
Northwest - outer	949	*3.0% ± 1.9	*2.3% ± 1.7	24.2% ± 3.8	70.5% ± 4.0
West suburbs	1,936	5.3% ± 2.1	*2.0% ± 1.4	25.2% ± 3.2	67.5% ± 3.4
West - inner	1,043	7.6% ± 4.3	^2.6% ± 2.7	20.8% ± 4.4	68.9% ± 5.2
West - outer	893	*3.9% ± 2.4	^1.6% ± 1.9	27.9% ± 4.4	66.6% ± 4.6
South suburbs	2,176	5.8% ± 1.9	*2.0% ± 1.2	21.6% ± 2.7	70.6% ± 3.1
South - east	1,086	8.7% ± 3.8	*3.0% ± 2.7	24.8% ± 4.6	63.5% ± 5.2
South - west	1,090	4.5% ± 2.4	*1.6% ± 1.6	20.3% ± 3.4	73.6% ± 3.8
Age					
18-24	480	*5.6% ± 4.9	^3.4% ± 4.0	*7.3% ± 5.0	83.7% ± 6.4
25-34	1,751	4.8% ± 2.0	4.1% ± 1.8	13.2% ± 2.8	77.9% ± 3.3
35-44	1,614	3.9% ± 1.8	4.2% ± 1.9	22.4% ± 3.3	69.4% ± 3.6
45-54	1,462	7.6% ± 2.2	2.9% ± 1.5	21.1% ± 3.3	68.4% ± 3.6
55-64	2,069	10.4% ± 2.3	3.0% ± 1.3	26.3% ± 2.8	60.2% ± 3.1
65-74	1,973	5.4% ± 1.8	2.1% ± 1.2	34.7% ± 3.0	57.8% ± 3.2
75 and older	1,501	*1.9% ± 1.1	^0.7% ± 1.1	37.5% ± 3.5	59.9% ± 3.5
Gender					
Male	3,785	6.9% ± 1.4	3.8% ± 1.1	23.5% ± 2.1	65.8% ± 2.4
Female	7,122	5.2% ± 0.9	2.7% ± 0.7	21.0% ± 1.5	71.1% ± 1.7
Transgender	96	^8.8% ± 18.7	^8.3% ± 24.0	^14.3% ± 17.2	68.6% ± 19.9
LGBT self-identification					
LGBT self-identified	931	5.8% ± 2.8	6.2% ± 3.4	24.5% ± 5.1	63.6% ± 5.5
Not LGBT self-identified	9,376	5.9% ± 0.9	3.0% ± 0.6	22.3% ± 1.3	68.7% ± 1.5

Healthy Lifestyle and Behaviors



Current smoking status

Table 46	Sample Size	Yes
	N	% ± 95% C.I.
Hennepin County total	10,920	9.2% ± 1.0
Minneapolis	4,639	12.1% ± 1.8
Camden, Near North	1,322	22.3% ± 5.2
Central, Northeast, University, St. Anthony	1,108	12.1% ± 3.6
Phillips, Powderhorn	1,224	16.0% ± 4.5
Calhoun-Isles, Longfellow, Nokomis, Southwest	985	5.9% ± 2.8
Suburban Hennepin County	6,281	7.6% ± 1.2
Northwest suburbs	2,169	7.5% ± 1.9
Northwest - inner	1,220	10.3% ± 3.4
Northwest - outer	949	5.4% ± 2.3
West suburbs	1,936	7.3% ± 2.3
West - inner	1,043	10.3% ± 4.5
West - outer	893	5.5% ± 2.7
South suburbs	2,176	7.8% ± 2.1
South - east	1,086	11.7% ± 4.2
South - west	1,090	6.1% ± 2.6
Age		
18-24	480	*9.0% ± 5.5
25-34	1,751	8.9% ± 2.5
35-44	1,614	8.1% ± 2.4
45-54	1,462	10.4% ± 2.5
55-64	2,069	13.4% ± 2.5
65-74	1,973	7.5% ± 2.0
75 and older	1,501	2.5% ± 1.4
Gender		
Male	3,785	10.7% ± 1.7
Female	7,122	7.9% ± 1.1
Transgender	96	^17.1% ± 21.4
LGBT self-identification		
LGBT self-identified	931	12.0% ± 4.0
Not LGBT self-identified	9,376	9.0% ± 1.0

Healthy Lifestyle and Behaviors



Current smoking status

Table 46

Sample
Size

Yes

N

% ± 95% C.I.

Selected race/ethnicity

Hispanic 535 13.7% ± 5.2

Non-Hispanic

American Indian or Alaska Native 220 46.6% ± 10.0

Asian or Asian American 364 *12.4% ± 7.4

Southeast Asian 174 *13.8% ± 11.1

Black or African American 1,615 21.8% ± 2.9

US-born black 1,101 34.3% ± 4.3

Foreign-born black 440 *3.9% ± 2.4

White 7,827 10.0% ± 1.1

Household income

< 200% of Federal Poverty Level 3,807 18.0% ± 2.7

< 100% of Federal Poverty Level 1,973 21.5% ± 4.4

100 - 199% of Federal Poverty Level 1,707 15.2% ± 3.5

≥ 200% of Federal Poverty Level 6,753 6.3% ± 1.0

Educational attainment

Less than high school 655 17.2% ± 6.6

High school or GED 1,733 16.9% ± 3.5

Some college 3,005 12.6% ± 2.0

College degree or higher 5,430 3.9% ± 0.9

Housing insecurity

Yes 1,579 26.8% ± 5.3

No 9,304 7.4% ± 0.9

Self-reported disability

Yes 3,137 14.9% ± 2.5

No 7,688 7.5% ± 1.0

Frequent mental distress

Yes 1,529 21.5% ± 4.1

No 9,079 7.5% ± 0.9

NOTE: Definitions for the indicators are provided in Appendix A.

* Estimate is potentially unreliable and should be used with caution. (Relative Standard Error is > 30% and ≤ 50%)

^ Estimate does not meet criteria for statistical reliability and should be used with extreme caution. (Relative Standard Error > 50%)



MINNESOTA CITY RETAIL TOBACCO LICENSING ORDINANCE



Through licensing and related regulations, Minnesota cities have the opportunity to address the sale of commercial tobacco and related devices and products in the retail environment.

This model ordinance includes all of the minimum retail tobacco sales restrictions required by Minnesota state and federal law. It also includes a number of additional provisions a city may choose to adopt in order to further advance public health. A city planning to adopt this model ordinance, in whole or in part, should review it with its city attorney beforehand to determine suitability for the city's circumstances. While the model ordinance language can be modified by adding or omitting content concerning activities that a city does or does not seek to regulate, doing so may result in an ordinance that does not conform to state law, federal law, and best public health policy practices.

Because provisions within this model ordinance are controlled by statute and rules, the city



attorney should review any modifications to ensure they conform to state and federal law. In addition, because the ordinance establishes rights and responsibilities of both the city and license applicants and holders, the city attorney should review the entire ordinance before it is adopted. The Public Health Law Center provides legal technical assistance to help communities that wish to adopt commercial tobacco control ordinances. We encourage communities to contact us for assistance when considering this model language.

Notice

This ordinance is drafted in the form prescribed by state law for statutory cities. Statutory cities must publish their ordinances — or a summary thereof — in the city's official newspaper before they become effective. Home rule charter cities may have to follow the formatting and/or other procedural requirements found in their city's charter. Charter cities should consult their charter and their city attorney to ensure that they comply with all charter requirements. All cities must provide copies of their ordinances to the county law library or its designated depository pursuant to Minn. Stat. § 415.021.

This ordinance may affect existing license holders. Under Minn. Stat. § 461.19, a city is required to give retailers notice that it is considering adopting or substantially amending a retail tobacco licensing ordinance. The city must take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license. The notice must state the time, place, and date of the meeting and the subject matter of the proposed ordinance. A city may also mail a copy of the proposed ordinance to all existing license holders to inform them of its contents and to provide them an opportunity to make their views known.

Additionally, Minn. Stat. § 415.19 requires statutory and home rule charter cities to post proposed new ordinances and ordinance amendments on the city website at least 10 days prior to a final vote by the city council, if the city already posts ordinances on its site. Under the same statute, within 10 days of a final vote, cities must also provide this same notice to all city listserv subscribers via their electronic notification system or, if the city does not have an electronic notification system, in the location that the city posts public notices. Cities must also provide new or renewing licensees with information about the city's notification procedure at the time of application.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain commercial tobacco control policies that are intended to help make that world a reality. As such, this model ordinance represents a balance between state and federal minimum standards, best public health policy practices, and practicality for city governments in Minnesota. This model ordinance contains several policy components that communities may or may not choose to adopt at this time that may go beyond minimum state and federal requirements, including:

- Prohibiting the sale of all flavored tobacco products, including menthol-flavored products;

- Regulating the price of commercial tobacco products, such as establishing minimum prices for cigars and restricting the redemption of price promotions and coupons;
- Limiting the number of retailers in a jurisdiction and regulating the distance between tobacco retailers and between retailers and youth-oriented facilities and other retailers;
- Prohibiting the delivery and/or online sales of commercial tobacco products; and
- Prohibiting pharmacies from selling commercial tobacco products.

Context Box

Context boxes are included throughout this model ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A city wishing to adopt all or part of this model ordinance should keep this in mind and remove the context boxes.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, adopting effective commercial tobacco control policies starts early with education, stakeholder and community engagement, and a strong advocacy plan. If a community is unaware of the resources available to them for engaging the community and developing an advocacy plan, or if a city is considering adopting an ordinance and is interested in learning about the range of resources available, the Public Health Law Center can provide assistance through our publications and referrals to experts in the field. In certain, limited circumstances, Public Health Law Center staff may be able to speak at public hearings or work sessions to provide education about particular policy options.

This retail tobacco licensing ordinance was prepared by the Public Health Law Center, located at the Mitchell Hamline School of Law in St. Paul, Minnesota.

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not lobby nor does it provide direct legal representation or advice. This document should not be considered legal advice.

This publication represents the only Minnesota city model retailer licensing policy endorsed by the Public Health Law Center.

ORDINANCE NO. [_____]

**AN ORDINANCE REGULATING THE SALE OF TOBACCO
AND RELATED DEVICES AND PRODUCTS WITHIN
THE CITY OF [_____], MINNESOTA**

**THE CITY COUNCIL OF THE CITY OF [_____]
DOES ORDAIN:**

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Section 1. Findings of Fact and Purpose.

Because the city recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates both state and federal law; and because studies, which the city accepts and adopts, have shown that high school use of any commercial tobacco product has increased to 27.6% in Minnesota; and because nearly 90% of people who smoke begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the City Council accepts the conclusions and recommendations of: the U.S. Surgeon General reports, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking — 50 Years of Progress* (2014) and *Preventing Tobacco Use Among Youth and Young Adults* (2012); the Centers for Disease Control and Prevention in their studies, *Tobacco Use Among Middle and High School Students — United States, 2011–2015* (2016), and *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997* (1998); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D'Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455-459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327-333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326-7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673-677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen,

L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740-746; Minnesota Department of Health. (2020). *Data Highlights from the 2019 Minnesota Youth Tobacco Survey*. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). *The Verdict Is In: Findings from United States v. Philip Morris, The Hazards of Smoking*. University of California San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326-333, copies of which are adopted by reference.

Findings of Fact and Purpose

A Findings of Fact and Purpose section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies and demonstrates the city's reasoning for adopting specific provisions. This Findings of Fact and Purpose section reflects language appropriate for all of the provisions suggested. The Public Health Law Center can provide support for communities to determine which Findings of Fact and Purpose statements and references should be retained in a final ordinance, depending on which provisions from the model ordinance the city chooses to adopt.

Section 2. Definitions.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions apply unless the context clearly indicates or requires a different meaning:

CHILD-RESISTANT PACKAGING. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

CIGAR. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as it may be amended from time to time.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance.

COMPLIANCE CHECKS involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. **COMPLIANCE CHECKS** may also be conducted by the city or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

DELIVERY SALE. The sale of any licensed product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. **DELIVERY SALE** includes but is not limited to the sale of any licensed product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. **DELIVERY SALE** includes delivery by licensees or third parties by any means, including curbside pick-up.

Prohibiting delivery sales

Local communities may be interested in prohibiting delivery sales as an effective means of curtailing underage access to licensed products, especially e-cigarettes sold online. This definition supports the Delivery Sales Prohibition on page 16.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. **ELECTRONIC DELIVERY DEVICE** includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. **ELECTRONIC DELIVERY DEVICE** includes any component part of a product, whether or not marketed or sold separately. **ELECTRONIC DELIVERY DEVICE** does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

FLAVORED PRODUCT. Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such

products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

IMITATION TOBACCO PRODUCT. Any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. IMITATION TOBACCO PRODUCT includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. IMITATION TOBACCO PRODUCT does not include electronic delivery devices or nicotine or lobelia delivery products.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

LICENSED PRODUCTS. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

LOOSIES. The common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. LOOSIES does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

Prohibiting the sale of single cigarettes and other products removed from their original packaging

Federal law and the Master Settlement Agreement prohibits the sale of single cigarettes. State and local governments can replicate and expand on the federal provisions. This definition includes and expands on the existing federal ban on the sale of single cigarettes (commonly referred to as “loosies”) to also prohibit the sale of cigars and other tobacco products (e.g., smokeless pouches and Juul pods) that have been removed from their intended packaging. The exception language here removes premium cigars from the definition, and thus the sales prohibition, of loosies.

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section. NICOTINE OR LOBELIA DELIVERY PRODUCT does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

PHARMACY. A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. RETAIL ESTABLISHMENT includes but is not limited to grocery stores, tobacco products shops, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.

SALE. Any transfer of goods for money, trade, barter or other consideration.

SELF-SERVICE DISPLAY. The open display of licensed products in a retail establishment in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee and where a physical exchange of the licensed product from the licensee or the licensee's employee to the customer is not required in order to access the licensed products.

SMOKING. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. SMOKING also includes carrying or using an activated electronic delivery device.

TOBACCO. Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigarettes; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. TOBACCO does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

TOBACCO-RELATED DEVICE. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. TOBACCO-RELATED DEVICE includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. TOBACCO-RELATED DEVICES may or may not contain tobacco.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment into or onto the device by the person seeking to purchase the licensed product.

YOUTH-ORIENTED FACILITY. Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. Youth-oriented facility includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

Section 3. License.

- (A) **License required.** No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city.
- (B) **Application.** An application for a license to sell licensed products must be made on a form provided by the city. The application must contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk will forward the application to the City Council for action at its next regularly scheduled meeting. If the City Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.
- (C) **Action.** The City Council may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council approves the application, the City Clerk will issue the license to the applicant. If the City Council denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- (D) **Term.** All licenses issued are valid for one calendar year from the date of issue.
- (E) **Revocation or suspension.** Any license issued may be suspended or revoked following the procedures set forth in Section 11.

- (F) **Transfers.** All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (G) **Display.** All licenses must be posted and displayed at all times in plain view of the general public in the retail establishment.
- (H) **Renewals.** The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license.
- (I) **Issuance as privilege and not a right.** The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.
- (J) **Instructional program.** Licensees must complete and ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the city. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the city at the time of renewal, or whenever requested to do so during the license term.
- (K) **Minimum clerk age.** Individuals employed by a licensed retail establishment under this ordinance must be at least [18 or 21] years of age to sell licensed products.

Minimum Age for Clerks

Cities may be interested in establishing a minimum age for employees to sell commercial tobacco products at licensed retail establishments. The tobacco industry has acknowledged that peer pressure facing young clerks from their underage peers seeking to purchase commercial tobacco products at the counter plays a role in youth access. Establishing a minimum clerk age addresses the peer pressure and impacts youth access. If a city chooses to establish a minimum clerk age below the age of 21 (e.g., 18), clerks between the ages of 18 and 20 could legally sell licensed products within the purview of their employment but would be unable to purchase them. This sample language allows that people under the minimum clerk age may still work for a licensed retailer but cannot engage in sales of commercial tobacco products.

- (L) **Maximum number of licenses.** The maximum number of licenses issued by the city at any time is limited to [see "Licensing Cap" below]. When the maximum number of licenses has been issued, the city may place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis, as licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid city license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.

Licensing Cap

Communities with a higher concentration of commercial tobacco retailers within their jurisdiction expose more youth and young adults to commercial tobacco industry marketing, making it easier for them to obtain licensed products. This heavier concentration of retailers also influences the brands chosen by young people and encourages their initiation of commercial tobacco use. One way to address retailer density issues is to place a limit or cap on the number of tobacco retailer licenses that may be issued by the city. The above provision would set the maximum number of licenses available.

Cities can choose how to structure a licensing cap to meet the needs of their communities. Potential options include setting the cap at the number of existing licensed retailers or limiting the number of licensed retailers based on population density. A city may also want to limit licenses to those that currently exist and reduce the number of available licenses over time, as licenses are revoked or expire and are not renewed. It is possible to craft language that would ultimately reduce the number of licenses over time to zero. Cities are encouraged to work with local public health departments, city attorneys, and the Public Health Law Center to determine the appropriate licensing cap provision for their community.

For more information on retailer density, review our publication *Location, Location, Location: Tobacco & E-Cig Point of Sale.*

- (M) **Proximity to youth-oriented facilities.** No license will be granted to any person for a retail establishment location that is within [1,000] feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in that same location for at least one year before the date this section was enacted into law.

- (N) **Proximity to other licensed retailers.** No license will be granted to any person for a retail establishment location that is within [2,000] feet of any other existing licensed retail establishment , as measured by the shortest line from the property line of the space to be occupied by the applicant for a license to the nearest property line of the existing licensee. This restriction does not apply to an applicant who has been licensed to sell licensed products in the same location for at least one year before the date this section was enacted into law.

Proximity Restrictions

Research has demonstrated that policies requiring set distances between retailers and between retailers and youth-oriented facilities help to reduce tobacco retailer density and increase prices for commercial tobacco products. These proximity buffers may have significant impact in urban, low-income neighborhoods, which have been historically targeted by the tobacco industry with pervasive marketing and price promotions at the point-of-sale. The greatest public health impacts are seen when these policies are combined with a cap on the number of licenses issued.

For more information on proximity restrictions, review our publication, *Location, Location, Location: Tobacco & E-Cig Point of Sale.*

Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A. Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740-746; Myers, A. E., Hall, M. G., Isgett, L. F., & Ribisl, K. M. (2015). A Comparison of Three Policy Approaches for Tobacco Retailer Reduction. *Preventive Medicine*, 74, 67-7; and Ribisl, K. M., Luke, D. A., Bohannon, D. L., Sorg, A. A., & Moreland-Russell, S. (2017). Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales near Schools. *Nicotine & Tobacco Research: Official Journal of the Society for Research on Nicotine and Tobacco*, 19(2), 239-244.

- (O) **Pharmacies ineligible for licensure.** No existing license will be eligible for renewal to any pharmacy, including any retail establishment that operates or contains an on-site pharmacy, and no pharmacy or any retail establishment that operates an on-site pharmacy will be granted a new license.

Pharmacy Prohibitions

Several communities have adopted laws prohibiting pharmacies from selling commercial tobacco products. These laws have been shown to significantly reduce commercial tobacco retailer density when compared to communities without similar laws. Some studies have shown that pharmacy prohibitions are most effective in reducing health disparities when combined with proximity restrictions.

Giovenco, D. P., Spillane, T. E., Mauro, C. M., & Hernández, D. (2018). Evaluating the Impact and Equity of a Tobacco-free Pharmacy Law on Retailer Density in New York City Neighbourhoods. *Tobacco Control*, tobaccocontrol-2018-054463. Jin, Y., Lu, B., Klein, E. G., Berman, M., Foraker, R. E., & Ferketich, A. K. (2016). Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts. *American Journal of Public Health*, 106(4), 679-685.

- (P) **Smoking prohibited.** Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance.
- (Q) **Samples prohibited.** No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.

Section 4. Fees.

No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the city's fee schedule and may be amended from time to time.

Licensing Fees

Fees provide revenue for the administration and enforcement of the ordinance and for retailer and community education. Periodic review and adjustment of licensing fees will ensure that they are sufficient to cover all administration, implementation, and enforcement costs, including compliance checks. Our publication, *Retail License Fees*, provides more information about retail licensing fees and a license fee checklist.

Section 5. Basis for Denial of License.

- (A) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:
- (1) The applicant is under 21 years of age.
 - (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
 - (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.
 - (4) The applicant fails to provide any of the information required on the licensing application, or provides false or misleading information.
 - (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
 - (6) The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.
- (B) If a license is mistakenly issued or renewed to a person, the city will revoke the license upon the discovery that the person was ineligible for the license under this ordinance. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.

Section 6. Prohibited Sales.

- (A) **In general.** No person shall sell or offer to sell any licensed product:
- (1) By means of any type of vending machine.
 - (2) By means of loosies.
 - (3) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other products subject to this ordinance.
 - (4) By means of self-service display. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely

accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.

- (5) By means of delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.

Delivery Sales Prohibition

The traditional compliance check system with which we are familiar was designed for use in brick-and-mortar, fixed location retail establishments — and when conducted at regular intervals as required by state and local laws, this approach can be successful in weeding out bad actors among those retailers. But this means of monitoring and enforcement does not transfer well to the rapidly growing online tobacco retailer environment, where underage persons can often gain access to a tobacco retailer's website simply by clicking a prompt claiming they are of legal age to purchase and can then make purchases by taking advantage of lax age verification processes and loopholes.

Local communities may be interested in prohibiting delivery sales as an effective means of curtailing underage access to licensed products. This approach recognizes the challenges inherent in trying to effectively monitor online retailers and prevent underage access to the enormous numbers of e-cigarette products found online, acknowledging that age verification processes do not prevent underage persons from obtaining e-cigarettes and other licensed products online.

Because online age verification systems do not prevent underage access and purchases, and because the vast scope of online marketing of e-cigarettes to youth and young adults has contributed to a huge surge in underage access to and use of e-cigarettes — reversing decades of progress in reducing initiation and use of tobacco — state and local jurisdictions are increasingly choosing to completely prohibit delivery sales of licensed products to consumers (sales conducted by any means other than in-person, over-the-counter sales transactions in a licensed retail establishment). Cities are encouraged to work with the local public health department, city attorney, and the Public Health Law Center in considering this policy. For more information on this topic, please review our publications, *Online Sales of E-Cigarettes & Other Tobacco Products* (2019) and *Online E-Cigarette Sales & Shipments to Consumers: State Laws Prohibiting Them* (2019).

- (6) By any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

- (B) **Legal age.** No person shall sell any licensed product to any person under the age of 21.
- (1) **Age verification.** Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - (2) **Signage.** Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

Minimum Legal Sales Age (MLSA) of 21

In 2015, the Institute of Medicine (now the Health and Medicine Division of the National Academies of Sciences, Engineering, and Medicine) (IOM) released a report containing compelling evidence of the significant public health benefits of raising the MLSA for tobacco products. The IOM concluded that raising the MLSA today to 21 would result in a 12 percent decrease in tobacco use, approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019. Based on studies showing the effectiveness of enforced youth access laws, increasing the MLSA is likely to be particularly effective in reducing tobacco usage among high school-aged youth by reducing their access to commercial tobacco products. Studies have also indicated that older underage youth (i.e. those who are closer to age 18) are more likely to succeed in buying tobacco in stores. Further, high school friends and peers of legal age are an important social source of commercial tobacco products for underage youth.

Under federal and Minnesota state law (effective August 1, 2020), it is unlawful to sell licensed products to any person under the age of 21 Pub.L. 111-31, H.R. 1256; Minn. Stat. § 609.685; Minn. Stat. § 609.6855. State law does not prohibit local jurisdictions from enacting a higher minimum legal sales age. Jurisdictions in Minnesota may consider increasing the MLSA to 25, as the IOM report suggests being most protective of public health.

Minimum Legal Sales Age (MLSA) of 21 *(continued)*

As of August 1, 2020, Minnesota law requires licensed retailers to display a sign in plain view to provide public notice that selling licensed products to any person under the age of 21 is “illegal and subject to penalties.” Minn. Stat. § 461.22, Sec. 10. Federal and state law require retailers to verify age as set forth in the above provision. *Id.*; Pub.L. 111-31, H.R. 1256. However, local jurisdictions could require licensed retailers to verify the age of all people attempting to purchase licensed products, regardless of how old the customer appears to be.

DiFranza, J R, Savageau, J. A., & Aisquith, B. F. (1996). Youth access to tobacco: the effects of age, gender, vending machine locks, and “it’s the law” programs. *American Journal of Public Health*, 86(2), 221–224. DiFranza, Joseph R., & Coleman, M. (2001). Sources of tobacco for youths in communities with strong enforcement of youth access laws. *Tobacco Control*, 10(4), 323–328. DiFranza, Joseph R., Savageau, J. A., & Fletcher, K. E. (2009). Enforcement of underage sales laws as a predictor of daily smoking among adolescents — a national study. *BMC Public Health*, 9(1), 107. Institute of Medicine. (2015). *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products: Health and Medicine Division*.

(C) Flavored products. No person shall sell or offer for sale any flavored products.**Sales of Flavored Products**

Research demonstrates that flavored licensed products are especially attractive to youth. These products increase initiation amongst all populations by masking the harsh taste of tobacco and nicotine. Flavors like menthol and clove also provide a numbing effect that lead to longer breath-holding. This makes quitting flavored licensed products more difficult. Overwhelmingly, youth users of licensed products initiate commercial tobacco use by using flavored products. Prohibiting the sale of flavored licensed products would reduce youth access to and advertisements for these products.

Many jurisdictions in Minnesota, municipalities across the U.S., and the state of Massachusetts have completely prohibited the sale of flavored tobacco products. Some other jurisdictions restricted the sale of flavored licensed products with the limited exemptions for 21+ retailers. In addition to improving public health and advancing health equity, complete prohibitions on the sale of flavored tobacco products are clear, easy to understand, and remove much of the guesswork and frustration associated with the tobacco industry’s response to exceptions to flavored tobacco sales regulations (see below). Communities interested in enacting a complete prohibition or ban on the sale of flavored tobacco products can review how these policies are legally defensible in our publication, *Regulating Flavored Tobacco Products*.

Sales of Flavored Products *(continued)*

If a community is not ready to adopt a complete ban but wants to limit the sale of flavored tobacco products to 21+ retailers, we have included that language below for consideration. Please note that it is important to include language to prevent an increase in the density or concentration of 21+ tobacco product shops. In response to flavored tobacco sales restriction ordinances enacted in Minnesota, some tobacco retailers have divided their establishment into two sections, separated by a wall or other structural divider. This has resulted in an alleged, makeshift 21+ licensed tobacco product shop on one side that sells flavored licensed products, and a licensed tobacco retailer on the other side that sells only unflavored licensed products. Adding structural requirements, as suggested in the sample exemption language below, would restrict such practices:

- (C) Flavored products. No person shall sell or offer for sale any flavored products. This prohibition does not apply to retail establishments that:
- (1) Prohibit persons under 21 from being present or entering at all times;
 - (2) Derive at least 90 percent of its gross revenues from the sale of licensed products; and
 - (3) Meet all of the following building or structural criteria:
 - (a) Shares no wall with, and has no part of its structure adjoined to any other business or retailer, unless the wall is permanent, completely opaque, and without doors, windows, and pass-throughs to the other business or retailer;
 - (b) Shares no walls with, and has no part of its structure directly adjoined to, another licensed tobacco retailer; and
 - (c) Is accessible by the public only by an entrance door opening directly to the outside.

Any retail establishment that sells flavored products must provide financial records documenting its annual gross sales, upon request by the city.

(D) **Cigars.** No person shall sell or offer to sell:

- (1) Any cigar unless it is within a package containing a minimum of [five] cigars; and
- (2) Any package of cigars for a sales price of less than [\$15.00] per package, after any discounts are applied and before sales taxes are imposed.

This provision does not prohibit the sale of a single cigar with a sales price of at least [\$4.00], after any discounts are applied and before sales taxes are imposed.

Individual low-cost cigars

Tobacco retailers frequently sell low-cost cigars individually or in small packages (e.g., containing two or three cigars), often in candy or fruit flavors. Inexpensive cigars are more accessible to all users, but are especially appealing to price-sensitive youth who might be experimenting with different licensed products. A growing number of Minnesota communities have adopted laws that increase the price of these appealing and addictive products. The language above (1) sets the minimum price of a single, individually-packaged cigar at a deterrent price (e.g., \$4.00) and (2) requires that any pack of cigars contains at least five cigars, priced at a total of no less than \$15.00 (or a similarly-deterrent price) per pack. Recall from Prohibiting the sale of single cigarettes on page 8, this model prohibits the sale of cigars that have been removed from their original packaging, except for a premium cigar as defined by state law. Jurisdictions may choose to adopt the entirety of the provision above, one of the two above policies (e.g., minimum price for single cigars), or similar combination.

- (E) **Imitation tobacco products.** No person shall sell, offer to sell, or otherwise distribute any imitation tobacco products within the city.
- (F) **Liquid packaging.** No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- (G) **Coupon and price promotion.** No person shall accept or redeem any coupon, price promotion, or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any licensed products to a consumer at no cost

or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

Product Discounts

The price of tobacco products directly affects consumption levels, particularly among price-sensitive consumers, including and young adults. The commercial tobacco industry devotes billions of dollars per year to these innovative pricing strategies to entice new customers to purchase their products, to discourage current users from quitting, and to reduce the effectiveness of tobacco tax increases in decreasing tobacco sales and increasing users' quit attempts. These pricing strategies include coupons or in-store price promotions that offer "buy-one-get-one" offers, cents- or dollar-off promotions, and multi-pack offers, and pairing of different tobacco products or other tobacco "freebies" which are often marketed and redeemed at the point-of-sale. Jurisdictions can prohibit the redemption of these price promotions and coupons to negate the sophisticated discount marketing strategies of the commercial tobacco industry. Please see our publication, *Death on a Discount: Regulating Tobacco Product Pricing*, for more information on product pricing.

Section 7. Responsibility.

All licensees are responsible for the actions of their employees regarding the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee.

Section 8. Compliance Checks and Inspections.

All licensed premises must be open to inspection by law enforcement or other authorized city officials during regular business hours. From time to time, but at least [twice] per year, the city will conduct compliance checks. In accordance with state law, the city will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

Compliance Checks

State law requires every local licensing authority to conduct at least one compliance check each year. This state-mandated compliance check “must involve persons at least 17 years of age, but under the age of 21” as of August 1, 2020. For retailer education purposes, and to identify and cite repeat offending retailers, the model language above requires at least two compliance checks per year.

Section 9. Other Prohibited Acts.

Unless otherwise provided, the following acts are an administrative violation of this ordinance:

- (A) **Prohibited furnishing or procurement.** It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product.
- (B) **Use of false identification.** It is a violation of this ordinance for any person to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

Penalizing Underage Purchase, Use, and Possession and the Use of a False Identification

Neither state nor federal law penalizes the attempted or actual possession, use, and purchase (PUP) of licensed products by underage persons. This model ordinance does not include penalties for underage PUP and only provides non-criminal, non-monetary penalties for the use of false IDs.

At its core, a licensing ordinance is intended to regulate the behavior of licensees. Penalizing underage persons detracts from the focus of the licensing code and siphons enforcement resources away from the licensees to young consumers, many of whom are addicted to nicotine.

A 2017 Minnesota Annual Synar Report on youth access enforcement found that underage persons were cited 3.6 times, and assessed fines 2.6 times, more often than retailers. It is important to note that, even if PUP provisions are not included in an ordinance, retailers have the authority to ask underage persons to leave the premises if they attempt to purchase products.

Penalizing Underage Purchase, Use, and Possession and the Use of a False Identification *(continued)*

There is no strong evidence to support an assertion that PUP penalties are effective in significantly reducing youth smoking. Historically, these laws were lobbied for by the commercial tobacco industry to punish youth users while the industry simultaneously targeted, and continues to target, youth to replace a dying consumer base and maintain profits in a dwindling market.

Furthermore, many advocates are concerned that PUP penalties open the door to selective enforcement against youth from certain racial, ethnic, and socio-economic groups. Evidence suggests that youth of color in Minnesota are disproportionately over-represented in similar status-level offenses, increasing their interactions with law enforcement and resulting in their introduction to the criminal justice system. Jurisdictions that currently have PUP penalties no longer aligning with state law should consider removing those penalties from their ordinance.

This model ordinance only offers alternative non-criminal, non-monetary penalties for underage use of false identification to purchase or attempt to purchase licensed products as described below in section 11(B)(3).

For further reading on the history of PUP laws and the disproportionate enforcement of laws against youth of color and indigenous youth, please see Minnesota Juvenile Justice Advisory Committee's report, *2016 Annual report to Governor Mark Dayton and the Minnesota State Legislature* (2016) and Wakefield, M., & Giovino, G. (2003). Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*, 12(suppl 1), i6-i13.

Section 10. Exceptions and Defenses.

- (A) **Religious, Spiritual, or Cultural Ceremonies or Practices.** Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- (B) **Reasonable Reliance.** It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Section 11. Violations and Penalties.

(A) Violations.

- (1) **Notice.** A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs the alleged violator of their right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.
- (2) **Hearings.**
 - (a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
 - (b) The City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.
- (3) **Hearing Officer.** The City Council will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.
- (4) **Decision.** A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in section 11, paragraph (A)(6) of this section.
- (5) **Costs.** If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of [\$1,000] must be paid by the person requesting the hearing.

(6) **Appeals.** Appeals of any decision made by the hearing officer must be filed in [_____] County district court within 10 business days of the date of the decision.

(7) **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(B) Administrative penalties.

(1) **Licensees.** Any licensee cited for violating this ordinance, or whose employee has violated this ordinance, will be charged an administrative fine of [\$300] for a first violation; [\$600] for a second offense at the same licensed premises within a 36-month period; and [\$1,000] for a third or subsequent offense at the same location within a 36-month period. Upon the third violation, the license will be suspended for a period of not less than [30] consecutive days and may be revoked. Upon a fourth violation within a 36-month period, the license will be revoked.

Minimum fine schedule

As of August 1, 2020, state law set a minimum fine schedule for underage sales or other ordinance violations by licensed tobacco retailers at: \$300 for a first violation, \$600 for a second violation within 36 months, and \$1,000 for a third or subsequent violation within 36 months. Upon the third or subsequent violation within 36 months of the first violation, state law requires a suspension of at least seven days and allows for license revocation. The sample language provided above includes a longer suspension period for a third violation (30 days) and requires license revocation for repeat offenders (four violations) within 36 months.

- (2) **Employees of licensees and other individuals.** Individuals, other than persons under the age of 21 regulated by paragraph (B)(3) of this section, who are found to be in violation of this ordinance may be charged an administrative fine of [\$50].
- (3) **Persons under the age of 21.** Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel, and other interested parties to determine an appropriate remedy for persons

under the age of 21 in the city in the best interest of the underage person. The remedies for persons under 21 who use a false identification to purchase or attempt to purchase licensed products may be established by ordinance and amended from time to time.

- (4) **Statutory penalties.** If the administrative penalty for violations against licensed retailers under Section 11(B)(1) authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

- (C) **Misdemeanor prosecution.** Nothing in this section prohibits the city from seeking prosecution as a misdemeanor for an alleged second violation of this ordinance by a person 21 years of age or older within five years of a previous conviction under the ordinance.

Section 12. Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Section 13. Effective Date.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Price Discounting FAQ

In 2018, tobacco companies spent \$9.1 billion to reduce the price of cigarettes and smokeless tobacco for consumers. That is more than \$1 million every hour¹. We know coupons and discounts undermine smokers' attempts to quit and hook young people into starting. In Minnesota, adult smokers who redeemed cigarette coupons were less likely to quit smoking than those who didn't use coupons^{2,3,4}. Below are some frequently asked questions regarding a tobacco price discounting ordinance.

Price Discounting Ordinance:

What would be included in a price discounting ordinance?

There are two components that would be included in a price discounting ordinance.

1. A minimum price on all conventional cigarettes and smokeless tobacco.
2. Prohibiting the redemption of coupons and in-store promotions of all tobacco products.

Why is increasing the price of tobacco products important?

Price is the most effective tool in reducing smoking in adults and preventing youth from starting. Tobacco is a leading cause of premature, preventable death in Minnesota. All tobacco - including conventional cigarettes and smokeless tobacco - contains nicotine, which is highly addictive. Despite Minnesota's progress in reducing smoking among youth and adults, an increasing percentage of youth are still using many of these products. Studies have shown that a \$10 per pack retail price and regulating discounts could result in⁵:

- 637,270 fewer smokers aged 12-17 years
- 4,186,954 fewer smokers aged 18-25 years
- 7,722,460 fewer smokers aged 26 and older

When prices are higher, tobacco use decreases, especially among youth and low-income smokers. It prevents youth from starting and helps people quit^{6,7}.

Why is it important to prohibit coupon redemption and set a minimum price for conventional cigarettes and smokeless tobacco?

Prohibiting coupon redemption and establishing a minimum price for conventional cigarettes and smokeless tobacco ensures there are no loopholes. Setting a minimum price for conventional cigarettes and smokeless tobacco will keep prices of these products high. However, it does not include tobacco products such as e-cigarettes and vaping devices.

Conventional cigarettes and smokeless tobacco come in standard sizes and make setting a minimum price per product less challenging for the city to regulate. However, tobacco products like e-cigarettes and vaping devices vary in types (ex. tank, pen, JUUL, Puff Bar) and sizes (ex. E-juice vary in ounces per bottle). Although e-cigarettes and vaping devices will not have a minimum price, prohibiting coupon redemption will ensure to include these products in the price discounting policy.

What will setting a minimum price do?

Setting a minimum price on conventional cigarettes and smokeless tobacco will make it so these products cannot be sold for a price lower than the set price. Brooklyn Center already has a minimum price for cigars, so establishing a minimum price would treat conventional cigarettes and smokeless tobacco similarly and provide consistency.

What products would a minimum set price ordinance apply to?

A minimum set price ordinance would apply to all conventional cigarettes and smokeless tobacco.

Doesn't Brooklyn Center already have a minimum price on tobacco?

Brooklyn Center adopted a minimum set price on cigars of \$2.10 per cigar in 2014. It only applies to cigars.

Are minimum price restrictions legal?

Yes, cities and states may set minimum prices on tobacco. In Minnesota, the Unfair Cigarette Sales Act (UCSA) is a state law that sets a minimum price on cigarette products⁹. There is no preemptive language that does not allow for local jurisdictions to adopt stronger minimum prices for cigarettes¹⁰.

What will prohibiting the redemption of tobacco coupons and in-store promotions do?

Prohibiting the redemption of coupons and promotions will make it against city ordinance in Brooklyn Center for a retailer to redeem coupons and promotions for all tobacco products. This includes: conventional cigarettes, chew tobacco, electronic cigarettes, cigars, little cigars and all other tobacco products. This means tobacco companies can still make coupons, but customers and retailers in Brooklyn Center cannot redeem them.

Why is prohibiting the redemption of coupons and promotions on all tobacco products important?

Tobacco companies use coupons and retail promotions to lower the price of products, making them much more appealing to youth and young adults. About 50 percent of Minnesota smokers have used tobacco coupons or promotions in the past year to save money on cigarettes and one third of adult smokers use tobacco coupons or discounts every time they see one^{2,8}. Coupons also undermine smokers' attempts to quit. Minnesota adult smokers who redeemed cigarettes coupons were less likely to quit smoking than those who didn't use coupons^{2,3,4}. Doing a complete ban on redemption of coupons and promotions would also apply to electronic cigarettes, which are known to be more commonly used among youth. Because there are so many electronic cigarette products available, banning the redemption of coupons and promotions would help keep the price of these products high.

By keeping tobacco prices low, people of color and low-income communities will continue to experience health disparities and inequities.

Enforcement:

What is the Minnesota Unfair Cigarette Sales Act and how does it apply to this ordinance?

A local price discounting ordinance is not in conflict with the state law. It supports the original intent of that law by leveling the playing field among retailers. The Minnesota Unfair Cigarette Sales Act (UCSA) of 1967 was established to “prevent unfair competition from sales below cost.” (9). The state wanted to prevent stores from using tobacco products as a ‘loss leader’ and wanted to prevent larger retailers from having an advantage over small retailers. UCSA sets minimum prices for wholesale and retail sales of cigarettes.

However, the law has not worked as intended. In 1967, valuable coupons and in-store promotions such as a ‘buy one, get one free’ were not common and they are not covered by the UCSA. Large retail stores such as Holiday or Speedway have contracts with tobacco companies that give them more of the in-store promotions, thus giving them a significant advantage over smaller “mom and pop” shops that do not have the same access. The UCSA only applies to cigarettes, not other tobacco products like e-cigarettes or smokeless. This ordinance will protect all Brooklyn Center licensed tobacco retailers from unfair competition.

How would this ordinance be enforced?

The ordinance would be enforced by the city, which employs random compliance checks at each licensed tobacco retailer in Brooklyn Center. The city issues warnings and penalties to businesses that fail to follow the ordinance.

What would the penalties be for failing to comply?

The penalties will be the same as other infractions of the city's tobacco ordinance.

What have other cities done?

Providence, RI, New York City, and Chicago, have all passed ordinances regulating the price of tobacco. New York City and Chicago have passed city ordinances on a minimum price on tobacco products (ex. Cigarettes, cigars, smokeless tobacco). Providence prohibits coupon redemption for cigarettes. ANSR has been in contact with key people involved in implementing and enforcing the ordinances in these cities.

SOURCES

1. Federal Trade Commission (2019). *Cigarette Report for 2018*; Federal Trade Commission (2019). *Smokeless Tobacco Report for 2018*.

What coupons or promotions would this ordinance apply to?

This ordinance would apply to all coupons or in-store promotions on all tobacco products, including conventional cigarettes, smokeless tobacco, electronic cigarettes, cigars, little cigars and other tobacco products.

What is the difference between coupons and in-store promotions?

People receive coupons in many ways, such as email, mail and phone apps. In-store promotions are discounts available only in the store and typically already on the packages. When a tobacco coupon or promotion is redeemed, retailers are reimbursed by tobacco companies.

Is a ban on coupon redemption legal?

Yes, it is legal to prohibit coupon redemption but it is probably not legal to prohibit the distribution of coupons even if the coupons cannot be used ¹¹.

Businesses:**What would this ordinance require of businesses and retailers?**

This ordinance requires licensed tobacco retailers to sell conventional cigarettes and smokeless tobacco at a set minimum price. Retailers could not use coupons or in-store promotions to sell these items for less than the set minimum price.

Which businesses would this ordinance apply to?

This ordinance would apply to all licensed tobacco retailers and businesses in Brooklyn Center.

If the minimum price is higher than the usual list price, who makes the extra profit?

The tobacco licensed business keeps the extra profit.

Inequity and Communities:**Will this price discounting ordinance be inequitable to people of color and low-income communities in Brooklyn Center?**

Tobacco price discounting schemes target communities disproportionately impacted by the harms of tobacco: African Americans, LGBTQ individuals, women, youth, and low-income populations. Knowing the harms of tobacco products, these communities experience health disparities of tobacco-related illnesses at greater rates.

- "Tobacco use is a major contributor to the three leading causes of death among African Americans - heart disease, cancer, and stroke ¹²."
- "Lower-income populations have less access to health care, making it more likely that they are diagnosed at later stages of diseases and conditions ¹³."
- "LGBT individuals are less likely to have health insurance than straight individuals, which may negatively affect health as well as access to cessation treatments, including counseling and medication ¹⁴."

2. Choi, et al. (2013). Receipt and redemption of cigarette coupons, perceptions of cigarette companies and smoking cessation. *Tobacco Control*; 22(6): 418-22.
3. Choi & Forster (2014). Frequency and Characteristics Associated with Exposure to Tobacco Direct Mail Marketing and Its Prospective Effect on Smoking Behaviors among Young Adults from the US Midwest. *American Journal of Public Health*; 104(11), 2179-2183.
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5. Marynak, et al. (2016). DOI: 10.1177/0033354916662211
6. U.S. Department of Health and Human Services (2014). *The Health Consequences of Smoking— 50 Years of Progress: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.
7. Institute of Medicine (1998). *Taking Action to Reduce Tobacco Use*. Washington, D.C.: National Academies Press.
8. White, et al. (2006). Cigarette promotional offers: Who takes advantage? *Am J Prev Med*; 30(3):225–231.
9. Minnesota House of Representatives Research Department (2000). *The Unfair Cigarette Sales Act*. <https://www.leg.state.mn.us/docs/pre2003/other/000646.pdf>
10. Marlo Miura, Tobacco Control Legal Consortium, *Regulating Tobacco Product Pricing: Guidelines for State and Local Governments* (2010).
11. Tobacco Control Legal Consortium (2011). *Tobacco Control Regulations and Sampling Restrictions*. Public Health Law Center.
12. CDC (2019). *African Americans and Tobacco Use*.
13. CDC (2019). *Cigarette Smoking and Tobacco Use Among People of Low Socioeconomic Status*.
14. CDC (2019). *Lesbian, Gay, Bisexual, and Transgender Persons and Tobacco Use*.

U.S.-born African American Tobacco Pre-Survey Data Highlights

October 2016

Hennepin & Ramsey Counties

The African American Leadership Forum, in coordination with Hennepin County Public Health, surveyed a convenience sample of 407 African Americans in Hennepin and Ramsey counties from May through July 2016.

This assessment is part of a Statewide Health Improvement Partnership (SHIP) grant required by the Minnesota Legislature¹ to address African American menthol tobacco use. It is a first step to deepen understanding of African American use patterns and perceptions and attitudes toward menthol tobacco. It will serve as a basis for community engagement and education in the second year of the two-year grant.

Twenty-four percent of the respondents to this survey are current smokers.

U.S.-born African Americans² confirm menthol tobacco is a serious threat to their health.

- 84% of surveyed smokers smoke a brand that is menthol.
- 72% of surveyed smokers agreed menthol makes it harder to quit.

Menthol's soothing effect and minty taste makes smoking easier and more attractive, especially for youth.

- Surveyed menthol smokers were attracted to menthol products because they taste and feel different than other types of cigarettes; the top three reasons for using menthol: It's soothing, cooling, and "tastes better" than non-menthol.
- 69% of surveyed smokers agreed menthol's cooling sensation makes it easier for young people to start smoking.

African American community members are targeted by tobacco industry marketing.

- 83% of surveyed smokers get their cigarettes at gas stations or convenience stores – locations commonly visited on a day-to-day basis.
- 61% of respondents agree menthol cigarettes are marketed to African Americans more than other racial groups
- In the past 30 days, one in four of all respondents noticed:
 - Cigarettes at sale prices.
 - Coupons for cigarettes.
 - Advertisements for cigarettes in magazines.
- 57% of surveyed smokers noticed coupons for cigarettes in the past 30 days.
- 28% of surveyed smokers noticed cigarettes promotions in the mail in the past 30 days.

Survey results reinforce the need to educate and raise awareness on the harms of menthol tobacco use.

- 88% of respondents thought tobacco use was a significant health issue in the African American community.
- 57% of surveyed smokers didn't know menthol cigarettes are just as harmful as other cigarettes.
- 44% of surveyed smokers wrongly thought menthol cigarettes are less harmful than other cigarettes.

A majority of African American community members support new laws to reduce tobacco's harm.

- 69% of surveyed smokers supported more laws to reduce the harms of smoking.
- 60% of surveyed smokers said they would quit if menthol was no longer sold in stores.



¹ Statewide Health Improvement Partnership: Menthol Cigarette Intervention Grant <http://www.health.state.mn.us/divs/oshii/ship/menthol.html>

² Hereafter referred to as African Americans

U.S.-born African American Menthol Tobacco Post Survey Data Highlights

December 2017

Hennepin & Ramsey Counties

Surveys and key informant interviews were completed as part of a Statewide Health Improvement Partnership (SHIP) grant. The Minnesota Legislature required that the SHIP grant address African American menthol tobacco use.¹ Post-surveys and key informant interviews were completed to evaluate efforts to increase awareness of harmful effects of menthol tobacco products and to develop community-driven recommendations to decrease tobacco use in the African American community. The African American Leadership Forum (AALF), in coordination with Hennepin County Public Health, surveyed a convenience sample of 382 African Americans in Hennepin and Ramsey counties from July through October 2017. In addition, AALF conducted interviews with nine key stakeholders in the community, the results of which support the findings highlighted below and support subsequent community-driven recommendations to reduce tobacco use in the African American community.

Eighteen percent of the respondents to the post-survey were current smokers. Consistent with the pre-survey, African American smokers at post overwhelmingly reported using menthol brands (83 percent).

Many African Americans agree that menthol cigarettes are marketed to their community more than other racial groups.

- African American smokers noticed coupons (54 percent), free cigarettes (30 percent), and cigarette promotions in the mail (25 percent) and online (19 percent) in the past 30 days.

African American smokers and nonsmokers strongly support policies to restrict sale and availability of tobacco.

- Most smokers (68 percent) and nonsmokers (77 percent) also support restricting sale of flavored products, including menthol, to certain retailers such as tobacco-only stores.
- Smokers and nonsmokers alike (71 percent and 73 percent, respectively) support increasing the legal age for sale of tobacco products from 18 to 21.
- Similarly, 67 percent of smokers and 74 percent of nonsmokers support reducing the number and density of stores that sell tobacco.
- Two-thirds of smokers (62 percent) and three-quarters of nonsmokers (74 percent) support efforts to keep prices of tobacco high.

¹ Statewide Health Improvement Partnership: Menthol Cigarette Intervention Grant <http://www.health.state.mn.us/divs/oshii/ship/menthol.html>

Sixty percent of smokers in both the pre- and post-surveys said they would quit smoking if menthol were no longer sold in stores.

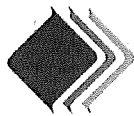
Most smokers (70 percent) tried to quit in the past 12 months.

- Additionally, 68 percent knew where to get information or resources for quitting.
 - However, relatively few of those who tried to quit reported using common resources, such as telephone programs (15 percent), in-person counseling (17 percent), or medications (13 percent). One-quarter (27 percent) talked to their health care provider about their tobacco use, although it is not known what actions they took as a result.
- Those who tried to quit but were unsuccessful reported that the craving to smoke was too strong (46 percent) and that they have family and friends who still smoke (42 percent).

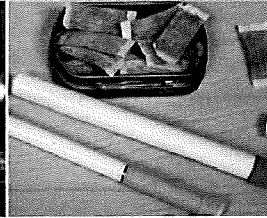
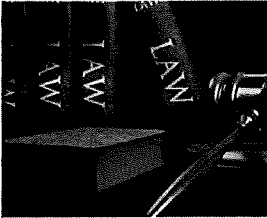
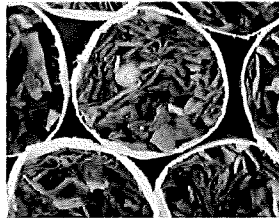
Community members who attended education sessions were more aware of the harms of menthol tobacco and marketing directed to the African American community.

- This grant-funded initiative supported more than 60 education sessions that reached more than 3,000 community members in Hennepin and Ramsey counties.
- Seventy nine percent of those who attended education sessions agreed that menthol makes it harder for smokers to quit; by comparison, just under half (49 percent) of those who did not attend education sessions agreed with the previous statement.
- Eighty three percent of those who attended education sessions agreed that menthol is marketed to African Americans more than other racial groups; just over half (58 percent) of those who did not attend education sessions agreed with the previous statement.





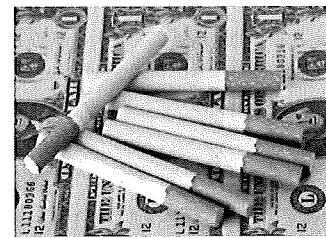
Tobacco Control
Legal Consortium



Death on a Discount: Regulating Tobacco Product Pricing

Introduction

The price of tobacco products directly affects the level of consumption. For example, the availability of cheap tobacco products increases rates of tobacco use, particularly among young adults and minors, who tend to be price-sensitive. The tobacco industry uses a variety of innovative pricing strategies to discourage current tobacco users from quitting, to entice new customers to purchase their products, and to reduce the effectiveness of tobacco tax increases. These strategies include popular discounting schemes, such as cents- or dollar-off promotions, multi-pack offers (e.g., two-for-one deals), and other price-related incentives (e.g., buy-some-get-some-free offers). Many of these retail value-added promotions are advertised and used at the point of sale or made available through coupons. The tobacco industry uses sophisticated research to apply these strategies to specific products in particular geographic locations, and to target certain groups of people.



This publication provides a brief overview of policy approaches for addressing tobacco product discounting schemes – specifically tobacco product coupons and value-added promotions such as multi-pack offers.¹ Given the tobacco industry's extensive use of price discounting schemes and strong evidence that price has a significant impact on overall tobacco use and youth initiation, a growing number of state and local communities are considering pricing policies, in addition to taxation, as part of comprehensive tobacco control programs.² Although some pricing strategies are relatively untested, states and many localities have broad legal authority to regulate the sale and distribution of tobacco products in their jurisdictions. If regulations are carefully drafted to focus on tobacco product pricing, retailer conduct at the point of sale, and transactions within a specific jurisdiction, these pricing laws are likely to be upheld, even if they are challenged by the tobacco industry.³

Tobacco Product Coupons

Consumers receive tobacco product coupons in several ways. For example, they can be affixed to packs of certain brands, sent by direct mail, or made available via download from the Internet or smartphone applications. Coupons are often targeted to specific geographic areas (such as low socio-economic neighborhoods)⁴ or to particular demographic groups (such as youth or minorities). Studies have found, for instance, that price promotions for menthol cigarettes are more prevalent in neighborhoods with high concentrations of African American youth.⁵

Coupons are also attractive price reduction strategies for the tobacco industry because they allow premium brands to maintain their image as a higher-end product, while competing with generic brands on price.⁶

One way to restrict coupons is to limit their *distribution*. Historically, this has been the most common approach taken by state and local governments. The extent of current state and local coupon distribution laws vary, but they generally are very narrow in scope. For instance, some states only prohibit tobacco coupon distribution to minors. Other states' laws restrict coupon distribution more generally within a certain distance of schools, but contain exemptions allowing for coupon distribution in bars and other adult-only venues. Because restricting the distribution of coupons could have Commerce Clause and First Amendment implications, state and local governments should take care to consult an attorney before they pursue this approach.

Another way for governments to restrict coupons is to regulate their *redemption*. Such laws could prohibit tobacco retailers from redeeming coupons that discount the price of cigarettes and other tobacco products, and could make compliance with such a restriction a condition of the jurisdiction's retail tobacco licensing scheme. In January 2012, the city of Providence, Rhode Island passed the first law to prohibit licensed retailers from redeeming coupons and multi-pack offers for tobacco products.⁷ The law amends the city's tobacco retailer licensing ordinance, and punishes violators by fines or revocation of the tobacco retail license.⁸ A group of tobacco retailers, cigar manufacturers and tobacco product manufacturers challenged the ordinance in court, alleging among other things that it was preempted by federal law.⁹ The district court dismissed the tobacco industry's motion and upheld the ordinance;¹⁰ the tobacco industry appealed the decision; and the appellate court affirmed the lower court's ruling that the pricing ordinance was not preempted by federal law.¹¹ The pricing ordinance took effect January 3, 2013.

If local communities are concerned that they lack the authority to directly regulate price discounting, they may want to explore opportunities to enforce existing state minimum price laws. For example, a state's minimum price law might allow local communities to prohibit the redemption of coupons that reduce the price of cigarettes below the statutory minimum price.

Laws restricting or prohibiting the retail redemption of coupons would be more likely to affect the price of tobacco products than coupon distribution laws and, given the correlation between price and consumption, would also be more likely to have a significant public health impact. Because a coupon redemption law is limited to regulating only one aspect of a sales transaction at the local level, it may minimize the legal challenges posed by other approaches, such as an expansive state or local restriction on coupon distribution.

Retail Value-Added Promotions

Retail value-added promotions typically take the form of multi-pack offers, which involve the sale of multiple packages for a single combined price (e.g., "buy-one-get-one free" offers), and cross-promotions, which involve a bonus tobacco product with the purchase of another type of tobacco product (e.g., "buy a pack of cigarettes and get a free tin of snus"). Such bundling can dramatically reduce the price of each item, particularly when multi-pack offers are combined

with discount coupons in a single transaction. Moreover, the tobacco industry's significant spending on retail value-added offers of bonus non-cigarette tobacco products with cigarette purchases¹² suggests that it is using cross-promotions as a way to promote smokeless tobacco products and encourage dual use.¹³

The federal Family Smoking Prevention and Tobacco Control Act of 2009 does not regulate retail value-added offers involving free cigarettes or other tobacco products with the purchase of other tobacco products. Nevertheless, the federal law expressly preserves the authority of state and local governments to regulate the sale or distribution of tobacco products,¹⁴ allowing such entities to adopt laws regarding pricing and the sale of discounted tobacco products. At this time, with the exception of Massachusetts (which prohibits sales involving bonus packs of cigarettes through its minimum price law¹⁵), most state laws do not address retail value-added promotions. To date, Providence and New York City are the only localities that have directly prohibited multi-pack offers that result in sales below the listed or non-discounted price. Note: New York City's 2013 tobacco sales law also set the minimum price for cigarettes and 20-pack little cigars at \$10.50.¹⁶

As with coupon restrictions, limiting retail value-added promotions, such as multi-pack discounts, could be a promising way for state and local governments to maintain higher prices for tobacco products and to close loopholes under existing law. Restricting value-added promotions could be accomplished in several ways: (1) through a stand-alone law, (2) imposed as a condition on a tobacco retailer license, or (3) included as an element of a state's minimum price law. For instance, states with minimum price laws could prohibit sales involving bonus packs of cigarettes by requiring that each item included in a combination sale meet the statutory minimum price. States and many localities could also, directly or via a minimum price law, prohibit cross-promotions that add free non-cigarette tobacco products (e.g., smokeless tobacco) with the purchase of packs of cigarettes.

Conclusion

Because pricing policies may face legal challenges, states and local communities should have strong legal support in the pre-planning stages and all other phases of policy development. Local attorneys and tobacco control attorneys, including the staff at the Tobacco Control Legal Consortium, can help ensure that a jurisdiction has the legal authority to adopt a particular regulation and if so, whether any federal statute or constitutional provision limits that authority. They can also provide examples of implemented policies, share policy options and help design, enact and implement legally sound, effective and evidence-based laws.¹⁷ Also, if the policy is challenged in court, tobacco control lawyers can help provide litigation support.

Other Helpful Resources

The Tobacco Control Legal Consortium has several resources on its [website](#) that cover tobacco pricing issues, including *Pricing Policy: A Tobacco Control Guide* (2014), *Regulating Price Discounting in Providence, Rhode Island* (2013), *Regulatory Options for Little Cigars* (2013), *Regulating Tobacco Product Pricing: Guidelines for State and Local Governments* (2010), *Price-Related Promotions for Tobacco Products: An Introduction to Key Terms & Concepts*

(2011), and publications on tobacco taxation. Other resources include CounterTobacco.org's webpage, *Raising Tobacco Prices Through Non-Tax Approaches*, which contains several resources on tobacco pricing policies and the Center for Public Health & Tobacco Policy at New England Law | Boston's *Tobacco Price Promotion: Local Regulation of Discount Coupons and Certain Value-Added Sales* (2013).

Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at publichealthlawcenter@wmitchell.edu with any questions about the information included in this fact sheet.

Last updated: November 2015

Notes

¹ The information contained in this document is not intended to constitute or replace legal advice.

² See Center for Public Health Systems Science et al., *Pricing Policy: A Tobacco Control Guide 2* (2014), <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-guide-pricing-policy-WashU-2014.pdf>.

³ See Tobacco Control Legal Consortium, *Regulating Tobacco Product Pricing: Guidelines for State and Local Governments* 4-7 (2010), <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-pricing-2010.pdf> (describing legal questions that state and local governments should consider to ensure that pricing laws will withstand legal challenges).

⁴ Marlo Miura, Tobacco Control Legal Consortium, *Regulating Tobacco Product Pricing: Guidelines for State and Local Governments 2* (2010), available at <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-pricing-2010.pdf>.

⁵ Lisa Henricksen et al., *Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods*, 14 NICOTINE & TOBACCO RESEARCH, 116-121 (2012).

⁶ Micah Berman & Kerry Malloy Snyder, Ctr. for Pub. Health & Tobacco Policy, *Tobacco Price Promotion: Policy Responses to Industry Price Manipulation* 7(2011), <http://www.tobaccopolicycenter.org/documents/Tobacco%20Price%20Promotion%20Complete%20Report.pdf>.

⁷ Providence Ord. § 14-303 (2012), <http://providenceri.com/efile/2037>.

⁸ See *id.*

⁹ See Tobacco Control Legal Consortium, *Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence* (2013) (providing an overview of the litigation), <http://publichealthlawcenter.org/content/national-association-of-tobacco-outlets-inc-v-city-of-providence>.

¹⁰ *Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence*, 731 F.3d 71 (1st Cir. 2013).

¹¹ See, e.g., Center for Public Health Systems Science et al., *Regulating Price Discounting in Providence, RI: Innovative Point-of-Sale Policies: Case Study #1* (2013),

<http://publichealthlawcenter.org/sites/default/files/resources/SCTC-case-study-Providence-pricing-2013.pdf>.

¹² FED. TRADE COMM'N, FEDERAL TRADE COMMISSION CIGARETTE REPORT FOR 2012, at 2 and tbl.2A (2015), <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2012/150327-2012cigaretterpt.pdf>

¹³ Berman, *supra* note 6, at 11. For more information about the trend of dual use, see Scott L. Tomar et al., *Patterns of Dual Use of Cigarettes and Smokeless Tobacco Among U.S. Males: Findings From National Surveys*, 19 TOBACCO CONTROL 104,107 (2010).

¹⁴ 21 U.S.C. § 387p(a)(1) (West 2013).

¹⁵ MASS. GEN. LAWS ANN. ch. 64C § 13(e) (West 2013).

¹⁶ NEW YORK, N.Y., ORDINANCE NO. 1021-2013 (2013) (signed into law on November 19, 2013). *See also* New York City, *New Law Regulating Tobacco Sales in New York City Retail Stores* (2014), <http://www.nyc.gov/html/doh/downloads/pdf/smoke/ts-faq.pdf>

¹⁷ *See, e.g., Regulating Price Discounting in Providence, RI, supra* note 11, at 11, 14.



Date: May 7, 2018

To: Curt Boganey, City Manager

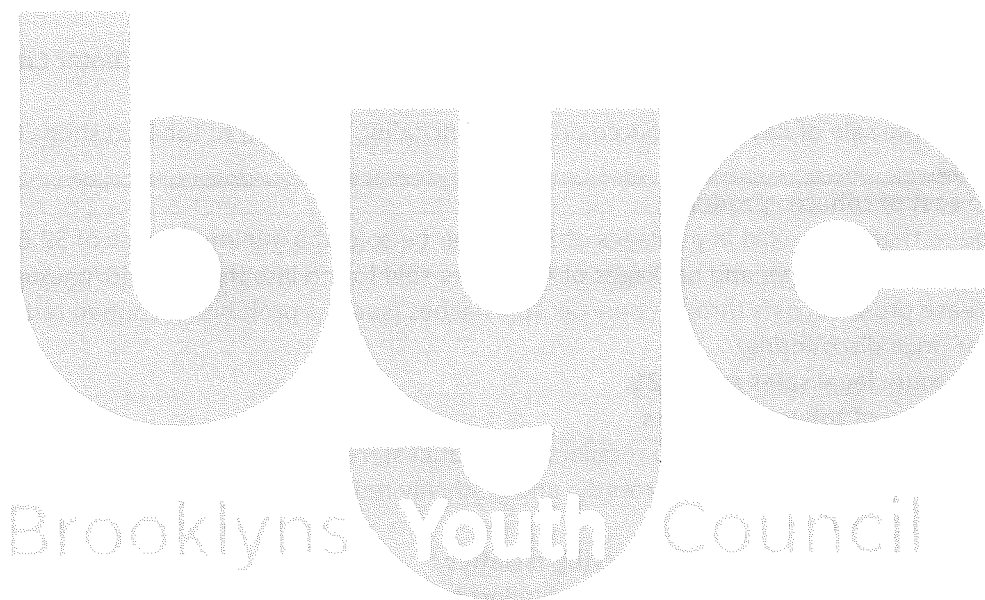
From: Brooklyns Youth Council (BYC)

Subject: City of Brooklyn Center Tobacco Policy Recommendations

INTRODUCTION AND SUMMARY

The BYC's mission is to represent youth in Brooklyn Center and Brooklyn Park by providing a voice in collaboration with the community and local government in order to positively raise awareness of problems facing youth. We are a team of youth from Brooklyn Center and Brooklyn Park who serve as an advisory, strategic planning, and communicating body in partnership with the Brooklyn Bridge Alliance for Youth, Cities of Brooklyn Center and Brooklyn Park, Hennepin County, Local School Districts and Community Colleges to help us

make
the
most



impact for youth in our community. We do a diverse range of projects to represent the issues and hopes of youth in our community such as provide advice and input on policies related to youth that the Alliance partners have.

This year, the BYC partnered with Hennepin County Public Health Department to better understand the effects tobacco has on the youth in Brooklyn Center and Brooklyn Park. Our research consisted primarily of 8 focus groups with youth ages 12-20. In total we interviewed 38 young people, 16 from Brooklyn Center and 22 from Brooklyn Park. Below are key findings from our research.

KEY FINDINGS

Youth tobacco use behavior:

- Many youth expressed that tobacco was very easy to obtain.
- Cigarillos, menthol cigarettes, and flavored e-cigarettes are the most prominent tobacco products youth use.

- E-cigarettes are seen as a healthy alternative to cigarettes.
- Many youth expressed that stress and peer pressure were the primary reasons they chose to use tobacco.

Exposure to tobacco products and marketing:

- Youth frequent tobacco retailers on a daily basis.
- Corner stores, convenience stores and gas stations are the stores youth shop at the most.

Youth awareness and perceptions of tobacco marketing:

- Youth are aware that tobacco marketing is more prominent in low-income and communities of color.
- Young people realize that the marketing of flavored tobacco products is directed at them.
- Marketing of e-cigarettes as a healthier alternative is effective among youth.

The effects of tobacco

- Youth felt tobacco is a gateway for other drugs.
- Using tobacco affects youth's physical, emotional and mental health.

RECOMMENDATIONS

Based on these key findings, the BYC compiled a list of recommendations for the Brooklyn Center City Council.

- **Reduce youth access and exposure to flavored tobacco products.**
 1. Restrict the sale of flavored tobacco products (including menthol) to tobacco shops that restrict minors.
- **Increase the cost of tobacco products.**
 1. Require that cigars sold in packages of 3 or fewer be sold at a minimum price of \$2.60 per cigar contained in package; and packages of 4 or more sold for no less than \$10.40/package
 2. Increase product costs through non-tax approaches (such as prohibiting coupon redemption or other price discounting).
- **Raise the minimum legal sales age to 21.**
- **Reduce the density of tobacco retailers.**
 1. Reduce the number of tobacco retailers to 15 retail stores. This could be done by capping the number of tobacco retailers currently, and gradually reducing the number, as tobacco licenses are not renewed.
- **Restrict the sale of tobacco near youth serving facilities.**
 1. Restrict the proximity of new tobacco retailers to within 1,000 feet of youth serving facilities, such as:
 - i. Schools/educational facilities
 - ii. Parks
 - iii. Community centers
 - iv. Library
- **Increase tobacco retailer compliance with age verification to purchase tobacco products.**
 1. Require retailer employee training on youth access laws. This training can be preventative, a consequence or both.
 2. Increase the number of annual compliance checks.
 3. Require re-inspections after failed compliance check(s) and/or FDA violation(s).
 4. For additional costs of administering the compliance checks, increase the licensing fee so the license holder absorbs the costs.
 5. Signage – Require the notice of the legal sales age and age verification requirement be posted at each retail store.

6. Increase penalties for license violations – this could be done through increased fines; longer suspension terms; suspensions for first, second, third violations.

NEXT STEPS

The BYC also compiled a list of recommendations for the school districts, Hennepin County Public Health, and Minnesota Department of Health to consider in reducing the impact of tobacco on youth in Brooklyn Center.

- **School districts:** Meet and engage with the school boards to inform them on the rising usage rates and concerns about e-cigarettes in schools, increase awareness of tobacco issues and impacts on youth, and boost mental health/well-being services and programs that schools provide to students to reduce tobacco use.
- **Hennepin County Public Health:** Increase awareness in Hennepin County on tobacco issues and impacts on youth and provide support and technical assistance to boosting mental health/well-being services and programs that schools provide to students to reduce tobacco use.
- **Minnesota Department of Health:** Explore state and federal policy approaches on how to decrease youth access to online sales of e-cigarettes.

This project was completed in partnership with Hennepin County Public Health with support from the Statewide Health Improvement Partnership, Minnesota Department of Health.

Edina bans sale of flavored tobacco products, is promptly sued

Andrew Wig

Jun 19, 2020 Updated Jun 19, 2020

It took less than one day for the city of Edina to be sued after a June 16 vote to ban the sale of flavored tobacco products.

Alleging an unconstitutional overreach, a group of businesses including R.J. Reynolds Tobacco Company filed the suit June 17 in the wake of the Edina City Council's unanimous vote.

Effective Sept. 1, the ban was approved in light of concerns over the use of vaping products among youth. In seeking to prevent the ban's implementation, the lawsuit calls the decision an "overboard reaction to legitimate public health concerns about youth vaping."

Edina is not the first city in Minnesota to enact restrictions on flavored tobacco, but the ban follows the city's recent leadership in banning tobacco sales to buyers under the age of 21. In 2017, Edina became the first city in the state to enact such a restriction, starting a trend that led to the same measure becoming state law in May.

Edina's ban on flavored tobacco defines the product category as any tobacco-related product that contains taste or smell other than tobacco. That includes flavors like menthol, mint, wintergreen, and varieties of fruit and candy.

Four other Minnesota cities – Golden Valley, Mendota Heights, Lilydale and Arden Hills – had completely prohibited the sale of flavored tobacco products before the Edina ordinance was approved, according to the Association for Nonsmokers-Minnesota. Sixteen cities in the state, including Edina, have approved some sort of restrictions on flavored tobacco sales, the organization adds.

A December memo from the Edina Community Health Commission predicted that other cities would follow in Edina's footsteps in enacting a full ban on flavored tobacco products. "The Commission anticipates that other nearby municipalities may follow suit, as they did with the Edina Tobacco 21 initiative, until momentum is sufficient to lead to action at the state or federal level," the memo states.

The suit filed in reaction to Edina's ban includes two Edina businesses – Vernon BP and Lang's One Stop Market. Filed in U.S. District Court, the suit argues the ordinance goes beyond concerns about youth vaping.

The legal action cites the Supremacy Clause in the U.S. Constitution, arguing the ban is preempted by U.S. law. In January, the FDA moved to ban most flavored pod-based vaping products such as those sold under the popular Juul brand. The ban did not include menthol flavoring, however.

"Congress and FDA have made the judgment that certain tobacco products, particularly menthol cigarettes and menthol-flavored ENDS (electronic nicotine delivery system) products, should remain available to adult users of tobacco products," the suit states, arguing that Edina's ban conflicts with federal goals.

The suit also argues that banning flavored vaping products could cause former smokers who now vape to revert to cigarettes. The plaintiffs, stating they agree with the goal of reducing vaping among youth, contend the city could have pursued that end by focusing on public health campaigns and the enforcement of age restrictions.

The Edina Community Health Commission memo notes that flavoring tobacco products reduces the burning sensation otherwise associated with tobacco consumption and thereby makes the products more attractive to

youth. "Although not a solution as a single measure, a ban of flavored vaping liquids may lead to a reduction in the number of young people who take up e-cigarettes," the memo reads.

Leading up to the June 16 vote at Edina City Hall, several public-health advocates sent letters to the city council approving of the ban. Backers included Minnesota Department of Health Commissioner Jan Malcom, the American Cancer Society, the American Lung Association, the American Heart Association and the Association for Nonsmokers.

Council members said they had also received correspondence from interest groups in opposition to the measure. Such criticism came from the likes of the Minnesota Service Station and Convenience Store Association. In a letter to the editor published in the Edina Sun Current in May, the organization's executive director, Lance Klatt, argued the ordinance would reflect a double standard by banning flavored tobacco products while allowing city-owned liquor stores to continue selling flavored alcohol products.

City Manager Scott Neal responded to that reasoning by arguing there is a fundamental difference between tobacco and alcohol products. "The products we sell in liquor stores, when used as directed, are not going to kill you," Neal said.

Aside from claiming the double standard, Klatt also warned of detrimental effects on businesses. "Convenience stores and service stations rely on gasoline sales and tobacco sales to remain in business. Without tobacco sales, the business model for these retailers no longer works," he wrote.

The suit against the city also bemoans the fact that no public hearing preceded the council's vote in favor of the ban. Because of the level of correspondence the city was already receiving on the proposed ban, council members judged that a public hearing would not have to precede their vote. A public hearing did, however, precede the council's vote on Tobacco 21 in 2017.

Regarding that listening session, "I became much more well educated," Mayor Jim Hovland said at a June 2 council meeting. The hearing, he continued, "allowed us to make a really solid decision on Tobacco 21."

But makers and sellers of tobacco products had already been given fair chance to weigh in, Councilmember Mary Brindle observed. "Clearly, the industry knew about this for a while," Brindle said. "... I don't think a public hearing's going to give us anything more than we already have."

– Follow Andrew Wig on Twitter @EdinaSunCurrent

On Thu, Jul 2, 2020 at 1:35 PM Curt Boganey <cboganey@ci.brooklyn-center.mn.us> wrote:

Thank you Emily,

I will review and get back to you with any comments.

Cornelius Lycurtis Boganey

City of Brooklyn Center

City Manager

https://www.hometownsource.com/sun_current/community/edina-bans-sale-of-flavored-tobacco-products-is-promptly-sued/article_34ee86b8-b268-11ea-af28-c76a7bf122b0.html

FEATURED

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Andrew Wig
Jun 19, 2020



The sale of flavored tobacco products such as Juul pods, pictured here for sale at Lang's One Stop Market in Edina, will be banned in the city effective Sept. 1. (Sun Current staff photo by Andrew Wig)

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– Follow Andrew Wig on Twitter @EdinaSunCurrent

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Andrew Wig

Edina Community Editor

The Potential Impact of a Menthol Restriction on Convenience Stores

Tobacco isn't the primary reason customers shop at convenience stores

A 2015 national industry report on why customers go to convenience stores shows:

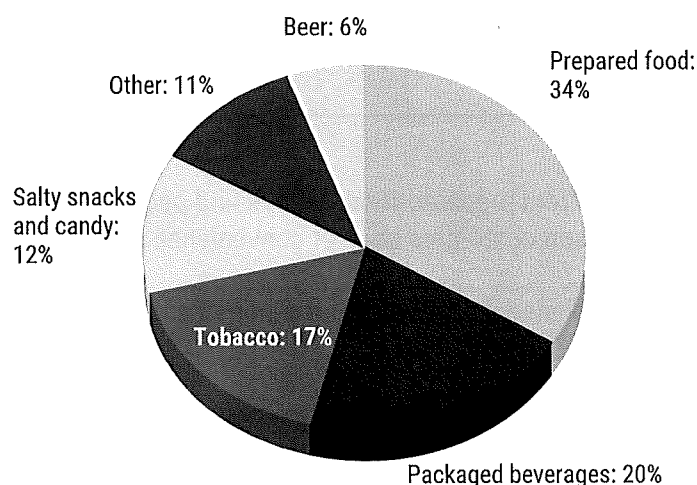


Nationwide in 2015, convenience stores profited twice as much from food service then from tobacco sales.

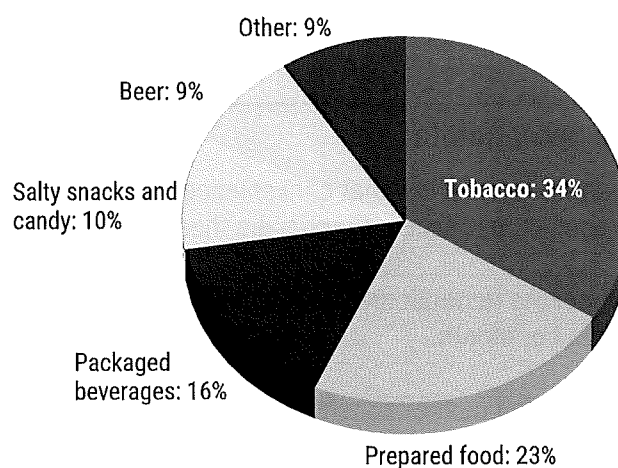


Nationally, convenience store tobacco profits are much lower than tobacco sales

Percentage of in-store **profits** in 2017



Percentage of in-store **sales** in 2017



Profit= What the store takes home after taxes and operational costs are taken out
Sales= The sale value before taxes and operational costs are taken out

Restricting menthol cigarettes to adult-only stores would have little financial impact on convenience stores

In 2015, the National Association of Convenience Stores reported that in the Central Region of the U.S., which includes Minnesota, profit from cigarettes was **\$6,253 per convenience store per month**.

The market share of menthol cigarettes in Minnesota was **24%** in 2015.

If the sale of menthol cigarettes were restricted to adult-only tobacco stores in Minnesota, each convenience store would lose an estimated **\$1,519 per month**.

Projections of the cost of a menthol ordinance in Minnesota

Market share of menthol cigarettes	Loss of profit from menthol cigarettes per store per month
24.3%	\$1,519
For stores where menthol makes up a larger market share:	
30%	\$1,876
40%	\$2,501
50%	\$3,752

Compared to other non-tobacco items:

Non-tobacco convenience store items	Profit per store per month
Salty snacks	\$2,669
Candy	\$2,662
Packaged beverages	\$10,272

Take away points:

- National reports show that convenience stores make more money from prepared food, snacks and packaged beverages than tobacco. Purchasing these items is the primary reason customers shop at convenience stores.
- If Minnesota restricts menthol to adult-only tobacco shops, convenience stores would lose an estimated \$1,519 per store per month.
- The estimated cost of a menthol restriction in Minnesota is small compared to the harmful effects of menthol tobacco.

Sources:

Kress, M. (2017) CSNews Realities of the Aisle annual consumer study, February 2017.

Oller, S. (2018). Preliminary Data from NACS State of the Industry Summit. CSP Daily News, May 2018.

Oller, S. (2016). Region by region: NACS State of the Industry Summit. CSP Daily News, July 2016.

NACS. (2015). How convenience stores work & their contribution to communities. www.nacsonline.com/YourBusiness/Refresh/Document/How-Stores-Work.pdf

Brooklyn Center City Council

June 8, 2020

Emily M. Anderson, Director of Policy



FOR people doing the work. **BY** people doing the work.

Who we are



The Association for Nonsmokers-Minnesota (ANSR)

is a nonprofit organization dedicated to reducing the human and economic costs of tobacco use in Minnesota. Our core commitments are to reduce the number of young smokers and to continuously advocate for the rights and health of nonsmokers.



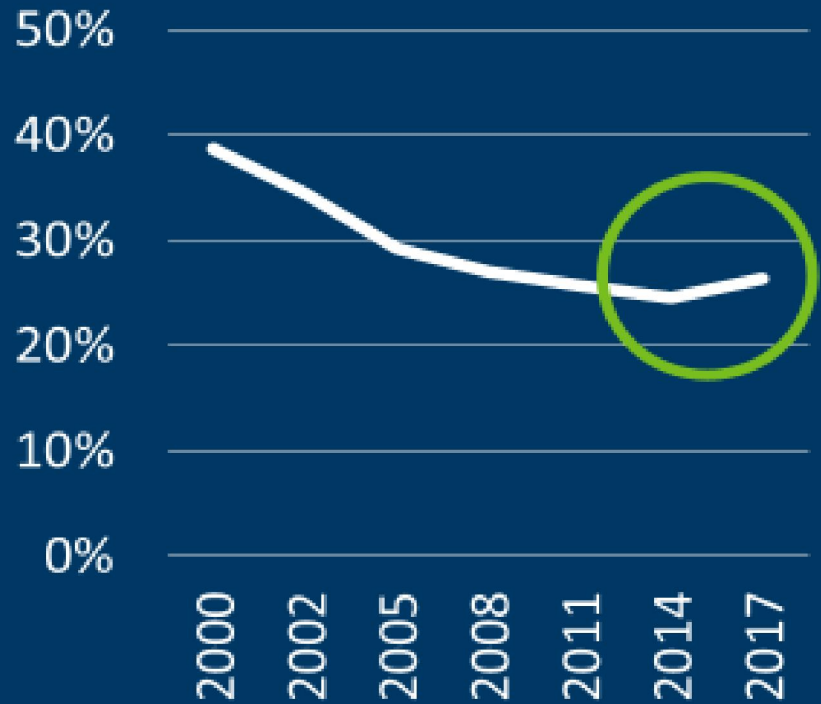
FOR people doing the work. **BY** people doing the work.

Agenda

- » Tobacco Use and Regulations: Today vs. 2018
- » Two policy initiatives:
 - ◊ Flavored/Menthol Tobacco
 - ◊ Price Discounting

Youth Tobacco Use MN 2017

Youth tobacco use
has increased
for the first time
in 17 years.



Brooklyn Center's Tobacco Regulations: 2014-2018

- » First city in the state to set a minimum price for cigars at \$2.10. Since then many MN communities have also set a minimum price for cigars.
- » Raised the tobacco sales age to 21 and restricted where e-cigarettes and other vaping products could be sold.
- » Put a cap on the total number of tobacco licenses.

Brooklyn Center: Ahead of the Curve

- » State leader on minimum cigar pricing.
- » Increased the tobacco sales age to 21 before federal and state law did the same.



Tobacco Regulations: 2020

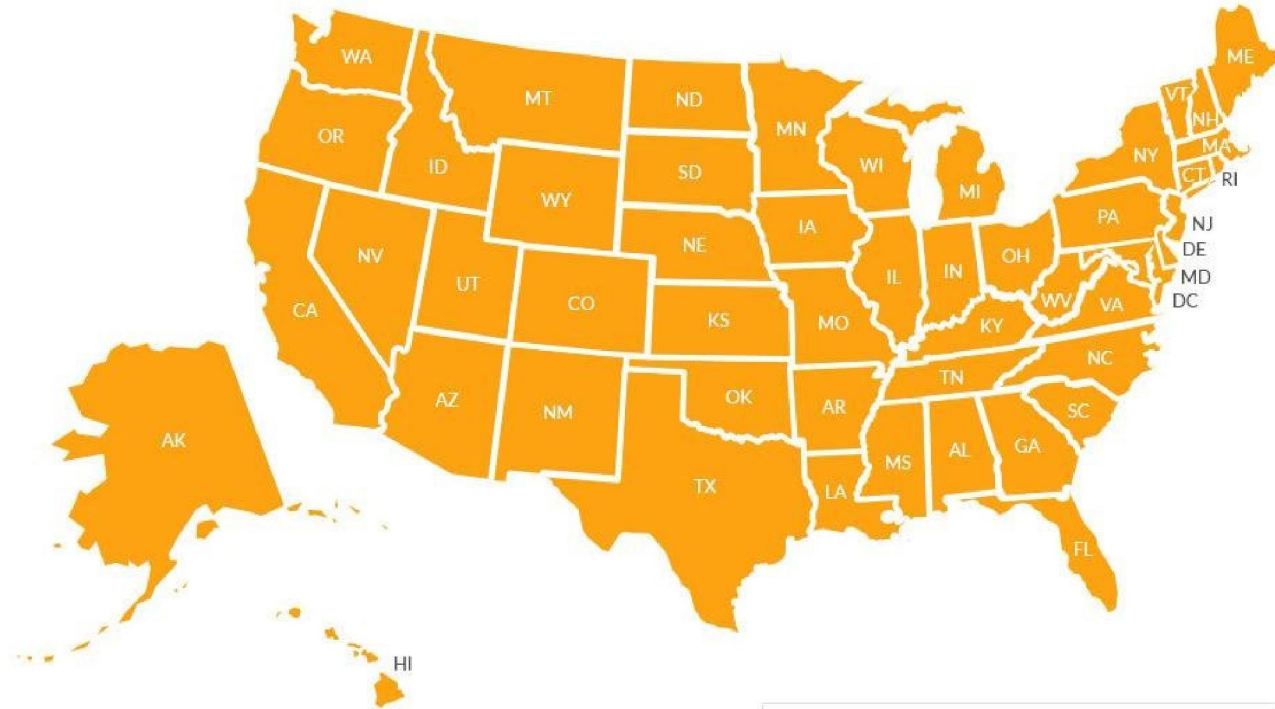
What's different?

- » Tobacco 21 is now federal and state law
- » There are some new, temporary federal restrictions on flavored vaping products.

What's the same?

- » Flavored and menthol tobacco is largely unregulated
- » Many types of flavored vaping products are still available

Tobacco 21 is Now the Law of the Land.



States that will be covered by new Tobacco 21 Law

Last Updated: December 19, 2019

Gov. Walz Signs T21 Law



Minnesota Tobacco 21



Flavored Products Temporarily Unavailable



Mango

Cucumber

Creme'

Fruit

CURRENT JUUL POD OFFERING

TOBACCO AND
MENTHOL-BASED
PRODUCTS



MINT



CLASSIC
TOBACCO



VIRGINIA
TOBACCO



MENTHOL

Mint, Classic Tobacco, Virginia Tobacco, Menthol

Federal flavor restriction- These cigarette flavors are not included in the temporary ban.

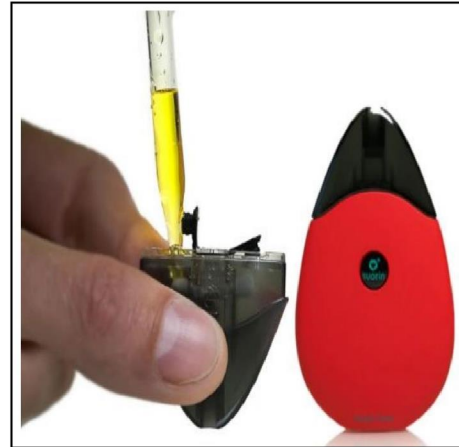
Disposable flavored e-cigarettes



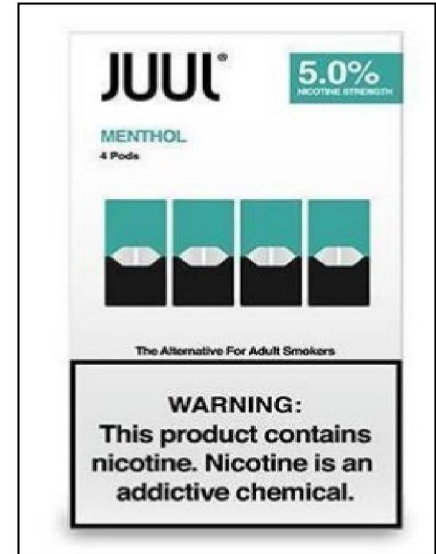
15,000+ flavored e-liquids



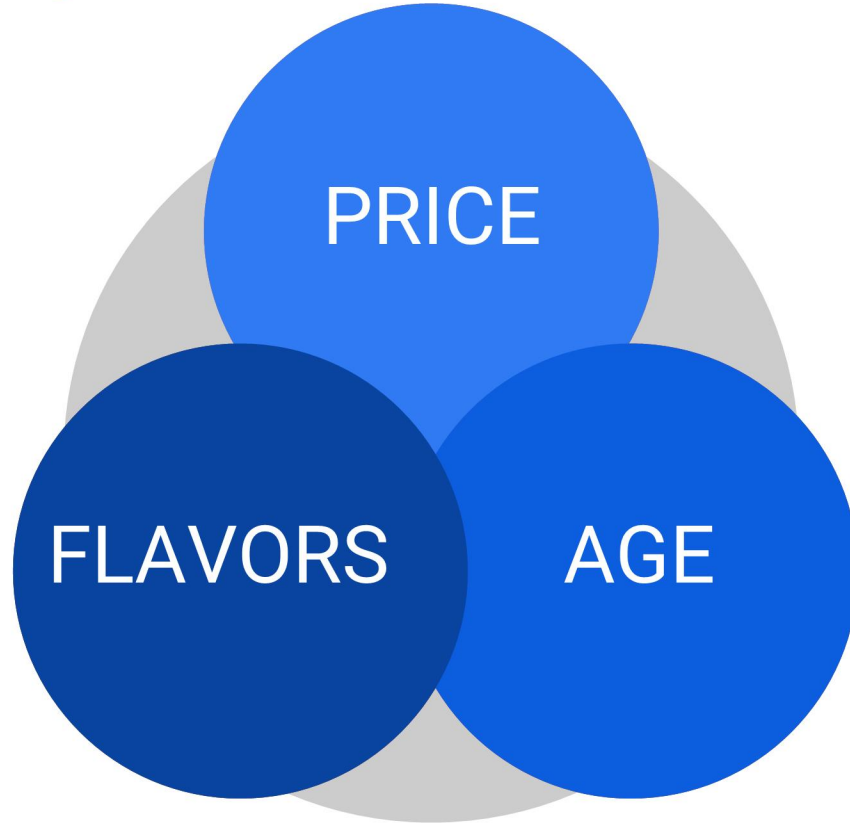
Popular open systems including refillable Juul- compatible pods



Juul and other menthol-flavored pods



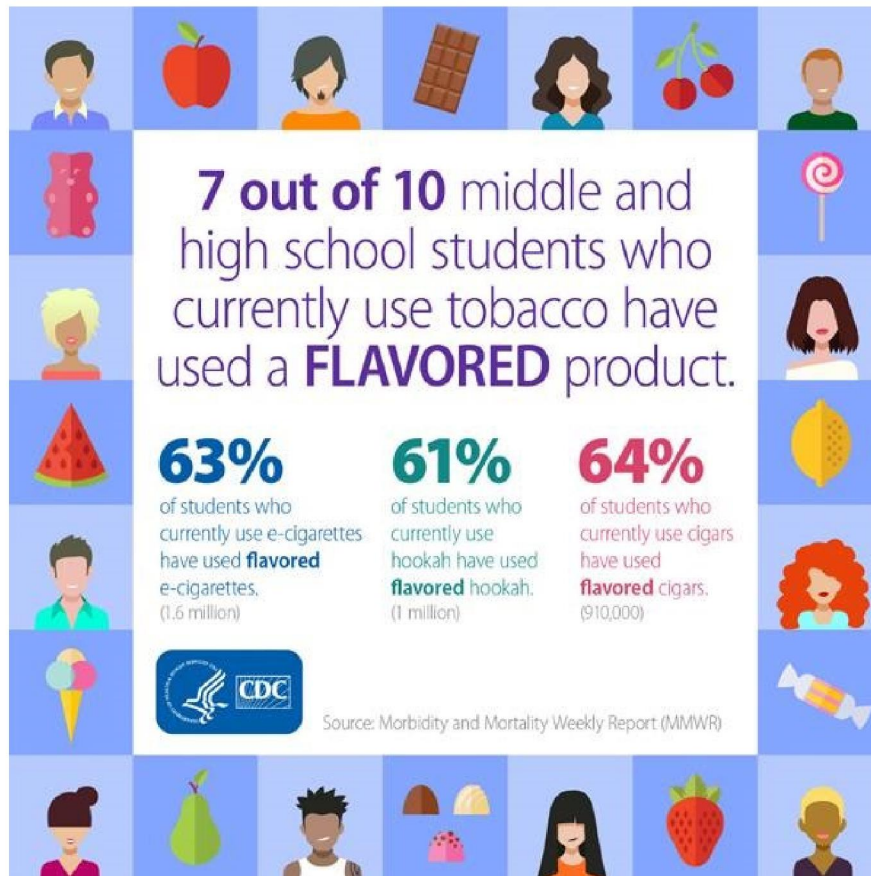
Tobacco Regulations: What's left?



Flavored Tobacco



Flavored Tobacco and Youth

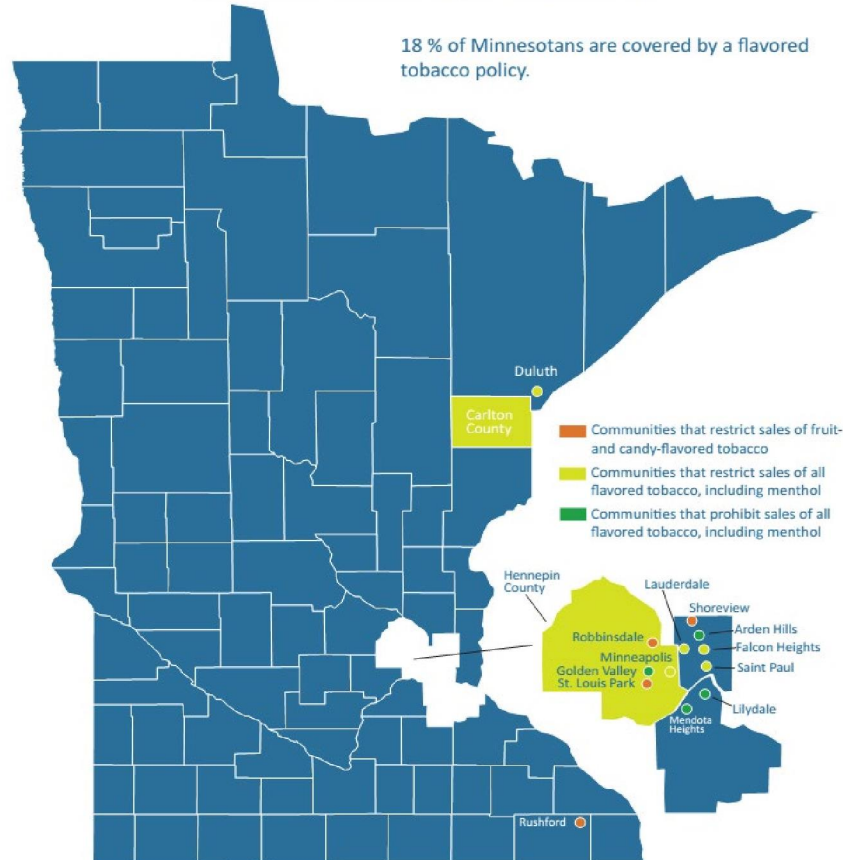


What can communities do?



Minnesota communities restricting the sale of flavored tobacco

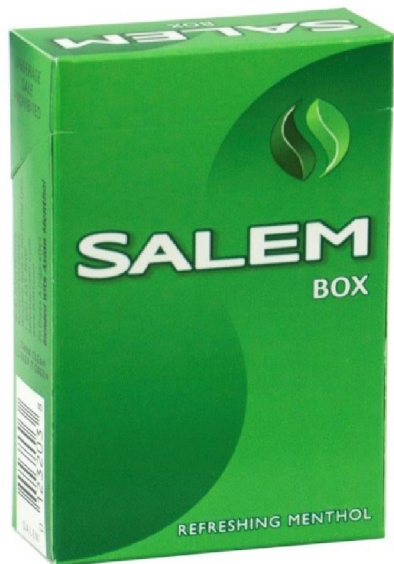
18 % of Minnesotans are covered by a flavored tobacco policy.



What about menthol...

- Is a chemical compound extracted from the peppermint or corn mint plant or created synthetically.
- Has anesthetic or numbing qualities.
- Is used to relieve throat irritation and produces a cooling feeling.

Menthol is used as an additive in nearly all cigarettes to make them more palatable, but only some are promoted as menthol-flavored cigarettes.

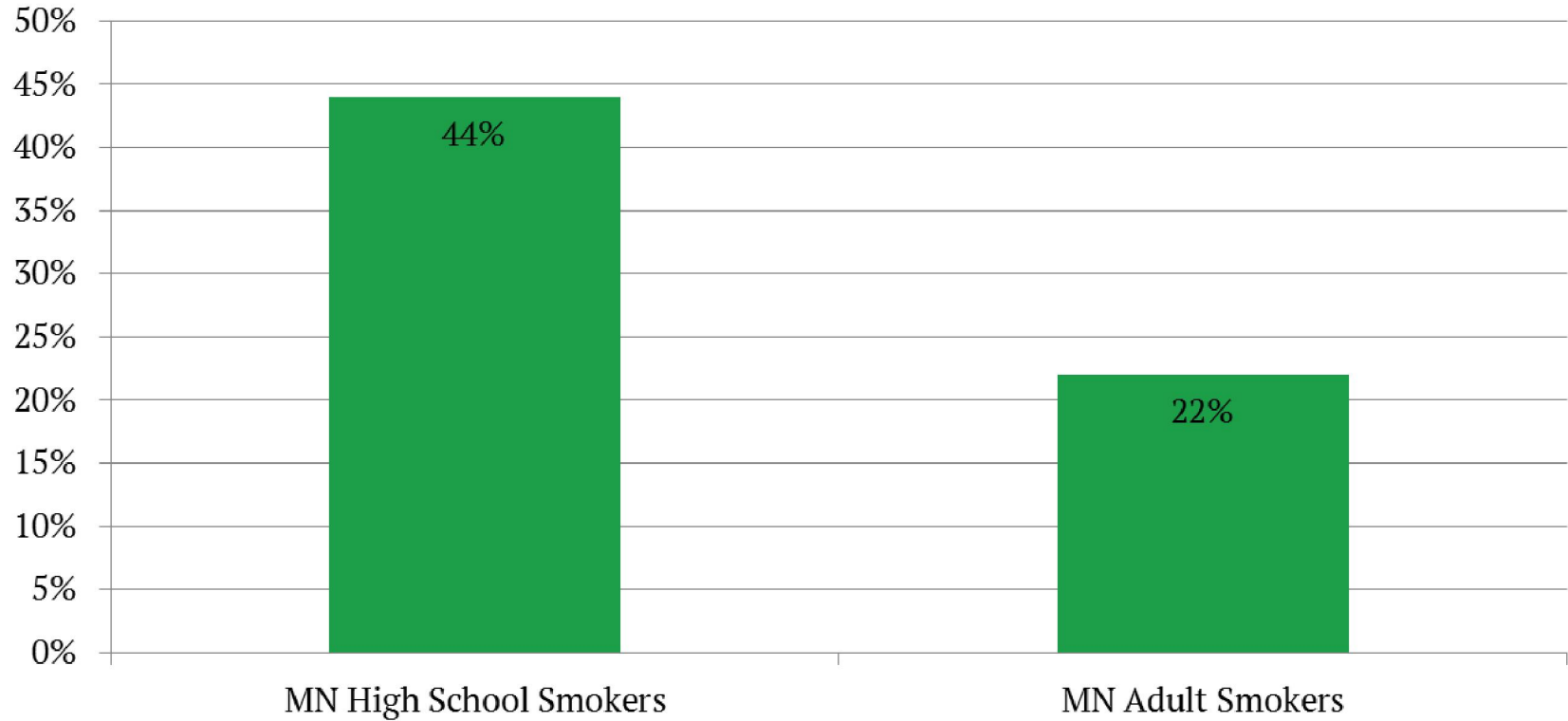


BEAUTIFUL **LIE**
UGLY **TRUTH**
ABOUT MENTHOL TOBACCO

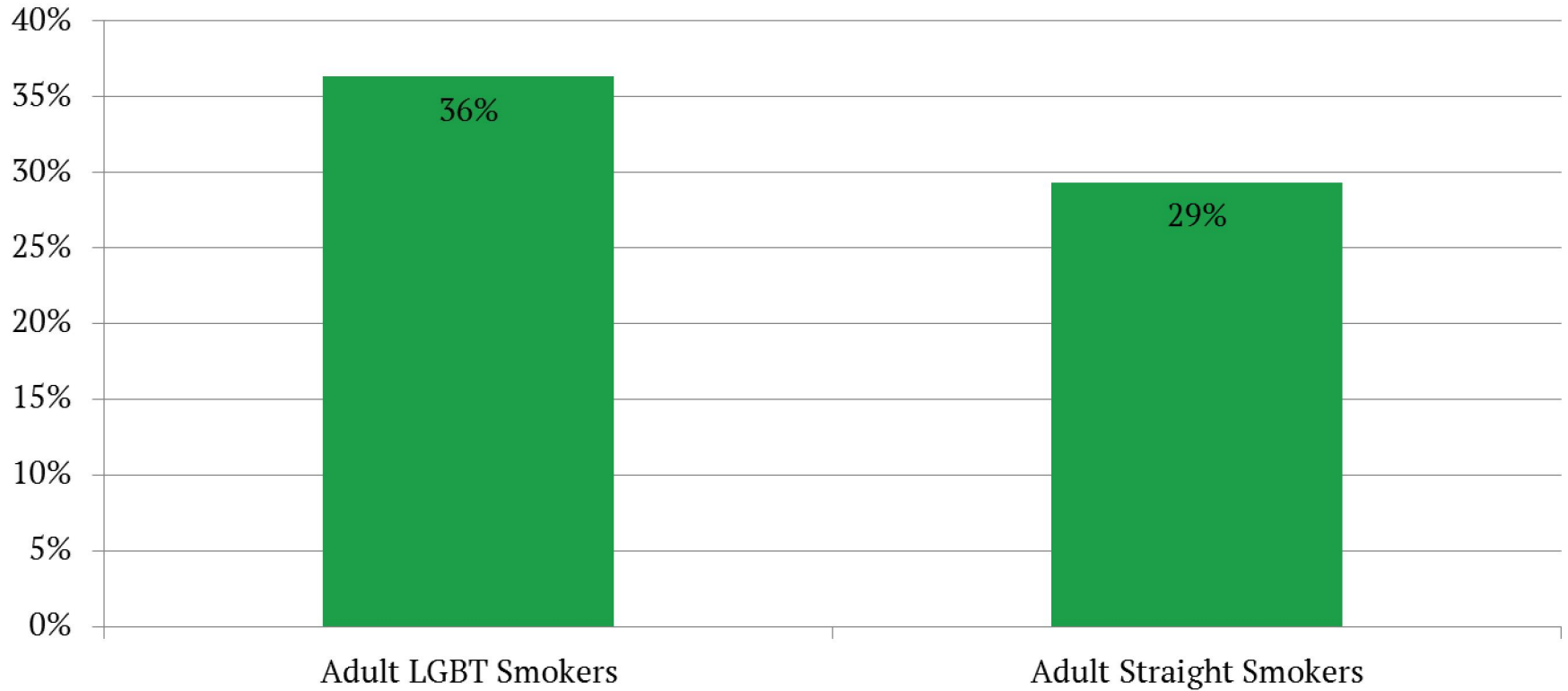


BEAUTIFUL LIE
UGLY TRUTH
ABOUT MENTHOL TOBACCO

Percent of smokers who use menthol

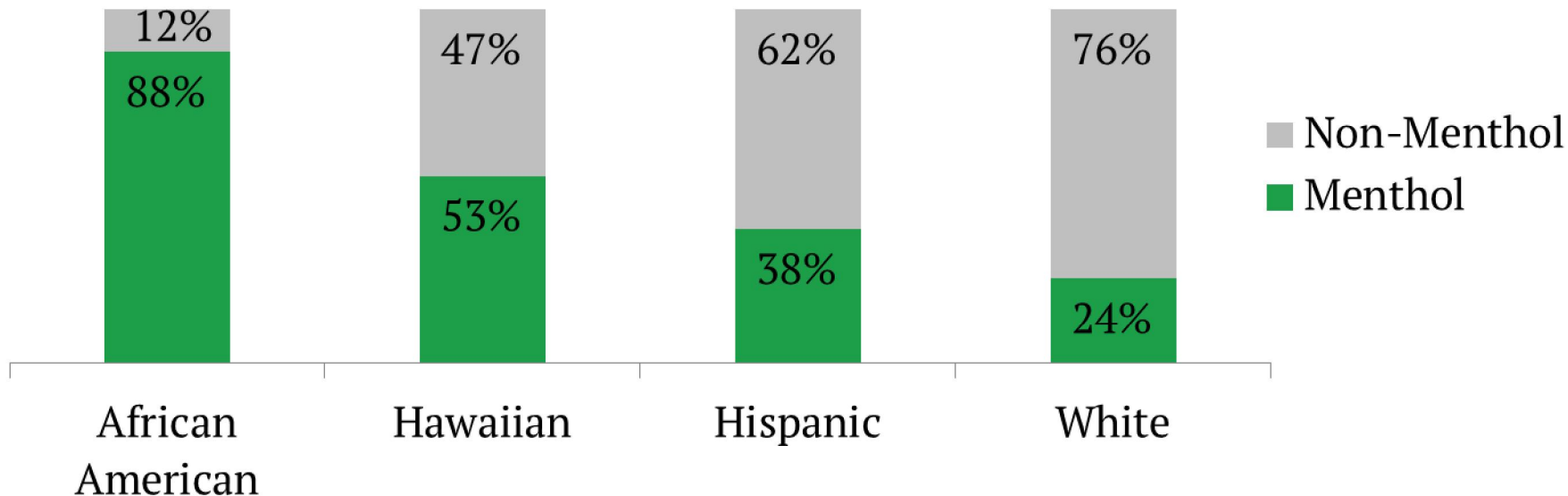


Percent of smokers who use menthol



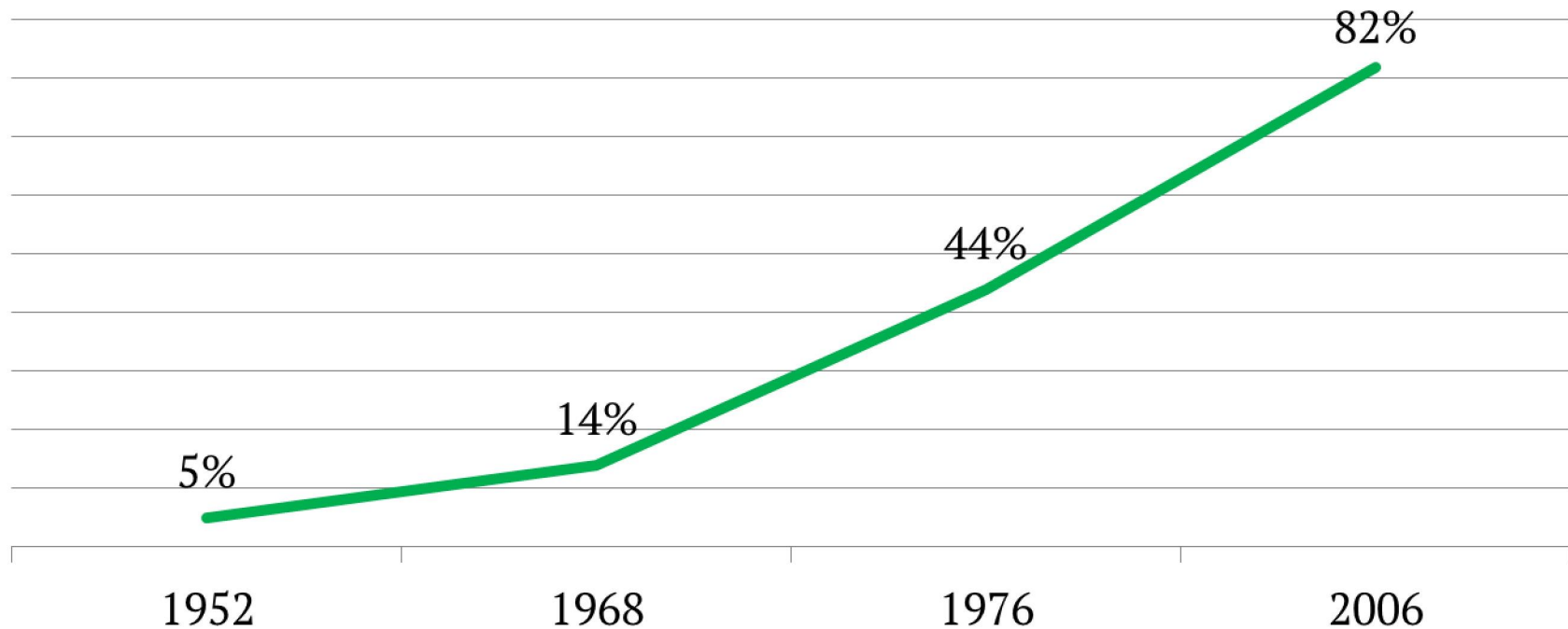
Source: Fallin, Goodin, King (2015). Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. *Am J Prev Med*.

African Americans Use Menthol More Other Racial/Ethnic Groups



Smoking Incidence from NHIS 2009; menthol preference from NSDUH 2009; Giovino GA, Villanti AC, Mowery PD, et al. Differential trends in cigarette smoking in the USA: Is menthol slowing

African Americans Adult Smokers Who Use Menth

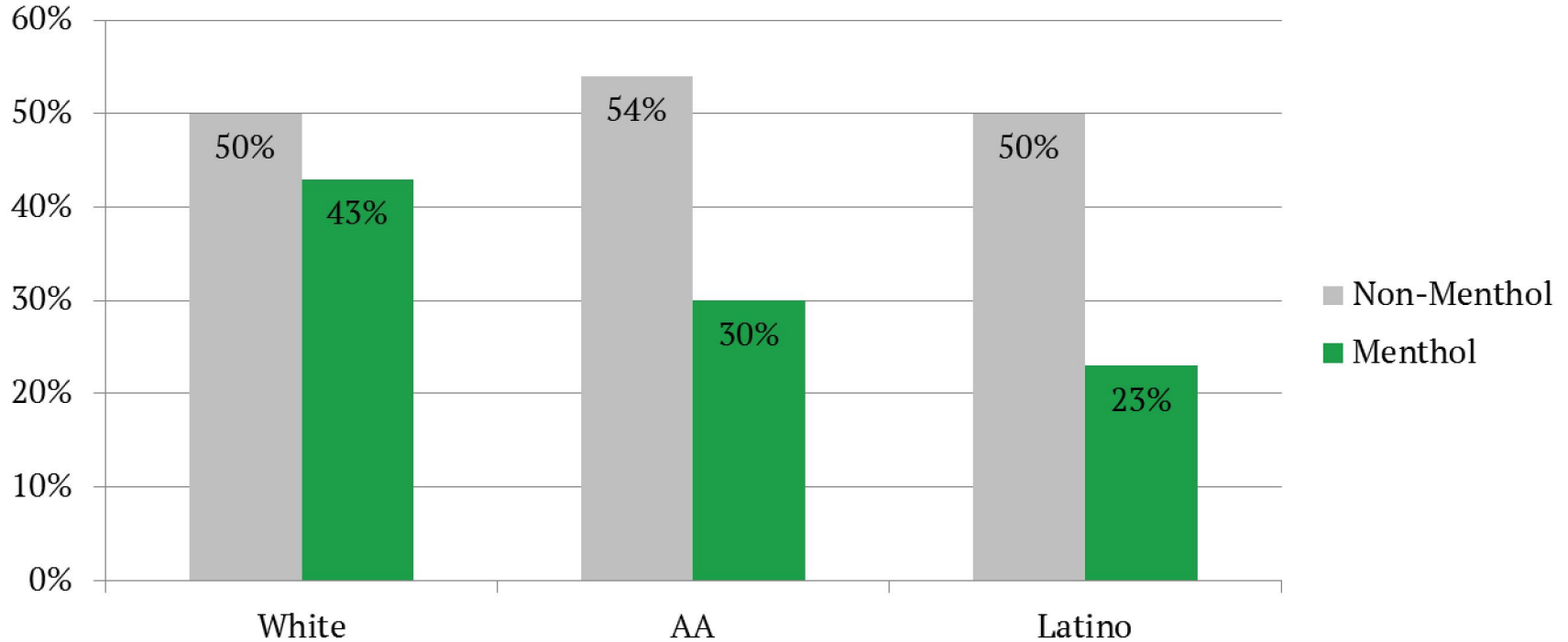


Menthol = Harder to Quit

- Menthol increases nicotine absorption, leading to greater dependence.
- Among high school smokers, those who smoke menthols are more likely to smoke within one hour of waking and more likely to report cravings compared to high school smokers of non-menthols.

Wackowski & Delnevo, 2007. Menthol cigarettes and indicators of tobacco dependence among adolescents. *Addictive Behaviors*, 32(9), 1964-1969.

Percent of Smokers Who Quit



Menthol: Tobacco Industry Targeting

- There is sufficient research to **confirm** that tobacco companies targeted youth, women, and African Americans with menthol marketing
- Research also **suggests** that tobacco companies targeted Latinos, Asians, and Hawaiian/Pacific Islanders

TPSAC Report

“We don’t smoke that s _ _ _ . We just sell it. We reserve the right to smoke for the young, the poor, the black and stupid.”

RJ Reynolds Executive, 1971

R.J. Reynolds executive’s reply when asked why he didn’t smoke according to Dave Goerlitz, lead Winston model for seven years for R.J. Reynolds.] Giovanni, J, “Come to Cancer Country; USA; Focus,” The Times of London, August 2, 1992.

BLACK LABEL FULL FLAVOR 17 mg "tar", 1.2 mg nicotine av. per cigarette by FTC method. For more product information, visit www.wjrt.com.

Visit www.salemaccess.com. Website restricted to smokers 21 or older. Black Label may not be available in all areas.

Rich. Intense.

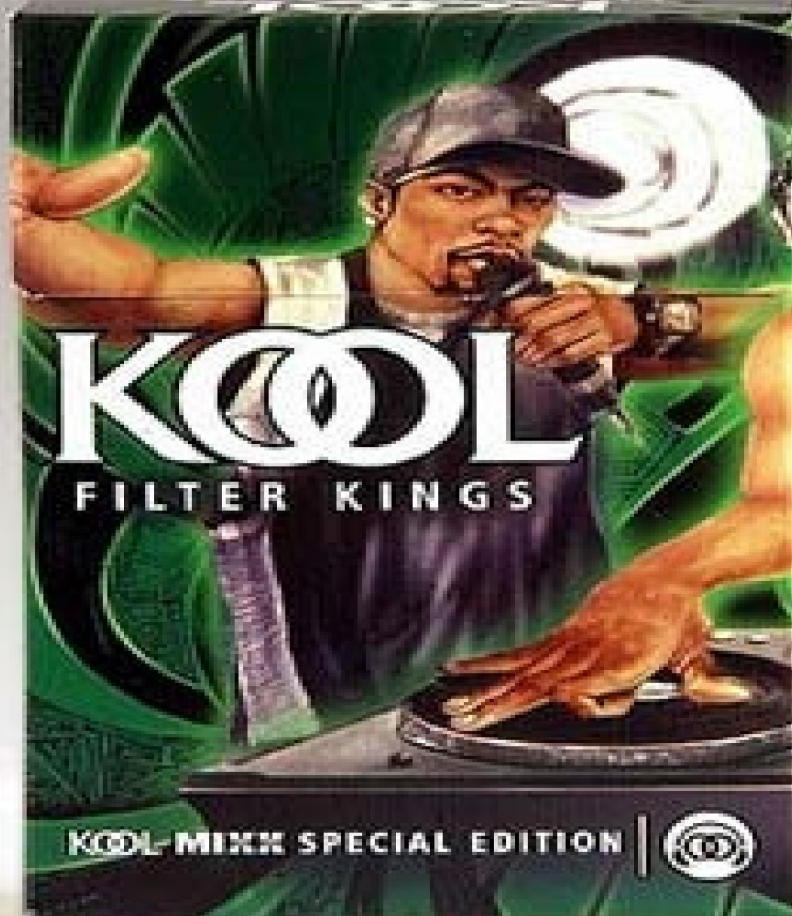
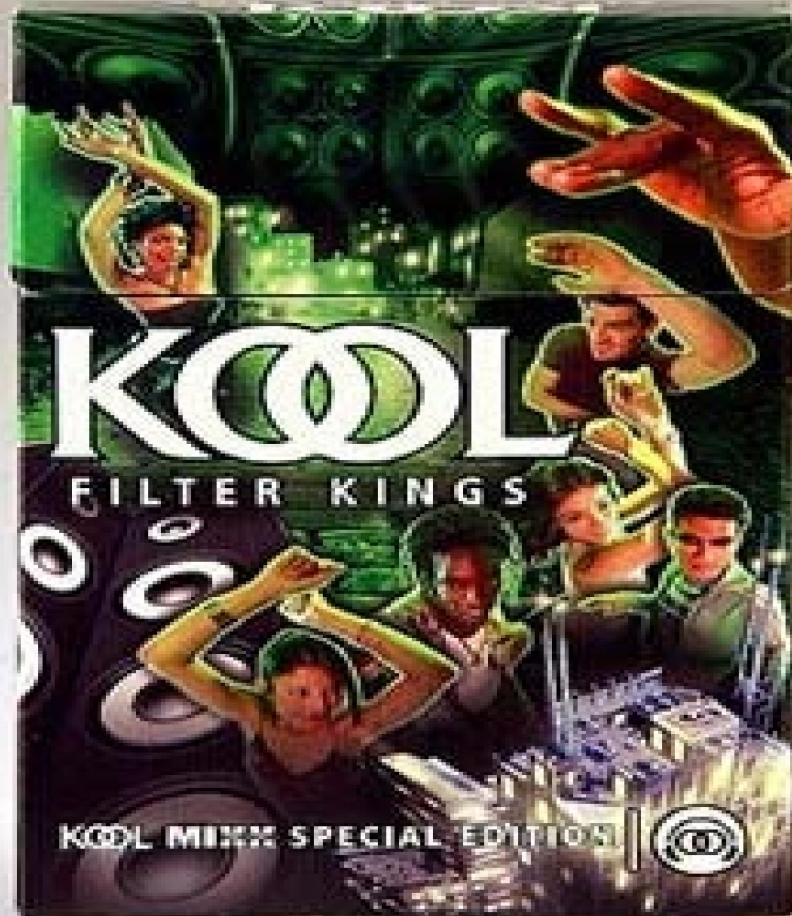
FULL FLAVOR
SALEM
BLACK LABEL

BLACK LABEL

100% FULL FLAVOR TOBACCO

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

SALEM
stir the senses



2004

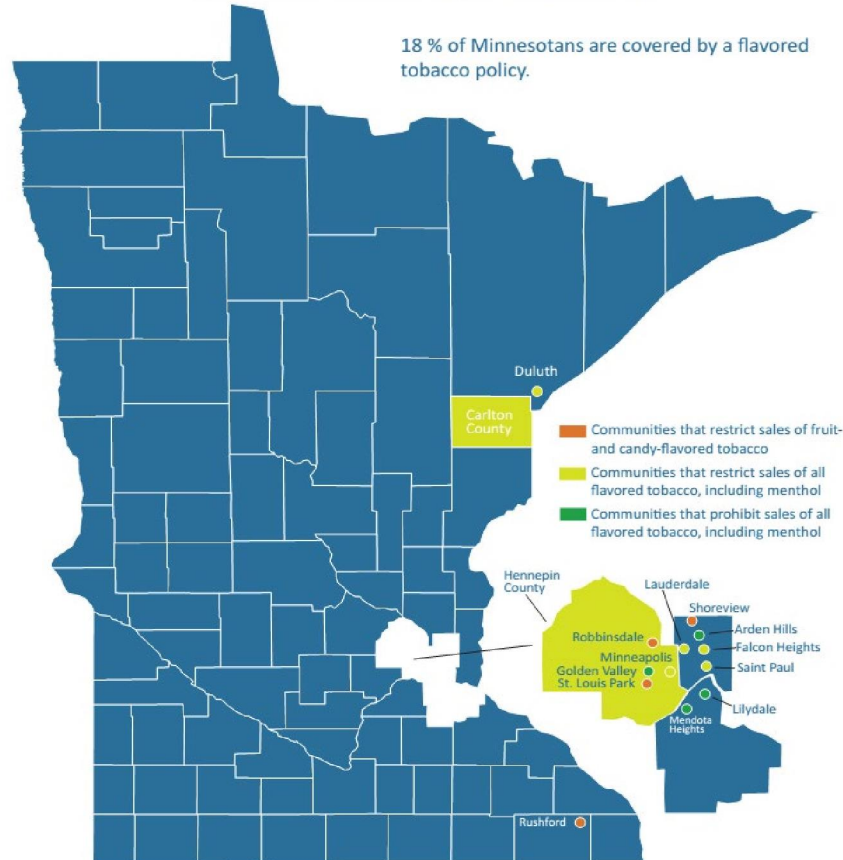
Targeting started in 1960s with these five approaches:

1. Collect data about Black consumers
2. Use mobile marketing vans
3. Develop special promotions for inner city tobacco retailers
4. Engage with local Black organizations to improve corporate image
5. Advertise in Black magazines

Yerger et al. (2007)

Minnesota communities restricting the sale of flavored tobacco

18 % of Minnesotans are covered by a flavored tobacco policy.



If menthol were banned...

- Of MN Adults who smoke menthol, about half said they would quit smoking if menthol cigarettes were no longer sold in the United States. (MATS, 2014)

The Price of Tobacco

Increasing the price of tobacco will prevent kids from smoking, help smokers quit and save lives.



A \$1.50 per pack increase would:

- Keep 15,900 Minnesota kids from becoming addicted adults
- Decrease youth smoking by 15 percent
- Help 26,600 current smokers to quit
- Save 11,500 Minnesotans from premature smoking-related deaths
- Prevent almost \$900 million dollars in long-term health care costs

WHAT IS PRICE DISCOUNTING?

- Tobacco products are reduced to a lower price through coupons and in-store price promotions.
- Tobacco companies use various marketing strategies to keep prices low for consumers.





Newport



CIGARETTES

ENJOY YOUR COUPONS!

SURGEON GENERAL'S WARNING: Quitting Smoking
Now Greatly Reduces Serious Risks to Your Health.

©2017 RJRTD (4Q) 721450

MANUFACTURER'S COUPON

EXPIRES 3/31/2017

VOID WHERE PROHIBITED

Newport **\$1.00 OFF**
ONE PACK
good for any style of Newport

CIGARETTES

SURGEON GENERAL'S WARNING: Quitting Smoking
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©2017 RJRTD (4Q) 721450

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Find this and more...

NewportPleasure.com*

*Restricted to Adult Smokers 21 or older

CIGARETTES

SURGEON GENERAL'S WARNING: Quitting Smoking
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ON THEIR WAY NOW

Keep an eye on your mailbox.
You should see your coupons in 2-4 weeks.

CONTINUE



GET \$3.50 OFF A
PACK IN THREE EASY
STEPS:

1. Download **The Oasis** app.*

2. Sign in with your Camel.com ID and password.

3. Claim your coupon.

REDEEMABLE ON A PACK OF CAMEL CIGARETTES AT PARTICIPATING MINNESOTA
HOLIDAY AND SUPERAMERICA STORES.

*USE OF THE OASIS APP AND OFFER ARE RESTRICTED TO AGE 21 + TOBACCO CONSUMERS.

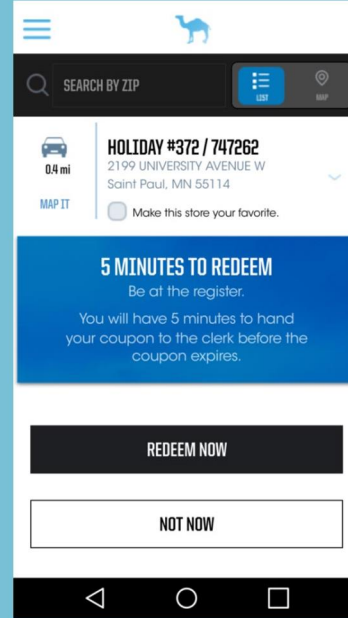
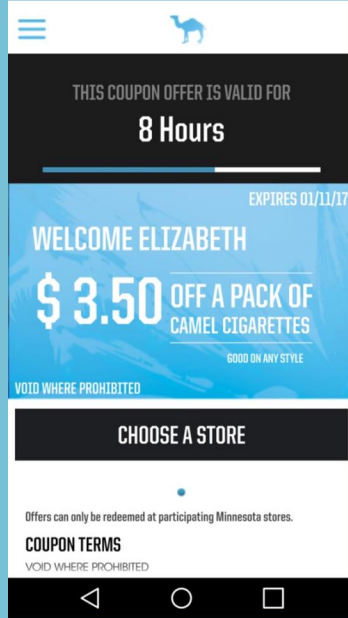
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CIGARETTES

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Now Greatly Reduces Serious Risks to Your Health.



WHAT ABOUT PRICE?

“A high cigarette price, more than any other cigarette attribute, has the most dramatic impact on the share of the quitting population...price...is the main driving force for quitting.”

- Philip Morris Executive, 1993

HOW MUCH DO TOBACCO COMPANIES SPEND ON DISCOUNTING?

- Companies spend the vast majority of their marketing budget on price discounting.
- In 2017, tobacco companies spent \$8.2 billion
- (87% of total marketing budget) on price discounting
- That is more than \$1 million per hour or \$18,000 per minute!

WHAT HAPPENS AT THE RETAIL LEVEL?

- Tobacco companies work with retailers and wholesalers to offer in-store specials
- Examples:
 - Buy-one-get-one free or multipack discounts
 - Cents- or dollars-off promotions



HOW DO PEOPLE RECEIVE COUPONS?

- Emails that direct you to websites
- Mail
- Phone apps
- In-store or at events/bars



When coupons are redeemed, retailers are reimbursed by tobacco companies

WHAT IS THE IMPACT OF TOBACCO COUPONS?

Among Minnesota smokers, about 50% have used coupons or promotions in the past year to save money on cigarettes.

ARE COUPONS EFFECTIVE?

MN young adult nonsmokers who receive tobacco coupons are **twice** as likely to become smokers.

A third of adult smokers use tobacco coupons or discounts every time they see one.

Sources:

Choi & Forster (2014). Frequency and Characteristics Associated with Exposure to Tobacco Direct Mail Marketing and Its Prospective Effect on Smoking Behaviors among Young Adults from the US Midwest. *American Journal of Public Health*; 104(11), 2179-2183.

White, et al. (2006). Cigarette promotional offers: Who takes advantage? *Am J Prev Med*; 30(3):225-231.

HOW DO TOBACCO COUPONS WORK?

Holiday Stationstores
Shop the difference!

Store # 372
2199 Univ Ave W
St Paul, MN 55114
651-646-2020

9/9/2016 9:45:07 AM

***** REPRINT*****

Register: 2 Trans Seq #: 879584
Store: # 372 Lane, Toni
2 KING AMER SPIRIT ORGANIC \$19.98

Sub. Total: \$19.98
Tax: \$0.00
Total: \$19.98
Discount Total: \$0.00

Vendor Coupon \$17.98
Cash \$2.00
Change \$0.00

Thank You
Please Come Again Soon
Visit us at
www.holidaystationstores.com

Original price: \$19.98 for 2 packs



Discounted Price: \$2.00 for 2 packs



HOW DO DISCOUNTS IMPACT USE?

- Coupons foster nicotine addiction in young smokers and keep heavy smokers addicted.
- Minnesota adult smokers who redeemed cigarette coupons were much less likely to quit smoking than those who didn't use coupons.

Sources:

Henriksen, et al. (2012). DOI: 10.1093/ntr/ntr122, Choi, et al. (2012). DOI: 10.1093/ntr/ntr300

Choi, K. & Forster, J. Tobacco Direct Mail Marketing: Frequency, Content, and Prospective Effect on Smoking Behaviors of Young Adults.

WHAT IMPACT WOULD REGULATION HAVE?

- Studies have shown that a \$10 per-pack retail price and regulating discounts could result in:
 - ✓ 637,270 fewer smokers aged 12-17 years
 - ✓ 4,186,954 fewer smokers aged 18-25 years
 - ✓ 7,722,460 fewer smokers aged >26 years

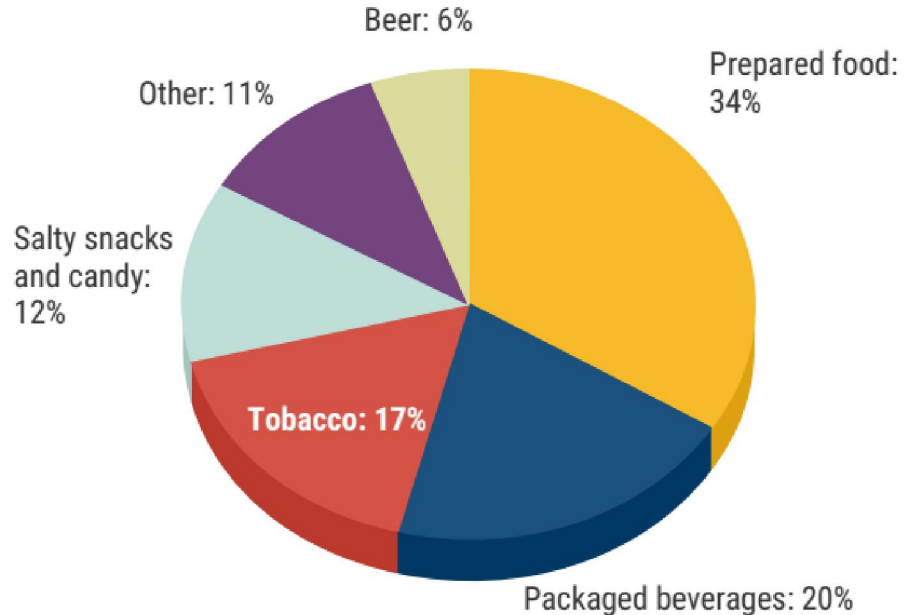
Cost of Tobacco Regulations

A 2015 national industry report on why customers go to convenience stores shows:

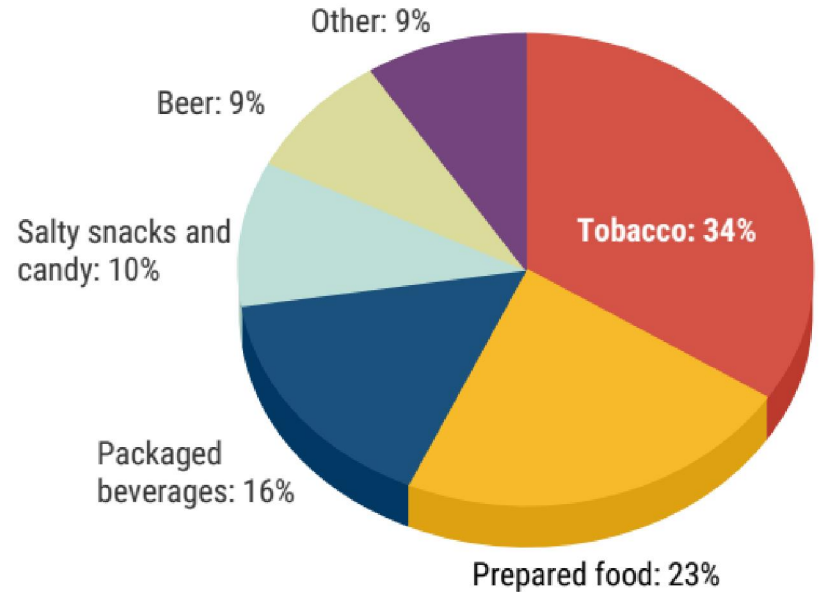


Cost of Tobacco Regulations

Percentage of in-store **profits** in 2017



Percentage of in-store **sales** in 2017



The COST of Tobacco

\$3 BILLION

IN EXCESS HEALTH CARE
EACH YEAR



EQUAL TO:



PER MAN,
WOMAN AND
CHILD IN
MINNESOTA.

Questions

Emily M. Anderson, MA
Association for Nonsmokers-MN
emily@ansrmn.org

MEMORANDUM - COUNCIL WORK SESSION

DATE: 11/23/2020

TO: City Council

FROM: Curt Boganey, City Manager

THROUGH: N/A

BY: Cornelius L. Boganey, City Manager

SUBJECT: Pending Items

Recommendation:

- Council Retreat Follow-up
- Council Policy for City Charter requirement of Mayor's signature on all contracts
- Strategic Plans for years 2018-2020 and 2021-2023
- NOAH Preservation Program
- Review Special Assessment Policy
- Opportunity Site Update
- Earle Brown Name

Background: