

Regular Meeting
Monday, November 17, 2014
Bloomington Civic Plaza
1800 West Old Shakopee Road
Bloomington, Minnesota 55431-3027

- 1 **CALL TO ORDER - 7:00 PM** Mayor Winstead called the meeting to order at 7:00 p.m.
- 2 **INTRODUCTORY** Present: Councilmembers C. Abrams, J. Baloga, T. Busse, A. Carlson, D. Lowman, and J. Oleson.
- 2.1 **FLAG PRESENTATION** The Mayor led the audience in the pledge of allegiance to the flag.
- 2.2 **GO PIR Bonds of 2014, Series 48 Adopt Resolutions Awarding Sale (timed)** Requested Action: Adopt resolutions awarding the sale of the General Obligation Permanent Improvement Revolving Fund and Refunding Bonds of 2014, Series 48.
- Chief Financial Officer Lori Economy-Scholler presented this item using a slide presentation. She stated the bond sale occurred today at 11:00 a.m. and this 10-year debt, in the amount of \$7,465,000, was sold at a 1.73% interest rate. She said it will save the City \$40,000. She talked about the City's AAA bond ratings that were reaffirmed from Fitch, Standard & Poor's and Moody's rating agencies. She said Terri Heaton and John Utley from Kennedy & Grave, the City's bond counsel, were present in the audience if Council had any questions.
- Baloga questioned why there are changes made to the bid numbers before and after the bid opening. Heaton provided a response.
- Motion was made by Baloga, seconded by Busse, and all voting aye, to adopt a resolution awarding the sale of G.O. PIR Revolving Fund and Revolving Bonds as listed above in the principal amount of \$7,465,000. (R-2014-126)
- 3 **CONSENT BUSINESS**
- 3.1 **2016-2017 Parks and Trails Legacy Fund Grant Request** Requested Action: Approve the proposed 2016-2017 Parks and Trails Legacy Fund grant request to the Metropolitan Council in the amount of \$552,000.
- Motion was made by Baloga, seconded by Carlson, and all voting aye, to approve the grant request to the Met Council as described above.

- 3.2 2014-902 Overlook Lake Stormwater Outfall Replacement Project Award Contract** Requested Action: Award the 2014-902 Overlook Lake Stormwater Outfall Replacement Project to Ryan Contracting Co. in the amount of \$221,582.00, and approve various contract changes up to 15% of the original contract amount (\$33,237.30) for a total project construction authorization of \$254,819.30.
- Motion was made by Baloga, seconded by Carlson, and all voting aye, to award the 2014-902 Project to Ryan Contracting Co. as described above.
- 3.3 Accept Donations** Requested Action: Accept the donations made to various City activities by various donors as listed in the agenda item.
- Motion was made by Baloga, seconded by Abrams, and all voting aye, to accept the various donations as listed in the agenda item.
- 3.4 Quicklime Extension and Price Adjustment - Approval Requested** Requested Action: Approve extension of the contract with Graymont (WI) LLC for the purchase of quicklime at a fixed cost of \$154.00 per ton for an additional one-year period through December 31, 2015.
- Motion was made by Baloga, seconded by Carlson, and all voting aye, to approve contract extension with Graymont (WI) LLC as stated above.
- 3.5 Hennepin County Signal Maintenance Agreement; Maintenance for Hennepin County 24th Avenue from 494 to Old Cedar Ave.** Requested Action: Approve Agreement PW 26-07-14 with Hennepin County for the maintenance and operation of Hennepin County signals along CSAH 1 (Old Shakopee Road).
- This item was held out by Oleson who inquired if the Safe Routes to School project at Valley View Middle School is already in progress. Staff replied that crossing was previously applied for and was funded. These are for other projects.
- Motion was made by Oleson, seconded by Baloga, and all voting aye, to approve Agreement PW 26-07-14 as described above.
- 3.6 Federal Transportation Funding Projects Adopt Resolutions of Support** Requested Action: Adopt the resolutions of support for the request for federal funding of Projects 2017-1, 2017-2, 2017-3 and 2018-1.
- Motion was made by Baloga, seconded by Carlson, and all voting aye, to adopt the four resolutions for the project numbers as described above. (R-2014-127, R-2014-128, R-2014-129, and R-2014-130)
- 3.7 Meeting Minutes City Council - Approval** Requested Action: Approve the May 12, 2014, City Council Study Meeting Minutes as presented.
- Motion was made by Baloga, seconded by Carlson, and all voting aye, to approve the minutes listed above as presented.
- 3.8 HLB Tautges Redpath - Approve Extension** Requested Action: Approve and appoint Redpath and Company Ltd. as the City's External Auditor for the fiscal years ending in 2015 and 2016.
- Motion was made by Baloga, seconded by Carlson, and all voting aye, to approve the City's External Auditor as described above.

- 4 PUBLIC COMMENT PERIOD** The Mayor declared the public comment period open for those wishing to address the Council on matters other than items included on the agenda.
- Speaker #1: Sally Ness, 8127 Oakland Avenue South
 She asked the Council not to sign the Joint Use Agreement (JUA) with the Dar Al Farooq Youth & Family Center (AFYFC) at 8201 Park Avenue South. She made references to a past memo from the City Attorney, a letter from the City Manager, and the City Code regarding the construction of the Smith Park parking lots. She said the City Code states City parks close at 10:00 p.m. She talked about why the occupancy numbers stated in AFYFC's Conditional Use Permit are the only safe numbers to use for occupancy vs. the numbers specified in the Fire Code.
- After 20 minutes, the Mayor asked if anyone wished to address the Council during the public comment period, or it would be closed. No one else came forward to speak so the public comment period was closed.
- 5 LICENSING DIVISION: PUBLIC HEARINGS**
- 5.1 Currency Exchange Renewal Licenses** Requested Action: Approve the Currency Exchange license renewal applications for Pawn America and SuperCash.
- Motion was made by Busse, seconded by Abrams, and all voting aye, to approve the Currency Exchange license renewals as stated above.
- 6 DEVELOPMENT BUSINESS: PUBLIC HEARINGS** None.
- 7 TRANSPORTATION & UTILITY IMPROVEMENTS: PUBLIC HEARINGS**
- 7.1 2015 Collector Street Program - Final Approval** Requested Action: Approve the 2015 Striping Reconfiguration Program with the following striping configuration for the following street segments:
- West 109th Street: Bloomington Ferry Road to Bush Lake Road (2-Lane Configuration with wide striped shoulders)
 - Nicollet Avenue: 98th Street to 102nd Street (2-Lane Configuration with wide striped shoulders)
- Civil Engineer Amy Marohn presented a slide presentation. She reviewed past projects, the 2015 Collector Program streets, presented maps of West 109th Street and Nicollet Avenue, and staff's recommendation.
- Busse questioned why West 109th Street, at 46 feet wide, was built as a 4-lane roadway. Winstead explained streets were built wide and plentiful in the 50s, 60s and 70s. Now it's time to reconfigure them based on use and growth.

Oleson asked about the striping for bicycles. Marohn replied both roadways are posted NO Parking 24 hours. The 8-foot striped shoulder becomes a nice striped bike lane so no additional bike lane markings will be included at this time.

Winstead requested staff take into account the cement curb area when considering the width of bike lanes in the future.

Speaker #1: Wayne Muxlow, 10054 Nicollet Avenue South
He said the Nicollet Avenue project is a waste of time, as it was recently torn up by the gas company. He said there are sidewalks on both sides and the project turned out well.

Lowman asked if this was just going to be a restriping of Nicollet.

Julie Long, Civil Engineer said this segment on Nicollet will be part of the City's mill and overlay project in 2015.

Motion was made by Abrams, seconded by Busse, and all voting aye, to approve the 2015 Striping Reconfiguration Program for segments on West 109th Street and Nicollet Avenue as described above.

7.2 Right Turn Lanes Normandale Blvd - Reconsider at Three Locations

Requested Action: Vote to reconsider Council's previous action and remove the three right-turn lanes from the Normandale Boulevard (CSAH 34) Project. If Council desires to keep the turn-lanes in the project, it should remove the direction to staff to use bonds to finance the turn-lane improvements to allow more flexibility in overall project financing.

Long presented a slide presentation on the right-turn lanes. She reviewed the following three locations: Mt. Normandale Drive, Northwood Ridge, and Southwood Drive. She said no right-of-way (ROW) acquisitions are needed for any of those three locations. She presented views and the associated costs to add the right-turn lanes at each location. (Mt. Normandale Drive-\$66,000, Northwood Ridge-\$209,000, which includes two retaining walls, and Southwood Drive-\$226,000.) She compared those three locations with 9172 and 9164 Utica Avenue.

Council received comments from those residents most affected.

Speaker #1: Tony Carideo, 5300 Southwood Drive
He said it is ludicrous that the City is considering constructing a right-turn lane to accommodate 55 vehicles. He said cars will go even faster than they do now with a right-turn lane. As a 20-year resident in this location, he recalled a fatal accident that occurred in the northbound lane of Normandale Boulevard so he asked for a left turn lane. He's never recalled an accident in front of his house. He asked Council not to turn this County Road into a freeway. He said this road is an extension of Hwy. 100. He said his house stands as the sound block for the entire neighborhood. He asked the Council not to take another 12 feet of his property. He said the left-turn lanes are great; just don't add the right turn lanes.

Winstead explained it was the Council who requested staff research the possibility of adding right-turn lanes. The City's engineers told the Council they weren't needed. He said it was the Council who said let's talk about right-turn lanes to make sure if it's going to be done, it's done right. It was just to make sure all options were considered. He said this is not a done deal, as the engineers don't recommend them.

Speaker #2: Tom Kamp, 5821 Southwood Drive

As a neighborhood of 72 neighbors, they've been involved in what was ultimately designed. They're supportive of the left-turn lanes. He has two family members who have been rear-ended trying to make left turns. He voiced strong opposition to the right-turn lanes. The cost of the right-turn lanes is very high. It will destroy the trees, landscaping, the berm and noise barriers. It will increase the speed of the cars traveling on Normandale Boulevard. It's rare to have an accident in the southbound lane of Normandale Boulevard turning right onto Northwood Ridge or Southwood Drive. He requested the Council not add right-turn lanes on Southwood Drive or Northwood Ridge.

Speaker #3: Lori Kreuzscher, 5300 Northwood Ridge

She's lived at this address for 40 years and echoed the sentiments of the previous speakers. She a right-turn lane would be very invasive for her property. She said it would take out the hill and all of the green area on the photo and would involve a 10-foot retaining wall. She said her house faces Normandale Boulevard so she would be responsible for maintaining the shrubs. She's never seen an accident involving someone turning right. She said researching all of the possibilities is respectable but the right-turn lanes don't make any sense. She asked if the entrance monuments would need to be replaced. She likes hers but says it will be impacted. She urged the Council not to do this.

Long said the monuments would be affected and that staff would work with the associations on replacing them.

Winstead asked the members in the audience if anyone wanted to see the right-turn lanes added and no one raised their hand. He again stated it was Council that requested the right-turn lanes be explored and now they have. He wants to go forward with the construction without the right-turn lanes.

Baloga said this exercise gave the Council an opportunity to look back; especially with regard to accident data. He said he also recommends the Council abandon the plan for adding right-turn lanes.

Oleson also supported what staff is recommending.

Motion was made by Abrams, seconded by Lowman, and all voting aye, to remove the three right-turn lanes from the Normandale Boulevard (CSAH 34) project.

8 ORDINANCES: PUBLIC HEARINGS

8.1 City Code Amendments - Signs

Requested Action: Adopt an ordinance approving amendments to City Code Chapters 19 and 21 as recommended by staff to establish new definitions and on-site and off-site advertising sign provisions, to modify standards for changeable copy signs and Class VI Sign District provisions, and to establish a master sign plan approval process.

The Planning Commission recommends adoption of the ordinance as recommended by staff with Section 19.115 amended to incorporate the changes drafted in the email of September 17, 2014, from William Griffith to Jason Schmidt and for Section 21.501.06 (f)(3) to be removed.

Planning Manager Glen Markegard presented the staff report. He explained that the Mall of America (MOA) wants to bring the interior energy of the Mall to the exterior. He showed photo examples and renderings of the new signage that started with the former Bloomingdale's location. He discussed the proposed Code amendments and the landowner's choice; to follow the current sign standards and get a sign permit or request flexibility through a Council-approved master sign plan process, which would give the City a high level of discretion. He said a master sign plan would provide limited applicability, as it would only be available in the Class VI Sign District (MOA Phase 1, IKEA, MOA Phase 2, and the Adjoining Lands site). He said the Council would have the final approval authority over that master sign plan. He discussed the design principles. He said in the proposed ordinance, off-site advertising signs would be prohibited. Some on-site sign samples that would be allowed included Pepsi, Budweiser, as they're products that are available inside the Mall. Ski Colorado, for example, would not be allowed because it represents something outside of the Mall. Regarding full motion signs, he said the proposed changes retain the prohibition of them if they're visible from the street but they would be allowed if they are visible from a driveway provided they meet public safety needs. Staff doesn't want full motion signage facing motorists; rather they should be oriented towards pedestrians.

Markegard discussed two areas of disagreement between City staff and the Mall; revenue sharing and the approval process for window enabled identity signs. He said with regard to revenue sharing, there is a Best Practice. Cities are requiring revenue sharing across the country and used Denver as an example. In their theater district, Denver requires 15% revenue sharing. He said staff's recommendation is that Council follow the Denver model whereby 15% of the revenue is dedicated to public art and arts events. He commented the amount of potential revenue is, however, unknown at this time. As it relates to billboards, he said it's based on visibility, which is different from city to city and from location to location. Facing the MOA vs. a freeway sign. He said there is no master sign plan before the Council at this time but there is a conceptual plan involving several large format signs that may or may not be revenue generating signs. There are a total of 11 signs in the concept plan.

Markegard talked about Branded Cities, a third party group that acts as a go between the advertisers and the land owner. He said staff doesn't know if the Branded Cities proposal will move forward. They're concentrating signage on ring roads and parking decks. As of today, there is no proposal staff could approve from Branded Cities.

Markegard said staff recommends adopting the revenue sharing along with the ordinance tonight but said the Planning Commission (PC) recommends deleting the revenue sharing requirement, as they had concerns in opening private books.

With regard to wall sign eligibility, Markegard said the Mall wants to add a third category "by right" addressing windows with an exterior view. He showed renderings of some areas where that would apply in MOA Phase 1C. He said staff's recommendation is that these signs might be appropriate but staff believes they are context specific. They'd like to see the actual proposal and have discretion.

Winstead asked what businesses can have window signage on ground level.

Markegard said there are two concepts; window coverage and wall mounted signs on the exterior. These would be signs outside the window; not signs behind the window.

Markegard said staff's recommendation is that these be reviewed and approved by the City Council via the master sign plan process to retain discretion. He said the PC and the Mall recommend that approval be by staff via a sign permit. He said there are two Code amendments tonight; City-initiated amendments and privately-initiated amendments (at the next meeting). No agency application deadline on tonight's amendments.

Council asked what happens if it says proceed with the City-initiated application including the revenue sharing piece and then a privately-initiated application comes in over the next two weeks. Should both of the applications be heard at the same time? Markegard said staff would recommend Council deny the privately-initiated application.

City Manager Mark Bernhardson suggested if a majority of the Council decide to move ahead with the two issues recommended by staff, it should request a resolution of denial for the Mall-initiated application.

Council discussed the photo examples. Winstead likes the architectural graphics that don't provide any information, as it adds life and pizzazz to the building and identifies the tenant.

Markegard said it has to be a product that is sold onsite.

Winstead restated he doesn't want to go the route of outdoor advertising, i.e. billboard type and asked how the architectural graphics can be retained. How is that determination made?

Markegard said it would be difficult. The City has worked hard to control outdoor advertising and this would open the door. If someone leases office space and wants to put up signage advertising their law firm; they could.

Winstead said his concern is if the City passes on something, the signage could take on the role of outdoor advertising.

Markegard said an onsite advertising limit is very restrictive. But in this location, it's restricted to products and services sold at the Mall.

Council said it has a responsibility regarding what impact signage will have on the multi-family residential and hotels in the South Loop District and asked how other players in this area can voice their opinion.

Markegard replied with a master sign plan, properties within 500 feet of the signage would be noticed. Council could look to see how the signs will impact the nearby residential uses.

Council inquired as to where rotating video signage fit in.

Markegard replied it is part of the Branded Cities proposal if it comes forward. They propose a sign with a changing message on the parking deck. Potentially there could be several signs with changing graphics. He said full motion video signs can only be used in certain areas.

Busse said this could be a sizable amount of revenue and asked what Denver does with their revenue.

Markegard agreed and said Denver funds "Activation" of their Theater District. It generates energy and activity. In Bloomington, it would be used to make South Loop more vibrant and to attract more business. The ordinance as drafted requires the revenue be used in the South Loop District.

Bernhardson said the revenue could be used as a way to recapture some of the other money that has been spent on the Mall.

Winstead questioned if the Branded Cities proposal is more of what is coming with the Mall's-initiated rezoning. He asked what would allow Council to deny placement of the Branded Cities Proposal. He commented the parking ramps at the MOA are not good looking but if signs like this were put on the ramps, it would make the situation worse. He said they're not architectural graphics but look like billboards and he would run from any ordinance that opens the door to these types of signs on the MOA ramps.

Markegard said staff agrees with the Mayor and that was communicated to the applicant.

Carlson said with this greater flexibility, Council can set a strong precedent from the start. He's comfortable with the built-in safeguards. He said 15% for revenue sharing could provide a sustainable funding source but asked if there was a means in which those projects could be vetted.

Markegard said if the revenue sharing was approved and then a master sign process came in, the questions would be about the revenue and who manages it.

Winstead asked if the two applications could be combined at the next meeting.

Bernhardson said this could be postponed to the next meeting to continue the public hearing.

The Mayor invited the public to speak.

Speaker #1: Bill Griffith, Attorney Representing the Mall of America
They initiated the privately-initiated amendments in June. The cabinets have been ordered and will be constructed. He said no one objected to the image in front of the Council for two years. He reported City staff and the MOA have reached consensus on all but two issues and now they're ordering materials for this project. He said this has been a pressing issue since June. He said it took concessions to get it to this point. He said there is no difference between the proposals except for the two issues. He presented their response to staff's presentation. He said they're trying to bring the inside of the Mall to the exterior. Regarding quality assurance, he said his client is after the high exterior signage that is seen in other places. He commented the previous City Council said they liked where this was going. He said there are some opportunities to attract the highest quality tenants in the world and Phase 1C is intended to be a luxury retail location. Regarding Branded Cities, they wanted to create a comprehensive sign program for MOA. He said they've stepped back because of the 20-minute dwell time on digital signs. The MOA's high quality tenants would be able to show graphics with their quality brands. He said there has been total acceptance by the PC and a high level of acceptance by past City Councils. The revenue share model was patterned after the Denver model. He said millions of dollars are currently being spent to activate not only the Mall's interior but many events that are occurring outside the MOA. He reported the MOA is working with City staff and the Bloomington Theater and Art Center staff voluntarily to seek brands and special funding. He said the MOA is spending lots of money on its exterior and on public art and they're working cooperatively with the South Loop interests to see about going after grants and other funding for public art. He said there is little revenue in these signs and reported Branded Cities is probably not coming back due to the City's stringent Sign Code.

Griffith said the primary drivers of revenue sharing is activation and to balance commercialization. He said approximately \$100 million of non-profit fundraising goes on in the MOA every year. He said MOA is a community partner. He's concerned about a program that is not yet defined. The new advertising signs will be part of the master sign plan. He said they're ready to submit an application this week to have this approved as part of the master sign plan. They don't see the justification in allowing signage on the first level but not on the levels above. He showed photos of Restoration Hardware, as an example. They have no problem going through a master sign process for something out of the box and completely new. He said this district pays some of the highest taxes, liquor and lodging taxes, a surcharge on their building permits, and special assessments for improvements in the district. He said given what the MOA is doing for the community and the fundraising, it's appropriate to try and replicate what is going on there with a whole new program that's undefined at this stage. They will continue to work with staff to bring the high quality of the interior to the exterior. It will be done well and of the highest quality.

Lowman indicated his preference to wait.

Baloga stated his preference for having the discussion tonight.

Winstead said he has some strong thoughts on the way it's going. Staff would need to set up the sign criteria in this district and have some strong subjective items. He's concerned that this could turn into the Pepsi and Bud Light MOA. He would hate to see it go the route of many billboards. He said the MOA sees their sign as a \$500,000 piece of art. Regarding revenue sharing, he said it's the City imposing a tax on outdoor advertising. He again stated the revenue sharing is a tax on outdoor advertising in this district and asked if the Council needs to talk about where the revenue goes.

Carlson applauded the City and the MOA for coming to an agreement on this. He said his concerns could be mitigated through the master sign plan ordinance. He supports the revenue sharing piece as a way to provide a sustainable funding source in what this new neighborhood is going to look like. He said the MOA has the creativity to guide this to make it a community place. Regarding window glazing, he asked if it should be allowed by right or kept in the master sign plan. He suggested taking the comprehensive approach and keeping it within the master sign plan regulations. He's confident with what's been presented.

Lowman said he's worked with sign ordinances and understands the City's history. He said staff did an incredible job on this and trusts the past and the MOA wanting to be a quality retailer. He likes what past Council's passed. He said this is a mall that the Council wants to be a family-oriented place but has concern regarding first amendment rights. Given what he's read and his experience, he is hesitant to approve this to get additional revenue. He's reluctant to support this given the City's history to prevent a certain type of advertising. He wants to protect the City.

Bernhardson said there was an issue with billboards and phasing them out, but they had a property right to own them. This is creating somewhat of a new right but it's still a permit issue. He said the question is how you can unwind this if future tenants don't provide the same quality. He asked if there was a way to amortize their cost of putting up these things over a reasonable period of time to bring it to a close. He said Council can't control the content of the signage but could limit it in a more objective way to say 10% of each plat. The more letters on the image, the more it looks like advertising. Staff is asking if this passes, does it make sense, given the amount of revenue generated, to have a share of it for some purpose.

Baloga said he finds the window glazing to be a simple issue. The City has a good permitting process and the Council has already turned over some approvals to the staff. He said why create an impediment to business. There is a certain outcome when conforming to the permit. Regarding revenue sharing, he said it's imperative that Council moves forward with the sign process. The MOA needs to come into the 21st century and graphics will allow that to happen. He said the City is exceedingly dependent on the MOA in Bloomington and its success. If the MOA continues its pattern of success, it will offset the liquor and lodging taxes. There has been a substantial effort by the MOA and the City. He said he's comfortable the Mall will do what they say they will. He referenced the waiver the MOA asked for when they were refinancing. Each one was a significant capital investment on their part. He believes they will perform as represented. He said the Denver example was a different need. Bloomington's situation is not the same as Denver. He said he's not comfortable with the additional tax, as the Mall generates a substantial amount of tax in many forms.

Busse said everyone agrees the exterior of the Mall is not attractive. He is comfortable with this. The master sign plan allows flexibility but also control. He's comfortable with the elements of the master sign plan. He's comfortable this is an international brand. He doesn't think the MOA will jeopardize that with distasteful messages. He said the MOA won't want messages that will be a turn off to potential shoppers. He agrees with Baloga. Glazing should be handled by a permit process. He said he's uncomfortable with the revenue sharing piece. He said anytime there is a big event in Bloomington, the MOA is a big supporter. He said they're already out there providing support so the City doesn't need an additional tax or fee in this area.

Abrams likes the master sign plan. She doesn't support revenue sharing at this point, as the relationship needs to be premised on some give and take. She commented Macy's is looking dingy on the outside. With regard to glazing, she said create it as flexible as possible so the City can empower the Mall to engage five star sorts of tenants. It will be the high quality tenant that moves in and the signage will identify that. She trusts the MOA on this one.

Winstead said what goes forward in the master sign plan is critical. His concern is the different places on the Mall that could be signed and could they appear as a billboard. He said the MOA said they won't generate revenue but he's not sure about that. The master sign plan needs to have some very defined and subjective criteria. He agreed the graphics that were shown are quality. He said what started out as architecturally designed signage on the outside of the Mall has grown to what looks like display ads and onto the sides of the parking ramps, which morph into billboards. He leans toward including the revenue sharing. He said it goes back to the advertising the City has worked on through the years. Now the Council is permitting something that is new to the City. He said regarding glazing, it could be done with a permit if it's well defined.

Carlson said the revenue sharing would be a dedicated fund for the South Loop District and could provide a means to accomplish the placemaking plans for the district. He said it would result in a direct benefit to the MOA. It brings the Mall and its neighbors together to form a community. It's not just a tax but one directed at the South Loop District.

Lowman asked the Mayor if he has confidence this will not turn into billboards.

Winstead restated the master sign plan needs to have definitive criteria or it could turn the signage into billboards. He wants the focus on the architectural graphics.

Motion was made by Baloga, seconded by Lowman, to adopt an ordinance as recommended by the Planning Commission to allow exterior identification signs for tenants with windows as documented in William Griffith's September 17, 2014, e-mail to Planner Jason Schmidt but removing the revenue sharing language. No vote was taken at this time.

Bernhardson asked staff if the glazing signage is handled through a permit, how much signage would they be allowed and how will it be controlled; by a master sign plan or by a certain amount of signage per wall space.

There was more discussion about the glazing and if the criteria should be included in the master sign plan so it could be allowed by permit. Staff said approval of the PC recommendation, it would be allowed by right if it meets the standard. When an application comes in for a master sign plan, the applicant would show where the different tenants will have signage. Once a master sign plan gets approved, every sign application would be handled through a permit process.

Griffith interjected window glazing is allowed by right. With submittal with the master sign plan, these locations will be incorporated. He said because of the timing of the development, those locations if approved by permit, would be included in the master sign plan.

Winstead questioned which should come first -- the master sign plan or the individual permits.

Bernhardson said adoption of this ordinance is the master sign plan. The Mall would present a master plan for what they would like on this building so that is what the Council would consider next.

Oleson said he doesn't have a problem voting for the motion given the current configuration of the Mall. He questioned if tonight's decision automatically applies to the Mall's expansion to the north of Lindau Lane and to the east of 24th Avenue or will they be coming forward in the future.

Markegard said with regard to MOA Phase II, they would likely come in and amend their master sign plan so it would involve a future amendment. He said the Code could be amended in the future.

Winstead said any subsequent development in this district could present a master sign plan and virtually put up their graphics. To back down from this if there is something the Council doesn't like, will be virtually impossible..

Carlson believes there is a greater good here and hopes the revenue sharing stays on the Council's agenda so more opportunities can be explored.

Winstead said he supports the general direction.

Lee suggested the Council consider the motion on the table as advice to staff and direct them to turn it into a revised ordinance for adoption at the December 1 meeting. That would allow Council the opportunity to check for internal consistency and language they agree with.

Bernhardson said the revenue sharing would be removed but the other piece involve the right to the signage. He doesn't think language has been drafted to handle it appropriately.

Baloga disagreed with Lee and desired the ordinance be adopted tonight.

The Mayor called for a vote on the motion to adopt the ordinance with a request that staff work through the proper language regarding outside banding signage and to remove the revenue sharing language. The motion passed unanimously.
(O-2014-16)

8.1.1 Resolution Directing Summary Publication - Signs

Requested Action: Adopt a resolution authorizing summary publication of the ordinance amending Chapters 19 and 21 of the City Code.

Motion was made by Abrams, seconded by Busse, to adopt a resolution directing summary publication of Ordinance No. 2014-16. Motion passed 6-0-1 (Baloga temporarily abstaining). (R-2014-131)

Meeting Recessed

Mayor Winstead called for a short recess.

Meeting Reconvened

Mayor Winstead reconvened the meeting after a 10-minute recess.

8.2 Tobacco Ordinance Amendment

Requested action: Adopt an ordinance amending Chapters 5, 12, and 14 of the City Code to prohibit Electronic Delivery Device use in public places, places of work, and parks, including outdoor and bar areas of restaurants, and require cigars be sold in packs of no fewer than five cigars unless they are sold for \$2.60 apiece before sales tax.

Mayor Winstead said staff will kick this item off with some presentations.

Public Health Administrator Bonnie Paulsen presented the staff report. She explained the proposed ordinance adds language defining e-cigarettes and prohibits the use of them in Bloomington in the same places as cigarettes. She said it also adds language that states cigars cannot be sold in packs of fewer than five cigars unless they are sold for \$2.60 apiece before sales tax. She said Bloomington wants to be a leader in protecting the health of its youth and e-cigs are using television, celebrities, etc. to market these devices to youth. She reported there are 7,700 flavors of e-cigarettes, which are marketed to children. She said the proposed changes will discourage the use of cigars. She presented two letters of support; one from the Building Owners & Managers Association and one from the Mall of America, as this will help them enforce the Clean Indoor Air Act within the Mall. She explained the vapor from e-cigs is not without chemicals. They contain nicotine and other chemicals and the risks from these chemicals remain uncertain. She referenced the April 7th and June 9th City Council study meetings when information on e-cigs was presented to the Council. At that time, the Council directed staff to convene a committee to work on restricting the use of e-cigs in Bloomington. At the August 11th study meeting, staff updated the Council on the changes to the City's ordinance. An administrative hearing was held on September 30. She described in details the changes that are proposed in the ordinance involving Sections 5.20 (Definitions), Section 12.80, and Chapter 14. She said staff received correspondence from 37 opposed to the ordinance and 28 in support, two petitions containing 258 signatures, and some testimonial books. She said staff will work to educate the businesses. She added the 2014 Legislature passed the prohibition of e-cigarettes in certain places.

Paulsen reported similar ordinances have been enacted throughout Minnesota; 3 counties and 15 cities including Edina, Eden Prairie, Chaska, Savage, and St. Anthony. The City of Minneapolis' health committee heard this issue today and it passed unanimously. It will be heard at their December 5 Council meeting. She reported Hennepin County is also bringing an e-cigarette prohibition ordinance to their board. She said staff recommends the amendments be adopted as presented. She said this ordinance will prohibit the use of electronic delivery devices in public places, places of work, and parks including outdoor and bar areas of restaurants and changes the pack size of cigars to be sold. She introduced Dr. Ned Kelley from the City's Advisory Board of Health.

Dr. Kelley said the Advisory Board of Health has been involved in this issue for some time and unanimously agreed this was the right thing to do to protect the public's health. He said the data they've received is very clear; there is a serious potential danger with e-cigarettes and there is not enough data to say they're safe. He talked about the workplace exposure to e-cigarettes and said there are serious dangers associated with its use.

Winstead asked Paulsen about her reasons for wanting to enact the portion of the ordinance that deals with cigar packaging and marketing.

Paulsen replied youth are sensitive about tobacco so the goal was to keep youth from purchasing that \$1 or \$1.99 cigar. This will aid the City's efforts in trying to stop the initiation of tobacco use by the youth.

Winstead stated the ordinance is to incorporate e-cigarettes into the Clean Indoor Act and to price cigars at an amount to make them less attractive to the youth.

Motion was made by Abrams, seconded by Baloga, to adopt an ordinance amending Chapters 5, 12, and 14 of the City Code to prohibit Electronic Delivery Device use in public places, places of work, and parks, including outdoor and bar areas of restaurants, and require cigars be sold in packs of no fewer than five cigars unless they are sold for \$2.60 apiece before sales tax. No vote was taken at this time.

Winstead explained this motion will keep the public focused on what's being amended. He asked those who support the ordinance to come forward first, followed by those opposed to the ordinance, and finally those who are opposed to the small cigar pricing. He requested testimony be limited to 3 minutes per person.

Speakers in support of the ordinance:

Speaker #1: Molly Moilanen, ClearWay MN, 8117 West 96th Street
She explained ClearWay MN is a statewide non-profit organization working to reduce tobacco's harm in Minnesota. She described her coalition and said they support all three parts of the City's ordinance. She said the cigar market has increased consistently since state and federal restrictions on cigarettes have grown stronger. She said cigar manufacturers have intentionally set a cheap price at the point of sale to entice younger smokers. She said endorsement boards are supportive of restricting e-cigarette use but there is still a lot to learn on the potential harms and benefits of e-cigarette use. She provided a fact sheet, a map, a comparison of e-cigarette advertising, and editorials from the Mankato and St. Cloud newspapers as well as the Star Tribune.

Winstead acknowledged the large amount of feedback Council has received on this issue.

Speaker #2: Betsy Brock, Association for Nonsmokers MN
She referenced a 2014 youth tobacco survey of high school students that was conducted which indicated Minnesota saw a steep rate of decline in youth cigarette use ever recorded by the survey. She reviewed several facts and said nicotine is highly addictive. She urged the Council to send the right message to Bloomington youth. She said the Council is implementing Best Practices by increasing the price on cigars. Vote to help the health of this community.

Speaker #3: Dr. Stuart Hanson, Twin Cities Medical Society
He is a 40-year lung physician. He was directly involved in the implementation of the MN Clean Indoor Act. He said these three proposals are a common sense approach and urged the Council to adopt all three portions of the ordinance. He said e-cigarettes are nicotine delivery devices. Users are inhaling nicotine; it's not simply water vapor. It's air pollution that is absorbed into the air and into the body. Exhaling is what is put into the environment. Nicotine is a very addictive substance. It's a very sticky molecule. Exhaling nicotine sticks on carpet, paint, ceilings and on clothes and it gets absorbed by others in the vicinity. He said e-cigs allow the continuance of the tobacco addiction and there already are products available to help people stop smoking. He said e-cig users are not quitting smoking. He said e-cigarettes come from the tobacco leaf. There aren't enough studies on the long-term effects of the vapor. He said if the City takes a wait and see attitude with e-cigarettes, there will be an epidemic on our hands. He said data continues to come in. The medical society supports all portions of the City's ordinance.

Speaker #4: Kevin Lewis, Building Owners & Managers Association Rep.
He wasn't available to speak but receipt of his letter was acknowledged.

Speaker #5: Karen Nordstrom, 9123 Forest Hills Circle
She referenced an article that said students using e-cigarettes planned to smoke real cigarettes. She said the Minnesota Health Commissioner was in Bloomington a year ago and wanted Bloomington to do something to restrict the use of e-cigs in public places. She said flavored cigars are being marketed to the youth.

Speaker #6: Michelle Morris, American Lung Association
They fully support all three measures in the ordinance. She spoke about her father who died due to the harmful effects of smoking.

Speakers opposed to the ordinance:

Speaker #1: Cap O'Rourke, Rep. Independent Vape Retailers of MN
He said there are two vaping retailers located in Bloomington. They do not sell Big Tobacco. Their clients and customers are those who have been harmed by Big Tobacco. He said the Council is proposing an e-cigarette ban and a sampling ban. As a former employee of a traditional cigar store, he said no one ever sampled their products but it's a different business model with e-cigarettes. Smokers who have tried other ways to quit smoking come to the vape shops for help. They get their questions answered and then they try the products and levels of juice. He said this practice will not be allowed to continue if the Council imposes a ban on e-cigarettes and on vaping sampling. He said many times people come into the e-cigarette shops just to get their questions answered about using their own vaping devices. He explained there are three distinct parts to this ordinance. He said Bloomington will be breaking ground if they pass a sampling ban while having existing vaping businesses already in operation. He said many customers come to Bloomington but they'll go to other shops if they can't sample e-cigarettes here.

Speaker #2: Jennifer Swanson, Vape Shop Representative

She said they're helping people every day to stop smoking by reducing the amount of nicotine they're getting. She said with Bloomington's ban, she won't be able to educate people or help them if they have problems with their devices. She believes requiring that vaping not occur less than 25 feet from the building will allow youth to see what is happening. She urged the Council to exempt the two existing vape shops from the ordinance.

Speaker #3: Angie Griffith, Smokeless Smoking, 8563 Lyndale Avenue So. She mentioned the invitation she sent to Council members to visit her shop. She submitted 250 testimonials from her Bloomington customers that were collected over a 4-week period of time. She said there are many e-cig users wanting to share their success. They want to continue to sample within her store. She said Bloomington is the headquarters for all of their wholesale and retail business. They're not Big Tobacco and they don't operate past 9 p.m. They are a thriving, responsible small business. She referenced a petition from the residents living across the street from her shop who hope she will be able to continue operations as they are so e-cig users don't have to smoke outside her store. She asked the Council to amend the ordinance to allow vaping and the sampling of products within her store.

Speaker #4: Nathan Affield, Smokeless Smoking Employee

He said they've helped thousands of people go from smoking to vaping. Customers like being able to sample, test, and trouble-shoot a device. He said this product is for current and new smokers, as it allows sampling before buying. He said not allowing this to occur within the store could push people back into becoming smokers again. He said it's nice not having to go outside to vape. He asked for an exemption from the ordinance for the vaping stores.

Speaker #5: Tim Koester, Co-Owner of Smokeless Smoking

They have four stores and their headquarters is located in Bloomington. He said they came to Council a year ago to expand the lounge and he received a Conditional Use Permit (CUP). He said they doubled the size of their Bloomington store at a cost of \$100,000. He said he thought the Bloomington City Council valued his business. A ban on sampling e-cigarettes would cause shoppers to go elsewhere. He said if e-cigs are banned, they would no longer have a use for their 3200 square foot store.

Busse questioned why it's necessary for vapors to try different vaping juices when people can't try different beers in the liquor store before buying some.

Koester said that is the industry standard; allowing people to sample. He said the Minneapolis Health Commission endorsed banning e-cigarettes in public places but not in vaping shops.

Speaker #6: Greg Conley, President, American Vaping Association

He said they're not Big Tobacco. They don't consider their products to be tobacco products. He requested Council reject two portions of the ordinance. He disagreed with the doctor who stated vapor is harmful to others. He asked the Council to exempt the vape shops. He questioned why the Council would ban this operation after approving a CUP to expand a vape shop. He said this is an impediment to business. He believes this ordinance will drive customers to other cities. He said other big cities have determined vape shops are not harmful; such as those in New Jersey.

Lowman questioned the ability of someone to contaminate or sabotage the liquid vapor if there are no standards regulating it.

Conley replied they want to stay in business and said there is no financial value in making a substandard product. Additionally, the wrong chemicals would probably break the device.

Abrams questioned who funded the research by the Dr. Burstyn of Drexel University, as universities generally don't fund that type of research on its own.

Conley replied it was funded by the Consumers Advocates for Smoke-free Alternatives Association (CASAA).

Abrams inquired if Dr. Burstyn was in any way associated with the CASAA.

Conley said Dr. Burstyn has joined the CASAA Board of Advisors in an unpaid position, as he believes in these products.

Speaker #7: Chris Tipton, President of MN Vapors Advocacy
He encouraged the Council to oppose a public use ban on vapor products. He said there are no peer reviewed studies that secondhand vapor causes any risk to bystanders. He read from other studies and journals. He said it's not right to combine smokeless products with smoking products in an ordinance. He said they want to work with the Council in minimizing youth use of tobacco products. He said banning e-cigarettes would severely limit a consumer's ability to find products in a vape shop that will work effectively for them. He asked the Council to oppose this ban; or, at the very least, provide an exemption for vapor shops.

Speaker #8: Noel Hammill, Vendor
He's spent hours in the vaping shops and believes the smokeless shops are less dangerous to his health than are paint shops, acrylic nail shops, etc. He said he's witnessed the emotion of vaping customers. He said there are a lot of unknowns out there and asked the Council if they are voting on this because it's new or different. He said the Council can deal with this later on if they determine it's necessary.

Speaker #9: Daniel Troutmann, Bloomington Business Owner
He talked about the cultural benefits of vaping lounges. While he's not a vapor himself, he enjoys meeting his son, who is a vapor, at the Bloomington shops where they spend time together playing chess. He said these shops bring people together. He said these gatherings occur in a non-alcoholic, smoke-free intergenerational commons. As a longtime Bloomington resident, he urged the Council to not cripple these local businesses out of a prejudicial fear. He said don't rely on "maybe" or "think so". Don't limit a burgeoning business that has great cultural potential; make Bloomington a multi-cultural city.

Speaker #10: Jason Downing, 56 Wentworth Court West
He said Dr. Hanson stated the inhalation of nicotine is a dangerous prospect. He said Pfizer has a Nicorette inhaler. He said that is a fallacy in the doctor's statements. He said a survey is not a scientific study and vaping doesn't lead to smoking. As a regular customer of Smokeless Smoking, he's spent over \$2,000 in Bloomington but said he'll go elsewhere to spend his dollars if this ordinance is adopted. He too questioned why the Council would approve a permit for a business expansion and then put a ban on that business a year later. He asked the Council to amend the ordinance but exempt the vape shops.

Speaker #11: Alex Carlson, 1600 – 23rd Street NW, Bemidji, MN
He's a truck driver and likes cotton candy. He likes being able to purchase vaping juice in the cotton candy flavor. He said the comment was made that e-cigarettes target the youth, which is ironic because they can't purchase them.

Speaker #12: Jeff Horstmann, 2835 Rice Street, Roseville, MN
He said sampling is not sampling. It's a way of trying the vaping experience. He quit smoking and said e-cigarettes have helped him so asked the Council to not take away that potential experience from potential customers who are going to stop smoking.

Speaker #13: Mitchell Hislop, 1930 East 86th Street
He said the Oxford dictionary has added the word vape. He asked the Council to allow the vape stores to operate as they have been so he doesn't have to go to another city or order these products through the Internet.

Mayor Winstead asked if anyone had any new information to present. He asked by a show of hands how many in the audience oppose this ordinance because they don't think it should be included with the Clean Indoor Air Act or the sampling aspect of it. Most everyone raised their hands.

Speaker #14: Patrick Fisher, 125 West 100th Street
At first he was a smoker trying to quit. He said there are a lot of former addicts living in Bloomington. He asked the Council to not push people back to the habit they've worked hard to get away from. He asked Council not to take away the sampling.

Speaker #15: Jesse Ray, 12971 Morgan Place, Burnsville
He said sampling is a major lifestyle change. He talked about the outdoor parts of the ban. He talked about how he couldn't walk very far before but is now able to take longer walks. He said if he's a bigger influence on kids than their own parents, those parents are doing something wrong.

Speaker #16: Cap O'Rourke
He said neither of the Bloomington shops sell these products to anyone under the age of 18. He said people could, by turning in their driver's license, get a sample and then take it out to their car to try. He mentioned what's to stop someone from bringing vaping samples out to the car for underage kids to try. Right now a group of kids can't vape without each one having a proper driver's license. He said they're committed to keeping these products out of the hands of youth. He again encouraged the Council to exempt the sampling ban.

Winstead said the other part of this ordinance involves the small cigar retailing issue.

Speaker #17: Steve Rush, Holiday Companies, Dir. of Gov't. Relations
He reported they employ over 400 people in the city of Bloomington. As a retailer, they card people by using point of sale scanning equipment. He said the retail community has a very successful compliance rate. He said a previous speaker reported smoking has dropped for high school students. He said that reason is not because of the price. He said responsible retailers like Holiday don't sell Bubble Gum flavored cigars. He said they lose sales in the store and at the pump. He said when Brooklyn Center raised the prices, they lost business to Brooklyn Park. He said the City might want to separate out the parts of this ordinance. He asked the Council to postpone this ordinance so staff can continue working with the community. He said the problem isn't in retail. It's more of a societal issue. He said adopting this ordinance will just push the problem to another city.

Motion was made by Busse, seconded by Carlson, and all voting aye, to close the public hearing on an ordinance to amend the City's ordinance to address the use of e-cigarettes and the sale of cigars.

Lowman asked if there was any interest by the Council in separating out the elements of the ordinance. He said he can support both parts but would be open to an exemption for the sampling. He said he'll support the motion unless others want to make a change.

Abrams said many statements have been made tonight about independents not being Big Tobacco and lots of discussion about cessation. She reported Big Tobacco is making about \$2.5 billion in sales in this industry right now and the independents are at the bottom of that market; even though it appears it is a burgeoning industry. She said Lorillard, a division of Altria, one of the major Big Tobacco entities, spent \$40 million in 2013, mainly on TV advertising, and only received a \$6 million return. She asked why would they do that? She said there is a business model in play that is beyond the control of the City Council. She said the City is four years too late on this discussion. She referenced a District Court of Appeals case in Washington, D.C. whereby a company sued the FDA when the FDA wanted to regulate e-cigarettes as a cessation device. As a result of that case, the FDA can only regulate e-cigarettes as tobacco products. She believes the price point on cigars will help deter youth from using them. She fully supports all measures of the ordinance.

Busse commented he's embarrassed that Bloomington is late on this issue and now it's behind the curve. He said the Council received many letters asking them to not back track on this issue. He agreed the science is not 100% solid at this point. However, with the expected dangers associated with it, this has moved towards the culturalization of the youth. He supports the e-cigarette portion of the ordinance. In terms of small cigars, he is open to discussing the possibility of looking at additional discussions on this. He is supportive of including small cigars in the ordinance as well.

Oleson commented on his uncles who served in the Navy back at a time when the tobacco industry was giving out free cigarettes to anyone who had served in the military. He said the research is coming on board. He said the university work is solid in many respects but it was indicated there are potential problems in particular regarding manufacturing standards. He said this product shouldn't even be in front of the Council. He reported he visited one of the two vaping shops and asked some general questions. He then announced he was on the City Council and that this issue was coming forward. He said the store owner was open and honest with him. He said getting good information is part of the job. He was told that people come in to quit smoking. He's conflicted because when people try to quit; it's hard. He said vaping in the wrong hands could get people hooked rather than unhooked. He supports the ordinance and believes the Council owes it to the current vaping shops in the city to give them a window of time (2 years), which would give the Council more time to review additional research. He said the Council endorsed the business a couple of years ago with a CUP, which doesn't seem right. He said he will vote for the motion but with an exception that it be amended to allow sampling to occur in the vaping shops for a period of two years and made the following motion.

Motion was made by Oleson, seconded by Lowman, to amend the main motion to permit in-shop sampling in the two existing vape shops for a period of two years. No vote was taken at this time.

Abrams asked when the ordinance will take effect. Johnson replied it will take effect upon publication, which is usually 10 days to two weeks from the date of adoption.

Winstead said he will not support the amendment. He said there was some side discussion when the Conditional Use Permits for the shops came before the Council previously that things were moving down the road and believes the applicants were also aware of that. He said someone testified there is a social gathering that takes place within the vape shops. He doesn't accept the argument that there isn't enough good information out there to support the City's position. He doesn't disagree that it's a cessation product used to get people to stop smoking but that doesn't mean that it's good and healthy. He supports the ordinance as it was presented; unamended.

Baloga said he'll be supporting the ordinance as presented because the City is behind in getting this done. He said Bloomington waited to see what the State was going to do about e-cigarettes and they did nothing. He fears the same thing will happen to cigars at the state level. He asked if the ordinance will be totally effective and replied probably not, but he fully supports it.

Winstead called for a vote on the amendment to allow sampling. It failed 5-2 (Winstead, Busse, Abrams, Baloga and Carlson opposing).

Carlson commented he was impressed with the personal experiences of those who testified. He believes more information will come forth that reveals there are health risks regarding e-cigarettes. He said he needs to weigh the greater good of the community so will be support the ordinance.

Mayor Winstead called for a vote on the original motion to adopt an ordinance amending Chapters 5, 12, and 14 of the City Code to prohibit Electronic Delivery Device use in public places, places of work, and parks, including outdoor and bar areas of restaurants, and require cigars be sold in packs of no fewer than five cigars unless they are sold for \$2.60 apiece before sales tax and it passed unanimously. (O-2014-17)

8.2.1 Resolution Directing Summary Publication - Tobacco

Requested Action: Adopt a resolution directing summary publication of Ordinance No. O-2014-17.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to direct summary publication of Ordinance No. O-2014-17. (R-2014-132)

9 OTHER: PUBLIC HEARINGS

10 ORGANIZATIONAL BUSINESS

10.1 City Council Policy & Issue Update

Bernhardson reminded Council of the following meeting dates: 6 pm study meeting on November 24; meet and greet for the City Manager finalists on December 1; Regular City Council meeting at 7 pm on December 1; interviews of the City Manager finalists on December 2; final interviews and selection of the City Manager on December 6; Joint Council/Port meeting at 5:30 pm on December 10; Joint Council/School Board meeting at 7 pm on December 10; and Regular Council meeting at 7 pm on December 15.

Winstead presented information to Council on the three City Manager finalists they will be interviewing: Jamie Verbrugge (current Brooklyn Park City Manager), Heather Worthington (Ramsey County Deputy County Manager), and Jay Stroebel (City of Minneapolis Deputy City Coordinator). He reported the process began with 48 applicants, was reduced to 17; then to 9, and now to these final three. He said Council will receive more information on the candidates as well as on those that didn't make the cut. He said Council will determine if an offer should be made to one of them following the December 1st meet and greet event and the December 2nd interviews. They discussed the process for the December 2nd interviews. Staff indicated Council would be receiving more information on the candidates with their City Manager Information packets at the end of the week.

11 ADJOURN

The Mayor adjourned the meeting at 1:00 a.m.

Barbara Clawson
Council Secretary