

Regular Meeting
Monday, December 21, 2015
Bloomington Civic Plaza
1800 West Old Shakopee Road
Bloomington, Minnesota 55431-3027

- 1 **CALL TO ORDER- 7 PM** Mayor Winstead called the meeting to order at 7:00 p.m.

Present: Councilmembers C. Abrams, J. Baloga, T. Busse, A. Carlson, D. Lowman and J. Oleson.

- 2 **INTRODUCTORY**

- 2.1 **FLAG PRESENTATION** Mayor Winstead led the audience in the pledge of allegiance to the flag.

- 2.2 **Introduce Elizabeth Tolzmann, Assistant City Manager and Kris Wilson, Human Resources Director** Requested Action: City Manager Verbrugge introduced the City's two newest employees -- Kris Wilson, Human Resources Director and Elizabeth Tolzmann, Assistant City Manager.

Both Wilson and Tolzmann commented on their appreciation for the opportunity to work at the City of Bloomington.

- 3 **CONSENT BUSINESS**

- 3.1 **Approve Amendment to Bylaws Advisory Board of Health** Requested Action: Approve amendment to the Bylaws of the Advisory Board of Health.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve an amendment to the Bylaws of the Advisory Board of Health as presented in the agenda item.

- 3.2 **2015 South Loop Revolving Development Services Fund Budget Amendment** Requested Action: Approve the 2015 South Loop Revolving Development Services Fund budget amendment for the South Loop Wayfinding Signage Project in the amount of \$40,550.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the 2015 South Loop Revolving Development Services Fund budget amendment for the South Loop Wayfinding Signage Project in the amount of \$40,550.

- 3.3 **Alternate Dispensing Modalities MOU with Geritom Medical, Inc. – Approve** Requested Action: Approve the Alternate Dispensing Modalities (ADM) Memorandum of Understanding (MOU) with Geritom Medical, Inc.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the Alternate Dispensing Modalities (ADM) Memorandum of Understanding (MOU) with Geritom Medical, Inc.

- 3.4 MN Women, Infants, Children Peer Breastfeeding Support Agreement with MN Department of Health – Approve** Requested Action: Approve the Minnesota Women, Infants, Children (WIC) Peer Breastfeeding Support (PBFS) Agreement with Minnesota Department of Health (MDH)
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the Minnesota Women, Infants, Children (WIC) Peer Breastfeeding Support (PBFS) Agreement with Minnesota Department of Health (MDH).
- 3.5 Metropolitan Council Regional Park Grant Agreement SG-03560** Requested Action: Approve Grant Agreement #SG-03560 between the City and the Metropolitan Council for the Hyland-Bush-Anderson Lakes Regional Park Reserve.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve Grant Agreement #SG-03560 between the City and the Metropolitan Council for the Hyland-Bush-Anderson Lakes Regional Park Reserve in the amount of \$285,000 as partial funding to reconstruct parking lots, driveways, parking lot lighting, boat ramp improvements and associated storm water improvements at the Hyland-Bush-Anderson Lakes Regional Park Reserve.
- 3.6 2016 General Fund Budget Adopt Resolution** Requested Action: Adopt a resolution adopting the 2016 General Fund Budget.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to adopt a resolution adopting the 2016 General Fund Budget in the amount of \$68,155,122. (R-2015-149)
- 3.7 2016 Tax Levy Adopt Resolution** Requested Action: Adopt a resolution establishing the 2016 Tax Levy.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to adopt a resolution establishing Final Tax Levies for the City of Bloomington for the Year 2016 in the amount of \$52,845,152. (R-2015-150)
- 3.8 Approve Funding 2016-201 Testing Services** Requested Action: Approve funding for construction testing services provided by Braun Intertec Corp. as part of the 2016-201 Normandale Boulevard (CSAH 34) Reconstruction Project in the amount of \$84,980.00 plus a \$15,020.00 contingency amount for a total contract amount of \$100,000.00.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve funding for construction testing services provided by Braun Intertec Corp. as part of the 2016-201 Normandale Boulevard (CSAH 34) Reconstruction Project in the amount of \$84,980.00 plus a \$15,020.00 contingency amount for a total contract amount of \$100,000.00. This project is a safety improvement project that includes the reconstruction of Normandale Boulevard from 94th Street to Nine Mile Creek.
- 3.9 Print Shop Budget Adjustment** Requested Action: Increase the budget appropriation in Account Number 760901-57040 Print Shop capital by \$15,594 to replace a failing duplicator in the Print Shop. The following materials and supply codes will be reduced by the same amount: 760901-56020, 760901-53200, 760901-56990, and 760901-52990.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve a budget adjustment for the Print Shop increasing the budget appropriation in Account Number 760901-57040 Print Shop capital by \$15,594 to replace a failing duplicator per the agenda item.

3.10 2016 Port Authority Budget - Approve

Requested Action: Approve the 2016 Port Authority Budgets.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the 2016 Port Authority Budgets as presented.

3.11 Extend Foth Solid Waste Contract for Implementation of Organized Collection

Requested Action: Approve the implementation work for organized collection (described as Phase 6) in the amount of \$51,700 with a 10% contingency for a total of \$56,870.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve an extension to the Foth solid waste contract for the implementation of organized collection work described as Phase 6 work in the amount of \$51,700 with a 10% contingency for a total of \$56,870.

3.12 Columbarium Unit Award

Requested Action: Approve the award for providing four columbarium units for the City of Bloomington Cemetery to Eickhof Columbaria, Inc. in the amount of \$136,070.00.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the award for providing four columbarium units for the City of Bloomington Cemetery to Eickhof Columbaria, Inc. in the amount of \$136,070.00.

3.13 Quicklime Extension and Price Adjustment - Approval Requested

Requested Action: Approve an extension of the contract with Graymont (WI) LLC for the purchase of quicklime at a fixed cost of \$155.50 per ton for an additional one-year period through December 31, 2016.

No action required. This item was pulled by staff.

3.14 MN DNR Flood Damage Reduction Grant Assistance Program Adopt Resolutions

Requested Action: Adopt two resolutions authorizing applications to the Minnesota Department of Natural Resources (DNR) Flood Damage Assistance Program to assist with the Sandro Pond Bypass Project and the Wyoming Circle Floodproofing Project.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to adopt two resolutions authorizing applications to the Minnesota Department of Natural Resources Flood Damage Reduction Grant Assistant Program for the following two projects: Sandro Pond Bypass Pipe Project (R-2015-151) and the Wyoming Circle Floodproofing Project (R-2015-152).

3.15 Accept Donations

Requested Action: Accept donations as listed.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to accept the various donations made to various City departments in the amounts listed in the agenda item and approve the amendments to the revenue and expenditure budgets, as noted, to facilitate the appropriate use of the funds.

- 3.16 Contract Extension for SRF Consulting at EBLR/494** Requested Action: Approve Amendment 2 to the SRF Consulting Group Inc. contract for the preliminary engineering work for the westbound ramp access at the East Bush Lake Road (CSAH 28)/I-494 Interchange.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve Amendment 2 to the SRF Consulting Group Inc. contract for the preliminary engineering work for the westbound ramp access at the East Bush Lake Road (CSAH 28)/I-494 Interchange.

- 3.17 Hauler Services Contract for Organized Collection** Requested Action: Approve a services contract with Bloomington Haulers, Inc. to provide organized collection services to residential properties and authorize the Mayor and the City Manager to sign the contract.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve a services contract with Bloomington Haulers, Inc. to provide organized collection services to residential properties in the city of Bloomington and authorize the Mayor and the City Manager to sign the contract as presented in the agenda materials.

- 3.18 Integrated FHRA and Flexible Benefits Plan Documents** Requested Action: Approve plan changes to Integrated Funded HRA and Flexible Benefits Plan Documents.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve plan changes to the Integrated Funded HRA (Health Reimbursement Arrangement) and Flexible Benefits Plan documents.

- 3.19 Meeting Minutes City Council-Approval** Requested Action: Approve the November 16, 2015, Regular City Council Meeting minutes as presented.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the November 16, 2015, City Council Regular Meeting minutes as presented.

4 PUBLIC COMMENT PERIOD

- 4.1 Response to Prior Meeting's Public Comments** City Manager Jamie Verbrugge had nothing to report from the last meeting.

- 4.2 Public Comment** Mayor Winstead opened the public comment period for anyone wishing to address the Council on any matters not on tonight's agenda.

Speaker #1: Sally Ness, 8127 Oakland Avenue South
She commented on cars not parking in the parking spaces at Smith Park, cars parked in the fire lane at the Dar Al Farooq (DAR) Youth & Family Center (AFYFC) at 8201 Park Avenue South, overflow parking at AFYFC, and the fact that there are no AFYFC staff or police officers present during their Friday prayer services. She asked the City to apply its Code. She said the overnight use of Smith Park was handled lightly so the City could avoid notifying citizens. Another comment made was that the City allowed DAF to keep buried concrete in the berm and the City didn't make them clean it up. She again commented there has been no Food Manager on staff at AFYFC. She showed an aerial photo of the parking lot to the north. She requested Type III vehicles be made to park where allowed and referenced Sec. 19.45 of the City Code. She said semi-trucks do not belong on residential streets.

More photos of Type III vehicles – semis, buses, etc. were shown by Ness; the uses of which she said were not related to the use of the building. She said they were not loading or unloading. She said Type III vehicles should park to the north. She referenced City Code Sec. 21.301.06 and asked the City to enforce the Code regarding Type III vehicles.

Mayor Winstead requested staff respond to the claims made by Ness at the next Council meeting regarding AFYFC’s lack of a food license, the fire lane parking violations at 8201 Park Avenue, if any, and how that is enforced. He asked staff to investigate the parking of Type III vehicles on Park Avenue and explain why they’re there and if they’re allowed to park there. How is that interpreted?

Speaker #2: Joel Jennissen, 3119 West 88th Street
He summarized the community effort, “Hands Off Our Cans” stating they collected over 4,000 signatures representing 3500 households in Bloomington. He commented Bloomington’s voter turnout in the last election was troubling, stating Mayor Winstead was re-elected with less than 6% voter turnout. He asked people to look at how the Council operates. He said citizens have no real voice, as the Council’s decisions were made a long time ago. He commented on political behavior and said the process is broken and needs to be changed by the Council. He asked the Council members to listen to the voice of the people resulting from the surveys. He said all documents of public input show people were against organized collection. He said the system shouldn’t discourage public input and encouraged the Council to conduct public hearings at the beginning, middle, and end of major initiatives. He said the Council needs to listen to the citizens, as the status quo is not working. He said while waiting for the results of the lawsuit to be determined, they realize it takes less than 800 signatures for an initiative to pass, less than 1,200 signatures to drive a referendum, and less than 2,000 signatures to recall a citywide office. He said the lower the voter turnout, the easier it is for any group to exact change. His group wants the voice of the people to be recognized.

**5 LICENSING DIVISION:
PUBLIC HEARINGS**

**5.1 Renewal of On-Sale
and Off-Sale 3.2% Malt
Liquor Licenses**

Requested Action: Approve the list of on-sale and off-sale 3.2 percent malt liquor renewal applications for 2015.

Busse commented these renewals are for 2016; not 2015.

Motion was made by Busse, seconded by Baloga, and all voting aye, to approve the list of on-sale and off-sale 3.2 percent malt liquor renewal applications for 2016 as presented in the agenda item.

**5.2 Currency Exchange
Renewal**

Requested Action: Approve the Currency Exchange license renewal application for Pawn America.

Motion was made by Baloga, seconded by Abrams, and all voting aye, to approve the Currency Exchange license renewal for Pawn America Minnesota, Inc. dba Pawn America at 8650 Lyndale Avenue South commencing on January 1, 2016 and expiring December 31, 2016.

**6 DEVELOPMENT
BUSINESS: PUBLIC
HEARINGS**

**6.1 The Orlean Company;
8001 28th Avenue
South;
Rezoning/PDP/FDP**

Requested Action: Approve a major revision to the Preliminary Development Plan for a 164-room, five-story hotel with hotel restaurant and banquet space, and separate attached 7,400 square foot restaurant/coffee shop (Case 10966B-15) and a Final Development Plan for a 164-room, five-story hotel with hotel restaurant and banquet space (Case 10966C-15) for the Orlean Company at 8001 28th Avenue South, subject to the conditions listed in the staff report.

Planner Michael Centinario presented the staff report. He presented a number of slides that showed the location of the proposed hotel with banquet space and restaurant, and existing conditions. He said the City initiated some rezonings in the South Loop District but stated the applicant has withdrawn the rezoning portion of its application. Council is to act on the Preliminary and Final Development Plan changes. He went on to explain the massing of the five-story hotel and said it will be a two-phase project – the hotel and then the restaurant. He explained the height of the hotel is limited to five or six stories per the Federal Aviation Administration (FAA). He discussed the building elevations, site plan, and requested deviation from the required setbacks, which staff approves of due to the underground utility easement. To the southeast, there is a connection to the Met Transit parking lot. The City believes the applicant can do more in terms of landscaping where there is no building; specifically around the south parking lot or along American Boulevard to the east. Staff desires a vertical element. The Planning Commission suggested the applicant add more landscaping to the north since the restaurant in Phase II might take a while to complete. The applicant is requesting a 13.8% deviation from the City Code regarding parking, of which staff and Planning Commission recommend approval. Both staff and the Planning Commission recommend approval including the deviations requested.

Council had no questions of staff.

Speaker #1: Stu Friedman, Applicant's Representative

They intend to break ground as soon as possible. The hotel will be built in the first phase. He assured Council his client is willing to make the recommended landscaping revisions and confirmed they have received FAA approval for the hotel. He mentioned they're still working on getting approval for the crane.

Carlson requested Friedman talk about the timing of Phase II.

Friedman said once the hotel gets in the ground, they'll decide if it's going to be all restaurant or a combined restaurant/coffee shop. He said the hotel will open in the spring of 2017, which is when construction of Phase II should begin. He said they will keep the City apprised of that schedule. He commented the utility easement presents its own challenges, as the electrical lines are buried close to the surface. He stated they are trying to maximize all space possible.

No public testimony was received.

Motion was made by Oleson, seconded by Lowman, and all voting aye, to approve a major revision to the Preliminary Development Plan for a 164-room, five-story hotel with hotel restaurant and banquet space, and separate attached 7,400 square foot restaurant/coffee shop (Case 10966B-15); and approve a Final Development Plan for a 164-room, five-story hotel with hotel restaurant and banquet space (Case 10966C-15), for the Metropolitan Airports Commission (owner) and The Orlean Company (developer) at 8001 28th Avenue South, subject to the conditions and Code requirements listed in the staff report.

**CLOSED PUBLIC
COMMENT PERIOD**

Mayor Winstead asked if anyone else wished to address the Council or the public comment period would be closed. No one came forward so the public comment period was closed.

**6.2 Dean Nephew; 8330
Pillsbury Ave.; Interim
Use Permit**

Requested Action: Approve a five-year Interim Use Permit to allow open storage as a primary use at 8330 Pillsbury Avenue South, Case 08931A-15, for Dean Nephew, subject to the conditions of approval listed in the staff report.

Planner Nick Johnson presented this staff report. His slide presentation included an aerial photo of the location of the requested Interim Use Permit (IUP) at 8330 Pillsbury Avenue South, which he stated is in a predominantly industrial area. He explained the IUP is requested because open storage is unrelated to the primary use of the property. This is the third IUP on this site; 2007, 2010 and 2015. He explained the storage area is currently not Code compliant. It needs a durable surface, curb and gutter, landscaping, etc. He reported since the Planning Commission (PC) meeting, the applicant has worked with staff to discuss options for keeping storage on site and has since submitted a plan for improvements that will take place over a five-year period. He explained the proposed five-year improvement plan should result in a Code compliant site by the end of 2019, which would allow open storage as a primary use and the applicant's ability to apply for a Conditional Use Permit in 2020 for open storage as a permanent use of the site. This phased approach is only valid if the applicant meets certain benchmarks in the proposed schedule. Staff recommends approval of the five-year IUP subject to the conditions listed in the staff report.

Winstead said this has been before the Council in the past so it's good to see there is a plan to bring the site into Code compliance.

Baloga said the Council has approved other phased projects and requested Johnson provide an overview on this one. Johnson said the general feedback is half of those projects have performed well with phased improvements. If they don't, the City issues orders.

No public testimony was received.

Abrams asked if the Lyndale Green Townhomes are purchased. Johnson confirmed they're owner occupied. Abrams asked if there was any sense when they were built that the back side of Southside Imports would ultimately ever be improved.

Planning Manager Glen Markegard presented a photo from within that townhome community looking towards the industrial lot. He said one of the conditions of approval with that development was that the developer put extensive screening along that side of the property. He said a 10-foot tall screening fence was installed, which does a good job along with the landscaping of screening the townhomes from the industrial uses that were already in use when that application was approved.

Abrams said Council has previously discussed this stretch to the north and south and other parts of Bloomington that were built right next to 1954 ramblers that should be considered value priced housing. She said this neighborhood has value for the future so the Council needs to be more proactive in its decision regarding what it wants built. She's not supportive of allowing five more years for this property to be brought up to Code. The clock has run out. She'd like the Council to consider what this part of Bloomington should look like.

Carlson asked if the applicant would be willing to expedite his plan.

Speaker #1: Dean Nephew, 8330 Pillsbury Avenue South (Applicant)
He can't afford to make all of the required investments to bring this property up to Code all at once. He could if the City could loan him the money. He said this is the only chance he has to do this.

Winstead commented the applicant has been aware of what is required for eight years.

Nephew mentioned the economic downturn that took place eight years ago and restated he can't bring the property up to speed all at once.

Abrams said if this was a use of the property directly associated with his business and it was an improvement of his business, she would be much more supportive. She said this is an ancillary use that is not associated with his business. She said just as the Council frowns upon extra uses in residential zones that diminish the look and feel of the neighborhood and unless the look and feel can be improved in a much more efficient manner, she cannot support the applicant using the back portion of his lot for outdoor storage.

Oleson said he drove by the site today and noticed there was a dim light. He stated many of the boats are stored there because of the nearby marine business. He asked if Nephew had any long-term arrangements to store them.

Nephew replied it's currently year to year.

Oleson asked if anyone has shown an interest in purchasing the property.

Nephew replied the only person that could purchase that property is John Snow because it doesn't have any street frontage. The property could only be purchased by the property owner with whom his property is contiguous.

Oleson asked Nephew if he had ever considered selling the driveway on the south end of his building.

Nephew said no because he would lose too much space; 20% or better of his parking. He said if the Council turns this down, the lot will sit vacant.

Carlson stated he's not confident with Nephew's plans.

Nephew restated he can only do improvements incrementally and is good with installing the landscaping in 2017.

Lowman asked Nephew if the Council will be having this same discussion in four to five years from now.

Nephew expressed his understanding of the conditions that if he doesn't complete the required improvements in any of the five years, he'll have to stop the project immediately. He said any of the phased improvements will be an improvement over what's there today. He hopes to be able to financially execute this plan and believes this is workable given today's economic conditions.

Winstead said this is a plan to improve an older industrial area of the community, which isn't easy to accomplish.

Busse agreed and said the Council has allowed phased improvements in the past. Beyond this, he asked what other options are there to improve this area. He said it's been a challenging decade for businesses and he would like to give this business the opportunity to succeed. He believes having deadlines in place for each October that require certain improvements be made is a doable plan. Staff will follow up with the applicant each year to ensure what is required has been completed; and if it hasn't, the applicant will have to stop the work.

Markegard explained if the phased improvements are not completed by each October, the IUP is automatically terminated. No revocation hearing will be needed. The IUP just expires.

Oleson asked if tenants would have a certain number of days to relocate their items. Markegard replied termination would occur immediately, however, time is provided to clean up loose ends.

Motion was made by Oleson, seconded by Lowman, to approve a five-year Interim Use Permit to allow open storage as a primary use at 8330 Pillsbury Avenue South, Case 08931A-15, for Dean Nephew, with an understanding that certain improvements laid out in the conditions of the staff report must be completed by October of each year or the Interim Use Permit is terminated. No vote was taken as this time.

Winstead said he'll support the motion but understands Abram's concerns. He said at least there is a map for the improvements. If they don't occur as scheduled, the IUP will come to a halt.

Mayor Winstead called for a vote on the motion. It passed 6-1 (Abrams opposing).

7 TRANSPORTATION & UTILITY IMPROVEMENTS: PUBLIC HEARINGS

7.1 2016 Collector Street Reconfiguration Program

Requested Action: Approve the 2016 Striping Reconfiguration Program for West 98th Street (Normandale Boulevard to Nesbitt Avenue) and Lyndale Avenue (West 106th Street to West 102nd Street) as described below:

- West 98th Street: Normandale Boulevard to Nesbitt Avenue
 - 2-lane configuration.
 - One drive lane in each direction, wide striped shoulders, dedicated turn lanes and modified medians.
- Lyndale Avenue: West 106th Street to West 102nd Street
 - 3-lane configuration.
 - One drive lane in each direction, a center two-way dual left turn lane, and striped shoulders.

Traffic Management Coordinator Paul Jarvis presented the staff report. His slides included the 2016 programmed streets, 2016 Project Map, an aerial map showing it's primarily residential with some commercial. Connections were shown to the Alternative Transportation Plan (ATP) including the Nesbitt bikeway, the Hyland Park trail connection, and eventually to the bikeway along Normandale. The center median will be reconstructed and extended. He said 12-foot drive lanes and 8-foot shoulders are proposed. No changes are planned to the signal system at Normandale. It will stay four lanes.

Jarvis said the Average Daily Traffic counts are between 2,000-4,200, which would create a bikeable shoulder both ways. The "No Parking" signs would remain.

He presented the Lyndale Avenue segment, which he said is primarily residential. The ADP facilities in this segment include the 106th Street bikeway and path and the future project, which will extend the bikeway under the bridge. He said the Minnesota Department of Transportation (MnDOT) plans to reconstruct the bridge over the Minnesota River in 2020, which will include a multi-use pathway. A three-lane configuration on Lyndale is proposed due to the higher ADT's of 5,800.

He said there are many driveways along this stretch. It will have a bikeable shoulder and the current "No Parking" will remain unchanged. Jarvis said this will take place when the streets are overlaid.

Abrams stated it makes sense to slow traffic by the apartment complexes but her concern is the heavy use of the buses by residents in the area and only having three minutes to board and disembark. She asked if there is a complex in this segment on Lyndale Avenue. She questioned the traffic laws regarding cars that go around buses that have to pull into the bike lane to load or unload passengers. Is that legal? Jarvis replied cars need to wait for the bus to clear the area.

Civil Engineer Amy Marohn explained everyone has to stop when a school bus has its stop bar out. She said in a three-lane cross section, if the public bus is pulled up to the curb, cars can encroach into the center line to go around the bus if it's safe to do so.

Oleson said there's been an issue for students going to school via the underpass on 106th Street due to the lack of visibility for drivers as they come down the off-ramp from the southbound 35W at 106th Street. He asked if there were any proposed changes in the anticipated number of bike riders. Marohn replied staff doesn't have projections on the anticipated bike numbers for the Minnesota River crossing. To address the student crossings along 106th Street going under 35W, staff has a 2018 project that will reconstruct some of the ways the existing trail intersects with the existing off-ramp for 35W. It will give the drivers and pedestrians some clear guidance. She said widening the sidewalk under the bridge and constructing a new sidewalk along East Bloomington Freeway from 106th Street up to 99th Street is planned. Oleson asked if a new Minnesota River Bridge is a go. Marohn replied MnDOT will be providing Council with an update at the next study meeting. She said they're looking at 2020 but are hoping to start in 2018 if funding is available.

Winstead said when MnDOT brings that plan forward, a reconstruction plan that eliminates the bridge columns needs to be worked into the mix, as they are very blinding for drivers. He requested staff ask MnDOT about that in anticipation of their presentation to the City Council.

Oleson asked if the neighborhood was 50/50 on the lane choices in both locations including Lyndale. Jarvis concurred they were.

Carlson asked about the portion of Lyndale leading towards the trail head and said going from six feet to eight feet makes a difference on a bike. He asked how that played out at the open house. Jarvis reported it was split 50/50 between those supporting two lanes vs. three lanes. Carlson said 26 driveways in this segment probably means a three-lane configuration. Jarvis concurred stating it would be similar to 86th Street.

Busse asked about the experience on West 106th Street with 6-foot bike lanes, as that was a concern when the striping on West 106th to the west was changed. Marohn replied typically the cross section on three lanes is a 5-foot shoulder, 11-foot drive lanes, and a 12-foot dual left-turn lane in the middle. She said this will be done as a trial because it's a sealcoat street. The 10-foot dual turn lane is significantly narrower than what staff has done in the past, which results in a 6-foot wide shoulder. She said staff will want feedback on whether the 6-foot shoulders are better for bikers. Staff will use traffic cameras to ensure there aren't traffic issues with buses and larger vehicles in the 10-foot turn lane.

No public testimony was received.

Motion was made by Baloga, seconded by Carlson, and all voting aye, to approve the 2016 Striping Reconfiguration Program as presented by staff for the following segments on West 98th Street and Lyndale Avenue adding the bridge over the Minnesota River needs to be reconstructed:

- West 98th Street: Normandale Boulevard to Nesbitt Avenue
 - 2-lane configuration
 - One drive lane in each direction, wide striped shoulders, dedicated turn lanes and modified medians.
- Lyndale Avenue: West 106th Street to West 102nd Street
 - 3-lane configuration.
 - One drive lane in each direction, a center two-way dual left turn lane, and striped shoulders.

**7.2 Order 2016-101
Pavement Management
Program Street
Reconstruction Project**

Requested Action: Approve the Feasibility Report and adopt a resolution ordering the remaining streets for the 2016-101 Pavement Management Program (PMP) Street Reconstruction Project.

- Street Ref. No.'s 6-9:

Civil Engineer Bob Simons presented the staff report on this item that was continued from the November 16, 2015, City Council Regular meeting. His slides addressed Street Reference No.'s 6-9. He explained the 104th Street & Ewing Road neighborhood submitted a petition consisting of 23 properties. He reported 20 out of 23 property owners signed the petition. Staff surveyed the entire neighborhood on November 20, 2015; a total of 47 properties. He reported 16 didn't respond. He said 10 supported the reconstruction, 17 opposed it, and 4 returned the survey with no decision. He reviewed the questions asked by Council at the public hearings regarding the Pavement Condition Index (PCI) history. He reported all City streets are walked every three years and staff takes an in-depth look at them. He said the crack length is measured, the severity of the cracks is rated, and the types of pavement cracking are reviewed. The cracking is rated on a low, medium or high severity index. He showed a graph of the pavement condition on 104th Street between Ewing Road and Drew Avenue. He reported that area was sealcoated in 1994, 1999 and 2006. After the 2006 sealcoat, he said the PCI didn't increase but rather continued to drop.

Winstead said many of the residents that testified said they don't believe a total reconstruct of their street is necessary and that an overlay is preferred. Simons said the pavement didn't improve when the street was sealcoated in 2006 and the condition has gotten worse since then. He said it needs more maintenance than a sealcoat.

Winstead said staff can tell by the cracks what is going on underneath the pavement and what would be the most cost-effective fix. Sometimes a mill and overlay will not repair, fix or allow that road to be maintained in a decent manner into the future.

Abrams said the graph shows the ideal reclamation of performance of the pavement was not realized after the sealcoats were made. She said there was a point on 104th Street between France Avenue to Ewing where the performance exceeded the red line on the graph. She inquired if the data from the last five years shows the City's work coming in under performance of the anticipated result. Simons said it depends on each individual street segment. There are so many characteristics that come into play. The enhancement techniques usually help unless the PCI is already low.

Winstead asked if a case could be made to construct a street that might still be in okay condition but is surrounded by street segments in much worse condition. Simons explained it's better to do the same maintenance technique with all segments in the neighborhood to get a consistent result.

Lowman asked if there is a standard technique used by all cities. Simons said most PMP programs in the Metro Area use a walk-through technique to determine a baseline before it's entered into a program to help create a decay curve or a formula as to where that pavement will be going based on its current location. Lowman asked if staff was confident the numbers realistically depict the condition of the street. Simons concurred it is.

Busse said the current PCI for this segment is 20 and asked what is an acceptable range. Simons explained a rating of 1-35 or 40 means it needs reconstructing; 35-65 it needs a mill and overlay, and from 65-70 it could use a sealcoat. He said 0- 40 requires reconstruction. When Busse asked what would happen if it received a mill and overlay, Simons replied the PCI should jump to the 50 range but said it wouldn't last very long.

Oleson said some of these roads were put in by the developer and were considered temporary. He asked about pavement standards used in the construction industry and if staff had access to a soils analysis to help guide road construction. Simons replied there are standards and core values to help staff determine the PCI ratings of the street. He said there is also a list of industry-wide pavement failures.

Baloga asked about a mill and overlay and how long could it perform before it achieved a rating of 20. Simons said an overlay can typically last 15-20 years. In an area like this where the PCI is already at a 20, he said an overlay might be expected to last 5-10 years but pavement failings will occur during that time. He said with a mill and overlay, any cracks within the pavement will reflect through within the first year or two.

Mayor Winstead invited the public to speak:

Speaker #1: William Lundholm, 10440 Ewing Road
He said Engineering sent the affected residents a letter explaining why this reconstruction is needed. He said staff should have included the information presented tonight that indicated reconstruction costs will rise 3-4% if his street is postponed. He said a survey was also included. He believes the residents in his neighborhood could have made a better decision had a town hall meeting been held on this matter.

Winstead said his questions were about the information that should be included at the open houses going forward. He said the information that was provided tonight is provided to the residents at the open houses. He said few people attend the open houses but many don't like the City's policy or the payment portion. He said that's a policy that's been in place for a couple of decades and it's worked in a favorable way. He said some have questioned the need but City engineers say it's time and it needs to be done. For the betterment of the city as a whole, it's time to do it.

Motion was made by Abrams, seconded by Busse, and all voting aye, to approve the Feasibility Report and adopt a resolution including Street Ref. No.'s 6 (Drew Avenue South), 7 (Ewing Road), 8 (West 103rd Street) and 9 (West 104th Street) in the 2016-101 Pavement Management Program (PMP) Street Reconstruction Project. (R-2015-153)

➤ Street Ref. No.'s 10-19

Simons said the Thomas area submitted a petition for the entire area except for Queen Avenue South from 88th to 90th Street. He said 82 out of 154 homeowners signed the petition that was presented to the Council. Staff sent out a letter and a survey to 164 properties. He reported 65 didn't respond, 31 supported the project, 64 opposed it, and 4 returned the survey with no decision. He summarized the pavement condition history in this area. He said similar to the 104th Street area, the PCI's improved with sealcoats but it missed the mark after the 2006 sealcoat. Regarding West 87th Street from Washburn to Vincent Avenue, he said additional notification was provided informing the residents of what the City is planning to do in the future. He said the information is posted on the City's website. He suggested staff could use the 5-year projected map on the website so residents will know what they're looking at. He stated there are 340 lane miles in the city of Bloomington.

Winstead said these streets were initially constructed without curb and gutter so that will be added with this project but said that takes on a higher cost factor for the assessment. He said a mill and overlay is not an alternative for this area and asked staff to explain why. Simons explained these streets were built in the late 50s and early 60s as temporary streets and weren't built to the 7-ton standards. He said curb and gutter will be installed per the City's policy, which will give the streets a permanent status. He said it's not cost effective to reconstruct streets without curb and gutter.

Speaker #1: Mike Broviak, 2918 West 87½ Street

He said at the previous Council meeting, Council requested staff survey the neighborhood. He said the letter was clear on informing the residents of their choice and option and it included a ballot. He believes the petition they put out clearly relayed the sentiment of the neighborhood and that the City's survey reaffirmed it. While they appreciated staff's map of the voting, he said the neighborhood still wants their street deferred.

Winstead asked Broviak what deferment means.

Broviak said deferment to him means delaying the construction into the future; a timeframe that should be discussed by him and his neighbors. He said it will need to be done at some point; just not now. They believe their roads are fine for now and they're comfortable living with them as they are.

Speaker #2: Matthew Pawlowski, 2930 West 87th Street

He and his wife are not opposed to curb and gutter. He's opposed to the special assessment. The special assessment is not a special benefit to his property. He said LMCIT has a special assessment tool and reported there is a plethora of case law. Chapter 429 tries to interpret the MN State's constitution regarding special assessment but there is a lot of gray area. His concern is that the City says they will not sealcoat or do a mill and overlay on their street if this project doesn't move forward in 2016. He asked why a mill and overlay was not done in the last 90's. He has concerns with PMP and said he asked for a creative solution at the last meeting. He said they're a successful middle class couple but the PMP is a financial burden. He said his local property taxes should include paying for maintenance of the roads and should be budgeted accordingly. He added the special assessment doesn't rise to the level of a special assessment per Chapter 429. He encouraged his neighbors to read a letter by Michael Ringham regarding the interpretation of Chapter 429.

Winstead stated per Chapter 429, "any assessment that is put on a property must be done in a fashion that is commensurate with the increased property values of that property if it does go forward." He said it's been proven out that the 25% rate of assessment the City puts on for its streets, curbs and gutter has been indicative of the value properties have increased. He said the City settled on the assessment rate of 25% because it's historically been commensurate with increased property value associated with these improvements. He added people have legally challenged this in court. He added the City's policy is based on history, facts, values, etc. and it's been doing it this way 30 years. He said it could be worse, as Edina assesses its residents 100% of the cost.

Pawlowski again stated his assessment doesn't feel right. He said he was appalled when he heard about a business on Old Cedar Avenue that is being assessed almost \$70,000. He said PMP is a financial burden. He sees roads as being basic City services. He asked the Council to consider what it's voting on tonight and what it will do to his family. He said roads are not cheap so staff needs to come up with a creative solution. He suggested staff increase the levy and explain to the residents why more taxes are needed.

Winstead said this Council and previous Councils have considered and evaluated the assessment parity and have stayed the course. Some clarity has been established regarding lot footage to gain parity. He said if this Council wants to consider a different policy regarding assessments for PMP reconstructions, it could but it wouldn't affect the assessments related to the 2016 PMP.

Speaker #3: Gerald Myer, 3716 West 104th Street

He's lived in his home for 22 years. He asked if Council voted on his street.

Winstead replied yes, the Council voted on it but acknowledged they received his letter. He said Myers has a unique frontage situation.

Myer said he wanted to speak on the condition of his street and apologized for arriving at the meeting too late.

Winstead explained the Council voted to include his street in the 2016 reconstruction project.

Myer said they petitioned only two of the four streets (104th Street and Ewing Avenue); their neighborhood watch area. He said timing of the letters and the schedule of the meetings didn't allow time to petition all 47 properties. He reported the petition on their two streets came back with 95% of the property owners objecting to the project. He commented the City's survey strongly predicted further acceleration of street decline if the street isn't reconstructed in 2016. He was surprised more people didn't change their mind. He said past sealcoats on his street have worked just fine but nothing has been done to it in the last 10 years.

Winstead restated the Council received his correspondence but said the City's engineers have determined if the City were to patch or overlay the street, it would not be an efficient use of tax dollars. That's a Council decision and it's why 104th Street is recommended for reconstruction and the assessment that goes along with it.

Myer said even though five votes changed as a result of the survey, it was an overwhelming case of opposition to the project.

Winstead didn't disagree with his statement but said the Council voted on the premise that it needs to maintain the streets in the city of Bloomington the best way possible and in the most efficient way possible and that it be done for the entire city of Bloomington.

Carlson commented staff does a good job of evaluating the streets across the city. He said mills, overlays and sealcoats are part of the street maintenance provided but reconstructions are assessed and they're spread out over ten years to make it as equitable as possible. He saw no reason to disapprove it and supported moving it forward.

Motion was made by Carlson, seconded by Lowman, to approve the Feasibility Report and adopt a resolution including Street Ref. No.'s 10 (Washburn Avenue South), 11 (West 87th Street), 12 (Vincent Avenue South), 13 (West 87½ Street), 14 (Thomas Avenue South), 15-16 (Sheridan Avenue South), 17 (Russell Avenue South), and 18-19 (Queen Avenue South) in the 2016-101 Pavement Management Program (PMP) Street Reconstruction Project. No vote was taken at this time.

Oleson said while it doesn't appear the Council is reacting to what the neighborhood has stated, it's trying to be responsive to the neighborhood that is paying 25%. He said three-quarters of the street improvement costs will be borne by all taxpayers. He said the Council has to be watching out for the other 75% of the taxpayers' money also.

Baloga said he won't support this motion because the City has a history regarding PMP. Even though the Council understands the technical part of it, he said the residents will see the accuracy of the engineer's predictions. These are residential streets; not ones the majority will be using. He said there is overwhelming opposition in this instance. He said more often than not, the residents do come back to ask that their street be reconstructed but it comes at a higher cost. Regarding the 25% assessment, he said the City meets the criteria of the statute. The City's been using the 25% assessment for 30 years. He said the real issue is what the City does for the equitable distribution for people who've paid those assessments. He said that question hasn't been addressed. He asked what about all those people who have been assessed in the past. How does the City make it a level playing field? He believes the assessment policy does a nice job on that. He said after listening to his neighbors, he won't be supporting this motion.

Busse said there is no question this is a financial burden and it's not getting any less expensive; not for the individual homeowners or the rest of the taxpayers. It will continue to get more expensive. He said another street will get bumped in the future to make room for this one at some point. He said these are financial obligations and responsibilities the Council needs to make for the entire city.

Lowman said the Council needs to look at the common good with regard to sustainable decisions for the neighborhood. There is a large minority in this neighborhood that wants this to go a different way but he looks at the cost of doing it three to four years from now. He supports it.

Mayor Winstead called for a vote on the motion. It passed 6-1 (Baloga opposing). (R-2015-154)

8 ORDINANCES: PUBLIC HEARINGS

8.1 HOM Furniture; 7800 and 7850 Dupont Ave.; Rezoning/PDP/FDP

Requested Action: Adopt an ordinance rezoning 7800 and 7850 Dupont Avenue, Case 09334A-15, from I-3 and I-3(PD) to C-3(PD) and approve the Preliminary and Final Development Plan for a 163,460 square-foot furniture store, Case 09334BC-15, for HOM Furniture, subject to the conditions and Code requirements listed in the staff report.

Planner Nick Johnson presented the staff report. His presentation highlighted the following slides: An aerial photo of the southeast quadrant of the 35W/I-494 interchange, rezoning that is consistent with the Comprehensive Plan, proposed building design, landscape plan, parking, and requested deviations which relate to the existing conditions on site. No new deviations are requested. He said staff supports the requested deviations with conditions. The Planning Commission and staff recommend approval.

Council had no questions.

No public testimony was received.

Motion was made by Baloga, seconded by Abrams, to adopt an ordinance amending the Zoning Map by rezoning land located at 7800 and 7850 Dupont Avenue South, Case 09334A-15, from I-3 and I-3 (PD), General Industrial and General Industrial (Planned Development) to C-3(PD), Freeway Commercial Center (Planned Development). No vote was taken at this time.

Abrams said it's gratifying to see a planned improvement that is very visible. This is what the City should be celebrating. It will be a great gateway to what then becomes South Loop. She appreciates the investment made by HOM Furniture.

Mayor Winstead called for the vote on the motion. It passed 7-0. (O-2015-41)

Motion was made by Baloga, seconded by Abrams, and all voting aye, to approve the Preliminary and Final Development Plan for a 163,460 square foot furniture store for HOM Furniture at 7800 & 7850 Dupont Avenue South, Case 09334BC-15, subject to conditions listed in the staff report being satisfied prior to issuance of grading, stormwater, or building permits.

8.2 Amendment to Northern States Power Franchise

Requested Action: Adopt an ordinance allowing the City to collect Franchise Fees on electric services to finance the Pavement Management Program (PMP).

Chief Financial Officer Lori Economy-Scholler and City Engineer Shelly Pederson presented the staff report on franchise fees explaining the goal is to, “implement changes in funding for the Pavement Management Program (PMP; committing to maintaining a sustainable and consistent funding source for PMP street overlays and trails.” They explained a normal road life is 20 years but PMP maintenance extends it to 70 years. Trails would get a 25-year life. It was stated there are 38 miles of asphalt trails; 9 miles of which need reconstruction for safety reasons, as they don’t meet today’s design standards. Regarding the use of franchise fees in Hennepin County, approximately 86% of the County is impacted by them. Bloomington proposes to utilize its franchise fees for the street overlay program and the trail program. The City proposes a \$3.75 cost per Bloomington Xcel Energy residential class customer. If this franchise fee is approved tonight, it is proposed to be on the March Xcel Energy invoices for collection by the City in April. Staff recommended approval and stated Michelle Swanson from Xcel Energy is present for Council questions.

With regard to non-demand vs. small commercial/industrial demand, Abrams asked if the estimated count was the same as that used in the CenterPoint Energy classification. Are they the same businesses that would have fallen under the CenterPoint classification? Economy-Scholler confirmed staff used the same rate structure as in the CenterPoint franchise agreement.

Speaker #1: Tom Hulting, 6717 Auto Club Road
He asked if the total monthly costs for city services shown for Edina (\$97), Eden Prairie (\$96), and Bloomington (\$71) were accurate.

Economy-Scholler replied they were per the chart.

Hulting asked if those comparisons were on median value homes.

Economy-Scholler said those are the single-family property tax amounts not adjusted for aids on the median value home.

Hulting said the rest of the story is that the median value home in Edina is about \$390,000, is \$290,000 in Eden Prairie, and is \$185,000 in Bloomington so it’s not an apples to apples comparison when comparing tax burdens per household in those three cities.

Winstead explained it has to do with the cost to provide City police, fire, etc. to each lot and that’s the fairest way to provide a cost comparison – by using the median value or average home value.

Hulting said Edina residents should be paying twice what Bloomington is paying in taxes because their median home value is so much higher. He said the City’s information is misleading. He believes Bloomington residents are paying more for City government than their counterparts in Edina and Eden Prairie are paying based on median home values.

Busse said as he did with the CenterPoint Energy franchise fee, he’ll be voting against this. He disagrees with using fees to provide ongoing City services such as maintenance for streets and trails.

Motion was made by Abrams, seconded by Lowman, to adopt an ordinance granting Northern States Power Company, a Minnesota corporation, its successors and assigns, a franchise to construct, operate, repair and maintain in the city of Bloomington, Minnesota, an electric distribution system and transmission lines, including necessary poles, lines, fixtures and appurtenances, for the furnishing of electric energy to the City, its inhabitants, and others, and to use the public ways and public grounds of the city for such purposes, thereby amending Chapter 20 of the City Code. Motion passed 6-1 (Busse opposing). (O-2015-42)

8.2.1 Resolution Directing Summary Publication NSP Franchise

Requested Action: Adopt a resolution authorizing summary publication of Ordinance No. O-2015-42 for a Northern States Power Franchise.

Motion was made by Abrams, seconded by Lowman, and all voting aye, to adopt a resolution directing summary publication of Ordinance No. O-2015-42 granting Northern States Power a franchise. (R-2015-155)

8.3 Approve Northern States Power Franchise Fee

Requested Action: Adopt an ordinance authorizing a Northern States Power Franchise Fee.

Motion was made by Abrams, seconded by Carlson, to adopt an ordinance modifying the electric franchise fee on Northern States Power Company, a Minnesota corporation, its successors and assigns, for providing electric service within the city of Bloomington, Minnesota. Motion passed 6-1 (Busse opposing). (O-2015-43)

8.3.1 Resolution Directing Summary Publication NSP Franchise Fees

Requested Action: Adopt a resolution authorizing summary publication of the fee schedule ordinance for Northern States Power Franchise.

Motion was made by Abrams, seconded by Carlson, and all voting aye, to adopt a resolution directing summary publication of Ordinance No. 2015-43, modifying the electric franchise fee on Northern States Power Company. (R-2015-156)

8.4 Barbecue Grills Ordinance Change

Requested Action: Adopt an ordinance amending Chapter 6 of the City Code with regard to barbecue grills.

Fire Chief Ulie Seal presented the staff report. He reviewed Chapter 6 of the Fire Provisions Article II regarding BBQ grills. He said this ordinance change will allow propane BBQ grills on balconies and ground floor patios of townhouses constructed of two or more attached units that are contiguous from the foundation through the roof. They cannot be stacked and the patio must have open space on at least two sides. They're not allowed on balconies of apartment buildings or townhomes that don't meet that definition. He said charcoal grills are still prohibited. The changes in the Code define the storage requirements and limitations of LPG gas cylinders for multi-family housing. It further clarifies the installation requirements for natural gas and electric grills. He showed photo examples of what's allowed and what isn't.

Carlson expressed his appreciation that this change has come forward, as it will impact many townhome owners who have wanted this. He said this is for movable propane gas grills and asked Chief Seal to clarify how they can be stored. Seal replied the cylinders can't be stored in a basement and they're limited to a certain cylinder size in the garage. He said a 20# cylinder cannot be stored in a garage; only on the grill itself.

No public testimony was received.

Motion was made by Carlson, seconded by Abrams, and all voting aye, to adopt an ordinance revising standards for the use of barbeque grills for specifically defined multi-family dwellings thereby amending Chapter 6 of the City Code. (O-2015-44)

8.5 Environmental Control, Refuse, Recycling, Water, Wastewater, and Stormwater (Organized Collection) Code Amendment

Requested Action: Approve the City Code Amendments relating to implementation of Organized Solid Waste Collection, amending Chapter 10 of the City Code for Environmental Control, Article II—Refuse; Article VII—Recycling; And Chapter 11—Water, Wastewater, Stormwater and Recycling.

Public Works Director Karl Keel and City Attorney Sandra Johnson presented the staff report. They discussed the organized collection timeline; the formal process of which started in the fall of 2014. Implementation of organized collection was approved by the City Council on June 22, 2015, which requires the adoption of two ordinances to be consistent with the services contract and it makes organized collection the process used for waste collection at residential properties in Bloomington. Chapter 10 sets the definition with those in the contract and all the provisions that require residential properties to utilize the City's contract for the collection of waste. Chapter 11 sets the associated fees.

Johnson explained tonight's action is not an opportunity for the Council to vote yes or no on the process, as that was done in June. She said this is a limited program at this time affecting residential single and two-family dwelling units and it's limited to curbside collection of residential garbage. This is a separate form of service. Only those residential haulers that are currently under contract with the City can perform this service. No other haulers can bid. She said all existing private contracts with the haulers will be replaced with this contract, which includes some of the best practices put forth by the haulers. She said staff wants the ordinance to be in sync with the services contract. The ordinance spells out the responsibility of the tenants, owners, lessees, and others responsible for this core group of residential dwelling units covered by the contract. It represents the identified best practices of the consortium. Penalty language is the only other significant change. It reflects the penalty verbiage the City has used in all ordinances over the past ten years. A civil fine can be used instead of limiting the City to the criminal prosecution of violators. She explained she was not the attorney involved in the negotiation of this contract; it was Attorney Amy Larson who works for Finance and Legal. She said it was a significant task getting the consortium to agree on a single contract. She commended Larson and Deputy Director Jim Gates for their work on this.

Winstead added they had to do this within State law.

Johnson said it's a very detailed statute and the City did more than what was required by State statute. She said the City didn't jump the gun and go straight to a Request for Proposals (RFP) process. Staff had to keep both tracks open under the State statute and followed it as best it could.

Keel reviewed the organized collection rates -- the average amount residents were paying for trash and recycling (\$27.00/mo.) based on the City's survey, the estimated cost of organized collection at the time of the public hearing (\$18.49/mo.), and the revised rates forecast (\$19.52/mo.). He said there are two rates charged by the haulers -- the collection rate controlled by the haulers and the HERC charge. Since the City began its negotiations with the haulers, HERC, Inc. increased its rate from \$49/ton to \$55/ton causing an increase in the proposed rate for organized collection.

Lowman asked for more information on the increase. Keel explained in an open system, some of the haulers were taking their garbage to HERC and they would have seen an increase also. However, some haulers took their garbage to landfills. He said some own their own landfills. He said with organized collection, all of the waste must go to a processing facility; which is most likely HERC. All of the waste in the city of Bloomington will be burned and turned into electricity. He again stated anyone using the HERC facility would have seen this increase in rates.

Speaker #1: Sunil Lachhramani, 4609 Nine Mile Creek Parkway
He asked about paragraph 2 under Sec. 10.06.02 regarding carts for each type of waste that says, "lids fully closed." He asked what happens if the lid is slightly open.

Winstead said the intent is that people who have waste in their cans must be able to completely close the lids. If they have more trash and can't shut the lid, they can put it in bags and they'll be collected at no additional charge. He said the ordinance requires the garbage container lids must be closed. He asked Keel to clarify the penalty for failure to comply with the ordinance. Keel said there are three cart sizes. He said there will be an additional charge for bags outside the can. He said if a hauler observes a lid that isn't closed; contact will be made with the resident to inform them they're in violation of the ordinance. If they continue to violate the ordinance, an order will be written against that property. He said the fee is \$4 for an extra bag.

Lachhramani questioned who determines if there is more than 10 percent trash within a recycling bin and that it amounts to 10 percent.

Winstead said that's to discourage people from loading their recycling cart with trash. Keel said it's a similar process to gain compliance. Contact will be made with the resident to get them to change their practice. In the event they don't, the City would issue orders and follow its civil process to gain enforcement. He said these are Minnesota Pollution Control Agency (MPCA) State Standards. He said it gets expensive if there is too much trash in the recyclables.

Lachhramani said this ordinance pertains to single and two-family residential and asked what the plan is to incorporate the rest of the community.

Winstead said no date has been set. He said apartments will probably be considered if there is a better and more efficient way to make that collection happen. He said the business community is very diverse – manufacturing, restaurants, retail, etc. He again stated if there's a better or more efficient way to collect trash from multi-family, the City will look into it. Keel said staff hasn't yet looked into multi-family. Organized collection around the country has been limited to single-family residential. He said staff is looking at townhomes where individual units have contracted individually for service. The City is not organizing those townhouses that pick up trash via their association contract but they could opt in.

Speaker #2: Russ Burnison, 4716 Nine Mile Creek Parkway
He asked if this requires every single-family residence to have garbage service or can they opt out of the program.

Keel said an application will be developed that will set the criteria for opting out of the program. That will be a rare occasion. He said the current ordinance has an opt out of trash service with criteria.

Oleson asked about the 48 hour pre-notice for snowbirds that are gone for extended periods of time and wish to suspend their service.

Keel confirmed there is an option to suspend service for extended periods of time if people are out of their homes.

Burnison asked for more details on how long service can be suspended and exactly what will constitute an open lid violation.

Winstead said the intent of the ordinance is to keep the lids down with good reasoning behind it.

Oleson said the haulers are going to work with the City and the citizenry but there has to be parameters when starting a program. He said there will be growing pains at the beginning but the general idea is to reduce the amount of garbage and recycle more to improve life.

Burnison asked if there was anything to prevent Hennepin County from increasing the HERC fees. He said with the current system, if those fees are increased, the haulers can choose to dump their garbage elsewhere.

Speaker #3: Tom Hulting, 6717 Auto Club Road
He said his house sets 320 feet from the road and he searched long and hard to find a hauler that would drive down his driveway to pick up and dump his trash and so did his neighbors. He hopes to receive that same service under organized collection. He said he pays his current hauler \$53.71 for three months of service to drive down his driveway and pick up his trash; less than \$18/month for special treatment which makes life easier. He asked if there was a provision to keep the same carrier or to continue receiving this special treatment.

Keel replied valet service will be offered to those with physical needs for no additional charge that will require the submittal of an application. He said no valet service will be available for those with longer driveways.

Hulting asked why one more protected class couldn't be added because his long driveway presents a hardship. He doesn't believe there would be that many situations like his.

Winstead said staff could discuss this with the consortium.

Keel said there is no provision in the contract to address a long driveway.

Hulting said he currently has Republic and they pick up the City parks and several of his neighbors.

Winstead said this might be a unique circumstance to consider.

Hulting said if the City continues to use Republic to pick up its parks, it could continue to pick up his trash.

Speaker #4: Joel Jennissen, 3119 West 88th Street
Regarding the HERC charges and the open market haulers, he said it will be slightly different for those not in an organized collection process next year. Whatever amount the hauler hauled to HERC this year will be reduced by 12%. If they go over that amount, they will be charged an extra fee. He said HERC is set up to operate a certain number of hours per day. He said there is a lot of waste and toxins that end up in the ground even when it's burned. He said the price structure will be the same regardless. He said the price for garbage will go up in Bloomington in two years.

Winstead said he was aware HERC was going to have different rates for organized collection and for non-organized collection. The organized collection cities would have preference to delivery and price. Private haulers in non-organized cities would have a different fee and price but would have a lower priority of being able to use it. He said that's the portion that is subject to the open market. He said HERC has had some of the best and reasonable dumping fees to date. If haulers have elected to have their own landfills, it will be dealt with down the road. He said that information from Hennepin County has been out there for a year.

Jennison asked the city attorney for clarification on the statute about discontinuing recycling.

Johnson said discontinuing recycling is dealt with generally regardless of whether it's part of an organized system or not. She said the problem with organics recycling right now is that Bloomington is a large city so it would be difficult to find a service provider that could handle that capacity. She said the City will be offering organics when it becomes feasible.

Keel said the statute says when a city goes to organized collection, it can't do anything that disadvantages recycling. A hauler vested in organics recycling has stated that another portion of the law states organics is a form of recycling, and therefore, we have to offer organics recycling citywide. There isn't capacity in the current system to accommodate organics recycling but the City's contract includes provisions to add it. It can't offer it citywide because there isn't capacity in the market. He said once the marketplace has the capacity to handle it, the City will turn it on. He said 88 out of 22,000 Bloomington residents currently have organics collection.

Jennissen asked if it's alright to break State statute. He said city governments are never held accountable when breaking the law. He said this is going to be a violation of the law.

Winstead disagreed and said it's how this State statute applies to what is being done in Bloomington.

Johnson said the argument impossibility of performance would come into play if this matter were litigated in court. She said there is no manner in which the City can practically provide organics recycling at this time to all residents. The City has a plan that is in progress and that is a goal. Organics is on the list of what the City wants to provide its residents but it's got to be done in the best possible way. She said whether it needs to be done immediately is a decision to be made by the courts. The City is protected by the legal doctrine of impossibility of performance.

Speaker #5: Ron Martelle, 8536 1st Avenue South

He asked if the City would be in this organized collection process if it didn't have so many haulers in the first place and asked why there are seven haulers. He asked about bi-weekly pricing and what happens if one of the haulers sells out.

Keel said there is no cost advantage to having bi-weekly trash collection. He said the final contract has weekly trash collection, bi-weekly recycling, and weekly yard waste collection. He explained the haulers formed their own entity and they have provisions if one of them sells their business; their market share will be distributed equally. He said what's more likely is the hauler might want to sell their share. He said Bloomington had an open trash collection system so anyone who wanted to provide trash service in Bloomington could.

Winstead said the City embraced an open system. Any and all haulers could get a license to do business in the city. What evolved from that were trash trucks, recycling trucks, and yard waste trucks. Each hauler went to three trucks.

Martelle said the City should have stopped at a lower number of companies to avoid this situation, which he's still opposed to.

Speaker #6: Michael Guinee, 1925 West 92nd Street

This is about the ordinance. He said he attended all of the Council meetings on this matter and he has some concerns; one that requires the City operate through HERC. He said HERC can only process so many tons of garbage per day and they want the most dollars for that tonnage. He asked about the checks in place regarding what HERC can do with prices in the coming years. He asked about the oversight provided by HERC.

Winstead replied the Hennepin County commissioners oversee HERC but said a release valve will be needed if they can't process the amount of garbage coming out of Hennepin County or from those in organized.

Keel said the City found out HERC has been providing preference to the organized communities. He said to make room for Bloomington, HERC sent a letter to their existing haulers limiting the amount of trash they can deliver to HERC at the rate of \$55/ton. He said HERC will guarantee the haulers hauling to HERC the same capacity as last year minus 12%. That is how they can guarantee they will have capacity for Bloomington's organized collection at the \$55/ton rate. Those that don't have organized collection and exceed their amount are charged the \$85/ton rate. He said Bloomington's waste is required to be processed (burned for energy) and there are three facilities within the Metro area. He said HERC is the least expensive. It's the best burning rate.

Guinee said we'll see what the courts say. He said the City's plan touted it would lower the trash rates. At the end of five years, he hopes the City can show the citizens it worked so it doesn't regret making this decision. He asked about the additional fee for the City to administer the program and if there was oversight language in the ordinance to keep the City's administration fee in check.

Winstead said the haulers proposed a lower rate for pickup and tipping fees if the City would do the billing. The City took that deduction in rates and will take on the billing. Keel explained there are two sets of rates: The set of rates the City pays the haulers and the rates the City will charge its customers in the ordinance. He said the rates in the ordinance are \$1 per household higher than what the City pays the haulers. He said there has been no increase in rates on the City side since the Council approved organized collection. It's just the HERC rate. He said the \$1/monthly fee provides the City with enough of a buffer to handle the billing but we'll see how it plays out.

Burnison reapproached the podium to ask if one of the haulers decides to sell his share, can an outside hauler purchase his portion of the business.

Keel confirmed that is a function of the consortium agreement, which is an agreement between the seven haulers. The rules of how that consortium agreement functions is between them. The City requires that all haulers that do business in Bloomington are part of that consortium and are licensed with the City. He said if the remaining consortium allows an outside company to purchase the business license of a hauler that quits, they can do that.

Motion was made by Baloga, seconded by Busse, to adopt an ordinance amending the City Code to conform with Resolution No. 2015-71 adopted on June 22, 2015, directing the implementation of organized solid waste collection in the city and thereby amending Bloomington City Code, Chapter 10, Environmental Control, Article II – Refuse; Article VII – Recycling; and Chapter 11, Water, Wastewater, Storm Water and Recycling with the addition of yard waste, the addition of the on call item onto the schedule, and the trash overflow price onto the pricing schedule. No vote was taken at this time.

Keel pointed out a revised portion of the ordinance was provided to the Council before tonight’s meeting.

Carlson said there’s a great article in the August 20, 2015 edition of Political Magazine regarding the use and function of the HERC. He said it contains great statistics. He said HERC is good for business. He supports organized collection and taking Bloomington’s municipal waste to the HERC facility.

Mayor Winstead called for a vote on the motion. It passed 7-0. (O-2015-45)

8.5.1 Resolution Directing Summary Publication Code Amendments

Requested Action: Adopt a resolution authorizing summary publication of Ordinance No. O-2015-45.

Motion was made by Baloga, seconded by Busse, and all voting aye, to direct summary publication of Ordinance No. 2015-45. (R-2015-157)

9 OTHER: PUBLIC HEARINGS

10 ORGANIZATIONAL BUSINESS

10.1 City Council Policy & Issue Update

City Manager Verbrugge applauded the efforts of staff and thanked the haulers for working with them on the organized collection ordinance, as it took a real commitment to get it done.

As this is the last Council meeting of the year, Verbrugge commended staff for their work during the past year. He said they serve with integrity, confidence and enthusiasm. He also expressed his gratitude to the City Council for taking on some difficult issues. He said it was a very solid 2015.

Baloga said Council recognizes the fine work and good service the City of Bloomington employees provide to the businesses and residents.

Motion was made by Baloga, seconded by Busse, and all voting aye, to grant employees a full day off with pay on December 24, 2015.

He wished everyone a Merry Christmas and a Happy New Year.

11 ADJOURN

Mayor Winstead adjourned the meeting at 11:05 p.m.

Barbara Clawson
Council Secretary