



CITY COUNCIL MEETING
City Hall—Council Chambers, 590 40th Ave NE
Monday, September 27, 2021
7:00 PM

MINUTES

Mayor
Amáda Márquez
Simula
Councilmembers
John Murzyn, Jr.
Connie Buesgens
Nick Novitsky
Kt Jacobs
City Manager
Kelli Bourgeois

The following are the minutes for the Meeting of the City Council held at 7:00 pm on Monday, September 13, 2021 in the City Council Chambers, City Hall, 590 40th Avenue NE, Columbia Heights, Minnesota. Due to the COVID-19 pandemic, this hybrid meeting was held both virtually and in-person.

CALL TO ORDER/ROLL CALL

Mayor Márquez Simula called the meeting to order at 7:00 pm.

Present: Mayor Márquez Simula; Councilmember Buesgens; Councilmember Jacobs; Councilmember Murzyn, Jr.; Councilmember Novitsky

Also Present: Lenny Austin, Chief of Police; Jeff Bahe; Gloria Bergstrom; Sean Clerkin, Columbia Heights Lions Club; Kevin Hansen, Public Works Director; Minerva Hark, City Planner; Jim Hoeft, City Attorney; Sara Ion, City Clerk/Council Secretary; Joseph Kloiber, Finance Director; April Knoke, Member of the Columbia Heights Lions Club; Brent Morris; Grace Plowman; Ben Sandell, Communications Coordinator; Molly Schmidtke; Bobby Williams.

PLEDGE OF ALLEGIANCE

MISSION STATEMENT

Our mission is to provide the highest quality public services. Services will be provided in a fair, respectful and professional manner that effectively addresses changing citizen and community needs in a fiscally-responsible and customer-friendly manner.

APPROVAL OF AGENDA

Motion by Murzyn, Jr., seconded by Councilmember Novitsky, to approve the Agenda as presented. All Ayes, Motion Carried 5-0.

PROCLAMATIONS, PRESENTATIONS, RECOGNITION, ANNOUNCEMENTS, GUESTS

A. Domestic Violence Awareness Month Proclamation

Councilmember Buesgens read the proclamation designating the month of October, 2021 to be Domestic Violence Awareness Month in Columbia Heights. A representative of Alexandra House expressed gratitude for the formal recognition and the City's ongoing support of their work.

In October, Alexandra House will strive to increase awareness of domestic violence through its “Yard Sign Campaign,” “Purple Lights Campaign” and “Purple Thursday” on October 1, with more information available at “alexandrahouse.org.” Columbia Heights Lions representatives Sean Clerkin and April Knoke then announced a donation of \$2,000.00 to Alexandra House to help ensure their continued ability to serve.

B. Columbia Heights Pride Proclamation

Mayor Márquez Simula read the proclamation designating Saturday, October 9, 2021 as Columbia Heights Pride Day in Columbia Heights. HeightsNEXT representatives thanked the City and its representatives for officially recognizing the Pride movement.

C. Polish American Heritage Month Proclamation

Mayor Márquez Simula read the proclamation designating the month of October, 2021 to be Polish American Heritage Month in Columbia Heights. Gloria Bergstrom, chairperson of the Sisters City group, cited the group’s 30-year history and connection to Poland and said Columbia Heights is well representing what the Sister City international organization’s intentions; and another representative expressed her appreciation in the Polish language.

CONSENT AGENDA

Motion by Councilmember Jacobs, seconded by Councilmember Murzyn, Jr., to approve the Consent Agenda as presented. All Ayes, Motion Carried 5-0.

1. Approve September 13, 2021 City Council Meeting Minutes

MOTION: Move to approve the City Council Meeting minutes of September 13, 2021.

2. Accept August 17, 2021 Traffic Commission Meeting Minutes

MOTION: Move to accept the Traffic Commission Meeting minutes of August 17, 2021.

3. Final Payment for Silver Lake Water Quality Pond Reconstruction, City Project 1808

MOTION: Move accept the work for Silver Lake Water Quality Pond Reconstruction, City Project 1808, and authorize final payment of \$20,012.80 to Sunram Construction, Inc. of Corcoran, Minnesota.

4. Final Payment for Zone 3B Seal Coat, City Project 2101

MOTION: Move to accept the work for 2021 Seal Coat, City Project No. 2101 (Zone 3B), and authorize final payment of \$2,713.26 to Pearson Bros. Inc. of Hanover, Minnesota.

5. Final Payment For 37th Avenue Bituminous Trail and Pedestrian Improvements, City Project 1907

MOTION: Move accept the work for 37th Avenue Bituminous Trail and Pedestrian Improvements, City Project 1907, and authorize final payment of \$17,086.52 to Sunram Construction, Inc. of Corcoran, Minnesota.

6. Adopt Resolution 2021-75 Being a Resolution Establishing Amount of City Share and Amount of Special Assessments on Projects to be Levied

MOTION: Move to waive the reading of Resolution 2021-75, there being ample copies available for the public.

MOTION: Move to adopt Resolution 2021-75 being a resolution establishing amount of City share and amount of special assessments on projects to be levied.

7. Designate “No Parking” on the East Side of Heights Drive Between The Driveway Entrances for 4617 Heights Drive and 4623 Heights Drive

MOTION: Move to designate “No Parking” on the east side of Heights Drive between the driveway entrances for 4617 Heights Drive and 4623 Heights Drive, as recommended by the Traffic Commission.

8. Memorandum of Understanding Amendment for SACA Land Sale

MOTION: Move to approve the amended Memorandum of Understanding for the SACA land sale, as presented.

9. Review of Bills

MOTION: Move that in accordance with Minnesota Statute 412.271, subd. 8 the City Council has reviewed the enclosed list to claims paid by check and by electronic funds transfer in the amount of \$1,632,785.34.

10. Rental Occupancy Licenses for Approval

MOTION: Move to approve the items listed for rental housing license applications for September 27, 2021 in that they have met the requirements of the Property Maintenance Code.

11. License Agenda

MOTION: Move to approve the items as listed on the business license agenda for September 27, 2021 as presented.

PUBLIC HEARINGS

12. First Reading of Ordinance No. 1670, an Ordinance Amending Chapter 5.3 of the Columbia Heights City Code to Revise Purpose and Intent, Definitions, License, Prohibited Sales, License Holder Responsibility, Compliance Checks and Inspections, and Violations and Penalties of Tobacco Regulations

Planner Hark reported that during the August 2, 2021 City Council Work Session, the City Council expressed interest in moving forward with amendments to Chapter 5.3 (Tobacco Regulations) of the City of Columbia Heights City Code. With the interest of the community’s youth in mind, the Council guided City Staff to amend the chapter in a manner that would make flavored tobacco more difficult for youth to obtain, while decriminalizing the purchase, use and possession of tobacco products by persons under the age of 21.

City Staff collaborated with Hamline University’s Public Health Law Center and the Association for Nonsmokers-Minnesota in an effort to amend the City’s tobacco regulations and bring the Chapter into compliance with Minnesota State Statute.

Ordinance No. 1670 would restrict the sale of all flavored tobacco products to licensed Tobacco Product Shops only (currently known as Smoke Shops), increase administrative fines, and eliminate criminal penalties for tobacco-related offense for persons under the age of 21, placing added responsibility on license holders.

She reported that City staff worked with the Public Health Law Center of Hamline University and Association for Nonsmokers Minnesota to ensure that all amendments in the City Code followed Minnesota State Statute.

As directed by the Council, Ordinance No. 1670 would restrict all flavored tobacco products to licensed tobacco shops only, currently known as smoke shops; increase administrative fines and eliminate criminal penalties for tobacco-related offenses for persons under the age of 21, placing added responsibility on license holders. On a more detailed level, the Ordinance would also:

- Update the Purpose and Intent of the Chapter
- Add the following definitions: Child-Resistant Packaging; Cigar; Electronic Delivery Device; Flavored Product; Indoor Area; Licensed Products; Nicotine or Lobelia Delivery Product; Self-Service Display; Smoking; and Tobacco Product Shop
- Amend the following definitions: Compliance Checks; Loosies; Moveable Place of Business; Retail Establishment; Tobacco; Tobacco-Related Devices; and Vending Machine
- Eliminate the following definitions: Individually Packaged; Minor; Sampling, Tobacco; Self-Service Merchandising; Smoke Shop; and Tobacco Products
- Add qualifications for retail establishments interested in a tobacco product shop license
- Prohibit the transfer of tobacco licenses to another location or person
- Prohibit indoor smoking and sampling
- Restrict the sale of all flavored tobacco products to licensed tobacco product shops only (previously noted above)
- Require child-resistant packaging for liquid products being sold
- Increase license holder responsibility
- Increase administrative fees and penalties
- Remove criminal or monetary penalties for persons under the age of 21 who purchase or attempt to purchased licensed products (previously noted above)
- Add sections for Severability and Effective Dates

Minnesota Statute §461.19 requires municipalities to give written notice to all tobacco license holders within their jurisdiction at least 30 days prior to the meeting during which substantial changes to local tobacco ordinances will be considered. All tobacco license holders in the City were mailed notification of Ordinance No. 1670 on August 26, 2021. License holders were encouraged to submit comments to the Community Development Department or attend this City Council Meeting. A few license holders reached out to City Staff via telephone and in-person with questions and concerns regarding the proposed ordinance. Many letters and postcards of support were received by City Staff leading up to the public hearing.

The proposed Ordinance stipulates that the restriction of sales of flavored tobacco products to licensed Tobacco Product Shops only will take effect on January 1, 2022.

Staff recommends waiving the reading of Ordinance No. 1670 and setting the second reading for October 11, 2021 at 7:00 pm.

Mayor Márquez Simula opened the public hearing.

Bobby Williams, business owner, said he is a nonsmoker but doesn't condemn those who do and thinks the City would make a mistake with the ordinance, citing Minneapolis and Bloomington as having done so. He said it would limit "what a human being can do and what a business can and cannot do," referencing socialism. He then asked when such regulations would stop, that it's important to think about City customers and businesses' ability to pay taxes using tobacco sale profits.

Jeff Bahe, City business owner, said he has been in business since 1979 and about 30% of his employees live in Columbia Heights. With the proposed tobacco change, a loss of the \$10,000.00 menthol sales per week in revenue would have less of an ability to pay employees and taxes. Customers typically buy other items, such as chips and pop, when they purchase tobacco products and they may end up going to another business in a different city. He said the City needs services, citing an example of the lack of a grocery store within its boundaries. Mr. Bahe said he has family members in his business and the family needs the revenue to be able to stay in the City. He said he could see if the State was making a change, where "everyone would be in the same playing field, but that is not the case," and asked that the Council not approve the ordinance, adding that people should be able to make their own choice and underage tobacco customers should be disciplined and continue to be penalized as well.

Brent Morris, future City resident and business manager in Columbia Heights, said he runs the convenience store at Bobby & Steve's, is a smoker and used to work with kids for 15 years. He said North Minneapolis has become a black market for menthol cigarettes because of the limited number of places where they can be purchased in Minneapolis and if a kid wants something, they will get it. Bobby & Steve's has systems in place already for kids not to be able to get cigarettes, and he said that he is trained and his cashiers are trained to ensure that cigarettes are getting into the hands of those who are supposed to. He said an ordinance will not stop underage tobacco sales, because those kids will find a way to obtain them somehow – that "it's just readily available in a different place." Mr. Morris said he cares about his staff and doesn't want to have to "cut their hours and take food off of their tables and money in their pockets because cigarettes about half of company weekly sales, with menthol sales 50% at the very least." With inability to purchase at his store, customers will go elsewhere and also purchase that company's gas and/or food and beverage items; he said the ordinance would hinder businesses and does nothing for the actual problem that is trying to be solved. For those reasons, he asked that the Council reconsider the ordinance.

Molly Schmidtke (via Zoom), a community outreach coordinator for the Association for Nonsmokers Minnesota, expressed support for the proposed ordinance that would restrict the sale of flavored tobacco products and remove purchase, use and possession penalties against youth. She cited the history and goals of her organization, which is dedicated to reduce the number of young smokers and continuously advocate for the right and health of nonsmokers.

She said many smokers start when they are kids, which her organization is trying to prevent, and the tobacco industry has spent billions of dollars over decades to market commercial tobacco products through appealing flavors, low prices and “egregious” marketing towards youth and LGBTQ, black, indigenous and other communities of color; “this has led to a disproportionate health outcomes in these communities. In Minnesota, 21 local communities restrict the sale of flavored tobacco products and eight of those opted to completely end the sale of all flavored tobacco products. Ms. Schmidtke said that, should the proposed ordinance pass, the City “would send a clear message that it would not stand by while the tobacco industry addicts a whole new generation and the impact this policy would have on retailers is not enough to jeopardize the lives of young people for the sole benefit of the tobacco industry.” She thanked the City for prioritizing the wellness of its community above the interests of the tobacco industry, adding that smoking remains the leading preventable cause of death in Minnesota and Minnesotans pay three billion dollars a year in excess healthcare costs from tobacco. She urged the Council to support the ordinance.

Grace Plowman (via Zoom), resident, said she is 18 years old and recent winner of the Campaign for Tobacco-Free Kids Youth Advocate Award, has been doing tobacco prevention work for a few years and expressed support for the ordinance including the purchase, use and possession penalties as well as the limiting flavored tobacco products (including menthol) to adult-only tobacco stores. She said she supports these policies because they help to increase racial equity within the City; and as a black person, she said she knows all too well that too many people of color are already being penalized for nonviolent drug offenses. Removing the penalties for purchase, use and possession is one simple step to help, as tobacco companies target young people specifically and no young person should be penalized for their addiction, especially after they have been marketed to so aggressively for a majority of their youth. Ms. Plowman said menthol tobacco products have been known to be targeted to the black community in particular, which affects their health detrimentally, and the City will be starting to address one of the many aspects of racial equity should the Council choose to restrict the sale of menthol. She said no stores in the City should be able to sell menthol and other flavored products, because the cost of healthcare as a result of tobacco is much higher than any profit from selling tobacco, adding that businesses have been known to show continuously that they are able to adapt to tobacco laws.

Gloria Bergstrom, City resident, said she has taught in years past and she had a third grader who smoked and said he stole them from Walgreens, so she went to Walgreens and informed the store but did not know what happened after that. She said people who want to smoke will find a way to do it one way or another and then asked if the Council was setting the age at 21, adding that she is confused because a person can vote or go into the Service at age 18. Planner Hark said State Statute for all smoking is set at age 21 and that the proposed ordinance would limit the sale of flavored tobacco to stores that only allow entry and sale to those over the age of 21.

Planner Hark clarified that the ordinance would not ban the sale of unflavored tobacco products from the City or the sale of flavored tobacco, rather restricting the sale of flavored tobacco to licensed smoke shops only, which are establishments for patrons 21 and older only.

As further clarification, Planner Hark also read the penalties portion of the ordinance that states the use of a false identification to purchase tobacco is still criminal but the purchase, use and possession in and of itself would be noncriminal. The ordinance is intended to limit exposure of tobacco products to youth and young adults in the City.

Councilmember Jacobs asked what the ramifications would be regarding black market tobacco transactions. Chief Austin stated that problem has not typically occurred in the City but any such case would be referred to the State.

Motion by Councilmember Buesgens, seconded by Councilmember Novitsky, to close the public hearing and waive the reading of Ordinance No. 1670, there being ample copies available to the public. All Ayes, Motion Carried 5-0.

Motion by Councilmember Buesgens, seconded by Councilmember Novitsky, to set the second reading of Ordinance No. 1670, being an Ordinance amending Chapter 5.3 of the Columbia Heights City Code to revise Purpose and Intent, Definitions, License, Prohibited Sales, License Holder Responsibility, Compliance Checks and Inspections, and Violations and Penalties of tobacco regulations, for October 11, 2021 at approximately 7:00 pm in the City Council Chambers. All Ayes, Motion Carried 5-0.

ITEMS FOR CONSIDERATION

Ordinances and Resolutions

13. Resolution 2021-74 Adopting a Proposed Budget for the Year 2022, Setting the Proposed City Levy, Approving the HRA Levy, Approving a Tax Rate Increase and Establishing a Budget Hearing Date for Property Taxes Payable in 2022

Director Kloiber reported that under the City Charter, the City Manager provided the City Council with a proposed 2022 budget and tax levy at a regular Council meeting in August. That document explained the proposed 2022 budget with 135 pages of summary and detail information, including comparisons to both the current year budget and to two prior years of actual expenses, and is available on the City website.

The resolution includes one change from the tax levy initially proposed by the City Manager. In consultation with the City Council, the proposed gross tax levy was increased from 4.8% over the 2021 gross levy to 8.5% over the 2021 gross levy. This reflects an increase in the metro area fiscal disparities subsidy in 2022, which was determined after the initial required budget submission in August.

As a result of this change, the average increase in the local taxpayer share of the 2022 tax levy will be 4.9% over 2021. In addition, this change provides the City with more flexibility to adapt to a likely reduction in the metro area fiscal disparities subsidy in 2023, allowing for “smoother” annual changes in the local share of property taxes from 2021 through 2024.

He said the City Council must adopt a proposed budget and tax levy resolution by September 30 and adopt a final version at a budget hearing in December. The final tax levy can be less than, but not greater than, the proposed levy adopted in September.

Motion by Councilmember Jacobs, seconded by Councilmember Murzyn, Jr., to waive the reading of Resolution 2021-74, there being ample copies available to the public. All Ayes, Motion Carried 5-0.

Motion by Councilmember Jacobs, seconded by Councilmember Novitsky, to adopt Resolution 2021-74, being a resolution adopting a proposed budget for the year 2022, setting the proposed City levy, approving the HRA levy, approving a tax rate increase and establishing a budget hearing date for property taxes payable in 2022 of December 13, 2021 at approximately 7:00 pm in the City Council Chambers. All Ayes, Motion Carried 5-0.

CITY COUNCIL AND ADMINISTRATIVE REPORTS

Report of the City Council

Mayor Márquez Simula attended the Recreation Department's "Roller-skating Boogie Bash," which she said was a lot of fun; the Heights Cultural Festival was held last Saturday at the High School gym, the first public event in the new gym, and she said it looked and sounded great, with many performers from the surrounding area including a Sisters City presentation; attended North Park's Peace Celebration, where a promise garden was planted, and which Senator Mary Kunesh also attended; reported that last week HeightsNEXT won an award for the City's storm water drain adoptions – and she challenged City residents to go to "adoptadrain.com" to participate in the program; attended the City's Community Education class that partnered with First Lutheran Church discussing race and racism, which was full and others interested can sign up the spring class; and attended the "Moana" outdoor movie last week at McKenna Park, which was a lot of fun but cold outside.

Councilmember Novitsky said a lot of his time has been dedicated to school sports, noting that the volleyball team beat the Fridley varsity team for the first time in five years, which he said was fun to be part of. Regarding Alexandra House, he said a speaker will present the third Monday of November to the Lions meeting and open to everyone to learn more about what the organizations do.

Councilmember Murzyn, Jr. attended the flag retirement ceremony at the VFW last weekend, where there was a good turnout and thanked everyone who brought their flags.

Councilmember Jacobs was out of town for "rest and relaxation" at the Packer game last Monday night; and had five resident reach-outs. She then read two historical articles from 1958 about a site planning walk near Sullivan Lake and two parades that tie into the City's Centennial, and she will send copies of them to the other Councilmembers.

Councilmember Buesgens attended the Housing and Economic Policy Committee meeting for the Metro Council; attended the Heights Cultural Festival last Saturday; was liaison for the Park and Recreation meeting, where there was a discussion about smoking in the parks and the conclusion was to monitor Sullivan Park after no-smoking signs are installed.

Councilmember Buesgens encouraged anyone who supports no-smoking in other parks, or has any other related concerns, to contact the Park and Recreation Commission at 763-706-3730. She attended the Clean Energy Resource Team meeting, where there was a discussion about clean energy products in the metro area; continued to volunteer at the Blooming Sunshine Garden, which is getting close to shutting down in the next couple weeks; and participated in a local Climate and Environmental Concerns Forum. She thanked everyone who has adopted storm drains in the City, though hundreds remain unadopted, and encouraged organizations to participate, adding that HeightsNEXT adopted seven storm drains around Lomiaki Park, and said it makes a huge difference in what doesn't go into the Mississippi River and flow down into the Gulf of Mexico.

Report of the City Attorney

Attorney Hoeft had no update.

COMMUNITY FORUM

No one spoke.

ADJOURNMENT

Motion by Councilmember Jacobs, seconded by Councilmember Buesgens, to adjourn. All Ayes, Motion Carried 5-0.

Meeting adjourned at 8:12 pm.

Respectfully Submitted,



Sara Ion, City Clerk/Council Secretary