

EAST BETHEL CITY COUNCIL MEETING

NOVEMBER 2, 2016

The East Bethel City Council met on November 2, 2016, at 6:00 p.m. for the City Council Work Meeting at City Hall.

MEMBERS PRESENT: Steve Voss Ron Koller Tim Harrington
Brian Mundle Tom Ronning

ALSO PRESENT: Jack Davis, City Administrator
Mark Vierling, City Attorney

1.0 The November 2, 2016, City Council Work Meeting was called to order by Mayor Voss at
Call to Order 6:00 p.m.

2.0 **Harrington stated I'll make a motion to adopt the November 2, 2016, City Council**
Adopt **Work Meeting agenda. Koller stated I'll second.** Voss asked any discussion? All in
Agenda favor say aye?" **All in favor.** Voss asked opposed? Hearing none motion passes. **Motion**
passes unanimously.

3.0 Davis presented the staff report, indicating at the August 23, 2016 Planning Commission
Predatory Meeting, the Commission discussed the need for an ordinance that would provide residency
Offenders restriction requirement for Level III sexual predators. He explained that in recent months,
Residency many cities in Anoka County have adopted such an ordinance including Anoka, Andover,
Restriction Columbia Heights, Coon Rapids, and St Francis. These ordinances have been in response
Ordinance to the potential release of sex offenders from civil commitment due to a Federal ruling that
stated the State of Minnesota's Civil Commitment Program is unconstitutional.

Davis advised of the Planning Commission's discussion and recommendation to approve an ordinance that provides residency restrictions for released Level III Sexual Offenders, subject to legal opinion. Davis indicated Taylor Falls in Chisago County was the first city in the State to adopt a residency restriction requirement in 2006. Since that time, 45 communities and one county (Chisago) have adopted residency restriction ordinances. Currently both South St. Paul and Rogers are considering adoption of the residential restriction ordinances. These ordinances have never been through a judicial review process. Attached is an article from the Star Tribune that discusses this issue.

Davis stated on October 5, 2016, Mark Bliven of the Minnesota Department of Corrections made a presentation to City Council relating to adoption of residency restriction ordinances and its different view of the intent of these ordinances and feels that adoption of these restrictions may create a false sense of security in a community and pose issues relating to tracking of these persons. Staff is seeking direction from Council as to this matter.

Ronning stated this item is troubling to him as it came before the Planning Commission twice and they didn't request it. He noted there are some dangerous people out there (murders, drug dealers) that have no rating and Mr. Bliven had indicated at the last meeting 'the resolution the Council was considering,' showing he knew something the Council wasn't aware of. Ronning asked how you would oppose something like this regardless of what you think, noting there have been complaints for a long time about zoning ordinances for industrial, R-1, R-2 and to him, that seems like more of an issue than this thing.

3.0 Davis noted the issue is that cities are put into an almost 'no win' situation as there seems to

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be almost a race against time for cities to enact these regulations. One thing he considered was that East Bethel does not want to be the last one to adopt this or have any restrictions as it may lead to an over concentration of these offenders. That is why he had recommended the Planning Commission look at this ordinance.

Ronning stated out of the 45 listed, Andover is #2, Linwood Township is #28, but there are none in Ham Lake or Isanti, Oak Gove, Cambridge, Blaine, so East Bethel may be the 'donut hole.' Davis agreed that if East Bethel has no regulations, that is eventually the potential of what will happen. Ronning felt it would create more concerns due to fear of the unknown than having a murderer or any number of things like that living next door.

Voss stated Mr. Bliven made some really good points about their whole program so he thinks there may be unintended consequences that will happen from every city doing this. And, it sounds like eventually, the State will come down and say you can't do it anyway. Voss stated that is the broader defined issue because the way the map was presented with the criteria, a city can't blanket ban it. Vierling advised it is significant that it has never been challenged because if it had been challenged, he believes it would stand as there is no Statutory authority that he could find that allows the city to classify people in terms of where they can live in a community. By statute, the City has the right to determine uses (commercial, residential, educational, institutional) but there is no doubt in his mind that if this type of ordinance is challenged in any of these communities at any time, it's not going to stand up.

Vierling advised the Council can certainly adopt it, for what it's worth. With regard to where the likely challenge will come from, he thinks at some point in time as more communities adopt this, there will be a tipping point at which the State will step up and challenge. Or, more importantly and probably earlier, when one of these people want to locate, they might bring the challenge or get the Minnesota Civil Liberties Union (MCLU) or another organization of that nature to bring the challenge on their behalf.

Vierling posed the question whether the Council should adopt it as a preventative measure so the City is not targeted until such time as that challenge comes in, noting that is the real issue before the Council. He explained with the patterning, the original cities took what was probably in the form of their adult use ordinances as it basically draws a zoning ordinance as a use to allow some place in their city where that could go, in some corner where nobody cared or there were no services anyway. Vierling stated for years, cities have adopted adult use ordinances so as to do the same type of things with those types of uses. That, however, can stand as long as the city identifies a place in their community where that use can go. But, again, when it comes down to it, Vierling did not think it would 'fly' to take that parallel and apply it to people.

Ronning stated Mr. Bliven had commented that there have been ordinances overturned as unconstitutional. He asked if Minnesota has a statute that has been overturned. Vierling stated he does not recall that specific comment but in general principle, the highest form of government in the State is the State of Minnesota. He advised there are many court hearings, proceedings, and decisions that basically cities can legislate exactly in and nowhere else in those areas that the State has permitted them to legislate. Usually, unless the City can point to a specific statute giving authority to adopt this type of legislation, the City does not have authority to do it. Vierling advised the bottom line is not to say cities don't do that, waiting for someone to make the challenge, but if that does come around, the City would not want to be the target city they are challenging. Ronning stated his

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experience with the United Auto Workers is there are many groups looking for a cause to grow intention and they ran into them all the time. Vierling agreed that can happen.

Voss stated to his question, if the Council was to adopt this regulation it sounds like it doesn't matter what criteria the City uses to draw lines, it's likely not going to hold up anyway. He stated his point is the Council making 'winners' and 'losers' out of the City, then carving out sections of the City, and asked how the Council can arbitrarily decide that. Voss stated in the end, he thinks it will be found to be unconstitutional so why should the Council consider passing it, only to the fact that everyone else is doing it and the City does not want to be the last.

Davis stated with regard to whether the City can totally eliminate them, he would agree with Vierling's comments that if challenged it would probably be over ruled. He noted the City of Dayton went beyond what most cities have done by identifying distances from certain areas that these people can be located in. Two that stand out are they cannot be located anywhere within 2,000 feet of a pumpkin patch or apple orchard. Essentially what Dayton did was to blanket their entire city by broadening the scope of restrictions in where they can actually reside.

Ronning stated anybody who is aware of this now would say, 'You were informed that you didn't have the authority to do this and you go ahead and do it.' But, if you have to dispose of it, they will be asked, 'What's the matter with you guys because you knew the issue when you were doing this.'

Davis stated another thought is that this is one of those cases where you're in trouble if you do and in trouble if you don't. He believed the regulation would give an indication to residents of East Bethel that the Council is trying to do something while in effect they may not really be able to do anything at all. Davis referenced the last incident where a Level III sexual offender was proposed to be located in East Bethel in 2012 and 200 people or more attended the hearing at the Senior Center. Also, there was a request in Linwood last week to have a half-way house for treatment of women with opiate issues and that town hall was packed. Davis noted if one of these things does come up, there's going to be public outcry for it not to happen.

Voss agreed that would be the case if it comes up but he would contend if the City adopts this regulation and map, it will get more residents upset depending on whether or not they are located within the zone. He stated he does not know that people living in 'safe zones' would necessarily feel any safer. Davis agreed and stated he does not know that the map is final as one criteria is they can't live anywhere within 2,000 of a licensed day care center and he does not know if all have been identified or there is need to go any further with this, but this is something he felt the Council should discuss and provide direction.

Mundle asked about the process for a Level III to locate somewhere. Davis explained the Department of Corrections will try to find them a place and when they do, then they hold a notification hearing. As part of the commitment for release, they must have a place to live. In the case of the 2012 request, the proposed residency was identified, there was a lot of pressure put on that property owner who finally said he would not rent to the individual so that individual was not released at that time. He stated the Department of Corrections does need to hold a hearing within the locale in which the offender is to live in.

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hearing, it is a notification meeting. Davis agreed. Voss stated he remembers asking Mr. Bliven that question and he does not think they necessarily find a place but instead it is a place where the offender knows the owner or family member. He was unsure that it was the State trying to find a place for them to live, noting the City has no authority over group homes anyway.

Vierling advised that group homes and daycares have been statutorily removed, within limits, as to numbers and bodies that can be in there. Davis stated the only thing the City has over group homes is whether they meet Building Code requirements, septic system capacity, and Fire Codes.

Ronning stated if the City put limitations on daycares and schools, etc., he would ask whether they are prohibited from having children. He thought it was up to the couple whether they would stay together as the State cannot require them to divorce but they should be kept away from where a child can go (school, daycare). He believed there were too many 'holes' and the City did not have the authority anyhow, making it a damned if you do and damned if you don't.

Voss stated not that the public won't be upset about it, but at this point the public has not brought it to the Council's attention, it is from a staff level because other cities are enacting these regulations. Voss stated he was glad Mr. Bliven attended and he understood that discussion of facts. He stated whether it be a group home or rehab house, it's always controversial and about fear. Ronning felt there was also a lot of witch hunt.

Mundle noted with cities that have passed this regulation, such as Dayton, it was in response to some individuals wanting to locate there. If the City does not enact regulations now and the scenario came up that someone wanted to locate in East Bethel, he would ask if the City could then consider regulations or does it have to be enacted before such a request. Davis advised it cannot be retroactive.

Vierling advised the City would have plenty of notice from the Commissioner's Office before they made the placement and there would be nothing to prevent the City from mobilizing properly. The City could certainly pass an ordinance in advance. Voss noted that is what occurred in Dayton, regulation was passed after receiving notification.

Mundle stated the scenario could be that if the Council decides to not go forward with an ordinance at this time, at such time in the future it could be discussed and potentially passed. Voss stated it could and he certainly does not want to condone it right now as a means of dealing with an issue. But, it's an option to consider. Voss stated at the very least, if waiting for the State to come to sue, at least the City would not be in that pool that could be sued if nothing is enacted right now.

Ronning asked what potential damages can happen, what exposure does the City have to some liability. Vierling advised it depends on the theory in which the attack comes framed. The worst scenario is the City is basically sued under some theory under federal civil rights. In which case, there is potential liability for actual out of pocket damages of the individual trying to locate. The terrible part of federal civil rights is that it does not matter if it is a penny, the plaintiff gets full attorney fees. Vierling stated he has had cities on small things such as political use of parks by an individual get sued and have \$4,000 of out of pocket damages but \$50,000 of attorney fees without having to go to a single hearing.

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Voss stated he still goes back to fundamental rights as it is a civil rights thing since it is legislating what people can do and that is not right.

Harrington asked staff to update the map, noting it is outdated because there are also school bus pickups. Davis explained there are essentially no maps of designated school bus stops because they change. Voss stated the bus stops are driveways. Davis agreed, noting they change year-to-year and month-to-month and location-to-location so there is not designated maps of school bus stops to base a restriction on. Voss thought there were very few City streets that the school bus does not go down as there are four bus routes per day.

Mundle stated if the Council wants to look at any language, they should deal with that but otherwise it should be put on the 'back burner' and ready just in case at such time in the future, the Council would want to go forward with it. Voss concurred.

Ronning stated it almost seems like something to 'pass the buck' to get a little bit of what you want. He stated the ordinance would read such that our practice will mirror the State legislation and statutes. Voss noted there are no statutes preventing it and is being done on a local level. Ronning stated the City does not have the authority to do it.

Vierling advised State law preempts the City anyway from that perspective. He noted that with the news, everybody is fully aware the State of Minnesota has its own issues in federal court with the release of these folks. Vierling stated he would not be surprised if there is some legislation at the State level that deals with the issue in some respects and may defer some authority down to local jurisdictions. He noted it is not as if the Council won't be revisiting it as the State gets through its federal issues, which is more than likely to occur. Voss agreed, noting it may also be a discussion during the next Legislative Session due to the Wetterling case.

Ronning referenced related material indicating US District Judge Donovan Frank's ruling that the program is essentially permanent confinement with no clear path to release. Ronning stated it appears to be clear that you cannot confine somebody that is not imprisoned. Vierling advised this refers to the State's holding these folks in a supposed hospital setting for treatment indefinitely. Obviously, that is the issue in the federal case yet to be addressed. Vierling stated as that case is resolved, there may be an entire area of State legislation to come forth because all the rules with release and treatment will be revised, making it entirely probable that they would also take a look at local regulatory authority.

After polling the Council, Voss stated it is the City Council's consensus to shelve this matter to a future date.

4.0
 Sign
 Ordinance

Davis presented the staff report, indicating at the October 5, 2016, City Council meeting, concerns regarding Code enforcement were presented, particularly as they relate to the Sign Ordinance. He listed the issues relating to the Sign Ordinance as detailed in the staff report. Davis noted the City's Sign Ordinance is need of review and update to assess its currency with the advances in sign technology and communications needs of businesses. Staff is seeking direction from Council as to amending this Ordinance. In addition, staff is discussing the Sign Ordinance regulations with existing and potential businesses to get their comments. In this way, the Ordinance discussion can address current and future potential needs for incorporation in the three business zones while remaining compatible with the Comprehensive Plan.

4.0 Davis stated electronic reader board signs are the new advertising trend but are prohibited in

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the City's Center District regardless of size. He suggested the City develop a comprehensive Sign Ordinance as it relates to what will be done with future businesses that desire signage that keeps up with technological advances and needs.

Voss stated he expects it will take more than several meetings to get this issue resolved. He stated the problem with developing the first Sign Ordinance is that it occurred in a vacuum so having more background and input from the business community is important. Voss stated the most significant thing about existing signs along the Highway is the constant flashing lights to get attention. He found that to be a distraction as well as some illuminated billboards that can be blinding if all white so he thinks those safety issues need to be addressed. Davis stated staff has held conversations with several businesses about flashing signs that are a safety issue, noting the existing ordinance does contain some provisions but they could be expanded to assist with Code enforcement of safety issues.

Ronning stated he would be interested seeing an inventory of existing signs and sign regulations of surrounding communities. He agreed there should be some continuity with signs along Highway 65. Voss stated Blaine went through significant sign ordinance changes about ten years ago when it started developing and addressed signage for businesses.

Ronning stated most communities have a maximum sign height. Voss stated East Bethel also has that restriction as well as maximum width and number of signs on a building. Davis advised the maximum height cannot exceed the eave height of the building and there is also a provision based on the elevation of the road centerline.

Mundle asked, with the electronic signs, if there are regulations on imitation of emergency vehicles (flashing sequence of red to blue). Davis advised not in the current ordinance. Voss noted some signs are visible two miles' distance due to flashing strobe lighting, which is a distraction.

Voss stated with the first Sign Ordinance, a big issue was temporary and portable signs so there are some restrictions but to him, it almost comes down to how and when it is enforced. Davis stated for the most part, those things are fairly well covered in the existing Sign Ordinance and the big issue now is the size of electronic signs and if they should be prohibited in certain areas. Davis stated some of that language needs to be clarified as well as considering the concept of the City Center District as it has evolved and changed somewhat. He agreed another issue is consistency with surrounding cities while still addressing the City's specific needs. Voss stated the billboard aspect should also be reviewed because those are areas the City hopes to develop.

Koller asked what the definition of 'temporary' is. Davis stated it is defined in the ordinance. For other types of signs, there are different definitions of temporary but it does give measurable definitions as far as time goes. Voss stated you are allowed 30 days out of a year to have grand opening types of signs. Ronning read the definition of temporary sign being a sign designed or intended to be displayed temporarily.

Voss stated he is interested to see what the Planning Commission discusses at its next meeting and comes back with. Davis stated that topic is scheduled for their next agenda and agreed it will not be done in one meeting and may take several months for a thorough review and examination. Voss felt it would come down to assuring the City has an ordinance that is enforceable and the City is willing to enforce it.

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Ronning stated the purpose should also be part of the equation. With regard to the City's sign, Davis clarified that it does meet the Sign Ordinance as an exception with the distinction being it is not a commercial sign and is for the purpose of disseminating information to the public. Voss noted that exception can be clarified, if needed.

Informational; no action required at this time.**5.0****Oak Grove Building Official & Inspection Services Contract**

Davis stated he met with the Oak Grove Administrator on October 31, 2016, to discuss continuation of the Building Official and Inspection Services Contract for 2017. He stated he had e-mailed the Council a brief update on that meeting indicating the City's financial position with that and basically, the discussion involved extension of the contract and trying to make services more efficient in terms of inspection response time. Generally, the goal is to do inspections within 24 hours but occasionally it has been 48 hours due to work load volume.

Davis stated he also discussed that the City is going to evaluate the permit process to find ways to streamline and make it more efficient. The other thing to address is the volume of work load. He reported that so far through September, the City issued 72 single-family home permits in East Bethel and Oak Grove. With all permits, the volume is the highest it has been since 2006 so staff would like the Council to consider hiring a part-time inspector next year during the busiest time year (April through October). Davis noted in 2017, a temp position is budgeted in Building Inspections Department to help the Permit Tech keep up with those activities and improve efficiencies.

Davis stated another thing that may come up is to consider Oak Grove's request to consider the charges. Currently, Oak Gove is charged 80% of the permit fees for basic inspection work (decks, windows, remodeling) and 100% for plan review. In past such discussions, the City has told Oak Grove that staff has a better data on historical costs and this could be an area for discussion. Davis stated he will provide an update on this matter at the next Council Meeting.

Ronning asked about the past sharing of costs, noting Oak Gove has been asking for consideration on charges for a while now. Davis stated with the first contract, the City charged Oak Grove 90% because staff was not exactly sure what would be involved. That charge was then reduced to 80% after the first year and remained at that rate. Davis explained that through the charges received so far this year, if reduced to 75%, it would be a revenue reduction of \$7,000. Currently, the City covers all of its costs for inspection services to Oak Grove and there are additional revenues generated from that which also cover the cost for the extra inspector used for East Bethel. Davis stated from the City's standpoint, it is a good deal and also a good deal from Oak Grove's standpoint as they don't need to hire and manage staff and receive a timelier response than they received with their past contractor. Davis stated staff wants to assure it is a good deal for both cities.

Voss asked about Oak Grove's basis for discussing the percentage, noting they also have administrative costs with permits. Davis explained that currently, Oak Grove gets 20% of their permit fees. Voss asked if Oak Grove is saying that does not cover their costs. Davis answered in the affirmative, noting Oak Grove does all the permit issuance and East Bethel does the inspection. Oak Grove is asking for another 5% to cover their administrative costs. Voss noted East Bethel does not set Oak Grove's permit fees and East Bethel's focus has to be to assure its own expenses are covered. Davis concurred.

5.0**Oak Grove**

Building
Official &
Inspection
Services
Contract

Voss asked how it fits the budget to hire a part-time staffer next year. Davis explained it would be fee driven and a budget neutral item. Based on the volume of work for the past three years, it has increased every year. So far this year, the City has taken in close to \$400,000 in permit fees.

Ronning asked about the split of the 72 homes. Davis responded 25 East Bethel and 47 Oak Grove, 25 permits is the most issued in East Bethel since 2007, and there are three months to go.

Ronning asked about timing for the temporary help in 2017. Davis stated it would be during the busy construction time and also fill in during times when the other two inspectors are at training, sick, vacation, etc. In addition, the part-time position will free up time for Code enforcement activities.

Mundle asked if the inspectors have worked over time in 2016. Davis stated they have since May. Mundle noted that getting someone part-time may reduce some of those costs. Voss clarified it would be a full-time position during those busy months. Davis confirmed that is correct, full time for six months of the year. He stated the total overtime has been 160 hours, or essentially four weeks. Davis stated he expects it will be a contract position to avoid other issues.

Davis stated he will provide an update at the next Council Meeting.

**6.0
Adjourn**

Harrington stated I'll make a motion to adjourn. Koller stated I'll second. Voss asked any discussion? All in favor say aye?" All in favor. Voss asked opposed? Hearing none motion passes. Motion passes unanimously.

Meeting adjourned at 6:52 p.m.

Submitted by:
Carla Wirth

TimeSaver Off Site Secretarial, Inc.