



**REGULAR CITY COUNCIL MEETING
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS
AUGUST 8, 2023
7:00 PM**

INTRODUCTORY PROCEEDINGS

Call to order

Pledge of Allegiance

Open forum

Call into the open forum by dialing 1-415-655-0001 Use webinar access code: 2630 925 5372 and password: 1234.

Please refer to the Council Agenda & Minutes web page for additional ways to submit comments.

Approval of the Minutes of the (1) City Council Work Session of July 25, 2023; and (2) City Council Meeting of July 25, 2023.

PRESENTATIONS

1. Proclamation Celebrating Ron Cottone

AGENDA APPROVAL

2. Approval of the Agenda
3. **Consent Calendar contains several separate items, which are acted upon by the City Council in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further Council action on these items is necessary. However, any Council Member may request that an item be removed from the Consent Calendar and placed on the regular agenda for Council discussion and action. All items listed on the Consent Calendar are recommended for approval.**
 - A. Consider a request to amend a Conditional Use Permit to increase the capacity of the preschool and daycare at 7132 Portland Avenue to 330 children.
Staff Report No. 93
 - B. Consider a resolution approving a special request to allow the relocation of a billboard at 7731 - 4th Avenue South (Blaylock Plumbing).
Staff Report No. 94
 - C. Consider approval of an easement agreement for perpetual easements on four roadways that border the tax parcels containing ISD #280's STEM and Dual Language Elementary Schools
Staff Report No. 102
 - D. Consider the adoption of a resolution identifying the need for Livable Communities Transit Oriented

Development funding and authorizing an application for grant funds on behalf of the Aster Commons development, located at 6613-25 Portland Avenue.

Staff Report No. 97

- E. Consider approval of the 2023-2024 Emergency Preparedness agreement with the City of Bloomington, using public health emergency preparedness grant funds distributed by a federal grant from the Centers for Disease Control, to provide services in the area of public health emergency preparedness/bio-terrorism and the development of a response system.

Staff Report No. 98

- F. Approve a resolution supporting a request for state bonding funds to fund the City's portion of costs to reconstruct Nicollet Ave from 77th Street to 66th Street.

Staff Report No. 103

- 4. Consideration of items, if any, removed from Consent Calendar

PUBLIC HEARINGS

- 5. Public hearing and consideration of the second reading of an interim ordinance authorizing a study and imposing a moratorium on the operation of cannabis businesses in the City, which will expire on January 1, 2025 or upon the City's receipt of an application from the Office of Cannabis Management for a cannabis business within the City of Richfield, whichever occurs first, unless repealed earlier by the City Council.

Staff Report No. 100

PROPOSED ORDINANCES

- 6. Consider the second reading of a transitory ordinance repealing ordinance 19.26, which authorized a study and imposed a moratorium on the sale of edible cannabinoid products.

Staff Report No. 99

- 7. Consider the second reading of an ordinance amending Chapter 11, Section 1146 of the Richfield City Code to include eliminating the sale of flavored products and capping the number of tobacco licenses.

Staff Report No. 101

CITY MANAGER'S REPORT

- 8. City Manager's Report

CLAIMS AND PAYROLLS

- 9. Claims and Payroll

COUNCIL DISCUSSION

- 10. Hats Off to Hometown Hits

- 11. Adjournment

Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9739.



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

City Council Work Session

July 25, 2023

CALL TO ORDER

Mayor Supple called the work session to order at 7:00 p.m. in the Bartholomew Room.

Council Members Present: Mary Supple, Mayor; Simon Trautmann; Sean Hayford O'Leary; Ben Whalen; and Sharon Christensen

Staff Present: Katie Rodriguez, City Manager; Dustin Leslie, City Clerk; Matt Hardegger, Transportation Engineer; Joe Powers, City Engineer; Kristin Asher, Public Works Director; Jay Henthorne, Police Chief; Jennifer Anderson, Health Administrator; Brittany Bartlett, Equity Coordinator; Chris Swanson, Management Analyst; and Mary Tietjen, City Attorney.

ITEM #1	DISCUSS STATUS OF TWO REQUESTS SUBMITTED BY STAFF TO MINNESOTA MANAGEMENT AND BUDGET FOR POTENTIAL INCLUSION IN A 2024 BONDING BILL
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City Manager Rodriguez introduced the new Equity Coordinator, Brittany Bartlett, to Council and she gave a brief overview of her background.

Director Asher presented the report to Council and recommended they pick either the Nicollet Avenue reconstruction project or the 73rd Street pedestrian bridge project for a bonding bill request.

Transportation Engineer Hardegger gave the presentation with an overview of both projects. He recommended Council Members choose the Nicollet Avenue project due to several factors including: regionality, timing, funding eligibility considerations, ownership, and staff time.

Council Members and staff discussed construction projects over the past ten years on Nicollet Avenue and how this request would differ from those.

Council Member Whalen stated that while the staff recommendation made sense, he wanted to know if it would make sense to push Penn Avenue as a future bonding construction project. Staff spoke about financial considerations for choosing Nicollet or Penn and stated Penn would likely not get a match from Hennepin County due to it being eligible for federal funding.

City Manager Rodriguez spoke about the importance of Hennepin County matching bonding funds and the need to fix many streets soon while having a small tax base.

Council Member Hayford Oleary stated that if the Nicollet Avenue project was chosen as the recommendation, it was still important to make the 73rd pedestrian bridge a priority as it was in bad shape and ADA non-compliant. Council Member Trautmann agreed and spoke about personal difficulties using the bridge.

Council Member Trautmann spoke about Penn Avenue being in bad shape and needing improvements. He asked staff if there were any ways for Council to leverage funding for its reconstruction. City Manager Rodriguez stated she would reach out to Commissioner Goettel regarding Penn Avenue.

Director Asher stated she would continue to solicit resources for the 73rd Ave Pedestrian bridge. Council Member Hayford Oleary asked staff to also make the north part of Portland Avenue a priority.

Mayor Supple stated the city should be strategic with bonding requests and was supportive of the staff's recommendation of Nicollet Avenue. The rest of the Council agreed with the recommendation.

ITEM #2	DISCUSSION OF AN ORDINANCE REGULATING CANNABIS USE WITHIN PUBLIC PROPERTY AND PUBLIC PLACES
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Police Chief Henthorne gave the presentation and asked Council for guidance in regulating cannabis in public spaces. He showed a draft ordinance and asked for feedback.

Council Member Whalen asked about private locations being included in the public place definition. Police Chief Henthorne gave the example of not allowing people to smoke cannabis in the parking lots of businesses. City Attorney Tietjen noted the Council could craft the definition however they wanted.

Council Member Hayford Oleary suggested mirroring prohibition of cannabis smoking where tobacco smoking is already prohibited. He further stated that he was in favor of restricting smoking cannabis in public spaces but not the consumption of edibles.

City Attorney Tietjen spoke about public nuisances and how those laws could apply with cannabis consumption. She stated the smoking of cannabis would have to be a nuisance to multiple people for it to qualify.

Council Member Whalen agreed with Council Member Hayford Oleary that prohibition of smoking cannabis in public places should mirror tobacco prohibition and that edibles should not be restricted. He also asked Henthorne if public inebriation laws could apply to cannabis. Police Chief Henthorne stated yes but there was not currently an effective way of testing for cannabis consumption in the field.

Mayor Supple agreed with treating cannabis smoking the same as tobacco and stated there was consensus on restricting smoking in public parks but not edibles.

Council Member Hayford Oleary asked questions about what constituted a public nuisance in relation to neighbor complaints. City Attorney Tietjen stated multiple neighbors would have to complain for it to be considered a public nuisance.

Mayor Supple asked about multi-family housing units and if smoking would be allowed there with the possibility of hallway smoking creating unwanted smells. Health Administrator Anderson

stated property owners and managers set the rules until 2025 when smoking in multi-family homes will be restricted.

The meeting was wrapped up with a general discussion about timelines regarding cannabis moving forward.

ADJOURNMENT

Mayor Supple adjourned the work session at 6:57 pm

Date Approved: August 8, 2023

Mary B. Supple
Council Member

Dustin Leslie
City Clerk

Katie Rodriguez
City Manager



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

Regular Council Meeting

July 25, 2023

CALL TO ORDER

The meeting was called to order by Mayor Supple at 7:00 p.m. in the Council Chambers.

Council Members Present: Mary Supple, Mayor; Sharon Christensen; Simon Trautmann; Sean Hayford Oleary; and Ben Whalen

Staff Present: Katie Rodriguez, City Manager; Mary Tietjen, City Attorney; Chris Swanson, Management Analyst; Jennifer Anderson, Support Services Manager; and Dustin Leslie, City Clerk

PLEDGE OF ALLEGIANCE

Mayor Supple led the Pledge of Allegiance.

OPEN FORUM

Mayor Supple reviewed the options to participate:

- Participate live by calling 1-415-655-0001 during the open forum portion
- Call prior to meeting 612-861-9711
- Email prior to meeting kwynn@richfieldmn.gov

City Manager Rodriguez stated she had received five letters of which two of them requested be part of the open forum regarding the proposed ban on flavored tobacco. She indicated three letters from Free Alliance, the African American Tobacco Control Leadership Council, and Children's Minnesota supported the proposed ban. And The National Association of Tobacco Outlets and The National Hookah Community Association were against the ban. She read the National Hookah Community Association's reasons they were against the ban and indicated The National Association of Tobacco Outlets letter would be attached to the Minutes due to its length. All five letters received prior to the 7/25 meeting are attached to the minutes. All comments received are attached to the staff reports.

APPROVAL OF MINUTES

M/Hayford Oleary, S/Christensen to approve the minutes of the: (1) City Council Work Session of July 11, 2023; (2) City Council Meeting of July 11, 2023.

Motion carried: 5-0.

ITEM #1	PROCLAMATION CELEBRATING THE PASSAGE OF THE AMERICANS WITH DISABILITIES ACT
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Mayor Supple invited Tim Garvey from the Richfield Human Rights Commission to accept and read aloud the proclamation.

Mr. Garvey stated the Americans with Disabilities Act was very important and it was right and proper they commemorate this. He indicated laws could only mandate compliance, but to truly accept those with disabilities required a community and Richfield was one of those communities.

ITEM #2	APPROVAL OF THE AGENDA
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M/Whalen, S/Trautmann to approve the agenda.

Motion carried: 5-0.

ITEM #3	CONSENT CALENDAR
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City Manager Rodriguez presented the consent calendar.

- A. Consider an interim ordinance repealing transitory ordinance 19.26, which authorized a study and imposed a moratorium on the sale of edible cannabinoid products (Staff Report No. 89)

BILL NO. 2023-6

AN INTERIM ORDINANCE REPEALING TRANSITORY ORDINANCE 19.26, WHICH AUTHORIZED A STUDY AND IMPOSED A MORATORIUM ON THE SALE OF EDIBLE CANNABINOID PRODUCTS

M/Hayford Oleary, S/Christensen to approve the consent calendar.

Motion carried: 5-0.

ITEM #4	CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM CONSENT CALENDAR
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None.

ITEM #5	CONSIDER APPROVAL OF THE FIRST READING OF AN INTERIM ORDINANCE AUTHORIZING A STUDY AND IMPOSING A MORATORIUM ON THE OPERATION OF CANNABIS BUSINESSES IN THE CITY UNTIL JANUARY 1, 2025, UNLESS REPEALED EARLIER AT AN EARLIER DATE BY THE CITY COUNCIL. (STAFF REPORT NO. 90)
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Council Member Trautmann presented Staff Report 90.

M/Trautmann, S/Christensen to approve the first reading of an Interim Ordinance authorizing a study and imposing a moratorium on the operation of cannabis businesses in the City until January 1, 2025, unless repealed earlier at an earlier date by the City Council.

BILL NO. 2023-7

AN INTERIM ORDINANCE AUTHORIZING A STUDY AND IMPOSING A MORATORIUM ON THE OPERATION OF CANNABIS BUSINESSES WITHIN THE CITY OF RICHFIELD

Council Member Whalen believed the intent of this suggestion and the desire of Council was to prevent an unlicensed business from opening before the State office was ready to actually license the businesses. He stated this would have some local enforcement up to a point, but not needlessly extend how long the moratorium lasted. He asked if Council would be open to an automatic repealing at the point either when a license was first received by the Office of Cannabis Management for Richfield, or when it was first issued. He noted that would not take away the City's ability to repeal it at any point, but removing the possibility if the office was up and running by March, there would be an additional nine months they could not have a cannabis business.

Council Member Hayford Oleary stated he supported this moratorium and preferred Council Member Whalen's suggestion that there be some sort of an automatic repeal rather than requiring Council's action. He noted his trigger would be as soon as the Office of Cannabis Management issued a license to anyone in the State that this became repealed.

City Attorney Tietjen clarified the correct verbiage would be an expiration of the moratorium and not an automatic repeal. She indicated it was important to be very specific about what the act was that triggered the automatic expiration.

Council Member Trautmann stated he also supported the automatic expiration of the moratorium as soon as the Office of Cannabis Management was ready.

City Attorney Tietjen stated the City had some options such as upon issuance by the Office of Cannabis Management license to a Richfield business. She noted there were probably other options also, but she would need to think through those.

Council Member Whalen stated he was comfortable with Attorney Tietjen's suggestion.

City Manager Rodriguez noted when the application was received from the Office of Cannabis Management, the City would have time to respond to it.

Mayor Supple indicated this was a first reading and it would come back to Council for a second reading along with a public hearing at the August 8 Council meeting.

Motion carried: 5-0

ITEM #6	CONSIDER THE APPROVAL OF THE FIRST READING OF AN ORDINANCE AMENDING CHAPTER 11, SECTION 1146 OF THE RICHFIELD CITY CODE TO INCLUDE ELIMINATING THE SALE OF FLAVORED PRODUCTS AND CAPPING THE NUMBER OF TOBACCO LICENSES (STAFF REPORT NO. 91)
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Council Member Hayford Oleary presented Staff Report 91.

M/Hayford Oleary, S/Whalen to approve the first reading of an Ordinance amending Chapter 11, Section 1146 of the Richfield City Code to include eliminating the sale of flavored products and capping the number of tobacco licenses.

BILL NO. 2023-8

**AN ORDINANCE MODIFYING SECTION 1146 OF THE RICHFIELD CITY CODE
IN RELATION TO FLAVORED PRODUCTS**

Mayor Supple inquired when the effective date would be. Health Administrator Anderson responded that the businesses would have ample time to sell down their product and they were discussing December 31 as the deadline.

Mayor Supple noted a letter had been read at the Open Forum from the National Hookah Community Association in opposition to this. She asked if staff had any feedback. Administrator Anderson responded she appreciated the cultural sensitivity, but hookah was tobacco which exposed people to addictive chemicals and contains many of the same toxins within cigarettes.

Mayor Supple inquired if there was an estate and the businesses passed down to the children, what happened in that situation. Administrator Anderson responded the license would be revoked, but the business could still be passed down to one generation. She noted tobacco licenses were renewed at the end of the year and Council voted to approve those licenses and family members could be added at that time.

Mayor Supple stated she eventually wanted to limit how many licenses they had but the City was allowing licenses to be passed to one generation. However, she also didn't want to have a situation with an entire family's wealth in a business and the City not licensing them at the last minute. She asked could this be amended later to allow families to pass on one generation. Attorney Tietjen responded the Council could always amend an ordinance at any time. She stated if Council wanted this it could be done for the second reading.

Council Member Trautmann noted he was struggling with them saying this was a public health concern, but they want to continue this on for another generation which seemed at odds with the policy. He also noted the City derived a lot of revenue from this and they had to live with some internal contradictions about how they raised revenue for things sold in the City that had a negative public health consequence. He stated however he would support continuing it for another generation.

Council Member Whalen believed the public health benefit outweighed the single owner or family benefit and he would not support that kind of exemption. He stated the way this was currently written was both actions relating to flavored tobacco and limiting licenses were in the same resolution. He recommended they split them up entirely so they can have two effective dates or writing it in such a way that the limit on licenses could be effective as soon as possible.

Council Member Hayford Oleary agreed with Council Member Trautmann's about the liquor store, but he believed the benefit was greater when they were there for public health first and economic development second in this case. After further thought, he believed it was fine as written do everything on December 31. He indicated he was concerned about the rush for licenses though.

Mayor Supple stated she also supported it as written with a December 31 effective date.

Motion carried: 5-0

ITEM #7	CONSIDER THE APPROVAL OF A RESOLUTION APPROVING 2023 STATE LEGISLATION FOR A LOCAL OPTION SALES TAX IN RICHFIELD (STAFF REPORT NO. 92)
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Council Member Whalen presented Staff Report 92.

M/Whalen, S/Hayford Oleary to approve a Resolution approving 2023 State Legislation for a local option sales tax in Richfield.

RESOLUTION NO. 12111

**RESOLUTION APPROVING LAWS OF MINNESOTA
2023, CHAPTER 64, ARTICLE 10, SECTION 44
RELATING TO A LOCAL SALES TAX**

Council Member Whalen stated cities around Richfield already had a local sales tax and over half of this local sales tax would be paid by people who lived elsewhere but come into Richfield to use the amenities of the community and he supported this as a way to have visitors to the City pay for the amenities that needed to be kept up.

Council Member Trautmann agreed the majority of the people who would pay this tax would be people outside of Richfield. He noted he did not feel the City was at a competitive advantage to other cities and they were losing an opportunity to get revenue and putting that burden on property tax owners in Richfield. He indicated a lot of the City’s infrastructure was built in the 1960’s that was getting old and it was to the City’s advantage to rebuild and maintain that infrastructure, which would be possible having a local sales tax.

Mayor Supple thanked everyone for their research and work on this.

Motion carried: 5-0.

ITEM #8	CITY MANAGER’S REPORT
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City Manager Rodriguez shared information regarding Ruane Onesirosan questions about document for bond issue the Richfield HRA approved. She explained the process for dating the documents and noted it was common practice for bond attorneys to use the date the first day of the month for these types of documents. She confirmed that all actions required by State law and the Internal Revenue Code relating to the issuance of the bonds were taken.

City Manager Rodriguez indicated Ms. Onesirosan had also inquired about the Council salaries. She detailed what the Mayor and Council Members were being paid along with their participation in the Minnesota Public Employees Retirement Association defined contribution plan, and any payroll taxes the City paid on their behalf.

ITEM #9	CLAIMS AND PAYROLL
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M/Trautmann, S/Whalen that the following claims and payrolls be approved:

<u>U.S. BANK</u>	<u>07/21/2023</u>
A/P Checks: 322608-322890	<u>\$1,707,389.53</u>
Payroll: 180118 – 180493, 43655, 43656, 43657	<u>\$ 557,351.71</u>
TOTAL	<u>\$2,264,741.24</u>

Motion carried: 5-0

ITEM #10	HATS OFF TO HOMETOWN HITS
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Council Member Whalen stated next week was Night to Unite with many block parties planned.

Council Member Christensen gave hats off to the Richfield Symphonic Band for their concert at Veterans Park last week. She noted their next performance would be on August 15 also at Veterans Park.

Council Member Hayford Oleary gave hats off to Will Wlizlo from the school district who left the school district to work for the State Department of Transportation.

Council Member Trautmann gave a reminder that the Urban Wildlife half marathon was coming up. He encouraged people to attend their Night to Unite events next week.

Mayor Supple stated they reopened the HRA application process through July 30. She gave hats off to the Richfield Leadership Network for their basketball tournament. She noted she was honored to speak with the residents that lived at Main Street Village today. She gave hats off to Representative Michael Howard for being named a League of Minnesota Cities Legislator of Distinction.

ITEM #11	ADJOURNMENT
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M/Trautmann, S/Whalen to adjourn the meeting at 8:06 p.m.

Motion carried: 5-0

Date Approved: August 8, 2023

Mary B. Supple
Mayor

Dustin Leslie
City Clerk

Katie Rodriguez
City Manager



ADVOCATES FOR
BETTER HEALTH

*ABH is dedicated to creating a healthy,
equitable, and thriving state by engaging
physicians and medical students in
community-driven public health
initiatives.*

July 26th, 2023

RE: Please eliminate the sale of flavored tobacco products, and cap tobacco retail licenses in Richfield

Dear Mayor Supple and the Richfield City Council,

I am writing on behalf of Advocates for Better Health, an organization dedicated to creating a healthy, equitable, and thriving state by engaging physicians and medical students in community-driven public health initiatives. Our medical providers share all too often that commercial tobacco is still a matter of huge concern when it comes to the health of their patients. Tobacco use and tobacco-related illnesses are still the number one cause of death in Minnesota—and in the United States as a whole.

Flavored tobacco products, including menthol, mask the harsh taste of tobacco which makes smoking easy to start and harder to quit. Flavored tobacco is incredibly appealing to young tobacco users, especially when over 15,000 flavors exist on the market at any given time. Some products, like menthol tobacco products, are disproportionately marketed to certain communities such as Black communities, youth, women, and LGBTQ. Given the harms of tobacco products, these communities experience health disparities of tobacco-related illnesses at greater rates. Other communities that have fully restricted flavored tobacco, including menthol, are: Edina, Golden Valley, Arden Hills, Lilydale, and Mendota Heights. Richfield would be in good company and a model to other communities by passing a similar restriction.

Eliminating the sale of flavored tobacco and capping retail licenses to four will protect residents and future generations' health and wellbeing from the harms of tobacco. These changes stand to have a huge impact if passed, including on health disparities, community health and wellbeing, and economically. I hope we can work together to achieve this goal. Thank you for your leadership on this important issue.

Sincerely,

Zeke McKinney MD, MHI, MPH

A handwritten signature in black ink, appearing to read 'ZMK', with a stylized flourish extending to the right.

President, Advocates for Better Health



July 24, 2023

Mayor Supple and Members of the Richfield City Council:

The Association for Nonsmokers-MN (ANSR) supports the proposed ordinance to end the sale of all flavored tobacco products including menthol and cap retailer licenses in Richfield.

Since 1973, ANSR has worked to prevent youth tobacco use and reduce health disparities by supporting and helping enact strong public policies like the ones you are considering. We know that the tobacco industry has a long history of targeting youth, communities of color and LGBTQ populations with their products. Tobacco executives admitted to these intentions in emails and industry documents throughout the late 20th century. While the industry may be craftier today, their intentions are still clear. They use flavors like mango, mint and cotton candy to reel in a new generation who become addicted to nicotine.

There will be pressure to exempt menthol from your proposed restriction. We strongly oppose this tobacco industry ploy. Menthol makes it easier to start and harder to quit. Further, menthol tobacco poses a unique health risk because of its targeted marketing to African Americans, youth, and the LGBTQ community. The tobacco industry is making an enormous profit while our most vulnerable communities suffer from the health consequences of nicotine addiction.

ANSR also supports the proposal to cap the number of tobacco licenses, thus reducing the number of licensed tobacco retailers over time. Cities in Minnesota that have capped their tobacco licensing ordinance include Bloomington, Brooklyn Center, Excelsior, Golden Valley, New Hope, Roseville, and St. Paul. Saint Paul is considering reducing their allowed number of licensing even further.

Richfield is poised to adopt one of the strongest tobacco licensing ordinances in the state. We are proud of the work you are doing to protect your citizens and are pleased to support your work.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeanne Weigum', is written over a horizontal line.

Jeanne Weigum, President





NATO

July 25, 2023

Mayor Mary Supple
Members of the Richfield City Council
6700 Portland Avenue South
Richfield, MN 55423

RE: Proposed Tobacco Retail Licensing Ordinance Amendments

Dear Mayor Supple and Councilmembers:

As the Executive Director of the National Association of Tobacco Outlets (NATO), a national retail trade association that represents more than 66,000 retail stores throughout the country including several Richfield retail store members, I am writing to submit our comments and concerns regarding the to amend the existing Tobacco Retail Licensing ordinance to, among other things, ban the sale of flavored tobacco and vapor products and prohibit the transfer of tobacco businesses.

Compliance with Minnesota Statutes Section 461.12

Minnesota Statutes Section 461.12 grants cities the authority to license and regulate the sale of tobacco products. Minnesota Statutes Section 461.19 requires that a city which intends to adopt or substantially amend an existing retail tobacco licensing ordinance provide a written notice by mail at least 30 days before a city council meeting at which an ordinance is to be adopted or an amendment considered. My question is whether the City of Richfield mailed the required prior notice to those retailers which hold a retail tobacco sales license. If not, then I would request that the Richfield City Council not consider the proposed ordinance amendments at a first reading scheduled for today and direct staff to issue the notice in accordance with Minnesota Statutes Section 461.19 (see statute below).

461.19 EFFECT ON LOCAL ORDINANCE; NOTICE.

Sections 461.12 to 461.18 do not preempt a local ordinance that provides for more restrictive regulation of sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products. A governing body shall give notice of its intention to consider adoption or substantial amendment of any local ordinance required under section 461.12 or permitted under this section. The governing body shall take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license under section 461.12. The notice shall state the time, place, and date of the meeting and the subject matter of the proposed ordinance.

Richfield Should Focus on Alcohol and Marijuana Use, Not Flavored Tobacco Products

According to the 2022 Minnesota Student Survey for 11th graders in Richfield, in the previous 30 days, just 1.1% used *any* cigarettes, cigars or smokeless tobacco, *even once*. With no significant youth use of traditional tobacco products, there is no justification for an across-the-board prohibition on the sale of every kind of flavored tobacco product that adults who are 21 and older choose to purchase.

This same survey found that 6.5% of 11th graders currently used alcohol and 10.6% currently used marijuana. This survey is consistent with the recently published Gallup survey referenced above. Richfield has a much more significant problem with youth drinking alcohol and smoking marijuana; a reasonable person can inquire why the Richfield City Council is not considering a ban on all flavored alcohol products and additional regulations to respond to the high marijuana use rates?

The Public Does Not Support a Menthol Cigarette Ban

An August 2022 Gallup poll noted that cigarette smoking was at an historic low of 11% of the nation's adult population, and only 42% of respondents, Democrats and Republicans alike, support banning menthol cigarettes. It is simply not a priority of the public, which is much more concerned with marijuana use than cigarettes. This is not surprising, in that Gallup released further survey results that show that young adults aged 18-29 use marijuana at a rate more than double that of cigarettes (26% marijuana use vs. 12% cigarette use.) Marijuana use among that age cohort also exceeds the 19% who use e-cigarettes, according to Gallup. As other traditional flavored tobacco products are used even less than menthol cigarettes, one can only surmise that the public also has little interest in banning traditional flavors of these products.

FDA is Pursuing Menthol Cigarette and Flavored Cigar Bans

The FDA issued proposed regulations in April 2022 banning menthol cigarettes and flavored cigars. If enacted, these regulations would apply nationwide and remove hundreds of brands of menthol cigarettes and flavored cigars from the marketplace. The FDA has publicly announced that it plans to finalize these regulations banning menthol cigarettes and flavored cigars in August of 2023, this coming month. With this federal action being taken, there is no need for the Richfield City Council to act.

The Ban Would Affect Products Found by the FDA to be in the Public Health

The U.S. Food and Drug Administration has a process whereby manufacturers submit products for scientific scrutiny to determine whether the products are “appropriate for the protection of public health.” To do so, the agency utilizes a review process that relies on science and evidence-based data to determine whether a tobacco product may stay on the market. Thus far, the FDA has granted marketing orders for four modern nicotine products, all of which are mint flavored, eight snus products, four of which are mint or wintergreen flavored, two low nicotine combustible cigarettes, one of which is menthol flavored, and three heat-not-burn products, two of which are menthol flavored. By granting these applications, the FDA has determined that some menthol, mint, and wintergreen tobacco products *protect* public health. The city's prohibition of flavored products that may receive this designation as the FDA would work *against* the public health.

Cross-Border Purchasing of Flavored Tobacco Products Will Hurt City Retailers

A ban on the sale of flavored tobacco products in the city will cause adults who purchase these products to go outside Richfield to buy their preferred products. This cross-border purchasing will involve not only

buying tobacco products and e-cigarettes in a nearby city, but also gasoline, snacks, and beverages, which will exacerbate the loss of sales by Richfield retailers.

Illicit Tobacco Product Market Expansion by Criminals and Racial Profiling

Illicit markets for tobacco products already exist across the country, especially in those cities and counties that assess high tobacco taxes or have banned the sale of flavored tobacco products. Banning the sale of menthol cigarettes and traditional flavors of other tobacco products and e-cigarettes will create even more incentive for criminals to supply these products in the city to anyone of any age who has cash. This increase in illegal tobacco sales will necessitate a higher level of law enforcement intervention, putting further pressure on already strained police resources.

Beyond the illicit market, banning the sale of flavored tobacco products, including menthol cigarettes, may result in racial profiling and a greater number of interactions between African Americans, who tend to smoke menthol cigarettes at higher rates, and City police. These interactions may arise if police witness African Americans possessing or using menthol cigarettes and stop these individuals to ascertain the source of the prohibited menthol cigarettes. Such interactions will create further tensions between the African American community and the police.

Increase in Non-Tobacco Product Prices

The average convenience store business model relies on cigarette and tobacco sales for approximately one-third of all in-store sales. Some areas have become food deserts, forcing residents to rely on convenience stores or small grocers to remain open for basic groceries and household goods. Since a ban on these flavored products would eliminate hundreds of tobacco products from convenience store shelves, those stores located in underserved areas of a city may be forced to close or move to nearby border cities where no flavored tobacco restrictions exist.

Moreover, these retailers will be forced to raise prices on non-tobacco products to replace the lost sales due to an expanded flavor ban. In this period of record-breaking inflation that the country is experiencing, higher prices on other products, including gasoline and food products, will exacerbate the financial challenges being faced by many families. Richfield convenience store retailers will find it very difficult to compete with retailers in neighboring localities or with illicit sellers who do not care to whom they sell illicit tobacco products. Employee layoffs and even store closures are real possibilities in the event of significant sales declines.

Restricting License Transfers Takes Valuable Property Interests without Compensation

The proposed ordinance adds subdivision 11 to Section 11.46.05, prohibiting transfers of licenses from one person to another. Such a prohibition makes it impossible for a business to be sold and the business owner realize its value as a going concern. Small business owners, many of whom are first- or second-generation citizens, who would like to either sell and retire or give the business to their progeny, would be impacted the hardest by this prohibition. Many mom-and-pop operators have a considerable amount of their net worth and retirement savings in the equity of their business. If they are not able to realize that by a sale of the business to a third party, or if they cannot leave the business by will or gift to their heirs, they are significantly deprived of their life savings. This prohibition should be removed to protect small business owners in Richfield.

Conclusion

Richfield retailers share everyone's interest in keeping tobacco products out of the hands of persons under 21 years old. In fact, according to the FDA's compliance checks on Richfield retailers, in 209 checks over the past 10 years, Richfield retailers have only failed to comply 9 times, a 95.6% compliance rate; the last failure to comply was in 2019. (See attached spreadsheet.) Banning the sale of these products makes no sense. Why would the Richfield City Council want to harm the city's responsible, legitimate retailers and force their adult customers to patronize other cities' retailers or buy from illicit sellers?

We trust that you will give serious consideration to all the facts and information contained in this letter to make an informed decision on whether to proceed with this ban on the sale of flavored tobacco products and prohibition on business sales. Thank you for your time and willingness to hear from retailers.

Sincerely,

Thomas A. Briant

NATO Executive Director and Legal Counsel



July 28, 2023

Mayor Supple and Richfield City Council
Richfield Municipal Center
6700 Portland Avenue
Richfield, MN 55423

Mayor Supple and Members of the Richfield City Council,

The Minnesota Cancer Alliance (MCA) strongly supports the proposed ordinance that would end the sale of flavored commercial tobacco products, including menthol, and cap retailer licenses in Richfield. We urge you to move forward with this ordinance.

The MCA is a coalition of over 100 organizations dedicated to reducing the burden of cancer across the continuum: from prevention and detection, to treatment, survivorship and end-of-life care. Our members include Fairview Health Services, the Masonic Cancer Center at the U of M, the Mayo Clinic Cancer Center, Health Partners, Medica, Blue Cross Blue Shield of MN and the MN Medical Association – to name just a few.

Tobacco is the leading preventable cause of cancer, and cancer is the leading cause of death among Minnesotans. The tobacco industry adds flavors to tobacco to make their products more appealing to new users. In December 2022, nearly 80% of all e-cigarette unit sales in the U.S. were menthol, mint or other flavored. The industry markets and sells flavors like mango, mint and cotton candy to entice youth, and now, there is an epidemic of youth e-cigarette use in our country. Removing flavored e-juice/pods and disposables from tobacco retailers in Richfield will have a major impact on youth access and appeal.

There will be pressure to exempt menthol from your proposed restriction. We urge you to continue to include it. Historically, marketing of menthol cigarettes, products known to be more addictive and difficult to quit than other tobacco, has been targeted towards African Americans, youth, women, and the LGBTQ community. As a result, a disproportionate number of these individuals use menthol products and are burdened by tobacco addiction. The tobacco industry is making an enormous profit while our most vulnerable communities suffer from the health consequences of commercial tobacco addiction.

The MCA also strongly supports your efforts to reduce the number of licensed tobacco retailers in your city. Your city is poised to adopt one of the strongest tobacco licensing ordinances in the state. Research shows that youth who live or attend school in neighborhoods with the highest density of tobacco retailers have higher smoking rates.

The Minnesota Cancer Alliance strongly supports the ordinance that has been proposed to you, as we believe it will protect Richfield's youth and community members from the burdens of tobacco addiction and a myriad of cancers and other chronic diseases. As city leaders, you can pass a policy that will prevent commercial tobacco use for decades to come.

Sincerely,

Sarah Manes
Chair, Minnesota Cancer Alliance Steering Committee

2023 STEERING COMMITTEE

CHAIR: Sarah Manes, MS, CCLS
Global Liver Institute

VICE CHAIR: Sumedha Penheiter, PhD
Mayo Clinic

SECRETARY/TREASURER: Patty Graham
HealthPartners

NOMINATING CHAIR: Kris Newcomer
KLN Consulting

Brittney Dahlin
Minnesota Association of Community Health Centers

Laura Fangel
M Health Fairview - Fairview Health Services

Kate Feuling Porter, MPH
Be the Match

Matthew Flory
American Cancer Society

Catherine Graeve, PhD, MPH, CNE, BSN, PHN
St. Catherine University

Erin Hartung, JD
Cancer Legal Care

Amy LaRue
Fond du Lac Human Services Division

Heather Kehn, RN, BS, MPH
Metro-Minnesota Community Oncology Research Consortium

Deborah Day Laxson
Health Care Agent Literacy Project

Joanne Moze, MPH
Blue Cross MN

Emily Myatt
American Cancer Society Cancer Action Network

David Perdue, MD, MSPH
MNGI Digestive Health

Erin Peterson
Colon Cancer Coalition

Melanie Peterson-Hickey, PhD
Minnesota Department of Health

Ashley Pohlenz, MPH
University of Minnesota – Masonic Cancer Center

Kathy Scheid
Elder Network

Esha Seth, MPH
Association of Nonsmokers-Minnesota

Patrick Tarnowski
PTx2 Healthcare Consulting

Cornelius Thiels, DO
Commission on Cancer, Mayo Clinic

Nancy Torrison
A Breath of Hope Foundation



July 27, 2023

RE: LETTER OF SUPPORT - Proposed ordinance prohibiting the sale of flavored commercial tobacco products including menthol

Dear City Manager Kate Rodriguez,

Thank you for considering ending the sale of all flavored commercial tobacco products in Richfield.

[Parents Against Vaping e-cigarettes](https://www.parentsagainstvaping.org), is a national volunteer-based nonprofit, fighting youth tobacco use and the predatory behavior of the tobacco industry. There is an epidemic of youth e-cigarette/vape use in our country. Youth have been blatantly targeted by the tobacco industry through flavored vape devices. This proposal is particularly important to Richfield parents eager to protect their kids from nicotine addiction and becoming Big Tobacco's next generation of cash cows.

According to the 2022 National Youth Tobacco Survey, more than 3.0 million kids across the country are using tobacco products. Among e-cigarette/vape users, 85% of high school and 81% of middle school students use flavored products with menthol, fruit, candy, and mint reported as the most popular. **To effectively address the youth vaping epidemic, the most crucial step is to eliminate youth access by discontinuing the sale of all flavored tobacco products, including menthol, in all locations.**

Historically, flavors have been used as a marketing weapon by tobacco manufacturers to target youth and initiate them into the use of the industry's addictive nicotine products. In particular, the tobacco industry has used menthol flavors to racially segment and target specific groups, especially Black Americans, and LGBTQ communities.

As our city leaders, you can pass a policy that will prevent youth tobacco and nicotine use for decades to come. We commend you for championing these important issues and encourage you to continue fighting for these efforts. It is up to all of us to prevent our children and loved ones from being preyed upon and exploited for profit by Big Tobacco.

Sincerely,

Cynthia Stremba

Director of Volunteers and State & Local Advocacy, Parents Against Vaping e-cigarettes

www.parentsagainstvaping.org



SENT VIA E-MAIL

July 13, 2023

Dear Mayor Mary Supple and Richfield City Council Members:

On behalf of Children's Minnesota, I am writing in support of the proposed ordinance ending the sale of all flavored tobacco products, including menthol tobacco, in Richfield.

Children's Minnesota is the state's largest pediatric health care system. We serve an incredibly diverse patient population and 46 percent of our patients are insured through Medicaid. Last year, we saw over 170,000 patients.

As the kid experts in our community, Children's Minnesota is committed to promoting a healthier and more equitable future for our kids. Commercial tobacco use and addiction is an important health equity issue that must be addressed. We know the tobacco industry has a long history of targeting specific communities through various marketing efforts. Because of this targeting, the Black community, those that identify as LGBTQ+, youth, and low-income populations are disproportionately impacted by tobacco-related illnesses.

Candy, mint and menthol flavors are extremely attractive to children and young adults, and at these young ages they are especially vulnerable to addiction. In 2019, providers at Children's Minnesota found a cluster of cases of vaping-related severe lung injuries in teens and young adults. Despite these injuries and growing evidence of the health harms of e-cigarettes, thousands of flavored vapes remain on the market alongside flavored cigars and menthol cigarettes. The tobacco industry has studied the behaviors of young people and figured out how to target the next generation of customers. The tobacco industry is making an enormous profit while our most vulnerable communities suffer from the health consequences of tobacco addiction.

Children's Minnesota applauds efforts being made in cities across our state to address youth tobacco use and reduce health disparities. We hope to see the City of Richfield join others that are ending the sale of commercial tobacco products to secure a brighter future for our children.

Sincerely,

Amanda Jansen, MPP
Director of Public Policy
Children's Minnesota



The African American Tobacco Control Leadership Council

July 18, 2023

To: Mayor Mary Supple, Councilmember Sharon Christensen, Councilmember Simon Trautmann, Councilmember Sean Hayford O'leary, and Councilmember Ben Whalen

From: The African American Tobacco Control Leadership Council (AATCLC)

Re: End the Sale of Menthol Cigarettes and All Other Flavored Tobacco Products in Richfield! No Exemptions: All Flavors, All Products at All Locations!

The African American Tobacco Control Leadership Council (AATCLC) strongly encourages the Richfield City Council to adopt a comprehensive policy to:

- (1) end the sale of menthol cigarettes and all flavored tobacco products, with no exemptions for hookah;
- (2) reduce tobacco store density; and
- (3) remove all criminal penalties associated with the purchase, use, and possession of all tobacco products.

We are glad to see that the Council is taking up this matter. Frankly, this couldn't come at a better time. We already know that 80% of youth, 12-17 start smoking using flavored cigarettes (Ambrose et al., 2015). According to the 2022 National Youth Tobacco Survey, more than 2.5 million kids across the country are using tobacco products. 85% of high school and 81% of middle school students use flavored products with fruit, candy/desserts/other sweets, mint, and menthol reported as the most popular flavors.

Indeed, in the aftermath and lingering impact of the COVID-19 pandemic, nothing could be more important than getting these products out of our community. Unfortunately, we know that smokers are more susceptible to COVID infection (CDC, 2020). If the Council truly wants a healthier Richfield, and we believe that you do, then it is imperative that you support the end of the sale of menthol and all flavored tobacco products; its passage will end the predatory marketing of these products that disproportionately impacts poorer communities, marginalized groups, youths, and communities of color.

Menthol the Ultimate Candy Flavor; It Helps the Poison Go Down Easier!

This is no minor matter. Menthol and flavored tobacco products are driving tobacco-related deaths and diseases nationwide. While the use of non-flavored tobacco cigarettes has been decreasing, the use of menthol cigarettes is on the rise, among youth and adults; among Latinos,



The African American Tobacco Control Leadership Council

Blacks, and Whites (Villanti, 2016). Let's be clear, the majority of women smokers smoke menthol cigarettes; folks from the LGBTQ community disproportionately smoke these products; 47% of Latino smokers prefer menthol cigarettes, with 62% of Puerto Rican smokers using menthol; nearly 80% of Native Hawaiians; a majority of Filipinos; and a majority of smokers with behavioral health issues smoke menthol cigarettes. Frankly, the most marginalized groups disproportionately use these so-called "minty" products (CDC, 2010; Fallin, 2015; Forbes, 2013; Delnevo, 2011; Hawaii State Dept. of Health, 2009; Euromonitor, 2008; Hickman, 2015).

Be appraised that 85% of African American adults and 94% of Black youth who smoke are using menthol products (Giovino, 2013). These striking statistics arise from the predatory marketing of these products in the Black Community, where there are more advertisements, more lucrative promotions, and most disturbing menthol cigarettes are *cheaper in the Black community* compared to other communities (Henriksen et al., 2011; Seidenberg et al., 2010). These predacious practices for the past 50 years have led to Black folks dying disproportionately from heart attacks, lung cancer, strokes, and other tobacco-related diseases (RSG, 2014).

Take note that new research shows that menthol cigarettes were responsible for 1.5 million new smokers, 157,000 smoking-related premature deaths, and 1.5 million life-years lost among African Americans over 1980–2018. While African Americans constitute 12% of the total US population, these figures represent, respectively, a staggering 15%, 41%, and 50% of the total menthol-related harm (Mendez & Le, 2021).

The Council should be aware that menthol is an anesthetic by definition, and as if to add insult to injury, masks the harsh taste of tobacco and allows for deeper inhalation of toxins and greater amounts of nicotine. The greater the nicotine intake, the greater the addiction. Hence, it is no surprise menthol cigarette users find it harder to quit than non-menthol cigarette users (Ton et al., 2015; Levy et al., 2011). The "cool refreshing taste of menthol" heralded by the tobacco industry is just a guise; **ultimately, menthol and all flavors allow the poisons in cigarettes and cigarillos "to go down easier!"**

We Can't-Wait on the FDA

Today over 90 municipalities prohibit the sale of all menthol tobacco products including flavored e-juices; <https://no-smoke.org/wp-content/uploads/pdf/flavored-tobacco-product-sales.pdf>

While it is important that the FDA announced that they will put forward a Rule outlawing menthol as a characterizing flavor in cigarettes, we know that even this process will be fraught with disorder. First, the FDA says they will promulgate the rule in August of 2023. If past practices are any indication of future practices, then it is almost certain that the ruling won't come in August. Even if the ruling comes in August of 2023, it will probably give the industry a



The African American Tobacco Control Leadership Council

year to implement the rule, pushing the date to the summer of 2024 and once a final rule is made public and there is more public comment, the industry will **sue** to stop the process from going forward, thus extending the time period for years to come. **The bottom line is that: We Can't Wait on the FDA.** Richfield must take steps to protect the health of its citizens, lives are at stake.

Who Are the Racists: The Tobacco Control Advocates or the Tobacco Industry?

Some groups funded by the tobacco industry insist that removing menthol cigarettes and flavored little cigars would be taking away “our” cigarette; we’d be discriminatory; racist. This line of argumentation stands history on its head. As was pointed out earlier, it was and is the tobacco industry that predatorily markets these products in the Black Community. As mentioned earlier, the facts are these: there are more advertisements, more lucrative promotions, and most disturbing is that menthol cigarettes are **cheaper in the Black Community** compared to other communities (Henriksen et al., 2011; Seidenberg et al., 2010). This is how these flavored death sticks became “our” cigarettes, they pushed them down our throats!

Still, other groups, spurred on and funded by the tobacco industry, have been spreading falsehoods, stating that restricting the sale of menthol and flavored tobacco products, including flavored e-juices will lead to the “criminalization” of particularly youth of color. Nothing could be further from the truth. All ordinances adopted around the country **prohibit the sale** of flavored products, **they don't prohibit the possession** of these products. Indeed, the FDA proposed rule states explicitly that there are no penalties for individual use or possession. The facts are that the adoption of menthol restrictions will not lead to police having any greater interaction with any youth; it won't be illegal to possess these products, just retailers cannot sell them.

These same groups rail about “unintended consequences.” We respond: **Look at the Intended Consequences!** As mentioned before, Black folks die disproportionately from tobacco-related diseases of heart disease, lung cancer, and stroke compared to other racial and ethnic groups. (RSG, 2014); menthol cigarettes and flavored little cigars are the agents of that destruction. It is estimated that 45,000 Black folks die each year from tobacco-related diseases (RSG, 1998). In this regard, we encourage Richfield's Council to support the removal of all criminal penalties associated with the purchase, use, and possession of all tobacco products. Decriminalize tobacco! Hold retail owners responsible, not clerks, and don't punish kids!

The AATCLC

Formed in 2008, the African American Tobacco Control Leadership Council is composed of a cadre of dedicated community activists, academics, public health advocates, and researchers.



The African American Tobacco Control Leadership Council

Even though based in California, we are national in our scope and reach. We have partnered with community stakeholders, elected officials, and public health agencies, from Chicago, Boston, and Minneapolis to Berkeley and San Francisco. Our work has shaped the national discussion and direction of tobacco control policy, practices, and priorities, especially as they affect the lives of Black Americans, African immigrant populations, and ultimately all smokers. The AATCLC has been at the forefront in elevating the regulation of mentholated and other flavored tobacco products on the national tobacco control agenda, including testifying at the FDA hearings in 2010 and 2011 when the agency was first considering the removal of menthol cigarettes from the marketplace. In November of 2019 we testified on Capitol Hill in support of HR 2339 (The Pallone Bill), this bill would prohibit the manufacturing and sale of menthol and all flavored tobacco products throughout the United States. This Bill was passed in the House of Representatives in February of 2020 but went nowhere in the Senate. In June 2020 the AATCLC along with its partner Action on Smoking and Health (ASH) filed a lawsuit against the FDA for dragging their feet by leaving menthol on the marketplace with overwhelming scientific evidence showing that it should be removed immediately. Subsequently and importantly the American Medical Association (AMA) and the National Medical Association (NMA) have joined the lawsuit as plaintiffs. It was this lawsuit that forced the FDA to act. And even though the lawsuit has been dropped, we are prepared to re-file if the FDA drags its feet again and doesn't announce a rule in August of 2023.

Call to Action!

Now is the time to adopt strong tobacco control measures that can protect our families. We already know that menthol and flavors “makes the poison go down easier.” Richfield’s Council needs to put the health of Richfield Citizens at the forefront of their thoughts, not the interests and profits of the tobacco industry, the vaping industry, and their surrogates. This is not the time for half-steps, rather it is time to take a stand for the public’s health and say: **No Selling of Menthol Cigarettes and All Other Flavored Tobacco Products, including Flavored E-Juices and Flavored Hookah in the City of Richfield!** Say “No” to the continued predatory marketing of menthol-flavored tobacco products to our youth and say “Yes” to the health and welfare of our kids, who are the most vulnerable. In fact, say “Yes” to the protection for **all** residents of Richfield.

We respectfully ask for your support in ending the sale of menthol and all flavored tobacco products and reducing tobacco store density, a lifesaving proposal.

We are all counting on you!



The African American Tobacco Control Leadership Council

Sincerely,

A handwritten signature in black ink that reads 'Phillip Gardiner'.

Phillip Gardiner, Dr. P.H. Co-Chair AATCLC www.savingblacklives.org

A handwritten signature in black ink that reads 'Carol McGruder'.

Carol McGruder, Co-Chair AATCLC

A handwritten signature in black ink that reads 'Dr. Valerie Yerger'.

Valerie Yerger, N.D., Co-Chair AATCLC



Preserving Hookah Culture & Protecting Hookah Tradition across the USA

July 25, 2023

The National Hookah Community Association (NHCA) brings together, and serves as the voice of, hookah producers, distributors, sellers, hookah lounge owners, consumers, and community members who support the preservation of hookah's cultural traditions. We are writing to request that as you consider the ban on flavored tobacco products, you acknowledge the cultural significance of hookah to minority and immigrant populations as well as the lack of youth access to, and use of, the product. California took a historic step in December by enacting a statewide ban on flavored tobacco products, which exempted hookah, for these reasons. NHCA has worked with California, and with many other state and local governments including Colorado, Columbus, Denver, San Diego, San Jose, Los Angeles, and others, to include exemptions for hookah in recent flavor ban legislation.

Hookah is a small category in the tobacco space, making up only roughly 0.005% of nicotine product sales. However, hookah is an important cultural practice to many and one that has existed for centuries, originating in the Middle East and India. Today, a broad cross-section of immigrants in the U.S. from around the world enjoy hookah at home and in lounges as a centerpiece for cultural, business, and social gatherings. Hookah is widely used by Middle Eastern, Armenian, Turkish, East African, Indian, Persian, Indonesian, and other minority immigrant citizens. Hookah lounges across the country have come to serve as safe gathering places for many diverse ethnic and religious communities. Despite the importance of this social practice and tradition, NHCA members continue to find that many policymakers are often unfamiliar with hookah, its practice, and its community.

NHCA fully supports efforts to eliminate youth access and usage of tobacco products, including hookah. Hookah is unlikely to be used or consumed by youth for many reasons. Hookah water pipes are expensive, several feet tall, not easily concealed, and the setup for use is a lengthy process. Lounges that offer hookah are restricted to of-age customers, preventing teens from accessing the product. Recent research by the Centers for Disease Control and Prevention (CDC) found that just 1% of middle and high school students used hookah in the past 30 days, ten times less than the number of teens who vape.

Shisha, the product used in hookah, is a combination of tobacco and a sugar substance such as honey or molasses, and the total product is only comprised of approximately 15% tobacco. As has been the practice for hundreds of years, hookah is, by nature, a flavored product. Unfortunately, noble efforts to address the teen vaping epidemic by **banning flavored tobacco also would result in the ban of ALL hookah.**

A ban on hookah would not only eliminate this important cultural practice for many U.S. citizens, but could also shutter many small, independent, and minority owned businesses. Many of these businesses serve as community gathering places for immigrant populations in cities across the country. Many hookah users are part of religious or ethnic populations that already face discrimination. Eliminating this cultural practice would make many feel as though they are misunderstood and targeted as an outsider by lawmakers and regulators.

We ask that you do not target this important cultural practice and shutter minority and immigrant owned businesses. Please grant an exemption for hookah from any flavored tobacco ban.

National Hookah Community Association

July 24, 2023

The Honorable Mary Supple and members of the Richfield City Council
6700 Portland Ave.
Richfield, MN 55423



Dear Mayor Supple and members of the Richfield City Council:

I am writing on behalf of Tobacco-Free Alliance to express our support for the proposed ordinance that would end the sale of all flavored tobacco products including menthol and cap retailer licenses in Richfield. The Tobacco-Free Alliance is a Twin Cities nonprofit organization with the mission to prevent youth from using commercial tobacco, prioritizing communities adversely affected by industry marketing and health disparities.

Thousands of different sweet, candy-flavored, and menthol/mint flavored tobacco products are available, enticing youth with the taste and colorful packaging. Menthol flavored tobacco products in particular make it easier for kids to start smoking and harder to quit because menthol cools the throat and masks the harshness of tobacco. The 2022 Minnesota Student Survey results showed that 78 percent of 8th-graders and 85 percent of 11th-grade tobacco users report they use a flavored product. Unfortunately, many of these same students are becoming addicted to e-cigarettes. More than 70 percent of youth e-cigarette users in Minnesota are showing signs of nicotine dependence. Removing menthol and flavored tobacco from the marketplace as well as capping licenses has the opportunity to make tobacco products less accessible and appealing to young people and is critical to lowering youth tobacco use rates.

By removing all flavored tobacco products including menthol from the marketplace and including a provision to not issue any new tobacco licenses in your ordinance, your city is poised to adopt one of the strongest tobacco licensing ordinances in the state. Thank you for your leadership in considering this tobacco prevention ordinance that will help prevent another generation from a lifetime of addiction and tobacco-related disease.

Sincerely,

A handwritten signature in black ink that reads "Elyse Less". The signature is written in a cursive, flowing style.

Elyse Levine Less
Executive Director

2395 University Avenue W, Suite 304, Saint Paul, MN 55114-1512
651-379-0196 | www.mntobaccofreealliance.org



NATO

July 25, 2023

Mayor Mary Supple
Members of the Richfield City Council
6700 Portland Avenue South
Richfield, MN 55423

RE: Proposed Tobacco Retail Licensing Ordinance Amendments

Dear Mayor Supple and Councilmembers:

As the Executive Director of the National Association of Tobacco Outlets (NATO), a national retail trade association that represents more than 66,000 retail stores throughout the country including several Richfield retail store members, I am writing to submit our comments and concerns regarding the to amend the existing Tobacco Retail Licensing ordinance to, among other things, ban the sale of flavored tobacco and vapor products and prohibit the transfer of tobacco businesses.

Compliance with Minnesota Statutes Section 461.12

Minnesota Statutes Section 461.12 grants cities the authority to license and regulate the sale of tobacco products. Minnesota Statutes Section 461.19 requires that a city which intends to adopt or substantially amend an existing retail tobacco licensing ordinance provide a written notice by mail at least 30 days before a city council meeting at which an ordinance is to be adopted or an amendment considered. My question is whether the City of Richfield mailed the required prior notice to those retailers which hold a retail tobacco sales license. If not, then I would request that the Richfield City Council not consider the proposed ordinance amendments at a first reading scheduled for today and direct staff to issue the notice in accordance with Minnesota Statutes Section 461.19 (see statute below).

461.19 EFFECT ON LOCAL ORDINANCE; NOTICE.

Sections 461.12 to 461.18 do not preempt a local ordinance that provides for more restrictive regulation of sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products. A governing body shall give notice of its intention to consider adoption or substantial amendment of any local ordinance required under section 461.12 or permitted under this section. The governing body shall take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license under section 461.12. The notice shall state the time, place, and date of the meeting and the subject matter of the proposed ordinance.

Richfield Should Focus on Alcohol and Marijuana Use, Not Flavored Tobacco Products

According to the 2022 Minnesota Student Survey for 11th graders in Richfield, in the previous 30 days, just 1.1% used *any* cigarettes, cigars or smokeless tobacco, *even once*. With no significant youth use of traditional tobacco products, there is no justification for an across-the-board prohibition on the sale of every kind of flavored tobacco product that adults who are 21 and older choose to purchase.

This same survey found that 6.5% of 11th graders currently used alcohol and 10.6% currently used marijuana. This survey is consistent with the recently published Gallup survey referenced above. Richfield has a much more significant problem with youth drinking alcohol and smoking marijuana; a reasonable person can inquire why the Richfield City Council is not considering a ban on all flavored alcohol products and additional regulations to respond to the high marijuana use rates?

The Public Does Not Support a Menthol Cigarette Ban

An August 2022 Gallup poll noted that cigarette smoking was at an historic low of 11% of the nation's adult population, and only 42% of respondents, Democrats and Republicans alike, support banning menthol cigarettes. It is simply not a priority of the public, which is much more concerned with marijuana use than cigarettes. This is not surprising, in that Gallup released further survey results that show that young adults aged 18-29 use marijuana at a rate more than double that of cigarettes (26% marijuana use vs. 12% cigarette use.) Marijuana use among that age cohort also exceeds the 19% who use e-cigarettes, according to Gallup. As other traditional flavored tobacco products are used even less than menthol cigarettes, one can only surmise that the public also has little interest in banning traditional flavors of these products.

FDA is Pursuing Menthol Cigarette and Flavored Cigar Bans

The FDA issued proposed regulations in April 2022 banning menthol cigarettes and flavored cigars. If enacted, these regulations would apply nationwide and remove hundreds of brands of menthol cigarettes and flavored cigars from the marketplace. The FDA has publicly announced that it plans to finalize these regulations banning menthol cigarettes and flavored cigars in August of 2023, this coming month. With this federal action being taken, there is no need for the Richfield City Council to act.

The Ban Would Affect Products Found by the FDA to be in the Public Health

The U.S. Food and Drug Administration has a process whereby manufacturers submit products for scientific scrutiny to determine whether the products are “appropriate for the protection of public health.” To do so, the agency utilizes a review process that relies on science and evidence-based data to determine whether a tobacco product may stay on the market. Thus far, the FDA has granted marketing orders for four modern nicotine products, all of which are mint flavored, eight snus products, four of which are mint or wintergreen flavored, two low nicotine combustible cigarettes, one of which is menthol flavored, and three heat-not-burn products, two of which are menthol flavored. By granting these applications, the FDA has determined that some menthol, mint, and wintergreen tobacco products *protect* public health. The city's prohibition of flavored products that may receive this designation as the FDA would work *against* the public health.

Cross-Border Purchasing of Flavored Tobacco Products Will Hurt City Retailers

A ban on the sale of flavored tobacco products in the city will cause adults who purchase these products to go outside Richfield to buy their preferred products. This cross-border purchasing will involve not only

buying tobacco products and e-cigarettes in a nearby city, but also gasoline, snacks, and beverages, which will exacerbate the loss of sales by Richfield retailers.

Illicit Tobacco Product Market Expansion by Criminals and Racial Profiling

Illicit markets for tobacco products already exist across the country, especially in those cities and counties that assess high tobacco taxes or have banned the sale of flavored tobacco products. Banning the sale of menthol cigarettes and traditional flavors of other tobacco products and e-cigarettes will create even more incentive for criminals to supply these products in the city to anyone of any age who has cash. This increase in illegal tobacco sales will necessitate a higher level of law enforcement intervention, putting further pressure on already strained police resources.

Beyond the illicit market, banning the sale of flavored tobacco products, including menthol cigarettes, may result in racial profiling and a greater number of interactions between African Americans, who tend to smoke menthol cigarettes at higher rates, and City police. These interactions may arise if police witness African Americans possessing or using menthol cigarettes and stop these individuals to ascertain the source of the prohibited menthol cigarettes. Such interactions will create further tensions between the African American community and the police.

Increase in Non-Tobacco Product Prices

The average convenience store business model relies on cigarette and tobacco sales for approximately one-third of all in-store sales. Some areas have become food deserts, forcing residents to rely on convenience stores or small grocers to remain open for basic groceries and household goods. Since a ban on these flavored products would eliminate hundreds of tobacco products from convenience store shelves, those stores located in underserved areas of a city may be forced to close or move to nearby border cities where no flavored tobacco restrictions exist.

Moreover, these retailers will be forced to raise prices on non-tobacco products to replace the lost sales due to an expanded flavor ban. In this period of record-breaking inflation that the country is experiencing, higher prices on other products, including gasoline and food products, will exacerbate the financial challenges being faced by many families. Richfield convenience store retailers will find it very difficult to compete with retailers in neighboring localities or with illicit sellers who do not care to whom they sell illicit tobacco products. Employee layoffs and even store closures are real possibilities in the event of significant sales declines.

Restricting License Transfers Takes Valuable Property Interests without Compensation

The proposed ordinance adds subdivision 11 to Section 11.46.05, prohibiting transfers of licenses from one person to another. Such a prohibition makes it impossible for a business to be sold and the business owner realize its value as a going concern. Small business owners, many of whom are first- or second-generation citizens, who would like to either sell and retire or give the business to their progeny, would be impacted the hardest by this prohibition. Many mom-and-pop operators have a considerable amount of their net worth and retirement savings in the equity of their business. If they are not able to realize that by a sale of the business to a third party, or if they cannot leave the business by will or gift to their heirs, they are significantly deprived of their life savings. This prohibition should be removed to protect small business owners in Richfield.

Conclusion

Richfield retailers share everyone's interest in keeping tobacco products out of the hands of persons under 21 years old. In fact, according to the FDA's compliance checks on Richfield retailers, in 209 checks over the past 10 years, Richfield retailers have only failed to comply 9 times, a 95.6% compliance rate; the last failure to comply was in 2019. (See attached spreadsheet.) Banning the sale of these products makes no sense. Why would the Richfield City Council want to harm the city's responsible, legitimate retailers and force their adult customers to patronize other cities' retailers or buy from illicit sellers?

We trust that you will give serious consideration to all the facts and information contained in this letter to make an informed decision on whether to proceed with this ban on the sale of flavored tobacco products and prohibition on business sales. Thank you for your time and willingness to hear from retailers.

Sincerely,

Thomas A. Briant

NATO Executive Director and Legal Counsel



Proclamation of the City of Richfield

WHEREAS, Ronald Anthony Cottone had a passion for baseball; he was known as “Mr. Baseball” in Richfield; and

WHEREAS, Ron helped establish the 35-and-over Federal Baseball League in 1986, ensuring these players had a place to play place, he served for several years as the league’s commissioner, as well as being elected to the Federal League Hall of Fame in 2008, and winning the Chris Erickson Award in 2022; and

WHEREAS, Ron founded the Richfield Rockets Baseball Club in 1989; managing the Rockets and coaching 3rd base until his passing in 2022; and

WHEREAS, Ron demonstrated true sportsmanship on and off the field, ensuring equity for all; he was always sure to shake hands with the opposing team, even if they beat his beloved Rockets; and

WHEREAS, Ron extended the warmth and compassion of his personality and his wisdom not only to other players and his teammates, but also to the fans and families, making sure they felt cared for, comfortable, and included; and

WHEREAS, although Ron’s passion was baseball, he was also a proud Richfield resident and a dedicated member of the community for nearly 30 years; always willing to lend a hand, even helping to remodel homes; and

WHEREAS, Ron viewed life through an enlightened spiritual lens; he welcomed philosophical conversations on life, society, culture, faith, or his favorite, baseball; and

WHEREAS, Ron’s legacy cannot be overstated, he created a flourishing baseball community in the Twin Cities and surrounding area, where fairness, inclusion, and friendship were valued; and

WHEREAS, Ron’s impact on his friends, family, teammates and baseball in our community will be forever felt.

NOW, THEREFORE, I, MARY SUPPLE, Mayor of the City of Richfield, in recognition of Ron’s lifelong baseball uniform number of eight, do hereby proclaim August 8th, 2023, as:

RON COTTONE DAY IN THE CITY OF RICHFIELD

PROCLAIMED this 8th day of August 2023.

Mary B. Supple, Mayor



STAFF REPORT NO. 93
CITY COUNCIL MEETING
8/8/2023

REPORT PREPARED BY: Sam Crosby, Planner II

DEPARTMENT DIRECTOR REVIEW: Melissa Poehlman, Community Development Director
7/27/2023

OTHER DEPARTMENT REVIEW: Sack Thongvanh, Assistant City Manager

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
7/31/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider a request to amend a Conditional Use Permit to increase the capacity of the preschool and daycare at 7132 Portland Avenue to 330 children.

EXECUTIVE SUMMARY:

Twin Cities Spanish Immersion, d.b.a. Tierra Encantada (Applicant), is proposing to open a new location at Hope Church, in the space recently vacated by Blossomtime Montessori. State-licensed day care facilities serving 15 or more children within a non-residential building require a Conditional Use Permit (CUP) in the R, Low Density Residential, Zoning District. The current CUP allows for 244 students; the Applicant is requesting an increase to 330.

The new preschool and day care would occupy 17,000 square feet of the 88,464 square foot building, (roughly 19 percent of the floor area). No exterior changes are proposed. The existing hours of operation are 7:00 a.m. to 6:00 p.m. The proposed hours of operation are from 6:30 a.m. to 6:00 p.m.

The facility will create approximately 55 full time employees. There are other programs operating during the week, including a small high school, another preschool and school aged program, and various miscellaneous church programs. Everything accounted for, the parking available is more than twice that required by Code.

Staff finds that the proposal meets the Code requirements and therefore recommends approval of the CUP. A summary of the applicable requirements is provided in the Policies section, below, and in the Required Findings for a CUP attached to this report. The Planning Commission unanimously recommended approval of the request as presented.

RECOMMENDED ACTION:

By motion: Approve the attached resolution amending the Conditional Use Permit to increase the capacity of the preschool and day care at 7132 Portland Avenue to 330 children.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- The building was constructed in 1954, and was originally a school before being purchased by the church. Various service programs have been offered over the years, including adult day care and

temporary housing for youth.

- In 2019 the Council approved a CUP for a public High School, Richfield's School District's "College Experience Program" and most recently, in 2020, the City approved a significant building renovation and vacated a portion of 5th Avenue along the northern boundary of the site.
- The site currently offers the following weekday programming: Hope Church's preschool and school aged programs, Richfield Public High School, Loaves and Fishes, Branches Clothing Ministry, Frontier Fellowship Missions Organization, and Church Office activities.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

Section 514.07 of the Zoning Code specifies two conditions:

1. That there be a designated pick-up and drop-off area located on the site.
 - There is an existing pick-up/drop-off area, separate from the parking area, on the west side of the building.
 2. Designated outdoor play areas shall be set back at least 15 feet from any lot line which abuts a residential property.
 - There are three existing play structures – one in the atrium in the middle of the building, another in the northwest corner of the open space in the southeast corner of the property, and a third on the west side of the building just south of the pick-up/drop-off lane. All three locations meet the setback requirement.
- Per Section 544.13, the parking requirements for the various weekday uses are as follows:

Program	Capacity	Parking Calc.	Parking Req'd
Hope Preschool	34 kids & 4 employees	1 per 5 kids	7
Hope School Age	60 kids & 5 employees	1 per Employee + 8 for visitors	13
T.E. Preschool	236 kids & 55 employees	1 per 5 kids	47
RF High School	100 students & 12 teachers	1 per employee + 1 per 8 students	25
Other Weekday Programs	24 employees	N/A	Unofficial 24
		TOTAL:	116
		Provided:	298

- The main entrance to the day care will be on the southeast side of the building, where parents will be parking and walking their children in and out of the facility; therefore daycare parents will not be utilizing the designated drop-off lane on the west side of the building. Each daytime use has it's own circulation area - see the site plan.
- Section 544.17, Subd.2.e requires bike parking for religious institutions at the rate of ten percent of the occupancy capacity of the main gathering space. The main sanctuary holds 500 people, requiring bike racks that can accommodate 50 bikes. Currently, there are only two racks that accommodate five bikes each on the property. Based on the amount of bike parking required for the recently approved Blossomtime Montessori day care, staff recommends four additional racks that can accommodate a total of eight bicycles. Staff's review of the site did not reveal any other non-conformities.

C. CRITICAL TIMING ISSUES:

The statutory 60-day clock started when a complete application was received on June 29, 2023. A decision is required by August 28, 2023 or the Council must notify the Applicant that it is extending the deadline (up to a maximum of 60 additional days or 120 days total) for issuing a decision.

D. FINANCIAL IMPACT:

None - The required application fees have been paid.

E. LEGAL CONSIDERATION:

- Notice of the public hearing was published in the Sun Current newspaper and mailed to properties within 350 feet of the site on July 13, 2023.

- The Planning Commission held the required public hearing on July 24, 2023. Only the Applicant and representatives from Hope Church were in attendance. The Planning Commission recommended approval of the ACUP 6-0 without any changes.

ALTERNATIVE RECOMMENDATION(S):

- Approve the proposal with modifications
- Deny the proposal with a finding that requirements are not met.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Resolution	Resolution Letter
<input type="checkbox"/> Required Findings of Fact	Backup Material
<input type="checkbox"/> Zoning/Location Map	Backup Material
<input type="checkbox"/> Applicant's Narrative	Backup Material
<input type="checkbox"/> Site Plan	Backup Material
<input type="checkbox"/> Floor Plans	Backup Material

RESOLUTION NO.

**RESOLUTION APPROVING A
AMENDED CONDITIONAL USE PERMIT FOR A
PRESCHOOL AND DAY CARE
AT 7132 PORTLAND AVENUE**

WHEREAS, an application has been filed by Tierra Encantada, with the City of Richfield, which requests an increase in capacity from 244 children to 330 children, for the preschool and day care at Hope Church, 7132 Portland Avenue, legally described as follows:

Lot 1, Block 1, Hope Presbyterian Church Addition; And also that part of the East Quarter of South Quarter of Southeast Quarter of Northeast Quarter of Northeast Quarter Lying South of the North 90 Feet thereof except road.

WHEREAS, the Planning Commission of the City of Richfield held a public hearing and recommended approval of the requested conditional use permit at its July 24, 2023 meeting; and

WHEREAS, notice of the public hearing was published in the Sun Current and mailed to properties within 350 feet of the subject property on July 13, 2023; and

WHEREAS, the requested conditional use permit meets the requirements necessary for issuing a conditional use permit as specified in Richfield's Zoning Code, Subsection 547.09 and 514.07, Subdivision 8, as detailed in City Council Staff Report No.____; and

WHEREAS, the City has fully considered the request for approval of the conditional use permit;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Richfield, Minnesota, as follows:

1. The City Council adopts as its Findings of Fact the WHEREAS clauses set forth above, and the findings listed in the Required Findings Statement.
2. The requested conditional use permit for a 330 child preschool and day care, as described in the City Council Staff Report, on the property legally described above, is hereby approved, subject to the following conditions:
 - a) That the applicant records this Resolution with the County, pursuant to Minnesota Statutes Section 462.36, Subd. 1 and the City's Zoning Ordinance Section 547.09, Subd. 8. A recorded copy of the approved resolution must be submitted to the City prior to the issuance of an occupancy permit.
 - b) Any new rooftop or ground mechanical equipment must be screened, per Zoning Code Section 544.05.
 - c) Sign permits are required for any signs greater than six square feet in size.
 - d) No lighting changes are proposed or approved.

- e) Four bicycle racks shall be installed to accommodate 8 bicycles, per Section 544.17, prior to Certificate of Occupancy. Style and location of racks to be reviewed and approved prior to installation.
 - f) The applicant is responsible for obtaining all required permits, compliance with all requirements detailed in the City's Administrative Review Committee Report dated June 23, 2023, and compliance with all other City, County and State regulations.
 - g) Bike racks to be installed prior to Certificate of Occupancy.
 - h) Prior to the issuance of an occupancy permit the applicant must submit a surety equal to 125% of the value of any improvements and/or requirements not yet complete. This surety shall be provided in the manner specified by the Zoning Code.
3. The conditional use permit shall expire one year after issuance unless 1) the use for which the permit was granted has commenced; or 2) building permits have been issued and substantial work performed; or 3) Upon written request of the applicant, the Council extends the expiration date for an additional period not to exceed one year. Expiration is governed by the City Zoning Ordinance, Section 547.09, Subdivision 9.
4. This conditional use permit shall remain in effect for so long as conditions regulating it are observed, and the conditional use permit shall expire if normal operation of the use has been discontinued for 12 or more months, as required by the City's Zoning Ordinance, Section 547.09, Subd. 10.

Adopted by the City Council of the City of Richfield, Minnesota this 8th day of August 2023.

Mary B. Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk

Tierra Encantada (7132 Portland Ave.)
Code Requirements / Required Findings

Part 1 – Conditional Use Permit: The findings necessary to issue a Conditional Use Permit (CUP) are as follows (547.09, Subd. 6):

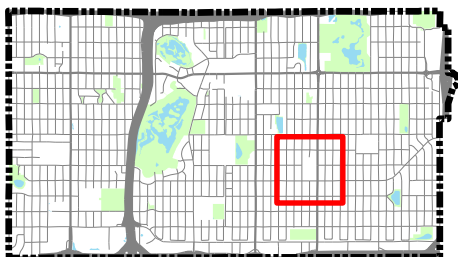
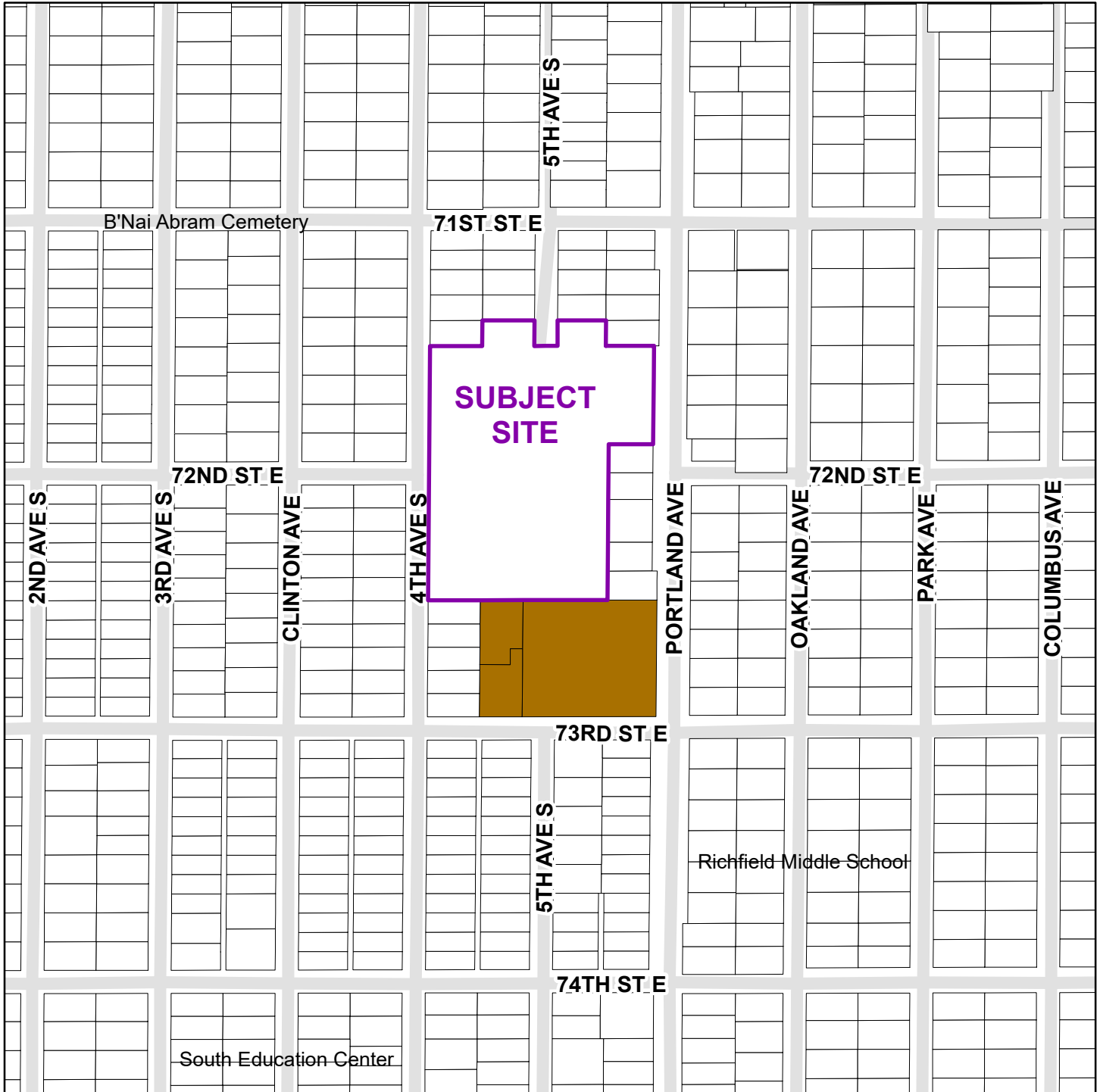
1. *The proposed use is consistent with the goals, policies, and objectives of the City's Comprehensive Plan.* The proposed use is consistent with the "Public/Quasi-Public" guiding designation. The Comprehensive Plan does not have any goals or policies specifically related to day care facilities, however, the proposal provides a much needed services to families.
2. *The proposed use is consistent with the purposes of the Zoning Code and the purposes of the zoning district in which the applicant intends to locate the proposed use.* The purpose of the Zoning Code is to protect and promote the public health, safety, aesthetics, economic viability, and general welfare of the City. The purpose of the R "Low Density Residential" district is to protect and preserve the low density residential character and provide residential locations that are safe, attractive, and quiet. The proposal is consistent with both these purposes.
3. *The proposed use is consistent with any officially adopted redevelopment plans or urban design guidelines.* There are no specific redevelopment plans or design guidelines that apply to the property.
4. *The proposed use is or will be in compliance with the performance standards specified in Section 544 of this code.* The property will maintain the status quo in regards to performance standards requirements. Since no building expansion is proposed, the site may continue with its present nonconformities, if there are any – a comprehensive review was not conducted, except for parking which is compliant.
5. *The proposed use will not have undue adverse impacts on governmental facilities, utilities, services, or existing or proposed improvements.* The City's Public Works and Engineering Departments have reviewed the proposal and do not anticipate any issues.
6. *The use will not have undue adverse impacts on the public health, safety, or welfare.* The proposed use is not anticipated to have any adverse impacts to public health, safety and welfare.
7. *There is a public need for such use at the proposed location.* The use is in high demand; the public need is strong.
8. *The proposed use meets or will meet all the specific conditions set by this code for the granting of such conditional use permit.* The use will comply with the two specific conditions listed by the R district for state licensed day care facilities serving more than 15 children.



7132 Portland Avenue

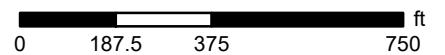
Location and Zoning Map

Tierra Encantada



Legend

- R Low Density Residential
- MR-3 High-Density Multi-Family



**City of Richfield
Planning Commission**

Greetings,

We are a group of real estate professionals and operational experts that have teamed up to expand access to Spanish Immersion early education in the twin cities. In the last ten years, 9 corporate locations have opened, here in the twin cities, as well as Rochester MN, Chicago Ill, and Dallas TX. Multiple franchised locations have opened as well, and several more are in progress.

As franchisees, we seek to bring Tierra Encantada Spanish Immersion Preschool and Daycare to Hope church in Richfield. Our project will revitalize the property known as Hope Center, a premises owned by Hope Church, at 7132 Portland Avenue S, Richfield. Our proposal will fill the gap in the market and alleviate the long wait lists that currently exist for our services. Additionally, we will seek to employ and provide opportunity for upward mobility to 50+ full time employees in the area.

There are currently 298 off-street parking spaces available. Our hours of operation are exclusively during the week. This will allow for very little traffic/parking congestion caused by the overlap of our services, and the services provided by Hope Church. Due to the large number of off-street parking spaces and 5 dedicated drop off/ pick up spaces, we do not anticipate any adverse impact to adjacent properties.

In order to bring these services and benefits to the Richfield area, we are seeking an amendment to the existing Condition Use Permit. The current permit allows for 244 students per day. We are seeking to bring that number up to 330 students per day. Please see the explanation below.

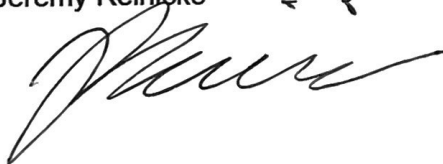
60 students in Hope Church school aged program
34 students in Hope Church Preschool program
236 students in proposed Tierra Encantada program

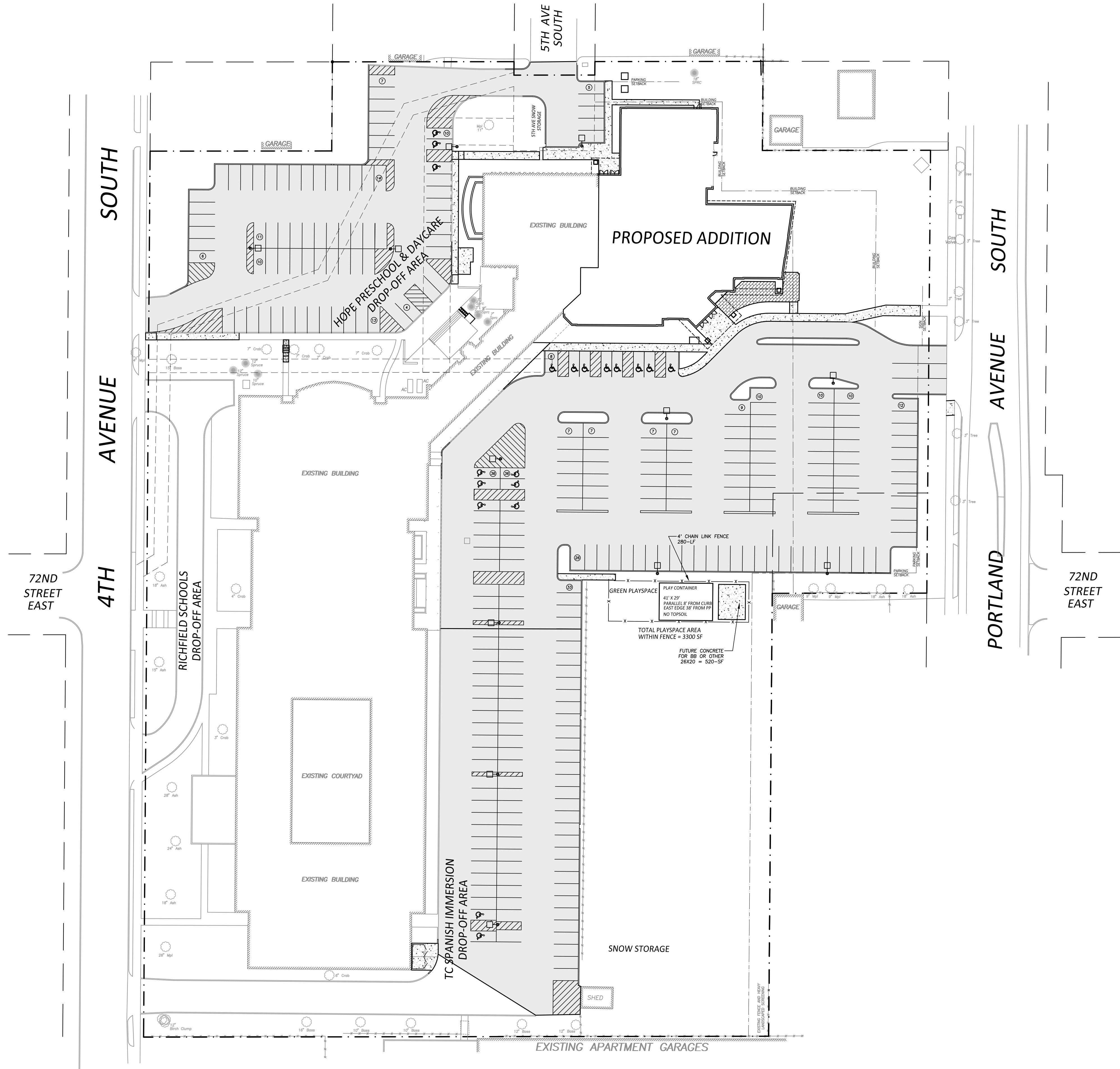
330 TOTAL students per day

Our anticipated completion date is March 2024.

On behalf of Hope Church and Tierra Encantada, we thank you for your consideration.

Jeremy Reinicke





EXISTING PARKING STALLS (SEE SHEET C1)

PARKING LOT	STANDARD STALLS	ACCESSIBLE STALLS	TOTAL
NORTH/WEST	71	2	73
SOUTH/EAST	152	19	171
TOTAL	223	21	244

PROPOSED PARKING STALLS PROVIDED

PARKING LOT	STANDARD STALLS	ACCESSIBLE STALLS	TOTAL
NORTH/WEST	77	3	80
SOUTH/EAST	202	16	218
TOTAL	279	19	298

LEGEND

- BOUNDARY/ROW/BLOCK LINE
- [Hatched Box] PROPOSED CONCRETE
- [Solid Box] PROPOSED BITUMINOUS

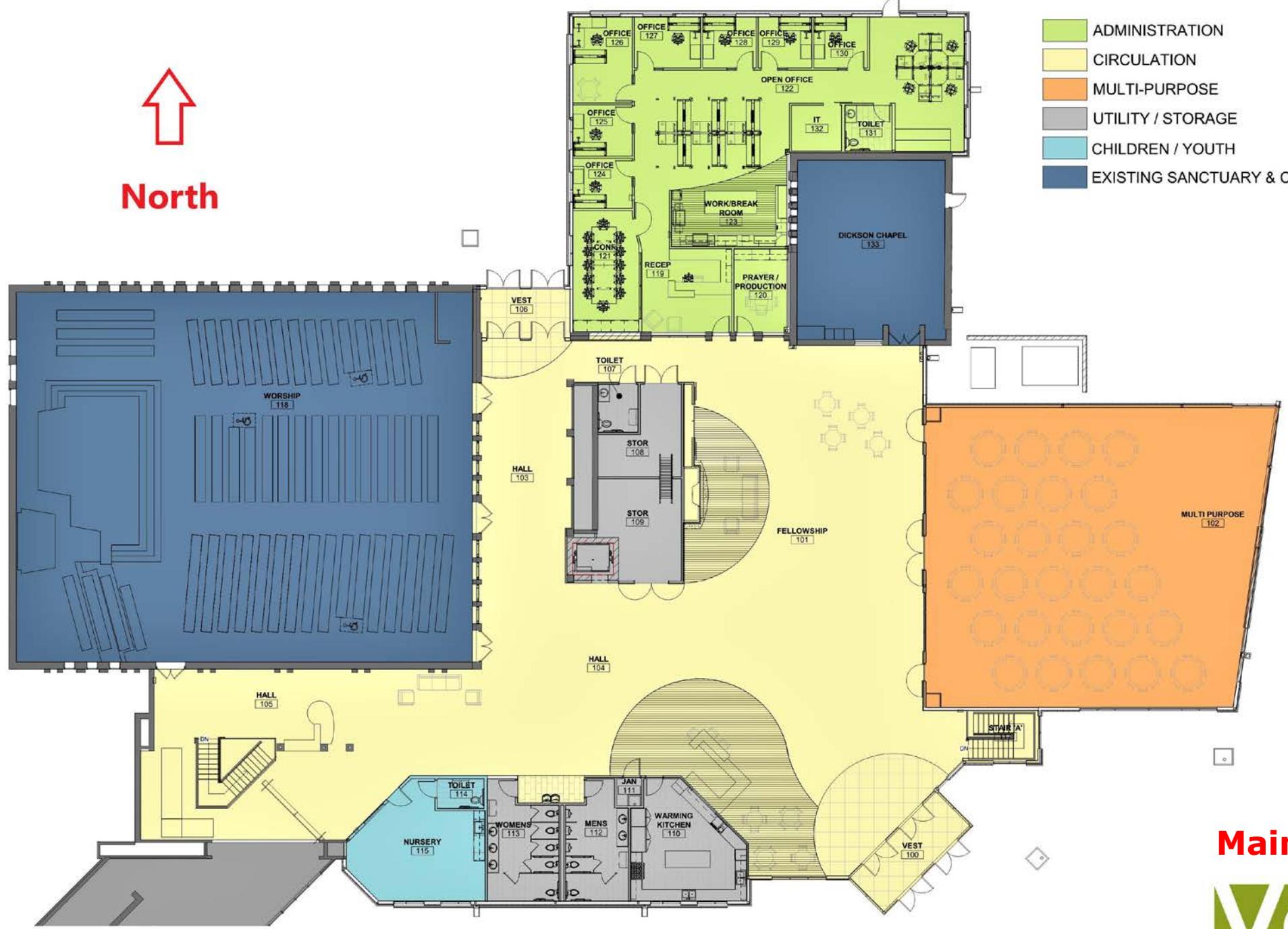
Scale in Feet

0 20 40 80 120

N

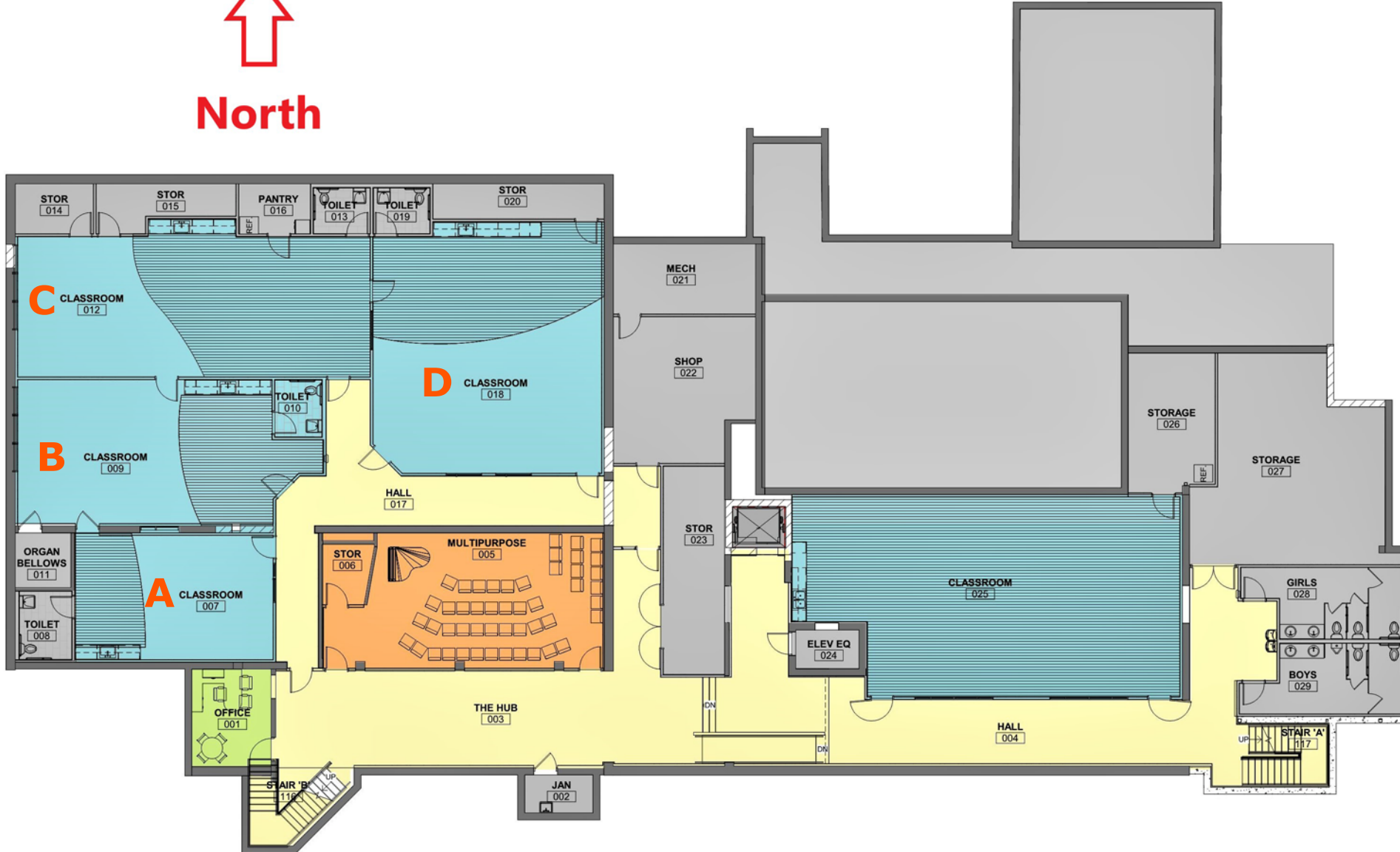


- ADMINISTRATION
- CIRCULATION
- MULTI-PURPOSE
- UTILITY / STORAGE
- CHILDREN / YOUTH
- EXISTING SANCTUARY & CHAPEL



Main Floor





- ADMINISTRATION
- CIRCULATION
- MULTI-PURPOSE
- UTILITY / STORAGE / FOUNDATION
- CHILDREN / YOUTH

Employees

- Hope Church Offices- 18
- Richfield Public schools RCEP program- 12
- Loaves and Fishes- 1
- Vine + Branches Clothing Ministry- 1
- Frontier Fellowship Missions Organization- 4
- Hope Church Preschool Classroom A- 2
- Hope Church Preschool Classroom B- 2
- Hope Church School Aged Classroom C- 2
- Hope Church School Aged Classroom D- 3

Licensed Student Capacity per classroom

- Hope Church Preschool Classroom A- 14
- Hope Church Preschool Classroom B- 20
- Hope Church School Aged Classroom C- 28
- Hope Church School Aged Classroom D- 32

Program Specifications

- Preschool programs serve children ages 3-5
- School Aged Programs serve children ages 6-11

Lower Level

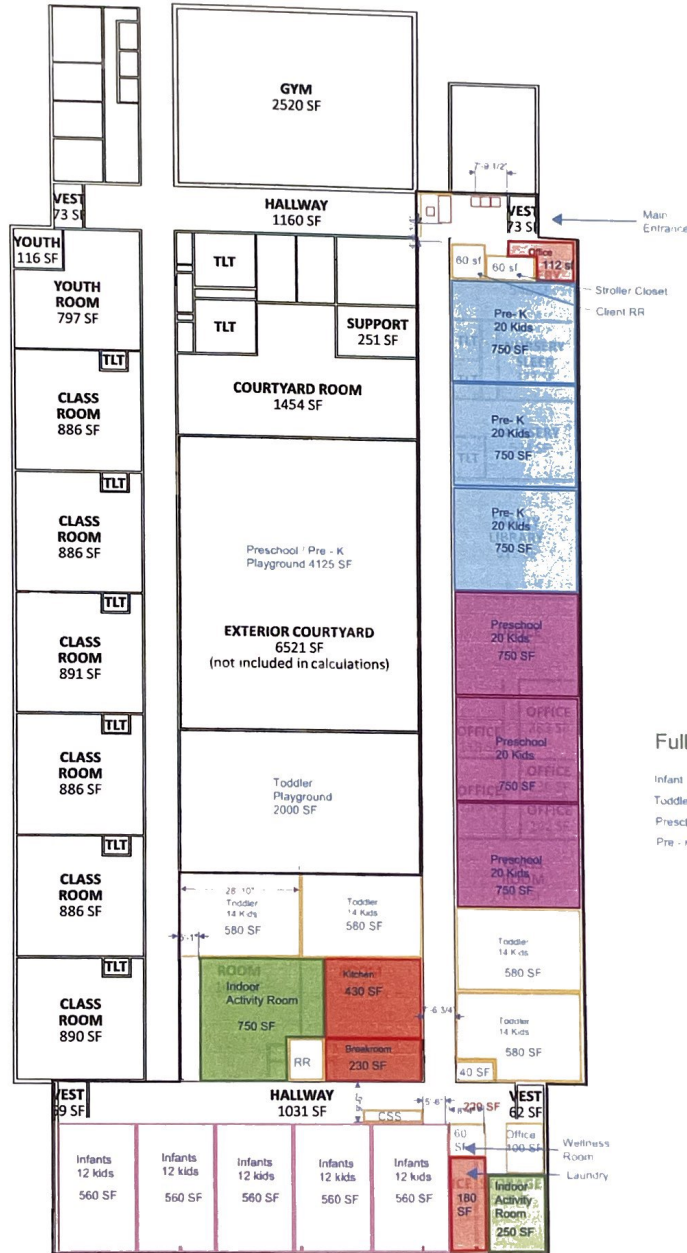
7132 PORTLAND

7132 Portland Avenue S, Richfield, MN 55423

North
↑

Proposed FLOOR PLAN

Exhibit B



Full Capacity -236 Children

- Infant - 5 Classroom of 12 Kids = 60 Kids
- Toddler - 4 Classroom of 14 each = 56 Kids
- Preschool - 3 Classroom of 20 each = 60 Kids
- Pre - K - 3 Classroom of 20 each = 60 Kids
- Total Capacity = 236



Kevin Peck
 2550 University Ave. W. Suite 416-S
 St. Paul, MN 55114
 612-834-2250 | KevinPeck@Suntide.com

The majority of the ceilings are 10ft. The two rooms south of the exterior courtyard are vaulted from 9-13 ft.
 Vertical hallway is 8 ft wide



STAFF REPORT NO. 94
CITY COUNCIL MEETING
8/8/2023

REPORT PREPARED BY: Sam Crosby, Planner II

DEPARTMENT DIRECTOR REVIEW: Melissa Poehlman, Community Development Director
7/31/2023

OTHER DEPARTMENT REVIEW: Sack Thongvanh, Assistant City Manager

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
7/31/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider a resolution approving a special request to allow the relocation of a billboard at 7731 - 4th Avenue South (Blaylock Plumbing).

EXECUTIVE SUMMARY:

Clear Channel Outdoor, LLC (Applicant) is requesting to relocate the existing billboard at 7731 - 4th Avenue South 17 feet northward and nine feet westward. The need to relocate the billboard was triggered by Minnesota Department of Transportation's (MnDOT's) right-of-way acquisition along the south side of the property in association with their I-494 reconstruction project. The change in location is the minimum necessary to alleviate the impact of the public action upon the property.

The new support column is proposed to be on the north end of the billboard. The north side was chosen so the new billboard could be constructed before the existing billboard is removed. However, the north side location of the post reduces the amount of buildable space under the new billboard. If the column were instead installed within the building setback on the south side, it would be out of the way of any future building (see staff's setback graphic). Consequently, staff is recommending approval with this stipulation. The Applicant does not foresee any issues with this change, but has yet to fully vet the option. In relation to timing, the sign could be shifted a few feet westward to accommodate the Applicant's desire to construct the new billboard before the old one is removed; this flexibility has been incorporated into the attached resolution.

Section 549.27 allows the City Council to approve the relocation of a non-conforming sign, and staff finds that all applicable requirements have been met, as outlined in the "Policies" section below.

RECOMMENDED ACTION:

By motion: Approve the attached resolution granting the special request to relocate the billboard at 7731 - 4th Avenue South.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The building was constructed in 1947. The current billboard was constructed in May of 1983, as a replacement for two other signs (one of which was a rooftop sign). The Sign Code was revised in 2007 to prohibit outdoor advertising signs (billboards and other off premises signage), making the sign legally

non-conforming. The property was rezoned from I (Industrial) to MU-R (Mixed Use Regional) in 2009. The I-494 project has begun, but construction of the Portland Avenue Interchange is not anticipated until 2025. The building on site will be removed with the I-494 project and the remainder of the site (minus the acquisition area) will be available for redevelopment.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The entire billboard structure will be rebuilt with new materials. Section 509.25 “Nonconformities” states that a non-conformity may be continued, including thru replacement, and defines replacement as “construction that provides a substitute substantially equivalent to the preexisting conditions...” The new billboard will be same size, height, style and illumination as the existing billboard. As there will be no significant difference between the existing sign and the proposed sign, staff finds the proposal substantially equivalent.
- Section 549.27 of the Zoning Code allows the City Council to approve the relocation of a non-conforming sign provided that:
 1. The relocation will lessen any adverse impact of the sign upon traffic safety and aesthetics; the relocation will lessen traffic safety by moving it out of the newly acquired right-of-way.
 2. A conforming location is not available; being as billboards are no longer allowed in the City, a conforming location is not available.

C. CRITICAL TIMING ISSUES:

60-DAY RULE: The 60-day clock started when a complete application was received on June 13, 2023. A decision is required by August 12, 2023 or the City must notify the Applicant that it is extending the deadline (up to a maximum of 60 additional days or 120 days total) for issuing a decision.

D. FINANCIAL IMPACT:

None to the City; the required application fee has been paid. Allowing the billboard to be relocated out the acquisition area will both simplify MnDOT’s right-of-way acquisition process and minimize MnDOT’s acquisition cost.

E. LEGAL CONSIDERATION:

None.

ALTERNATIVE RECOMMENDATION(S):

- Approve the request with modifications.
- Deny the request with a finding that requirements are not met.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Matthew Weiland, VP Real Estate and Public Affairs, Clear Channel

ATTACHMENTS:

Description	Type
☐ Resolution	Resolution Letter
☐ Location / Zoning Map	Backup Material
☐ Staff’s Setback Graphic	Backup Material
☐ Applicant’s Request Letter	Backup Material
☐ Relocation Graphics & Details	Backup Material

RESOLUTION NO.
**RESOLUTION APPROVING A
SPECIAL REQUEST
FOR THE RELOCATION OF AN EXISTING BILLBOARD
AT 7731 4TH AVENUE SOUTH**

WHEREAS, an application has been filed by Clear Channel Outdoor, LLC, with the City of Richfield, which requests the relocation of an existing billboard at 7731 4th Avenue South, legally described as follows:

Lot 1, Block 1, Blaylock Plumbing Addition, Hennepin County, MN

WHEREAS, the property located directly under the existing billboard has been condemned as part of the I-494 reconstruction project; and

WHEREAS, Zoning Code Section 549.27 “Nonconforming Signs” authorizes the City Council to approve the relocation of a non-conforming sign; and

WHEREAS, the Council finds that a conforming location is not available; and

WHEREAS, the relocated billboard will be of the same style as, and no larger, no taller, and no brighter than the existing billboard; and

WHEREAS, the Council finds that the requested relocation will lessen any adverse impact of the sign upon traffic safety and aesthetics;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Richfield, Minnesota, as follows:

1. The City Council adopts as its Findings of Fact the WHEREAS clauses set forth above.
2. The special request for the billboard relocation, as described in the City Council Staff Report No. ____, on the property legally described above, is hereby approved, subject to the following conditions:
 - a) The support column be located on the south side of the sign. The sign may be shifted a few feet westward, if necessary, to accommodate this condition.
 - b) That the applicant records this Resolution with the County, pursuant to Minnesota Statutes Section 462.36, Subd. 1 and the City’s Zoning Ordinance Section 547.09, Subd. 8. A recorded copy of the approved resolution must be submitted to the City prior to the issuance of an occupancy permit.
 - c) Sign and electrical permits are required prior to construction.
 - d) The face of the new billboard may not be applied until all of the existing billboard has been removed. A demolition permit is required with the sign and electrical permits mentioned above.

Adopted by the City Council of the City of Richfield, Minnesota this 8th day of August
2023.

Mary B. Supple, Mayor

ATTEST:

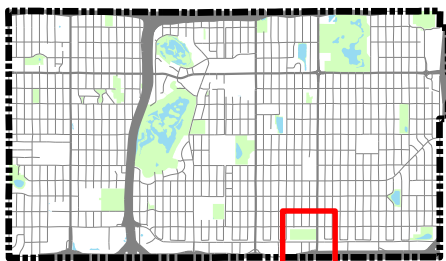
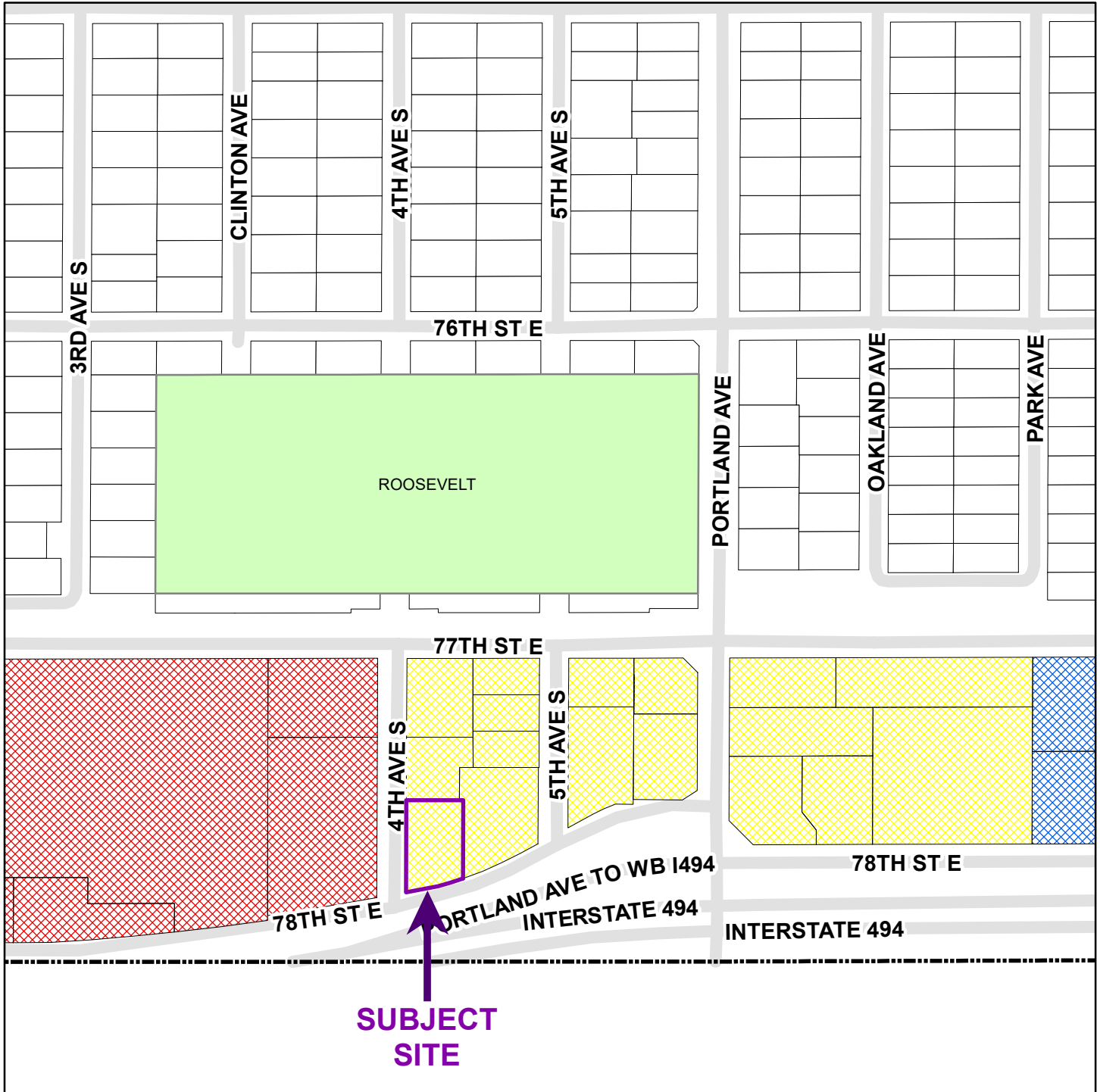
Dustin Leslie, City Clerk



7731 4th Avenue South

Location and Zoning Map

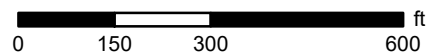
Clear Channel-Blaylock Billboard

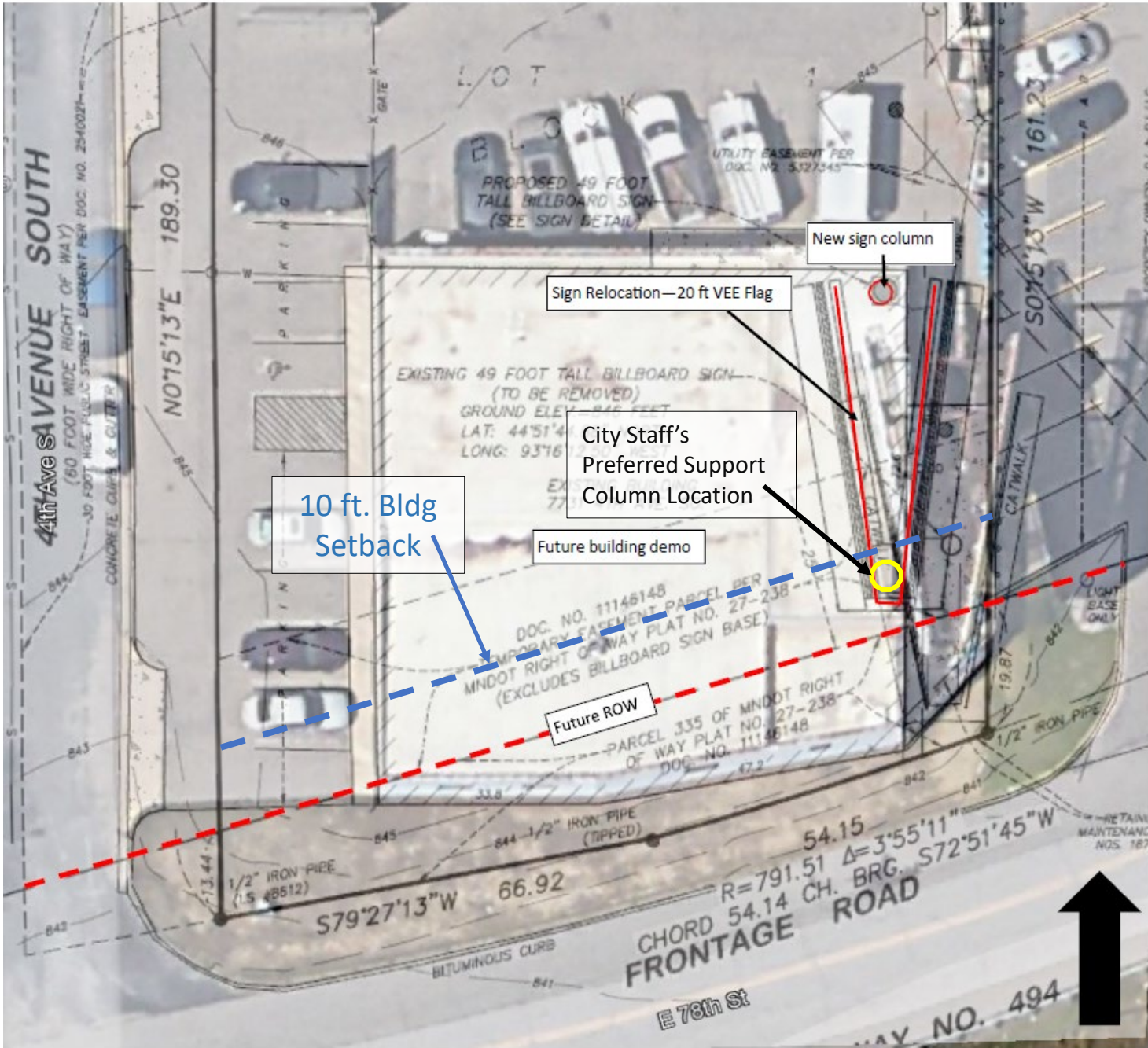


Legend

- R Low Density Residential
- MU-R Mixed Use-Regional
- MU-C Mixed Use-Community
- MU-N Mixed Use-Neighborhood

Parks





Clear Channel Outdoor, LLC
Zoning and Planning Application – Special Request to Council
7731 4th Ave S
Project Narrative

- a. **Description of Project:** Clear Channel Outdoor, LLC (CCO) owns a legally established nonconforming outdoor advertising sign (billboard) located at 7731 4th Ave St. The billboard includes two 14'x48' panels and is 49 ft tall. The billboard reads to I-494. The property is zoned MU-R – Mixed Use Regional District. The property located under the billboard has been condemned as part of the I-494 project requiring the billboard to be removed.

CCO is requesting City Council approval to relocate the billboard to another portion of the property as permitted by Section 549.27 Subd2. Relocation of the City code.

549.27. Nonconforming signs.

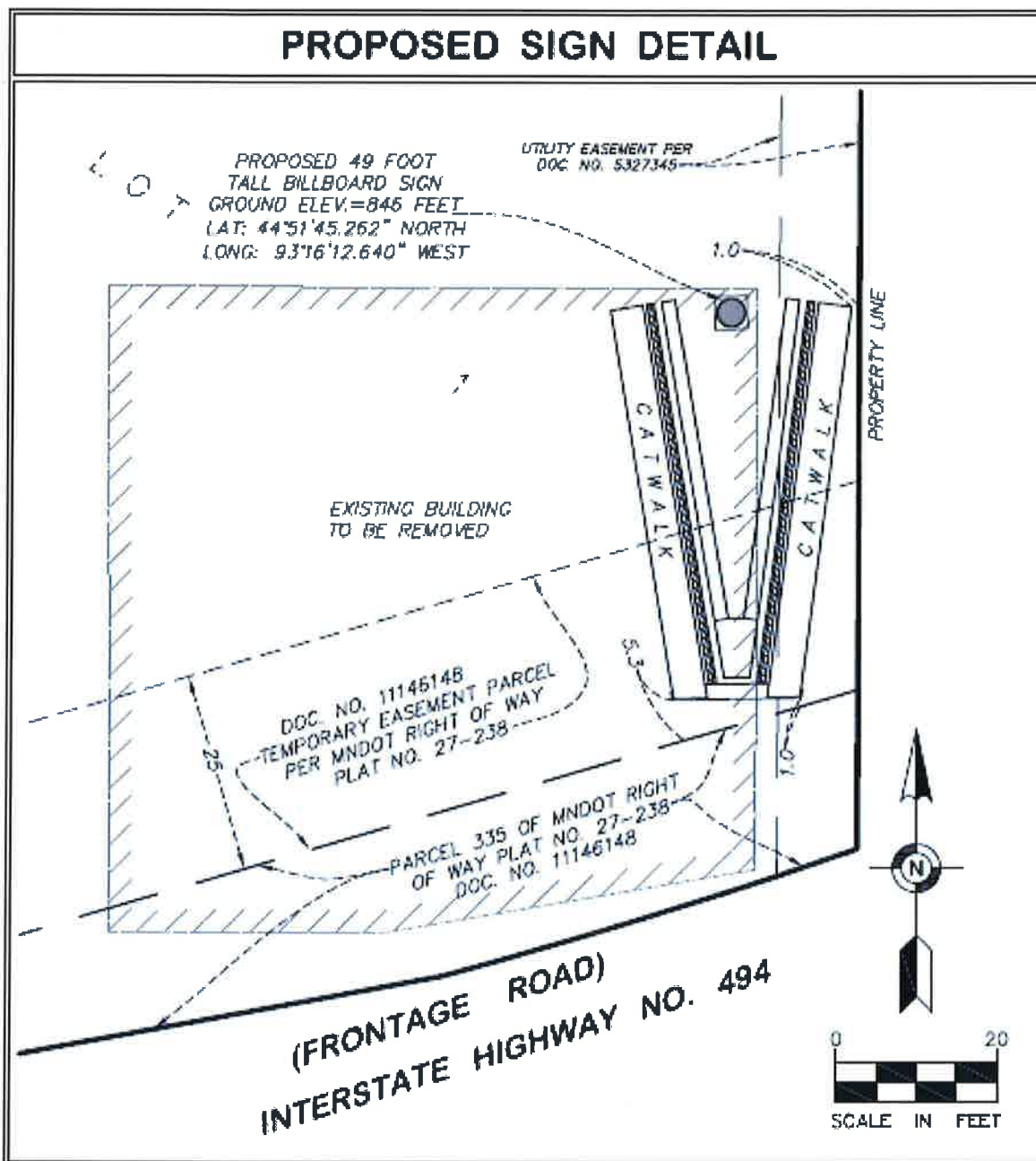
Subdivision 1. In addition to the standards established by Section 509.23, the following shall apply to nonconforming signs:

Subd. 2. Relocation. Any legally nonconforming sign may be relocated, subject to compliance with the other provisions of this Code and subject to the limitations hereinafter contained, to another location provided that such alternate location is first approved by the Council. The Council may approve relocation if it finds that the relocation will lessen any adverse impact of the sign upon traffic safety and aesthetics. If a conforming location is available, the Council shall not approve relocation to a nonconforming location.

The relocated billboard would be rebuilt at the same size (14' x 48') and height (49 ft) as the existing billboard. The proposed location of the relocated billboard is noted on the attached Exhibit A survey.

- b. **Project Timing:** The anticipated project start date would be August 2023. The project should be completed in 7 – 10 days.
- c. **Impacts:** This proposal will not have any impacts adjacent properties.

Exhibit A



BILLBOARD SIGN SURVEY FOR: CLEAR CHANNEL OUTDOOR

LEGAL DESCRIPTION:

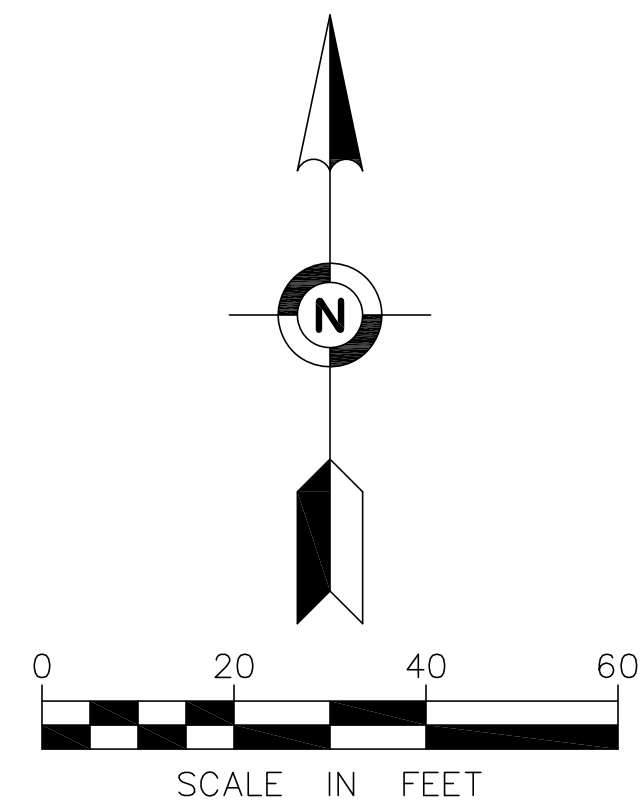
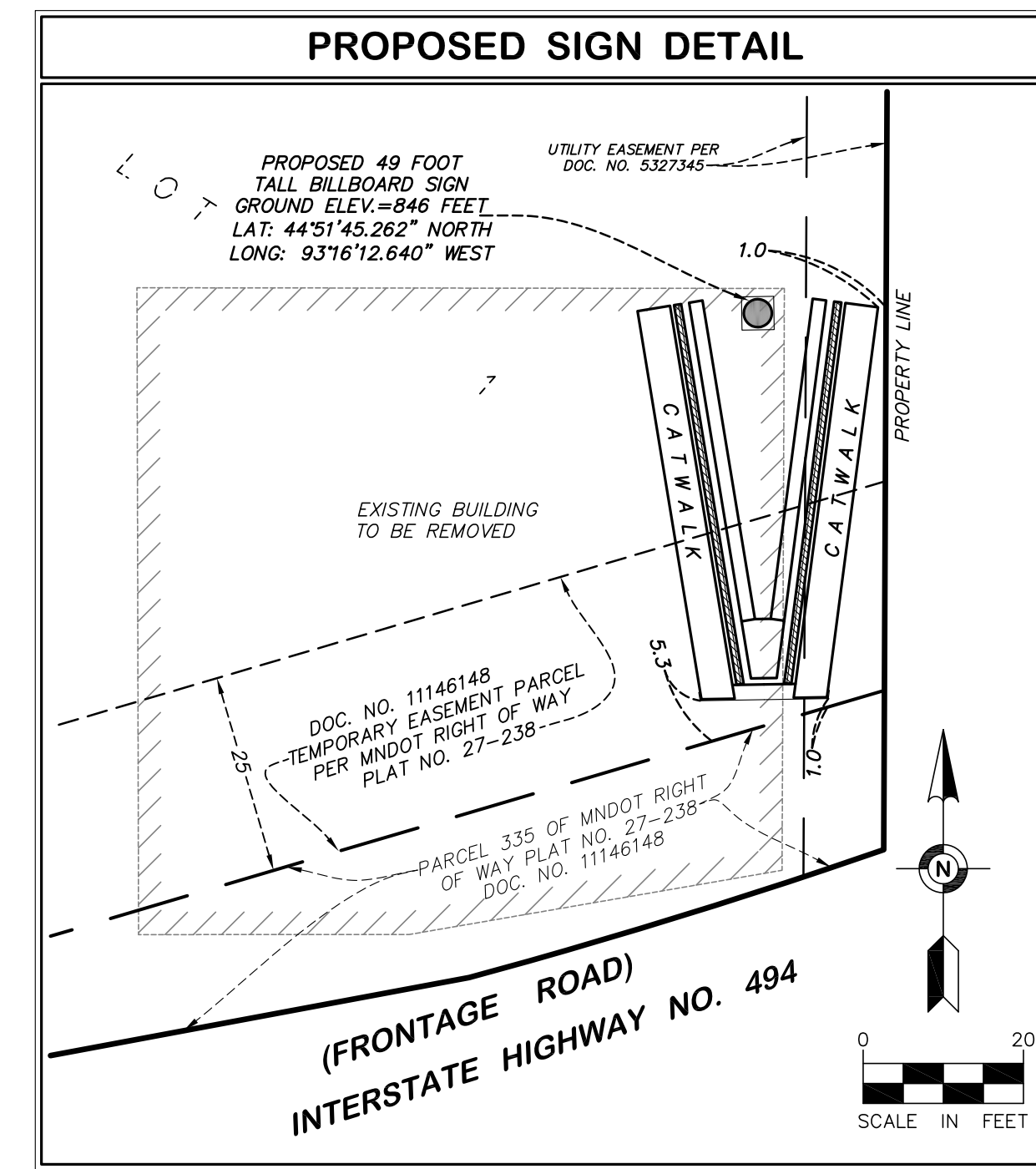
(Per Hennepin County Property Information Web Site)

Lot 1, Block 1, BLAYLOCK PLUMBING ADDITION, Hennepin County, Minnesota.

Hennepin County Parcel No. 34-028-24-44-0029

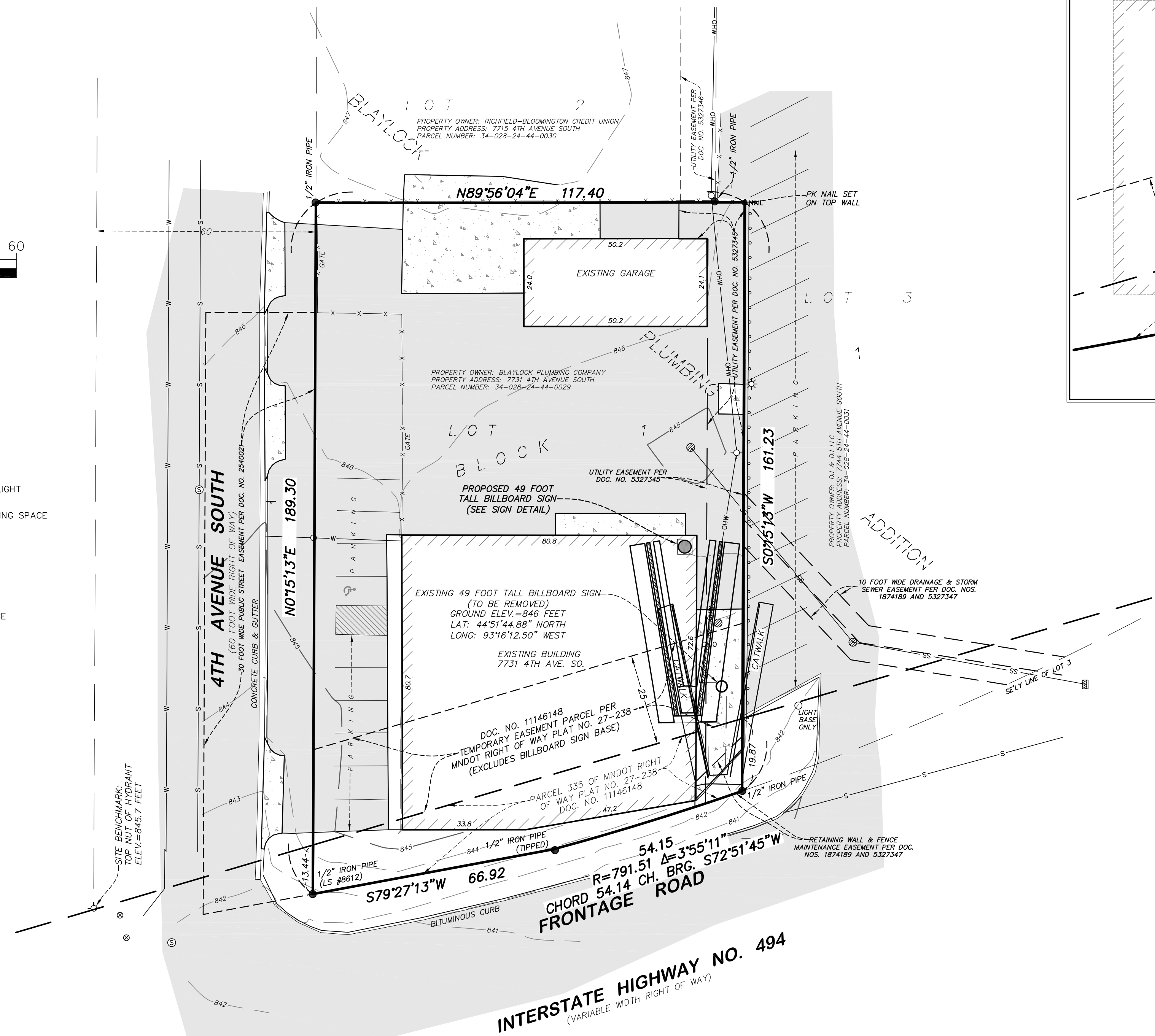
NOTES:

- The orientation of this bearing system is based on the Hennepin County coordinate grid (NAD 83-2011 Adj).
- Title work was not furnished to Egan, Field & Nowak, Inc. in the preparation of this survey to verify ownership, the legal description, or the existence of any easements or encumbrances. Easement information shown was obtained from the Hennepin County Records Record/Ease Web site.
- Existing utilities, services and underground structures shown hereon were located either physically, from existing records made available to us, by resident testimony, or by locations provided by Gopher State One Call, per Ticket No. 222852152. However, lacking excavation, the exact location of underground features cannot be accurately, completely and reliably depicted. Where additional or more detailed information is required, the client is advised that excavation may be necessary. Other utilities and services may be present and verification and location of all utilities and services should be obtained from the owners of the respective utilities prior to any design, planning or excavation.
- BENCHMARK: Top nut of the Hydrant located in the northwest quadrant of 4th Avenue South and the Frontage Road. Elevation = 890.5 feet. (NAVD 88)
- This survey does not purport to show all improvements situated on the subject property.
- The property described hereon lies within Flood Zone "X" (area of minimal flood hazard) per Federal Insurance Rate Map No. 27053C 0457 F, dated November 4, 2016.
- The improvements and topography shown on this survey were based on a field survey performed October 28, 2022.



LEGEND

- SANITARY MANHOLE
- ⊗ CATCH BASIN
- ⊕ HYDRANT
- ⊙ GATE VALVE
- ⊖ STOP BOX
- ⊛ LIGHT
- ⊚ UTILITY POLE
- ⊕ POWER POLE WITH LIGHT SIGN
- ⊙ HANDICAPPED PARKING SPACE
- ⊖ CHAIN LINK FENCE
- ⊙ WOOD FENCE
- ⊖ SANITARY SEWER
- ⊙ STORM SEWER
- ⊖ WATERMAIN
- ⊙ OVERHEAD WIRE
- BITUMINOUS SURFACE
- CONCRETE SURFACE



CERTIFICATION:

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Date of survey: October 28, 2022.
Date of signature: November __, 2022.

PRELIMINARY

Lee J. Nord
Minnesota License No. 22033
lnord@efnsurvey.com

FIELD BOOK	PAGE	FIELDWORK CHIEF:	REVISIONS	
			NO.	DATE
		SK		
		DRAWN BY:		
		kgf		
		CHECKED BY:		
		LJN		

BILLBOARD SIGN SURVEY

SURVEY FOR:
CLEAR CHANNEL OUTDOOR

PROPERTY ADDRESS:
**7731 4th Avenue South
Richfield, Minnesota 55423**



Egan, Field & Nowak, Inc.
Land surveyors since 1872

475 Old Highway 8 NW, Suite 200
New Brighton, Minnesota 55112
PHONE: (612) 466-3300
WWW.EFNSURVEY.COM
COPYRIGHT © 2023 By EGAN, FIELD & NOWAK, INC.

Panels: 90060 and 90100 (II-494 NS 500ft W/O Portland)

Address: 7731 4th Ave S , Richfield, MN 55423

Sign Condemnation / Relocation

Existing conditions map

Clear results

PID: 3402824440029

7731 4th Ave S

Richfield, MN 55423

Owner/Taxpayer

Owner:	Blaylock Plumbing Co
Taxpayer:	BLAYLOCK PLUMBING CO 7731 4TH AVE S MPLS MN 55423

Tax Parcel

Parcel Area:	0.48 acres 20,815 sq ft
Torrens/Abstract:	Abstract
Addition:	Blaylock Plumbing Addn
Lot:	001
Block:	001
Metes & Bounds:	

Tax Data (Assessed 2020, Payable 2021)

Market Value:	\$1,114,000
Total Tax:	\$37,602.40
Property Type:	Industrial-Non Preferred
Homestead:	Non-Homestead
Year Built:	1947

Tax Data (Assessed 2021, Payable 2022)

Market Value:	\$1,150,000
Property Type:	Industrial
Homestead:	Non-homestead



Clear Channel Outdoor

Panels: 90060 and 90100 (II-494 NS 500ft W/O Portland)

Address: 7731 4th Ave S , Richfield, MN 55423

Sign Condemnation / Relocation

Existing conditions - East sign face



East Sign face

Future building demo

Clear Channel Outdoor

Panels: 90060 and 90100 (II-494 NS 500ft W/O Portland)

Address: 7731 4th Ave S , Richfield, MN 55423

Sign Condemnation / Relocation

Existing conditions—West sign face

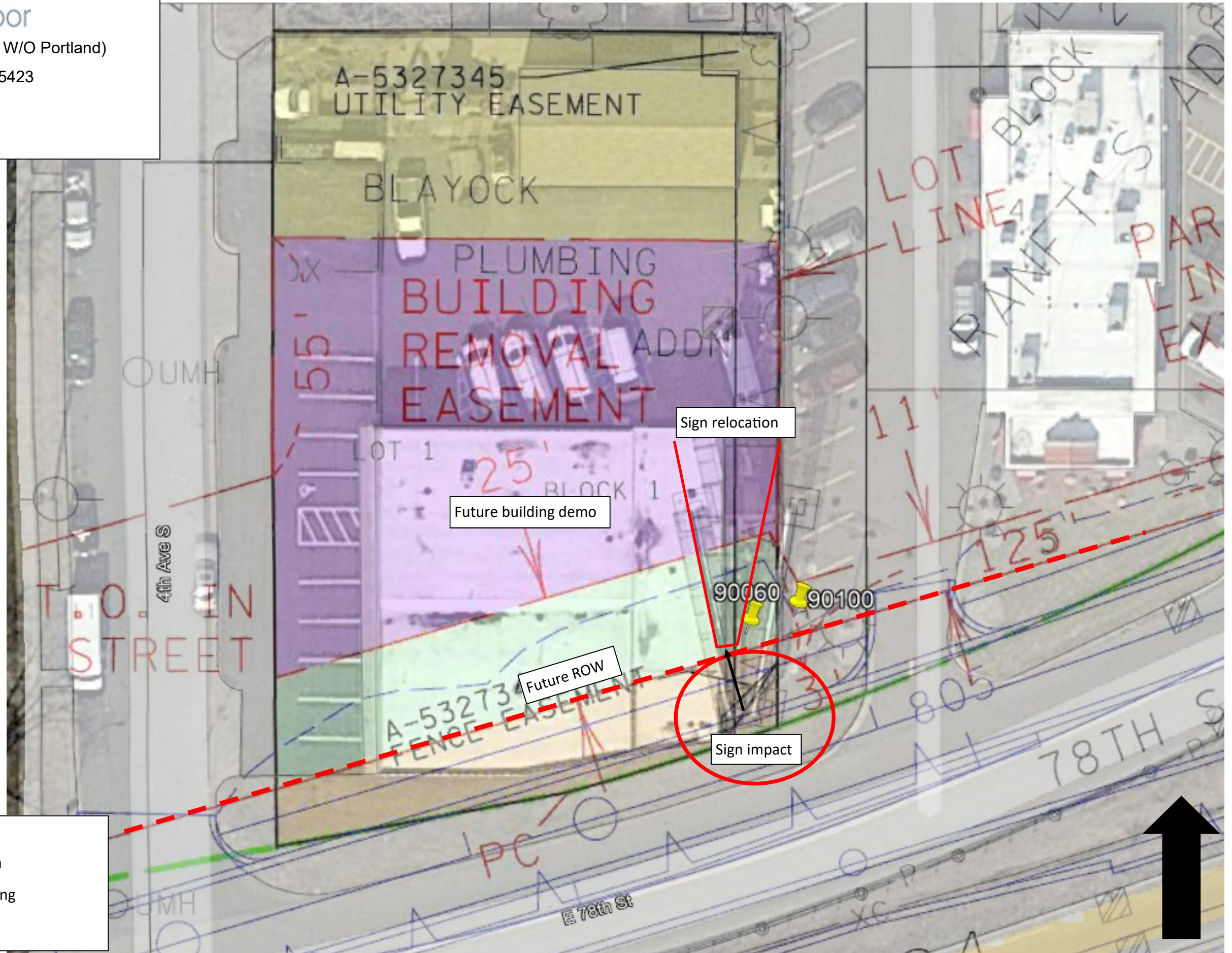


Panels: 90060 and 90100 (II-494 NS 500ft W/O Portland)

Address: 7731 4th Ave S , Richfield, MN 55423

Sign Condemnation / Relocation

Proposed relocation map



Issues:

1. Need City council approval to relocate sign
2. Need to relocate sign after demo of building
3. Requires City sign and building permit

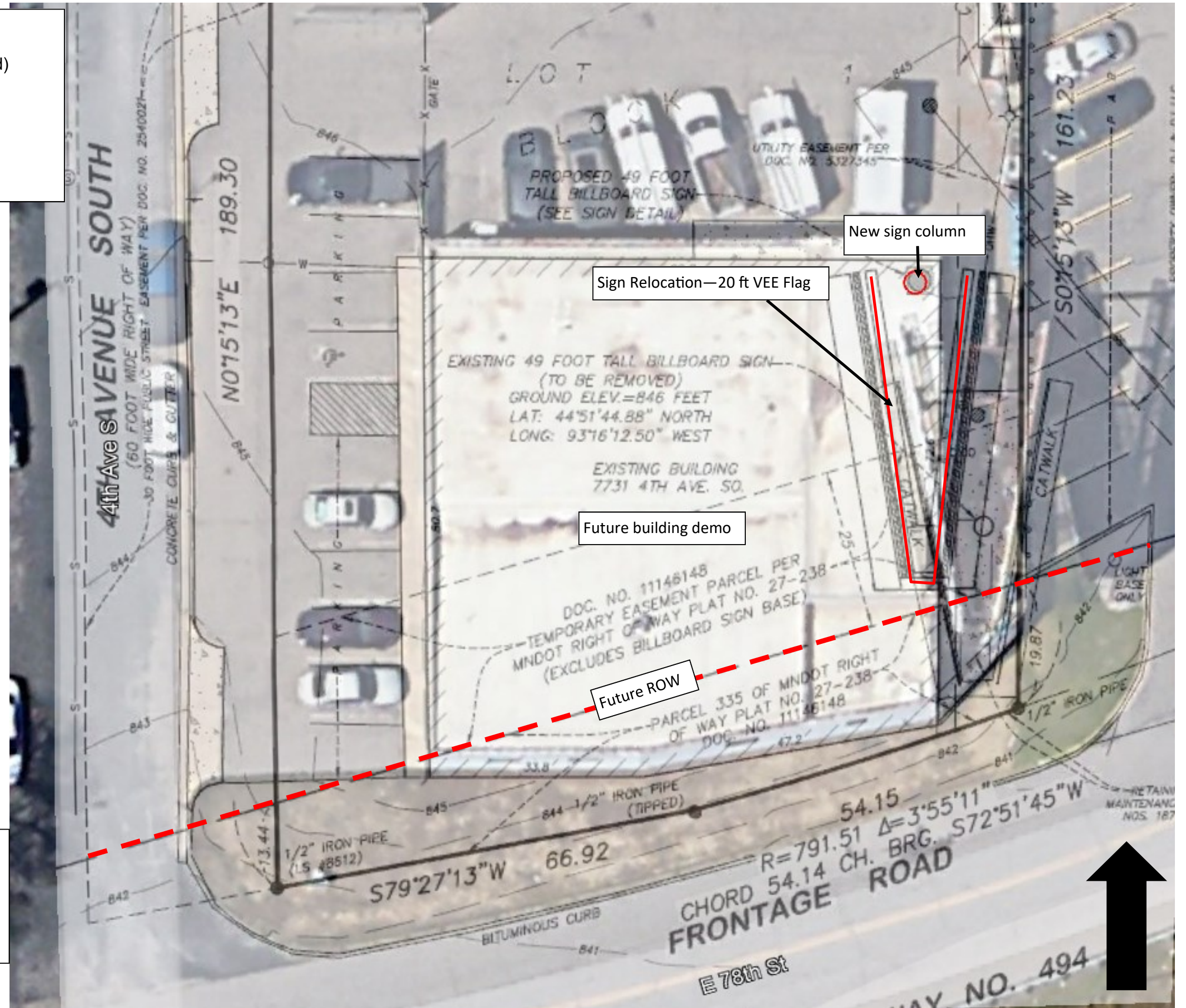
Panels: 90060 and 90100 (II-494 NS 500ft W/O Portland)

Address: 7731 4th Ave S , Richfield, MN 55423

Job#:40-3076

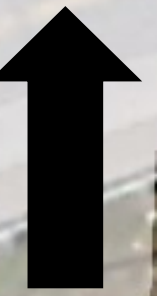
Sign Condemnation / Relocation

Proposed relocation map

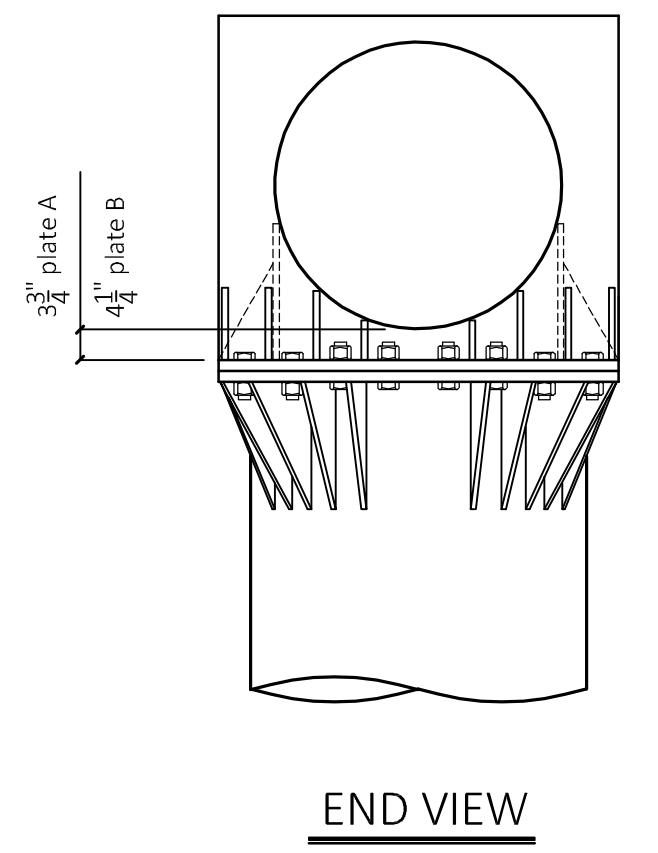
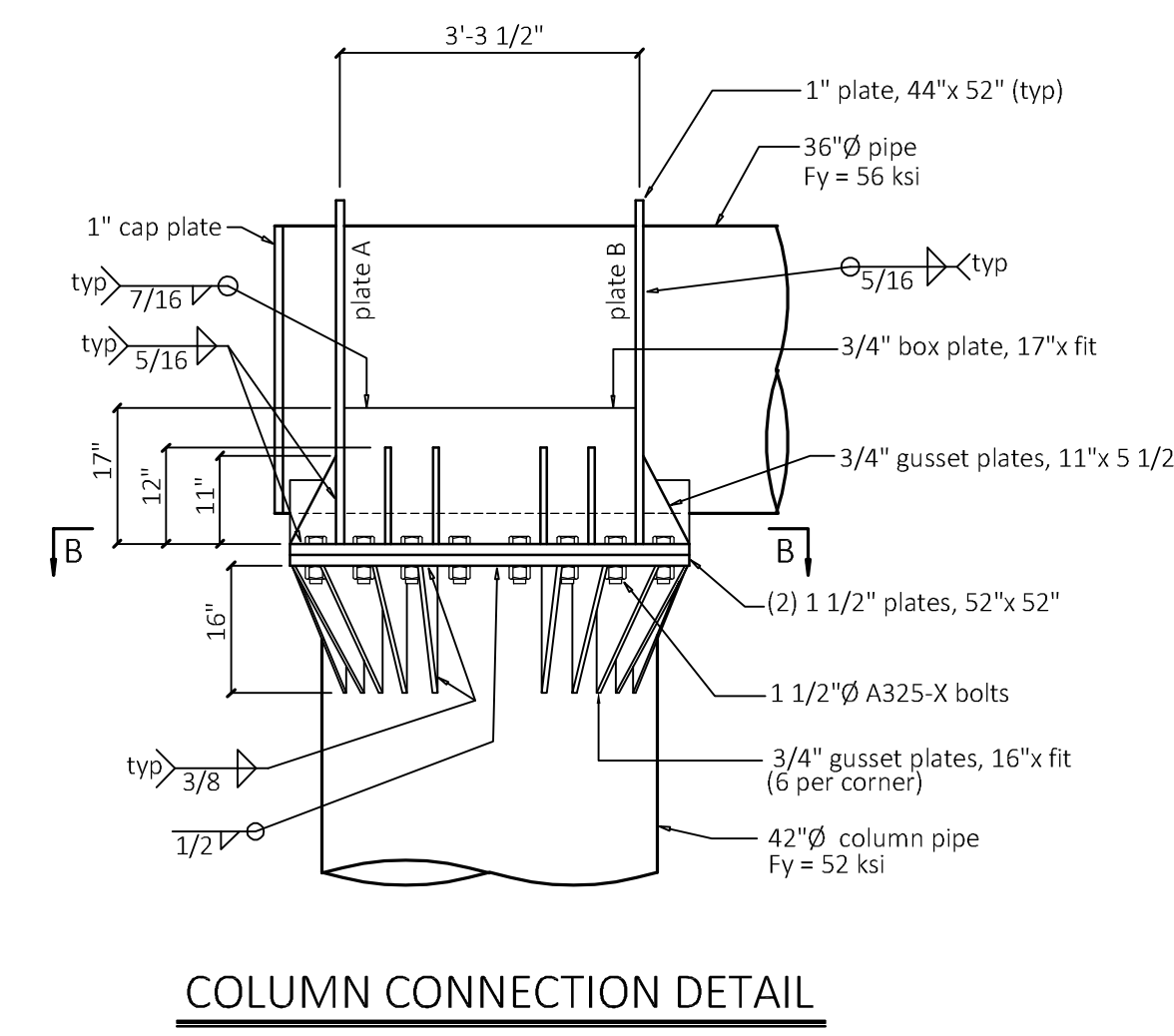
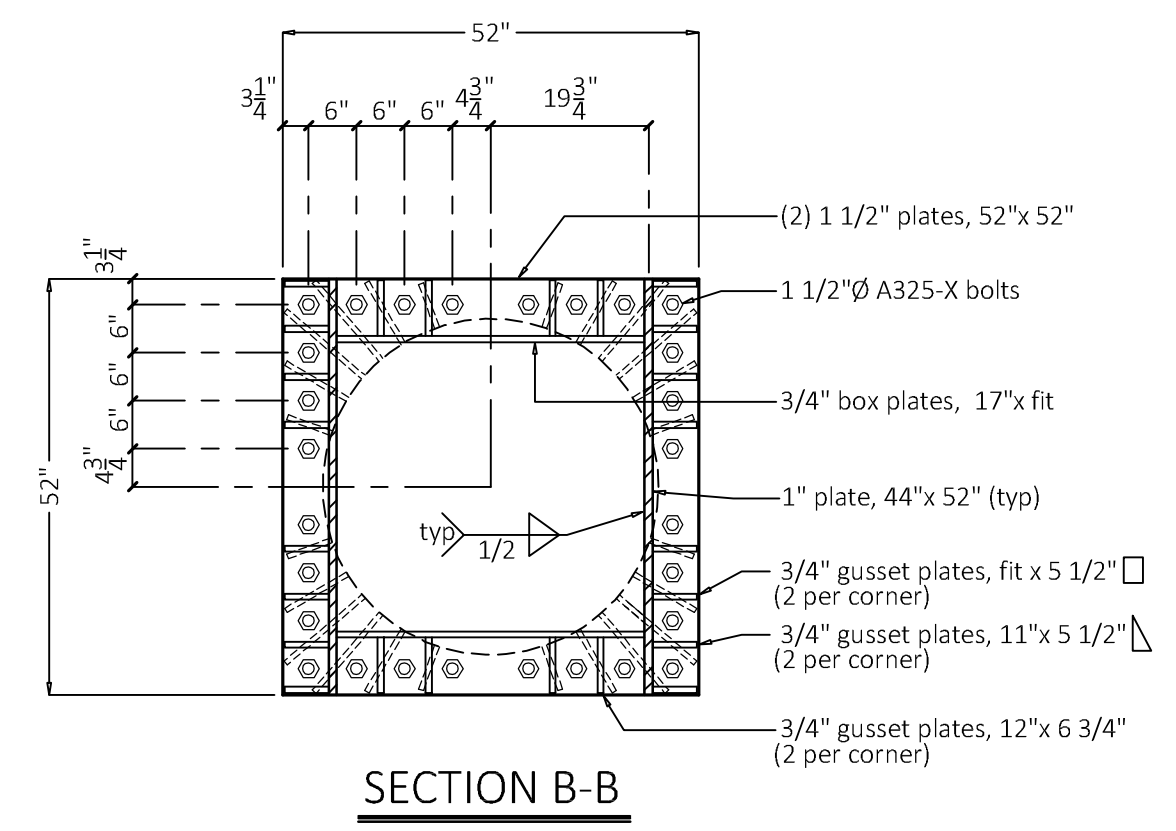
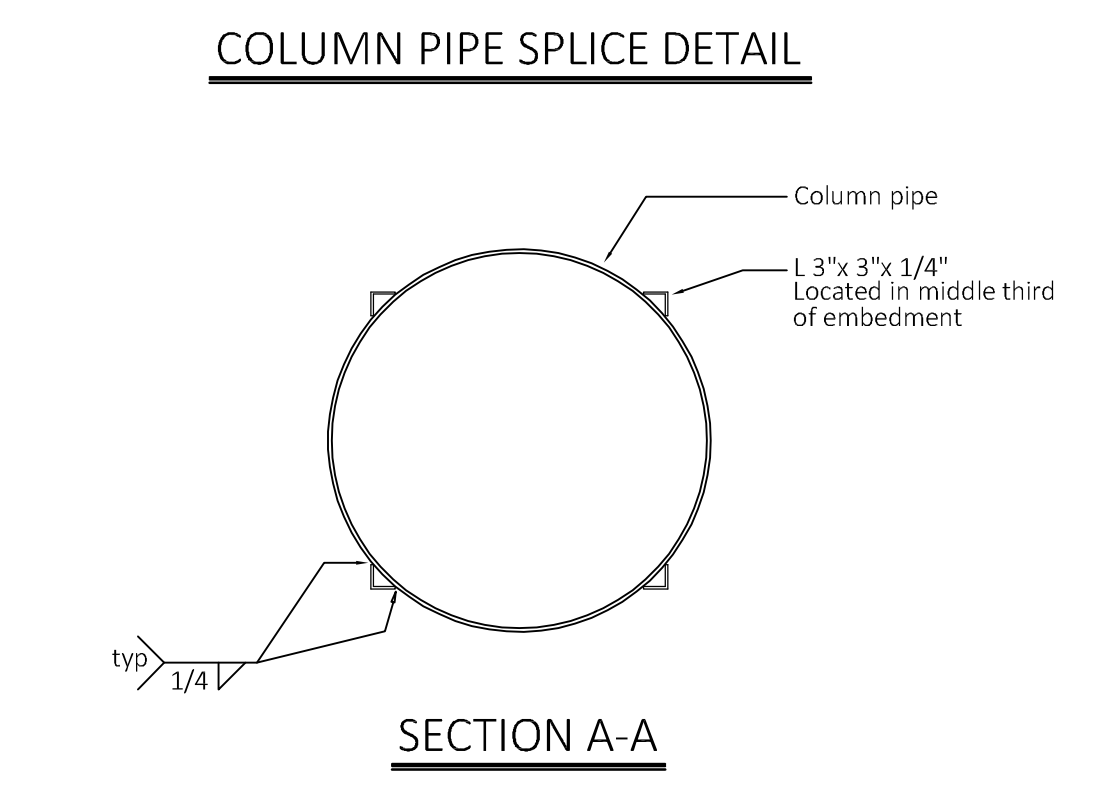
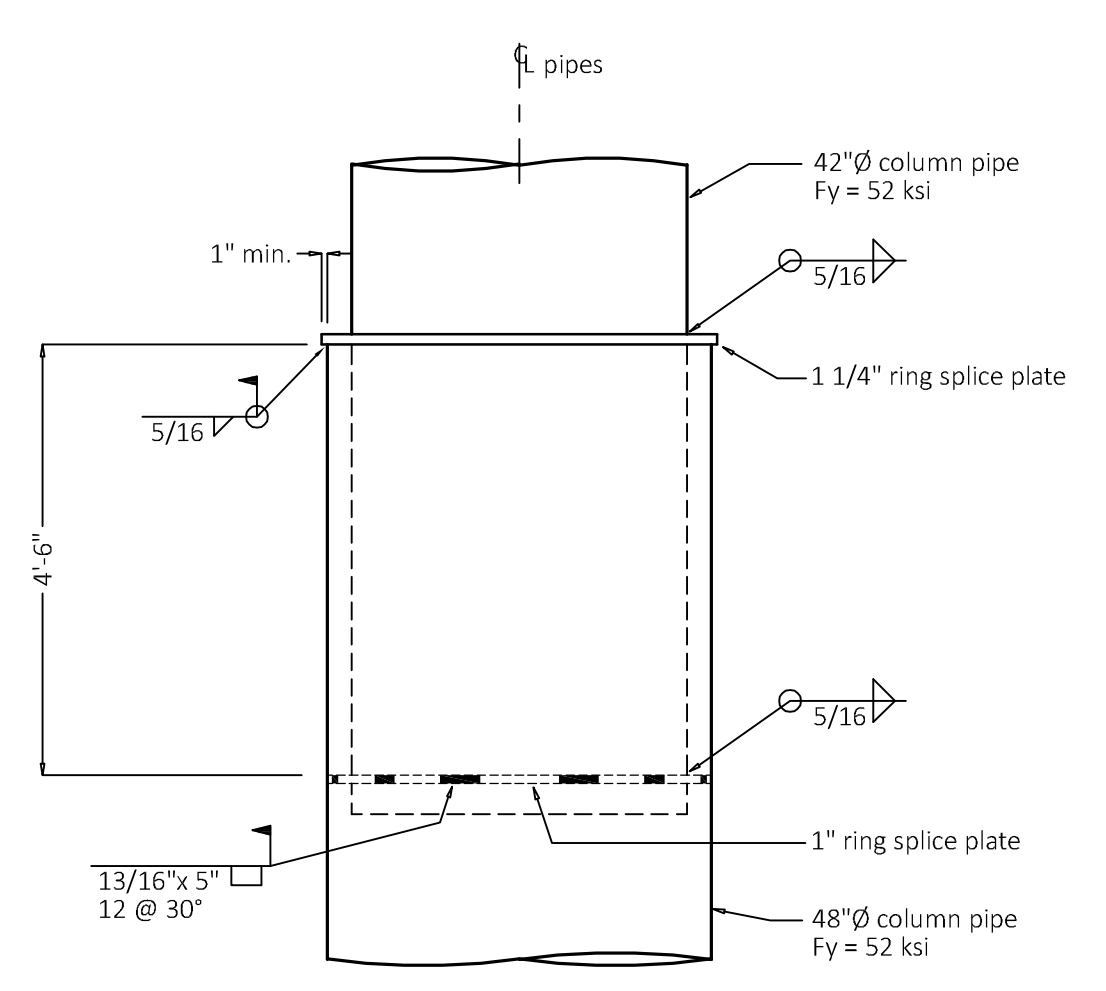
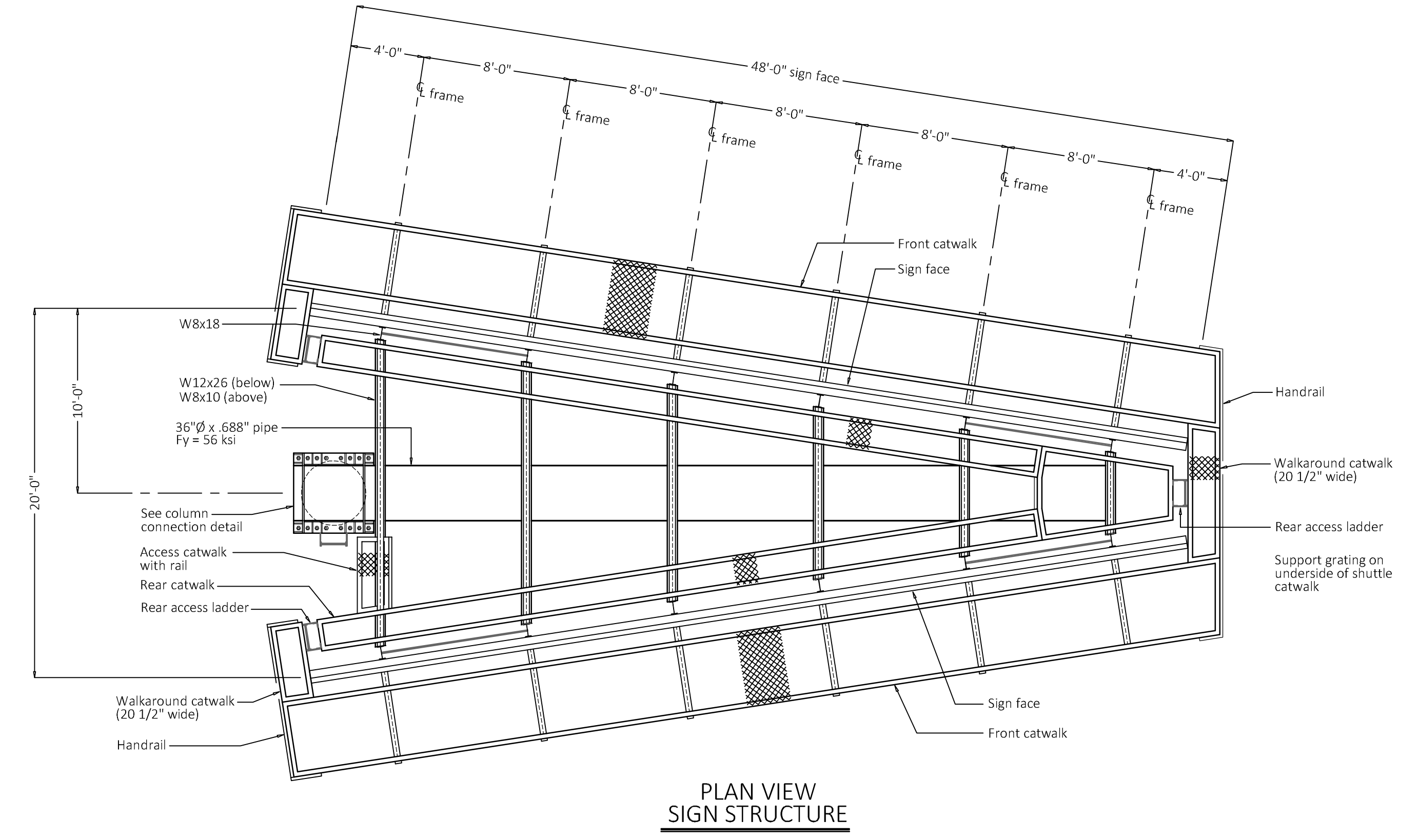
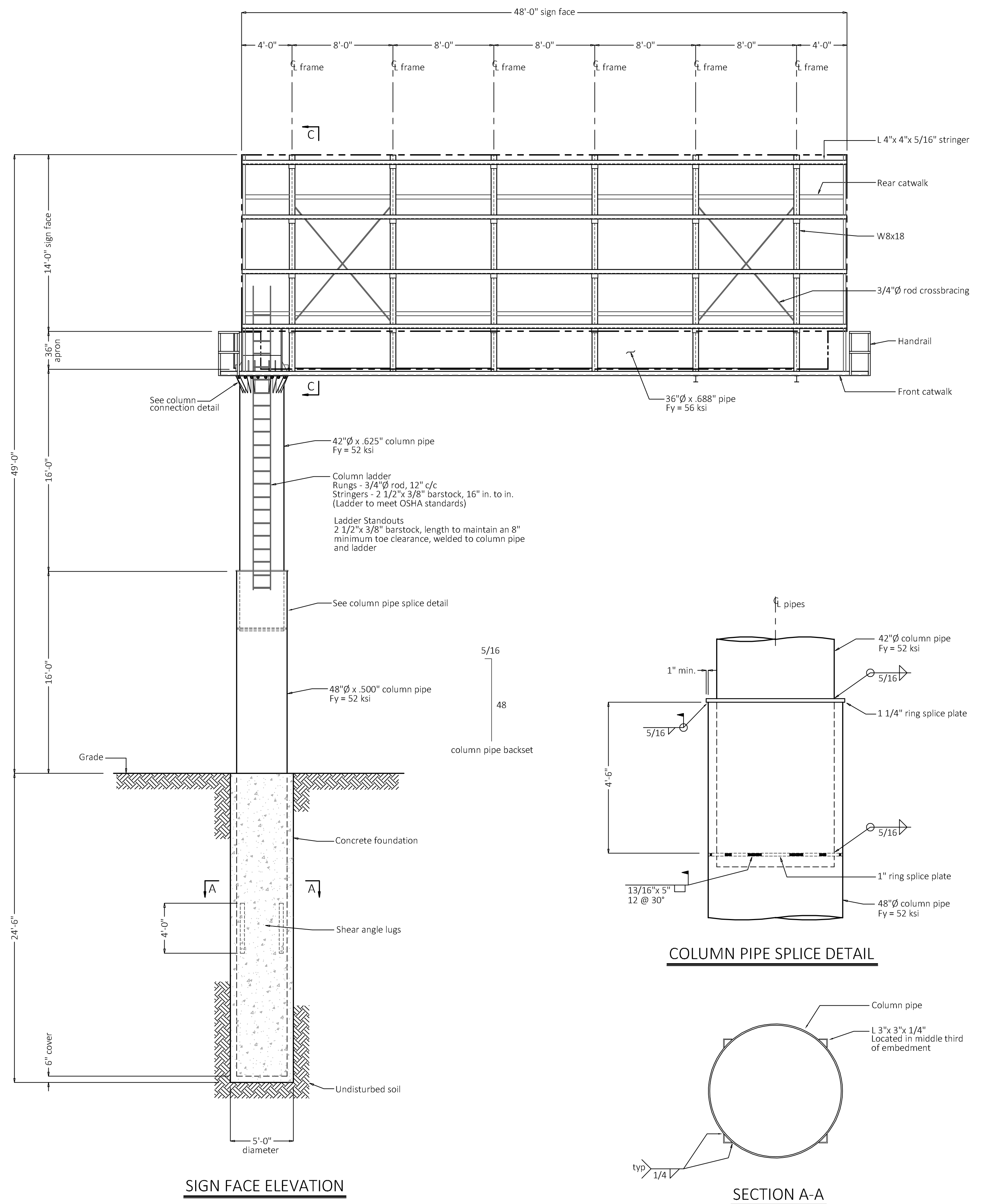


Issues:

1. Need City council approval to relocate sign
2. Need to relocate sign after demo of building
3. Requires City sign and building permit

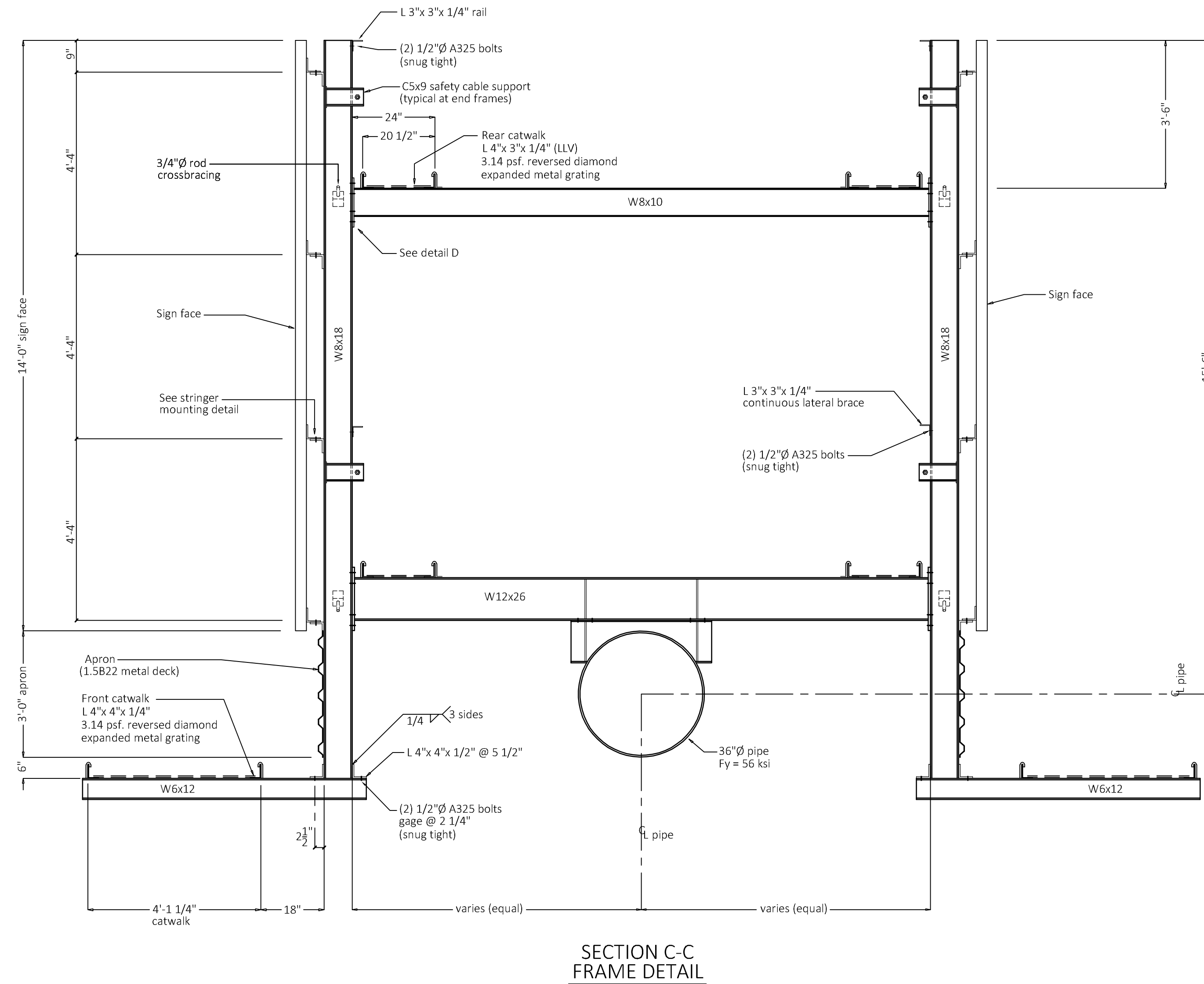


ENGINEER	DATE	REMARKS
fy	6-9-23	for approval
a2d	6-13-23	revised
sv		

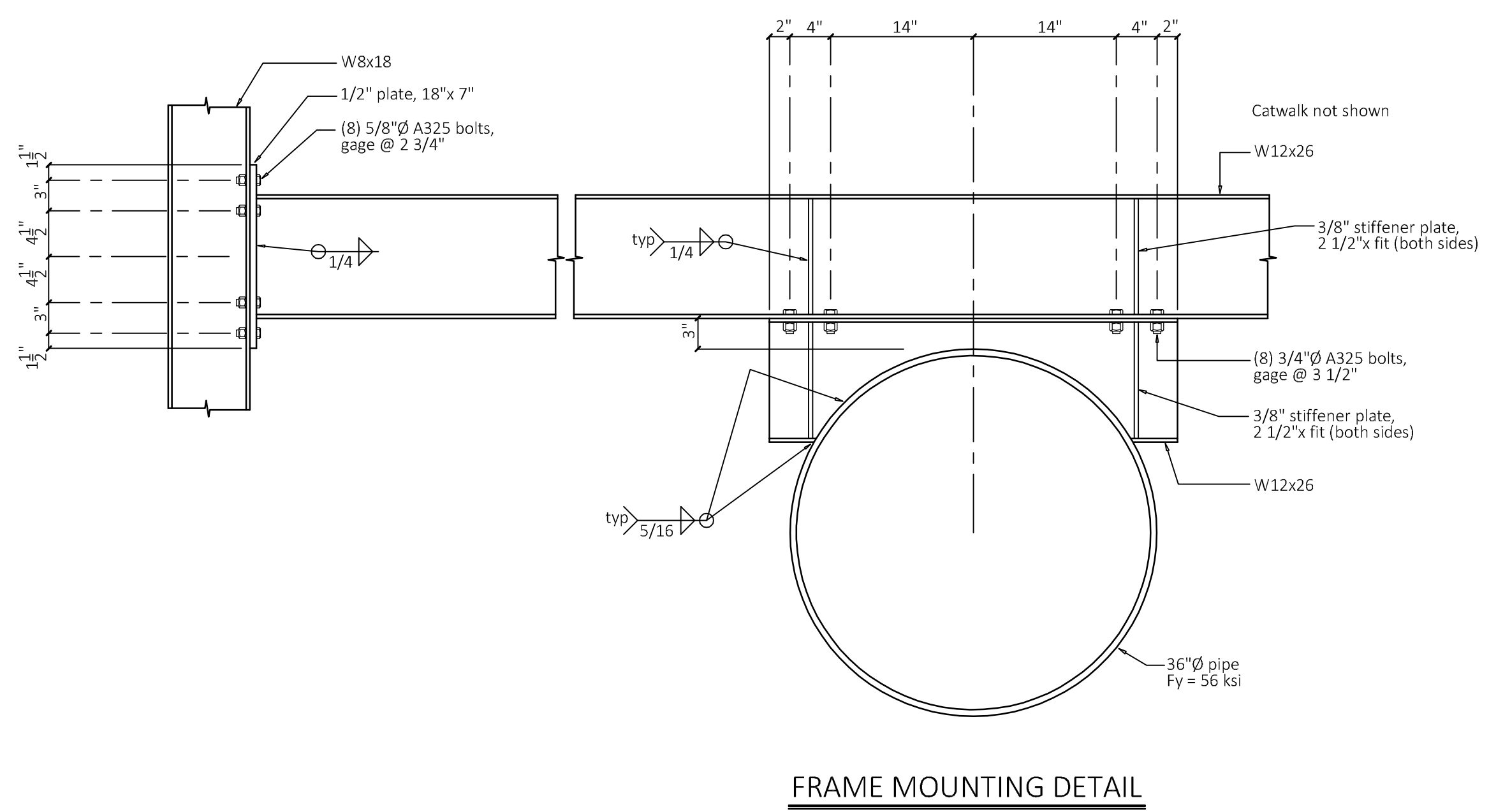


- NOTES**
- Structural design conforms to the 2018 International Building Code.
 - Design standard is ASCE 7-16.
 - Design dead load of the superstructure without faces is 36,900 pounds.
 - Superstructure can accommodate two stringerless faces weighing up to 8,000 pounds each.
- WIND**
- Design winds - 109 mph. (3 sec. gust) Exposure C.
 - Structure is classified risk category II.
 - Wind importance factor - Iw = 1.0
 - Design wind pressure is 25.3 p.s.f.
- SEISMIC**
- Seismic load importance factor: IE = 1.0
 - Structure is classified occupancy category II.
 - Mapped spectral response accelerations:
 - SS = 0.048 g
 - S1 = 0.030 g
 - Site class : D
 - Spectral response coefficients:
 - SDS = 0.051
 - SD1 = 0.048
 - Seismic design category is A.
 - Seismic basic force resisting system:
 - Non-building structure not similar to building - signs and billboards.
 - Design base shear: 1.8 kips
 - Seismic response coefficient: Cs = 0.030
 - A325 bolts and nuts to be galvanized.
 - Bolt holes shall be the AISC standard size (unless noted otherwise).
 - All high strength bolts shall be fully pretensioned (unless noted otherwise).
 - Steel shall be primed and painted, except for the embedded portions of members.
 - Steel welding shall be in accordance with AWS standards.
 - Steel members and elements of the structure shall be fabricated and erected according to the latest AISC specifications and standard practice.
- FOUNDATION & CONCRETE**
- Concrete shall attain a 28-day compressive strength of $f'_c = 3000$ p.s.i.
 - Soil report by Braun/Intertec, Project No. B2303339.
- GENERAL**
- The contractor shall verify all dimensions and conditions in the field and notify the engineer of any discrepancies.
 - Voss Structural Engineering, PLLC, will not be supervising or monitoring the erection/installation of this structure.
 - This is an original unpublished drawing; it is not to be reproduced, copied, or exhibited in any fashion without written permission of Clear Channel Outdoor.

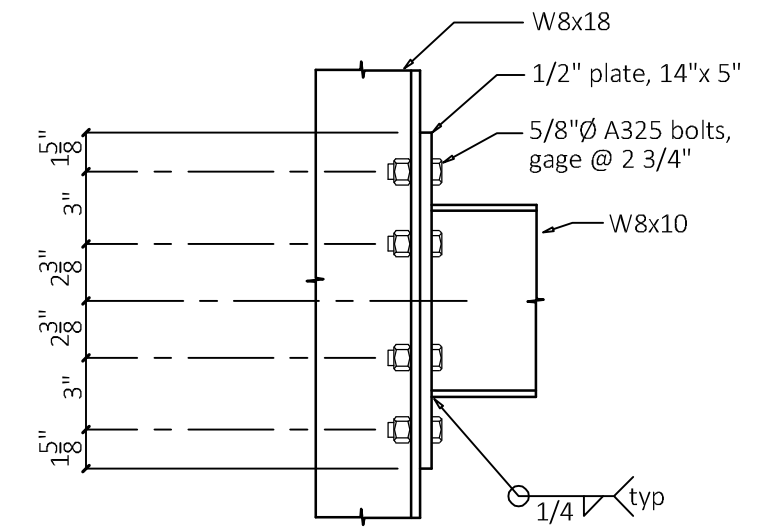
14'-0" x 48'-0"
MONOPOLE SIGN STRUCTURE
FULL FALG 20' V
49'-0" OVERALL HEIGHT
7731 4TH AVENUE SOUTH
RICHFIELD, MINNESOTA



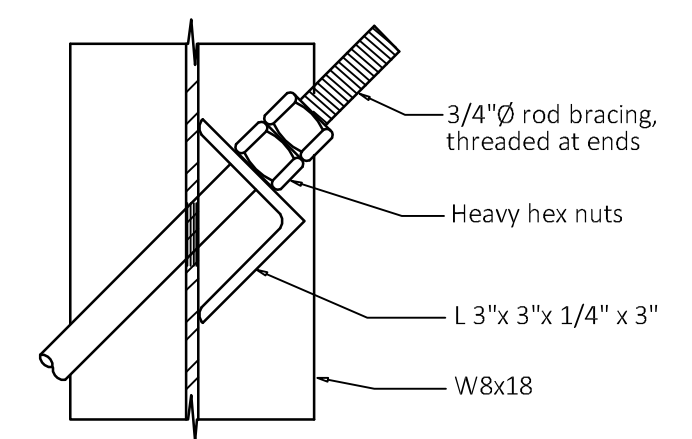
**SECTION C-C
FRAME DETAIL**



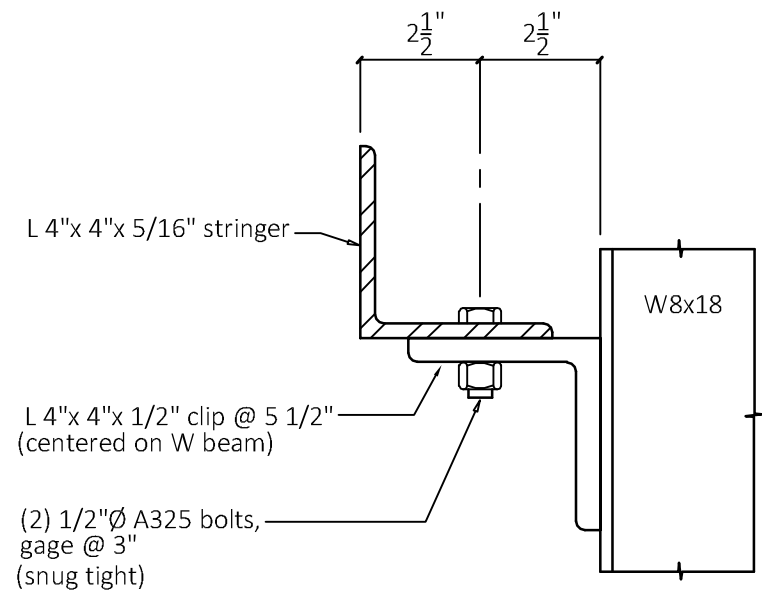
FRAME MOUNTING DETAIL



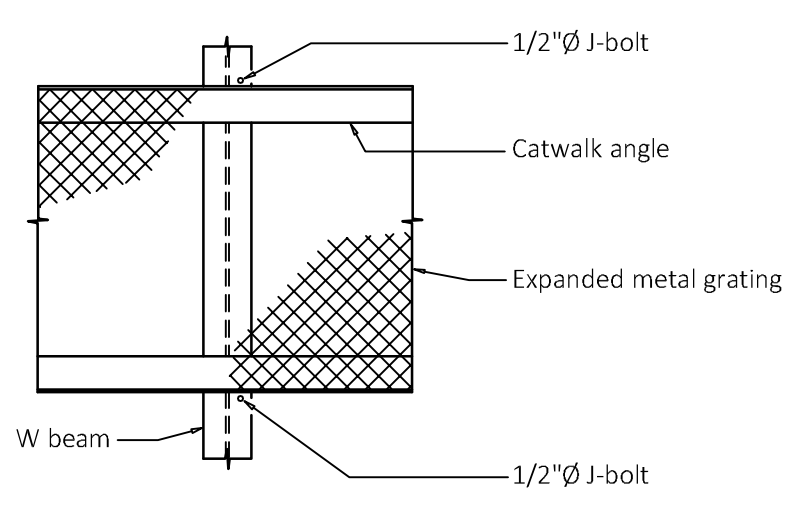
DETAIL D



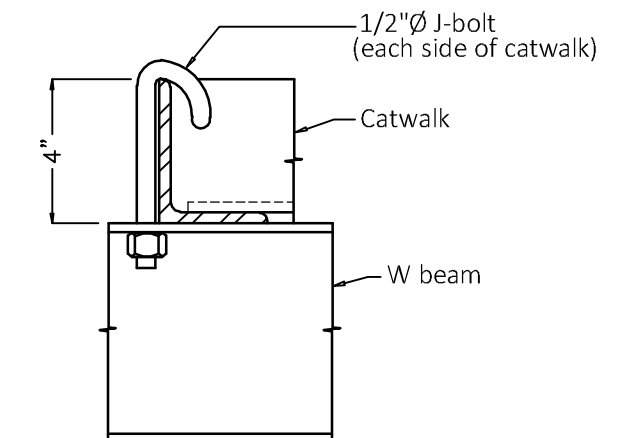
CROSSBRACING DETAIL



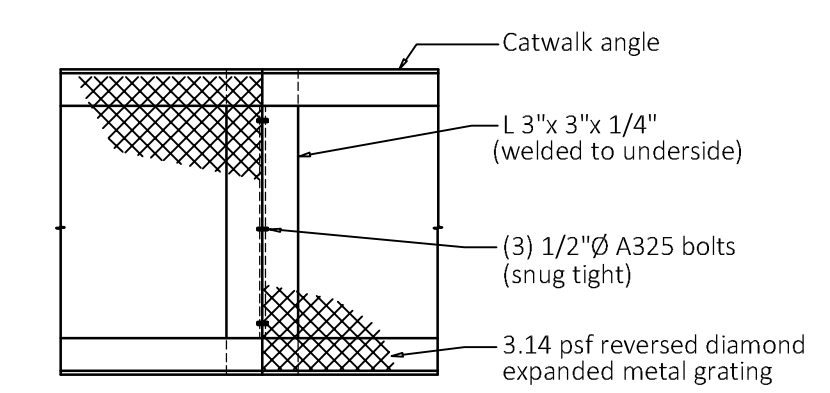
STRINGER MOUNTING DETAIL



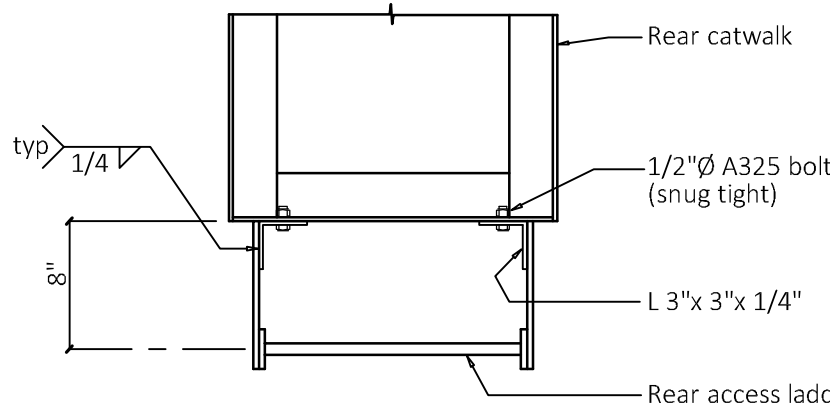
CATWALK DETAIL



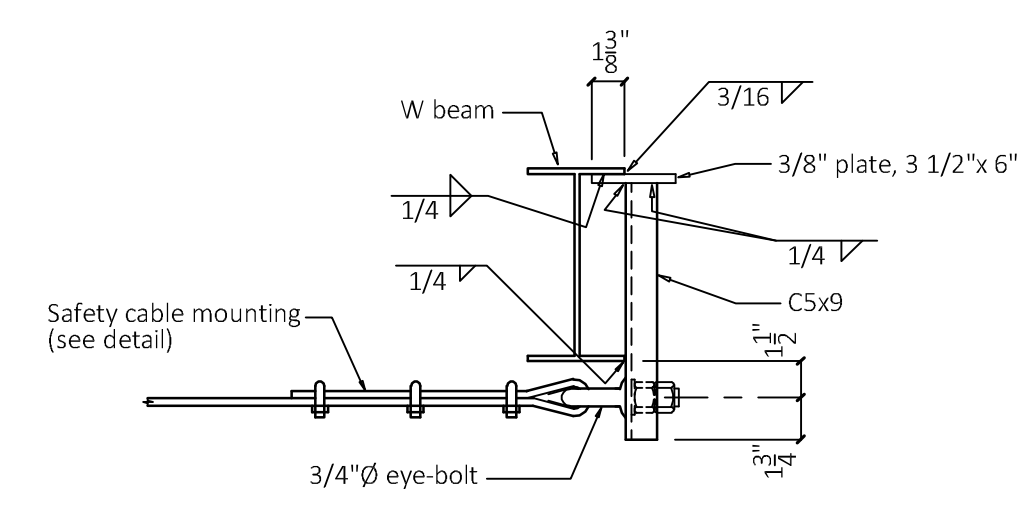
CATWALK MOUNTING DETAIL



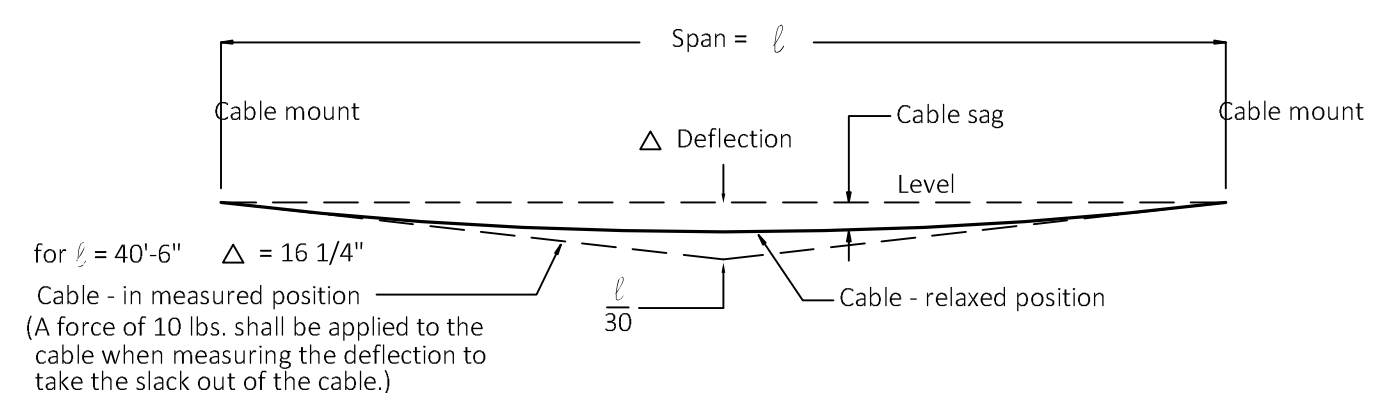
CATWALK SPLICE DETAIL



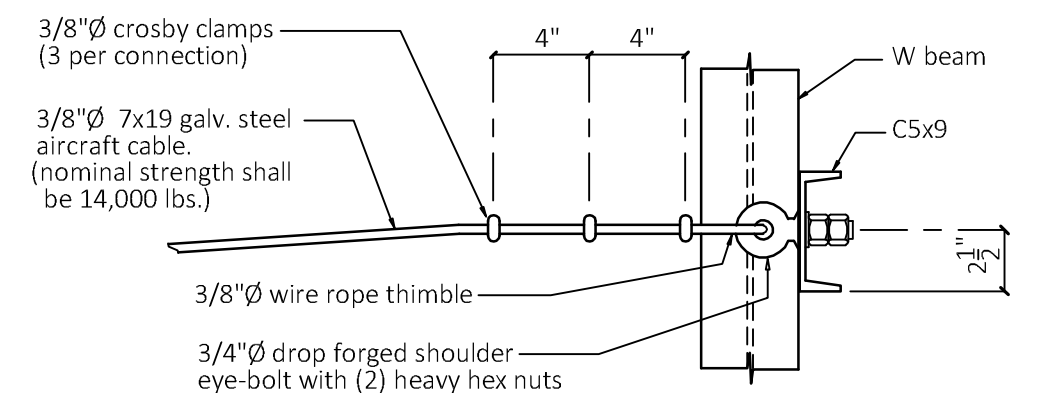
REAR LADDER MOUNTING DETAIL



TOP VIEW



SAFETY CABLE INSTALLATION CRITERIA



SAFETY CABLE MOUNTING

ENGINEER	DATE	ISSUE	REVISIONS
	6-9-23	00	for approval
	6-13-23	01	revised

Ultra LED Billboard Light Series



Ultra Billboard Light 150

The Ultra Billboard Light is a revolutionary LED light used for various applications. Unlike traditional LED lighting, the Ultra Billboard Light's heat displacement feature drastically extends the life span of the LEDs. The Ultra Billboard Light is inexpensive, energy efficient and provides continuous, trouble-free lighting for 10 years.



- ECO green product; dark-sky compliant
- 3:1 light spread - requires fewer LEDs to maintain effective illumination intensity
- Small dimensions and lightweight packaging make installation fast and simple
- Single pole installation lowers the cost of installation
- Adjustable tilt for optimizing illumination based on height range
- Patented asymmetric optical lens ensures high intensity brightness from edge to edge of your lighting application

- Highest concentration of light on desired areas
- Reduced light spillage means the light does not spill into the night sky
- Less heat and no uv emissions substantially reduces the attraction of mosquitos and other insects
- IP 65 rated - water resistant and corrosion resistant
- Typical Applications: Signage, dark sky lighting, billboard lights, and special building exterior lighting applications



Product Specifications:

Mount Type:	Up to 1.75" x 1.75" square or up to 1.5" diameter round tubing
Size:	11.5"x22.5"x6" (HxWxD)
Color Temperature:	5000K
Material:	extruded aluminum
LED Quantity:	96
Luminous Flux:	122lm @ 350mA
Rated lumen:	15255 lm
Product Life:	10 year

Product Specifications cont.:

Wattage:	150W
Weight:	17 lbs
Warranty:	10 Years

Electrical Specifications:

Input Voltage:	90-295VAC
Power Supply Eff:	91%
Power Factor:	0.94



(214) 504-2404

* Confidential & Proprietary

Ultravision International
 sales@uvintmail.com
 www.ultravisioninternational.com



STAFF REPORT NO. 102
CITY COUNCIL MEETING
8/8/2023

REPORT PREPARED BY: Matt Hardegger, Transportation Engineer

DEPARTMENT DIRECTOR REVIEW: Kristin Asher, Public Works Director
8/1/2023

OTHER DEPARTMENT REVIEW: Sack Thongvanh, Assistant City Manager

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
8/2/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider approval of an easement agreement for perpetual easements on four roadways that border the tax parcels containing ISD #280's STEM and Dual Language Elementary Schools

EXECUTIVE SUMMARY:

- Engineering and Public Works are designing and constructing a sidewalk along 71st Street from Elliot Avenue to 12th Avenue on the south side of the STEM/RDLS elementary school property.
- The addition of the sidewalk requires relocating an existing fence several feet to the north, outside the previously assumed right of way, which would require an easement.
- When reviewing title documentation for the parcels in question, the city's consultant surveyor noted that the title documentation showed ISD #280's parcel ownership extended to the centerline of 70th Street, 12th Avenue, 71st Street, and Elliot Avenue.
- This easement agreement provides the city access to the existing roadway and utility infrastructure within the typical public right-of-way dimensions for roads in Richfield, with an additional easement to relocate the fence as part of the sidewalk project.

RECOMMENDED ACTION:

By Motion: Approve the easement agreement for perpetual easements on four roadways which border the tax parcels containing ISD #280's STEM and Dual Language Elementary Schools

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

See Executive Summary.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

Approval of the easement agreement is consistent with City Council Strategic Priority/Outcome 3a (Sustainable Infrastructure - City Infrastructure Supports Service Needs).

C. CRITICAL TIMING ISSUES:

An executed easement agreement is required prior to the start of sidewalk construction in the coming months.

D. FINANCIAL IMPACT:

The easement is to be granted to the City at no cost.

E. **LEGAL CONSIDERATION:**

The City Attorney's office drafted the easement agreement and will be available to answer questions.

ALTERNATIVE RECOMMENDATION(S):

None.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None.

ATTACHMENTS:

Description	Type
☐ Easement Agreement with Richfield Public Schools	Contract/Agreement

RIGHT-OF-WAY AND UTILITY EASEMENT

THIS INSTRUMENT is made by Independent School District No. 280, Richfield Public Schools, a body corporate and politic in the State of Minnesota (“Owner”), in favor of the City of Richfield, a Minnesota municipal corporation (“City”) (together with Owner referred to herein as the “Parties” or each a “Party”).

Recitals

- A. Owner is the fee owner of the certain real property located at 7020 12th Avenue South and at 7001 Elliot Avenue South, in Richfield, Hennepin County, Minnesota, (PID Nos. 35-028-24-21-0002 and 35-028-24-21-0001) and legally described on the attached Exhibit A (collectively, the “Property”).
- B. Owner desires to grant to the City a perpetual, non-exclusive right-of-way and utility easement, according to the terms and conditions contained herein.

Terms of Easement

1. Incorporation. The above recitals and attached exhibits are hereby incorporated and made part of this Instrument.
2. Grant of Easement. For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged by Owner, Owner grants and conveys to the City a permanent, non-exclusive easement for public right-of-way and utility purposes over the portions of the Property legally described on Exhibit B and depicted on Exhibit C attached hereto (the “Easement Area”).
3. Scope of Easement. The above-described easement includes the rights of the City, its contractors, agents, and employees to enter the Easement Area at all reasonable times for the purposes of locating, constructing, reconstructing, operating, maintaining, improving, inspecting, altering, and repairing a roadway, sidewalk, utility improvements including water, sanitary sewer, and storm sewer and other utility improvements, and other public facilities or improvements of any type that are not inconsistent with use as a public right-of-way, within the Easement Area. The City’s easement rights herein include the right to permit private utilities within the Easement Area.

The easement granted herein also includes the right to cut, trim, or remove from the Easement Area such improvements, trees, shrubs, or other vegetation, and to prohibit obstructions and grading alterations as in the City's judgment unreasonably interfere with the easement or the function of the facilities located therein. In the event any installation, maintenance, or repair by the City to the City's right of way or utilities within the Easement Area disturbs any of Owner's structures, landscaping, or other improvements, the City shall promptly restore the same to its condition immediately prior to such disturbance.

4. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants that may have existed on, or that relate to, the Easement Area or the Property prior to the date of this Instrument.

5. Binding Effect. The terms and conditions of this Instrument shall run with the land and be binding on Owner, its successors, and assigns.

STATE DEED TAX DUE HEREON: NONE

[The rest of this page left intentionally blank; signatures to follow on next page]

EXHIBIT A

Legal Description of the Property

That Part of the Northeast Quarter of the Northwest Quarter of Section 35, Township 28, North, Range 24 West of the 4th Principal Meridian lying North of Zubert's Elliot Avenue Addition except the West 325.3 feet thereof.

EXHIBIT B

Legal Description of the Easement Area

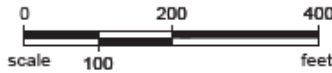
A permanent road, utility, and sidewalk easement over, under, and across the northerly 33.00 feet AND the easterly 33.00 feet AND the westerly 30.00 feet AND the southerly 35.00 feet of the following property:

That Part of the Northeast Quarter of the Northwest Quarter of Section 35, Township 28, North, Range 24 West of the 4th Principal Meridian lying North of Zubert's Elliot Avenue Addition except the West 325.3 feet thereof.

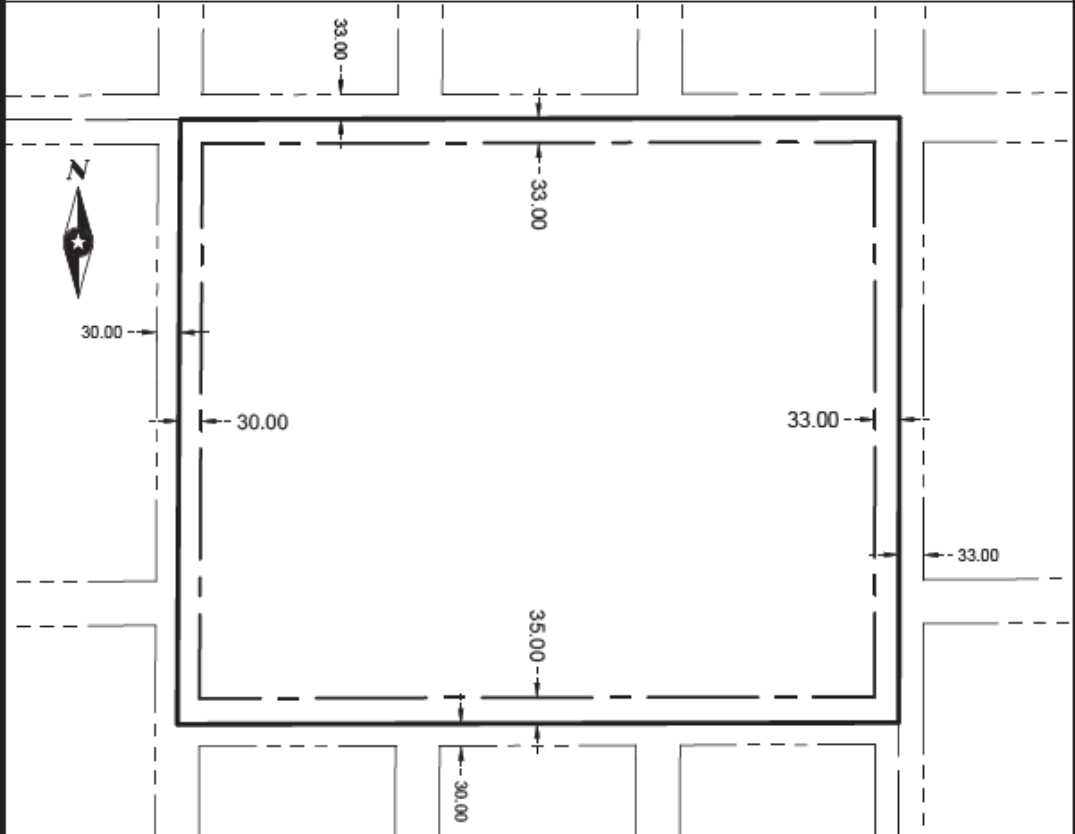
EXHIBIT C
Depiction of the Easement Area

A Permanent road, utility, and sidewalk easement over, under, and across the northerly 33.00 feet AND the easterly 33.00 feet AND the westerly 30.00 feet And the southerly 35.00 feet of the following property:

That Part of the Northeast Quarter of the Northwest Quarter of Section 35, Township 28, North, Range 24 West of the 4th Principal Meridian lying North of Zubert's Elliot Avenue Addition except the West 325.3 feet thereof.



ORIENTATION OF THIS BEARING SYSTEM IS
 BASED ON THE HENNEPIN COUNTY
 COORDINATE SYSTEM, NAD83 (2011 ADJ)



EASEMENT EXHIBIT FOR: PID 3502824210002 & 3502824210001

**RICHFIELD
 HENNEPIN
 MINNESOTA**
 SEH Project RICHF 170899
 Drawn By TSB
 Designed By TSB
 Checked By TSB

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

THEODORE S BROWN
 DATE 7/14/2023

LICENSE NO. 51878





STAFF REPORT NO. 97
CITY COUNCIL MEETING
8/8/2023

REPORT PREPARED BY: Julie Urban, Asst. Community Development Director

DEPARTMENT DIRECTOR REVIEW: Melissa Poehlman, Community Development Director
7/31/2023

OTHER DEPARTMENT REVIEW: Sack Thongvanh, Assistant City Manager

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
7/31/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider the adoption of a resolution identifying the need for Livable Communities Transit Oriented Development funding and authorizing an application for grant funds on behalf of the Aster Commons development, located at 6613-25 Portland Avenue.

EXECUTIVE SUMMARY:

Beacon Interfaith Housing Collaborative (Beacon) is seeking to develop the Housing and Redevelopment Authority (HRA)-owned property located at 6613-25 Portland Avenue with 38 units of affordable, supportive housing. Beacon is proposing to submit a request for a Livable Communities Act (LCA) Transit-Oriented Development (TOD) grant in the amount of one million dollars to help finance the project.

LCA grants help communities achieve development goals that create more housing choice, support living wage job creation, and connect jobs, housing, and regional amenities to create a more equitable region. LCA TOD grants are focused on high density projects that contribute to a mix of uses in TOD-eligible areas, which include areas along light rail, commuter rail, bus rapid transit, and high frequency bus corridors.

Applications are due on August 14, 2023. The City is the applicant and recipient of the grant on behalf of the development. A resolution of support approved by the City Council is required with the application

RECOMMENDED ACTION:

By motion: Adopt a resolution identifying the need for Livable Communities Transit Oriented Development funding and authorizing an application for grant funds on behalf of the Aster Commons development, 6613-24 Portland Avenue.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- Beacon presented its development concept for the property to the City Council, HRA, and Planning Commission on March 8, 2022. On March 23, 2022, the Council approved a resolution in support of the concept of developing of affordable, supportive housing on the site.
- On June 20, 2023, the HRA approved a Contract for Private Redevelopment with Beacon which commits the HRA to holding a public hearing to consider selling the property to Beacon for one dollar and provides a grant of \$500,000 from the Affordable Housing Trust Fund.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The Metropolitan Council requires the City to be the applicant and to submit a resolution in support of the grant application.
- It is the City's policy to seek grant funding when available and as appropriate.

C. CRITICAL TIMING ISSUES:

- The grant application is due August 14, 2023, and a resolution of support needs to be submitted as part of the application.
- Approval of the application would be awarded in December.
- Funds must be expended within three years of the grant award.

D. FINANCIAL IMPACT:

- Funding would be provided by the Metropolitan Council.
- Community Development has the staff capacity to help prepare the application and administer the grant, if awarded funds.

E. LEGAL CONSIDERATION:

- The City will be required to enter into a grant agreement with the Metropolitan Council, if funding is awarded.
- The City Attorney will review the grant agreement prior to execution.

ALTERNATIVE RECOMMENDATION(S):

Decide not to apply for grant funds.

PRINCIPAL PARTIES EXPECTED AT MEETING:

NA

ATTACHMENTS:

Description	Type
□ Resolution	Resolution Letter

RESOLUTION NO.

RESOLUTION IDENTIFYING THE NEED FOR LIVABLE COMMUNITIES TRANSIT ORIENTED DEVELOPMENT FUNDING AND AUTHORIZING APPLICATION FOR GRANT FUNDS

WHEREAS, the City of Richfield is a participant in the Livable Communities Act's Local Housing Incentives Account Program for 2023 as determined by the Metropolitan Council, and is therefore eligible to apply for Livable Communities Act Transit Oriented Development (TOD) grant funds; and

WHEREAS, the City has identified a proposed project within the City that meets the Transit Oriented Development Account purposes and criteria and is consistent with and promotes the purposes of the Metropolitan Livable Communities Act and the policies of the Metropolitan Council's adopted metropolitan development guide; and

WHEREAS, the City has the institutional, managerial and financial capability to ensure adequate project administration; and

WHEREAS, the City certifies that it will comply with all applicable laws and regulations as stated in the grant agreement; and

WHEREAS, the City agrees to act as legal sponsor for the project contained in the grant application submitted on August 14, 2022; and

WHEREAS, the City acknowledges TOD grants are intended to fund projects or project components that can serve as models, examples or prototypes for development or redevelopment projects elsewhere in the region, and therefore represents that the proposed project can be replicated in other metropolitan-area communities; and

WHEREAS, only a limited amount of grant funding is available through the Metropolitan Council's TOD grants during each funding cycle and the Metropolitan Council has determined it is appropriate to allocate those scarce grant funds only to eligible projects that would not occur without the availability of TOD grant funding.

NOW, THEREFORE, BE IT RESOLVED

1. It is in the best interests of the City's development goals and priorities for the proposed project to occur at this particular site and at this particular time.
2. The project components for which TOD grant funding is sought will not occur solely through private or other public investment within the reasonably foreseeable future and will occur within three years after a grant award only if TOD funding is made available for this project at this time.

3. The City has undertaken reasonable and good faith efforts to procure funding for the project components for which TOD grant funding is sought but was not able to find or secure from other sources, funding that is necessary for project component completion within three years and states that this representation is based on the following reasons and supporting facts: the project requires significant funding to cover the costs of redeveloping an existing small site, providing 100% affordability at 30% and 50% of the Area Median Income (AMI), providing supportive services, and increased construction costs.

Project Name	Amount Requested
Aster Commons	\$1,000,000

4. Staff is authorized to submit on behalf of the City an application for Metropolitan Council TOD grant funds for the project components identified in the application, and to execute such agreements as may be necessary to implement the project on behalf of the City.

Adopted by the City Council of the City of Richfield, Minnesota this 8th day of August, 2023.

Mary B. Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk



STAFF REPORT NO. 98
CITY COUNCIL MEETING
8/8/2023

REPORT PREPARED BY: Jennifer Anderson, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
7/28/2023

OTHER DEPARTMENT REVIEW: Sack Thongvanh, Assistant City Manager

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
8/2/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider approval of the 2023-2024 Emergency Preparedness agreement with the City of Bloomington, using public health emergency preparedness grant funds distributed by a federal grant from the Centers for Disease Control, to provide services in the area of public health emergency preparedness/bio-terrorism and the development of a response system.

EXECUTIVE SUMMARY:

The City of Richfield has had a public health emergency preparedness contract with the City of Bloomington to provide public health emergency preparedness services on Richfield's behalf for over twenty years. This is Richfield's 2023-2024 contractual agreement with Bloomington.

The City will receive \$55,547 for the grant cycle which runs from July 1, 2023, to June 30, 2024. The contract with the City of Bloomington for this same period of time for public health emergency preparedness is in the amount of \$51,501, of which \$16,500 is being passed through directly to Bloomington to meet the Cities Readiness Initiative (CRI), which is intended to be used metro wide to regionally fund public health emergency preparedness planning, exercise, training and activities. A remaining amount of \$4,046 is retained by Richfield for our staff time, training, planning and exercise in public health emergency preparedness activities.

RECOMMENDED ACTION:

By motion: Approve the 2023-2024 contract with the City of Bloomington, using public health emergency preparedness grant funds distributed by a federal grant from the Centers for Disease Control, to provide services in the area of public health emergency preparedness/bio-terrorism and the development of a response system.

BASIS OF RECOMMENDATION:

A. **HISTORICAL CONTEXT**

See Executive Summary.

B. **POLICIES (resolutions, ordinances, regulations, statutes, etc):**

The City of Richfield became a Local Public Health Agency in 1977, which makes the City eligible to

receive these grant funds to use for the development of a public health emergency response system specific to Richfield and its needs.

C. CRITICAL TIMING ISSUES:

These funds are part of a nationwide effort by the federal government to respond to serious public health emergencies, including threats of bio-terrorism.

D. FINANCIAL IMPACT:

Funds being used are those given to Richfield as a Local Public Health agency, from the federal government, to develop a system for responding to public health emergency preparedness and bio-terrorism threats.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed the contract and has approved of its contents.

ALTERNATIVE RECOMMENDATION(S):

The City Council could decide not to approve the contract with the City of Bloomington for the services of a Public Health Emergency Preparedness Coordinator in developing a public health emergency preparedness/bio-terrorism plan. This would mean the City would have to hire a staff person to assume some of the grant responsibilities which cannot be met with current staffing levels and would result in a significant budget increase.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
▣ PHEP/CRI agreement 2023-2024	Cover Memo

PUBLIC HEALTH PREPAREDNESS SERVICES AGREEMENT

BETWEEN THE MINNESOTA CITIES OF BLOOMINGTON AND RICHFIELD

THIS AGREEMENT is made by and between the **CITY OF BLOOMINGTON, MINNESOTA**, a Minnesota municipal corporation located at 1800 West Old Shakopee Road, Bloomington, Minnesota 55431-3027 acting through its Public Health Division, (Bloomington”), and **CITY OF RICHFIELD, MINNESOTA**, a Minnesota municipal corporation located at 6700 Portland Avenue, Richfield, Minnesota 55423 (“Richfield”). Bloomington and Richfield are herein referred to collectively as the “Parties.”

RECITALS

- A. Bloomington warrants and represents that its Division of Public Health is a duly certified public health agency operating in accordance with all applicable federal and state requirements.
- B. Bloomington’s Division of Public Health provides Public Health Emergency Preparedness Services to respond to bioterrorism, infectious diseases, and other threats to public health including, but not limited to coordination, assessment, planning and exercise, response, surveillance, notification, and training (“PH Emergency Preparedness Services”). Bloomington also provides services and activities to improve the mass dispensing of medicines and medical supplies through the Cities Readiness Initiative (“CRI Duties”).
- C. Richfield wishes to promote, support, and maintain the health of its residents by providing PH Emergency Preparedness Services and Cities Readiness Initiative (“CRI”) planning activities to its residents, and desires to contract with Bloomington to provide such PH Emergency Preparedness Services and CRI Duties, funding these duties via Minnesota Department of Health (MDH) grant dollars and subject to the grant compliance timeliness provided by MDH.
- D. Bloomington is willing to provide such PH Emergency Preparedness Services and perform such CRI Duties to residents of Richfield on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, based on the Recitals above and in consideration of the terms and conditions expressed in this Agreement, City and Contractor agree as follows:

AGREEMENT

1. **Services to be Provided.** Bloomington agrees to provide the residents of Richfield with PH Emergency Preparedness Services and CRI Duties as described in the Scope of Services attached to this Agreement as Exhibit A or any supplemental letter agreements, or both, entered into between Bloomington and Richfield (the “Services”). The Services referenced in the attached Exhibit A or any supplemental letter agreements shall be incorporated into this Agreement by reference. All Services shall be provided in a manner consistent with

the level of care and skill ordinarily exercised by contractors currently providing similar services.

2. **Time for Completion.** This Agreement shall remain in force and effect commencing from July 1, 2023 and continuing until June 30, 2024 unless terminated by either party or amended pursuant to the Agreement.
3. **Consideration.** The consideration, which Richfield shall pay to Bloomington shall not exceed \$51,501.00, as set forth in Exhibit B and incorporated into this Agreement.
4. **Approvals.** Bloomington will secure Richfield's written approval before making any expenditures, purchases, or commitments on Richfield's behalf beyond those listed in the Services. Richfield's approval may be provided via electronic mail.
5. **Termination.** Notwithstanding any other provision hereof to the contrary, either party may terminate this Agreement for any reason upon giving thirty (30) days' written notice to the other party. In the event of termination:
 - a. The quarterly payment next due shall be prorated and paid for only the period ended on the date of termination, and Richfield shall pay such reduced quarterly payment for the period ended on the date of the termination, within fifteen (15) days after receipt of Bloomington's invoice.
 - b. The Parties may take whatever action at law or in equity that may appear necessary or desirable to collect damages arising from a default or violation or to enforce performance of this Agreement.
 - c. The provisions of this section will continue and survive termination of the Agreement.
6. **Amendments.** Except as expressly permitted by this Agreement, no amendments may be made to this Agreement except in writing signed by both parties.
7. **Records/Inspection.** Pursuant to Minnesota Statutes § 16C.05, subd. 5, the Parties agree that the books, records, documents, and accounting procedures and practices of Contractor, that are relevant to the contract or transaction, are subject to examination by the other party and the state auditor or legislative auditor for a minimum of six years. Both Parties shall maintain such records for a minimum of six years after final payment.
8. **Indemnification.**
 - a. To the fullest extent permitted by law, Bloomington and its successors or assigns, agree to protect, defend, indemnify, save, and hold harmless Richfield, its officers, officials, agents, volunteers, and employees from any and all claims; lawsuits; causes of actions of any kind, nature, or character; damages; losses; or the costs, disbursements, and expenses of defending the same, including but not limited to attorneys' fees, professional services, and other technical, administrative or professional assistance resulting from or arising out of Bloomington's (or its subcontractors, agents, volunteers, members, invitees, representatives, or employees) performance of the duties required by or arising from this

Agreement, or caused in whole or in part by any negligent act or omission or willful misconduct, or arising out of the failure to obtain or maintain the insurance required by this Agreement.

- b. To the fullest extent permitted by law, Richfield, and its successors or assigns, agrees to protect, defend, indemnify, save, and hold harmless Bloomington, its officers, officials, agents, volunteers and employees from any and all claims, lawsuits; causes of actions of any kind, nature, or character; damages; losses; or the costs, disbursements, and expenses of defending the same, including but not limited to attorney's fees, professional services, and other technical, administrative or professional assistance resulting from or arising out of Richfield's (or its subcontractors, agents, volunteers, members, invitees, representatives, or employees) performance of the duties required by or arising from this Agreement, or caused in whole or in part by any negligent act or omission or willful misconduct, or arising out of the failure to obtain or maintain the insurance required by this Agreement.
- c. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the Parties are entitled. The Parties agree that these indemnification obligations will survive the completion or termination of this Agreement.

9. **Insurance.** To the extent allowed by law, the Parties agree to maintain the following insurance coverages, in an amount equal to, or greater than, the minimum limits described below, and upon request, to provide the other with a certificate of insurance evidencing such coverages:

- a. Commercial General Liability Insurance in the amount of at least \$1,500,000 per occurrence for bodily injury or death arising out of each occurrence, as well as \$1,500,000 per occurrence for property damage. In the alternative, each party may maintain a general aggregate of at least \$2,000,000. Each party agrees to name the other party as an additional insured on its Commercial General Liability and to provide an endorsement of such status. In addition, each party agrees to notify the other party thirty (30) days prior to cancellation or a change in any of the aforementioned insurance policies. All insurance must be provided at the respective party's expense and at no additional cost to the other party.
- b. Bloomington agrees to maintain Workers' Compensation Insurance as required by Minnesota Statutes, Section 176,181.

10. **Assignment and Subcontracting.** Neither Richfield nor Bloomington shall assign, subcontract, or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement, in whole or in part, without the written consent of the other except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Bloomington from employing such independent consultants, associates, and

subcontractors, as it may deem appropriate to assist it in the performance of Services required by this Agreement. Any instrument in violation of this paragraph is null and void.

11. **Independent Contractor.** Bloomington shall be deemed an independent contractor. Bloomington's duties will be performed with the understanding that Bloomington has special expertise as to the Services that Bloomington is to perform and is customarily engaged in the independent performance of the same or similar services for others. All required equipment and personnel shall be provided or contracted for by Bloomington. The manner in which the Services are performed shall be controlled by Bloomington; however, the nature of the Services and the results to be achieved shall be specified by Richfield. The Parties agree that this is not a joint venture and the Parties are not co-partners. Bloomington is not to be deemed an employee or agent of Richfield and has no authority to make any binding commitments or obligations on behalf of Richfield except to the extent expressly provided in this Agreement. All Services provided by Bloomington pursuant to this Agreement shall be provided by Bloomington as an independent contractor and not as an employee of Richfield for any purpose, including but not limited to: income tax withholding, workers' compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.
12. **Compliance with Laws.** The Parties shall exercise due care to comply with applicable federal, state and local laws, rules, ordinances and regulations in effect as of the date Bloomington agrees to provide the Services.
13. **Entire Agreement.** This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between Richfield and Bloomington and supersedes any other written or oral agreements between Richfield and Bloomington. This Agreement can only be modified in writing signed by Richfield and Bloomington. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
14. **Third Party Rights.** The Parties to this Agreement do not intend to confer on any third party any rights under this Agreement.
15. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Hennepin County, Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise. These obligations survive termination of this Agreement.
16. **Conflict of Interest.** Contractor shall use reasonable care to avoid conflicts of interest and appearances of impropriety in representation of Richfield. In the event of a conflict of interest, Bloomington shall advise Richfield and either secure a waiver of the conflict or advise Richfield that it will be unable to provide the Services.

17. **Work Products and Ownership of Documents.** All records, information, materials and other work products, including, but not limited to the completed reports, drawings, plans, and specifications prepared and developed in connection with the provision of Services pursuant to this Agreement shall become the property of Richfield, but reproductions of such records, information, materials and other work products in whole or in part may be retained by Bloomington. Regardless of when such information was provided, Bloomington agrees that it will not disclose for any purpose any information Bloomington has obtained arising out of or related to this Agreement, except as authorized by Richfield or as required by law. These obligations survive termination of this Agreement.
18. **Agreement Not Exclusive.** Bloomington retains the right to perform other PH Emergency Preparedness Services and CRI Duties for other matters, in Bloomington's sole discretion.
19. **Data Practices Act Compliance.** Any and all data provided to Bloomington, received from Bloomington, created, collected, received, stored, used, maintained, or disseminated by Bloomington pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and any applicable nondisclosure agreements. The Parties agree to notify the other party within three (3) business days if it receives a data request from a third party. This paragraph does not create a duty on the part of Bloomington to provide access to public data to the public if the public data are available from Richfield, except as required by the terms of this Agreement. These obligations survive termination of this Agreement.
20. **No Discrimination.** The Parties agree not to discriminate in providing products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Violation of any part of this provision may lead to immediate termination of this Agreement. Contractor agrees to comply with Americans with Disabilities Act, as amended ("ADA"), Section 504 of the Rehabilitation Act of 1973, and the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A. Each Party agrees to hold harmless and indemnify the other party from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of these laws by Contractor or its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and subcontractors. Upon request, the Parties shall provide accommodation to allow individuals with disabilities to participate in all Services under this Agreement. The Parties agree to utilize its own auxiliary aid or service in order to comply with ADA requirements for effective communication with people with disabilities.
21. **Authorized Agents.** Richfield's authorized agent for purposes of administration of this Agreement is Jennifer Anderson, the Health Administrator/Support Services Manager, or designee. Bloomington's authorized agent for purposes of administration of this Agreement is Nick Kelley, Public Health Administrator, who shall perform or supervise the performance of all Services.

22. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:

Bloomington: City of Bloomington, 1800 West Old Shakopee Road, Bloomington, MN 55431;

Attn: Nicholas Kelley; nkelley@bloomingtonmn.gov; 952-563-4962.

Richfield: City of Richfield, 6700 Portland Avenue, Richfield, MN 55423,

Attn: Jennifer Anderson; jenniferanderson@richfieldmn.gov; 612-861-9881;

or such other contact information as either party may provide to the other by notice given in accordance with this provision. A convenience copy may be provided electronically.

23. **Waiver.** No waiver of any provision or of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged with such a waiver.
24. **Headings.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit or affect the scope and intent of this Agreement.
25. **Mediation.** Both parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation at the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, Minnesota 55405. In the event mediation is unsuccessful, either party may exercise its legal or equitable rights.
26. **Publicity.** Bloomington and Richfield shall develop language to use when discussing the Services. Bloomington agrees that any publicity regarding the Services or the subject matter of this Agreement must not be released unless it complies with the approved language. Bloomington cannot use Richfield's logo or state that Richfield endorses its services without Richfield's advanced written approval. Publicity approvals may be provided electronically.
27. **Severability.** In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect.
28. **Signatory.** Each person executing this Agreement ("Signatory") represents and warrants that he/she/they is duly authorized.
29. **Counterparts and Electronic Communication.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be transmitted

by electronic mail in portable document format (“pdf”) and signatures appearing on electronic mail instruments shall be treated as original signatures.

30. **Recitals.** Bloomington and Richfield agree that the Recitals are true and correct and are fully incorporated into this Agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, City and Contractor have caused this Services Agreement to be executed by their duly authorized representatives on the respective dates indicated below.

CITY OF BLOOMINGTON, MINNESOTA

DATED: _____ BY: _____
James D. Verbrugge
Its: City Manager

Reviewed and approved by the City Attorney.

Melissa J. Manderschied

CITY OF RICHFIELD

DATED: _____ BY: _____
Its: _____

**EXHIBIT A TO SERVICES AGREEMENT BETWEEN THE MINNESOTA CITIES OF
BLOOMINGTON AND RICHFIELD**

SCOPE OF SERVICES

EXHIBIT B TO SERVICES AGREEMENT BETWEEN
THE MINNESOTA CITIES OF BLOOMINGTON AND RICHFIELD

TERMS OF PAYMENT

- A. Richfield shall pay Bloomington the total not-to-exceed amount of \$51,501 during the term of this Agreement for services outlined below:
1. \$35,001 for PH Emergency Preparedness Services; and
 2. \$16,500 for CRI Duties
- B. The amounts above will be paid according to the following terms:
1. Bloomington shall invoice Richfield for Services identified on Exhibit A, as follows:

Invoice Date:	Amount:
Upon Contact Execution	\$12,875.25
December 1, 2023	\$12,875.25
March 1, 2024	\$12,875.25
June 1, 2024	\$12,875.25

Payment shall be made within 15 days of receipt by Richfield of Bloomington's invoice.

BP5 Supplement Document

GENERAL OVERVIEW

The BP5 CHB Grant Duties were developed through regional conversations with local public health emergency preparedness coordinators, information from LPH reporting, CDC priorities, and input from MDH Division of Emergency Preparedness and Response staff. The duties were reviewed by a group of LPH representatives and the SCHSAC PHEP Oversight Work Group. (Reference 2023-2024 Concurrence Letter)

Grantees shall fully participate in site visits, technical assistance sessions or reviews, financial and programmatic review evaluations, state scheduled events, exercises, conference calls, and meetings as requested or required by the state or federal funding agency. (Reference PHEP contract)

Allow state, local, tribal agencies to advance response strategies aligned with community needs, preferences, and resources without overprescribing “how” to specifically manage every jurisdictional plan, response, etc. (Reference CDC National Standards PHEP Capabilities Document)

Tiered Strategies- The required number of strategies or gaps identified across grant duties are tied to CHB-TH funding levels.

Recurring Duties

Duty	Additional Resources	Due Dates
Mid-Year Report	Use REDCap for grant duties reporting	Dec. 29, 2023
EOY	Use REDCap for grant duties reporting	July 8, 2024
Integrated Preparedness Plan – (Formerly MYTEP)		PartnerLink announcement
Update and maintain accounts: PartnerLink MIN Responds IMATS MN. TRAIN MNTTrac (if applicable)		Mid-year and EOY
Maintain Health Care Coalition (HCC) membership and representation on Health Care Coalition steering/advisory committees, and report back to		EOY

Duty	Additional Resources	Due Dates
<p>CHB_LHD_THD Directors and Emergency Preparedness Coordinators on actions, information, and other important items.</p>		
<p>IMATS Review and update POD and LDN locations and contacts at least every 6 months.</p>	<p>The Inventory Management and Tracking System (IMATS) is a software tool to manage medical countermeasures inventory received from the Strategic National Stockpile (SNS). Not all response will require IMATS use. However, IMATS is deployed on the Centers for Disease Control and Prevention (CDC) network. CDC requires a level of security to ensure the protection of private and/or sensitive information from unauthorized disclosure, loss, or damage.</p>	<p>Mid-year and EOY</p>
<p>Report on Equipment, if over \$5000 at end of year.</p>	<p>Prior to purchase, a request and approval are required from MDH. Tracking pertains to a piece of equipment valued at \$5000 or more.</p>	<p>EOY</p>
<p>LH_TH will respond to all State Health (Alerts 1hr) (advisories 24 hours). Forward messages to HAN recipients as requested by the State. No local response tracking required.</p>		<p>Mid-year and EOY</p>
<p>Attend MDH-sponsored preparedness trainings when offered and appropriate to CHB_TH.</p>		<p>Mid-year and EOY</p>
<p>Staff maintain appropriate NIMS training based on their role(s), using PHEP Capability 3 (page 30-36) as a guide.</p>		<p>Mid-year and EOY</p>

Duty

Additional Resources

Due Dates

AAR-IPs and Corrective Actions-

- Write AAR-IPs for exercises and significant incidents/events. Submit within 90 days of the exercise/incident/event using the full AAR-IP form in REDCap

- Track progress on improvement plans and document status or completion of corrective actions. Link to the IP document will be provided in the supplemental guidance document.

IP template can be found here:
[LPH TH AAR IP Worksheet Template.docx](#)

EOY

Conduct an annual volunteer call down drill and document findings using the short AAR-IP form in REDCap. This duty is waived if volunteers were called up for a real world event during the grant year.

EOY

Address the access and functional needs of at-risk populations in your plans, exercises, and responses. For exercises, you should have at least one objective or inject that addresses access and functional needs of at-risk populations.

EOY

Duty	Additional Resources	Due Dates
Conduct and/or participate in Jurisdictional Risk Assessments, based on jurisdiction's 5-year timeline cycle.	JRAs have been waived for BP5. However, CHBs can continue to report their top three threats or additional JRA information in REDCap depending on capacity.	Waived for BP5

Base Duties

Domain 1: Community Resilience

Capability 1: Community Preparedness

Duty	Outputs	Additional resources	Due Dates
<p>1.1 In collaboration with local partners, CHB_TH will implement strategies (new or existing) to mitigate gaps identified during COVID-19 response to strengthen community preparedness. At least one strategy must address access and functional needs of at-risk individuals/communities of focus/vulnerable populations.</p> <p>Tiered strategies: base=1, X=2 Y=3 and Z=4</p>	<p>Each CHB and THD implemented at least one community preparedness strategy to address gaps identified during the COVID-19 response.</p>	<p>To help strengthen preparedness within communities. Strategies (plans or approaches) are tiered according to funding levels.</p> <p>Example only: During the COVID-19 response, Good Source CHB identified a gap in communication with Somali community. CHB reached out to community leaders, developed a relationship, and now attends and provides public health information at community gatherings on a regular basis.</p>	EOY
<p>1.2 Participate in emPOWER training.</p>	<p>CHBs and THs have a basic understanding of how to use emPOWER data in preparedness, response, and recovery.</p>	<p>Virtual training - Attendees are chosen by the CHB. A recorded session TBD.</p>	EOY
<p>1.3 Meet with key local partners to explore how emPOWER data could identify and support needs of at-risk individuals in future responses.</p>	<p>CHBs and THs have a basic understanding of how to use emPOWER data in preparedness, response, and recovery.</p>	<p>Conduct one virtual or in person meeting with key community members to determine three key areas:</p> <ol style="list-style-type: none"> 1) identify what type of incident or disaster would require identified data. 2) when emPOWER identified data should be requested. 3) Review roles and responsibilities of key local partners. 	EOY

Duty	Outputs	Additional resources	Due Dates
<p>2.1 CHB_TH will report on outcomes of two activities based on the COPEWELL/Alternative Action plan developed during BPA.</p>	<p>Number of LPH that continue to build upon their COPEWELL Action Plans.</p>	<p>CHB_TH will report on outcomes of two activities. What happened? Why did it happen? Were there positive or negative results due to the work that has been done with 'community'?</p> <p>During BPA ongoing or completed activities can be reported at the end of year.</p> <p>COPEWELL FAQ PHEP for CHB/THD - COPEWELL_FAQ2023.01.31.pdf - byCategory (sharepoint.com)</p>	<p>EOY</p>
<p>2.2 CHB_TH will participate in a regional natural disaster TTX using the Community Behavior Health Recovery Needs Assessment checklist (CBHRNA).</p>	<p>Feedback provided on CBHRNA assessment tool to help configure it to be a regional tool.</p> <p>MDH, CHBs, and THDs understand the role of equity in disaster recovery</p>	<p>MDH Community Behavioral Health Recovery Needs Assessment Checklist.pdf -tool</p> <p>MDH will provide TTX scenario, MDH will facilitate the exercise. CHB_THs are testing the checklist. Outcome: LPH_TH agencies will obtain knowledge of CBHRNA checklist. Each LPH_TH will identify one strength or gap found when using the tool during the TTX.</p> <p>Report in REDCap.</p>	<p>Mid-year</p>

Domain 2: Incident Management

Capability 3: Emergency Operations Coordination

Duty	Outputs	Additional Resources	Due Dates
<p>3.1 Based on identified gaps during COVID-19 or other responses, implement strategies to address those identified gaps. At least one gap should be related to the public health incident management structure. Number of strategies implemented by tier: base=2, X=3 Y=4 and Z=5</p>	<p>Updated All-Hazards Response and Recovery Plan outlining key roles and functions</p>	<p>Example only: Identified gap during 2019 Regional Communication Exercise</p> <p>1) Gap -External/internal partner list is outdated. Implemented strategy: Assigned a staff member to update contact lists on a yearly basis.</p> <p>2) Gap Not all key staff members were trained in ICS. Implemented strategy: Provided just in time training. Worked with external resources to support the response efforts.</p>	<p>EOY</p>
<p>3.2a Participate in the in-person severe weather UMN TTX. CHB will identify at least one strength and one improvement opportunity from the exercise. Tiered: Y and Z</p> <p>3.2b Identify one gap related to CHB_TH severe weather plan. Tiered: base and X</p>	<p>Participation in UMN TTX climate change discussion and LPH will identify strengths and areas for improvement.</p>	<p>Three TTXs will be offered in three different locations across the state.</p>	<p>EOY</p>
<p>3.3 Each CHB/THD will conduct a gap assessment of their Pandemic Influenza plans based on their COVID-19 AARs.</p>	<p>LPH and TH will know gaps to address when revising their pandemic influenza plans. MDH will review REDCap summary reports to identify opportunities to support Pan Flu Plan development/revisions.</p>	<p>Examples only: essential service plan needs update to reflect a list of resources, contacts, etc.</p>	<p>EOY</p>

Domain 3: Information Management

Capability 4: Emergency Public Information and Warning

Duty	Outputs	Additional Resources	Due Dates
4.1 Attend risk communication/public information training if offered by MDH.	CHBs and THs increased knowledge of risk communication and public information principles through attendance at MDH provided training.	Virtual Training-Attendees are chosen by the CHB. This training is not intended to replace formal trainings from CDC or FEMA.	EOY
4.2 CHB_TH will develop or update internal policies and procedures as it relates to social media.	CHBs and THs will be better prepared to use social media to reach local affected populations during an emergency/response because of new or revised social media plans, policies, or procedures.		EOY

Domain 4: Countermeasures and Mitigation

Capability 8: Medical Countermeasures

8.1 Based on jurisdictional priorities, offer/coordinate/collaborate with partners to offer COVID-19 vaccine administration.	CHBs and THs will coordinate COVID-19 vaccine administration with partners.		EOY
8.2 Based on jurisdictional priorities, offer/coordinate/collaborate with partners to offer COVID-19 testing.	CHBs and THs will coordinate COVID-19 tests kits with partners.	CHBs will continue to report monthly OTC tests distribution information through REDCap.	EOY

Capability 14: Responder Safety and Health

Duty	Outputs	Additional resources	Due Dates
14.1 CHB_TH will participate in a regional discussion to identify potential elements in a public health responder safety checklist for a long duration response like COVID-19.	Public health responder safety checklist	MDH will provide responder safety and health condensed materials from CDC to CHB_TH. A regional discussion document will be available to help guide the discussion. EOY REDCap- upload one regional discussion guide for each region. CHB_TH will identify potential elements of a public health responder safety checklist through REDCap. Reference Capability 14; Function 1; Task 1	EOY
14.2 At least one person from each CHB_TH will attend the MDH-sponsored Psychological First Aid (PFA) training.	CHB-TH staff increased knowledge of PFA.	Attendees are chosen by the CHB. PFA training is offered monthly by Regional Behavioral Health Coordinators https://www.train.org/mn/ Course ID 1101620 or staff members can access the training here- Online Psychological First Aid: A Minnesota Community Supported Model Register at https://www.train.org/mn/ with Course ID 18110-36, PUBH X327 (.75 CEUs from UMN). Reference Capability 14; Task 2; S/T1	Mid-year and EOY

Domain 5: Surge Management

Capability 15: Volunteer Management

Duty	Outputs	Additional resources	Due Dates
15.1 Attend a MN Responds system administrators training. The training will provide new system information.	MN Responds Administrators will have attended at least one virtual training. Add training objectives.	MDH staff will coordinate and facilitate training on the updated MN Responds System during 4 th quarter.	EOY
15.2 MN Responds administrators will communicate with registered	MN Responds volunteers will be more engaged in their volunteer unit due to regular	This is intended to help MN Responds administrators (and other volunteer programs using PHEP funds) keep volunteers engaged and retain them in the system. This	Mid-year and EOY

<p>volunteers on a regular basis. Examples of communication could include MN Responds written materials, trainings/exercise opportunities, emergency preparedness news, information on public health initiatives, etc. Call-down drills do not qualify as retention communication. Tiered: base and X=Twice a year, Y and Z= Quarterly.</p>	<p>communications by MN Responds Administrators. Newsletters and other forms of communication sent to volunteers.</p>	<p>grant duty could be done at a regional level as long as each LPH provides content for the newsletter.</p>	
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Multi-Capability

Duty	Comments	Due Dates
<p>MC.1.0 Preparedness and Response Workshop.</p>	<p>At least one representative from a CHB/TH will attend a preparedness and response workshop sponsored by MDH. Date(s) and session topics TBD. Will be held either virtual or in person.</p>	<p>EOY</p>

Minnesota Department of Health
 Emergency Preparedness and Response
 651-201-5700 Health.phep@state.mn.us
www.health.state.mn.us

Summary of Document Changes:

5/31/2023 Katie Triebold Strikethrough in Recurring Duties; added correct page number for NIMS training



STAFF REPORT NO. 103
CITY COUNCIL MEETING
8/8/2023

REPORT PREPARED BY: Matt Hardegger, Transportation Engineer

DEPARTMENT DIRECTOR REVIEW: Kristin Asher, Public Works Director
8/1/2023

OTHER DEPARTMENT REVIEW: Sack Thongvanh, Assistant City Manager

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
8/2/2023

ITEM FOR COUNCIL CONSIDERATION:

Approve a resolution supporting a request for state bonding funds to fund the City's portion of costs to re-construct Nicollet Ave from 77th Street to 66th Street.

EXECUTIVE SUMMARY:

The City has applied for state bonding funds to partially fund the County-led reconstruction of Nicollet Ave from 77th to 66th. The State requires a resolution of support from the governing body of the political subdivision making the request.

RECOMMENDED ACTION:

Approve a resolution supporting a request for state bonding funds to fund the City's portion of costs to re-construct Nicollet Ave from 77th Street to 66th Street.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

Hennepin County has programmed a reconstruction project on CSAH 52 (Nicollet Ave) from 77th Street to 66th Street in 2026 and 2027, in conjunction with the removal of the ramps to and from I-494 as part of I-494 Project 1. The total roadway project cost without utility improvements is expected to be approximately \$20 million, of which the city will be responsible for approximately \$5 million (estimated). City utility replacement costs are yet to be fully determined, but a full replacement of city utilities under the roadway is expected to be an additional \$5 million.

The City is requesting state bonding funds in the amount of \$10 million, which would cover the City's full share (estimated) of the roadway reconstruction and utility replacement.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

Approval of the easement agreement is consistent with City Council Strategic Priority/Outcome 3a (Sustainable Infrastructure - City Infrastructure Supports Service Needs).

C. CRITICAL TIMING ISSUES:

Applications can be edited to add supporting documentation until October 13, 2023.

D. FINANCIAL IMPACT:

\$10 million was requested from the state as a capital grant, if included in a potential 2024 session bonding package. If state bonding is not awarded, the City will need to fund its \$10 million share through various funds, including but not limited to Municipal State Aid, local bonding, general fund, and/or utility enterprise funds.

E. LEGAL CONSIDERATION:

None.

ALTERNATIVE RECOMMENDATION(S):

None.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None.

ATTACHMENTS:

Description	Type
☐ Resolution of Support for Nicollet Bonding	Resolution Letter

RESOLUTION NO.

RESOLUTION OF SUPPORT FOR BONDING FUNDS FROM THE STATE OF MINNESOTA TO RECONSTRUCT NICOLLET AVENUE

WHEREAS, Nicollet Avenue (CSAH 52) will be reconstructed and modernized between 77th Street and 66th Street within the City of Richfield, providing the opportunity to include enhanced pedestrian facilities, the potential for improved transit stops, safer vehicle movements, and a dedicated bicycle facility along the entire length of the corridor.

WHEREAS, Nicollet Avenue is a key regional corridor used to access 3 schools, 2 churches, 2 city parks, a library, the Richfield Community Center, and 6 retail hubs; and

WHEREAS, Nicollet Avenue is used by over 10,000 people per day via personal vehicles, Metro Transit busses, and walking, biking and rolling; and

WHEREAS, the roadway was last fully reconstructed in 1961 with a pavement width intended to accommodate traffic from a new interchange with I-494 that will be removed by MnDOT in 2026; and

WHEREAS, pavement rehabilitation efforts are no longer cost effective due to the age of the underlying roadway; and

WHEREAS, public utilities underneath the roadway have reached the end of their useful life without major rehabilitation; and

WHEREAS, 226 vehicle crashes occurred on the Nicollet Avenue corridor from 2018-2022, which accounted for 12% of the city's total non-freeway or freeway ramp vehicle crashes during that period; and

WHEREAS, the Nicollet Avenue corridor was the location of 8% of the city's vehicle crashes with a pedestrian or bicyclist, 16% of the city's minor or possible injury vehicle crashes, 19% of the city's serious injury vehicle crashes, and 50% of the city's fatal vehicle crashes from 2018-2022 on non-freeway or freeway ramp facilities.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richfield, Minnesota that it supports seeking state bonding funds to reconstruct Nicollet Avenue.

Adopted by the City Council of the City of Richfield, Minnesota this 8th day of August, 2023.

Mary Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk



STAFF REPORT NO. 100
CITY COUNCIL MEETING
8/8/2023

REPORT PREPARED BY: Jennifer Anderson, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
8/1/2023

OTHER DEPARTMENT REVIEW: Sack Thongvanh, Assistant City Manager

CITY MANAGER REVIEW:

ITEM FOR COUNCIL CONSIDERATION:

Public hearing and consideration of the second reading of an interim ordinance authorizing a study and imposing a moratorium on the operation of cannabis businesses in the City, which will expire on January 1, 2025 or upon the City's receipt of an application from the Office of Cannabis Management for a cannabis business within the City of Richfield, whichever occurs first, unless repealed earlier by the City Council.

EXECUTIVE SUMMARY:

The Minnesota Legislature recently enacted, and the Governor signed, 2023 Minnesota Session Laws, Chapter 63 - H.F. No. 100 ("the Act"), which is comprehensive legislation relating to adult use cannabis.

The Act provides that if a city is "conducting studies or has authorized a study to be conducted or has held or has scheduled a hearing for the purpose of considering adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of a cannabis business, the governing body of the local unit of government may adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety, and welfare of its citizens." As part of a city's interim ordinance, the city may prohibit a cannabis business from opening until January 1, 2025.

The City Council held a work session on July 11, 2023 to hear staff recommendations and discuss the Adult Use Cannabis legislation, required city regulation and its impacts on the city. Staff were directed by the City Council to bring a first reading of an interim ordinance to the July 25, 2023 city council meeting, imposing a moratorium on the operation of cannabis businesses until January 1, 2025.

The moratorium will be in effect until January 1, 2025, or until the City receives an application from the Office of Cannabis Management for a cannabis business within the City of Richfield, whichever occurs first, unless repealed earlier by the City Council.

The first reading of this ordinance was heard by the City Council on July 25, 2023.

RECOMMENDED ACTION:

Conduct and close the public hearing and by motion:

- 1. Approve the second reading of an interim ordinance authorizing a study and imposing a moratorium on the operation of cannabis businesses in the City, which will expire on January 1,**

2025 or upon the City's receipt of an application from the Office of Cannabis Management for a cannabis business within the City of Richfield, whichever occurs first, unless repealed earlier by the City Council, and

2. approve a resolution authorizing summary publication of said ordinance.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The Minnesota Legislature recently enacted, and the Governor signed, 2023 Minnesota Session Laws, Chapter 63 - H.F. No. 100 ("the Act"), which is comprehensive legislation relating to Cannabis including, but not limited to, the establishment of the Office of Cannabis Management ("OCM"); legalizing and limiting the possession and use of cannabis and certain hemp products by adults; providing for the licensing, inspection, and regulation of cannabis businesses and hemp businesses; taxing the sale of cannabis flower, cannabis products, and certain hemp products; establishing grant and loan programs; amending criminal penalties; providing for expungement of certain convictions and providing for the temporary regulation of certain edible cannabinoid products.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The City Council passed a moratorium on edible cannabinoid products in 2022, and will consider the repeal of the moratorium at the August 8, 2023 City Council meeting.

C. CRITICAL TIMING ISSUES:

Enacting the moratorium on the operation of cannabis businesses in the City gives the City the authority to initiate any legal action deemed necessary to secure compliance with this Ordinance.

D. FINANCIAL IMPACT:

The financial impact of this legislation is unknown at this time. Staff will have a better idea of possible impacts after October 1, 2023, the deadline for businesses selling edible cannabinoid products to register with the state.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed the proposed interim ordinance and approves of its contents.

ALTERNATIVE RECOMMENDATION(S):

The City Council could decide to not approve the second reading of the moratorium and direct staff on how to proceed.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
▣ Ordinance	Cover Memo
▣ Resolution and Summary Publication	Cover Memo

BILL NO. 2023-___

TRANSITORY ORDINANCE NO. ____

AN INTERIM ORDINANCE AUTHORIZING A STUDY AND IMPOSING A MORATORIUM ON THE OPERATION OF CANNABIS BUSINESSES WITHIN THE CITY OF RICHFIELD

THE CITY OF RICHFIELD DOES ORDAIN:

Section 1. Legislative Findings and Authority.

- (A) The Minnesota Legislature recently enacted, and the Governor signed, 2023 Minnesota Session Laws, Chapter 63 – H.F. No. 100 (the “Act”), which is comprehensive legislation relating to cannabis including, but not limited to, the establishment of the Office of Cannabis Management (“OCM”), legalizing and limiting the possession and use of cannabis and certain hemp products by adults, providing for the licensing, inspection, and regulation of cannabis and hemp businesses, taxing the sale of cannabis flower, cannabis products, and certain hemp products, establishing grant and loan programs, amending criminal penalties, providing for expungement of certain convictions, and providing for the temporary regulation of Edible Cannabinoid Products.
- (B) The Act provides local units of government certain authority related to Cannabis Businesses, including the authority to (i) require local registration of certain Cannabis Businesses operating retail establishments, (ii) adopt reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses, provided that such restrictions do not prohibit the establishment or operation of a Cannabis Business, (iii) limit the number of certain Cannabis Businesses based on the population of the community, and (iv) prohibit the operation of a Cannabis Business within 1,000 feet of a school, or 500 feet of a day care, residential treatment facility, or an attraction within a public park that is regularly used by minors, including a playground or athletic field.
- (C) The Act requires the OCM, which was established effective July 1, 2023, to work with local governments to develop model ordinances for reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses. The Act also requires the OCM to establish additional rules and regulations relating to the operation of Cannabis Businesses. It is anticipated that the city of Richfield (the “City”) will benefit from reviewing and analyzing the OCM’s model ordinances, rules, and regulations before making any decisions related to the regulation of Cannabis Businesses in the City.
- (D) The Act (Minnesota Statutes, section 342.13(e)) expressly allows a local unit of government that is conducting studies or has authorized a study to be conducted or has held or scheduled a hearing for the purpose of considering

adoption or amendment of reasonable restrictions on the time, place and manner of the operation of Cannabis Businesses to adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety, and welfare of its citizens. The interim ordinance may regulate, restrict, or prohibit the operation of Cannabis Businesses within the jurisdiction or a portion thereof until January 1, 2025.

- (E) Given the uncertainty regarding the model ordinances to be developed by the OCM and the broad scope of the changes to Minnesota law brought about by the Act, the City desires to adopt an interim ordinance for the purpose of protecting the planning process and the health, safety, and welfare of its citizens.
- (F) The City desires to conduct a study for the purpose of considering the adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses as well as the other regulations local units of government may adopt under the Act.
- (G) On August 8, 2023, after providing at least 10 days published notice, the City Council held a public hearing regarding the consideration and adoption of an interim ordinance prohibiting the operation of Cannabis Businesses within the City until January 1, 2025.

Section 2. Definitions. For purposes of this Ordinance, the following terms shall have the meaning given them in this section.

- (A) “Act” means 2023 Minnesota Session Laws, Chapter 63 (H.F. No. 100).
- (B) “Cannabis Business” has the meaning given the term in Minnesota Statutes, section 342.01, subdivision 14.
- (C) “City” means the city of Richfield, a Minnesota municipal corporation.
- (D) “Edible Cannabinoid Product” has the meaning given the term in Minnesota Statutes, section 151.72, subdivision 1(f).
- (E) “OCM” means the Office of Cannabis Management, established as set forth in Minnesota Statutes, section 342.02, subd. 1.
- (F) “Ordinance” means this interim ordinance, which is adopted pursuant to Minnesota Statutes, section 342.13(e).

Section 3. Study Authorized. The City Council hereby authorizes and directs City staff to conduct a study regarding the adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses, as well as other potential local regulations allowed under the Act, and report to the City Council on the

potential regulation of Cannabis Businesses. The study may include a review of any model ordinances that OCM is directed to draft under Minnesota Statutes, section 342.13(d), an analysis of potential setback regulations allowed under Minnesota Statutes, section 342.13(c), and such other matters as staff may determine are relevant to the City Council's consideration of this matter. The report may also include City staff's recommendations on whether the City Council should adopt regulations and, if so, the recommended types of regulations.

Section 4. Moratorium. A moratorium is hereby imposed on the operation of any Cannabis Business within the City. During the term of this Ordinance, no business, person, or entity may establish or operate a Cannabis Business within the jurisdictional boundaries of the City. Accordingly, during the period that this Ordinance is in effect, the City shall not accept, process, or act on any application, site plan, building permit, zoning request, or other approval, including any requested confirmation, certification, approval, or other request from the OCM or other governmental entity requesting City review of any application or proposal for a business proposing to engage in the operation of a Cannabis Business. During the term of the moratorium, it is a violation of this Ordinance for any business, person, or entity to establish or operate a Cannabis Business within the City.

Section 5. Exceptions. The moratorium imposed by this Ordinance does not apply to: (i) the continued operation of a duly established business as part of the Medical Cannabis Program administered by the Minnesota Department of Health that was lawfully operating within the City prior to the effective date of this Ordinance; or (ii) the sale of Edible Cannabinoid Products, provided, however, that nothing in this Ordinance exempts a business, person, or entity from complying with all other requirements and prohibitions of applicable laws and ordinances related to such exceptions.

Section 6. Enforcement. Violation of this Ordinance is a misdemeanor. The City may also enforce this Ordinance by mandamus, injunction, or other appropriate civil remedy in any court of competent jurisdiction. A violation of this Ordinance is also subject to the City's general penalties prescribed in the city code and may further result in the City reporting violations to the OCM, if relevant to OCM licensing. The City Council hereby authorizes City staff and consultants to initiate any legal action deemed necessary to secure compliance with this Ordinance.

Section 7. Severability. Every section, provision, and part of this Ordinance is declared severable from every other section, provision, and part. If any section, provision, or part of this Ordinance is held to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other section, provision, or part of this Ordinance.

Section 8. Effective Date and Term. This Ordinance shall be effective in accordance with Section 3.09 of the Richfield City Charter and shall expire on January 1, 2025, or upon the City's receipt of an application from the Office of Cannabis Management for a cannabis business within the City of Richfield, whichever occurs first, unless repealed earlier by the City Council.

Adopted by the City Council of the City of Richfield on this 8th day of August 2023.

Mary Supple, Mayor

Attest:

Dustin Leslie, City Clerk

RESOLUTION NO. _____

**RESOLUTION APPROVING SUMMARY PUBLICATION OF AN ORDINANCE
AUTHORIZING A STUDY AND IMPOSING A MORATORIUM ON THE OPERATION OF
CANNABIS BUSINESSES UNTIL JANUARY 1, 2025**

WHEREAS, the City of Richfield has adopted the above referenced ordinance; and

WHEREAS, the verbatim text of the ordinance is cumbersome, and the expense of publication of the complete text is not justified.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Richfield that the following summary is hereby approved for official publication:

**SUMMARY PUBLICATION
TRANSITORY ORDINANCE NO. _____**

**AN ORDINANCE AUTHORIZING A STUDY AND IMPOSING A MORATORIUM ON THE
OPERATION OF CANNABIS BUSINESSES IN THE CITY UNTIL JANUARY 1, 2025**

This summary of the ordinance is published pursuant to Section 3.12 of the Richfield City Charter.

The purpose of the ordinance is to allow staff time to research and study the adult cannabis law and impose a moratorium on cannabis businesses until January 1, 2025, or until the City receives an application from the Office of Cannabis Management for a cannabis business within the City of Richfield, whichever occurs first.

Copies of the ordinance are available for public inspection in the City Clerk's office during normal business hours or upon request by calling the Executive Department at (612) 861-9712.

Adopted by the City Council of the City of Richfield, Minnesota this 8th day of August 2023.

Mary Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk



STAFF REPORT NO. 99
CITY COUNCIL MEETING
8/8/2023

REPORT PREPARED BY: Jennifer Anderson, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
8/1/2023

OTHER DEPARTMENT REVIEW: Sack Thongvanh, Assistant City Manager

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
8/2/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider the second reading of a transitory ordinance repealing ordinance 19.26, which authorized a study and imposed a moratorium on the sale of edible cannabinoid products.

EXECUTIVE SUMMARY:

On July 1, 2022, it became legal to sell certain products containing delta-9 (THC products) in Minnesota. The legislation allows THC products to be sold if the following requirements are met:

- Not more than 5mg of THC per dose
- Not more than 50 mg of THC per container
- The purchaser is at least 21 years old.
- The products are not marketed towards children.

On October 25, 2022, the Richfield City Council approved a one year moratorium on selling THC products. The moratorium went into effect on December 3, 2022 and expires on December 3, 2023, or the City Council repeals it.

This ordinance will be effective 30 days after the ordinance is published.

The first reading of this ordinance was heard by the City Council on July 25, 2023.

RECOMMENDED ACTION:

By Motion: Approve the second reading of an ordinance repealing interim ordinance 19.26, which authorized a study and imposed a moratorium on the sale of edible cannabinoid products.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

On July 1, 2022, it became legal to sell certain products containing delta-9 (THC products) in Minnesota. The legislation allows THC products to be sold if certain requirements are met including that there are not more than 5mg of THC per dose and 50 mg of THC per container; the purchaser is at least 21 years old; and the products are not marketed towards children.

On October 25, 2022, the Richfield City Council approved a one year moratorium on THC products. The moratorium went into effect on December 3, 2022 and is in effect until it expires on December 3, 2023, or the City Council repeals it.

With the advent of adult use cannabis, in a July 11, 2023 work session, staff provided the City Council with recommendations, including to repeal interim ordinance 19.26, and not temporarily license businesses that sell these products. Businesses who sell these products in Richfield will need to register with the Minnesota Department of Health by October 1, 2023.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The City of Richfield addresses medical cannabis in the Zoning code.

C. CRITICAL TIMING ISSUES:

Regulations for retailers wanting to sell edible cannabinoid products will be overseen by the Minnesota Department of Health (MDH) until the Office of Cannabis Management is open. These retailers will need to register with MDH by October 1, 2023.

D. FINANCIAL IMPACT:

There will be a financial impact in Public Safety due to the mandated compliance checks of retailers selling edible cannabinoid products. Compliance checks must be conducted to address age verification, operational requirements and product THC limits. Public Safety staff will need training to conduct these specific compliance checks.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed the proposed ordinance and approves of its contents.

ALTERNATIVE RECOMMENDATION(S):

The City Council could decide to not repeal interim ordinance 19.26 and direct staff on how to proceed.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
▣ Ordinance to repeal	Cover Memo

BILL NO. _____

**A TRANSITORY ORDINANCE
REPEALING TRANSITORY ORDINANCE 19.26 THAT AUTHORIZED A STUDY AND
IMPOSED A MORATORIUM ON THE SALE OF EDIBLE CANNABINOID PRODUCTS**

THE CITY OF RICHFIELD DOES ORDAIN:

Sec. 1. Transitory Ordinance 19.26 is hereby repealed.

Sec. 2. This Ordinance is effective in accordance with Section 3.09 of the Richfield City Charter.

Adopted by the City Council of the City of Richfield on this 8th day of August 2023.

Mary Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk

AGENDA SECTION: PROPOSED
ORDINANCES
AGENDA ITEM # 7.



STAFF REPORT NO. 101
CITY COUNCIL MEETING
8/8/2023

REPORT PREPARED BY: Jennifer Anderson, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
8/1/2023

OTHER DEPARTMENT REVIEW: Sack Thongvanh, Assistant City Manager

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
8/2/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider the second reading of an ordinance amending Chapter 11, Section 1146 of the Richfield City Code to include eliminating the sale of flavored products and capping the number of tobacco licenses.

EXECUTIVE SUMMARY:

The Richfield Advisory Board of Health (ABH) is charged with bringing recommendations to the City Council related to community health and has a long history of advocating for sound health policies that protect residents.

In their continued effort to protect youth and adults, particularly members of the LGBTQ+ and black communities who have been historically targeted by the tobacco companies, from the harms of tobacco products, the ABH is recommending prohibiting the sale of flavored tobacco products and placing a cap on the number of tobacco licenses issued to four. Reducing the number of tobacco licenses will take time since current licenses are only revoked when a current licensee moves or the business changes ownership.

Work sessions with City Council members were held March 22, 2022 and March 28, 2023.

The first reading of this ordinance was heard by the City Council on July 25, 2023.

RECOMMENDED ACTION:

By motion:

1. **Approve the second reading of an ordinance amending Chapter 11, Section 1146 of the Richfield City Code to include prohibiting the sale of all flavored products and reduce the number of tobacco licenses to four; and**
2. **Approve a resolution authorizing summary publication of said ordinance.**

BASIS OF RECOMMENDATION:

A. **HISTORICAL CONTEXT**

Because of their sweet flavors, low cost and attractive packaging, flavored products are especially appealing to youth, who are much more likely to use flavored products than adults. Young people perceive flavored products as tasting better and being safer than unflavored products, even though they

are just as dangerous and addictive as unflavored cigarettes.

States and localities can adopt sales restrictions to address menthol cigarettes and other flavored products that appeal to youth. Six states and more than 170 U.S. localities have prohibited the sale of all flavored products including menthol cigarettes. Currently, over 25% of Minnesotans are covered by a flavored policy. Richfield would be joining Traverse County, Fridley, Columbia Heights, Minneapolis, Shoreview, Arden Hills, Lauderdale, St. Paul, Lilydale, Mendota Heights, Moorhead, Golden Valley, Edina and Bloomington by approving these policy recommendations.

Communities that have capped tobacco licenses include Bloomington, Brooklyn Center, Excelsior, Golden Valley, New Hope, Roseville, and St. Paul.

Review of Proposed Ordinance Changes by Section:

Findings and Purpose: Additional findings are added to support capping licenses and flavor prohibition.

Definitions: Updated to align with State law, while adding new definitions for Flavored Product, Child-Resistant Packaging and Indoor Area.

Sale/distribution: Proposed language added to reflect a limit of 4 licenses allowed by the city. License transfers are prohibited. Should a business move or change ownership, the tobacco license would be revoked.

Prohibitions: Proposed language prohibits smoking/sampling in all retail establishments licensed under the ordinance and prohibits the sale of flavored products.

Self-Service Sales: Self-service sales are prohibited unless a licensee sells at least 90% of its products in licensed products. Proposed language eliminates this exception and provides a stronger policy prohibiting self-service sales in all licensed establishments.

Other prohibited acts: Prohibits furnishing of/procuring/coercion of licensed products to underage youth.

Violations: Details out a hearing process and proposes fees for a hearing.

Penalties: This section is updated to meet State minimums. The current penalty structure is strong, but unique, with the reset of a violation to the previous violation instead of resetting to the first violation. Proposed language shifts the lookback period to 36 months instead of 24 months. Diversion penalties would apply for use of a false ID by someone under the age of 21.

Effective Date: Communicates an effective date of implementation changes determined by the City Council.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

Chapter 11, Section 1146 regulates the sale, possession, and use of tobacco and related devices and products and is intended to protect young people against the serious effects associated with tobacco use.

A formal public hearing is not required, but the City Council could allow public comment on the proposed ordinance changes during the open comment period of the meeting.

C. CRITICAL TIMING ISSUES:

In an effort to give retailers time to sell flavored tobacco, approving the ordinance at the August 8, 2023 meeting provides over four months for retailers to sell down their inventory.

D. FINANCIAL IMPACT:

The 2023 tobacco license fee is \$541 and there are 25 tobacco licenses issued. This generated \$13,525

in revenue. By capping licenses at four, this will reduce licensing revenue over the coming years.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed the proposed ordinance and approves of its contents.

ALTERNATIVE RECOMMENDATION(S):

The City Council may decide to not approve the second reading of the ordinance and direct staff how to proceed.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Proponents and opponents of the flavor restriction/license cap, including community members and business owners.

ATTACHMENTS:

	Description	Type
▣	Proposed Tobacco Ordinance	Cover Memo
▣	Resolution and Summary Publication	Cover Memo
▣	Tobacco Ordinance 7-25-23 Open Forum Comments	Backup Material

BILL NO. _____

**AN ORDINANCE AMENDMENT MODIFYING SECTION 1146 OF THE RICHFIELD CITY
CODE IN RELATION TO FLAVORED PRODUCTS**

THE CITY OF RICHFIELD DOES ORDAIN:

Section 1. Section 1146 of the Richfield City Code is amended as follows:

1146.01. Findings and Purpose.

Subdivision 1. The Richfield City Council makes the following Findings in support of this section intended to regulate the sale and use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products and to protect young people against the serious effects associated with the use of those products:

- (a) The City Council recognizes that the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates both state and federal laws;
- (b) Studies, which the city hereby accepts and adopts, have shown that 95 percent of smokers initiate use before the age of 21; and that almost no one starts smoking after age 25;
- (c) Tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government;
- (d) Raising the minimum legal sales age to 21 will take legal purchasers out of the social circles of underage users. Studies have concluded that raising the minimum legal sales age for tobacco to 21 would result in a 12 percent decrease in tobacco use and approximately 223,000 fewer premature deaths for those born between 2000 and 2009;
- (e) Raising the minimum legal sales age to 21 is in line with the minimum age to buy alcohol and simplifies ID checks for retailers;
- (f) There is evidence to suggest that enforcement of possession, use, or purchase (PUP) laws against youth detract from the enforcement of penalties against retailers and that youth of color in Minnesota are disproportionately over-represented in similar status-level offenses, increasing their interactions with law enforcement and the juvenile justice systems;
- (g) Enforcement of PUP laws has not been shown to reduce youth smoking significantly and because PUP laws do not sufficiently take into account the tobacco industry's responsibility for targeting youth with its marketing practices, this section is intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors and young adults against the serious effects associated with use and initiation, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stat. § 144.391, as it may be amended from time to time;
- (h) Marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and
- (i) Studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments;

- (j) Commercial tobacco use causes disease and death and constitutes an urgent public health threat as it remains the leading cause of preventable death and disability in the United States, with 480,000 people dying prematurely in the United States from smoking-related diseases every year. In the United States, smoking is responsible for about one in every five deaths, more deaths each year than human immunodeficiency virus (HIV), illegal drug use, alcohol use, motor vehicle injuries, microbial agents, and toxic agents combined;
- (k) Commercial tobacco use can affect nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths. According to the World Health Organization, tobacco use accounts for the greatest cause of death worldwide, responsible for nearly 6 million deaths per year. Over 16 million Americans have at least one disease caused by smoking;
- (l) Secondhand smoke, according to the Centers for Disease Control and Prevention, causes stroke, lung cancer, and coronary heart disease in adults. In addition, it increases risks for sudden infant death syndrome, respiratory symptoms, middle-ear disease, and slows lung growth in children.
- (m) Cigarette butts are the most-littered object in the world and the item most often found in beach cleanups globally. Butts contribute nonbiodegradable plastic, nicotine, heavy metals, pesticides, and other toxic substances to land and marine environments, down to the bottom of the oceans;
- (n) The tobacco industry has been adjudicated as racketeers in federal court as a result of its collective and coordinated denial, deceit, and targeting of deadly, addictive products to structurally marginalized communities.

Subd. 2. Studies. In making these findings, the City Council accepts the conclusions and recommendations of: the Institute of Medicine's report, "Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products" (2015), the U.S. Surgeon General reports, "E-cigarette Use Among Youth and Young Adults" (2016), "The Health Consequences of Smoking—50 Years of Progress" (2014) and "Preventing Tobacco Use Among Youth and Young Adults" (2012); the Centers for Disease Control and Prevention in their studies, "Tobacco Use Among Middle and High School Students—United States, 2011-2015," "Best Practices for Comprehensive Tobacco Control Programs, 2014," and "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997"; and of the following scholars in these scientific journals: Xin Xu et al., Annual Healthcare Spending Attributable to Cigarette Smoking: An Update, *Am. J. Prev. Med.* 48(3): 326-33 (Mar. 2015); Giovino GA, "Epidemiology of Tobacco Use in the United States," *Oncogene* (2002) 21, 7326-40; Khuder SA, et al., "Age at Smoking Onset and its Effect on Smoking Cessation," *Addictive Behavior* 24(5):673-7, September-October 1999; D'Avanzo B, et al., "Age at Starting Smoking and Number of Cigarettes Smoked," *Annals of Epidemiology* 4(6):455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," *Health Reports* 9(4):39-46, Spring 1998; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," *Preventive Medicine*, 29(5):327-33, November 1999; Wakefield, M & Giovino, G "Teen Penalties for Tobacco Possession, Use, and Purchase: Evidence and Issues," *Tobacco Control* (2003)12, i6-i13; the Minnesota Juvenile Justice Advisory Committee's report, "2016 Annual report to Governor Mark Dayton and the Minnesota State Legislature (2016); Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740–746; Andrea C. Villanti et al., Flavored Tobacco Product Use in Youth and Adults: Findings from the First Wave of the PATH Study (2013–2014), *53 Am. J. Prev. Med.* 139 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28318902>; Shari P. Feirman et al., Flavored Tobacco Products in the United States: A Systematic Review Assessing Use and Attitudes, *18 Nicotine Tobacco Res.* 739 (2015); copies of which are adopted by reference. (Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.03. Definitions.

Subdivision 1. For the purposes of this section, the terms defined in this subsection have the following meanings given them:

Subd. 2. Tobacco. "Tobacco" means any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including, but not limited to, cigarettes; cigars; pipe tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 3. Tobacco-related devices. "Tobacco-related devices" shall mean pipes, rolling papers, wraps, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 4. Licensed product. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, as those terms are defined in this section. (Added, Bill No. 2018-6)

Subd. 5. Self-service merchandising. "Self-service merchandising" shall mean open displays of licensed products in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention entails the actual physical exchange of the licensed product, between the customer and the licensee or employee. Self-service merchandising shall not include vending machines. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 6. Vending machine. "Vending machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses licensed products, upon the insertion of money, tokens, or other form of payment into or onto the machine by the person seeking to purchase such items. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 7. Loosies. "Loosies" shall mean the common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 8. Retail establishment. "Retail establishment" shall mean any place of business where licensed products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, tobacco product shops, liquor stores, convenience stores, gasoline service stations, bars, and restaurants. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 9. Moveable place of business. "Moveable place of business" shall mean any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions . (Amended, Bill No. 2013-19)

Subd. 10. Sale. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 11. Compliance checks. "Compliance checks" shall mean the system the City of Richfield uses to investigate and ensure that those authorized to sell licensed products, are following and complying with the requirements of this section. Compliance checks shall involve the use of persons under the age of 21 as authorized

by this section to attempt to purchase such items. Compliance checks may also be conducted by other units of government for educational, research and training purposes or for the purpose of enforcing appropriate Federal, State or local laws and regulations relating to licensed products. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 12. Electronic delivery device. "Electronic delivery device" shall mean any product or electronic device that can be used to deliver nicotine, lobelia or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product.. Electronic delivery device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act (Added, Bill No. 2013-19; amended, Bill No. 2015-13; Bill No. 2018-6)

Subd. 13. Cigar. A "cigar" shall mean any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stat. § 297F.01, subdivision 3 as amended from time to time. (Added, Bill No. 2015-13)

Subd. 14. Smoking. "Smoking" shall mean inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, ~~cannabis~~ ~~marijuana~~, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device. (Added, Bill No. 2015-13; amended, Bill No. 2018-6)

Subd. 15. Place of Employment. "Place of employment" shall mean any indoor area at which two or more individuals perform any type of service for consideration of payment under any type of contractual relationship, including, but not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. Place of employment includes any indoor area where two or more individuals gratuitously perform services for which individuals are ordinarily paid. A place of employment includes, but is not limited to, public conveyances, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, and rooms or areas containing photocopying equipment or other office equipment used in common. Vehicles used in whole or in part for work purposes are places of employment during hours of operation if more than one person is present. An area in which work is performed in a private residence is a place of employment during hours of operation if:

- (1) The homeowner uses the area exclusively and regularly as a principal place of business and has one or more on-site employees; or
- (2) The homeowner uses the area exclusively and regularly as a place to meet or deal with patients, clients, or customers in the normal course of the homeowner's trade or business.

(Added, Bill No. 2015-13)

Subd. 16. Public Meeting. "Public meeting" shall mean any meeting open to the public pursuant to Minn. Stat. § 13D.01. (Added, Bill No. 2015-13)

Subd. 17. Public Place. "Public place" shall mean any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings. (Added, Bill No. 2015-13)

Subd. 18. Sampling. "Sampling" shall mean the lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic delivery devices or nicotine or lobelia delivery products in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase. (Added, Bill No. 2015-13; amended, Bill No. 2018-6)

Subd. 19. Nicotine or lobelia delivery product. Any product containing or delivering nicotine or lobelia intended for human consumption, whether natural or synthetic, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section. Nicotine or Lobelia Delivery Product does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.. (Added, Bill No. 2018-6)

Subd. 20. Flavored product. Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

Subd. 21. Child-resistant packaging. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

Subd. 22. Indoor area. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

1146.05. Sale and distribution of tobacco.

Subdivision 1. License required. No person or establishment shall sell or offer to sell any licensed products without first having obtained a license to do so from the City of Richfield. All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 2. Application. An application for a license to sell licensed products shall be made on a form provided by the Public Safety Director or the Public Safety Director's designee. The fee shall accompany the application. The application shall be reviewed and action taken on it by either the Public Safety Director or the Director's designee.

Subd. 3. Action. The Public Safety Director or the Public Safety Director's designee may either approve or deny the license, or may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Public Safety Director or the Public Safety Director's designee denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.

Subd. 4. License term. All licenses shall expire on December 31 of the year in which the license is issued. The annual license fee will not be prorated.

Subd. 5. Denial, revocation or suspension.

- (a) A license under this section may be denied, suspended, or revoked by the council, after an investigation and public hearing where the licensee is granted the opportunity to be heard, for any of, but not limited to, the following reasons:

- (1) The operation of the business is in conflict with any provision of this code.

- (2) The operation of the business is in conflict with any health, fire, building, building maintenance, zoning, or any other applicable codes or laws.
- (3) The applicant or licensee has failed to comply with one (1) or more provisions of this section or any statute, rule or ordinance pertaining to the sale of licensed products.
- (4) The applicant has committed fraud, misrepresentation or bribery in securing or renewing a license.
- (5) The owner of the premises licensed or to be licensed would not qualify for a license under the terms of this section.
- (6) The applicant is under the age of 21 years.
- (7) The applicant has been convicted within the past five (5) years of any violation of a Federal, State, or local law ordinance provision, or other regulation relating to licensed products.
- (8) The applicant has had a license to sell licensed products, revoked within the 12 months preceding the date of application.
- (9) The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

(b) If a license is mistakenly issued or renewed to a person, the city will revoke the license upon the discovery that the person was ineligible for the license under this ordinance. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.

Subd. 6. Moveable place of business. No license shall be issued to a moveable place of business. Only a fixed location business shall be eligible to be licensed under this section.

Subd. 7. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 8. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.

Subd. 9. Employee training. The applicant for license renewal must provide proof that an employee training program on sales of licensed products has been provided during the license year by submitting records supporting that training at the time of their license renewal each year. (Amended, Bill No. 2004-9)

Subd. 10. Maximum number of licenses. The maximum number of licenses issued by the city at any time is limited to four. When the maximum number of licenses has been issued, the city will place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis, when an existing license is not renewed or is revoked. A new applicant who has purchased a business location holding a valid city license will be first on the waiting list, provided the new applicant meets all other application requirements in accordance with this ordinance. Retail establishments holding a valid license on December 31, 2023 will not be affected by this limitation but will be eligible to have such licenses renewed for the same location and licensee provided:

- (a) The retail establishment maintains a valid license by complying with the provisions of this section;
- (b) The establishment or location is in compliance with all other requirements of law and there exist no grounds for adverse actions against such licenses;
- (c) The previous license has not terminated or expired more than one (1) year before the new license had been first applied for; and,
- (d) A previous license has not been revoked.

Subd. 11. Transfers. All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.

1146.07. License fee.

The annual license fee for a tobacco license is set by appendix D. The license fee must be paid at the time of application for the license.

1146.09. Prohibitions.

Subdivision 1. Prohibited sales. It shall be a violation of this section for any person to sell or offer to sell any licensed product:

- (a) To any person under the age of 21 years.
 - (i) Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - (ii) Signage. Notice of the minimum legal sales age, age verification requirement, and possible penalties for underage sales must be posted at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (b) By anyone under the age of 18 years.
- (c) By means of any type of vending machine.
- (d) By means of loosies.
- (e) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
- (f) By any other means prohibited by Federal, State, or other local law, ordinance provision, or other regulation. (Amended, Bill No. 2018-6)

Subd. 2. Child-resistant packaging. The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and used in an electronic delivery device or nicotine or lobelia delivery product that is not contained in child-resistant packaging, is prohibited. All licensees under this Section must ensure that any such liquid is sold in child-resistant packaging, as defined in Minn. Stat. § 461.20, as amended from time to time. (Amended, Bill No. 2018-6)

Subd. 3. Cigar sales. No person shall sell, offer for sale, or otherwise distribute cigars in original packages containing three (3) or fewer cigars for a sale price, after any coupons, multipack or buy-one-get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person shall sell, offer for sale, or otherwise distribute cigars in original packages of four (4) or more cigars for a sale price, after any coupons, multipack or buy-one-get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than ten dollars and forty cents (\$10.40) per package. This subdivision does not apply to premium cigars as defined in Minn. Stat. § 297F.01, subdivision 13a. This subdivision shall become effective January 1, 2016.

Subd. 4. Smoking prohibited. Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this section ordinance.

Subd. 5. Samples prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.

Subd. 6. Flavored products. No person shall sell or offer for sale any flavored products.

(Amended, Bill No. 2013-19; Bill No. 2015-13)

1146.13. Self-service sales.

It shall be unlawful for a licensee under this section to allow the sale of licensed products, by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the item, between the licensee or licensee's employee and the customer. All licensed products, shall either be stored behind a counter or other area not freely accessible to customers. A license holder who operates an establishment or fully enclosed portion of an establishment that sells at least 90 percent of its products in licensed products, is exempt from the self-service merchandising provision if the license holder prohibits anyone under 21 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously displays a notice prohibiting persons under 21 years of age from entering the establishment. (Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.15. Responsibility.

All licensees under this section shall be responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products on the licensed premises, and the sale, offer to sell, and furnishing of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to whatever penalties are appropriate under this section, State or Federal law, or other applicable law or regulation. (Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.17. Compliance checks and inspections.

All licensed premises shall be open to inspection by Richfield law enforcement or other authorized City officials during regular business hours. From time to time, but at least twice per year, the City shall conduct compliance checks. In accordance with state law, the city will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check.. Persons used for the purpose of compliance checks shall be supervised by the Public Safety Director or the Public Safety Director's designee. No person used in compliance checks shall attempt to use a false identification misrepresenting the person's age and all persons lawfully engaged in a compliance check shall answer all questions about the person's age, asked by the licensee or licensee's employee and shall produce any identification, if any exists, for which the person is asked. Nothing in this subdivision shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

(Amended, Bill No. 2013-19; Bill No. 2015-13; Bill No. 2018-6)

1146.19. Other prohibited acts.

Subdivision 1. Unless otherwise provided, the following acts shall be a violation of this section.

Subd. 2. Prohibited furnishing or procurement. It shall be a violation of this section for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product. (Amended, Bill No. 2018-6)

Subd. 3. Use of false identification. It shall be a violation of this section for any person to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification. (Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.21. Violations.

Subdivision 1. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of their right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number..

Subd. 2. Hearings.

- (a) Upon issuance of a citation, a person accused of violating this ~~section ordinance~~ may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
- (b) The City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.

Subd. 3. Hearing Officer. The City Council will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

Subd. 4. Decision. A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in Subd. 6 of this subsection.

Subd. 5. Costs. If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000 must be paid by the person requesting the hearing.

Subd. 6. Appeals. Appeals of any decision made by the hearing officer must be filed in Hennepin County district court within 10 business days of the date of the decision.

Subd. 7. Continued violation. Each violation, and every day on which a violation occurs or continues, shall constitute a separate offense.

1146.23. Penalties.

Subdivision 1. Licensees. Any licensee found to have violated this section, or whose employee shall have violated this section, shall be charged an administrative fee as follows:

- (a) First violation. \$300.00 fine with no suspension.
- (b) Second violation. If within 36 months of the first violation, \$600.00 fine with a two-day suspension. If outside of 36 months of the first violation, it will be counted as a first violation. (Amended, Bill No. 2013-19)
- (c) Third violation. If within 36 months of the first violation, \$1,000.00 fine with a seven-day suspension. If outside of 36 months of the second violation, it will be counted as a second violation. (Amended, Bill No. 2013-19)
- (d) Fourth violation. If within 36 months of the third violation, \$1,000.00 fine and the license will be revoked. If outside of 36 months of the third violation, it will be counted as a third violation. (Amended, Bill No. 2013-19)

- (f) Penalty for noncompliance. If a licensee fails to comply with a suspension or revocation notice, the Council may increase the suspension or the fine, or both, at its discretion. (Added, Bill No. 2013-19)

Subd. 2. Other individuals. Individuals, other than licensees regulated by subdivision 1 of this subsection and other than persons under the age of 21 regulated under Subd. 3 of this subsection, found to be in violation of this section may be charged an administrative fee of \$50.00. (Amended, Bill No. 2004-9)

Subd. 3. Persons under the age of 21. Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to noncriminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel, and other interested parties to determine an appropriate remedy for persons. (Repealed, Bill No. 2018-6)

Subd. 4. Misdemeanor. Nothing in this subsection prohibits the city from seeking prosecution as a misdemeanor for an alleged second violation of Section 1146 by a person 21 years of age or older within five years of a previous conviction under Section 1146.

1146.25. Exceptions and defenses.

Subdivision 1. Nothing in this section shall prevent the provision of tobacco, tobacco-related devices to a person under the age of 21 as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 2. It shall be an affirmative defense to the violation of this section for a person to have reasonably relied on proof of age as described by State law.

(Amended, Bill No. 2018-6)

1146.27. Severability and savings clause.

If any section or portion of this section shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this section.

Section 2. ~~1146.28~~ Effective Date.

Pursuant to Section 3.09 of the Richfield City Charter, ordinances are effective on the 30th day after the day of publication or at such later date as is fixed therein. This ordinance will be effective on January 1, 2024. This ordinance is effective in accordance with Section 3.09 of the Richfield City Charter.

~~Section 5 — This Ordinance is effective in accordance with Section 3.09 of the Richfield City Charter.~~

Passed by the City Council of the City of Richfield, Minnesota this ____ day of _____, 2023.

Mary B. Supple, Mayor

ATTEST:

City Clerk

RESOLUTION NO. _____

**RESOLUTION APPROVING SUMMARY PUBLICATION OF AN ORDINANCE
AMENDING SECTION 1146 OF THE RICHFIELD CITY CODE**

WHEREAS, the City of Richfield has adopted the above referenced ordinance; and

WHEREAS, the verbatim text of the ordinance is cumbersome, and the expense of publication of the complete text is not justified.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Richfield that the following summary is hereby approved for official publication:

**SUMMARY PUBLICATION
TRANSITORY ORDINANCE NO. _____**

AN ORDINANCE AMENDING SECTION 1146 OF THE RICHFIELD CITY CODE

This summary of the ordinance is published pursuant to Section 3.12 of the Richfield City Charter.

The purpose of the ordinance is to restrict flavored products and place a cap on the number of tobacco licenses issued, to four.

Copies of the ordinance are available for public inspection in the City Clerk's office during normal business hours or upon request by calling the Executive Department at (612) 861-9712.

Adopted by the City Council of the City of Richfield, Minnesota this 8th day of August 2023.

Mary Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk



ADVOCATES FOR
BETTER HEALTH

*ABH is dedicated to creating a healthy,
equitable, and thriving state by engaging
physicians and medical students in
community-driven public health
initiatives.*

July 26th, 2023

RE: Please eliminate the sale of flavored tobacco products, and cap tobacco retail licenses in Richfield

Dear Mayor Supple and the Richfield City Council,

I am writing on behalf of Advocates for Better Health, an organization dedicated to creating a healthy, equitable, and thriving state by engaging physicians and medical students in community-driven public health initiatives. Our medical providers share all too often that commercial tobacco is still a matter of huge concern when it comes to the health of their patients. Tobacco use and tobacco-related illnesses are still the number one cause of death in Minnesota—and in the United States as a whole.

Flavored tobacco products, including menthol, mask the harsh taste of tobacco which makes smoking easy to start and harder to quit. Flavored tobacco is incredibly appealing to young tobacco users, especially when over 15,000 flavors exist on the market at any given time. Some products, like menthol tobacco products, are disproportionately marketed to certain communities such as Black communities, youth, women, and LGBTQ. Given the harms of tobacco products, these communities experience health disparities of tobacco-related illnesses at greater rates. Other communities that have fully restricted flavored tobacco, including menthol, are: Edina, Golden Valley, Arden Hills, Lilydale, and Mendota Heights. Richfield would be in good company and a model to other communities by passing a similar restriction.

Eliminating the sale of flavored tobacco and capping retail licenses to four will protect residents and future generations' health and wellbeing from the harms of tobacco. These changes stand to have a huge impact if passed, including on health disparities, community health and wellbeing, and economically. I hope we can work together to achieve this goal. Thank you for your leadership on this important issue.

Sincerely,

Zeke McKinney MD, MHI, MPH

A handwritten signature in black ink, appearing to read 'ZMK', with a stylized flourish extending to the right.

President, Advocates for Better Health



July 24, 2023

Mayor Supple and Members of the Richfield City Council:

The Association for Nonsmokers-MN (ANSR) supports the proposed ordinance to end the sale of all flavored tobacco products including menthol and cap retailer licenses in Richfield.

Since 1973, ANSR has worked to prevent youth tobacco use and reduce health disparities by supporting and helping enact strong public policies like the ones you are considering. We know that the tobacco industry has a long history of targeting youth, communities of color and LGBTQ populations with their products. Tobacco executives admitted to these intentions in emails and industry documents throughout the late 20th century. While the industry may be craftier today, their intentions are still clear. They use flavors like mango, mint and cotton candy to reel in a new generation who become addicted to nicotine.

There will be pressure to exempt menthol from your proposed restriction. We strongly oppose this tobacco industry ploy. Menthol makes it easier to start and harder to quit. Further, menthol tobacco poses a unique health risk because of its targeted marketing to African Americans, youth, and the LGBTQ community. The tobacco industry is making an enormous profit while our most vulnerable communities suffer from the health consequences of nicotine addiction.

ANSR also supports the proposal to cap the number of tobacco licenses, thus reducing the number of licensed tobacco retailers over time. Cities in Minnesota that have capped their tobacco licensing ordinance include Bloomington, Brooklyn Center, Excelsior, Golden Valley, New Hope, Roseville, and St. Paul. Saint Paul is considering reducing their allowed number of licensing even further.

Richfield is poised to adopt one of the strongest tobacco licensing ordinances in the state. We are proud of the work you are doing to protect your citizens and are pleased to support your work.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeanne Weigum', is written over a horizontal line.

Jeanne Weigum, President





NATO

July 25, 2023

Mayor Mary Supple
Members of the Richfield City Council
6700 Portland Avenue South
Richfield, MN 55423

RE: Proposed Tobacco Retail Licensing Ordinance Amendments

Dear Mayor Supple and Councilmembers:

As the Executive Director of the National Association of Tobacco Outlets (NATO), a national retail trade association that represents more than 66,000 retail stores throughout the country including several Richfield retail store members, I am writing to submit our comments and concerns regarding the to amend the existing Tobacco Retail Licensing ordinance to, among other things, ban the sale of flavored tobacco and vapor products and prohibit the transfer of tobacco businesses.

Compliance with Minnesota Statutes Section 461.12

Minnesota Statutes Section 461.12 grants cities the authority to license and regulate the sale of tobacco products. Minnesota Statutes Section 461.19 requires that a city which intends to adopt or substantially amend an existing retail tobacco licensing ordinance provide a written notice by mail at least 30 days before a city council meeting at which an ordinance is to be adopted or an amendment considered. My question is whether the City of Richfield mailed the required prior notice to those retailers which hold a retail tobacco sales license. If not, then I would request that the Richfield City Council not consider the proposed ordinance amendments at a first reading scheduled for today and direct staff to issue the notice in accordance with Minnesota Statutes Section 461.19 (see statute below).

461.19 EFFECT ON LOCAL ORDINANCE; NOTICE.

Sections 461.12 to 461.18 do not preempt a local ordinance that provides for more restrictive regulation of sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products. A governing body shall give notice of its intention to consider adoption or substantial amendment of any local ordinance required under section 461.12 or permitted under this section. The governing body shall take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license under section 461.12. The notice shall state the time, place, and date of the meeting and the subject matter of the proposed ordinance.

Richfield Should Focus on Alcohol and Marijuana Use, Not Flavored Tobacco Products

According to the 2022 Minnesota Student Survey for 11th graders in Richfield, in the previous 30 days, just 1.1% used *any* cigarettes, cigars or smokeless tobacco, *even once*. With no significant youth use of traditional tobacco products, there is no justification for an across-the-board prohibition on the sale of every kind of flavored tobacco product that adults who are 21 and older choose to purchase.

This same survey found that 6.5% of 11th graders currently used alcohol and 10.6% currently used marijuana. This survey is consistent with the recently published Gallup survey referenced above. Richfield has a much more significant problem with youth drinking alcohol and smoking marijuana; a reasonable person can inquire why the Richfield City Council is not considering a ban on all flavored alcohol products and additional regulations to respond to the high marijuana use rates?

The Public Does Not Support a Menthol Cigarette Ban

An August 2022 Gallup poll noted that cigarette smoking was at an historic low of 11% of the nation's adult population, and only 42% of respondents, Democrats and Republicans alike, support banning menthol cigarettes. It is simply not a priority of the public, which is much more concerned with marijuana use than cigarettes. This is not surprising, in that Gallup released further survey results that show that young adults aged 18-29 use marijuana at a rate more than double that of cigarettes (26% marijuana use vs. 12% cigarette use.) Marijuana use among that age cohort also exceeds the 19% who use e-cigarettes, according to Gallup. As other traditional flavored tobacco products are used even less than menthol cigarettes, one can only surmise that the public also has little interest in banning traditional flavors of these products.

FDA is Pursuing Menthol Cigarette and Flavored Cigar Bans

The FDA issued proposed regulations in April 2022 banning menthol cigarettes and flavored cigars. If enacted, these regulations would apply nationwide and remove hundreds of brands of menthol cigarettes and flavored cigars from the marketplace. The FDA has publicly announced that it plans to finalize these regulations banning menthol cigarettes and flavored cigars in August of 2023, this coming month. With this federal action being taken, there is no need for the Richfield City Council to act.

The Ban Would Affect Products Found by the FDA to be in the Public Health

The U.S. Food and Drug Administration has a process whereby manufacturers submit products for scientific scrutiny to determine whether the products are “appropriate for the protection of public health.” To do so, the agency utilizes a review process that relies on science and evidence-based data to determine whether a tobacco product may stay on the market. Thus far, the FDA has granted marketing orders for four modern nicotine products, all of which are mint flavored, eight snus products, four of which are mint or wintergreen flavored, two low nicotine combustible cigarettes, one of which is menthol flavored, and three heat-not-burn products, two of which are menthol flavored. By granting these applications, the FDA has determined that some menthol, mint, and wintergreen tobacco products *protect* public health. The city's prohibition of flavored products that may receive this designation as the FDA would work *against* the public health.

Cross-Border Purchasing of Flavored Tobacco Products Will Hurt City Retailers

A ban on the sale of flavored tobacco products in the city will cause adults who purchase these products to go outside Richfield to buy their preferred products. This cross-border purchasing will involve not only

buying tobacco products and e-cigarettes in a nearby city, but also gasoline, snacks, and beverages, which will exacerbate the loss of sales by Richfield retailers.

Illicit Tobacco Product Market Expansion by Criminals and Racial Profiling

Illicit markets for tobacco products already exist across the country, especially in those cities and counties that assess high tobacco taxes or have banned the sale of flavored tobacco products. Banning the sale of menthol cigarettes and traditional flavors of other tobacco products and e-cigarettes will create even more incentive for criminals to supply these products in the city to anyone of any age who has cash. This increase in illegal tobacco sales will necessitate a higher level of law enforcement intervention, putting further pressure on already strained police resources.

Beyond the illicit market, banning the sale of flavored tobacco products, including menthol cigarettes, may result in racial profiling and a greater number of interactions between African Americans, who tend to smoke menthol cigarettes at higher rates, and City police. These interactions may arise if police witness African Americans possessing or using menthol cigarettes and stop these individuals to ascertain the source of the prohibited menthol cigarettes. Such interactions will create further tensions between the African American community and the police.

Increase in Non-Tobacco Product Prices

The average convenience store business model relies on cigarette and tobacco sales for approximately one-third of all in-store sales. Some areas have become food deserts, forcing residents to rely on convenience stores or small grocers to remain open for basic groceries and household goods. Since a ban on these flavored products would eliminate hundreds of tobacco products from convenience store shelves, those stores located in underserved areas of a city may be forced to close or move to nearby border cities where no flavored tobacco restrictions exist.

Moreover, these retailers will be forced to raise prices on non-tobacco products to replace the lost sales due to an expanded flavor ban. In this period of record-breaking inflation that the country is experiencing, higher prices on other products, including gasoline and food products, will exacerbate the financial challenges being faced by many families. Richfield convenience store retailers will find it very difficult to compete with retailers in neighboring localities or with illicit sellers who do not care to whom they sell illicit tobacco products. Employee layoffs and even store closures are real possibilities in the event of significant sales declines.

Restricting License Transfers Takes Valuable Property Interests without Compensation

The proposed ordinance adds subdivision 11 to Section 11.46.05, prohibiting transfers of licenses from one person to another. Such a prohibition makes it impossible for a business to be sold and the business owner realize its value as a going concern. Small business owners, many of whom are first- or second-generation citizens, who would like to either sell and retire or give the business to their progeny, would be impacted the hardest by this prohibition. Many mom-and-pop operators have a considerable amount of their net worth and retirement savings in the equity of their business. If they are not able to realize that by a sale of the business to a third party, or if they cannot leave the business by will or gift to their heirs, they are significantly deprived of their life savings. This prohibition should be removed to protect small business owners in Richfield.

Conclusion

Richfield retailers share everyone's interest in keeping tobacco products out of the hands of persons under 21 years old. In fact, according to the FDA's compliance checks on Richfield retailers, in 209 checks over the past 10 years, Richfield retailers have only failed to comply 9 times, a 95.6% compliance rate; the last failure to comply was in 2019. (See attached spreadsheet.) Banning the sale of these products makes no sense. Why would the Richfield City Council want to harm the city's responsible, legitimate retailers and force their adult customers to patronize other cities' retailers or buy from illicit sellers?

We trust that you will give serious consideration to all the facts and information contained in this letter to make an informed decision on whether to proceed with this ban on the sale of flavored tobacco products and prohibition on business sales. Thank you for your time and willingness to hear from retailers.

Sincerely,

Thomas A. Briant

NATO Executive Director and Legal Counsel



July 28, 2023

Mayor Supple and Richfield City Council
Richfield Municipal Center
6700 Portland Avenue
Richfield, MN 55423

Mayor Supple and Members of the Richfield City Council,

The Minnesota Cancer Alliance (MCA) strongly supports the proposed ordinance that would end the sale of flavored commercial tobacco products, including menthol, and cap retailer licenses in Richfield. We urge you to move forward with this ordinance.

The MCA is a coalition of over 100 organizations dedicated to reducing the burden of cancer across the continuum: from prevention and detection, to treatment, survivorship and end-of-life care. Our members include Fairview Health Services, the Masonic Cancer Center at the U of M, the Mayo Clinic Cancer Center, Health Partners, Medica, Blue Cross Blue Shield of MN and the MN Medical Association – to name just a few.

Tobacco is the leading preventable cause of cancer, and cancer is the leading cause of death among Minnesotans. The tobacco industry adds flavors to tobacco to make their products more appealing to new users. In December 2022, nearly 80% of all e-cigarette unit sales in the U.S. were menthol, mint or other flavored. The industry markets and sells flavors like mango, mint and cotton candy to entice youth, and now, there is an epidemic of youth e-cigarette use in our country. Removing flavored e-juice/pods and disposables from tobacco retailers in Richfield will have a major impact on youth access and appeal.

There will be pressure to exempt menthol from your proposed restriction. We urge you to continue to include it. Historically, marketing of menthol cigarettes, products known to be more addictive and difficult to quit than other tobacco, has been targeted towards African Americans, youth, women, and the LGBTQ community. As a result, a disproportionate number of these individuals use menthol products and are burdened by tobacco addiction. The tobacco industry is making an enormous profit while our most vulnerable communities suffer from the health consequences of commercial tobacco addiction.

The MCA also strongly supports your efforts to reduce the number of licensed tobacco retailers in your city. Your city is poised to adopt one of the strongest tobacco licensing ordinances in the state. Research shows that youth who live or attend school in neighborhoods with the highest density of tobacco retailers have higher smoking rates.

The Minnesota Cancer Alliance strongly supports the ordinance that has been proposed to you, as we believe it will protect Richfield's youth and community members from the burdens of tobacco addiction and a myriad of cancers and other chronic diseases. As city leaders, you can pass a policy that will prevent commercial tobacco use for decades to come.

Sincerely,

Sarah Manes
Chair, Minnesota Cancer Alliance Steering Committee

2023 STEERING COMMITTEE

CHAIR: Sarah Manes, MS, CCLS
Global Liver Institute

VICE CHAIR: Sumedha Penheiter, PhD
Mayo Clinic

SECRETARY/TREASURER: Patty Graham
HealthPartners

NOMINATING CHAIR: Kris Newcomer
KLN Consulting

Brittney Dahlin
Minnesota Association of Community Health Centers

Laura Fangel
M Health Fairview - Fairview Health Services

Kate Feuling Porter, MPH
Be the Match

Matthew Flory
American Cancer Society

Catherine Graeve, PhD, MPH, CNE, BSN, PHN
St. Catherine University

Erin Hartung, JD
Cancer Legal Care

Amy LaRue
Fond du Lac Human Services Division

Heather Kehn, RN, BS, MPH
Metro-Minnesota Community Oncology Research Consortium

Deborah Day Laxson
Health Care Agent Literacy Project

Joanne Moze, MPH
Blue Cross MN

Emily Myatt
American Cancer Society Cancer Action Network

David Perdue, MD, MSPH
MNGI Digestive Health

Erin Peterson
Colon Cancer Coalition

Melanie Peterson-Hickey, PhD
Minnesota Department of Health

Ashley Pohlenz, MPH
University of Minnesota – Masonic Cancer Center

Kathy Scheid
Elder Network

Esha Seth, MPH
Association of Nonsmokers-Minnesota

Patrick Tarnowski
PTx2 Healthcare Consulting

Cornelius Thiels, DO
Commission on Cancer, Mayo Clinic

Nancy Torrison
A Breath of Hope Foundation



July 27, 2023

RE: LETTER OF SUPPORT - Proposed ordinance prohibiting the sale of flavored commercial tobacco products including menthol

Dear City Manager Kate Rodriguez,

Thank you for considering ending the sale of all flavored commercial tobacco products in Richfield.

[Parents Against Vaping e-cigarettes](http://www.parentsagainstvaping.org), is a national volunteer-based nonprofit, fighting youth tobacco use and the predatory behavior of the tobacco industry. There is an epidemic of youth e-cigarette/vape use in our country. Youth have been blatantly targeted by the tobacco industry through flavored vape devices. This proposal is particularly important to Richfield parents eager to protect their kids from nicotine addiction and becoming Big Tobacco's next generation of cash cows.

According to the 2022 National Youth Tobacco Survey, more than 3.0 million kids across the country are using tobacco products. Among e-cigarette/vape users, 85% of high school and 81% of middle school students use flavored products with menthol, fruit, candy, and mint reported as the most popular. **To effectively address the youth vaping epidemic, the most crucial step is to eliminate youth access by discontinuing the sale of all flavored tobacco products, including menthol, in all locations.**

Historically, flavors have been used as a marketing weapon by tobacco manufacturers to target youth and initiate them into the use of the industry's addictive nicotine products. In particular, the tobacco industry has used menthol flavors to racially segment and target specific groups, especially Black Americans, and LGBTQ communities.

As our city leaders, you can pass a policy that will prevent youth tobacco and nicotine use for decades to come. We commend you for championing these important issues and encourage you to continue fighting for these efforts. It is up to all of us to prevent our children and loved ones from being preyed upon and exploited for profit by Big Tobacco.

Sincerely,

Cynthia Stremba

Director of Volunteers and State & Local Advocacy, Parents Against Vaping e-cigarettes

www.parentsagainstvaping.org



The Kid Experts™

SENT VIA E-MAIL

July 13, 2023

Dear Mayor Mary Supple and Richfield City Council Members:

On behalf of Children's Minnesota, I am writing in support of the proposed ordinance ending the sale of all flavored tobacco products, including menthol tobacco, in Richfield.

Children's Minnesota is the state's largest pediatric health care system. We serve an incredibly diverse patient population and 46 percent of our patients are insured through Medicaid. Last year, we saw over 170,000 patients.

As the kid experts in our community, Children's Minnesota is committed to promoting a healthier and more equitable future for our kids. Commercial tobacco use and addiction is an important health equity issue that must be addressed. We know the tobacco industry has a long history of targeting specific communities through various marketing efforts. Because of this targeting, the Black community, those that identify as LGBTQ+, youth, and low-income populations are disproportionately impacted by tobacco-related illnesses.

Candy, mint and menthol flavors are extremely attractive to children and young adults, and at these young ages they are especially vulnerable to addiction. In 2019, providers at Children's Minnesota found a cluster of cases of vaping-related severe lung injuries in teens and young adults. Despite these injuries and growing evidence of the health harms of e-cigarettes, thousands of flavored vapes remain on the market alongside flavored cigars and menthol cigarettes. The tobacco industry has studied the behaviors of young people and figured out how to target the next generation of customers. The tobacco industry is making an enormous profit while our most vulnerable communities suffer from the health consequences of tobacco addiction.

Children's Minnesota applauds efforts being made in cities across our state to address youth tobacco use and reduce health disparities. We hope to see the City of Richfield join others that are ending the sale of commercial tobacco products to secure a brighter future for our children.

Sincerely,

A handwritten signature in black ink that reads "Amanda Jansen". The signature is fluid and cursive.

Amanda Jansen, MPP
Director of Public Policy
Children's Minnesota



The African American Tobacco Control Leadership Council

July 18, 2023

To: Mayor Mary Supple, Councilmember Sharon Christensen, Councilmember Simon Trautmann, Councilmember Sean Hayford O'leary, and Councilmember Ben Whalen

From: The African American Tobacco Control Leadership Council (AATCLC)

Re: End the Sale of Menthol Cigarettes and All Other Flavored Tobacco Products in Richfield! No Exemptions: All Flavors, All Products at All Locations!

The African American Tobacco Control Leadership Council (AATCLC) strongly encourages the Richfield City Council to adopt a comprehensive policy to:

- (1) end the sale of menthol cigarettes and all flavored tobacco products, with no exemptions for hookah;
- (2) reduce tobacco store density; and
- (3) remove all criminal penalties associated with the purchase, use, and possession of all tobacco products.

We are glad to see that the Council is taking up this matter. Frankly, this couldn't come at a better time. We already know that 80% of youth, 12-17 start smoking using flavored cigarettes (Ambrose et al., 2015). According to the 2022 National Youth Tobacco Survey, more than 2.5 million kids across the country are using tobacco products. 85% of high school and 81% of middle school students use flavored products with fruit, candy/desserts/other sweets, mint, and menthol reported as the most popular flavors.

Indeed, in the aftermath and lingering impact of the COVID-19 pandemic, nothing could be more important than getting these products out of our community. Unfortunately, we know that smokers are more susceptible to COVID infection (CDC, 2020). If the Council truly wants a healthier Richfield, and we believe that you do, then it is imperative that you support the end of the sale of menthol and all flavored tobacco products; its passage will end the predatory marketing of these products that disproportionately impacts poorer communities, marginalized groups, youths, and communities of color.

Menthol the Ultimate Candy Flavor; It Helps the Poison Go Down Easier!

This is no minor matter. Menthol and flavored tobacco products are driving tobacco-related deaths and diseases nationwide. While the use of non-flavored tobacco cigarettes has been decreasing, the use of menthol cigarettes is on the rise, among youth and adults; among Latinos,



The African American Tobacco Control Leadership Council

Blacks, and Whites (Villanti, 2016). Let's be clear, the majority of women smokers smoke menthol cigarettes; folks from the LGBTQ community disproportionately smoke these products; 47% of Latino smokers prefer menthol cigarettes, with 62% of Puerto Rican smokers using menthol; nearly 80% of Native Hawaiians; a majority of Filipinos; and a majority of smokers with behavioral health issues smoke menthol cigarettes. Frankly, the most marginalized groups disproportionately use these so-called "minty" products (CDC, 2010; Fallin, 2015; Forbes, 2013; Delnevo, 2011; Hawaii State Dept. of Health, 2009; Euromonitor, 2008; Hickman, 2015).

Be appraised that 85% of African American adults and 94% of Black youth who smoke are using menthol products (Giovino, 2013). These striking statistics arise from the predatory marketing of these products in the Black Community, where there are more advertisements, more lucrative promotions, and most disturbing menthol cigarettes are *cheaper in the Black community* compared to other communities (Henriksen et al., 2011; Seidenberg et al., 2010). These predacious practices for the past 50 years have led to Black folks dying disproportionately from heart attacks, lung cancer, strokes, and other tobacco-related diseases (RSG, 2014).

Take note that new research shows that menthol cigarettes were responsible for 1.5 million new smokers, 157,000 smoking-related premature deaths, and 1.5 million life-years lost among African Americans over 1980–2018. While African Americans constitute 12% of the total US population, these figures represent, respectively, a staggering 15%, 41%, and 50% of the total menthol-related harm (Mendez & Le, 2021).

The Council should be aware that menthol is an anesthetic by definition, and as if to add insult to injury, masks the harsh taste of tobacco and allows for deeper inhalation of toxins and greater amounts of nicotine. The greater the nicotine intake, the greater the addiction. Hence, it is no surprise menthol cigarette users find it harder to quit than non-menthol cigarette users (Ton et al., 2015; Levy et al., 2011). The "cool refreshing taste of menthol" heralded by the tobacco industry is just a guise; **ultimately, menthol and all flavors allow the poisons in cigarettes and cigarillos "to go down easier!"**

We Can't-Wait on the FDA

Today over 90 municipalities prohibit the sale of all menthol tobacco products including flavored e-juices; <https://no-smoke.org/wp-content/uploads/pdf/flavored-tobacco-product-sales.pdf>

While it is important that the FDA announced that they will put forward a Rule outlawing menthol as a characterizing flavor in cigarettes, we know that even this process will be fraught with disorder. First, the FDA says they will promulgate the rule in August of 2023. If past practices are any indication of future practices, then it is almost certain that the ruling won't come in August. Even if the ruling comes in August of 2023, it will probably give the industry a



The African American Tobacco Control Leadership Council

year to implement the rule, pushing the date to the summer of 2024 and once a final rule is made public and there is more public comment, the industry will **sue** to stop the process from going forward, thus extending the time period for years to come. **The bottom line is that: We Can't Wait on the FDA.** Richfield must take steps to protect the health of its citizens, lives are at stake.

Who Are the Racists: The Tobacco Control Advocates or the Tobacco Industry?

Some groups funded by the tobacco industry insist that removing menthol cigarettes and flavored little cigars would be taking away “our” cigarette; we’d be discriminatory; racist. This line of argumentation stands history on its head. As was pointed out earlier, it was and is the tobacco industry that predatorily markets these products in the Black Community. As mentioned earlier, the facts are these: there are more advertisements, more lucrative promotions, and most disturbing is that menthol cigarettes are ***cheaper in the Black Community*** compared to other communities (Henriksen et al., 2011; Seidenberg et al., 2010). This is how these flavored death sticks became “our” cigarettes, they pushed them down our throats!

Still, other groups, spurred on and funded by the tobacco industry, have been spreading falsehoods, stating that restricting the sale of menthol and flavored tobacco products, including flavored e-juices will lead to the “criminalization” of particularly youth of color. Nothing could be further from the truth. All ordinances adopted around the country ***prohibit the sale*** of flavored products, ***they don't prohibit the possession*** of these products. Indeed, the FDA proposed rule states explicitly that there are no penalties for individual use or possession. The facts are that the adoption of menthol restrictions will not lead to police having any greater interaction with any youth; it won't be illegal to possess these products, just retailers cannot sell them.

These same groups rail about “unintended consequences.” We respond: **Look at the Intended Consequences!** As mentioned before, Black folks die disproportionately from tobacco-related diseases of heart disease, lung cancer, and stroke compared to other racial and ethnic groups. (RSG, 2014); menthol cigarettes and flavored little cigars are the agents of that destruction. It is estimated that 45,000 Black folks die each year from tobacco-related diseases (RSG, 1998). In this regard, we encourage Richfield's Council to support the removal of all criminal penalties associated with the purchase, use, and possession of all tobacco products. Decriminalize tobacco! Hold retail owners responsible, not clerks, and don't punish kids!

The AATCLC

Formed in 2008, the African American Tobacco Control Leadership Council is composed of a cadre of dedicated community activists, academics, public health advocates, and researchers.



The African American Tobacco Control Leadership Council

Even though based in California, we are national in our scope and reach. We have partnered with community stakeholders, elected officials, and public health agencies, from Chicago, Boston, and Minneapolis to Berkeley and San Francisco. Our work has shaped the national discussion and direction of tobacco control policy, practices, and priorities, especially as they affect the lives of Black Americans, African immigrant populations, and ultimately all smokers. The AATCLC has been at the forefront in elevating the regulation of mentholated and other flavored tobacco products on the national tobacco control agenda, including testifying at the FDA hearings in 2010 and 2011 when the agency was first considering the removal of menthol cigarettes from the marketplace. In November of 2019 we testified on Capitol Hill in support of HR 2339 (The Pallone Bill), this bill would prohibit the manufacturing and sale of menthol and all flavored tobacco products throughout the United States. This Bill was passed in the House of Representatives in February of 2020 but went nowhere in the Senate. In June 2020 the AATCLC along with its partner Action on Smoking and Health (ASH) filed a lawsuit against the FDA for dragging their feet by leaving menthol on the marketplace with overwhelming scientific evidence showing that it should be removed immediately. Subsequently and importantly the American Medical Association (AMA) and the National Medical Association (NMA) have joined the lawsuit as plaintiffs. It was this lawsuit that forced the FDA to act. And even though the lawsuit has been dropped, we are prepared to re-file if the FDA drags its feet again and doesn't announce a rule in August of 2023.

Call to Action!

Now is the time to adopt strong tobacco control measures that can protect our families. We already know that menthol and flavors “makes the poison go down easier.” Richfield’s Council needs to put the health of Richfield Citizens at the forefront of their thoughts, not the interests and profits of the tobacco industry, the vaping industry, and their surrogates. This is not the time for half-steps, rather it is time to take a stand for the public’s health and say: **No Selling of Menthol Cigarettes and All Other Flavored Tobacco Products, including Flavored E-Juices and Flavored Hookah in the City of Richfield!** Say “No” to the continued predatory marketing of menthol-flavored tobacco products to our youth and say “Yes” to the health and welfare of our kids, who are the most vulnerable. In fact, say “Yes” to the protection for **all** residents of Richfield.

We respectfully ask for your support in ending the sale of menthol and all flavored tobacco products and reducing tobacco store density, a lifesaving proposal.

We are all counting on you!



The African American Tobacco Control Leadership Council

Sincerely,

A handwritten signature in black ink that reads 'Phillip Gardiner' in a cursive script.

Phillip Gardiner, Dr. P.H. Co-Chair AATCLC www.savingblacklives.org

A handwritten signature in black ink that reads 'Carol McGruder' in a cursive script.

Carol McGruder, Co-Chair AATCLC

A handwritten signature in black ink that reads 'Dr. Valerie Yerger' in a cursive script.

Valerie Yerger, N.D., Co-Chair AATCLC



Preserving Hookah Culture & Protecting Hookah Tradition across the USA

July 25, 2023

The National Hookah Community Association (NHCA) brings together, and serves as the voice of, hookah producers, distributors, sellers, hookah lounge owners, consumers, and community members who support the preservation of hookah's cultural traditions. We are writing to request that as you consider the ban on flavored tobacco products, you acknowledge the cultural significance of hookah to minority and immigrant populations as well as the lack of youth access to, and use of, the product. California took a historic step in December by enacting a statewide ban on flavored tobacco products, which exempted hookah, for these reasons. NHCA has worked with California, and with many other state and local governments including Colorado, Columbus, Denver, San Diego, San Jose, Los Angeles, and others, to include exemptions for hookah in recent flavor ban legislation.

Hookah is a small category in the tobacco space, making up only roughly 0.005% of nicotine product sales. However, hookah is an important cultural practice to many and one that has existed for centuries, originating in the Middle East and India. Today, a broad cross-section of immigrants in the U.S. from around the world enjoy hookah at home and in lounges as a centerpiece for cultural, business, and social gatherings. Hookah is widely used by Middle Eastern, Armenian, Turkish, East African, Indian, Persian, Indonesian, and other minority immigrant citizens. Hookah lounges across the country have come to serve as safe gathering places for many diverse ethnic and religious communities. Despite the importance of this social practice and tradition, NHCA members continue to find that many policymakers are often unfamiliar with hookah, its practice, and its community.

NHCA fully supports efforts to eliminate youth access and usage of tobacco products, including hookah. Hookah is unlikely to be used or consumed by youth for many reasons. Hookah water pipes are expensive, several feet tall, not easily concealed, and the setup for use is a lengthy process. Lounges that offer hookah are restricted to of-age customers, preventing teens from accessing the product. Recent research by the Centers for Disease Control and Prevention (CDC) found that just 1% of middle and high school students used hookah in the past 30 days, ten times less than the number of teens who vape.

Shisha, the product used in hookah, is a combination of tobacco and a sugar substance such as honey or molasses, and the total product is only comprised of approximately 15% tobacco. As has been the practice for hundreds of years, hookah is, by nature, a flavored product. Unfortunately, noble efforts to address the teen vaping epidemic by **banning flavored tobacco also would result in the ban of ALL hookah.**

A ban on hookah would not only eliminate this important cultural practice for many U.S. citizens, but could also shutter many small, independent, and minority owned businesses. Many of these businesses serve as community gathering places for immigrant populations in cities across the country. Many hookah users are part of religious or ethnic populations that already face discrimination. Eliminating this cultural practice would make many feel as though they are misunderstood and targeted as an outsider by lawmakers and regulators.

We ask that you do not target this important cultural practice and shutter minority and immigrant owned businesses. Please grant an exemption for hookah from any flavored tobacco ban.

National Hookah Community Association

July 24, 2023

The Honorable Mary Supple and members of the Richfield City Council
6700 Portland Ave.
Richfield, MN 55423



Dear Mayor Supple and members of the Richfield City Council:

I am writing on behalf of Tobacco-Free Alliance to express our support for the proposed ordinance that would end the sale of all flavored tobacco products including menthol and cap retailer licenses in Richfield. The Tobacco-Free Alliance is a Twin Cities nonprofit organization with the mission to prevent youth from using commercial tobacco, prioritizing communities adversely affected by industry marketing and health disparities.

Thousands of different sweet, candy-flavored, and menthol/mint flavored tobacco products are available, enticing youth with the taste and colorful packaging. Menthol flavored tobacco products in particular make it easier for kids to start smoking and harder to quit because menthol cools the throat and masks the harshness of tobacco. The 2022 Minnesota Student Survey results showed that 78 percent of 8th-graders and 85 percent of 11th-grade tobacco users report they use a flavored product. Unfortunately, many of these same students are becoming addicted to e-cigarettes. More than 70 percent of youth e-cigarette users in Minnesota are showing signs of nicotine dependence. Removing menthol and flavored tobacco from the marketplace as well as capping licenses has the opportunity to make tobacco products less accessible and appealing to young people and is critical to lowering youth tobacco use rates.

By removing all flavored tobacco products including menthol from the marketplace and including a provision to not issue any new tobacco licenses in your ordinance, your city is poised to adopt one of the strongest tobacco licensing ordinances in the state. Thank you for your leadership in considering this tobacco prevention ordinance that will help prevent another generation from a lifetime of addiction and tobacco-related disease.

Sincerely,

A handwritten signature in black ink that reads "Elyse Less". The signature is written in a cursive, flowing style.

Elyse Levine Less
Executive Director

2395 University Avenue W, Suite 304, Saint Paul, MN 55114-1512
651-379-0196 | www.mntobaccofreealliance.org

Blue Cross and Blue Shield of Minnesota

P.O. Box 64560
St. Paul, MN 55164-0560
(651) 662-8000 / (800) 382-2000



August 1, 2023

The Honorable Mayor Mary Supple and Members of City Council
City of Richfield
6700 Portland Avenue
Richfield, MN 55423

Dear Mayor Supple and Council Members:

As both a resident of Richfield and on behalf of Blue Cross and Blue Shield of Minnesota, I am writing to urge you to support the proposed ordinance to prohibit the sale of all flavored commercial tobacco products including menthol and to cap tobacco retail licenses at four. A comprehensive policy that clears the market of all flavored tobacco products will create a healthier future for our kids and adults alike.

As the largest health plan in Minnesota, Blue Cross and Blue Shield of Minnesota is committed to improving the health of all Minnesotans, which is why we strongly support local policy change.

An epidemic of e-cigarette use has disrupted a downward trend in youth tobacco use overall. One out of every four Minnesota 11th-graders now report using e-cigarettes – a 54 percent increase since 2016. This policy will have a direct impact on reducing youth access to these products.

The tobacco industry, which includes e-cigarette manufacturers, uses menthol, candy and fruit-flavored tobacco products to attract the next generation of smokers. Their targets are undeniably young people, but because of predatory marketing, they also attract African Americans, American Indians and LGBTQ individuals. Nine out of ten African American adult smokers use menthol tobacco, compared to 25 percent of white adult smokers.

Finally, phasing out commercial tobacco licenses will also reduce addiction and improve health. We appreciate your comprehensive approach to addressing tobacco's harms.

In 2017, Blue Cross released a study showing that each year, smoking claims over 6,000 Minnesota lives and costs our state **\$7.5 billion** in health care costs and lost productivity. The staggering costs of tobacco in both health care costs and loss of life cannot be compared to the loss of profits for those who want to continue to sell these lethal products.

I hope you will take this positive step toward improving the health of all Richfield residents.

Sincerely,

A handwritten signature in black ink that reads "Bukata Hayes".

Bukata Hayes
Vice President, Racial and Health Equity and Chief Equity Officer
Blue Cross and Blue Shield of Minnesota