



**CITY COUNCIL WORK SESSION AGENDA
MONDAY, FEBRUARY 08, 2021**

CITY HALL, 1301 81ST AVENUE NE, SPRING LAKE PARK at 5:30 PM

- 1. CALL TO ORDER**
- 2. DISCUSSION ITEMS**
 - A. Rental Housing Study Presentation and Discussion
 - B. Targeted Residential Picketing Ordinance (*Nelson*)
 - C. Discussion of Resolution of Support for SF 82/HF 185 (*Nelson*)
 - D. Median Safety Ordinance (*Nelson*)
 - E. 1628 County Highway 10 Discussion (*Buchholtz*)
 - F. Tower Days Funding Request (*Buchholtz/Okey*)
- 3. REPORT**
 - A. Administrator Reports
- 4. ADJOURN**

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 1301 81st Avenue NE, Spring Lake Park, MN 55432. Ph.763-784-6491 at least 48 hours in advance.

To:	Dan Buchholtz, City Administrator City of Spring Lake Park	From:	Phil Carlson, Lauren Walburg Stantec
File:	Rental Housing Study	Date:	January 29, 2021

Re: Rental Housing Study Update

INTRODUCTION

The Spring Lake Park City Council is exploring the issue of rental housing in single family zoning districts and has asked for Stantec's assistance in a study which focuses on improving Spring Lake Park's current programs and policies for rental properties. The study includes researching and summarizing Spring Lake Park's current policies and regulations, as well as information provided by the City on documented issues with rental properties. This memo summarizes the research conducted to date and provides initial recommendations for next steps.

We have had conversations with City Staff and listened to input from the City Council in initiating this moratorium and study. The summary and recommendations included in this memo focus on the issues from these discussions. City staff also expressed a desire to look at the rental licensing program in the City of Columbia Heights as a model for Spring Lake Park. We suggest using Columbia Heights as a model for rental licensing in Spring Lake Park. This memo responds to the following issues:

- Maintenance issues at rental properties including yard maintenance, trash and parking issues
- Conduct issues at rental properties by residents or their guests including noise complaints and other police calls
- Issues with administering the ordinance, including: follow-through and enforcement of rental inspections, contacting rental managers (especially larger companies) and license renewal process, among others

REVIEW OF NUISANCE/POLICE CALLS

Nuisance Complaints

One of the issues analyzed in this study is maintenance and upkeep of rental vs owner-occupied single-family homes. One indicator of maintenance issues is the record of nuisance complaints and calls per property. The Building Inspector provided Stantec with a summary of nuisance/code enforcement records from 2018-2020 for both owner-occupied and renter-occupied residential properties throughout the City. Stantec reviewed both the number of nuisance calls for each type of property, as well as the type of nuisance complaints received. A few conclusions can be drawn from the information:

- Of all the code enforcement/nuisance complaints throughout the City from 2018-2020, roughly 83% were for owner-occupied properties, while roughly 17% were for renter occupied properties. This correlates with the higher percentage of owner-occupied residential properties in the City.
- Nuisance calls for rental properties included the following categories: Parking (including inoperable and commercial vehicles), rubbish/junk, weeds/grass, driveway repair, garbage cans at street, outdoor storage.
- Of these nuisance calls, few required a second notice. However, this list generally does not capture violations cited during routine rental inspection, which require a follow-up inspection.

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While these types of nuisance complaints are not unique to rental properties, enforcement can be made more difficult by the absence of an on-site property owner/responsible party. These nuisance issues are exacerbated when a rental manager or property owner is difficult to reach, providing few solutions to the City to address the issue. This memo will suggest several ways in which enforcement/administration may be improved to better respond to nuisance complaints.

Police Calls

City Staff also provided Stantec with a random sampling of police calls in three sections of the City. These police calls were provided for both owner occupied and rental properties. Stantec reviewed this information to assess the extent to which conduct/behavioral issues occur at renter occupied vs. owner-occupied properties. Stantec ensured an equal number of owner-occupied and rental properties to provide an “apples-to-apples” comparison for police calls. The following conclusions can be drawn from the information provided:

- In an equal random sample of owner-occupied and renter-occupied properties, there were 151 police calls from owner-occupied properties and 348 police calls from renter-occupied properties.
- There were several properties (both renter and owner-occupied) that had more than 20 police calls per property. Properties with this many calls are relative outliers compared with the rest of the call data. When these outliers were removed, the number of police calls for owner-occupied and renter-occupied properties were essentially equal (104 calls for owner occupied vs. 105 calls for renter-occupied).
- Police calls for renter-occupied properties included the following general categories: medical, welfare check, noise, domestic/civil dispute, narcotics, 911 hang-up, suspicious activity, animal complaint, child custody. Police calls for owner-occupied properties included the same general categories.

The police call data indicates that for the most part, owner-occupied and renter-occupied properties place a similar number of 911 calls and for similar issues. However, as indicated above, there are a few rental properties that have consistent conduct/behavioral issues. This memo proposes stronger mechanisms for the City to address these properties with consistent and repeated conduct issues.

CURRENT POLICIES AND REGULATIONS

The City currently regulates rental housing through Section 12.16 Housing Maintenance and Occupancy in its municipal code. The City provides all property owners seeking a rental license with an application and a guidance document describing the application, fees and inspection process. Additionally, the City has adopted the International Property Maintenance Code (2006 IPMC) by reference, which applies to all residential properties within the City, and is used as a tool for conducting regular rental inspections. During inspection, the City issues a Rental/C.O. (certificate of occupancy) Inspection Report and Compliance Order, which provides rental property owners with a list of inspection criteria, and a timeframe to correct any issues. All of these documents were reviewed by Stantec as part of this study and are analyzed further in the following sections.

Ordinance

Section 12.16 Housing Maintenance and Occupancy includes several sections pertaining to the following broader topic areas: administration of rental license and application procedure, fees, rental unit inspection, compliance/violation of procedures and conduct on rental property. The following summarizes key points in the rental ordinance, Stantec comments are included in *italics*:

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License/Application

- Per City code section 12.16.030, a rental license must be obtained, which is valid for a period of **1 year**. Licenses expire on December 31, and license renewals must be filed by November 1. The code sets a delinquency penalty of 5% of the license fee for each day of operation without a valid license.
Rental licenses are renewed every year, while inspections occur every 2 years. At a minimum, these processes should occur at the same time of the year. It could also help with administration if they were done at the same frequency.
- Application must be completed by the owner of the property or their legally constituted agent (see description below).
- Resident agent – must be designated in writing by the owner of the property. This person must reside in the Twin City area, is the person responsible for maintenance and upkeep and can legally receive notice of violation of city ordinance. City must be notified in writing of any change of agent.
This language ensures that the City has a local contact, which was a stated issue. Ensuring that the contact information for the resident agent (address, not a P.O. box, up-to-date phone number and email, etc) is collected in the application and updated at each renewal period could help with administration.
- Application requirements are listed in section 12.16.050 (B).
The City of Columbia Heights has a much longer list of application requirements, including requiring detailed contact information from property owner, rental manager, agent and emergency contact in the case of a maintenance emergency. Collecting more information in the application and requiring information to be verified at each renewal period could ease administration and contact issues with the rental license and inspection processes. The City of Columbia Heights also collects other pertinent information such as number of parking spaces,
- License is non-transferable

Inspection

- A certificate of inspection must be obtained prior to operating a rental dwelling. The certificate is valid for a period of **2 years**. Certificate expires on the anniversary of its issuance and is non-transferable.
The building inspector has stated that the inspection procedures and enforcement could be stronger.
- Property owner must agree to allow inspection

Fees

- A conversion fee is required for converting a single-family home to a rental property and is in addition to the first year registration fee. This is a one-time fee.

Conformance to laws

- City Code Section 12.16.070 says that an operating license may not be issued or renewed if the rental dwelling and its premises fail to follow City and State law.
In addition to complying with all City and State laws, rental property owners could also be required to include crime/drug-free language in their leases and to perform criminal background checks prior rental.

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Compliance Order

- A compliance order is issued whenever a violation of the ordinance is discovered (typically during inspection). The ordinance states that the compliance order must be in writing, describe the location and nature of violation, provide reasonable time for correction of violation and be served to the property owner or designated agent.
This language could provide more specific guidance to City staff regarding compliance procedures. Specifically, in the event that a property owner does not correct a violation, specific recourse could be included to provide for additional enforcement of the ordinance. This could also be addressed in a separate inspection policy, such as the Columbia Heights example provided in the recommendations.

License Suspension or Revocation

- The City Council has the right to suspend or revoke a rental license should the owner or resident agent fail to comply with city ordinances or state law. Should a license be revoked/suspended, the owner or agent is barred from receiving a rental license for any new occupancies until the license is restored by the City Council.
The revocation language could be clearer about the situations (nuisance/conduct issues) under which a license would be revoked/suspended. The process could also be clearer. Suspension/revocation example language from the City of Columbia Heights is included in the recommendations below.

Responsibility For a Licensee Relating to the Conduct of Occupants or Guests

- The ordinance specifies a list of Minnesota State Statutes and Spring Lake Park city ordinances describing a variety of conduct issues. The ordinance states that it shall “be the responsibility of the licensee to take appropriate action following conduct by occupant(s) or guest(s) of the occupants in violation of the statutes and ordinances. A specific enforcement and administration procedure is described, to be carried out by the Chief of Police, which provides for written notice of violation and revocation or suspension by the City Council after three violations within 12 months, following appropriate notice and opportunity for hearing.
This language provides a mechanism for suspension/revocation of license for conduct issues, the recommendations below give the City Council further options and tools to manage behavioral/conduct issues at rental properties.

Application

Stantec reviewed the application and supplemental information provided to property owners/agents upon request for rental license. The application and supplemental information provides clear guidance on the expectations for rental licensing and inspection within the City, including information on fees. As indicated in the ordinance section above, the information collected in the application could be enhanced to ease administration and enforcement. If not already done, the applicant could also be provided with the inspection checklist so that expectations for maintenance and upkeep are clear from the start and provided in writing. Overall, the application appears to serve the City well, and any updates would likely be minor.

Inspection Checklist

City staff provided Stantec with the inspection checklist used during routine rental inspections. The inspection checklist provides clear guidance to property owners/rental agents on the expectations for maintenance and upkeep. As mentioned above, this checklist could be provided early in the process, prior to the first inspection to ensure that expectations are clear. Stantec does not propose any updates to the inspection checklist itself, as this document appears to be serving the City well.

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RECOMMENDATIONS

The goal of this study was to provide the City with targeted recommendations for updates to their ordinance/policies/practices for single-family rental properties. The following information provides recommendations for best practices related to rental properties, generally using the City of Columbia Heights as a model. Stantec would propose as a next step to prepare a strikethrough version of the ordinance, providing for specific modifications based on feedback from City staff and the City Council on the proposed recommendations below.

Nuisance

- To address maintenance and nuisance complaints, as well as inspection administration, the City could adopt a similar policy to the Columbia Heights Property Maintenance Inspection Policy (attached). While this policy would not be part of the official ordinance, Stantec would work with the City to update the ordinance with necessary language to correspond with this policy. The Columbia Heights Policy is included as an attachment to this memo and was vetted and recommended by the building official.
- The City of Columbia Heights requires that property owners take responsibility for the inspection process, rather than tenants. This ensures clear communication with property owners and ensures that the responsible party handles all corrections to violations. We recommend that the City adopt language that explicitly requires property owners (or their formally designated agent) to conduct the inspection and reinspection process with the building official. This language could also be listed in bold on the license application to ensure that it is clear to the owner/designated agent that they must be present for inspection and reinspection.
- Columbia Heights also uses abatement as an option for handling nuisance issues at rental properties. The City of Spring Lake Park has an existing abatement policy for specific public nuisances in section 9.20.020 of the municipal code. The City could choose to apply this policy to rental properties for specific nuisance concerns, or after several correction orders are served in writing.

Conduct/Behavioral Issues

- To address behavioral/conduct issues, the City could consider requiring that all single-family rental properties include a crime-free/drug-free addendum in their tenant leases. This is common practice in many cities across the Twin Cities Metro Area, including Columbia Heights. However, several cities have begun to move away from this requirement based on equity issues and a lack of due process for tenants. City staff is doing additional research on cities that have recently removed this language from their ordinances and will share that information with the Council. Sample language from the City of Columbia Heights is included as an example below:
 - (1) Crime Free/Drug Free.
 - a. Resident, any members of the resident's household or a guest or other person affiliated with resident shall not engage in criminal activity, including drug-related criminal activity, on or near the premises.
 - b. Resident, any member of the resident's household or a guest or other person affiliated with resident shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or near the premises.
 - c. Resident or members of the household will not permit the dwelling unit to be used for, or to facilitate criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household, or a guest.

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- d. Resident, any member of the resident's household or a guest, or other person affiliated with the resident shall not engage in the unlawful manufacturing, selling, using, storing, keeping, or giving of a controlled substance at any locations, whether on or near the premises or otherwise.
 - e. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR IMMEDIATE TERMINATION OF TENANCY.
- (2) Disorderly Use.
- a. Resident, members of the resident's household, guests, or other persons under the resident's control shall not engage in the following Disorderly Use activities: violations of state law relating to alcoholic beverages, trespassing or disorderly conduct; and violation of the Columbia Heights City Code relating to prohibited noise.
 - b. THREE DISORDERLY USE VIOLATIONS INVOLVING THE SAME TENANCY WITHIN A CONTINUOUS TWELVE MONTH PERIOD SHALL BE A SUBSTANTIAL AND MATERIAL VIOLATION OF THE LEASE AND GOOD CAUSE FOR TERMINATION OF THE TENANCY.
- (3) Definitions.
- a. The term "criminal activity" means prostitution, gambling, maintaining or conducting a disorderly house, unlawful possession, transportation, sale or use of a weapon, domestic assault, delinquency of a minor, criminal street gang activity, threatening, intimidating or assaultive behavior, the unlawful discharge of firearms, or any other criminal activity on or near the premises that jeopardizes the health, safety and welfare of the landlord, his agent, other resident, neighbor or other third party, or involving imminent or actual serious property damage.
 - b. The term "drug related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a controlled substance or any substance represented to be drugs (as defined in Section 102 of the Controlled Substance Act [21 U.S.C. 802]).
- (4) Non-Exclusive Remedies. The Crime Free/Drug Free and Disorderly Use provisions are in addition to all other terms of the lease and do not limit or replace any other provisions. The City could also consider requiring rental property owners to conduct criminal background checks on all tenants. This information could be made available to the City upon request. This is also a fairly typical requirement across metro-area cities.
- The City could also consider requiring rental property owners to conduct criminal background checks on all tenants. This information could be made available to the City upon request. This is also a fairly typical requirement across metro-area cities, including the City of Columbia Heights. Similar to the Crime-free/drug-free language, several cities have begun to move away from this requirement based on equity issues. City staff is doing additional research on cities that have recently removed this language from their ordinances and will share that information with the Council. Example language from the City of Columbia Heights is included below:
 - (1) A statewide (Minnesota) criminal history check of all prospective tenants covering at least the last seven years. The checks must be done by utilizing the most recent update of the Minnesota Bureau of Criminal Apprehension's criminal history files;
 - (2) A statewide criminal history check from the prospective tenant's previous state of residence shall be conducted if the tenant is moving directly from the previous state;
 - (3) A criminal history check of any prospective tenant in their previous states of residence shall be conducted covering the last seven years if they have not resided in Minnesota for three years or longer;
 - (4) A statewide (Minnesota) court history check of all prospective tenants covering at least the last seven years. This check, which includes Unlawful Detainer actions, can be done utilizing the most recent update of the Minnesota Judicial Branch Trial Court Public Access database.

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- (5) Any company that the licensee contract with to conduct criminal history checks must meet the same standards as established above.
 - (6) Documentation of the criminal background checks must be kept on file by the property owner for the length of the tenant's lease. The lessor must display documentation of the background check upon request by the Police Department.
 - (7) If the licensee fails to comply with the requirements of this section, the rental dwelling license for the premises may be denied, revoked, suspended, or not renewed. An action to deny, revoke, suspend, or not renew a license under this section shall be initiated by the City Council at the request of the Police Department in the manner described in § [5A.408](#).
- Finally, some cities require landlords (especially those with multiple rental properties within the City) to take a Phase 1 of the Crime Free Multi Housing (CFMH) training. This is an 8-hour class which covers crime prevention/working with police, crime prevention through environmental design principals, lease agreements and evictions, applicant screening and fair housing, terrorism awareness and prevention. Most cities that require this class will offer it at least once per year through their local police department. The City of Columbia Heights does not require this class as part of their rental licensing policy. For more information about the Crime Free Multi Housing training, visit: <https://www.mncpa.net/what-we-do/crime-free-multi-housing>

Administration

- The City could consider targeted improvements to the application requirements to help to alleviate some of the issues with contacting property owners/management companies.
 - The City has a section in their municipal code that addresses revocation of rental licenses. This section should be reviewed, and further guidance provided on the situations in which revocation would be appropriate and to clarify the process. Example suspension/revocation language from the City of Columbia Heights is included below:
- (A) A license issued or renewed under this section may be revoked or suspended upon a finding of noncompliance with the provisions of this chapter. Reinstatement of a suspended or revoked license shall be accompanied by a fee in an amount set by Council Resolution. Issuance of a new license after suspension or revocation shall be made in the manner provided for obtaining an initial license.
 - (B) The Council may, for cause, revoke or suspend a license, or take other action restricting the privileges of a license subject to the following requirements:
 - a. The city, through its Property Maintenance Enforcement Officer, provides the licensee with a written statement or reasons or causes for the proposed Council action together with a notice for public hearing.
 - b. The Council shall conduct a public hearing on the proposed action and provide findings of fact and citations to any ordinances or regulations that have been violated, together with a statement of action taken and the conditions of any resulting revocation, suspension, or other action restricting the privileges of the licensee.
 - c. The Property Maintenance Enforcement Officer shall forward the findings and statement of action taken to the person in whose name said license was issued by mailing the same to the mailing address indicated on the license application.
 - (C) A violation of any provision of this chapter or of state law, prescribing standards of conduct or regulations governing a licensee; the particular type of business or commercial activity or trade or occupation that is licensed; or the premises where the licensed activity is conducted; shall be a prima facie showing of cause for revocation, suspension, or other action restricting the privileges of a licensee as the Council may determine.

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- (D) Nondisclosure, misrepresentation or misstatement of a material fact in any application for a license under this chapter shall be a prima facie showing of cause for revocation, suspension, or other such action restricting the privileges of a licensee as the Council may determine.
- (E) Any person or owner who has had an interest in two or more licenses revoked pursuant to this code shall be ineligible to hold or have an interest in an occupancy license for a period of five years.

- If these recommendations are adopted, it will likely increase the staff time required to administer the ordinance and enforce the inspection policy. The Council could consider increasing fees for the rental license program to pay for the additional staff time needed to enforce the ordinance. This could be handled during the regular budget and fee discussions, which would give the City time to assess the increase in staff time needed to enforce the ordinance. For reference, the current fee structure is as follows:
 - Single Family: \$150/year
 - Duplex: \$200/year
 - Apartment: \$250 per building plus \$25 per Unit (per year)
 - Rental Conversion Fee: \$750 (one-time fee)

CITY OF COLUMBIA HEIGHTS FIRE DEPARTMENT



PROPERTY MAINTENANCE INSPECTION POLICY

EFFECTIVE July 1, 2005

PURPOSE

This policy is intended to guide the administration of all property maintenance, licensing and inspections.

POLICY

It shall be the policy of the City of Columbia Heights to conduct property maintenance licensing and inspections according to the procedures outlined in this document, City Ordinances, State Fire Code and the State Building Code.

SCOPE

The provisions of this policy shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

PROCEDURE

Inspection Hours. Hours for conducting non-scheduled inspections shall be Monday through Friday, 8:00 am – 4:45 pm. Inspections may be performed outside this time frame if needed. Scheduled inspections shall be Monday through Thursday, 9:00 am-11:00 am and 1:30 pm-4:00 pm.

Property Identification. All properties will be assigned an occupancy identification number. The specific occupancy type of the property/space will determine the occupancy ID number. See the chart below for numbering system.

OCCUPANCY ID NUMBER RANGE	TYPE OF OCCUPANCY
10000 – 10999	Single Family Rental
12000 – 12999	Owner Occupied Two Family Dwelling
20000 – 29999	Two Family Rental
30000 – 34999	Multi Family (3 or more units) Rental
35000 – 35999	Owner Occupied Condominiums
40000 – 49999	Commercial Property
50000 – 59999	Industrial Property
60000 – 69999	Churches and School Property
70000 – 79999	City Owned Property
80000 – 89999	Vacant Property
90000 – 99999	Owner Occupied Single Family Homes

LICENSING

All property, except Owner Occupied Single Family Homes, shall be licensed. Licenses are not transferable. Non-residential properties with multiple tenant spaces shall have a license for each individual tenant space. New property owners or non-residential tenants must submit a new application within 30 days. Any change in occupancy classification shall be approved prior to occupation of the space or property.

Licensing procedure is as follows:

Residential Rental Property. Every property will be given a licensing date. The date is always the 1st day of a month. The license will run for one year from that date thru the last day of the 12th month.

License applications will be sent out to the owner 45 days prior to their licensing date. Licensing requires that a signed, updated application be returned along with required fees prior to the re-licensing date.

All applications shall be filled out completely and signed, to be considered as meeting the licensing requirement. Any incomplete application will be sent back.

A reminder letter will be sent out 15 days prior to the re-licensing date reminding the owner to return their application and fees.

On the first of the month, the re-licensing date, all properties that have not submitted their application and fees will be placed on the agenda of a City Council meeting for revocation of license.

Non-Residential Properties. Every property will be given a licensing date. The date is always the 1st day of a month. The license will run for one year from that date thru the last day of the 12th month.

License applications will be sent out to the owner/tenant 45 days prior to their licensing date. Licensing requires that a signed, updated application be returned along with required fees prior to the re-licensing date.

All applications shall be filled out completely and signed, to be considered as meeting the licensing requirement. Any incomplete application will be sent back.

A reminder letter will be sent out 15 days prior to the re-licensing date reminding the owner to return their application and fees.

On the first of the month, the re-licensing date, all properties that have not submitted a completed license application and fees will be placed on the agenda of a City Council meeting for revocation of license.

**PROPERTY MAINTENANCE CODE
LICENSING PROCEDURE
TABLE FORM**

RESIDENTIAL WITH INTERIOR INSPECTION	RESIDENTIAL WITHOUT INTERIOR INSPECTION	NON-RESIDENTIAL
45 days prior to license date, license application and inspection request are mailed out.	45 days prior to license date, license application and inspection request are mailed out.	45 days prior to license date, license application and inspection request are mailed out.
After 30 days, if license application, fees, and initial inspection are not in, a reminder letter is sent.	After 15 days if no inspection appointment is requested the address is given to inspectors.	After 15 days if no inspection appointment is requested the address is given to inspectors.
After 45 days, all 3 items: license application, fees, and initial inspection must be in and completed. If one or all are not done the property is scheduled for a revocation hearing.	After 30 days, if license application and fees are not in, a reminder letter is sent.	After 30 days, if license application and fees are not in, a reminder letter is sent.
	After 45 days, if the license application and fees are not in the property is scheduled for a revocation hearing.	After 45 days, if the license application and fees are not in and an inspection could not be made, the property is scheduled for a revocation hearing.

LICENSE FEES

All licensed properties will be assessed a license fee. The fee will cover the length of time of the license only. As with the license, the license fee is not transferable. The license fee may be prorated for a specific length of time for the remainder of a licensing year. Proposed licensing fees are as follows:

RESIDENTIAL

See attached fee schedule for current fees. Fees are set by Resolution.

NON-RESIDENTIAL

See attached fee schedule for current fees. Fees are set by Resolution.

INSPECTIONS

All licensed properties are required to have periodic inspections as per this chart:

Occupancy ID Number	Interior Required	Exterior Required
10000 – 35999	Every other year	Every year
40000 – 89999	Every year	Every year
90000 – 99999	None	By complaint*

*The Fire department has the right to make systematic inspections of properties as individuals, blocks, or areas of the City.

45 days prior to their re-licensing date, along with the license application, the owner/commercial tenant will be requested to schedule an inspection if required.

Residential rental properties that require inspections of the individual tenant units are required to schedule an inspection with the Fire Department. Tenants shall be notified, by the owner, of the inspection at least 24 hours prior to the scheduled inspection. The Fire Department will not inspect individual units that have not met the minimum 24 hours notice. It is the right of the tenant to refuse to let us conduct an inspection of their individual tenant space. The Fire Department may acquire an administrative search warrant to conduct the inspection. The Fire Department reserves the right to inspect a randomly picked sampling of units based on the size of the building and past inspection history.

The occupancy identification number will be used to determine the year in which residential rental properties receive inspections of the individual rental units. Properties, which have an even occupancy ID number, will have unit inspections during even numbered years. Properties, which have an odd occupancy ID number, will have unit inspections during odd numbered years. Rental property owners desiring to change the year of inspection for a property may do so **one time** by contacting the fire department Inspection office.

All licensed residential properties are required to have an inspection of the exterior and common areas every year.

Non-residential properties/tenant spaces are required to have interior and exterior inspections every year. This will include the annual fire inspection as mandated by the State Fire Code.

Residential rental properties that do not require inspections of the individual units, and all other properties, will have the opportunity to schedule an inspection until 30 days prior to their re-licensing date. After this date the inspections will be made during regular inspection hours without prior notice. Properties/tenants that are not open during regular business hours are required to set up an appointment for their inspection.

The initial inspection must be made prior to the property's re-licensing date for all properties. On the first of the month, the re-licensing date, all properties that have not had their initial inspection will be placed on the agenda of the next City Council meeting for revocation of license

COMPLAINT INSPECTION. The Fire Department shall respond to all complaints. Complaints will be accepted either verbally or in writing. A written record of the complaint will be made.

Complainants are encouraged to identify themselves however it is not required. Information regarding the identity of any complainant is private data and will not be released to public.

Complaints will be included as a scheduled inspection unless it is determined that it is a Priority Inspection. Priority Inspections will be responded to as soon as feasible.

Complaints of individual residential rental units will follow the above policy with some differences. Complaints must originate from a tenant of the unit. Except for Priority Violations, complaint inspections will not be made for tenants that are under an unlawful detainer, part of an eviction process, or who have already moved out of a property.

If a complaint is in regards to the exterior of a property the inspectors may, based on the type of violations and the condition of neighboring properties, inspect those neighboring properties that have similar violations or are of similar condition.

Violation Correction

When violations are found by inspectors, the owner of residential properties or the owner/tenant of non-residential properties shall be given reasonable time to correct the violations. Following is the schedule to be used by the Property Maintenance office:

TYPE OF VIOLATION	TIME TO FIRST REINSPECTION	DISPOSITION
Priority Violations (Significant life safety violations). Trash, Outside Storage, Vegetation, etc.	10 days*	Citation, Abatement or License Revocation**
All Other Violations	30 days*	Citation, Abatement or License Revocation**
<p>*These time frames are used unless a different time is specified in the ordinance or referenced ordinance.</p> <p>**License revocation does not apply to non-licensed properties, i.e. owner occupied single-family homes.</p>		

The property owner or commercial tenant will be mailed a violation notice. The notice will contain the date of the inspection, any violations found, and the date/time of the re-inspection. The notice will also contain the process/penalties if the violations are not corrected by the re-inspection date.

If violations are not corrected, the property may be put on the agenda of a City Council meeting for a possible license revocation hearing or abatement hearing.

EXTENSION PROCEDURE

Extensions to the violation correction schedule above may be granted by the inspection staff, office staff or the Property Maintenance Enforcement Officer subject to the following guidelines.

Extensions will only be granted if requested during the initial 30-day time to the first re-inspection. Extensions will not be granted for 10-day violations.

Requests for extensions received for non-priority violations can be granted routinely by inspection staff or office staff for up to a maximum of 14 days. Any length of time longer than this requires the approval of the Property Maintenance Enforcement Officer.

Seasonal extensions for exterior work, which cannot be completed due to cold weather, may be granted to no later than June 1 of the following year. Examples include exterior painting, siding replacement, roofing, concrete, or asphalt work, retaining walls, landscaping or other work with soil that is frozen.

Special extensions may be granted for large projects that require more time or are a financial hardship. Requests for these extensions are to be in writing with an explanation as to the hardship. The request must include a completion date. Only one special extension will be granted for a violation.

Extensions involving heating violations require the approval of the Property Maintenance Officer. Generally, the property owner will be granted reasonable extensions provided that significant efforts are being made by the property owner to comply and circumstances beyond the control of the property owner exist.

A re-inspection of extension items will be made to verify compliance. If the violation is not completed the property may be given a citation or the property will be put on the agenda of a City Council meeting for a license revocation hearing or abatement hearing.

SPECIAL SITUATIONS

There may be times that deadlines cannot be made due to special situations beyond the control of the City and its staff. An example may be a missed inspection due to an emergency call. The inspection office has the right to deviate from this policy as long as the intent of the policy is met.

REVOCATION PROCESS

When the property has not met the above requirements, licensed properties may have their license revoked. The license can only be revoked by the City Council as part of a revocation hearing. Property owners and tenants are to be notified of the revocation hearing by regular and certified mail. The owner's notification will also include the **Statement of Cause**.

The revocation hearing will be set by staff with the City Council Secretary. Staff will schedule the hearing to give the owner and tenants at least 14 days notice.

A final pre-revocation inspection will be performed, if needed, prior to the hearing. If violations are corrected and all other requirements are met, the hearing will be closed.

At the revocation hearing, the owner and all tenants will be given an opportunity to be heard by the City Council.

The City Council has the right to revoke or suspend the license, grant an extension, table the motion, or refuse revocation.

If the license is revoked, the owner and tenants will be notified by regular and certified mail of the revocation. The property will also be posted. The posting gives 60 days to vacate.

Sixty days after the original posting of the property, an **Unlawful to Occupy** posting will be put on the building. The Fire Department may write the owner and/or occupants a County Citation or begin the process with Anoka County Courts to have the occupants removed.

To re-license a revoked property, all requirements of this policy and the Property Maintenance Code ordinance shall be met. This includes all outstanding fees.

ABATEMENT PROCEDURE

City ordinance #1461 allows for the abatement of Property Maintenance violations that the City Council deems a nuisance affecting public safety. The Property Maintenance Office will follow the procedures outlined in the ordinance.

The violation letter sent to property owners/tenants will advise that abatement may be one of the options used if the violations are not completed by the re-inspection date.

If the violations are not completed by the re-inspection date, and the Property Maintenance Office decides to use this option, the property owner/tenant will be scheduled for an abatement hearing at a City Council Meeting.

COUNTY CITATION

The Fire Chief and Assistant Fire Chief are allowed, by City ordinance, to write County Citations. The Property Maintenance Office will follow the procedures outlined in the ordinance.

The violation letter sent to property owners/tenants will advise that a County Citation may be one of the options used if the violations are not completed by the re-inspection date.

If the violations are not completed by the re-inspection date, and the Property Maintenance Office decides to use this option, the property owner/tenant will be given a County Citation.



Memorandum

To: Mayor Nelson and Members of the City Council
From: Daniel R. Buchholtz, MMC, Administrator, Clerk/Treasurer
Date: February 3, 2021
Subject: Targeted Residential Picketing Ordinance

Mayor Nelson requested that staff research an ordinance regulating targeted picketing in residential neighborhoods.

This issue has come back to the forefront due to a protest that occurred in a residential neighborhood in the City of Hugo.

White Bear Township was one of the first to adopt a targeted residential picketing ordinance in the early 1990s after continued protests in front of the home of the Executive Director of Planned Parenthood. The ordinance was challenged and, in 1993, was determined to be constitutional by the Minnesota Court of Appeals as “a constitutionally valid time, place, or manner regulation of expression in a public forum.”

Since the protest in Hugo, a number of north metro cities have adopted, or are in the process of adopting, the ordinance, including Hugo, Lino Lakes, Centerville and Blaine.

While Minnesota State Law 609.748, subd. 1 already outlaws targeted residential picketing, it requires the picketing to happen more than once. A City ordinance could outlaw if on the first offense.

It is appropriate for the City Council to discuss the benefits and risks of this proposed ordinance and provide staff direction on how to proceed.

If you have any questions, please don't hesitate to contact me at 763-784-6491.

ORDINANCE NO. ____

AN ORDINANCE RELATING TO AND REGULATING TARGETED PICKETING IN RESIDENTIAL NEIGHBORHOODS IN THE CITY OF SPRING LAKE PARK

WHEREAS, the City Council finds that targeted residential picketing in front of or about a residential dwelling causes emotional distress to the dwelling's occupants, obstructs and interferes with the free use of public rights-of-way and has as its object the harassment of the dwelling occupants; and

WHEREAS, the City Council further finds that, without resorting to targeted residential picketing, ample opportunities exist for those otherwise engaged in targeted residential picketing to exercise constitutionally protected freedom of speech and expression; and

WHEREAS, the protection and preservation of the home is the keystone of democratic government; the public health, safety and welfare and the good order of the community require that members of the community enjoy, in their homes and dwellings, a feeling of wellbeing, tranquility and privacy and, when absent from their homes and dwellings, carry with them the sense of security inherent in the assurance that they may return to the enjoyment of their homes and dwellings; the practice of picketing before or about residences and dwellings causes emotional disturbance and distress to the occupants, obstructs and interferes with the free use of public sidewalks and public ways of travel; such practice has as its object the harassing of such occupants and, without resort to such practice, full opportunity exists, and under the terms and provisions of this section, will continue to exist for the exercise of freedom of speech and their constitutional rights; and that the provisions hereinafter enacted are necessary for the public interest to avoid the detrimental results herein set forth.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SPRING LAKE PARK, MINNESOTA, HEREBY ORDAINS AS FOLLOWS:

Section 1. Purpose

The City has an interest in the protection of residential privacy, the wellbeing and tranquility of the home, and protecting citizens from unwanted speech when they are a captive audience within their homes. The city council finds that, without resorting to targeted residential picketing, ample opportunities exist for those otherwise engaged in targeted residential picketing to exercise conditionally protected freedoms of speech and expression.

Section 2. Definitions

For the purposes of this section, the following definition shall apply.

TARGETED RESIDENTIAL PICKETING means:

- (1) Marching, standing or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security or privacy of an occupant of the building; or
- (2) Marching, standing or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which a residential building is located; or
- (3) Standing, marching, patrolling or picketing by one or more persons focused in front of or adjacent to a particular residential dwelling without the consent of the dwelling's occupants.

Section 3. Prohibited Activity

No person shall engage in targeted residential picketing within the City.

Section 4. Violation/Penalty

Every person convicted of a violation of any provision of this Ordinance shall be guilty of a misdemeanor.

Section 5. Severability

Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part thereof, other than the part held to be invalid.

Section 6. Effective date

This ordinance shall have full force and effect upon its passage and publication.

Passed by the Council of the City of Spring Lake Park, Anoka County, Minnesota, this _____ day of _____, 2021.

APPROVED BY:

Robert Nelson, Mayor

ATTEST:

Daniel Buchholtz, City Administrator

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506 N.W.2d 641
STATE of Minnesota, Respondent,
v.
Leo CASTELLANO, Appellant.
No. C4-93-356.
Court of Appeals of Minnesota.
Sept. 28, 1993.

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Syllabus by the Court

1. A municipal targeted residential picketing ordinance is a constitutionally valid time, place, or manner regulation of expression in a public forum if the ordinance is content-neutral, narrowly tailored to serve a significant government interest, and leaves open ample alternative channels of communication.

2. A municipal targeted residential picketing ordinance that defines targeted residential picketing as an "activity focused on a single residential dwelling without the consent of the dwelling's occupant" is not unconstitutionally overbroad under the First Amendment or *Frisby v. Schultz*, 487 U.S. 474, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988), when activity is narrowly construed to mean solely "picketing activity."

3. A municipal targeted residential picketing ordinance is not void for vagueness where the ordinance provides sufficient notice that all targeted residential picketing is prohibited "without the consent of the dwelling's occupant." The ordinance's consent provision provides a defense to a municipality's prima facie case that focused residential picketing violated the ordinance. Under the ordinance, an "occupant" is a person with a legal right to control or to possess the single residential dwelling.

Hubert H. Humphrey, III, Atty. Gen., Martin J. Costello, Hughes & Costello, St. Paul, John G. Dillon, Minneapolis, for respondent.

Thomas W. Strahan, Minneapolis, for appellant.

Considered and decided by HUSPENI, P.J., and SCHUMACHER and KLAPHAKE, JJ.

OPINION

HUSPENI, Judge.

Appellant, convicted of violating a township ordinance that prohibits targeted residential picketing, facially challenges the constitutionality of the ordinance on the grounds of overbreadth and vagueness. We affirm.

FACTS

On August 24, 1991, approximately 20 men and women were picketing in the area of 5758 Meadowview Drive in the Town of White Bear. Several of the individuals carried graphic signs depicting aborted fetuses. Thomas Webber, Executive Director of Planned Parenthood of Minnesota, who resides at 5758 Meadowview Drive, called the Ramsey County Sheriff's Department to report the noise and disruption caused by the protestors.

A sheriff deputy arrived at 5758 Meadowview Drive and talked to Webber. Webber told the deputy that appellant Leo Castellano

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had stood directly in front of his residence for approximately 30 minutes and shouted "Tom Webber in his hour of death" and "Pray for us sinners now and in the hour of Tom Webber's hour of death" numerous times loudly enough to disrupt Webber and several other neighborhood residents.

The deputies informed the group that they would be arrested if they continued to picket in front of Webber's residence on Meadowview Drive. The protestors reluctantly dispersed after the deputy told them he would not debate the legal issues involved and took photographs of the

graphic signs. Appellant, however, refused to leave the area and stayed in front of Webber's residence. He stated "I am not a part of the group" and "[t]his is a public street." Appellant then commenced marching in one place as though he was walking but did not physically leave the street in the area in front of Webber's residence. Webber signed a certificate of arrest by private citizen, and a deputy took appellant into custody for violating the targeted residential picketing ordinance. See White Bear Township, Minn., Ordinance No. 63.

The trial court denied appellant's motion to dismiss and held that the ordinance was constitutional. Based on stipulated facts, the trial court adjudicated appellant guilty of violating Ordinance No. 63 and ordered him to pay a \$60 fine plus a surcharge.

ISSUES

1. Is the Town of White Bear, Minn., Ordinance No. 63 (1990), prohibiting targeted residential picketing, facially unconstitutional on the grounds of overbreadth?

2. Is the Town of White Bear, Minn., Ordinance No. 63 (1990), prohibiting targeted residential picketing, facially unconstitutional under the void for vagueness doctrine?

ANALYSIS

At issue in this case is a municipal ordinance prohibiting focused, or targeted residential picketing. ¹ The constitutionality of an ordinance is a question of law. See *Hibbing Educ. Ass'n v. Public Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn.1985) (construction of a statute is clearly a question of law fully reviewable by an appellate court); *State v. Clarke Plumbing & Heating, Inc.*, 238 Minn. 192, 197, 56 N.W.2d 667, 671 (1952) (whether an ordinance is constitutionally valid is a question of law). Although ordinances are ordinarily afforded a presumption of constitutionality, ordinances restricting First Amendment rights are not so presumed. *Goward v. City of Minneapolis*, 456

N.W.2d 460, 464 (Minn.App.1990). The burden of proving the need of such a law rests with the government. *Id.* (citing *Meyer v. Grant*, 486 U.S. 414, 426, 108 S.Ct. 1886, 1894, 100 L.Ed.2d 425 (1988)).

I. Overbreadth

In the area of freedom of expression, it is well-established that an overbroad

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regulation may be subject to facial review and invalidation even though the application in a particular case may be constitutionally unobjectionable. *Forsyth County, Ga. v. Nationalist Movement*, --- U.S. ---, ---, 112 S.Ct. 2395, 2400-01, 120 L.Ed.2d 101 (1992). Permitting a facial challenge to allegedly overbroad legislation is an exception to general standing principles. *Broadrick v. Oklahoma*, 413 U.S. 601, 615, 93 S.Ct. 2908, 2917, 37 L.Ed.2d 830 (1973). The exception is "based on an appreciation that the very existence of some broadly written laws has the potential to chill the expressive activity of others not before the court." *Forsyth County*, --- U.S. at ---, 112 S.Ct. at 2401.

In order to invalidate a statute or ordinance on its face, the overbreadth not only must be real, but "substantial." *Board of Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 574, 107 S.Ct. 2568, 2572, 96 L.Ed.2d 500 (1987). The requirement that the overbreadth be substantial arose from the Court's recognition that striking an ordinance on overbreadth grounds imposed "manifestly, strong medicine." *Id.* (quoting *Broadrick*, 413 U.S. at 613, 93 S.Ct. at 2916). The Court has required that there be a "realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court" to facially challenge legislation on overbreadth grounds. *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 801, 104 S.Ct. 2118, 2126, 80 L.Ed.2d 772 (1984).

The United States Supreme Court addressed the facial constitutionality of an ordinance restricting residential picketing in *Frisby v. Schultz*, 487 U.S. 474, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988). In *Frisby*, the Court found constitutional a Brookfield, Wisconsin, ordinance that provided:

It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Brookfield.

Id. at 477, 108 S.Ct. at 2498. The Brookfield ordinance stated that its purpose was "the protection and preservation of the home" through assurance "that members of the community enjoy in their homes and dwellings a feeling of well-being, tranquility, and privacy." *Id.* According to the Town of Brookfield, prohibiting residential picketing was necessary because such picketing "causes emotional disturbance and distress to the occupants * * * [and] has as its object the harassing of such occupants." *Id.*

An ordinance restricting targeted residential picketing "operates at the core of the First Amendment" because it prohibits picketing on issues of public concern. *Id.* at 479, 108 S.Ct. at 2499. In *Frisby*, the Court stated that restrictions on public issue picketing are typically subject to careful scrutiny because of the importance of "uninhibited, robust, and wide-open" debate on public issues. *Id.* (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 720-21, 11 L.Ed.2d 686 (1964)). The Court specifically held that picketing on public streets is "the archetype of a traditional public forum" and such status is not lost because a public street runs through a residential area. *Id.* 487 U.S. at 480, 108 S.Ct. at 2500. Although in a "quintessential public forum[]", the government may not prohibit all communicative activity," *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983), the government may

enforce regulations of the time, place, and manner of expression which are content-neutral,

are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

Id.

Respondent argues that White Bear Ordinance No. 63 meets all the requirements of *Frisby*. Appellant, conversely, would have this court find the White Bear ordinance unconstitutional because it does not, in fact, satisfy the requirements of *Frisby*. We agree with respondent that White Bear Ordinance No. 63 is facially constitutional under *Frisby*. However, we believe that *Frisby* compels us to narrowly construe the White Bear Ordinance in order to avoid constitutional overbreadth. We address each of the *Frisby* factors in turn.

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A. Content Neutrality

In First Amendment time, place, or manner cases, the principal inquiry in determining whether legislation is content-neutral is "whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 2754, 105 L.Ed.2d 661 (1989). An ordinance restricting expressive activity is content-neutral so long as it is "justified without reference to the content of the regulated speech." *Id.* (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984)).

The *Frisby* Court accepted the determination of the lower courts that the Brookfield ordinance was content-neutral. *Frisby*, 487 U.S. at 482, 108 S.Ct. at 2501. Appellant argues that *Carey v. Brown*, 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980) compels a conclusion that the White Bear ordinance is not "content-neutral." We disagree and find *Carey* distinguishable. In *Carey* the regulation prohibited residential picketing except for peaceful picketing of a place of employment involved in a labor dispute. *Id.* at 457, 100 S.Ct. at 2288. Because the regulation in

Carey discriminated among speech-related activities in a public forum based upon content, the Court considered whether the statute was finely tailored to serve a substantial state interest. *Id.* at 462-63, 100 S.Ct. at 2291. The Court determined that exempting labor picketing did not advance the state's asserted interest in protecting residential privacy, *id.* at 465, 100 S.Ct. at 2293, and struck the regulation as unconstitutional.

Appellant has presented no evidence that the Town of White Bear discriminatorily enacted the ordinance specifically to suppress expression espousing opposition to abortion. To the contrary, the White Bear ordinance unequivocally prohibits all targeted residential picketing regardless of the content of speech and is, therefore, content neutral. See *Ward*, 491 U.S. at 791, 109 S.Ct. at 2754.

B. Valid Governmental Interest

In Ordinance No. 63, the Town of White Bear specifically states that it has an interest in protecting residential privacy. A similar significant governmental interest was acknowledged in *Frisby*, 487 U.S. at 484, 108 S.Ct. at 2502. The Court has long recognized that:

Preserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value. * * * The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.

Carey, 447 U.S. at 471, 100 S.Ct. at 2295-96. Because the home is "the last citadel of the tired, the weary and the sick," *Gregory v. City of Chicago*, 394 U.S. 111, 125, 89 S.Ct. 946, 954, 22 L.Ed.2d 134 (1969) (Black, J., concurring), and is "one retreat to which men and women can repair to escape from the tribulations of their daily pursuits," *Carey*, 447 U.S. at 471, 100 S.Ct. at 2295, the government may legislate to protect intrusion into the privacy of the home of unwilling listeners. *Frisby*, 487 U.S. at 484, 108

S.Ct. at 2502. The Town of White Bear, in stating its substantial interest "in the protection of residential privacy * * * and [in] protecting the well-being, tranquility, and privacy of the home which is * * * of the highest order in a free and civilized society," see *Town of White Bear, Minn., Ordinance No. 63, § 2*, parallels language of the Court in *Carey*, 447 U.S. at 471, 100 S.Ct. at 2296 (the "State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society"). Thus, the language of the White Bear Ordinance meets fully the requirement that a valid government interest be served by the regulation of expression.

C. Narrow in Scope

In arguing that Ordinance No. 63 unconstitutionally sweeps too broadly, appellant essentially claims that the ordinance is not narrow in scope. He raises two concerns: (1) the ordinance, in using the word "activity" in describing targeted residential picketing,

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includes within the sweep of regulation activity that is clearly protected by the First Amendment; and (2) the ordinance, in prohibiting expression unless the dwelling's "occupant" consents, extends beyond the protection of the unwilling listener. We believe each of these challenges must fail.

"A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby*, 487 U.S. at 485, 108 S.Ct. at 2503 (citing *Taxpayers for Vincent*, 466 U.S. at 808-810, 104 S.Ct. at 2130-32). Even a complete ban can be narrowly tailored if each activity within the proscription's scope is an appropriately targeted evil. *Id.*

Frisby held that the Brookfield ordinance was narrowly tailored despite its complete ban on focused residential picketing. The "evil" of targeted residential picketing, the presence of an unwelcome visitor at the home, which the

ordinance sought to eliminate was "created by the medium of expression itself." *Id.* at 487, 108 S.Ct. at 2504. Frisby noted that the Brookfield ordinance was narrowly directed at the household, not the public, and thus distinguished cases which had struck down complete bans of communication such as handbilling, solicitation, and marching, which communications were directed at broader residential areas.

The type of picketers banned by the Brookfield ordinance generally do not seek to disseminate a message to the general public, but to intrude upon the targeted resident, and to do so in an especially offensive way.

Id. at 486, 108 S.Ct. at 2503.

The White Bear ordinance, like the Brookfield ordinance in Frisby, is "readily subject to a narrowing construction that avoids constitutional difficulties." See *id.* at 482, 108 S.Ct. at 2501. In construing the Brookfield ordinance, the Court stated:

[T]he use of the singular form of the words "residence" and "dwelling" suggests that the ordinance is intended to prohibit only picketing focused on, and taking place in front of, a particular residence. * * * "Picketing," after all, is defined as posting at a particular place, a characterization in line with viewing the ordinance as limited to activity focused on a singular residence.

Id. (emphasis added) (citing Webster's Third New International Dictionary 1710 (1981) to define picketing as "posting at a particular place").

Similarly, Ordinance No. 63 was not intended to circumscribe all "activity," ² but only activity constituting picketing in the focused sense. We interpret the White Bear ordinance in a limited fashion to proscribe only "picketing activity" focused on or taking place in front of a particular single residential dwelling. See *id.* ³ So narrowed, the ordinance would not prohibit constitutional

distribution of materials to neighborhood residents, or solicitation by mail or in person.

Appellant also argues that the White Bear ordinance is not tailored narrowly enough to protect only unwilling ⁴ listeners in

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their homes, and that by extending protection to "occupants" rather than to "residents" the ordinance is unconstitutionally overbroad and vitiates any possibility of narrow construction. We disagree. We believe the word "occupant," as used in the ordinance, has a narrower definition than appellant urges, ⁵ and makes the White Bear ordinance no broader than the one held constitutional in Frisby.

An "occupant" is a person "having possessory rights, who can control what goes on on premises." Black's Law Dictionary 1078 (6th ed. 1990). Black's Law Dictionary also defines "occupant" as "[o]ne who has actual use, possession or control of a thing." *Id.* Webster's defines "occupant" as

one who takes possession of something that has no other owner and thereby acquires title by occupancy * * * one who takes possession under title, lease, or tenancy at will * * * one who occupies a particular place or premises [such as a] tenant [or a] resident.

Webster's Third New International Dictionary 1560 (1961). Similarly, an "occupant" is

one that occupies a position or place * * * one who has certain legal rights to or control over the premises occupied.

American Heritage Dictionary of the English Language 1251 (3d ed. 1992).

"Resident," on the other hand, means a "dweller, habitant or occupant." Black's Law Dictionary 1309 (6th ed. 1990). Webster's defines "resident" as "having an abode for a continued

length of time" or "one who resides in a place, one who dwells in a place for a period of some duration." Webster's Third New International Dictionary 1931 (1961). "Resident" is also defined as "one who resides in a particular place permanently or for an extended period." American Heritage Dictionary of the English Language 1535 (3d ed. 1992).

In view of the recognized definitions of "resident" and "occupant," we believe that "occupant," as used in the White Bear ordinance, means an individual with a legal right to possess or to control the single residential dwelling. A guest, visitor, or contractor would not come within the definition of "occupant" because those persons would not have some legal right to possess or control the residence. Whether the ordinance used "resident" or "occupant," its protection would extend to those other than a fee owner and would cover those who had some legal right to possess or control the residence.

Our interpretation of "occupant" as one who has some legal right to possess or control the premises answers, we believe, appellant's concerns that the White Bear ordinance is not narrowly enough drafted to protect only "unwilling" listeners. The words "unless the occupant consents" inform the potential defendant that one not having the status of an "occupant," even though that one be a "willing" listener, has no power to consent.

We also reject appellant's argument that the ordinance is overbroad because it would be violated regardless of whether the occupant was home. Whether or not an occupant is home, the government has an interest in prohibiting targeted residential picketing that invades the sanctity of the home. To somehow justify the intrusion simply because the resident is not home would be to say that the "evil" of targeted residential picketing only results if someone is home. Although we recognize that the ordinance is intended to protect residential privacy and recipients unwilling to receive the communication, an occupant returning home to find picketers focused on his or her home might

be persuaded to stay away. Such an individual would be just as much captive as if in the home when the focused picketing commenced. See *Frisby*, 487 U.S. at 488, 108 S.Ct. at 2504.

The targeted picketing ordinance of the Town of White Bear is narrowly tailored to protect unwilling occupants of a single residential dwelling. The ordinance eliminates no more than the exact source of the "evil" it

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seeks to remedy. See *id.* at 485, 108 S.Ct. at 2503.

D. Alternative Means of Expression

The *Frisby* Court, after narrowly construing the Brookfield, Wisconsin, ordinance "to prohibit only picketing focused on, or taking place in front of, a particular residence," *id.* at 482, 108 S.Ct. at 2501, had no difficulty in determining that the ordinance left open alternative channels of communication. The Court held that the ordinance did not prohibit general marching through neighborhoods, walking a route in front of an entire block of houses, or distributing literature door-to-door or through the mail. *Id.* at 483, 108 S.Ct. at 2502.

We agree with the Town of White Bear that Ordinance No. 63 permits general dissemination of ideas protected by the First Amendment. Because the prohibition is limited to targeted picketing focused on and taking place in front of a single residential dwelling, picketers may enter, alone or in groups, residential White Bear neighborhoods, march the public streets, distribute literature, and go door-to-door to proselytize their views. Sufficient alternative channels of communication remain open under Ordinance No. 63, as fully as they did under the Brookfield, Wisconsin, ordinance found to be constitutional in *Frisby*. See *id.*

In summary, the Town of White Bear has demonstrated the need for Ordinance No. 63. See *Goward*, 456 N.W.2d at 464. The ordinance is content-neutral, narrowly tailored to promote a

significant government interest, and leaves open alternative means of communication. See Perry, 460 U.S. at 45, 103 S.Ct. at 955. Neither the selection of the word "occupant" nor the concept of "activity" as narrowly construed here causes the ordinance to be substantively overbroad under Broadrick. Under Frisby, White Bear Ordinance No. 63 is a facially constitutional governmental regulation of the time, place or manner of speech.

II.

Finally, appellant contends that Town of White Bear Ordinance No. 63 is void for vagueness. We disagree. The void-for-vagueness doctrine, based upon due process,

requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983). In the First Amendment context, the Court has "taken special care to insist on fair warning when a statute regulates expression." Marks v. United States, 430 U.S. 188, 196, 97 S.Ct. 990, 995, 51 L.Ed.2d 260 (1977).

Here, the ordinance prohibits all targeted residential picketing unless the occupant of a single residential dwelling has consented. Although appellant attempts to argue the ordinance is vague because a picketer will never know if an occupant will object to the content of the message, the language of the ordinance is clear and unambiguous. Because of the particular intrusiveness that results from targeted residential picketing, such picketing is presumed to be without the consent of the occupant and the ordinance sufficiently gives notice to picketers that focused picketing on a residence is prohibited under the law. See Kolender, 461 U.S. at 357, 103 S.Ct. at 1858. Should an occupant consent to the picketers' presence before his or her residence, the municipality will be unable to make a prima

facie showing of a violation of the ordinance. The ordinance, therefore, does not give the government unbridled discretion to arbitrarily or discriminatorily enforce the ordinance. See *id.* Ordinance No. 63 provides fair notice that all targeted residential picketing is prohibited. The ordinance is not void for vagueness.

DECISION

Town of White Bear, Minn., Ordinance No. 63 is facially constitutional.

Affirmed.

1 In 1990, the Town of White Bear enacted an ordinance regulating targeted residential picketing. The ordinance, in full, provided as follows:

SECTION 1. DEFINITION. For the purpose of this Ordinance, "targeted residential picketing" means an activity focused on a single residential dwelling without the consent of the dwelling's occupant.

SECTION 2. TARGETED RESIDENTIAL PICKETING. The Town of White Bear has an interest in the protection of residential privacy within the Town of White Bear and protecting the well-being, tranquility and privacy of the home which is certainly of the highest order in a free and civilized society. The Town Board of the Town of White Bear further finds that, without resorting to targeted residential picketing, ample opportunities exist for those otherwise engaged in targeted residential picketing to exercise constitutionally protected freedom of speech and expression.

SECTION 3. PROHIBITED. No person shall engage in targeted residential picketing within the Town of White Bear.

SECTION 4. PENALTY. Every person convicted of a violation of any provision of this Ordinance shall be punished as provided in Ordinance No. 26.

609.748 HARASSMENT; RESTRAINING ORDER.

Subdivision 1. **Definition.** For the purposes of this section, the following terms have the meanings given them in this subdivision.

(a) "Harassment" includes:

(1) a single incident of physical or sexual assault, a single incident of harassment under section 609.749, subdivision 2, clause (8), a single incident of nonconsensual dissemination of private sexual images under section 617.261, or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target;

(2) targeted residential picketing; and

(3) a pattern of attending public events after being notified that the actor's presence at the event is harassing to another.

(b) "Respondent" includes any adults or juveniles alleged to have engaged in harassment or organizations alleged to have sponsored or promoted harassment.

(c) "Targeted residential picketing" includes the following acts when committed on more than one occasion:

(1) marching, standing, or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security, or privacy of an occupant of the building; or

(2) marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

Subd. 2. Restraining order; court jurisdiction. A person who is a victim of harassment or the victim's guardian or conservator may seek a restraining order from the district court in the manner provided in this section. The parent, guardian or conservator, or stepparent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor. An application for relief under this section may be filed in the county of residence of either party or in the county in which the alleged harassment occurred. There are no residency requirements that apply to a petition for a harassment restraining order.

Subd. 3. Contents of petition; hearing; notice. (a) A petition for relief must allege facts sufficient to show the following:

(1) the name of the alleged harassment victim;

(2) the name of the respondent; and

(3) that the respondent has engaged in harassment.

A petition for relief must state whether the petitioner has had a previous restraining order in effect against the respondent. The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section and shall advise the petitioner of the right to sue in forma pauperis under section 563.01. The court shall advise the petitioner of the right to request a hearing. If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent

may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing. Upon receipt of the petition and a request for a hearing by the petitioner, the court shall order a hearing. Personal service must be made upon the respondent not less than five days before the hearing. If personal service cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date. Nothing in this section shall be construed as requiring a hearing on a matter that has no merit.

(b) Notwithstanding paragraph (a), the order for a hearing and a temporary order issued under subdivision 4 may be served on the respondent by means of a one-week published notice under section 645.11, if:

(1) the petitioner files an affidavit with the court stating that an attempt at personal service made by a peace officer was unsuccessful because the respondent is avoiding service by concealment or otherwise; and

(2) a copy of the petition and order for hearing and any temporary restraining order has been mailed to the respondent at the respondent's residence or place of business, if the respondent is an organization, or the respondent's residence or place of business is not known to the petitioner.

(c) Regardless of the method of service, if the respondent is a juvenile, whenever possible, the court also shall have notice of the pendency of the case and of the time and place of the hearing served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner.

(d) A request for a hearing under this subdivision must be made within 20 days of service of the petition.

Subd. 3a. Filing fee; cost of service. The filing fees for a restraining order under this section are waived for the petitioner and the respondent if the petition alleges acts that would constitute a violation of section 609.749, subdivision 2, 3, 4, or 5, or sections 609.342 to 609.3451. The court administrator and any peace officer in this state shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when a peace officer is unavailable or if service is made by publication.

Subd. 4. Temporary restraining order; relief by court. (a) The court may issue a temporary restraining order that provides any or all of the following:

(1) orders the respondent to cease or avoid the harassment of another person; or

(2) orders the respondent to have no contact with another person.

(b) The court may issue an order under paragraph (a) if the petitioner files a petition in compliance with subdivision 3 and if the court finds reasonable grounds to believe that the respondent has engaged in harassment. When a petition alleges harassment as defined by subdivision 1, paragraph (a), clause (1), the petition must further allege an immediate and present danger of harassment before the court may issue a temporary restraining order under this section. When signed by a referee, the temporary order becomes effective upon the referee's signature.

(c) Notice need not be given to the respondent before the court issues a temporary restraining order under this subdivision. A copy of the restraining order must be served on the respondent along with the order for hearing and petition, as provided in subdivision 3. If the respondent is a juvenile, whenever possible, a copy of the restraining order, along with notice of the pendency of the case and the time and place of the hearing, shall also be served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner. A temporary restraining order may be entered only against the respondent named in the petition.

(d) The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subdivision 5. The court shall hold the hearing on the issuance of a restraining order if the petitioner requests a hearing. The hearing may be continued by the court upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or if service is made by published notice under subdivision 3 and the petitioner files the affidavit required under that subdivision.

(e) If the temporary restraining order has been issued and the respondent requests a hearing, the hearing shall be scheduled by the court upon receipt of the respondent's request. Service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of the hearing upon the petitioner by mail in the manner provided in the Rules of Civil Procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this subdivision, the court may set a new hearing date.

(f) A request for a hearing under this subdivision must be made within 20 days of the date of completed service of the petition.

Subd. 5. Restraining order. (a) The court may issue a restraining order that provides any or all of the following:

(1) orders the respondent to cease or avoid the harassment of another person; or

(2) orders the respondent to have no contact with another person.

(b) The court may issue an order under paragraph (a) if all of the following occur:

(1) the petitioner has filed a petition under subdivision 3;

(2) a peace officer has served respondent with a copy of the temporary restraining order obtained under subdivision 4, and with notice of the right to request a hearing, or service has been made by publication under subdivision 3, paragraph (b); and

(3) the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.

A restraining order may be issued only against the respondent named in the petition; except that if the respondent is an organization, the order may be issued against and apply to all of the members of the organization. If the court finds that the petitioner has had two or more previous restraining orders in effect against the same respondent or the respondent has violated a prior or existing restraining order on two or more occasions, relief granted by the restraining order may be for a period of up to 50 years. In all other cases, relief granted by the restraining order must be for a fixed period of not more than two years. When a referee presides at the hearing on the petition, the restraining order becomes effective upon the referee's signature.

(c) An order issued under this subdivision must be personally served upon the respondent.

(d) If the court orders relief for a period of up to 50 years under paragraph (a), the respondent named in the restraining order may request to have the restraining order vacated or modified if the order has been in effect for at least five years and the respondent has not violated the order. Application for relief under this paragraph must be made in the county in which the restraining order was issued. Upon receipt of the request, the court shall set a hearing date. Personal service must be made upon the petitioner named in the restraining

order not less than 30 days before the date of the hearing. At the hearing, the respondent named in the restraining order has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the court relied in granting the restraining order no longer apply and are unlikely to occur. If the court finds that the respondent named in the restraining order has met the burden of proof, the court may vacate or modify the order. If the court finds that the respondent named in the restraining order has not met the burden of proof, the court shall deny the request and no request may be made to vacate or modify the restraining order until five years have elapsed from the date of denial. An order vacated or modified under this paragraph must be personally served on the petitioner named in the restraining order.

Subd. 5a. **Short-form notification.** (a) In lieu of personal service of a harassment restraining order, a peace officer may serve a person with a short-form notification. The short-form notification must include the following clauses: the respondent's name; the respondent's date of birth, if known; the petitioner's name; the names of other protected parties; the date and county in which the temporary restraining order or restraining order was filed; the court file number; the hearing date and time, if known; the conditions that apply to the respondent, either in checklist form or handwritten; and the name of the judge who signed the order.

The short-form notification must be in bold print in the following form:

"The restraining order is now enforceable. You must report to your nearest sheriff's office or county court to obtain a copy of the restraining order. You are subject to arrest and may be charged with a misdemeanor, gross misdemeanor, or felony if you violate any of the terms of the restraining order or this short-form notification."

(b) Upon verification of the identity of the respondent and the existence of an unserved harassment restraining order against the respondent, a law enforcement officer may detain the respondent for a reasonable time necessary to complete and serve the short-form notification.

(c) When service is made by short-form notification, it may be proved by the affidavit of the law enforcement officer making the service.

(d) For service under this section only, service upon an individual may occur at any time, including Sundays and legal holidays.

(e) The superintendent of the Bureau of Criminal Apprehension shall provide the short form to law enforcement agencies.

[See Note.]

Subd. 5b. **Service by others.** In addition to peace officers, corrections officers, including but not limited to probation officers, court services officers, parole officers, and employees of jails or correctional facilities, may serve a temporary restraining order or restraining order.

Subd. 6. **Violation of restraining order.** (a) A person who violates a restraining order issued under this section is subject to the penalties provided in paragraphs (b) to (d).

(b) Except as otherwise provided in paragraphs (c) and (d), when a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor.

(c) A person is guilty of a gross misdemeanor who violates the order within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.

(d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person violates the order:

(1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency;

(2) because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin;

(3) by falsely impersonating another;

(4) while possessing a dangerous weapon;

(5) with an intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(6) against a victim under the age of 18, if the respondent is more than 36 months older than the victim.

(e) A person who commits violations in two or more counties may be prosecuted in any county in which one of the acts was committed for all acts in violation of this section.

(f) A person may be prosecuted at the place where any call is made or received or, in the case of wireless or electronic communication or any communication made through any available technologies, where the actor or victim resides, or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established under chapter 5B.

(g) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under subdivision 4 or 5 if the existence of the order can be verified by the officer.

(h) A violation of a temporary restraining order or restraining order shall also constitute contempt of court.

(i) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated an order issued under subdivision 4 or 5, the court may issue an order to the respondent requiring the respondent to appear within 14 days and show cause why the respondent should not be held in contempt of court. The court also shall refer the violation of the order to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

Subd. 7. Copy to law enforcement agency. An order granted under this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order issued under this section.

Subd. 8. Notice. (a) An order granted under this section must contain a conspicuous notice to the respondent:

(1) of the specific conduct that will constitute a violation of the order;

(2) that violation of an order is either (i) a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both, (ii) a gross misdemeanor punishable by imprisonment for up to one year or a fine of up to \$3,000, or both, or (iii) a felony punishable by imprisonment for up to five years or a fine of up to \$10,000, or both; and

(3) that a peace officer must arrest without warrant and take into custody a person if the peace officer has probable cause to believe the person has violated a restraining order.

(b) If the court grants relief for a period of up to 50 years under subdivision 5, the order must also contain a conspicuous notice to the respondent that the respondent must wait five years to seek a modification of the order.

Subd. 9. Effect on local ordinances. Nothing in this section shall supersede or preclude the continuation or adoption of any local ordinance which applies to a broader scope of targeted residential picketing conduct than that described in subdivision 1.

Subd. 10. Prohibition against employer retaliation. (a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this section. Except in cases of imminent danger to the health or safety of the employee or the employee's child, or unless impracticable, an employee who is absent from the workplace shall give 48 hours' advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and disbursements, including reasonable attorneys fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

History: 1990 c 461 s 5; 1991 c 170 s 1,2; 1992 c 571 art 6 s 15-17; 1993 c 326 art 2 s 14-21; 1Sp1993 c 5 s 4; 1994 c 636 art 2 s 48; 1995 c 226 art 6 s 13; 1995 c 259 art 3 s 17; 1997 c 96 s 5; 1997 c 239 art 11 s 5; 1998 c 367 art 5 s 8,9; 2000 c 476 s 1-3; 1Sp2001 c 8 art 10 s 13,14; 1Sp2003 c 2 art 8 s 14-16; 2004 c 145 s 2; 2004 c 228 art 1 s 72; 2005 c 136 art 8 s 21; art 17 s 44-45; 2006 c 260 art 1 s 28; 2008 c 316 s 6-8; 2012 c 218 s 2-4; 2012 c 223 s 1,2; 2013 c 47 s 4; 2014 c 204 s 10; 2016 c 126 s 6; 2017 c 95 art 2 s 16; art 3 s 20-24; art 4 s 2; 1Sp2019 c 5 art 2 s 29; 2020 c 86 art 1 s 39

NOTE: Subdivision 5a, as added by Laws 2017, chapter 95, article 3, section 23, is effective 30 days following publication of a notice on the Bureau of Criminal Apprehension's website that a computer system is available to send harassment restraining order data from the Minnesota judicial branch to law enforcement. Laws 2017, chapter 95, article 3, section 23, the effective date.



Memorandum

To: Mayor Nelson and Members of the City Council

From: Daniel R. Buchholtz, MMC, Administrator, Clerk/Treasurer

Date: February 4, 2021

Subject: SF 82/HF 185 Resolution of Support

Mayor Nelson will provide an overview of his request for a resolution of support from the City Council on SF 82/HF 185 at the City Council work session.

Metro Cities and the League of Minnesota Cities, which represent us at the Capitol, have not taken a position on this bill.

If you have any questions, please don't hesitate to contact me at 763-784-6491.

RESOLUTION NO. 21-XX

RESOLUTION EXPRESSING SUPPORT FOR SF 82/HF 185, A BILL INCREASING THE PENALTY FOR CERTAIN ATTEMPTS TO COMMIT MURDER IN THE FIRST DEGREE

WHEREAS, last year, Waseca Police Officer Arik Matson was critically wounded in the line of duty after being shot in the head by a suspect after responding to a report of a suspicious person; and

WHEREAS, the minimum sentence for an attempt on a peace officer, judge, prosecutor or correctional officer's life is 20 years with release under supervision after two-thirds of the sentence is served; and

WHEREAS, due to the inherent dangers faced by law enforcement and judicial officers on a daily basis, the current penalty is insufficient in comparison to the life-long physical and mental health impacts such an attempt has on the individual; and

WHEREAS, SF 82/HF 185, sponsored by Senator Jasinski and Representative Petersburg, increases the penalty against individuals who are convicted of attempted first-degree murder of a police officer, judge, prosecutor or correctional officer to life incarceration with a minimum of 30 years served in prison before being eligible for release.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Spring Lake Park that the City Council does hereby express its strong support for SF 82/HF 185 and encourages the Legislature to adopt it without delay.

The foregoing resolution was moved for adoption by Councilmember .

Upon roll call, the following voted aye:

And the following voted nay:

Whereupon the Mayor declared said resolution duly passed and adopted this _____ day of _____, 2021.

Robert Nelson, Mayor

ATTEST:

Daniel R. Buchholtz, Administrator

State of Minnesota)
Counties of Anoka and Ramsey)ss
City of Spring Lake Park)

I, Daniel R. Buchholtz, duly appointed and qualified City Administrator in and for the City of Spring Lake Park, Anoka and Ramsey Counties, Minnesota, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-XX, A Resolution Expressing Support for SF 82/HF 185, A Bill Increasing the Penalty for Certain Attempts to Commit Murder in the First Degree.

Daniel R. Buchholtz, Administrator

(SEAL)

Dated: _____

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 82

(SENATE AUTHORS: JASINSKI, Dornink, Miller, Hoffman and Rosen)

DATE	D-PG	OFFICIAL STATUS
01/14/2021	93	Introduction and first reading
		Referred to Judiciary and Public Safety Finance and Policy
01/21/2021	137	Author stricken Tomassoni
		Author added Rosen

1.1 A bill for an act

1.2 relating to public safety; increasing the penalty for certain attempts to commit

1.3 murder in the first degree; amending Minnesota Statutes 2020, sections 244.05,

1.4 subdivision 4; 609.17, subdivision 4.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2020, section 244.05, subdivision 4, is amended to read:

1.7 Subd. 4. **Minimum imprisonment, life sentence.** (a) An inmate serving a mandatory

1.8 life sentence under section 609.106 or 609.3455, subdivision 2, must not be given supervised

1.9 release under this section.

1.10 (b) An inmate serving a mandatory life sentence under section 609.17, subdivision 4,

1.11 clause (1); 609.185, paragraph (a), clause (3), (5), or (6); or Minnesota Statutes 2004, section

1.12 609.109, subdivision 3, must not be given supervised release under this section without

1.13 having served a minimum term of 30 years.

1.14 (c) An inmate serving a mandatory life sentence under section 609.385 must not be given

1.15 supervised release under this section without having served a minimum term of imprisonment

1.16 of 17 years.

1.17 (d) An inmate serving a mandatory life sentence under section 609.3455, subdivision 3

1.18 or 4, must not be given supervised release under this section without having served the

1.19 minimum term of imprisonment specified by the court in its sentence.

1.20 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to crimes

1.21 committed on or after that date.

2.1 Sec. 2. Minnesota Statutes 2020, section 609.17, subdivision 4, is amended to read:

2.2 Subd. 4. **Penalties.** Whoever attempts to commit a crime may be sentenced as follows:

2.3 (1) for an attempt to commit a violation of section 609.185, paragraph (a), clause (4),
2.4 to imprisonment for life;

2.5 (2) except as provided in clause (1), if the maximum sentence provided for the crime is
2.6 life imprisonment, to not more than 20 years; or

2.7 ~~(2)~~ (3) for any other attempt, to not more than one-half of the maximum imprisonment
2.8 or fine or both provided for the crime attempted, but such maximum in any case shall not
2.9 be less than imprisonment for 90 days or a fine of \$100.

2.10 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to crimes
2.11 committed on or after that date.

609.185 MURDER IN THE FIRST DEGREE.

(a) Whoever does any of the following is guilty of murder in the first degree and shall be sentenced to imprisonment for life:

(1) causes the death of a human being with premeditation and with intent to effect the death of the person or of another;

(2) causes the death of a human being while committing or attempting to commit criminal sexual conduct in the first or second degree with force or violence, either upon or affecting the person or another;

(3) causes the death of a human being with intent to effect the death of the person or another, while committing or attempting to commit burglary, aggravated robbery, kidnapping, arson in the first or second degree, a drive-by shooting, tampering with a witness in the first degree, escape from custody, or any felony violation of chapter 152 involving the unlawful sale of a controlled substance;

(4) causes the death of a peace officer, prosecuting attorney, judge, or a guard employed at a Minnesota state or local correctional facility, with intent to effect the death of that person or another, while the person is engaged in the performance of official duties;

(5) causes the death of a minor while committing child abuse, when the perpetrator has engaged in a past pattern of child abuse upon a child and the death occurs under circumstances manifesting an extreme indifference to human life;

(6) causes the death of a human being while committing domestic abuse, when the perpetrator has engaged in a past pattern of domestic abuse upon the victim or upon another family or household member and the death occurs under circumstances manifesting an extreme indifference to human life; or

(7) causes the death of a human being while committing, conspiring to commit, or attempting to commit a felony crime to further terrorism and the death occurs under circumstances manifesting an extreme indifference to human life.

(b) For the purposes of paragraph (a), clause (4), "prosecuting attorney" has the meaning given in section 609.221, subdivision 2, paragraph (c), clause (4).

(c) For the purposes of paragraph (a), clause (4), "judge" has the meaning given in section 609.221, subdivision 2, paragraph (c), clause (5).

(d) For purposes of paragraph (a), clause (5), "child abuse" means an act committed against a minor victim that constitutes a violation of the following laws of this state or any similar laws of the United States or any other state: section 609.221; 609.222; 609.223; 609.224; 609.2242; 609.342; 609.343; 609.344; 609.345; 609.377; 609.378; or 609.713.

(e) For purposes of paragraph (a), clause (6), "domestic abuse" means an act that:

(1) constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.2242, 609.342, 609.343, 609.344, 609.345, 609.713, or any similar laws of the United States or any other state; and

(2) is committed against the victim who is a family or household member as defined in section 518B.01, subdivision 2, paragraph (b).

(f) For purposes of paragraph (a), clause (7), "further terrorism" has the meaning given in section 609.714, subdivision 1.

History: 1963 c 753 art 1 s 609.185; 1975 c 374 s 1; 1981 c 227 s 9; 1986 c 444; 1988 c 662 s 2; 1989 c 290 art 2 s 11; 1990 c 583 s 4; 1992 c 571 art 4 s 5; 1994 c 636 art 2 s 19; 1995 c 244 s 12; 1995 c 259 art 3 s 12; 1998 c 367 art 2 s 7; 2000 c 437 s 5; 2002 c 401 art 1 s 15; 2005 c 136 art 17 s 10; 2014 c 302 s 1

ORDINANCE NO. ____

**AN ORDINANCE RELATING TO AND REGULATING TARGETED PICKETING IN
RESIDENTIAL NEIGHBORHOODS IN THE CITY OF SPRING LAKE PARK**

THE CITY COUNCIL OF THE CITY OF SPRING LAKE PARK, MINNESOTA, HEREBY
ORDAINS AS FOLLOWS:

Section 1. Findings and Purpose

- (A) The City has three high-capacity arterial roadways that are heavily travelled thruways with traffic counts on County Road 10 of 19,100 to 22,300 vehicles per day, on University Avenue (Highway 47) of 31,500 vehicles per day, and on Highway 65 of 31,500 to 35,000 vehicles per day. These arterial roadways have posted speed limits that range from 50 to 55 miles per hour, contain numerous high-traffic intersections, and have relatively narrow or obstructed medians.
- (B) According to MnDOT data, pedestrian crashes along the Highway 65 and University Avenue corridors are 2-4 times higher than the state average. From 2013-2017, there have been 7 pedestrian crashes, with 3 fatalities along the Highway 65 and University Avenue corridors.
- (C) The medians on these roadways are traffic separation structures that were not designed, and are not maintained, to accommodate either any pedestrians, or only those who are temporarily crossing through the designated crosswalk. Most of the medians also contain landscaping, traffic control devices, and other obstructions which are inconsistent with use by pedestrians.
- (D) The City has experienced an increase in the number of pedestrians remaining on medians at high-traffic intersections for extended periods, creating a public safety risk for both the pedestrians as well as drivers. Pedestrians remaining on the intersection are at risk of being struck by the large volume of traffic traveling through these intersections at high rates of speed. Additionally, their presence on the medians distracts drivers whose focus becomes fragmented between not striking the pedestrians so close to the roadway and navigating through these high-traffic intersections.
- (E) According to a 2011 study commissioned by the AAA Foundation for Public Safety, the average risk of death for a pedestrian struck by a vehicle reaches 75% at an impact speed of 50 miles per hour and 90% at 58 miles per hour, versus 25% at 32 miles per hour.

Section 2. Definitions

For the purposes of this section, the following definition shall apply.

ARTERIAL ROADWAY means the following roadways within the City:

- (1) University Avenue (Minnesota State Highway 47)
- (2) Minnesota State Highway 65
- (3) County Road 10

HIGH TRAFFIC INTERSECTION means the following intersections on arterial roadways controlled by traffic signal:

- (1) University Avenue and Osborne Road
- (2) University Avenue and 81st Avenue
- (3) Highway 65 and Osborne Road
- (4) Highway 65 and 81st Avenue
- (5) Highway 65 and 85th Avenue
- (6) County Road 10 and Able Street
- (7) County Road 10 and Pleasant View Drive

MEDIAN means a paved or unpaved area dividing a street or highway that separates lanes of traffic traveling at opposite directions, or, in the case of separated turn lanes, vehicles traveling in the same direction.

ROADWAY means both the travelled portion and median of a street or highway.

PRIOR MEDIAN SAFETY VIOLATION means a previous petty misdemeanor conviction under this section.

Section 3. Prohibition

- A. No person shall be on a median within 300 feet of a high-traffic intersection unless the person is in the process of legally crossing the roadway through a safety zone or crosswalk. This prohibition applies to both the median on the arterial roadway and the median on the intersecting roadway. A person shall not be considered in the process of legally crossing a roadway, and it shall be prima facie evidence of a violation of this section, if a person stays on a median through two consecutive opportunities to cross the roadway in accordance with the crossing signal and state law. This may include a change in the traffic control signal or lack of traffic, as applicable.
- B. No operator of a motor vehicle shall park, stop, or leave standing a vehicle at any high traffic intersection where prohibited or suddenly decrease the speed of said vehicle or deviate from a traffic lane for the purpose of responding to a person violating subd. A

Section 4. Exceptions

The prohibitions in Section 2 shall not apply to any of the following:

- A. Any person engaged in law enforcement or rescue activities, including aiding an injured or disabled vehicle or person.

- B. Any person engaged in the emergency repair of a vehicle.
- C. Any public works staff or public contractor engaged in the maintenance, repair or improvement of a roadway or related to public facilities, or public utility workers installing, maintaining, repairing or removing public utilities.
- D. Streets or portions thereof that have been closed pursuant to a permit or other express authorization from the City.

Section 5. Penalty

A violation of this section is a petty misdemeanor offense. A person may be charged with a misdemeanor offense if that person violates this section within 12 months of the first of two prior median safety violations.

Section 6. Effective date

This ordinance shall have full force and effect upon its passage and publication.

Passed by the Council of the City of Spring Lake Park, Anoka County, Minnesota, this _____ day of _____, 2021.

APPROVED BY:

Robert Nelson, Mayor

ATTEST:

Daniel Buchholtz, City Administrator



Memorandum

To: Mayor Nelson and Members of the City Council

From: Daniel R. Buchholtz, MMC, Administrator, Clerk/Treasurer

Date: February 3, 2021

Subject: Median Safety Ordinance

Mayor Nelson requested the City Council discuss the adoption of an ordinance to prohibit the extended occupation of medians. The Blaine City Council is working on a similar ordinance to implement in their city.

There has been an increase in the number of pedestrians occupying the medians of our busiest roadways for significant periods of time. This creates a dangerous situation for both the pedestrian and the driver.

The proposed language is a limited response. It applies to 7 signalized intersections along the University Avenue, Highway 65 and County Road 10 corridors. The ordinance prohibits an individual from staying in the median through two consecutive opportunities to cross the roadway. The ordinance also prohibits the operator of a motor vehicle to from responding to a person violating the median safety ordinance.

There are exceptions for law enforcement/rescue activities, emergency repair of a vehicle, public works staff repairing infrastructure or those gathering if the street has been closed due to authorization from the City. The penalty for the first violation is a petty misdemeanor and for the second and subsequent violations within a twelve-month period is a misdemeanor.

Public safety staff will take steps to educate pedestrians as to this ordinance before enforcement action begins.

If you have any questions, please don't hesitate to contact me at 763-784-6491.



Memorandum

To: Mayor Nelson and Members of the City Council

From: Daniel R. Buchholtz, MMC, Administrator, Clerk/Treasurer

Date: February 3, 2021

Subject: 1628 County Highway 10

I received a phone call from Brian Shulson, who is part of the ownership group that owns 1628 County Highway 10. They are in the process of trying to lease the space that belonged to the former Life Prep Academy.

After the City Council's rejection of Family Promise, he presented several options of tenants and inquired as to the City's preference. I explained that I would share these with the City Council and obtain feedback from the Council to share with him.

Prospective tenants that have contacted Mr. Shulson about the space include:

1. Family Promise, which they believe is a good fit due to the current configuration of the space and aligns with their organizational values. *Will require a code amendment; per previous City Council discussion.*
2. A Mosque tenant. *Just as in the case of 8485 Plaza Blvd, parking may be an issue for any assembly space in this location.*
3. A voluntary chemical treatment program. Individuals would be able to stay for 60-90 days after they go through treatment teaching them how to reintegrate back into their living situation. *Would need to explore if a code amendment would be required – if it falls under the classification of a boarding house, it may only require a conditional use permit.*
4. An adult-oriented business. *While allowed as a conditional use in the C-1 zoning district, this site would not be an eligible location as any sexually oriented business must be located "at least 500 feet from any structure containing any public or private school, church, licensed day care center, public library, park or municipal building. This property is next door to a licensed daycare (Little Bees). This was communicated to the building owner.*

The space is set up in a dorm configuration from the previous boarding school, which has sparked interest from Family Promise and the chemical treatment program.

There was nothing in the call that would be determined as a threat. Rather, it was a genuine statement that they need to lease the space and that these were the prospective tenants that approached them.

Staff is seeking guidance from the City Council on how to proceed. If you have any questions, please don't hesitate to contact me at 763-784-6491.



Memorandum

To: Mayor Nelson and Members of the City Council

From: Daniel R. Buchholtz, MMC, Administrator, Clerk/Treasurer

Date: February 3, 2021

Subject: Tower Days

Recreation Director Okey and the Tower Days Committee is working diligently to plan Tower Days for 2021. The COVID-19 pandemic and the various restrictions imposed by the Governor's Executive Orders means that Tower Days will look different than in past years.

The Spring Lake Park Lions Club has informed the City that, due to the two shutdowns of bars/restaurants in 2020, they have not had the charitable gaming revenue they are accustomed to having and that they do not have the funds to contribute their traditional sponsorship to Tower Days. We also anticipate that fundraising will be challenging for this year's festival.

City staff is seeking input from the City Council on a proposal for a one-time transfer of \$15,000 from the General Fund to the Tower Days fund to ensure that the committee has the funds available to host the 2021 festival. We ended 2020 with a sizable surplus so funding is available in the General Fund for this request.

If you have any questions, please don't hesitate to contact me at 763-784-6491.

Memorandum

To: Mayor and City Council
From: Kay Okey, Recreation Director
Date: February 3, 2021

Subject: Tower Days 2021

The Tower Days Committee, working under current COVID-19 restrictions, would like to present a scaled back version of the City's annual celebration.

Tentative Schedule of Events

Wednesday

Pre-kick off Music in the Park (part of Summer Dine and Dance Music Series)

Thursday-Saturday

All City-wide Garage Sale

Saturday

Adult Softball Tournament (no outstate teams will be invited)

Drive thru Antique Car Show – SLP High School Parking Lot

Adult Bingo at Kraus-Hartig VFW. Sponsored by Lions

Movie Night in the Park and kid friendly Lion-Ingo (Bingo)-Sponsored by Lions

Sunday

Adult Bingo at Kraus-Hartig VFW. Sponsored by Lions

1:00pm Lumberjack Show and Carving – 1 ½ hour show, reservation required, limited seating (free)

5:30-8:30pm Live Music at Lakeside Lions Park. Reservations required, limited seating. Free

5:00-8:30 SLP Lions concession and adult beverage stand

10:00pm Fireworks – Participants encouraged to stay in their cars. Free

All events are planned as separate events to avoid crowding, milling around and will follow MDH and CDC guidelines.

2021 Expenses

Fireworks	\$4,450
Saturday Band	\$2,500
Lumberjacks	\$3,900
Scavenger Hunt	\$300
OEC	\$250
Marketing	\$400
Port-o-Potties	\$400
Car Show	<u>\$500</u>
	\$12,700
Wed. Night Band	\$450

Sponsorship Carried over from last year: \$3,100

I have included a Historical Financial review for your information.

TOWER DAYS FINANCIAL REVIEW

Year	Income	Expense	Balance	To Date
2001	\$11,215.77	\$ 8,776.14	+ \$2,439.63	+ 2,439.63
2002	\$12,636.37	\$13,687.44	- \$1,051.17	+ 1,388.46
2003	\$18,157.00	\$19,166.93	- \$1,009.93	+ 378.53
2004	\$26,943.42	\$27,234.12	- \$ 290.70	+ 87.83
2005	\$25,475.00	\$26,022.17	- \$ 547.17	- 459.34
2006	\$22,552.00	\$19,855.47	+ \$2,696.53	+ 2,237.19
2007	\$22,762.50	\$22,640.40	+ \$ 122.10	+ 2,359.29
2008	\$22,971.00	\$22,364.98	+ \$ 606.02	+ 2,965.31
2009	\$16,866.00	\$18,563.95	- \$1,697.95	+ 1,267.36
2010	\$15,346.07	\$19,799.34	- \$4,453.27	- 3,185.91
2011	\$15,861.00	\$17,607.61	- \$1,746.61	- 4,932.52
2012	\$16,442.00	\$17,180.45	- \$ 738.45	- 5,670.97
2013	\$14,768.00	\$18,111.89	- \$3,343.89	- 9,014.86
2014	\$14,710.75	\$18,111.68	- \$3,400.93	- 12,415.79
2015	\$18,707.00	\$17,965.47	+ \$ 741.53	- 11,674.26
2016	\$21,389.00	\$18,159.58	+ \$3,224.42	- 8,449.84
2017	\$18,841.00	\$19,281.47	- \$ 440.47	-8,890.31
2018	\$19,750.00	\$18,224.93	+ \$1,525.07	-7,365.24
2019	\$19,559.11	\$19,063.80	+ \$ 495.31	-6,869.93

- 2001 – Ham Lake Seniors Food Vendor wagon, evening dance and ice cream social (\$5,000 beginning funds)
- 2002 – Tot-tanic, pony rides, MV Lions food vendor, fireworks
- 2003 – Water wars, star gazing, car show, craft show, three food vendors, bingo
- 2004 – More children’s games, prizes for bungee run, idol contest, Rockin Hollywoods, Radio Disney
- 2005 – Rockin Hollywoods and country band in afternoon, face painting
- 2006 - Country band, variety of daytime entertainment
- 2007 – Rockin Hollywoods, Radio Disney, Banjo Bandits, all city garage sale
- 2008 – Rockin Hollywoods, variety of musical groups, caricature and balloon artists
- 2009 – Rockin Hollywoods, petting zoo
- 2010 – Rockin Hollywoods, Lumberjack shows, Blue Grass Bands
- 2011 – Rockin Hollywoods, Lumberjack shows, Blue Grass Bands
- 2012 – Rockin Hollywoods, Lumberjack shows, Blue Grass Bands. Weather hot, windy. Storm in early evening, band quit early, fireworks in the rain. Lower attendance.
- 2013 – Rockin Hollywoods, Lumberjack shows, Jim Berner, Photo Booth, Bungee Trampoline. Rain all day until 6:00pm then beautiful weather. Very low attendance.
- 2014 - Perfect weather. No street dances or Medtronic Grant. Bungee Trampoline long waits with two operators. Sold 480 buttons at the gate. Car show 94 vehicles. Same shows. Rockin Hollywoods
- 2015 – Great weather. More food vendors. Great volunteers from high school football program worked at the inflatables. Provided meal tickets from Lions for youth volunteers. Rockin Hollywoods
- 2016 – Good weather, band quit at 9:00, fireworks at 9:30 due to pending weather. Craft fair full. 45 cars in car show. Attendance lower than average. 3:00 attendance count: 237. 300 served Culvers Custard at 7:00 pm. Good crowd for Rockin Hollywoods.
- 2017 – Rockin Hollywoods, Lumberjacks, fireworks, inflatables, water wars, Bungee Trampoline, 9 paid food vendors. Severe thunderstorm in the morning. Lower attendance. Three high school bands in parade, evening band, lumberjacks, and stage expense all increased this year.
- 2018 – Good weather for parade and Sunday at Lakeside. Limetree Circus, 60 cars at car show, 11 food vendors, 50 craft vendors. Great crowd and dancing for Rockin Hollywoods. Otis obtained free use of Blaine’s portable stage for Sunday. 689 buttons sold at the gate.
- 2019 - Weather overcast, cool and rainy from approximately 1 – 4 pm. Attendees, in addition to many crafters and car show participants, left once the rain started. Better weather late afternoon. New events: Kids Dance DJ, Video Game Truck, Balloon artist. Added two portable signs for advertising. Several people asked for the pie eating contest which was not held this year. Boy scouts had archery set up which was fairly well attended.
- Rockin Hollywoods
- 2020- Cancelled due to Pandemic