

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, SEPTEMBER 27, 2004**

1. CALL TO ORDER.

Acting Mayor Jan Callison called the meeting to order at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

Councilmembers Terry Schneider, Al Thomas, Tony Wagner, Bob Ellingson, Brad Wiersum and Jan Callison were present. Mayor Karen Anderson was excused.

4. APPROVAL OF AGENDA.

Thomas moved, Wiersum seconded a motion to accept the agenda as submitted. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES: September 13, 2004 regular council meeting.

Wagner moved, Thomas seconded a motion to approve the minutes of the September 13, 2004 Minnetonka City Council meeting. Schneider, Thomas, Wagner, Ellingson, and Callison voted "yes." Wiersum abstained. Motion carried.

6. SPECIAL MATTERS:

A. Resolution of commitment to the National League of Cities American Dream Campaign.

Wiersum provided background information about the NLC American Dream campaign.

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2004-117 stating our resolution of commitment to the National League of Cities American Dream Campaign. All voted "yes." Motion carried.

B. Proclamation declaring "City Wide Open House" on October 5, 2004.

Callison read a proclamation concerning the October 5, 2004 Fire and City-wide Open House.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the upcoming council meeting schedule. He also provided some clarification to the discussion at the previous council meeting about the proposed tax increase. Gunyou noted that a 4.5 percent increase was discussed, and newspaper items had indicated a 7 percent increase. The difference is due to the voter-approved referendum for parks and open space.

Gunyou noted that of the 4.5 percent increase, one-half of one percent is related to city services, and the remaining 4.0 percent is needed because of the uncertainty of the state market value credit program. He explained that the state still faces a billion-dollar deficit, so the receipt of these funds is very uncertain. Further, the city will not know whether the state will fund its program until late next year. If any funds are actually received to pay for this state program, these revenues will be considered in conjunction with the city's 2006 budget.

Callison reported that she attended Groveland School's 150th anniversary, and the dedication of Gatewood School's peace garden.

6. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA.

No one spoke.

9. BIDS AND PURCHASES:

A. Award of contract for the updates to the police department firearms training range.

Gunyou provided the staff report for this item.

Ellingson moved, Wiersum seconded a motion to award the contract for the upgrades to the Minnetonka Police Department firearms range to Caswell International in the amount of \$43,373.25. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):

A. Claims for council authorization – September 27, 2004.

Wiersum moved, Thomas seconded a motion to approve the September 27, 2004 claims list, including checks numbered 184562 through 184826 totaling \$1,340,940.84. All voted "yes." Motion carried.

B. Ordinance authorizing conveyance of a portion of city-owned property to the State of Minnesota for the I-494 improvement project.

Wiersum moved, Thomas seconded a motion to adopt Ordinance No. 2004-30 authorizing the conveyance of a portion of city-owned property located east of Sunrise neighborhood park on Minnetonka Drive to the State of Minnesota for the I-494 improvement project, City of Minnetonka Project No. 4357. All voted "yes." Motion carried.

C. Proposed orders for liquor license stipulations.

Wiersum moved, Thomas seconded a motion to issue Findings of Fact, Conclusion, and Order for Byerly's Beverages, Inc. and Cellars Wines/Spirits of Minnetonka, Inc. for liquor license violations as follows:

<u>Establishment</u>	<u>Fine</u>	<u>Suspension</u>
Byerly's Wines & Spirits	\$750	None
Cellars Wines & Spirits	\$750	None

All voted "yes." Motion carried.

D. Conditional use permit and site and building plan review to add a car wash to the building at 13305 Excelsior Boulevard for Knutson's Car Wash & Detail Center.

Wiersum moved, Thomas seconded a motion to:

1) Adopt Resolution No. 2004-118 approving the conditional use permit to add a car wash to the building at 13305 Excelsior Boulevard for Knutson's Car Wash & Detail Center.

This resolution is based on the following findings:

a. The proposal meets the required conditional use permit standards.

Approval is subject to the following conditions:

a. Record this resolution with the county before the city issues a building permit.

b. Hours of operation are from 7:00 am to 8:00 p.m.

c. There may be no outside vacuums permitted.

d. The building must be constructed with insulated panels as shown on the plans date stamped July 22, 2004.

e. The city council may reasonably add or revise conditions to address any future violation of the noise ordinance or other unforeseen problems.

- f. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
 - g. The applicant must agree to the above conditions in writing.
- 2) Approve the site and building plans for the car wash at 13305 Excelsior Boulevard. Approval is subject to the following conditions:
- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date stamped July 22, 2004
 - Landscaping plan date stamped July 22, 2004
 - Building elevations date stamped July 22, 2004
 - b. The following must be submitted to the city before the city issues a building permit:
 - (1) All required hook-up fees.
 - (2) The building must be constructed with insulated panels as shown on the plans date stamped July 22, 2004.
 - (3) The building must include a fire sprinkler system subject to review and approval of the fire marshal.
 - c. The property owner is responsible for replacing any required landscaping that dies.
 - d. Storm water runoff from the car wash cannot be directed into the sanitary sewer system in the side of the building.
 - e. A trench drain must be provided at the entrance to the car wash.
 - f. All garbage dumpsters must be stored inside the building or an enclosure constructed to match the building.
 - g. Storm sewer must be added to direct drainage towards the ponding area at the corner of Excelsior and Baker Road.
 - h. The grading around the car wash entrance must be revised to include retaining walls, and eliminate the grading to the south, which would remove trees.
 - i. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.

- j. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
- k. Construction must begin by December 31, 2005, unless the planning commission grants a time extension.

All voted "yes." Motion carried.

E. Revised resolution authorizing the issuance of a senior housing refunding revenue note (WestRidge Senior Housing Project).

Wiersum moved, Thomas moved, seconded a motion to adopt Resolution No. 2004-119 authorizing the issuance of a senior housing refunding revenue note for the WestRidge Senior Housing project. All voted "yes." Motion carried.

F. Resolution authorizing the police department to enter into an agreement with the Hennepin County as an interconnected dispatch facility on the 800 MHz radio system.

Wiersum moved, Thomas seconded a motion to adopt Resolution No. 2004-120 authorizing the police department to enter into an agreement with the Hennepin County as an interconnected dispatch facility on the 800 MHz radio system. All voted "yes." Motion carried.

11. **Items requiring Five Votes:** None.

12. **INTRODUCTION OF ORDINANCES:**

A. Items related to the sale of city-owned property in the vicinity of 34th Circle West:

- 1) **Introduction of ordinance authorizing the sale.**
- 2) **Purchase agreement for sale of property.**

Gunyou provided the staff report for this item.

Wiersum moved, Ellingson seconded a motion to introduce an ordinance authorizing the sale of city-owned property in the vicinity of 34th Circle West, and authorize a purchase agreement with Curt Fretham for the sale of that property. All voted "yes." Motion carried.

13. **PUBLIC HEARINGS:**

A. Public hearing to vacate the undeveloped Cordy Road between 12200 and 12120 Golden Acre Drive for Susanne K. Ryan.

Gunyou introduced the item. Callison opened the public hearing. No one spoke, and the hearing was closed.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2004-121 vacating the undeveloped Cordy Road between 12200 and 12120 Golden Acre road. Approval is subject to the following conditions:

- 1) Retaining a drainage and utility easement over the entire right-of-way; and
- 2) Recording a mutually agreeable, private driveway easement to the owners of 12120 Golden Acre Drive for their driveway and turn-around area with the vacation resolution.

All voted "yes." Motion carried.

B. Public hearing to vacate right-of-way and drainage and utility easements at 2020 Dwight Lane for Michael Barry.

Gunyou provided a brief staff report. In response to Wagner's question, Gunyou stated that it was the north/south easement that would be vacated.

Callison opened the public hearing. No one spoke, and the hearing was closed.

Thomas moved, Ellingson seconded a motion to adopt Resolution No. 2004-122 vacating the right-of-way and drainage and utility easements at 2020 Dwight Lane. Approval is subject to recording this resolution with the AUSTRIAN PINES plat. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Administrative hearing regarding the liquor license held by Minnetonka MN Hotel Ltd. Partnership d/b/a Sheraton Minneapolis West Hotel.

City Attorney Desyl Peterson reported that an alleged sale of liquor to a minor occurred at the Sheraton Minneapolis West Hotel during a police department compliance check in May 2004. The city sent a notice to the liquor license holder to assume the presumptive penalty, and they asked for a hearing. Peterson said that the license holder was invited to the council meeting. They do not dispute that the sale was made.

Leif Chaffee, 12201 Ridgedale Drive, said that the hotel is managed by Remington Corp., which manages 45 hotels around

the country. On May 25, bartender Jimmy Caan, served alcohol to the minor.

Chaffee requested a waiver of the one-day suspension for a first offense. He said that the bartender checked the minor's identification, but misread the birthday. The bartender paid a fine and is on one-year probation. Chaffee said that Remington takes its liquor license seriously. He provided a number of examples of efforts Remington makes to educate its employees who serve alcohol. The bartender who served the minor participated in all of these activities. Chaffee said that the hotel and its customers expect alcohol service, and a suspension of their license would put them in violation of their agreement with Sheraton to serve alcohol at the hotel. Chaffee extended his personal pledge to ensure that no future violations would occur.

In response to Wiersum's question, Chaffee said that they began to participate in Minnetonka's Best Practices Program this summer.

Peterson said that staff recommended that the city council use the presumptive penalty. She said that a precedent would be set if they did not. Peterson said that Remington did not participate in the Best Practices Program until August, and their national program does not cover what Minnetonka's program covers. Minnetonka's program devotes more time to reviewing the Minnesota driver's license. Peterson provided a page from the Best Practices manual showing the differences in Minnesota driver's licenses for those individuals over and under the age of 21. She also showed a copy of the driver's license that the bartender checked, and noted that it very clearly indicated that the person was less than 21 years of age. Peterson said that she understands failing eyesight, but this was clearly an underage individual. If the bartender had attended Minnetonka's training program, he may have noticed the differences in the two types of licenses. Peterson said that she was pleased that the hotel was now participating in the Best Practices Program, but felt that was not a good reason to not impose a penalty.

Ellingson asked how much it would cost the hotel if its license were suspended for one day. Chaffee responded that it would range from \$1,000 to \$8,000.

Wagner asked if the last sale to a minor took place in 2002. Peterson confirmed that, and noted that all license holders complied in 2003.

Wagner asked if there was a policy change in 1999 so the city did not waive suspensions but started imposing presumptive penalties. Peterson confirmed that.

Wiersum said that the city has taken a strong stand against underage drinking. The city takes liquor laws very seriously. The Sheraton presented a good case, but Wiersum felt that the issue was very serious and this would not be the time to compromise. He agreed with staff's recommendation.

Callison said that if the city bends the rule in this case, it might as well get rid of the Best Practices Program. The hotel was given an opportunity to participate. Callison supported the penalties.

Peterson said that she would convert the information in the council packet into an order form.

Wiersum moved, Thomas seconded a motion to impose a \$500 penalty, and a one-day suspension of the liquor license on a date to be specified by staff for the liquor license violation by Sheraton Minneapolis West Hotel. All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Wiersum moved, Thomas seconded a motion to adjourn the meeting at 7:15 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk