

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, OCTOBER 13, 2008**

1. CALL TO ORDER.

Mayor 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 Brad Wiersum, James Hiller, Terry Schneider, Bob Ellingson, Tony Wagner, and Jan Callison were present. Dick Allendorf was excused.

4. APPROVAL OF AGENDA.

Assistant City Manager Geralyn Barone noted addenda to items 6C, 10E, and 10H.

Wagner moved, Wiersum seconded a motion to accept the agenda with the addenda. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES:

A. August 25, 2008 regular meeting.

Wiersum moved, Wagner seconded a motion to approve the minutes of the August 25, 2008 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

B. September 15, 2008 regular meeting.

Wiersum moved, Wagner seconded a motion to approve the minutes of the September 15, 2008 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Recognition of the 2008 Burwell House tour guides.

Callison read the recognition and presented certificates to the 2008 Burwell House tour guides: Sue Adamek, Gayle Andrs, Lois Benton, Judi Callas, Dave Carroll, Jan Cook, Cassie Cook, Miriam Devery, Juli Englander, Sally Enstrom, Pat Gabler, Joan George,

Lorena Hooyman, Barbara Kok, Lucille Long, Terry Mulhern, Darlene Nelson, Patricia Peterson, Donna Ranallo, Bonnie Sherman, Sandra Smith, Tammy Thelen and Doris Wenthe.

B. Recognize Orville and Delores Anderson for receiving a 2008 Prudential CARES Volunteer Grant Award for South Shore Meals on Wheels.

Schneider read the recognition.

Orville Anderson said Prudential Financial supports all employee volunteer efforts and has a special organization called Retirees Offering Community Service.

C. Donation to the Park Dedication Fund from Trails for Tonka.

Item postponed until the October 27 meeting.

D. Receive the 2008 Minnehaha Creek Watershed Heroes "Innovation in Government" Award.

Callison read the nomination. The award will be put in the city's display case.

E. Proclamation declaring October 20-24, 2008 as Minnesota Manufacturer's Week.

Wagner read the proclamation.

F. Kids Voting proclamation.

Wiersum read the proclamation.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Barone reported the city's Open House was very successful. She also noted the Recreation Department did volunteer work recently at Cub Foods raising over \$1,100 working at a food trailer. The money will go toward the recreation scholarship fund. She noted that absentee voting has begun at city hall.

Callison thanked staff, residents, and community groups for the successful Open House.

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

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of bids for the hockey rink dasher board project at Gro Tonka Park.

Barone gave the staff report.

Wiersum moved, Schneider seconded a motion to award bid to Becker Arena Products, Inc. for the base bid and alternates 1, 2 and 4 in the amount of \$27,866.36. All voted "yes." Motion carried.

B. Consideration of the bid for police and fire department space needs study.

Barone gave the staff report.

Wagner moved, Hiller seconded a motion to award the contract to KKE Architects. All voted "yes." Motion carried.

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

A. Claims for council authorization – October 13, 2008.

Wiersum moved, Wagner seconded a motion to approve the October 13, 2008 claims which includes checks numbered 215058 through 215472, totaling \$1,381,242.55. All voted "yes." Motion carried.

B. Ordinance amending the regulations for dangerous animals.

Wiersum moved, Wagner seconded a motion to adopt Ordinance No. 2008-29 amending the regulations for dangerous animals. All voted "yes." Motion carried.

C. Ordinance amending the regulations for building moves.

Wiersum moved, Wagner seconded a motion to adopt Ordinance No. 2008-30 amending the regulations for building moves. All voted "yes." Motion carried.

D. Ordinance amending the fire department ordinance.

Wiersum moved, Wagner seconded a motion to adopt Ordinance No. 2008-31 amending the fire department ordinance. All voted "yes." Motion carried.

E. Ordinance amending the nuisance abatement procedure.

Hiller asked for the item to be pulled from the consent agenda. He questioned why the item was on the consent agenda. At the May 5 meeting there was an item related to Bantas Point that was put on the consent agenda. At that time the council decided items should not be put on the consent agenda when there are changes made to what the Planning Commission or other boards approved. Callison said the Bantas Point item was a situation where the Planning Commission approval differed from the staff recommendation and it was unclear that there were changes. For this item, she said staff had taken direction from a previous council discussion to make changes to the proposed ordinance.

Hiller said in previous discussion staff said that similar ordinances in adjacent cities were looked at and all of those cities required council approval for abatement except for St. Paul and Minneapolis. He discussed St. Paul's ordinance with a St. Paul police officer. The goals of St. Paul's ordinance are to identify gangs, crack houses and other problems that need aggressive action. St. Paul is also after decaying areas where people are not complaining. He said he was concerned about eliminating council review and approval. By making the process more efficient, it puts the city in a more active role in the abatement process. He said with the growing foreclosure problem, the city is going down the path of having banks and others counting on the city to take care of the abatement process. He noted a couple of months ago another ordinance was passed that included increasing fines for successive violations. He said the proposed changes to this ordinance move too far and fast in taking on a policing role when the job should be to get the city out of the abatement process by finding other solutions.

Schneider said he had concerns about the lack of notice for repeat violations in the first draft of the ordinance. That has been addressed in the re-draft. He said the concept of putting the council in the role of trying to preempt nuisances is not workable in Minnetonka because the city addresses nuisance issues on a complaint basis. Because the ordinance gives the council the discretion to enforce the provisions, common sense will generally prevail. He said he was comfortable letting staff solve the problems and expediting the process.

Wagner said he was concerned with a provision requiring a posted notice rather than written notice to the owner of record. He said because of rental properties, he would prefer seeing both a posted and written notice. City Attorney Desyl Peterson said the provision came from the enforcement staff. Current procedure is for the notice to be posted on the property. Wagner said overall he was glad the ordinance takes steps to expedite the process to deal with complaints.

Wiersum said the biggest concern he has heard about nuisance conditions is that it takes too long to correct the problems. He agreed the proposed changes to the ordinance will speed up the process. He said he was more comfortable with the 72 hour posting requirement that replaced the original 24 hour posting requirement.

Wagner said even though the council would no longer approve the abatements he would still like to receive the report of when there are nuisance conditions.

Schneider said the idea of sending a mailed notice to the property owner made good sense but suggested mailing the notice to the taxpayer of record.

Callison said she was comfortable with the ordinance. As foreclosures become more of an issue it is even more important for the violations to be handled quickly.

Peterson suggested striking wording in the vegetation abatement provision to address Wagner's concern about providing written notice.

Schneider moved, Wiersum seconded a motion to adopt Ordinance No. 2008-32 amending the nuisance abatement procedure with the change requested by Wagner. Wiersum, Schneider, Ellingson, Wagner, and Callison voted "yes." Hiller voted "no." Motion carried.

F. Agreement with Bennett Family Park for the joint development of a youth athletic field.

Wiersum moved, Wagner seconded a motion to approve the prepared agreement between the city of Minnetonka and Bennett Family Park. All voted "yes." Motion carried.

G. Resolution authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor.

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2008-117 authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor. Wiersum, Hiller, Schneider, Wagner, and Callison voted "yes." Ellingson abstained. Motion carried.

H. Resolution ordering the abatement of long grass nuisance conditions at 1624 Welland Avenue.

Withdrawn from agenda because the nuisance violation was corrected.

11. Items requiring Five Votes:

A. Resolution requesting an extension to the Comprehensive Plan review period.

Wagner moved, Schneider seconded a motion to adopt Resolution No. 2008-118 approving the time extension. All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance regarding utility fee collection.

Peterson gave the staff report.

Wiersum moved, Wagner seconded a motion to introduce the ordinance. All voted "yes." Motion carried.

B. Ordinance regarding disposition of abandoned property.

Peterson gave the staff report.

Wagner moved, Weirsum seconded a motion to introduce the ordinance. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

A. Continued public hearing to consider on-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Chipotle Mexican Grill, 12509 Wayzata Boulevard, #1305.

Community Development Director Julie Wischnack gave the staff report.

Callison reopened the continued hearing at 7:14 p.m. No one spoke.

Callison closed the hearing at 7:14 p.m.

Schneider moved, Wagner seconded a motion to grant the licenses. All voted "yes." Motion carried.

B. Items concerning the proposed Dragon Jade Restaurant, 14406 Excelsior Boulevard:

Wischnack gave the staff report.

Callison noted the comprehensive guide plan foresees more mixed used developments. She said it might be appropriate to revise the ordinances to address the separation between residential and businesses.

Joseph Chang of 14406 Excelsior Boulevard said he drove around the city and looked at other restaurants with liquor licenses that have outdoor seating. He said he thought an eight foot fence was too high and would be detrimental to the look of the restaurant.

Callison asked staff to comment on the eight foot height requirement for the fence. Wischnack said the CUP standards state that the use shall be located in a controlled or cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, the enclosure is required and may not be interrupted, and there can only be access through the principal structure. She said that the Planning Commission asked staff to change the condition to deal with a use separation issue. That is why the eight foot screen was required. The type of material to be used was not specified.

Wiersum asked if staff concurred with the need for an eight foot barrier. Wischnack said an eight foot fence would require a building permit and engineered drawings have to be submitted. She said eight feet is likely too high and six feet would be more reasonable from the property owner's standpoint. As for separation, the difference between six or eight feet would not make a lot of difference.

Wagner asked what the fence height standard would be if there were no building to the north. Wischnack said there is no standard or height requirement. State statute contains the continuous

perimeter language that is reflected in the CUP standards. Wagner said because of the density of the area, requiring something lower than six feet high would be appropriate.

Schneider said the final design of the northern part of the development is not known but if it is similar to what has been approved, the buildings will be around 120 feet away from the restaurant. He said he would recommend going with the standard liquor license required three foot fence with landscaping.

Callison agreed with Schneider and said an eight foot high fence works against what is trying to be accomplished in the area to have the uses connected to each other.

Wiersum moved, Wagner seconded a motion to grant the on-sale intoxicating liquor licenses and adopt Resolution No. 2008-119 approving a conditional use permit for an outdoor seating area at 14432 Excelsior Boulevard. Approval includes the following variance.

- Residential setback variance from 200 feet to 10 feet.

Approval is based on the following findings:

- 1) The proposal meets the required conditional use permit standards.
- 2) The proposal meets the required standards for a variance, because:
 - a. UNDUE HARDSHIP: The discrepancy between the approved mixed use, commercial and residential, of the Glen Haven Center site and the required setback between these uses presents a practical difficulty.
 - b. UNIQUE CIRCUMSTANCE: The combination of commercial and residential uses at the Glen Haven Center site is found in only two other PUD developments within the city. As such, this circumstance is unique.
 - c. NEIGHBORHOOD CHARACTER: Glen Haven Center is an existing commercial area. The addition of an outdoor seating area would not negatively impact this commercial character.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. The applicant must agree to these conditions in writing.
 - b. This resolution must be recorded with Hennepin County and a copy of the recorded resolution returned to the city.
- 2) The outdoor seating area must:

- a. Not exceed 415 square-feet in total size.
 - b. Be located in general conformance with the proposed site plan date stamped August 13, 2008.
 - c. Be surrounded by a decorative metal fence, subject to staff approval.
 - d. Be equipped with refuse containers. Litter clean-up and collection must occur daily.
- 3) Speakers or audio equipment which is audible from adjacent parcels is not permitted.
 - 4) The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - 5) 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.
 - 6) A violation of the conditions of this conditional use permit may render the permit null and void.

All voted "yes." Motion carried.

C. Public hearing to consider a temporary on-sale liquor license for Bet Shalom, 13613 Orchard Road.

Wischnack gave the staff report.

Callison opened the hearing at 7:28 p.m. No one spoke.

Callison closed the hearing at 7:28 p.m.

Schneider moved, Wiersum seconded a motion to grant the license. All voted "yes." Motion carried.

14. OTHER BUSINESS:

Steve Perlman of 14103 Laurel Road said he received a past due utility bill notice. He questioned the accuracy of his bill. Callison directed him to discuss the matter with staff.

Wagner moved, Wiersum seconded a motion to reconsider item 10G. Wiersum, Hiller, Schneider, Wagner, and Callison voted "yes." Ellingson abstained.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2008-117 with the removal of 14103 Laurel Road authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor. Wiersum, Hiller, Schneider, Wagner, and Callison voted "yes." Ellingson abstained. Motion carried.

15. **APPOINTMENTS and REAPPOINTMENTS: None.**

16. **ADJOURNMENT.**

Wiersum moved, Schneider seconded a motion to adjourn the meeting at 7:38 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk