Minutes
Minnetonka City Council
Monday, April 6, 2015

1. Call to Order

Acting Mayor Tim Bergstedt called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Tim Bergstedt, Tony Wagner, Bob Ellingson, Dick Allendorf, Patty Acomb, and Brad Wiersum were present. Mayor Terry Schneider was excused.

4. Approval of Agenda

Wiersum moved, Wagner seconded a motion to accept the agenda with an addendum to item 13A. All voted “yes.” Motion carried.

5. Approval of Minutes: March 2, 2015 minutes

Wagner moved, Allendorf seconded a motion to approve the March 2, 2015 minutes. All voted “yes.” Motion carried.

6. Special Matters:

A. Recognition of 2015 Police Citizens Academy

Police Chief Jeff Sebenaler provided a staff report.

Bergstedt handed out the certificates.

Steve Arnold, 15017 Highland Lane, thanked the police department for the effort put into the classes.

Dave Larson, 15733 Randall Lane, said staff did a fabulous job.

Bergstedt said modern day policing was not an easy job and the city was fortunate to have a second to none department. The academy was a unique opportunity for residents to see what goes on behind the scenes and hopefully the graduates would work as ambassadors in the community.
7. **Reports from City Manager & Council Members**

City Manager Geralyn Barone reported on the schedule for upcoming council meetings.

Wagner reminded residents of an April 14 meeting to get public input for the LRT station area designs for the Shady Oak and Opus stations.

8. **Citizens Wishing to Discuss Matters not on the Agenda**

No one appeared.

9. **Bids and Purchases:** None

10. **Consent Agenda – Items Requiring a Majority Vote:**

    A. **Order for tobacco violation for Siri Enterprises LLC**

       Allendorf moved, Wagner seconded a motion to issue the Findings of Fact, Conclusion and Order for Siri Enterprises LLC. All voted “yes.” Motion carried.

    B. **Resolution for the 2015 Street Rehabilitation**

       Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2015-020 accepting plans and specifications and authorizing the advertisement for bids for the 2015 Street Rehabilitation Project No. 15401. All voted “yes.” Motion carried.

    C. **Resolution approving a conditional use permit for telecommunications facility at 15001 Minnetonka Industrial Road**

       Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2015-021 approving the request for a 100-foot telecommunications tower at 15001 Minnetonka Industrial Road. All voted “yes.” Motion carried.

11. **Consent Agenda – Items requiring Five Votes:** None

12. **Introduction of Ordinances:** None

13. **Public Hearings:**

    A. **On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for LTF Minnetonka Restaurant Company, LLC dba Life Café, 3310 Co Road 101.**
Barone gave the staff report.

Bergstedt opened the public hearing at 6:47 p.m.

Joan Warner, 17630 Breconwood Road, said she was concerned about noise if Life Time Fitness was doing outside service. She asked if there would be any change to the way the outside service was currently run. Currently there were classes held outside with some going to 10 p.m. The music and the instructor with a microphone was very loud.

Community Development Director Julie Wischnack said the conditional use permit had a provision not allowing speakers or audio equipment in the outdoor patio. She checked with the police department and there were some noise complaints received the past few months. She said staff would devote time to checking into the issue.

Wiersum moved, Wagner seconded a motion to continue the public hearing to May 4, 2015. All voted “yes.” Motion carried.

B. Resolution approving vacation of drainage and utility easements at 14720, 14702, 14680, 14685 and 14711 Williston Glen

Wischnack gave the staff report.

Bergstedt opened the public hearing 6:51 p.m. No one spoke. He closed the public hearing at 6:51 p.m.

Wiersum moved, Acomb seconded a motion to adopt Resolution No. 2015-022 vacating the obsolete drainage and utility easements at 14720, 14702, 14680, 14685 and 14711 Williston Glen. All voted “yes.” Motion carried.

C. Items concerning At Home Apartments at 5709 Rowland Road

Wagner moved, Wiersum seconded a motion to continue the At Home Apartments, LLC land use, TIF and public hearing items to the April 20, 2015 meeting. All voted “yes,” Motion carried.

14. Other Business:

A. Appeal of peddler license denial for Joshua Donald Peterson

Wischnack gave the staff report.
Ellingson asked if the license would have been approved if the applicant had disclosed information about his record. Wischnack said it was likely the license would have been approved. She said she would have done further research into the types of violations involved but the record showed there was no felony violation.

Josh Peterson, 2715 Dupont Avenue South, Minneapolis, said he applied for a solicitor's license. He didn't indicate a criminal record because he didn't think his one DUI in 2013 was a crime. His intention was not to mislead, lie or withhold information. He said if the application had asked if he ever had a DUI he would have indicated he had. He apologized for his mistake.

Ellingson asked if the applicant could reapply after a period of time if the license was denied. City Attorney Corrine Heine said the ordinance provides that if the license was denied, the applicant would have to disclose the denial for falsification and then would not be eligible to reapply for three years.

Ellingson asked if the city received many applications from real estate agents intending to go door to door to solicit clients. Wischnack said she had not received any similar applications during the seven and a half years she has been the community development director.

Bergstedt said he sympathized with Peterson if Peterson was confused by the language on the application. The city had a process for approval of licenses for people who solicit door to door. It was a serious process for the city to give approval to the licensees. He said he wasn't sure what type of message would be sent to future applicants or residents who were looking to the city to be the gatekeeper, by approving a license for a person that was less than truthful on the application. He was strongly in favor of upholding the decision to deny the license.

Wiersum said he agreed with Bergstedt's comments. He noted earlier in the meeting the residents who participated in the police academy were recognized. Given that it is a difficult time for law enforcement, he thought the city had to uphold the rules and to say the city takes the licensing process for people who go door to door seriously. There had to be a high standard. The council should be concerned about a precedent being set.

Allendorf moved, Acomb seconded a motion to uphold the denial. All voted "yes." Motion carried.

**B. Resolution amending Council Policy 6.2 regarding presumptive penalties for liquor licensing violations**
Barone said there was a straightforward amendment to the policy related to taprooms and breweries. Also, last fall a penalty came before the council and there were questions about whether or not the city's penalties were appropriate. The staff report included information about other potential changes to the policy to address the council's earlier questions. She said if the council wanted to have a more in-depth discussion, staff could prepare information for a future study session. She asked the council to provide some direction for what it wanted staff to do.

Wagner said when a violation has come before the council, council members have indicated that they wished more of the businesses participated in the city's best practices program. The city has had a number of people who participated and then let their participation lapse. He said he would support anything that could be done to encourage participation. He would also support having a further discussion about what other tools could be put into place.

Barone noted although there was an issue with fewer businesses participating in the program, the overall recidivism rate was pretty low. It was pretty rare where there was a third or fourth violation or a total revocation. No matter what program was put in place there likely would continue to be a few violations here and there because human error was involved. She said it was important to know the council's goal. Was it to have zero incidents or was it to keep the recidivism rate low?

Acomb said she was supportive of the amendment related to taprooms. She noted that during her time on the council the number of failed compliance checks had gone up dramatically. There were some businesses participating in the best practices program and still failing compliance checks. This may indicate the program needs improvement. While zero incidents may be an unrealistic goal, she thought increasing participation in the best practices program, which currently was around 30 percent, was important. She said she would be supportive of looking at the penalties, the best practices program and even how compliance checks are done. The community is full of resources. The school districts have coalitions that work to discourage underage substance abuse.

Allendorf asked how the best practices activities were being kept fresh year to year so that people continue to attend. Wischnack said she has worked with Sebenaler since he became police chief to keep things fresh. The formal training was dispensed with because it was presented by the same person every year. This has changed to a more open house style format that allows interaction with both Sebenaler and herself. This gets at the issues the businesses are concerned about and want to discuss. She
said historically the highest participation was 24 businesses. The number has been pretty consistent over the years at about 14 businesses.

Allendorf said years back when he served on the police advisory commission, an idea that was floated was to look at if the city could require any on sale or off sale establishment to check the ID of anyone under 40 years old. He said some of the establishments really liked the idea because it took them off the hook and helped address the issue of a service person asking for IDs of people that looked around 21 years old and offending somebody causing them not to leave a tip. He asked if the idea had been considered. Sebenaler said currently the best practices program gives points to businesses that have a policy to ID anyone under 40 years old. The program has provisions that are required and then other provisions that are optional. Allendorf said he thought zero incidents was unrealistic but the goal should be less recidivism. Heine indicated that the city could mandate by ordinance that businesses check the ID of anyone under 40 years old.

Wiersum said the proposed changes related to taprooms were good changes. He said he could support expanding the gap between penalties for businesses that participate in the best practices program and those who do not. He was interested in staff coming up with suggestions to address the issues. He would also support having a suspension of a license occur on a day where the business was as likely to be as busy as the day the violation occurred. Wischnack said she picks the day the suspension occurs and she always picks a weekend night.

Bergstedt said his concern was that despite the city’s best efforts with the best practices program, the participation has consistently been around 25 percent. The council had to decide if that level of participation was OK. If the penalties were increased for violations for those who did not participate, no amount would be high enough to have the desired impact on some of the larger businesses. Another option, one he was not recommending, was requiring participation in order to receive a liquor license from the city. Some of the businesses have internal programs so he didn’t think the city wanted to go to that extreme.

Acomb said she has been involved with Tonka Cares and the coalition has done some research on how to provide incentives so that more establishments participate in the best practices programs. Connecting it with license fees was one of these incentives. A participant’s license fee would be lower if they participated in the program and higher if they did not. She said it was frustrating that the program was not being used given the amount of staff work and time especially since the number of violations continue to increase.
Wagner said more and more chain restaurants were moving into the city and that number would increase with the Ridgedale redevelopment. Many of these businesses have established their own best practices programs. He suggested staff look at crediting practices that were in the company’s program that was also in the city’s program. He cited the example of his own job with Carlson Companies where a lot of the pharmaceutical companies want his employer to use their internal training program but allow Carlson to prove that their own program meets the pharmaceutical company’s standards. This reduces duplicative processes.

Wischnack said the city already was doing some of what Wagner was suggesting. She thought it was worthwhile though for the council to take a look at the program. She also could provide more information about the participation numbers.

Allendorf said he didn’t think the best practices program by itself would eliminate violations. He cited an example of a call he received from a business that was a best practices participant where the wife of the owner misread a license leading to a compliance check failure. He said his earlier suggestion was based on not expecting the best practices program to significantly cut down on the number of violations because mistakes happen. He questioned if charging more for the license would similarly lead to a significant decrease in the number of violations.

Wiersum said there was enough passion around the issues that a study session discussion made sense. He said it concerned him that the relative percentage of best practices program participants was low. Other communities have best practices programs and he said it would be helpful to get information about the percentage of participation in those other communities. Looking at successful models in other communities could make Minnetonka’s program better. Ultimately the objective was to minimize violations but he agreed with Allendorf that mistakes do happen.

Bergstedt agreed keeping the mistakes to a minimum and keeping the recidivism rate low were key objectives. He also agreed that it was important to make decisions based on facts and actual numbers and what other cities and businesses were doing.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2015-023 amending council Policy 6.2. All voted “yes.” Motion carried.

15. Appointments and Reappointments: None

16. Adjournment
Acomb moved, Wagner seconded a motion to adjourn the meeting at 7:34 p.m. All voted "yes." Motion carried.

Respectfully submitted,

[Signature]

David E. Maeda
City Clerk