

City of Excelsior
Hennepin County, Minnesota

MINUTES
EXCELSIOR CITY COUNCIL WORK SESSION

OCTOBER 20, 2014

1. CALL TO ORDER/ROLL CALL

Mayor Gaylord called the meeting to order at 6:02 p.m.

Present: Councilmembers Beattie, Caron, Fulkerson, Miller (arrived at 6:05 p.m) and Mayor Gaylord

Absent: None

Also Present: City Manager Luger, City Engineer Dawley, Finance Director Tumberg and City Clerk Johnson

2. AGENDA APPROVAL

Beattie moved, Fulkerson seconded, to move Item 5, Caterer Liquor License Ordinance Considerations, to follow Item 2, Agenda Approval, and approve the agenda, as amended. Motion carried 4/0.

5. CATERER LIQUOR LICENSE ORDINANCE CONSIDERATIONS

Attorney Staunton stated that the Cellar at Scuzi, located at 221 Water Street, has been promoting a weekly event, according to the Excelsior Sun Sailor Newspaper, featuring jazz music, food and alcohol, with an admission charge of \$10. Staunton said the events are handled through a Caterer's Permit held by Joey Nova's in Tonka Bay. Staunton said that questions have been raised to staff about the regulations for catered events. He said these events do fit, technically, within State regulations but that the Council may have concerns regarding events using Caterer's Permits at retail establishments and the possibility that they could occur even daily. Staunton said these events could also effect off-street parking requirements and interfere with regular liquor licensing. Staunton asked if there are any policy issues the Council is interested in examining or if there are any suggestions from the Council on the subject.

Mayor Gaylord asked if there have been any complaints about events held at Scuzi. Staunton said there have been no complaints; however, there have been many questions about these type of events at an establishment that does not hold a liquor license. Staunton said the question is whether the Council is okay with catered events or if the Council would like to make changes (i.e., adding limits in our ordinance in the use of Caterer's Permits, how frequently they may be used, whether these events are open to the public, etc.).

Mayor Gaylord asked if there have been a lot of inquiries on these events. Luger said no but that a couple of Councilmembers have raised the question about these events.

5. CATERER LIQUOR LICENSE ORDINANCE CONSIDERATIONS - *Continued*

Fulkerson said that she thinks these events are skirting around the Special Event Permit process. She said this is basically adding another bar to Excelsior.

Caron said that she thinks this is a bit of a loophole that should be discussed. She said it also raises the question of how many other establishments may come in to the City and set up without a liquor license. Caron said that another food or alcohol service establishment may be able to get around the liquor license requirement by doing this. Caron said that Scuzi is well liked in the community. Caron said she thinks the City may want to get ahead of this and discuss catered events.

Beattie said this type of event is unusual but said it has been a clever adoption of a retail use. Beattie said Debra Antone has done a great job of marketing for Scuzi. He said there are some definitions that should be set for Caterers Permits and that the City should figure out some reasonable parameters. Beattie asked if the City has had any issues or complaints. Luger said she is not aware of any but has not been in contact with South Lake Minnetonka Police Department (SLMPD).

Mark Kelly, Attorney, 351 Second Street, addressed the Council and also introduced Debra Antone, Owner of Scuzi, 221 Water Street. Attorney Kelly said that Ms. Antone has run this business for about a year now. He asked the Council to recognize that this is a beautiful place, acoustically. Attorney Kelly suggested that catered events could be monitored with a small licensing fee to know what events are occurring. He said the building is closed during the evening hours and that parking is not an issue for this location. Attorney Kelly said that Caterer's Permits provide licensed control over the events. He said that the events at Scuzi provide, for a nominal fee, a small amount of food and a small glass of wine for its customers.

Debra Antone, 221 Water Street, addressed the Council. She said that her store is open seven days a week, 10:00 a.m. to 6:00 p.m. Monday thru Saturday and Noon to 6:00 p.m. on Sunday. Ms. Antone said that she knows there are concerns about the amount of restaurants in Excelsior. Ms. Antone said she realized the beauty and historical value of the space at 221 Water Street when they remodeled it. She said she has worked with Joey Nova's for the past four to five years with Gray Gardens, also. Ms. Antone said she enjoys bringing the community together. Ms. Antone said that many of the artists that are represented and the musicians that come in are students from Minnetonka High School. She said they are seniors this year and that one of these students is planning to attend Northwestern University on a full scholarship for engineering. Ms. Antone said the Minnesota Opera has also been to Scuzi. She said Scuzi is not a restaurant, so she hires Joey Nova's to serve pizza and wine. Ms. Antone said she supports the local arts and has at least three to six local artists, photographers, and authors to bring the arts together. Ms. Antone said these events start at 8:00 p.m. and are usually finished by 10:30 or 11:00 p.m. Ms. Antone said the Excelsior Fire District told her the capacity of Scuzi's space is 100 occupants. She said the space is almost 2,500 square feet and that it used to be a bowling alley. Ms. Antone said she wants to know from the Council if she is doing anything wrong.

5. CATERER LIQUOR LICENSE ORDINANCE CONSIDERATIONS - *Continued*

Beattie asked if there is any history of catered events or irregularly scheduled events on Water Street. Luger said The Commons Workplace and Pique Travel host catered events. Luger said the events they host tend to be a variety of events and are not the same caterer week after week and not the same type or frequency as Scuzi's events.

Caron said this is a question of how far the liquor and catering licenses are stretched. Caron said she thinks what Scuzi has done is a fantastic concept and that the marketing on Facebook is very creative. However, Caron stated that this discussion is not about Ms. Antone's business or how she is managing her business. Caron said the question is whether it would be acceptable for another retailer to utilize a basement or similar space but make the event bigger. She said it seems we need to figure out the parameters and whether or not we are opening ourselves up for bigger venues.

Beattie said what Ms. Antone is doing is not only clever but also interesting. Beattie said that his reaction is that there are some issues but, with respect to what Scuzi is doing, he doesn't think the City needs to change the way Ms. Antone is conducting her business. Beattie said he would like more facts about what other communities are doing in this regard. He asked if Edina or Wayzata or other cities have any issues with events like this.

Staunton said that he has checked with the Minnesota Alcohol and Gambling Enforcement Division (AGED) and they seemed to indicate that this is a new thing that hasn't been done regularly.

Mayor Gaylord said this may be an indication of a one time concept in Excelsior and that the City may not need to put in much effort on it.

Beattie asked Ms. Antone about the \$10.00 cover charge that she mentioned. Ms. Antone said this money goes to the students playing in the band or artists to put towards their scholarship, education, or simply for a ride to get there and back. She said the cover charge allows patrons to come in and enjoy the music. Ms. Antone said a glass of wine or a slice of pizza is an extra charge. Beattie asked if there is a limit on the number of glasses of wine a patron may have. Ms. Antone said the Caterer checks identification and she would need to check with them on the number allowed.

Fulkerson asked the age of the students in the band. Ms. Antone said they are currently seniors, about 17 or 18 years old. Tumberg mentioned that minors may not be in a liquor establishment after 10:00 p.m. Ms. Antone said the parents of these students, along with their families, are there with them. Attorney Kelly said that workers may be underage and serve in a restaurant with alcohol.

Miller said that Ms. Antone's business is an interesting approach, but that these events seem to be more regular than incidental. He suggested that staff look for ordinances in other cities. Miller said he is leaning towards Fulkerson's concern of this becoming a regular or daily event. Miller said the City should get ahead of it.

5. CATERER LIQUOR LICENSE ORDINANCE CONSIDERATIONS - *Continued*

Fulkerson said that residents are calling and emailing her about what the City is allowing. She said Scuzi's events were not brought to the City for a license.

Ms. Antone said she checked with AGED and the City Clerk and found that everything was legal.

Miller said he isn't against the events Scuzi is hosting but said he doesn't want it to get out of hand.

Fulkerson said these events need to be controlled by the City. She said she doesn't want other businesses coming in without the proper licenses.

Caron said it's a hybrid that needs to be controlled. Caron questioned if a restaurant with a liquor license expands to an unused basement space, whether it would change their liquor license. Staunton said that the premise area for the liquor license would need to be expanded. Caron said it's really about licensing "other uses."

Beattie said he thinks the City should continue monitoring these type of events but that more information is needed to determine if there is a frequency for other catering events in the City. Luger said she can call and ask the other businesses. Beattie said the concern is about being squeezed by liquor licenses. He said Scuzi is not competing with other restaurants. Beattie said that the City needs to be sure everything done within the city is supporting the retail businesses and figure out parameters without being too restrictive. Beattie said he doesn't think Scuzi is evading the liquor license requirements.

Miller said if only one or two businesses are catering events, it's not a big deal, but if more want to do it, then it's a big deal.

Caron asked about catering licenses. Staunton said he can do some research with other cities. Caron said she thinks it's smart to get ahead of it and have some type of licensing arrangement.

3. ASSESSMENT POLICY

Dawley said this item is a continuation from meetings over the past couple of months to re-examine the assessment policy. Dawley said that he, Attorney Staunton and staff have been looking at several different options. Dawley directed the Council to the draft assessment policy in the Council's packet, which expands the aspects included in the Met Council Improvement Project.

Dawley said the chart included in the Council's packet is one that the Council has seen before, but provides the original way of assessing versus the revised rate. He said that each change can be seen and that some are minor and some are more significant. For instance, Dawley said that the change to condominiums is more significant. Dawley said that commercial assessments are still based on the same front footage methodology but the percentage has changed from 15 percent to 30 percent. On average, Dawley said that the change is an increase of about \$6,500.

3. ASSESSMENT POLICY - *Continued*

Dawley stated that the revised section of the assessment policy has not yet been reviewed by the City Attorney. However, Dawley said the revised assessment policy describes how the City arrived at the new rates and is clearly stated for the Council, staff, and the public, as well.

Miller said that he doesn't like how the percentages are presented. He said the City has never had a condominium unit policy before, nor a commercial policy for streets, so the initial numbers were defaulted to 15 percent, based on residential properties. Miller said that the Council has never adopted a specific policy. Caron said this is a good point and stated that the past policy was 15 percent across the board but it didn't classify specific properties, so the assumption was that all properties were 15 percent. Luger said the past policy did have an institutional category. Tumberg said that the feasibility study is the key piece that included those original numbers. Staunton said that was the methodology presented at the Project Improvement Hearing. Miller said it appears that the increased rates for some properties look to be incredibly high.

Caron said the policy was silent on the other categories and that the assumption was that all properties were 15 percent. She said it's fair to discuss why these rates are changing to 20 or 30 percent.

Beattie said property owners are focusing on the raw dollars. Tumberg said she has received a lot of phone calls for condominium sales and that they are holding the assessment money in escrow. Tumberg said she gives them the projected amount from the feasibility report but that now the numbers are substantially different.

Dawley said there has not been an official notification of an Assessment Hearing. Beattie said the real issue is a legal issue and that we need to hear from Staunton on just how much latitude the City has.

Staunton said there are two steps to the process: 1) an Improvement Hearing where the purpose is to evaluate whether it makes sense to move forward; and 2) an Assessment Hearing where each property owner has the chance to talk about their individual assessment. Staunton said the question is whether the changes to the methodology are significant enough that property owners would have come forward to object to the improvement. Beattie asked if the City can hold another Improvement Hearing. Staunton said no, due to the fact that the project is already underway. Staunton said the Council needs to consider how much property owners would object to the change.

Caron said the City should be able to answer to property owners as to how the City came up with these percentages.

Miller said the new formula is a compilation of different cities compared by staff. Luger said the residential rate is still low. She also said that it's not uncommon for commercial properties to be at 30 percent. Luger said it's all over the board in other communities.

3. ASSESSMENT POLICY - *Continued*

Caron said she would like a copy of the comparison chart for the next Council meeting.

Beattie questioned if the City has a legal standard or basis if the policy is adopted after the Improvement Hearing, with a basis that the City compared how other cities are assessing properties in the area.

Staunton said it's really whether it's such a dramatic modification that property owners would have objected to the improvement itself. Caron said, in this case, there is no question that the City would have gone forward with the Met Council project, except that additional improvements were ordered.

Beattie asked how much time the City has in the process. Staunton said it won't be on the tax rolls for 2015. Staunton said the question is whether this issue gets resolved before a possible new Council comes in. Staunton said that staff would like to come to some kind of conclusion before the end of the year and said there will be plenty of time to give notice to property owners.

The Council continued this item to a future meeting and directed staff to bring back a comparison chart. Luger asked if the Council is comfortable with the proposed amounts. Caron and Beattie said yes. Luger said she will email the comparison chart to the Council.

4. E-CIGARETTE ORDINANCE CONSIDERATIONS

Staunton said another new development in Excelsior is the E-cigarette retailer, which has raised questions on licensing and other regulations to cover the retail sale and use of E-cigarettes in the community. Staunton said E-cigarettes use battery power to heat liquid nicotine or other chemicals into a vapor. Staunton said that, for a long time, there were no regulations and that the Food and Drug Administration is currently investigating the health consequences of use of this product. The State recently amended statutes on the Clean Indoor Air Act to include no E-cigarettes in health care facilities, no sales to minors, and childproof packaging. Staunton said Excelsior does not have anything in the Tobacco Licensing ordinance to include E-cigarettes and there is now an E-cigarette retailer in Excelsior. Staunton said some cities also have vapor lounges with retail sales and materials may be used within the business. He said other cities have adopted moratoriums, in order to gain some time to study E-cigarettes and how they should be regulated. Staunton said he is looking for feedback from the Council.

Staunton said the Council may choose to do nothing or they may amend the zoning code to consider whether vapor lounges could be permitted, amend the Tobacco Licensing requirements, create Excelsior's own version of the Clean Indoor Air Act to include all facilities, or a modification of all of these. Staunton said this topic may come up at the legislature this year.

Beattie complimented Staunton on the depth of his research and that a moratorium makes a lot of sense, so the Council may want to study this. Beattie said there are two branches of this topic - one is the retail shop and the other is the retail vapor

4. E-CIGARETTE ORDINANCE CONSIDERATIONS - *Continued*

Lounge. He said, without a moratorium, Excelsior may end up with an on sale version of this product.

Caron agrees with adopting a moratorium. She said that Excelsior Vapor Shoppe has seating inside the building and also a table outside. Caron said that she has been contacted by residents on this issue who are very concerned, especially a lot of parents. Caron said there is a lot of concern in the community on this subject.

Mayor Gaylord and Fulkerson both asked why the City couldn't just follow the State statutes. Mayor Gaylord said that staff is already over-burdened. Caron said that residents have asked that the Council look at this.

Staunton said there is nothing in State law prohibiting these vapor lounges.

Mayor Gaylord said there is not a lot of space in Excelsior for vapor lounges.

Beattie thinks this subject is worthy of further discussion and suggested that staff draft a moratorium ordinance for Council consideration.

Caron suggested this item be placed on a regular Council agenda and said she will let her constituents know about it.

Mayor Gaylord directed staff to add this item to the November 17, 2014 Council agenda.

6. ADJOURNMENT

Beattie moved, Fulkerson seconded, to adjourn at 7:00 p.m. Motion carried 5/0.

Respectfully submitted,

Shirley Johnson
City Clerk