

LICENSE HEARING MINUTES
Takeabreath LLC, dba Hotworx, 431 Snelling Ave N
Thursday, September 19, 2:00 PM
Room 330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Legislative Hearing Officer

The hearing was called to order at 2:07 PM

Staff Present: Jeff Fischbach, Department of Safety and Inspections (DSI) Licensing Inspector; Frances Birch, DSI Zoning Inspector (remote participation)

Licensee: Natalia Gaston, Applicant/Owner; Malik Davis, Applicant/Owner

License Application: Health/Sport Club license

Legislative Hearing Officer Nhia Vang made introductory comments about the hearing process: This is an informal legislative hearing for a license application. This license application required a Class N notification to inform neighbors and the District Council about the application and provide them with an opportunity to submit comments. The city received correspondence of concern/objection, which triggered this hearing.

The hearing will proceed as follows: DSI staff will explain their review of the application and state their recommendation. The applicant will be asked to discuss their business plan. Members of the community will be invited to testify as to whether they object to or support the license application. At the end of the hearing, the Legislative Hearing Officer will develop a recommendation for the City Council to consider. The recommendation will come before the City Council as a resolution on the Consent Agenda; the City Council is the final authority on whether the license is approved or denied.

There are three possible results from this hearing: 1) a recommendation that the City Council issue this license without any conditions; 2) a recommendation that the City Council issue this license with agreed upon conditions; or 3) a recommendation that the City Council not issue this license but refer it to the city attorney's office to take an adverse action on the application, which could involve review by an administrative law judge.

Minutes:

Jeff Fischbach, Department of Safety and Inspections (DSI) - Licensing, gave a staff report for licensee Takeabreath LLC (License ID#20240001110), d/b/a Hotworx, located at 431 Snelling Avenue N. The application is for a Health/Sport Club license. DSI is recommending approval with the following license conditions:

1. At least one employee or manager, trained and qualified in first aid and CPR according to standards established by rule by the Department of Safety and Inspections shall be on duty at all times that the licensed premises are in operation or open to members of the public. Such standards shall be in conformity with standards and guidelines established by the American Red Cross with respect to water safety instructors or by the American Heart Association for similar purposes.
2. No exercise equipment shall be used unless there is assigned at all times an employee on duty which is trained to give advice on the safe use and operation of said equipment. The staff member on duty must be on the premises.

3. Licensee agrees take appropriate action to ensure that entry to the establishment is in accordance with the business plan on-file with DSI so that only registered members are permitted access to the facility during non-office hours, and non-members are only able to access the space during office hours.

The District 13 Union Park District Council and the District 11 Hamline Midway Coalition submitted letters of support. Building conditions in process; Environmental health in process; License approved with conditions; and Zoning approved.

Fischbach: The initial business model submitted was to have it open 24 hours and unstaffed at certain times. Other municipalities allow it, though Saint Paul ordinance does not. DSI has no administrative purview to change or ignore the ordinance. Applicants initially accepted that, but then later pursued a license to be an exercise-only facility, which would allow them to have unstaffed hours. The problem is that no other facilities, such as saunas or steam rooms, can be allowed under that license type. Additionally, all members of an exercise-only facility need to have the same level of membership. You cannot have different levels of membership receiving different access. The saunas jump out right away and make this not applicable as an exercise-only facility. I didn't explore the possibility further since that immediately ruled that possibility out. I told them that if they pursued a license for an exercise-only facility, their application would be referred to the City Attorney's Office (CAO) for adverse action to deny the application. I told them that the process can take up to 6 months. The City Council would be the final authority on whether the license is issued or denied, but their decision would have to be based on City ordinance. They then wanted to go back to a regular health/sport club license, since adverse action can take months and they were already doing construction. They went back to a fully staffed model under that license application. I then sent a letter summarizing events up to that point to ensure clarification (refer to attachment 21). I have a copy here and will make sure it is added to the record. They then revised their business plan, and that is attached to the record. We then sent the public notice. Building permits are opened and construction is proceeding. Conditions 1 and 2 are restatements of City ordinance.

Hearing Officer Vang asked whether the business plan attached to the staff report was the most current version.

Fischbach: Yes. The first one they submitted is not in front of you, which did not have a fully staffed facility. The current plan demonstrates that staff will be always there.

Hearing Officer Vang asked the applicant to talk about the business, franchise, and conditions.

Malik Davis: We did switch our application. Being new business owners, we weren't sure what options there were. We've had multiple conversations with the department and were told we could move forward in one of two directions: staffed or unstaffed for after-hours times. The franchise is worldwide. We always wanted to do unstaffed, and it has been difficult to pursue. We looked into a process for being unstaffed after-hours. We planned to have our license be denied by City staff and then to appeal to the City Council for them to issue our license, since we have their support, and they are the final authority.

Hearing Officer Vang stated that the administrative law judge process does take time before the City Council can vote on the matter. She also indicated that the current ordinance does not allow for unstaffed health clubs.

Davis: I'm just walking you through the process from our perspective.

Fischbach: I also told them about another option, which was to change City ordinance. I told them that is also a lengthy process.

Davis: We then reached out to our councilmember, and they said they would support our application for an unstaffed model. We also reached out the Union Park and Hamline Midway district councils, and they supported us as well. Our plan was to have it denied and go to the City Council for approval. We were told it could be 6 months and that wasn't an option for us. We already have financial obligations to our landlord and loan officers. We then reverted to a staffed fitness model, which is cumbersome and financially taxing. We then reached out to Council President Jalali and asked for direction. We feel good about receiving our councilmember and district councils' support for an ordinance change, so we will just have the staffed model temporarily.

Hearing Officer Vang clarified that the applicants still plan to seek an ordinance change to allow for an un-staff model for their members.

Davis: We meet all the exercise-only conditions aside from the saunas. Saunas are our fitness equipment since the equipment being used is in the sauna. Our saunas are not for sitting. They are only for working out. Our argument is that our sauna model is different because it is for exercise and not be treated as a separate facility.

Hearing Officer Vang asked them to review the sauna rooms.

Davis: Two saunas have 3 pedal bikes each. One has 3 row machines. Another will have three Blast machines, which are like bikes but let you move your arms too. So, a total of 4 saunas will have equipment. The other 5 saunas don't have any machines, but have screens that loop, starting every 15-30 minutes. There are no buttons to push. Members use an app to look online if a class is coming up or if there is availability to reserve. This model is controlled. We know who is there and we know when they leave. We will also have 24-hour surveillance.

Fischbach: It is not true that the only thing that doesn't meet the exercise-only definition is the sauna. I advised the applicants to talk to a lawyer to explore that fully. I can see one other things in their plan that it is not compliant with the definition. I did not go into other issues because we just stopped at the sauna, which immediately made it not a good fit under Saint Paul's ordinance. I told them that a lawyer could help them with the ordinance change process to make sure everything is changed properly. We don't want them to go through an ordinance change and then find out it wasn't the fix they were hoping for. They had a time crunch to open quickly, so they wanted to begin with a fully staffed model. One other requirement that they don't meet is [Section 427.07 \(130\) J. 1](#). It says there can only be one room containing all fitness equipment. The only additional fitness room allowed is one group exercise room. There is also another section that deals with glass window frontage. There is more than just the sauna issue. I informed them that if they wanted to move forward with an ordinance change, they were encouraged to work with an attorney to make sure all changes will accommodate their plan.

Davis: We are one big room, just with partition walls. Each cube is not a separate room.

Hearing Officer Vang indicated that she was concern about moving too quickly in the process. She wants then to succeed and to do that correctly, she encouraged them to talk to their attorney to make sure all the changes they were seeking fit with their business plan. Regarding how a room is defined, the building official should be consulted.

Fischbach: I think our CAO would have to work on that determination with our Licensing Manager. If there are walls, roof, and a door, that seems to be a room to me.

Hearing Officer Vang stated that pursuing the ordinance amendment would take significant time as the current ordinance does not allow for unstaffed health clubs. Some of the issues discussed so far is

subjected to legal interpretation that is beyond her scope. She can only address the requirements that are currently in the ordinance regarding licensing requirements. She is encouraging them to work with their attorney now that they understand the steps for moving forward with an ordinance change to operate unstaffed. She verified that they are intending to move forward to operate with staff at all times they are open until the ordinance change is approved.

Gaston: Yes.

Hearing Officer Vang asked about the Zoning review.

Frances Birch, Department of Safety and Inspections (DSI) - Zoning, gave a staff report. The area is zoned T3 – Traditional Neighborhood. This is also in the Meriam Park Special Sign District. A sign permit for this business was issued and reviewed. This is a permitted use that requires no additional zoning conditions. Zoning recommends approval.

Hearing Officer Vang then asked the applicants to walk through how the business would be operated, hours of operations and staffing.

Gaston: I was under the impression that I could propose adjustments. Can we move forward with conditions to have unmanned hours where only members are allowed in? Regular hours would be 11am – 8pm, Monday – Thursday; 9am – 6pm Friday, 11am – 4pm Saturday, and closed Sunday. We would be open 24 hours each day for members only and would only have staff during regular hours. Under this proposed condition, non-members would only be allowed in during regular hours. Executive Assistant Greg Weiner said I could propose new conditions, so I wanted to bring that proposal. I have a handout with our proposed adjustments, which I can distribute and have added to the record. It differentiates between the public and members. We also provide 24-hour security, and members will have necklaces with an emergency response system. Police will also have 24-hour access to cameras. There are 700 Hotworx locations worldwide. They typically staff during peak times only. From listening today, what can happen with this proposed condition?

Hearing Officer Vang stated that the proposal failed to address the specific sections of our ordinance. Until the ordinance is changed, the proposed conditions she is making is contrary to current law. She would recommend against the proposed changes.

Gaston: So, ordinance doesn't allow it?

Hearing Officer Vang: No.

Davis: Can we make a text amendment to the ordinance for an exception?

Hearing Officer Vang reference the section of the ordinance that addressed exceptions and informed them to review that part of the ordinance if they are seeking to make amendments to the ordinance.

Davis: Could our councilmember propose that text amendment?

Hearing Officer Vang: Yes, though I encourage you to work with your attorney to make sure the change accommodates your needs. The process may take about 6 months as Mr. Fischbach indicated earlier.

Davis: This is frustrating. I keep hearing different lengths of time things can take.

Fischbach: When I give a statement about time, I want to give a longer estimate so as not to let you down. Things can move quicker than that. There needs to be a proposal from you for an ordinance change. If you go to your councilmember with something already written, the process will move much faster.

Davis: Should our councilmember or our attorney draft this?

Hearing Officer Vang: The easiest route would be to have your attorney look at our ordinance and draft exactly what you are seeking. Doing this will help speed things up. Once that's done, you should put forward what you want the councilmember to be working on since they may not know your business needs as well as your attorney would.

Fischbach: Anecdotally, if people bring language to start the process, that moves things faster than asking the City to propose language.

Davis: We will do that then.

Gaston: The owner of one in Minneapolis gave us language that she used.

Davis: That was an interpretation issue. They did not need an ordinance change.

Hearing Officer Vang stated that though she appreciated that Minneapolis' interpretation was able to work for another franchise owner. Saint Paul and Minneapolis are two very different cities with different laws and interpretations. The conditions the applicants proposed don't currently meet Saint Paul's existing ordinance, unfortunately.

Gaston: I understand that now.

Fischbach: If a new ordinance passes, you will then request to modify the conditions of your license or change your license type. There would be a new public notice, but no cost to you. We could even start that notice in the 30-day window of time between when an ordinance passed and when it takes effect.

Gaston: Right now, we are moving forward as a health club with staff.

Fischbach: If these conditions are on the license, we can't administratively remove them. It has to go through the public notice process again. Council is the only body who can add or remove conditions.

Gaston: Can we move forward with conditions and open sooner? What is the process to get this before Council?

Hearing Officer Vang: If Council approves, this license where a staffer would be on site while you are open could be issued; however, there are other things needed before the department can issued the license. She noted that the process for building review and environmental health review are underway.

Fischbach: Even if council approves, you still need the building completed, your Fire Certificate of Occupancy, and a sign-off from the environmental health inspector.

Gaston: We are only waiting for electrical right now.

Fischbach: You should call Barb McMonigal-St Dennis as soon as possible about the environmental health review, to see what is still needed from you.

Gaston: If we don't walk away in agreement, what happens?

Hearing Officer Vang: If you disagree to the conditions, I would recommend to the City Council to proceed with adverse action to deny the license application.

Gaston: And because what we would want doesn't align with the current ordinance, they would deny the application?

Vang: Correct. Denial would also prevent you from reapplying for a year. If you withdraw your application and wait until the ordinance is changed, you can reapply and not wait the year.

Davis: We will move forward with a staffer at all times.

Hearing Officer Vang: They must be trained in CPR as well.

Gaston: It will be one of us, most likely.

Hearing Officer Vang: Could you tell me about your backgrounds?

Gaston: I have a company called Take A Breath, where we work with kids in schools about the power of breathing related to their health. I worked for Target in human resources as a team lead. We have properties in St. Paul that provide affordable housing as well.

Hearing Officer Vang asked how they would manage issues outside their control and how many staffers would be supporting the business.

Gaston: We have necklaces with an emergency button that can access the fire or police department. I'm the general manager and will have 3 employees. I was hiring based on the Hotworx model, so we will see if staff take the afterhours shifts as well. If not, Malik and I will take them.

Hearing Officer Vang: What is the parking situation?

Gaston: There is street parking in front and retail parking in the back. We will have at least 3 dedicated spaces.

Davis: It's two blocks from the light rail as well.

Hearing Officer Vang: Are any businesses nearby in the building?

Gaston: Bremer Bank in building as well. There are apartments above us. H&R Block is in the building next door.

Hearing Officer Vang: Is there soundproofing for your ceiling?

Gaston: No music will be blasting. Members can control their own sound.

Davis: Sound is contained. There's elevator music in the general part of the gym but it's not loud.

Hearing Officer Vang: Are the restrooms all-gender?

Gaston: Yes.

Hearing Officer Vang: Up to 3 people can be in any room at any time?

Davis: Yes.

Hearing Officer Vang: Access is by keycard only?

Gaston: An app on a member's phone lets them in and only works with our wifi signal.

Hearing Officer Vang: Are there two entrances?

Davis: There is one entrance only. The second door is an emergency exit.

Hearing Officer Vang: What is the Functional Training Zone?

Gaston: It's for people running their own programs with free weights and such.

Hearing Officer Vang next referred to the STAMP Activity Report and the Police Incident Report, encouraged the applicants to look them over to understand the property's history, and asked if they had any questions.

Gaston: No questions.

Hearing Officer Vang: Did you receive and feedback from the two district councils besides support?

Davis: They are excited about our investment in the community.

Gaston: They are excited for the value it adds since it's not a bar or something that can attract negative behavior.

Hearing Officer Vang: Do you want to go through the whole document you presented today?

Gaston: No. I now understand the ordinance is the ordinance.

Hearing Officer Vang next read into the record the objection from Dorothy Irvin, which voiced concerns about safety. She then gave the applicant the opportunity to respond.

Davis: All customers will be looked up to see if they are a sexual predator. Any idea that we are connected with that behavior is ridiculous.

Gaston: I'm happy to have this opportunity to explain what our business is. I understand Irvin's concern. We are not associated with any of that and will not support it.

Hearing Officer Vang next read into the record the letters of support from the Union Park District Council and the Hamline Midway Coalition.

Hearing Officer Vang then asked if they applicants would consider agreeing to a condition that they provide a list of employees and their schedule whenever DSI asks.

Davis: It's just about seeing who is working when, right?

Hearing Officer Vang: It's not to say that we don't trust you. It's just to cover our bases in the event of a complaint.

Fischbach read the proposed condition.

Davis: Could we add that it would only be initiated by a complaint?

Hearing Officer Vang supported that addition.

Fischbach read the updated proposed condition.

Davis: Sounds good.

Fischbach: I will send this as an affidavit for you to sign tomorrow.

Hearing Officer Vang remind then to contact Barb McMonigal-St Dennis about the environmental health review to help move their application along.

Fishbach: Her review is separate from mine.

Hearing Officer Vang stated that after reviewing the records and considering the testimonies from all parties, she will recommend to the City Council that they approve the license with the following agreed-upon conditions:

1. At least one employee or manager, trained and qualified in first aid and CPR according to standards established by rule by the Department of Safety and Inspections shall be on duty at all times that the licensed premises are in operation or open to members of the public. Such standards shall be in conformity with standards and guidelines established by the American Red Cross with respect to water safety instructors or by the American Heart Association for similar purposes.
2. No exercise equipment shall be used unless there is assigned at all times an employee on duty which is trained to give advice on the safe use and operation of said equipment. The staff member on duty must be on the premises.
3. Licensee agrees take appropriate action to ensure that entry to the establishment is in accordance with the business plan on-file with DSI so that only registered members are permitted access to the facility during non-office hours, and non-members are only able to access the space during office hours.
4. Licensee agrees to provide DSI with a current employee schedule upon request from DSI. Such request will only be made if a complaint is received. The information shall be provided to DSI within 48 hours of such request.

The hearing adjourned at 3:17 PM.

The Conditions Affidavit was signed and submitted on September 20, 2024.