

LICENSE HEARING
Metro Lofts Snap Fitness, 2650 University Avenue West
Thursday, April 19, 2012
Suite 330 City Hall/Courthouse, 15 Kellogg Boulevard West
Nhia Vang, Deputy Legislative Hearing Officer

The hearing was called to order at 9:58 a.m.

Staff Present: Jeff Fischbach, Department of Safety and Inspections (DSI); and William Gunther, Environmental Health Manager (DSI)

Applicant: Heather Bowman, President

Others Present: Alison Newton, Wellington Management (property owner) representative, 1625 Energy Park Drive, Suite 100

Type of Business: Health/Sports Club – Exercise Only, and Tanning Facility licenses (Note: this is for a change in ownership of an existing location)

Ms. Vang stated that this was an informal legislative hearing for a Class N license application. This particular license required neighborhood notification which means the neighborhood was notified and people had the chance to voice their concerns. The City received one (1) letter of concern regarding this license application. There were three possible results from this hearing: 1) she may recommend that the City Council issue this license without any conditions; 2) she may recommend that the City Council issue this license with agreed upon conditions; or 3) she may recommend that the City Council not issue this license but refer it to the city attorney to take an adverse action on the application, which could involve review by an administrative law judge. The applicant will be required to sign a Conditions Affidavit demonstrating the understanding of the conditions.

DSI staff will explain their review of the application and state their recommendation. Ms. Vang will then ask the applicant to talk about the business plan. At the end of the hearing, she will make a recommendation for the City Council to consider. Her recommendation will be on the Consent Agenda; the City Council is the final authority on whether the license is approved or denied.

Mr. Fischbach, DSI, read the application summary, which includes all the recommended conditions for the license. DSI has recommended license Conditions 1 through 9. He said that the recommended conditions were a restatement of what is in the City's legislative ordinances for 'exercise only' health sports club. The difference is that 'exercise only' facilities can have unstaffed hours. The tanning facility cannot be available during unstaffed hours. DSI did not receive a response from neighborhood council. Licensing and Zoning have both approved the license with conditions, and DSI recommends approval with the proposed license conditions:

1. No more than two tanning rooms containing tanning equipment are permitted. The tanning rooms shall be locked at all times unless a staff member is present inside the facility and performing the duties required by Minnesota State Statute 325H. Members of the exercise only facility shall not have access to tanning equipment or rooms containing tanning equipment unless a staff member is present.
2. This facility is licensed as a health/sport club "exercise only facility" per Chapter 427 of the City of Saint Paul Legislative Code and the licensee agrees during all times of operation to remain in compliance with all applicable regulatory requirements governing such a facility including but not necessarily limited to the following conditions #3 - #19:
3. An exercise only facility shall provide only fitness equipment and restroom/shower facilities, but no other facilities such as saunas, steam rooms, hot tubs, and massage facilities.
4. All members of an exercise only facility shall have access to the entire facility and there shall not be separate access to facilities for different levels of membership.
5. There shall be maintained clearly designated separate locker room/restroom facilities for female and male patrons.
6. An exercise only facility shall provide a minimum of 10 cardiovascular exercise machines and 10 strength training machines at all times.
7. There shall be at least seventy-five (75) square feet of external window space maintained free and clear of any obstruction(s) (i.e., signage, lettering, paper, equipment, walls, etc.). This condition is intended to permit clear visibility into and out of the facility at all times (including when the facility is closed).
8. If an exercise only facility has un-staffed hours of operation, all members of an exercise only facility shall sign a written acknowledgement stating they have been advised that a staff member is not always present during hours of operation, and these acknowledgements shall be retained by the business owner and immediately available to the DSI upon request.
9. An exercise only facility shall provide at least one automatic electronic defibrillator (AED) on the premises, and at least three (3) times per year offer certification for use of the AED, CPR and first aid free of charge to members of the facility.
10. An exercise only facility shall provide personal security devices capable of being worn around a member's neck that is connected to a security company staffed twenty-four (24) hours a day that will result in immediate notification of police and/or other emergency services. The security company shall have access to video surveillance from the club so that police can be notified of what caused the alarm and can better be able to send appropriate help. Exercise only facilities must post notification to members in a conspicuous location near the door to the facility and within view of the fitness equipment that all members of the facility who are alone in the facility must wear a personal security device at all times.
11. An exercise only facility shall maintain and operate an access monitoring system that records the name, date and time that members enter the facility. This record shall be made regardless of whether the facility is staffed, and shall be retained for a period of at least ninety (90) days and made immediately available to the Saint Paul Police Department (SPPD) or DSI upon request.

12. All external doors to the exercise only facility shall be equipped with tailgating alarms to record the entry of more than one person at a time to the facility. All tailgating alarms shall be reported to DSI along with the date, time and circumstances of the alarm.

13. An exercise only facility shall have a working video surveillance system to provide twenty-four (24) hour recorded documentation of all activities on the interior of the facility (excluding inside locker rooms, restrooms, and tanning rooms), and the exterior of the facility including the parking lot within fifty (50) feet of the entrance to the facility. Recordings must be retained for a period of at least ninety (90) days and made immediately available to the SPPD or DSI upon request. In addition, the SPPD and DSI shall be provided electronic access to the surveillance system in order to monitor actions on the premises in live time.

14. An exercise only facility shall be equipped with a working video surveillance system which documents and records any persons(s) entering and leaving all internal doors to the facility including but not limited to restrooms, shower rooms, and tanning facilities. Any instances in which more than one person enters a room within the facility that is not monitored by internal surveillance cameras shall be reported to DSI along with the date, time and circumstances of the incident.

15. If SPPD determine a preferable placement for cameras, the licensee shall position cameras as directed by SPPD within 90 days of notification from SPPD or DSI.

16. An exercise only facility shall notify DSI of the designated employee staffed hours for each facility, and the staff hours shall be conspicuously posted at the entrance to the facility. DSI shall be immediately notified in writing of any changes to staff hours.

17. An exercise only facility shall not allow members to bring guests into the facility during non-staffed hours. During all non-staffed hours, every person entering the facility shall be required to individually unlock the doors into the facility for the monitoring system to record that member's entry.

18. There shall be only one office area, and if such office area has interior walls the walls shall be made of at least 50% clear glass and have a door made up of at least 90 % glass. No window treatment or other glass treatment shall be permitted that obstructs the view of the office in any way. The door to the office shall remain locked at all times unless an employee is inside the office. Anytime any person is inside the office, the lights to the office shall be on.

19. The licensee shall make available to SPPD and DSI the ability to obtain immediate access to the premises upon notice.

Ms. Vang asked Ms. Bowman about her plans for the business, staffing, hours of operations, etc.

Heather Bowman, president of Metro Lofts Snap Fitness, said she purchased the business from her partner and is now the sole operational owner. Because the business is a change in ownership, she agrees to the conditions stated since they were also the same conditions that she and her former partner agreed to with the previous business license. She co-owned the business with her previous partner for three years and is continuing with the operation. She was removed from the business for a little over eighteen months where she was not the operational owner. She is now back as the operational owner and will assume all business management. The business is opened 24 hours daily and is an unstaffed fitness facility. The business operates under a key card access—key bob system where members gain entry by

scanning a card into the facility. As part of the franchise restriction, tailgating systems are installed on the doors which means that no more than one person can gain entry into the facility; however, if multiple people enter the facility, the system would scan and take photographs and would notify her and involved parties for security reasons. Also, the franchise makes live feed to the personal security system available for her access.

Ms. Vang asked how many cameras were installed in the facility. Ms. Bowman indicated that there were approximately 15 cameras. There is one outside the facilities shooting down the street. They share a hallway with Dunn Bros. because of access to the bathrooms, and so there are two cameras in the back hallway in addition to those within the facility. When her license with her previous partner was initially approved, the security cameras were installed based on SPPD's recommended placement. Under the change in ownership, no modification has been made to any of the security cameras because everything is functioning and operational as it was previously. There is no time lapse for the cameras. So, if two people enter the facility, the tailgating system takes a photo immediately...it is an instant time face shot photo of these two individuals. Ms. Bowman will be the only person staffing this facility. She has five college students that help her clean the facility in exchange for facility memberships. Most of her members are students of the University of Minnesota and does a lot of marketing and networking there. Regarding other staff, she has independent contractors for group fitness (e.g., zimbo, kick boxing, boot camp, etc.), and two personal trainers who are also independent contractors. The hours for the independent contractors are sporadic. For example, a personal trainer's schedule in a day may go over an eighteen-hour-period of time because they are there at 4/5/7/8 am, etc., take a break in the afternoon and come back in the evenings. All the scheduling is done by appointments. Group fitness are evenings (between 6pm and 8pm), except for Saturday, and are on set times. Right now there are eight classes a week. She is not offering a lot of programs yet because she just opened.

When asked about the defibrillator, Ms. Bowman responded there is a box at the facility that would walk someone through the steps. The box is set up with their AED, which has just been tested since she took over the business, and when triggered, a voice would walk someone through the exact steps of the procedure. The system is automated. In addition, once the system is activated, her hired security company will also come over through the loudspeaker and start assisting. At that time, they will decide whether medical needs to be dispatched. It is all interconnected. There are also panic buttons right next to the box and panic lanyards for members to wear around their neck. They recommend that people wear the personal alarm when they are doing weight-lifting by themselves in the evenings or if they have an old injury and will be running. When the panic lanyards are pressed, someone comes over the loudspeaker. If no one answers in the facility, the system will send out a dispatch. The system is good and functioning correctly because she had a faulty lock incident and a couple of girls were stuck in the aerobics room and dispatch was sent immediately.

Ms. Vang asked about other safety trainings and Ms. Bowman said that she also offer CPR for staff.

Ms. Vang asked about whether members sign an agreement acknowledging that the facility Ms. Bowman owns will not be staffed 24 hours a day. She stated that per her membership agreement, it is called out in two places--the liability clause and insurance clause, ensuring that members understand what the safety features are and security features that they can use. In addition, at the end of the agreement, they have to acknowledge and initial, reminding them again, per City of St. Paul ordinance, that the facility is a 24-hour unstaffed business. Ms. Bowman currently has 325 members and there are about 45 parking spaces, which is also shared with Dunn Brothers, for them to park. Most of the members live within walking distance so parking is not an issue. Also, some members may be driving less because of light rail construction.

When asked about the tanning facility, Ms. Bowman responded that it is only available during her staff hours. The door is locked when she is not there. There is a kill light switch that is in her office. She thought that offering the tanning facility would be an extra revenue source but she is not able to be competitive with the tanning salons next to the facility. She is currently does not selling enough tanning services. She would like to install key card access on the door to the tanning facility which would only allow parties a one-time entrance access per day but that is a difficult process because of the restriction—requiring the use of eyewear any time tanning services are used. The facility offers the eyewear for free and also makes eyewear available for purchase; however, she can't force members to use the eyewear if members are left unsupervised. Because of that condition restriction, it is difficult for her to consider the key card access to the tanning service.

Ms. Vang asked about the objection letter and whether Ms. Bowman would like to respond to the concern stated. Ms. Bowman said that she had talked to the neighbor who wrote the letter a few times. As a result, Ms. Bowman has posted signs reminding her members to set weights down when they are finished instead of dropping the weights. Her independent contractors also help her police members to ensure that members were setting the weights down. For her, it is embarrassing for everyone regarding the reminder(s). Because of the sign postings asking members to do this, Metro Lofts is now known as the gym that members cannot make noise. She is working hard to reduce the noise (e.g., posting reminder signs (totaling 4), constantly tapping people on the shoulders, and putting mats down, etc.) She has lost business and some of her members have cancelled with her to use the other health club facilities down the street. She believes that it is not just the free weights that are making the disturbing noise but other equipment as well. She recently posted a sign that warns members that repeated failures to comply with the rules of the club is subjected to immediate termination after an incident is reported and verified by video surveillance. For her, this last posted sign was difficult because she already lost several members.

Ms. Vang asked how many weight machines and where they were placed and whether Ms. Bowman knew whether they were placed directly under the complainant's apartment. Ms. Bowman responded that she has several weight machines and that where they are placed there are no apartments above it. However, the noise from use of the machines would resonate through the walls and ceilings. The smallest sound in the facility also resonates to her office so she believes that the noise is an acoustic thing. Ms. Bowman has less than 10% of members who use the facility after hours.

Ms. Vang asked whether the building was completely soundproof. Ms. Bowman responded that the majority of health club facilities, in shared spaces, are sprayed with acoustical foam. In some, the floor is dropped. She is looking into adding dropped flooring to that area where the weight machines are. She doesn't know if she can afford it at this time but is looking into the matter. She understands that the noise is a problem and is doing her best to try to minimize the resonance by putting down more floor mats and has reminded her members to not move them when they're using the weights. Again, she is not really sure what else she can do to minimize the noise apart from what she's done so far.

Ms. Vang asked about the process for a noise complaint and at what level does DSI monitor. Bill Gunther responded that the noise ordinance is written primarily for external sources of noise. Some are internal. It is basically a landlord tenant association. The police can use the portion of the noise ordinance—noise is a nuisance, but there is no standard dB level for indoor monitoring. Noise nuisance, in general, is a significant annoyance to a reasonable person of normal sensitivity. When there is a complaint, the police officer has to make a judgment call. The intent is to not outlaw normal human behavior. Unlike this situation, in the case of a dance hall, the music can be turned up or down. The problem here is the impact or high duration short intensity noise. We do not have any standards for that kind of impact or high duration short intensity noise because that kind of noise is the worst type of noise. For example, if there is a constant noise at 70 decibels, no one would worry about it. But if there is a constant 50 decibels and all of a sudden, the noise shoots to 70 decibels, people would be upset—that situation is what this facility is dealing with here. The City's noise ordinance wouldn't cover this as a standard. Also, the noise is impact noise and it is probably transmitted throughout the floor as a low frequency sound that comes up and then transduced into the facility upstairs as a noise. Cities that do have an internal-type noise standard, they have to get into a dBa, which is a weight scale for normal hearing that peaks at 1500 hertz. There is a scale called dBc which emphasizes base, which is ubiquitous, it is not directional, and can go through walls easily...that is most likely the case here. Basically, she could operate her club normally and with the weight stacks, even if you click them, it may be heard upstairs. Again, it is not constant noise here but it's the sudden elevated noise. It sounds like she is operating her club reasonably. It just sounds like this is a bad match between the living spaces and the facility space. Noise nuisance is a significant annoyance to a reasonable person of normal sensitivity so there are people who are very sensitive to noise and a police officer has to take that into account when investigating a complaint. The law does not guarantee that a person will be immune from any noise and the intent is to assess what is reasonable noise.

Ms. Vang acknowledged that Ms. Bowman has taken reasonable steps to minimize noise. Mr. Gunther explained further about noise and stated again that the officer would have to use judgment based on the measure of significant annoyance to a reasonable person of normal sensitivity and assessment of the type of activities. In this case, it does not sound like there is anything outrageous that is going on in the club. Ms. Vang asked whether music was also amplified there and Ms. Bowman said yes but that the sound was very low and minimal in the facility. When she leaves, she turns music down a bit because the facility opens 24 hours and there may be one person there, she does not want the music to be a nuisance to them at

the facility. There is music amplified during group fitness classes in the aerobic rooms and not amplified at a level that would be disturbing. Mr. Gunther reiterated that sounds do depend on what people are doing. Some people drop/smash weights and others touch and click. He does not know what level the complainant is sensitive to but 55 decibels is the standard at night in a residential. So, if there was 45 decibels being heard and then a click is heard at 10 decibels over—the standard for being plainly audible, a person might be disrupted by that but it would still be technically legal. In this case, what we have here is impact of high intensity low duration noise which tends to cause people to notice the noise and that noise may not even be a violation.

Ms. Bowman stated that frustrations level is high with the construction adding to the constant noise during the day. Also, the complainant has a new baby and she does understand that the noise would interfere with the baby sleeping. Ms. Bowman said that she took that complaint seriously and made adjustments when the complainant informed her of the situation. She has provided the complainant with her business card and all members have her personal cell number. Ms. Bowman cannot do more than what she is doing. Again, her business is now known as the gym where you have to be quiet. She is losing many of her everyday members. She is not in a position to move her business down the street and she likes the building she is in and wants to stay there. The signage she posted is aggressive and intimidating to her members. She would like to think that something could be done within the space to change the situation because she wants her members to be comfortable while at the same time not create a disturbance to the other residents in the building. Business is hard with the light rail construction because her gym is no longer convenient or accessible to members/new customers. She finds it difficult with the loss of her serious members. Also with the noise issue, she does not see that going away and the likelihood of her members switching to the other gyms is a likely scenario. She understands that it may happen.

Ms. Vang encouraged Ms. Bowman to work with the property owner to find ways to minimize the noise resonance because even after light rail goes way, noise will still be an issue for Ms. Bowman.

Mr. Gunther asked how long the club has been there and how long has the complainant been there. Ms. Bowman responded that the fitness business has been there for three years. Ms. Alison Newton, Wellington Management representative, said that the complainant was one of the first buyers. She also said that the complainant has complained about noise to them in the past; however, Ms. Bowman took swift actions.

Mr. Gunther stated that noise of this nature is endemic to the operation and is not unreasonable as to what is going at Metro Lofts. He suspects it is the clicking sound--the nature of no noise and then there is sudden noise.

Ms. Vang asked about the possibility of adding a condition to address additional controls by referencing the resident's request. Mr. Fischbach responded that the owner already posted signage up and even if we were to add such a condition, it would be pointless because the signs are already in placed. Also, it appears that there is open communication here and because the building management is in the crowd, perhaps she could address this matter.

He added that perhaps there is something already in the lease that says Metro Lofts cannot affect neighbors. It also sounds like the owner and building management are taking proactive approach to this matter. [Both the owner and building management representative affirmed the statement made by Mr. Fischbach that there is open communication so both parties are aware of the situation and there is an immediate response.]

Mr. Gunther stated that we should be careful because we don't know if the noise coming out of there is unreasonable or not. So, we don't want to put harsh conditions on that may be unattainable.

Alison Newton stated she works for Wellington Management, the building manager of the Metro Lofts retail space. She has worked with Ms. Bowman and has had open communications to address the noise issue in the past and continues to maintain that relationship to address ongoing future issues. She has been with Wellington for seven years and has been on this project since the building was developed. The noise issue is there; however, it is something that is addressed and if Wellington hears about complaints, they immediately share that information with Ms. Bowman. The complaint becomes an immediate priority for Ms. Bowman, as the tenant, to resolve. She believes that Ms. Bowman has done what she needs to do to comply such as reminding her members to be cognizant that they are in a mixed use building.

Ms. Vang stated that since this hearing was triggered by an e-mail from Ms. Paige Schram who raised the issue of noise after hours, she encouraged Ms. Bowman to continue to monitor the situation and to take responsible actions despite the current limitations. Ms. Vang is satisfied with what Ms. Bowman has presented and will recommend to the City Council that they grant the license with conditions proposed by DSI and agreed to by Ms. Bowman.

The hearing adjourned at 10:34 a.m.

The Conditions Affidavit was signed on April 19, 2012.

*Submitted by:
Racquel Naylor*