



City of Saint Paul

City Hall and Court House
15 West Kellogg Boulevard
Council Chambers - 3rd
Floor
651-266-8560

Minutes - Final

City Council

Council President Russ Stark
Councilmember Dan Bostrom
Councilmember Amy Brendmoen
Councilmember Rebecca Noecker
Councilmember Jane L. Prince
Councilmember Dai Thao
Councilmember Chris Tolbert

Wednesday, December 6, 2017

3:30 PM

Council Chambers - 3rd Floor

Budget Amendment Public Hearings at 3:30 p.m.

Public Hearings at 5:30 p.m.

The Truth in Taxation Public Hearing will be held at 6:30 p.m. or shortly thereafter.

ROLL CALL

The meeting was called to order by Council President Stark at 3:32 p.m.

Present 6 - Councilmember Dan Bostrom, Councilmember Amy Brendmoen,
Councilmember Dai Thao, Councilmember Chris Tolbert, Councilmember
Russ Stark and Councilmember Rebecca Noecker

Absent 1 - Councilmember Jane L. Prince

Councilmember Prince arrived after roll call.

Present 7 - Councilmember Dan Bostrom, Councilmember Amy Brendmoen,
Councilmember Dai Thao, Councilmember Chris Tolbert, Councilmember
Russ Stark, Councilmember Rebecca Noecker and Councilmember Jane L.
Prince

COMMUNICATIONS & RECEIVE/FILE

- 1 [CO 17-68](#) Letter from the Department of Safety and Inspections declaring 96
Manitoba Avenue a nuisance property. (For notification purposes only;
public hearings will be scheduled at a later date if necessary.)
Received and filed
- 2 [AO 17-77](#) Amending the 2017 budget of the Sewer Utility Fund to combine four
accounting units.
Received and filed

- 3 [AO 17-89](#) Amending the CDBG activities budget.

Received and filed

CONSENT AGENDA

Items listed under the Consent Agenda will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the Consent Agenda for separate consideration.

Approval of the Consent Agenda (Items 4 - 38)

Councilmember Brendmoen moved approval of the Consent Agenda.

Consent Agenda adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 4 [RES 17-1884](#) Approving the Settlement Agreement and Release between the City of Saint Paul and Michael Fleming and his attorney Paul Applebaum.

Adopted

- 5 [RES 17-1840](#) Memorializing the Council's decision to deny the appeal of Kathryn Engdahl of a Board of Zoning Appeals decision to grant a variance to construct a garage at 17 Hall Avenue.

Adopted

- 6 [RES 17-1942](#) Authorizing Visit Saint Paul to Coordinate Planning of Mayor-Elect Carter's Inauguration and related events.

Adopted

- 7 [RES 17-1862](#) Approving the City's cost of providing Boarding and/or Securing services during September 2017, and setting date of Legislative Hearing for January 9, 2018 and City Council public hearing for February 28, 2018 to consider and levy the assessments against individual properties. (File No. J1804B, Assessment No. 188103)

Adopted

- 8 [RES 17-1863](#) Approving the City's cost of providing Trash Hauling services during October 4 to 25, 2017, and setting date of Legislative Hearing for January 9, 2018 and City Council public hearing for February 28, 2018 to consider and levy the assessments against individual properties. (File No. J1805G, Assessment No. 188704)
Adopted
- 9 [RES 17-1864](#) Approving the City's cost of providing Tree Removal services from May to September 2017, and setting date of Legislative Hearing for January 9, 2018 and City Council public hearing for February 28, 2018 to consider and levy the assessments against individual properties. (File No. 1801T, Assessment No. 189000)
Adopted
- 10 [RES 17-1865](#) Approving the City's cost of providing Demolition services from August 2017, and setting date of Legislative Hearing for January 9, 2018 and City Council public hearing for February 28, 2018 to consider and levy the assessments against individual properties. (File No. J1804C, Assessment No. 182003)
Adopted
- 11 [RES 17-1866](#) Approving the City's cost of providing Collection of Vacant Building Registration Fees billed during June 7 to September 21, 2017, and setting date of Legislative Hearing for January 9, 2018 and City Council public hearing for February 28, 2018 to consider and levy the assessments against individual properties. (File No. VB1805, Assessment No. 188804)
Adopted
- 12 [RES 17-1897](#) Amending the City's 2017 Operating Budget to reflect an advance in the amount of \$1,081,581 from the internal borrowing fund to finance the Office of Technology and Communications Phone Replacement project.
Adopted (Further action was taken at the beginning of the public hearing portion of the meeting.)
- 13 [RES 17-1902](#) Authorizing the withholding of tax-forfeit parcels from public sale for six months.
Adopted
- 14 [RES 17-1930](#) Authorizing the Office of Financial Services to apply for and accept the U.S. Environmental Protection Agency grant.
Adopted

- 15 [RES 17-1936](#) Amending the 2017 budget to establish a transition team budget for Mayor-elect Carter.
Adopted
- 16 [RES 17-1853](#) Authorizing the Fire Department to enter into a joint powers agreement with the City of Eden Prairie for the use of the Saint Paul Fire Department training facilities.
Adopted
- 17 [RES 17-1769](#) Authorizing the Fire Department to accept the donation of 300 9-volt batteries valued at \$147 from Energizer.
Adopted
- 18 [RES 17-1782](#) Authorizing the Fire Department to accept the donation of 1,000 smoke detectors and 1,000 carbon monoxide detectors valued at \$39,960.00 from Kidde Fire Safety.
Adopted
- 19 [RES 17-1812](#) Establishing the rate of pay for the new classification of Loan Servicing and Real Estate Supervisor in EG 09, SPSO, Grade 020.
Adopted
- 20 [RES 17-1860](#) Amending Civil Service Rule 7 to extend the Firefighter eligible list.
Adopted
- 21 [RES 17-1834](#) Changing the rate of pay for the existing classification of Plan Review Supervisor from Grade 016 to Grade 022, EG 09, SPSO.
Laid over to December 13 for adoption
- 22 [RES 17-1919](#) Changing the rate of pay for the classifications of Capital City Intern and EMS Cadet Assistant in Grade 001, EG 99, Special Employment.
Laid over to December 13 for adoption
- 23 [RES 17-1920](#) Changing the rate of pay for the classification of Parks and Recreation Worker in Grade 31H of EG 99, Special Employment.
Laid over to December 13 for adoption
- 24 [RES 17-1873](#) Establishing the rate of pay for the new classification of Parking Manager in EG06, PEA, Grade 018.
Laid over to December 13 for adoption

- 25 [RES 17-1861](#) Approving the Mayor's appointments of Cody Zwiefelhofer, Melissa Finnegan, and Tony Parrish to serve on the Neighborhood STAR Board.
Adopted
- 26 [RES 17-1917](#) Approving the Mayor's appointments of Lindsay Kimball and Jai Winston, and reappointments of Lana Barkawi and Chris Widdess to serve on the Cultural STAR Board.
Adopted
- 27 [RES 17-1885](#) Authorizing the use of a Project Labor Agreement (PLA) on the construction portion of the Rice Park Revitalization project, and authorizing appropriate city officials to execute such an agreement.
Adopted
- 28 [RES 17-1793](#) Authorizing the Department of Parks and Recreation to apply for \$164,500 in funding through the Conservation Partners Legacy grant program to enhance 61 acres of forest and prairie habitat at Cherokee Regional Park and, if successful, enter into an agreement providing indemnification for the MN Department of Natural Resources.
Adopted
- 29 [RES 17-1904](#) Authorizing the Department of Parks and Recreation to execute agreements with the Metropolitan Council, which include an indemnification clause, to accept Clean Water, Land and Legacy Amendment grant funds for multiple City projects.
Adopted
- 30 [RES 17-1842](#) Authorizing carryforward of unused private activity bond volume cap.
Adopted
- 31 [RES 17-1927](#) Authorizing the Police Department to expense charges for meals, travel, and other costs relating to the assessors for the Sergeant's Exam.
Adopted
- 32 [RES 17-1849](#) Approving adverse action against the Massage Practitioner license application submitted by Laura K. Sanchez for 1053 Grand Avenue, Suite #113.
Adopted
- 33 [RES 17-1899](#) Approving adverse action against the Sidewalk Contractor license held by Allphase Companies, Inc.
Adopted
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- 34 [RES 17-1835](#) Approving the application with conditions, per the Deputy Legislative Hearing Officer, to add an Entertainment (A) license to the existing Malt On Sale (Brewery Taproom), Liquor On Sale-Sunday, Liquor-Outdoor Service Area (Patio), and Malt Off Sale (Brewery) licenses for Bad Weather Brewing LLC (ID #20150000267), d/b/a Bad Weather Brewing CO, at 414 7th Street West.

Adopted

- 35 [RES 17-1666](#) Approving the application with conditions, per the Deputy Legislative Hearing Officer, to add a Liquor-Outdoor Service Area (Patio) license to the existing Liquor On Sale - 291 or more seats, and Liquor On Sale - Sunday licenses for the City of Saint Paul Parks and Recreation Department, d/b/a City House (License ID #20160002228), at 258 Mill Street.

Adopted

- 36 [RES 17-1389](#) Approving the application with conditions, per the Deputy Legislative Hearing Officer, for an Auto Repair Garage license for Drive Time Auto Repair LLC (ID #20170002357), d/b/a Drive Time Auto Repair at 1324 Arcade Street.

Adopted

- 37 [RLH OA 17-16](#) Making recommendation to Ramsey County on the application of Mee Lee Moua, d/b/a Malina's Sports Bar, for repurchase of tax forfeited property at 691 DALE STREET NORTH.

Adopted

- 38 [RES 17-1872](#) Approving and authorizing execution of Amendment No. 2 to Site Lease Agreement between the Board of Water Commissioners and T-Mobile Central LLC to provide for the installation of additional wireless equipment at the Board's Cottage Avenue Standpipe site at 2095 Clear Avenue.

Adopted

FOR DISCUSSION

- 39 [CO 17-69](#) Presentation of the 2017 Karl Neid Award to Tabitha Mitchell.

Mayor Coleman, Council President Stark, Mayor-Elect Carter, and Joann Tromsck-Neid, and other Council members spoke about Tabitha Mitchell's contributions to the City as an employee and community activist. Ms. Mitchell made brief comments. Mayor Coleman presented the award.

Received and filed

40 [APC 17-1](#)

Public hearing to consider the appeal of the Dayton's Bluff Community Council to a decision of the Planning Commission approving a change of nonconforming use from bar to tobacco shop at 937-3rd Street East. (Public hearing held November 1)

Councilmember Prince distributed the text of her motion. She said she had done her due diligence and would deny the appeal. She read the motion denying the appeal, and said in denying the appeal and based upon the record, she moved the following condition approving the change in nonconforming use permit, pursuant to Legislative Code 61.704 and 61.107. She said the building had existed as a bar for many years and was unusual in that it had no windows facing the street. She said pursuant to Section 63.301b, new above-grade windows shall be installed on each exterior wall facing a street or sidewalk. She read the code and condition requirements.

Motion of Intent - Appeal denied (conditions added for approval of change of use)

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

41 [RLH FCO
17-169](#)

Appeal of Brett Ripley to a Correction Notice-Reinspection Complaint at 1685 TAYLOR AVENUE. (Public hearing held November 1)

Council President Stark requested a layover to January 17.

Laid over to January 17, 2018

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

42 [RES 17-1939](#)

Directing the City Clerk not to submit Ordinance 17-40 as a ballot question to the County Auditor for placement on the ballot for the next election.

Council President Stark asked Deputy City Attorney Rachel Tierney to explain the legal position.

Ms. Tierney said their opinion was that the Charter provision which would allow a referendum on zoning and land use matters was pre-empted by State law, and the City Council did not have the legal authority to allow a referendum.

Council members Tolbert and Prince made brief comments.

Councilmember Tolbert moved approval.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

ORDINANCES

An ordinance is a city law enacted by the City Council. It is read at four separate council meetings and becomes effective after passage by the Council and 30 days after publication in the Saint Paul Legal Ledger. Public hearings on ordinances are held at the third reading.

Final Adoption

- 43** [Ord 17-55](#) Granting the application of Twin City Concrete Products Co. to rezone property at 1477-1485 Minnehaha Avenue East from VP Vehicular Parking to T2 Traditional Neighborhood, and amending Chapter 60 of the Legislative Code pertaining to the zoning map.

Councilmember Prince moved approval.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 44** [Ord 17-56](#) Granting the application of Michael Mohrlant to rezone the property at 550 Smith Avenue South from RM2 multiple family to B2 community business, and amending Chapter 60 of the Legislative Code pertaining to the zoning map.

Councilmember Noecker moved approval.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

Second Reading

- 45** [Ord 17-57](#) Amending Chapter 402 of the Saint Paul Legislative Code pertaining to local gambling tax.

Laid over to December 20 for third reading/public hearing

- 46 [Ord 17-58](#) Allowing special permits for extended hours for service of alcoholic beverages in licensed establishments.

Councilmember Noecker moved an amended version with corrected language.

Amended; laid over to December 13 for third reading/public hearing

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

BUDGET AMENDMENT PUBLIC HEARINGS (Held during the 3:30 portion of the meeting)

- 47 [RES PH 17-319](#) Amending the financing and spending plans in the Fire Department in the amount of \$17,328.88 for the Minnesota Task Force One team reimbursement from the City of Edina.

No one was present to testify. Councilmember Bostrom moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 48 [RES PH 17-315](#) Amending the financing and spending plan in the Department of Parks and Recreation in the amount of \$90,000 to reflect the Minnesota China Garden Friendship Society's gift for the St. Paul-Changsha China Friendship Garden project in Phalen Regional Park.

Romi Slowiak thanked the Council for their support in creating the landmark work of art, and spoke about the initiators of the project.

Councilmember Bostrom moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 49** [RES PH 17-324](#) Amending the financing and spending plans in the Department of Parks and Recreation in the amount of \$402,558 to reflect additional funding received from Como Friends for the MAC Roadmap project at Como Park Zoo and Conservatory.

No one was present to testify. Council President Stark moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 50** [RES PH 17-330](#) Amending the financing and spending plans in the Police Department Special Fund in the amount of \$281,000 for fund balance.

No one was present to testify. Councilmember Thao moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 51** [RES PH 17-331](#) Amending the financing and spending plans in the Police Department Special Fund in the amount of \$126,500 for fund balance.

No one was present to testify. Councilmember Bostrom moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 52** [RES PH 17-307](#) Amending the 2017 financing and spending budgets in the Department of Public Works Department, Sewer Utility, for the Private Sewer Connection Program.

No one was present to testify. Councilmember Tolbert moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

The Council recessed at 4:13 p.m.

PUBLIC HEARINGS (Public hearings will begin at 5:30 p.m.)

The Council reconvened at 5:31 p.m. Council President Stark welcomed those present in the chambers and explained the procedure for public testimony.

[RES 17-1897](#)

Amending the City's 2017 Operating Budget to reflect an advance in the amount of \$1,081,581 from the internal borrowing fund to finance the Office of Technology and Communications Phone Replacement project.

Council President Stark moved to reconsider RES 17-1897 and lay it over to December 29 for a public hearing.

Reconsidered; laid over to December 20 for public hearing

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

53 [Ord 17-17](#)

Amending Chapter 65 of the Legislative Code pertaining to Alternative Financial Establishments.

No one was present to testify. Council President Stark moved to close the public hearing and approve the resolution.

Public hearing held and closed; laid over to December 13 for final adoption

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

54 [RES PH 17-327](#)

Approving adverse action against the Second Hand Dealer-Motor Vehicle license held by Best Buy Auto Sales, LLC, d/b/a Payless Auto Sales located at 1414 Arcade Street.

Therese Skarda, Assistant City Attorney representing the Department of Safety and Inspections (DSI), gave a staff report.

No one was present to testify.

Councilmember Bostrom moved to close the public hearing and accept the recommendation of DSI. (\$2000 penalty and 10-day license suspension)

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 55** [RES PH 17-322](#) Approving the preliminary plat for Farrell's Addition at 561 Burlington Road, southwest corner at Upland.

No one was present to testify. Councilmember Prince moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 56** [RES PH 17-326](#) Approving the application of Hangman Productions USA, Inc. for a sound level variance to allow 24/7 operation of chillers and generators from Wednesday, December 27, 2017 through Monday, January 29, 2018, and the use of an amplified sound system for the Red Bull Crashed Ice Event on Friday, January 19 and Saturday, January 20, 2018.

No one was present to testify. Councilmember Noecker moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 57** [RES PH 17-329](#) Approving the petition of Catholic Charities of the Archdiocese of Saint Paul and Minneapolis and Dorothy Day Shelter, LLC to vacate air rights over Dorothy Day Place for a private skyway bridge.

No one was present to testify. Councilmember Noecker moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 58 [RES PH 17-332](#) Approving the application of Lametti & Sons Inc. for a sound level variance from 10:00 p.m. to 3:00 a.m., weeknights, from December 1, 2017 through March 30, 2018 for the Phalen Creek Storm Tunnel Rehab Project - Phase 2.

No one was present to testify. Councilmember Noecker moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 59 [RES PH 17-338](#) Reciting a proposal for a Housing Finance Program for a multifamily rental housing development, giving preliminary approval to the project and the program pursuant to Minnesota Statutes, Chapter 462C, authorizing the Housing and Redevelopment Authority of the City to issue conduit multifamily housing revenue bonds and authorizing the preparation of necessary documents and materials in connection with said project and program, northwest corner of Fillmore and Livingston Avenues (West Side Flats Phase III B Apartment Project District 3, Ward 2).

No one was present to testify. Councilmember Noecker moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 60 [RES PH 17-340](#) Reciting a proposal for a Housing Finance Program for a multifamily rental housing development, giving preliminary approval to the project and the program pursuant to Minnesota Statutes, Chapter 462C, authorizing the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota to issue conduit multifamily housing revenue bonds and authorizing the preparation of necessary documents and materials in connection with said project and program, 700 Emerald Street SE (Millberry Apartments Project, District 12, Ward 4).

No one was present to testify. Council President Stark moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 61** [RES PH 17-341](#) Reciting a proposal for a Housing Finance Program for a multifamily rental housing development, giving preliminary approval to the project and the program pursuant to Minnesota Statutes, Chapter 462C, authorizing the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota to issue conduit multifamily housing revenue bonds and authorizing the preparation of necessary documents and materials in connection with said project and program, 700 Emerald Street SE (Legends at Berry Senior Apartments Project, District 12, Ward 4).

No one was present to testify. Council President Stark moved to close the public hearing and approve the resolution.

Adopted

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

Truth in Taxation Public Hearing (Held at 6:30 p.m. or shortly thereafter)

The COuncil reconvened at 6:30 for TNT 7-0

(The 2018 Budget and Taxation Public Hearing was held following the staff report and some discussion for Items 63 and 64.)

62 [PH 17-11](#)

Final Hearing on the proposed 2018 Budget and Tax Levy, aka Truth in Taxation hearing.

John McCarthy, Office of Financial Services, gave a staff report.

Testimony:

Jamie Hendricks (1280 Galtier Street)

Jim Yates (555 Laurel Avenue)

Danette Lincoln (1864 Marshall)

Marcia Robert (240 Spring Street)

Councilmember Bostrom moved to close the public hearing. Yeas - 7 Nays - 0

Council President Stark made brief comments.

Public hearing held and closed

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

PUBLIC HEARINGS

63 [APC 17-2](#)

Public hearing to consider the appeal by Listening House of a Planning Commission decision to affirm in part and modify a Zoning Administrator's similar use determination for Listening House to provide services at First Lutheran Church at 464 Maria Avenue subject to 14 conditions.

Council President Stark: Is Mr Dermody here?

Ms. Moore: Shall I go ahead and read the other one, too?

Council President Stark: Yes. Read Item 64 as well.

Ms. Moore: [Reads item 64.]

Council President Stark: I'm not seeing Mr. Dermody here for a staff report. "He'll be right back" is the word on the street. Because these two items are actually our last items before Legislative Hearing Consent Agenda Items, I think we're just going to take a pause for a moment and wait for him to arrive. As of a few minutes ago, I was given information that we have five speakers in support of Listening House and 14 in opposition.

Mr. Dermody, staff, Planning and Economic Development: Based on the agenda, I told everyone they didn't have to be here until 6:30 PM, so I'm not sure everyone's in attendance. And what you might want to do about that.

Council President Stark: You had told people that. How many people are we talking about?

Mr. Dermody: I believe the Listening House contingent, I told Mr Galatz that, on the Listening House side.

Council President Stark: Ooo. That was not good information.

Mr. Dermody: I'm sorry about that.

Council President Stark: Well, we are not ...

Councilmember Bostrom: We can still have the staff report.

Council President Stark: We can have a staff report. Of course, not everyone is here to hear it at this point, but why don't we go ahead and have the staff report.

Mr. Dermody: My apologies. Thank you. I do have a longer staff report tonight because there's quite a lot of detail involved in this. I will talk about the history, zoning code guidance, Planning Commission decision, the two appeals, and the options the City Council has today. [Puts up map of site.] This is Listening House in its current location at 464 Maria Ave, near the corner of Maria and 7th St. In February, the First Lutheran Church submitted a letter asking for approval to have the Listening House on the site. The site is zoned RT1, residential, so this use normally would not be allowed, unless they got the approval from the City Zoning Administrator. They described the use as a variety of services to low income, homeless, or lonely adults, from 9 to 5. On Mar 20, the Zoning Administrator's office issued a letter of clarification approving the use as being similar to other church uses, subject to three conditions intended to limit

the impact of the use in a manner consistent with accessory uses. It was modeled after a 2004 Planning Commission decision about a different church with a different set of accessory uses. Those conditions included a 10 person limit on a yoga studio. Condition 2 adopted some of the limitations on home occupations allowed anywhere throughout the City where we have residences. Typically, these are very small businesses run out of a bedroom. The limitations applied in this situation included no retail uses, no manufacturing uses, no exterior storage, and no detriments to the residential character of the neighborhood due to annoyance resulting from the use. The March 20 letter had no neighborhood notice. Listening House moved forward, spent money on tenant improvements, and opened their doors on June 5. We started to get complaints into the City. The City Attorney's office looked into this in more detail and determined that we should notify the neighbors, so they have a true chance to appeal. The legal thought was that you can't appeal a decision you didn't know was made. Despite the fact the zoning code does not require the neighborhood notice, City Attorney's office advised we do notify. July 3, DSI did notify the neighbors. We received an appeal soon thereafter. A public hearing was held with the Zoning Committee and the Planning Commission in August. Public testimony was heard. Staff report recommended overturning the Zoning Administrator's decision, which would have had the effect of moving Listening House from the premises. The Zoning Committee laid over a decision and directed staff to work further on the issue. We did. Nancy Homans from the Mayor's office stepped in and spoke to people on both sides of the issue in August and September to try to work toward a solution. A number of potential conditions were written by Ms. Homans. Some were agreed to by both sides; many were not. We remained at an impasse. Zoning Committee took the item up again September 28 and recommended granting the neighbors' appeal in full, overturning the Zoning Administrator's decision. A week later, the Planning Commission deadlocked on the recommendation and laid over the issue for a couple of weeks. On October 20, the Planning Commission voted to deny the appeal in part and modifying the Zoning Administrator's decision by adding 11 conditions, bringing the total to 14 conditions. Then appeals were filed from both sides. Overall, there've been three official City actions: The Zoning Administrator's letter in March; the Zoning Committee's recommendation; and the Planning Commission decision. The Planning Commission decision is what is at issue today but I expect much of the testimony will refer to the other actions as well. The Zoning Code in Section 61.106 lays out four findings for making a similar use determination. The most debated uses have been: 4(a) which is the use is similar in character to one or more of the uses permitted and the use they found it similar to is accessory use; and finding 4(d) is that the use is consistent is consistent to Plan and the Planning Commission found that this could be met as well. These drove the conditions that the Planning Commission chose to place on this use. The conditions include: limiting the hours of operation to 9 to 5; ensuring guests leave the area after Listening House closes; communicating with the neighbors; having good neighbors policies for the Listening House guests; and limiting the number of guests to 20 per day. The last is the most debated and opposed by Listening House.

Councilmember Prince: Could you explain how that condition was arrived at?

Mr. Dermody: We do have some guidance from the previous approval of the yoga use where that use was limited to 10 persons per day to make it act like an accessory use. And be clearly incidental. We haven't had issues or complaints at that site. And so, if 10 worked on that site, hopefully 20 would work on this one.

Council President Stark: I had a similar question as you were describing the conditions. You said the Planning Commission came back a second time and had a

different vote that included these additional conditions. How were those additional conditions developed? Were those conditions that had been considered during the previous mediation process, or were those developed in consultation with you and staff as conditions that would address the zoning code?

Mr. Dermody: The first three came from the Zoning Administrator. Ten of the 11 came from the work Nancy Homans did, not all of those were taken verbatim from her proposal, and the final condition, the limit on the number of people was consultation between staff and the Planning Commission prior to the meeting. They wanted to have a limit and we advised them.

I want to address the appeals. We have an appeal from Renee and Kim Lerma who filed the original appeal to the Zoning Administration. They are asking that you overturn the Planning Commission's decision and go back to the Zoning Committee's recommendation, which prohibits Listening House from the site. Listening House filed an appeal to uphold the Planning Committee decision in part, but modify it in two ways. One that you find the Listening House use is similar to other principle uses, not accessory uses. They also ask you to modify the list by cutting it from 14 to 11 and revising several of them. Notably this includes eliminating restriction on the number of daily guests. Staff's recommendation is that this be treated as an accessory use and not a principle use. This use would not be appropriate in RT1 residential. Staff's recommendation is that you do not grant this part of the appeal.

The Council has four options today. You can deny both appeal in full and uphold the Planning Commission decision in full. You could grant the Lerma's appeal in full thereby removing Listening House from the premises. You could grant the second part of the Listening House appeal and modify the Planning Commission's decisions. You could uphold the Planning Commission decision and modify the conditions in a manner different from that requested by Listening House.

Councilmember Noecker: Could you go into more detail about the difference between a principle and an accessory use and what would be the implications in this case in determining that it is a principle use? Why is that being requested? What is the benefit to Listening House?

Mr. Dermody: In the RT1 district, you are allowed to have residential uses as a principle use, churches and schools. I believe that is it. They are asking to be permitted as part of the church, essentially, and if you did do it that way there would be no conditions applied to it. It would be a permitted use. An accessory use is clearly incidental and customarily found in connection with the principle use. That has to do with size, scale and impact. A yoga studio for 10 people could be clearly incidental but if you had a yoga studio for 200 people, it would not be incidental. It would be a principle use.

Council President Stark: Did any information come out in the process, it's possible it's in the record and I missed it, but, an estimate of how many clients a day Listening House does have typically?

Mr. Dermody: I would check that with Listening House. I recall that from their letters, it was 50 to 60 but I would ask you to confirm that with them.

Council President Stark: Sure. They can speak to that. Other questions? All right. Mr. Dermody, as far as you know, the folks from Listening House still not here?

Mr. Dermody: I do not believe so. I am sorry again for that inconvenience.

Council President Stark: Yeah, why don't we check. Because folks were given information, procedurally about the time. We'll give them due consideration to be here. Ms. Moloney is going to check and see if the Legislative Hearing items might be ready to do. Does anyone have any other thoughts? Process-wise?

Councilmember Noecker: In terms of the original application from Listening House, were they originally coming in as a principle use? Who initially made that determination in terms of accessory?

Mr. Dermody: There was no mention of being a principle use at the beginning of this process.

Councilmember Noecker: Was there mention of being an accessory use? Or no mention of being a type of use?

Mr. Dermody: I would have to reread the letter to see if they asked for general permission or mentioned accessory use. I could get back to you on that.

Council President Stark: Is it pretty clear that the method by which the Zoning Administrator granted them the determination of similar use was based on it being an accessory use?

Mr. Dermody: That is clear.

Councilmember Brendmoen: So, on your process question, it sounds like there is a specific group of people who aren't here. Could we hear people who are in opposition or people in support. I know you said 20 minutes a side and it's 20 minutes until 6:30. I know the community members have met with each other and probably have a pretty good idea of what the opposing side says. That's an option.

Councilmember Prince: I think the issue is if the attorney for the Listening House isn't here. I'm not sure it would be appropriate to proceed.

Councilmember Brendmoen: I see.

Mr. Dermody: I do have an answer to Councilmember Noecker's question. There is no mention of accessory uses in the first letter from February. It's just a description of the use and asking permission to be there.

Council President Stark: We will officially recess here for five minutes.

(The Council recessed and reconvened, and the Public Hearing on the 2018 Budget and Tax Levy was held)

Council President Stark: We will start with those who are here in support of Listening House. There are 13 and we talked about 20 minutes per side. It's not a lot of time, a little more than a minute per speaker but we ask you to stick to it in the interest of everyone's time this evening.

In support of Listening House:

Eric Galatz, counsel representing Listening House: City Planner Bill Dermody advised the Planning Commission and I assume he advised the City Council. This is very

complicated set of issues but what we're asking for is simple and what we do for the homeless, the lonely, the indigent is very simple. I think the means of addressing issues our neighbors have with the services we provide and the people we provide them to is relatively simple. We are requesting modifications of the conditions the Planning Commission imposed on Listening House. I've submitted suggested revised conditions and stuck as close as possible to those imposed by the Planning Commission. I did the best we could to address the concerns they were attempting to address in the conditions while not interfering with the services we try to provide. The appeal has been complicated up to this point partly because zoning is just not the right tool to address we're trying to address: poverty, disability and homelessness. The appellants' objections are all about the people we serve and the way our guests behave when they are not with us. What we are asking you to do is to approve a set of conditions that allow us to serve them, keep them with us off the street, have an opportunity to work with them and educate them on how to behave when they are outside. The City has tools other than zoning to address issues, the police force in particular has been incredibly helpful and cooperative in addressing some of the issues. I think that when complaints arise of how people behave, that's the job of the police force, it's not the job of the planning staff. The appeal has also been complicated because in spite of how Listening House is like a church, the City has been trying to regulate them as a business. The Zoning Administrator started us down that path, following the 2004 decision in regulating St Mary's Episcopal Church when they wanted to bring in commercial uses into their church. It was completely appropriate to regulate those uses as home occupations. They were businesses inside a residential district. This is not defined by the code and it's not appropriate to apply standards applied to a business. You've determined already that it is a place of worship, similar to a religious institution. It is appropriate to apply standards applied to a religious institution. I asked the Zoning Commission three months ago, would you be having hearings about the church, if it were the church itself providing these services. I don't want to dig into the legal arguments. Listening House has agreed to be regulated here. They are willing to accept a set of reasonable conditions and we have submitted them. You can't do this. I'm not saying you shouldn't or won't. There are conditions you can impose and again we have proposed some we think we can live with but, under federal law, you can't impose discriminatory or unduly burdensome conditions on operations inside a church. We're working inside a church. We're serving the mission of that church. The fact that we are a separate entity doesn't negate the fact the church invited us in there to do the things that the church has been doing since 1868. I will stop here. You have read what I need to say.

Christine Olson Bingea (1159 Larpenteur Avenue E.), pastor at First Lutheran Church

Cheryl Peterson, Listening House Executive Director

Robert Williams, Listening House guest

Marcia Sanoder (720 E. 7th Street)

Chelsea DeArmond (667 North Street)

John Slade (3 Linder Ct)

Zach Wolfsrun (1905 Wilson)

Andrew LaBarre (853 W. Iowa)

Viktor Moserg (1035 Summit Avenue)

Alex French (1035 Summit Avenue)

Brie Trovall (447 Maria)

Connor Sullivan (1035 Summit Avenue)

Judith Pryor (535 Lexington)

In opposition to Listening House operation:

Tim Carey (628 Bates Avenue) said he would be offering lengthy comments but the group had timed it out to accommodate the Council's expectations. He said the Zoning Administrator granted the determination of similar use variance, and Listening House opened in reliance on the accessory use classification. He said it was unfair and illogical to suggest that Listening House was seeking to be heard according to a completely different characterization of their land use. He said the neighbors participated in discussions based on that characterization, and it was not disputed by Listening House before the Zoning Committee or Planning Commission or during discussions with neighbors and mediation. He said allowing an agency to operate outside of the land uses outside of the zoning code was a significant concession in a densely populated urban area with competing land interests. He said the City's responsibility to its citizens included making zoning decisions that kept people safe and prevented them from experiencing the type of ongoing nuisance behaviors and harms that other neighbors would speak about. He said Listening House was now seeking to morph the City Council's grant of a hearing into a forum in which it publicly litigated against the foundation that allowed them to operate for the last 5 1/2 months. He said this chance for Listening House to operate outside of the zoning code in a neighborhood very different from the one where they previously operated, had been a failure. He said the first item under the grounds for appeal represented one of many attempts to conflate Listening House's identity with First Lutheran Church, but they were separate organizations with a contractual lease agreement. He said Listening House's stated mission did not require that it be treated as a place of worship. He said the motivation to avoid governmental oversight was apparent in the second item for appeal, citing the religious use act as a restriction against government regulation of land use placing a burden on religious exercise. He said treating Listening House as a church simply because they moved to a church from a secular setting, would set a precedent for anyone seeking to avoid regulation. He said the conditions imposed by the Planning Commission were not a restriction on religious expression or assembly, but were an attempt to establish parameters to control a chaotic presence in an RT1 neighborhood. He said the home occupation standards cited by Listening House in item 3 as inappropriate and confusing, were accepted by Listening House and never questioned during the weeks of mediation. He said the uses listed by First Lutheran in the application clearly targeted services previously determined to be an accessory use in the 2004 St. Mary's resolution. He said Listening House denied that behavioral controls were appropriate in a land use matter; he said land use was human behavior. He said Listening House had demonstrated that they were not compatible with the neighborhood, and if they were allowed to continue to operate, outside enforcement mechanisms and review processes must be in place. He said the City could take control of the situation, could impose the zoning code, and remediate the detrimental impacts of Listening House's land use.

Rene Lerma (613 North Street)

Kristenza Nelson (653 North Street)

Mandy Okonek (649 North Street)

Nick Okonek (649 North Street)

Eric Salinas (657 North Street)

Lea Ebensteiner (441 Bates Avenue)

Cliff Carey (635 Bates Avenue)

Sage Holben (705 E. 4th Street)

Wayne Lundeen (732 Margaret Street)

Milan Mockavak (720 7th St. E.)

Councilmember Prince moved to close the public hearing. Yeas - Nays - 0

Councilmember Prince said she was deeply disappointed that the time for negotiated settlement had passed leaving no choice but to rely solely on the record and the zoning code and land use law. She asked for a layover to allow for further consultation with the City Attorney.

Following further discussion among Council members, the matter was laid over to December 13.

Public hearing held and closed; laid over to December 13

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

64 [APC 17-3](#)

Public hearing to consider the appeal by Rene & Kim Lerma of a Planning Commission decision to affirm in part and modify a Zoning Administrator's similar use determination for Listening House to provide services at First Lutheran Church at 464 Maria Avenue subject to 14 conditions.

(See minutes for item 63.)

Councilmember Prince moved to close the public hearing and lay the matter over to December 13.

Public hearing held and closed; laid over to December 13

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

LEGISLATIVE HEARING ITEMS FOR DISCUSSION

- 72** [RLH VO 17-59](#) Appeal of Dhaneshwarie Himraj to a Correction Notice-Complaint Inspection (which includes condemnation) at 1032 DULUTH STREET.
- Legislative Hearing Officer Marcia Moermond gave a staff report on the appeal of a vacate order issued due to a significant fire. She said as of at 2:30 p.m. that afternoon, the building could be re-occupied, and the next step was a full Certificate of Occupancy inspection and to note that the building would not be referred to the vacant buildings program because it had been re-occupied. She noted that there was a simultaneous tenant remedies action taking place with a court hearing the next day. She said the building owner and a tenant were present and wanted to speak to the Council, but since building the had been re-occupied, she wasn't sure what action there was for the Council to take. In response to a question from Council President Stark, she confirmed that the electricity and heat had been restored.*
- Following discussion among Council members, Ms. Moermond, and the Deputy City Attorney, a motion was made by Councilmember Bostrom to grant the appeal.*
- A tenant and the property owner shared their perspectives on the situation. Council members responded to their comments.*
- Councilmember Bostrom moved to close the public hearing and grant the appeal.*
- Adopted (appeal granted)**
- Yea:** 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince
- Nay:** 0
-
- 80** [RLH VO 17-50](#) Appeal of Aaron Livingston to a Notice of Condemnation as Unfit for Human Habitation and Order to Vacate plus Summary Abatement Order at 1124 MATILDA STREET. (Public hearing continued from December 6)
- Legislative Hearing Officer Marcia Moermond said she had discussed the matter in the hallway with the property owner and come to an agreement. She gave a staff report, and asked that the matter be referred for a Legislative Hearing on December 12 and the public hearing be continued to December 20.*
- No one was present to testify. Councilmember Brendmoen moved to continue the public hearing to December 20.*
- Referred to Legislative Hearings on December 12; Council public hearing continued to December 20**
- Yea:** 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince
- Nay:** 0

LEGISLATIVE HEARING CONSENT AGENDA

Items listed under the Consent Agenda will receive a combined public hearing and be enacted by one motion with no separate discussion. Items may be removed from the Consent Agenda for a separate public hearing and discussion if desired.

Approval of the Consent Agenda (Items 65 - 89)

No one was present to testify. Councilmember Bostrom moved to close the public hearing and approve the Legislative Hearing Consent Agenda as amended.

Legislative Hearing Consent Agenda adopted as amended

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

- 65** [RLH VO 17-52](#) Appeal of Ray Moore to a Notice of Condemnation Unfit for Human Habitation and Order to Vacate at 1258 ALBEMARLE STREET.
Adopted
- 66** [RLH VBR 17-80](#) Appeal of Wanda Baker to a Vacant Building Registration Renewal Notice at 971 ARCADE STREET.
Adopted
- 67** [RLH CO 17-42](#) Appeal of Ajah Peterson to a Correction Notice at 1560 ARLINGTON AVENUE EAST.
Adopted
- 68** [RLH VO 17-54](#) Appeal of Jorge A. Lopez to a Revocation of Fire Certificate of Occupancy and Order to Vacate at 1150 BURR STREET (and 1152 BURR STREET).
Adopted
- 69** [RLH RR 17-43](#) Making finding on the appealed nuisance abatement ordered for 1571 CHRISTIE PLACE in Council File RLH RR 17-35.
Public hearing continued to December 20
- 70** [RLH VBR 17-79](#) Appeal of Kim Sorn Theng to a Vacant Building Registration Notice at 483 COMO AVENUE.
Adopted
- 71** [RLH CO 17-44](#) Appeal of Sue Hang to a Correction Notice at 1805 COTTAGE AVENUE EAST.
Adopted

- 73 [RLH VO 17-53](#) Appeal of Daniel Beck to a Notice of Condemnation as Unfit for Human Habitation and Order to Vacate at 1274 EDGERTON STREET.
Adopted
- 74 [RLH SAO 17-65](#) Making finding on the appealed nuisance abatement ordered for 25 ELIZABETH STREET EAST in Council File RLH SAO 17-56. (Public hearing continued from April 11)
Referred to Legislative Hearings on December 19; Council public hearing continued to December 20
- 75 [RLH FCO 17-180](#) Appeal of Caryl L. Kruchowski to a Fire Inspection Correction Notice at 598 GRAND AVENUE.
Adopted
- 76 [RLH CO 17-41](#) Appeal of Jonathan LaFond to a Correction Notice at 594 HUMBOLDT AVENUE.
Adopted
- 77 [RLH SAO 17-97](#) Appeal of Patrick Milan to a Summary Abatement Order at 108 LAWSON AVENUE WEST. (Public hearing continued from December 6, 2017)
Amended; public hearing continued to June 6, 2018
- 78 [RLH VO 17-51](#) Appeal of William Acree to a Revocation of Fire Certificate of Occupancy and Order to Vacate at 79 MAGNOLIA AVENUE WEST.
Adopted
- 79 [RLH VBR 17-78](#) Appeal of Fred Rappaport, KCR Corporation, to a Vacant Building Registration Renewal Notice at 707 MARSHALL AVENUE.
Adopted
- 81 [RLH FCO 17-212](#) Appeal of Kong Sue Xiong to a Correction Order at 1325 REANEY AVENUE.
Adopted
- 82 [RLH TA 17-527](#) Amending Council File No. RLH AR 17-57 to delete the assessment for Collection of Vacant Building Registration Fees billed during November 10, 2016 to February 27, 2017 at 1041 SELBY AVENUE. (File No. VB1712A, Assessment No. 178831)
Adopted

- 83 [RLH FCO 17-200](#) Appeal of Todd Delack, Archer Properties Group, to a Fire Inspection Correction Notice at 559 SMITH AVENUE SOUTH. (Public hearing continued from December 20)
Public hearing continued to December 20
- 84 [RLH CO 17-38](#) Appeal of William Long to a Correction Notice at 1818 SUMMIT AVENUE.
Adopted
- 85 [RLH VBR 17-77](#) Appeal of Calvin Mickel to a Vacant Building Registration Notice at 316 SUPERIOR STREET. (Public hearing continued from December 6, 2017)
Referred to Legislative Hearings on January 23, 2018
- 86 [RLH VBR 17-73](#) Appeal of Keith Kaestner to a Vacant Building Registration Fee at 1630 UNIVERSITY AVENUE WEST.
Adopted
- 87 [RLH CO 17-43](#) Appeal of Mark Nalipinski to a Correction Notice at 408 VIEW STREET.
Adopted
- 88 [RLH VO 17-49](#) Appeal of Christian Krein to a Notice of Condemnation as Unfit for Human Habitation and Order to Vacate at 631 WESTERN AVENUE NORTH.
Public hearing continued to December 20
- 89 [RLH VO 17-48](#) Appeal of Laurel Hedlund (former appellant was Lance Holder) to a Revocation of Fire Certificate of Occupancy and Order to Vacate at 1108 WESTERN AVENUE NORTH. (Public hearing continued from December 20)
Referred to Legislative Hearings on December 19; Council public hearing continued to December 20

ADJOURNMENT

Council President Stark adjourned the meeting.

Meeting adjourned at 8:34 p.m.

Yea: 7 - Councilmember Bostrom, Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Stark, Councilmember Noecker and Councilmember Prince

Nay: 0

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