



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 Amy Brendmoen
Councilmember Dan Bostrom
Councilmember Samantha Henningson
Councilmember Rebecca Noecker
Councilmember Jane L. Prince
Councilmember Dai Thao
Councilmember Chris Tolbert

Wednesday, February 21, 2018

3:30 PM

Council Chambers - 3rd Floor

Budget Amendment Public Hearings and Legislative Hearing Items at 3:30 p.m. Public Hearing Items at 5:30 p.m.

Ward 4 Interim Councilmember Samantha Henningson was sworn in prior to roll call.

ROLL CALL

The meeting was called to order by Council President Brendmoen at 3:35 p.m.

Councilmember Bostrom excused.

Present 6 - Councilmember Amy Brendmoen, Councilmember Dai Thao,
Councilmember Chris Tolbert, Councilmember Rebecca Noecker,
Councilmember Jane L. Prince and Councilmember Samantha Henningson

Absent 1 - Councilmember Dan Bostrom

COMMUNICATIONS & RECEIVE/FILE

- 1 [AO 18-13](#) Amending CDBG and ESG activities budgets.

 Received and filed
- 2 [AO 18-14](#) Amending the 2018 Capital Improvement Budget to allocate funding for
 capital maintenance projects to the appropriate departments, as
 recommended by the Capital Improvement Budget Committee.

 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 3 - 19)

Item 5 was removed from the Consent Agenda for separate consideration.

Councilmember Henningson moved approval of the Consent Agenda as amended.

Consent Agenda adopted as amended

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

- 3 [RES 18-299](#) Approving the settlement agreement and release in the Trahern Crews v. City of Saint Paul, et al., matter.

Adopted

- 4 [RES 18-320](#) Approving the modification of 2015 Neighborhood STAR Program Funds for the Oromo Community of Minnesota.

Adopted

- 6 [RES 18-227](#) Approving renewal of the lease with the St. Paul Intervention Project for the Bridges to Safety Program housed in city space within the City Hall/Courthouse.

Adopted

- 7 [RES 18-259](#) Authorizing the Fire Department to apply for the 2017 Assistance to Firefighter grant in the amount of \$112,900 from the Federal Emergency Management Agency (FEMA) for command staff training, RIT packs, and Trench Rescue Prop.

Adopted

- 8 [RES 18-301](#) Authorizing Fire Department to apply for the 2017 Hazardous Materials Emergency Preparedness (HMEP) grant in the amount of \$16,118 from the State of Minnesota Department of Homeland Security and Emergency Management for training for firefighters.

Adopted

- 9 [RES 18-303](#) Authorizing Fire Department to apply for the 2017 Hazardous Materials Emergency Preparedness (HMEP) grant in the amount of \$37,830 from the State of Minnesota Department of Homeland Security and Emergency Management to provide Hazardous Material Tech training for firefighters.
Adopted
- 10 [RES 18-232](#) Changing the rates of pay for the classification of Parks and Recreation Worker in Grade 31H, EG 99, Special Employment Salary Schedule.
Laid over to February 28 for adoption
- 11 [RES 18-233](#) Changing the rates of pay for the classifications of Capital City Intern and EMS Cadet Assistant in Grade 001, EG 99, Special Employment.
Laid over to February 28 for adoption
- 12 [RES 18-195](#) Authorizing the Police Department to enter into Organized Crime Drug Enforcement Task Force (OCDETF) agreements in 2018.
Adopted
- 13 [RES 18-304](#) Authorizing the Police Department to expense food and beverages for 2018 professional training courses and training exercises.
Adopted
- 14 [RES 18-305](#) Authorizing the Police Department to provide snacks and beverages in 2018 to visitors during critical incident investigations and assistance programs.
Adopted
- 15 [RES 18-307](#) Authorizing the Police Department to cover expenses including food, beverage, and room rental for 2018 events that recognize outstanding service by employees and members of the public who take extraordinary efforts to help others and to engage employees and the public.
Adopted
- 16 [RES 18-224](#) Approving and authorizing execution of a lease agreement between the City of St. Paul ("City") and, ("LICENSEE"), ExteNet Systems, Inc., a Delaware corporation with its principal offices located at 3030 Warrenville Rd., Ste. 340, Lisle, Illinois 60532, allowing the installation of wireless communication equipment on various City infrastructure.
Adopted

- 17 [RES 18-316](#) Providing Incentive to increase community participation in the Pedestrian Plan.

Adopted

- 18 [RES 18-309](#) Approving a waiver of the 45-day notice requirement in order to issue a Liquor On Sale-101-180 Seats, Liquor On Sale-Sunday, Entertainment (A), and Gambling Location licenses with conditions to 267 West Seventh, LLC, d/b/a Parlour (License ID #20180000336) at 267 7th Street West.

Adopted

- 19 [RES 18-312](#) Approving and authorizing execution of the Site Lease Agreement with Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless, to provide for continued operation of telecommunications equipment at the Cottage Avenue Standpipe site located at 2095 Clear Avenue.

Adopted

FOR DISCUSSION

- 5 [RES 18-300](#) Approving the 2018 Innovation Fund Allocation.

Council President Brendmoen moved an amendment to extend the authorization to seek funding to all City staff. She moved approval of the resolution as amended.

Adopted as amended

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

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.

Second Reading

- 20 [Ord 18-6](#) Amending Chapter 106 of the Legislative Code pertaining to restrictions on the use of sidewalks, streets, and etc. to permit sidewalk cafes on boulevards under certain conditions.

Laid over to March 7 for third reading/public hearing

- 21 [Ord 18-7](#) Amending Chapter 121 of the Legislative Code, pertaining to permits for driveways, sidewalks, curbs, and etc. to permit surfacing of boulevards for sidewalk cafes under certain conditions.

Laid over to March 7 for third reading/public hearing

First Reading

- 22 [Ord 18-9](#) Establishing the classification titled Assistant to the Mayor VIII in the unclassified service pursuant to Section 12.03.02 (H) of the Charter.

Laid over to February 28 for second reading

- 23 [Ord 18-10](#) Establishing the classification titled Assistant to the Mayor VII in the unclassified service pursuant to Section 12.03.02 (H) of the Charter.

Laid over to February 28 for second reading

SUSPENSION ITEMS

Councilmember Tolbert moved suspension of the rules.

Rules suspended

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

- [RES 18-358](#) Approving the Mayor's appointments of Naomi Alemseged, Kaohly Her, Ikram Koliso, Peter Leggett, Noel Nix, Lyndsey Olson, Joan Phillips, Chris Rider, Russ Stark, Camille Tinnin, Andrea Turner, LyLy Vang-Yang, Sharon Kennedy Vickers, Liz Xiong, ThaoMee Xiong, and Daniel Yang as City of Saint Paul Department Directors and Mayor's Office staff.

Councilmember Tolbert moved approval of the resolution.

The Mayor's appointees were sworn in by City Clerk Shari Moore.

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

Councilmember Noecker moved suspension of the rules.

Rules suspended

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

RES 18-338

In appreciation of the students and staff of McNally Smith College of Music and their contributions to the vibrancy and culture of Saint Paul.

Councilmember Noecker spoke in recognition of students and staff. She asked those present to stand, and she read the resolution. She moved approval of the resolution.

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

BUDGET AMENDMENT PUBLIC HEARINGS (Held at 3:30 p.m.)

24 RES PH 18-35

Amending the financing and spending plans in the Department of Emergency Management in the amount of \$33,850 for the 2016 Pre-Disaster Mitigation Grant.

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

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

- 25** [RES PH 18-59](#) Authorizing the Police Department to accept the donation from the Target Corporation for the department's crime prevention/community programs in 2018.

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

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

LEGISLATIVE HEARING CONSENT AGENDA (Held at 3:30 p.m.)

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 26 - 37)

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

Legislative Hearing Consent Agenda adopted as amended

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

- 26** [RLH VO 18-4](#) Appeal of Heather Meyers, SMRLS, o/b/o Tywana Price to a Condemnation as Unfit For Human Habitation and Order to Vacate at 1272 EDGERTON STREET.

 Adopted as amended (appeal granted on occupancy; extensions granted for repairs)
- 27** [RLH CO 18-6](#) Appeal of Victoria Downey to a Correction Notice at 865 HOWELL STREET NORTH.

 Adopted
- 28** [RLH CO 18-5](#) Appeal of Maria T. Denison to a Correction Notice at 1990 HOYT AVENUE EAST. (Legislative hearing on February 20, 2018)

 Adopted as amended (extension granted)
- 29** [RLH CO 17-49](#) Appeal of Gregory Hanzal to a Correction Notice at 1069 KENT STREET.

 Adopted
- 30** [RLH RR 18-6](#) Making finding on the appealed nuisance abatement ordered for 666 MINNEHAHA AVENUE WEST in Council File RLH RR 17-13.

 Adopted
- 31** [RLH VO 18-3](#) Appeal of James VinZant, VinZant Construction, to a Revocation of Fire Certificate of Occupancy and Order to Vacate at 1247 ROSS AVENUE.

 Adopted

- 32 [RLH TA 17-531](#) Deleting the Appealed Special Tax Assessment for property at 694 SHERBURNE AVENUE. (File No. J1803B, Assessment No. 188102; amended to File No. J1803B1, Assessment No. 188107, and to delete the assessment)
Adopted as amended (assessment number updated)
- 33 [RLH TA 17-547](#) Ratifying the Appealed Special Tax Assessment for Property at 694 SHERBURNE AVENUE. (File No. VB1803, Assessment No. 188802; amended to File No. VB1803A, Assessment No. 188809)
Adopted as amended (assessment number updated; payments spread over 5 years)
- 34 [RLH TA 18-91](#) Amending Council File No. RLH AR 17-102 to delete the assessment for Collection of Vacant Building Registration Fees billed during January 4 to July 21, 2017 at 255 SYNDICATE STREET SOUTH. (File No. VB1803, Assessment No. 188802)
Adopted
- 35 [RLH VO 18-5](#) Appeal of Kwei Fang to a Condemnation and Order to Vacate at 2144 TEMPLE COURT.
Adopted as amended (appeal granted)
- 36 [RLH RR 18-2](#) Ordering the rehabilitation or razing and removal of the structures at 1536 VAN BUREN AVENUE within fifteen (15) days after the February 14, 2018, City Council public hearing. (Amend to remove or repair within 180 days)
Referred to Legislative Hearings on February 27
- 37 [RLH RR 18-5](#) Making finding on the appealed nuisance abatement ordered for 670 WESTERN AVENUE NORTH in Council File RLH RR 17-22.
Adopted as amended (180 days granted to complete rehabilitation)

Council members shared news from the wards.

The Council recessed at 3:48 p.m.

PUBLIC HEARINGS (Held at 5:30 p.m.)

The Council reconvened for Public Hearings at 5:32 p.m. Council President Brendmoen welcomed those present and explained the procedure for public testimony.

Present 6 - Councilmember Amy Brendmoen, Councilmember Dai Thao, Councilmember Chris Tolbert, Councilmember Rebecca Noecker, Councilmember Jane L. Prince and Councilmember Samantha Henningson

Absent 1 - Councilmember Dan Bostrom

38 [Ord 18-5](#)

Amending Chapter 157 of the Legislative Code to clarify parking restrictions in certain zoning districts.

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

Public hearing held and closed; laid over to February 28 for final adoption

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

39 [Ord 18-8](#)

Amending Chapter 160 of the Legislative Code pertaining to parking meter zones on holidays.

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

Public hearing held and closed; laid over to February 28 for final adoption

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

40 [RES PH 18-44](#)

Approving the application of O'Gara's Bar and Grill, Inc. for a sound level variance in order to present amplified music in an enclosed tent on Saturday, March 17, 2018.

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

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

- 41** [RES PH 18-34](#) Approving the application of Patrick McGovern's for a sound level variance in order to present amplified music for a St. Patrick's Day Event in an enclosed tent on Saturday, March 17, 2018 at 225 7th Street West.

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

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

- 42** [RES PH 18-36](#) Approving the application of Shamrocks Irish Nook for a sound level variance in order to present amplified music for a St. Patrick's Day event in an enclosed tent on Saturday, March 17, 2018 at 995 7th Street West.

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

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

- 43** [RES PH 18-40](#) Approving the application of Visit Saint Paul for a sound level variance to use live music and DJs on 7th Street West, between 174 and 258 7th Street West, during Lucky Palooza on West 7th on March 10, 2018.

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

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

- 44** [RES PH 18-45](#) Approving the application of Burger Moe's for a sound level variance in order to present amplified music for St. Patrick's Day events on Friday, March 16 and Saturday, March 17, 2018 at 242 7th Street West.

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

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

- 45** [RES PH 18-7](#) Final Order approving the improvements to pedestrian crossings on Grand Avenue between Hamline Avenue and Victoria Street. (Project No. 19241)

HunWen Westman, Public Works, gave a brief staff report on the project.

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

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

46 [RES PH 18-9](#)

Final Order approving the completion of the sidewalk network on local streets bounded by Randolph Avenue, Hamline Avenue, Highland Parkway, and Snelling Avenue. (Project No. S1801)

Elizabeth Stifler gave a staff report on the project. She said it was community-driven by the three schools in the close vicinity, and was funded with a federal grant with no assessments for property owners. She noted where there were gaps in sidewalks and said residents had asked for sidewalks for years. She said due to the grade and number of trees she was removing one block on one side of Saratoga and a small portion of Eleanor, but there would be sidewalk on the remaining side. She said the priority for the neighborhood was Pascal and Hartford.

Councilmember Noecker asked whether this was a potential funding source for future projects, Ms. Stifler said they applied and were successful for the Washington Tech area. She said they were learning about the federal criteria, and maybe there was a way to combine areas to be more efficient. She said the sidewalks department had also applied for and received a grant.

In opposition:

Mark and Terry Palmquist (1515 Scheffer Avenue)

Councilmember Tolbert and Council President Brendmoen responded to concerns raised by Mr. Palmquist.

In support:

Dawn Strojny (644 Saratoga)

Councilmember Tolbert moved to close the public hearing. Yeas - 6 Nays - 0

Councilmember Tolbert spoke in support and moved approval of the resolution.

Adopted

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

47 [ABZA 18-2](#)

Public hearing to consider the appeal of a decision made by the Board of Zoning Appeals stating that the Zoning Administrator's October 30, 2017 determination letter was not in error in determining that the West Addition to the Commodore Restaurant was, for zoning purposes, never legally established as a restaurant space.

Jerome Benner, Department of Safety and Inspections (DSI), gave a staff report. He said the property was in an RM3 Residential zoning district. He said restaurant, bar, and squash club were now considered non-conforming uses which were conforming prior to 1975 when hotels and accessory uses were considered permitted in residential districts. He said the space in question was part of the squash club until 2001 when it became part of the Commodore as the result of a court decision, and it was most recently used as an exercise room by the squash club. He said the previous owner of the squash club intended for the space to be a dining room, and it was designated as a future dining room on a 1976 floor plan, but the space remained vacant until it was used as an exercise room. Mr. Benner said the zoning administrator said that even though the space was originally designed to be a dining room, it was never used as such and never legally established to be a restaurant, and the only way to make it a dining room would be to apply for a nonconforming use permit. In response to a question from Council President Brendmoen, Mr. Benner said the appellant had not applied for a nonconforming use permit.

Councilmember Thao asked Mr. Benner to explain the portion of the record relating to a building permit having established the space as a restaurant. Mr. Benner said Mr. Rupp (appellant) pulled a permit in 2012 to do some work within the Commodore space, but the west dining room was not a part of that building permit. He said Mr. Rupp didn't establish the space at that time, and that would have had to have been done through the Planning Commission.

Councilmember Noecker clarified with Mr. Benner that they were talking about a nonconforming use permit for a space within a building.

In opposition:

Appellant John Rupp (366 Summit Avenue) said purchased the Commodore in 1984 and received title to the room in question in a legal action in 2001. He displayed a photograph of the dining room. He said an addition was built on the Commodore hotel in 1976, prior to existence of the squash club business, and it included a planned extension of the 1920 bar and restaurant, and some squash courts. He said the building blew up in 1978, which delayed the construction, but the records at the time established that this was a legal non-conforming use as a restaurant in a residential district. He said in 1987 the zoning administrator stated there was a building permit for some windows, but in fact it was a request to the Heritage Preservation Commission to install some restaurant windows that had been specified in the 1976 plan. He said the HPC granted permission for the windows but no permit was ever filed. He said in 1987 there were no permits or Planning Commission application to convert the 1976 approved restaurant space to an exercise club, no health club license and no Certificate of Occupancy. He said in order to establish a legal use you have to have the appropriate zoning, a Certificate of Occupancy, and a business license, and none of those things happened. He said the 1987 zoning administrator's letter noted there was evidence in one photo of exercise equipment in the room, and stated that Planning Commission approval was needed for a change of nonconforming use to allow use of that equipment. He said he didn't dispute it was being used that was at that time, but it was being used that way illegally. He said a liquor license was granted in 1976 to the

builder of the room, and he bought the license along with the original Commodore Bar and Restaurant in 1984. He said the liquor license covered the west dining room, so the space was zoned and licensed appropriately in 1976. He said he started using the room as part of the restaurant complex in 2001, and has been inspected annually and no one from the City ever suggested the room couldn't be used. He said he applied for a building permit in February 2012 to upgrade entire facility including the west dining room, and was told it would first go to Zoning and then to Licensing, and both of those determinations were made, along with suggestions for updated plans. He said he filed amended plans in May 2012, and received a building permit in August. He said the building permit stated there was no expansion or change in use. He said he began construction and was inspected a minimum of five times between August 2012 and September 2015, and was told verbally he would be granted a temporary Certificate of Occupancy. He said three days after opening he received a letter saying he didn't have appropriate zoning and didn't have a building permit. He said he was told by the zoning department that they'd lost the zoning file; he said he'd already been told by the building department that they'd lost the construction file. He said the City Attorney told the zoning department that he wasn't allowed to talk to zoning staff about the zoning issue, and then the zoning administrator's letter was issued, which was the subject of this appeal. He said the letter stated that the restaurant use had not been established - which he said was true until the temporary Certificate of Occupancy was converted - and that there had been a previous use. He said the letter didn't specify that the previous use hadn't been legally established. He said there had never been any other legal use, and, for 40 years, the space had never been completely legally established. He said he appealed the determination based on the question of why the zoning department had changed its mind between the time the permit was granted in 2012 and completion of construction. He said the staff report was completely factually inaccurate. He said if the Council were to decide to direct that the final inspection of his improvements, then he would have zoning inherited from 1976, he would have his license and his Certificate of Occupancy, and would have legally established the restaurant.

Council President Brendmoen asked Mr. Rupp why he didn't apply for a nonconforming use permit. Mr. Rupp said the building department had taken the position that there was a change of use, and were requiring installation of a sprinkler system, which would cost \$200,000 and bankrupt the restaurant. He said it was an outrage for the building department to inspect the building for over 2 1/2 years and then impose a requirement based on a zoning determination made by the building official, which he had no legal authority to make.

Council President Brendmoen asked Mr. Rupp why he didn't put sprinklers in as part of the remodeling of the restaurant. Mr. Rupp said he was grandfathered in as not needing one, and the building didn't have a system. He said he was not required under law to have a sprinkler system.

Councilmember Noecker reviewed Mr. Rupp's testimony. Mr. Rupp said the City granted legal nonconforming use for restaurant use in advance of the construction of the building that contained the room, and expanded the liquor license from the adjacent restaurant, and the restaurant would have been built out immediately if there hadn't been an explosion. He said two of the three legs of the stool were satisfied 42 years ago.

Councilmember Noecker asked Mr. Benner if it was correct that there had been a non-conforming use permit covering the space. Mr. Rupp said it was his understanding, based on conversations with zoning staff prior to construction, that zoning had the authority to make the decision that he didn't have to re-establish the non-conforming

use in 2012 since there hadn't been an intermediate use.

Council President Brendmoen asked Mr. Benner to respond. Mr. Benner said it was not correct that there was a nonconforming use permit for the space in question prior to the explosion. He said the addition was added as part of the squash club, which was an established use under the zoning code, and putting exercise equipment in the room made it a conforming use. He said when Mr. Rupp acquired it in 2001, the space went vacant for more than a year and was no longer part of the squash club. He said the space didn't need a nonconforming use permit until Mr. Rupp acquired it to make it part of the restaurant, because a restaurant use is no longer allowed in a residential district.

Deputy City Attorney Rachel Tierney clarified that the reason no permit was required for the exercise room was because it was an accessory use to the squash club.

Mr. Rupp said that was not even close to the facts. He said the building was built in 1976, and, in the letter he was appealing, the zoning administrator reached the conclusion that it was built as a restaurant. He said there was no squash club in 1976. He said it was an expansion of a building that had been a parking garage and was then used as classrooms for 3M, and connected to the bar/restaurant, and the owner was going to expand the bar and restaurant. He said a 1991 letter from DSI staff Bob Kessler and the zoning administrator's letter confirmed that the liquor license granted in 1976 covered the room both in 1991 and currently.

In response to a question from Councilmember Prince, Mr. Rupp said the area was inspected five times by the building department and multiple times for subcontractors between 2012 and 2015, and given final approval as a restaurant. He said the building official raised the zoning question but he didn't have the legal authority to do that.

Councilmember Prince referred to the zoning administrator's letter, and asked how the building official could claim the permit didn't include an area the City was inspecting, and how a liquor license could have been granted. She said it did seem that the building and licensing departments considered it a restaurant that they were providing a license for. Mr. Benner said a license and a building permit had no bearing on a zoning matter. Councilmember Prince asked if there wasn't a check-off on any of those applications that said it was zoned properly. Mr. Benner the City did keep strong communication between divisions and departments, but this was a zoning matter and the use of the space had changed from an exercise room to the proposed restaurant space. He said the liquor license was issued in 1976 to John O'Brien prior to Mr. Rupp's ownership, as part of the squash club and for an idea they were considering at the time.

Council President Brendmoen said the Council was being presented with contradictory information on issues beyond the scope of what was being considered, and asked whether Council members might agree that the matter might need to be laid over so they could get more information before voting.

Councilmember Thao said he would be open to laying it over for a week, but wanted to be sure they were focusing on the matter in question, which was that a change from one nonconforming use to another required BZA approval.

Mr. Benner said they were under the 60-day clock, and one extension had already been granted to March 13, and it would be up to Mr. Rupp if he wanted to waive for another 60 days. Council President Brendmoen said they were looking at one week to February

28. She said it was important to honor the time period but they would benefit from the additional week.

Mr. Rupp said Councilmember Thao mischaracterized the issue, and it was important that the Council learn what the facts were. He summarized his earlier testimony.

Council President Brendmoen asked Mr. Rupp if he was okay with a layover. Mr. Rupp said he was as long as the Council looked at the facts.

Councilmember Thao moved to close the public hearing and lay the matter over.

Public hearing held and closed; laid over to February 28 at 3:30 p.m.

Yea: 6 - Councilmember Brendmoen, Councilmember Thao, Councilmember Tolbert, Councilmember Noecker, Councilmember Prince and Councilmember Henningson

Nay: 0

Absent: 1 - Councilmember Bostrom

ADJOURNMENT

Council President Brendmoen adjourned the meeting.

Meeting adjourned at 6:29 p.m.

Council Meeting Information

The City Council is paperless which saves the environment and reduces expenses. The agendas and Council files are all available on the Web (see below). Council members use iPads to review the files during the meeting. Using the iPad greatly reduces costs since most agendas, including the documents attached to files, are over 1000 pages when printed.

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Cable

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