

MOUND CITY COUNCIL MINUTES
July 24, 2018

The City Council of the City of Mound, Hennepin County, Minnesota, met in regular session on Tuesday, July 24, 2018 at 7:00 p.m. in the council chambers of the Centennial Building.

Members present: Mayor Mark Wegscheid, Council Members Kelli Gillispie, Jeff Bergquist and Ray Salazar, and Jennifer Peterson

Members absent: None

Others present: City Manager Eric Hoversten, Director of Finance and Administrative Services Catherine Pausche, Community Development Director Sarah Smith, Administrative Assistant Rebecca Kress, Consultant Rita Trapp, Tom Bakritges, Jeff Thoele, Monica & Darren Kahmeyer, TQ White II, Tegan & Kevin Castellano, Frank Doherty, Barb Miller, John Smyth, Robert Sandom, Curt & Laura Wynkoop, Jim Gountanis, Michelle Herrick, Scott Gates, Cassy & Alex Hubler, Danelle Bonilla, Robert Stevens, Jesus Uitell, Gary Wambold, Arlyn Anderson, Rick Manion, Jack Harrison, Joe Bruns, S. Zimmerscheid, Dennis Johnson, Debbie Anderson, Christie Casey, Bethany Slicerson, Anna Peters, Desiree Meisik, Kim Blievernicht, Candi Stabeck, Brooks Chandler, Leigh Maustad, Sheri Buescher, Stephen & Suzanne Schmidt, Marc Doepner-Hove, Cathryn Fossing, and David Goode.

Consent agenda: All items listed under the Consent Agenda are considered to be routine in nature by the Council. There will be no separate discussion on these items unless a Councilmember or citizen so requests, in which event it will be removed from the Consent Agenda and considered in normal sequence.

1. Open meeting

Mayor Wegscheid called the meeting to order at 7:00 p.m.

2. Pledge of Allegiance

3. Approve Agenda, with any amendments

Hoversten added packet correspondence and emails relevant to Item 8 which will be labeled pages 1389.1-6 and on page 1371 129-71 paragraph B, fourth line down, the word "as" should be inserted between the word "same" and "the" beginning at the front of that line.

MOTION made by Salazar, seconded by Bergquist, to approve the agenda with amendments. All voted in favor. Motion carried.

4. Consent Agenda

MOTION made by Salazar, seconded by Gillispie, to approve the consent agenda. Upon roll call vote, all voted in favor. Motion carried.

- A. Approve payment of claims in the amount of \$973,429.31.
- B. Approve Pay Request #1 in the amount of \$78,630.27 to Minger Construction for the 2018 Lift Station Improvement and Wilshire Blvd Sewer Realignment Project, PW 18-02,3
- C. **RESOLUTION NO. 18-75: RESOLUTION APPROVING PUBLIC GATHERING PERMIT AND OUTDOOR MUSIC PERMIT 2018 DOG DAYS EVENT ON SATURDAY, AUGUST 11, 2018 IN HARBOR DISTRICT AND VICINITY OF AUDITORS ROAD**
- D. **RESOLUTION NO. 18-76: RESOLUTION AMENDING RESOLUTION NO. 18-42 APPROVING PUBLIC GATHERING PERMIT AND OUTDOOR MUSIC PERMIT FOR**

2018 MUSIC IN THE PARK FOR RESCHEDULED CONCERT BEING HELD IN THE HARBOR DISTRICT ON THURSDAY, AUGUST 2, 2018

- E. RESOLUTION NO. 18-77: RESOLUTION APPROVING RELEASE OF RESTORATION AGREEMENT WITH RESPECT TO 4837 BEDFORD ROAD, IN THE CITY OF MOUND, MINNESOTA, 55364**

5. Comments and suggestions from citizens present on any item not on the agenda.

None

6. Approve minutes:

1. June 26, 2018 regular council meeting

MOTION made by Salazar, seconded by Peterson, to approve the June 26, 2018 regular council meeting. Gillispie, Salazar, Bergquist, and Peterson voted in favor. Mayor Wegscheid abstained. Motion carried.

2. July 10, 2018 regular council meeting

MOTION made by Salazar, seconded by Gillispie, to approve the July 10, 2018 regular council meeting. Gillispie, Salazar, and Bergquist voted in favor. Mayor Wegscheid and Peterson abstained. Motion carried.

7. Presentation by Lana Thomason, Assistant Executive Director of Harrison Bay Senior Living

Lana Thomason, Assistant Executive Director of Harrison Bay Senior Living, presented information on the new senior living community Harrison Bay at 1861 Commerce Blvd. Thomason said that the center plans a mid-October opening date and that it is operated by Tealwood Senior Living based in Bloomington. Tealwood was formed in 1989 and operates over 50 skilled nursing and assisted living communities in five states. Thomason said that Harrison Bay Senior Living is not directly on the bay as the name might suggest, but Tealwood likes to name their communities after significant landmarks in the community in which they reside. Harrison Bay consists of 72 senior living apartments for persons 55 years or older. There will be 20 studio memory support apartments and 52 Independent Living and enhanced care apartments. Thomason stated that there are different levels of support within the three types of living quarters and nursing services are available to all, noting Harrison Bay is not a nursing home but rather considered housing with services up to nursing home type care. Thomason added that these are month to month leases (including utilities) and administration will try to help prospective residents obtain elderly waivers if eligible. The first floor will be administrative offices and memory support apartments, a dining room which is run like a restaurant, and pub. Each resident will receive an emergency pendant which is monitored by clinical staff who are on-site 24 hours a day. Thomason said there will be plenty of group entertainment options and other amenities include weekly housekeeping availability, maintenance staff availability, an onsite salon, 3rd party health care professionals, walk-in showers and other safety features. Harrison Bay is also a pet friendly community. Thomason stated that the focus is on comprehensive wellness which include the 7 dimensions of wellness. Thomason added that the leasing office is located at 2349 Commerce Blvd and pre-leasing is available. There are volunteer opportunities available and Tealwood will be employing 50-60 staff. Mayor Wegscheid asked what expected occupancy will be in October. Thomason said there are 12 reservations so far but hoping to reach 30 once the facility opens in October and people can tour the actual units.

8. Public Hearing - Consideration to Amend Chapter 129 of the Mound City Code (Zoning Ordinance) to Prohibit Short-Term Home Rental and to Include New Regulations for Uses in the Zoning Districts that are not Specifically Listed

Sarah Smith, Development Director, presented an overview of the proposed amendments presented before Council. Smith provided background, including discussions in regard to short

term home rental (STHR) beginning in the summer of 2017 and several meetings since talking about STHR and possible regulations needed. Smith added that Council directed Staff at the May 22nd meeting to begin preparation of an ordinance that would restrict or prohibit short-term home rental use in Mound. An earlier draft was reviewed at the June 19th Planning Commission meeting and this included specific regulations that prohibited STHR and included several different components, including some proposed changes to definition of STHR which is considered a rental of an existing residence of a period less than 30 days. Smith added that at the June 19th Planning Commission meeting there were several attendees and a public hearing did take place. Smith said several attendees expressed support of the proposed prohibition of STHR in Mound and some expressing concern in regards to new regulations. Smith said that if a situation is deemed lawful non-conforming use, the use would be allowed to continue same-similar and cannot expand and after a lapse of a certain amount time that right would be taken away, noting there was some discussion about some type of registration tool for the existing causing the Planning Commission to recommend to the Council to add some enhanced enforcement measures in case there are any "bad actors." Smith said the Planning Commission voted 8 to 1 to recommend approval of the earlier draft. The Planning Commission recommended to Council to consider approval of the new ordinance to prohibit short-term home rental use and that did include 4 conditions for consideration:

1. Inclusion of language to allow for a grace period for existing bookings
2. Inclusions of provisions to require a registration for grandfathered properties
3. Inclusion of strengthened language related to enforcement for grandfathered properties
4. Exemption for short-term rental prohibition for hosted properties

Smith said that 4 letters were submitted which include a copy of an email letter received on July 23rd from Roger Stephanson resident of 4601 Island View Drive, a copy of an email letter received on July 24th from Joe Grunnet, a copy of an email letter received on July 24th from Jane Anderson resident of 5060 Edgewater Drive, and a copy of an email letter received on July 24th from Pam Dahm resident at 5108 Edgewater Drive and these were provided as supplements and amendments to the packet. Smith asked for any questions from the Council.

Salazar asked if the amendments to the ordinance are mostly definitions and terminology changes. Smith said that part was included in section 2 subsection 129-71 - allowed uses A and B. Salazar said it makes no mention to short-term home rental. City Manager Eric Hoversten said that at the conclusion of this proposed action, short-term home rental will be specifically addressed in our uses table and taken off the list of things that are unaddressed. This language addresses uses that are not known at this time that may emerge in the future and if they are not specifically listed it calls the action to propose that use to the Council for approval to the applicant and it gives the City better coverage that if the use is not listed, it is prohibited. Salazar asked if anything in the ordinance talks about grandfathering. City Attorney Troy Gilchrist said there isn't anything expressed in the current wording, but keep in mind that this would be amending City Code and Section 129 does have a section on non-conforming uses. So the City would have a section in the Code that would address non-conformity that will automatically apply.

Mayor Wegscheid called the Public Hearing to order at 7:34 pm.

Arlyn Anderson, resident of 3038 Brighton Commons, presented information on her property that was handed down to her from her parents which she would like to keep in the family. Anderson has used the property for short-term home rentals on Air BNB in order to be able to financially support the property and keep it in the family. Anderson would like the City to consider grandfathering properties that have already been doing short-term home rentals up to this point. Mayor Wegscheid said that grandfathering is a process the Council does not have a lot of control over and that is not up for discussion during this meeting but there are changes to

the Code that will address aspects of grandfathering in the Code. Gilchrist added that non-conforming rights are common law. Non-conforming rights are if something has been done lawfully or a structure has been lawfully placed and then the ordinance changes and these changes causes non-conformity, they are then considered lawfully non-conforming as long as use is not expanded and it stays consistent with use up to the point of the changes. Gilchrist added that providing proof of use to the City may be necessary to confirm pre-existing lawful use. Salazar added that this type of lawful non-conforming means that if use stops for a year or more than the use cannot be started again after that point. Salazar also said that the house would not be allowed to expand in size in any way. Mayor Wegscheid asked that for someone that is engaging in short-term home rental use, at what time does that status effect homestead status of the home. Hoversten said that as long as the home is declared primary residence, having guests in the house should not change that status. Mayor Wegscheid stated that the City should look into that to be sure moving forward. Gilchrist added that in some communities that use has effected homestead status in some structures when the structure is used primarily for short-term rental use so in some instances it could be an issue. Bergquist asked where Anderson's clients park when they rent her property. Anderson confirmed that they park at the end of Brighton Commons because there is no driveway for her property.

Norbert Villamil, resident of 4345 Wilshire Blvd, asked about previously booked AirBNB rentals that he already has booked for future dates and what they are supposed to do in order to stay in compliance with the City. Mayor Wegscheid stated that the City should get his contact information since this portion of proposed changes has not been determined yet.

Sally Dahms, said she is temporarily staying at Presbyterian Homes taking care of her father and that she wanted to state that she has had many good experiences with AirBNB and asked why after 50 years is there not an upscale restaurant in the Mound area. Dahms asked why prohibit AirBNB's in Mound as they could bring visitors and money into Mound. Mayor Wegscheid stated that after quite a bit of conversation and comments that the conclusion was reached that the desire is to have a more family oriented community with less transient traffic occurring in the City of Mound.

Jessica Teske, resident of 1772 Lafayette Lane, and she stated her home is a hosted AirBNB rental. Teske stated that she wanted to read an expanded statement from the group that is interested in suing the City if short-term rentals are banned regardless of any grandfathering allowed in the Code. Teske went on to say that the group feels that the ban is unfairly targeting a small sector of people in Mound and impeding on their private property rights as homeowners. The group consists of people that feel the need to oppose the ban by bringing in legal representation should a fair compromise not be reached. Teske added that she agrees that regulations are fair but an outright ban is not and she is disappointed that the conversations up to this point have leaned in that direction.

Annette Villamil, resident of 4345 Wilshire Blvd, wanted to point out that they have neighbors who are not good neighbors. Villamil added that many times the people that rent out a home in the community are often better neighbors than those that living permanently in the community. Villamil said that regulations can be helpful and need to provide for the safety of others in the community.

Roger Stephanson, resident of 4601 Island View Drive, stated that he is in support of the ordinance that is being proposed as written and would like to see it implemented as soon as possible. Stephanson said often times those that are renting out their properties are not there to see the things that go on which effect the community around the home being rented. Stephanson said that this type of activity just does not work in residential neighborhoods. Stephanson stated that normal code violation punishment may not be sufficient punishment for short term rental violations as compared to the revenue that short term rentals can generate. Stephanson asked if the Council feels that there is enough in the code to sufficiently punish

short term rental violations. Mayor Wegscheid stated that the City has been working at the wording in the code for some time and feels that currently it is sufficient to handle these issues adequately.

Mayor Wegscheid closed the Public Hearing at 8:07 pm.

Gillispie stated that at earlier meetings it was thought that regulations were the way to go and she thinks it is unfortunate that that was abandoned. Gillispie went on to say that it seems that at most of the meetings up to this point there has been more support for short-term rentals than non-support. Gillispie said that the number of short-term rentals that the City currently has must be less than 1% of the total number of households in the City. Gillispie understands the need to address the issues but doesn't feel that a ban is necessary as there are studies out there that show that they actually increase home values. Gillispie urged taking all the personal feelings out of it. Salazar stated that right now the City has 20+ pieces of property that are actively doing short-term rentals but it is booming and growing in many communities. Salazar said that this ordinance would protect the unsung neighbor and those that quietly deal with these properties and their issues. Salazar said that he has gotten a lot of feedback from neighbors and people in the community that support the ban. Gillispie added that the focus shouldn't be on the negative aspects as there are many positives that arise out of having short-term rentals in the community. Salazar said that there are good and bad aspects and this could be debated at length.

Mayor Wegscheid said there are two sides to the issue and it can be argued both ways. Wegscheid added that he represents a certain percentage of residents in Mound that want to keep this community residential and family oriented. Bergquist said that one of the biggest issues is that it is difficult enforcing codes now and by adding more makes it even more difficult to enforce. Peterson said she gets both sides of the issue and there have been issues arising for years and that the Council can't ignore how the public feels. Peterson said Mound lots are narrow and the close proximity of neighbors is what generates many of the complaints. Gillispie pointed out that it is unfair to group larger lots with smaller lots and treat them all the same. Gillispie added that lot size should not be discounted and that larger lots shouldn't be discriminated against.

Salazar asked if prohibiting is good for the City or not and with this being a highly residential community would residents like to live next to a hotel. Salazar stated that he does not want to live next to a hotel and neither do many residents in this community. Gillispie mentioned that a majority of the City residents leave during the day for work, but yet the City desires to have a more thriving business community. Gillispie said that if there were more options to have people visit/stay in short-term rentals in the community it could result in more patronage to our local businesses.

Mayor Wegscheid asked Gillispie how many short term rentals are needed to change the economics of the community. Gillispie responded that the more people that come to the community the more interest that will grow because of word of mouth. Salazar asked that if the goal is to have more people visit the community and visit our business than wouldn't it make more sense to put a hotel in the community and no developer seems to want to do that. Gillispie said that a hotel is a different type of business structure. Peterson asked about the registration process. Hoversten said that it would be incumbent of the operators to prove up to the City versus the City going to seek out those that are currently offering short-term rentals and want to continue. Code enforcement is complaint based in the community so individuals who are lawful non-conforming should reach out to the City with information about their operation.

Peterson asked Hoversten if there is a way to work on the regulations and enforcement. Hoversten said the regulation and enforcement of existing code language is always under review as situations and events emerge in the City. Hoversten added that the biggest challenge

is that there will always be violations and those situations are always going to be challenging. There is only so much a citation from Police will do to stop someone in violation. Hoversten said that any complaints need to happen in the moment in the form of a 911 call and not reported a few days later to City Hall as to ensure proper enforcement of violations and complaints. Gillispie added that if those are the true issues than why isn't the Council addressing more of those types of things instead of banning short-term rentals altogether. Mayor Wegscheid said that the Council has been working on things like that over the years. Salazar asked Gilchrist if "bad actors" continue to be "bad actors" in the community, can something be added to the lawful non-conforming language or is there already enough teeth in this ordinance language to be able to enforce and shut down bad actors. Gilchrist stated that the City cannot condition lawful non-conforming rights in ordinance language. Gilchrist added that the City can limit nuisances being created by the language in the non-conforming uses with nuisance provisions and the City seems to have adequate nuisance provisions already in the code. Salazar asked how the City would enforce the unlawful persons in the community in regard to the issues that arise from short-term rental use and abuse. Gilchrist stated that there are two ways to handle those instances. There is a criminal route and the other is the civil route and typically Cities will use the criminal route to enforce those types of actions. Peterson noted that typically those citations from police would go to the "bad actor" and not the home owners allowing that type of behavior on their property.

Rita Trapp said that one of the reasons that Staff had been talking more about licensing in the past was so that if the City licensed the short-term rentals the City would have more ability to revoke "bad actors" licenses to disallow them from operating versus with lawful non-conforming rights the City has less ability to enforce violations against the owner. Gilchrist agreed that typically a City would license in order to have more ability to enforce violations. Gilchrist said many of the things that are complained about are already violations to the law such as noise ordinances and the like, but again emphasized these things need to be reported immediately so police can enforce the law being broken in real time. Mayor Wegscheid asked that if a renter is cited by police, what ramifications come to the home owner. Gilchrist said that the City would need to bring a civil action against the homeowner to sue them for using their property in that manner, but that is not ideal for the City to do so as the costs are considerable and it's not efficient.

Gillispie asked if there a parallels for social hosting in regard to short-term rentals and homeowners. Gilchrist said he doesn't believe so but he can look into that. Peterson also asked if a licensing program would help the City have more recourse with problem properties. Gilchrist said that when a City has a licensing program, the license can be revoked due to violations of the license even if they had been operating lawfully prior to the licensing structure being created, but that this wasn't researched in its entirety since it was decided not to pursue licensing. Gilchrist added that enforcement will always be an issue and the City's nuisance ordinances should be more than sufficient, noting it will still be difficult to enforce these types of things since it is just the nature of enforcing ordinances in general.

Gillispie asked that if the City begins a licensing program for short-term rentals and a "bad apple" reaches the threshold of violations, then the City can pull their license and the homeowner cannot fall back on to lawful non-conforming language. Gillispie said she feels like that could be a better resolution for the "bad apples" in the community. Gilchrist said that this gives the City a process but it doesn't change the enforcement piece of things. Gilchrist said that even with licensing enforcement will always be difficult. Gillispie added that in some communities they put a limit on the percentage of a block that can be rentals. Mayor Wegscheid said that the Council needs to take a direction and work towards the future after experience and evaluation.

Requested Actions:

A. Approve Ordinance Amending Chapter 129 of the Mound City Code (Zoning Ordinance) to Prohibit Short-Term Home Rental and to Include New Regulations for Uses in the Zoning Districts that are not Specifically Listed

MOTION made by Salazar, seconded by Bergquist, to approve Ordinance Amending Chapter 129 of the Mound City Code (Zoning Ordinance) to Prohibit Short-Term Home Rental and to Include New Regulations for Uses in the Zoning Districts that are not Specifically Listed. Salazar, Wegscheid, Bergquist, and Peterson voted in favor. Gillispie voted against. Motion carried.

ORDINANCE NO. 03-2018: ORDINANCE AMENDING CHAPTER 129 OF THE MOUND CITY CODE (ZONING ORDINANCE) TO PROHIBIT SHORT-TERM HOME RENTAL AND TO INCLUDE NEW REGULATIONS FOR USES IN THE ZONING DISTRICTS THAT ARE NOT SPECIFICALLY LISTED

B. Approve Resolution to Allow for Publication of Ordinance by Summary (requires 4/5's vote of City Council to approve)

MOTION made by Salazar, seconded by Peterson, to approve resolution to allow for Publication of Ordinance by Title and Summary. Salazar, Wegscheid, Bergquist, and Peterson voted in favor. Gillispie voted against. Motion carried.

RESOLUTION NO. 18-78: RESOLUTION AUTHORIZING PUBLICATION OF AN ORDINANCE BY TITLE AND SUMMARY, AS IT RELATES TO SHORT-TERM RENTALS AND ALLOWED USES

7. Information/Miscellaneous

A. Comments/reports from Council members:

Hoversten mentioned some of the Music in the Park events have been rescheduled. Tour De Tonka on August 4th, National Night Out on August 7th and Westonka Dog Days on August 11th. Hoversten encouraged residents to get out and enjoy the great weather and events, including the weekly farmers market. Hoversten noted the Primary Election is on August 14th so the regular meetings have been rescheduled to August 15th. Hoversten noted early voting has begun. Mayor Wegscheid mentioned the Running of the Bays event on Sept 8th and Wegscheid also stated that he will not be running for re-election for Mayor.

- B. Reports: Finance Department - June YTD
Bolton & Menk - Engineering Costs 06/30/18 YTD
- C. Minutes: 06-14-18 Parks and Open Spaces Commission Regular Meeting
- D. Correspondence: Thank you from Sheriff Rich Stanek

8. Adjourn

MOTION made by Peterson, seconded by Bergquist, to adjourn at 9:00 p.m. All voted in favor. Motion carried.

Mayor Mark Wegscheid

Attest: Catherine Pausche, Clerk