

**MINUTES OF THE REGULAR MEETING
CITY COUNCIL
LITTLE CANADA, MINNESOTA**

JULY 12, 2023

Pursuant to due call and notice thereof a regular meeting of the City Council of Little Canada, Minnesota was convened on the 12th day of July 2023 in the Council Chambers of the City Center located at 515 Little Canada Road in said City.

Mayor Tom Fischer called the meeting to order at 7:34 p.m. and the following members of the City Council were present at roll call:

CITY COUNCIL: Mayor Fischer, Council Members T. Miller, Kwapick, Gutierrez and D. Miller.
Absent: None.

ALSO PRESENT: City Administrator Chris Heineman, Parks & Rec/Community Services Director Bryce Shearen, Public Works Director Bill Dircks, City Engineer Eric Seaburg, City Clerk/HR Manager Heidi Heller and City Attorney Chad Lemmons.

APPROVAL OF MINUTES

T. Miller introduced the following resolution and moved its adoption:

RESOLUTION NO. 2023-7-75 – APPROVING THE MINUTES OF THE JUNE 14, 2023 WORKSHOP AND THE JUNE 14, 2023 REGULAR MEETINGS AS SUBMITTED

The foregoing resolution was duly seconded by D. Miller
Ayes (5). Nays (0). Resolution declared adopted.

ANNOUNCEMENTS

None.

PUBLIC COMMENT

None.

CONSENT AGENDA

Mayor Fischer requested that item three be pulled from the Consent Agenda for further discussion.

T. Miller introduced the following resolution and moved its adoption:

RESOLUTION NO. 2023-7-76 – APPROVING THE CONSENT AGENDA WHICH CONTAINS THE FOLLOWING:

- Approval of the Vouchers
- Approve Partial Pay Request No. 2 for Pioneer Park Improvements
- ~~Approve Partial Pay Request No. 1 and Change Order No. 1 for Twin Lake Boulevard~~
- Approve Partial Pay Request No. 2 for 2023 Street Improvement Projects
- Approve Furnace Replacement at Old Fire Hall
- Approve 2023 Crack Filling Project
- Approve Purchase of Toolcat

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The foregoing resolution was duly seconded by D. Miller.

Further discussion: Kwapick referenced the June 28th vouchers and received clarification on whether those were approved electronically as there was not a meeting held on June 28th.

Ayes (5). Nays (0). Resolution declared adopted.

STAFF REPORTS

CONSIDER TOBACCO LICENSE FOR THE HOOKAH HIDEOUT

The City Clerk explained that this license was not approved at the June 14th meeting as there were some additional questions for the application. She noted that because there was not a meeting on June 28th, this is the next meeting at which the Council could consider the license. She commented that she did receive the additional information she had requested. She noted that staff has had some concerns about the ownership and management of the store, along with fire code violations. She reported that the fire inspection has been passed. She commented that there have been some tobacco compliance violations and employees do not appear to know the person listed as the owner. She noted that there are people present today to speak on this topic.

Mayor Fischer commented that even though this is not a public hearing, they will accept comments from the public.

Roger Reistad, owner of a business in the Little Canada Mall, commented that he has been in business for almost 50 years, with only the last four in Little Canada, as he was previously located in Roseville. He commented that in Roseville he never had concern for his vehicle or had the need for cameras. He stated that in Little Canada he does have those issues and needs and should have stayed in Roseville. He commented on the trash and questionable clientele in that area. He stated that each business in the mall has cameras and his employee's vehicle was broken into and noted that he has concerns allowing his female employee to work at night. He commented that he does not feel safe in this location and has concerns with the safety of his employees.

The City Attorney referenced the security cameras and asked if there are copies of the video footage that could be supplied to the City. Mr. Reistad commented that he could, but there has only been one case when the footage was viable and could be used by the Sheriff. He stated that his business is only open 9 a.m. to 5 p.m. so he is not sure what occurs after those hours.

John DeRosa, owner of Little Canada Smoke Shop, commented that the police do have the footage from the videos of people's vehicles getting broken into. He stated that the person that broke into the vehicles is linked to the Hookah Hideout. He commented that the same person that broke into the vehicles is on his video footage, bringing females to the Hookah Hideout, escorting them through the back entrance. He commented that the other businesses in that mall are good neighbors to each other. He provided more details on the break-ins and that person. He commented that he is afraid for the safety of females in that area. He commented that the Hookah Hideout does not project itself as a smoke shop as they do not sell cigarettes, are open until 2 or 3 a.m., there are liquor bottles in the

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parking lot, and often on weekends there are over 70 people in there partying. He stated that the Hookah Hideout also does not accept credit cards and only accepts cash. He did not believe the business was a smoke shop and is instead a nightclub/speakeasy that is operating under a smoke shop license. He commented that this is a safety concern. He commented that there are so many people in that business that the bathroom cannot be used by everyone, and people are urinating and defecating in the parking lot or back of the building. He stated that he has not seen the owner, David Nelson, at the shop in over four years, and believed that the business is often being run by whoever has the most money to rent it at that time. He stated that as a cigarette business, he has relationships with the distributors, and no one is delivering to Hookah Hideout because they are not purchasing tobacco products.

The City Attorney asked when his business closes and when the liquor bottles are noticed.

Mr. DeRosa replied that his business is open until 11 p.m. and commented that he is unsure if the bottles are in the parking lot at that time because of the large number of vehicles. He stated that he has observed people sitting on their vehicles, pouring alcohol into their cups to go into Hookah Hideout. He noted that the employee of the previous speaker picks up liquor bottles from the parking lot and resells them on Craigslist because there are so many. He stated that the Hookah Hideout is not a smoke shop and the activity there is illegal.

The City Attorney asked if any other businesses in the mall are open after 11 p.m. Mr. DeRosa commented that no other businesses are open past that time with the exception of Hookah Hideout.

The City Attorney asked the operating hours for the other businesses in the mall. Mr. DeRosa commented that the business that closes before him is the pizza establishment, which closes at 10 p.m. He stated that when he closes at 11 p.m., the parking lot for the mall is packed full until 2 or 3 a.m.

The City Attorney asked if the parking lot is packed all day. He asked for an estimate of the number of vehicles in the parking lot during the day and in the evening. Mr. DeRosa commented that when he opens there are under 20 vehicles in the parking lot for all the businesses, noting that the Hookah Hideout does not open until 11 a.m. He stated that at 6 p.m. the lot for Hookah Hideout is full and spilling into his parking area. He commented that everyone from those vehicles is going into Hookah Hideout.

David Nelson, owner of Hookah Hideout, stated that he is present to answer questions. Mayor Fischer asked if Mr. Nelson is operating the day-to-day operation onsite. Mr. Nelson replied that he is, noting that he is not onsite every day, but is there twice a week to place orders and process payroll. He stated that he does delegate other duties to employees as he owns other businesses as well.

T. Miller asked why the employees would not recognize his name when asked. Mr. Nelson replied that there is a high turnover for employees and there have been occasions when he allows other employees to handle hiring and terminating of employees.

T. Miller asked the number of times staff has inquired about Mr. Nelson. The City Clerk replied that she has visited the business herself twice and the employees did not know who David Nelson was. She

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stated that the Fire Inspector has also been to the business multiple times and the employees did not know Mr. Nelson. Mr. Nelson replied that the taxes are in his name and the bottom line is that he owns the business. He commented that they do get a lot of customers, which people may not like. He referenced the allegations made tonight, noting that he does not have control over what happens in the parking lot. He commented that he has seen customers or employees from the pizza place drinking in the back after hours. He commented that there should be video of people peeing on the fence or in the back if those allegations are true. Mr. DeRosa commented that they do have that footage.

Kwapick commented that as a business owner in this community, Mr. Nelson should care about what happens in the parking lot and what his customers are doing. Mr. Nelson commented that when he has noticed people that smell of alcohol, he has asked them to leave.

T. Miller asked the capacity of the Hookah Hideout. Mr. Nelson was not sure of that number. T. Miller commented that it sounds like the business could be exceeding that number. The City Clerk replied that would be based off the square footage of the space and could be verified with the Building Official. Mr. Nelson replied that he just spent almost \$15,000 to comply with the Fire Marshal's directions.

The City Attorney asked if Mr. Nelson signs the payroll checks. Mr. Nelson replied that he does not and explained that he utilizes a payroll company. The City Attorney asked if there is security for the business. Mr. Nelson replied that he does not have security. The City Attorney asked if Mr. Nelson believes that there should be security for the business. Mr. Nelson replied that he has not had any problems in his space, outside of the incident when they were robbed at gunpoint a few years ago.

The City Attorney asked if the Ramsey County Deputies have been in that space. Mr. Nelson replied that the officers have come over the years, but they have not done anything wrong to result in a ticket.

Mayor Fischer commented that the business has failed the tobacco compliance checks in the past and asked for details. Mr. Nelson replied that the last compliance check failure was a new employee that was fired, and the other employees have undergone more training. He stated that they have also updated the computer systems to allow scanning of identification of customers, therefore there will not be any more compliance check failures.

T. Miller asked the hours of the business. Mr. Nelson replied that the business hours are 11 a.m. to 1 a.m. Mayor Fischer asked if customers are escorted out at 1 a.m. Mr. Nelson replied that they turn the lights on and tell everyone it is time to go. T. Miller asked if people actually leave then. Mr. Nelson commented that when there are 30 or 40 people there, it does take time for them to filter out. The City Attorney asked if customers are told to leave the parking lot as well. He asked if there is someone that makes sure people clear out of the parking lot. Mr. Nelson replied that he does tell people to exit the premises but does not have someone that goes out to clear people out of the lot. He did not believe that was his responsibility. The City Attorney asked if the business owner feels that it is his responsibility as a business owner to clear people out. Mr. Nelson commented that while they are his customers, they are not doing anything wrong sitting in their vehicles. The City Attorney commented that most bars ensure their parking lots are clear. He commented that this is a business that attracts the public and these customers stick around.

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Mr. Nelson commented that people leave and are not staying until 5 a.m. He stated that this is similar to a bar where people exit the business and may hang around in the lot for a bit making other plans. He stated that he is hearing that concern and would be willing to address that issue. He commented that he has supplied his documents, above what is requested of other businesses, as the City did not believe he was the owner. T. Miller commented that the question was not ownership, but management.

Mayor Fischer asked how frequently Mr. Nelson is onsite managing the business and for how long. Mr. Nelson replied that he is at the business a few times a week to do ordering and other duties. Mayor Fischer commented that if he were onsite a few times a week, employees should know who he is. Mr. Nelson replied that he is typically onsite before the business hours. He commented that there is employee turnover as well. Mayor Fischer commented that one of the conditions is that Mr. Nelson actively manages the business and that does not appear to be happening. Mr. Nelson commented that while he is not there working day to day, he does own and operate the business. T. Miller commented that she does not get the impression that Mr. Nelson would be aware what is occurring at the business when it is open.

Mr. Nelson commented that trash has been an ongoing issue for customers visiting all the businesses. He stated that crime existed before his business was here. He noted that this is the last year when smoking will be allowed inside for his business, as that grandfathered permission was already taken away for next year and he has already paid \$15,000 to comply with the Fire Marshal.

Gutierrez asked for details on the cash only policy and what products are sold. Mr. Nelson replied that he started the cash only policy a few years ago because they had over \$7,000 in chargebacks from customers. He stated that they are a hookah lounge and sell sheesha and hookah products, along with other tobacco related products. Gutierrez asked if the business sells CBD or THC products. Mr. Nelson confirmed that his business sells those products, just as the other tobacco business does. He commented that they do not sell cigarettes.

Mayor Fischer asked if the shop was open during COVID. Mr. Nelson replied that he shut his business down for the first shutdown during COVID, but did open for one week during the second shutdown and was prosecuted. He stated that resulted in him paying the State the revenue from that week.

D. Miller referenced the comment that customers are going out to their vehicle to fill up their cup with alcohol and coming back in. He asked if customers were going in and out. Mr. Nelson replied that he cannot say how each customer acts. He stated that people are not allowed to drink alcohol inside and ask people to leave if they are drinking.

Mayor Fischer thanked Mr. Nelson for speaking with the Council tonight. He closed the public comment period for the item. The City Attorney suggested that there be a motion to close public testimony, acknowledging that it was not a formal public hearing.

Upon motion by T. Miller, seconded by Gutierrez, the public testimony was closed.
Ayes (5). Nays (0). Motion adopted.

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Mayor Fischer stated that he interprets the City Code to state that the owner is to manage the daily operations and he is not convinced that is occurring to the degree expected. He commented that there were a lot of statements from the business owner about being a business owner and bringing customers to the city but noted that there appears to be a void of responsibility and lack of ownership of the broader elements of the business and its customers. He did not think the ownership understands what the City is looking for and believes that the management control of the ordinance is violated.

The City Attorney noted that under the ordinance, Chapter 802.030, there are provisions for denial and noted items B, D, and H which would be applicable in this situation. He stated that in order to be fair to everyone, this could be tabled to allow review of the videos that were provided to the Ramsey County Sheriff. He stated that the videos could then be included to provide a complete record.

Mayor Fischer asked what would happen in the interim under that circumstance. The City Attorney commented that the action would defer the decision and confirmed that the business could continue to operate during that time.

T. Miller commented that while she agrees with the comments of the Mayor, she does agree with the decision to table in order to review the footage. Kwapick stated that a tobacco license has not yet been approved for this business. The City Attorney confirmed that the application has not yet been approved or denied and if action is deferred, the business could continue to operate in that interim.

Mayor Fischer asked if there is any idea from staff on how long this would need to be tabled in order to review video footage. The City Clerk stated that they would need to determine what Council is looking for in the videos, and noted that the videos likely are only showing stores front and back doors, not the parking lot. She asked the business owners if the videos are in the front or back. Mr. DeRosa commented that the Sheriff has the video footage from the back related to the vehicle break in incidents.

The City Attorney stated that he only brought up the videos to make a more complete record, but it would be questionable as to whether that would be the case if those are the only two videos the Sheriff has. He stated that there were statements made about videos, but they have not actually been seen by the Council yet.

D. Miller asked if the interim time could be used to observe the parking lot and business. The City Attorney confirmed that could be done if the record is kept open and action is deferred. He acknowledged that there appear to only be two videos supplied to the Sheriff but there may be other videos from the building management. The City Clerk commented that the building management has not been forthcoming with information.

Mayor Fischer asked if two weeks would be enough time to defer action. The City Clerk commented that she did see a segment of a video which shows a person approaching a vehicle that they were breaking into. She commented that the Council would need to determine what it is looking for before reviewing a lot of video.

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Mayor Fischer commented that he has heard and received complaints about people urinating and defecating behind the building. The City Clerk believed that possibly could be observed from the footage of the back of the building.

Mr. DeRosa commented that the business has been closed since July 1st and was unsure how long the footage from the other businesses would go back. Mr. Nelson asked if his business would be responsible for everyone that walks through the parking lot. The City Attorney noted that the public comment period has closed.

Kwapick stated that he is not looking at this from the point of one instance and would prefer to take action tonight. He stated that he has heard complaints from neighbors that observe behavior each day and night, comments about a management style that does not comply with the City Code and was unsure that delaying this would make a difference in the outcome. He stated that he has heard other comments and reports prior to tonight that do not support this being a responsible business and did not hear comments tonight committing to making this better.

Gutierrez commented that in 2017, an alcohol establishment business had some issues, and conditions were placed upon that business license to make it comply and operate better. She noted that she would be in favor of placing conditions upon the license to make the business comply in a better manner.

Mayor Fischer asked if restrictions could be placed on the operating hours of the business if the issue is deferred. The City Attorney replied that could not be done if the action is deferred, action would have to be tabled. He stated that the license could be renewed with conditions if desired. He explained that a license is not a property right, it is a privilege. He confirmed that the action could be delayed, and staff could bring back additional conditions to consider.

Mayor Fischer asked if staff believes that there is video that could be made available that could address the public safety comments. The City Clerk commented that would depend on what is available from the businesses. She commented that she did not believe it would show anything different than the comments made tonight.

Mayor Fischer commented that there is a part of him that would support delaying action to see if the videos show something one way or the other. The City Clerk noted that staff would need to contact the other businesses to determine if there is video that could be shared, but noted that it could be difficult if the hookah business has not operated much in the last couple of weeks. The City Attorney commented that if it would not be material, there would be no point in searching for footage.

Fischer introduced the following resolution and moved its adoption:

RESOLUTION NO. 2023-7-77 – DENYING A TOBACCO STORE LICENSE FOR THE HOOKAH HIDEOUT FOR THE PERIOD JULY 13, 2023 TO JUNE 30, 2024

The foregoing resolution was duly seconded by Kwapick.
Ayes (2). Nays (3) (T. Miller, D. Miller, and Gutierrez opposed). Resolution declared failed.

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Mayor Fischer welcomed another action.

D. Miller stated that he would want to see the conditions that could be placed upon the license. He stated that management includes day-to-day operations. He stated that he would want to see what those conditions could be.

T. Miller introduced the following resolution and moved its adoption:

RESOLUTION NO. 2023-7-77 – TABLING CONSIDERATION OF A TOBACCO STORE LICENSE FOR THE HOOKAH HIDEOUT FOR THE PERIOD JULY 13, 2023 TO JUNE 30, 2024 TO THE NEXT MEETING

The foregoing resolution was duly seconded by D. Miller.

Ayes (4). Nays (1) (Kwapick opposed). Resolution declared adopted.

EDGERTON STREET SANITARY SEWER SERVICE REPAIR

The Public Works Director provided background on the sanitary sewer service on Edgerton Street and repairs that have been made. He noted that similar issues continue to appear and need to be addressed. He reviewed the bids that were received and difference in cost. He noted that there are budgeted funds available if road work were needed as \$40,000 was budgeted for the project.

T. Miller introduced the following resolution and moved its adoption:

RESOLUTION NO. 2023-7-78 – APPROVING THE REPAIR OF THREE SANITARY SEWER SERVICES ON EDGERTON STREET BY CAPRA’S UTILITIES FOR \$28,425

The foregoing resolution was duly seconded by D. Miller.

Ayes (5). Nays (0). Resolution declared adopted.

APPROVE PARTIAL PAY REQUEST NO. 1 AND CHANGE ORDER NO. 1 FOR TWIN LAKE BOULEVARD

Mayor Fischer asked for details on the change order as that seems substantial.

The City Engineer replied that two thirds of the change order is related to additional tree removal that was needed and the remainder was related to erosion control measures from the Watershed District. He commented that the City did not collect survey shots on all the trees in the woods, as those shots were taken during the winter, therefore not all the trees were surveyed. He stated that there was also brush clearing as the initial tree clearing took place prior to the project and the contractor believed that all clearing would have been done prior to their arrival on the project. He stated that because that additional clearing was needed, it would need to be paid for.

Fischer introduced the following resolution and moved its adoption:

RESOLUTION NO. 2023-7-79 – APPROVING PAY REQUEST NO. 1 AND CHANGE ORDER NO. 1 FOR TWIN LAKE BOULEVARD

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The foregoing resolution was duly seconded by T. Miller.
Ayes (5). Nays (0). Resolution declared adopted.

COUNCIL REPORTS AND MEETING UPDATES

Kwapick noted that the Little Canada History Center will be meeting the following week.

Mayor Fischer stated that on Monday he attended a bimonthly meeting with mayors and city administrators from eight communities and provided a brief summary of the discussion that occurred.

The City Administrator noted the recent League of Minnesota Cities annual conference that occurred since the last meeting.

T. Miller provided details on the League of Minnesota Cities committee that she will be serving on.

The City Administrator introduced Brian Reimers who is serving as a fellow with the City for the next six months through the ICMA Veterans in Local Government Fellowship Program.

Brian Reimers introduced himself and thanked the City for allowing him to be here.

ADJOURN

There being no further business, upon motion by Kwapick, seconded by D. Miller the meeting was adjourned at 8:46 p.m.

Thomas Fischer, Mayor

Attest:

Christopher Heineman, City Administrator