

**OFFICIAL PROCEEDINGS
CITY OF COLUMBIA HEIGHTS
CITY COUNCIL MEETING
AUGUST 13, 2018**

The following are the minutes for the regular meeting of the City Council held at 7:00 PM on Monday, August 13, 2018 in the City Council Chambers, City Hall, 590 40th Avenue N.E., Columbia Heights, Minnesota

1. CALL TO ORDER/ROLL CALL

Mayor Schmitt called the meeting to order at 7:03 p.m.

1b. Appoint Secretary Pro Tem

Motion by Councilmember Williams, seconded by Councilmember Novitsky to appoint Nancy Becker as Council Secretary Pro Tem. All Ayes, Motion Carried.

Present: Mayor Schmitt, Councilmember Williams, Councilmember Murzyn, Jr., Councilmember Buesgens, and Councilmember Novitsky

Also Present: Walt Fehst, City Manager; Jim Hoeft, City Attorney; Joe Hogeboom, Community Development Director; Kelli Bourgeois, Human Resources Director/Assistant City Manager; Ben Sandell, Communications Coordinator; and Nancy Becker, Council Secretary Pro Tem

2. INVOCATION

Invocation provided by Nikki Wakal, Pagan Community

3. PLEDGE OF ALLEGIANCE

4. MISSION STATEMENT, Read by Mayor Schmitt

Our mission is to provide the highest quality public services. Services will be provided in a fair, respectful and professional manner that effectively address changing citizen and community needs in a fiscally-responsible and customer friendly manner.

5. APPROVAL OF AGENDA

Motion by Councilmember Buesgens, seconded by Councilmember Williams to approve the agenda as presented. All Ayes, Motion Carried.

6. PROCLAMATIONS, PRESENTATIONS, RECOGNITION, ANNOUNCEMENTS, GUESTS

7. CONSENT AGENDA

(These items are considered to be routine by the City Council and will be enacted as part of the Consent Agenda by one motion. Items removed from consent agenda approval will be taken up as the next order of business.)

A. Approve Minutes of the City Council

MOTION: Move to approve the minutes of the City Council meeting of July 23, 2018

B. Accept Board and Commission Meeting Minutes

MOTION: Move to accept the Economic Development Authority minutes from June 4, 2018

MOTION: Move to accept the Library Board minutes from June 13, 2018

C. Adopt Resolution 2018-52 approving a professional services agreement between the City of Columbia Heights and McGrath Consulting Group, Inc. for a Public Safety Staffing Study.

MOTION: Move to waive the reading of Resolution 2018-52, there being ample copies available to the public.

MOTION: Move to adopt Resolution 2018-52 approving a professional services agreement between the City of Columbia Heights and McGrath Consulting Group, Inc. for a Public Safety Staffing Study, and authorize the Mayor and City Manager to execute the agreement.

D. Resolution approving an amendment to the 2018 Community Development Fee Schedule

MOTION: Move to waive the reading of Resolution 2018-48, there being ample copies available to the public.

MOTION: Move to adopt Resolution 2018-48 approving an amendment to the 2018 Community Development Fee Schedule.

E. Second Reading of Ordinance No. 1650, an ordinance amending City Code of 2005 relating to Public Nuisances Affecting Peace and Safety

MOTION: Move to waive the reading of Ordinance No. 1650, there being ample copies available to the public.

MOTION: Move to approve Ordinance No. 1650, being an ordinance amending City Code of 2005 relating to Public Nuisance Affecting Peace and Safety as presented, and authorize publication in the legal newspaper of the City of Columbia Heights.

F. Approve Resolution No. 2018-51 to Remove Provisional Status for Rental License Held by 2015-3 IH2 BORROWER LP

MOTION: Motion to waive the reading of Resolution No. 2018-51, being a resolution for the removal of provisional status for the property rental license held by 2015-3 IH2 BORROWER LP, there being ample copies available for the public.

MOTION: Motion to approve Resolution No. 2018-51, being a resolution for the removal of provisional status for the property rental license held by 2015-3 IH2 BORROWER LP

G. Public Hearing to Consider Revocation of Rental Licenses for 4625 and 4633 Tyler Street NE

MOTION: Motion to cancel the public hearing to consider the revocation of rental licenses at 4625 and 4633 Tyler Street NE

H. Approve Gambling Permit, Immaculate Conception Church

MOTION: Move to direct the City Manager to forward a letter to the State Charitable Gambling Control Board indicating that the City of Columbia Heights has no objection to a gambling permit for Immaculate Conception Church to conduct bingo at an event being held October 27, 2018 at 4030 Jackson Street NE, Columbia Heights; and furthermore, that the City of Columbia Heights hereby waives the remainder of the thirty-day notice to the local governing body.

I. Approve Business License Applications

MOTION: Move to approve the items as listed on the business license agenda for August 13, 2018.

J. Review of Bills

MOTION: Move that in accordance with Minnesota Statute 412.271, subd. 8, the City Council has reviewed the enclosed list of claims paid by check and by electronic funds transfer in the amount of \$ 1,662,066.53.

Motion by Councilmember Buesgens, seconded by Councilmember Murzyn Jr. to approve the consent agenda as presented. All Ayes, Motion Carried.

8. PUBLIC HEARINGS

A. Resolution approving the Conditional Use Permit Amendment for a Daycare Operation at 4025 University Avenue NE.

Community Development Director, Joe Hogeboom reported that there is a proposal to provide an amendment to the Conditional Use Permit (CUP) for the daycare operation in response to numerous complaints from neighboring property owners relating to noise from outdoor playtime, especially during evening hours in the summer months. He gave an overview of the purpose of CUPs and read the list of conditions that exist presently in the CUP for this property.

Hogeboom stated that the Planning Commission met last week and listened to the neighbors' concerns. The Planning Commission recommends amending the CUP by adding the following conditions: Limiting the outdoor operation hours to 8 AM – 6 PM on weekdays, Monday – Friday, and 10 AM – 4 PM on Saturdays and Sundays. Also, the property owner must install a privacy fence along the north, east, and south sides of the property that is at least 6 feet in height and 80% opaque within the next six months.

Councilmember Buesgens asked if parents are continuing to drive up and honk to signal their arrival for picking up children rather than going inside to retrieve them, and if there might be anything that could be done about that as well, being that it is not only an annoyance, but also a safety issue. Hogeboom responded that enforcement might be difficult, but the new revised CUP, once it is approved, along with meeting minutes from the Planning Commission and City Council are to be forward to the Dept. of Human Services which governs the daycare license. Councilmember Buesgens questioned whether daycare staff would be responsible for retrieving items thrown over the fence into neighboring yards. Hogeboom said his understanding was that the fence was requested primarily for addressing the noise issues.

Councilmember Novitsky expressed concerns about parked vehicles on the service road in front of the property. This is a no parking zone, but he has observed unattended vehicles parked there, which is a safety hazard since the road is narrow. Hogeboom responded that he had been in contact with the Police Department regarding the street parking.

Motion by Councilmember Williams, seconded by Councilmember Buesgens to waive the reading of Resolution No. 2018-43, there being ample copies available to the public. All Ayes, Motion Carried.

Suad Isse, Director of the daycare and representing Madina Academy, distributed photos to the Council while describing their challenges and efforts to address the concerns of neighbors, offering explanations and expressing frustration and a desire to compromise, since other daycares in the area are operating until 7:00 PM.

Mayor Schmitt asked about the ages of the children attending the daycare. Suad Isse responded that their license allows them to accept children ages 6 weeks – 12 years old.

Councilmember Buesgens asked if there was a designated drop-off area in the parking lot. When Suad Isse responded that all the spaces are also used for staff and other parking, Buesgens suggested she look at making parking lot changes that would make it easier for parents drop off and pick up their children without parking on the street.

Councilmember Murzyn, Jr. commented that he was present at the Planning Commission meeting when the CUP amendment was being discussed, and he felt that the commission listened carefully to both sides and came up with a fair decision which is what the Council has before them tonight.

Nicholas Dobbs – 4024 4th St. NE spoke in support of the amendment. He said it is not unrealistic to expect the children to be inside after 6:00 PM on weekdays and 4:00 PM on weekends. He said that the noise from the daycare is interfering with his ability to enjoy his own property and that the children are sometimes out until 8:00 or 9:00 PM. He commented he has tried talking to the daycare staff. He said that it is difficult to communicate what conditions are like because he cannot take photographs or record when the children are present, and the police don't respond to noise complaints if it isn't nuisance noise.

Councilmember Novitsky asked for confirmation that Mr. Dobbs had spoken with staff. Mr. Dobbs said he has talked with daycare staff members that were out with the children, but has not spoken with Suad Isse.

Vue Lee – 4037 University Ave. NE stated that in the last ten years the noise from the daycare has gone long into the evening. He described how the noise has detrimentally affected his enjoyment of his home and how his property has been damaged by water turned on by the children and left running for long periods of time. He also stated that he has talked to daycare staff members and he ended up putting in a drainage system to deal with the excessive water.

Steven Schultz – 4028 4th St. NE stated that he agreed with Nicholas Dobbs and Vue Lee. He is also concerned about the noise levels.

Lorri Fjetland – 4023 4th St. NE explained that even across the street where she lives, she can hear the noise from the daycare in her backyard and house.

Joan Dobbs – 4024 4th St. NE explained that she has talked to the daycare workers numerous times over the years about the words the children were using, about her dog, the noise levels, and toys and litter being thrown into her yard. She has also called the police, but nothing has worked. She said a neighbor had a window broken after children threw rocks at the house. She is in favor of putting rules in place so if they are violated, the police will be able to do something to enforce them.

Dr. Sidow Mohammed – 6140 Benjamin St. is a teacher, advises instructors, and counsels families. He is supportive of the daycare and is against the amendment. He explained that neighbors are very important in his culture and he has not witnessed the things the neighbors are talking about. While he acknowledged that the children do make noise when playing outdoors, he feels that if everyone works together and communicates honestly, their differences can be worked out without the need for intervention by the City.

Max Weis – 4034 4th St. NE stated he has occasionally heard 4 kids screaming at each other around 8:00 PM when he is letting his dog out. It doesn't happen often and he doesn't hear it inside his house, but it can go on for too long.

Anthony Mayer—the owner of the property at 4025 University Ave. NE. which houses the daycare operation, requested that he would be given until May, 2019 to construct the fence being proposed in the amendment due to the difficulty of finding a contractor to do the work this fall. He stated that the retaining wall at 4024 4th St. NE which borders his property is in need of repair and that work would need to be done prior to the fence construction. He said he would also like to extend the parking lot down to the curb to get more parking and a better drop off zone. For the hours of outdoor operation of the daycare, he is in favor of an end time of 7:00 PM on weekdays and 4:00 PM on weekends, using city park hours as an example of why he feels this is appropriate.

Mayor Schmitt asked if Anthony Mayer was in attendance at the Planning Commission meeting where this was discussed. Mr. Mayer responded that he was unable to attend due to work, but his wife was there. Mayor Schmitt said she wanted to clarify that although our parks are open later, the City also enforces a noise ordinance. She noted that the Splash Pad closes at 7:00 PM, and that children at the park in the evening are often being supervised by a parent at a much smaller ratio than that of a daycare operation.

Suad Isse clarified the number of children in the different age classifications they are allowed to have at any one time. She asked if this amendment would be considered permanent, or if the end time would be changed to a later time once the fence has been constructed. Mayor Schmitt responded that the amendment would be permanent.

Councilmember Murzyn, Jr. commented that the needs of the residents must be considered too. He was under the impression that the daycare operation was okay with the CUP amendment at the Planning Commission meeting.

Suad Isse disputed that they were okay with the amendment. She said the Planning Commission made their judgment and recommendation without the acceptance of the daycare operation. If other daycares are allowed to have outdoor operations until 7:00 PM, they feel they should be allowed to as well.

Walt Fehst, City Manager, asked if the fence was supposed to be put in 1995 as part of the original CUP. Joe Hogeboom replied it was not. The fence described in the original CUP was not required to be a privacy fence or 6 ft. high. It simply enclosed the play area. Fehst asked if the property could be partially fenced now, and finished when the retaining wall was repaired. Anthony Mayer replied that he would not be able to hire a contractor to do the work that quickly.

Mayor Schmitt asked if any of this came up at the Planning Commission meeting. Joe Hogeboom responded that regarding neighbors taking pictures, he saw the police report and the reason photos were being taken was to prepare for the Planning Commission meeting. Although it was not a violation of law, the police officer asked them not to do that and they agreed. He also explained that 10:00 PM is the typical cutoff for nuisance level noise. Determination of nuisance noise is based on decibel level and is usually associated with construction noise, or lawn mowing equipment, for example. The Police Department did not have a report of a broken window. Hogeboom said that he acknowledges that it would be unusual to install a fence in February, but he believes the intention of the Planning Commission in setting that deadline was to ensure that it was constructed this fall. The parking lot does not need to be striped, as was discussed at the Planning Commission meeting.

Nicholas Dobbs stated that when he bought his house in 2000 the daycare was either not active or active only during the day. The current daycare moved in after he did. He doesn't feel that daycare staff is concerned about the residents that live nearby. He would like the CUP revisited for this daycare and any daycare centers that occupy the property in the future.

Mayor Schmitt asked about the retaining wall on his property. Dobbs said he would look at it, evaluate it, and work with it if that is what is needed to get the fence built.

Abdi Elmi, the owner of the daycare, is against the amendment because it is only during the summer months when the children are out later, due to the hot conditions earlier in the day. Even then he said they are not out as late as 7:45 or 8:00. They are good neighbors. They try to reduce the noise, but they can't keep the children in all the time. He asked the Council to be fair.

Joe Hogeboom stated that as the representative of the department which fielded the complaints, he has never heard comments that the daycare is a bad neighbor or a bad business, or even that the kids are bad, only concerns about the amount of time the children are allowed to spend outside when residents want to be enjoying their own yards.

Mayor Schmitt commented that the City does have the authority to set acceptable business hours. She suggested some options for the daycare: hiring additional help for chaperones and getting better air conditioning for their building.

Councilmember Buesgens called the question. *Motion by Councilmember Buesgens, seconded by Councilmember Novitsky to call the question. All Ayes, Motion Carried.*

Motion by Councilmember Murzyn, Jr., seconded by Councilmember Buesgens to close the public hearing. All Ayes, Motion Carried.

Motion by Councilmember Buesgens, seconded by Councilmember Novitsky to approve Resolution No. 2018-43, approving the Conditional Use Permit Amendment for the property located at 4025 University Ave. NE, subject to certain conditions of approval that have been found to be necessary to protect the public interest and ensure compliance with the provisions of the Zoning Ordinance. All Ayes, Motion Carried.

Hogeboom said that the Community Development department will mail copies of the new CUP to the property owner and business owner, as well as provide a copy to the Police Department. Zoning enforcement will make sure the fence is installed within the allowed timeframe.

9. ITEMS FOR CONSIDERATION

- A. Other Ordinances and Resolutions**
- B. Bid Considerations**
- C. New Business and Reports**

10. ADMINISTRATIVE REPORTS

Councilmember Buesgens reported that she attended the HeightsNext member picnic, the Bruce Nawrocki Park dedication, the HeightsNext Garden Tour, the HeightsNext Cleanup Committee meeting, the League of Cities Improving Local Economies Committee, the League of Cities Improving Fiscal Future Committee, the Traffic Commission meeting, and four National Night Out parties.

Councilmember Williams attended the Library Board meeting.

Councilmember Murzyn, Jr. attended National Night Out parties.

Councilmember Novitsky attended five National Night Out parties. He also thanked the Recreation Department for their great summer programs for kids. He said that the leaders are great and the kids went on numerous trips this summer. Cleanup Day is on October 13th this year and there will be a shredding truck available to residents from 9 AM – noon.

Mayor Schmitt attended National Night Out parties on August 7th, the Joint Law Enforcement Council (JLEC) held at the Columbia Heights Public Safety Building on July 25th, and the Multicultural Advisory Committee (MAC) meeting at the City of Peace Building in Nawrocki Park on July 31st.

City Manager Walt Fehst reported that he also attended several National Night Out parties. He reminded everyone to vote in the primary election on Tuesday, August 14th.

11. CITIZENS FORUM

Mike Novitsky expressed concern about a property maintenance issue at the former Rainbow Foods/Future Hy-Vee property. He was told that it would be checked on.

12. ADJOURNMENT

Motion by Councilmember Murzyn, Jr., seconded by Councilmember Buesgens to adjourn. All Ayes, Motion carried.

Meeting adjourned at 8:41 p.m.



Respectfully Submitted,
Nancy Becker, Council Secretary Pro Tem

Resolution 2018-43

A RESOLUTION APPROVING THE CONDITIONAL USE PERMIT AMENDMENT FOR THE DAYCARE LOCATED AT 4025 UNIVERSITY AVENUE NE.

WHEREAS, based on neighborhood complaints about excessive outdoor noise during evening hours, the Community Development Director is requesting an amendment to the Conditional Use Permit at the following site:

ADDRESS: 4025 University Avenue NE.

LEGAL DESCRIPTION: On file at City Hall.

THE FOLLOWING IS REQUESTED: An amendment to the Conditional Use Permit per Code Section 9.106 (P)(12)(c)(d), to restrict outdoor operations at the property located at 4025 University Ave NE to between 8:00 am and 7:00 pm.

WHEREAS, the Planning Commission held a public hearing as required by the City Zoning Code on August 8th, 2018;

WHEREAS, the City Council has considered the advice and recommendations of the Planning Commission regarding the effect of the proposed Conditional Use Permit upon the health, safety, and welfare of the community and its Comprehensive Plan, as well as any concerns related to compatibility of uses, traffic, property values, light, air, danger of fire, and risk to public safety in the surrounding areas;

NOW, THEREFORE, BE IT RESOLVED, in accordance with the foregoing, and all ordinances and regulations of the City of Columbia Heights, the City Council of the City of Columbia Heights adopts the amended Conditional Use Permit, including the added outdoor hours of operation condition:

CONDITIONS

1. A maximum of 56 children are allowed to be enrolled at the daycare.
2. Seventy five (75) square feet of outdoor, fenced in, play space per child is required to be maintained.
3. A fence of at least six (6) feet in height and at least 80% opacity shall be constructed around the north, south and east sides of the property. The fence shall be constructed and operable no later than February 15, 2019.

4. Outdoor hours of operation, including outdoor play time, shall be limited to between 8:00 AM to 6:00 PM Monday through Friday; and, 10:00 AM to 4:00 PM Saturday and Sunday.
5. At least seven (7) paved onsite parking spaces are required.
6. The daycare must maintain proper licensing with the State of Minnesota at all times.

All other applicable local, state and federal regulations must be followed at all times

Resolution 2018-48

A RESOLUTION ESTABLISHING THE FEE FOR A PLANNED UNIT DEVELOPMENT DISTRICT AND AMENDING THE 2018 COMMUNITY DEVELOPMENT FEE SCHEDULE

BE IT RESOLVED BY the City Council (the "Council") for the City of Columbia Heights, Minnesota (the "City") as follows:

WHEREAS, the City's Community Development Department supports Land Use Planning and Zoning functions of the City; and

WHEREAS, the certain fees are associated with various action items within the Community Development Department; and

WHEREAS, occasionally, fee pricing is evaluated and adjusted based on comparable area rates as well as staff time used for processing and evaluating requests; and

WHEREAS, the City adjusted Community Development fee pricing on September 11th, 2017; and

WHEREAS, since that time, the City has approved the land use application process known as a Planned Unit Development District; and

WHEREAS, the passage of this Resolution will establish a fee for the Planned Unit Development District application.

NOW THEREFORE BE IT RESOLVED, that the City Council authorizes the passage of Resolution No. 2018-48, amending the 2018 Community Development Fee Schedule.

Resolution 2018-51

Resolution of the City Council for the City of Columbia Heights approving the removal of provisional status for the property rental license held by 2015-3 IH2 BORROWER LP (Hereinafter "License Holder").

Whereas, License Holder is the legal owner of the real property located at 1030 Polk PL N.E., Columbia Heights, Minnesota.

Whereas, a notice of this resolution was provided to the license holder on August 02, 2018 via email notification to Michelle Fliss Tecson – Senior Regional Council for Invitation Homes.

Now, therefore, in accordance with the foregoing, and all ordinances and regulations of the City of Columbia

Heights, the City Council of the City of Columbia Heights makes the following:

FINDINGS OF FACT

1. On November 27th, 2017 a council hearing was held to review activity at the licensed location which included a high number of calls for service, lack of license holder oversight, and unwillingness on behalf of the license holder to work with the police department to resolve the issues.
2. On November 27th, 2017 the council ordered the license holder be granted an eight (8)-month provisional license with the following conditions:
 - a. Monthly meeting (more if needed) between CHPD (and CHFD if needed) and Invitation Homes to review calls and activity on property and other Invitation Homes properties in Columbia Heights
 - b. Provide lease and documentation of backgrounds of all prospective tenants for PD review during Provisional license.
 - c. Reduce calls for service to reflect average calls for service from previous years.
 - d. Crime Prevention through Environmental Design (CPTED) study to be conducted on the property and implement any reasonable recommendations.
 - e. Fulfill all requests to meet with CHPD and CHFD during provisional licensing period.
 - f. The property manager will attend quarterly landlord meetings during the 8 month period.
3. During the provisional period the license holder has fulfilled the above listed requirements to include providing lease documentation of prospective tenants, attending monthly meetings and reducing calls for service.
4. The License holder has met all requirements for both the CHPD and the CHFD.
5. The License holder has expressed a commitment to continue a positive working relationship with the Columbia Heights Police Department and comply with all requirements outlined in chapter 5A of the Columbia Heights City Code.

ORDER OF COUNCIL

1. The rental license belonging to the License Holder described herein and identified by license number F16291 is hereby removed from provisional status and restored to regular status.
2. The License Holder is approved to renew their rental license without restriction at the next scheduled renewal date, pursuant to completing the proper application and submitting the appropriate fees.

Resolution 2018-52

Resolution of the City Council for the City of Columbia Heights entering into an agreement with McGrath Consulting, Inc. to conduct a Public Safety Staffing Study.

WHEREAS, The City Council included \$60,000 in the 2018 budget to conduct a Public Safety Staffing Study for both the Police Department and Fire Department; and

WHEREAS, on May 18, 2018 the City released a request for proposals for the staffing study, and by the June 25, 2018 submittal due date had received eight proposals; and

WHEREAS, staff from City Police, Fire, and Administration reviewed the proposals and recommended the City Council contract with McGrath Consulting, Inc. to conduct the staffing study for a total cost of \$59,750.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF COLUMBIA HEIGHTS, MINNESOTA

1. That the City of Columbia Heights hereby enters into a contract with McGrath Consulting, Inc., attached as Exhibit A, to conduct a Public Safety Staffing Study for the Police and Fire Departments.
2. That the City Manager is hereby authorized to sign the contract with McGrath Consulting, Inc.

Ordinance No. 1650

BEING AN ORDINANCE AMENDING CITY CODE OF 2005 RELATING TO PUBLIC NUISANCE STRUCTURES

The City of Columbia Heights does ordain:

SECTION 1:

§ 8.204 Public Nuisances Affecting Peace and Safety.

City Code of 2005, is proposed to include the following addition and shall hereafter read as follows, to wit:

(T) Structures or other physical property damaged by natural disasters, fire, decay, civil unrest, vegetation, neglect or accident.

~~(U)~~ All other conditions or things which are likely to cause injury to the person or property of anyone.

This Ordinance shall be in full force and effect from and after 30 days after its passage.