Brainerd, MN
June 11, 2018

Pursuant to due call and notice thereof, the special council meeting of the Brainerd City Council was called to order at 7:30 P.M. by Council President Pritschet.

Upon roll call, the following members were noted as present: Johnson, Hilgart, Lambert, Stunek, Badeaux and Pritschet. Member Bevans was noted as absent. Mayor Menk was also noted as present.

Council President Pritschet opened the meeting with the Pledge of Allegiance to the Flag.

City Code Section 1200 – Liquor Ordinance Review

City Administrator Torstenson informed the council that City Attorney Langel is unable to attend the meeting tonight and sends his regrets. City Planner Ostgarden, Finance Director Hillman and City Administrator Torstenson will be leading the discussion and will refer all legal questions to City Attorney Langel for input.

City Planner Ostgarden indicated there are three topics for discussion: 1) Liquor Zones 2) Number of Liquor Licenses 3) Definition of a Restaurant. The Planning Department has gathered information on several other cities definition of a restaurant, which is included in the packet. Several cities follow state statutes while others have their own city ordinance. The current liquor zone map is provided as well as some options and ideas for reducing or enlarging the zone. City Planner Ostgarden explained the perimeters of the possible options for changing the zone and included a blank map for additional input and ideas from council.

Finance Director Hillman stated according to City Attorney Langel's memo, state law definition of a restaurant allows the city to determine the seating capacity in their ordinance. The current City Code states several requirements as the seating capacity must seat at least 75 persons, less than half the dining area is to be a bar and an off-street parking space is required for every three units of seating in the dining area.

City Administrator Torstenson indicated a chart has been provided showing the seating capacity within the dining areas of the businesses with on-sale liquor licenses. The Minnesota Department of Health Licensing Definitions have also been provided which show three categories of establishments for food, pools and lodging services. City Administrator Torstenson stated the establishments that are listed on the spreadsheet as a restaurant meet category three definition.

Council Member Pritschet asked if Sunday liquor on-sale licenses are held by the establishments that currently meet category three requirements. Finance Director Hillman confirmed all of the on-sale liquor license recipients have been issued a Sunday license.

Council Member Johnson indicated he is in favor of the restaurant definition that the City of Duluth uses as it is to the point and simple. He stated it seemed extreme to ask for a percentage of food sales and to have the business submit tax records for proof.

Council Member Badeaux and Council Member Stunek are in favor of following the state statute, as the seating requirement of 30 seats along with the Sunday requirement is reasonable and fit the needs of our city.

Mayor Menk offered to hear public input by anyone present.

Mr. Steven Zelinske, owner of Yesterday's Gone, 219 S. 9th Street asked if he recently installed a kitchen does the business need to be defined as a restaurant. He may want to serve food now but may not in the future. He indicated he would not want to lose the license if there is a limited amount available.

Council Member Johnson responded there should be the three definitions for licenses. The appropriate definition would be assigned when it is a new application and for renewal each year. In this case, Yesterday's Gone would be a Category Two.

Council Member Pritschet indicated discussion is needed regarding the grandfather clause that was put in place in 2001. Council Member Badeaux stated the clause should not be enforced going forward as without it, businesses would be easily trackable, and the application would be clear.

City Administrator Torstenson stated she discussed this topic with City Attorney Langel and he indicated if the definition of restaurants is determined, the City has six current licenses for bars. All of the other establishments are categorized as restaurants. The City was unaware that Yesterday's Gone would like the definition of their business to be a bar and not a restaurant. That would then put us over by one bar license, based on the current ordinance with the downtown zone having a maximum of six on-sale licenses.

Council Member Johnson stated that Yesterday's Gone has been doing the same business for 15 years and it is not an error on their part – this is simply a staff overissuing problem.

Mayor Menk questioned if the fee will be changed for each of the different categories. Council Member Johnson stated that is a future topic of discussion when and if the licenses are amended. Mayor Menk mentioned they could probably stay as a restaurant license and serve "bar food" rather than a full menu.

Council Member Johnson indicated that to be concerned about the six or seven number is not the point of this meeting. The current city code has requirements for a restaurant that no business meets right now.

Council Member Badeaux stated he suggests enlarging the downtown liquor zone and adding one more license to the number available.

Mayor Menk suggested changing the area of the liquor zone to exclude Yesterday's Gone from the zone which allows for the six-license requirement.

Mr. Ed Mattson, owner of The Last Turn Saloon, 214 S 8th Street stated the business owners would like to be involved in any decisions that are made. Mr. Mattson indicated the City does not need any more licenses and would not like to be categorized as a restaurant, bar or other. This would limit the possibilities that the business would have in the future and the decision that is made today will affect the decisions made by others tomorrow. Mr. Mattson

suggests eliminating the liquor zones completely, not having different categories of licenses and just follow the restaurant seating requirements per state statute.

Council Member Hilgart stated she agrees with Mr. Mattson and his suggestion of eliminating the liquor zone. The process of issuing future licenses should be based on the zoning district for the type of establishment as how it pertains to the rest of the City. The restaurant definition should be established by state statute. The City is bound to a total number of licenses that can be issued whether they serve food or not and that number cannot be exceeded. The zoning ordinances should be able to dictate very clearly where future establishments can be located.

Mayor Menk indicated if we do not make any changes, this would eliminate the possibility of any new business locating in Brainerd which is something we do not want to happen.

City Administrator Torstenson clarified that there must be a definition for a restaurant as part of the license because a restaurant does not count against the twelve available licenses. The City does not want to preclude additional establishments from locating in the City. Using the business category listing for an example, if the businesses' shown in white and yellow on the spreadsheet provided wanted to be classified as just a bar and not a restaurant, the City would not be able to allow any more bars in the entire city.

City Planner Ostgarden stated all sorts of scenarios can be discussed but there are three situations to keep in mind. 1) The hotel at the south end of 6th Street will be redeveloped and may possibly desire to add a bar in the future. 2) There are areas of land for sale along Highway 210 towards the airport that could be further developed into accommodations for travelers which may include a bar or eating establishment. 3) The River Front may be developed to include a bar.

Council Member Badeaux stated the intention of the liquor zone was to limit the number of bars located in the downtown area and feels there still should be a liquor zone defined.

Council Member Johnson suggested staff reach out to each establishment and ask whether they want to be classified as a bar or a restaurant. The classification is necessary to limit the number of liquor licenses issued and compensate for those that are restaurants that do not count against the limit.

Mr. Ed Mattson stated he understands there is a situation that needs to be resolved but do not punish the businesses that have been here for years just to help the ones that might be coming in the future. He stated his friend lost his license in Alexandria.

Council Member Pritschet indicated he is not comfortable with having the current definition of a restaurant and allowing establishments to define themselves. Their response could effectively eliminate any competition. He suggested if the establishment has a liquor license under a restaurant and they lose the restaurant part, insert verbiage in the grandfather clause to say they wouldn't automatically lose their liquor license.

Mayor Menk suggested to change the definition of restaurant and modify the liquor zone to exclude Yesterday's Gone.

Mr. Steven Zelinske stated when his business moved to the Moose building, he attended many city council meetings to obtain a variance to extend the zone. At that time the council told him the business could not be a bar outside the zone.

Council Member Badeaux explained the council is looking at options to possibly remove the other zones in the City. Currently, there are specific zones where bars can locate, and the downtown zone is one of them; outside of that area you cannot be exclusively a bar.

Mr. Ed Mattson questioned if changes are made in the future, if it is possible to get a document in writing that would protect the current establishments that are considered a restaurant. There is already a grandfather clause that council is possibly voiding; he suggested creating a new one.

City Administrator Torstenson suggested taking one item at a time and voting on each topic. The information will be sent to City Attorney Langel to draft the ordinance in the correct legal terms which will be brought back to City Council as an ordinance.

Council Member Badeaux proposes to have only one liquor zone in Brainerd as the downtown zone but to expand it to allow for growth in additional areas and spacing in between establishments.

MOVED AND SECONDED BY ALDERMEN HILGART AND JOHNSON, DULY CARRIED, TO ADOPT THE DEFINITION OF A RESTAURANT TO ALIGN WITH MINNESOTA SUNDAY ON-SALE STATUTE AND THE HOLDER OF THE ON-SALE LICENSE MUST HAVE FACILITIES FOR SERVING NOT LESS THAN 30 GUESTS AT ONE TIME AND MUST MAINTAIN A CATEGORY 3 FOOD LICENSE.

Council Member Johnson suggested to expand the downtown liquor zone and to create the remainder of the city into a separate liquor zone to allow the option of having a bar in other areas of town. The businesses currently downtown have spoken and indicated they do not want any more bars in that area. If we are to allow bars outside of that area we need to expand the zone in order to make certain there are no more in that area. Essentially creating a buffer zone which allows development to expand

City Planner Ostgarden asked council to look at what they want to accomplish and what is the goal.

Mayor Menk stated he believe the goal is to create a larger district to get less concentration in a certain area. Mayor Menk suggests a Conditional Use Permit for a bar application within the zone. City Planner Ostgarden asked what conditions could be put on a bar in order to approve or deny the CUP. He does not think the City Attorney would suggest a CUP be considered.

Mr. Steven Shepherd, owner of Shep's on 6th stated there are twelve establishments in the current downtown liquor zone and agreed that the number and zone should remain the same.

City Administrator Torstenson clarified in order to add a new establishment, that applicant would have to follow our city zoning codes and go through the process of the Planning Commission to be allowed in that area. The council is proposing to change the boundaries of

the liquor zone and by making it larger it could encompass more of the area that fits the category appropriate for a bar.

Mr. Rob Lewis, owner of 9th Street Social Club, 212 S. 9th Street stated he does not understand the changes in the number of licenses that are being proposed. The liquor zone as it stands works so why change it. Council Member Johnson stated it does not work as the City is currently over the limit.

Finance Director Hillman is concerned regarding a grandfather clause and who determines if the establishment is a bar or a restaurant.

MOVED AND SECONDED BY ALDERMEN JOHNSON AND LAMBERT TO ELIMINATE THE LIQUOR LICENSE ZONES, CREATE THREE CATEGORIES OF LIQUOR LICENSES IN THE CITY AS FOLLOWS: 1) BARS, PUBS, TAVERNS 2) RESTAURANTS 3) OTHER (CLUBS, BOWLING ALLEYS, HOTELS) AND THE CAP TO THE NUMBER OF CATEGORY ONE LICENSES TO BE DETERMINED.

Council Member Pritschet suggests obtaining fees for the different classes from the other cities. He also asked staff to research if there are any areas in the City that would be problematic if the liquor zones were eliminated and a bar desired to open in an allowed zone.

City Planner Ostgarden indicated that certain questions regarding bars with restaurants need to be referred to City Attorney Langel for clarification prior to any decision making.

Members Johnson, Hilgart, Lambert, Badeaux and Pritschet voted “aye”. Member Stunek voted “nay”. The Chair declared the motion carried.

Council Member Pritschet suggested discussion take place regarding the grandfather clause. Council Member Hilgart stated possibly sunset the existing clause and create a new one. The verbiage in the clause will have to define whether it follows the establishment or the licensee.

Adjourn

The Chair adjourned the meeting at 9:03 p.m.

Cassandra Torstenson
City Administrator