

MEMORANDUM

TO: Members of the Tonka Bay City Council and Lindy Crawford  
FROM: James G. Penberthy  
DATE: December 1, 2015  
RE: Tonka Bay Ordinance Section 330 (the ordinance).  
Signs and Outdoor Advertising

You have asked whether signs described in Section 330.04 Subd. 2. Holiday and Seasonal Decorations may be attached to utility poles.

You have also asked whether public funds may be expended for the installation of the above signs in the event they may be attached to utility poles.

FIRST ISSUE

May signs described in Section 330.04 Subd. 2. Holiday and Seasonal Decorations be attached to utility poles?

BACKGROUND

The relevant sections of the ordinance state:

**SECTION 330.**  
**SIGNS AND OUTDOOR ADVERTISING**  
(Amended June 3, 2010)

**330.01**        **INTENT AND PURPOSE**

Subd. 1.        This section is intended to provide for the orderly control of signs and outdoor advertising, to permit the use of signs and outdoor advertising necessary for adequate identification and direction in order to promote the health, safety and welfare of the citizens of Tonka Bay, and to provide for commercial advertising under appropriate conditions.

Subd. 2.        Contained in this ordinance (Amended June 3, 2010) are the requirements for signs and outdoor advertising which are allowed in various zone districts. These include details pertaining to size, shape, height, location, setbacks and construction of signs and other outdoor advertising.

**330.02**        **GENERAL REGULATIONS**

Subd. 1        No sign shall be erected, maintained, modified or continued unless it is in full compliance with the regulations for the zone district in which it is located and all applicable provisions and regulations of the Zoning Ordinance, Minnesota State Statutes and

Federal regulations.

Subd. 2. No sign shall be placed in the right-of-way of any public street or highway except (Amended June 3, 2010) traffic or other municipal signs, legal notices, railroad crossing signs, danger, and such temporary, emergency, or non- advertising signs.

Subd. 3 No sign shall be placed at any location where, by reason of the position, shape, or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device.

Subd. 4 No sign shall display the words "stop", "look", "drive-in", "brake", or "danger" or any other word, phrase, symbol or character in such manner as to interfere with, mislead, or confuse traffic.

Subd. 5 No sign shall be placed on public property other than signs placed by agencies or governments.

Subd. 6 No sign shall be placed on any private property without the consent of the owner of said property.

Subd. 7 No sign shall be placed, painted, attached, or in any manner affixed to trees, rocks, or similar natural surfaces, or attached to utility poles, bridges, towers, storage facilities, or similar public structures.

Subd. 8 No sign shall be placed on any utility pole except for utility identification or similar purpose.

Subd. 10 Sign Permits

- a. No signs, except for those not subject to permits listed below, shall be erected or modified without a permit approved by the Tonka Bay City Council.

**330.03 SIGNS OR ADVERTISING DEVICES NOT PERMITTED**

The following types of signs or advertising devices are expressly prohibited in all districts unless specifically permitted.

Subd. 4 Signs or advertising devices consisting of (Amended June 3, 2010) flashing, blinking, rotating or otherwise animated parts, (Amended June 3, 2010) Or any type of illumination or attraction devices that fluctuate in light intensity, except for holiday decorations, (Amended June 3, 2010) time and/or temperature devices.

**330.04 SIGNS OR ADVERTISING DEVICES NOT REQUIRING PERMITS**

Subd. 2. Holiday and Seasonal Decorations:

Signs in the nature of decoration, clearly incidental and customary and commonly associated with any national, local or religious holiday or season; provided that such signs shall be displayed for a period of not more that 60 consecutive days, not more than 60 days in any one year; and may be of any type, number, area, height, location, illumination or animation.

Subd. 6. Public Signs

Signs required or specifically authorized for public purposes, notice or posting by any law or statute. These signs may be of any type, number, area, and height above grade and location authorized by the law or statute under which the signs are erected.

**330.05            SIGNS PERMITTED IN ALL ZONE DISTRICTS**

The following signs requiring permits are permitted in all zone districts:

**330.06            SPECIFIC ZONE DISTRICT SIGN REGULATIONS**

- Subd. 1.            Residential Zone Districts
  - a.            The following signs are permitted in the R-1A, R-1B, R-2A, R-2B, R-3 and R-4 zone districts.
    - (1)        Signs not requiring a permit.
    - (2)        Signs requiring a permit which are permitted in all zone districts.
    - (3)        Signs requiring a permit which are clearly incidental, customary and commonly associated with a permitted use is the zone district and are located on the same lot as such permitted use.
  
- Subd. 2.            Commercial Zone Districts:
  - a.            The following signs are permitted in the C-1 and C-2 Zone Districts.
    - (1)        Signs not requiring a permit.
    - (2)        Signs requiring a permit in any zone district.
    - (3)        Signs requiring a permit which are clearly incidental, customary and commonly associated with a permitted use in the zone district and are located on the same lot as such permitted use.

**330.10            VARIANCES**

A sign permit applicant or permit holder may appeal an order or determination by making an application for a variance. Variance procedures shall be established in the Tonka Bay Zoning Ordinance.

**330.11            DEFINITIONS PERTAINING TO SIGNS AND OUTDOOR ADVERTISING**

SIGN: Any man-made object or device or part thereof, situated outdoors or indoors and which object or device or effect produced is primarily used to advertise, announce, identify, declare, demonstrate, display, instruct, or attract attention by any mean including words, letters, fixtures, colors, motion, illumination, sound, and projecting images.

SIGN PERMIT: A permit issued for the erection, construction, enlargement, alteration, repair, moving, improvement, removal, conversion, or demolition of any sign.

Minnesota Statutes Section 645.44 defines “Holiday” as follows:

645.44 WORDS AND PHRASES DEFINED.

Subdivision 1.Scope. The following words, terms, and phrases used in Minnesota Statutes or any legislative act shall have the meanings given them in this section, unless another

intention clearly appears.

Subd. 5.Holiday. "Holiday" includes New Year's Day, January 1; Martin Luther King's Birthday, the third Monday in January; Washington's and Lincoln's Birthday, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Christopher Columbus Day, the second Monday in October; Veterans Day, November 11;Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25; provided, when New Year's Day, January 1; or Independence Day, July 4; or Veterans Day, November 11; or Christmas Day, December 25; falls on Sunday, the following day shall be a holiday and, provided, when New Year's Day, January 1; or Independence Day, July 4; or Veterans Day, November 11; or Christmas Day, December 25; falls on Saturday, the preceding day shall be a holiday. No public business shall be transacted on any holiday, except in cases of necessity and except in cases of public business transacted by the legislature, nor shall any civil process be served thereon. However, for the executive branch of the state of Minnesota, "holiday" also includes the Friday after Thanksgiving but does not include Christopher Columbus Day. Other branches of state government and political subdivisions shall have the option of determining whether Christopher Columbus Day and the Friday after Thanksgiving shall be holidays. Where it is determined that Columbus Day or the Friday after Thanksgiving is not a holiday, public business may be conducted thereon.

#### DISCUSSION

The ordinance clearly states that signs in the nature of decoration, clearly incidental and customary and commonly associated with any national, local or religious holiday or season do not require a sign permit.

The ordinance clearly states that no sign can be placed in the right-of-way of any public street or highway except traffic or other municipal signs, legal notices, railroad crossing signs, danger, and such temporary, emergency, or non- advertising signs.

The ordinance clearly prohibits the placement, painting, attaching or in any manner affixing of signs to utility poles, again, clearly excepting only utility identification or a similar purpose.

Minnesota courts have instructed us to give words in a statute their ordinary meaning. See State v. Larivee, 2003, 656 N.W. 2d 226.

The Merriam Webster On Line Dictionary defines “no”, when used as an adjective, as “not any”.

Webster’s II New College Dictionary defines “no”, when used as an adjective as, “none”, “not any”, “not one”. “None” in turn is defined as “not one”, “not any”.

#### CONCLUSION

As written, the ordinance prohibits the placement, painting, attaching or in any manner affixing signs described in Section 330.04 Subd. 2. Holiday and Seasonal Decorations to utility poles and prohibits placement of signs in the right-of-way of any public street or highway except traffic or other municipal signs, legal notices, railroad crossing signs, danger, and temporary, emergency, or non-advertising signs.

#### CONSIDERATION OF POSSIBLE ACTIONS

The City Council may consider amending the ordinance to allow holiday and seasonal decorations on utility poles. “Special events” could also be considered for inclusion in such an amendment.

It is common to see lights and decorations on utility poles in cities, especially this time of year. Those lights and decorations are commonly restricted to those decorations that do not contain a commercial message. For example, the City of Maplewood sign ordinance contains a provision which allows: “Seasonal displays of holiday lights and decorations that do not contain a commercial message.”

#### SECOND ISSUE

May public funds be expended for the installation of the above signs in the event they may be attached to utility poles.

#### DISCUSSION

The City Council may expend public funds for a public purpose. Whether funds will be used for a “public purpose” will need to be reviewed on a case by case basis. Factors to consider will be whether the proposed activity promotes public health, safety, general welfare, security, prosperity and contentment for all of the City’s residents.

The City Council must also consider whether the expenditure will benefit the City as a whole, whether the activity is directly related to functions of government and whether the activity does not have as its primary objective the benefit of a private interest.