CITY OF TONKA BAY
ITEM NO. 9B

Memo

To: Honorable Mayor and City Council

From: Joe Kohlmann, City Administrator

Date: March 12, 2013

Re: 2013 Commercial Marina License Renewals

The City has received three applications for 2013 Commercial Marina licenses *(attached)*. All applications are for **renewal without change**. The applicants are listed below:

1) Lindbo Landing
2) Tonka Bay Marina
3) The Caribbean

Current fees for license renewal:

1) Base Fee: $150
2) Yearly Renewal: $120
3) # of units at $5 per unit

The regulation and licensing of commercial marina licenses is outlined in Section 520, "Regulation and Licensing of Commercial Boat Dock Businesses." On March 7, 2013, staff conducted a site inspection for each application. A visual inspection indicated there were no site modifications of concern. Also, the City has not received any formal complaints regarding commercial marinas in 2011 and 2012. Therefore, staff is recommending approval of these renewal applications for marina license. *Staff has attached the ordinance to provide the requirements for granting a license renewal.*

The following information is historical background on each marina.

LINDBO LANDING

Lindbo Landing changed ownership in 1990, and the request for a marina license was heard at the City Council on April 24, 1990. *Attached are the following*:

1. *Minutes of April 24, 1990 meeting where license was approved*

2. *City Administrator report dated April 20, 1990 with attachments*

The City Council approved the request conditioned on the marina meeting all the conditions set forth in Resolution 82-4 *(attached).*

TONKA BAY MARINA

Tonka Bay Marina took the City to court in 1984 and the resulting court action lists the requirements for their marina license. *Attached is a copy of the Stipulation for Settlement.*

CARIBBEAN

A public hearing was held on April 26, 1977 to consider approval of the marina license for the Caribbean. *Attached are the following*:

1. *Original application for license dated March 22, 1977*
2. *Copy of original survey*
3. *Minutes of April 26, 1977 meeting where license was approved*
4. *Minutes of April 13, 1993 when input was requested from surrounding property owners on all marina applications*

The City Council approved the request with the condition that a survey be provided. None of the attachments to the original application are in the Caribbean public file nor are they in the City Hall file vault.

Council Action Requested:

Motion to approve 2013 Commercial Marina Licenses renewals.

SECTION 520
REGULATION AND LICENSING OF COMMERCIAL BOAT DOCK BUSINESSES

520.01. DEFINITIONS

For the purposes of this section the following definitions shall apply:

Boat Slip. A space, structure, dock or other thing designed or used for the docking, mooring or storing of a boat temporarily or permanently in or on water, including mooring posts, buoys or other devices.

Business of Docking or Storing Boats. Renting or otherwise providing space, including boat buoys for docking, mooring or storing three or more boats belonging to persons other than the owner or renter of the property upon or from which said boats are docked or stored, or adjacent to which said boats are moored.

Commercial Boat Dock Business. Providing space for docking, mooring or storing boats for a fee or boats used in a trade or business, including, without limitation, providing rented space, boat buoys, space for keeping boats owned by the licensee and held for sale, display, rental, or otherwise used in connection with a boat or marina business, and space held for docking of boats during or pending repairs or maintenance of said boats.

Commercial Docks. Docks, mooring spaces, mooring posts, mooring buoys, or boat slips used in commercial boat dock business or by one in the business of docking or storing boats as defined herein, including all "Ls", mooring posts, or any other structures related to the main dock.

520.02. LICENSE REQUIRED

It shall be unlawful for any person or corporation to operate a commercial boat dock business or be engaged in the business of docking, mooring or storing boats in the City of Tonka Bay without first obtaining a license from the Council. The licenses for existing or new operations received under this ordinance for the first time shall be considered initial permits. Granting of a license pursuant to this ordinance will not confer a vested right to the applicant or licensed premises.

520.03 APPLICATION

The application for the license shall be made in writing to the City on such form as the City may from time to time promulgate, and shall include such information as may be required by the City, and shall contain among other things:

(a) The correct legal description of the premises.
(b) The name and address of the applicant and owner of the land.

(c) An overall site plan drawn accurately to scale showing the location and dimensions of all present and proposed buildings, lot lines, road entrances and exits, boat ramp, signs, off-street parking, gas tanks and docks. This plan shall be similar in detail to a preliminary plat.
(d) A detailed landscape plan for setback areas, showing proposed location and sizes of all trees, shrubbery and other foliage.
(e) Location and surface of contiguous access roads.
(f) Proposed hours of operation.
(g) Method of maintaining security on the premises.
(h) The names and addresses of all property owners within 350 feet of the business premises.

520.04 AGREEMENT REQUIRED

As a condition precedent to the granting of any license pursuant to this ordinance, the applicant shall enter into an agreement with the City which shall include provisions relating to all of the requirements of this ordinance, including, but not limited to: the required landscaping and planting for the landscape areas, location and surfacing of access roads, parking, storage, hours of operation, number of boat slips and boat buoys, length of dock, sanitary facilities, lighting and other requirements and performance standards that the Council deems necessary to protect the interests of the City and to promote public safety, health, welfare and enjoyment of the lake as a public recreational asset.

520.05. TIME OF APPLICATION

Application shall be made by March 1 of the year being applied for. The Council may issue licenses upon compliance with such conditions as it may find necessary in accordance with the terms of this section.

520.06. PUBLIC HEARING

Upon receipt of the initial application, the Council shall order a public hearing to be conducted by the Council. The Council shall examine the application with the purpose of protecting and preserving the health, safety and general welfare of the inhabitants of the City. The Council may order a public hearing on subsequent applications.

520.07. PERFORMANCE STANDARDS AND FACTORS TO BE CONSIDERED IN GRANTING OR DENYING LICENSES

As the use of Lake Minnetonka by Tonka Bay residents and others for boating, fishing, swimming, water skiing and other uses continues to increase each year, the Council is faced with increasing problems in licensing of commercial docks. The Council recognizes that the interests of lakeshore residents are to some extent in conflict with the interests of persons in the business of operating commercial docks, and the Council is mindful of complaints as to the extent and manner of commercial dock operations. The Council finds that, as lake use increases, licensing procedures and standards which have been adequate in the

past have become inadequate and the danger to the public health, safety and welfare has increased greatly. The Council finds that, as lake use increases, licensing procedures and standards which have been adequate in the past have become inadequate and the danger to the public health, safety and welfare has increased greatly. The Council finds that the following requirements and regulations are in the best interest of the City, promote public safety, health, welfare, and sanitation in the use of the lake, eliminate extreme congestion on the lake (which reduces the enjoyment of all), restrict excessive noise, pollution, and fumes, eliminate unsightly installations or accumulations visible either from the lake or from the shore, and eliminate road and parking congestion. The maximum number of boat slips and boat buoys that may be constructed shall be regulated for each licensee. In setting such maximum the Council shall have in mind the size of the bay on which the installation is located, the congestion of boat traffic on said bay, the intensity of public use of the bay from all other properties or accesses, the rights of other property owners to store boats on or adjacent to the same bay, the other licenses expected on said bay, the character of the property and adjacent properties, the proposed number of boat slips and boat buoys, and any other factors which it deems relevant. The number of boat slips and boat buoys allowed shall include any space used or intended to be used for the personal use of the licensee and his family or friends when located on or adjacent to the premises from which the license may be granted, the Council shall find that the following performance standards shall be met by the applicant's proposed plans:

Subd. 1 The proposed number of boat slips and boat buoys shall not adversely affect the public safety, health and welfare or infringe on the public right to use the water, or unreasonably restrict the rights of other property owners to store boats on or adjacent to the same bay.

Subd. 2 The proposed vehicular off-street parking facilities shall be sufficient to eliminate any traffic or parking congestion likely to be caused by the business of the licensee, and shall be in addition to any other parking required by other uses of the licensee. The minimum parking requirements shall be as follows:

(a) One parking space shall be provided for each two boat slips on water or on land shown on the plan.

(b) At least eight off-street parking spaces, plus one additional space for each 800 square feet of floor area over 1000 feet, including warehousing, and all outside sales and storage areas related to the sales and service functions. Parking spaces shall be 8.5 feet by 18 feet. Aisles shall be 24 feet wide.

(c) If the proposed use is to include the launching of boats owned by the public for the day from trailers, 20 additional auto-trailer parking spaces shall be provided for each ramp.

(d) The required parking spaces may not be separated by a public roadway from the dock, storage space, mooring space, floor space,

or ramp they are designed to serve, unless the property is contiguous to the public roadway and zoned for commercial use.

(e) Required off-street parking space may not be utilized for open storage of goods or for the storage of boats, except that from October 1 to May 1 each year, the required off-street parking may be used for winter storage of boats provided that adequate parking spaces remain as a functional parking area.

(f) Parking may not be allowed in any required yard or landscaping area.

Subd. 3 The minimum required setback yard areas shall be landscaped and planted with evergreen and deciduous shrubs and trees in accordance with a detailed landscape plan.

(a) Side yard landscaping shall be an area that is parallel to the side lot line and shall not be less than eight feet deep. Breaks in the landscaping area for access shall not exceed 50 feet.

(b) Front yard landscaping area shall be an area that is parallel to the street or opposite the lakeshore landscaping area and shall not be less than 10 feet deep. Breaks in the landscaping area for access to the public road shall not exceed an aggregate width of 50 feet for each licensed marina operation.

(c) A detailed landscape plan shall be submitted to the Council for review and approval. All landscaping shall be trimmed and maintained in a healthy growing condition.

Subd. 4 Suitable sanitary facilities shall be provided on the premises for men and women.

Subd. 5 Insofar as practicable, all means of access of the operation from any street shall be so located and designed as to avoid the routing of vehicles from the property over streets that primarily serve abutting residential areas.

Subd. 6 The lighting shall be shielded so that no direct glare can be seen from adjoining residences, from the lake or from the roadway.

Subd. 7 The hours for running engines or operating any boat engine for the purpose of charging batteries, running auxiliary equipment or testing shall be between the hours of 8:00 a.m. and 6:00 p.m.

Subd. 8 The maximum hours of operation for the marina business shall be 7:00 A.M. TO 10:00 P.M., for retail sales and service functions, except as necessary to support normal fishing activity or private use of the boats stored on the premises, unless other permission is specifically granted by the Council.

Subd. 9 Persons in charge shall at all times keep the docks, sea walls, and premises in a neat and orderly manner and free from trash, rubbish, repair parts, machinery, equipment and debris of all kinds.

Subd. 10 Persons in charge shall prohibit the dumping or throwing of garbage, paper, bottles, cans, refuse or debris into waterway. Persons in charge of mooring area shall provide garbage cans of sufficient size to hold garbage or refuse to be collected.

Subd. 11 No commercial docks or boat buoys shall extend further into the waters of any lake than is reasonable necessary to accommodate the docking and mooring of such craft as shall customarily and lawfully be used upon the lakes or so as to interfere with, obstruct, or tend to obstruct, or render dangerous for use or passage a body of water within the primary harbor limits of the City. The length of docks and location of buoys shall be regulated by the provisions of Subd. 13 of this ordinance. All such commercial docks and wharves shall be constructed and maintained of such materials and of such type of construction as will not render them unsafe or likely to endanger public enjoyment of the waters. Commercial docks shall be maintained in a neat orderly manner at all times.

Subd. 12 If outside off-season boat storage facilities are provided, the boats shall be stored in such manner that they do not create a fire hazard. Any outside structure for purpose of storage of boats may not exceed 15 feet in height. Dry boat storage areas may not be located in the required setback landscaping areas. Dry stacking is not allowed. Any gasoline offered for sale or stored on the premises shall be placed in tanks or containers as may be required by the Council, and such tanks or containers shall be stored underground or such distance from the storage facilities so as not to create a danger to the community. The premises shall at all times be maintained in a neat and orderly manner.

Subd. 13 Such other regulations pertaining to the operation of the licensee shall be met which promote the public health, safety and welfare. The Council shall be mindful of the past history of the conduct of the business by the licensee.

520.08. <u>INSPECTIONS</u>

The Council shall review all premises for license applications. At least once a year, the Council shall inspect all areas where a license has been issued. The Council or its agent may at any time inspect any commercial dock or wharf. If it appears that such dock or wharf has not been constructed or is not being maintained and operated in accordance with the application for license, the agreement executed by the City and applicant, or with the provisions of this Ordinance, then the licensee shall be informed of such violation in writing by the City Clerk and the Clerk shall further notify the licensee that he has ten days in

which to correct said violation. If said violation is not corrected within said time, the Council may revoke the license. Any person who shall violate any of the provisions of this section may enjoined from further operation and may be punished by a fine not to exceed $500.00 or be imprisoned for not to exceed ninety (90) days. Each day that a violation exists shall constitute a separate offense and be punishable as such. Notification under this Ordinance shall be made in writing to the licensee of the dock or wharf at the address given in the application. Failure to have a valid license in force shall be prima facie evidence of a violation of this Ordinance.

520.09. DURATION OF LICENSE

Licenses shall run from May 1 of the year for which a license is requested through April 30 of the following year.

520.10. RENEWAL OF LICENSE

Application for renewal of the license shall be made in writing not less than sixty (60) days before the expiration of the license. Application for renewal shall contain a statement of any changes in the information submitted in the last approved license application or renewal. Failure to submit such information shall be grounds for revocation or for not granting renewal of the license. If there are not changes, it shall be so stated in the renewal application. Renewals may be made only by the Council, provided the operation is in conformance with the provisions under which the license was granted.

520.11. FEE SCHEDULE

Fees shall be paid to the City under the fee schedule set out in Section 402.01 of this code. All Fees are intended to reimburse the City for expenses incurred in processing the initial application, annual renewals and in conducting the annual inspection. License fees shall not be pro-rated. The fee for each license shall be a base fee plus a fee for each water or land boat slip requested in the application as determined by the Council or its agents. In addition, the applicant shall receive and pay within thirty (30) days, an itemized bill for all additional reasonable expenses incurred which exceed the above fees by the City in processing the initial application, annual renewal and annual inspection. Said itemized bill shall include, but not be limited to, expenses for such items as legal, planning or engineering consulting services, other City officials or staff, mileage, materials, advertising for public hearings, and similar expenses. The Council shall have the right to amend the above.

520.12. VARIANCES

Where the City Council finds that hardships may result from strict compliance with these regulations or that unusual conditions exist, it may vary these regulations so that substantial justice may be done, and the public interest secured, provided that such variation will not have the effect of nullifying the intent and purpose of this Section. Variances may be granted to the provisions

of the Section in accordance with the provisions set forth in Section 7 of the Zoning Ordinance No. 15.

520.13. ADOPTION BY REFERENCE

The City hereby adopts by reference and makes a part of this Section, as if fully set forth herein, the following: Lake Minnetonka Conservation District Code Chapter III. The City expressly reserves the right to deny any variance to the provisions of the Code, even though the same variance was granted to the Lake Minnetonka Conservation District.

520.14. REFERENCE TO OTHER ORDINANCES

This Section is expressly conditioned upon the effectiveness of the Ordinances of the Lake Minnetonka Conservation District pertaining to marina regulations and if all or a portion of such Ordinances are declared invalid by a court of competent jurisdiction, no marina shall have a longer dock, more boat slips or more boat buoys than what was permitted by the terms of that Ordinance on the date it was declared invalid, or that what was last approved by the Lake Minnetonka Conservation District, whichever is less. The City expressly reserves the power to be more restrictive in its regulation than the Lake Minnetonka Conservation District Ordinances if the public health, safety and welfare of the citizens of Tonka Bay so requires.

520.15. VALIDITY

I any section, subsection, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

520.16. PENALTIES

Any person violating any provision of this ordinance shall be guilty of a misdemeanor.