



## CITY COUNCIL REGULAR MEETING AGENDA

July 11, 2023 – 7:00 pm

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. CONSENT AGENDA<sup>1</sup>
  - A. June 13, 2023 Regular Council Meeting Minutes
  - B. June 27, 2023 Regular Council Meeting Minutes
  - C. June 30, 2023 Emergency Council Meeting Minutes
  - D. Approve 2023 Lake Minnetonka Association Contribution for Gideon's Bay Treatment
5. MATTERS FROM THE FLOOR<sup>2</sup> (*maximum time of five minutes per person*)
6. SPECIAL BUSINESS
  - A. Presentation – Andrew Myers, MN House Representative
  - B. Presentation – Jenny Bodurka, Tour de Tonka
  - C. Presentation – Ryan Nellis, Tonka Bay LMCD Representative
7. PUBLIC HEARING
  - A. None
8. OLD BUSINESS
  - A. Resolution 23-28: Approval of Lot Size Variances for 385 & 395 Lakeview Avenue
  - B. Resolution 23-29: Approval of Simple Subdivision for 385 & 395 Lakeview Avenue
9. NEW BUSINESS
  - A. Cannabis Legislation Overview
  - B. Closed Meeting – Attorney Client Privilege Discussion
10. MATTERS FROM THE FLOOR<sup>2</sup> (*maximum time of five minutes per person*)
11. REPORTS
  - A. Administrator's Report
  - B. Contract Staff Report(s)
  - C. Doug Eckland: Finance, Fire Lanes and Public Access, Technology
  - D. Kristin Viger: Parks and Docks, Sanitation and Recycling
  - E. Kelly Wischmeier: Building Inspection, Municipal Buildings and Grounds
  - F. Tim Connelly: EFD, Commercial Marinas, LMCD
  - G. Adam Jennings: SLMPD, Administration, Public Works, Employee Advisory Board
12. ADJOURNMENT

All matters listed within the Consent Agenda are considered to be routine items to be enacted upon by one City Council motion. Items on the Consent Agenda are reviewed in total by the City Council and may be approved through one motion with no further discussion by the Council. Any item may be removed by any Council Member, staff member or person from the public for separate consideration.

<sup>2</sup>For individuals who wish to address the Council on subjects which are not a part of the meeting agenda. Typically, the Council will not take action on items presented at this time but will refer them to staff for review, action and/or recommendation for future Council action.

**DRAFT MINUTES  
TONKA BAY CITY COUNCIL  
JUNE 13, 2023**

**1. CALL TO ORDER**

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:03 pm.

**2. ROLL CALL**

Members present: Mayor Jennings, Councilmembers Connelly, Eckland, Viger and Wischmeier. Also present were City Administrator Dan Tolsma, City Engineer John Bradford, City Planner Lori Johnson and City Attorney Jason Hill.

**3. APPROVAL OF AGENDA**

**Connelly moved to approve the agenda. Eckland seconded the motion. Ayes: Connelly, Eckland, Wischmeier, Viger, Jennings. Motion carried.**

**4. CONSENT AGENDA**

- A. May 9, 2023 Work Session Meeting Minutes**
- B. May 9, 2023 Regular Council Meeting Minutes**
- C. April / May 2023 Financial Reports**

**Connelly moved to approve the consent agenda. Viger seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

**5. MATTERS FROM THE FLOOR**

None.

**6. SPECIAL BUSINESS**

None.

**7. PUBLIC HEARINGS**

**A. 24320 Smithtown Road Comp Plan Amendment, Rezoning, & Conditional Use Permit Public Hearing**

City Planner Johnson explained the continuance of the prior public hearing. The council discussed the various ways in which the public was made aware of the comprehensive plan amendment.

Mayor Jennings opened the public hearing.

Todd Simning of ADOR Homes at 350 Highway 7 in Excelsior addressed the council regarding the project and the expected timeline.

Megan Stadelman of 55 Lilah Lane in Tonka Bay addressed the council regarding traffic safety concerns.

Mayor Jennings closed the public hearing.

Councilmember Wischmeier inquired about what the functionality of the private road entails. City Planner Johnson explained the maintenance and upkeep of it is provided by the homeowner's association. Various other questions regarding the private road and driveway were discussed. Mayor Jennings relayed his thoughts on the changing comp plan and his approval of the project. Councilmember Wischmeier gave reasons for her support of the project. Councilmember Eckland is also in favor of the project moving forward. Councilmember Viger asked City Administrator Tolsma if he has looked at how utility use would be affected. He said he did not believe it would change very much. He also commented on how it would affect the property tax base. Councilmember Viger inquired about the park dedication fees. City Planner Johnson replied that it would be \$107,000. Councilmember Connelly stated that this was one of the hardest decisions he has had to make in his time as a councilmember. He is torn as he does not want to see the commercial property be given up; however, he does not want to stand in the way of the landowner from selling the property. Councilmember Viger said she is still very concerned about the traffic at the intersection. City Engineer Bradford said the proposed ninety-degree turn is much safer. He also stated that residential traffic is much less volume than commercial traffic.

**Wischmeier moved to approve the comprehensive plan amendment, which changes the land use from Mixed Use to Multi Family for 24320 Smithtown Road, based on rationale one through four in the staff memo. Eckland seconded the motion. Ayes: Connelly, Eckland, Wischmeier, Jennings. Nays: Viger. Motion carried.**

**Wischmeier moved to approve the rezoning, changing the zoning from C-2 to R-3 for 24320 Smithtown Road, based on rationale one through three in the staff memo. Eckland seconded the motion. Ayes: Connelly, Eckland, Wischmeier, Jennings. Nays: Viger. Motion carried.**

**Wischmeier moved to approve the conditional use permit for the Planned Unit Development consisting of four twin homes, the establishment of a homeowner's association, a private road and access changes, for 24320 Smithtown Road, based on conditions one through nineteen in the staff memo. Eckland seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

a. Resolution 23-22: Approving Comp Plan Amendment, Rezoning, Conditional Use Permit

**Wischmeier moved to approve Resolution 23-22, approving Comp Plan Amendment, Rezoning, Conditional Use Permit. Eckland seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

B. 24320 Smithtown Road Preliminary Plat Public Hearing

City Planner Johnson gave an overview of the preliminary plat request. She stated the proposed preliminary plat, to be known as Lake Park Villas, involves subdividing the 1.12-acre property in Tonka Bay into 4 twin home lots and one out lot. The out lot will include property in Tonka Bay and Shorewood, and it will be commonly owned and maintained by the homeowner's association. Staff recommends approval of the preliminary plat based on the conditions one through thirteen in the staff memo. She gave a timeline of the next steps in the process after approval.

Mayor Jennings opened the public hearing. Having no comments, he then closed the public hearing.

Mayor Jennings and Councilmember Viger both gave their support for the project.

**Viger moved to approve the preliminary plat to subdivide 1.12-acres into 4 twin home lots and one out lot to be known as Lake Park Villas. Connelly seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

**8. OLD BUSINESS**

A. 190 Sunrise Avenue Variance Request

City Planner Johnson gave a recap of the prior requested variances at the last meeting, changing the impervious surface coverage to 38% from 41.8% as previously requested by removing the boat parking area as impervious.

a. Resolution 23-23: Approving 190 Sunrise Avenue Variance Request

**Viger moved to Resolution 23-23, approving 190 Sunrise Avenue variance request. Connelly seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

B. 175 Lakeview Avenue Variance Request

- a. Resolution 23-24: Approving 175 Lakeview Avenue Variance Request

**Connelly moved to approve Resolution 23-24, approving 175 Lakeview Avenue variance request. Wischmeier seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

**9. NEW BUSINESS**

A. Public Works Collective Bargaining Agreement 2023 - 2025

City Administrator Tolsma gave an overview of the proposed labor agreement, pointing out the substantial changes from the prior agreement. The differences between the positions Maintenance I, Maintenance II and Lead were discussed, along with the two different CBA pay structure alternatives to choose from.

**Connelly moved to approve the Public Works Collective Bargaining Agreement 2023 – 2025, adopting the new CBA pay structure alternate number two. Wischmeier seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

**10. MATTERS FROM THE FLOOR**

None.

**11. REPORTS**

A. Administrator's Report

City Administrator Tolsma said Representative Andrew Myers has reached out to all of the cities, asking for capital requests due by June 16<sup>th</sup>. He said the capital improvement list is relatively the same as last year, with a few minor updates.

B. Contract Staff Report(s)

City Engineer Bradford gave an update on the Manitou water main project and the recent State Historical Preservation Office, HUD and tribal meeting.

C. Doug Eckland – Finance, Fire Lanes and Public Access, Technology

No report.

D. Kristin Viger – Parks and Docks, Sanitation and Recycling

Councilmember Viger said the next Parks and Docks Commission meeting is June 26, 2023.

E. Kelly Wischmeier – Building Inspection, Municipal Building and Grounds  
No report.

F. Tim Connelly – EFD, Commercial Marinas, LMCD  
Councilmember Connelly gave a briefing on the EFD's 2024 proposed budget.

G. Adam Jennings – SLMPD, Administration, Public Works, Employee Advisory Board  
Mayor Jennings stated that he received a call that the city has been awarded a \$45,000 grant from Hennepin County towards the Manitou Park project. He also said he has an upcoming meeting with the SLMPD for an initial budget conversation.

**12. ADJOURNMENT**

**There being no further business, Viger moved to adjourn the meeting at 9:15 pm. Connelly seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

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Adam Jennings, Mayor

Attest:

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Rachel Myskevitz, Deputy City Clerk

**DRAFT MINUTES  
TONKA BAY CITY COUNCIL  
JUNE 27, 2023**

**1. CALL TO ORDER**

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:00 pm.

**2. ROLL CALL**

Members present: Mayor Jennings, Councilmembers Connelly, Eckland, Viger and Wischmeier. Also present were City Administrator Dan Tolsma, City Engineer John Bradford, City Planner Lori Johnson and City Attorney Jason Hill.

**3. APPROVAL OF AGENDA**

**Connelly moved to approve the agenda. Viger seconded the motion.**

Under discussion, City Administrator Tolsma commented that they were not ready to approve Items 8A and 8B.

**Connelly moved amend the motion, removing items 8A and 8B. Wischmeier seconded the amended motion. Ayes: Connelly, Eckland, Wischmeier, Viger, Jennings. Motion carried.**

**4. CONSENT AGENDA**

**A. May 23, 2023 Regular Council Meeting Minutes**

**B. June 13, 2023 Work Session Meeting Minutes**

**Connelly moved to approve the consent agenda. Viger seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

**5. MATTERS FROM THE FLOOR**

Eric Lockovitch of 125 and 145 Brentwood Avenue spoke to the council regarding his dislike of the noise pollution from the First Student bus station. Mayor Jennings and City Administrator Tolsma said it would be a topic in an upcoming work session.

Kai Wilson of 15 Northrup Avenue spoke regarding his belief of 25 Northrup Avenue's fence violation. Mayor Jennings directed staff to put the discussion on the next work session agenda.

**6. SPECIAL BUSINESS**

None.

**7. PUBLIC HEARINGS**

**A. 385 / 395 Lakeview Avenue Lot Line Adjustment and Lot Area Minimum Variance Request**

City Planner Johnson gave an overview of the simple subdivision and variance request. She said the applicants are proposing to adjust the lot line between 385 and 395 Lakeview Avenue. She explained the goal of the applicants is to create a larger lot size for 385 Lakeview Avenue by moving the lot line 15 feet to the west. The result of the lot line adjustment would create a 75-foot-wide lot at 385 Lakeview Avenue and an 85-foot-wide lot for 395 Lakeview Avenue. With this lot line adjustment, both lots would meet the minimum required lot width in the R-1A zoning district of 75 feet. She said the applicants are proposing to demolish both buildings and rebuild. She said under the variance review all criteria have been met.

Mayor Jennings opened the public hearing.

Bob Breckner of 385 and 395 Lakeview Avenue spoke regarding his reasons for the requested proposal to adjust the lot line.

Mayor Jennings closed the public hearing.

Mayor Jennings spoke in favor of the proposal. Councilmembers Connelly and Eckland agreed.

**Viger moved to direct staff to prepare a resolution of approval for a simple subdivision/lot line adjustment for 385 and 395 Lakeview Avenue, based on the following conditions: 1. The owners/applicants must identify all easements around the lot line being adjusted and adjust/reestablish those easements as necessary. This might mean an easement vacation would need to be approved by the City. Staff will not sign the necessary paperwork needed for recording at Hennepin County until this issue has been addressed. 2. The owners/applicants are required to obtain a demolition permit prior to staff signing the necessary paperwork needed for recording at Hennepin County to ensure existing home setbacks are not affected by the lot line adjustment. 3. The simple subdivision/lot line adjustment must be recorded at Hennepin County. Connelly seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**



**Connelly moved to direct staff to prepare a resolution of approval for lot size variances caused by the simple subdivision of 385 and 395 Lakeview Avenue, based on conditions one through eight being met. Viger seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

**8. OLD BUSINESS**

~~A. Resolution 23-25: Award Manitou Road Watermain Project~~

~~B. WSB Professional Services Agreement – Manitou Road Watermain Project~~

Councilmember Eckland asked why the Items 8A and 8B were struck from the agenda. City Engineer Bradford and Mayor Jennings gave an explanation.

C. Resolution 23-26: Approval of Preliminary Plat for 24320 Smithtown Road

**Viger moved to Resolution 23-26, approval of Preliminary Plat to be known as Lake Park Villas at 24320 Smithtown Road PID: 3311723140040. Eckland seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

**9. NEW BUSINESS**

A. Approve 2024 LMCD Budget

City Administrator Tolsma gave an overview of the final 2024 LMCD budget.

**Connelly moved to approve the 2024 LMCD budget. Viger seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

**10. MATTERS FROM THE FLOOR**

Dennis Nelson of 135 Mound Avenue addressed the council regarding his attendance at the next LMCD meeting regarding his pending variance request with them. The details of the previously approved variance request were discussed by the council.

**11. REPORTS**

A. Administrator's Report

City Administrator Tolsma gave a recap of the Parks and Docks Commission meeting from the previous night. He gave an update on the recently approved grant of \$47,000 for a playground at Manitou Park from Hennepin County. He also gave an update on the tentative plans of a grand opening of the new dual-purpose field in Manitou Park for July 15<sup>th</sup>. Councilmember Eckland suggested publishing something regarding it in the Sun Sailor newspaper.

B. Contract Staff Report(s)

No reports.

C. Doug Eckland – Finance, Fire Lanes and Public Access, Technology

No report.

D. Kristin Viger – Parks and Docks, Sanitation and Recycling

No report.

E. Kelly Wischmeier – Building Inspection, Municipal Building and Grounds

No report.

F. Tim Connelly – EFD, Commercial Marinas, LMCD

No report.

G. Adam Jennings – SLMPD, Administration, Public Works, Employee Advisory Board

Mayor Jennings reported the SLMPD had a significant jump in the labor union contract. He said right now they are looking at a 6.3% increase in the budget. Future dates for the budget timeline were discussed.

**12. ADJOURNMENT**

**There being no further business, Connelly moved to adjourn the meeting at 8:05 pm. Eckland seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

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Adam Jennings, Mayor

Attest:

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Rachel Myskevitz, Deputy City Clerk

**DRAFT MINUTES  
TONKA BAY CITY COUNCIL  
JUNE 30, 2023**

**1. CALL TO ORDER**

The emergency meeting of the Tonka Bay City Council was called to order at 4:01 pm.

**2. ROLL CALL**

Members present: Mayor Jennings, Councilmembers Connelly, Eckland and Wischmeier. Also present were City Administrator Dan Tolsma and City Engineer John Bradford.

**3. AWARD CONSTRUCTION AGREEMENT - MANITOU ROAD WATERMAIN PROJECT**

**Connelly moved to award the contract for the Manitou Water Main Improvements to Geislinger & Sons in the amount of \$4,354,407.52 per Resolution 23-27. Eckland seconded the motion. Ayes: Connelly, Eckland, Wischmeier, Jennings. Motion carried.**

**4. WSB PROFESSIONAL SERVICES AGREEMENT - MANITOU ROAD WATERMAIN PROJECT**

**Connelly moved to enter into a professional services agreement with WSB to manage and oversee the Manitou Road water main project for an estimated project fee of \$414,296. Wischmeier seconded the motion. Ayes: Connelly, Eckland, Wischmeier, Jennings. Motion carried.**

**5. ADJOURNMENT**

**There being no further business, Connelly moved to adjourn the meeting at 4:10 pm. Eckland seconded the motion. Ayes: Connelly, Eckland, Viger, Wischmeier, Jennings. Motion carried.**

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Adam Jennings, Mayor

Attest:

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Rachel Myskevitz, Deputy City Clerk

# Gideons Bay - Spring 2023

## Eurasian Watermilfoil and Curlyleaf Pondweed Treatment

The Gideons Bay Treatment Program is done to prevent invasive weeds from interfering with recreation and to improve the overall health of our bay. The Treatment Program is a partnership between Gideons Bay homeowners and the Lake Minnetonka Association. Treatments are done by professional scientists and applicators. The Lake Minnetonka Association is a 501(c)(3) nonprofit organization, so all contributions are tax-deductible. 100% of your contribution is used for the Bay Treatment.

As the a Bay Captain, my job is to raise funding from the homeowners of Gideons Bay for the treatment of invasive weed species – Eurasian watermilfoil and curlyleaf pondweed. This helps ensure your use of the bay, without matted weeds interfering with your enjoyment during an all too short summer.

**Our Goal is: \$32,000 to pay for Treatments**

*We need your help to reach our goal! Please contribute what you can – every amount is appreciated!*

Your contributions have helped Gideons Bay become one of the premier bays with an “A” rating for water quality and sought after by lakeshore home buyers. The funding you have invested in our bay has created value.

Also, included is a map of Gideons Bay with the contributing homeowners in 2022 highlighted. For those of you supporting this important effort, please suggest to your neighbors that they should too.

**Thank you for your support,**  
Judd Brackett, Gideons Bay Resident and Volunteer Bay Captain  
for the Lake Minnetonka Association

*If you have questions, please contact:  
Judd Brackett at 612-310-1002,  
or [judd@LMAssociation.org](mailto:judd@LMAssociation.org)*

Enclose your contribution with this form and mail to: The Lake Minnetonka Association, P.O. Box 248, Excelsior, MN 55331

**YES, I would like to help by contributing to the Gideons Bay Treatment Program:**  
\_\_\_ \$100  
\_\_\_ \$250  
\_\_\_ \$500  
\_\_\_ \$ \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Check here if you would like Email updates of the Gideons Bay Treatments

**Please make checks payable to: Lake Minnetonka Association**  
\*on your check's memo line – please indicate “Gideons Bay LVMP”

Or: Scan this QR Code with your mobile phones camera, and it will go directly to the Gideons Bay Contribution Page.



SCAN ME

You may also contribute online at: [www.LMAssociation.org/bay-treatments](http://www.LMAssociation.org/bay-treatments)

**Contributions Are Tax-Deductible.** The Lake Minnetonka Association is a 501(c)(3) nonprofit corporation.



**LAKE**  
**MINNETONKA**  
ASSOCIATION

## INVOICE

May 1, 2023

**To:** City of Tonka Bay  
Attn: Dan Tolsma  
4901 Manitou Road  
Tonka Bay, MN 55331

**From:** Lake Minnetonka Association

**Invoice Number:** 050123-01-GI

Bay Treatments

2023 Gideon Bay

\$5,000.00

**Total:**

**\$5,000.00**

Please remit to:

Lake Minnetonka Association  
P.O. Box 248  
Excelsior, MN 55331

By: May 30, 2023

Thank you.



**RESOLUTION NO. 23-28**

**A RESOLUTION APPROVING  
VARIANCES AT 385 and 395 LAKEVIEW AVENUE  
PID: 2711723310004, 2711723310002**

**WHEREAS**, the City of Tonka Bay is a municipal corporation, organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, the City Council of the City of Tonka Bay (“City”) has adopted zoning regulations in the Tonka Bay City Code (“City Code”) to promote orderly development and utilization of land within the city; and

**WHEREAS**, Tonka Bay Investments and Robert and Elizabeth Breckner, Owners, applied for variances at 385 and 395 Lakeview Avenue which are legally described as follows; and

LEGAL DESCRIPTION WEST PARCEL (395 LAKEVIEW):

LOTS 55 AND 56 AND ALSO LOT 57, EXCEPT THE EASTERLY 20 FEET FRONT AND REAR THEREOF, IN MINNETONKA LAKE PARK, HENNEPIN COUNTY, MINNESOTA, ALSO EXCEPT THE NORTHEASTERLY 20 FEET OF EACH SAID LOT TAKEN FOR STREET PURPOSES, (RODEARMEL AVENUE), AND INCLUDING AS PART OF THE GRANT ALL PART OR PORTION OF ANY STREET OR ALLEY ADJACENT TO SAID PREMISES VACATED OR TO BE VACATED, WHICH INCLUDES THAT PART OF MINNEKANIN AVENUE VACATED, LYING BETWEEN THE WEST LINE OF THE EASTERLY 20 FEET OF LOT 57 AND THE WEST LINE OF LOT 55 BOTH EXTENDED TO THE LAKE SHORE.

LEGAL DESCRIPTION EAST PARCEL (385 LAKEVIEW):

That part of the East 20.00 feet of Lot 57 and that part of Lot 58 lying South of the South line of the North 20.00 feet of said Lots 57 and 58, and that part of Minekamin Avenue lying between the Southerly extensions of the East line of said Lot 58 and the West line of said East 20.00 feet of Lot 57, Minnetonka Lake Park, Hennepin County, Minnesota

**WHEREAS**, the Property is located within the R-1A zoning district and within the Shoreland Overlay District; and

**WHEREAS**, the Applicants are requesting the following and:

- A lot size variance to allow for a lot size of 13,562 square feet for 385 Lakeview Avenue.
- A lot size variance to allow for a lot size of 16,398 square feet for 395 Lakeview Avenue.

**WHEREAS**, Lori Johnson, City Planner, issued a report to City Council dated June 27, 2023, that analyzed the request against the Comprehensive Plan and City Code; and

**WHEREAS**, the City Council held a public hearing and considered the application on June 27, 2023 and in consideration of the above-described request, makes the following findings of fact:

1. The request is in harmony with the general purpose and intent of this Ordinance.
2. The variances are consistent with the comprehensive plan.

3. The variance will not impair an adequate supply of light and air to adjacent property.
4. The variance will not unreasonably increase the congestion in the public street.
5. The variance will not increase the danger of fire or endanger the public safety.
6. The variance will not unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of the zoning ordinance.
7. The constraints of the site are created by the physical barriers of Lakeview Ave and Lake Minnetonka. The lot area cannot meet the requirement due to the existing conditions and is not the fault of the applicant.
8. The requested variance will maintain the essential character of the locality and will bring the lot width of 385 Lakeview Avenue into conformance with the ordinance. There are many small lots within the city that are similar, or smaller than the proposed lot sizes. Denying a variance for smaller lot sizes would deny the owners/applicant of privileges given to other property owners in the same neighborhood.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Tonka Bay hereby approve the following requests as shown on the plans provided by the Applicant:

- A lot size variance to allow for a lot size of 13,562 square feet for 385 Lakeview Avenue.
- A lot size variance to allow for a lot size of 16,398 square feet for 395 Lakeview Avenue.

**PASSED AT A REGULAR MEETING** of the Tonka Bay City Council this 11<sup>th</sup> day of July 2023.

Roll call vote:

Councilmember Wischmeier	_____
Councilmember Eckland	_____
Councilmember Connelly	_____
Councilmember Viger	_____
Mayor Jennings	_____

\_\_\_\_\_  
Adam Jennings, Mayor

ATTEST:

\_\_\_\_\_  
Rachel Myskevitz, City Clerk

**RESOLUTION NO. 23-29**

**A RESOLUTION APPROVING  
A SIMPLE SUBDIVISION BETWEEN 385 AND 395 LAKEVIEW AVENUE  
PID: 2711723310004, 2711723310002**

**WHEREAS**, the City of Tonka Bay is a municipal corporation, organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, the City Council of the City of Tonka Bay (“City”) has adopted zoning regulations in the Tonka Bay City Code (“City Code”) to promote orderly development and utilization of land within the city; and

**WHEREAS**, Tonka Bay Investments and Robert and Elizabeth Breckner (Owners) applied for a simple subdivision (lot line adjustment) between 385 and 395 Lakeview Avenue which is legally described as follows; and

LEGAL DESCRIPTION WEST PARCEL (395 LAKEVIEW):

LOTS 55 AND 56 AND ALSO LOT 57, EXCEPT THE EASTERLY 20 FEET FRONT AND REAR THEREOF, IN MINNETONKA LAKE PARK, HENNEPIN COUNTY, MINNESOTA, ALSO EXCEPT THE NORTHEASTERLY 20 FEET OF EACH SAID LOT TAKEN FOR STREET PURPOSES, (RODEARMEL AVENUE), AND INCLUDING AS PART OF THE GRANT ALL PART OR PORTION OF ANY STREET OR ALLEY ADJACENT TO SAID PREMISES VACATED OR TO BE VACATED, WHICH INCLUDES THAT PART OF MINNEKANIN AVENUE VACATED, LYING BETWEEN THE WEST LINE OF THE EASTERLY 20 FEET OF LOT 57 AND THE WEST LINE OF LOT 55 BOTH EXTENDED TO THE LAKE SHORE.

LEGAL DESCRIPTION EAST PARCEL (385 LAKEVIEW):

That part of the East 20.00 feet of Lot 57 and that part of Lot 58 lying South of the South line of the North 20.00 feet of said Lots 57 and 58, and that part of Minekamin Avenue lying between the Southerly extensions of the East line of said Lot 58 and the West line of said East 20.00 feet of Lot 57, Minnetonka Lake Park, Hennepin County, Minnesota

**WHEREAS**, Lori Johnson, City Planner, issued a report to City Council dated June 27, 2023, that analyzed the request against the Comprehensive Plan and City Code; and

**WHEREAS**, the City Council held a public hearing and considered the application on June 27, 2023, and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Tonka Bay hereby approve the simple subdivision (lot line adjustment) between 385 and 395 Lakeview Avenue as shown on the plans provided by the Owners with the conditions listed below:

1. The owners/applicants must identify all easements around the lot line being adjusted and adjust/reestablish those easements as necessary. This might mean an easement vacation would need to be approved by the City. Staff will not sign the necessary paperwork needed for recording at Hennepin County until this issue has been addressed.
2. The owners/applicants are required to obtain a demolition permit prior to staff signing the necessary paperwork needed for recording at Hennepin County to ensure existing home setbacks are not affected by the lot line adjustment.
3. The simple subdivision/lot line adjustment must be recorded at Hennepin County.



PASSED AT A REGULAR MEETING of the Tonka Bay City Council this 11<sup>th</sup> day of July 2023.

Roll call vote:

Councilmember Wischmeier	Aye
Councilmember Eckland	Aye
Councilmember Connelly	Aye
Councilmember Viger	Aye
Mayor Jennings	Aye

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Adam Jennings, Mayor

ATTEST:

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Rachel Myskevitz, City Clerk



Jason Hill  
Fifth Street Towers  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402

(612) 337-92662 telephone  
(612) 337-9310 fax  
jhill@kennedy-graven.com

**MEMORANDUM**

**TO:** Dan Tolsma, City Administrator

**FROM:** Jason Hill, City Attorney

**DATE:** May 22, 2023

**RE:** Summary of Immediately Effective Changes to Minnesota Statutes, section 151.72 (2022 edibles)

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The purpose of this memorandum is to provide guidance on the impact of the cannabis legalization bill (the “Act”), to Minnesota Statutes, section 151.72, which is the 2022 legislation that resulted in the expanded sales of hemp-derived THC products in Minnesota.

Unlike the majority of the provisions of the Act, which are effective July 1, 2023, the sections amending Minnesota Statutes, section 151.72, are effective the day after the Governor signs the bill into law. The House and Senate passed the bill and the Governor is expected to sign the Act within days, which means that, depending on when the Act is presented to the Governor, the Act could be signed as early as today.

In addition to amending Minnesota Statutes, section 151.72, the Act also amends Minnesota Statutes, section 340A.412 to allow edible cannabinoid products to be sold at exclusive liquor stores the day after the bill is signed into law.

**Regulation for Sales**

The Act clarifies what types of products are considered under the two categories of product created in 2022: 1) Nonintoxicating Cannabinoids; 2) Edible Cannabinoid Products.

**A. Nonintoxicating Cannabinoids**

Previous guidance from the Board of Pharmacy provided that Nonintoxicating Cannabinoids could include a wide range of products that could be ingested by humans and animals in many ways. The Act limits nonintoxicating cannabinoid products to products that are meant for external application only, but which do not produce an intoxicating effect when consumed by any route of administration. The new language explicitly prohibits the sale of nonintoxicating nonedible

products meant for vaping or inhaling of smoke, chewing, drinking, swallowing, injection, or by application to the mucus membrane.

## **B. Edible Cannabinoid Products**

The definition of Edible Cannabinoid Products remains the same – a product that is intended to be eaten or consumed as a beverage by humans, contains a cannabinoids in combination with food ingredients, and is not a drug – but a number of minor changes in the Act impact the sale Edible Cannabinoid Products.

### **1. Likeness**

In addition to the previous requirements specific to edible cannabinoid products, such as the requirement that they not bear resemblance to a real or fictional person, animal, or fruit that appeals to children, be modeled after a brand of products primarily consumed or marketed to children, or be made by applying an extracted or concentrated hemp-derived cannabinoid to a commercially available candy or food snack item, they now also must not be substantially similar to a meat food product; poultry food product, or dairy product (the latter two have statutory definitions elsewhere in law).

### **2. Beverage Serving Size**

Edible Cannabinoid Products that are meant to be consumed as a beverage may contain no more than two servings (5mg per serving means a beverage may contain no more than 10 mg per package). The limits for Edible Cannabinoids that are not intended to be consumed as a beverage remain the same – 50 mg of any THC total per package and each serving must be differentiated by wrapping, scoring or other indicator, and must not contain more than 5 mg of any THC.

### **3. Type of THC Allowed**

The Act adds new definitions for “Artificially Derived Cannabinoid” and “Synthetically Derived Cannabinoids”. Artificially Derived Cannabinoids are cannabinoids derived from hemp that are changed after extraction and Synthetically Derived Cannabinoids are substances with a similar chemical structure and have a similar impact to a cannabinoid, but which are not extracted or derived from hemp plants or parts. The Act clarifies that an Edible Cannabinoid Product may contain delta-8 or delta-9 cannabinoids that is extracted or derived from the hemp plant or is an Artificially Derived Cannabinoid but Edible Cannabinoid Products cannot contain a Synthetically Derived Cannabinoid (not derived or extracted from hemp).

### **4. Display and Storage**

The Act requires that all Edible Cannabinoid Products available for retail sale must be displayed behind the checkout counter where the public is not permitted or in a locked case.

This display and storage requirement does not apply to Edible Cannabinoid Products meant to be consumed as beverages.

The Act adds additional and specific age verification requirements. Retailers must verify that a client is over the age of 21 before completing a sale. Proof of age can be established only via: passport, driver’s license, Tribal ID, state ID, or instructional permit. Retailers may seize IDs if they believe them to be falsified or used in violation of the law, but must deliver the same to law enforcement within 24 hours of seizure.

#### 5. Exclusive Liquor Store Sales Authorized

In addition to amending Minnesota Statutes, section 151.72, the Act amends Minnesota Statutes, section 340A.412 to specifically allow exclusive liquor stores to sell Edible Cannabinoids Products.

#### **C. On-Site Consumption – Edible Cannabinoid Products and Nonintoxicating Cannabinoids**

Products may be sold for on-site consumption if the retailer has an on-sale liquor license under Minnesota Statutes, section 340A. Additionally, products must be served in their original packaging and cannot be sold to patrons who a retailer knows or should reasonably know is intoxicated. Retailers cannot permit the products to be mixed with alcohol, and products that are removed from packaging must be consumed on-site. This change allows the on-site consumption of both nonintoxicating cannabinoid products and edible cannabinoid products, including both traditional edibles and products meant to be consumed as beverages. However, the likely exclusive use of this will be for Edible Cannabinoid Products.

#### **D. Regulations for Testing**

The Act adds a definition for “batch”. A batch is a specified amount of product that must meet certain manufacturing requirements, that is then submitted to the testing facility. Each batch must be tested and each label must identify the batch. The Act also requires additional testing and disclosure requirements.

Manufacturers must submit a sample of each batch of products for testing to an accredited, independent laboratory before July 2, 2023. The manufacturer must further disclose to the lab all known information regarding pesticides, fertilizers, solvents, and other foreign materials applied or added to the hemp during manufacturing. The commissioner of health is entitled to review test results at any time.

#### **E. Regulations for Registration**

The Act also transitions the state level enforcement of aspects of Minnesota Statutes, section 151.72 to the Minnesota Department of Health.

All individuals selling edible cannabinoid products must register with the Minnesota Department of Health on or before October 1, 2023. Selling without registration after that date is prohibited.

## **F. Penalties for Violations**

The new legislation makes violating or falsifying records to comply with Minnesota Statutes, section 151.72 a gross misdemeanor punishable by a \$3,000 fine, up to one year imprisonment, or both.

### **Termination of Minnesota Statutes, section 151.72**

Under the Act, Minnesota Statutes, section 151.72 will be automatically repealed on March 1, 2025. The Act also contains regulations for products defined as “Lower-Potency Hemp Edibles” which are defined almost exactly the same as Edible Cannabinoid Products, and it is unclear how the transition between Minnesota Statutes, section 151.72 and Edible Cannabinoid Products to Lower-Potency Hemp Edibles will occur between the date of enactment and March 1, 2025.

### **Conclusion**

The amendments to Minnesota Statutes, section 151.72 make clarifications to the types of products that may be sold as Edible Cannabinoid Products, increase testing and labeling requirements, and provides for additional criteria and requirements related to sales. In addition, changes to Minnesota Statutes, section 340A.412 allows Edible Cannabinoid Products to be sold in exclusive liquor stores.

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## MEMORANDUM

**TO:** Tonka Bay City Council  
Dan Tolsma, City Administrator

**FROM:** Jason M. Hill

**DATE:** July 6, 2023

**RE:** Regulation of THC Products Authorized Under Minnesota Statutes, Section 151.72

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This memorandum provides information on ways in which the City can regulate the hemp-derived, THC products legalized in 2022 in Minnesota Statutes, section 151.72 (the “Act”). I have also attached a copy of my memorandum dated May 22, 2023 with regard to immediate changes to the Act that were enacted with the recent cannabis legalization bill. As you will note in the attached memorandum, it is important to note that **the Act will automatically be repealed on March 1, 2025**, and therefore, any action taken by the City with regard to regulating THC products under the Act will no longer be effective as of March 1, 2025. Additionally, when retailers of THC products obtain licenses from the state for the sale of lower-potency hemp edibles, which are virtually the same, the regulations may also no longer apply. However, we will need additional guidance from the State before making that determination.

As will be summarized below, the City generally has the following options upon the termination of the existing THC product moratorium:

- Outright prohibition;
- Regulation through licensing of retailers; and
- Regulation through zoning.

### **Interim Ordinance and Moratorium**

The City Council adopted an interim ordinance and moratorium with regard to the sale of THC products on September 13, 2022, which expires on September 13, 2023.

## **Local Regulation**

As was the case in 2022, the recent updates to the Act neither explicitly allow nor explicitly prohibit local regulation of the sale of THC products. Therefore, to determine whether a municipality can regulate the sale of THC products, the municipality must have the authority to regulate the sale of THC products and must not be preempted by state law.

A municipality can rely upon its general police and general welfare power to regulate the sale of THC products. The two most applicable avenues through which the municipality can regulate the sale of THC Products is through its licensing or zoning authority.

A. The Act does not expressly preempt local regulation.

The Act does not expressly require a city to allow the sale of THC Products, nor does it restrict a city's ability to regulate such facilities through additional zoning or licensing requirements. Nevertheless, a city cannot enact a local regulation if it conflicts with state law or if the state law fully occupies a particular field of legislation so that there is no room for local regulation.

Any local regulations must not create an irreconcilable conflict with state law, but instead must be merely additional and complementary or in aid and furtherance of the Act. Also, local regulations must not exceed a city's lawful licensing or zoning powers.

Two recent Minnesota Supreme Court cases indicate a deference for local ordinances that provide greater protections than state statutes. Additional licensing and zoning requirements adopted for the purpose of protecting the general welfare and ensuring the sale of THC products are being conducted in accordance with the Act, including that THC products are not being sold to individuals under the age of 21, for example, would be considered greater protections than those included in the Act.

B. Licensing

A city may license a business or activity, either (1) when expressly allowed to do so by state statute; or (2) when implied by statute, such as when a license is necessary for a city to perform its general statutory powers (like preventing public nuisance or protecting the general welfare).

Since there is no express authority for a city to license a business selling THC products, the City must look to an implied authority. The authority granted under the "general welfare" clause allows a city to provide "for the suppression of vice and immorality, the prevention of crime, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of residence, trade, and commerce, and the promotion of health, safety, order, convenience, and the general welfare by such ordinances not inconsistent with the Constitution and laws of the United States or of this state as it shall deem expedient."

While amendments to the Act in 2023 provide additional regulatory structure, consumer protection, and general control of the sale of THC products, the City very clearly has an interest in ensuring that THC products are being sold in the manner provided for in the Act.

A licensing ordinance must be reasonable in its terms and conditions and cannot place unnecessary, unreasonable, or oppressive restrictions that conflict with the state or federal constitution. A licensing ordinance could include application requirements such as:

- terms;
- qualifications;
- bond and insurance requirements;
- hours of operation;
- reasons for denial, including no criminal conviction or license revocations related to controlled substances;
- revocation and suspension of license;
- transferability; license fees;
- limiting the number of licenses;
- requiring licensees to ID purchasers;
- requiring THC products to be sold from behind a counter; and
- identify how the City will conduct compliance checks.

### C. Zoning

Zoning controls generally relate to uses of property and not the sale of individual products, so using the City’s zoning authority alone may not be an effective way to regulate the sale of THC products. However, cities have used a combination of zoning and licensing provisions to regulate the sale of THC products.

#### 1. Outright prohibition

The City could probably prohibit the sale of THC products if it establishes an appropriate use and has legitimate planning and zoning grounds for the ban. There is no “right” to sell THC products and cities have broad discretion in establishing zoning requirements. An outright ban would likely need to be combined with other general business regulations (e.g., licensing) since the sale of THC products is currently not a primary use of land but can be sold at any retail store.

#### 2. Expressly authorize THC product sales

The City could expressly authorize THC Product sales at dedicated locations, establish the sale of THC products as a dedicated permitted or conditional use, and consider imposing additional regulations on those operations that it does authorize.

If the City chooses to authorize some uses, it should make clear that unauthorized uses are not permitted.

Some examples of additional regulations might include:

- restricting such uses to certain zoning districts;
- capping the total number of THC-related land uses within the City or within certain zoning districts;



- requiring that THC-related facilities not produce noxious odors;
- requiring a minimum distance from certain land uses in addition to schools, such as child-care facilities; places of worship and other religious institutions; health care practitioners and chemical dependency, alcohol and drug treatment facilities;
- requiring a minimum distance between other THC-related uses; and
- additional restrictions on signage and advertising.

Instead of including these traditional zoning provisions in the zoning code, the City could consider including similar provisions as part of a licensing regulatory scheme (e.g., only issue a license to an THC product business that is located within particular zoning districts). This approach would be more appropriate if the City chooses not to require THC product sales at dedicated business locations.

Additionally, when considering zoning regulations for THC products, the City can also consider adopting similar regulations for similar products once they are licensed by the State as “lower-potency hemp edibles”. This would result in the City treating businesses selling similar products in a similar manner and doing so at the same time to help ensure the City has zoning regulations in place prior to the state issuing licenses.

JMH