



CITY COUNCIL REGULAR MEETING AGENDA

SEPTEMBER 13, 2022 – 7:00 pm

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. CONSENT AGENDA¹
 - A. City Council Work Session Minutes from July 26, 2022
 - B. City Council Regular Meeting Minutes from August 23, 2022
5. MATTERS FROM THE FLOOR² (*maximum time of five minutes per person*)
6. SPECIAL BUSINESS
 - A. None
7. PUBLIC HEARING
 - A. None
8. OLD BUSINESS
 - A. None
9. NEW BUSINESS
 - A. Ordinance 22-03: Authorizing a Study and Imposing a Moratorium on the Sale of Cannabis Products
10. MATTERS FROM THE FLOOR² (*maximum time of five minutes per person*)
11. REPORTS
 - A. Administrator's Report
 - B. Contract Staff Report(s)
 - C. Jeff Anderson: 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.

²For 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.

ITEM NO. 4A

DRAFT MINUTES TONKA BAY CITY COUNCIL WORK SESSION JULY 26, 2022

1. **CALL TO ORDER**

The work session was called to order at 5:08 pm.

2. **ROLL CALL**

Members present: Mayor Jennings and Councilmember Connelly, Viger and Wischmeier. Also present were City Administrator Tolsma and City Engineer Gadbois.

3. **DISCUSSION TOPICS**

Infrastructure Report and Discussion

City Engineer Gadbois spoke about the draft infrastructure report and how it was prepared. The report talks through the surface improvements, existing conditions and the overall rating of the streets from a windshield drive through in 2020. The next step is more of a walk through, with a more detailed rating using a software called Paver. A few of the common pavement improvement types that the city may consider are seal coating, mill and overlay, reclamation or reconstruction. Once the streets have been reconstructed, there is a maintenance schedule to serve as a guide. The costs associated in the report are in three priority areas throughout the city. Mayor Jennings said when looking at the funding for it, we possibly have to change our rates, special assessments charged to property owners in the areas and increasing the levy, which can be looked at in two ways, a flat-out general levy increase or use reserves or bond or do a combination of the two. Different methods and ways of assessing properties were discussed. City Engineer Gadbois suggested rather than rehashing the assessment discussion year after year, it might be worth hiring a special benefit appraiser to do an analysis and that could be a document to reference and update for future projects that require assessments. City Administrator Tolsma stated in Spring Park, they are doing away with special assessments because in a small city, each street eventually needs to be redone and rather than face conflicts with individual property owners, it is better to assess the entire city through bonding or raising the levy so everyone is paying proportionally. Mayor Jennings suggested taking assessments off the table and do a combination of raising the general levy and bonding by using reserves. Curb and gutter improvements and possibly adding sidewalks was also discussed.

First Draft 2023 Budget and CIP Discussion

City Administrator Tolsma gave a simple snapshot of the general budget.

Schedule For Upcoming Budget / CIP Meetings

First draft budget is due to the state at the beginning of September. The certified levy is due by the end of September.

Miscellaneous

- a. North Manitou Fire Lane Signage Request
Not discussed.

4. ADJOURNMENT

There being no further business, Council moved on to the City Council meeting.

Adam Jennings, Mayor

Attest:

Rachel Myskevitz, City Clerk

ITEM NO. 4B

DRAFT MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING AUGUST 23, 2022

1. **CALL TO ORDER**

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:05 pm.

2. **ROLL CALL**

Members present: Mayor Jennings, Councilmembers Anderson, Connelly, Viger and Wischmeier. Also present were City Administrator Dan Tolsma, City Engineer Adam Gadbois, City Planner Brandy Howe and City Attorney Jason Hill.

3. **APPROVAL OF AGENDA**

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

4. **CONSENT AGENDA**

- A. Minutes of the Regular City Council Meeting from July 26, 2022**
- B. City Council Regular Meeting Minutes from August 16, 2022**
- C. Financial Report**
- D. Claims for Payment**

Anderson moved to approve the consent agenda, with correction under Item B, removing Interim in the roll call and pulling Items C and D. Connelly seconded the motion. Ayes: Anderson, Connelly, Viger, Wischmeier, Jennings. Motion carried.

Councilmember Viger asked for clarification on some of the park's expenditures. City Administrator Tolsma said he would go over the bigger expense items with City Treasurer Spoerner to make sure they are categorized correctly and send a summary to the council. Councilmember Viger also asked about the check in the amount of \$10,884.75 to WSB on June 2, 2022, referencing 2021 Dec 350 West Point Road. City Administrator Tolsma said he would investigate that also. Councilmember Viger had questions on the account payable verified accounts for expenses related to parks that City Administrator Tolsma said he would verify also.

Anderson moved to approve the consent agenda, with Items C and D. Connelly seconded the motion. Ayes: Anderson, Connelly, Viger, Wischmeier,

Jennings. Motion carried.

5. MATTERS FROM THE FLOOR

None.

6. SPECIAL BUSINESS

None.

7. PUBLIC HEARINGS

None.

8. OLD BUSINESS

A. Resolution 22-32: Approving Setback Variances at 436 Lakeview Avenue

Anderson moved to approve Resolution 22-32, Approving Setback Variances at 436 Lakeview Avenue. Viger seconded the motion. Ayes: Anderson, Connelly, Viger, Wischmeier, Jennings. Motion carried.

B. Resolution 22-33: Approving Supplement Agreement with WSB for 2023 Street and Utility Improvements

Anderson moved to approve Resolution 22-33, Approving Supplement Agreement with WSB for 2023 Street and Utility Improvements. Connelly seconded the motion. Ayes: Anderson, Connelly, Viger, Wischmeier, Jennings. Motion carried.

9. NEW BUSINESS

A. Receive Manitou Road Watermain Project Feasibility Report

City Engineer Gadbois gave an overview of the feasibility report for the Manitou Road watermain improvement project. The Feasibility Report includes a detailed Opinion of Probable Cost (OPC) for the project. This OPC is based on the estimated unit prices for the anticipated construction pay items. Prices are based off historical bid pricing provided by contractors for similarly scoped projects. The OPC for the project is approximately \$3.796 million. This cost includes a ten percent construction contingency and eighteen percent indirect costs such as engineering, administrative and legal. The project is proposed to be funded primarily through the Omnibus Appropriations Funding Package, which provides funding for economic development, infrastructure, and public safety projects. The City requested a total of \$3,035,800, of which \$3,000,000 is to be funded by the package. The remaining project costs will be funded by the City's Water Fund. The requested amount was based on a cost estimate completed in the Fall of 2020. Since that time, many factors have led to

increased construction costs, including availability of material and labor, and inflation.

Mayor Jennings asked if it would save money if we waited on the project due to supply chain issues. City Engineer Gadbois replied that you bring the project all the way to bidding as the contract is going to tell you what the cost will be. If you do not like what you see, you shelf the project and re-bid it again based on the feedback. Mayor Jennings stated that \$1.5 million has already been set aside to cover the principal and interest on the bond for the Brentwood improvement project so that would be essentially half, it just depends on how we want to use it.

Councilmember Viger stated she would rather delay the Brentwood project because the watermain needs to get done. Councilmember Connelly agreed to City Engineer Gadbois' point to put it out there for bids and see what comes back. Mayor Jennings asked if there is an opportunity to bond for both projects at the same time. City Administrator Tolsma said you would reach out to a bond council company to see what the options are. Mayor Jennings asked the turn around time and City Administrator Tolsma responded usually within a week.

Councilmember Viger asked about the temporary waterline in the feasibility report and it that was every household in the city. City Engineer Gadbois responded it is only certain phases along the corridor that will require above ground temporary water.

Anderson moved to approve the receipt of the feasibility report for the Manitou Road watermain improvements. Viger seconded the motion. Ayes: Anderson, Connelly, Viger, Wischmeier, Jennings. Motion carried.

City Engineer Gadbois asked for clarification on the Brentwood project and the authorization to start design on the project or is there a need to wait until council figures out the budget. Mayor Jennings stated we want to come up with a plan to improve our roads so we can go ahead with the design and plan but do not have to necessarily go forward with the project. Councilmember Viger asked if we already have the money for it once we get the bill. City Administrator Tolsma said the short answer is we do have it.

10. MATTERS FROM THE FLOOR

None.

11. REPORTS

A. Administrator's Report

City Administrator Tolsma gave a handout giving perspective on the tax levy discussion. He said it would be helpful to zoom out and look at the countywide to see

where we sit with our levy in comparison to other cities. Tonka Bay's tax rate compared to almost every other city in the county is significantly lower. The county average is forty percent while Tonka Bay is at fifteen percent. The second handout shows Tonka Bay's tax rate history and the possible future rate when raising the levy with different percentages.

B. Contract Staff Report(s)

City Engineer Gadbois gave an update on the Manitou Park ballfield. The backstop, fences and irrigation restoration will be starting next week.

City Attorney Hill addressed the new cannabis law and what the city would like to do, such as a possible THC moratorium or even quickly adopting a licensing policy. Councilmember Wischmeier said council should put a moratorium on it, so they have time to formalize a policy. Jennings agreed that it would put them in a position to come up with a plan.

C. Jeff Anderson – Finance, Fire Lanes and Public Access, Technology

No report.

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

Councilmember Viger updated council on the Parks and Docks Commission meeting from the previous evening. They discussed possible funding options for the Manitou Park project and the possibility of adding railings to the municipal docks along the newly expanded part where it is very narrow.

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

No Report.

12. ADJOURNMENT

There being no further business, Anderson moved to adjourn the meeting at 8:18 pm. seconded the motion. Ayes: Anderson, Connelly, Viger, Wischmeier, Jennings. Motion carried.

Adam Jennings, Mayor

Attest:

Rachel Myskevitz, Deputy City Clerk

CITY OF TONKA BAY, MINNESOTA

ORDINANCE NO. 22-03

AN INTERIM ORDINANCE AUTHORIZING A STUDY AND
IMPOSING A MORATORIUM ON THE SALE OF CANNABIS PRODUCTS

The City Council of the City of Tonka Bay does ordain as follows:

SECTION 1. Legislative Findings

- (a) There is a great deal of uncertainty regarding the effect of Minnesota Laws 2022, Chapter 98 amending Minnesota Statutes, section 151.72 (“Act”) to allow the sale of edible cannabinoid products (“Cannabis Products”).
- (b) Because the proposal to allow the sale of Cannabis Products received little publicity until the Act went into effect on July 1, 2022, the City of Tonka Bay (“City”) did not have an opportunity to study and consider the potential impacts of the Act on the City. Nor did the City Council have sufficient time to engage in policy discussions regarding the regulations the City Council may elect to impose on the sale of Cannabis Products.
- (c) The Act authorizes the Minnesota Board of Pharmacy to enforce the Act, but the Act does not provide for any licensing of manufacturers or of those who sell Cannabis Products. The Act is also silent regarding the enactment of local regulations related to Cannabis Products.
- (d) The Legislature did not expressly prohibit or limit local regulations, and the regulations established in the Act clearly do not constitute the Legislature having occupied the field of regulation regarding the sale of Cannabis Products.
- (e) The City Council finds the uncertainties associated with sale of Cannabis Products, and the options for local regulation, compels the need for a study to develop information the City Council can rely on as it engages in policy discussions related to potential regulation of Cannabis Products through the adoption of licensing and zoning controls.
- (f) The City Council is authorized to adopt an interim ordinance “to regulate, restrict, or prohibit any use . . . within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.” Minnesota Statutes, section 462.355, subdivision 4(a).
- (g) The City Council is also authorized as part of its general police powers to adopt business licensing requirements related to the sale of Cannabis Products.

- (h) The Minnesota Supreme Court in *Almquist v. Town of Marshan*, 245 N.W.2d 819 (Minn. 1976) upheld the enactment of a moratorium despite the lack of express statutory authority as being a power inherent in a broad legislative grant of power to municipalities. In most cases, the enactment of business licensing requirements is based on a city’s police powers, which is the broadest grant of power to cities. Inherent in that broad grant of authority is the power to temporarily place a moratorium on a business activity to study and potentially implement licensing regulations on that business activity.
- (i) There are both business licensing and zoning issues associated with the sale of Cannabis Products the City Council determines it needs time to study to consider the development and adoption of appropriate local regulations. In order to protect the planning process and the health, safety, and welfare of the residents while the City conducts its study and the City Council engages in policy discussions regarding possible regulations, the City Council determines it is in the best interests of the City to impose a temporary moratorium on the sale of Cannabis Products.

SECTION 2. Definitions. For the purposes of this Ordinance, the following words, terms, and phrases shall have the meanings given them in this Article.

- (a) “Act” means 2022 Minnesota Session Laws, Chapter 98 (H.F. No. 4065), amending Minnesota Statutes, section 151.72.
- (b) “Cannabis Products” means Edible Cannabinoid Product regulated by the Act, effective July 1, 2022. This term excludes products that are not intended to be eaten or consumed by humans or that contain less than 0.1 percent of any tetrahydrocannabinol.
- (c) “City” means the City of Tonka Bay.
- (d) “City Code” means the Tonka Bay City Code.
- (e) “Edible Cannabinoid Product” has the same meaning given the term in Minnesota Statutes, section 151.72, subdivision 1(c).

SECTION 3. Study. City staff shall conduct a study regarding Cannabis Products and provide the City Council a report on the potential regulations of such products. The report shall include the City staff’s recommendations on whether the City Council should adopt regulations and, if so, the recommended types of regulations. The study shall consider, but is not limited to, the following:

- (a) The potential impacts of the sale of Cannabis Products within the City;
- (b) Licensing the sale of Cannabis Products and related regulations; and

- (c) Zoning regulations related to the sale, manufacture, and distribution of Cannabis Products as uses within the City.

SECTION 4. Moratorium. A moratorium is hereby imposed to prohibit any business, person, or entity from offering for sale or selling Cannabis Products to the public within the jurisdictional boundaries of the City. The City shall not accept, process, or act on any application, site plan, building permit, or other zoning approval for a business proposing to engage in the sale of Cannabis Products.

SECTION 5. Violations. During the term of the moratorium, it is a violation of this Ordinance for any business, person, or entity to offer for sale, or to sell, Cannabis Products within the City.

SECTION 6. Exceptions. The moratorium imposed by this Ordinance does not apply to the sale of medical cannabis or non-edible hemp products that were lawful to sell prior to the effective date of the Act.

ARTICLE 7. Enforcement. A violation of this Ordinance shall be a misdemeanor. In addition, the City may enforce this Ordinance by mandamus, injunction, other appropriate civil remedy in any court of competent jurisdiction, or through the City’s administrative penalties program under Section 270 of the City Code.

ARTICLE 8. Severability. Every section, provision, and part of this Ordinance is declared severable from every other section, provision, and part of this Ordinance. If any section, provision, or part of this Ordinance is held to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other section, provision, or part of this Ordinance.

ARTICLE 9. Effective Date and Term. This Ordinance shall be effective immediately and shall have a term of 12 months. This Ordinance shall remain in effect until the expiration of the 12 month term, until it is expressly repealed by the City Council, or until the effective date of an ordinance amending the City Code to address the sale of Cannabis Products, whichever occurs first.

Adopted this ____ day of September 2022.

Adam Jennings, Mayor

ATTEST:

Rachel Myskevitz, City Clerk

Date of Adoption: _____