



AGENDA
BIG LAKE CITY COUNCIL WORKSHOP
COUNCIL CHAMBERS

JULY 27, 2022
5:00 p.m.

- 1) CALL TO ORDER**
- 2) ROLL CALL**
- 3) PROPOSED AGENDA**
- 4) BUSINESS**
 - 4A. Election Update
 - 4B. The Third Rail Bar and Grill Mural Discussion
 - 4C. Discuss Advertising for Upcoming Streets/Parks Public Works Position
- 5) OTHER**
- 6) ADJOURN**

Disclaimer: This agenda has been prepared to provide information regarding an upcoming work session of the Big Lake City Council. This document does not claim to be complete and is subject to change.



WORKSHOP ITEM

Big Lake City Council

Prepared By: <i>Gina Wolbeck, City Clerk</i>	Meeting Date: <i>7/27/2022</i>	Item No. 4A
Item Description: <i>Election Update</i>	Reviewed By: <i>Soren Mattick, City Attorney</i>	
	Reviewed By: <i>N/A</i>	

COUNCIL DIRECTION REQUESTED

Update only.

BACKGROUND/DISCUSSION

At the May 25, 2022 Council Workshop, Council directed the City Attorney to research and provide an opinion on if the City can coordinate a manual count spot-check of the votes cast at one of the 2022 elections. City Attorney Soren Mattick has provided a memorandum in response to this request. Mr. Mattick will be in attendance at the July 27, 2022 City Council Workshop.

FINANCIAL IMPACT

As the directive came from the City Council, legal costs will be allocated to the 2022 City Council budget.

STAFF RECOMMENDATION

Staff recommends Council review the memorandum and address any questions they have with the City Attorney during the July 27, 2022 Workshop.

ATTACHMENTS

Campbell Knutson, P.A. Memorandum dated July 21, 2022

MEMORANDUM

TO: BIG LAKE CITY COUNCIL
FROM: SOREN MATTICK
DATE: JULY 21, 2022
RE: ELECTIONS — BIG LAKE



CAMPBELL KNUTSON
PROFESSIONAL ASSOCIATION

BACKGROUND

The City of Big Lake is exploring methods to verify the accuracy of election results. One possible option is a manual count spot-check, where a few races from a precinct would be hand counted after the electronic count to verify the accuracy of the electronic tally.

QUESTION PRESENTED

Can the City perform a manual count spot-check of a few races from one precinct immediately after the electronic count, but before sending vote totals to the County Auditor?

SHORT ANSWER

The City likely can do a hand count of a few randomly selected races from a precinct, provided that the City complies with the statutes and regulations of both hand counting ballots and electronically counting ballots.

DISCUSSION

1. Manual Count Spot-Check of Electronic Vote Tally

First, as an aside, there is already a procedure for spot checking election results before the canvassing board meets. Minn. Stat. § 206.89 mandates a Post-Election Review (PER) of the results from precincts which use an electronic voting machine. It takes place between the eleventh and eighteenth day after the general election. *Id.* at subd. 2. Big Lake is in Sherburne County, which has a population of around 97,000, so Sherburne County must conduct a PER of at least three randomly selected precincts. *Id.* The PER must count the votes cast for three offices: president or governor, United States senator, and United States representative. *Id.* at subd. 3. The county auditor can select additional offices for review. *Id.* Following the procedures for a recount, where the ballots are manually counted, the results from the electronic voting machine and the results from the manual count are compared. *Id.* at subd. 3–4. There are different standards of error depending on the size of the precinct, but in the largest precincts, the totals can differ by no more than five votes before additional review is required. *Id.* at subd. 4. Although this process happens for every general election, there is no guarantee that a precinct from Big Lake will be chosen for the PER of Sherburne County.

In a precinct counting system, the official count for the precinct is generated at the polling place for the precinct. The ballots can either be fed directly into the electronic voting machine by the voter, or voters can place their ballots into a locked auxiliary slot from which the ballots are later fed into the electronic voting machine by judges from different political parties. Minn. R. 8230.4355. Once voting has ended, the election judges first verify the ballot box is still sealed with the same seal as it had at the start of voting. Minn. R. 8230.4365, subp. 6. They then open the box to count the number of ballots within the box to ensure that it matches the number of individuals who voted. Minn. R. 8230.4370. After processing write-in ballots, “the election judges shall place in the transfer case . . . valid voted ballots . . .” Minn. R. 8230.4385.

In this rule, the word “immediately” does not appear, and there is no other word that suggests immediacy. This is in contrast to the rule on the procedure at a central counting location. The lack of immediacy suggests that the precinct could conduct a manual count spot check of the ballot tabulations at the precinct counting location. I was unable to find caselaw on this point, however. The election judges must deliver one set of summary statements and the voted ballots to the County Auditor “as soon as possible after the vote counting is completed but no later than 24 hours after the end of the hours for voting.” Minn. Stat. § 204C.27. Although this statute requires haste, it does not require immediacy. The statute does require a specific “piling system” for manually counting votes that a manual count spot check would have to follow. Minn. Stat. § 204C.21. In sum, a precinct that electronically counts votes could likely conduct a manual count spot check as the rules do not require the ballots to be placed in the transfer cases “immediately” after counting.

Finally, even if the manual count spot check were to identify discrepancies in the tabulations, the electronic count would still constitute the official return of the precinct. Minn. Stat. § 206.86 subd. 6 states that the official return of the precinct is the tabulation from the electronic voting machine along with the write-in and absentee ballots. Thus, even if the hand count revealed a different tabulation, the tabulation of the electronic voting machine would control.

2. Possible Penalties If the Manual Count Spot-Check Is Unlawful

There are several penalty provisions in the election statutes. During the counting of ballots, anyone who touches or interferes with the ballots is guilty of a misdemeanor. Minn. Stat. § 204C.19, subd. 1. Although somewhat unlikely, a court could consider an unlawful manual count spot check of the votes to be “interference” with ballots.

Under Minn. Stat. § 204C.41,

An election officer or any other individual . . . required by law . . . to perform any . . . act, who intentionally fails or refuses to perform the act required, or who is required by law to abstain from any act, and intentionally does the act, or who in either of these cases is guilty of . . . misbehavior in conducting . . . an election, or in counting or making returns of votes . . . is guilty of a felony.

It is unlikely that a spot check, even if it was unauthorized, would result in the spoliation of ballots. A Minnesota Supreme Court case, which still appears to be good law, states, “statutory violations in the conduct of elections do not of themselves invalidate the election either in whole or in part if the election appears to have resulted in a fair and free expression of the will of the

legal voters.” *Munnell v. Rowlette*, 145 N.W.2d 531, 536 (Minn. 1966). Thus, the inspected ballots will likely not be spoiled in the event that a manual count spot check is ruled invalid.

3. Best Practices for Implementing a Manual Count Spot-Check

If the City ultimately decides to pursue a manual count spot-check, the City should consider following the method already developed in statute for the county-level Post-Election Review. The City Council should develop a formal policy on how to conduct the spot-check to help guide the election judges. The policy could specify how the races to be included in the City’s manual count spot check would be randomly selected. The policy could also specify that the manual count spot check would follow the recount process, which is the same process used in the county-level PER.



WORKSHOP ITEM

Big Lake City Council

Prepared By: <i>Hanna Klimmek, City Administrator</i>	Meeting Date: <i>7/27/2022</i>	Item No. 4B
Item Description: <i>The Third Rail Bar and Grill Mural Discussion</i>	Reviewed By: <i>Lucinda Spanier, City Planner</i>	
	Reviewed By: <i>Deb Wegeleben, Finance Director</i>	

COUNCIL DIRECTION REQUESTED

Discuss the Third Rail Bar and Grill mural project and provide direction to staff on whether or not to waive the fees and escrows associated with the required Conditional Use Permit and Variance.

BACKGROUND/DISCUSSION

The property owners of The Third Rail Bar and Grill, Paul and Lolli Krueger, have been working with resident, George Quinn, on fundraising for a mural that they would like to be painted on the south side of their building.

In June of 2022, city staff obtained a legal opinion from the City Attorney on how the mural could be permitted through the sign ordinance as the current City Code does not acknowledge public art (murals) on privately owned buildings.

The legal opinion:

- The mural is classified as a painted wall sign, which is defined as a sign which has been painted directly onto a building wall, using the wall material as a base of the sign.
- Painted wall signs require a Conditional Use Permit (CUP).
- Wall signs are limited to 20% of the building façade or 200 square feet, whichever is less.
- A variance to the size limitation can be applied for and processed. There is recent precedent for granting a variance to this particular ordinance.
- Advertising signs, defined as- any permanent non-governmental sign advertising products, services, commodities, entertainment or other activity not offered at the location of the sign or not exclusively related to the premises on which the sign is located, are prohibited in all zoning districts.

The Krueger’s plan to attend the Workshop to discuss the mural project with the City Council. They intend to ask that the City Council consider waiving the fees and escrows for the CUP and Variance. Justification for the request is that the City Code is outdated and does not acknowledge their project.

FINANCIAL IMPACT

Conditional Use Permit; \$400 fee and \$1,000 escrow. Variance; \$350 fee and \$1,000 escrow. There will be City Attorney fees to draft the needed resolutions for approval.

STAFF RECOMMENDATION

Discuss the Third Rail Bar and Grill mural project and provide direction to staff on whether or not to waive the fees and escrows associated with the required Conditional Use Permit and Variance.

ATTACHMENTS - N/A



WORKSHOP ITEM

Big Lake City Council

Prepared By: <i>Norman Michels, Streets/Parks/Fleet Superintendent</i>	Meeting Date: <i>7/27/2022</i>	Item No. 4C
Item Description: <i>Advertise to fill upcoming Public Works Streets/Parks position</i>	Reviewed By: <i>Gina Wolbeck, City clerk</i>	
	Reviewed By: <i>Deb Wegeleben, Finance Director</i>	

COUNCIL DIRECTION REQUESTED

Council direction to allow staff to advertise to fill the upcoming Public Works Streets/Parks position.

BACKGROUND/DISCUSSION

A long-time public works employee has submitted his Advance Notice Resignation, which will be effective September 30, 2022. Mike Ziemer started his employment with the City on December 28, 1999 working in the Streets and Parks Department, and he has been a valuable asset to the City over his 23 years of service.

The Advance Notice policy is intended to provide early notice so that a replacement can be found and hired before the retiring employee leaves so that training can be started before the current employee leaves. This provides for adequate staffing and transfer of knowledge throughout the process.

Staff is asking for direction from the Council to allow staff to start to advertise to fill the position.

FINANCIAL IMPACT

Budgeted position

STAFF RECOMMENDATION

It is recommended that Council allow staff to advertise to fill the position.

ATTACHMENTS

N/A