

**BIG LAKE CITY COUNCIL  
WORKSHOP MINUTES**

**JULY 27, 2022**

**1. CALL TO ORDER**

Mayor Knier called the meeting to order at 5:00 p.m.

**2. ROLL CALL**

Council Members present: Ken Halverson, Sam Hanson, Paul Knier, Kim Noding, and Paul Seefeld. Also present: City Administrator Hanna Klimmek, City Clerk Gina Wolbeck, City Engineer Layne Otteson, Acting Police Chief Sam Olson, Liquor Store Manager Greg Zurbey, Streets/Parks/Fleet Superintendent Norm Michels, Water/Wastewater Superintendent Dan Childs, and Big Lake Student Liaisons Ella Dotzler and Allie Cross.

**3. PROPOSED AGENDA**

Council Member Noding motioned to adopt the proposed Agenda as presented. Seconded by Council Member Halverson, unanimous ayes, Agenda adopted.

**4. BUSINESS**

**4A. Election Update**

Hanna Klimmek discussed that per Council direction at the May 25, 2022 City Council Workshop, the City Attorney was directed 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. Soren Mattick reviewed his memorandum regarding his response to Council's directive. Mattick reviewed Minn. Stat. § 206.89 that mandates a Post-Election Review of the results from precincts which use an electronic voting machine. The population of a county determines how many precincts will be selected for the Post-Election Review which is held between the eleventh and eighteenth day after the General Election. Big Lake is in Sherburne County, which has a population of about 97,000, and therefore must conduct a Post-Election Review of at least three randomly selected precincts. The Post-Election Review must count the votes cast for three offices: president or governor, United States senator, and United States representative, however, the county auditor can select additional offices for review. The Post-Election Review follows the procedures for a recount by manually counting the ballots and comparing these results to the results from the electronic voting machine. There are different standards of error depending on the size of the precinct, however, in the largest precincts, the totals can differ by no more than five votes before additional review is required. Although this process happens for every General Election, there is no guarantee that a precinct from Big Lake will be chosen for the Post-Election Review of Sherburne County.

Mattick reviewed possible penalties if a manual count spot-check is unlawful, stating that it is unlikely that a spot check, even if it were 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.” The inspected ballots will likely not be spoiled in the event that a manual count spot-check is ruled invalid. Mattick reviewed that 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 Post-Election Review. Mattick also discussed the procedure if a discrepancy is found during the spot-check, noting that the results on the electronic reader are what governs.

Council Member Halverson asked that if there is a discrepancy, how it would be handled. Gina Wolbeck reviewed the procedures that occur during a recount, noting that the hand-count totals override the machine totals, but further research would be needed to determine how counts are affected for a spot-check. Council Member Seefeld noted that a spot-check would be validating the system. If the discrepancy is very small, the system is still pretty accurate, noting that everything has errors even humans. If it’s larger, then we will need to cross that bridge when we come to it. Council Member Noding stated that the County might have an issue as well if we have a larger discrepancy with a specific count. Wolbeck explained that if there is a larger discrepancy than a five-vote difference in a Post-Election Review, then more precincts are drawn for additional hand counts.

Council Member Hanson stated that he would like to move forward with doing the spot-checks and would like to get procedures established. Mayor Knier stated that he would prefer that specific seats/precincts not be determined and broadcast because the whole idea is to keep people honest. Seefeld suggested that we pick a partisan race at random, and Knier suggested we pick more than one.

Gina Wolbeck stated that based on Public Accuracy Testing that she has personally witnessed, she has no concerns with the Dominion Voting System accurately counting votes cast by Big Lake City residents at City precincts. Wolbeck reviewed procedures followed for Public Accuracy Testing, noting that the testing is conducted by certified Election Judges and is open to the public. Wolbeck also reviewed that per Minnesota Statute, after every regularly scheduled General Election, the Sherburne County Canvass Board draws three precinct names at random who are then required to conduct a Post-Election Review. This hand count is conducted at the Sherburne County Government Center by Certified Election Judges on votes cast for specific state and federal races. Wolbeck noted that during her time as City Clerk, the City has never been chosen for a Post-Election Review, so she has not witnessed any of these reviews. Post-Election Reviews are conducted publicly under the direct supervision of the County Auditor, per Minnesota Statute. Wolbeck discussed that if the City Council directs Staff to coordinate a manual recount, under the guidelines set forth by the Post-Election Review Statute, and it is held during the Post-Election Review counts, she would not object to that. Wolbeck also noted that all costs associated with conducting this type of review would be billed to the City. Wolbeck reviewed that she has had

discussions with Sherburne County Auditor Diane Arnold, and both are in agreement that if a City of Big Lake Precinct is randomly drawn, we would not pick a second one to be counted. If a City Precinct is not drawn as one of the three random precincts, the Canvass Board would then draw at random, one of the three City of Big Lake precincts to be a fourth precinct to be counted at the Post-Election Review. Wolbeck also noted that the County Attorney has not yet provided an opinion on this proposed procedure. The timing for the Post-Election Review is guided by Minnesota Statute and is held a specific number of days after the General Election. Mayor Knier asked when precincts are chosen. Wolbeck responded that the precincts are chosen at the County Canvass Board after the General Election. Soren Mattick clarified that the Post-Election Review is conducted between 11 to 18 days after the General Election. Council Member Halverson asked if we do this process after the 2022 General Election and there are no discrepancies, would this be a one-year process only, noting that if there are discrepancies, then it would be at Council's discretion to do on-going hand counts. Knier responded that while he can see Halverson's point, he noted that there are concerns with bad people who want to influence the election, and if they know we are going to do spot-checking, they are not going to mess with the Dominion Machines. This is the mind-set that many people are concerned about, so to him he doesn't feel it would be a waste of money. Halverson questioned that once we validate the machines by doing the hand-count, would it be necessary to do it every year, especially if we aren't chosen as one of the three precincts, and questioned if this would be fiscally responsible to keep incurring this added expense. Knier responded that he feels the people that are concerned about this would feel that it is fiscally responsible because it would be keeping it honest. If we are going to be saying hand counting will be done across the nation, then there shouldn't be any discrepancies.

Council Member Halverson stated that he likes Wolbeck's recommendation over doing the spot-check the night of the election. It would still include using our judges and we run the chance of getting picked for Post-Election Review anyways. Mattick discussed that from a legal standpoint, he really likes the option presented by Wolbeck. It is a lot clearer in the Statute, in that it is allowed for the County to do the extra review so we avoid that issue. Council Member Noding noted that it also has an element of local control as well, as our staff will be on site and our judges will be doing the counting. Seefeld clarified that the same people would be involved if it was done on election night also. Halverson noted that if there is a discrepancy in the vote counts, the County would have the authority to adjust the count numbers. Wolbeck clarified that the County would follow Statute in regards to how a discrepancy would be handled. Council Member Hanson stated that he would like to do the hand count through the County Post-Election Review and to have this done every two years during regular General Election years. Knier stated that he feels there are people who would volunteer to do this, noting that this is a strong, passionate group that is concerned about this. Wolbeck identified the requirements for citizens to be involved in a Post-Election Review which includes having judges from different political parties and that they have to be certified election judges. Halverson stated that Wolbeck has judges that are certified and that represent each party. Knier asked if the option of having a different team of counters do the spot check on election night is still a possibility. Wolbeck reviewed that an election night spot-check would need to have an approved official plan in place prior to a spot-check being done on the night of the General Election. Wolbeck reiterated that the Post-Election Review statute is in place to address election fraud concerns. Knier responded that the percentage of precincts that are reviewed under the Post-Election Review statute is very small. Council Member Noding reviewed that by doing the spot-check during the Post-Election Review, it merges into an already existing system seamlessly, with a little of

extra cost and effort and noted that Halverson had stated it would be done by our team of judges and supervisor. Knier acknowledged that he is thinking about the residents that are very concerned about this and whether we are going far enough for them. He just wants to be sure that he is clear on what we are proposing. Wolbeck reviewed that per MN Statute, three races would be hand counted during the Post-Election Review. Wolbeck also clarified that if a spot-check is done at the precinct on election night, only the ballots cast at the precinct would be hand counted. If Council chooses to do an extra City precinct as part of the Post-Election Review, all ballots cast at the chosen precinct will be counted, as well as any absentee ballots that were processed through the Central Count machine at Sherburne County during the 46 days of absentee voting. Wolbeck noted that the absentee ballots would not be recounted if we do the spot-check at the precinct on election night. Wolbeck also reviewed the dates when the County Canvass Board would pick the date/time/location of the Post-Election Review, and when they will randomly draw the precincts that will be hand counted. Wolbeck stated that the precincts won't be known until after the General Election, at a time that the County Canvass Board meets. Knier stated that he is on board with Wolbeck's recommendation. Seefeld asked what the process is for balancing a precinct the night of an election. Wolbeck reviewed that precincts must balance before vote totals are sent to the County.

Council directed Staff to officially request that the Sherburne County Auditor include a City of Big Lake precinct in the Post-Election Review after the 2022 General Election. If a City precinct is one of the three randomly drawn precincts, a fourth would not be drawn. If a City of Big Lake precinct is not drawn as one of the three precincts, then the County Canvass Board would randomly draw one City of Big Lake precinct to participate in the Post-Election Review.

#### **4B. The Third Rail Bar and Grill Mural Discussion**

Mayor Knier reviewed that information on the project is in the packet and asked if Council is in favor of waiving the fees for the required applications.

Council Member Halverson discussed the potential for obtaining art grants, and asked if the City can be a fiduciary agent for the project. Klimmek responded that the Finance Director has indicated that we can have a volunteer or independent contractor write a public art grant and it can go through the City and noted that it depends on the parameters of the grant. Mayor Knier reviewed the Big Lake Freedom Rock project, noting that the project was fully funded by donations, and asked if whoever is in charge of the mural would be getting donations that would come into the City, similar to the Freedom Rock project. Halverson responded that it is kind of the same process, and reviewed the MN Art Fund that the City could apply for funding from to help cover the \$20,000 expected cost. Knier asked how much has been raised to date. Lolli Krueger responded that they have raised \$4,000 so far. Klimmek reviewed that it depends on the grant, but the City can act as a pass-through agent for the funds. The City could accept a volunteer to write grants, or could hire them as an independent contractor, and if the grant is awarded, that is how they would be paid. Klimmek also noted that the Krueger's have a great deal of fundraising ahead of them, and they have been made aware of the BLEDA's Revolving Loan Fund program which can be advantageous to the project as well.

Council Member Noding discussed that the Central MN Arts Board (CMAB) has public art and project grants coming up. The only thing is, is that the first round is awarded in October and when she talked to Heather Allen at the CMAB, she said the difficulty would be that if the project is done in September, it would look like they didn't need the funds when the grants are awarded on October 13. Noding also noted that the public art grant itself requires a 25% match of fundraising, and she doesn't feel the group would have trouble raising that if they decide to go that route.

Mayor Knier reviewed that the City held firm that no taxpayer funds would be involved in the Freedom Rock project. That group was able to raise the funds and they finished a great project. He stated that he is sure this group will also do a great job with this project as well. He is fine with whatever the City can do to help facilitate it in that way.

Council Member Hanson asked if the proposed advertising element will affect the CUP or Variance. Klimmek responded that the City Code clearly identifies that advertising is not allowed for off premise locations, and the Third Rail is aware of that regulation. Halverson noted that he hopes with the new Code revision project, this gray area will be cleared up.

Council Member Seefeld reviewed that if the Code was already defined, they wouldn't have to go through the process or pay the fees.

Council directed Staff to allow fee waivers for the Third Rail Bar and Grill to apply for the required permitting.

#### **4C. Discuss Advertising for Upcoming Streets/Parks Public Works Position**

Norm Michels reviewed that a long-time public works employee has submitted his Advance Notice Resignation which will be effective on September 30, 2022. Mike Ziemer started his employment with the City in 1999, working in the Streets and Parks Department, and he has been a valuable asset to the City over his 23 years of service. Michels reviewed that 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. Michels asked for Council direction on allowing staff to advertise to fill the position.

Council directed Staff to advertise to fill the upcoming Public Works Streets/Parks position.

#### **5. OTHER**

Hanna Klimmek reviewed that the State of Minnesota recently permitted for the sale of edible and nonedible cannabinoid products that contain no more than 0.3% of THC products. The new law provides no parameters regulating production, compliance checks, or sales of THC products, and the new law does not prohibit local regulation. Minn. Stat. 462.355, subd. 4 allows a municipality to enact by ordinance a moratorium to regulate, restrict, or prohibit any use within its jurisdiction to protect the public health, safety, and welfare. This would allow the City to undertake a study to determine whether to adopt any

regulations or restrictions relating to the sales, testing, manufacturing, and distribution of THC products. Staff asked for Council direction on preparing moratorium language for consideration at the next Council Meeting.

Mayor Knier asked what the biggest issue is if we don't enact a moratorium. Olson responded that his biggest issue is that these products aren't regulated. Olson reviewed that the Big Lake Smoke Shop is currently selling these products and noted that the distributor had initially sent a higher grade of the product, which contained product that had 0.5% THC. The establishment was honest and didn't put that product on their shelves. They had to send the shipment back until they got the legal product. Olson discussed that the State is saying that 0.3% THC products are legal, but the law was passed so quickly no one knows how to regulate the new law. Until we get guidance from the State of Minnesota on how the law should be regulated and how compliance checks should be done, he would support a temporary moratorium. Klimmek stated that in order to write policy, we need to have answers to the questions. This doesn't only affect policing, but it also affects licensing, and planning/zoning so there are areas that we need to consider when writing the policies after we receive guidance. Klimmek also noted that there is an influx of communities that have passed, or are considering passing moratoriums.

Council Member Halverson asked how we deal with the local business that is already selling these products, and questioned if the City ordinance would override the law, or could it be challenged. Klimmek explained that the only thing we know for sure is that the new law does not prohibit local regulation. Klimmek also noted that cities are really struggling with this new law as it was passed last minute. Noding asked if the League of MN Cities has developed any recommendations yet. Klimmek responded that they have not.

Council Member Hanson discussed his concern with telling local businesses that they can't sell something that is allowed by law, when businesses in other communities are selling it. Hanson understands the concern that there is a lack of testing which is his only reservation. He discussed the need to be able to clearly identify the THC potency of products being sold in the City. The other side to it is that if someone is looking for ways to get THC products, they are going to find it no matter what so the moratorium would just take business away from a couple of our local establishments.

Greg Zurbey discussed that as a business that could potentially sell this product, he has no problem with pumping the brakes for 3 to 6 months. The Liquor Store has been looking into this with the League of MN Cities and the Minnesota Beverage Association has been working with their lawyers. There is no guidance on regulation checks, policies, and/or punishments. He doesn't want to take business away from anyone else, but he wants it to be a level playing field. Zurbey stated that he is all right with taking the time to find out what is in the public's best interest, because right now, there really is no guidance. From the perspective from a business that could be selling THC products, he feels it's not something we need to rush into and then try to cancel if the State decides to cancel. Halverson asked if we do a moratorium, who would be financially responsible for the product that has already been opened. Zurbey responded that generally, vendors will take the product back. He feels that it would be best for the store to contact their vendor to see if they can return the product and get a refund. Knier asked what the shelf life is for these products. Zurbey responded that we don't know, which is part of the problem. Council Member Seefeld asked if the moratorium needs to be effective immediately. Klimmek responded that it would be brought back to Council for consideration on August 10. Mayor Knier stated that he is all right with a 12-month

moratorium as long as we can remove it whenever we are ready to. He doesn't want to squelch freedom, but this sounds messy. Seefeld stated that he would like to revisit it in three months. Knier discussed that if we just do a three-month moratorium, businesses will plan for that which could be a problem if we don't have the information we need in that timeframe. Halverson noted that the moratorium could be for 12 months, but we can revisit it in three months and decide at that time to rescind it.

Council directed staff to draft an ordinance enacting a moratorium to regulate, restrict, or prohibit any use within its jurisdiction to protect the public health, safety, and welfare to allow the City to undertake a study to determine whether to adopt any regulations or restrictions relating to the sales, testing, manufacturing, and distribution of THC products with a review date in three months. The Council directed that this ordinance be brought to the August 10, 2022 Council Meeting for consideration.

**6. ADJOURN**

Council Member Seefeld motioned to adjourn at 5:48 p.m. Seconded by Council Member Hanson, unanimous ayes, motion carried.

Gina Wolbeck  
City Clerk

08/10/22  
Date Approved By Council