

The COMMON COUNCIL of the City of Tomah met in REGULAR SESSION October 8, 2019 at 6:00 p.m. with Mayor Mike Murray presiding in the Municipal Building, 819 Superior Avenue, Tomah WI.

Following the Pledge of Allegiance, roll call was taken with the following members present: Mike Murray, Travis Scholze, Lamont Kiefer, Donna Evans, Sue Holme, Jeff Cram, Richard Yarrington, and Shawn Zabinski. Absent: Mary Ann Komiskey. Quorum present.

Also present: City Attorney Penny Precour (arrived at 6:12 p.m.), City Administrator Roger Gorius, and City Clerk JoAnn Cram. Gregg Hagen videotaped the meeting.

Motion by Scholze, second by Cram to adjourn to closed session pursuant to State Statute 19.85(1) (c) and (e) to Confer with Legal Counsel with Respect to Union Negotiations, Personnel Issues, and Negotiation of Purchase/Sale of Land. Motion passed without negative vote. The meeting adjourned to Closed Session at 6:01 p.m.

Meeting reconvened to Open Session Pursuant to State Statute 19.85(2) at 6:38p.m.

Anyone Desiring to Appear Before the City Council. No one desired to appear.

Mayor. Mayor Murray advised he attended Manufacturing Day and received a lot of positive feedback regarding the event. Mayor Murray reminded citizens to be attentive while driving during the Homecoming and Halloween festivities.

City Administrator & Long Range Planning Committee Report. City Administrator Gorius provided a written report regarding current and ongoing activities. Admin. Gorius attended the Tomah Health Open House and Ribbon Cutting ceremony held on Oct. 13th. Admin. Gorius updated the Council regarding a recent health care insurance provision meeting which consists of several employees to discuss insurance trends and changes. Admin. Gorius assisted with the Chamber Shuttle Bus staffing for CranFest and also attended a Western Technical College Community roundtable.

City Clerk. City Clerk Cram reminded members of the combined Committee of the Whole and Council meetings on November 12th. Clerk Cram also reported on upcoming Election dates and registration drives. The Spring Election notice will be published in mid-November and even districts are on the ballot plus the Mayor and Municipal Judge. Clerk Cram also reminded the Council of the October Budget Workshop scheduled for October 19th. Municode has been selected to provide the agenda and minute software and training has commenced on the administrative side. Several training dates have been selected for the various stages and Council member training will be held the end of October.

Library Monthly Report. No report.

Tomah Public Housing & Community Development Block Grant Monthly Report. Director Muehlenkamp provided a written report. The 2020 Five Year Agency Plan; Amendment to Housing Voucher Administrative Plan, and Capital Fund for programs administered, owned and/or operated by the Tomah Public Housing Authority has been completed. HUD is requiring that we spend down reserve funds and units are being remodeled and upgraded. It is hoped 6 or 8 apartments can be remodeled prior to the transition. The Housing Voucher Program and Monroe County continues to see a significant increase in apartment rental costs. This year was an average of \$30 increase per month in rentals in Monroe County. Affordable housing in our area is something citizens will struggle with in the months ahead. There are 2 apartments currently rehabbing at Lakeside. A recap of funds available for home improvement loans was provided for the Block Grant Program. There are enough funds to do 5-10 home rehabs, however, equity must be available in the home to do the improvements and they are looking at major projects that stabilize the home for long term. You can also do rehabs of kitchens and bathrooms. There are income limitations on these loans. Information and the application is available on the City website.

Senior & Disabled Services Report. Senior & Disabled Services Coordinator Pam Buchda provided a monthly calendar and written summary of various events. Plans continue for the Community Halloween Festivities. Coordinator Buchda is busy marketing for the Tomah Great Holiday Shopping Hunt to be held November 23rd. Vendors of all kinds are welcome. Coordinator Buchda reminded citizens the Flu Clinic is scheduled for October 17th. Sunday Fun Day is October 27th from 2 to 4. The Sr. & Disabled Services Center will participate in the Sr. Health Expo at Cranberry Country Lodge on Oct. 24th.

Planning/Building Inspection Monthly Report. Shane Rolff provided a written report.

Consent Agenda Items. Motion by Kiefer, second by Scholze to approve the following Consent Agenda items. Motion passed without negative vote.

- A. **Minutes** of September 10, 2019 Regular Council Meeting as presented.
- B. **Treasurers Cash and Investment Reports** for September, 2019.
- C. **Bartender Licenses** for April S. Handy, Melissa E. Kaye, Darrius R. Kingsberry, Jodi M. Kuecker, Raemon J. Loendorf, Traci D. Parker, and Kaya R. Sisbarro
- D. **Special Beer and Wine Permit for Tomah Youth Hockey from October 11-13, 2019** for their "3 on 3" tournament event at Recreation Park Multi-Purpose Building (Ice-Rink).
- E. **Special Beer Permit for Tomah Fire Dept. for Nov. 2, 2019 for "Hunters Night Out" at Recreation Park, 1625 Butts Avenue, Recreation Building.**
- F. **2019 Budget Amendment** Authorizing an Expenditure of \$800 in Account #03-52300-3400 Ambulance Operating Supplies for the Purchase of Educational Materials.
- G. **2019 Budget Amendment** – Authorizing an Expenditure of \$11,657 in Account 05-57220-8300 Fire Protection Outlay – Equipment for the Purchase of Educational Material for Fire Safety

Ordinance Amending Chapter 28, Section 28-19 Removing State Statute 254.92 Under Adoption of State Statutes and Creating Division V, Possession of Tobacco and Vapor Products by Minors. Minors are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. There are new tobacco-less products commonly referred to as "electronic cigarettes, e-cigarettes," etc. which allow the user to simulate cigarette smoking. The solution contained in these items include nicotine, THC (marijuana) and other chemicals. Initial studies have determined these devices can increase nicotine addiction among young people and contain chemical ingredients known to be harmful which may expose users and the public to potential health risks. In order to protect the public health, safety and welfare of minors, this ordinance is created to prohibit persons under 18 years from possessing and/or using tobacco and vapor products, and prohibits the sale of tobacco and vapor products to persons under 18 years of age.

Motion by Cram, second by Yarrington to waive the first verbatim reading of the Ordinance Amending Chapter 28, Section 28-19 removing State Statute 254.92 under Adoption of State Statutes and Creating Division V. Possession of Tobacco and Vapor Products by Minors as presented. Motion passed without negative vote.

Motion by Cram, second by Kiefer to waive the second verbatim reading of the Ordinance Amending Chapter 28, Section 28-19 removing State Statute 254.92 under Adoption of State Statutes and Creating Division V. Possession of Tobacco and Vapor Products by Minors as presented. Motion passed without negative vote.

Motion by Cram, second by Zabinski to adopt **Ordinance No. 2019-10-08-D** Amending Chapter 28, Section 28-19 removing State Statute 254.92 under Adoption of State Statutes and Creating Division V. Possession of Tobacco and Vapor Products by Minors as presented. Motion passed without negative vote.

ORDINANCE NO. 2019-10-08-D

ORDINANCE AMENDING CHAPTER 28, SECTION 28-19 REMOVING STATE STATUTE 254.92 UNDER ADOPTION OF STATE STATUTES AND CREATING DIVISION V, POSSESSION OF TOBACCO AND VAPOR PRODUCTS BY MINORS OF THE CITY OF TOMAH MUNICIPAL CODE

SECTION ONE: Chapter 28, Section 28-19 Adoption of State Statutes Regarding Offenses Against Peace and Good Order is hereby amended to read as follows:

<u>State Statute No.</u>	<u>Municipal Violation No.</u>	<u>Offense</u>
254.92	9-254.92	Purchase or possession of cigarettes or tobacco products By persons under 18 prohibited

SECTION TWO: Chapter 28, Division 5 – Possession of Tobacco and Vapor Products by Minors is hereby created as follows:

(a) *Statement of purpose.*

- (1) The purpose of this section is to protect the public health, safety and welfare of the property and persons in the City by prohibiting persons under 18 years of age from possessing tobacco products and vapor products, and prohibiting the sale of tobacco products and vapor products to persons under 18 years of age.
- (2) Persons under age 18 are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. There are new tobacco-less products, however, commonly referred to as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," or "electronic nicotine delivery systems," which allow the user to simulate cigarette smoking. These products may be purchased by minors and are being marketed without age restrictions or health warnings and come in different flavors that appeal to young people.
- (3) E-cigarettes, and similar devices, are a relatively new nicotine delivery system. While devices vary in their appearance and specific method of operation, they have a few basic elements in common. A solution of water, dissolved nicotine, and other ingredients (usually flavoring) is heated with a heating element (usually battery-powered). This vaporizes the nicotine solution, which passes into a mouthpiece and is inhaled in a manner similar to cigarette smoking. Often, glycerol or propylene glycol is added to the solution to give the appearance of smoke when the solution is vaporized. The concentration of nicotine contained in the

solution can be customized by the retailer to the buyer's specifications, and many manufacturers make nicotine-free solutions.

- (4) The production and distribution of e-cigarettes is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration has not completed testing of these products. But, initial studies by the FDA have determined that e-cigarettes can increase nicotine addiction among young people and contain chemical ingredients known to be harmful, which may expose users and the public to potential health risks.
 - (5) The use of e-cigarettes and similar devices has increased significantly in recent years.
 - (6) Existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances including:
 - a. Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium;
 - b. PM_{2.5}, acrolein, tin, toluene, and aluminum, which are associated with a range of negative health effects such as skin, eye, and respiratory irritation, neurological effects, damage to reproductive systems, and even premature death from heart attacks and stroke.
 - (7) Some cartridges used by electronic smoking devices can be refilled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine.
 - (8) Clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over 400 brands of electronic smoking devices that are on the market and for this reason, consumers have no way of knowing whether electronic smoking devices are safe, what types of potentially harmful chemicals the products contain, and what dose of nicotine the products deliver.
 - (9) Electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.
 - (10) The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverses the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.
 - (11) It is the intent of the Common Council, in enacting the ordinance codified in this section, to provide for the public health, safety and welfare by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; by reducing the potential for children to associate the use of electronic smoking devices with a normative or healthy lifestyle; and by prohibiting the sale or distribution of electronic smoking devices to minors.
 - (12) Therefore, the Common Council determines that prohibiting the sale, giving, or furnishing of e-cigarettes to minors and prohibiting the purchase, possession, or use of e-cigarettes by minors is in the City's best interest and will promote public health, safety, and welfare.
- (b) *Definitions.* For the purpose of construction and application of this section, the following definitions shall apply:
- Minor* means an individual who is less than 18 years of age.
- Person who sells tobacco products at retail* means a person whose ordinary course of business consists, in whole or in part, of the retail sale of tobacco products subject to the state sales tax.
- Person who sells vapor products at retail* means a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products.
- Possession of a tobacco product* shall mean either actual physical control of the tobacco product without necessarily owning that product, or the right to control the tobacco product even though it is in a different room or place than where the person is physically located.
- Public place* means a public street, sidewalk, or park or any area open to the general public in a publically owned or operated building or premises, or in a public place of business or school.
- Tobacco product* means a product that contains tobacco and is intended for human consumption, including but not limited to, cigarettes, non-cigarette smoking tobacco, or smokeless tobacco, as those terms are defined in Section 2 of the Tobacco Products Tax Act, and cigars. Tobacco product does not include a vapor product or a product regulated as a drug or device by the United States Food and Drug Administration.
- Use a tobacco product or vapor product* means to smoke, chew, suck, inhale, or otherwise consume a tobacco product or vapor product.
- Vapor product* means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.
- (c) *Prohibited conduct.*
- (1) Consistent with Wis. Stats. § 254.92, a minor shall not do any of the following:
 - a. Purchase or attempt to purchase a tobacco product or vapor product.
 - b. Possess or attempt to possess a tobacco product or vapor product.
 - c. Use a tobacco product or vapor product in a public place.
 - d. Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product or vapor product.
 - (2) No individual, regardless of age, who is enrolled in secondary school may possess or attempt to possess a tobacco product or vapor product while on school property.
 - (3) An individual who violates Subsection (1) shall be subject to the following penalties:
 - a. For the first violation, the person is responsible for a civil infraction punishable by a civil fine of \$25.00.
 - b. For a second and subsequent violation, the person is responsible for a civil infraction punishable by a civil fine of \$50.00.
 - (4) An individual who violates Subsection (2) shall be subject to the following penalties:
 - a. For the first violation, the person is responsible for a civil infraction punishable by a civil fine of \$50.00.
 - b. For a second and subsequent violation, the person is responsible for a civil infraction punishable by a civil fine of \$75.00.
 - (5) Subsection (1) does not apply to a minor participating in any of the following:
 - a. An undercover operation in which the minor purchases or receives a tobacco product or vapor product under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.
 - b. An undercover operation in which the minor purchases or receives a tobacco product or vapor product under the direction of the state police or a local police agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product or vapor product

- by the minor was not under the direction of the state police or the local police agency and was not part of the undercover operation.
- c. Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, if the compliance checks are conducted with the prior approval of the state police or a local police agency.
 - (6) Subsection (1) does not apply to the handling or transportation of a tobacco product or vapor product by a minor under the terms of that minor's employment.
 - (7) This section does not prohibit an individual from being charged with, convicted of or found responsible for, or sentenced for any other violation of law that arises out of the violation of Subsection (1).
 - (d) *Furnishing to minors*. Consistent with Wis. Stats. § 134.66:
 - (1) A person shall not sell, give or furnish any vapor product to a minor, including, but not limited to, through a vending machine. A person who violates this this section is subject to a fine of not more than \$100.00 for each violation.
 - (2) Subsection (1) of this section does not apply to the handling or transportation of a tobacco product or vapor product by a minor under the terms of the minor's employment.
 - (3) Before selling, offering for sale, giving, or furnishing a vapor product to an individual, a person shall verify that the individual is at least 18 years of age by doing one of the following:
 - a. Examining a government-issued photographic identification that establishes that the individual is at least 18 years of age.
 - b. For sales made by the internet or other remote sales method, performing an age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is 18 years of age or older.

SECTION THREE: All ordinances in conflict with the foregoing are hereby repealed.

SECTION FOUR: This ordinance shall take effect upon passage and publication.

Michael Murray, Mayor
READ: 10/8/2019

ATTEST:
PASSED: 10/8/2019

JoAnn M. Cram, City Clerk
PUBLISHED: 10/18/2019

Ordinance Amending Chapter 30, Section 30-84(e) Regarding Docks. The Lake Committee feels the maximum width for docks at Lake Tomah should be 72" and our ordinance only allows 48 inches.

Motion by Holme, second by Scholze to waive the first verbatim reading of the Ordinance Amending Chapter 30, Section 30-84(e) increasing the maximum width for docks along Lake Tomah from 48" to 72". Motion passed without negative vote.

Ordinance Repealing and Recreating Chapter 22 of the City of Tomah Regarding Floodplain Zoning. The City of Tomah has been notified by the Federal Emergency Management Agency (FEMA) that updated Flood Insurance Rate Maps (FIRMs) and the Flood Insurance Study (FIS) for Monroe County must be adopted into the local floodplain ordinance within six months. The City ordinance must be amended and approved by DNR and FEMA no later than 12/6/2019.

Motion by Holme, second by Yarrington to waive the first verbatim reading of the Ordinance repealing and recreating Chapter 22 regarding Flood Plain Zoning. Motion passed without negative vote.

Offering of Optional Dental Coverage for City Employees Through the Health Insurance Plan. This year, the State has offered optional supplemental dental coverage for employees. It is requested that authorization be given to opt into the supplemental dental benefit coverage for city employees with all costs the responsibility of the participating employees.

Motion by Zabinski, second by Evans to authorize participation and offer the supplemental dental benefit to City employees with all costs the responsibility of participating employees. Motion passed without negative vote.

Personnel Policy Revisions. A draft of the revised Personnel Policy was presented. The data was compiled, suggested changes noted, and the document is now provided to the Council for review. This item will be addressed at the November or December meeting.

Resolution Authorizing Payment of Monthly Bills.

Motion by Yarrington, second by Evans to approve **Resolution No. 2019-10-08-33** authorizing payment of the monthly bills in the amount of \$1,130,461.49 as presented. Motion passed without negative vote.

**RESOLUTION NO. 2019-10-08-33
AUTHORIZING PAYMENT OF MONTHLY BILLS**

BE IT RESOLVED by the Common Council of the City of Tomah that the Committee of the Whole has reviewed the monthly bills and recommends the City Council approve said bills as follows:

1. Pre-Paid Checks	\$ 448,300.66	Check #'s	125743-125767 & 125805-125940
2. Payroll	\$ 244,622.08	Direct Deposit #'s	58577-58815
3. Wire Transfers	\$ 29,498.00		

4. Invoices	\$ 408,040.75	Check #'s	125992-126032
	<u>\$1,130,461.49</u>		

Mike Murray, Mayor ATTEST: JoAnn Cram, City Clerk

Winnebago Park Master Plan. A presentation of the Plan was given at the Monday night Committee of the Whole meeting by Phil Johnson from CBS Squared. There are three proposed phases identified in the Plan. A copy of the Plan is available at City Hall. Phil Johnson advised that a final resolution would be required prior to May 1, 2020 to allow for the ability to apply for various grants. There are no city funds committed at this time.

Motion by Yarrington, second by Scholze to accept the Winnebago Park Master Plan as presented. Motion passed without negative vote.

Rehabilitation SR19-1. At the Oct. 2, 2019 meeting of the CDBG, consideration was given to providing a \$7,000 home improvement deferred payment loan for work at 211 N. Superior Ave. The work will consist of a bathroom remodel for more handicap accessibility.

Motion by Yarrington, second by Kiefer to approve Rehabilitation SR19-1, a \$7,000 deferred payment home improvement loan for a bathroom remodel at 211 N. Superior Avenue as recommended by CDBG. Motion passed without negative vote.

Request Regarding Norman V. Martin and Betty J. Martin Living Trust Dated August 27, 1993 Transfer of Property Pursuant to the Development Agreement.

Motion by Cram, second by Scholze to authorize the transfer of property, pursuant to the development agreement regarding the Norman V. Martin and Betty J. Martin Living Trust dated August 27, 1993. Motion passed without a negative vote.

Ratification of TPPA (Police) Union Contract. Motion by Scholze, second by Evans to table the ratification of the TPPA (Police) Union Contract. Motion passed without negative vote.

Approval of Route for Annual City of Tomah Holiday Parade. The parade will line up on McLean and proceed as follows: McLean to West Foster Street to Superior Avenue (southbound in the northbound lane) dispersing on W. Holton Street.

Motion by Evans, second by Kiefer to approve the route as designated for the City of Tomah Holiday Parade on November 29, 2019 at 7 p.m. Motion passed without negative vote.

Adjourn. Motion by Kiefer, second by Evans to adjourn. Motion passed without negative vote. The meeting adjourned at 7:15 p.m.

Approved:

Michael Murray, Mayor

ATTEST:

JoAnn M. Cram, City Clerk
Minutes to be approved on November 12, 2019