

MINUTES FOR COMMON COUNCIL MAY 16, 2023

Call to Order, Pledge of Allegiance, Roll Call

The meeting was called to order by Mayor Mike Murray at 6:30 p.m. After the Pledge of Allegiance, roll call was taken. Present: Michael Murray, Travis Scholze, Richard Yarrington, John Glynn, Shawn Zabinski, Nicole Hart, Lamont Kiefer, Nellie Pater (arrived at 6:54 p.m.), Dean Peterson. Absent: none. Also in attendance: Penny Precour, Kirk Arity, Molly Powell, Becki Weyer, Tim Adler, Pam Buchda, Irma Keller, and Tina Thompson. The meeting was available via Zoom and was recorded by Hagen Sports Network. All motions are unanimously approved unless otherwise noted.

ANYONE DESIRING TO APPEAR TO COUNCIL

No one desired to appear before Council.

Mayor

There are many motorcycles and children out with the agreeable weather, please use caution when driving. Downtown Thursday Nights and the Tractor Pull are right around the corner. He asked all residents to use caution during all the upcoming activities in the city.

Senior Executive Team Monthly Report.

The Senior Executive Team did a walkthrough of 1004 Superior to assess the building future needs and uses and members met with Chamber Director Thompson to discuss potential uses to the space. Members attended the Chamber of Commerce meeting and provided an update on city business. They continue to work with Vandewalle on collaborating with landowners for potential residential development. There have been multiple meetings on site and with city staff to discuss ideas for the old Fire and Ambulance building uses. At this time, the team is confident there is enough potential for use within the city and the buildings will be used for new city use going forward. SET has spent significant time discussing and updating the employee handbook and reviewing policies and procedures needing updates. Alderman Kiefer asked for items to be added to the SET report that may come in front of the Council in future meetings.

Public Safety April Monthly Report

Fire: Fire inspectors are out working on their first round this weekend. Adler will be attending an all-weekend rail response course. He continues to work with Ft. McCoy on a mutual aid agreement. The public safety building is nearing final completion. The area is currently congested, and Adler cautioned the public to use care while in the area. They are working on a plan for transition to the new building. August 19th will be an open house and a celebration of the 50th year of the Tomah EMS. There will be chicken served.

EMS: The service has been very busy. The ground data process has been submitted. Adler thanked all the departments that contributed to making that happen and for their help with the new building.

Library

During the month of April, there were 4,846 physical and 2,012 eBook checkouts at the library in April. The summer reading program has begun. Dir. Keller covered the upcoming programs available at the library. Keller also covered the new books available. Programs, dates, and additional information are available at Tomahpubliclibrary.org.

Senior & Disabled Services Department Monthly Update/Report

Dir. Buchda provided a written report and covered the highlights with the Council. The Senior Meal site will be closed at all the County meal sites coming up this weekend. The Senior Center will still be open as normal. The center will be closed on Memorial Day. Buchda covered the usage numbers for the year so far which are increased from the previous year.

Building Inspection & Code Enforcement Reports

Rolff provided written March and April building inspection reports and the April Code Enforcement reports.

Chamber/Convention & Visitors Bureau

There are 70 booths registered for the Career and Job Fair. Registration is still open for the headshot event on May 25. They are working with a new firm on content for tourism development. They are also working Vandewalle and are starting the preliminary phase of installing the new wayfinding signs in the city. Mold mitigation on the Chamber building is complete, but they are still looking for contractors to complete drywall installation. They are looking to develop a 501c3 to operate under the Chamber to assist with tax advantages and grant eligibility.

Consent Agenda

Motion by Zabinski, second by Glynn, to approve the following consent agenda:

- A. Approval of Minutes from April 18, 2023
- B. Temporary "Class B" license application by Tomah Area Community Theatre (ACT) to sell wine at its Brick Sip Haus Pre-Show Wine Tasting Event on May 19, 2023
- C. Temporary Class "B" and Temporary "Class B" License application by Tomah Lions Club to sell fermented malt beverages and wine at North American Squirrel Association's (n.a.s.a.) Squirreffest on July 8, 2023
- D. Request from Kelsey's Class Act Bar and Smoke's Elbow Room for special amendments to the premises description of their Class "B" Fermented Malt Beverage Licenses and "Class B" Liquor Licenses for Special Events on June 10, 2023, and August 12, 2023
- E. Annual renewal of "Class A" Liquor & Class "A" Fermented Malt Beverage Licenses, "Class B" Liquor & Class "B" Fermented Malt Beverage Licenses, and "Class C" Wine Beverage Licenses

F. April 30, 2023 Cash and Investments Schedule
Motion carried with one abstain (Hart)

Approval of Hours Change for City Hall

Motion by Zabinski, second by Pater, to approve the hours for City Hall to 7:30a.m. to 4:30 p.m. Monday through Thursday on a temporary basis starting June 1st for the months of June, July, and August to be reviewed at the August meeting on August 15. Motion carried with one negative vote (Yarrington)

Resolution Authorizing Payment of Monthly Bills

Motion by Yarrington, second by Kiefer, to approve Resolution Authorizing Payment of Monthly Bills. Motion carried.

Approval of Building Rental Contract - 1000 Superior Ave.

Motion by Yarrington, second by Zabinski, to approve the amended contract between the City of Tomah and Jensen Tax & Accounting, LLC for the rental of 1000 Superior Ave. Motion carried.

Ordinance Creating Article VII of Chapter 12 of the City of Tomah Municipal Code, Mobile Food Establishments, First reading, second reading, and adoption

Motion by Scholze, second by Zabinski, to waive the first verbatim reading of the Ordinance Creating Article VII of Chapter 12 of the City of Tomah Municipal Code, Mobile Food Establishments. Motion carried.

Motion by Zabinski, second by Pater, to waive the second verbatim reading of the Ordinance Creating Article VII of Chapter 12 of the City of Tomah Municipal Code, Mobile Food Establishments. Motion carried.

Motion by Kiefer, second by Pater, to adopt the Ordinance Creating Article VII of Chapter 12 of the City of Tomah Municipal Code, Mobile Food Establishments. Motion carried.

ORDINANCE NO. 2023-05-04-D

Ordinance Creating Article VII of Chapter 12 of the City of Tomah Municipal Code, Mobile Food Establishments

The Common Council of the City of Tomah, Monroe County, Wisconsin, do ordain as follows:

SECTION ONE: Article VI of Chapter 12, Mobile Food Establishments, is hereby created to read as follows:

ARTICLE VII. MOBILE FOOD ESTABLISHMENTS

Sec. 12-123. Definitions.

In this section unless the context clearly requires otherwise:

Edible goods shall include but are not limited to:

- (1) Prepackaged and prepared food including, but not limited to, ice cream, hot dogs, deserts, and pizza.
- (2) On-site prepared food including, but not limited to, shaved ice, sandwiches, and tacos.

Mobile shall mean the state of being in active, but not necessarily continuous movement.

Mobile food establishment means a restaurant or retail food establishment where food is served or sold from a movable vehicle, trailer or cart which periodically or continuously changes location and requires a service base to accommodate the unit for servicing, cleaning, inspection and maintenance or except as specified in the Wisconsin Food Code.

Mobile food vendor means the registered owner of a mobile food establishment or the owner's agent or employee, or any business which sells edible goods from a mobile food establishment within the city.

Sell shall mean the act of exchanging a good for profit or in return for a donation.

Service base means an establishment operated under license or permit of an appropriate regulatory authority where food is manufactured, stored, prepared, portioned or packaged, or any combination of these, where such food is intended for consumption at another establishment or place, and where such units are serviced, cleaned, supplied, maintained, and where the equipment, utensils and facilities are serviced, cleaned and sanitized.

Vehicle shall mean any motor vehicle as defined by § 340.01(35), Wis. Stats., or trailer as defined by § 340.01(71), Wis. Stats. "Vehicle" shall also include any bicycle or other self-propelled device.

Vend shall mean to sell or to transfer the ownership of an article to another for a price with or without a monetary medium.

Sec. 12-124. License required.

- (1) No mobile food vendor and/or mobile food establishment shall vend, sell, or dispose of or offer to vend, sell, or dispose of goods, wares, or merchandise, produce or any other thing at any place whatsoever in the city, without having obtained an approved license from the City Clerk.
- (2) All mobile food establishments used for vending food shall be licensed for such use by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) and all other applicable agencies. Mobile food establishments shall acquire the appropriate licenses and permits for any additional food items not required under this article if deemed necessary by the state health department.
- (3) Every mobile food vendor shall have a license issued by the City Clerk to conduct business in the city. Each mobile food establishment shall be licensed separately. A mobile food establishment license shall expire on December 31 each year.
- (4) The application for license hereunder shall be accompanied by a license fee in the amount established by the common council. The application fee will be waived for one Mobile Food Establishment per year for a currently licensed city of Tomah business that has prepared food sales in excess of 50% of their total sales.
- (5) Upon renewal of license, each applicant must provide a new application, renewal fee, and any new permitting documentation.
- (6) A license issued under this article shall not be transferable. A license is valid for one vehicle only and shall not be transferrable between vehicles, persons, or entities.
- (7) On the expiration of a license issued under this article, the license holder shall surrender the license to the City Clerk. No person shall alter or change in any manner any license issued under the provisions of this article, and such alteration or the failure of the holder of the license to display the license in a conspicuous place on the mobile unit or his or her person or to exhibit the license upon demand of any officer or customer or prospective vendee shall be cause for revocation of such license.

Sec. 12-125. License application process.

- (1) Any person desiring to operate a mobile food establishment shall apply for a license on a form provided by the City Clerk and pay the proper license fee for each mobile food establishment as outlined in the city fee schedule. The City Clerk shall forward the application to the police and fire departments for review.
 - a. Upon receipt of each application from the City Clerk, the Tomah Police Department shall conduct an investigation of the statements made on such application.
 - b. Upon receipt of each application from the City Clerk, the Tomah Fire Department shall, at its discretion inspect or cause to be inspected each stand/unit that will use any cooking or heating appliance or propane, to determine whether it complies with all laws, ordinances, rules and regulations.
- (2) The City Clerk shall refuse to license the applicant if it is determined, pursuant to the investigations referenced in (1)a. or (1)b. that:
 - a. The circumstances of a pending criminal charge against the applicant substantially relate to the licensed activity.
 - b. The applicant has been convicted of any felony, misdemeanor or other offense, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.
 - c. The applicant made a false statement on the application.
 - d. The applicant is under 18 years old.
 - e. The applicant is found to have unpaid civil judgment(s) which relates to the duties and responsibilities of the permitted occupation which shall be determined by the nature and the amount of the judgment, the relationship of the judgment to the purpose of the permit and the extent that the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments.
 - f. The applicant failed to comply with requirements of the fire department.
- (3) If the City Clerk denies an application the applicant may appeal in writing within 15 calendar days after the City Clerk mails a notice of denial to the applicant. If the applicant files a timely appeal with the clerk, the clerk shall schedule an appeal before the common council at its next regular session.
- (4) The common council may approve any application appeal placed on its agenda only if the applicant is qualified under this section and may place conditions upon approval.

Sec. 12-126. Inspection, suspension, and revocation.

- (1) The City of Tomah through any of its officers, employees or agents shall have the right, without notice, to inspect any portion of a Mobile Food Establishments operation including but not limited to sanitation, safety, and vehicle maintenance.
- (2) The common council may revoke or suspend any license under this article for violation by any vendor or the vendor's employee or agent of any provision of this chapter or any state law or city ordinance which renders future vending contrary to the public health, safety, or welfare, or for fraud or misrepresentation in solicitation under this chapter.

Sec. 12-127. Insurance.

- (1) The license holder under this article shall have liability insurance for each mobile food establishment.
- (2) Each licensee shall obtain, pay for, and at all times, maintain proof of and actual liability insurance coverage against personal injury, death and property damage in an amount of not less than \$1,000,000.00 per person per incident and \$1,000,000.00 aggregate per incident. Such insurance shall name the City of Tomah and its elected and appointed officials, officers, employees, agents and representatives as additional or co-insureds. At the time of filing the initial and all renewal applications, and applicant shall provide a true and correct photocopy of a certificate of insurance and/or other proof of insurance for each mobile food vending vehicle and mobile food vending cart listed on the form required by the City Clerk.

Sec. 12-128. Sanitation requirements.

- (1) Mobile food establishments shall comply with all regulations of the Wisconsin Food Code including but not limited to the time, temperature, plumbing, operation, and maintenance for mobile food establishments.
- (2) Mobile food establishments shall comply with all regulations of the Wisconsin Food Code and regarding preparation facilities, serving areas and operation areas.
- (3) The licensees of the mobile food establishment or employee(s) thereof shall abide by the request of the DATCP for annual inspections of the establishment at a location designated by the health department.
- (4) *Service base required.*
 - a. All mobile food establishments shall have a service base to store and prepare food and all supplies. No food items are allowed to be stored or prepared in a private residence or garage unless approved by the DATCP.
 - b. All mobile food units shall be cleaned and serviced as often as necessary.

Sec. 12-129. Conduct of business.

- (1) *Regulations generally.* The following regulations shall apply to mobile food establishments during the regular order of business:
 - a. A licensee shall not falsely or fraudulently misrepresent the quantity, character or quality of any article offered for sale or offer for sale any unwholesome or tainted edible goods, nor intentionally misrepresent to any prospective customer the purpose of his or her solicitation, the name of the business of his or her principal, if any, the source of supply of the goods, wares or merchandise which he or she sells or offers for sale or the disposition of the proceeds of his or her sales.
 - b. A licensee shall not use the license provided by the city after expiration or revocation of the license.
 - c. A licensee shall keep the premises in a clean and sanitary condition and the edible goods offered for sale well covered and protected from dirt, dust, and insects. All food vendors shall comply with requirements of state and local authorities.
 - d. All persons conducting business on a sidewalk or terrace must maintain within 25 feet of their sales location, a clean, sanitary, and hazard-free condition, and shall not discharge any material onto the street, sidewalk, gutters, or storm drain. Each person conducting business of this chapter shall carry a minimum 30-gallon container for placement of such litter by customers or other persons.
 - e. A vehicle or other on-street unit which is operated for the purpose of selling food from the unit shall be operated only by a person who has obtained a license or by the employee of the person who obtained a license under this article.
 - f. No person may sell or vend any item upon any premise(s) if there is placed signage prohibiting the activity.
 - g. All business activity relating to the mobile food establishments in the public right-of-way shall be conducted from the curbside of the vehicle at all times. No sales shall be made from a vehicle except from the curbside of said vehicle, unless otherwise authorized by the owner of private property.
 - h. No food service shall be prepared, sold, or displayed outside of the mobile food establishment without prior approval by the common council.
 - i. Dining areas to the mobile food establishment, including, but not limited to, tables and chairs, booths, stools, benches, or stand-up counters are only allowed on private property without prior approval by the common council.
 - j. Signage must be in compliance with Article V, Chapter 52 of the City of Tomah code of ordinances.
- (2) *Vehicle regulations.*

- a. Any vehicle or other on-street units used for vending food in any public street must be designed and constructed specifically for the purpose of vending the product or products to be vended.
 - b. Amplified music or other sounds from any vehicle or unit used for the purpose of vending products in the public streets shall comply with chapters 28 and 32 in the City of Tomah code of ordinances.
 - c. All mobile food establishments shall be entirely self-contained in regards to gas, water, electricity, and equipment(s) required for operation of the unit without prior approval by the common council.
 - d. All mobile food vehicles must have valid license plates and registration as provided by chapter 341, Wis. Stats.
 - e. No vehicle or unit may violate any traffic or parking statute or ordinance when stopping to make sales.
 - f. No flashing or blinking lights, or strobe lights are allowed on a mobile food establishment or related signage when the establishment is parked and engaged in serving customers. All lighting is subject to review by the City of Tomah and shall be removed if deemed to conflict with safe travel.
 - g. All mobile food establishments shall comply with all federal, state, and local regulations regarding vehicle size requirements.
- (3) *Zoning restrictions.*
- a. The vendor of the mobile food establishment shall not operate in a congested area where such operation impedes or inconveniences public use. No vendor shall engage in the licensed business on any public park, playground, school, library, or other public premises without prior approval from the Director of Parks & Recreation and the common council.
 - b. No mobile food establishment or pedestrian desiring to conduct business at the mobile food establishment shall obstruct an adjacent path or lane of travel. A path or lane of travel includes, but is not limited to sidewalks, motor vehicle lanes, bicycle lanes and other designated parking areas.
 - c. No mobile food vendor shall be located on any private property without written permission from the property owner. A copy of the written permission shall be kept in the mobile food unit at all times. The mobile food vendor shall comply if asked to leave the private property by the property owner.
 - d. No mobile food establishment shall conduct business within 500 feet of any fair, festival, special event, or civic event that is licensed or sanctioned by the city unless the licensee has obtained written permission from the event sponsor.
 - e. A mobile food establishment shall be located on a paved surface at all times unless it is part of a city sanctioned special event.
 - f. No person may conduct business on a sidewalk or curbside in any of the following places:
 - 1. Within 20 feet of the intersection of the sidewalk with any other sidewalk.
 - 2. Within ten feet of the extension of any building entrance or doorway to the curb line.
 - 3. Within 150 feet of a public entrance of any business which is a licensed or permitted restaurant by the City of Tomah, during the hours the particular business is open for sale, unless written permission is granted by the business.
 - 4. Within 150 feet of a city park where food concessions are sold, during the hours that concessions are being sold, unless written permission is granted by the parks & recreation department.
 - g. A mobile food establishment may be permitted in all zoning districts except residential zoning districts.
- (4) *Exemptions.*
- a. Upon application and approval from the common council, the licensee may periodically and infrequently extend the hours of service of the mobile food establishment outside the designated zone for business purposes only or obtain other exemptions found to be reasonable and appropriate in the council’s discretion.
 - b. For event purposes, a mobile food establishment may conduct business on publicly owned property after the approval from the Parks and Recreation Department or participates in a city sanctioned special event.

Sec. 12-130. Penalties.

- (1) Any person, firm, corporation or other entity of whatsoever kind or nature violating any of the provisions of this article, upon conviction thereof in court, shall be ordered to pay to the City a forfeiture of not less than \$50.00 nor more than \$1,000.00, together with the costs of prosecution. In default of the payment of such forfeiture and costs, the violator shall be dealt with in the manner provided, from time to time, by law for such default in payment. Each day's continuance of any violation constitutes a separate violation.
- (2) In addition to, and not in lieu of, the imposition and/or payment of the above forfeitures and remedies, the City may seek, and the court may grant, injunctive and other legal and/or equitable relief in favor of the City to abate and/or enjoin the violations.
- (3) In addition to, and not in lieu of, the above forfeitures and remedies, the court or the common council may suspend and/or revoke any permit or license issued under this or any other article.

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

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

Michael Murray, Mayor

ATTEST:

Rebecca Weyer, City Clerk

READ: 05/16/2023

PASSED: 05/16/2023

PUBLISHED: 05/22/2023

Approve definition of “full time” employee from 40 hours per week to 32 hours per week or more

Motion by Glynn, second by Scholze, to approve the definition of “full time” employee from 40 hours per week to 32 hours per week. Motion carried.

Amendment of Ordinance Section 52-10 (4) Regarding Open Decks First Reading, Second Reading, Adoption

Motion by Yarrington, second by Pater, to waive the first verbatim reading of the amendment of Ordinance Section 52-10 (4). Motion carried.

Motion by Zabinski, second by Kiefer, to waive the second verbatim reading of the amendment of Ordinance Section 52-10(4). Motion carried.

Motion by Zabinski, second by Scholze, to adopt the amendment of Ordinance Section 52-10(4) regarding open decks. Motion carried.

ORDINANCE NO. 2023-05-05-D

Ordinance Amending Section 52-10 (1)(a)(4) of the City of Tomah
Municipal Code Regarding Open Decks

The Common Council of the City of Tomah, Monroe County, Wisconsin, do ordain as follows:

SECTION ONE: Section 52-10 (1)(a)(4) of the City of Tomah Municipal Code is hereby amended to read as follows:

4. All accessory structures which are attached to the principal building shall comply with the yard requirements of the principal building except for open decks. Open decks (without a roof or enclosure) may not exceed one-half the distance of the required front, side and rear yard setbacks for the zoning classification of the property.

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

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

Michael Murray, Mayor

ATTEST:

Rebecca Weyer, City Clerk

READ:

PASSED:

PUBLISHED:

Acceptance of Tally Report for April 4, 2023 Election Results

Motion by Yarrington, second by Zabinski, to accept the Tally Report for the April 4, 2023 Election Results.

Set Time and Meeting Date for Special Meeting to set Bond Sale Date

Because of the missed quorum for the sale date for the bonding, the city needs to reset the dates to set the sales for bonding purposes. After deliberation, the meeting will be on Tuesday, June 6th at 6:30 p.m.

Appointment of Sandi Bloom to the Senior & Disabled Services Department Board

Motion by Kiefer, second by Zabinski, to approve the Appointment of Sandi Bloom to the Senior & Disabled Services Department Board to fulfill the remaining term of Mary Watkins ending in April 2025. Motion carried.

Adjourn

Motion by Kiefer, second by Zabinski, to adjourn. Meeting adjourned at 7:44 p.m.

Mayor Michael Murray

Attest: Rebecca Weyer, City Clerk

To be approved June 20, 2023