

**Minutes
Minnetonka City Council
Monday, January 10, 2022**

1. Call to Order

Mayor Brad Wiersum called the meeting to order at 6:31 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Bradley Schaeppi, Kissy Coakley, Brian Kirk, Rebecca Shack, Kimberly Wilburn, Deb Calvert and Brad Wiersum were present.

4. Approval of Agenda

Coakley moved, Kirk seconded a motion to accept the agenda, as amended adding consideration of a city-wide mask mandate under Item 14.D. All voted "yes." Motion carried.

5. Approval of Minutes:

A. December 20, 2021 regular meeting

Calvert moved, Schack seconded a motion to approve the minutes, as presented. All voted "yes." Motion carried.

6. Special Matters: Ceremonial oath of office for newly elected officials

City Attorney Corrine Heine administered the Oath of Office to Mayor Brad Wiersum, Councilmember Deb Calvert, and newly elected Councilmember Kimberly Wilburn. A round of applause was offered by all in attendance.

7. Reports from City Manager & Council Members

Acting City Manager Funk reported on upcoming city events and council meetings. He noted city hall would be closed on Monday, January 17 for Martin Luther King, Jr. day. He encouraged members of the public to take part in the Minnetonka 2022 Yeti Hunt going on now through Wednesday, January 19.

Coakley read a statement in full for the record noting safety was a priority for her. She explained she had a degree in criminal justice and believed people that look

like her were underrepresented in employment, housing, transportation and housing for decades in Minnesota but were over represented in the criminal justice system. She indicated she moved to Minnetonka because she was looking for a safe and quiet neighborhood. She wanted her neighbors and community to be safe, which included those who worked, visited and played in Minnetonka. She noted Minnetonka has a very low crime rate when compared to other communities. She noted recently, there has been an uptick in car jackings and burglaries and this was not acceptable. She indicated this was a statewide problem. She encouraged residents to be vigilant and aware of their surroundings. She explained there was no easy solution to long-systemic problems. She asked if there was a subset of people who were committing these crimes, were they from in state or out of the state. She stated if tough on crime solutions were pursued the city would not be addressing the problem, but rather would send juveniles down the pipeline to prison. She encouraged the city to find solutions to why people were committing these crimes. She suggested the city take a deeper look at the real problems of employment, housing, education, transportation and healthcare. She explained on December 29, 2021 the mayor addressed crime in Minnetonka and reported this statement was not based on the opinion of the city council. She indicated this statement made her feel this mission was for black and brown folks, and that there was a war on crime. She discussed how the war on drugs back in the 80's caused a lot of black and brown folk to end up in the criminal justice system without a solution. She felt singled out with no real evidence and now black and brown folks were a target for being murdered at the hands of white folks who take matters into their own hands. She reported her husband is a black man, who is a mail carrier in Golden Valley. She noted during peak hours he works 14 hours a day and does not return home until after 10:00 p.m. She feared for his safety because he delivers packages to homes in the dark and could be mistaken as a burglar or a car jacker. She stated she wanted her husband to return home each day safely after he delivers the mail. She encouraged Mike Freeman and the city to consider real solutions to the crimes that are occurring. She recommended that the next time a message is sent to residents regarding crime that black and brown folks be included.

Wilburn stated she was very excited to be serving as a councilmember for the city of Minnetonka. She read a prepared statement regarding the comments the mayor made regarding public safety. She explained there was a mayor's meeting on December 17, a letter followed shortly thereafter that was signed by five mayors. She noted the mayor then made comments at the December 20 city council meeting. She commented on December 28 the chiefs of police of Minnesota sent a letter to Hennepin and Ramsey County attorneys. She reported on December 29 there was an interview held with the Minnetonka mayor and a second mayors letter was sent on January 4. She indicated public safety has been a frequent topic of discussion with many officials weighing in on possible causes and solutions for the increase in certain crimes. She understood people were anxious to know what is being done. She stated she was troubled

by some recent public statements and the messages they send. She explained claims have been made without any supporting data. She discussed how cities and counties that have adopted pre-trial and bail reform show that releasing people pre-trial did not negatively impact public safety. She reported cash bail systems punish the poor by incarcerating them prior to any trial or conviction and could lead to job loss or alienation from family and the community. She explained experts are telling us the impact of the pandemic on mental health and economic/housing stability, along with the already disparities in education, healthcare, employment and housing are contributing factors to the crime that are being committed. She stated proposing simple solutions to the complex problems without any supporting data does a disservice to marginalized communities who hear the message they will continue to be targeted, but also to concerned residents who are seeking answers. She indicated public safety and social justice can co-exist. She concluded by saying before any solutions are put forth or any statements are made, that data should be reviewed and more people should be at the table discussing these matters. She recommended the DEI task force be included, along with public defenders or people who work with juveniles. She stated what people say matters and she did not want marginalized people to continue to be marginalized.

Kirk reported he had the opportunity to speak with Councilmembers Coakley and Wilburn before the meeting. He indicated he supported their comments regarding getting tough on crime. He stated he has worked for the YMCA for the past 35 years and 20 of those years were in youth development. He explained the young people who were committing these crimes were 15 to 16 years old at the beginning of the pandemic and he assumed they were already facing great social and economic diversities. He understood that criminals needed to be held accountable and safety was his top priority. He encouraged the public to recognize what was causing this bad behavior in the first place in order to end the cycle of crime. He stated by pushing for incarceration only the symptoms of the problem are being addressed and not the cause. He indicated these are mostly crimes of opportunity and the city should be focusing on prevention instead of incarcerating young people in communities that are already struggling. He urged the public to focus on crime prevention measures to remove the opportunity. He stated an ounce of prevention was worth a pound of cure. He recommended the cities impacted by these crimes work with Hennepin and Ramsey County to address the social and economic problems at their core and to help these young people find a more productive path.

Wiersum reported this was not a forum for debate and he was not going to do that. He noted he attended a mayors meeting and the issue of public safety was discussed because public safety was job one for all cities. He stated people expect to be safe, people from all communities. He indicated he did not make any statements on behalf of the city or the city council. He explained the words that appeared were his own words and he stands behind them. He appreciated

the input from his fellow councilmembers and noted he would be happy to speak with anyone about their concerns regarding public safety or social justice.

8. Citizens Wishing to Discuss Matters not on the Agenda: None

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

A. Resolution accepting plans and specifications and authorizing bids for the Ridgedale Drive Trail Project

Kirk moved, Calvert seconded a motion to adopt Resolution 2022-001. All voted “yes.” Motion carried.

B. Designation of official newspaper for 2022

Kirk moved, Calvert seconded a motion to designate *Sun Sailor* as city’s official newspaper for 2022. All voted “yes.” Motion carried.

C. Minnetonka School District School Resource Office Agreement

Kirk moved, Calvert seconded a motion to approve the agreement . All voted “yes.” Motion carried.

D. Resolution for the Hopkins Crossroad Trail Project Safe Routes to School Grant Application

Kirk moved, Calvert seconded a motion to adopt Resolution 2022-002. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings:

A. Resolution vacating a portion of a sewer and drainage easement at 12003 Ridgemount Avenue W

City Engineer Phil Olson gave the staff report.

Wiersum opened the public hearing.

There being no further comments from the public, Wiersum closed the public hearing.

Schack moved, Calvert seconded a motion to hold the public hearing and adopt Resolution 2022-003. All voted "yes." Motion carried.

14. Other Business:

A. Resolution denying a conditional use permit for an accessory structure in excess of 1,000 square feet, at 4127 Williston Road

Assistant City Planner Susan Thomas gave the staff report.

Wiersum opened the meeting for comments from the public.

Donald Sundell, 14660 Lake Street Extension, reported his property adjoins the property in question. He believed the proposed construction would adversely impact his property. He noted the new building would be directly north of his rear yard and would dominate the view from his deck and living room. He expressed concern with how the proposed garage space would be used, considering the fact the applicant was requesting 12 foot garage doors and a 16 foot overhead door. He believed the home would be better served by putting on an addition for entertainment space. He feared the proposed space would be used for commercial use, noting the applicant was running a contractor business from this property. He stated the applicant has requested a turn around to access the garage because of the slope of the driveway. He noted the applicant already had a paved turnaround at the top of the existing driveway that had a temporary canvas covered structure that was being used for storing materials and equipment for his construction business. He anticipated the existing turnaround would serve the applicants needs. He discussed the second marked up plan noting it was not very different from the first plan and recommended the council deny the conditional use permit request.

Susan Sundell, 14660 Lake Street Extension, explained she lived at the intersection of Lake Street Extension and Williston Road. She stated at the second planning commission meeting she took more risks regarding this request because it was so important to her. She noted she had a daughter who was hit by a car and died at the corner where she lived. She considered herself to be a good citizen and she paid her taxes. She provided staff with a handout which included two letters she wrote to the planning commission. She indicated she did not want to have to police what was being parked in her neighbors garage. She stated she was an outpatient mental health psychologist for 35 years and she was pretty good at seeing things. She reported she did not see this project in the same way the applicant did. She expressed concern with how her property value would be impacted if this garage were constructed. She explained her view

would be adversely impacted and a large number of trees would be lost. She indicated the proposed garage was not in keeping with the neighborhood and encouraged the city council deny the conditional use permit request.

Zack Klonneyes, 4127 Willison Road, explained he was the applicant and property owner. He stated it was unfortunate to be before the council without a recommendation for approval from staff and the planning commission. He discussed how the grade of his lot had made it very difficult to find a location for the proposed garage. It was his opinion, the proposed placement was the best location. He discussed how the proposed structure would help in meeting the needs of his family. He made it clear that if this structure was not approved, another garage structure that does not require city approve would be built on his property in this location. He asked that the council reconsider and offer their approval of the proposed garage.

Kirk asked if the proposed garage could be considered a second home versus an outbuilding given the size of the lot. Thomas reported the city only allows one primary structure on a lot. This meant that if garage structure were to be converted into a home, this request would have to come before the city.

Kirk questioned if the applicant has any storage violations with the city. Thomas indicated the applicants applied for a temporary storage permit in October of 2021 so they have time left on this temporary permit.

Kirk explained city ordinance does not allow a home to be used as a construction company. He inquired if the materials being stored on the property were for the construction business. Thomas reported she has not been in the storage building and was therefore not aware of what was being stored on the property. She stated based on her visits to this site, she did not see anything glaring that says a home occupation was occurring on this site.

Kirk asked if the applicants comments regarding being able to build a garage without a loft would be allowed on this property. Thomas stated staff would need to see the plans in writing, but noted an enclosed space that was less than 1,000 square feet and was 12 feet or less a building permit could be issued.

Schack commented it was disappointing to have a resident come to the city and make threats of building something less appealing if his request was not approved. She indicated this was not the way to convince her to take action. She reported she put a lot of faith in staff, along with the recommendation from the planning commission. She stated she would be supporting staff and planning commissions recommendation.

Calvert noted three members of the city council have served on the planning commission. She indicated it was difficult to respect private property rights along

with taking into consideration the concerns of the neighbors. She agreed with the planning commission that viewshed was not a property right. She was of the opinion the placement of the proposed garage feels very disrespectful and diminishes the experience of all of the other neighbors. She commented she would be supporting the recommendation from the planning commission and staff.

Schaeppi stated he would be supporting the recommendation of staff. He wished the applicant and staff could have found common ground.

Kirk thanked the neighbors and applicant for voicing their concerns at the planning commission and council meetings in a respectful manner. He stated the applicant has a lot that was almost one acre in size and noted the property owner has the right to build on his property. He encouraged the neighbors to reach out to one another in order to find some common ground because it sounded as if the applicant would be building a garage on his property, even if the conditional use permit were denied.

Calvert moved, Kirk seconded a motion to adopt the Resolution 2022-004. All voted "yes." Motion carried.

B. Resolution for the Tonka-Woodcroft Improvements Project (includes Minnetonka Boulevard Trail)

City Engineer Phil Olson gave the staff report.

Schaeppi thanked staff for all of their efforts on this project. He stated this project was exciting and he looked forward to its completion. He requested staff educate the public on the driveway curb cuts. Olson explained for the most part the city would be maintaining the normal driveway widths. However, the unique situations would be evaluated by staff to allow for flexibility. He noted staff had already met with several property owners.

Schaeppi questioned where the existing sidewalk would end from Groveland Road as it heads east. Olson indicated the sidewalk would end just to the west of the pond.

Wiersum reported this was the biggest street and utility construction project in the history of the city. He asked if there were any comments from the public.

A resident questioned if there was a timeline on when each individual street would be completed. Wiersum reported the council would not know this, but encouraged the resident to speak with staff. Olson reported a more detailed project schedule would be sent to residents after meeting with the contractor.

Wiersum explained if this project were completed in other cities the residents would be assessed for 20% to 30% of the project costs. He commented the city of Minnetonka pays for its street improvement projects through property taxes.

Calvert moved, Schaeppi seconded a motion to adopt the Resolution 2022-005. All voted "yes." Motion carried

C. Resolution designating a new Acting Mayor and Alternate Acting Mayor

Schack gave the staff report and recommended Councilmember Kirk serve as the acting mayor for 2022, with Councilmember Coakley serving as the alternate acting mayor.

Schack moved, Calvert seconded a motion to make designation and adopt Resolution 2022-006. All voted "yes." Motion carried.

D. COVID-19 pandemic updates

Acting City Manager Mike Funk and City Attorney Corrine Heine gave the staff report.

Schack asked if the COVID testing was an expense that could be passed along to employees. Heine reported the city policy would provide rapid testing starting February 7 at the city's expense.

Calvert commented she has seen reports that that rapid tests are only 30% accurate for Omicron. She expressed concern with how this may impact city staff. She discussed how PCR's took longer to get results and questioned if staff had considered going this route. Heine the city had the ability to order any type of test. She noted the city would be moving forward with rapid tests because they were the most economical. She indicated staff does not know the scope of how many employees would have to be tested. She explained the contract would allow the city to change tests and could move to PCR's, but these would be more expensive and took longer to get the results.

Funk asked if the city council wished to proceed with the current in-person format for meetings, or should the council move to virtual meetings. He commented if the council were to move to virtual meetings, what would trigger the move back to in-person meetings.

Calvert stated she supported the council moving to virtual meetings. She recommended the trigger to return to in-person follow a metric.

Schack explained she appreciated the comments from Councilmember Calvert, but feared the council was being elitist by making a decision to meet remotely when all other city employees had to work in person. She questioned if the previous metrics applied to the Omicron variant. She suggested that if the council were to move to virtual meetings that a decision be made in real time or what the science is recommending at the time.

Coakley indicated she was open to moving back to virtual meetings. She suggested the trigger to return be based on a metric given the high number of people that have COVID at this time and noted the African American community has been hit really hard.

Kirk stated the council has to abide by quorum requirements and he believed moving to virtual meetings would ensure that the council could continue to meet in the coming weeks and months. He anticipated there would be fewer people interested in attending meetings as the number of COVID cases continue to rise. He indicated he did not understand the metrics well enough to weigh in on this, but recommended science guide the metrics in order to trigger when the council should return to in-person meetings.

Wilburn reported she would be in favor of moving to virtual meetings. She noted she did masters work in immuno-biology and she understood the science. She recommended the council not return to in-person meetings unless the metrics or science approved.

Schaeppi supported the council continuing to meet in-person. He noted the city council were the leaders of this community. He believed the risk at the meetings was very low. He stated the signal virtual meetings sends to the public was that elected officials could choose something that was convenient because they have a choice. He reported not all people have a choice and they have to show up for work every day. While he highly respected the opinions of his colleagues, he indicated the leadership message that virtual meetings send was incorrect.

Wiersum appreciated the input from each councilmember. He reported it was his understanding Omicron was highly contagious. He then discussed the breakthrough rates that were occurring for people who have been vaccinated. He stated he agreed with much of what has been said, and understood going virtual was a privilege. However, he also understood that the work of the city had to get done and he did not want meetings to be canceled due to COVID or COVID exposures. While he felt safe in the council chambers, he believed the most likely way to continue to get the work of the city done was to move to virtual meetings. He recommended this decision be evaluated every four weeks.

1.) Consideration of a city-wide mask mandate

Acting City Manager Mike Funk gave the staff report.

Wiersum stated he has spoken with residents that want a mask mandate and he has spoken to residents that do not support a mask mandate. He understood that people were emotional on both sides of this issue and that a council decision would not be popular.

Schack reported she supported the city having a mask mandate in place. However, she understood this would adversely impact the business community who was already struggling due to COVID. She suggested the mask mandate move forward with the understanding this would be difficult to enforce. She noted she would be open to athletic or recreational facility exceptions.

Coakley stated she supported a city-wide mask mandate. She noted with the numbers being up this would be a good way to protect the community. She asked if schools would be included in the city-wide mandate. Heine commented on the previously approved mask mandate which occurred in July of 2020. She stated this mandate did not have to be enforced because the governor imposed a state-wide mandate. She noted the city's mandate would not apply to schools as schools would be allowed to make their own determination.

Coakley supported the schools be required to have a mask mandate if a city-wide mandate were approved by the city council.

Kirk agreed with Councilmember Schack's comments. He hoped that this mask mandate would be short lived. He noted the transmission of Omicron was occurring very quickly and this was impacting all industries. For this reason, he believed the mask mandate made sense at this time. He stated he supported exempting recreational facilities, sporting events and the ice rink from the mask mandate.

Schaeppi reported he supported the previous mask mandate. He discussed how the governor was surrounded by highly educated professionals. He indicated he did not support a city-wide mask mandate when the state did not have a mask mandate in place.

Calvert questioned what the penalty would be for noncompliance with a mask mandate. Heine reported violation of a city ordinance was a misdemeanor offense. Police Chief Scott Boerboom commented this would be a very difficult ordinance for his officers to enforce. He stated it was better when it was statewide because there was consistency across borders. He feared that his officers would be getting into an altercation with an individual who feels passionately about this subject if he was asked to enforce this ordinance.

Calvert commented she understood enforcement would be the biggest challenge. She understood there were issues occurring at the state level and therefore the onus was being put on the smaller levels of government to make this difficult decision. She stated she did not relish in making this decision, but she believed it was based on science. She indicated the goal of the mask mandate would be to reduce transmission and to keep workers working. It was her hope that the mask mandate would be quickly lifted noting it would have to be based on science. She explained all citizens have the right to life, liberty and the pursuit of happiness and her goal right now was to preserve life, while protecting the liberties of residents. She supported kids wearing masks at sporting events and in ice rinks. She also preferred letting other units of government, such as the school district, to make their own decisions when it comes to mask mandates.

Wilburn stated she supported a mask mandate noting the science shows masks help with the spread of COVID. She believed this was the responsible way to move forward at this time.

Wiersum indicated he supported wearing masks and he believed it made sense for people to be wearing masks at this time. However, from a public policy standpoint, he could not support an ordinance being put in place that would not be enforced. He explained he had a real problem with laws that were not enforced. He stated the police department had better things to deal with than trying to enforce a mask mandate. He feared that a mask mandate would create an illusion that everyone was going to wear a mask, and this would not be the case. He indicated he supported wearing a mask and would be wearing a mask, but he did not support the city passing an ordinance that would not be enforced. He stated this was bad public policy. He commented he had spoken to a number of mayors and they would not be having a mask mandate but rather would have a strongly worded resolution of encouragement to wear masks. He encouraged everyone in this room to wear a mask, but stated he would not support an ordinance moving forward that would not be enforced.

Wiersum stated he would not be putting a mask mandate in place by declaring a state of emergency. He asked how the council should proceed with this matter. City Attorney Corrine Heine explained the council has the authority to adopt an emergency ordinance. She indicated staff does not have a draft ordinance prepared for a city-wide mask mandate. She reported the council could recess the meeting to allow staff time to draft an ordinance. She stated another alternative would be to schedule another meeting, prior to January 24 to address this matter.

Kirk noted it would take time for businesses to chime in and respond to this mandate. He believed it would be fair to allow for some window of opportunity for local businesses. He understood that a mask mandate would be difficult for both the police and local businesses to enforce. He discussed how businesses would

have to resign their properties and get staff up to speed with the new mandate. He suggested action on this matter be delayed to the next council meeting.

Funk encouraged the council to consider holding a special meeting in three days to allow staff some time to prepare an ordinance and to push communications to the business community and the general public. He noted this meeting would be advertised properly and would be held virtually. He stated an implementation date should be considered by the council.

Wilburn asked if the council were to wait three days what sort of communication would be made with local businesses. Funk reported at a minimum staff would be announcing the purpose for the special council meeting, which would be to consider an ordinance for a city-wide mask mandate. He indicated the city would also be proactive in letting the business community and residents know that this was being considered.

Schack stated time was of the essence and the city had a responsibility to make sure things were being done properly. She supported the council holding a special meeting in three days.

Coakley supported the council holding a special meeting in three days to address the city-wide mask mandate.

Wiersum reiterated there would be no state of emergency declared by the mayor. He noted an ordinance had certain requirements with respect to effective dates. He asked what the charter says in terms of enacting a non-emergency ordinance. Heine stated even if a state of emergency was not declared by the mayor, the council has the ability to adopt an emergency ordinance. She reported an emergency ordinance was an ordinance that was necessary for the immediate preservation of the public peace, health, safety or welfare. It must be adopted by the affirmative vote of at least five councilmembers. She reported the city may not prosecute a violation of an emergency ordinance until 24 hours after the ordinance was either filed with the city clerk and posted in three conspicuous places in the city or published at least once in the official means of publication. She recommended the council follow the posting method.

Wiersum questioned what action the council had to take tonight. Heine stated the council would have to provide staff with direction on when they would like to meet. She reported the council could meet in three days for a special meeting, or could choose to continue this meeting to a date and time specific.

Wiersum recommended the council meet in three days versus continuing this meeting. He suggested the council meet on either Thursday or Friday of this week.

Calvert supported the council meeting in three days as well because this would provide staff with more time to pull information together.

Schack agreed and recommended the meeting be held in the late afternoon.

Coakley supported this recommendation.

Funk requested the council be prepared to discuss exemptions from the mask mandate for recreation facilities on Friday.

Wiersum recommended staff make a list of athletic sites that should be exempt from the mask mandate.

Coakley anticipated other businesses would feel the exemptions for athletic facilities was unfair.

Wiersum stated this would all be worked out on Friday. He suggested the council continue this meeting to Friday, January 14 at 3:30 p.m. The council supported this recommendation.

15. Appointments and Reappointments:

A. Reappointments to Minnetonka boards and commissions

Wiersum moved, Wilburn seconded a motion to approve the appointments. All voted "yes." Motion carried.

B. Appointment of student member to the Park Board

Wiersum moved, Calvert seconded a motion to approve the appointment. All voted "yes." Motion carried.

16. Meeting Continuation

Wiersum moved, Calvert seconded a motion to continue this meeting to 3:30 p.m. on Friday, January 14, 2021 pursuant to Minnesota State Statute 13D.021. All voted "yes." Motion carried.

Respectfully submitted,



Becky Koosman
City Clerk