

**CITY OF CEDARBURG
COMMON COUNCIL
July 31, 2017**

**CC20170731-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, July 31, 2017, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Kinzel called the meeting to order at 7:00 p.m.

ROLL CALL: Present - Common Council: Mayor Kip Kinzel, Council Members John Czarniecki, Jack Arnett, Dick Dieffenbach, Rick Verhaalen, Mitch Regenfuss, Patricia Thome, Mike O'Keefe

Also Present - City Administrator/Treasurer Christy Mertes, City Clerk Constance McHugh, Planner Jon Censky, Fire Chief Jeff Vahsholtz, Fire Inspector Blake Karnitz, City Attorney Michael Herbrand, several Fire Department members; interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Kinzel's request, City Clerk McHugh verified that notice of this meeting was provided to the public by forwarding the agenda to the City's official newspaper, the *News Graphic*, to all news media and citizens who requested copies, and by posting in accordance with the Wisconsin Open Meetings law. Citizens present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

APPROVAL OF MINUTES

Council Member Dieffenbach suggested the following sentence of paragraph 5 on page 2 of the July 10, 2017 minutes be changed as follows: He stated that the Friends of the Library work hard to raise ~~as much as~~ donations over \$600,000 in ~~and conduct~~ annual book sales to help the Library. ~~and~~ ~~it~~ It would not be cost efficient to purchase liquor liability for this one event.

Motion made by Council Member Thome, seconded by Council Member Arnett, to approve the minutes of the July 10, 2017 Common Council meeting as amended. Motion carried unanimously.

OATH OF OFFICE – BLAKE KARNITZ, FIRE INSPECTOR

City Clerk McHugh administered the oath of office to Fire Inspector Blake Karnitz. Chief Vahsholtz said the Fire Department is excited to have Mr. Karnitz, who started as an explorer, come back to the Department as Fire Inspector.

PRESENTATION OF 2016 ANNUAL FIRE DEPARTMENT REPORT

Chief Vahsholtz said 2016 was a big year for the Fire Department. Highlights include:

- The Department celebrated the 50th year of Maxwell Street Days.
- Fundraising and saving for several years allowed the Department to purchase a new fire truck for \$680,000 and donate it to the City.

- The Department celebrated the 150th anniversary of the Cedarburg Fire Department in 2016.
- Membership decreased slightly from 68 active members in 2015 to 61 members in 2016.
- The number of volunteer hours has also decreased, mainly due to other commitments resulting in less time members are able to devote to the Department.
- Firefighter Dustin Halyburton was promoted to Publication Coordinator.
- Tanya Zarling was promoted to Lieutenant of Explorers.
- The bell tolled one last time for members Ardell Guetzke, Gerald Hammetter, Jim Langnes, and Rodger Rahn.
- The Department responded to a total of 1,000 incidents and mutual aid requests in the City and Town. This number is slightly down from a total of 1,045 in 2015.
- There were no major structure fires in 2016. There were five minor structure fires.
- Training is always a priority for the Fire Department. In 2016 almost 6,000 training hours were logged by volunteers.
- Fire Department personnel are ready and on standby for Winter Festival, Strawberry Festival, July 4th and Wine and Harvest Festival. 950 volunteer hours were logged for standby at these events.
- Many volunteer hours also go into public education efforts.
- Not mentioned in the written report are the thousands of hours provided by volunteers that are unrelated to firefighting, such as the fundraising at Fireman's Park. This fundraising allows the Department to buy the best equipment to help community members and keep the community safe.

Chief Vahsholtz thanked the Council and Police and Fire Commission for the support received.

Council Member Arnett asked Chief Vahsholtz if he views the decrease in membership as continuing. Chief Vahsholtz said it is unknown at this time if the decrease will continue. He said everyone is busy and there are competing interests. Joining the Fire Department is a big commitment. He said the Department is doing everything it can to draw people in.

Council Member Arnett asked if thought has been given to charging Festivals of Cedarburg for the time devoted to standby during the festivals. Chief Vahsholtz said he spoke this year to representatives of Festivals of Cedarburg about the problems experienced, logistics involved because of the location of the Fire Station in relation to the festivals, and to explain that two vehicles were purchased solely for use during festivals, but he has not gone as far as asking the Festivals Board for payment. He said Festivals of Cedarburg did make a donation to the Fire Department.

Council Member Arnett asked if any other area volunteer departments are able to donate vehicles worth \$700,000 back to the community. Chief Vahsholtz said the Thiensville Fire Department is able to donate back to the Village, but not at the same level as the Cedarburg Fire Department.

Council Member Arnett said he has heard from his neighbors that they very much appreciate the Fire Department and the services provided. He said this is a common feeling around town.

CONSIDER OUTDOOR ALCOHOL BEVERAGE LICENSE FOR HANDEN DISTILLERY AT W62 N590 WASHINGTON AVENUE

Planner Censky said the Handen Distillery recently received conditional use approval to conduct their distilling operation from the renovated downtown building at W62 N590 Washington Avenue and are now requesting an outdoor alcohol beverage license to serve their product on a small patio out front. This patio is approximately 9' x 11' and will be accessed from within the distillery through a set of sliding glass doors. The Plan Commission and Landmarks Commission have reviewed the application and both bodies recommended approval.

Council Member Dieffenbach asked if this is a new alcohol license issued by the City. Mayor Kinzel explained the Distillery operates under a permit from the State and is allowed to sell and serve their products. The applicant is seeking permission to sell and serve the products outside on a patio.

Motion made by Council Member Arnett, seconded by Council Member O'Keefe, to approve the application for an outdoor alcohol beverage license for the Handen Distillery at W62 N590 Washington Avenue. Motion carried with Council Members Czarnecki, Arnett, Verhaalen, Regenfuss, Thome and O'Keefe voting aye and Council Member Dieffenbach voting nay.

CONSIDER APPLICATION FROM SHEILA JEAN RZENTKOWSKI OF R.J. THIRSTY'S AT W62 N559 WASHINGTON AVENUE FOR THE CLASS "B" BEER AND "CLASS B" LIQUOR LICENSE FORMERLY HELD BY EASY STREET

City Clerk McHugh said the Easy Street bar closed on June 30, 2017; therefore a "Class B" liquor license is available. One of the current owners of the building, Sheila Rzentkowski, has applied for the license that was previously held by Dan Brush, owner of Easy Street.

Dan Rzentkowski said Mr. Brush was working with someone to buy his business but that did not work out. He offered to continue to lease the building to Mr. Brush until a new tenant was found, but Mr. Brush was not interested in continuing his operations. He said his wife has applied for the license and has plans to run the tavern while the building is being sold. Mr. Rzentkowski said as recently as last week a buyer has come forward.

Michelle Taraboi said she and her husband plan to buy the building and close on October 1. Plans are to lease the building to two couples that have applied for the license last Friday. The two couples will rent from Mr. Rzentkowski until the sale closes.

Attorney Herbrand reminded everyone that the Council recently adopted an ordinance that requires holders of liquor licenses to be open a minimum of four hours a day, fifteen days a month. Ms. Taraboi said she is aware of the ordinance as did Mr. Rzentkowski. Mr. Rzentkowski asked the Council whether they should run the bar or wait until the new license is issued to the new applicants.

Attorney Herbrand said a provision in the ordinance does allow for an exemption to the minimum hours and days for extraordinary circumstances.

Council Member Arnett asked if the Council is obligated to act on this item tonight. He said he is concerned about the process of notifying the public about available liquor licenses and needs more information.

Attorney Herbrand said the Council has a large amount of discretion in terms of issuing this available license, as long as a record is created showing the rationale for the decision.

Gus Wirth, owner of Echo Plaza, said he was approved for a liquor license by the Chief of Police for the former La Fajitas location in his shopping center. He said he is shocked to see someone vying for this license. His request for the license formally held by La Fajitas was turned down at the June 26 meeting. He said the license should be maintained by a restaurant type business and said licenses usually stay with the building.

City Clerk McHugh said Deputy Clerk Kletzien called Mr. Wirth and Martin Valencia, a prospective tenant for the Las Fajitas location, on July 5 explaining a liquor license had become available and if there was interest in obtaining the license an application should be made as soon as possible.

Council Member Arnett made a motion to postpone a decision on granting this license until the August 28 meeting and that there be a process for notifying the public of an available license, such as posting on the website. The motion was seconded by Council Member Dieffenbach.

Council Member Thome said she does not know what to do in this case. She said she does not want to see this put off for a month because it may mean a loss of business for someone. However, she also is concerned about a misunderstanding on Mr. Wirth's part of having to reapply for the license.

Mayor Kinzel asked Mr. Wirth if he has a tenant for the former La Fajitas location. Mr. Wirth said he has four separate individuals who are interested in running a Mexican restaurant.

Council Member Regenfuss said the owners of the building, the Rzentkowski's, seem to have a buyer for the building, there is a tenant who will ensure continuity of business, and the applicant has followed the right steps in the process to obtain the license. He suggested the Council move forward with the application.

Mr. Rzentkowski said they will continue to run the bar if for some reason the application of the new tenants is not approved.

Council Member Czarnecki said the person who owns the building has applied for the license, this is what is on the agenda, and is what should be acted on at this meeting.

Some Council Members expressed an interest in establishing a notification policy or process when liquor licenses become available. Council Member Verhaalen said a policy regarding advertising available licenses could be discussed at a future meeting but is not on the agenda tonight.

With Council Members Arnett and Dieffenbach voting aye, and Council Members Czarnecki, Verhaalen, Regenfuss, Thome and O'Keefe voting nay, the motion to postpone a decision failed.

Motion made by Council Member O’Keefe, seconded by Council Member Czarnecki, to approve the application of Sheila Jean Rzentkowski of R.J. Thirsty’s at W62 N559 Washington Avenue for the Class “B” beer and “Class B” liquor license formerly held by Easy Street. With Council Members Czarnecki, Verhaalen, Regenfuss, Thome and O’Keefe voting aye and Council Members Arnett and Dieffenbach voting nay, the motion carried.

Attorney Herbrand said a recent change in the law allows communities to acquire liquor licenses from neighboring communities. He said this is something staff will be exploring.

CONSIDER REQUEST OF JIMMY PHOA OF NEW FORTUNE TO AMEND THE PREMISE DESCRIPTION OF THE CLASS “B” BEER AND “CLASS B” LIQUOR LICENSE OF NEW FORTUNE AT W62 N547 WASHINGTON AVENUE TO SELL AND SERVE ALCOHOL OUTSIDE DURING STRAWBERRY FESTIVAL AND WINE AND HARVEST FESTIVAL

The owners of New Fortune are seeking permission to alter the liquor license premise description to be able to sell and serve alcohol on the street in front of the business during Strawberry Festival and Wine and Harvest Festival.

Council Member O’Keefe said businesses must pay Festivals of Cedarburg \$1,000 to be able to sell and serve alcohol outside their establishments during festivals. He said this is an attempt to limit the number of points of sale and alcohol related problems.

Motion made by Council Member Regenfuss, seconded by Council Member Czarnecki, to amend the premise description of the Class “B” beer and “Class B” liquor license of New Fortune at W62 N547 Washington Avenue to sell and serve alcohol outside during Strawberry Festival and Wine and Harvest Festival. Motion carried unanimously.

CONSIDER CANCELLATION OF CLASS “B” BEER AND “CLASS C” WINE LICENSE OF SAL’S PIZZA FOR NON-PAYMENT

City Clerk McHugh said the applicant made payment for the licenses today so the matter is resolved.

CONSIDER ORDINANCE NO. 2017-19 RELATED TO SEX OFFENDER RESIDENCY RESTRICTIONS

Attorney Herbrand said the City has an ordinance that restricts sex offenders from living within 500’ from where children may typically congregate. In April of 2017, a Federal Court ruled that a sex offender residency restriction ordinance in the Village of Pleasant Prairie was unconstitutional because it made more than 90% of the Village off limits to sex offenders. It also contained a domicile restriction that was found to banish sex offenders from the Village, especially when considering the provision requiring offenders living in rental units to leave those units after 6 months of the date of the adoption of the ordinance. This domicile clause was found to violate the equal protection clause of the U.S. Constitution. When the ordinance was adopted, the Village did not obtain or consider any studies or empirical data regarding the safety risk of allowing designated offenders to live near the prohibited locations. The Village also produced no evidence, either when

adopting the ordinance or in Court, indicating that sex offenders living outside of the Village at the time of their last offense posed a greater safety risk than those who lived in the Village.

Attorney Herbrand said the City has domicile restriction similar to that of Pleasant Prairie that states no person who has been convicted of a sexually violent offense and/or crime against children shall be permitted to reside in the City unless such person had lived in the City at the time of the offense.

Attorney Herbrand said it is his opinion the City's ordinance is good in that he believes there is about 22% of real estate available for sex offenders to reside. However, the domicile clause is a concern. He proposed that it be removed from the current ordinance. This would allow sex offenders who did not live in the City prior to committing the crime move to the City as long as all other restrictions are complied with.

Council Member Czarnecki asked if the 500' restriction could be increased to 700'. Attorney Herbrand said this is something that would have to be looked into.

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to postpone action on the proposed ordinance to give staff the opportunity to research a possible change in the distance restriction. Motion carried unanimously.

PAYMENT OF BILLS

Motion made by Council Member Arnett, seconded by Council Member Czarnecki, to approve the payment of the bills for the period 07/03/17 through 07/21/17, transfers for the period 06/10/17 through 06/23/17, and payroll for the period 07/02/17 through 07/15/17. The motion carried unanimously.

LICENSE APPLICATIONS

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to authorize the issuance of new Operators licenses for the period ending June 30, 2018 to Teia J. Batiansila, Darren D. Hackmann, Rochelle L. Hackmann, Pamela A. Lidington, Christopher C. Nelson, Kerry K. Tharp, John P. Stolte, and Robert L. Vaccarella. Motion carried unanimously.

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to authorize the issuance of renewal Operators licenses for the period ending June 30, 2018 to Elizabeth A. Albers, Elizabeth M. Bursten, Terri J. Heidtke, Patrick R. Riley, and James L. Wendt. Motion carried unanimously.

CITY ADMINISTRATOR'S REPORT

The second quarter financial report was distributed prior to the meeting.

CITY CLERK'S REPORT

City Clerk McHugh certified that the Ethics Code has been distributed to and reviewed by all boards, committees, and commissions and staff pursuant to the requirement of Sec. 2-5-10 of the

Municipal Code, with the exception of the Board of Appeals, ad hoc Creek Walk Committee, ad hoc Cedar Creek Clean up Committee, and ad hoc Mayor's Enhancement Award Committee, all which have not meet to date.

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Thome said the Greater Cedarburg Foundation Gala will be held on September 23.

Council Member Verhaalen said Mel's Pig Roast will be held on September 24 at Cedars.

CLOSED SESSION

Motion made by Council Member Dieffenbach, seconded by Council Member Thome, to adjourn to closed session at 8:35 p.m. pursuant to State Statutes 19.85(1)(e) to deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business whenever competitive or bargaining reasons require a closed session, more specifically, to consider a Developer's Agreement regarding the redevelopment of the Amcast property and to consider cellular tower lease document to be used for location on the monopole to be constructed on Western Avenue. Approval of 07/10/17 closed session minutes. Motion carried on a roll call vote with Council Members Czarnecki, Arnett, Dieffenbach, Verhaalen, Regenfuss, Thome and O'Keefe voting aye.

RECONVENE TO OPEN SESSION

Motion made by Council Member Dieffenbach, seconded by Council Member O'Keefe to reconvene to open session at 9:53 p.m. Motion carried on a roll call vote with Council Members Czarnecki, Arnett, Dieffenbach, Verhaalen, Regenfuss, Thome and O'Keefe voting aye.

ADJOURNMENT

Motion made by Council Member Czarnecki, seconded by Council Member Arnett, to adjourn the meeting at 9:54 p.m. Motion carried unanimously.

Constance K. McHugh, MMC/WCPC
City Clerk