

**CITY OF CEDARBURG
COMMON COUNCIL
March 8, 2021**

**CC20210308-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held online on Monday, March 8, 2021, utilizing the Zoom app.

Mayor O’Keefe called the meeting to order at 7:00 p.m.

Roll Call: Present - Mayor Michael O’Keefe, Council Members Sherry Bubnitz, Jack Arnett, Kristin Burkart, Rick Verhaalen, Patricia Thome, Robert Simpson, Barbara Lythjohan

Also Present - City Administrator Mikko Hilvo, City Attorney Michael Herbrand, Deputy City Clerk Amy Kletzien, Finance Director/Treasurer Christy Mertes, Director of Engineering and Public Works Mike Wieser, Police Chief Thomas Frank, interested citizens and news media.

STATEMENT OF PUBLIC NOTICE

At Mayor O’Keefe’s request, Deputy City Clerk Kletzien 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. Citizen’s present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

APPROVAL OF MINUTES

Motion made by Council Member Thome, seconded by Council Member Bubnitz, to approve the February 16, 2021 Joint Common Council/Town Board minutes and the February 22, 2021 Common Council minutes. Motion carried without a negative vote.

NEW BUSINESS

CONSIDER RECOMMENDATION OF POLICE CHIEF TO DENY NEW OPERATORS LICENSE APPLICATION OF TRINITY CARLSON; AND ACTION THEREON

Police Chief Frank stated that he was recommending the license application for Trinity Carlson be denied based on her arrest and conviction record.

Motion made by Council Member Bubnitz, seconded by Council Member Simpson, to deny the new Operator license application for Trinity Carlson based on Police Chief Frank’s recommendation. Motion carried without a negative vote.

DISCUSSION ON IMPACT FEE STUDY; AND ACTION THEREON

Finance Director/Treasurer Mertes explained that the last impact fee study for the City was completed in 2012 by Baker Tilly. Through the study the need for the fees is justified, the fees are calculated and, in some cases, a total amount to be collected is set. For the Police Department and the Library, the fee was based on the debt financed for the building construction. In 2020 the City reached that total for the Police Department. Instead of refunding the fees collected over the amount necessary, Staff is recommending a new study be completed to evaluate the needs of the Police Department and other departments in the future due to the continuing growth of the City. The impact fee study would cover the Parks, Police, Library and Water Recycling Reserve Capacity impact fees.

Finance Director/Treasurer Mertes explained that three proposals were received from three firms: Baker Tilly (\$29,500), Ehlers (\$22,500), and Ruekert & Mielke (\$28,000).

Council Member Verhaalen confirmed with Finance Director/Treasurer Mertes that \$30,000 would need to be returned. When asked by Council Member Verhaalen if the \$30,000 could be used to pay for the impact fee study, Finance Director/Treasurer Mertes replied that it cannot.

In answer to Council Member Burkart's question, Finance Director/Treasurer Mertes stated that there are no glaring differences in the impact fee proposals.

In answer to Council Member Bublitz's question, Finance Director/Treasurer Mertes said there is no reason not to hire Ehlers for the impact fee study.

Motion made by Council Member Verhaalen, seconded by Council Member Thome, to approve an Impact Fee study to be completed by Ehlers in an amount not to exceed \$22,500. Motion carried without a negative vote.

CONSIDER ORDINANCE NO. 2021-07 APPROPRIATING FUNDS IN THE GENERAL FUND FOR AN IMPACT FEE STUDY; AND ACTION THEREON

Motion made by Council Member Verhaalen, seconded by Council Member Thome, to approve Ordinance No. 2021-07 appropriating funds in the General Fund for an Impact Fee study. Motion carried without a negative vote.

CONSIDER RECOMMENDATION FROM FINANCE COMMITTEE REGARDING FC-5 GENERAL FUND BALANCE POLICY; AND ACTION THEREON

Finance Director/Treasurer Mertes explained that Policy FC-5 has not been updated or revised since it was adopted in 1989. The Finance Committee is recommending a change be made to the level of unassigned fund balance for the General Fund. Currently the amount is based on a minimum of 2 months (=17%) and a maximum of 3 months (=25%) of the ensuing year's operating budget. The Committee is recommending the change from number of months to a percentage and an increase to both the minimum and maximum level to 20% and 35% respectively. The Committee has also made a recommendation as to how the fund balance should be used.

Council Member Arnett stated that a percentage is more accurate.

In answer to Mayor O'Keefe's question, Finance Director/Treasurer Mertes stated that the fund balance will still be within the normal policy and this is just a different way of measuring.

Motion made by Council Member Bubnitz, seconded by Council Member Arnett, to approve the changes to Policy FC-5 as recommended by the Finance Committee. Motion carried without a negative vote.

CONSIDER RECOMMENDATION FROM FINANCE COMMITTEE REGARDING FC-10 FUND BALANCE POLICY; AND ACTION THEREON

Finance Director/Treasurer Mertes explained that the last time FC-10 was updated was in 2012 when there were changes made to how fund balance was categorized by the Governmental Accounting Standards Board (GASB). The Finance Committee is only recommending the deletion of a sentence in the first paragraph because there are different levels of fund balance.

Motion made by Council Member Arnett, seconded by Council Member Lythjohan, to approve the changes to Policy FC-10 as recommended by the Finance Committee. Motion carried without a negative vote.

CONSIDER AWARD OF CONTRACT FOR THE HWY. 60 BUSINESS PARK ROADWAY CONTRACT; AND ACTION THEREON

Director Wieser explained that staff advertised and received bids for the Hwy. 60 Business Park roadway work. This contract entails the construction of the Business Park internal roadway, improvements to STH 60 and the 5 Corners intersection as required by the DOT. A total of four bids were received, with the low bid submitted by Wondra Construction in the amount of \$1,415,131.61. This bid is well below the engineer's estimate and is in line with the TIF budget. Wondra Construction has previously been awarded the Hwy 60 Business Park Utility contract.

In answer to Mayor O'Keefe's question, City Attorney Herbrand explained that if the contractor goes over budget, it will need to be approved by the Common Council.

Motion made by Council Member Burkart, seconded by Council Member Thome, to award the contract for the Hwy. 60 Business Park Roadway contract to Wondra Construction in an amount not to exceed \$1,415,131.61. Motion carried without a negative vote.

CONSIDER AWARD OF CONTRACT FOR THE 2021 SIDEWALK REPLACEMENT PROGRAM; AND ACTION THEREON

Director Weiser explained that staff advertised and received bids for the 2021 Sidewalk Replacement Program. This contract entails the replacement of sidewalk slabs that have been deemed defective according to the City's Sidewalk Replacement Policy. The program focuses on the Georgetown Subdivision and spreads to other areas throughout the City due to resident requests. One bid was received from Forward Equipment LLC for \$65,170, which is over the budgeted amount. Staff is recommending award of the 2021 Sidewalk Replacement contract to Forward Equipment LLC but to reduce the project to not exceed the budget of \$45,000.

In answer to Council Member Simpson's question, Director Wieser explained that there is a lot of this type of work available this year. Port Washington's project is four times larger than Cedarburg's and they only received one bid, as well.

In answer to Council Member Verhaalen's question, Director Weiser replied that he will determine what work should be done within the budget amount.

Council Member Verhaalen asked if there was a grading system for sidewalks similar to the street grading. Director Wieser replied that there is not a grading system for sidewalks; however, there is a policy in place that outlines and helps him determine which sidewalks should be replaced.

City Attorney Herbrand stated that there is a good policy in place for Sidewalk Replacements and the Common Council should consider awarding the bid, rejecting the bid, or rebidding the project.

Motion made by Council Member Bublitz, seconded by Council Member Thome, to award the 2021 Sidewalk Replacement Program to Forward Equipment in an amount no to exceed \$65,170. Motion carried without a negative vote.

CONSIDER ORDINANCE 2021-11 OUTDOOR AMPLIFIED SOUND AND MUSIC PERMIT; AND ACTION THEREON

City Administrator Hilvo presented revised Ordinance No. 2021-11 to be in effect for 2021 based on the Common Council and community input provided at the February 22 meeting. He highlighted that any amplified music or sound exceeding 80 decibels will require a permit under this subsection, the annual permit fee will be \$250, and all requests for amplified music or sound shall be approved by the Plan Commission and the Common Council and will be limited to two (2) events per week.

In answer to Council Member Burkart's question, City Administrator Hilvo explained that there is not a time limit on an event. Council Member Burkart stated that she would prefer evening hours only, or a time limit per event. Council Member Bublitz suggested that an event be limited to four hours.

Police Chief Frank expressed concern for enforcing decibel levels. The Department will only purchase one reader, which may create some issues that will need to be worked through.

In answer to Council Member Bublitz's question, City Administrator Hilvo explained that the events should be self-monitored by the event holder. Officers should only check decibels when there are issues are complaints.

Mayor O'Keefe stated that measuring decibel levels is less ambiguous and will benefit the officers.

Police Chief Frank stated that his Department is willing to enforce decibel levels for one year and will come back to the Common Council if they are experiencing problems.

It was the consensus of the Common Council to limit each event to four (4) hours.

Michelle Tietz from Lime Cantina explained that she downloaded an app on her phone to measure decibel levels and it was easy to do and the levels remained between 80 – 85 decibels.

Council Member Thome expressed concern for hearing music eight blocks away from downtown, near her home, and is in favor of measuring decibel levels.

Council Member Bublitz asked the public and businesses to be courteous to one another, as this will be another summer when people want to be outside. It is important to support and help local businesses stay afloat.

Council Member Arnett asked if it was necessary to have approval from the Plan Commission and the Common Council for an Amplified Music permit, as this seems cumbersome and time consuming. City Administrator Hilvo stated that this is the current process.

Council Member Thome opined that the Plan Commission has the expertise and history to evaluate Amplified Music applications and that businesses can plan ahead to allow for the meetings.

Council Member Bublitz agreed with Council Member Arnett that the Common Council can evaluate and issue an Amplified Music permit without prior Plan Commission approval.

Council Member Simpson questioned if there should be consequences for too many citations and how many that would be. It would be beneficial for the business owner to have this information.

City Attorney Herbrand opined that it was fair to set a limit for citations. He suggested that three citations could lead to revocation.

Samantha Landre of the Cedarburg Art Museum asked if the Police Department was willing to do a test with the Art Museum and help them calibrate their equipment. Police Chief Frank said that it would be good to test the different equipment and help the business owners stay compliant.

In answer to Michelle Tietz's question, City Administrator Hilvo stated that if a business wanted amplified music at lunch and dinner on the same day, that it would be two events. An event could always be supplemented with acoustical music beyond the four-hour limit.

In answer to Council Member Thome's question, City Attorney Herbrand stated that there is no legal requirement to go through the Plan Commission with the Amplified Music applications.

Mayor O'Keefe stated that this is a reasonable template for the Amplified Music Permit application process, and it can always be changed.

Council Member Bublitz confirmed the following changes: an event will be four hours, Plan Commission review will be eliminated, three citations could lead to revocation of permit, and each business will be allowed two events per week with notification.

Council Member Arnett asked if recalibration of equipment was cumbersome and could be eliminated.

Council Member Lythjohan opined that calibration once each year, rather than every six months, would be less cumbersome.

City Attorney Herbrand stated that calibration of equipment helps with enforcement.

It was the consensus of the Common Council to change the calibration period to 9 months.

Motion made by Council Member Arnett, seconded by Council Member Burkart, to approve Ordinance No. 2021-11 Outdoor Amplified Sound and Music permit as amended: remove Plan Commission approval (e)(4); must be calibrated every 9 months (e)(8)(c); limited to three citations before permit is revoked (e)(8)(d); each organization or business is allowed a maximum of two (2) days per week, limited to four hours each day, for amplified music or sound (e)(10). Motion carried without a negative vote.

DISCUSSION ON IN-PERSON/ZOOM CITY MEETINGS; AND ACTION THEREON

Mayor O'Keefe asked for a consensus on beginning in-person meetings.

After a lengthy discussion, it was determined that the Common Council will begin hybrid meetings allowing in-person meetings with the zoom component available on June 14, 2021. This will allow a two-week period after the time it is expected that most people will be vaccinated, by the end of May 2021.

Motion made by Council Member Bublitz, seconded by Council Member Simpson, to begin hybrid Common Council meetings on June 14, 2021. Motion carried without a negative vote.

CONSIDER FOURTEENTH-AMENDED AGREEMENT FOR THE OPERATION OF THE MID-MORAINES MUNICIPAL COURT; AND ACTION THEREON

City Administrator Hilvo explained that the City of Cedarburg is a member of the Mid-Moraine Municipal Court and as such shall approve any changes to the agreement. The changes recommended are in line with how the court currently operates.

Motion made by Council Member Lythjohan, seconded by Council Member Bublitz, to approve the fourteenth-amended agreement for the operation of the Mid-Moraine Municipal Court. Motion carried without a negative vote.

CONSIDER EXTENSION OF ALCOHOL PREMISE DESCRIPTION FOR THE SHINERY, W63 N678 WASHINGTON AVENUE, CEDARBURG, WI 53012, TROY REISSMAN, AGENT, FOR AN OUTDOOR TENT LOCATED IN THE DRIVEWAY ON THE NORTHSIDE OF THE SHINERY DURING STRAWBERRY FESTIVAL AND WINE & HARVEST FESTIVAL ONLY; AND ACTION THEREON

Motion made by Council Member Arnett, seconded by Council Member Burkart, to allow the extension of the alcohol premise description for The Shinery, W63 N678 Washington Avenue,

Cedarburg, WI 53012, Troy Reissman, agent, for an outdoor tent located in the driveway on the northside of The Shinery during Strawberry Festival and Wine & Harvest Festival only. Motion carried without a negative vote.

CONSIDER RESOLUTION NO. 2021-05 AUTHORIZING THE SALE OF OUTLOT 1 OF CERTIFIED SURVEY MAP NO. 2811, TAX KEY 13-034-14-000.02; AND ACTION THEREON

City Attorney Herbrand stated that this item was approved by the Common Council at the February 23 meeting. This action resolves the authorization of the sale and allows City Administrator Hilvo to sign the closing documents.

Motion made by Council Member Burkart, seconded by Council Member Bublitz, to adopt Resolution No. 2021-05 authorizing the sale of outlot 1 of Certified Survey Map No. 2811, Tax Key 13-034-14-000.02. Motion carried without a negative vote.

CONSIDER LICENSE/PERMIT APPLICATIONS; AND ACTION THEREON

Motion made by Council Member Bublitz, seconded by Council Member Lythjohan, to approve new Operator License application for the period ending June 30, 2021 for Rebecca Blau; and action thereon

CONSIDER PAYMENT OF BILLS DATED 01/30/2021 THROUGH 02/26/2021, TRANSFERS FOR THE PERIOD 02/13/2021 THROUGH 02/28/2021 AND PAYROLL FOR PERIOD 02/07/2021 THROUGH 02/20/2021; AND ACTION THEREON

Council Member Verhaalen questioned the transfer of the Cedarburg School District tax settlement. City Administrator Hilvo said this was a normal process to collect the money and transfer it to the School District.

Motion made by Council Member Burkart, seconded by Council Member Verhaalen, to approve payment of bills dated 01/30/2021 through 02/26/2021, transfers for the period 02/13/2021 through 02/28/2021 and payroll for the period 02/07/2021 through 02/20/2021. Motion carried without a negative vote.

ADMINISTRATOR'S REPORT

City Administrator Hilvo reported that the Fire Shared Services Report that was prepared by the Wisconsin Policy Forum will be presented on Thursday, March 11 at 6:00 p.m. via a webinar, and will be posted for the public on Friday, March 12.

A Joint Town Board/Common Council meeting is scheduled for April 7, 2021 at Town Hall to discuss Fire shared services.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Arnett stated that current statistics show that progress is being made against COVID19. More people are being vaccinated daily and the number of cases is decreasing. He also stated that the Zarling property will be vacated soon and will be a great asset to the community, with its public access to the Milwaukee River. He encouraged the Council Members to provide their input on uses for the property.

MAYOR REPORT

Mayor O’Keefe encouraged the Council Members to read the Fire Shared Services Report.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Burkart, seconded by Council Member Lythjohan, to adjourn to closed session at 8:55 p.m. pursuant to State Statute 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 cellular tower lease with T-Mobile for location on the monopole constructed on Western Avenue. Approval of February 22, 2021 closed session minutes. Motion carried on a roll call vote with Council Members Bublitz, Arnett, Burkart, Verhaalen, Simpson, Thome and Lythjohan voting aye.

RECONVENE TO OPEN SESSION

Motion made by Council Member Thome, seconded by Council Member Burkart, to reconvene to open session at 9:14 p.m. Motion carried on a roll call vote with Council Members Bublitz, Arnett, Burkart, Verhaalen, Simpson, Thome, and Lythjohan voting aye.

DISCUSSION AND POSSIBLE ACTION ON CELLULAR TOWER LEASE WITH T-MOBILE FOR LOCATION ON THE MONOPOLE CONSTRUCTED ON WESTERN AVENUE; AND ACTION THEREON

Motion made by Council Member Bublitz, seconded by Council Member Burkart, to approve a cellular tower lease with T-Mobile for location on the monopole constructed on Western Avenue. Motion carried without a negative vote.

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member Lythjohan, to adjourn the meeting at 9:17 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk