

**CITY OF CEDARBURG
COMMON COUNCIL
January 25, 2010**

CC20100125-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, January 25, 2010 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Myers called the meeting to order at 7:00 p.m. The meeting began with a moment of silence followed by the Pledge of Allegiance.

Roll Call: Present - Common Council – Mayor Gregory Myers, Council Members Chris Reimer, Ron Reimer, Art Filter, Paul Radtke, Michael Maher, Kip Kinzel, Bob Loomis

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, Police Chief Tom Frank, Library Director Mary Marquardt, City Planner Jon Censky, City Clerk Constance McHugh, 5th District Candidate James McCoy, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Myers' 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.

CONSIDER MAYOR MYERS' APPOINTMENTS TO BOARDS, COMMITTEES, AND COMMISSIONS

No appointments were made.

APPROVAL OF MINUTES

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to approve the minutes of the January 11, 2010 meeting with the insertion of the word "not" between the words "and" and "charging" in eighth paragraph on page 3. Motion carried unanimously.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

CONSIDER ORDINANCE NO. 2010-01 AMENDING SEC. 2-7-1 OF THE MUNICIPAL CODE ESTABLISHING A FEE FOR SERVICE OF WARRANTS AND COMMITMENT ORDERS

Motion made by Council Member Filter, seconded by Council Member Kinzel, to approve Ordinance 2010-01 amending Sec. 2-7-1 of the Municipal Code establishing a \$35 fee for service of warrants and commitment orders by the Police Department. Motion carried unanimously.

CONSIDER ORDINANCE NO. 2010-02 CREATING SEC. 5-6 OF THE MUNICIPAL CODE PERTAINING TO SEX OFFENDER REGISTRY RESTRICTIONS AND CHILD SAFETY ZONES

Chief Frank said an ordinance has been drafted that restricts sex offenders from residing or loitering within 500' of property that supports a use where children regularly congregate or live. He said it is necessary to provide some areas in the City for sex offenders to live; all areas cannot be restricted.

Council Member Filter asked Attorney Vance if there is sufficient space or area in the City for a sex offender to live under this ordinance.

Attorney Vance said that a sufficient amount of space must be provided in the City for sex offenders to live. She said she doesn't know if someone will challenge this ordinance on constitutional grounds. Thus far similar ordinances in other communities have only been challenged at the circuit court level.

Planner Censky said that Thiensville and Grafton as well as other communities have adopted similar ordinances. Some communities that are land rich such as Brookfield have adopted ordinances that extend the area beyond 500'. He said the 500' restriction was selected because it does include areas in the City where sex offenders can live. If the ordinance has a 1,000' restriction, most all areas of the City will be eliminated.

Council Member Maher said that he wants to make sure the Girl Scout House at the corner of Hilbert Avenue and Spring Street is covered.

Council Member Loomis said he is in favor of the ordinance with the 500' restriction and inclusion of the Boy Scout and Girl Scout Houses.

Council Member C. Reimer suggested staff research surrounding communities to determine what their distance requirements are.

Motion made by Council Member Loomis, seconded by Council Member Maher, to adopt Ordinance 2010-02 with an amendment to Sec. 5-6-3 that includes language that no sex offender shall reside within 500' of the Girl Scout and Boy Scout Houses. Motion carried unanimously.

The Council directed staff to obtain information on the distance requirements in other communities.

CONSIDER AWARD OF ENGINEERING SERVICES CONTRACT TO R. A. SMITH NATIONAL FOR THE WESTERN ROAD/WAUWATOSA ROAD UTILITY EXTENSIONS

Motion made by Council Member Maher, seconded by Council Member C. Reimer, to award the contract for engineering services for the Western Road/Wauwatosa Road utility extensions to R. A. Smith National in the amount of \$14,900. Motion carried unanimously on a roll call vote.

CONSIDER REVISIONS TO POLICY PW-6: YARD WASTE DISPOSAL

Director Wiza said the Public Works Commission discussed and recommended changes to Policy PW-6 regarding yard waste disposal. In the current policy residents are instructed to take yard waste to the Town of Cedarburg drop-off site. Because this site is no longer available to City residents, staff is proposing to create a drop-off site at the Public Works yard, which will be open every Saturday from April 1st through November 30th from 9:00 a.m. to 3:00 p.m. Residents can drop off leaves, brush, yard waste, used motor oil, and pick up wood chips. Director Wiza said he anticipates the site will be staffed by a temporary employee with funds that were budgeted for the part-time shared employee with the Town.

Motion made by Council Member Filter, seconded by Council Member R. Reimer, to approve Policy PW-6 regarding yard waste disposal as presented. Motion carried unanimously.

REVIEW OF PLAN FOR COUNTY LIBRARY SERVICE IN OZAUKEE AND SHEBOYGAN COUNTY 2011 TO 2015

Library Director Marquardt said every five years the County Board of Supervisors appoints a committee to develop a plan for County library service in Ozaukee and Sheboygan Counties. The proposed Plan for 2011 to 2015 addresses membership on the Eastern Shores Library System Board, reimbursement to the libraries from the non-librariated communities, bookmobile service and payment, and the administration of the Plan. The 2011 to 2015 Plan increases the reimbursement to public libraries for servicing the non-librariated residents to 90% of the cost in 2011 and 2012; 91% in 2013, 92% in 2014; and 93% in 2015 with the goal for future plans to reach 100%. Director Marquardt said under this Plan, the amount the City receives from non-librariated communities will increase.

Council Member Loomis questioned why the reimbursement to 100% doesn't go up faster.

Director Marquardt said by law the reimbursement is only required to be 75%. Currently Ozaukee County reimburses at 85% and Sheboygan County reimburses at 90%.

Motion made by Council Member Maher, seconded by Council Member Loomis, to support the Plan for County Library Service in Ozaukee and Sheboygan County 2011 to 2015 and that a letter of support be presented at the meeting on February 3 to review the Plan. Motion carried unanimously.

The Council directed that a formal resolution of support be drafted for passage at a future meeting.

CONSIDER DATES OF FUTURE COMMON COUNCIL MEETINGS AND POSSIBLE RESCHEDULING OF MEETINGS

It was the consensus of the Council to cancel the February 22, 2010 Council meeting due to several absences. The meeting will be held if there are items that must be acted on.

It was the consensus of the Council to cancel the April 26, 2010 meeting. The Council will meet on April 12 and on April 20 for its organizational meeting.

IDENTIFY POSSIBLE MEDIATORS FOR MEDIATION WITH THE TOWN OF CEDARBURG

Attorney Vance said the Town has agreed to enter into mediation with the City. She suggested the Council develop a list of names of possible mediators. Those to include on the list could be retired Waukesha County Circuit Court Judge Patrick Snyder, retired Waukesha County Circuit Court Judge Willis Zick, retired Ozaukee County Circuit Court Judge Joseph McCormack, Attorney Dan Wilson, retired Executive Director of SEWRPC Phil Evenson, mediator Howard Bellman, and WERC mediator Bill Houlihan.

City Administrator/Treasurer Mertes said retired Judge McCormack indicated he is not interested in doing the mediation because he is a resident of the Town and feels the municipalities would be best served by someone outside the community.

Mayor Myers suggested those individuals with a strong judicial and mediation background be included on the list.

Council Member Filter suggested that the individual selected be from outside the community.

Motion made by Council Member C. Reimer, seconded by Council Member Loomis, that the list of potential mediators include Patrick Snyder, Willis Zick, Dan Wilson, Howard Bellman, and Bill Houlihan. Motion carried unanimously.

CONSIDER DATES AND LOCATIONS FOR MEDIATION WITH THE TOWN OF CEDARBURG

Possible suggestions for the location of the mediation were the Cultural Center, one of the schools, the Community Center gym, and the room where the Cedarburg School Board meets. Council Members agreed that the room selected must be large enough to accommodate all those that may be interested in attending.

The Council agreed that the dates for mediation be scheduled as soon as possible after the mediator is selected.

LICENSE APPLICATIONS

The owner of Grapes and Tastes currently was granted a Class "A" beer and "Class A" liquor license by the Council on October 12, 2009 to sell beer, wine and liquor in original packages or containers for off-premise consumption. The owner has now applied for a Class "B" beer and "Class B" liquor license to serve beverages for on-premises consumption. The owner would like this license to be able to serve glasses of wine and "flights" of wine on-premise. If granted, the applicant would take the license that was formerly held by Klug's Creekside Inn. This is the last "Class B" liquor license available under the State imposed quota of liquor licenses.

State Statutes 125.32(3m) specify that no Class "B" beer license may be granted for any premises where any other business is conducted with the premise; however, this restriction does not apply to hotels, restaurants, combination grocery stores and taverns, combination sporting goods stores and

taverns in towns, villages and 4th class cities, combination novelty stores and taverns, bowling centers or recreation premises or a club, society or lodge that has been in existence for 6 months or more prior to the date of filing the application for a license.

Council Member Maher said he received a few calls from business owners who were concerned that this type of license may be granted by the Council. He said the business is a hybrid operation that will be acting as a retail business and a tavern. He said he is concerned about the usage of the license and encouraged the Council to think more about this before making a decision. He reminded the Council this is the last "Class B" liquor license available.

Attorney Vance said the Council must determine if public policy is best served by the granting of this license.

Brad Fine of Grapes and Tastes said by State Statute he is limited to serving two samples of wine per person per day. He said he would like to demo more wines if desired by a customer. He said this business will not turn into a night club or a wine bar. His intention is to continue to focus on the retail sales of wine.

Attorney Vance said the applicant would be considered a tavern/grocery store, although she is not sure this use meets the definition of a grocery store. There is no statutory definition of a grocery store. She said grocery stores combined with taverns are not typical. Class B licenses are typically granted to restaurants and taverns. Attorney Vance said if the Council were to grant this license, it would be granting a tavern license and the business would be operating as a tavern. She said it may also set a precedent for other grocery stores and similar businesses. This business would also need conditional use approval by the Plan Commission.

Mr. Fine said there is a Grocers Association in Wisconsin, and under this association's definition the business would be considered a grocery store. He said the business carries a line of food products.

Council Member Radtke said he understands there may be better uses for this license; however, no one has applied for the license and it is available.

Motion made by Council Member Radtke, seconded by Council Member R. Reimer, to authorize issuance of Class "B" beer and "Class B" liquor licenses to Fineco, LLC, Joan Fine, agent, d/b/a Grapes and Tastes at W63 N140 Washington Avenue, subject to conditional use approval by the Plan Commission. Motion carried with Council Members C. Reimer, R. Reimer, Filter, Radtke, and Loomis voting in favor and Council Members Maher and Kinzel voting against.

Motion made by Council Member Kinzel, seconded by Council Member Maher, to authorize issuance of new Operator's Licenses for the period ending June 30, 2010 to Erik M. H. Olsen and Steve F. Danner. Motion carried unanimously.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes said fourteen City employees participated in the City's Wellness points program in 2009. Pam Holloway and Eric Hackert will be presented with awards at the employee meeting on January 27 for the most participation points.

City Administrator/Treasurer Mertes said Health Risk Assessments will again be held in early February. Thirty employees/spouses participated in the assessment in 2009 and five employees are scheduled for the upcoming assessments.

COMMENTS AND SUGGESTIONS BY CITIZENS - None

REPORTS AND COMMENTS BY COUNCIL MEMBERS

Council Member Filter asked if Christmas tree removal from the curb is taking place.

Director Wiza said Waste Management picks up trees as needed.

Council Member Maher said circulation at the Cedarburg Library increased by 8% in 2009. Visits to the Library in the fourth quarter of 2009 averaged 44 people per hour. Reference summary questions averaged twelve questions per hour in the fourth quarter. There were over 1,000 registrations for Internet workstations in December 2009. Council Member Maher said the point is that numbers are up at the Library and many things are being done at the Library in light of recent financial hardships.

Council Member Loomis said although he cannot attend the Emergency Government dinner on February 20, he encouraged others to attend as this is a wonderful evening.

Council Member Loomis asked if a meeting between the City and Village of Grafton regarding shared services has been scheduled.

Mayor Myers said a meeting has been scheduled for February 2.

Council Member Radtke also agreed that the Emergency Government dinner is great event.

Council Member Radtke said that at his suggestion the Economic Development Board discussed changing the land use on Cardinal Avenue behind the new Walgreens. He said the area is not conducive to manufacturing and there may be land uses for this area that better fit the City. The Economic Development Board will continue to look into this.

MAYOR'S REPORT

Mayor Myers said the joint City of Cedarburg/Village of Grafton meeting to discuss shared services will be held at the Grafton Village Hall on February 2 at 5:30 p.m.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to adjourn to closed session at 8:32 p.m. pursuant to Wisconsin State Statutes 19.86(1)(g) to confer with legal counsel for the Common Council who is rendering oral or written advice concerning strategy to be adopted by the Common Council with respect to litigation it is involved in regarding the prevailing wage issue and Department of Workforce Development issue. Approval of closed session minutes of January 11, 2010.

RECONVENE TO OPEN SESSION

Motion made by Council Member Filter, seconded by Council Member Radtke, to reconvene to open session at 8:48 p.m. Motion carried unanimously.

CONSIDER PREVAILING WAGE ISSUE AND DEPARTMENT OF WORKFORCE DEVELOPMENT DECISION

Motion made by Council Member Loomis, seconded by Council Member Radtke, to appeal the Department of Workforce Development's determination that the City failed to obtain prevailing wage determinations for the Keup Trail project. Motion carried unanimously.

ADJOURNMENT

Motion made by Council Member C. Reimer, seconded by Council Member Filter, to adjourn at 8:50 p.m. Motion carried unanimously.

Constance K. McHugh, MMC/WCPC
City Clerk