CITY OF CEDARBURG **CC20090209-1**
COMMON COUNCIL **UNAPPROVED**
February 9, 2009

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, February 9, 2009 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, Steve Glamm, Art Filter, Paul Radtke, Michael Maher, Kip Kinzel, Joe Emmerich (7:05 p.m.)

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, Deputy City Clerk Amy Kletzien, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Myers' 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. Citizens present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

APPROVAL OF MINUTES

Motion made by Council Member Kinzel, seconded by Council Member Filter, to approve the minutes of the January 26, 2009 meeting. Motion carried without a negative vote.

COMMENTS & SUGGESTIONS FROM CITIZENS - None

UNFINISHED BUSINESS – None

CONSIDER ORDINANCE NO. 2009-02 PERTAINING TO EMPLOYEE BENEFITS FOR PRIVATE BUSINESS

Mayor Myers stated that he introduced Ordinance No. 2009-02 pertaining to employee benefits for private business because of the sick leave referendum and subsequent ordinance in the City of Milwaukee and its potential impact on businesses. A number of communities have adopted ordinances preventing municipalities from mandating that businesses provide certain wage and benefits to employees. This ordinance would prohibit mandating that businesses in the City provide such wages and benefits to their employees.

City Attorney Vance stated that an injunction has stopped this requirement in Milwaukee for now. The City of Cedarburg is proposing this ordinance because direct legislation is the process whereby citizens can get legislative ordinances passed; however, it will not apply if there is already an ordinance on the books.

Mayor Myers' stated that Cedarburg has many businesses such as Olsen's Piggly Wiggly that employ many part-time employees within the City and it would be wrong to mandate paid sick leave or interfere with the contract between an employer and employee.

Motion made by Council Member Filter, seconded by Council Member Reimer, to adopt Ordinance No. 2009-02 pertaining to employee benefits for private business.

Council Member Maher stated that in researching this topic, he read that even though a similar ordinance has been passed by a community, a referendum would still trump this action.

City Attorney Vance stated that this ordinance would only prevent direct legislation.

Council Member Kinzel questioned whether Council Member Maher was referring to a statement made by a reporter.

Council Member Maher stated that his reference came from an *Associated Press* story.

Council Member Glamm stated that direct legislation is something that is created by each state government and perhaps Wisconsin's direct legislation provides that once you have acted in that area it can not be undone and other states are the opposite.

Council Member Glamm agreed with the proposed ordinance because it is not the role of local government to start dictating what policies should be for employment. Local government is here to provide police, fire service, garbage collection and park & recreation activities. Once the City allows our municipality, through direct legislation, to legislate in these areas it will have gotten away from the role of local government. He stated that he supports the ordinance because he believes that local communities should not be involved in making these types of policy decisions.

City Attorney Vance stated that a case law interprets the State Statute, which lists four exceptions that direct legislation be either passed or submitted to the electors. The one exception that applies in this case is: when it compels the repeal of an existing ordinance or compels the passage of an ordinance in clear conflict with an existing ordinance.

City Attorney Vance stated that in this case if someone did direct legislation, it would directly conflict with the ordinance and it would not have to be enacted.

Council Member Maher stated that he is opposed to an ordinance that would block any direct legislation. It is a powerful right for citizens to gather signatures and bring it to a referendum. He opined that by passing the proposed ordinance the City is sending a bad message.

Mayor Myers stated he was in favor of the message because it shows that the City recognizes that there are rights between the employer and employee and if the two parties enter into an employment agreement, they have the right to determine what those terms of agreement are. This ordinance will be sending out a message that the City is business friendly and the City supports individual rights and the government is not going to be involved in social engineering.

Council Member Kinzel stated that he agrees with the democratic process but agrees that this ordinance would prevent a group from legislating how private businesses run.

Mayor Myers stated that the democratic process is fine as long as something isn't being mandated or rights are taken away from someone else to benefit another.

City Attorney Vance stated that it is an administrative nightmare when a business has employees who work in different communities.

Council Member Emmerich stated that he will vote in favor of Ordinance No. 2009-02 and he commended Mayor Myers for his astute leadership by taking action on this legislation.

Mayor Myers stated that the essence of the community is based on a successful business atmosphere and the City needs to support them when possible.

City Attorney Vance stated that the City of Milwaukee will need to set up an equal rights division to enforce the legislation and they are not prepared at this point.

Motion carried with Council Members Reimer, Glamm, Filter, Radtke, Kinzel and Emmerich in favor and Council Member Maher opposed.

CONSIDER CONTRACT EXTENSION WITH AECOM FOR ENGINEERING SERVICES ASSOCIATED WITH THE 2009 NR 216 STORMWATER PERMIT

Director Wiza stated that AECOM (formerly Earthtech) has provided an engineering services proposal in the amount of $17,120 to complete various monitoring, and the annual reporting requirements to the DNR that are associated with the City's NR 216 storm water permit for 2009. AECOM has completed this work for the City in previous years, and the current contract can be amended to include the 2009 reporting requirements.

Motion made by Council Member Filter, seconded by Council Member Glamm, to approve the contract extension with AECOM for engineering services associated with the 2009 NR 216 stormwater permit in an amount not to exceed $17,120. Motion carried without a negative vote.

CONSIDER PROCESS TO USE IN DISCUSSION WITH THE TOWN OF CEDARBURG CONCERNING TOWN/CITY AGREEMENTS

City Attorney Vance stated that it is never required that a municipality go into closed session. The exemptions used by the City for Town issues are bargaining and negotiations with the Town; however, the Town uses litigation. This is a narrow exception and should be used only when it is

necessary. City Attorney Vance provided all of the information on the Town issues to the Council Members along with options for moving forward at a previous meeting. The next step is to come up with a proposal for the Town. The issues include shared services, the library, extension of water, boundaries, zoning, etc.

In answer to Council Member Filter's question, City Attorney Vance stated that the Common Council should decide if these issues should be discussed in open or closed session.

In answer to Mayor Myers' question, City Attorney Vance stated that none of the current issues are in litigation right now and the Town would have to answer why they are going into closed session under this statute.

In answer to Council Member Filter's question, City Attorney Vance stated that there are points in time when the Common Council can go into closed session. If there is or is likely to be litigation, then a closed session is allowable and an Attorney should always be present when discussing litigation.

Council Member Kinzel asked if each negotiation that is not agreed upon by either party should be in open session.

Mayor Myers stated that an argument could be made that anything that is being discussed is public policy and should be in the open to inform the citizens. He questioned any justification for any agreements or issues to be done in closed session because the public has the right to know what their community leaders are discussing for the future. If the City is being sued, it is appropriate to go into closed session. All the issues with the Town, at this point, are public policy issues. Mayor Myers stated that the citizens of the City and Town of Cedarburg have a right to be informed on the present issues because it is not a private contract.

In answer to Council Member Filter's question, City Attorney Vance stated that the Mayor, Town Board Chairman and the City and Town Attorneys were meeting to work out some tentative issues. The attorneys worked together on the tentative issues and nothing has happened because the public officials have not acted on the issues. The next step for the Common Council to decide is whether the next meeting should be in open or closed session when the issues on the table are discussed.

Council Member Reimer opined that the issues should be discussed in open session because they are at a point where real discussions and decisions can be made to move forward.

Council Member Kinzel agreed and stated that Mayor Myers and City Attorney Vance have done a good job of getting the issues to this point where they can be discussed.

Council Member Glamm expressed concern for something that may come up that should be discussed in closed session, then the debate would need to be ended at that point and be on a future agenda. He stated that a reason would need to be stated for the closed session.

In answer to Council Member Filter's question, City Attorney Vance stated that any decisions or wishes of the Council would be conveyed through the City and Town attorneys to the Town Board and Common Council.

Mayor Myers stated that the issues would be discussed openly and would be in the minutes. He is not certain that anything would need to be conveyed.

Council Member Glamm asked if it was sufficient to say that it is the consensus of the Common Council to go forward with the City's discussion in regard to the Town in a public forum.

City Attorney Vance stated that it does not need a motion.

Mayor Myers stated that the general approach will be to discuss the Town issues in public, unless there is something in particular that should be discussed in closed session.

Council Member Reimer thanked Mayor Myers and City Attorney Vance for getting the Town issues to this point where some decisions can be made.

CITY ADMINISTRATOR'S REPORT

City Administrator Treasurer Mertes highlighted that she attended the WPPI Benefit Trust Board meeting on January 29 and was voted Vice Chair to the Board. She was also selected to sit on the Financial Oversight Committee and as an alternate on the Claims Review Committee.

City Administrator/Treasurer Mertes brought attention to an article that she copied for the Council, which was distributed by the Mid-Moraine Municipal Association regarding the legislative efforts from the Wisconsin Towns Association that may affect the City.

COMMENTS & SUGGESTIONS BY CITIZENS - None

REPORT & COMMENTS BY COUNCIL MEMBERS

In answer to Council Member Maher's question, City Administrator/Treasurer Mertes explained that the equipment purchase on truck #62 was budgeted; however, the extra equipment was placed on an existing truck to extend the life of both trucks.

MAYOR'S REPORT

Mayor Myers stated that he will be out of town for the next Common Council meeting on February 23, 2009.

ADJOURNMENT

Motion made by Council Member Glamm, seconded by Council Member Maher, to adjourn to closed session at 7:35 p.m. pursuant to Wisconsin Statutes 19.85(1)(g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the body with respect

to litigation in which it is or is likely to become involved and 19.85(1)(e) to deliberate or negotiate the purchase of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, specifically the Amcast site and the Plant No. 2 site. Approval of closed session minutes of 1/26/09. Meeting did not reconvene to open session.

ADJOURNMENT

Motion made by Council Member Reimer, seconded by Council Member Radtke, to adjourn at 8:05 p.m. Motion carried without a negative vote.

Amy D. Kletzien, CMC
Deputy City Clerk