

**CITY OF CEDARBURG
COMMON COUNCIL
June 24, 2013**

CC20130624-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, June 24, 2013 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 Art Filter, Paul Radtke, Michael Maher, Doug Yip, Mike O'Keefe

Excused - Council Members Chris Reimer and Ron Reimer

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, City Clerk Constance McHugh, Light & Water General Manager Dale Lythjohan, Public Works Superintendent Jeff Boerner, City Planner Marty Marchek, Economic Development Coordinator Mary Sheffield, 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

Motion made by Council Member Filter, seconded by Council Member Maher, to approve the minutes of the June 10, 2013 meeting as presented. Motion carried with Council Member Radtke abstaining and Council Members C. Reimer and R. Reimer excused.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Mary Ann Rusch, W62 N541 Washington Avenue, said that she is the niece of Tony and Dolores Fischer and resides with them at their home on Washington Avenue. She said she wanted to bring attention to the high noise level of the bars on Washington Avenue. She also said people are not respectful of property and she often has to clean up the property after the bars close and after festivals. In addition, her vehicle has been struck by a drunk driver.

LIBRARY FUNDRAISING UPDATE AND LIBRARY BUILDING UPDATE

City Administrator/Treasurer Mertes said there has been an increase in payments to Engberg Anderson in the last few weeks for the library project. This is the only change to the Sources and Uses of Funds spreadsheet that was distributed to the Council prior to the meeting.

Council Member Maher said the Friends of the Library are selling flags for \$50, with a portion of the proceeds going towards the library project. The flags were sold at the American Legion Fish Fry and Summer Sounds. Approximately \$600 has been collected from the sale of the flags to-date. He said a \$1,200 memorial donation was received for the library project. The Friends of the Library are close to launching the fundraising website.

CONSIDER OUTDOOR ALCOHOL BEVERAGE LICENSE FOR KALUA HAWAIIAN BBQ AND TIKI BAR AT W62 N547 WASHINGTON AVENUE

Albert Yee, owner of Kalua Hawaiian BBQ and Tiki Bar said that his intent is to place five tables and ten chairs in front of the restaurant for outside dining.

Council Member Filter asked if the Police Chief has reviewed the application and whether the applicant will comply with all rules and regulations.

City Administrator/Treasurer Mertes said Chief Frank has reviewed the application and does not see any problems with it. She said it is expected that the applicant will follow all rules and regulations.

Motion made by Council Member Radtke, seconded by Council Member O'Keefe, to approve an Outdoor Alcohol Beverage license for Kalua Hawaiian BBQ and Tiki Bar at W62 N547 Washington Avenue. Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

CONSIDER APPLICATION FROM KELLEY'S INC., TIMOTHY KELLY, AGENT, FOR A "CLASS A" LIQUOR AND CLASS "A" BEER LICENSE FOR KELLEY'S DRIVE THRU MARKET, W61 N506 WASHINGTON AVENUE, FOR THE PERIOD JULY 1, 2013 THROUGH JUNE 30, 2014

City Clerk McHugh said Tim and Jennifer Kelley have applied for a "Class A" liquor license and Class "A" beer license for the corner grocery store they plan to open at W61 N506 Washington Avenue. She said these licenses allow for the sale of alcohol for off-premise consumption. She pointed out that according to State Statutes 125.68(3), unless waived by a majority vote of the governing body, a "Class A" liquor license may not be issued within 300 feet of the main entrance of any church, school, or hospital. Immanuel Lutheran Church is located next to this property.

Raymond Jacques, 1752 Audubon Avenue, Grafton, said he represents Immanuel Church. He noted there is only 75 feet from the front door of this business to the front door of the church.

Council Member Radtke said that he does not have a problem with the granting of these licenses.

Council Member Filter said a self-imposed hardship is not reason for a variance.

Mr. Jacques said there is a shared parking lot. The owner of the building that will house this business only has a driveway easement. He said that he expects most traffic will take place in the church parking lot. He questioned why the Council would consider a variance when the business does not have a parking area. He said this variance would have a negative impact on the parking lot, there would be wear and tear on the parking lot, and there are liability issues.

Council Member Radtke said if a grocery store is a permitted use listed in the City Code, the Council cannot restrict it. He said the parking is a separate issue, and one that is not on the agenda.

Council Member Filter said it is against Statutes and the City Code to sell liquor within 300 feet of a church. He said he has a problem if the parking situation will be worse than before the store is located in the building.

Council Member Radtke said he understands the concerns about the parking, but said it is not fair to withhold the licenses until the parking situation is worked out. He said he is in favor of this idea.

Council Member O'Keefe asked the applicant if it would be a deal breaker if the alcohol licenses were not granted.

Tim Kelley, owner, said probably not, but he does not want to limit the products he carries. He said alcohol will be a fairly large part of what the store stocks.

Council Member Radtke moved to approve the application from Kelley's Inc., Timothy Kelley, agent, for a "Class A" liquor and Class "A" beer license for Kelley's Drive Thru Market, W61 N506 Washington Avenue, for the period July 1, 2013 through June 30, 2014, waiving the location restrictions in section 125.68(3) of the Wisconsin Statutes. The motion was seconded by Council Member Maher.

Council Member Filter said he will vote no on the motion after hearing the neighbors' concerns and testimony that the church door is only 75 feet from the door of this business.

With Council Members Radtke, Maher and O'Keefe voting aye, Council Members Filter and Yip voting nay, and Council Members C. Reimer and R. Reimer excused, the motion failed as the location restriction can only be waived by a majority vote of the Council, which is four members.

Mayor Kinzel said the applicant has the right to reapply for the licenses.

CONSIDER RESOLUTION NO. 2013-09 AUTHORIZING CITY PARTICIPATION IN THE WISCONSIN PUBLIC WORKS MUTUAL ASSISTANCE AGREEMENT

Motion made by Council Member Filter, seconded by Council Member Yip, to adopt Resolution No. 2013-09 authorizing City participation in the Wisconsin Public Works Mutual Assistance agreement. Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

DISCUSS AND APPROVE PRELIMINARY BUDGET PARAMETERS, INCLUDING OPERATING EXPENDITURES AND/OR TAX LEVY, GROWTH TARGETS FOR DEVELOPMENT OF THE PROPOSED 2014 BUDGET

City Administrator/Treasurer Mertes said annually the Council sets the budget parameters for staff to follow during the development of the budget. Usually the expectation is that the tax rate should be held at the same rate as the previous year.

Mayor Kinzel agreed that the goal should be a 0% tax rate increase.

Council Member O'Keefe said consideration should be given to an employee contribution towards health insurance. He said perhaps savings from these contributions could be used towards funding street projects.

CONSIDER BUDGET CALENDAR FOR 2014

City Administrator/Treasurer Mertes said the proposed budget calendar for 2014 is the same as last year. The budget will be distributed to the Council on October 3 with the public hearing/budget presentation at the October 28 meeting and adoption on November 25. October 21 has been set aside as a possible additional meeting for budget deliberations, if necessary.

Motion made by Council Member Filter, seconded by Council Member Yip, to approve the preliminary budget calendar as presented. Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

PRESENT STRATEGIC WORK PLAN

City Administrator/Treasurer Mertes said changes have been made to the Strategic Plan after staff discussions. She said no action is required at this time but asked the Council to review the Plan as it will be discussed during the budget process.

Council Member Maher said he was impressed with the new layout and design of the Strategic Plan.

City Administrator/Treasurer Mertes said Administrative Assistant Dianna Pantle redesigned the Strategic Plan and is doing the same with the budget document.

CONSIDER RESOLUTION NO. 2013-10 TO INITIATE THE PROCESS OF CREATING TAX INCREMENTAL DISTRICT NO. 3 TO REDEVELOP THE VACANT SITE ALONG THE NORTH SIDE OF MILL STREET BETWEEN WASHINGTON AVENUE AND HANOVER AVENUE

City Administrator/Treasurer Mertes said a resolution to initiate the process of creating Tax Incremental District No. 3 is before the Council.

City Attorney Vance advised that this resolution is non-binding.

Motion made by Council Member Radtke, seconded by Council Member O'Keefe, to adopt Resolution No. 2013-10 to initiate the process of creating Tax Incremental District No. 3 to redevelop the vacant site along the north side of Mill Street between Washington Avenue and Hanover Avenue. Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

CONSIDER AGREEMENT WITH EHLERS FOR CREATION OF A TID FOR THE PARCELS ALONG THE NORTH SIDE OF MILL STREET BETWEEN WASHINGTON AVENUE AND HANOVER AVENUE

City Administrator/Treasurer Mertes said Ehlers has submitted a proposal to assist the City with the creation of TID No. 3 in the amount of \$11,500.

Council Member Filter said Ehlers can always make a TID work and always will say all TIDs are economically feasible. He said he had a few calls from constituents about how the canopy of trees at the Stone Manor Bridal building site (former Zeunert home) will be handled since this home will be moved and incorporated into the TID. He said the electrical wires, cable, and phone lines will need to be to be relocated and service could be out for 45 minutes to one hour. He said that Ehlers should take this into consideration when doing the analysis.

City Administrator/Treasurer Mertes said the proposed moving of the stone house is not part of the TID project. Mayor Kinzel agreed and said that the proposal from Ehlers is independent of the house moving.

Council Member Filter requested that a discussion of the house moving and tree trimming be placed on a future Council agenda.

City Planner Marchek said moving a home requires a permit from the Building Inspector and a bond or insurance for any damage that may be done. He said he doesn't know if the bond or insurance would cover damage to trees.

City Attorney Vance said the house moving is a separate agenda item.

It was the consensus of the Council that the moving of the former Zeunert home, currently the Stone Manor Bridal building, and the anticipated tree trimming associated with it be placed on the next Council agenda.

Motion made by Council Member Radtke, seconded by Council Member Filter, to approve the agreement with Ehlers for the creation of a TID for the parcels along the north side of Mill Street between Washington Avenue and Hanover Avenue in the amount of \$11,500. Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

CONSIDER LADDER SAFETY POLICY

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to approve a ladder safety policy that will be added to the City's Safety Manual. Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

CONSIDER HEARING CONSERVATION POLICY

Motion made by Council Member Yip, seconded by Council Member Radtke, to approve a hearing conservation policy that will be added to the City's Safety Manual. Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

CONSIDER ORDINANCE NO. 2013-14 REVISING SEC. 2-6-30 OF THE PERSONNEL CODE PERTAINING TO OVERTIME/PREMIUM PAY, ORDINANCE NO. 2013-15 AMENDING SEC. 2-6-78 OF THE PERSONNEL CODE RE: MISCONDUCT-UNACCEPTABLE PERFORMANCE/DISCIPLINARY PROCEDURES MANUAL, ORDINANCE NO. 2013-16 CREATING SEC. 2-6-85 OF THE PERSONNEL CODE PROHIBITING GAMBLING BY CITY EMPLOYEES, ORDINANCE NO. 2013-17 CREATING SEC. 2-6-87 OF THE PERSONNEL CODE RE: AMERICANS WITH DISABILITIES ACT (ADA), TITLE 1, ORDINANCE NO. 2013-18 CREATING SEC. 2-6-88 OF THE PERSONNEL CODE RE: AMERICANS WITH DISABILITIES ACT, TITLE II AND ORDINANCE NO. 2013-19 CREATING SEC. 2-6-89 OF THE PERSONNEL CODE RE: AT-WILL EMPLOYMENT

Attorney Vance said that because of Act 10, it is beneficial to adopt personnel policies as an employee manual or handbook rather than as ordinances. She said this preserves the rights of management and ensures that policies do not turn into contracts or set precedents. She suggested the ordinances presented tonight be passed as policies that are to be followed from now on. She also suggested the just cause section in the Misconduct Ordinance be removed when adopted as a policy.

Motion made by Council Member Yip, seconded by Council Member Radtke, to adopt the above named proposed ordinances as policies to be put in an employee handbook in the near future, with the deletion of the just cause section in the Misconduct Ordinance.

Council Member Filter expressed his concern about the change in the overtime policy that states employees will be paid time and one half for all hours worked in excess of their scheduled 40 hour work week, instead of hours worked in excess of 8 hours per day. He said he believes employees should be paid overtime regardless of working 40 hours a week.

Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

PRESENTATION OF LIGHT & WATER REPORT

Light and Water General Manager Dale Lythjohan presented a summary report of the Light and Water Utility for 2012. The following was presented:

Electrical Highlights

- Electrical revenues in 2012 were \$12,435,608, an increase of \$246,404
- Purchased power was \$9,087,988, an increase of \$260,762
- Operating expenses were \$1,099,963, and increase of \$12,135
- Depreciation expenses were \$719,430, an increase of \$22,000
- Taxes were \$443,119, an increase of \$8,870
- Operating income was \$1,051,811, a decrease of \$57,360
- The last electrical rate increase was January 2011
- The loss of Amcast and International paper resulted in a decrease in the KWHs purchased since 2007
- 45% of the Electric Utility revenues come from residential customers

- Average monthly use increased until 2006 but a decline has occurred due to energy efficient appliances

Water Highlights

- Water revenues in 2012 were \$1,896,957, an increase of \$126,532
- Operating expenses were \$760,407, an increase of \$89,175
- Depreciation expenses were \$215,804, an increase of \$9,766
- Taxes were \$324,580, an increase of \$36,423
- Operating income was \$596,166, a decrease of \$8,832
- New rates were effective January 2012
- Although income is decreasing the Utility is still able to fund capital projects without borrowing
- 49% of the Water Utility revenues are from residential customers
- Since the 1990s water usage has gone down, with the exception of 2012. This was due to the drought.

Additional Highlights

- The number of full-time equivalent employees is approximately 20. It has been as high as 23. A position may be added in the future due to retirements.
- In 2012 the average customer paid 11.5% less for electricity compared to other areas in Ozaukee County
- Water rates remain “middle of the pack” compared to water utilities throughout SE Wisconsin
- \$1,282,739 of infrastructure was added in 2012 on the electric side
- \$289,936 of infrastructure was added in 2012 on the water side
- The net plant value at the end of 2012 was \$23,801,005 on the electric side and \$18,255,625 on the water side
- Both utilities have been debt free since 2005;
- The roundabout relocation on Wauwatosa Road cost in excess of \$550,000
- A long-term water supply study is ongoing with Grafton & Mequon
- There is an ongoing commitment to proactively replace any aging infrastructure while managing declining sales and increasing costs
- The Well #4 cost recovery is on-going

2013 and Beyond

- No rate changes are necessary for either Utility for 1/1/2014
- A groundwater adequacy review will take place in 2013 to determine the status of groundwater before continuing to review alternate sources of water for the long term
- Infrastructure review will take place to determine a balance of cost structure, reliability, and customer service
- There will be an odd-even watering advisory for the summer of 2013 to help ensure adequate supply and relieve stress on the aquifer
- Challenges include managing ongoing flat or reduced sales with increases in costs, promoting conservation activities that benefit individual customers without causing costs to

increase to all, keeping both utilities financially strong for the long term, while managing customer costs; and staff planning due to retirements

- Opportunities include growing sales through economic development activities

The Council thanked Manager Lythjohan for his presentation.

PAYMENT OF BILLS

Motion made by Council Member Filter, seconded by Council Member O’Keefe, to approve the payment of the bills for the period 6/6/13 through 6/14/13, ACH transfers for the period 6/6/13 through 6/18/13, and payroll for the period 5/26/13 through 6/8/13. Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

LICENSE APPLICATIONS

Motion made by Council Member Filter, seconded by Council Member Radtke, to authorize the issuance of new Operator’s licenses for the period ending June 30, 2013 to:

Carolynn G. Black, Dyan D. Lasar, and Kevin A. Stephan;

and to authorize the issuance of new Operator’s licenses for the period ending June 30, 2104 to:

Suzanne Jochims-Flanders, Jennifer S. Kelley, Michelle Murach, and John P. Robertson;

and to authorize the issuance of renewal Operator’s licenses for the period ending June 30, 2014 to:

Kevin J. Bachmann	Carolynn G. Black	Elizabeth M. Bursten
Kyle E. Ciske	Jason U. Collins	Eric J. Halleman
James D. Hintz	Amber N. Kidd	Crystal R. Klas
Daniel W. Kropidlowski	James A. Lee	Christian T. Leonard
Craig E. Lowdermilk	William R. Poull	Richard J. Roden
Robert J. Roden	Emily J. Schneeberger	Steven R. Sievers
Matthew R. Stein	Kevin A. Stephan	Darcie R. Stib
Bryan E. Taylor	Michelle L. Taylor	Chris R. Velnetske
Jeanne M. Venturini	Stephan L. Venturini	Jennifer L. Mohny
Gerald E. Truchan		

Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Filter said he received a call form a constituent regarding the hours of the Public Works drop-off/compost site. He suggested that the Public Works Committee discuss opening the site an additional half-day and moving the site to the far north end during budget discussions for 2014.

ADJOURNMENT - CLOSED SESSION

Motion made by Council Member Filter, seconded by Council Member Yip, to adjourn to closed session at 8:12 p.m. pursuant to State Statutes 19.85(1)(g) to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is likely or is likely to become involved, more specifically, to discuss the Prochnow Landfill. Approval of closed session minutes of April 8, 2013. Motion carried unanimously with Council Members C. Reimer and R. Reimer excused.

ADJOURNMENT

Motion made by Council Member Filter, seconded by Council Member Radtke, to adjourn the meeting at 8:31 p.m. Motion carried unanimously with Council Members C. Reimer and R. Reimer excused. The Council did not reconvene to open session.

Constance K. McHugh, MMC/WCPC
City Clerk