

**CITY OF CEDARBURG
COMMON COUNCIL
September 14, 2015**

**CC20150914-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, September 14, 2015, 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 Jack Arnett, Art Filter, Rick Verhaalen, Mitch Regenfuss, Patricia Thome, Mike O’Keefe

Excused - Council Member John Czarnecki

Also Present - City Administrator/Treasurer Christy Mertes, City Attorney Michael Herbrand, Director of Engineering and Public Works Tom Wiza, Police Chief Tom Frank, Deputy City Clerk Amy Kletzien, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Kinzel’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. 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 Thome, seconded by Council Member Filter, to approve the minutes of the August 31, 2015 meeting as presented. Council Member Verhaalen stated that he voted nay along with Council Member Arnett, to award the 2015 asphalt pavement repair contract to Parking Lot Maintenance, Inc., including alternates 1 and 2 in the total amount of \$145,975.75. Motion carried without a negative vote with Council Member Czarnecki excused.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

UNFINISHED BUSINESS

CONSIDER ORDINANCE NO. 2015-14 AMENDING SEC. 7-2-17 OF THE CODE OF ORDINANCES CREATING AN EXCEPTION TO THE PROHIBITION ON AMPLIFIED MUSIC OR SOUND IN AN OUTDOOR ALCOHOL BEVERAGE SEATING AREA; AND ACTION THEREON

Attorney Herbrand stated that this ordinance was previously before the Council and has been revised for consideration. The changes include:

- Outdoor amplified music would be allowed under the liquor licensing for a beer garden for any 501(c)3 non-profit organization under the guidelines set forth in the ordinance.

- The number of events that would be allowed under the permit has been paired back from 15 events to 12. An event is defined as a single occurrence in a 24 hour period that lasts no longer than five hours. The amplified sound is restricted to 11 a.m. or after and must end by 9 p.m.
- The enforcement mechanism involving the decibel readings has been eliminated. The new language mirrors the current language in the Code, which is a reasonable person standard. If there is a complaint, the Police Department will check it out and if they perceive a problem under the reasonable person standard they will request that the volume be lowered.
- The notice requirements have been changed to: Notice of permitted events, and a brief description of the event, shall be given, in writing, by permit holders to the Cedarburg Police Department and all property owners within 150 feet of the outdoor seating area, by regular mail, at least 24 hours prior to the event.

In answer to Council Member Filter's questions, City Attorney Herbrand stated that the \$250 annual permit fee is only for non-profit 501(c)3 organizations with a beer garden. The fee is intended to reimburse the City for the costs of processing the request. The Police Department will monitor the number of events. The thought process is that non-profits bring a different aspect to the downtown and City. For-profit businesses are allowed to have amplified music during Festivals only through Cedarburg Festivals.

In answer to Council Member O'Keefe's question, City Attorney Herbrand's interpretation is that the Cedarburg Art Museum may have amplified sound without it counting as an event toward their permit during the festivals.

Council Member Filter asked how the City will determine whether sound is played at such a level to unreasonably disturb the peace and quiet of persons in the vicinity.

Attorney Herbrand explained that it is based on a reasonable person standard. This will be deferred to the Police Department to gauge this. If the Department determines that it is too loud they will ask the permit holder to shut down the music or lower the volume.

Police Chief Frank explained that the reasonable person standard has been used at the Police Department for many years and it has served them very well.

David and Diane Henke, W65 N672 St. John Avenue, live directly behind the museum. Mr. Henke provided a history on their ownership of the property since 2009. The Cedarburg Art Museum purchased the building behind them a few years ago and there has been nothing but good that has happened from that purchase. They have made many beautiful improvements and noise has never been a problem for them. They have experienced many beer garden events that include folk music and it is usually quiet. Even the amplified events during Festivals are very respectful. The property brings in artists from all over the State and more importantly patrons that not only participate at the museum but they also participate in the downtown businesses. They offer constant programs for adults and children. He stated that Jill Hepburn and Chris Christon are excellent communicators and they have never had a problem. The Cedarburg Art Museum allowed him access through their backyard to take out some silver maple trees. If he ever has a problem with noise, he knows that he would get a very open set of ears and something would be done very quickly. Mr. Henke said that

there have been several events in the last month with music that were not festival related, that went very late and woke them up. He is surprised that is allowed to go on and yet this discussion is about folk singers playing until 9 p.m. at the museum. He asked that the Common Council consider their good experience with the museum in their discussion.

Robin Paradis-Kent and David Kent, N66 W6432 Cleveland Street, stated that they and the neighbors along Cleveland Street and Hanover Avenue want to ask the Common Council to deny the request to create an exception to the prohibition on amplified music or sound in an outdoor alcohol beverage seating area. Allowing the amendment to pass would have a negative impact on the quality of life the taxpaying citizens experience as neighbors. Ms. Paradis-Kent stated that they have not experienced the wonderful communication and experiences that the Henke's have. The Cedarburg Art Museum told them that they would also have a privacy fence added if they removed a tree and instead they erected a four foot fence that does not prohibit anyone seeing into their yard; they acted in good faith, and the art museum did not honor their word. As a group, the neighbors love the museum and it is a fabulous place; however, their issue is what the Cedarburg Art Museum's purpose is. Is it a bar, because that is what they are getting?

Ms. Paradis-Kent continued by making the following points in reference to the March 9, 2015 Common Council minutes:

“Attorney Herbrand stated that amplified sound or music is not permitted in the outdoor seating area by ordinance.”

On the following dates, the Cedarburg Art Museum utilized amplification for voice (spoken) and music (vocal and instrumental):

- Strawberry Festival, Saturday and Sunday (does not count)
- July 11 – wedding/reception into the night
- July 3 – an additional beer garden, not on the original Thursday list, along with every Thursday evening July 9 – August 27, 5 – 9 p.m. and sometimes 9:30 p.m. and sometimes 9:40 p.m.
- July 25, following the Iron Pour demonstration, there was a “dance”, that was not folk music
- August 15, the Shakespeare event

If sound was not to be amplified according to ordinance, how was this sound allowed?

Ms. Christon stated that, “the purpose for applying for the alcohol outdoor beverage license is for a few special events. They will not operate as a tavern.”

The neighbors believe that a weekly beer garden is, in fact, a tavern.

“...and will not be open every weekend.”

The beer garden is not open every weekend, just every Thursday night.

“Their (Cedarburg Art Museum) intention is to use the (liquor) license three or four times per year and not on an ongoing basis.”

They believe marketing a “Beer Garden”, open “every Thursday from 5-9 p.m.,” is clearly in opposition to their statements when they applied for this liquor license: it is not “three or four times a year”; it is on an ongoing basis. Their Twitter feed and

Facebook page shows a lot of people drinking in the beer garden, which is fine, they have an issue with the noise.

“They (CAM) feel they have established good barriers between the neighbors”

Ms. Paradis-Kent was told if they took down a tree, the Cedarburg Art Museum would erect a fence that would prohibit view into their yard and neighbor’s yard (Dorothy Gallun); however, the fence to the south edge from the west corner to Washington Avenue is 4.5 feet tall and is clearly not a privacy fence. They have not really been good neighbors, in their opinion.

“Ms. Christon continued to say that most of their events end between 9-10 pm because they do not have good lighting for into the night events.”

They have since added lights to their outdoor bar, which they call “the Shed”; and have strung party lights around the perimeter of their property in addition to their flood lights. That is a lot of light in neighboring yards.

“and the crowds have not been rowdy or loud”

Ms. Paradis-Kent stated that some of their crowds are loud and they do have some rowdy patrons who are allowed to remain after 9 p.m., occasionally until after 10 p.m. who then sing, dance, talk, laugh down the street and slam car doors. All this is happening in their quiet residential neighborhood. The Art Museum took over a home in a neighborhood.

“Acting Mayor Radtke stated that the license can be discussed anytime throughout the year, if there are any concerns about this outdoor alcohol beverage license.”

The neighborhood people do have concerns and would like direction on how to pursue further discussion about the Cedarburg Art Museum’s liquor license renewal. How, when, and where does that happen, please let them know.

Additionally: not relating to the minutes, they are interested in the number of people allowed per Fire Code to occupy the Beer Garden at one time, as well as how many people are allowed per Fire Code to attend a given event.

As they understand, the Cedarburg Art Museum is requesting a change in the amplification ordinance because their audience members cannot hear when they have 75 people or more; perhaps these Fire Code numbers may negate any need for additional amplification if it is determined the space does not allow for that many people. Ms. Paradis-Kent spoke with the Fire Inspector and no one seems to have a number on how many people are allowed. Does the City of Cedarburg have a limit in yards with a small driveway? There were concerns during the Iron Pour event and the hot metal. If a fire would have started, where would the people have gone, except into the neighbor’s backyards?

While the Cedarburg Art Museum did have a single wedding booked for summer 2015, their website clearly is advertising, “our beautiful building and grounds are available for rent for your wedding, reception, office party, bridal/baby shower and anniversary.”

She questioned how many outdoor events will be booked for next summer, and summers thereafter? Are these in addition to the 10 beer garden events? They clearly are using amplified music during these events.

Attorney Herbrand stated that they would be limited to 12 amplified events, per the proposed ordinance.

Ms. Paradis-Kent stated they feel that the Cedarburg Art Museum should get these “misrepresentations” under control before moving forward, and there should be more oversight on what their promises are.

They ask the Common Council to deny the proposal to amend the ordinance.

Ms. Paradis-Kent also read the following letter from Vickie Schroeder, N65 W6461 Cleveland Street, who could not attend the meeting: As a resident of the City of Cedarburg I would like to interject on this proposal. I have lived in Cedarburg for 30 years, owned my home on Cleveland Street since 2008 and most of my neighbors have been here for 25 to 40 years. We all seem to have similar concerns on the proposal for amplified sound and music at the Cedarburg Art Museum. I chose to make Cedarburg my home because it was safe and quiet. This has proven to change tremendously over the years between the festivals, fairs, Summer Sounds, parades, marching bands, Maxwell Street Days, music at City Hall, etc. It is safe to say it can be quite challenging. Parking can be impossible, the noise can be unbearable! You talk about decibels, well I guarantee that is neither here nor there because bottom line any amplified sound or music in town travels very far and very loud. Where I live it is like it is in my house and in my yard so I don't have the choice to listen or not. My son lives at the end of Riveredge Road and it sounds like it's in his backyard. I lived on Western Road about one mile west of 76th Street for the better part of 17 years and any amplified sound or music seemed to be in my yard there also, so decibels really mean nothing! You talk about 15 additional events, well that really puts a total end to any personal quiet family time any of us would like to have. I love music and people, but there has to be limits; otherwise, it is not fair to any of us, the taxpaying homeowner! I also feel allowing this proposal will open up many new situations. Thirty years ago, I bartended at Maxwell's on Main Street and if you approve this for the museum I am sure there will be many other businesses that feel what is fair for one should be across the board. I think this is an unrealistic and unfair request on the Museum's part. There is no consideration for the longtime residents, in fact if it was not for my great neighbors I and many of us would never have known this was going on. Why wouldn't we have been notified and invited? We have all watched how Cedarburg has grown to be one of the top tourist attractions, news stated 100,000 attended Strawberry Festival, these numbers go on and on with each event. When do we stop, when it is no longer safe and enjoyable to live here? I do not think approving this proposal would have a positive effect on anything except maybe the Museum. I do not feel this should be approved, but if it is, I think a 6:00 p.m. cut-off time is more appropriate than 9 or 10 p.m. In fact, maybe their amplified sound and music should be inside like all the other businesses.

Nancy Pipkorn, N66 W6466 Cleveland Street, asked that the City not allow amplified music. If amplification of sound would be permitted in this venue, even with the proposed limit of events and hours, she feels it is a bad set up. This particular beer garden is located within their backyard areas of the residents in the neighborhood. Their homes were built in the late 1800s and early 1900s, close to the street with nice backyards and it is a beautiful area. With the yards meeting in the

middle, the amplified sound fills the yards. Ms. Pipkorn read the Museum's mission statement: *"The mission of the Cedarburg Art Museum is to establish and then maintain a forum that will collect, exhibit, and forever preserve, the artwork of Cedarburg and its environs. Our endeavors will promote Cedarburg Wisconsin as a small but dynamic center for the creative arts in America."* She realizes that they are a non-profit organization; however, she does not believe it is right to use the beer garden to do so. It should be related to, and music is art, but not every Thursday night with a beer and disturbing the neighbors. There are many other activities that they can use to raise funds, as seen with other non-profit organizations throughout the State. Ms. Pipkorn read the Museum's Vision Statement: *"The Cedarburg Art Museum will provide a community gathering place for the celebration of the arts in Cedarburg. Concurrently we will build a historical record of the vibrant art scene that exists in Cedarburg. These efforts are designed to support the vibrancy of the downtown historic district and thereby strengthen the community as a whole."*

Ms. Pipkorn stated that if the Museum really meant this, they would not be forcing this intrusion of sound on their lives and families. The neighborhood residents have been good sports about the festivals and celebrations in the City, that is a given. These events are not every week and they are able to plan around them. Ms. Pipkorn stated that they have a buffer of buildings and trees that give them a little modulation of the volume of the sound when they occur. The beer garden is right in their backyard.

Paul Tehan, N65 W6443 Cleveland Street, stated that he agreed with many of the points stated so far. When he initially moved to the City five years ago, he essentially bought into everything that Cedarburg is, such as Festivals and Summer Sounds. Initially he was pleased with the Cedarburg Art Museum and took tours. He stated that art is pictures, sculptures, light music, etc.; not a beer garden, amplified music and lights. He does not like the way the Museum is heading. He agreed with eliminating the decibel reader, as that is not the way to measure the irritation and spread of sound. He is happy for the neighbors that don't mind it and is happy that the lot was cleaned up in its creation. However, the idea of a tax free bar seems a little perverse. He is within earshot of the Museum and it gets loud and has been woken at midnight on occasion. The Museum may be hijacking the purpose of what they should or what he was hoping they would be. Non-amplified music that would shut down by 8 or 9 p.m. would be favorable. He is concerned about the overflow from the museum. Mr. Tehan has enjoyed living in Cedarburg the past five years; however, recently he does not like being woken at midnight. Next time this happens he will call the Police Department.

Diane Henke, W65 N672 St. John Avenue, stated that she lives behind the museum and she can appreciate the after-hours disturbance. However, she hears more noise from Maxwell's than the Museum before it was even open. They live a block from main street and they appreciate that it is the urban part of Cedarburg. There are limits to noise pollution, but this is not the Cedarburg of the turn of the century. Downtown businesses do cause noise and should be respectful; however, you do have the right to call the Police Department when it gets to be later. Ms. Henke does not think that the Museum is the problem. When they sit in their back yard, they need to go up to the fence to hear the music at times.

In answer to Council Member Verhaalen's question, Attorney Herbrand said that any event such as a wedding with amplified sound would go towards the limited number allowed.

Ruth Cook, W64 N649 Hanover Avenue, stated that some of her questions have been answered by Council Member Filter's questions regarding 501(c)3 non-profit organizations. She wanted to clarify that the fence that was built along the Kent property was associated with a different ordinance and it had to go the Plan Commission to be considered. Now this is a different ordinance number with a different proposal. She questioned whether the Plan Commission will need to assess different sound barriers and constructions regarding the neighborhood? She brought this up because it is a different proposal than the initial one. She continued to say that there are many unanswered questions and this proposal goes beyond the art center. Because the proposal is for any non-profit to provide amplified music this will open it up to a larger number of groups. She questioned how many non-profits were in Cedarburg that would come under this category and apply for a yearly permit from the City. Has this been assessed as part of the proposed ordinance?

City Attorney Herbrand stated that the Cedarburg Art Museum is the only non-profit organization with a beer garden.

Council Member Arnett stated that someday the Cultural Center may want to do this, if they qualify as a 501(c)3 organization.

Council Member Verhaalen stated that he asked this question at the last Council meeting and the Cedarburg Art Museum is the only organization that qualifies for this ordinance at this time.

Ruth Cook asked if future 501(c)3 groups will be able to apply for this permit which will increase the number of groups.

City Attorney Herbrand clarified that the proposed ordinance will apply to all current and future organizations that meet the criteria.

Mayor Kinzel clarified that the organization needs to have an outdoor alcohol beverage license along with the 501(c)3 designation. Not just any non-profit organization can take out this permit.

Ruth Cook stated that many more non-profit organizations could apply for this permit and the Council should think about the future impact of the ordinance. She stated that there should be broader discussion to unanswered questions and related areas of the expanding event activities. Once this ordinance is passed, it will be difficult to correct or include regulatory measures. Passage as it is will affect the future of Cedarburg for years to come. The issue is not only about an alcohol beverage license and amplified music but also about all the other facets which impact a residential community. Cedarburg is a City of events/festivals and has become a trademark name in Wisconsin. However, the very thing that captures people's hearts is our hometown atmosphere, real people live here. How many events can the City have before we get fested out? The noise issue is a concern and one thing that is used to judge noise is the assessment of a reasonable person's standard assessed by the Police Department. Several years ago this very same neighborhood dealt with a very loud noise problem. The noise ordinance can be improved. In searching for assistance within the City at that time, they were unable to find support in dealing with it and they were on their own. What could have been solved with respect, was blown way out of proportion. It would have made a difference, if there had been a way to mediate or negotiate between the two parties to resolve those differences of noise. There is still a need to consider this in our City noise ordinance. She also recommended that notice be given to residents of the surrounding area, not property owners,

because Cedarburg has also become a City of renters. In her area there are a number of neighbors who are renters and should have been given notice of this ordinance. She asked the Council to deny the ordinance at this time and give it further discussion and consideration.

Alison Kriegel, N66 W6454 Cleveland Street, stated that her back yard is not directly abutting the Cedarburg Art Museum, but it is next door to a home that does, and shares many of the concerns of her neighbors. She has been living in her home for fourteen years and lovingly restoring it from the beginning. They have three girls ranging from 9 – 2 making their situation different. The sound is actually strongly affecting their quality of life for their family. A series of 12 events concerns her along with a series of events that have happened already when they should not have happened. She explained that they can hear the sound from the museum in two of their children's bedrooms and you can hear every word. Ms. Kriegel often works from home in the evening and needs to have a place of peace. She wanted the Council to consider what it would mean if it was in their own community or neighborhood. Imagine if a neighbor held a large party with dozens of people, amplified music and drinking every Thursday and now potentially every weekend. She asked how that would affect their quality of life. She expressed concern for leaving her children alone in the backyard unattended. Another major point was the 24 hour notice. If she wants to have her colleagues over for a party in her backyard, she would not know if they were planning something at the Art Museum at the same time. It is like going to a concert that you don't want to go to. Ms. Kriegel completely supports the mission statement of the Cedarburg Art Museum. It is a great idea and she is glad that they established themselves; however, there needs to be some type of separation between their contained events and how that is expanding into the neighborhood as a whole. She reiterated her concern about the 12 event proposal knowing that they have already been having amplified events. If they say 12, will someone be properly monitoring them? She agrees that the City needs to have continued vitality in the downtown community; however, passing things like this suggests that it is not a place for young families to raise their children because of all the noise all the time. Moving forward, to maintain the Cedarburg aesthetic, with beautiful well maintained homes, the City needs to keep this in mind. Not so much focus should be given to bringing new visitors to the community that we ignore the quality of life issues of our residents.

Diane Banas, W58 N438 Hilbert Avenue, spoke as a business owner across the street from the Cedarburg Art Museum. She commented that on August 10 Council Member Czarnecki questioned the fact that businesses are trying to make a living and with this ordinance they will not be given the same opportunity. It should be open to everyone. She does not see any answers to this question. She asked why the ordinance was only for non-profit organizations. This could affect many businesses. Ms. Banas stated that there is three or four businesses downtown Cedarburg without beer gardens that have amplified music outdoors on a daily basis. Is this not supposed to happen or is it because their decibel level is lower?

Mayor Kinzel stated that the ordinance only pertains to beer gardens.

In answer to a Nancy Pipkorn's question, Mayor Kinzel stated that the proposed ordinance is strictly for a 501(c)3 organization and it does not change the other outdoor beer gardens in the community. This will not be available to anyone that is not a 501(c)3 organization and does not have an established outdoor alcohol beverage seating area.

In answer to Council Member Filter's question, City Attorney Herbrand said that the notices to the Police Department will help the City track the events.

In answer to questions from the residents, Mayor Kinzel stated that if the ordinance is adopted, each event will need to be described and notices will be sent to the surrounding homeowners beforehand.

In answer to Council Member Filter's question, City Attorney Herbrand explained that the homes are tracked by the landowner through tax records and not the tenant. The organization having the event will need to search tax records to find the homeowners addresses for notification. If they have a schedule of events, all the dates may be included in one notice.

Council Member Verhaalen asked if the homeowners could be notified sooner than 24 hours in advance.

Council Member Arnett questioned the 24 hour time period and the time it would take for the notice to reach the homeowner by mail.

City Attorney Herbrand stated that the intent is, the notice would be received 24 hours before the event.

Council Member Thome stated that organizations will most likely have a list of events and the notice period could be changed.

City Attorney Herbrand stated that the ordinance is front of the Council and is at their discretion to approve. If they believe a longer notice period is warranted, this is within their authority.

In answer to Council Member Filter's question, City Attorney Herbrand stated that the ordinance will stand up in a legal challenge.

In answer to Mayor Kinzel's question, City Attorney Herbrand stated the City may not issue the amplified music permit if they have warranted reasons. If the City is going to revoke the permit mid-year, then the City will need to give the permit holder notice and follow a due process.

In answer to Council Member Filter's question, City Attorney Herbrand stated that the burden is on the permit holder to measure the 150 feet and get the names from tax records to notify the neighbors.

In answer to Ruth Cook's question, City Attorney Herbrand stated that the 150 feet should be measured from all boundary lines for notification.

Discussion took place in regard to notifying the resident of a property rather than the homeowner.

Council Member Thome stated that she understands the perspective of the non-profit organization and the mix of residents with a variety of needs. She suggested that the 12 events be changed to a lesser number.

Council Member Regenfuss stated that he struggles with 12 events and the 24 hour notification period.

Mayor Kinzel stated that 501(c)3 organizations rely on fundraising and this is one way to accomplish this. During the few events that he attended at the Art Museum, there were children and people of all ages. It is also difficult when you have a business district abutting a residential area. The Art Museum has been a nice addition to the City and the option of losing it is not a good option. He is in favor of cutting back on the number of amplified events. He did not hear the music on Thursday nights from the street and is not having the same experiences as others. It is in a business district and he is not certain that there is a Fire Code for outdoor events and does not see this as an issue. This is reviewed by City staff and he will confirm it. If it does not work and it becomes a burden to the downtown area it will not occur again. Most often, items like this are not as disruptive as perceived.

Alison Kriegel wanted to clarify that the perception is that the amplified music is important to the success of the beer garden. She disagrees, if this is how it is being interpreted. No one is suggesting that the beer garden be shut down. They can have many other events and she does not understand why it needs to be so loud. This is the main issue for the majority of the neighbors.

Ruth Cook opined that someone should work with the Museum to deal with sound attenuation. The stone buildings in the area make it unusual and it creates echoes. Maybe they should work with someone who knows how to play off of the acoustics within the area.

David Henke thought the removal of some of the large trees may play a part in the increased sound traveling up the street. He plans on putting some of the trees back over the years and this may help.

In answer to Council Member O'Keefe's question, City Attorney Herbrand stated that he can never say that the City will not get sued; however, all the City is doing is regulating sound/noise. To him, this is content neutral regulation. In this case, things can be regulated as long as there is a reason for doing so. The idea of allowing non-profit some extra discretion in this regard, has a certain benefit to the City based on past discussion that the non-profits brought a different aspect to the City and was worth granting this exception.

In answer to Mayor Kinzel's question, City Attorney Herbrand stated that the City's ability to regulate amplified music comes with the outdoor alcohol beverage license; otherwise, they could have amplified music whenever they choose within the noise ordinance guidelines.

Steve Cain, N50 W6890 Western Road, commented that State Statutes Chapter 125 has particular language for lodges, societies, etc. and are given specific treatment under State law. They are unique in the liquor licensing chapter. The language in the ordinance follows what is already in State law, probably since the 1930s and is the reason why they can be given special treatment.

Council Member O'Keefe suggested a compromise. This ordinance can be revisited, repealed and adjusted at any time. He proposed a limited amount of events, possibly five events in a calendar year and then review it this time next year. He agrees with the Mayor that sometimes these situations seem worse than they actually turn out to be.

Council Member Thome agreed with reducing the events and giving more advanced notice. She agrees with Attorney's Cain and Herbrand that the 501(c)3 designation can be carved out. She does not want to be biased against for-profit entities but somewhere there is a line and the precedence is there to allow it to occur.

Eric Stelter, N54 W5989 Portland Road, has lived in Cedarburg 14 years across from where Summer Sounds occurs 14 times per year. When Summer Sounds started he had an infant and it was difficult. The reality is that it lasts three hours and he dealt with it because it makes our community different. Cedarburg is very unique because of places like the Cedarburg Art Museum and Summer Sounds. For the general populous this proposal would be very good for Cedarburg.

Chris Christon, W70 N392 Fox Pointe Avenue, asked the Council to consider when choosing an amount, that the events are both music and sound. When a curator is opening an exhibit with many people, half the people may not hear him. It would be nice to divide it.

Council Member Filter agreed with Council Member O'Keefe to limit the events to five or six.

Mayor Kinzel asked if speaking could be addressed separately from music.

City Attorney Herbrand appreciated the comments made by the Cedarburg Art Museum; however, he likes that the City is simply regulating all forms of noise. There is a lot of case law that talks about when you start to regulate one form of noise over another (speech over music) then you are infringing upon people's First Amendment Rights. He prefers the simple term "sound" as referenced in the ordinance to mean all forms of amplified sounds.

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to adopt Ordinance No. 2015-14 amending Sec. 7-2-17 of the Code of Ordinances creating an exception to the prohibition on amplified music or sound in an outdoor alcohol beverage seating area with the following changes: permit holders shall be limited to six outdoor amplified sound or music events per calendar year and to increase the notification time to seven days prior to the event.

Council Member O'Keefe amended the motion to include that the permit is issued per calendar year. Council Member Thome agreed to the amendment.

Peter Welch, N62 W6006 Columbia Road, asked the Council not to punt on this issue. Do not give the Museum six events when they ask for twelve. Do not legislate on the edge of a neighborly concert. It is not about sound. He went to Florence where they have a vibrant opera program and any tenor worth his salt can knock an amplified singer songwriter out of the park unaided by any amplification. You are dealing with one conflict but really talking about another. He wants to be sure that the Council does not solve one side of the problem while missing the broader conflict of the growth of an economic institution that is represented by the Art Museum. It is not going to solve the problem to limit the number of events because the growth of commercial entities near residential housing is always going to have conflict.

Ruth Cook, W64 N649 Hanover Avenue, strongly disagreed with Peter Welch. It is not about the Art Museum, it is about non-profit organizations that can apply for liquor licenses and have

amplified sound. This can multiply as clubs find out that they can have this advantage and this should be considered.

Council Member O'Keefe stated that six is a reasonable number. He looks at it as a trial basis until it is revisited next year. He stated that it is not a punt, it is a reasonable compromise to review later and possibly increase it or repeal it.

Motion carried with Council Members Arnett, Filter, Regenfuss, Thome and O'Keefe voted in favor, Council Member Verhaalen opposed and Council Member Czarnecki excused.

NEW BUSINESS

CONSIDER LICENSE APPLICATIONS; AND ACTION THEREON

Chief Frank stated that as of 5 p.m. today, Courtney C. Owrey, still has two outstanding traffic warrants and he is recommending denial. The Police Department contacted her three weeks ago and the Clerk's office also contacted her stating that the Chief will recommend approval if she took care of the matter. She had indicated that she would take care of them.

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to deny a new Operator's license application for Courtney C. Owrey on the recommendation of the Police Chief. Motion carried without a negative vote with Council Member Czarnecki absent.

Motion made by Council Member O'Keefe, seconded by Council Member Arnett, to approve a new Operator's license application for the period ending June 30, 2016 for Abigail R. Carpenter. Motion carried without a negative vote with Council Member Czarnecki excused.

CONSIDER EXTENSION OF CASH FARM LEASE WITH RODEN ECHO VALLEY, LLC FOR 2016; AND ACTION THEREON

Director Wiza explained that the City currently has a Cash Farm Lease, which originated on April 2, 1999, with Robert Roden for 47 acres at 6603 Highway 60, (former Kohlwey Farm), that will expire on October 31, 2015. While the land is eventually intended to be used for business park development, there is little chance of development occurring in 2016. Mr. Roden has agreed to increase his rent by 20% and has been an exceptional renter with his crop rotation, weed reduction and proper maintenance.

Motion made by Council Member Filter, seconded by Council Member Verhaalen, to grant the extension of the cash farm lease with Roden Echo Valley, LLC for 2016. Motion carried without a negative vote with Council Member Czarnecki excused.

CONSIDER ORDINANCE NO. 2015-15 ESTABLISHING A COMMUNITY DEVELOPMENT AUTHORITY (CDA); AND ACTION THEREON

City Attorney Herbrand explained that the Common Council approved the concept of a Community Development Authority (CDA) at a previous meeting. He outlined Ordinance No. 2015-15 to be

considered by the Council. It will require a 2/3 vote of the Council Members who are present to pass.

In answer to Council Member Filter's question, City Attorney Herbrand explained that the CDA will not have a budget and may participate in conjunction; however, it will be necessary for the Council to approve any bond issues. Working in this capacity will not put the City at risk.

Motion made by Council Member Filter, seconded by Council Member Thome, to adopt Ordinance No. 2015-15 establishing a Community Development Authority (CDA). Motion carried without a negative vote with Council Member Czarnecki excused.

Mayor Kinzel thanked the Economic Development Board for their work in helping to establish the Community Development Authority (CDA).

CONSIDER MAYOR KINZEL'S REAPPOINTMENTS OF JAMES COUTTS AND ANDREW MOSS TO THE LIGHT & WATER COMMISSION (TERMS EXPIRE 09/30/18); AND ACTION THEREON

Motion made by Council Member Arnett, seconded by Council Member O'Keefe, to approve Mayor Kinzel's reappointments of James Coutts and Andrew Moss to the Cedarburg Light & Water Commission (terms expire 09/30/18). Motion carried without a negative vote with Council Member Czarnecki excused.

CONSIDER UPDATED COOPERATION AGREEMENT WITH WAUKESHA COUNTY REGARDING THE HOME INVESTMENT PARTNERSHIP PROGRAM; AND ACTION THEREON

Motion made by Council Member Arnett, seconded by Council Member O'Keefe, to postpone the consideration of an updated cooperation agreement with Waukesha County regarding the Home Investment Partnership program at the request of City Attorney Herbrand. Motion carried without a negative vote with Council Member Czarnecki excused.

CONSIDER ASSOCIATED FINANCIAL GROUP SERVICE FEE AGREEMENT FOR HEALTH INSURANCE CONSULTING SERVICES IN 2016; AND ACTION THEREON

City Administrator/Treasurer Mertes explained that Associated Financial Group (AFG) has been the City's health insurance consultant since March 2013. The City has a good working relationship with AFG and would like to continue working with them. They provide long term planning, legal advice, ACA compliance, free training and support with policy and claims issues. The cost remains at \$23,000. If approved this evening, she asked that the motion include the addition of a termination clause.

Motion made by Council Member Thome, seconded by Council Member Arnett, to approve the Associated Financial Group service fee agreement for health insurance consulting services in 2016 with the addition of a termination clause.

In answer to Council Member Verhaalen's question, City Administrator/Treasurer Mertes explained that the contingency compensation refers to using them for other types of insurance and will not apply to the City.

Since this agreement will be automatically renewed on an annualized basis from the date it is signed, City Administrator/Treasurer Mertes will discuss possible renewal in 2017 during the budget process.

Motion carried without a negative vote with Council Member Czarnecki excused.

REVIEW AND POSSIBLE ACTION TO APPROVE AGREEMENT BETWEEN CITY OF CEDARBURG AND THE CEDARBURG-GRAFTON ROTARY FOUNDATION, INC. FOR THE CONSTRUCTION AND DEDICATION OF THE BAND SHELL FACILITY AT CEDAR CREEK PARK

Steve Cain spoke as past President and current Executive Secretary of the Cedarburg-Grafton Rotary. The organization is well on the way to reaching the \$650,000 needed for the project. He thanked Attorneys Michael Herbrand and Tim Schoonenberg for helping make the project a reality.

Funding has been pledged by the Cedarburg-Grafton Rotary Foundation, Greater Cedarburg Foundation and the Greater Milwaukee Foundation.

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to approve the agreement between the City of Cedarburg and the Cedarburg-Grafton Rotary Foundation, Inc. for the construction and dedication of the band shell facility at Cedar Creek Park. Motion carried with Council Members Arnett, Filter, Verhaalen, Regenfuss, and O'Keefe voting in favor, Council Member Thome abstaining and Council Member Czarnecki excused.

CONSIDER PAYMENT OF BILLS FOR THE PERIOD OF 08/28/15 THROUGH 09/04/15, ACH TRANSFERS FOR THE PERIOD 08/26/15 THROUGH 09/09/15, AND PAYROLL FOR THE PERIOD 08/16/15 THROUGH 08/29/15; AND ACTION THEREON

Motion made by Council Member Filter, seconded by Council Member Arnett, to approve the payment of bills for the period of 08/28/15 through 09/04/15, ACH transfers for the period 08/26/15 through 09/09/15, and payroll for the period 08/16/15 through 08/29/15. Motion carried without a negative vote with Council Member Czarnecki excused.

ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes reported that it will be difficult to meet the Council parameters in the 2016 budget.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS - None

MAYOR'S REPORT - None

ADJOURNMENT

Motion made by Council Member Filter, seconded by Council Member Arnett, to adjourn the meeting at 9:05 p.m. Motion carried without a negative vote with Council Member Czarnecki excused.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk