

**CITY OF CEDARBURG
COMMON COUNCIL
November 10, 2008**

CC20081110-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, November 10, 2008 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, Steven Glamm, Noel Jepson (participating by speaker phone), Paul Radtke, Michael Maher, Kip Kinzel, Amy Goyette

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering & Public Works Tom Wiza, City Planner Jon Censky, City Clerk Connie McHugh, Deputy City Clerk Amy Kletzien, Captain Glenn Lindberg, WWTP Superintendent Ron Clish, 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.

PUBLIC HEARINGS/PRESENTATIONS - None

APPROVAL OF MINUTES

Motion made by Council Member Reimer, seconded by Council Member Radtke, to approve the minutes of the October 15, 2008 joint meeting of the Common Council and the Economic Development Board and the October 20, 2008 special meeting of the Common Council. Motion carried without a negative vote.

REPORTS OF BOARDS, COMMISSIONS, AND COMMITTEES - None

COMMENTS & SUGGESTIONS FROM CITIZENS - None

UNFINISHED BUSINESS - None

CONSIDER PROPOSED 2009 BUDGET

City Administrator/Treasurer Mertes explained that the proposed budget was revised to allow the treatment of the Emerald Ash Borer to be included and keep the assessed tax rate increase to .10/\$1,000 of value.

The changes made include:

- Police Dept. Patrol Division 522120-351 gasoline account reduced \$5,000
- Public Works M&E 533210-351 gasoline account reduced by \$6,000

City Administrator/Treasurer stated that the gasoline costs for 2009 were figured at an average of \$2.70/gallon for unleaded fuel and \$3.00/gallon for diesel fuel.

- Refuse collection contract 533710-297 fuel surcharge reduced \$63,780
- Recycling collection contract 533720-290 fuel surcharge increased \$18,255

A portion of the refuse collection amount was added to the recycling collection for the purpose of grant reimbursement for expenses. The net reduction is \$45,525 assuming a 12% fuel charge.

- City Hall Complex repair and maintenance 518100-240 reduced \$13,545

Building Inspector Baier was able to remove one project for the City Hall complex repair and maintenance account in 2008 and move the savings to 2009.

- Parks & Forestry 555510-341 trees & supplies account increased \$70,200

The Park & Forestry account increase is due to the Emerald Ash Borer treatment as authorized by the Common Council.

- Celebrations operating expenses 555220-350 account increased \$1,000

The increase of \$1,000 to the Celebrations account is for help in funding the hanging baskets in downtown.

- Contingency Reserve 591000-950 account increased \$95,000

City Administrator/Treasurer Mertes stated that there was room in the expenditure restraint program to move this amount from the fund balance.

- Miscellaneous revenue increases of \$130
- Capital Improvements Police Dept. equipment replacement of radios split over two years
One half 2009, one half 2010

In answer to Council Member Jepson's questions, City Administrator/Treasurer Mertes stated that the tax increase for the City will be .10/\$1,000 assessed value which will allow the full amount of the Emerald Ash Borer treatment to be funded.

Council Member Radtke confirmed that an increase of approximately \$11,000 is equal to a .01 increase in the assessed tax rate.

Mayor Myers stated the current budget proposal will raise City taxes by .10/\$1,000 or \$10 per \$100,000 of assessed valuation in 2009.

Council Member Glamm stated that he has been involved with six budgets as a Council Member and this is the largest increase that he has seen; however, this is still a good budget. He pointed out that of the .10 per \$1,000 about 6.5¢ is directly attributable to the treatment for Emerald Ash Borer. Basically, in the face of uncertainty in respect to fuel costs and increases in health care insurance, he stated that the City Administrator/Treasurer and the Common Council have done a good job of holding the line. In relation to the Emerald Ash Borer treatment, which adds a large increase in taxes has been debated by the Common Council and some measures have already been taken this year to combat the Emerald Ash infestation. He believes that citizens want the City to continue the battle against the Ash Borer as opposed to waiting for Federal programming or agencies to get on board with a plan; however, it appears that officials are waiting to take any action while it is spreading. Council Member Glamm stated it is prudent to include this sum of money in the budget.

In regard to the budget, he is never pleased to pass a budget increase, but given the fact that it is being held to .10/\$1,000 in this time of demand in services is a remarkable achievement. He has tried to figure out various ways to reduce the budget; however, a reduction of significant amounts will result in significant reductions in programming that constituents want and expect to have in Cedarburg.

Mayor Myers thanked City Administrator/Treasurer Mertes and staff for working very hard on the budget. The City started out several cents higher and it was worked down to .10 per \$1,000. It was a challenge this year due to the increase in refuse collection and the unexpected cost of saving the City's ash trees. He echoes Council Member Glamm's comments in that the City faced difficult challenges and the City did well in keeping it under control. He thanked City staff again and he knows that they keep the citizens in mind when they prepare their budgets.

Motion made by Council Member Jepson, seconded by Council Member Glamm, to approve the 2009 budget as presented. Motion carried without a negative vote.

CONSIDER ORDINANCE NOS. 2008-19, 2008-20, 2008-21, 2008-22, AND 2008-23
ADOPTING THE 2009 BUDGET

Motion made by Council Member Jepson, seconded by Council Member Glamm, to adopt the following ordinances adopting the 2009 budget:

- Ordinance No. 2008-19 levying property taxes on the General, Debt Service, Special Revenue, and Capital Improvement Funds for fiscal year 2009
- Ordinance No. 2008-20 appropriating the necessary funds for the operation of the Government and Administration of the City of Cedarburg for fiscal year 2009
- Ordinance No. 2008-21 appropriating the necessary funds for the 2009 Capital Improvement budget
- Ordinance No. 2008-22 establishing the user charge schedule and appropriating the necessary funds for the Sewerage Fund for the operation of the Wastewater Treatment Plant for fiscal year 2009
- Ordinance No. 2008-23 appropriating the necessary funds for the operation of the Special Revenue Funds and adopting the indicated budgets for the fiscal year 2009

Motion carried unanimously on a roll call vote.

CONSIDER FILLING THE COUNCIL MEMBER VACANCY IN THE 7TH ALDERMANIC
DISTRICT

Mayor Myers stated that there is a policy (CC-20A) in place for filling a Council Member vacancy, which may be changed at any time by the current Council.

Council Member Glamm stated that he requested that this item be on the agenda. Even though there will be an election in April, there will be 4 ½ months that the 7th District will be without representation. He wants to hear from the Council as to whether the policy should stand or if applications should be solicited to fill the vacancy prior to the election.

Council Member Radtke stated that due to the resignation of Council Member Goyette on November 30, it would be a good idea to appoint someone in the interim to allow the 7th District representation.

Council Member Goyette appreciates Council Member Glamm's decision to add this discussion to the agenda. She urged the Common Council to appoint someone to represent the 7th District until such time an election can be held in April. She has spoken to residents in her district and has some names of several people who are interested in submitting their resumes for consideration.

In response to Council Member Radtke's question, Mayor Myers stated that the current policy will allow the Council to accept applications; however, deadlines will need to be set for accepting and interviewing the candidates. An ad will need to be placed in the *News Graphic* to solicit resumes for the vacancy.

Council Member Glamm proposed that the cut off date for interested candidates be set at December 8, 2008 with interviews and an appointment to take place at the first meeting in January 2009.

In answer to Council Member Jepson's question, Mayor Myers confirmed that the Council will adhere to Policy CC-20A, currently in place, for filling aldermanic position vacancies. The Council will accept applications for the vacancy up to December 8, 2008 and then the applicants will be interviewed and selected at the first Council meeting in January 2009.

Council Member Goyette added that during the interim until a new Council Member is appointed, she wants to remind District 7 residents that Council Members are responsible and responsive to all residents within the City; therefore, District 7 residents can contact Council Members from any district and have their concerns voiced and heard.

CONSIDER AGREEMENT WITH CITY ATTORNEY

Mayor Myers stated that the City Attorney's agreement is expiring at the end of 2008 and a new contract is being presented for approval. No changes have been made to the current contract including the fees for the specific services listed.

Council Member Goyette requested that the Common Council send out Requests for Proposals (RFPs) to consider having someone else appointed to the City Attorney position. She suggested that the agreement with the City Attorney not be renewed at this time, until RFPs can be sent out, which is the fiscally responsible thing to do.

Council Member Jepson supported the renewal of the City Attorney agreement at this time, but will have some questions in the future.

Council Member Radtke stated that the City Attorney position is similar to his professional computer consultant position where relationships are very important. He added that when beginning to work with a new customer it takes time to get to know them and their circumstances. There is a great value in knowing a certain system and the way the customer operates. Based on the

figures presented, the current contract is very well in line, if not much lower than the surrounding communities, and he supports the renewal.

Council Member Kinzel agreed with Council Member Radtke and added that in the years he has served on the Common Council, City Attorney Vance has done a very nice job and has been easy to contact.

Motion made by Council Member Kinzel, seconded by Council Member Jepson, to approve the agreement with the City Attorney.

Council Member Glamm stated that there are a limited number of people who are competent in the area of municipal law. He fears that a lower price could be found; however, in the world of legal work the City may not get a quality advocate on their behalf. The City may be able to hire a firm that represents another municipality also, but the City frequently finds itself in litigation with surrounding communities in which case the City would need to hire another attorney, resulting in spending more money. Council Member Glamm stated that City Attorney Vance provides a wide variety of services for the City; whereas, other communities need to have several attorneys for different types of services. The City is fiscally responsible and the proposed agreement is in line with other communities. He opined that the City does not want to have an hourly rate agreement where it would be difficult to control the hours and would be difficult to budget for. He agreed with Council Member Kinzel that the City has received good service from Attorney Vance and he supports the motion.

Council Member Reimer expressed that he has had all good experiences working with City Attorney Vance. She has experience, expertise and a good working relationship with the Common Council. If this should change in the future, the agreement allows for a 60 day notice in re-opening or renegotiating this agreement. He supports the motion to approve the agreement with City Attorney Vance.

Council Member Goyette agreed with Council Member Radtke that relationships are critically important in democratic institutions which require trust. Council Members must be able to trust the information provided by the City Attorney. She has heard from her constituents and she also has serious reservations regarding the City Attorney's abilities to discharge her duties without regards to relationships at times or political motivation. This is the reason she wants to solicit Requests for Proposals to actually garner more information before shutting the door to other alternatives. She questioned the necessity for a retainer. Cities with similar populations such as the Village of Grafton and the City of Port Washington use attorneys on an hourly rate and it works. She clarified that the municipal attorney rates provided in the Council packets show that the attorney for the Village of Grafton charges \$275 per meeting, which is not an hourly rate and is for the entire meeting time. It is better to have more information prior to closing the door; whereas, City Attorney Vance has represented the City of Cedarburg for approximately 14 years, comparisons are good when making a decision.

Council Member Glamm expressed surprise that Council Member Goyette would make such an accusation, after serving seven months on the Council, claiming that City Attorney Vance is not serving the community well. He understands the argument of getting more information, but to reflect the innuendo that the City Attorney is not discharging her duties in the best interests of the

City is a serious charge, which should not be made lightly. He asked that the record speak clearly that he is aware of absolutely nothing in his six years on the Council that suggests that the City Attorney has not devoted or discharged her duties with the utmost integrity and compliance with the rules that govern lawyers. He has served in other communities in an elected capacity where the City Attorney was a doormat. City Attorney Vance keeps the City on their toes and warns Council Members when they are about to go over the line. He opined that it is a serious charge to make after serving only seven months on the Council and it should not go unanswered.

Council Member Goyette stated that regardless of serving six or seven months, one interaction is enough. A person's opinion should not be weighed by the amount of time served on the Council. Everyone is entitled to their opinion based on their experiences.

Mayor Myers stated that the City Attorney is responsible for representing the citizens of Cedarburg and the Common Council. This job involves many different aspects of the operation of City government and involves many different interactions with staff, elected officials and citizens. In all of his experience with City Attorney Vance, he stated that she takes her responsibilities very seriously and her responsibilities are to serve this community. Not individual Council Members, not the Mayor, but the community as a whole. To make public charges after one interaction, which was an apparent misunderstanding, is not appropriate.

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

CONSIDER CHARTER ORDINANCE NO. 2008-24 MODIFYING TERM LIMITS FOR MAYOR AND COUNCIL MEMBERS

Mayor Myers stated that Charter Ordinance No. 2008-24 is to modify the term limits for Mayor and Common Council Members. Terms were enacted several years ago as a result of a non-binding referendum that was passed in the City. It was meant to prevent one person from serving in a particular office for years on end. It was meant to allow potential challengers to step forward without possibly being intimidated when running for office. Tonight's proposal is an amendment stating that if there is no candidate that steps forward and files the required ballot access documents or a vacancy occurs during the subsequent term, then the previous office holder would be eligible to serve in that position again without waiting a full two years prior to serving again on the Common Council. It does still preclude a Council Member who has served eight years from filing a petition to run again for a fifth term and precludes the Mayor from running a fourth term.

Council Member Radtke has always been in favor of term limits; however, this case is different. His constituents agree with him in the case where someone has stepped down for an election cycle to be allowed to run again in the future or be appointed if there is a vacancy on the Council. He confirmed with City Attorney Vance that if a Council Member sits out for one term, they are allowed to run again after that time.

Council Member Maher stated that this topic has been on the agenda three times this year. He repeated his thoughts that he is in favor of term limits and representing the voice that was heard in the referendum in favor of term limits. He will not vote to change or repeal term limits. There is a process in place and it should be left alone.

Council Member Goyette stated that the talent in this community is not so scarce that the benefits of rotation in the office must be sacrificed in order to prolong indefinitely a talented person's tenure in office. The benefits of turning the talent pool exceed the cost of limiting it. Council Member Goyette opined that it should be put to an advisory referendum.

Council Member Radtke stated that the proposed modification does not repeal term limits. It is strictly stated that if a vacancy becomes available and no one runs for the office, then a former Council Member may apply and step in to fill the position. He is in favor of term limits but does not object to the proposed modification to fill a vacancy.

Council Member Kinzel stated that he agrees with the proposed modification. He also agreed with Council Member Radtke that it allows a district that is happy with their former alderman the ability to have that person fill the vacancy if no else is interested.

Council Member Radtke stated that the alderman who reaches their term limits does need to step down and apply if no one else is interested in the position.

Mayor Myers restated that Ordinance No. 2008-24 will not allow an incumbent to circulate papers for a fifth term after their term expires. This will give the opportunity for another person to step forward without having to run against an incumbent.

Council Member Goyette stated that she heard and understands the Council Members' position on the modification, but speaking in specifics, the purpose of term limits have been set out and this modification would subvert those purposes. She specifically questioned how the appointment would be handled if someone resigns from the position, as she is, and will special consideration be given to the previous incumbent during the appointment process? Council Member Goyette stated that the advantages of an incumbent would play out in the appointment of a candidate to fill that vacancy and then the City would be back to the very reasons why term limits have been put into place. She stated this as her reason for disagreeing with the modification in addition to being against repealing the term limits. Both ordinances deal with the same issues at the end of the day.

Council Member Glamm stated that term limits are in place through the election process. If there is any election that has the easiest possibility of unseating an incumbent it is here at the local level. He is serving his sixth year and the seat to the right of him has been held by three different individuals, the seat to the left of him has been held by three different individuals, the 4th District has been represented by two individuals, the 5th District was decided by term limits and Council Member Kinzel (6th District) defeated an appointment to become a member of the Common Council. When the purpose of term limits is discussed, the reality is that they are not needed. In fact, an embarrassing situation occurred when no one ran or filed the necessary documents and a write-in was elected for the seat. He agreed there is a talented pool of people in Cedarburg and if they really wanted the seat and they felt there was an issue, they would campaign for it. Council Member Glamm stated that he has 550 households in his district which need to be visited to explain to them why he believes he can do a better job than the incumbent. The candidate needs to explain what they can do for the constituent. Council Member Glamm stated the modified ordinance deals with a vacancy in the position when someone does not run. This has happened before and it is prudent that talented people are not turned down who are interested in continuing their service to the community. This modification made sense to Council Member Glamm, as a half measure. He

stated that the referendum took place in 1994 and the experience since then has shown that this should not be a need for concern. There has been turnover on the Council. There will be a new Council Member in the 2nd District, as he will not be seeking another term. For any number of reasons, people leave these offices and there is a turnover. It is the easier to defeat an incumbent at this level and it has been seen in recent history. This modification makes sense so the Council can continue to have any number of talented people continue on if they choose to do so and that is what the district wants.

Motion made by Council Member Glamm, to adopt charter Ordinance No. 2008-24 with an amendment to change the sentence to read “No person shall be eligible to be appointed, or elected ~~or to serve in~~ the office of Council Member in an aldermanic district if that person previously held such office for four (4) or more full consecutive terms, unless ~~one full term or more has elapsed since that person last held the office of Council Member.~~ there is no candidate that files the required ballot access documents or a vacancy occurs during the subsequent term.” and also repeat this amendment in the sentence which pertains to the election of the Mayor in Sec. 2-3-3. This will make it read more complete.

Motion was seconded by Council Member Jepson, and he echoed most of what Council Member Glamm stated. Council Member Jepson stated he was opposed to term limits on principle and he would be in favor of considering the repeal of term limits this evening because it takes away the right of citizens to vote for their choice. Cedarburg is currently the only community in Ozaukee County that has held to term limits.

Council Member Reimer supported the modification to term limits; however, he does not support repealing them because of the referendum. He agrees that there is a lot of talent in Cedarburg and many people do not step up. It is fortunate that Council Member Goyette stepped up when she did. This modification allows the Common Council to tap the talent pool.

In answer to Council Member Jepson’s question, Mayor Myers clarified that the Ordinance modification does not make any specific appointments, but states that an alderman or mayor whose term has expired under the term limits ordinance cannot circulate papers to run for re-election for a fifth term (alderman) or fourth term (mayor). If in fact no one chooses to run in a vacant district or for mayor, the option will be available for the person who has reached their term limits to be reappointed at the choice of the Common Council.

Council Member Jepson questioned whether this modification would appear as cronyism.

Mayor Myers stated this modification applies to everyone in the City and has nothing do with cronyism.

Council Member Radtke reiterated that this issue does not repeal term limits and they will remain in place. It only changes the situation where someone does not fill their entire term and no one steps forward to fill the position. This allows some flexibility to the Common Council which they did not have prior to this modification.

Council Member Glamm expressed concern that Council Member Jepson may not understand the proposed motion because some of his comments appeared contrary to the motion on the floor. He

clarified that his amendments to the motion only made it read better. In the case of a vacancy, it will give the Common Council the option to appoint a former alderman to that position until the April election.

Council Member Goyette clarified that if no one steps forward, this modification will allow the option, if a vacancy occurs during the subsequent term, for this Council to appoint a former alderperson.

Council Member Jepson stated that Council Member Glamm explained the motion effectively and he understood the implications.

Council Member Reimer stated that this does not apply to Council Member Loomis because of the 60 day waiting period he cannot be appointed to the seat.

Council Member Goyette understood and stated that this was not her concern.

Mayor Myers stated that this modification is not germane to any one person, it is a general ordinance. He understands that in this case, Bob Loomis would be an effective person because he is the former incumbent alderperson in the 7th District.

Council Member Goyette voiced her concern about Council Member Glamm's comments directed towards how long she has served on the Council. This Council has already shown a favor towards how long someone has served on this Council and she is concerned how this Council would go about appointing someone to the position of a vacancy and if favor would be given to the previous alderperson.

Mayor Myers stated that it would be the Council Members' personal decision and that is what they are elected to do.

Council Member Radtke stated that at some point the Council Member needs to be trusted to do what is best for the City and not whether they are going to do anything in their personal best interest.

Council Member Kinzel stated that the modification does not preclude anyone from applying for the position also. In his case; however, there were two other people beside himself that came forward to fill the vacancy. It is up to the elected Council to decide the best person to serve the position.

Mayor Myers added that this is done in an open forum.

Council Member Goyette agreed that it is important to have faith in a Council Member to do what is in the best interest of the residents; however, if we all believe that occurred on a daily basis there would not be a need for term limits to begin with.

Council Member Jepson stated that this would not be an issue if a Council Member would not have resigned in a very short period of time. The Council's first responsibility is to make sure that the people in the 7th District have effective representation. This direction appears to be the right direction and he fully supports the motion.

Motion carried with Council Members Reimer, Glamm, Jepson, Radtke and Kinzel in favor and Council Members Maher and Goyette opposed.

CONSIDER CHARTER ORDINANCE NO. 2008-25 REPEALING TERM LIMITS FOR MAYOR AND COUNCIL MEMBERS

No discussion took place because of the motion to modify term limits for the Mayor and Common Council.

CONSIDER LICENSE APPLICATIONS

Motion made by Council Member Glamm, seconded by Council Member Reimer, to authorize issuance of a new Operator's License for period ending June 30, 2009 to Lindsey A. Deiss. Motion carried without a negative vote.

CITY ADMINISTRATOR'S REPORT - None

COMMENTS & SUGGESTIONS BY CITIZENS - None

REPORTS & COMMENTS BY COUNCIL MEMBERS

Council Member Jepson thanked City Administrator/Treasurer Mertes for setting up the conference/speaker call which enabled him to participate in the meeting this evening.

Mayor Myers stated that this service is available to all Council Members, if needed.

MAYOR'S REPORT

Mayor Myers reminded everyone in attendance to remember and honor all Veterans tomorrow.

ADJOURNMENT

Motion made by Council Member Glamm, seconded by Council Member Kinzel, to adjourn the meeting at 8:02 p.m.

Amy D. Kletzien, CMC
Deputy City Clerk