

**CITY OF CEDARBURG
COMMON COUNCIL
December 10, 2012**

**CC20121210-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, December 10, 2012 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Kinzel 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 Kip Kinzel, Council Members Chris Reimer, Ron Reimer, Art Filter, Paul Radtke, Michael Maher, Douglas Yip, Mike O’Keefe

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, Deputy City Clerk Amy Kletzien, Police Chief Tom Frank, Wastewater Superintendent Ron Clish, 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 Filter, seconded by Council Member O’Keefe, to approve the minutes of the November 26, 2012 meeting. Motion carried without a negative vote.

CONSIDER ORDINANCE NO. 2012-28 AMENDING SEC. 3-6-3 TO 3-6-7 OF THE MUNICIPAL CODE ADJUSTING THE IMPACT FEES FOR LIBRARY FACILITIES, POLICE DEPARTMENT FACILITIES, WATER SUPPLY FACILITIES, PARK FACILITIES, AND WASTEWATER TREATMENT PLANT; ORDINANCE NO. 2012-29 AMENDING SEC. 9-2-6(c) ADJUSTING THE SANITARY SEWER CONNECTION FEE; AND ORDINANCE NO. 2012-30 AMENDING SEC. 14-1-84 ADJUSTING THE FEES IN LIEU OF PARKLAND BASED ON THE CONSTRUCTION COST INDEX PUBLISHED IN THE ENGINEERING NEWS RECORD AND CALCULATED BASED ON THE ANNUAL INCREASE IN THE CCI INDICES

Director Wiza explained that these ordinances are updated in December of each year based on the annual increase in the Construction Cost Indices; however, they were revised in March 2012. This year’s percentage increase is 1.55% and is applied from March through December 2012.

Motion made by Council Member Filter, seconded by Council Member Yip, to adopt Ordinance No. 2012-28 amending Section 3-6-3 to 3-6-7 of the Municipal Code adjusting the impact fees for library facilities, police department facilities, water supply facilities, park facilities, and wastewater treatment Plant based on the Construction Cost Index published in the Engineering news Record and calculated based on the annual increase in the CCI Indices. Motion carried without a negative vote.

Motion made by Council Member Maher, seconded by Council Member Radtke, to adopt Ordinance No. 2012-29 amending Section 9-2-6(c) adjusting the sanitary sewer connection fee; and Ordinance No. 2012-30 amending Section 14-1-84 adjusting the fees in lieu of parkland based on the Construction Cost Index published in the Engineering News Record and calculated based on the annual increase in the CCI Indices. Motion carried without a negative vote.

CONSIDER ORDINANCE NO. 2012-31 ESTABLISHING 2013 PAY RANGES FOR NON-REPRESENTED EMPLOYEES

City Administrator/Treasurer Mertes stated that this ordinance adjusts the pay ranges for non-represented employees by 2% (budgeted for 2013) and includes positions that are no longer covered under labor agreements.

In answer to Council Member O'Keefe's question, City Administrator/Treasurer Mertes stated that the approved salaries for the Police Chief and Captain are within the listed pay range.

Motion made by Council Member Filter, seconded by Council Member C. Reimer, to adopt Ordinance No. 2012-31 establishing the 2013 pay ranges for non-represented employees. Motion carried without a negative vote.

UPDATE ON REVISION OF SEC. 11-2-1 OF THE CODE OF ORDINANCES PERTAINING TO THE REGULATION OF FIREARMS

Mayor Kinzel stated that there are two versions of Sec. 11-2-1 of the Code of Ordinances pertaining to the Regulation of Firearms and he asked for an update at this meeting.

Police Chief Frank stated that both versions have not been distributed to the Common Council. He believes that both versions are correct; however, he prefers the shorter version for a couple of reasons. It is a new State law and there is a possibility that the State will tweak it in the near future because it is only one year since it was enacted. There are plenty of ordinances on the books already that reference State Statutes; therefore, it is not unusual to enact an ordinance in this fashion. Police Chief Frank stated that it is done both ways throughout the State to have a short or long version of the State Statutes.

Council Member R. Reimer stated that discussion should be on the attributes of the two versions and not all of the Council Members have seen them.

City Attorney Vance stated that most municipalities provide a short description that has the State Statutes incorporated into it for reference. The reason for listing the State Statutes is because they keep changing and it is confusing to incorporate the full statute.

Mayor Kinzel stated that the City is superceded by the State and the City cannot have anything in an ordinance that would be more strict than the State. He also stated that the regulation of firearms is still maturing.

Attorney Vance explained that in the case of a criminal charge it would be at the discretion of the officer and the District Attorney.

In answer to Council Member Yip's question, Mayor Kinzel stated that an ad hoc committee was not appointed to look at the proposed ordinance.

Council Member Radtke stated that the Council was disadvantaged at making a decision because they have not seen both drafts.

Mayor Kinzel stated he preferred that any rewriting of the Code should be done by City staff.

Council Member R. Reimer stated that it was necessary to update the regulation of firearms and he elected to look at it.

In answer to Council Member Radtke's question, Council Member R. Reimer stated that the proposed short version of the ordinance omits items that he believes are relevant to the citizens. He stated that the Council is disadvantaged at this time to make a decision.

Mayor Kinzel acknowledged that it is difficult to make a decision without having copies to review and he was unaware that the Council did not receive copies of both drafts.

Council Member R. Reimer stated that he has trouble with patching the existing regulations of the firearms code.

Council Members Yip and Maher agreed that they cannot make a decision without any documentation or recommendations.

Mayor Kinzel stated that he appreciates the effort put forth to update the current Code because it needs to be done; however, he would prefer if City staff would take the initiative to rewrite portions of the Code for the Council to review.

In answer to Council Member Radtke's question, Police Chief Frank stated that whatever version is decided upon, between the long and short versions, the ordinance should be refined with a few additions.

Council Member C. Reimer suggested a unified effort in revising the Regulation of Firearms Ordinance.

Mayor Kinzel stated that he understands that the ordinance needs to be changed; however, it really is regulated by the State and the City has time to do an update correctly.

Council Member R. Reimer stated that he is in favor of going strictly with the State Statutes but he does not see staff agreeing to this. He would like to leave carrying arms into City buildings in the ordinance.

City Attorney Vance explained that the State Statutes state that if you post no firearms allowed you are enforcing the law. City Attorneys throughout the State had their Councils decide to post or not post. The concealed carry is being adopted and by virtue of adopting the State Statute (recommended by the League of Municipalities) it is being addressed.

In answer to Council Member R. Reimer's question, Police Chief Frank agreed that the current regulation of firearms is not compliant with the City's Code and needs to be fixed.

In answer to Council Member Yip's question, Mayor Kinzel stated that he is uncomfortable with two different entities coming up with two different versions. If a Council Member notices that an Ordinance needs updating, that it be referred to staff to correct for the Council to review. There is a solid City staff that is aware of what is needed in terms of the Code.

City Attorney Vance stated that the City's Code is not out of compliance in terms of being able to enforce it because the City has to enforce the State Statutes.

Council Member Filter asked that staff bring their version forward for the Common Council to review at a later date.

Council Member R. Reimer stated that it would be a great courtesy if staff would reply to his version of the update to the regulations of firearms ordinance.

In answer to Council Member O'Keefe's question, Council Member R. Reimer stated that the ordinance as modified by Police Chief Frank, the paragraph on City property is sufficient for what the City can do to enforce the law. However, not as a vehicle to enable citizens to find out what is expected to be legal by looking at our ordinances and not researching law books. He said a section that may state, unless you are a law enforcement officer you cannot discharge a weapon and adding one sentence "except for as in State Statutes (citation)." He does not think that this is adequate. He was concerned that the Code does not reference the Castle Doctrine.

City Attorney Vance stated that the Castle Doctrine is not addressed because it is a defense to be applied strictly by the District Attorney or a jury. The simplified version states that nothing in the ordinance is counter to the State Statutes. It is not up to the Chief of Police to decide whether the Castle Doctrine applies or not. It is not the City Ordinance task to educate or to be the lawyers of the public. They will need to get their own legal counsel to interpret the Statutes. The Castle Doctrine is accounted for in the simplified version.

Mayor Kinzel opined if the City goes to that extent of restating State Statutes rather than referencing them, our Code would be too cumbersome.

Council Member Radtke stated that the Code would be outdated as soon as the Statutes change.

Mayor Kinzel reiterated that he wants City staff to make a recommendation to prevent multiple drafts being circulated for review.

Police Chief Frank stated that he appreciates the work that Council Member R. Reimer put into rewriting the regulation of firearms ordinance and it was carefully read by himself, Attorney Kaye Vance, Captain Lindberg and the Sergeants. After discussing the draft version, they decided to present a different version that would accomplish the same thing as Council Member R. Reimer's version.

Council Member R. Reimer stated that from an enforcement aspect it works, however, there seems to be more in the City Code than simply enabling enforcement officials to function. He wants to communicate to the City what is being enforced noncryptically and what their rights are fully noncryptically.

In answer to Mayor Kinzel's question, Council Member R. Reimer stated that the ordinance does not have to be that detailed and it may reference State Statutes, however, it should further explain how to enforce the no carry laws into a person's home.

City Attorney Vance stated that this is not the role of the City. The private property owner has their rights. The City is not supposed to act as the citizens legal counsel. If the private property owner wishes to prohibit guns that is up to them. The Chamber of Commerce and private citizens have been educated about the law and it is not the function of the Code.

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to have City staff continue to work on the regulation of firearms ordinance and present it to the Common Council at a later date for consideration. Motion carried without a negative vote.

CONSIDER AUTHORIZING SPECIAL COUNSEL TO ASSIST THE BOARD OF APPEALS IN AN UPCOMING MATTER

Mayor Kinzel presented this item for discussion based on the City receiving two appeals to be heard before the Board of Appeals. By law, the Board must have its own legal counsel. City Attorney Vance represents the City in this case. The Board of Appeals functions in a quasi-judicial manner and must comply with certain ethical and legal requirements. This requires skilled counsel who is familiar with the City Board of Appeals requirements and procedures and will require briefing, possible appeals as well as preparation and representation at the hearings.

In answer to Council Member C. Reimer's questions, City Attorney Vance stated that Attorney Stadler charges \$175/hr, which is lower than he normally charges and he has worked with the Board of Appeals previously on other hearings. In terms of saving the City money, she believes he will but this case could drag out.

Council Member Filter stated that it is important to have independent counsel for the Board of Appeals.

Motion made by Council Member Filter, seconded by Council Member C. Reimer, to appoint Attorney Ron Stadler as special counsel to assist the Board of Appeals in an independent matter. Motion carried without a negative vote.

In answer to Mayor Kinzel's question, City Attorney Vance stated that the cost will be split between the City and the people who are making the appeal for a court reporter.

CONSIDER PAYMENT OF BILLS FOR THE PERIOD 11/21/12 THROUGH 11/29/12, ACH TRANSFERS FOR THE PERIOD 11/20/12 THROUGH 12/4/12, AND PAYROLL FOR THE PERIOD 11/11/12 THROUGH 11/24/12

Motion made by Council Member O'Keefe, seconded by Council Member Yip, to approve the payment of bills for the period 11/21/12 through 11/29/12, ACH transfers for the period 11/20/12 through 12/4/12, and payroll for the period 11/11/12 through 11/24/12. Motion carried without a negative vote.

CONSIDER LICENSE APPLICATIONS

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to approve new Operator's License applications for the period ending June 30, 2013 for Christina N. Gabrielson and Angela A. Smith. Motion carried without a negative vote.

CITY ADMINISTRATOR/TREASURER'S REPORT

City Administrator/Treasurer Mertes stated that her report explains a change in the allocation of CDBG funds originally designated for economic development to affordable housing assistance and community development activities that primarily benefit low and moderate income persons. This change does not affect our Revolving Loan Fund (RLF) program. Our RLF program is a result of a CDBG loan to a local business.

However, the Department of Administration is accepting comments on the draft Substantial Amendment to the 2011 Plan Summary, which is available on the Department of Administration website. The 30-day public comment period for the draft Amendment is November 28-December 27, 2012. Your written, faxed, or email comments to the draft Amendment must be received by 5PM on December 27, 2012.

MAYOR'S REPORT

Mayor Kinzel stated that a meeting is scheduled with the Town of Cedarburg to discuss a request from the North Shore United Soccer Club to put two practice fields on the Prochnow site. The Town is involving the special administrator of the property to make a decision. The City has concerns about the role of the special administrator and whether or not this is within their realm of duty. The DNR and Mercury Marine should also be involved in the decision because it is a PPR.

A meeting is scheduled for Wednesday, December 12 with the entire Town Board, the special administrator, a representative for Mercury Marine, Mayor Kinzel, General Manager Lythjohan and any other interested parties.

City Attorney Vance stated that the property is complex because of the ownership. She suggested a closed session during a future meeting to discuss this proposal.

Council Member C. Reimer stated that he is comfortable with the Mayor and General Manager Lythjohan attending the meeting to gather information to bring back to the Common Council for discussion in closed session at the next Council meeting. He stated that he is not authorizing anything on this property until all parties have been informed and answers are received from the DNR.

City Administrator/Treasurer Mertes stated that she received an email from the Town with a map of the proposed area stating that they were hoping to have a joint meeting on Wednesday in regard to making a decision on this request. She advised the Town that she would ask the Common Council if there would be a quorum of the Common Council available and then it would be noticed.

It was the consensus of the Common Council that a quorum would not be available to attend this meeting. City Administrator/Treasurer Mertes will advise the Town and suggest a meeting with the Mayor and General Manager Lythjohan for information gathering purposes.

ADJOURNMENT

Motion made by Council Member Filter, seconded by Council Member Radtke, to adjourn the meeting at 7:55 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk