

**CITY OF CEDARBURG
COMMON COUNCIL
March 14, 2022**

**CC20220314-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, March 14, 2022 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers and online utilizing the Zoom app.

Mayor O’Keefe called the meeting to order at 7:00 p.m.

Roll Call: Present - Mayor Michael O’Keefe, Council Members, Jack Arnett, Kristin Burkart, Rick Verhaalen, Robert Simpson (via zoom), Patricia Thome, Barbara Lythjohan

Excused - Council Member Sherry Bublitz

Also Present - City Administrator Mikko Hilvo, City Attorney Michael Herbrand, Deputy City Clerk Amy Kletzien, Director of Engineering and Public Works Mike Wieser, Police Chief Michael McNerney, City Planner Jon Censky, Fire Inspector Blake Karnitz, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor O’Keefe’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. Citizen’s present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

APPROVAL OF MINUTES

Motion made by Council Member Thome, seconded by Council Member Burkart, to approve the February 28, 2022 Common Council minutes. Motion carried without a negative vote with Council Member Bublitz excused.

UNFINISHED BUSINESS

DISCUSSION AND POSSIBLE ACTION ON RESOLUTION NO. 2022-07 HONORING ERIC HACKERT, RETIRED SUPERINTENDENT OF THE WATER RECYCLING CENTER

Motion made by Council Member Arnett, seconded by Council Member Burkart, to adopt Resolution No. 2022-07 honoring Eric Hackert, retired Superintendent of the Water Recycling Center. Motion carried without a negative vote with Council Member Bublitz excused.

PUBLIC HEARINGS

A PUBLIC HEARING ON PROPOSED ORDINANCE NO. 2022-07 AMENDING THE STANDARDS FOR TEMPORARY USES AS IT RELATES TO TEMPORARY STRUCTURES AND TENTS

Mayor O’Keefe opened the public hearing at 7:07 p.m.

City Planner Censky reminded the Common Council that at the October 11, 2021 meeting, they directed the Plan Commission to draft rules to accommodate temporary tents in the City subject to the Building Inspector and Plan Commission approval and Landmarks Commission approval if located in the Historic District with the understanding that they should be allowed annually between October 1 and May 30. In response, the Plan Commission undertook to draft a comprehensive set of rules which were discussed at their December 6, 2021 meeting and then further discussed on January 4 where they solicited input from downtown business owners and also took into consideration recommendations from the Landmarks Commission, Fire Department and City Attorney Mike Herbrand. At their February meeting, the Commission refined those rules and ultimately agreed on proposed Ordinance No. 2022-07. In summary this ordinance stipulates, among other things the following:

- The use of a tent exceeding fourteen consecutive days in duration shall be allowed one (1) time per calendar year from October 1 through April 30 subject to Plan Commission approval and Landmarks Commission approval if the site is in the Historic District.
- Tents are to be located in the side or rear yards only, and generally out of view of the public
- The Code specifically references State Building and Fire Safety Code requirements

Planner Censky answered questions from Council Members and the following remarks were made:

- In answer to Council Member Lythjohan’s question, the final motion did not stipulate any time limit other than October 1 through April 30.
- Council Member Arnett noted that the ending date is April 30, rather than the May 30 date that the Council asked the Plan Commission to consider. Overall, it is a good ordinance that addresses safety, and the Plan Commission tried to make it a workable ordinance for everyone.
- In answer to Council Member Verhaalen’s questions, the ordinance is applicable City-wide; however, the Landmarks Commission will be responsible for review in the Historic District. In relation to a tent located generally out of the view of the public, the placement will be decided by the Plan Commission and Landmarks Commission according to side or rear yards only.
- Council Member Thome read a statement containing the following points:
 - Plan Commission spent at least 12 hours on this topic with very thorough discussions.
 - The City heavily regulates buildings in the downtown district.
 - Understands benefit to bars and restaurants who want to expand their dining space.

- With this ordinance, the City is ignoring decades of efforts into preserving the Historic District by allowing white tents in the historic downtown for basically six months of the year.
- She hoped that Council Member Arnett does not ask for 7 months. It should not happen that the Common Council overrides the Plan Commission after they have done all of the research on this item.
- She has stated her concerns over the last 12 hours of meetings and voted to bring the ordinance as presented. She knows when she has lost; however, it is not a loss to take away tents totally from businesses but to try to help them expand some accessible time. The concept of having large white tents downtown, since the City has worked for decades to preserve the historic district seems to clash.
- Council Member Burkart read a statement containing the following points:
 - She attended all the meetings and thanked the Plan Commission for their work.
 - It was a tedious process, and she will ultimately vote against this ordinance.
 - Reminded Council that the tents were approved temporarily as an accommodation to allow for social distancing.
 - Businesses have business plans prior to 2020 that did not include the square footage of a tent.
 - Last year an accommodation was made to put cones in front of businesses for curbside pickup and it was taken away in October because of concerns over parking and the look of it. COVID numbers were down, and it was merely just a convenience. Striking to her, was that the convenience was for families and residents to use that curbside pickup.
 - Businesses are greatly able to increase their usable square footage and some cases even double. Now there is no concern about the lack of parking or that nearly every business can put up a tent.
 - She talked to many people with varying opinions on tents.
 - It is the Council's responsibility to increase the tax base and to do what is in the best interest of the residents. Why is the City willing to allow a temporary structure for six months when they could be encouraged to build a permanent structure that would increase their assessed value? Businesses are being allowed to greatly increase their square footage for the low price of free.
 - The accessory ordinance that was passed a couple of years ago is so tight and stringent on many landowners in Cedarburg as to what they can do with their own property. That ordinance was passed to allow the control of size and character of what landowners wanted to put in their own yards.
 - She questioned why the City is so hard on residents but allow large white tents downtown.
 - Everyone has heard that the Cedarburg downtown is a gem; we protect it all cost; it is the downtown that everyone seeks to have a similar downtown. We don't want tattoo parlors, CBD stores, purple awnings, colorful murals; however, we are allowing large white tents for six months.
 - The Council should choose between protecting the downtown and the historic district; or it is just simply our main street. The City is at a presifist, and it is either the beautiful downtown historic district that we protect, or we just focus on economic development.

- Urged the Common Council to realize that they cannot go back on this. 37 additional businesses downtown could ask for a tent. Future business plans could be based on having a tent.
- Council Member Lythjohan agreed that originally the tents were allowed to help business owners during COVID, and that time has passed.
- Mayor O’Keefe questioned the ingress and egress requirement through the businesses and how that might hamper someone’s ability to get to a tent. It was determined that accommodations can be made accordingly.
- Fire Inspector Karnitz stated that business owners with tents have been notified that they need to follow certain safety rules after April 30, 2022. The Code limits where propane and natural gas equipment can be in proximity to tents.
- Council Member Arnett opined that tents are not a distraction to the downtown and are a positive addition to downtown.
- In answer to Council Member Arnett’s question, City Clerk Sette stated that she sent an email to businesses with tents advising them of tonight’s public hearing.
- Discussion ensued regarding the possibility of an additional 37 businesses asking for tents on their property.
- Council Member Verhaalen stated that tents are costly and that is a deterrent. Safety guidelines will need to be followed. He was in favor of Ordinance No. 2022-07.
- Council Member Simpson spoke in favor of allowing tents and stated that he would vote to approve Ordinance No. 2022-07.

Public comment followed.

Michelle Tietz of Lime Cantina explained that they chose to open a business downtown because they cared about preserving what they love about Cedarburg and had no intention of taking away from the historic nature. The tent was added during COVID to help business and give patrons another choice in dining. It worked and they learned a lot in the process. They had over 27,000 customers use the tent up to December 31, 2021. They added music on weekends and people enjoyed themselves during a very difficult time, which has carried over to present day. They had team dinners for sports teams, family parties, and private events and people are requesting this to continue. Having the tent allowed them to continue and retain their employees along with being able to donate to Mel’s Charities, provide hospital meals and give to the schools. Allowing music has made them attractive to music tours. A tent was not part of their business plan, but it worked. In the future, they may add a permanent structure. More than half of their customers choose to sit outside in the tent.

Council Member Burkart explained that her comments were directed to the Common Council and that she was thankful for their business and what they have done for the City.

Council Member Arnett added that business plans are not followed to the letter, and they change. He stated that tents are not detrimental to the downtown. He added that the Stagecoach Inn is adding a permanent structure and others may follow.

Greg Zimmerschied, Cedar Ct., asked when a temporary structure becomes permanent. He is in favor of businesses adding value and adding to the tax base. He asked if tents could be allowed

for two years and then require a permanent structure or be done with the tent. He commended Settler's Inn for the significant improvements made to their building, saying that it is a fairness issue to those businesses who make an investment. He does not want to see tents become permanent structures.

Motion made by Council Member Burkart, seconded by Council Member Thome, to close the public hearing at 7:53 p.m. Motion carried on a roll call vote with Council Members Arnett, Burkart, Verhaalen, Simpson, Thome, and Lythjohan voting aye and Council Member Bublitz excused.

Council Member Arnett asked if the ingress and egress requirement would disallow Rebellion Brewery from having a tent. Council Member Thome stated that this requirement stands, and the ordinance is applicable to most businesses. Anomalies can be addressed by the Plan Commission. The ingress and egress through the business is part of the Outdoor Alcohol licensing requirements. Fire Inspector Karnitz stated that he understands; however, it is inconsistent with the Fire Code.

NEW BUSINESS

DISCUSSION AND POSSIBLE ACTION ON ORDINANCE NO. 2022-07 AMENDING SECTION 13-1-22(f) OF THE ZONING CODE REGARDING TEMPORARY STRUCTURES AND TENTS

Motion made by Council Member Arnett, seconded by Council Member Verhaalen, to adopt Ordinance No. 2022-07 amending Section 13-1-22(f) of the Zoning Code regarding temporary structures and tents with Council Members Arnett, Verhaalen, Simpson, Thome, and Lythjohan voting aye, Council Member Burkart opposed, and Council Member Bublitz excused.

DISCUSSION AND POSSIBLE ACTION ON DISCONTINUANCE OF THE ALARM PANEL AT THE POLICE DEPARTMENT DISPATCH CENTER

Police Chief McNerney explained that the Police Station currently has an alarm panel in dispatch that is monitored by the dispatchers. The Department pays \$750 quarterly to the Bold Group for this service and there are currently 24 users that pay \$240 per year for the service. The alarm panel is behind by six updates at a cost of \$1,200. The system also needs a new server which will be a minimum of \$3,000. When the service was originally started, businesses had very few options for their alarm system monitoring; however, today there are many companies who offer 24-hour monitoring that they could go to for this service. Recently, two Dispatchers have put in their notices to leave the Department which creates a staffing shortage especially for third shift. Based on the Department's dispatching needs they will be switching the third shift dispatch over to the Ozaukee County Sheriff's Department beginning May 1. This change would not allow them to monitor the alarm system on third shift. Police Chief McNerney recommended that the Department discontinue offering the alarm system and ask the affected businesses to go to a private company for that service beginning May 1, 2022.

Mayor O'Keefe stated that most burglaries happen at night, and he would be in favor of businesses using a private firm.

Motion made by Council Member Burkart, seconded by Council Member Verhaalen, to discontinue the alarm panel at the Police Department Dispatch Center as of May 1, 2022. Motion carried without a negative vote with Council Member Bublitz excused.

DISCUSSION AND POSSIBLE ACTION ON AWARD OF CONTRACT FOR THE 2022 SIDEWALK REPLACEMENT PROGRAM

Director of Engineering and Public Works Wieser explained that staff advertised and received bids for the 2022 Sidewalk Replacement Program. This contract entails the replacement of sidewalk slabs that have been deemed defective according to the City's Sidewalk Replacement Policy. The program focuses on the north end of the Willowbrooke Subdivision, part of the Maple Manor Subdivision and spreads to other areas throughout the City due to resident requests. Two bids were received with the low bid submitted by BMCI Construction, Inc. BMCI has successfully completed many projects for the City in the past, with their most recent work done on the City's 2021 Street & Utility Project. BCMI's bid of \$51,470 was below the estimate and is within budget.

Motion made by Council Member Verhaalen, seconded by Council Member Thome, to award the contract for the 2022 Sidewalk Replacement Program to BMCI Construction, Inc. in an amount not to exceed \$51,470. Motion carried without a negative vote with Council Member Bublitz excused.

DISCUSSION AND POSSIBLE ACTION ON INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CEDARBURG AND THE TOWN OF CEDARBURG REGARDING THE RECONSTRUCTION, MAINTENANCE, AND REPAIRS OF HILLTOP DRIVE

Director of Engineering and Public Works Wieser explained that at the February 14 meeting, the contract for the Hilltop Drive Roadway Connection contract was awarded to All-Ways Contractors, Inc. in the amount of \$463,381.85 contingent upon an accepted MOU with the Town of Cedarburg. City and Town staff completed an Intergovernmental Agreement to efficiently complete the reconstruction of Hilltop Drive within the Town and lays out construction cost sharing and maintenance responsibilities of each party. The City will be responsible for the construction costs on Hilltop Drive from the City limits to and including the intersection with Sycamore Drive. The Town will be responsible for the construction costs on Hilltop Drive from the north end of the intersection with Sycamore Drive to STH 60. The agreement will terminate when the work is completed, and the City has been reimbursed by the Town for their portion. The Town Board approved this Intergovernmental Agreement at their March 2 meeting.

Motion made by Council Member Burkart, seconded by Council Member Verhaalen, to approve an intergovernmental agreement between the City of Cedarburg and the Town of Cedarburg regarding the reconstruction, maintenance, and repairs of Hilltop Drive. Motion carried without a negative vote with Council Member Bublitz excused.

DISCUSSION AND POSSIBLE ACTION ON BIDS RECEIVED FOR THE 2022 STREET AND UTILITY CONSTRUCTION CONTRACT

Director of Engineering and Public Works Wieser explained that staff advertised and received bids for the 2022 Street and Utility construction contract. A total of five bids were received, with the low bid submitted by Dorner Inc. Dorner has successfully completed projects in Cedarburg in the past. Their most recent work in Cedarburg was on the 2019 Street & Utility project. Director Wieser recommends award of this project to Dorner Inc. based on their low bid of \$2,475,075, which was above his estimate but just within the budgeted amount. The bids were very competitive with the next bid coming within \$10,000 and the top three bids within \$80,000.

Motion made by Council Member Arnett, seconded by Council Member Burkart, to award the contract to Dorner Inc. for the 2022 Street and Utility Construction contract in an amount not to exceed \$2,475,075. Motion carried without a negative vote with Council Member Bublitz excused.

DISCUSSION AND POSSIBLE ACTION ON ORDINANCE NO. 2022-06 AMENDING WATER IMPACT FEES

City Clerk Sette explained that at the February 28, 2022 Common Council meeting, another round of Impact Fees was approved, however, the water portion of that approval inadvertently reverted to a previous Ordinance (established before 9/13/2021). Approval of Ordinance No. 2022-06 will correct the error and bring the Water Impact Fees back to what was approved on September 14, 2021.

Motion made by Council Member Thome, seconded by Council Member Arnett, to adopt Ordinance No. 2022-06 amending Water Impact fees. Motion carried without a negative vote with Council Member Bublitz excused.

DISCUSSION ONLY ON PEDAL TAVERN ORDINANCE NO. 2021-01

City Clerk Sette explained that a renewal application for the Pedal Tavern license has been submitted to the City and this is an opportunity to review the first year of operation. The current ordinance does not contain the language specific to the Common Council approving the annual license, as it does in the Horse & Carriage License (*The City Clerk shall place the application on the Common Council agenda. If the Common Council determines that the issuance of a license is in the best interests of the City and is not likely to result in safety hazards or undue congestion, the Common Council may authorize the issuance of the license*).

Attorney Herbrand stated that this is an opportunity for the Common Council to look at the terms of the current ordinance.

Council Member Thome raised the question on whether the Council would be reviewing the Pedal Tavern license after seeing advertisements on Facebook, as she understood during the approval process last year, that the Council would review before reissuance.

Police Chief McNerney stated that he was not aware of any police reports regarding the Pedal Tavern in 2021 and that traffic generally runs slow during the hours of operation.

Council Member Arnett asked to remove, and it is not likely to result in safety hazards or undue congestion in the revision.

Council Member Thome has heard a few complaints about wild behavior and asked that the license be considered by the Common Council each year, like the Horse & Carriage license. Council Member Burkart supported the suggested change by Council Member Arnett.

Council Member Verhaalen has received quite a few complaints regarding traffic flow, and he leans toward not renewing the license.

Council Member Arnett opined that the Pedal Tavern adds more to downtown Cedarburg than it takes away.

Greg Zimmerschied, Cedar Court, stated he was not in favor of continuing the Pedal Tavern. Cedarburg is a unique place for families and the music and ruckus behavior impedes on some people's enjoyment of the downtown.

Jordan Cole, owner of North 48/Pedal Tavern, explained that the noise from the Pedal Tavern is under the allowable decibel level. The Pedal Tavern brings additional business to Cedarburg. They had 3,400 riders last year and he is aware of only one bad experience. He opined that it is no different than the Harley Davidson riders going through downtown during one of their events.

Council Member Burkart has heard more good things about the Pedal Tavern than she has complaints. She was in favor of changing the ordinance to an annual renewal by the Common Council.

DISCUSSION AND POSSIBLE ACTION ON A RESERVE LIQUOR LICENSE FOR AN ESTABLISHMENT ON THE CORNER OF MILL STREET AND WASHINGTON AVENUE

City Administrator Hilvo explained that a new building/restaurant on the corner of Mill Street and Washington Avenue is expected to be finished by Fall and the owner wants to secure one of the remaining Reserve Liquor licenses for his tenant to insure that one is available for the restaurant when it opens.

City Attorney Herbrand stated that this is a unique request and offered a few options to the Common Council.

It was agreed upon by the Council to allow the proposed tenant of the restaurant to apply for the license once a lease is signed, and to release the license to the tenant once the business opens, providing they meet all the requirements necessary to hold such license.

Motion made by Council Member Arnett, seconded by Council Member Burkart, to hold a Reserve Liquor License for a future business on Mill Street and Washington Avenue and agree to not issue the last available liquor license for a period of six months. Motion carried without a negative vote with Council Members Bublitz and Simpson excused.

DISCUSSION AND POSSIBLE ACTION REGARDING RESOLUTION NO. 2022-09 APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF CEDARBURG, VILLAGE OF THIENSVILLE, CITY OF MEQUON, AND TOWN OF CEDARBURG ESTABLISHING A JOINT FIRE & EMS WORKING GROUP

City Administrator Hilvo explained that over the last few years, several municipalities within Ozaukee County have engaged in a series of informational meetings regarding potential opportunities to share in the provision of Fire and Emergency Medical Services (EMS). Collectively, these discussions were borne out of a desire to proactively address critical and ongoing staffing shortages that many departments are facing as paid-on-call (POC) or all volunteer (Cedarburg) entities, as well as the significant level of ongoing capital investment (e.g., stations, fire trucks, ambulances, rescue equipment) that is required to maintain separate fire departments.

Through early discussions between the City and Town of Cedarburg on shared Fire & EMS services an ad hoc Joint Fire/EMS Committee was formed to evaluate all options for the Cedarburg Fire Department. The group has put together an option that would keep the Cedarburg Fire Department operating on its own with increased future funding for personnel and moving towards a paramedic program and is one of three options. The other options are to continue exploring a full-county consolidation or some type of partial consolidation. One option for partial consolidation is a Southern Ozaukee joint department with the City of Mequon and the Village of Thiensville. Through several meetings with the current Joint Mequon/Thiensville working group it was brought up that having Cedarburg join future discussions would be beneficial to all communities. An MOU has been drafted that includes all four communities. Both Mequon and Thiensville elected officials have approved the MOU. The Town of Cedarburg will be discussing the MOU at their March 17 meeting, as well.

City Administrator Hilvo further explained that the MOU does not commit the City to consolidating its Fire & EMS Departments at this time. It also provides flexibility for all communities to continue participating in other consolidation talks that continue to occur on a larger county-wide scale, or on a more regionalized basis (i.e., Northern and Southern Ozaukee Departments, etc.). Pending adoption of the resolution approving the MOU between the Cities, Village and Town, it is anticipated that the larger Joint Working Group will commence its work in March and provide an update to each governing board in the coming months.

Motion made by Council Member Verhaalen, seconded by Council Member Thome, to adopt Resolution No. 2022-09 approving a Memorandum of Understanding (MOU) between the City of Cedarburg, Village of Thiensville, City of Mequon, and Town of Cedarburg establishing a Joint Fire & EMS Working Group. Motion carried without a negative vote with Council Member Bublitz excused.

DISCUSSION AND POSSIBLE ACTION ON LICENSE/PERMIT APPLICATIONS

Motion made by Council Member Burkart, seconded by Council Member Thome, to approve a Reserve Liquor License for Art of Joy, LLC, W63N644 Washington Avenue, Cedarburg, WI, Stephanie Hayes, Agent, premises to be licensed: W63N644 Washington Avenue, known as Art

of Joy. Motion carried without a negative vote with Council Members Bublitz and Simpson excused.

Motion made by Council Member Arnett, seconded by Council Member Burkart, to approve an Amplified Music/Sound in an Outdoor Alcohol Beverage Seating Area Permit for the period ending December 31, 2022 for North 48 Inc., W62N599 Washington Avenue. Motion carried without a negative vote with Council Members Bublitz and Simpson excused.

Motion made by Council Member Arnett, seconded by Council Member Burkart, to approve a Pedal Tavern License for North 48 Inc., W62N599 Washington Avenue. Motion carried with Council Members Thome, Arnett, Burkart, and Lythjohan voting aye, Council Member Verhaalen opposed, and Council Members Bublitz and Simpson excused.

CONSIDER PAYMENT OF BILLS DATED 01/28/2022 THROUGH 02/04/2022, TRANSFERS FOR THE PERIOD 01/28/2022 THROUGH 02/11/2022 AND PAYROLL FOR PERIOD 01/23/2022 THROUGH 02/05/2022; AND ACTION THEREON

Motion made by Council Member Verhaalen, seconded by Council Member Lythjohan, to approve payment of bills dated 01/28/2022 through 02/04/2022, transfers for the period 01/28/2022 through 02/11/2022 and payroll for period 01/23/2022 through 02/05/2022. Motion carried without a negative vote with Council Members Bublitz and Simpson excused.

CITY ADMINISTRATOR'S REPORT

There were no additions to the City Administrator's Report that was included in the packet.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Thome encouraged the Council Members to attend the upcoming Emergency Management Recognition dinner.

MAYOR REPORT - None

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member Burkart, to adjourn the meeting at 9:19 p.m. Motion carried without a negative vote with Council Members Bublitz and Simpson excused.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk