

**CITY OF CEDARBURG
COMMON COUNCIL
February 27, 2017**

**CC20170227-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, February 27, 2017, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Council President O'Keefe called the meeting to order at 7:00 p.m.

ROLL CALL: Present - Common Council: Council Members John Czarnecki, Jack Arnett, Dick Dieffenbach, Rick Verhaalen, Mitch Regenfuss, Patricia Thome, Mike O'Keefe

Excused - Mayor Kip Kinzel

Also Present - City Administrator/Treasurer Christy Mertes, Director of Public Works and Engineering Tom Wiza, City Clerk Constance McHugh, Library Director Linda Pierschalla, City Assessor Cathy Timm, Library Board President Sue Karlman, Economic Development Board Chair Peter Welch, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Acting Mayor O'Keefe's request, City Clerk McHugh verified that notice of this meeting was provided to the public by forwarding the agenda to the City's official newspaper, the *News Graphic*, to all news media and citizens who requested copies, and by posting in accordance with the Wisconsin Open Meetings law. Citizens present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

Council Member O'Keefe said as Acting Mayor he is retaining his right to vote as Council Member of the 7th Aldermanic District.

APPROVAL OF MINUTES

Motion made by Council Member Thome, seconded by Council Member Dieffenbach, to approve the minutes of the February 13, 2017 meeting of the Common Council as presented. Motion carried unanimously.

**CONSIDER MOTION TO REMOVE FROM THE TABLE: ORDINANCE NO. 2017-04
CREATING SEC. 7-1-26 OF THE MUNICIPAL CODE OF ORDINANCES PERTAINING
TO THE KEEPING OF DOMESTICATED CHICKENS**

Motion made by Council Member Arnett, seconded by Council Member Czarnecki, to remove from the table Ordinance No. 2017-04 creating Sec. 7-1-26 of the Municipal Code of Ordinances pertaining to the keeping of domesticated chickens. Motion carried unanimously.

CONSIDER PROPOSED ORDINANCE NO. 2017-04 CREATING SEC. 7-1-26 OF THE MUNICIPAL CODE OF ORDINANCES PERTAINING TO THE KEEPING OF DOMESTICATED CHICKENS AND CONSIDER PROPOSED ORDINANCE NO. 2017-07 AMENDING SEC. 7-1-25(a) OF THE CODE OF ORDINANCES RELATING TO PENALTIES

Attorney Herbrand said the first ordinance to be considered is one that would allow the keeping of domesticated chickens in the City upon obtaining a permit from the Building Inspection Department. The second ordinance is to change enforcement provisions in the Code of Ordinances should the ordinance allowing for chickens be adopted. He said the ordinance regulating chickens was discussed at the January 30, 2017 Council meeting but was tabled to allow Council Members time to obtain input from constituents.

Council Member Arnett said he has been looking into this issue. He said there are three newer subdivisions in his district and all three prohibit the keeping of fowl. He said he would like a sentence added to the ordinance that clarifies that this ordinance will not override restrictions that may be contained in subdivision deeds or covenants. Council Member Arnett said he would like to see existing historic structures that currently house chickens be grandfathered. He also said he still has concerns about the requirement that coops and pens must be located at least 30' from a neighboring residential structure and at least 5' from a side or rear property line. He feels these distances are too short. Other than these concerns the proposed ordinance is acceptable to him.

Council Member Czarnecki said the proposed ordinance is fine to Council Member Arnett because his district has subdivisions with covenants or restrictions that do not permit fowl. He said he cannot find one person who is in favor of this ordinance. He said it is a slippery slope and not a good idea. Next will be ducks, goats, pigs, etc...

Council Member Dieffenbach said he is in favor of the ordinance. He said there are residents in the City that have historic structures that house chickens. These should be grandfathered in.

Council Member Thome said she is in favor of the ordinance with some modifications. She agrees there needs to be some flexibility in terms of the type of structure that can be used. She also said the ordinance restricts chickens to the rear yard and perhaps there is a way to allow chickens elsewhere on lots if there is some sort of screening. She questioned the requirement that those applying for a permit must provide the registration number of the applicant's completed Livestock Premises Registration with the Wisconsin Department of Agriculture, Trade, and Consumer Protection.

Attorney Herbrand said this is required by the State and is necessary to track chickens if there is an outbreak or some other issue.

Council Member Thome said the fee charged for the permit needs to be determined by the Council and should be such that it covers only the cost of issuing the permit.

Council Member Verhaalen said he talked to neighbors and constituents and no one had issues with the proposed ordinance or the concept of keeping chickens. He said some residents welcomed the

ordinance. He questioned if there have been any issues relating to chickens reported to the Police Department.

Council Member Arnett said he talked to Chief Frank about this briefly. Chief Frank indicated there are few complaints. The complaints generally relate to noise, smell, and fear of rodents.

Council Member Regenfuss said all Council Members have received calls regarding neighbor disputes. He feels allowing chickens will increase the number of calls received. He said this is not the right thing to spend Council and staff time on. It does not make sense and will be one more thing for neighbors to disagree about.

Acting Mayor O'Keefe said there is an active Brittney Spaniel that lives in the house behind his. He wonders if chickens would aggravate the dog, if he had any.

Mal Hepburn, W62 N736 Riveredge Drive, said he and his wife have a Brittney Spaniel and four hens. He said that chickens are less trouble than dogs in the neighborhood. He said if this ordinance is passed it will probably be a non-event. He encouraged the Council to find a way to allow chickens.

Council Member Arnett asked if it is necessary for chickens to be able to run loose.

Kevin Steers, W61 N634 Mequon Avenue, said he has had chickens for three or four years. He said dogs do not pose a problem. He said chickens do not have to have free range, but must be watched closely if they are allowed to roam free. This is because of natural predators such as hawks.

Lori Torner, W61N679 Mequon Avenue, said she does not have chickens and likely never will. Her neighbors have chickens and they do not bother her at all. There are no problems with noise or smell.

A resident on Center Street said many houses have detached garages and if there is a requirement that coops and pens be 30' from a residential structure this may exclude most homes from having chickens.

Attorney Herbrand said a detached garage is not considered a residential structure.

Kristen Burkart, W67 N542 Evergreen Blvd., said the City of Madison has allowed chickens for 13 years. Even with a large population Madison has only 200 licenses. She said there will be a spattering of chickens throughout the City.

Council Member Arnett asked Ms. Burkart if she believes it would be a drawback to home buyers if a property next to a house they are interested in has chickens.

Ms. Burkart said it depends on the person and the condition of the coop.

Deb Spiering, W61 N673 Mequon Road, said her chickens have a pretty good deal as they are housed in a building in the backyard that was probably once a barn. She said the ordinance needs leeway or flexibility in terms of the type of structures that can be used.

Matthew Lust, N72W5371 Georgetown Drive, said he agrees with Council Members Czarnecki and Regenfuss in that chickens will open up other problems. He said if some subdivisions have rules and covenants not allowing chickens the keeping of them will not be open to everyone.

Council Member Arnett said the City cannot override deed restrictions. He said there must also be ways to address issues such as noise, odor and potential disturbances.

Attorney Herbrand said there are provisions dealing with these issues in the proposed ordinance.

Council Member Verhaalen suggested the ordinance include a provision that chickens cannot roam free unless the property has a fenced yard so the chickens do not wander on to other properties.

Council Thome said she feels this will come down to common sense and now sees the importance of applicants going through the Department of Agriculture.

Council Member Arnett said he still feels the requirement that pens and coops must be located 30' from neighboring residential structures and 5' from side or rear property lines is too short and should be increased.

Attorney Herbrand said he will revise the ordinance based on the following comments and suggestions:

- Language be included that the ordinance cannot override local subdivision regulations, covenants, or deed restrictions;
- The ordinance allow for existing structures or coops or pens to be used if they existed on the date of passage as long as they comply with health and safety requirements;
- Consideration that the location of pens and coops 30' from neighboring residential structures may not be enough;
- Fences or fenced in areas and monitoring is required if chickens are allowed to roam free;
- There be the possibility to allow chickens elsewhere on the property other than rear yard if properly screened;
- A fee to cover the cost of permit issuance.

Motion made by Council Member Thome, seconded by Council Member Dieffenbach, to postpone Ordinance No. 2017-04 related to domesticated chickens and Ordinance No. 2017-07 relating to penalties until the City Attorney has the opportunity to revise Ordinance No. 2017-04. Motion carried with Council Members Arnett, Dieffenbach, Verhaalen, Thome and O'Keefe voting aye and Council Members Czarnecki and Regenfuss voting nay.

CONSIDER AUTHORIZING RESCINDING OF PERSONAL PROPERTY TAXES FOR GG & KR, LLC, DUE TO A PALPABLE ASSESSMENT ERROR (PARCEL 13-000-0387-500, W62 N630 WASHINGTON AVENUE)

City Assessor Timm said an error was made in the personal property assessment for GG & KR, LLC that was not caught during the open book period last year. It was only caught after tax bills were generated and mailed out. Under State Statutes the City is allowed to rescind/refund property taxes if such an error occurs.

Motion made by Council Member Czarnecki, seconded by Council Member Thome, to rescind the taxes in the amount of \$2,112.61 for GG & KR, LLC (parcel 13-000-0387-500, W62 N630 Washington Avenue) due to a palpable assessment error. Motion carried unanimously.

CONSIDER ORDINANCE NO. 2017-06 AMENDING SEC. 10-1-28(h) OF THE CODE OF ORDINANCES TO ESTABLISH FOUR HOUR PARKING FROM 7:00 A.M. TO 7:00 P.M. EXCEPT SATURDAYS AND SUNDAYS ON THE WEST SIDE OF HANOVER AVENUE BEGINNING 18 FEET SOUTH OF THE PUBLIC LIBRARY DRIVEWAY AND CONTINUING SOUTH TO THE INTERSECTION WITH CENTER STREET

Director Wiza said a letter has been received by the Ozaukee County Historical Society requesting four hour parking on the west side of Hanover Avenue between the Library driveway and Center Street. The area is currently posted for two hour parking, but that causes those seeking longer term parking to park in front of the Depot building on Center Street. This makes it difficult for the elderly volunteers to staff the center. The Library Director believes this approach will cause more issues, and Director Wiza said he recently received a request from a resident to remove parking from one side of Center Street.

Library Director Pierschalla said she receives comments about the lack of parking and if the LaBudde Group employees begin to park on Hanover Avenue it will further reduce the number of available parking opportunities. The Library also has elderly people and parents with small children with strollers that need parking access. She said the Library can work with the Historical Society for a solution rather than changing the ordinance.

Mary Ann Velnetske said the parking area between the corner of Center Street and Hanover Avenue is underutilized. Her proposal is to remove the two-hour parking restrictions on the south corner of Hanover Avenue and Center Street (in front of the LaBudde building) and either allow parking at any time or revise it to allow four hour parking. This would permit some of the LaBudde employees to park in front of their building and free up some of the spots for OCHS volunteers and patrons and Rachel's Roses customers.

Council Member Dieffenbach agreed that the Library and Historical Society can probably work out a solution. He said there is a sign in the lot between the two buildings that is designated for Historical Center and Library parking.

Director Wiza said when the new Library was built an easement was granted to allow for shared parking in the lot with the understanding the City would construct the lot and maintain it.

Council Member Arnett asked where Library employees can park.

Director Wiza said there is unrestricted parking on Center Street and parking available in the U.S. Bank parking lot and nearby City parking lot. He said there is no easy solution.

Director Pierschalla said the owners of the LaBudde Group indicated their employees would park in nearby lots. This has never happened. She said she would like to figure out a solution rather than changing the ordinance.

Council Member Czarnecki suggested the LaBudde Group be involved.

Council Member Dieffenbach suggested staff investigate the possibility of purchasing the parking lot across the street.

Council Member Regenfuss said he prefers not to change the parking for this small section. He encouraged finding another solution. Acting Mayor O'Keefe agreed.

Motion made by Council Member Dieffenbach, seconded by Council Member Thome, to postpone this matter until all parties have the opportunity to work out a solution. Motion carried unanimously.

PRESENTATION OF MONOPOLE FEASIBILITY STUDY BY SHORT ELLIOT HENDRICKSON, INC.

Director Wiza introduced Dale Romsos of Short Elliot Hendrickson (SEH). SEH was retained to determine if a free-standing monopole can be erected on Western Road to accommodate telecommunication providers.

Mr. Romsos said the existing tower on Western Road has become overburdened. In 2015 the City had an evaluation done by Dixon Engineering, Inc. on the existing water tower to determine its current overall condition and the ability to continue to support the existing tenants. The report determined the installations were at their maximum and the condition of the water tower is such that it should no longer be used to support telecommunications. In August of 2016 the Council authorized SEH to provide an assessment of an alternative site for consideration.

Mr. Romsos said it was determined that a monopole located next to the existing tower on the Western Avenue site would provide the least obstructive design, require the smallest footprint, and could be the most cost-effective option for construction. The estimated construction cost is \$362,055.

Attorney Herbrand said staff is looking for direction from the Council as to approaching potentially interested tenants. He said the City could build the monopole and lease space or it could be built by the telecommunication providers in return for rent abatement.

It was the consensus of the Council that staff meet to develop a plan to start the negotiation process with interested tenants that is to be presented to the Council at a future meeting.

Council Member Arnett suggested that either he or Council Member Czarnecki be allowed to participate in the staff meeting(s).

CONSIDER LEASE WITH THE CEDARBURG WOMAN'S CLUB, INC. FOR THE GIRL SCOUT HOUSE LOCATED AT W57 N475 HILBERT AVENUE

City Administrator/Treasurer Mertes said the Woman's Club is interested in renewing the lease for the Girl Scout House. While the City pays the utilities, mows the lawn and provides snow removal, the Woman's Club pays for the telephone services and maintenance of the building. The Woman's

Club has replaced the front door, cleaned the chimney, replaced the roof, purchased a new refrigerator and installed a new furnace.

Motion made by Council Member Regenfuss, seconded by Council Member Czarnecki, to renew the lease with the Cedarburg Woman's Club, Inc. for the Girl Scout House located at W57 N475 Hilbert Avenue. Motion carried unanimously. The term of the lease is March 1, 2017 through February 29, 2020.

CONSIDER APRIL, 2017 COMMON COUNCIL MEETING SCHEDULE

City Clerk McHugh said due to spring break and the Easter holiday there may be difficulties in obtaining a quorum for the regularly scheduled Council meeting on April 10.

It was the consensus of the Council to combine the April 10 meeting with the organizational meeting to be held on Tuesday, April 18 at 7 p.m. The April 24 meeting will take place as scheduled.

PAYMENT OF BILLS

Motion made by Council Member Regenfuss, seconded by Council Member Dieffenbach, to approve the payment of the bills for the period 02/10/17 through 02/20/17, ACH transfers for the period 02/13/17 through 02/22/17, and payroll for the period 01/29/17 through 02/11/17. The motion carried unanimously.

LICENSE APPLICATIONS

Motion made by Council Member Thome, seconded by Council Member Arnett, to authorize the issuance of new Operators licenses for the period ending June 30, 2017 to Lisa F. Bender and Lauren A. Welch. Motion carried unanimously.

Motion made by Council Member Arnett, seconded by Council Member Czarnecki, to approve the issuance of a 6-month Class "B" Beer license to GG & KR, LLC, Gordon Goggin, Agent, for a beer garden at the Cedarburg Community Pool, W68 N851 Evergreen Blvd., from May 1, 2017 to October 31, 2017. Motion carried unanimously.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes said payments have been made to vendors using Agilex.

She reminded the Council that Wi Fi will not be available at the Community Center Gym for the Council meeting on March 13.

Acting Mayor O'Keefe said setup of the Gym for the meeting should perhaps include a timekeeper for those making comments.

Council Member Czarnecki said speakers should be required to follow the two minute rule for speaking at public hearings as established by the Council.

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Czarnecki said the local paper made mention of the proposed development at Five Corners. He asked what the City's involvement is.

City Administrator/Treasurer Mertes said the project will have to come to the City for extraterritorial zoning approval.

Attorney Herbrand said the City has limited oversight. He said staff will prepare a summary for the Council.

Council Member Dieffenbach asked when the proposal by Waste Management to alter garbage routes will come back to the Council.

City Administrator/Treasurer said the matter will go back to the Public Works Commission and then return to the Council.

Council Member Dieffenbach asked for an update on the Amcast matter.

City Administrator/Treasurer Mertes said an update will be provided at the March 27 Council meeting.

Council Member Verhaalen inquired about the opening date of the recycling center and key card system that will be used.

City Administrator/Treasurer Mertes said the site will open April 1. The card system is operational.

Council Member Dieffenbach said the Friends of the Library has a Cedarburg Reads program and encouraged Council Members to attend.

ADJOURNMENT

Motion made by Council Member Dieffenbach, seconded by Council Member Thome, to adjourn the meeting at 8:50 p.m. Motion carried unanimously.

Constance K. McHugh, MMC/WCPC
City Clerk