

**ABSTRACT/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL
ACTIONS OF THE COMMON COUNCIL OF THE CITY OF WHITEWATER,
WALWORTH AND JEFFERSON COUNTIES, WISCONSIN.**

February 19, 2009

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: Allen, Taylor, Nosek, Binnie, Singer, Kienbaum, Stewart. MEMBERS ABSENT: None.

It was moved by Nosek and seconded by Allen to acknowledge receipt and filing of the Police Department Consolidated Monthly Report for December, 2008; the Park and Recreation Minutes of 1/12/09; the Seniors in the Park Minutes of 1/3/09; and the January 2009 Financial Statements and Report of Manually-Produced Checks. AYES: Allen, Taylor, Nosek, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

APPROVAL OF PAYMENT OF INVOICES. It was moved by Nosek and seconded by Allen to approve payment of city invoices in the total sum of \$157,215.14. AYES: Allen, Taylor, Nosek, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

STAFF REPORTS. A Certificate of Appreciation was presented to Craig Stauffer in honor of his years of service as Councilmember for Aldermanic District 1. City Manager Brunner presented his "State of the City" report and his 2009 City Management Plan.

HEARING OF CITIZEN COMMENTS: None.

COMMON COUNCIL ANNOUNCEMENTS: None.

FIRST READING OF ORDINANCE AMENDING CHAPTER 5.20 TO REQUIRE THOSE WITH "CLASS B" ALCOHOL LICENSES TO BE OPEN A MINIMUM NUMBER OF HOURS PER YEAR. Councilmember Binnie reported that the Alcohol Licensing Task Force had met and recommended that the current ordinance, which requires a licensee to be open once every 90 days, be amended to require that a licensee be open a minimum of 50 days per year. Licensees will be required to file a statement with the City Clerk indicating the days and hours the establishment will be open. Councilmember Nosek expressed concerns whether a license is warranted for those establishments open only 50 days per year. Nosek felt the ordinance was not strict enough. John Cordio, owner of "Beer Here" stated that he sees no problem with the minimum hour requirement; he noted that his establishment is open every day of the year.

**ORDINANCE AMENDING SECTION 5.20.032 OF
THE WHITEWATER MUNICIPAL CODE
REGARDING ALCOHOL LICENSES**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do ordain as follows:

SECTION 1. Section 5.20.032 of the Whitewater Municipal Code Chapter 5.20 is hereby amended to read as follows:

A. Findings of Fact and Purpose. The Common Council finds that the nonuse of alcohol licenses that are available in limited numbers is generally contrary to the public's best interest. This is because alcohol licenses, if used responsibly, can attract and retain businesses such as restaurants and hotels, and thereby create jobs and provide non-alcohol-related entertainment and service opportunities for the general public. Furthermore, the nonuse of alcohol licenses, limited by quotas, is unfair to persons or businesses that seek to earn income through the use of a license, but are unable to receive a license because of the limited number available to be issued by the City.

B. Cancellation For Non Use. Any "Class A" or "Class B" license granted under this chapter may be cancelled by the common council 1) if it is not used within sixty days after its initial issuance (this 60 day non use provision applies only to initial license issuance and does not apply to license renewals); 2) if its usage is discontinued for a period of ninety consecutive days or more; 3) if the holder does not use the license for at least fifty (50) days during the one-year period of the license term; 4) if the licensee does not open and use its license on the minimum days and hours it submits under paragraph C three or more times during a license term.

For the purpose of this ordinance, a day within the yearly license term shall be defined as a day during which the license grantee or holder is open for business and therein uses the License for a minimum period of six (6) hours. Said hours shall be consecutive on the particular day. In order to be considered open, a "Class B" licensed premises must have a licensed bartender on duty and available and present on the premises to dispense alcohol. If there are two licensed premises in any one building, each premises must have a separate bartender available, present, and on duty during the time the premises is required to be open.

C. Reporting Requirements: Each "Class A" or "Class B" licensed premises shall complete a form as part of the initial and annual renewal application process that lists the specific days of the week and specific hours it represents will be open which satisfies the minimum opening and use requirements set forth above. If any licensee changes its minimum required days or hours of operation stated in the application, the licensee shall immediately report the change in writing to the municipal clerk. Licensees are not required to disclose all hours it or they expect to be open, rather only those mandatory minimum hours it will be open.

D. Exceptions: In the event the grantee or holder of a "Class A" or "Class B" license issued under this Chapter demonstrates to the satisfaction of the City Council that, due to undue hardship or unusual circumstances beyond the grantee's or holder's control, the grantee or holder could not meet the minimum use requirements set forth herein within the yearly term of the license, the license grantee or holder may request that the City Council grant an exception to the requirements found in paragraphs B and C above. Exceptions which the City Council may consider in not imposing the requirements of paragraphs B and C are the following:

- (1) Damage to the licensed premises rendering it temporarily unfit for safe operation under the license;
- (2) Closing for reasonable periods of time to alter, repair, remodel or redecorate the premises;
- (3) Certain factors of death, illness or contractual impossibility;
- (4) Any other unusual circumstances not under the control of the license grantee or holder.

E. Investigations and inspections to determine compliance with this section may be conducted by the City of Whitewater Police Department, or any City employee or official

directed by the City Manager to conduct an investigation or inspection to determine compliance. If a licensee is found to be in violation of the terms of this section, future inspections shall subject the licensee to the imposition of re-inspection fees under Chapter 1.29. Violations of this section shall also subject a licensee to the imposition of the penalties set forth in Section 5.20.160.

F. Prior to Cancellation: Prior to the cancellation of any license, the city shall notify the licensee in writing of the city's intention to cancel the license for non-use and provide the licensee with an opportunity for a due process hearing. Such hearing shall be conducted by the Alcohol License Review Committee generally under the procedures set forth in Whitewater Municipal Code 5.20.025.

Ordinance introduced by Councilmember Binnie, who moved its adoption. Seconded by Councilmember Taylor. AYES: Allen, Taylor, Binnie, Singer, Kienbaum, Stewart. NOES: Nosek. ABSENT: None. FIRST READING APPROVED: February 19, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

FIRST READING OF ORDINANCE AMENDING CHAPTER 5.20 TO LIMIT THE MAXIMUM NUMBER OF ALCOHOL LICENSES IN ANY SINGLE BUILDING. City Attorney McDonell presented an ordinance which would limit the number of the same type of alcohol licenses in buildings. Nosek referred to the ordinances as a "kiss from your Sister," while Councilmember Kienbaum indicated that if anybody is willing to pay the large fee the City charges for the license, business should be encouraged. Councilmember Nosek suggested that grammatical changes be made to the ordinance as it is cumbersome to read.

**ORDINANCE AMENDING CHAPTER 5.20 OF
THE WHITEWATER MUNICIPAL CODE
REGARDING ALCOHOL LICENSES**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do ordain as follows:

SECTION 1. Whitewater Municipal Code Chapter 5.20, Section 5.20.045 is hereby created to read as follows:

5.20.045 Maximum Number of Licenses. The maximum number of "Class A" and "Class B" licenses for any single building shall be two, and no building shall be allowed to have more than one "Class A" or "Class B" license. For the purpose of this Section, a combination license issued to the same premises shall be considered one license. When a "Class A" or "Class B" license is issued to a building, no other license of the same class shall be issued to a premises in the same building.

Ordinance introduced by Councilmember Binnie, who moved its adoption. Seconded by Councilmember Taylor. AYES: Allen, Taylor, Nosek, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None. FIRST READING APPROVED: February 19, 2009.

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CAPITAL IMPROVEMENT PLAN. City Manager Brunner and DPW Director Fischer presented a plan for 2009-2010 Capital Improvement projects, as well as projects for year 2011 and beyond. Brunner reported that 2009 projects will be bid as soon as possible to take advantage of the current highly-favorable construction climate. With the exception of the University

Technology Park infrastructure improvements, all projects have sufficient funding already in place for their construction. The same is true for 2010 projects, with the exception of utility improvements associated with the Clay Street reconstruction project. Brunner is recommending the issuance of revenue bonds next year for these utility improvements. Sanitary sewer will require \$350,000; Stormwater - \$575,000 and Water utility - \$750,000. The debt will need to be built into the rate structures for each of the three utilities. A water rate study will need to be conducted for a possible future water rate increase. Brunner noted that the last water rate increase was in 2004. Brunner stated that while the City has sufficient funds in TIF 4 (due to borrowing in January 2008 to fund projects in 2008, 2009 & 2010), Brunner is projecting a negative cash flow in TIF 4 in 2011. The initial negative flow is projected at \$55,000 then will escalate in succeeding years. The reason for the projected negative cash flow is due to the fact that some of the anticipated development within TIF 4 has not materialized. In addition, some property values are decreasing within the district rather than increasing. Brunner stressed that the maintenance and continued development of the city infrastructure is critical to Whitewater's continued success as a community. 2009 projects include the Trippe Lake Shelter; the Whiton and Main Traffic Signal; the Bike Path (completion south to Willis Ray Road); the Center Street Reconstruction (from Fourth to Franklin); the Whitewater Street project; the North St., First St, and First St. parking lot expansion; and Phase 1 of the Technology Park. Also proposed for 2009-2010 is the Whitewater Passenger Train Depot Restoration and the Wastewater Facilities upgrade. 2010 projects include the Five Points intersection improvements; the Clay St. Nature Park detention basin; the Clay St., reconstruction (roundabout to Clay Nature Park Dr.); Downtown Eastgate, the final lift for the Business Park Streets; and the Moraine View Parkway Detention Basin. The Milwaukee & Newcomb Street intersection / Department of Transportation project is planned for 2014. Attorney Mitch Simon suggested that replacement of water mains on Tratt Street and Ann Street be added to the plan. He noted that there have been several breaks over the last few years.

It was moved by Taylor and seconded by Binnie to approve the Capital Improvement Plan. Projects will have to come to Council individually before going forward. AYES: Allen, Taylor, Nosek, Binnie, Singer, Stewart. NOES: None. ABSTAIN: Kienbaum (prefers to wait until additional State Budget information is available before voting on this item).

APPROVAL OF DISPOSITION OF CITY-OWNED PROPERTY (Cable T.V. Equipment)

Cable TV Coordinator Alan Luckett presented Council with a listing of retired cable equipment, most of which has not been used for over two years. Luckett is recommending sale of some of the equipment online. Depending on the type of equipment, it may be sold at the City Auction. It was moved by Nosek and seconded by Allen to authorize the disposition of city-owned Cable T.V. equipment as proposed by Coordinator Luckett. AYES: Allen, Taylor, Nosek, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

APPROVAL OF ARCHITECTURAL SERVICES CONTRACT WITH DESIGN ALLIANCE ARCHITECTS, INC. (TRIPPE LAKE RESTROOM / SHELTER PROJECT).

The City obtained architectural service proposals from Strand Engineering of Madison and The Design Alliance of Fort Atkinson regarding upcoming work for the Trippe Lake Restroom / Shelter project. Design Alliance provided the lowest proposal in the sum of \$10,500. Plans are to re-use the existing building's foundation. Design Alliance intends to investigate options to make the project as "green" and energy efficient as the budget will allow. It was moved by Allen and seconded by Binnie to approve the contract with Design Alliance of Fort Atkinson, Wisconsin, in the sum of \$10,500 for architectural services for the Trippe Lake Restroom / Shelter project. AYES: Allen, Taylor, Nosek, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

COUNCILMEMBER REQUEST FOR FUTURE AGENDA ITEMS. Councilmember Nosek requested an update on his questions regarding enforcement of the Recycling Ordinance (as it relates to multi-family dwellings). Councilmember Allen requested that a chronic nuisance ordinance be brought forth to Council.

EXECUTIVE SESSION. It was moved by Singer and seconded by Allen to ADJOURN TO CLOSED SESSION pursuant to Chapter 19.85(1)(c) “(e) Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.” Item to be Discussed: Extension of South Whitewater Multi-Use Trail and Discussions with Town of Whitewater. AYES: Allen, Taylor, Nosek, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None. Being no further business to come before the regular portion of the meeting, the meeting adjourned at 8:50 p.m.

Respectfully submitted,

Michele R. Smith, Clerk