

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

May 5, 2009

**CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE.** The meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. MEMBERS ABSENT: None. OTHERS PRESENT: City Manager Kevin Brunner, City Attorney Wallace McDonell.

It was moved by Olsen and seconded by Taylor to approve the Common Council minutes of March 3, 2009 and March 17, 2009, and to acknowledge receipt and filing of the Plan Commission minutes of May 5, 2008, Landmarks Commission minutes of February 4, 2009; and March 4, 2009 and CDA minutes of March 23, 2009. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

**APPROVAL OF PAYMENT OF INVOICES PROCESSED THROUGH APRIL 30, 2009.**

It was moved by Olsen and seconded by Taylor to approve payment of invoices processed through April 30, 2009 in the amount of \$117,856.74. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

**STAFF REPORTS:** The City Manager gave an update on Federal grants that the City is pursuing. He then invited all present to attend the May 14 special meeting of the Plan Commission for the kick-off of the Whitewater Comprehensive Plan. Citizen surveys will be distributed at that meeting. Proclamations were presented relating to observation of Wisconsin Archaeology Month; Historic Preservation Month and National Arbor Day Tree City. Jim Allen was presented a certificate in recognition of his service to the City as a member the Common Council from January through April 2009. CDA Coordinator Nimm presented her 2009 first quarter report on CDA activity and Downtown Whitewater Director Brodnicki presented her quarterly report on the organization's activities.

**HEARING OF CITIZEN COMMENTS.** Jim Nies introduced himself as the recently-elected president of the Historic Starin Park Neighborhood Preservation Association. He announced that the Association now represents 192 properties in the City and has an active and growing membership. The group is concerned about building a more neighborly place to live by preserving, protecting and rejuvenating the Starin Park neighborhood area.

**COMMON COUNCIL ANNOUNCEMENTS.** Jim Olsen spoke of an incident at Washington School where a custodian was bitten by a dog while trying to keep the animal away from students at the school. If anyone has information about the dog they should contact the Police Department. This could spare the man from having to take a course of rabies shots. Taylor wished all students good luck on their exams.

**ADOPTING THE WHITEWATER REGISTER AS THE OFFICIAL NEWSPAPER.**

Binnie suggested that there are other options that would better benefit the community although it is a legal necessity to follow State law in determining which newspaper the City will use as the newspaper of record.

**RESOLUTION ADOPTING WHITEWATER REGISTER AS OFFICIAL NEWSPAPER**

WHEREAS, it is deemed necessary and expedient to designate an official newspaper for the City of Whitewater, Walworth and Jefferson Counties, Wisconsin.

NOW THEREFORE, BE IT RESOLVED by the Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, that The Whitewater Register be, and the same hereby is, designated the official newspaper of said City.

Resolution introduced by Councilmember Binnie (under protest), who moved its adoption. Seconded by Councilmember Kienbaum. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ADOPTED: May 5, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**AUTHORIZING OFFICIAL DEPOSITORIES.** An annual approval of authorized City depositories is required by Statutes.

**RESOLUTION AUTHORIZING OFFICIAL DEPOSITORIES**

WHEREAS, it is deemed necessary and expedient to designate official depositories for the City of Whitewater, Walworth and Jefferson Counties, Wisconsin.

NOW THEREFORE, it is hereby resolved by the Common Council of the City of Whitewater that the Commercial Bank, the First Citizens State Bank, Associated Bank, all in said City, be and the same hereby are, designated the official depositories for the City, as well as the State of Wisconsin-Local Government Investment Pool, and MBIA-Class of Wisconsin. Additional depositories for investment purposes may include U.S. Bank of Milwaukee (formerly known as Firststar Bank), and Marshall & Isley Bank of Milwaukee.

Resolution introduced by Olsen, who moved its adoption. Seconded by Taylor. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ADOPTED: May 5, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**APPROVING CLEAN WATER FUND AUTHORIZED REPRESENTATIVE.**

It is necessary to designate a representative to file applications for financial assistance from the Wisconsin Environmental Improvement Fund.

**RESOLUTION AUTHORIZING REPRESENTATIVE TO FILE APPLICATIONS FOR FINANCIAL ASSISTANCE FROM STATE OF WISCONSIN ENVIRONMENTAL IMPROVEMENT FUND.**

WHEREAS, it is the desire of the City of Whitewater, Wisconsin, a municipal corporation, to file several applications for state financial assistance for its wastewater treatment facilities under the Wisconsin Environmental Improvement Fund (ss. 281.58, 281.59, 281.60, and 281.61 Wis Stats.); and

WHEREAS, it is necessary to designate a representative for filing said applications;

NOW THEREFORE, BE IT RESOLVED by the Common Council of the City of Whitewater that the City Manager is hereby appointed as the authorized representative for the City and for the purpose of filing these applications, and that the representative is further authorized and empowered to do all things necessary in connection with said applications.

Resolution introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Taylor. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**APPROVING CLEAN WATER FUND REIMBURSEMENT RESOLUTION.**

**RESOLUTION DECLARING OFFICIAL INTENT TO REIMBURSE EXPENDITURES FROM PROCEEDS ANTICIPATED BORROWING AND/OR GRANTS FOR WASTEWATER TREATMENT PLANT EQUIPMENT REPLACEMENT PROJECT.**

**RESOLUTION DECLARING OFFICIAL INTENT TO REIMBURSE EXPENDITURES FROM PROCEEDS ANTICIPATED BORROWING AND/OR GRANTS FOR WASTEWATER TREATMENT PLANT EQUIPMENT REPLACEMENT PROJECT**

WHEREAS, the City of Whitewater, Walworth and Jefferson Counties, Wisconsin (the "City") plans to undertake the replacement of wastewater treatment facility equipment; and

WHEREAS, the City expects to finance the Project with a combination of Clean Water Fund grants and loans, administered through the Wisconsin Department of Natural Resources (the "Financing Funds"); and

WHEREAS, because the Financing Funds are not expected to be issued prior to December 1, 2009, the City must provide interim financing to cover costs of the Project incurred prior to receipt of the proceeds of the Financing Funds; and

WHEREAS, it is necessary, desirable and in the best interests of the City to advance moneys from its funds on hand on an interim basis to pay the costs of the Project until the Bonds are issued.

NOW THEREFORE, BE IT RESOLVED by the Common Council of the City of Whitewater, that:

Section 1. Expenditure of Funds. The City shall make expenditures as needed from its Wastewater Capital Equipment Replacement funds on hand to pay the costs of the Project until Financing Fund proceeds become available.

Section 2. Declaration of Official Intent. The City hereby officially declares its intent under Treas. Regs. Section 1.150-2 to reimburse said expenditures with proceeds of the Financing Funds, the principal amount of which is not expected to exceed \$5 million dollars.

Section 3. Unavailability of Long-Term Funds. No funds for payment of the Project from sources other than the Financing Funds are, or are reasonably expected to be, reserved, allocated on a long term basis, or otherwise set aside by the City pursuant to its budget or financial policies.

Section 4. Public Availability of Official Intent Resolution. This Resolution shall be made available for public inspection at the City Clerk's office within 30 days after its approval in compliance with applicable State law governing the availability of records of official acts including Subchapter II or Chapter 19, and shall remain available for public inspection until the Financing Funds are issued.

Section 5. Effective Date. This resolution shall be effective upon its adoption and approval.

Resolution introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Taylor. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**ADOPTING A NATURAL HAZARDS MITIGATION PLAN FOR WALWORTH COUNTY AND CITY OF WHITEWATER.** Brunner stated that it was the request of the County that the City endorse and approve this document.

**RESOLUTION ADOPTING A NATURAL HAZARDS MITIGATION PLAN FOR WALWORTH COUNTY AND THE CITY OF WHITEWATER**

WHEREAS, the United States Congress passed the Disaster Mitigation Act of 2000 (DMA2000), which requires that a local unit of government must have an approved all hazard mitigation plan before it can receive federal grant monies for pre-disaster mitigation projects; and

WHEREAS, the City worked with Walworth County Emergency Management to prepare a countywide mitigation plan in conformance with state and federal guidelines; and

WHEREAS, the Common Council considered the plan at its meeting on May 5, 2009; and

WHEREAS, the Common Council makes the following findings:

1. Natural disasters do pose a tangible threat to residents and property.
2. Undertaking hazard mitigation actions before disasters occur will reduce the potential for harm to residents and property and save taxpayer dollars.
3. Preparation of this plan is in the public interest.
4. This plan is intended to serve as a general strategy and may be amended from time to time.
5. Nothing in this plan obligates the City to undertake any of the recommended activities and/or projects.
6. Adoption of this plan is needed to apply for federal funding for mitigation projects.

NOW THEREFORE, BE IT RESOLVED, the plan entitled "Walworth County Hazard Mitigation Plan: 2009-2013" is adopted; and

BE IT FURTHER RESOLVED, The City Clerk is directed to send a signed copy of this resolution, at her earliest convenience, to Lt. Kevin Williams, Walworth County Emergency Management Coordinator, Walworth County Sheriff's Department, Emergency Management; PO Box 1004, Elkhorn, WI 53121; and

BE IT FURTHER RESOLVED, the Common Council authorizes the City Clerk to make non-substantive revisions to the plan as may be required to comply with the requirements of Wisconsin Emergency Management and/or the Federal Emergency Management Agency. Should the clerk make such authorized change the clerk shall notify the Common Council and City Manager of such change at the clerk's earliest convenience; and

BE IT FURTHER RESOLVED, the Common Council understands that it must within five years of passage of this resolution review the adopted plan and amend it, as may be necessary, and submit it to Wisconsin Emergency Management and the Federal Emergency Management Agency for recertification.

Resolution introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ADOPTED: May 5, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE A QUIT CLAIM DEED, AND ANY OTHER DOCUMENTS NECESSARY, TO TRANSFER OUTLOT 1 OF SPRINGBROOK SUBDIVISION/CSM (A STORM WATER MANAGEMENT AREA) BACK TO SPRINGBROOK APARTMENTS, LLC.**

City Attorney McDonnell recommended approval of a resolution that would allow Outlot 1 of the Springbrook Subdivision to be deeded back to the developer. Over the years, plans for the development have changed numerous times and the existing arrangement is now out of date.

**RESOLUTION CONCERNING SPRINGBROOK  
APARTMENTS, LLC, DEVELOPMENT**

WHEREAS, Springbrook Apartments, LLC, caused a subdivision of land near the intersection of Clark Street and Caine Street in the City of Whitewater, and

WHEREAS, due to changes in the development plan, Springbrook Apartments, LLC, caused a Certified Survey Map to be recorded which replaced the previously recorded subdivision plat, and

WHEREAS, it is necessary for the City of Whitewater to take certain actions in order to cause the real estate title to be consistent with the current Certified Survey Map and Development Plans.

Now, therefore, BE IT RESOLVED that the Common Council of the City of Whitewater hereby authorizes the following;

1. The City Manager and the City Clerk may execute a Quit Claim Deed, and any other documents necessary, to transfer Outlot 1 of Springbrook Subdivision/CSM (a Storm Water Management Area) back to Springbrook Apartments, LLC.

2. The City Manager and the City Clerk may execute documents releasing storm water, public utility, and other easements concerning the Springbrook development in the City of Whitewater.

3. The City Manager and the City Clerk may execute documents establishing storm water and other easements at the Springbrook development in the City of Whitewater.

4. The adding of a metes and bounds legal description and map to the ordinance previously passed by the City Council discontinuing Clark Street south of Caine Street in the City of Whitewater.

5. The City Manager and the City Clerk may sign any other documents, approved by the City Attorney, which are consistent with the City's approval of the Springbrook Certified Survey Map and plan, which replace the previously recorded subdivision plat and plan for Springbrook Apartments, LLC.

It was moved by Taylor and seconded by Olsen to authorize the City Manager and City Clerk to execute a quit claim deed, and any other documents necessary, to transfer outlot 1 of Springbrook subdivision/CSM back to Springbrook Apartments, LLC. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ADOPTED: May 5, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF ORDINANCES ADOPTING CHRONIC NUISANCE ORDINANCES.** Singer introduced three alternatives for the chronic nuisance ordinance. The ordinance as presented at the last Council meeting was identified as Alternative A. Alternatives B and C split Alternative A, and separated out Neighborhood Services – Code Enforcement matters from Police Department matters (Alternative C).

A representative of the Historic Starin Park Neighborhood Preservation Association asked that consideration of the ordinance be delayed until the group can present some of their ideas to the City to enhance the ordinance. Attorney McDonnell suggested that Council could approve the ordinance(s) with the understanding that there may be substantive amendments at a later time. Jim Allen, president of the Water's Edge North Condominium Association spoke in favor of the ordinance and its enforcement. Donna Henry, president of the Rental Association, expressed her

concern over the City holding landlords responsible for the actions of their tenants as well as concern over the fairness of a process which relies on resident complaints. Kienbaum wanted to ensure that residents and landlords be uniformly notified of the terms of any nuisance ordinance passed, perhaps by including a brochure in water utility bills. Council and several residents discussed various points related to the ordinance.

It was moved by Winship and seconded by Binnie to amend Ordinance for Code Enforcement by changing the number of offenses from four to three, that would initiate city action against the property. The amendment was seconded by Binnie. AYES: Winship, Binnie, Stewart. NOES: Olsen, Taylor, Singer, Kienbaum. *AMENDMENT FAILS.*

**ORDINANCE CREATING CHAPTER 7.41**  
**REGULATIONS CONCERNING NEIGHBORHOOD PRESERVATION**  
**(PROPERTY CONDITION NUISANCE RELATED)**

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

**SECTION 1.** Chapter 7.41, Regulations Concerning Neighborhood Preservation (Property Condition Nuisance Related), is hereby created to read as follows:

**Sections:**

7.41.010	Definitions
7.41.020	Notice
7.41.030	Abatement Plan
7.41.040	Additional Property Condition Nuisance Activity
7.41.050	Appeal
7.41.060	Violations – Penalties – Remedies – Injunctive and other relief.

**7.41.010** **Definitions.** The following terms shall be defined as follows in this chapter:

- A. **Enforcement Action.** Arrest, the issuance of a citation, the issuance of a written warning, the issuance of an order to correct.
- B. **WWMC.** Whitewater Municipal Code.
- C. **Property Condition Nuisance Related Activity.** Any of the following activities, behaviors or conduct occurring upon a premises or arising out of the use of a premises

(unless the owner or occupant of the property is the victim of the crime or act by a non-occupant):

**1. PROPERTY CONDITION NUISANCE RELATED ACTIVITY**

- a. Weeds and grass violation, set forth in WWMC 7.22.
- b. Storing junk on property, set forth in WWMC 7.48.
- c. Junked automobiles, set forth in WWMC 5.56.
- d. Filth violation, set forth in WWMC 8.12.
- e. Rubbish violation, set forth in WWMC 8.24.
- f. Building and construction violations, set forth in WWMC Title 14.
- g. Zoning violations under Chapter 19.
- h. Any other similar activity to that stated above.

F. **Owner.** The owner of the premises and his or her agents.

G. **Premises.** An individual dwelling unit used for residential purposes whether or not owner occupied; an individual business or commercial property; and associated common areas thereof.

**7.41.020 Notice**

A. Whenever the Neighborhood Services Director determines that four (4) or more Property Condition Nuisance Related Activities resulting in enforcement action have occurred at a premises on separate days during a 12-month period, the Neighborhood Services Director, or his designee, may notify the premises owner and tenant in writing. In reaching this determination, the Neighborhood Services Director shall not include nuisance activities resulting in enforcement actions that were reported by the owner of the premises. Only the Neighborhood Services Director may initiate and implement the procedure and enforcement for Property Condition Nuisance Related Activities under this Section.

B. The notice shall contain the street address including unit number if applicable or legal description sufficient to identify the premises, a description of the property condition nuisance related activities and enforcement actions that have occurred at the premises; a statement indicating that the cost of future enforcement may be assessed as a special charge against the premises, and a notice as to the appeal rights of the owner.

C. The Neighborhood Services Director's written notice shall be delivered to the owner of the premises by one of the following methods: personal service, certified mail, first class mail, posting and/or publication, such other means as provided by law for service of process in a civil action, as the Neighborhood Services Director, as applicable, may determine appropriate under the particular facts and circumstances.

**7.41.030 Abatement plan.**

Any owner (or the owner's representative) receiving such notice shall personally meet with the Neighborhood Services Director, or with his or her City designee, within seven (7) days of receipt of such notice. The Neighborhood Services Director and owner shall review the problems occurring upon the premises and/or property. Within ten (10) days of this meeting, the owner shall submit to the Neighborhood Services Director, or his or her designee, a detailed written abatement plan designed to forthwith and effectively end all the property condition nuisance related activity upon the premises. The plan shall also specify a name, address, and telephone number of a person living within sixty (60) miles of the premises who can be contacted in the event of further inspection activities and/or contact.

**7.41.040 Additional property condition nuisance related activity.**

Whenever the Neighborhood Services Director determines that:

1. Additional property condition nuisance related activity and/or enforcement action has/have occurred upon a premises for which written notice has been issued under this Chapter; and
2. This additional property condition nuisance related activity and/or enforcement action has/have occurred more than seventeen (17) days after written notice was served; and
3. Reasonable effort has not been made by the owner of the premises to abate the property condition nuisance related activity;

Then, for the next 24 months, the Neighborhood Services Director may calculate all of the cost, fees and expenses arising from and/or pertaining to any and all such City responses and enforcement including, but not limited to, actual burdened labor, overtime, materials, vehicle use, and related administrative time and efforts for this and any subsequent property condition nuisance related activities and enforcement actions upon, for and/or pertaining to the premises. The Neighborhood Services Director shall then cause all such costs, fees and expenses to be charged against the owner of the premises and the premises itself, and if unpaid in 30 days, charged, assessed, levied and collected by the City as a special charge against the premises/property.

**7.41.050 Appeal.**

**A. Appeal by Affected Property Owner.** An affected owner of the premises may appeal the Neighborhood Services Director's determination and invoiced special charges arising from and imposed for the police and related costs, fees and expenses set forth in this Ordinance in the manner set forth in this subsection.

**B.** The appeal shall be in writing, filed with the City Clerk, stating with specificity the grounds for the appeal and the relief requested. The appeal must be filed within thirty (30) days of the invoice from the City Clerk.

**C.** The appeal shall be considered only if filed within 30 days of the date of the invoice from the Clerk and prior to the time that any unpaid special charges imposed against the premises/property under this chapter are turned over by the Treasurer to be placed on the tax roll.

**D.** Chapter 68 of the Wisconsin Statutes shall not apply to such an appeal nor shall any other provision of state law or city ordinance to the contrary. The appellate procedure set forth herein shall govern and be exclusive.

**E.** Upon receipt of the written appeal, the Clerk shall set the matter for a hearing for a meeting of the Common Council not less than thirty (30) days nor more than sixty (60) days after the filing of the written appeal.

**F.** The Clerk shall provide written notice to the appellant and to the Neighborhood Services Director of such hearing date, time and place.

**G.** The parties may agree to continuances and stipulations as to procedure and substance.

**H.** The hearing shall be open to the public, recorded by a sound recording device and the recording preserved for seven (7) years by the City Clerk. A party may have a court reporter record the hearing but the requesting party shall pay all costs of the court reporter in advance regardless of the determination of the appeal.

**I.** The appellant and the Neighborhood Services Director may each present witnesses who testify upon oath after being duly sworn in by the City Clerk, the Deputy City Clerk, or any other person authorized by law to administer oaths.

**J.** After the hearing, the Common Council in open session shall deliberate and then make a determination by recorded motion, second and vote. A majority of Council Members voting shall decide the matter.

**K.** The City Clerk and Treasurer shall adjust all invoices, tax and related City records in accord with the Council's determination.

**L.** The procedures initiated by notice under Section 7.41.020 shall be stayed until the Common Council rules on any timely appeal filed under this section.

**7.41.060 Violations – Penalties – Remedies – Injunctive and other relief.**

In addition to the special charges authorized and described above, the following penalties and remedies are cumulative and not exclusive; may be jointly and severally sought and/or employed by the City, and may be ordered and/or imposed, as applicable, by the courts:

**A. First Offense.** Any individual, corporation or party who shall violate any provision of this chapter or any regulation, rule, or order made hereunder shall forfeit and pay to the City not less than \$100 nor more than \$1,000, together with the costs of prosecution. It shall be considered a violation of this chapter by the property owner if additional property condition nuisance related activity under section 7.41.040 takes place at a premises within a period of two years after a notice under 7.41.020 is given concerning a premises.

**B. Subsequent Offenses.** Any person who shall violate any provision of this chapter or any regulation, rule, or order made hereunder within twenty-four (24) months after committing a previous violation shall forfeit and pay to the City not less than \$200 nor more than \$2,000, together with the costs of prosecution.

**C.** Each and every day that a violation occurs, continues, and/or remains present constitutes a separate offense.

**D.** The City, in addition to the above monetary penalty(ies) and special charges may from time to time seek and obtain, and the court may order, temporary and/or permanent injunctive relief, abatement, and such other legal and/or equitable relief, remedies, judgments, and/or orders of the court against any person(s) and/or property(ies) as the court may, from time to time, deem necessary, appropriate and/or desirable to effectuate the intent of this chapter and the public good, peace, order, welfare, and/or safety.

**E.** In addition to the above penalties, relief and remedies, the Common Council may refuse to issue or not renew any license or permit to the owner of the premises and/or the premises, after conducting a hearing thereon.

**F.** It shall be the responsibility of the convicted persons(s) to immediately abate each and every violation upon the premises property as expeditiously as possible, unless otherwise directed by the City or the court.

**G.** This chapter is cumulative in its legal affect and is not in lieu of any and all other legal and equitable remedies under City ordinances, state statutes, state administrative codes, and common law, including, but not limited to, forfeiture of the property to the City under the applicable state statutes.

**SECTION 2.** This ordinance shall take effect upon passage and publication as provided by law.

Ordinance introduced by Councilmember Winship who recommended its adoption. Seconded by Councilmember Binnie. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. FIRST READING APPROVED: May 5, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

Taylor moved to remove the following from 742.010 D.1: Battery, Substantial Battery, or Aggravated Battery; Prostitution, and Arson from the ordinance. Olsen seconded the motion. Chief Coan stated that he felt it best to leave the offenses in the ordinance as a contingency to be used as a tool if other approaches fail. Second removed. Motion withdrawn.

Stewart introduced an amendment to the ordinance option C to change the number of offenses that would trigger city action from 4 to 3 offenses. The amendment was seconded by Winship. AYES: Olsen, Winship, Binnie, Singer, Stewart. NOES: Taylor, Kienbaum. MOTION PASSES.

Binnie motioned to add rape to the list of violations of municipal or state law violations in ordinance option C. The motion was seconded by Olson. AYES: Olsen, Taylor, Winship, Binnie, Singer, Stewart. NOES: None. ABSTAIN: Kienbaum.

**ORDINANCE CREATING CHAPTER 7.42  
REGULATIONS CONCERNING NEIGHBORHOOD PRESERVATION  
(POLICE RELATED NUISANCE ACTIVITIES)**

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

**SECTION 1.** Chapter 7.42, Regulations Concerning Neighborhood Preservation (Police Related Nuisance Violations), is hereby created to read as follows:

**Sections:**

7.42.010	Definitions.
7.42.020	Notice.
7.42.030	Abatement Plan.
7.42.040	Additional Police Related Nuisance Activity.
7.42.050	Appeal.
7.42.060	Violations – Penalties – Remedies – Injunctive and other relief.

**7.42.010**      **Definitions.** The following terms shall be defined as follows in this chapter:

A. **Chief.** The Chief of Police or his or her designee.

B. **Enforcement Action.** Arrest, the issuance of a citation, the issuance of a written warning, the issuance of an order to correct.

C. **WWMC.** Whitewater Municipal Code.

D. **Police Related Nuisance Activity.** Any of the following activities, behaviors or conduct occurring upon a premises or arising out of the use of a premises (unless the owner or occupant of the property is the victim of the crime or act by a non-occupant):

**1. POLICE RELATED NUISANCE ACTIVITY**

- a. An act of Harassment, as defined in §947.013, Wis. Stats.
- b. Disorderly Conduct, as defined in §947.01, Wis. Stats.
- c. Battery, Substantial Battery, or Aggravated Battery, as defined in §940.19, Wis. Stats.
- d. Lewd and Lascivious Behavior, as defined in §944.20, Wis. Stats.
- e. Prostitution, as defined in §944.30, Wis. Stats.
- f. Theft, as defined in §943.20, Wis. Stats.
- g. Receiving Stolen Property, as defined in §943.34, Wis. Stats.
- h. Arson, as defined in §943.02, Wis. Stats.
- i. Possession, Manufacture, or Delivery of a Controlled Substance or related offenses, as defined in Ch. 961, Wis. Stats.
- j. Gambling, as defined in §945.02, Wis. Stats.
- k. Obstructing or resisting an officer, set forth in WWMC 7.02.
- l. Failure to obey a police officer, set forth in WWMC 7.03.
- m. Possession of marijuana, set forth in WWMC 7.26.
- n. Disturbance of the peace, set forth in WWMC 7.36.
- o. Underage alcohol violation, set forth in WWMC 7.63.
- p. Furnishing alcohol to underage persons, set forth in WWMC 7.66.

- q. Fireworks violation, set forth in WWMC 5.08.
- s. Noise violation as set forth in WWMC 19.58.
- t. Rape.
- u. Another similar activity to that stated above.

E. **Owner.** The owner of the premises and his or her agents.

F. **Premises.** An individual dwelling unit used for residential purposes whether or not owner occupied; an individual business or commercial property; and associated common areas thereof.

**7.42.020      Notice.**

A. Whenever the Chief determines that three (3) or more Police Related Nuisance Activities resulting in enforcement action have occurred at a premises on separate days during a 12-month period the Chief, or his designee, may notify the premises owner and tenant in writing of the violations. In reaching this determination, the Chief shall not include police related nuisance activities resulting in enforcement actions that were reported by the owner of the premises. Only the Chief may initiate and implement the procedure and enforcement for Police Related Nuisance Activities under this Section.

B. The notice shall contain the street address including unit number if applicable or legal description sufficient to identify the premises, a description of the nuisance activities and enforcement actions that have occurred at the premises; a statement indicating that the cost of future enforcement may be assessed as a special charge against the premises, and a notice as to the appeal rights of the owner.

C. The Chief's written notice shall be delivered to the owner of the premises by one of the following methods: personal service, certified mail, first class mail, posting and/or publication, such other means as provided by law for service of process in a civil action, as the Chief may determine appropriate under the particular facts and circumstances.

**7.42.030      Abatement plan.**

Any owner (or the owner's representative) receiving such notice shall personally meet with the Police Chief, or with his or her City designee, within seven (7) days of receipt of such notice. The Chief and owner shall review the problems occurring upon the premises and/or property. Within ten (10) days of this meeting, the owner shall submit to the Chief or his or her designee, a detailed written abatement plan designed to forthwith and effectively end all the police related nuisance activity upon the premises. The plan shall also specify a name, address, and telephone number of a person living within sixty (60) miles of the premises who can be contacted in the event of further police, fire, or inspection activities and/or contact.

**7.42.040      Additional police related nuisance activity.**

Whenever the Chief determines that:

1. Additional police related nuisance activity and/or enforcement action has/have occurred upon a premises for which written notice has been issued under this Chapter; and
2. This additional police related nuisance activity and/or enforcement action has/have occurred more than seventeen (17) days after written notice was served; and
3. Reasonable effort has not been made by the owner of the premises to abate the police related nuisance activity;

Then, for the next 24 months, the Chief may calculate all of the cost, fees and expenses arising from and/or pertaining to any and all such police and related City responses and enforcement including, but not limited to, actual burdened labor, overtime, materials, vehicle use, and related administrative time and efforts for this and any subsequent nuisance activities and enforcement actions upon, for and/or pertaining to the premises. The Chief shall then cause all such costs, fees and expenses to be charged against the owner of the premises and the premises itself, and if unpaid in 30 days, charged, assessed, levied and collected by the City as a special charge against the premises/property.

**7.42.050      Appeal.**

**A. Appeal by Affected Property Owner.** An affected owner of the premises may appeal the Police Chief's determination and invoiced special charges arising from and imposed for the police and related costs, fees and expenses set forth in this Ordinance in the manner set forth in this subsection.

**B.** The appeal shall be in writing, filed with the City Clerk, stating with specificity the grounds for the appeal and the relief requested. The appeal must be filed within thirty (30) days of the invoice from the City Clerk.

**C.** The appeal shall be considered only if filed within 30 days of the date of the invoice from the Clerk and prior to the time that any unpaid special charges imposed against the premises/property under this chapter are turned over by the Treasurer to be placed on the tax roll.

**D.** Chapter 68 of the Wisconsin Statutes shall not apply to such an appeal nor shall any other provision of state law or city ordinance to the contrary. The appellate procedure set forth herein shall govern and be exclusive.

**E.** Upon receipt of the written appeal, the Clerk shall set the matter for a hearing for a meeting of the Common Council not less than thirty (30) days nor more than sixty (60) days after the filing of the written appeal.

**F.** The Clerk shall provide written notice to the appellant and to the Chief of Police of such hearing date, time and place.

**G.** The parties may agree to continuances and stipulations as to procedure and substance.

**H.** The hearing shall be open to the public, recorded by a sound recording device and the recording preserved for seven (7) years by the City Clerk. A party may have a court reporter record the hearing but the requesting party shall pay all costs of the court reporter in advance regardless of the determination of the appeal.

**I.** The appellant and the Chief of Police may each present witnesses who testify upon oath after being duly sworn in by the City Clerk, the Deputy City Clerk, or any other person authorized by law to administer oaths.

**J.** After the hearing, the Common Council in open session shall deliberate and then make a determination by recorded motion, second and vote. A majority of Council Members voting shall decide the matter.

**K.** The City Clerk and Treasurer shall adjust all invoices, tax and related City records in accord with the Council's determination.

**L.** The procedures initiated by notice under Section 7.42.020 shall be stayed until the Common Council rules on any timely appeal filed under this section.

**7.42.060 Violations – Penalties – Remedies – Injunctive and other relief.**

In addition to the special charges authorized and described above, the following penalties and remedies are cumulative and not exclusive; may be jointly and severally sought and/or employed by the City, and may be ordered and/or imposed, as applicable, by the courts:

**A. First Offense.** Any individual, corporation or party who shall violate any provision of this chapter or any regulation, rule, or order made hereunder shall forfeit and pay to the City not less than \$100 nor more than \$1,000 together with the costs of prosecution. It shall be considered a violation of this chapter by the property owner if additional police related nuisance activity under section 7.42.040 takes place at a premises within a period of two years after a notice under 7.42.020 is given concerning a premises.

**B. Subsequent Offenses.** Any person who shall violate any provision of this chapter or any regulation, rule, or order made hereunder within twenty-four (24) months after committing a previous violation shall forfeit and pay to the City not less than \$200 nor more than \$2,000, together with the costs of prosecution.

**C.** Each and every day that a violation occurs, continues, and/or remains present constitutes a separate offense.

**D.** The City, in addition to the above monetary penalty(ies) and special charges may from time to time seek and obtain, and the court may order, temporary and/or permanent injunctive relief, abatement, and such other legal and/or equitable relief, remedies, judgments, and/or orders of the court against any person(s) and/or property(ies) as the court may, from time to time, deem necessary, appropriate and/or desirable to effectuate the intent of this chapter and the public good, peace, order, welfare, and/or safety.

**E.** In addition to the above penalties, relief and remedies, the Common Council may refuse to issue or not renew any license or permit to the owner of the premises and/or the premises, after conducting a hearing thereon.

**F.** It shall be the responsibility of the convicted person(s) to immediately abate each and every violation upon the premises property as expeditiously as possible, unless otherwise directed by the City of the court.

**G.** This chapter is cumulative in its legal affect and is not in lieu of any and all other legal and equitable remedies under City ordinances, state statutes, state administrative codes, and common law, including, but not limited to forfeiture of the property to the City under the applicable state statutes.

**SECTION 2.** This ordinance shall take effect upon passage and publication as provided by law.

Ordinance introduced by Councilmember Winship who recommended its adoption. Seconded by Councilmember Binnie. AYES: Olsen, Taylor, Winship, Binnie, Singer, Stewart. NOES: None. ABSTAIN: Kienbaum. FIRST READING APPROVED: May 5, 2009.

**FIRST READING OF ORDINANCE AMENDING CHAPTER 1.29 REGARDING RE-INSPECTION FEE AND ABATEMENT PLAN.** Singer introduced the abatement plan offer as an inducement to residents who are affected by the Chronic Nuisance Ordinance to communicate with the City in solving problems.

**ORDINANCE AMENDING CHAPTER 1.29 OF THE WHITEWATER MUNICIPAL CODE.**

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

Section 1. Subsection 1.29.020(c) of Chapter 1.29 of the Whitewater Municipal Code is hereby created to read as follows:

Section 1.29.020(c). Any property owner or lessor receiving a fourth offense reinspection fee, for the same violation, may have the payment of the fee waived if the party or his or her representative personally meets with the Neighborhood Services Director, or with his or her City designee, within seven (7) days of receipt of the notice of the fee imposition. At the meeting the

Neighborhood Services Director and owner shall review the problems occurring at the property. Within ten (10) days of this meeting, the owner shall submit to the Neighborhood Services Director, or his or her designee, a detailed written abatement plan designed to forthwith and effectively correct the offense that caused the imposition of the fee. If the plan meets the Neighborhood Services Director's approval, the fee shall be waived upon successful completion of the plan. The Neighborhood Services Director shall notify the party that receives a fourth offense reinspection fee of the availability of this abatement process.

Ordinance introduced by Councilmember Singer who recommended its adoption. Seconded by Councilmember Kienbaum. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. FIRST READING APPROVED: May 5, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**SECOND READING OF ORDINANCE AMENDING CHAPTER 11 RELATING TO PARKING REGULATIONS ON FOURTH STREET.**

**ORDINANCE AMENDING SECTION 11.16.150 ENTITLED STREET INDEX OF PARKING RESTRICTIONS**

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

Section 1. Whitewater Municipal Code, Chapter 11.16, Section 11.16.150, entitled Street Index of Parking Restrictions is hereby amended by deleting the following:

The no parking restriction on the east side of Fourth Street from its intersection with West Center Street south to its intersection with West Whitewater Street is hereby deleted.

Section 2. Whitewater Municipal Code, Chapter 11.16, Section 11.16.150, entitled Street Index of Parking Restrictions is hereby amended by adding the following:

There shall be no parking on the east side of Fourth Street from its intersection with West Center Street south to its intersection with Forest Street.

There shall be no parking on the west side of Fourth Street from its intersection with Forest Street south to its intersection with West Whitewater Street.

Ordinance introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Taylor. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. Adopted: May 5, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**APPOINTMENT OF CITIZEN MEMBERS TO BOARDS AND COMMISSIONS.** City Manager Brunner and Council President Singer met and have made the following

recommendations for appointments to Boards and Commissions: **Birge Fountain Subcommittee** – reappoint Rusty Fero; **Cable TV Committee** – John Newhouse, Scott Coenen and Jay Craggs; **Handicapped Discrimination Commission** – Kim Krebs, Laura Jacobs and Kevin Martin; **CDA** – reappoint Jeff Knight; **Ethics Committee** – Harriet Kaluva and David Stone; **Landmarks Commission** – Kim Krebs, Kathleen Lashley and Mariann Scott; **Library Board** – reappoint Sharon Knight; **Park & Recreation Board** – reappoint David Stone and Prue Negley; **Plan Commission** – Karen Coburn, Thomas Miller, Rod Dalee, Kevin Martin (alternate) and Greg Meyer (alternate); and **Tree Commission** – Brenda Neumeister and Tom Miller. It was moved by Binnie and seconded by Winship to approve appointment of citizen members as presented. Board of Zoning Appeals appointments will be delayed until applications can be reviewed again. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

**APPROVAL OF CONTRACT WITH STRAND ASSOCIATES FOR WASTEWATER TREATMENT PLANT EQUIPMENT REPLACEMENT.** Wastewater Treatment Plant Director Reel was present and stated that there is an opportunity for a grant to deal with needs of the older Wastewater Treatment Plant facility. City Manager Brunner stated that the City must expend the funds for the report, but that in the event the grant is awarded, reimbursement is possible. Brunner stated that even if the grant is not awarded, the study will be useful in the planning process for upgrades. It was moved by Winship and seconded by Olsen to approve a contract with Strand Associates for Wastewater Treatment Plant Equipment replacement for a sum not to exceed \$315,000. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

**APPROVAL OF CONTRACT WITH STRAND ASSOCIATES FOR DESIGN OF USER CHARGE SEWER RATES SYSTEM.** Presented for approval was an agreement with Strand Associates for a user charge system for the Wastewater Treatment Plant. It was moved by Winship and seconded by Olsen to approve a contract with Strand Associates for a design and user charge sewer rates system, for a sum not to exceed \$25,000. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

**APPROVAL OF PURCHASE OF BACKHOE FROM YALE EQUIPMENT AND SERVICES, MENOMONEE FALLS WI FOR \$61,750.00.** DPW Director Fischer indicated that the City's 1990 backhoe is scheduled for replacement this year and that DPW is recommending that a second backhoe be purchased and that the existing backhoe be kept. The backhoe is used on an almost daily basis by either DPW, Water, Wastewater and Stormwater departments. Quotes were received from six vendors. It was moved by Olsen and seconded by Taylor to approve purchase of a backhoe in the amount of \$61,750.00 from Yale Equipment and Services. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

**CERTIFICATION OF SOUTH NEIGHBORHOOD PLAN.** A motion was made by Binnie and seconded by Olsen to approve certification of the South Neighborhood Plan presented to Council. Plan Commission held their public hearing on the plan on 4/20/09, at which time the Plan was also approved by the Planning and Architectural Review Commission. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

**DISCUSSION ON BOARD AND COMMISSION ATTENDANCE POLICY.** Taylor would like to see attendance improve at Board and Commission meetings, and to see a member dismissed from the Board or Commission automatically when absences reach a certain level. Taylor requested that the attendance policy be brought back to Council for review and possible change.

**COUNCILMEMBER REQUEST FOR FUTURE AGENDA ITEMS.** None.

**EXECUTIVE SESSION. ADJOURN TO EXECUTIVE SESSION TO RECONVENE, PER WISCONSIN STATUTES 19.85(1)(C) “CONSIDERING EMPLOYMENT, PROMOTION, COMPENSATION OR PERFORMANCE EVALUATION DATA OF ANY PUBLIC EMPLOYEE OVER WHICH THE GOVERNMENTAL BODY HAS JURISDICTION OR EXERCISES RESPONSIBILITY” AND 19.85(1)(E) “DELIBERATING OR NEGOTIATING THE PURCHASE OF PUBLIC PROPERTIES, THE INVESTING OF PUBLIC FUNDS, OR CONDUCTING OTHER SPECIFIED PUBLIC BUSINESS, WHEEVER COMPETITIVE OR BARGAINING REASONS REQUIRE A CLOSED SESSION.”** It was moved by Olson and seconded by Winship to adjourn to executive session to reconvene, per Wisconsin Statutes 19.85(1)(c) “considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility” and 19.85(1)(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 which require a closed session.” Items to be discussed: Teamsters dispatch union negotiations; possible ratification of 2009-2011 Teamsters contract (Dispatch) and University Technology Park Acquisition. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

**RECONVENE INTO OPEN SESSION AND POSSIBLE RATIFICATION OF 2009-2011 TEAMSTERS DISPATCH UNION CONTRACT FOR 2009-2011.** The meeting reconvened from executive session at 9:45 pm. A motion was made by Winship and seconded by Olsen to approve the Teamsters dispatch union contract for 2009-2011. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor.

**ADJOURNMENT.** A motion was made by Olsen and seconded by Winship to adjourn the meeting at 9:50 p.m. Motion carried by unanimous voice vote.

Respectfully Submitted,

Michele R. Smith, City Clerk