

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

July 7, 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 Attorney Wallace McDonell.

APPROVAL OF PAYMENT OF INVOICES PROCESSED THROUGH July 3, 2009.

It was moved by Olsen and seconded by Winship to approve payment of invoices processed through July 3, 2009 in the amount of \$133,779.20. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

ACKNOWLEDGMENT OF RECEIPT AND FILING OF CDA MINUTES OF 6/1/2009.

It was moved by Olsen and seconded by Winship to approve CDA Minutes of 6/1/09. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

STAFF REPORTS: City Manager Brunner reported that the biennial State budget was signed into law on June 29 with a total shared revenue drop of 3.5%. Whitewater's decline is 1.9% (\$56,000). Cuts to transportation aids are a little higher, amounting to 2% for 2010 and 3% for 2011. Next year's levy limit will be 3%. Tipping fees have increased from \$5.90 to \$13.00. The State has passed a mandate for maintenance of local police and fire services based on shared revenue. This year the city has frozen some open positions. Next year's budget will require more spending reduction. There will be budget working sessions scheduled in August to prepare for the next budget.

CITIZEN COMMENTS: None.

COMMON COUNCIL ANNOUNCEMENTS. None.

RESOLUTION AUTHORIZING SUBMISSION OF GRANT APPLICATION FOR FIRE HOUSE CONSTRUCTION AIDS.

City Manager Brunner provided Council with site plans for the improvements to the Fire Station. Brunner stated that the grant application would be for funds from the US Department of Homeland Security to provide: 1) addition of two bays for trucks and equipment; 2) small sleeping area with storage above it; 3) more secure handicapped accessible entry way separate from the police entrance of the building. The total cost would be \$1.4 million for the 8,000 square feet of specialized space. Matching funds may be required.

**RESOLUTION AUTHORIZING SUBMISSION OF GRANT APPLICATION FOR
FIREHOUSE CONSTRUCTION AIDS.**

WHEREAS, the City of Whitewater has planned for several years the construction of an addition to the existing fire Station to provide for additional vehicle and equipment storage, overnight sleeping quarters and to improve accessibility; and

WHEREAS, funds have become available through the federal A.R.R.A. Assistance to Firefighters Fire Station Construction Grants administered by the U.S. Department of Homeland Security to fund such fire station construction projects; and

WHEREAS, the City and Whitewater Fire / EMS Department desires to apply for such funding (no local match required).

NOW THEREFORE, BE IT RESOLVED, that the City of Whitewater Common Council hereby authorizes Kevin Brunner, City Manager, to act on behalf of the City of Whitewater to submit an application to the Department of Homeland Security for any financial aid that may be available as well as to take any necessary action to undertake, direct and complete the approved project.

BE IT FURTHER RESOLVED, that the City of Whitewater will comply with State or Federal rules for this particular grant program and will obtain from the Department of Homeland Security, approval in writing before any change is made in the use of the project site.

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

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

SECOND READING OF ORDINANCE PROHIBITING HUNTING ON CITY OWNED LAND -SECOND READING.

ORDINANCE PROHIBITING HUNTING ON CITY-OWNED LAND.

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

Section 1: Whitewater Municipal Code, Chapter 7.72, Subsection 7.72.045, is hereby created to read as follows:

7.72.045. Hunting is prohibited on all City of Whitewater owned land, unless the hunting is allowed under an established hunting program authorized and approved by the City Council.

Ordinance introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ADOPTED: July 7, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**ORDINANCE AMENDING CHAPTER 11.44 “SNOWMOBILES ON CITY PROPERTY”
(PROHIBITING SNOWMOBILE OPERATION IN CITY PARKS) – SECOND
READING.**

There was debate on whether snowmobile use should be prohibited on the lakes due to safety and noise issues. Amundson stated that the Park and Recreation Committee’s opinion is that snowmobiles interfere with the residential enjoyment of the small lakes. Stewart noted that there has been no previous problem. It was moved by Winship and seconded by Taylor to amend the ordinance by deleting language allowing snowmobiles on Cravath and Trippe Lakes. AYES: Taylor, Winship, Binnie, Singer, Kienbaum. NOES: Olsen, Stewart.

**ORDINANCE AMENDING
CHAPTER 11.44 SNOWMOBILES**

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

Section 1: Whitewater Municipal Code, Chapter 11.44, Subsection 11.44.020, is hereby amended to read as follows:

11.44.020 Operation within city limited.

(a) Except as herein provided, no person, firm, or organization shall operate or cause to be operated any snowmobile within the city limits.

(b) The following shall be the exceptions. Snowmobiles may be operated:

(1) Upon the operator’s private property;

(2) Upon the private property of another person, firm or organization from whom the operator has received prior consent from the owner;

(3) Upon such public or private property under the control of the city council as the council may from time to time designate as snowmobile areas. However, snowmobiles are prohibited at all times from operation in any park in the City of Whitewater.

Section 2: Whitewater Municipal Code, Chapter 11.44, Subsection 11.44.030, is hereby amended to read as follows:

11.44.030 Authority to prohibit use of authorized areas.

The city manager or his/her duly authorized representatives may prohibit the use of designated public snowmobile operation areas at such times as he or she may

see fit. The City Manager's failure to prohibit the use of said designated public areas during such times as the same may be unsafe for snowmobile traffic shall not render the city, its manager or its duly authorized representatives liable for damages sustained as a result of the use of said areas during a time when the same are unsafe for travel; all travel in said areas within the jurisdiction of the city shall be at the risk of the traveler. This chapter shall not be construed so as to render the city, its manager or other duly authorized representatives liable for damages to those engaged in permitted travel under this chapter, it being the intent of this chapter to preserve the immunities granted the city under Wisconsin Statutes and common law.

Section 3: Whitewater Municipal Code, Chapter 11.484, Subsection 11.48.110, is hereby amended to read as follows:

Ordinance introduced by Councilmember Binnie, who moved its adoption. Seconded by Councilmember Kienbaum. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None. ADOPTED: July 7, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

ORDINANCE AMENDING CHAPTER 11.48 "MISCELLANEOUS PROVISIONS CONCERNING VEHICLES" (PROHIBITING RECREATIONAL VEHICLE OPERATION IN CITY PARKS) – SECOND READING. City Attorney McDonell stated that language had been added by him to clarify that motorboats would be allowed on Whitewater's lakes.

SECOND READING OF ORDINANCE AMENDING CHAPTER 11.48 MISCELLANEOUS PROVISIONS CONCERNING VEHICLES.

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

11.48.110 Recreational vehicles prohibited in city parks.

- (a) It is unlawful for any person to operate a motorcycle, minibike, snowmobile, dune buggy, go cart, all-terrain vehicle or other recreational vehicle or motor vehicle in any park in the City of Whitewater. This section does not prohibit a person from legally operating a motor vehicle on public roads within parks; from parking on park property adjacent to public roads in the park; or from operating motorboats on lakes that are part of a park.
- (b) It is unlawful for any person to operate a bicycle within Indian Mounds Park.

Ordinance introduced by Councilmember Binnie, who moved its adoption. Seconded by Councilmember Kienbaum. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ADOPTED: July 7, 2009.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

ORDINANCE AMENDING CHAPTER 5.19 “SIDEWALK CAFÉ” PERMITS – SECOND READING. Tami Brodnicki (Executive Director, Downtown Whitewater, Inc.) was against additional restriction and commented that there have been no permits requested even without more restrictions. Some establishments would like to sell more food and could see this as a way to increase food sales from present levels. Dennis Salverson (Coyote Grill) stated that it is a good concept although Center Street has no space for it. Luis Sanchez (Hawks Nest) stated that he invested in his establishment partly because he thought he would be able to serve outdoors. Olsen indicated that he had been talking to business owners and did not find any that were currently interested in applying for a permit.

**ORDINANCE AMENDING CHAPTER 5.19
SIDEWALK CAFE PERMIT**

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

Section 1: Whitewater Municipal Code, Chapter 5.19 shall be amended to read as follows:

A. Purpose: To further encourage the revitalization of the downtown and other areas of the city, including the development of social and economic activity, the city council finds and determines:

1. That there exists a need for outdoor eating facilities in certain areas of the city to provide a unique environment for relaxation, social interaction, and food consumption.

2. That sidewalk cafes will permit enhanced use of the available public rights of way, will complement restaurants operating from fixed premises, and will promote economic activity in the area.

3. That the existence of sidewalk cafes encourages additional pedestrian traffic but their presence may impede the free and safe flow of pedestrians. Therefore, a need exists for regulations and standards for the existence and operation of sidewalk cafes to ensure a safe environment.

4. That the establishment of permit conditions and safety standards for sidewalk cafes is necessary to protect and promote public health, safety, and welfare.

B. Definitions.

1. "Sidewalk cafe" shall mean an expansion of a full service restaurant creating an outdoor dining facility on part of the public right of way that immediately adjoins the licensed premises for the purpose of consuming food or beverages prepared at the full service restaurant adjacent thereto. "Full service restaurant" shall mean an establishment requiring a State of Wisconsin restaurant license, and whose food sales are greater than twenty (20) percent of its gross receipts.

C. Permit required.

1. A full service restaurant may apply to the neighborhood services director or his or her designee for a permit to allow a restaurant to operate a sidewalk cafe. The neighborhood services director or designee may approve, approve with conditions or restrictions, or deny a permit where necessary to protect the public health, safety or welfare, to prevent a nuisance from developing or continuing, or due to violation of this section, the city code of ordinances, or applicable state or federal law.

2. Before a permit may be issued, the application and site plan shall be reviewed for approval by the city fire department and city building inspector.

3. Each permit shall be effective for one year from July 1st until June 30.

4. The permit issued may be transferred to a new owner only for the location and area listed in the permit. The transferred permit shall be valid only for the remainder of the period for which it was originally issued. A new certificate of insurance must be filed with the city before the permit transfer.

D. Permit application. Application for a permit to operate a sidewalk cafe shall be submitted to the department of public works and shall include at least the following information:

1. Completed city application form.

2. Copy of a valid restaurant license issued by the State of Wisconsin.

3. Copy of a current certificate of commercial liability insurance in the amount of at least \$100,000 per occurrence.

4. A general layout drawing, which accurately depicts the dimensions of the existing sidewalk area and adjacent private property, the proposed location of the sidewalk cafe, size and number of tables, chairs, steps, planters, and umbrellas, location of doorways, trees, parking meters, sidewalk benches, trash receptacles, light poles and any other sidewalk obstructions, either existing or proposed, within the pedestrian area. This layout shall be submitted on 8-1/2" x 11" paper, suitable for reproduction.

5. Photographs, drawings, or manufacturer's brochures fully describing the appearance and dimensions of all proposed tables, chairs, umbrellas, barriers or other objects related to the sidewalk cafe.

6. A copy of the menu showing food choices available in the sidewalk café.

E. Permit fees.

There shall be no application fee or renewal of permit fee for sidewalk café permits.

F .Sidewalk cafe standards. The following standards, criteria, conditions, and restrictions shall apply to all sidewalk cafes, provided, however, that the neighborhood services director or designee may impose additional conditions and restrictions to protect and promote the public health, safety, or welfare, to prevent a nuisance from developing or continuing, and to comply with this section, the city of Whitewater code of ordinances, and all applicable state and federal laws.

1. Sidewalk cafes are restricted to the public right of way immediately adjacent to the licensed full service restaurant to which the permit is issued.

2. Tables, chairs, umbrellas or other fixtures in the sidewalk cafe:

a. Shall not be placed within five feet of fire hydrants, alleys, or bike racks. Shall not be placed within five feet of a pedestrian crosswalk or corner curb cut.

b. Shall not block designated ingress, egress, or fire exits from or to the restaurant, or any other structures.

c. Shall be readily removable and shall not be physically attached, chained or in any manner affixed to any structure, tree, signpost, light pole, or other fixture, curb, or sidewalk.

d. Shall be removed when the sidewalk cafe is not in operation.

e. Shall be maintained in a clean, sanitary and safe manner.

3. Sidewalk cafes shall be located in such a manner that a distance of not less than four feet is maintained at all times as a clear and unobstructed pedestrian path. For the purpose of the minimum clear path, parking meters, traffic signs, trees, light poles and all similar obstacles shall be considered obstructions.

4. The sidewalk cafe, along with the sidewalk and roadway immediately adjacent to it, shall be maintained in a neat and orderly manner at all times. Debris shall be removed as required during the day and again at the close of each business day.

5. Plant tubs may be located in the sidewalk cafe with the approval of the neighborhood services director or designee. Plant tubs shall be maintained in a safe, neat, clean, and presentable manner.

6. Umbrellas and other decorative material shall be made of treated wood, canvas, cloth, or similar material that is manufactured to be fire-resistant. No portion of an umbrella shall be less than six feet eight inches above the sidewalk.

7. Signs to be used in the sidewalk cafe shall be in accordance with chapter 19.54 of the city code of ordinances. However, the neighborhood services director may allow temporary easel signs.

8. No food preparation, food or beverage storage, refrigeration apparatus, or equipment shall be allowed in the sidewalk cafe.

9. No amplified entertainment shall be allowed in the sidewalk cafe unless authorized as part of a special event.

10. A copy of the site plan, as approved in conjunction with the current sidewalk cafe permit, shall be maintained on the permittee's premise and shall be available for inspection by

city personnel at all times.

11. The sidewalk cafe permit covers only the public right of way described in the permit. Tables and chairs on private property will be governed by other applicable regulations.

12. Sidewalk cafes may only operate from 7:00 a.m. to 10:00 p.m. Alcohol may only be served from 8:00 a.m. to 8:00 p.m.

13. The use of a portion of the public right of way as a sidewalk cafe shall not be an exclusive use. All public improvements, including, but not limited to trees, light poles, traffic signals, pull boxes, or manholes, or any public initiated maintenance procedures, shall take precedence over said use of the public right of way at all times. The City Manager, Chief of Police, the neighborhood services director or their designees may temporarily order the removal of the sidewalk cafe for special events, including but not limited to, parades, sponsored runs or walks, or for public health and safety reasons.

14. If alcohol will be offered for consumption in the sidewalk café, the area encompassing the sidewalk café shall be roped off or otherwise enclosed by a freestanding barrier. The barrier shall be at least three feet high. The neighborhood services director shall approve the barrier to assure that it is safe and visually appealing. Any alcohol to be consumed in the sidewalk café area must be served to the patron by an employee of the establishment within the sidewalk café area. Alcohol may not be taken by patrons from the tavern to the sidewalk café area. Any patron consuming alcohol in the sidewalk cafe area must be seated.

15. The city, its officers and employees, shall not be responsible for sidewalk cafe fixtures that are relocated or damaged.

G. Alcohol licensing and service of alcohol beverages.

1. A permittee may sell and serve alcohol beverages in an outdoor cafe only if the permittee complies with all the requirements for obtaining an alcohol beverage license, and the sidewalk cafe is listed on the alcohol beverage license application as being an part of the licensed

premises.

2. Alcohol may be served at sidewalk cafes under the following conditions:

a. The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.

b. The retail alcohol beverage license premises description includes the sidewalk cafe in the description of the licensed premises as an extended area.

c. The retail alcohol beverage license permits the sale of the type of alcohol beverages to be served in the sidewalk cafe.

d. Alcohol beverages are sold and served by the licensee or licensee's employees and sold or served only to patrons seated at tables in the sidewalk cafe.

e. Alcohol beverages are served by the licensee or the licensee's employees in compliance with alcohol beverage laws, ordinances and regulations.

f. Alcohol beverages may only be served at the sidewalk cafe when food service is available through the licensed establishment.

g. The permittee shall be responsible for policing the sidewalk cafe area to prevent underage persons from entering or remaining in the sidewalk cafe, except when underage persons are allowed to be present on the licensed premises under applicable laws.

h. The permittee shall not allow patrons of the sidewalk cafe to bring alcohol beverages into the sidewalk cafe from another location, nor to carry open containers of alcohol beverages about in the sidewalk cafe area, nor to carry open containers of alcohol beverages served in the

sidewalk cafe outside the sidewalk cafe area.

i. The bar from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the sidewalk cafe area.

j. At times of closing or during times when consumption of alcohol beverages is prohibited, permittee shall remove from the sidewalk cafe area all containers used for or containing alcohol beverages. No container of alcohol beverages shall be present in the sidewalk cafe between 8:00 p.m. and 8:00 a.m.

H. Liability and insurance. By obtaining the sidewalk cafe permit, the permittee agrees to indemnify, defend, save, and hold harmless the City, its officers and employees, from any and all claims, liability, lawsuits, damages, and causes of action, which may arise out of the permit or the permittee's activity on the sidewalk cafe. The permittee shall sign an indemnification agreement approved by the city attorney prior to operation of the sidewalk cafe.

1. The permittee shall maintain in full force and effect commercial liability insurance in the amount of at least \$100,000 per occurrence for bodily injury and property damage, with the city of Whitewater named as an additional insured, shall show that the coverage extends to the area used for the sidewalk cafe.

2. The permittee shall provide the city with an original certificate of insurance as evidence that the requirements set forth in this section have been met prior to commencing operations.

I. Revocation or suspension. The approval of a sidewalk cafe permit is conditional at all times. A sidewalk cafe permit may be revoked or suspended by the neighborhood services director or designee where necessary based on a violation of this ordinance or to protect the public health, safety, or welfare, to prevent a nuisance from developing or continuing, in emergency situations, or due to noncompliance with this section, the city code of ordinances, or applicable state or federal law.

J. Appeal. A revocation, suspension, or denial of a permit may be appealed by the permittee to the alcohol licensing committee. If the neighborhood services director's decision is appealed, the alcohol licensing committee shall hold a hearing and either grant, grant with conditions, or deny the permit. The permittee holder or applicant shall be notified of the alcohol licensing committee appeal meeting and shall have the right to be heard prior to a decision. The alcohol licensing committee's decision shall be final and shall not be appealable to the full council.

K. Penalty. The penalty for violation of this section shall be a forfeiture of not less than \$50 or more than \$200 per day for each violation, together with the costs of prosecution.

It was moved by Olsen and seconded by Taylor to amend the ordinance amending Chapter 5.19 "sidewalk café" permits to add that: 1) a copy of the menu be submitted with the application. 2) the establishment must have at least 20% of their revenue come from food sales and 3) the hours of outdoor service would be limited to 8:00 AM to 8:00 PM. AYES: Olsen, Taylor, Winship, Singer, Stewart. NOES: Binnie, Kienbaum.

It was moved by Olsen and seconded by Taylor to approve the ordinance as amended at this meeting. AYES: Olsen, Taylor, Winship, Singer, Stewart, Binnie. NOES: Kienbaum.

It was moved by Taylor and seconded by Olsen to suspend the rules for second reading for the ordinance amending chapter 5.19 "Sidewalk Café" permits as just approved. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum. NOES: Stewart.

APPOINTMENT OF REPLACEMENT COUNCILMEMBER TO UNIVERSITY TECHNOLOGY PARK BOARD (DUE TO RESIGNATION OF COUNCILMEMBER SINGER). It was moved by Binnie and seconded by Olsen to appoint Councilmember Stewart to serve on the University Technology Park Board to replace Councilmember Singer. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

ACTION ON ALCOHOL LICENSING COMMITTEE'S RECOMMENDATION TO ISSUE BEVERAGE OPERATOR'S LICENSE TO GREGORY DOWDEN. It was moved by Olsen and seconded by Singer to approve a beverage operator's license Gregory Dowden as recommended by the Alcohol Licensing Committee on the condition that he will receive no additional citations in the coming year. Dowden must report any violations to the City and the City will check independently to make sure that this is so. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None.

COUNCILMEMBER REQUESTS FOR FUTURE AGENDA ITEMS. None.

ADJOURNMENT. It was moved by Olsen and seconded by Stewart to adjourn the meeting. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. The meeting adjourned at 7:45 p.m.

Respectfully Submitted,

Michele R. Smith
City Clerk