

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

**June 15, 2010**

The regular meeting of the Common Council was called to order by Council President Patrick Singer. MEMBERS PRESENT: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. MEMBERS ABSENT: None. LEGAL COUNSEL PRESENT: Wallace McDonell

It was moved by Olsen and seconded by Binnie to approve the Council minutes of 5/4/10 and to acknowledge receipt and filing of the CDA minutes of 4/19/10; the Park and Recreation Minutes of 5/10/10; the Financial Reports for May, 2010, and the Report of Manually-Produced Checks for May, 2010. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**APPROVAL OF PAYMENT OF INVOICES.** It was moved by Olsen and seconded by Binnie to approve payment of invoices totaling \$139,233.50. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**STAFF REPORTS:** City Manager Brunner and Councilmember Olsen presented the Whitewater High School Track team a key to the City in honor of their championship status at the State competition. City Manager Brunner reported on his attendance at the Town and Gown conference, and indicated that other communities have called him seeking advice on how to consider starting a technology park. Brunner reminded Council of the ceremony naming the bypass as the Stephen Ambrose Memorial Highway scheduled for June 25<sup>th</sup>. Brunner also indicated that a meeting regarding Tratt Street sidewalks is scheduled for June 17<sup>th</sup>.

**CITIZEN COMMENTS:** None.

**COMMON COUNCIL ANNOUNCEMENTS:** None.

**ADOPTING WASTEWATER UTILITY COMPLIANCE MAINTENANCE ANNUAL REPORT.**  
The annual Compliance Maintenance Annual Report was presented for approval.

**CITY OF WHITEWATER  
Wisconsin Department of Natural Resources  
Compliance Maintenance Annual Report Resolution  
2009**

WHEREAS, it is a requirement under a Wisconsin Pollutant Discharge Elimination System (WPDES) permit issued by the Wisconsin Department of Natural Resources to file a Compliance Maintenance Annual Report (CMAR) for its wastewater facilities under Wisconsin Administrative Code NR 208;

WHEREAS, it is necessary to acknowledge that the governing body has reviewed the CMAR;

WHEREAS, it is necessary to provide recommendations or an action plan for all CMAR section grades of "C" or less and/or overall grade point average <3.00;

BE IT RESOLVED, the city council in the City of Whitewater informs the Department of Natural Resources that the 2009 CMAR was reviewed and this resolution was voted on as follows: AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

Kevin M. Brunner, City Manager

Michele R. Smith

**RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING WITH TOWN OF  
WHITEWATER RELATING TO HOWARD ROAD.** Presented for approval was a Memorandum of

Understanding between the City and the Township of Whitewater relating to responsibilities of both parties pertaining to the Howard Road public improvements scheduled for completion by the City in 2010.

**RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING WITH TOWN OF  
WHITEWATER FOR HOWARD ROAD PUBLIC IMPROVEMENTS (WHITEWATER  
UNIVERSITY TECHNOLOGY PARK DEVELOPMENT)**

WHEREAS, the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, and the town of Whitewater, Walworth County, Wisconsin, wish to cooperate in the City's planned public improvements to Howard Road necessary for the development of the adjacent Whitewater University Technology Park, and

WHEREAS, the City of Whitewater and Town of Whitewater wish to clearly identify in an agreement the responsibilities of both parties pertaining to the Howard Road public improvements scheduled for completion by the City in 2010, and

WHEREAS, a Memorandum of Understanding has been negotiated by the two parties and the Town of Whitewater Board of Supervisors approved this Memorandum of Understanding at its meeting held on June 9, 2010.

NOW THEREFORE, BE IT RESOLVED, that the Common Council of the City of Whitewater authorizes the execution of the Memorandum of Understanding between the City of Whitewater and the Town of Whitewater for the Howard Road Public Improvement Project and authorizes the City Manager and City Clerk to execute the agreements and documents necessary for said approval; and

BE IT FURTHER RESOLVED, that approval of this Memorandum of Understanding is conditioned upon final approval of the Howard Road Improvements (Whitewater Technology Park Development) public works contract by the Whitewater Common Council.

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

Kevin M. Brunner, City Manager

Michele R. Smith

**FIRST READING OF ORDINANCE AMENDING DOG LICENSE TERM SECTION.** City Treasurer DeKemper requested that the date considered "late" for a purchase of a dog license be changed from March 1<sup>st</sup> to April 1<sup>st</sup>.

**ORDINANCE AMENDING DOG LICENSE TERM SECTION**

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

**Section 1.** Whitewater Municipal Code Chapter 9.08, Section 9.08.020(e)(2) is hereby amended to read as follows:

(2) Term. All licenses shall be issued for a term of one year, commencing with the first day of January of each year, and terminating as of midnight on the last day of the licensing year. Application for licenses must be made from January 1<sup>st</sup> to the last day of February of each year without penalty. Any license issued after April 1<sup>st</sup> of each year shall pay an additional five dollars, unless the owner can conclusively illustrate that the animal has been acquired by him/her within the last thirty days prior to application for a

license, or that applicant has established city residency within the last thirty days prior to application.

**Section 2.** This ordinance shall take effect upon passage and publication as provided by law. Ordinance introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Binnie. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None. FIRST READING APPROVED: June 15, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF AN ORDINANCE AMENDING SUBSECTION 5.28.035 OF THE TRANSIENT MERCHANT ORDINANCE AND WAIVER OF REQUIREMENT FOR SECOND READING OF ORDINANCE.** Requested was amendment to the transient merchant licenses. Proposed changes were the extension of the closing time and the procedure for which allowed locations will be determined. It was moved by Taylor and seconded by Olsen to amend the closing time listed on the ordinance from 12:00 a.m. to 1:00 a.m. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**ORDINANCE AMENDING SUBSECTION 5.28.035  
OF THE TRANSIENT MERCHANT ORDINANCE**

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

**Section 1.** Whitewater Municipal Code Section 5.28.035 is hereby amended to read as follows:

Transient merchants selling food in a B-2 zoning district shall, in addition to all other regulations provided by this chapter, be subject to the following regulations:

(a) Outdoor food sales by transient merchants shall be prohibited in the B-2 zoning district, except as allowed by this section.

(b) Food sales may not begin until nine a.m. and shall conclude by 1:00 a.m.

(c) Food sale sites shall be limited to the following locations:

1. On First Street sidewalks between Main and North Street.

2. In designated areas on sidewalks as set forth on a list of sites to be compiled by the Neighborhood Services director and approved by the City Manager. In compiling the list of sites, the Neighborhood Services director shall give strong consideration to sites that are in front of vacant buildings. Said list shall be made available to the general public at the City Clerk's office. If the vendor is operating in an area other than a First Street sidewalk, the location of the vendor site shall be listed on the vendor's license.

(d) Equipment, products and/or apparatus shall be located so as to allow a four-foot unobstructed pedestrian path on the sidewalk at all times.

(e) The food vendor shall use a cart with wheels for all cooking and food storage.

(f) The individuals conducting the sales shall be responsible for the cleanup of the site, and any debris or litter in the immediate area caused by the operation. Vendors shall provide a waste basket for use by customers at their sales location.

(g) The individuals and the organization conducting the sales shall be responsible for complying with all applicable rules and regulations provided for in this section.

This section shall not in any way limit the rights of civic non-profit organizations to conduct food sales under Section 5.28.030(b).

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

Ordinance introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Binnie. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None. APPROVED: June 15, 2010. It was then moved by Taylor and seconded by Olsen to waive the requirement for a second reading of the ordinance. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None. ADOPTED: June 15, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**DISCUSSION REGARDING ABOLISHMENT OF THE URBAN FORESTRY COMMISSION.** City Manager Brunner indicated that two citizen members of the Urban Forestry Commission contacted him regarding concerns pertaining to the Committee. The citizens felt the committee should be abolished. Brunner identified the concerns “egregious” and indicated that several members of the Commission as well as one citizen who works closely with them do not respect the proper role of the Commission as advisory. Brunner stated this has led to severe dysfunction and much additional time and effort by city staff. He indicated there is also a demoralizing impact on the staff. Urban Forestry Commission member Tom Miller recommended abolishment of the committee. Councilmember Kienbaum stated that we have a trained forester on staff, and his decisions should be respected. Councilmember Binnie indicated that he did not think the Memo issued by City Manager Brunner was well thought out, and that oozed with emotion. He did not believe there was evidence that “egregious” offenses occurred. Binnie felt that actions of certain individuals within the community are being confused with the Committee. One concern mentioned in Brunner’s memo was the fact that two individuals, one of them an Urban Forestry Commission member, wrote a letter to the State indicating that the City of Whitewater did not qualify for Tree City USA status. Binnie noted that the Urban Forestry member submitting the letter never made mention of his position on the Urban Forestry Committee, and wrote it as a private citizen. Binnie believes that the importance of the Tree City award is being overstated as the requirements to comply have fairly simple standards to meet. Binnie found the remainder of the materials in the backup material irrelevant since we asked the Urban Forestry Commission to make a fresh start, and the backup material contained items that occurred prior to the formation of the Committee. No action was taken on the ordinance. Councilmember Taylor requested a future Council discussion and possible action relating to removal of one member from the Committee.

**SECOND READING OF ORDINANCE ADOPTING STATEWIDE SMOKING BAN STATUTE.**

**ORDINANCE ADOPTING THE STATEWIDE SMOKING BAN**

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

SECTION 1: Whitewater Municipal Code Chapter 5.18 is hereby created to read as follows:

**5.18.010 - Adoption of Wisconsin Statute §101.123 – Statewide Smoking Ban.**

The provisions of Section 101.123 of the Wisconsin Statutes, and all acts amendatory thereof, are adopted as a portion of this chapter.

**5.18.020 – Definition of Enclosed Area.**

In addition to the definition of “enclosed indoor area” set forth in Section 101.123, an enclosed indoor area for the purposes of this ordinance shall include all space between a floor and a ceiling that is

bounded by walls, doors, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge screen with an 18 by 16 mesh count is not a wall.

5.18.030 – Penalty.

The penalty for violation of this section shall be a forfeiture of not less than \$50.00 nor more than \$150.00 for a first offense, and not less than \$100.00 nor more than \$200.00 for a second offense, and not less than \$150.00 nor more than \$300.00 for any third or subsequent offense.

Ordinance introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: Taylor. ABSENT: None. ADOPTED: June 15, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**SECOND READING OF ORDINANCE AMENDING SCHEDULE OF DEPOSITS (FOR SMOKING BAN VIOLATIONS)**

**AN ORDINANCE AMENDING SECTION 1.21.010  
SCHEDULE OF DEPOSITS**

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

SECTION 1: Whitewater Municipal Code Section 1.21.010 is hereby amended to add the following:

<u>CHAPTER OR SECTION NUMBER</u>	<u>OFFENSE</u>	<u>DEPOSITS AND COSTS</u>
5.18	Violation of Smoking Ban Ordinance	1 <sup>st</sup> offense - \$100.00 plus statutory penalty assessment, jail assessment, court costs and crime lab assessment
		2 <sup>nd</sup> offense - \$150.00 plus statutory penalty assessment, jail assessment, court costs and crime lab assessment
		3 <sup>rd</sup> and subsequent offense – \$200.00 plus statutory penalty assessment, jail assessment, court costs and crime lab assessment

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

Ordinance introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: Taylor. ABSENT: None. ADOPTED: June 15, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**RENEWAL OF CLASS “A” BEER LICENSE FOR WALGREENS, KATHY SCHULTZ, AGENT.**

It was moved by Olsen and seconded by Binnie to approve the renewal of the Class “A” Beer License for Walgreen’s, 1041 W. Main Street, Whitewater. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**APPROVAL OF “CLASS B” BEER AND LIQUOR LICENSE FOR TROEMEL’S LAKESIDE BANQUETS, LINDA TROEMEL, AGENT.**

Alcohol Licensing Committee has met and recommended renewal of the beer and liquor license for Troemel’s Lakeside Banquets, Linda Troemel, Agent, 292 S. Wisconsin Street. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**APPROVAL OF AGREEMENT WITH WISCONSIN SOUTHERN RAILROAD.**

It was moved by Olsen and seconded by Winship to approve the agreement with Wisconsin Southern Railroad to reconstruct the railroad crossings at E. Main Street and Howard Road. It was moved by Olsen and seconded by Winship to approve the agreement as presented. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH UW-WHITEWATER REGARDING CAMPUS POLLING PLACE.**

A Memo of Understanding setting forth the location(s) of elections for Aldermanic District 2 and Ward 10 (a portion of Aldermanic District 5) was presented. The agreement states, that effective 1/1/11, the Gubernatorial election, the Presidential Primary election, and the Presidential election will be held at the Hamilton Room on the UWW Campus (for Ward 10 and for Aldermanic District 2). All other elections will be held at the Downtown Armory. It was moved by Olsen and seconded by Winship to approve the MOU between the City and the University. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**APPROVAL OF CHANGE ORDER #1 FOR WHITEWATER INNOVATION CENTER.**

City Manager Brunner indicated that early on in the excavation of the foundation footings and walls, some unsuitable soils were discovered. Additional costs of \$11,857 to the general contractor and a \$522 fee for the construction manager is necessary. It was moved by Olsen and seconded by Binnie to approve the Change Order. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**REQUESTS FOR FUTURE AGENDA ITEMS.**

Councilmember Winship asked the City Manager to re-examine the charge given to Boards and Commissions. Councilmember Taylor requested discussion and action to remove Richard Ehrenberg from the Urban Forestry Commission. Councilmember Kienbaum requested information on rules and regulations relating to grass and weeds, and enforcement standards.

**EXECUTIVE SESSION.**

The executive session item was removed from the Agenda.

**ADJOURNMENT.**

It was moved by Olsen and seconded by Stewart to adjourn the meeting. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None. The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Michele R. Smith, City Clerk