

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

February 21, 2013.

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: Olsen, Abbott, Winship (Arrived at 6:31), Binnie, Singer, Kidd, Crone. MEMBERS ABSENT: None. LEGAL COUNSEL PRESENT: City Atty. Wallace McDonell.

It was moved by Olsen and seconded by Binnie to approve the Council Minutes of 2/5/2013, and to acknowledge receipt and filing of the following: Landmarks Commission Minutes of 12/6/12; Report of Manually-Issued Checks for January, 2013; Financial Statements for January, 2013; Plan Commission Minutes of 12/10/12 and 1/7/13; and the Parks and Recreation Board Minutes of 1/7/13. AYES: Olsen, Abbott, Winship, Binnie, Singer, Kidd, Crone. NOES: None. ABSENT: None.

**APPROVAL OF PAYMENT OF INVOICES.** It was moved by Olsen and seconded by Binnie to approve payment of invoices in the total sum of \$163,373.77. AYES: Olsen, Abbott, Winship, Binnie, Singer, Kidd, Crone. NOES: None. ABSENT: None.

**STAFF REPORTS:** City Manager Clapper announced the creation of the “Choose Whitewater” web portal, announced that a Strategic Planning process is being undertaken, and recognized city employees on length of service. Staff members recognized were: Susan Wileman – 10 years; Sherry Pontel – 15 years; Adam Vander Steeg – 10 years; Ted Kraus – 10 years; Shawn Reif – 15 years; Kathy Gregoire – 30 years; and Mike Ciardo – 30 years. The report on the 2012 Management Plan Report was removed from the agenda. Cable Coordinator Luckett updated council on the Charter Communications conversion of analog television service to digital service. Luckett also announced the upcoming “Our Voices, Our Town” Art Walk.

**CITIZEN COMMENTS:** None.

**RESOLUTION APPROVING A CERTIFIED SURVEY MAP FOR  
WHITEWATER BUSINESS PARK PROPERTY (TROSTEL) AND RELEASE OF  
PLATTED UTILITY EASEMENTS.**

**RESOLUTION APPROVING CERTIFIED SURVEY MAP AND RELEASE OF  
PLATTED UTILITY EASEMENTS**

**WHEREAS,** the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, intends to sell approximately one (1) acre of property to Trostel, Incorporated, and

**WHEREAS,** said sale will require a certified survey map, and

**WHEREAS,** said sale will also necessitate the release of platted utility easements, and

**WHEREAS**, the City of Whitewater Plan Commission has reviewed and approved the Certified Survey Map.

Now, therefore, **BE IT RESOLVED** as follows:

1. The attached Certified Survey Map is approved and the appropriate City staff may sign the certificate of approval and all other documents necessary to show the City's approval.
2. The attached Release of Platted Utility Easements is hereby approved and the appropriate City staff may sign the release of Platted Utility Easements and all other documents necessary to complete the release.
3. The public dedications provided for in the Certified Survey Map are hereby accepted.

Resolution introduced by Councilmember Olsen who moved its adoption. Seconded by Councilmember Binnie. AYES: Olsen, Abbott, Winship, Binnie, Singer, Kidd, Crone. NOES: None. ABSENT: None. ADOPTED: February 21, 2013.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF ORDINANCE AMENDING SIDEWALK CAFÉ ORDINANCE.**

**AN ORDINANCE AMENDING CHAPTER 5.19  
SIDEWALK CAFÉ 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. is amended as follows:

- 5.19.010 - Purpose.
- 5.19.020 - Definitions.
- 5.19.030 - Permit required.
- 5.19.040 - Permit application.
- 5.19.050. - Permit fees.
- 5.19.060. - Sidewalk café standards.
- 5.19.070. - Alcohol licensing and service of alcohol beverages.
- 5.19.080. - Liability and insurance.
- 5.19.090. - Revocation or suspension.
- 5.19.100. - Appeal.
- 5.19.110. - Penalty.

**5.19.010 - 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 cafés 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 cafés 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 cafés to ensure a safe environment.
4. That the establishment of permit conditions and safety standards for sidewalk cafés is necessary to protect and promote public health, safety, and welfare.

#### **5.19.020 - Definitions.**

"Sidewalk café" shall mean an expansion of a 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 restaurant adjacent thereto. "Restaurant" shall mean an establishment holding a State of Wisconsin restaurant license.

#### **5.19.030 - 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 café. 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 or approval by the city fire department and city building inspector.
3. The permit issued may be transferred to a new owner only for the location and area listed in the permit. If the site plan will change, a new plan must be filed and approved prior to the use under the new site plan. A new certificate of insurance must be filed with the city before the permit transfer.

#### **5.19.040(a) - New Permit application.**

Application for a permit to operate a sidewalk café shall be submitted to the Department of Neighborhood Services 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 \$100,000.00 per occurrence.
4. A layout, drawn to scale, which accurately depicts the dimensions of the existing sidewalk area and adjacent private property, the proposed location of the sidewalk café, size and number of tables, chairs, steps, planters, and umbrellas, location of doorways, trees, parking meters, sidewalk benches, trash receptacles, light poles, patio heaters, and any other sidewalk obstructions, either existing or proposed, within the pedestrian area. This layout shall be submitted on eight and one-half-inch by eleven-inch 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 café.

#### **5.19.040(b) –Annual Insurance Requirement.**

The establishment shall provide a current certificate of commercial liability insurance in the amount of at least \$100,000.00 per occurrence by April 1st each year.

#### **5.19.050. - Permit fees.**

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

#### **5.19.060. - Sidewalk café standards.**

The following standards, criteria, conditions, and restrictions shall apply to all sidewalk cafés, 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 cafés 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 café:
  - 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 café is not in operation.
  - e. Shall be maintained in a clean, sanitary and safe manner.
  - f. Shall be commercial grade furniture.
3. Sidewalk cafés 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 café, 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 café 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 café 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 café unless authorized by the neighborhood services director as part of a special event.

9. No amplified entertainment shall be allowed in the sidewalk café unless authorized by the neighborhood services director as part of a special event.
10. A copy of the site plan, as approved in conjunction with the current sidewalk café permit, shall be maintained on the permittee's premise and shall be available for inspection by city personnel at all times.
11. The sidewalk café 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 cafés shall not operate after 11:00 p.m. or before 7:00 a.m.
13. The use of a portion of the public right-of-way as a sidewalk café 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 café for special events, including but not limited to, parades, sponsored runs or walks, or for public health and safety reasons.
14. If alcohol is served in the sidewalk café on any date or at any time, the area encompassing the sidewalk café shall be roped off or otherwise enclosed by a freestanding barrier on all dates and at all times while in use, even when alcohol is not being served. The barrier shall be at least three feet high. The barrier can include, but is not limited to, attractive fence segments, flowers/plants, artwork and decorative menu boards. The neighborhood services director shall approve the barrier to assure that it is safe and visually appealing.
15. The city, its officers and employees, shall not be responsible for sidewalk café fixtures that are relocated or damaged.
16. Patio heaters shall not be located within 5 ft (1.5m) of exits from an assembly occupancy (NFPA 1 56:6.20.2.3). All patio heaters shall be located a minimum distance of 5 ft. from any building with combustible siding (wood or vinyl siding). Patio heaters shall not have an unprotected, open flame. Patio heaters are subject to the approval from the Fire Department. Patio heaters may only be located within a barrier enclosure as described in section 5.19.060 14.

**5.19.070. - Alcohol licensing and service of alcohol beverages.**

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

2. Alcohol may be served at sidewalk cafés 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 café 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 café.
  - 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 café.
  - 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 café when food service is available through the licensed establishment.
  - g. The permittee shall be responsible for policing the sidewalk café area to prevent underage persons from entering or remaining in the sidewalk café, 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 café to bring alcohol beverages into the sidewalk café from another location, nor to carry open containers of alcohol beverages about in the sidewalk café area, nor to carry open containers of alcohol beverages served in the sidewalk café outside the sidewalk café area.
  - i. The bar from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the sidewalk café area.
  - j. At times of closing or during times when consumption of alcohol beverages is prohibited, permittee shall remove from the sidewalk café area all containers used for or containing alcohol beverages. No container of alcohol beverages shall be present in the sidewalk café between 11:00 p.m. and 7:00 a.m.

**5.19.080. - Liability and insurance.**

By obtaining the sidewalk café 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 café. The permittee shall sign an indemnification agreement approved by the city attorney prior to operation of the sidewalk café.

1. The permittee shall maintain in full force and effect commercial liability insurance in the amount of at least \$100,000.00 per occurrence for bodily injury and property damage, with the City of Whitewater named as an additional insured, and shall show that the coverage extends to the area used for the sidewalk café.
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.

**5.19.090. - Revocation or suspension.**

The approval of a sidewalk café permit is conditional at all times. A sidewalk café permit may be revoked or suspended by the neighborhood services director or designee if a permittee has been found in violation of this chapter on three separate occasions documented by a written warning, or where necessary based on a violation of this ordinance, to protect the public health, safety, or welfare, to prevent a nuisance from developing or continuing, emergency situations, or to comply with the city code of ordinances, or to comply with applicable state or federal law.

Ordinance introduced by Councilmember Olsen who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kidd, Crone. NOES: None. ABSTAIN: Abbott. ABSENT: None. FIRST READING APPROVED: February 21, 2013.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**BUILDING PERMIT FEES.** City Building Inspector Greg Knoll, presented comparable information related to building permit fees charged by area communities. It was noted that in the past, estimated costs for a project were used to determine a building permit fee. Basing the fee on the square footage of a project would streamline the process according to Councilmember Singer. Councilmember Binnie inquired about the financial impact on the City if the method of determining building permit fees were to change. Binnie also questioned the actual definition of the “cost” of a project. It was agreed that fees with large developments may have to be adjusted. City Manager Clapper indicated that developers are opposed to “hidden” fees that exist in the current permit fee structure. Clapper recommended that his to-be-hired Management Analyst could review the impact of the proposed building permit fee change. Council consensus was that the proposal looks good and requested that a final schedule be brought back to Council.

**AUTHORIZATION FOR CONTRACT OF SERVICES WITH RECRUITMENT FIRM TO COMPLETE DPW DIRECTOR RECRUITMENT PROCESS.** Proposals

from firms desiring to complete the DPW Director recruitment process were presented. City Manager Clapper indicated that assistance was needed with recruitment efforts service only, and that contracts could be adjusted to reflect that. After discussion, it was moved by Binnie and seconded by Olsen to approve an expenditure of up to \$4,000, with preference to use PAA Associates from Oshkosh, Wisconsin, but with the understanding that City Manager Clapper has the ability to contract with one of the other proposed firms, should need be. AYES: Olsen, Abbott, Winship, Binnie, Singer, Crone, Kidd. NOES: None. ABSENT: None.

**CITY EMPLOYEE RESIDENCY REQUIREMENTS.** It was noted that Governor Walker has made a proposal that prohibits requiring any municipal employee to live within the municipality in which they are employed. It was also noted that during the last couple of recruitment processes, several applicants were unwilling or unable to reside in the city limits, thereby decreasing the pool of qualified candidates for city positions. It was moved by Winship and seconded by Olsen to bring forth an amendment to the personnel manual which indicates that the city employees currently required to live within the city limits (with the exception of the City Manager position), be amended to require that they live within the Whitewater Unified School District (but that City residency was preferred). AYES: Olsen, Abbott, Winship, Binnie, Singer, Crone. NOES: Kidd. ABSENT: None. It was then moved by Crone to apply the requirement to all current Department Heads (with the exception of the City Manager). Motion died for lack of a second.

City Manager Clapper was directed to bring forth an amendment to the personnel manual, with an adjustment to the manual indicating that for positions previously listed with city residency required, school district residency is required instead of city residency.

**FIRE DEPARTMENT OPERATIONS STUDY.** City Manager Clapper indicated that the proposed study would begin the process of establishing an agreement with the Fire Department and would provide a starting point to clarify responsibilities. Councilmember Kidd recommended that a Task Force be created. Councilmembers Kidd and Olsen volunteered to serve on that Task Force.

**CONTRACT WITH STRAND ASSOCIATES TO COMPLETE RIGHT-OF-WAY ACQUISITION STUDY (NEWCOMB STREET, AT HIGHWAY 59).** Neighborhood Services Manager Birkeland indicated that plans are to reconstruct STH 59 (Newcomb Street) and East Main Street in 2017. Birkeland requested approval of a contract with Strand Associates to perform negotiations and appraisal services as needed. Birkeland indicated that there are approximately six parcels of real estate involved. Birkeland also noted that the project is 100% reimburseable by the State of Wisconsin. It was moved by Olsen and seconded by Winship to approve a contract with Strand Associates for a sum not to exceed \$49,560. AYES: Olsen, Abbott, Winship, Binnie, Singer, Crone, Kidd. NOES: None. ABSENT: None.

**TRAIN TRAVEL NEAR WHITEWATER STREET DURING SPECIAL EVENTS.** Councilmember Crone informed Council of a personal experience he had during the prior

year's 4<sup>th</sup> of July festival, when his young child was near the railroad tracks in Cravath Lakefront Park, and a train came through just before fireworks were scheduled to begin. It was agreed that City Manager Clapper would contact the Railroad Company to see whether an agreement regarding train travel during special events in the Parks could be reached.

**NEIGHBORHOOD SERVICES REPORT ON 2012 ACTIVITIES.** Neighborhood Services Manager Birkeland provided a report on her Department's 2012 activities.

**COUNCILMEMBER REQUESTS FOR FUTURE AGENDA ITEMS.** Councilmember Kidd requested that the Aquatic Board be invited to the next meeting to give a presentation on the Aquatic Center. Councilmember Olsen requested information relating to 2013 year-to-date rescue squad calls and response times.

**EXECUTIVE SESSION.** It was moved by Singer and seconded by Olsen to Adjourn to closed session, NOT TO RECONVENE, pursuant to Section 19.85(1)(e) of the Wisconsin Statutes, "Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session" and 19.85(1)(g) "Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved." Item to be discussed: Development agreement with Elkhorn Road Ventures (Richard Vultaggio) and property at Elkhorn Road/Milwaukee Street. AYES: Olsen, Abbott, Winship, Binnie, Singer, Kidd, Crone. NOES: None. ABSENT: None. The regular portion of the meeting adjourned at 8:30 p.m.

Respectfully submitted,

Michele R. Smith,  
City Clerk