

**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 23, 2023

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Lisa Dawsey Smith. MEMBERS PRESENT: McCormick, Allen, Smith, Majkrzak, Brown. MEMBERS ABSENT: Gerber, Schreiber. LEGAL COUNSEL PRESENT: Wallace McDonell.

It was moved by Allen and seconded by Brown to approve the Council Minutes of 2/7/23, and to acknowledge receipt and filing of the following: Library Board Minutes of 1/18/23; Plan and Architectural Review Commission Minutes of 1/9/23; and Public Works Committee Minutes of 1/10/23. AYES: McCormick, Smith, Allen, Majkrzak, Brown. NOES: None. ABSENT: Gerber, Schreiber.

CITY MANAGER REPORT: City Manager John Weidl highlighted the Primary Election; Public Works projects; Fire/EMS hiring and training; Library programs; Aquatic and Fitness Center updates, and Police Department updates.

STAFF REPORTS. None.

HEARING CITIZEN COMMENTS. Laurence Kachel, 457 S Buckingham Blvd, thanked the Clerk's office for their work on the Spring Primary election. Ryan Rouse, N7276 Krahn Dr, indicated that he runs a business at 1260 W Main St.. Rouse thanked City Manager Weidl for the information distributed relating to the City's acquisition of property at the corner of Jefferson and Main Streets. Rouse stated that this kind of transparent communication is encouraging. He noted that the community is being heard and action is being taken. Rouse wants to see the Council focus on a plan for the City's prosperity. Michael Smith, 327 E Clay St. #29, inquired about the Grocery Coop project's being able to make a profit.

FIRST READING OF AN ORDINANCE AMENDING CHAPTER 11.45 OF THE MUNICIPAL CODE TO ALLOW FOR THE OPERATION OF ALL TERRAIN AND UTILITY TERRAIN VEHICLES ON CITY OF WHITEWATER STREETS (EXCLUDING CITY STREETS LOCATED WITHIN THE BOUNDARIES OF THE UWW CAMPUS). Councilmember Majkrzak stated that the wording of the ordinance has been updated to include Walworth County, leaving the boundaries of the University the same. There is also language regarding 35 miles per hour, which shouldn't impact anything in the City. Majkrzak said that there have been questions regarding insurance and driver's license requirements. These have been included in the ordinance even though they are not covered in the State Statutes. Majkrzak asked Attorney McDonell if the City is bound by statutes in regard to fines, or if the City has the liberty to modify them. Attorney McDonell said that the City adopted penalties at the time of the original ordinance. The fines are set at \$100 plus cost. McDonell continued that the Council does have the discretion to change this. The fine could be increased up to \$200 plus cost, or lowered.

Councilmember McCormick stated that Jefferson County re-evaluated their ordinance after a year and wondered if that was something the Council should do with this ordinance. Majkrzak stated that the original ordinance required a one-year review, with an intent to either revoke it or expand it. Majkrzak said that Council always has the discretion to bring the ordinance back if there is an issue, and he doesn't think that requirement needs to be in the ordinance.

Councilmember Smith read into the record statements from Councilmember Gerber, who was not able to attend. Gerber has concerns about education of the Whitewater community as a whole, as to information included in State Statutes 62.11 and 23.33. If this ordinance is approved, she would like to see efforts made to educate the public regarding non-use of ATVs in cemeteries, burial grounds, parks and walkways in parks, as well as helmet use, and owners' responsibility for ensuring that those who should not be driving vehicles are not driving ATVs. Gerber would also like to see more uniform requirements across communities. She had a question about wording in Statute 64.10 about accident reports being confidential. Attorney McDonell said that this is not normal wording as it is a special provision. Gerber was concerned that an operator not being able to get a copy of an incident report could be problematic.

Resident Neil Hicks, 1254 Tower Hill Pass, said that this is a good thing for the City. He stated that there are common laws across municipalities, through the DNR laws. Hicks suggested that a map of allowable roads be placed on the City website and on social media. He stated that during the summer months, he would like to see Starin Road be an allowable route. He asked that this be considered as an addition to the ordinance.

Public Works Director Marquardt stated that Starin Road is a City road that runs through the campus, and asked Attorney McDonell's opinion of allowing it to be in the route at all times. McDonell said that his quick opinion is that it would be usable, but he would double check and report back to the Council. Majkrzak responded that he thought being able to use Starin Road would be great. Majkrzak moved to approve the amended ordinance as written. Brown seconded the motion. AYES: McCormick, Smith, Allen, Majkrzak. Brown. NOES: None. ABSENT: Gerber, Schreiber.

FIRST READING OF AN ORDINANCE AMENDING CHAPTER 11.45
Allowing the Operation of All-Terrain Vehicles (ATV) and Utility Terrain Vehicles (UTV)
on City of Whitewater Streets Located (Excluding City Streets Located Within the
Boundaries of the University of Wisconsin – Whitewater Campus)

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

SECTION 1. Whitewater Municipal Code Chapter 11.45, is hereby amended to read as follows:

11.45.010 **General.** This ordinance is enacted pursuant to sections 62.11 (5) and 23.33 Wis. Stats., and the provisions of Wisconsin Administrative Code NR 64 regulating ATV and UTV operation, which is hereby adopted and incorporated herein.

11.45.020 **Applicability and Enforcement.** The provisions of this Ordinance shall apply to all streets, roads and highways, hereinafter at times referred to as City Streets, in the City of Whitewater, Wisconsin (except City streets located within the boundaries of the University of Wisconsin - Whitewater campus) and the provisions of this ordinance shall be enforced by the City of Whitewater Police Department.

Adoption of this ordinance shall not prohibit any law enforcement officer or DNR warden from proceeding under any other ordinance, regulation, statute, law or order that pertains to the subject matter addressed in this Chapter.

11.45.030 **Limitations.** The following limitations apply to all areas of operation designated in this Ordinance:

(a) Operators and passengers of ATVs/UTVs shall comply with all federal, state and local laws, orders, regulations, restrictions and rules, including, but not limited to, section 23.33 Wis. Stats. and Wisconsin Administrative Code NR 64.

(b) This Ordinance incorporates by reference all definitions under section 23.33 Wis. Stats. and Wisconsin Administrative Code NR 64 and any other applicable Wisconsin Law defining ATVs/UTVs and regulating ATV/UTV use unless this Ordinance states otherwise.

(c) ATVs/UTVs shall be operated on the paved surface on the extreme right side of the roadway.

(d) ATVs/UTVs may be operated on paved surfaces only, unless yielding the right of way.

(e) ATVs/UTVs operators are required to have applicable liability insurance.

(f) ATVs/UTVs shall not be operated at a speed greater than the posted speed limits.

(g) ATVs/UTVs may not be operated on any city street without fully functional headlights, taillights and brake lights.

(h) ATVs/UTVs may not be operated on any city street between the hours of 10:00 p.m. and 5:00 a.m.

(i) No person may operate an ATV/UTV on any city street without a valid driver's license and shall display the license on demand from any law enforcement officer or official described in section 23.33 (12) Wis. Stats.

(j) The operation of an ATV/UTV shall be limited to traveling on a direct route from the initial starting point of the vehicle to a specific destination in the City of Whitewater, Wisconsin. Operating ATV/UTV vehicles on City streets for other purposes is prohibited.

11.45.040 **Routes.**

(a) Any modification to the routes designated for ATV/UTV use shall be approved by the Common Council.

(b) The routes designated as an ATV/UTV vehicle route shall be as follows: All streets, roads and highways in the City of Whitewater, Wisconsin (excluding City streets located within the boundaries of the University of Wisconsin - Whitewater campus and portions of streets, roads and highways where the designated speed limit is greater than 35 m.p.h.).

(c) The City Manager or his or her designee shall have the authority to suspend operation on any route or segment thereof due to hazards, construction, emergency conditions, road damage or any other issue deemed appropriate for public safety. Routes subsequently removed as an ATV/UTV vehicle route will be posted on the City of Whitewater website.

11.45.050 Route Signs.

(a) All initial route signs will be installed and maintained by the City of Whitewater Public Works Department in cooperation with the Jefferson and Walworth County Highway Departments.

(b) No person may erect or remove any official designated route sign unless authorized by the City of Whitewater Public Works Department in writing.

(c) No person shall operate an ATV/UTV contrary to any authorized and official posted sign.

11.45.060 Penalties.

(a) This Ordinance shall be enforced by the City of Whitewater Police Department, or any other law enforcement official as set forth in section 23.33 (12) Wis. Stats., including the issuance of citations under section 66.0113 Wis. Stats.

(b) The penalties set forth in section 23.33 (13) (a) Wis. Stats., are adopted and incorporated by reference herein.

11.45.070 Severability.

(a) Should any subsection, clause or provision of this ordinance be declared by any court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance as a whole or any part thereof, other than the part declared invalid.

11.45.080 Maintenance.

(a) Designation of City of Whitewater streets and roads as ATV/UTV routes does not impose upon the City of Whitewater a greater duty of care or responsibility for maintenance of those segments than that required for any other street or road. Operators of ATV/UTVs on City streets assume all the usual and normal risks of ATV/UTV operation.

Ordinance introduced by Councilmember Majkrzak, who moved its adoption. Seconded by Councilmember Brown. AYES: McCormick, Smith, Allen, Majkrzak. Brown. NOES: None. ABSENT: Gerber, Schreiber.

John S. Weidl, City Manager

Michele R. Smith, City Clerk

ADOPTION OF FINDINGS FOR ALCOHOL LICENSING COMMITTEE AS IT RELATES TO “CLASS B” LIQUOR LICENSE APPLICATIONS FILED BY WHITEWATER PETROLEUM COMPANY D/B/A FIVE POINTS MOBIL (LISA LONG, AGENT) AND MICHAEL HUDEC D/B/A CASUAL JOE’S (MIKE HUDEC, AGENT), AND RANKING OF APPLICATIONS AND POSSIBLE ISSUANCE OF “CLASS B” LICENSE.

Attorney McDonell stated that this item is in regard to one available “Class B” license. There were three applicants for this license, but one dropped out. An Alcohol Licensing Committee hearing took place and formal findings were made. There is one technical issue, which is that Whitewater Petroleum Company does not have a conditional use permit that would allow serving alcohol. McDonell stated that the Council could grant a license to one of the applicants, or not grant the license to either applicant. Councilmember Smith moved to postpone this item until the Plan and Architectural Review Commission has had the opportunity to review the conditional use permit request made by Whitewater Petroleum Company. Allen seconded the motion. AYES: McCormick, Smith, Allen, Majkrzak. Brown. NOES: None. ABSENT: Gerber, Schreiber.

WATER RATE INCREASE IMPLEMENTATION, AND IMPLEMENTATION START DATE.

Finance Director Hatton stated that at the last Council meeting he had reported that the public hearing regarding the water rate case had taken place. The Public Service Commission (“PSC”) issued their ruling on February 15. The rate order allows up to 90 days for implementation. Typically, this is done at the end of a billing period and the last billing period end date to fall within the 90-day window would be April 28. Hatton is suggesting implementing the rate increase on April 28. Hatton said that this started from a rate study done in 2017 that showed vulnerability of two water tanks that were over 100 years old. The City moved forward and replaced the southwest water tank. The increase to rates is 30%. Hatton indicated that the PSC has changed the rate increase of the simplified rate case from 3.3% to 8% annually. **Majkrzak moved to implement the rate increase effective April 28, 2023. Brown seconded the motion.** McCormick asked when the residents would see the change. Hatton said that they would see the increase on the May bill. Smith asked that the information be made public, as to when it is happening and what it looks like, to help residents with budgeting. She also asked that if there are resources for low income residents that support water utilities. She requested that that information be shared with the public. Resident Jeff Knight, 405 Panther Court, asked Hatton whether he had updated the comparison information and if so, could that be provided? Hatton said he hadn’t updated it yet, but would give Knight a copy when it was done. Hatton stated that Ehlers had helped with the rate case and as part of that, they will produce an updated cash flow forecast and what the future path of rates looks like. They will present it to the Council if desired. AYES: McCormick, Smith, Allen, Majkrzak. Brown. NOES: None. ABSENT: Gerber, Schreiber.

REPORT ON STARIN PARK WATER TOWER STRUCTURAL ANALYSIS.

Public Works Director, Brad Marquardt, said that the Council had authorized a structural report to be completed on the Starin Park water tower. The report was completed in early January 2023, and was presented to the Public Works Committee at their January meeting. Marquardt stated that the report has not been presented to Council until now, because he wanted to have the approved Public Works Committee minutes as part of the packet materials.

Marquardt reported that the water tower is in generally good condition, but has some areas that are “less than fair” listed in the report. Marquardt has contacted the Public Service Commission to see whether Water Utility money could be used to fund any of this project. Marquardt was told that water funds could be used *up to the cost of demolition*, which is estimated to be around \$600,000. The cost to complete the recommended maintenance is \$950,000-\$1,100,000, assuming all of the work is done in one construction season.

Marquardt stated that there was no money budgeted for this project for 2023, so the earliest it could be done is 2024. The report also broke down the project into three phases, with a total cost of all phases at \$1,500,000. Marquardt said that the report has also been presented to the Landmarks Commission. Marquardt requested some direction from the Council as to what they would like to do with this information.

Councilmember McCormick said that she has been receiving emails about the tower. She noted that the question has been put out through the City's surveying vendor, but there was limited response. She would like to see an advisory referendum question placed on the April ballot. City Clerk Smith indicated that based on ballot certification requirements, it was too late to place it on the April, 2023 ballot.

Councilmember Smith stated that the two absent councilmembers had emailed comments regarding this matter, and Attorney McDonnell said that those comments could be read into the record. Councilmember Gerber had written that she has looked extensively at other water towers in the state, and fundraising has been done for all those that have been preserved. Gerber would like to see local quotes for demolition, if the Council decides to demolish. She would like the matter go back to the Finance Committee to look at the implications to the Capital Improvement Plan.

Councilmember Schreiber emailed that he is not opposed to the idea of keeping the water tower, and would like to look at ways to possibly make it a tourist attraction. He feels that the benefit of keeping it outweighs the cost to maintain it, but thinks that is a matter for future discussion. Schreiber is also not opposed to an outside entity taking the water tower over, if that is an option.

City Manager Weidl asked if there is a timeline to make a decision. Marquardt said that the tower is in a safe condition right now. The concern would be for the potential of rocks to fall off the façade, but the fence around the tower should prevent anyone from getting that close to the tower. Weidl stated that some may look at the potential \$600,000 that could be funded through the water utility as a jumpstart to make the repairs. Weidl asked if the Water Utility would need to take on debt for the \$600,000. Finance Director, Steve Hatton, stated that the Water Utility does not have that amount in cash on hand, so financing options would need to be reviewed.

City Manager Weidl said that he would like some time for staff to be able to use the \$600,000 as a tool for how to start the process of ensuring preservation. Councilmember Allen said that the Public Works Committee talked, and there is time to wait until the City has funds to do something with it. Allen stated that right now, the City just has funds to maintain services. It would also give Landmarks or whoever wants to take on the project to do some fundraising. Allen indicated that he has spoken to local developers who could take down the water tower for less than \$600,000.

Resident Neil Hicks, 1254 Tower Hill Pass, would like the matter to go on the November ballot and thinks that some organization would take it over. Since it is one of the oldest water towers in the state, he asked whether the City verified that with the antenna on top, all regulations have been followed.

City Manager Weidl asked if there is an election in November this year. City Clerk Smith stated that there is not one scheduled. Councilmember Majkrzak said that it would be nice to keep the water tower, but after listening to the public comment about the money spent on the Lakes project, which Majkrzak believes contributes more to the community than the water tower, he agrees that placing this matter on the ballot as a referendum question is a good idea. Majkrzak added that if the water tower is kept, ongoing maintenance will need to be budgeted for.

Councilmember Brown asked if the \$600,000 would be able to be used as matching funds, if a matching grant could be found. Weidl said that the staff would need to look into that.

Councilmember Smith made a motion that this matter be taken to the Finance Committee to look further into the financial impact to the Water Utility and the taxpayers. Allen seconded the motion. AYES: McCormick, Smith, Allen, Majkrzak. Brown. NOES: None. ABSENT: Gerber, Schreiber. In response to Councilmember Allen's question about the antenna on the tower, DPW Director Marquardt said that he thought it was for the SCADA system, but that he would need to check for sure.

DONATION OF FUNDS TO THE 2023 DISCOVER WHITEWATER SERIES RACE. Allen moved approval of donation of \$6,000 to the 2023 Discover Whitewater Series Race. It was noted that the contribution was not budgeted for, and if approved, would be funded through the unassigned fund balance. Brown seconded motion AYES: Majkrzak, Allen, McCormick, Brown, Smith. NOES: None. ABSENT: Gerber, Schreiber.

TELECOMMUTING POLICY (REMOTE WORK POLICY). Councilmember Smith stated that she had asked the City Attorney to add his insights into the motion that was approved at the last meeting, as it relates to a telecommuting policy. She inquired on the ability to draft a policy or whether the matter was more of a stopgap measure. City Manager Weidl said that he has drafted a policy based on the language of the motion, and provided to the City Attorney, who made some internal changes to the language. Weidl reported that he reached out to CVMIC, the City's insurance carrier, and asked them to provide a sample of what they provide to their clients when they are asked. Weidl indicated he has also reached out to other communities, and has supplied that information in the council packet as well. Councilmember Allen moved that this item be postponed until there is a full Council present. McCormick seconded the motion. Brown said she thinks the City Manager should be able to offer flexibility to the employees, so she is in favor of bringing it back when there is a full Council. AYES: McCormick, Smith, Allen, Majkrzak. Brown. NOES: None. ABSENT: Gerber, Schreiber.

DISCUSSION REGARDING EMPLOYEE HANDBOOK APPROVED IN 2011, AND REQUEST FOR DIRECTION REGARDING THE HANDBOOK. City Manager Weidl stated that he reached out to CVMIC, the City's insurance carrier, and they expressed concern that there would be more liability in **not** having an employee handbook than in **having** an employee handbook. CVMIC informed Weidl that most of their clients have an employee handbook.

Weidl indicated that if the Council wants to keep an employee handbook, he would like to ensure that the handbook is compliant. He would like to create a group, either subcommittee or possibly Finance Committee, go through the manual in its entirety and update what is needed.

Councilmember Smith moved to direct staff to create a timeline to untangle the discrepancies between the employee handbook and other existing policies, as well as to bring back to the Council the insight from CVMIC as to whether or not specifically the ordinance mentioning an employee handbook creates a liability position for the City. Smith continued her motion by stating pending the hiring of a Human Resources Manager, Smith would ask that there also be a review by the Finance Committee, as well as a timeline and a framework for full review of policies as they exist. Majkrzak seconded the motion.

City Manager Weidl asked for the specific items that Smith desired. Smith stated a review by CVMIC specifically of the ordinance, a timeline to untangle the discrepancies between the handbook and other policies, and create framework through the Finance Committee for ongoing review of policies. AYES: McCormick, Smith, Allen, Majkrzak. Brown. NOES: None. ABSENT: Gerber, Schreiber.

EASEMENT TO WE ENERGIES FOR INSTALLATION OF UNDERGROUND ELECTRICAL FACILITIES AT THE WASTEWATER TREATMENT FACILITY. Allen moved to approve issuance of a twelve-foot underground easement through the Wastewater Treatment Plant facility. The

easement would follow the north/south portion of the driveway serving the facility. The easement request is based on a need due to the Emergency Communication tower installation. It was moved by Allen to approve issuing an easement to WE Energies. Brown seconded the motion. AYES: McCormick, Smith, Allen, Majkrzak. Brown. NOES: None. ABSENT: Gerber, Schreiber.

DISCUSSION AND POSSIBLE DIRECTION REGARDING CITY MANAGER MANAGEMENT PLAN. Presented for acknowledgment was a 2023 City Manager Plan. The plan lists several focus areas that the new City Manager would complete, including, in part, increased communication and teamwork and re-establishment of an Economic Development platform. Councilmember Smith asked Council to acknowledge the City Management Plan so as to provide an extra layer of transparency for the community. Majkrzak moved and Smith seconded a motion to acknowledge the 2023 City Manager Plan. AYES: McCormick, Smith, Allen, Majkrzak. Brown. NOES: None. ABSENT: Gerber, Schreiber.

FUTURE AGENDA ITEMS AND/OR FUTURE POLCO QUESTIONS. Councilmember Smith requested that the 2019 version of the City Manager Evaluation Policy be put on a future agenda. She would also like to see the minutes of the 2013 Common Council meeting where the “Class B” license was originally issued to the previous owner of Casual Joe’s. She requested this information be provided prior to the request for award of the one remaining “Class B” the City is authorized to issue.

ADJOURNMENT. Majkrzak moved to adjourn the meeting. Brown seconded the motion. AYES: McCormick, Smith, Allen, Majkrzak. Brown. NOES: None. ABSENT: Gerber, Schreiber. The meeting adjourned at 7:30 p.m.

Respectfully submitted,

Michele R. Smith, Clerk