

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

March 7, 2023

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Dawsey Smith. MEMBERS PRESENT: McCormick, Allen, Smith, Majkrzak, Brown, Gerber, Schreiber. MEMBERS ABSENT: None. LEGAL COUNSEL PRESENT: Wallace McDonell.

It was moved by Allen and seconded by Schreiber to approve the agenda, with the understanding that the ATV/UTV ordinance will be removed from the Consent Agenda and to acknowledge receipt and filing of the CDA Minutes of /19/23. AYES: McCormick, Smith, Allen, Majkrzak. Brown, Gerber, Schreiber. NOES: None. ABSENT: None.

CITY MANAGER REPORT. City Manager Weidl highlighted events in the City including Public Works projects, Fire/EMS staffing, Library programs, Neighborhood Services, Aquatic and Fitness Center updates, Parks and Recreation programs, Polar Plunge, and Police Department updates.

SECOND READING OF 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. Councilmember Gerber requested that once the ordinance is passed, there be education provided to the public, a press release from the City Manager's office, and that the ordinance adoption be posted on the Police Department website, in newspapers, the City's social media outlets. She requested that the important parts of Chapter 23.33 be stressed. Councilmember Majkrzak said that he had sent the mapping resource to City Manager Weidl. Weidl stated that he had already forwarded information. Majkrzak stated that this is a great resource that supports local clubs. Majkrzak cited some of the concerns mentioned by Gerber.

**SECOND 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.

Gerber moved to approve the ordinance with a press release, public education and postings on the City's website and social media outlets. Majkrzak seconded the motion. AYES: McCormick, Smith, Allen, Majkrzak. Brown, Gerber, Schreiber. NOES: None. ABSENT: None.

John S. Weidl, City Manager

Michele R. Smith, City Clerk

TELECOMMUTING POLICY (REMOTE WORK POLICY) AND POSSIBLE DIRECTION REGARDING THE SAME. Councilmember Smith asked that this matter be brought back after discussion with the City attorney as to whether the motion was enough to codify into a policy. There was a draft policy created, based on that motion, and that policy is being brought back for clarification and/or action.

City Manager Weidl stated that the policy he drafted was what he believed to be the intent of the motion that was made. Attorney McDonnell had looked it over and made some minor changes.

Allen moved that the policy read that the City of Whitewater does not support telecommuting. In extreme circumstances, on a temporary basis, the City Manager may make an exception to telecommuting as long as the City Manager believes that the employee's work can be done. In the case of an exception, the City Manager should inform the Council of the exception and that the exception only be for one week. McCormick seconded the motion.

Majkrzak said that his opinion is that City Council does not get involved in the day to day operations. That is why they hired a City Manager. Majkrzak stated that he would not be voting for this. Brown said that she would not be voting for this either. She said that she used telecommuting a lot when she worked for the State and it was really helpful in a number of situations and thinks that it is something you need in the twenty first century when trying to hire someone.

Allen said that it is the job of the Council to set policy and it does weigh on the mood of the rank and file employees that they are not allowed to telecommute. Allen said that he believed that Councilmember Gerber has checked with surrounding communities that do not allow telecommuting, and he would like things to go back to the way they were pre-Covid and be open the way they should be.

Gerber stated that this had come up when they talked about the hours and she had contacted the City of Elkhorn; Walworth County; Fort Atkinson; Jefferson; City of Delavan; Village and Town of East Troy; and only one allowed telecommuting for a day to extend vacation or for a sick child. The rest were a clear "no" even for salary, except for cases of Covid. Gerber said that the City does have a flex time policy that allows for salaried personnel to allow them to flex off if they stay late. She was unclear how that was being implemented. She thought it had to be done in the same pay period. Gerber stated that she

also had concerns about non-exempt people doing exempt work if all the exempt employees are out of the building. She said she would be voting no unless there were some changes in the wording of the policy.

McCormick asked which municipality was the one who allowed telecommuting. Gerber stated that it was the Village of East Troy. McCormick stated that we are a small town and the employees should be at their jobs and the public requires it. She said that we need to get back to the way things were pre-Covid, and everyone should be back at their job.

Schreiber said that telecommuting should not be the norm for day to day job interaction. He said that he does understand that it has become a more popular option for a lot of companies. Schreiber has a friend that has a job where he telecommutes every day, but it is not a service job. There may be jobs within the City that may be open to that, if they are not dealing with people face to face on a daily basis, but those who need to be able to be reached by the public, should be in the office during normal office hours. Schreiber said that telecommuting can be a viable resource during extreme weather, stating that he telecommuted during a recent winter storm. He stated that he is not in favor of a policy that states that the City is against telecommuting altogether, because there is a place for it, but it would need to be re-worded to clarify those exceptions and where it can be applied to certain departments.

Smith stated that she feels that it is hypocritical to tell the employees that they do not have the option to telecommute when the Council has that option. She said that she is not supportive of the motion on the table. Smith said that the Council needs to award the City Manager some flexibility, because the City cannot remain competitive with private industry for some of the professional positions that staff our city. She would be supportive of something that would look more like the flexible work environment policy of Wauwatosa.

Neil Hicks, 1254 Tower Hill Pass, stated that he agreed with Councilmembers Allen, McCormick and Schreiber that there is a way that you can have this, with determined parameters. He stated that it does create animosity between employees when some can telecommute and some can't. Hicks said that if a citizen comes in to the municipal building to get a license or permit during regular business hours, someone should be in the office to help them. Hicks stated that he thinks that it could be done, with limits, making sure there is sufficient office coverage. He also stated that remote options for meetings should go. Brown stated that she also liked the Wauwatosa policy.

Allen stated that he thinks it is time for Council to stop calling in remote, as well. **Allen amended his motion to add that Council stop telecommuting.** Weidl asked whether that applied to boards and commissions. Allen stated that board and commission meetings do not run as well when there are members remote. McCormick agreed with Allen, and added that there is much more input and interaction when members are there in person. **McCormick seconded the amended motion.** City Clerk Smith asked if the amended motion include all boards and commissions or just Council. Allen stated that it included all boards and commissions as well as Council. Weidl asked if the public could participate virtually. Allen stated that the public could participate virtually. Vote to amend motion as follows: AYES: McCormick, Allen, Gerber, Schreiber. NOES: Brown, Majkrzak, Smith. ABSENT: None. Vote on full motion as follows: AYES: McCormick, Allen, Gerber. NOES: Schreiber, Brown, Majkrzak, Smith. ABSENT: None. Motion failed.

Schreiber stated that he is not against telecommuting entirely. There are certain circumstances where it should be able to be used, in certain departments, especially ones that do not deal with the citizens face to face. Schreiber said that City Manager Weidl knows more than he would who this could work for. Weidl said that he thinks a day a week seems appropriate as far as how much, for a certain amount of time, or more days in a row for a shorter period of time. Gerber asked Weidl if this would be for all employees or just exempt employees. Weidl said that there are some positions that this will not work for, but for general

employees, there are examples in each department where some work, especially in extenuating short term circumstances, can be done remotely. Weidl said that neither the position of no remote working at all or the position of more flexibility are moving forward, so he thinks the focus needs to be narrowed to find what the Council thinks is truly important. If the Council is worried about fraud, waste, and abuse then some rules need to be made for that. If the concern is prolonged time, then put limits on that.

Gerber stated that her main concern is having exempt people missing and having non-exempt people doing the work and the morale issues that may cause. Her other concern is the use of telecommuting to extend vacation time. She does not want to see it used in that way. Allen said that once a week would be too often. Majkrzak said that if they want to go to that level of managing the day to day operations, then they should apply to be City Manager.

Councilmember Brown said that the two are not mutually exclusive. She said it sounds like there are concerns about Weidl being too lenient, but in terms of hiring, he should have the flexibility to allow it. At the same time, the concerns are valid that it is not abused, so that the citizens are not able to get their issues taken care of. Weidl said that technology concerns are not as insurmountable as the Council may think. Allen stated that there is one position that can telecommute and is doing so, but he wonders how that is fair to the other employees.

Weidl stated that Allen's concern is valid. Weidl said that the Council needs to trust that he will work with the Council to design a process of accountability that will be enforced. Weidl also stated that if there is an accommodation that lasts longer than a certain amount of time, he would be happy to seek the Council's approval. Majkrzak said that he thinks that the Council is spending time micromanaging instead of spending time on the things they should be spending time on. He feels that micromanaging is going to make the City Manager leave. Majkrzak said that housing, a grocery store are things they should be dealing with. He stated that he would like to see Council have less authority on the level that they are talking about today. That should be up to the City Manager and if the Council doesn't like what he is doing, they can address it at his review.

Allen responded that the council are the elected officials chosen by the citizens to make these kinds of decisions and the City Council has the power to make policy. Gerber stated that the Council speaks for the people and not themselves.

Allen made the motion that Whitewater does not support telecommuting. The City Manager may make an exception to the telecommuting policy as long as the City Manager agrees that the City employee's work can be done at home, and in this case the City Manager should inform the Common Council. Gerber asked if there was a time limit for the exception. Allen stated that he was trying to keep it simple. Smith said that it was not enough different from what's already been drafted, in her opinion, and she would still vote no. Weidl said that he thinks that Allen gave a lot of discretion and autonomy to the City Manager and understands that others may want more constraints put around that. He told Allen that he appreciated the shift in position. Majkrzak said he would be in favor of that, striking the part about informing the Common Council. Smith stated that her opposition to it is that they are starting a policy from a negative position. It states that the City does not support telecommuting, and yet in certain venues, seeks to attract new residents who are telecommuters. Starting from a negative position is not supportive of what we may need to do to attract new residents. Schreiber stated that if the City is trying to attract new employees, and the potential employee looks up the policy and sees the first words as the City not supporting telecommuting, they may not go any further. Allen stated that no other municipalities in the area support it either. Smith said that it is the negative position of not supporting something that is her issue. Schreiber thinks that the broad statement of nonsupport of telecommuting is a bad starting point, when there are potentially positions within the City that telecommuting could work for. **Allen withdrew his motion, temporarily to allow Smith to offer some different language.**

Smith would like to see an expanded flexibility in the workplace policy to be drafted, based on what was outlined in the Wauwatosa policy because there are other things included. Allen stated that the Wauwatosa policy hasn't been shared with the Council. Smith said that the important parts of the policy have been included in the Council packet. It says that a flexible work arrangement is a department option. Certain positions, by their nature, are not suited for flexible work arrangements, participation is not appropriate for all employees and no employee is entitled to or guaranteed the opportunity to have a flexible work arrangement. That protects the intent and desire to make sure that the City seeks to provide excellent service and still enables a flexibility should it be necessary in attracting future workers. Smith stated that we cannot and will not ever be able to be competitive with the private sector. This could allow for the recruitment and retention of highly skilled individuals who need a little bit of flexibility.

Allen stated that after the first time reading it he doesn't seem to have a problem with it. Gerber said that she wanted to clarify, that the part Smith stated some positions do not allow for the flexible arrangement. She stated that she finds that the window staff will always be told they can't have it because they are front facing positions, so is that going to eliminate them right away and have the friction still there.

Weidl stated that he is creative and there are three people that can cover the counter, who are usually all working at the same time. He stated that he is also tracking how many people come in, and there were three today. Weidl said that Smith's motion and Allen's motion could possibly be combined to allow for the flexibility while informing the Council. Smith stated that she would like a trial period of one year to look back and make sure it has been successful. She would also add that there be no offers of employment that include a set remote work policy without Council approval.

Neil Hicks, 1254 Tower Hill Pass, said that he liked what Smith said. If he comes into City Hall for something, he expects someone to be there to take care of his request. If that can be done with the flexibility of telecommuting and not having to pay someone overtime to accomplish that, great. Hicks asked what the employees who work from home use, he wondered if there was an encrypted VPN. He was told there was a VPN. Hicks asked for clarification that all customer data is encrypted. Weidl said that it was.

McCormick seconded Allen's motion. AYES: McCormick, Allen, Gerber. NOES: Schreiber, Brown, Majkrzak, Smith. ABSENT: None. **Motion failed.**

Smith moved that staff be directed to draft a flexibility in the workplace policy, based upon the example of the City of Wauwatosa policy, to include a trial period of one year to allow for retrospection and with the condition that no offers of employment include a remote work arrangement without Council approval. Schreiber seconded Smith's motion. Allen asked to amend the motion to not allow telecommuting every day. Smith asked if Allen would be agreeable to amending the motion to not allow more than 20%, or one day of the week, to be used for telecommuting. Allen said he would not agree to that, because employees would take advantage of that and use every Monday or Friday to work from home. Smith said that this already happens with flex time. Allen stated that flex time is different, because it offsets time spent in after hours meetings. Smith said that she still had a problem with it because it could result in poor service due to lack of employees in office. Schreiber clarified that this motion is to draft the policy, not to pass the policy. Weidl said that the motion is giving staff direction to draft a policy that would be brought back to Council for possible approval. Allen stated that the compressed work week should be addressed in the policy. Smith said that she thought it might be addressed in other policies and it is up to staff to review them and make sure the policies are consistent in that regard. AYES: McCormick, Schreiber, Brown, Majkrzak, Smith. NOES: Gerber, Allen. ABSENT: None.

REQUEST INPUT REGARDING RENEWAL OF POLCO COMMUNITY SURVEYING SERVICE. City Manager Weidl stated that in 2022, the POLCO surveying software was used a total of five times; in 2021 it was used 14 times; and in 2020 it was used five times. Subscribers since 2017 total 818, and total responses in that time are 3660. This response total does not say whether it is the same people responding multiple times to the same question.

The cost to renew is \$2531.00. Weidl requested direction from Council, whether it is to move forward or look into other cheaper options. Smith stated that over the time the City has had the service, the cost per response is \$3.45. For a service like Meta, the cost per click is 94 cents. Smith feels the this is not a good return on investment for the community.

Majkrzak said that he is disappointed in the response to the tool. He stated that it is a wonderful opportunity for the public to engage and inform the Council on questions that they are making decisions on. Majkrzak feels the cost is not worth the value received. Allen and McCormick agreed with Majkrzak.

Weidl asked if the Council wanted him to look into other options. Brown said she is concerned about how we get information out. She would like to try something different. Gerber said that she thinks that Civic Plus, a software the City already has, has the ability to poll, but it hasn't been used. McCormick said that she thinks the same people are responding to the questions and it is not worth the money. Weidl said that he can look into other options, including Civic Plus. Smith stated that when the City started using POLCO, there was an investment by CDA, and POLCO had a presence in the City. Neither of those exist anymore. Allen agreed that the Council was supportive at the beginning because POLCO was at the Innovation Center. Weidl said he would move forward with nonrenewal. Smith said that the Tourism Council used a texting platform, and they may have some insight on the usefulness of it.

FUTURE AGENDA ITEMS AND/OR FUTURE POLCO QUESTIONS. Gerber would like an update from Neighborhood Services on citations through the winter, and an update on the library fundraising efforts. Majkrzak said that with the passing of the UTV/ATV ordinance for Walworth County, there were some stipulations, such as signage being placed. He would like to know what the process is for making this ordinance in particular, and ordinances in general, a reality, and a timeline for when this ordinance will become effective. Allen would like to address the wayfaring signs around the City. Several are in poor repair.

ADJOURNMENT. Schreiber moved to adjourn the meeting. Majkrzak seconded the motion. AYES: McCormick, Allen, Schreiber, Smith, Gerber, Brown, Majkrzak. NOES: None. ABSENT: None. Being no further business, the meeting adjourned at 7:30 p.m.

Respectfully submitted,

Michele R. Smith, Clerk