

**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 21, 2023

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

It was moved by Majkrzak and seconded by Allen to approve the Council Minutes of 3/7/23; and to acknowledge receipt and filing of the following: Preliminary Financial Reports for December, 2022; Plan Commission Minutes of 1/13/23; Public Works Committee Minutes of 2/14/23; and Whitewater Police Department 4th Quarter Report, 2022. 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 ice rescue training, Library programs, Neighborhood Services, Aquatic and Fitness Center updates, and Police Department updates.

STAFF REPORTS. **Library Report Regarding Fundraising Campaign** – Library Director, Stacey Lunsford stated that the 100 Extraordinary Women Initiative has raised \$97,000 and there has been \$180,000 raised in major gifts. This results in 70% of the fundraising goal being met. Lunsford indicated that the public phase of fundraising will probably begin this summer, but has not been discussed. **Neighborhood Services Update on Code Enforcement** – Neighborhood Services Officer, Derek Johnson, gave a brief presentation on code enforcement. Johnson stated that there were 836 code violations in 2022, and 191 so far in 2023. He indicated that the goal of code enforcement is for fines and fees to *decrease*, showing that compliance is improving and the need for fines is decreasing. Since 2017, compliance has improved. In response to Councilmember Allen’s question, it was confirmed by City Manager Weidl that Johnson is the only person doing code enforcement. **Wayfinding Signs Update** - City Manager Weidl stated that the Tourism Council is involved financially in updating the signs, resulting in the need to solicit another proposal. The information was included in the Council backup material. Councilmember Gerber said that she thought Parks and Recreation completed a report several years ago that included samples, etc. She wondered if they are using any of that information, or if they are just starting over. Councilmember Allen stated that he was interested in merely having the repaired and repainted. Councilmember Smith asked whether Allen was referring to the black metal signs. She indicated that many of the locations have changed, and substantial changes would be needed for the signs. Allen opined that the signs that can be repaired should be and he does not support throwing all signs out. **Update on ATV/UTV Implementation Plan** – Director of Public Works, Brad Marquardt, stated that the signage was ordered last week, with expected delivery in three to four weeks. Publication of the ordinance is scheduled. The City Attorney is working on bond amounts for violations, which is a three to four week process. Maps have been sent to mapping associations. Everything is anticipated to be complete by mid-April. Councilmember McCormick asked whether Starin Road will be open to ATVs. Marquardt stated that Starin Road is a public right of way *so it will be open for use*. Gerber asked for: information regarding the ordinance and safety issues to be put on the police department website; also in a press release from the City Manager’s office; and promoted on social media. Marquardt stated that he will work on having that done by mid-April.

HEARING CITIZEN COMMENTS. Neil Hicks, 1254 Tower Hill Pass, wondered if the road extending west from the end of Walton Drive is a public road. Kathy Schumacher, 834 Acorn Ridge,

said that the cement blocks on the “road to nowhere” off Walworth Avenue near County N, are an eyesore and something should be done about it. Schumacher also stated that the building on the corner of Second Street and Center Street has paper in some of the windows and something should be done to improve the appearance of the building.

RESOLUTION AUTHORIZING SUBMISSION OF GRANT APPLICATION TO WISCONSIN DEPARTMENT OF NATURAL RESOURCES FOR STORM WATER PLANNING PURPOSES.

RESOLUTION AUTHORIZING GOVERNMENTAL RESPONSIBILITY FOR URBAN NONPOINT SOURCE AND STORMWATER GRANTS

WHEREAS, the City of Whitewater is interested in acquiring a Grant from the Wisconsin Department of Natural Resources for the purpose of implementing measures to control agricultural or urban storm water runoff pollution sources (as described in the application and pursuant to ss. 281.65 or 281.66, Wis. Stats., and chs. NR 151, 154 and 155); and

WHEREAS, a cost-sharing grant is required to carry out the project;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Whitewater that the Common Council authorizes the City Manager for the City of Whitewater to act on behalf of the City of Whitewater to:

- Sign and submit an application to the State of Wisconsin Department of Natural Resources for any financial aid that may be available;
- Sign a grant agreement between the local government (applicant) and the Department of Natural Resources;
- Sign and submit reimbursement claims along with necessary supporting documentation;
- Sign and submit interim and final reports and other documentation as required by the grant agreement;
- Sign and submit an Environmental Hazards Assessment Form, if required; and
- Take necessary action to undertake, direct and complete the approved project.

BE IT FURTHER RESOLVED that the City of Whitewater shall comply with all state and federal laws, regulations and permit requirements pertaining to implementation of this project and to fulfillment of the grant document provisions.

Resolution introduced by Councilmember Majkrzak who moved its adoption. Seconded by

Allen. AYES: Schreiber, Allen, Gerber, Smith, Brown, Majkrzak, McCormick. NOES: None. ABSENT: None. ADOPTED: March 21, 2023

John S. Weidl, City Manager

Michele R. Smith, City Clerk

GRANTING THE AVAILABLE “CLASS B” ALCOHOL LICENSE TO ONE OF THE FOLLOWING APPLICANTS: 1. WHITEWATER PETOLEUM CO. – LISA LONG AGENT. BUSINESS LOCATION: FIVE POINTS MOBIL, 804 WALWORTH AVE. OR CASUAL JOES BBQ LLC – MICHAEL HUDEC AGENT, BUSINESS LOCATION 319 JAMES STREET.

Attorney McDonell stated that the City has one available “Class B” license and two applicants. The applicants had gone before the Alcohol Licensing Committee and had been ranked by the committee. Originally, there had been three applications, but one applicant (Apprahamian family d/b/a Bowers House) withdrew prior to the Alcohol Licensing Committee meeting. The committee ranked Five Points Mobil the higher of the two applicants. The Mobil station still required a Conditional Use Permit, so Common Council action was postponed until a hearing by the Plan Commission could be held. Plan Commission granted the Conditional Use Permit.

Bower’s House, the applicant that withdrew, has notified the City that they intend to renew their application. McDonell stated it is up to Council what they do. The Council may grant a license to either of the two current applicants, not grant any license, or postpone action until the Bower’s House renews their application. Councilmember Brown asked if there was a timeframe for when Bower’s House would renew their application. Clerk Smith said she didn’t know.

Councilmember Majkrzak said that the “Class B” licenses are valuable to the City and they should be actively used. He would like to see the ranking from the Alcohol Licensing Committee used to determine the license. Councilmember Allen stated that he thinks action should be postponed. City Manager Weidl asked when the cut off should be for submission. McDonell said that the ordinance says that there is no priority based on when applications are submitted; the timeframe is based more on the practicality of when committee members can meet.

Megan from the Bower’s House stated that their application was withdrawn after the death of a family member. She said the timing of the project was not known. Smith asked how soon a license needs to be used after issuance. Clerk Smith stated that the ordinance says a license must be used within 60 days of issuance and the establishment must be open a minimum of 50 days per year. A day is defined as six consecutive hours.

Mobin Ahmad, of the Five Points Mobil, 804 W. Walworth Ave., stated that his establishment was ranked first by the Alcohol Licensing Committee and he has already started to make changes and place down payments, in anticipation of the license being issued.

Councilmember Gerber asked what kind of food or restaurant he would be putting in. Mr. Ahmad stated that it would be burgers, hot dogs, seasonal food, breakfast sandwiches. He also stated that he is hoping to bring in more customers between 6:00 pm and midnight. Business during those hours has decreased due to competition.

Majkrzak asked if the Council can issue a gas station a “Class B” license. Attorney McDonell stated that the Police Chief and the Department of Revenue have said that in its current state, the building would not qualify for the license. McDonell said that if the area is described as a restaurant and is a segregated area, not the entire building, it may be allowed for that segregated area. City Manager Weidl asked if there will

be a commercial kitchen installed. Ahmad said that there is already a commercial kitchen. Weidl asked what percent of the food will be made to order. Ahmad said that the food sales are about five percent of gross earnings and he hopes to increase that to ten to fifteen percent. Weidl asked if it is made or prepackaged. Ahmad said that it is prepackaged that is warmed up in the kitchen. City Manager Weidl said that his idea of a restaurant is that the food is made when it is ordered.

Ahmad said that the area where liquor would be served is in the corner of the building, separated from the rest of the store. He said there would be additional staff, and patrons would not be allowed to walk around the store with an open beer.

Councilmember Allen stated that this type of license is meant for a business that has a focus on food, a destination for people to go and spend some time. He would be inclined to give it to a place that has banquets and draws people from out of town.

Michael Hudec of Casual Joe's BBQ, 319 James St., said that he already has a location where he can use the license. He has a bar and a banquet hall that are useless without the license. Hudec thinks there are other licenses, such as the local bowling alley, that have been issued and are not being used as well as they could be, and should maybe be given to other businesses. Hudec believes that the other applicant and the one who withdrew would both have trouble meeting the 60-day requirement. He states that he has an established business that draws patrons from out of the city that could use it now. Hudec indicated that without the license, he has had to cancel banquets and put his building up for sale. If he doesn't get the license, he will have to go through with selling the building.

Councilmember Smith asked if he would be able to use the license within 60 days. Hudec said that he could. McCormick asked if he would sell the building without the license. Hudec said that he would have to sell without the license. McCormick asked if it is for sale already. Hudec said that it is. He explained that after the Alcohol Licensing Committee meeting, he thought he would not be granted the license, so he put it up for sale. If he is granted the license, he will re-evaluate that plan.

Alsaf, who runs the gas station for Mr. Ahmad, wondered why Hudec needs the license if his food product is so good. He pointed out that when Ahmad purchased the gas station, it was going to be shut down and he turned the business around.

Councilmember Gerber asked for the legal definition of a restaurant is. Attorney McDonell read the definition from the alcohol section of the State Statutes. *"Restaurant" means any building, room, or place where meals are prepared or served or sold to transients or the general public, including all places used in connection with it and including any public or private school lunchroom for which food service is provided by contract. For purposes of this subsection, "meals" does not include soft drinks, ice cream, milk, milk drinks, ices, and confections. "Restaurant" does not include any of the following: Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter, and the serving of food or beverage through a licensed vending machine.* Gerber wondered if the word "prepared" referred to food made on premises or to prepackaged. McDonell said that the Council needs to use its best judgment to decide. He stated that he can't say that it does or does not meet the definition. Gerber asked if the bowling alley license could be re-evaluated. Councilmember Smith said that it isn't relevant to the decision before the Council this evening. City Attorney McDonell said that that license should be discussed at another meeting, when it is noticed on the agenda.

Councilmember Majkrzak said that had he had the information from the police chief before the Alcohol Licensing Committee meeting, he would not have ranked them the way he did. Majkrzak added that Five Points Mobil has been recommended by the Alcohol Licensing Committee for a "Class A" license. Majkrzak moved to grant the "Class B" license to Casual Joe's BBQ LLC. Schreiber seconded the

motion. AYES: Schreiber, Brown, Majkrzak, Smith. NOES: McCormick, Allen, Gerber. ABSENT: None.

PRESENTATION BY CLEAR PATH ENERGY/TERRA FOCUS ON LEASING THE OLD WHITEWATER LANDFILL (NORTH END OF JEFFERSON STREET) FOR SOLAR ENERGY GENERATION.

Jeffrey Brown from Terra Focus, an impact advisory firm in Madison, and his client, Clean Path Energy, represented by Omar Khaleel, gave a presentation on a potential solar project in the City. Clear Path is interested in developing solar fields on closed landfills. The project would consist of a \$7-9 million project that would create five megawatts of power to sell through distribution lines. They would be interested in leasing 25 acres over a 25 year period. This would create \$625,000 in revenue for the City over the term of the lease. They would also like to engage with the City in a Payment in Lieu of Taxes agreement, with terms to be negotiated. The company wants to do this type of project on parcels that are not generating any revenue. The project would consist of 9000 solar panels. It would need to be able to connect to the grid, and the means to do this is already available on the site. The parcel is only viewable from a small portion of Starin Road, which also makes it a desirable site. Potential purchasers of the power created include the City, the University, the School District, and the Business Park. Project timeline would be an initial 2-5 year option, followed by 6-12 months of construction, then a 25 year lease. The company strives to use at least 50% domestic content in their construction. The DNR is very supportive of this type of project. The company is not asking for any capital investment by the City. City Manager Weidl said that staff does not see any reason to not move forward. Councilmember Brown stated that she loves the idea and wonders if they will be hiring locally to help install the panels. It was noted that they would be working with local contractors. Councilmember McCormick asked how the power would get from the panels to the particular purchaser. Mr. Brown stated that the power gets put into the system and it is virtually contracted. Allen stated that all of their other projects are in New York or Massachusetts, and wondered why they were coming to Wisconsin. Mr. Brown stated that there is legislation being worked on regarding community energy programs and they want to begin programs in the state that will not take away any farmland.

AWARD OF CONTRACT 1-2023, SOUTHWEST WATER MAIN EXTENSION, TO FOREST LANDSCAPING AND CONSTRUCTION, INC. OF LAKE MILLS, WISCONSIN.

Director of Public Works Marquardt stated that this project was bid earlier this year. The project is to run water main from the new water tower east to a dead end water main. This will add resilience in case of a water main break. Total cost is \$451,700. The Public Works Committee recommends approval. Allen moved to approve awarding the contract to Forest Landscaping and Construction. Majkrzak seconded the motion. AYES: McCormick, Schreiber, Brown, Majkrzak, Smith, Gerber, Allen. NOES: None. ABSENT: None.

PAYMENT TO THE TOWN OF COLD SPRING FOR REIMBURSEMENT OF REPAVING PORTIONS OF HOWARD ROAD WITHIN THE CITY LIMITS.

Director of Public Works Marquardt stated that this is an item that was discussed at an earlier meeting in regard to possible federal funding available for the project. The Town of Cold Spring rejected the federal money, feeling that they could pay for the project themselves for around the same cost. The estimated cost of the City's portion of this project is \$260,000. Allen moved to approve the reimbursement to Town of Cold Spring. Majkrzak seconded the motion. AYES: McCormick, Schreiber, Brown, Majkrzak, Smith, Gerber, Allen. NOES: None. ABSENT: None.

STRAND TASK ORDER 23-04 FOR THE DESIGN OF WATER MAIN TO SERVE JOHNS DISPOSAL.

Director of Public Works Marquardt stated that this project is to extend water to John's Disposal for sprinklers in the new building they are expected to build, and because of issues with their current well. The DNR wants them to find a solution to those issues and a water main extension would do that. The main would run from the old LS Power land (now WE Energies) east to Johns. The cost is

\$43,000. This money was not budgeted, but there is money available. Marquardt said that there may be Clean Water funds available to cover the project. The Public Works Committee recommends approval. Allen moved approval of Task Order 23-04. McCormick seconded the motion. Weidl asked if the cost of the construction and design would be special assessed to Johns to recapture the money. Marquardt said that it would. AYES: McCormick, Schreiber, Brown, Majkrzak, Smith, Gerber, Allen. NOES: None. ABSENT: None.

EASEMENT TO JOHNS DISPOSAL FOR A DRIVING AISLE TO ACCESS PARKING STALLS. A representative from Angus Young explained that the driving lane would be along the lot line of City owned land and Johns to allow for additional parking next to the new building. Allen moved to approve granting the easement. Schreiber seconded the motion. AYES: McCormick, Schreiber, Brown, Majkrzak, Smith, Gerber, Allen. NOES: None. ABSENT: None.

STRAND AMENDMENT TO TASK ORDER 22-05 FOR PERFORMING CONSTRUCTION-RELATED SERVICES FOR THE INSTALLATION OF THE SOUTHWEST WATER MAIN EXTENSION. Director of Public Works Marquardt stated that this amendment would have Strand do construction inspection services. Additional cost is \$44,000 for a total cost of \$79,200. The project is still within the budgeted cost. Allen moved approval of the amendment to Task Order 22-05. Schreiber seconded the motion. AYES: McCormick, Schreiber, Brown, Majkrzak, Smith, Gerber, Allen. NOES: None. ABSENT: None.

STRAND TASK ORDER 23-06 FOR THE DESIGN OF WALWORTH AVENUE. Director of Public Works Marquardt stated that this project is mill and overlay of Walworth Avenue from Janesville Street to the Rock County line. This is a project that is partially federally funded, so DOT procedures for plans and specs need to be followed. The total cost for the design phase to meet all the requirements is \$296,000. This process will take about a year and a half. The plans need to be submitted by November 2024. Marquardt stated that there is money in Fund 280, Street Maintenance, to help to begin to pay for this. The Public Work Committee recommends approval. Brown asked for clarification on how the costs are broken down for the project. Marquardt stated that for the construction portion, 80% is federal money and 20% is cost the City has to pay. For the design portion, the City pays 100%. Allen moved to approve Task Order 23-06. Schreiber seconded the motion. Smith asked that Marquardt communicate to the public about the project and the federal money and additional requirements involved. AYES: McCormick, Schreiber, Brown, Majkrzak, Smith, Gerber, Allen. NOES: None. ABSENT: None.

STRAND TASK ORDER 23-05 FOR THE DESIGN OF INNOVATION DRIVE. Director of Public Works Marquardt stated that this project is similar to the Walworth Avenue project, as it uses Federal funds and requires the DOT procedures to be followed. The cost is \$82,000. This was not budgeted, but Fund 280 will be used to pay for this. Marquardt stated that Strand analyzed the cost to the City using the Federal program as opposed to the City doing the project itself. Strand found that the City is coming out ahead on this project and Walworth Avenue by using the Federal funds. Allen moved to approve Task Order 23-05. Schreiber seconded the motion. AYES: McCormick, Schreiber, Brown, Majkrzak, Smith, Gerber, Allen. NOES: None. ABSENT: None.

FLEXIBLE WORK SCHEDULE. Councilmember Allen asked how this item keeps coming up on the agenda. He stated that on January 17, the remote work policy was struck down except for extreme circumstances - then it was back on the agenda at the last meeting. Smith stated that it was on the agenda at the last meeting because Allen had requested that it be postponed due to two Council members being absent.

Smith moved approval of the flexible work schedule policy with the alteration under Guidelines #B2, where it says immediate manager, she would like it changed to City Manager. Majkrzak seconded the motion.

Gerber asked about section 306.00 #2C regarding the compressed work week. Gerber wondered how much overtime the compressed work week causes for the Public Works Department. Director of Public Works Marquardt stated that there is no one in the Streets Department past 10 am on Fridays, but he hasn't seen an issue with overtime. In the Water and Wastewater Departments, they work around the schedule. They also come in on Saturdays and Sundays to do rounds. There is one employee in water that works eight hour days. Marquardt said that overtime has not been an issue. Gerber stated that she would like to see it worked so there was no overtime. Gerber said that under remote it sounds like you can have it immediately and would like that changed to after one year of employment. Under Flex Days Allowed, she would like to ensure one person from each department is present so there is complete coverage when there are flex days. Gerber said in the wording under "B" sometimes there is a reference to immediate manager and sometimes employee supervisor. She would like to see consistency in the wording. Under "D" Remote Work Guidelines, Gerber would like to see the checklist that was in one of them for the safe environment working conditions with a signature required. She would like remote work limited to no more than one or two days per week. Gerber would like it spelled out in the document that you can't use remote work in place of sick time or FMLA. Allen asked if these were separate amendments. Gerber said that she would like to see it sent back to incorporate all of the changes.

Gerber moved to send the policy back to incorporate the changes she listed. Attorney McDonell asked that the first motion be voted on and then vote on the second if the first one doesn't pass. Allen moved to amend Smith's motion to change "C" under Review from six months to one month. There was no second. Allen made a motion to amend Smith's motion that "C" under Review number 2, that after successful completion of the trial period the arrangement will be reviewed at least every six months rather than annually. Gerber seconded the amended motion.

Councilmember Smith said she is not inclined to amend it in any form, since it is included in the policy that it would entirely be reviewed in one year.

AYES: McCormick, Gerber, Allen. NOES: Schreiber, Brown, Majkrzak, Smith. ABSENT: None. Amended motion failed. Schreiber asked if Smith would withdraw her motion so that the body can discuss openly and try to come to a consensus on changes. Smith said she will not withdraw the motion. She stated that the Council is the policy setting body, but the City Manager is the one who carries it out. Her intent is to allow him to implement the policy and be held accountable to make sure that the citizen's needs are met within the framework of the policy.

Councilmember Schreiber said that of the items that Gerber listed, he felt that differentiating between sick, vacation, and remote work is fairly important, but is possibly more of a human resources issue. Smith said that she thinks that any member of the Council can say to the City Manager, I hope you are doing this, because it is in the best interest of the citizens. Allen said that he feels like this policy that a few people came up with and it is being shoved down our throats. City Manager Weidl said that the motion to draft this policy passed 5-2 at the last meeting.

Councilmember Smith responded that the framework of the policy was in at least two packets. She said it is not something she sourced, but it is something she supports, because the environment requires flexibility to retain staff. Allen asked if she thought flex time is why people are quitting. Smith said she thinks it can affect whether current or future employees choose to remain or not.

Councilmember Gerber asked if there was wording in the policy that states that the City Manager has the right to alter the policy. Smith said no and that the policy as a whole will be reviewed in a year. Gerber is concerned that there are departments that could be left without any employees. Smith said that the policy states that department heads are responsible for remote work not disrupting operations and the level of service provided. Allen stated that code enforcement wouldn't be able to work from home. Smith agreed and said that in the policy it states that not every department or position is eligible. Gerber said that the standards are not known. Allen said it is too vague. Majkrzak said that they don't all have to agree, that's why they are a voting body, there is a motion on the table. Gerber said she is concerned that some things are not set and it will need to be brought back when situations arise that are not in the policy. Allen asked if the one year review can have a date attached to it. Weidl said that it would be the closest meeting to this date next year. Allen asked who was going to keep track of that to make sure it happens. Weidl said that he would.

Gerber asked if this would replace the remote work policy in the employee handbook. Smith said that she thinks that will be part of the process of the new HR manager going through and updating the employee manual. Gerber asked if this policy gets approved, which one will employees have to follow, the one in the manual or this one. Weidl said that they would follow this one. Gerber stated that part-time employees are not mentioned in the policy and wondered if they were eligible for remote work. Majkrzak said that he trusts management to handle it. Smith said that she would have trouble thinking of a part-time person who would fit the framework for this, but would trust the management to handle it. AYES: McCormick, Schreiber, Brown, Majkrzak, Smith, Gerber. NOES: Allen. ABSENT: None.

FUTURE AGENDA ITEMS. McCormick would like a Spectrum update. Gerber would like to bring back the flexible work policy for consideration. City Manager Weidl indicated that a councilmember who voted in the affirmative would have to bring it back. Gerber confirmed she had voted in the affirmative.

EXECUTIVE SESSION: It was moved by Smith and seconded by Majkrzak to adjourn to closed session *Not to Reconvene*, per Wisconsin Statutes 19.85(1)(c): "Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility." **Item to be Discussed:** Performance evaluation of City Manager. AYES: McCormick, Schreiber, Brown, Majkrzak, Smith, Gerber., Allen. NOES: None. ABSENT: None. The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Michele R. Smith, Clerk