



CITY OF WAUWATOSA
MEMORIAL CIVIC CENTER
7725 WEST NORTH AVENUE
WAUWATOSA, WI 53213
Telephone: (414) 479-8917
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COMMON COUNCIL
Regular Meeting, Tuesday, January 15, 2008

PRESENT: Alds. Maher, Meaux, Minear, Purins, Stepaniak, Becker, Birschel, Didier, Donegan, Ewerdt, Grimm, Hanson, Herzog, Krill -14

EXCUSED: Alds. Krol and Treis

ALSO PRESENT: Mr. Archambo, City Administrator; Mr. Kesner, City Attorney; Mr. Braier, Finance Director; Mr. Kappel, Public Works Director; Ms. Welch, Community Development Director; Police Lt. Jochem; Ms. Ledesma, City Clerk; Ms. Van Hoven, Deputy City Clerk

Mayor Estness in the Chair

The Mayor called the meeting to order at 7:37 p.m.

The Mayor and Common Council President Becker presented a proclamation to Wauwatosa East High School media students for their work in preparing public service ads for the new recycling bin program. Students honored are: Nick Groh, Nick Gross, Corina Holt, Michelle Kannenberg, Adam Koebel, Phillip Kraus, David Mascari, Ryan McVeigh, Nick Morin, Trevor Rutkowski, Kersten Schofield, and Kongmeng Ziong. Their instructor is Jean Biebel.

It was moved by Ald. Grimm, seconded by Ald. Didier that the reading of the minutes of the last regular meeting be dispensed with and they be approved as printed. -14

APPOINTMENTS BY THE MAYOR

Board of Health (reappointment)
Maureen McNally, 9200 W. Wisconsin Avenue
(Term ends 12/31/12)

Design Review Board B (reappointment)
Timothy Wiberg, 12317 W. Ripley Avenue
(Term ends 12/31/09)

Foregoing appointments ordered held as this was the first reading.

Board of Health
(Term ends 12/31/2013)
Judith Miller, R.N, Ph.D., 614 N. 77th Street

Design Review Board B
(Terms end 12/31/2009)
John Pernice, 2361 N. 88th Street
Michael Goetz, 8400 Stickney Avenue

Police and Fire Commission
(Term ends 4/30/2012)
Joseph Alioto, 7631 W. Wisconsin Avenue

Redevelopment Authority
(Term ends 10/31/2012)
Brian Randall, 2602 N. 88th Street

Wauwatosa Housing Authority
(Term ends 4/30/2012)
Jennifer Wakefield, 1848 N. 84th Street

Design Review Board A
(Terms end 12/31/2009)
John Niemer, 7424 Kenwood Avenue
Wayne Rappold, 6618 Ramona Ave.

Wauwatosa Historic Preservation Commission
(Term ends 11/30 2010)
Carolyn Edwards, 1850 N. 74th Street

Citizens Advisory Capital Improvements Comm
(Term ends 6/30/2010)
Terence Brown, 2463 N. 96th Street

Design Review Board C
(Term ends 12/31/2008)
Robert Kennedy, 7024 W. Wisconsin Ave

Board of Examiners and Appeals
(Terms end 5/30/2009)
J. Travers Price, 8626 Jackson Park Blvd.
Robert Ornst, Jr., 6526 Hillcrest Drive
Charles E. Millman, 2250 N. 72nd Street

Wauwatosa Civil Service Commission
(Terms end 9/30/2010)
John F. Hovel, 2559 N. 97th Street
Christy Brooks, 8837 Jackson Park Blvd.

It was moved by Ald. Birschel, seconded by Ald. Maher
to concur with the foregoing appointments. -14

APPLICATIONS, COMMUNICATIONS, ETC.

1. Notice of Claim: Wauwatosa Avenue Methodist Church, 1529 Wauwatosa Avenue, regarding improper real estate taxation by the City of Wauwatosa
City Attorney
2. Notice of Claim: Patricia A. Boyd, 1125 Lone Tree Road, Elm Grove
City Attorney
3. City of Wauwatosa Investment Summary as of December 31, 2007
Place on file
4. Wauwatosa Water Utility Statement of Receipts and Disbursements for the period ending December 31, 2007
Place on file
5. Southeastern Wisconsin Regional Planning Commission, Regional Broadband Telecommunications Plan for Southeastern Wisconsin
Place on file
6. Notice of Claims: Aaron Zingsheim, 3754 N. 97th Street, Milwaukee; Dianne Dagelen, 8444 Hill Street
City Attorney

7. Letter from Robert H. Messinger, Hector's – A Mexican Restaurant, 7118 W. State Street requesting an extension to the hardship legislation regarding the smoking ban in restaurants and bars

Health Department. Community Development Committee

FROM THE COMM. ON LEGISLATIONS, LICENSING AND COMMUNICATIONS

RESOLUTION R-08-03

WHEREAS, J. Sahul Flores, Jr., agent for Chipotle Mexican Grill of Colorado, LLC, d/b/a Chipotle Mexican Grill, 2711A N. Mayfair Road, Wauwatosa, WI, has applied for a Class B beer/liquor license for its location;

NOW, THEREFORE, BE IT RESOLVED THAT a Class B beer/liquor license be awarded to Chipotle Grill of Colorado, LLC, d/b/a Chipotle Mexican Grill, J. Sahul Flores, Jr., agent, Wauwatosa, WI, for the period ending June 30, 2008.

It was moved by Ald. Becker, seconded by Ald. Didier to approve the foregoing resolution. -14

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-08-04

WHEREAS, John Kuhn, JBK Properties, has applied for a Conditional Use in the AA Business District at 3850 N. 124th Street for a grocery store, and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission and the Committee on Community Development and determined to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to John Kuhn, JBK Properties, for a grocery store in the AA Business District at 3850 N. 124th Street subject to the following conditions:

- 1) Hours of operation from 9:00 a.m. to 8:00 p.m. Monday through Saturday and 10:00 a.m. to 6:00 p.m., and
- 2) Obtaining all necessary licenses and permits.

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-08-05

WHEREAS, Cary Bilicki, Midland 3251 LLC, has applied for a Conditional Use in the Business Planned Development District at 2717 N. Mayfair Road for a coffee shop with a drive-thru and outdoor patio, and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission and the Committee on Community Development and determined to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to Cary Bilicki, Midland 3251 LLC, for a coffee shop with a drive-thru and outdoor patio in the Business Planned Development District at 2717 N. Mayfair Road subject to the following conditions:

- 1) Hours of operation from 9:00 a.m. to 8:00 p.m. Monday through Thursday and Sunday and 5:00 a.m. to 11:00 p.m. Friday and Saturday, and
- 2) Obtaining all necessary licenses and permits.

It was moved by Ald. Herzog, seconded by Ald. Maher to approve the two foregoing resolutions. -14

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

ORDINANCE O-08-02

AN ORDINANCE TO CREATE CHAPTER 7.18 OF THE WAUWATOSA MUNICIPAL CODE RELATING TO PROHIBITION OF PUBLIC NUISANCES, WITHIN PART III OF TITLE 7 OF THE CODE

The Common Council of the City of Wauwatosa do ordain as follows:

Part I. Chapter 7.18 is hereby created to read as follows:

CHAPTER 7.18 PUBLIC NUISANCE

- 7.18.010** Legislative Declaration.
- 7.18.020** Public Nuisances Prohibited.
- 7.18.030** Public Nuisance Defined.
- 7.18.040** Enforcement.
- 7.18.050** Abatement of Public Nuisances.
- 7.18.060** Penalty.
- 7.18.070** Costs Of Abatement And Appeal of Special Charge.
- 7.18.080** Appeal.

7.18.010 Legislative Declaration

The Common Council of the City of Wauwatosa finds that public nuisances exist in the City of Wauwatosa in the operation of certain establishments, and the use and alteration of property in violation of building codes, fire codes, zoning codes and public health, safety, morality and general welfare laws and ordinances, all of which interfere with the interest of the public in the quality of life and total community environment, the tone of commerce in the City, property values and the public health, safety, morals, and welfare; the Common Council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety, morals and welfare of the people of the City of Wauwatosa and the businesses thereof and visitors thereto. It is the purpose of the Common Council to create one standardized procedure for securing legal and equitable remedies relating to the subject matter encompassed by this chapter, without prejudice to the use of or procedures available under existing state or local law or subsequently enacted ordinances and to strengthen existing ordinances on the subject. This ordinance is intended to apply to public, not private, nuisances.

7.18.020 Public Nuisances Prohibited.

No person shall erect, cause, continue, maintain or permit to exist, any public nuisance within the City.

7.18.030 Public Nuisance Defined.

A. A public nuisance is a thing, act, occupation, condition, or use of property which continues for such a length of time as to:

1. Substantially injure or endanger the comfort, health, repose or safety of the public; or
2. In any way render the public insecure in life or in the use and enjoyment of property; or
3. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any private property or any street, alley, highway, or other public way or the use of public property; or
4. Any other act or omission which would otherwise be recognized as constituting a public nuisance pursuant to the statutory or common law of the State of Wisconsin.

B. The following acts, omissions, places, condition and things are specifically declared to be public nuisances, but such enumeration shall not be construed to exclude other nuisances:

1. Nuisances affecting health, welfare, and enjoyment of property.
2. Nuisances affecting peace and safety.
3. Drug houses and buildings where controlled and illegal substances are used or sold.

7.18.040 Enforcement.

The Police Chief, Fire Chief, Health Officer, Forester, Chief Inspector or the Director of Public Works, Director of Community Development, Chief Building Inspector or any of their designees shall enforce those provisions of this chapter that come within the jurisdiction of their offices; and they shall make inspections upon complaint to ensure that such provisions are not violated.

7.18.050 Abatement of Public Nuisances.

- A. No action shall be taken by city officials under this section to direct the removal or abatement of a public nuisance unless the officer has inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself or herself that a nuisance does in fact exist. In addition to any other enforcement measure provided by law, for any public nuisance, whenever the enforcement official determines that three or more public nuisance activities resulting in law enforcement action have occurred at a premises on separate incidents during a 12 month period, the official may notify the premises owner in writing.
- B. Chronic Premises Nuisance. Whenever the Police Chief, Fire Chief, Health Officer, Forester, Chief Inspector or Director of Public Works or their designees identifies that three or more nuisance activities have occurred at a premises on separate days during a sixty (60) day period, that officer or his or designee may notify the premises owner in writing that the premises has become a chronic public nuisance. The officer or his or her designee may direct the landlord to evict the tenant as part of an abatement measure if the tenant contributed to or caused the nuisance. It shall be unlawful for a landlord to terminate the lease agreement or periodic tenancy of any tenant or otherwise retaliate against the tenant because the tenant complained to a city official or his or designee about the premises or landlord concerning a nuisance under this chapter.
- C. Basic Public Nuisance. Whenever the Police Chief, Fire Chief, Health Officer, Forester, Chief Inspector or Director of Public Works or their designees identifies that a nuisance activity has occurred, that officer or his or her designee may notify the person alleged to have committed the nuisance in writing that a public nuisance exists.
- D. Delivery of Notice. A notice in this section shall be deemed properly delivered if sent by either first class mail to the premises, owner's last known address or if delivered in person to the premises owner. If the premises owner cannot be located, the notice shall be deemed to be properly delivered if a copy is left at the premises owner's usual place of abode in the presence of some competent member of the family at least fourteen (14) years of age or a competent adult currently residing there.
- E. Content of Notice. The notice shall contain: the legal description or street address of the premises; a description of the nuisance activities that have occurred at the premises; a statement that the premises owner shall within ten (10) days respond to the appropriate office with abatement measures as ordered by the city, an appeal of the designation or to propose a written course of action to abate the nuisance activities.
- F. Whenever the Police Chief, Fire Chief, Health Officer, Forester, Chief Inspector or the Director of Public Works or their designees determines that an additional nuisance activity has occurred at a premises for which notice has been issued, and either this nuisance activity has occurred not less than thirteen (13) days after notice has been issued or a course of action submitted pursuant to this section has not been completed, the appropriate office may calculate the cost of enforcement for this and any subsequent nuisance activities and may refer such cost to the Treasurer. The premises owner shall be notified of the decision to refer the cost of enforcement. Delivery of this notice, along with a copy, of the referral letter to the Treasurer, shall be made as set forth in Paragraph (a) of this section and shall contain; the street address or legal description sufficient for identification of the premises; a statement that the cost of enforcement has been referred to the Treasurer with a concise description of

the nuisance activities and the relevant sections of the code; and a notice of the premises owner's right to appeal pursuant to sec. 7.18.070.

- G. **Additional Public Nuisance.** If additional public nuisance activity occurs on a rental property subject to an abatement plan during the timely implementation of the agreed upon abatement plan, the property owner shall not be subject to the penalties described in this code.
A landlord is in compliance with this ordinance if the landlord follows the abatement plan or takes legal steps as identified in the abatement plan to remove the tenants creating the public nuisance allowable under Wisconsin Statutes and Consumer Protection Rules when notified by the Police Department in writing that an illegal public nuisance exists.
- H. **Violation.** Each subsequent incident of nuisance activity shall be deemed a separate violation.
- I. **Summary Abatement.** If the inspecting official determines that a public nuisance exists within the city and that there is a great and immediate danger to the public health and safety, the official may cause the same to be removed or abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance.
- J. **Abatement After Notice.** If the inspecting official determines that a public nuisance exists but that such nuisance does not threaten great and immediate danger to the public, he shall serve notice on the person causing or maintaining the nuisance to remove or abate the same within ten days, or any other length of time specifically provided for the by ordinances of the City of Wauwatosa. If such nuisance is not removed or abated within the time set forth, the city official may cause an action to be commenced to abate the nuisance or may commence an action to seek forfeiture in a court of competent jurisdiction or both.
- K. **Other Methods Not Excluded.** Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the City or its official in accordance with the laws of the State or the ordinances of the City of Wauwatosa. Where the provisions of this chapter conflict with other sections of the City of Wauwatosa Municipal Code, the more stringent provision shall apply.
- L. **Court Order.** Except when necessary under sub. I., an official shall not use force to obtain access to private property to remove or abate a public nuisance but shall request permission to enter upon private property if such premises are occupied and if such permission is denied, shall apply to any court having jurisdiction for an order assisting the removal or abatement of the public nuisance.
- M. If the owner has satisfactorily abated the nuisance after issuance of citation, the forfeiture may be reduced by half.

7.18.060 Penalty.

- A. In addition to other penalties provided in this chapter, any person who shall violate any provision of this chapter, or any regulation, rule or order made hereunder, or permit or cause a public nuisance, shall forfeit not less than fifty (\$50) dollars nor more than two thousand dollars (\$2000) for each offense, together with the costs of prosecution; and in default of payment of such forfeiture and costs, by imprisonment in the county jail until such payment is made, but not in excess of the number of days set forth in section 800.095(a) of the

Wisconsin Statutes or by suspension of operating privileges pursuant to sections 343.30 and 345.47 of the Wisconsin Statutes.

- B. Each and every day during which a violation continues constitutes a separate offense.
- C. Where appropriate, the Common Council may authorize legal or equitable actions to be commenced to enjoin any person, firm or corporation from violating any of the provisions of this chapter.
- D. A second violation under this chapter may be subject to a penalty in an amount doubled from the first penalty and a third violation under this chapter may be subject to a penalty in an amount tripled from the first penalty.

7.18.070 Costs Of Abatement and Appeal of Special Charge.

- A. Costs of Abatement and Enforcement. In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuation or maintenance of a public nuisance, the cost of removing or abating the public nuisance and the cost associated with enforcement once a premises has been designated a chronic nuisance under section. 7.18.050 B. of this code shall be collected as a debt from the owner, occupant or person causing, permitting, or maintaining the nuisance and if the notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge if the nuisance is a chronic nuisance.
- B. Wherever this chapter imposes the costs of abatement as a special charge against the premises, the City of Wauwatosa elects not to be subject to administrative review provisions contained within chapter 68 of the Wisconsin Statutes and establishes the following as a complete and final review procedure. As a condition precedent to challenging any special charge, the owner of the premises must timely pay the charge in full under protest to the city.
- C. An appeal of an abatement order and costs of abatement shall be to the city clerk and can be undertaken only by filing written appeal with the city clerk concurrent with the date of payment. The written appeal shall specify all grounds for challenge to the amount of the special charge and shall state the amount of charge that the appellant considers to be appropriate. Failure to timely and properly appeal shall deprive the city of jurisdiction to hear the appeal.
- D. The city administrator shall hear the appeal and shall have 120 days calendar days to consider an appeal under this subsection. In considering an appeal, the city administrator shall determine whether the charge is fair and reasonable and, in the event the appeal is granted, whether or not a refund is due the appellant and the amount of refund. The city administrator shall conduct a formal or informal hearing at such time and place as designated in a hearing notice to the appellant, providing five business days to the appellant. The city administrator shall obtain sufficient facts upon which to make a determination. The decision shall be based on the evidence presented. The city clerk shall notify the appellant in writing of the determination by first class mail addressed to the individual and at the address listed within the appeal. Service is deemed completed upon mailing.
- E. The decision of the city administrator is final except if the owner of the premises appeals the decision to a court of competent jurisdiction. Such appeal shall be filed no later than thirty

(30) calendar days after the date of mailing the decision of the city administrator. Such appeal shall be writ of certiorari and the reviewing court shall be limited solely to the record created before the city administrator. Costs, excluding attorney fees, shall be awarded to the court at the sole discretion of the court. Failure to timely file and properly appeal shall deprive the court of jurisdiction to hear the appeal.

7.18.080 Appeal of Citation.

If a person adversely affected by an abatement order fails to comply with the order within the time prescribed in the order or by ordinance, the city department responsible for the issuing the order shall issue a citation. If a person adversely affected by an order issued pursuant to the provisions of this chapter desires to appeal the decision of the enforcement official, an appeal of the citation may be made through the municipal court process. The municipal court shall conduct a hearing on the appeal within 30 days of receipt of the appeal, unless such time limit is waived by the defendant.

Part II. This ordinance shall take effect on and after its date of publication.

It was moved by Ald. Herzog, seconded by Ald. Maher
to adopt the foregoing ordinance. -14

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-08-06

WHEREAS, the Milwaukee Metropolitan Sewerage District has notified the City of increases in sewer user charge rates in the 2008 operation and maintenance budget; and

WHEREAS, current rates charged to users in the City of Wauwatosa are not sufficient to pay that portion of the expenses related to sewer user rates charged by the Milwaukee Metropolitan Sewerage District in addition to the expenses required to maintain the local sewers within the City of Wauwatosa;

NOW, THEREFORE, BE IT RESOLVED THAT the recommendation of the Comptroller/Treasurer for an increase in 2008 sanitary sewer rates, as reflected in his memorandum of January 3, 2008, a copy of which is attached hereto, is hereby approved.

It was moved by Ald. Stepaniak, seconded by Ald. Purins
to approve the foregoing resolution. -14

FROM THE COMMITTEE ON BUDGET AND FINANCE

BILLS AND CLAIMS FOR THE PERIOD 1/3/08 – 1/15/08

The Committee on Budget and Finance hereby reports to the Common Council that it has examined the accounts of bills and claims and hereby certifies the same as correct and recommends that each of said accounts be allowed and paid.

Total bills and claims for 1/3/08 – 1/15/08:

\$2,955,705.85

It was moved by Ald. Meaux, seconded by Ald. Krill that each and every one of the accounts of bills and claims be allowed and ordered paid. Roll call vote, Ayes 14

There being no further business, the meeting adjourned at 7:59 p.m.

cal

Carla A. Ledesma, CMC, City Clerk