



CITY OF WAUWATOSA  
MEMORIAL CIVIC CENTER  
7725 WEST NORTH AVENUE  
WAUWATOSA, WI 53213  
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### **COMMON COUNCIL**

Regular Meeting, Tuesday, October 21, 2008

PRESENT: Alds. Maher, McBride, Meaux, Nikcevich, Organ, Purins, Stepaniak, Walsh, Birschel, Ewerdt, Hanson, Herzog, Jay, Krol -14

EXCUSED: Alds. Donegan 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 Capt. Weiss; Fire Chief Redman; Ms. Ledesma, City Clerk; Ms. Van Hoven, Deputy City Clerk

Mayor Didier in the Chair

The Mayor called the meeting to order at 7:30 p.m.

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

### **PUBLIC HEARING**

The first item of business was a public hearing to consider the following proposed ordinance:

### **ORDINANCE**

AN ORDINANCE AMENDING CHAPTER 24.02 DEFINITIONS AND CHAPTER 24.04.110 PERMITTED OBSTRUCTIONS IN REQUIRED YARDS AND COURTS

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

Part 1. Chapter 24.02 is amended to add the following:

24.02.518 Trellis.

A vertical frame of lattice work used as a screen or as a support for climbing plants. The trellis, exclusive of the planting materials, shall not exceed a maximum opacity of 50%. The length of a trellis shall not exceed the maximum trellis height, which is eight feet and no trellis units shall be joined to create a continuous barrier. A trellis is not an arbor.

Part 2. Chapter 24.04.110 is hereby amended to read as follows:

Obstructions	Residential District				
	Front Yards	Rear Yards	Side Yards- Interior	Side Yards- Abutting a Street	Courts
Trellises	P 14,16	P 14	P 14	P 14,15, 16	P 14

- 14 Trellis units must be separated by a distance that equals their width.
- 15 On side yards abutting a street, a trellis may be placed the side of a yard along the side street provided that it is at least 18 inches off of the side property line and does not obstruct the vision triangle. The vision triangle is an area formed by measuring 20 feet along each property line from the corner where the two street sides of the property meet. Connecting these two lines with a diagonal line completes the triangle and forms the corner vision triangle.
- 16 Requires Design Review Board approval.

Part 3. This ordinance shall take effect and be in force from and after its passage and publication.

Proof of publication is in the file.

In a meeting held on August 11, 2008 the City Plan Commission recommended approval of the request.

No one of the public present wished to be heard in favor of the proposed ordinance.

No one of the public present wished to be heard in opposition to the proposed ordinance.

No one of the public present wished to be heard either for or against the proposed ordinance or had any comments or questions.

The public hearing was declared closed. Ordered held to the next Community Development Committee meeting on October 28, 2008.

**PUBLIC HEARING**

The next order of business was a public hearing concerning the following proposed resolution:

**RESOLUTION**

WHEREAS, the City of Wauwatosa requests that the City vacate the entirety of that street rights-of-way within the boundaries of Hart Park including portions of N. 71<sup>st</sup>, 72<sup>nd</sup>, 73<sup>rd</sup>, 74<sup>th</sup>, 75<sup>th</sup> Street that are located south of W. State Street and north of the Menomonee River and Chestnut Street between 68<sup>th</sup> Street and 75<sup>th</sup> Street as well as that portion of River Parkway that is west of 68<sup>th</sup> Street within the City limits of Wauwatosa; and

WHEREAS, the owners of the properties abutting this public way have been notified;

NOW, THEREFORE, BE IT RESOLVED THAT the City of Wauwatosa hereby abandons and vacates that public way identified as street rights-of-way within the boundaries of Hart Park including portions of N. 71<sup>st</sup>, 72<sup>nd</sup>, 73<sup>rd</sup>, 74<sup>th</sup>, 75<sup>th</sup> Street that are located south of W. State Street and north of the Menomonee River and Chestnut Street between 68<sup>th</sup> Street and 75<sup>th</sup> Street as well as that portion of River Parkway that is west of 68<sup>th</sup> Street within the City limits of Wauwatosa in accordance with Sec. 66.1003 of the Wisconsin Statutes;

Proof of publication is in the file.

In a meeting held on August 11, 2008, the City Plan Commission recommended approval of the request.

No one of the public present wished to be heard in favor of the proposed ordinance.

No one of the public present wished to be heard in opposition to the proposed ordinance.

No one of the public present wished to be heard either for or against the proposed ordinance or had any comments or questions.

The public hearing was declared closed. Ordered held to the next Community Development Committee meeting on October 28, 2008.

### **OLD BUSINESS**

The following item was held after a public hearing on October 7, 2008:

#### **ORDINANCE O-08-20**

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

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF WAUWATOSA BY REZONING THE PROPERTY LOCATED AT 2283 LUDINGTON AVENUE FROM AA BUSINESS DISTRICT TO AA SINGLE FAMILY RESIDENCE DISTRICT**

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

Part 1. The Official Zoning Map of the City of Wauwatosa is hereby amended to reflect the following change:

The north 5.88 feet of lot 15 and the south 39.12 feet of lot 16, in block 2 in Ridge Lawn No.2, being a re-subdivision of lots 11, 12, 13, 14, and 14 in James Ludington and John H. Loomis subdivision in the Northwest ¼ of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin except the east 33 feet for street right-of-way and the west 16.5 feet for alley right-of-way is Rezoned from AA Business District to AA Single Family Residence District.

Part II. The City Administrator is hereby directed to change the Official Zoning Map of the City of Wauwatosa to conform to the provisions of the Ordinance, and said Map is declared amended accordingly.

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

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

### **APPOINTMENTS BY THE MAYOR**

#### Civil Service Commission

Gary Reusch, 6208 W. Washington Blvd.  
(term ends 9/30/11)

#### Village of Wauwatosa Business Improvement District

Larry Greves, America North, Inc. & The UPS Store, 6650 W. State Street  
Kami Dowdle, National City Bank, 6810 W. State St.  
Bobby Pantuso, George Webb Corporation, 7410 W. State Street  
Gail Sauter, Aurora Psychiatric Hospital, 1220 Dewey Avenue Building #5

Linda Burg, The Little Read Book, 7603 W. State Street (reappointment)  
Erin McCarthy, Waterstone Bank, 78500 W. State Street (reappointment)  
Jaime Kristof, Village Popcorn, 7707 W. Harwood Avenue (reappointment)  
Bill Brown, Bartolotta Restaurant Group, 6005 W. Martin Drive (reappointment)

Foregoing appointments ordered held as this was the  
first reading.

### **APPLICATIONS, COMMUNICATIONS, ETC.**

1. City of Wauwatosa Statement of Financial Conditional as of September 30, 2008  
**Place on file**
2. Notice of Claims: General Casualty Insurance, P.O. Box 975, Sun Prairie  
**City Attorney**
3. Wauwatosa Water Utility Statement of Receipts and Disbursements for the period ending  
September 30, 2008  
**Place on file**
4. Request by Ald. Jay for Council action on a resolution regarding HAVA checking process in  
advance of the November election  
**(Action requested by Ald. Jay under suspension of the rules)**
5. Letter from David J. Graczyk, U.S. Geological Survey (USGS), 8505 Research Way,  
Middleton WI regarding a request by the USGS and the Milwaukee Metropolitan Sewerage  
District (MMSD) for a land use permit to place a structure along Honey Creek  
**Community Development Director**
6. City of Wauwatosa Bank Reconciliation of Depository Accounts for the period ending  
September 30, 2008  
**Place on file**
7. Letter from Russ Drover, 9116 Jackson Park Blvd. expressing concerns regarding the 2009  
Village Business Improvement District Budget and Operating Plan  
**City Administrator, Add to existing file**

8. Letter from Kevin Kennedy, Government Accountability Board, reiterating the GAB's position concerning the conduct of HAVA checks on voters registering prior to August 6, 2008

**Add to existing file**

It was moved by Ald. Jay, seconded by Ald. Birschel to suspend the rules to consider item #4 above. Roll call vote, Ayes 9, Noes 5 (McBride, Meaux, Stepaniak, Walsh, Hanson)

The proposed resolution referenced in item #4 above follows:

**RESOLUTION**

Help America Vote Act (HAVA)

SUBMITTED TO – The Common Council of the City of Wauwatosa

Sponsored by Jacqueline Jay 3<sup>rd</sup> District Alderman

The Common Council of the City of Wauwatosa,

Acknowledging the efforts of the Attorney General Van Hollen to have the State of Wisconsin meet the Federal statute, Help America Vote Act (HAVA), with the actions taken with Government Accountability Board (GAB), and

Desiring to be proactive with in our city about having fair, clean elections in that each citizen have one legal vote, being

Aware that there have been grave concerns in the state with voting irregularities, as in that voter registrations of questionable natures have been found in records within the state, the goal of this requirement is to protect the integrity of elections by ensuring that only those who are qualified and properly registered would be permitted to cast ballots,

1. Implores the City Clerk of Wauwatosa to fulfill her legal obligation to have the city maintain compliance with state and federal election laws:
2. Desiring to review new voters who registered by mail since January 1, 2006 would have been subject to a "HAVA check" to ensure that the information they provided to election officials matched the information in other public databases:
3. Understanding that over 7,700 people as reported by the city clerk's office have registered as new voters since January 1, 2006 in the city of Wauwatosa, many came in person to register but 591 were submitted by Special Registration Deputy or by mail, and since the amount of time before the November 2008 election is short therefore
4. Request that the City Clerk seek permission to perform the complete Help America Vote Act checking process ("HAVA checks") before the November 4, 2008 election for the 591 registrations submitted by Special Registration Deputy or By-Mail and
5. Request the remaining HAVA checks be done before the February 2009 election.

It was moved by Ald. Jay, seconded by Ald. Birschel to approve the foregoing resolution. Roll call vote, Ayes 1 (Jay), Noes 13. Motion failed.

**FROM THE COMMITTEE ON TRAFFIC & SAFETY FOR INTRODUCTION**

1. Ordinance amending Section 11.32.490 of the code establishing an on-street handicapped parking zone at 2506 Wauwatosa Avenue  
**Re-referred to originating committee**

**FROM THE COMMITTEE ON EMPLOYEE RELATIONS**

**ORDINANCE O-08-21**

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

AN ORDINANCE AMENDING SECTION 2.59.040 PERTAINING TO PAY GRADES FOR FLSA NON-EXEMPT EMPLOYEES

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

Part I. The “FLSA Exempt Positions” portion of Section 2.59.040 of the Wauwatosa Municipal Code is hereby amended by removing the position “Traffic & Electrical Supervisor” at pay Grade 10 and replacing it with the position “Traffic & Safety Superintendent” at Pay Grade 11.

Part II. Non-ordinance provision: The City of Wauwatosa Position Distribution List is hereby amended accordingly.

Part III. The above ordinance shall take effect on and after its date of publication.

**FROM THE COMMITTEE ON EMPLOYEE RELATIONS**

**RESOLUTION R-08-202**

WHEREAS, the Human Resources Department solicited Requests for Proposals for professional contractual services for the City’s wellness program and determined that eCare Solutions was the lowest cost proposal and its services best match the City’s needs; and

WHEREAS, the 2009 proposed budget includes \$86,500.00 for wellness contractual services; and

WHEREAS, eCare Solution’s proposal will cost the City approximately \$75,000.00 to \$85,000.00 depending on the number of employees participating;

NOW, THEREFORE, BE IT RESOLVED THAT the proper City officials be and hereby are authorized to enter into a three year contract with eCare Solutions with a termination clause that allows the City to terminate the contract for any reason upon written notice.

**FROM THE COMMITTEE ON EMPLOYEE RELATIONS**

**ORDINANCE** O-08-22

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

AN ORDINANCE DELETING SECTIONS 2.52.08(F)(4) AND 2.58.130(F)(4) ELIMINATING EMPLOYEE BIWEEKLY CONTRIBUTIONS INTO PRE-TAX RETIREMENT HEALTHCARE SAVINGS PLAN

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

Part I. Sections 2.52.08 (F)(4) and 2.58.130(F)(4) of the Code of the City of Wauwatosa are hereby deleted.

Part II. This ordinance shall become effective on and after its date of publication.

**FROM THE COMMITTEE ON EMPLOYEE RELATIONS**

**RESOLUTION** R-08-203

BE IT RESOLVED THAT the proper City officials are hereby authorized to execute a Memorandum of Understanding between the City of Wauwatosa and Wauwatosa Peace Officers' Association that strikes Article XV Section 2(F)(4) from the collective bargaining agreement and eliminates the bi-weekly employee contribution into the Retirement Health Care Savings Plan.

It was moved by Ald. Purins, seconded by Ald. Ewerdt to adopt the two foregoing ordinances and to approve the two foregoing resolutions. -14

**FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS**

**ORDINANCE** O-08-23

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

AN ORDINANCE AMENDING WAUWATOSA CODE SECTION 1.04.020 ELECTION OFFICIALS TO ALLOW FOR SELECTION OF ADDITIONAL OFFICIALS AND SHIFTS

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

Part I: Section 1.04.020 C. of the Wauwatosa Code of Ordinances is hereby created to read in its entirety as follows:

- C. The city may provide for selection of alternate officials or the selection of two or more sets of officials to work at different times on election day and may permit the city clerk to establish different working hours for different officials assigned to the same polling place. Alternate

officials shall be appointed in a number sufficient to maintain adequate staffing at polling places.

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

**FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS**

**ORDINANCE** O-08-24

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

AN ORDINANCE AMENDING WAUWATOSA CODE TITLE 6 TO ELIMINATE SPECIFIC REFERENCES TO LICENSE FEES AND PENALTIES.

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

Part I. Section 6.04.030 is repealed in its entirety.

Part II. Section 6.04.040 is repealed in its entirety.

Part III. Section 6.04.050 is amended to read as follows:

Section 6.04.050 Late Filing Fee for license applications. Any applications for renewal of a license under this chapter after the termination date shall be subject to a late filing fee for each late license application and as set forth in the fee schedule.

Part IV. Section 6.04.070 amended to read in its entirety:

Section 6.04.070 Escort services.

A. The annual escort service license fee shall be as defined in the Fee Schedule.

B. The annual escort license fee shall be as defined in the Fee Schedule.

Part V. Section 6.12.020 is repealed in its entirety and recreated to read as follows:

6.12.020 License Issuance. Subject to the approval required in Section 6.12.010, such license should be issued by the City Clerk upon payment of fee for such license, provided that the applicant shall not have due and owing to the City of Wauwatosa any personal property taxes. If 5 or more such machines are located in one premises, each machine shall, in addition to the provisions of this chapter, require the approval of the Legislation, Licensing and Communications Committee prior to the issuance of such license. The annual license shall have a term commencing July 1<sup>st</sup> through June 30<sup>th</sup> of each year.

Part VI. Section 6.46.060 is repealed in its entirety.

Part VII. Chapter 6.46 is amended such that all references to “Licenses and Permits Committee” are deleted and replaced with the phrase “Legislation, Licensing and Communications Committee.”

Part VIII. Section 6.50.090 is amended to read in its entirety:

Section 6.50.090 – Temporary Sidewalk Sale. The Clerk’s office shall be authorized to issue a sidewalk sale permit to any merchant who abuts the City street for the purpose of carrying on a temporary sidewalk sale on the sidewalk abutting such place of business. The fee required shall be as set forth in the fee schedule prior to the issuance of such sidewalk permit. Such permit shall be limited to a 5 day period and shall be subject to revocation if the sidewalk sale is observed by a police officer of the City of Wauwatosa to interfere with the use of such sidewalk or in other ways creates a safety hazard or other form of public nuisance. Any person aggrieved by the provisions of this section shall be entitled to have the matter reviewed by the Board of Public Works.

Part IX. Section 6.54.020 is amended to read as follows:

Section 6.54.020 Transient Purchases Require Permit. Every person, firm, or corporation who is in the business of purchasing precious metals and precious stones, doing business within the City, who has not had a currently established business operation within the City for a period of at least one year immediately prior to the application for a precious metal and gem dealer license, shall obtain a transient dealers permit prior to doing business within the City for each event.

Part X. Section 6.54.030 is amended to read as follows:

Section 6.54.030 Permit Application. Any person, firm or corporation, requiring a transient dealer’s permit shall make application to the City Clerk’s office together with a fee as set forth in the fee schedule. The City Clerk shall issue such permit and forward copies of the same to the Chief of Police.

Part XI. Section 6.68.010 is amended to read as follows:

Section 6.68.010. License Required. No person or persons shall exhibit any caravans, circus or give any theatrical performance or show of any kind in the City of Wauwatosa without first having obtained a license as provided in this chapter under penalty and forfeiture as provided in the ordinance.

Part XII. Section 6.68.020 is amended to read as follows:

Section 6.68.020. License Application Fee. All applications for licenses under Section 6.68.010 to 6.68.060 shall be made to the Legislation, Licensing and Communications Committee who may grant or refuse to grant such license as may be best for the good order of the City. The Legislation, Licensing and Communications Committee request reports from the Police Department, Health Department, Public Works and any other City department whose investigation input may assist the Committee. The license fee shall be as set forth in the fee schedule.

Part XIII. Section 6.68.060 is amended to read as follows:

Section 6.68.060 – Circuses and Carnivals Held Outdoors Deemed a Nuisance. Circuses and carnivals exhibited or held outdoors or in tents are nuisances and are prohibited in the City of Wauwatosa. No person shall hold such carnival or circus in any violation hereof will subject the violator to the penalty as provided under the general penalty provisions of this code.

Part XIV. Chapter 6.76 is repealed in its entirety.

Part XV. Section 6.88.050 is repealed in its entirety.

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

It was moved by Ald. Birschel, seconded by Ald. Organ to adopt the two foregoing ordinances. -14

**FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT**

**RESOLUTION** R-08-204

BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin THAT a public hearing be held before the Common Council in the Council Chambers at 7:30 p.m. Local Time, on Tuesday, December 2, 2008 in the City Hall of the City of Wauwatosa, Wisconsin at which time all persons interested, or their agents or attorneys, will be heard concerning the proposed City of Wauwatosa Comprehensive Plan.

BE IF FURTHER RESOLVED THAT the City Clerk be and is hereby directed to publish the proper notices of said hearing as required by law.

**FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT**

**RESOLUTION** R-08-205

WHEREAS, the Common Council has previously approved the conditional use proposed by West Development Partners, LLC, for a large retail establishment at 1701-1801 N. Mayfair Road; and

WHEREAS, Section 24.25 of the Wauwatosa Municipal Code requires that deviations from standards for large retail developments be set forth in a Developer’s Agreement approved by the Wauwatosa Common Council; and

WHEREAS, a proposed Developer’s Agreement was reviewed by the Committee on Community Development at its meeting on October 14, 2008, and was recommended for approval by the Wauwatosa Common Council contingent upon certain language changes, which have been addressed and provided to Common Council members in advance of this meeting, a copy of which Developer’s Agreement is attached hereto and incorporated herein;

NOW, THEREFORE, BE IT RESOLVED THAT the appropriate City officials are hereby authorized to execute the attached Developer’s Agreement with West Development Partners, LLC, regarding development of the property at 1701-1801 N. Mayfair Road in the City of Wauwatosa, as

that Agreement has been amended in conformance with the directions of the Committee of Community Development.

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

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-08-206**

WHEREAS, in preparation for the construction of the new Fire Station #1 to be located north of the present Fire Station on Underwood Avenue in the City of Wauwatosa, the owner of the properties located at 1531, 1539 and 1607 Underwood Avenue has agreed to sell those properties to the City of Wauwatosa for a total combined purchase price of \$1,038,220.00; and

WHEREAS, the sale agreement clarifies that the sale of the properties should be closed prior to November 1, 2008, but that the owner's current tenants shall be permitted to maintain their residence in the properties for such time as necessary to vacate the properties, but no later than December 31, 2008; and

WHEREAS, the current owner of the properties is committed to provide all necessary costs associated with relocating the current tenant such that upon turning possession of the properties over to the City, they will be empty and prepared for the City's use;

NOW, THEREFORE, BE IT RESOLVED THAT the appropriate City officials are hereby authorized to execute all necessary documents and expend funds for the purpose of purchasing the properties at 1531, 1539 and 1607 Underwood Avenue in the City of Wauwatosa for the purpose of construction of Fire Station #1 at a price not to exceed \$1,038,220.00.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-08-207**

WHEREAS, the Village of Wauwatosa Business Improvement District submitted to the Committee on Budget & Finance its 2009 budget and work plan; and

WHEREAS, Committee members and representatives of the BID Board agreed that the budget and work plan are accurate and do reflect the intentions of the entire BID Board;

NOW, THEREFORE, BE IT RESOLVED THAT the 2009 budget and work plan for the Village of Wauwatosa Business Improvement District as provided to the Committee on Budget & Finance on October 14, 2008, are hereby approved and, upon completion of the tax roll, assessments shall be included on the property tax bills of affected properties in a manner consistent with those documents.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-08-208**

**RESOLUTION AUTHORIZING THE ISSUANCE OF \$2,000,000  
GENERAL OBLIGATION PROMISSORY NOTES AND THE ISSUANCE AND SALE OF  
\$2,000,000 NOTE ANTICIPATION NOTES IN ANTICIPATION THEREOF**

WHEREAS, the City of Wauwatosa, Milwaukee County, Wisconsin (the "City") is presently in need of the sum of \$2,000,000 for the public purpose of paying the cost of acquiring and improving a site for a new fire station, including demolishing existing structures; and paying design and other professional fees and preliminary costs of construction (the "Project");

WHEREAS, the Common Council hereby finds and determines that the Project is within the City's power to undertake and therefore serves a "public purpose" as that term is defined in Section 67.04(1)(b), Wisconsin Statutes;

WHEREAS, cities are authorized by the provisions of Chapter 67, Wisconsin Statutes, to borrow money and issue general obligation promissory notes for such public purposes;

WHEREAS, it is the finding of the Common Council that it is necessary, desirable and in the best interest of the City to authorize the issuance of and covenant to issue general obligation promissory notes (the "Securities") to provide permanent financing for the Project;

WHEREAS, the Securities have not yet been issued or sold;

WHEREAS, cities are authorized by the provisions of Section 67.12(1)(b), Wisconsin Statutes, to issue note anticipation notes in anticipation of receiving the proceeds from the issuance and sale of the Securities;

WHEREAS, it is the finding of the Common Council that it is necessary, desirable and in the best interest of the City to authorize the issuance and sale of note anticipation notes pursuant to Section 67.12(1)(b), Wisconsin Statutes (the "Notes"), in anticipation of receiving the proceeds from the issuance and sale of the Securities, to provide interim financing to pay the cost of the Project; and

WHEREAS, it is the finding of the Common Council that it is necessary, desirable and in the best interest of the City to sell the Notes to Hutchinson, Shockey, Erley & Co. (the "Purchaser"), pursuant to the terms and conditions of its note purchase proposal or term sheet attached hereto as Exhibit A and incorporated herein by this reference (the "Proposal").

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1. Authorization of General Obligation Promissory Notes. The City hereby authorizes the issuance and declares its intention and covenants to issue general obligation promissory notes pursuant to the provisions of Chapter 67, Wisconsin Statutes, in an amount of \$2,000,000 to retire any outstanding note anticipation notes issued for the purpose of paying the cost of the Project (hereinafter, such notes shall be referred to as the "Securities"). There is hereby levied on all the taxable property in the City a direct, annual, irrevocable tax sufficient to pay the interest on said Securities as it becomes due, and also to pay and discharge the principal thereof.

Section 2. Authorization and Sale of the Note Anticipation Notes. In anticipation of the sale of the Securities, for the purpose of paying the cost of the Project, there shall be borrowed pursuant to Section 67.12(1)(b), Wisconsin Statutes, the principal sum of TWO MILLION DOLLARS (\$2,000,000) from the Purchaser in accordance with the terms and conditions of the Proposal. To evidence the obligation of the City, the Mayor and City Clerk are hereby authorized, empowered and directed to make, execute, issue and sell to the Purchaser for, on behalf of and in the name of the City, note anticipation notes aggregating the principal amount of TWO MILLION DOLLARS (\$2,000,000) (the "Notes") for the sum set forth on the Proposal, plus accrued interest to the date of delivery.

Section 3. Terms of the Notes. The Notes shall be designated "Note Anticipation Notes, Series 2008"; shall be dated November 1, 2008; shall be in the denomination of \$5,000 or any integral multiple thereof as specified in the Notes; shall be numbered R-1 and upward; shall bear interest at the rate; and shall mature on November 1, 2010 as set forth on the schedule attached hereto as Exhibit B and incorporated herein by this reference (the "Schedule"). Interest is payable semi-annually on May 1 and November 1 of each year commencing on May 1, 2009. Interest shall be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board.

Section 4. Redemption Provisions. The Notes shall be subject to redemption prior to maturity, at the option of the City, on May 1, 2010 or on any date thereafter. Said Notes shall be redeemable as a whole or in part, and if in part, by lot, at the principal amount thereof, plus accrued interest to the date of redemption.

Section 5. Form of the Notes. The Notes shall be issued in registered form and shall be executed and delivered in substantially the form attached hereto as Exhibit C and incorporated herein by this reference.

Section 6. Security. The Notes shall in no event be a general obligation of the City and do not constitute an indebtedness of the City nor a charge against its general credit or taxing power. No lien is created upon the Project or any other property of the City as a result of the issuance of the Notes. The Notes shall be payable only from (a) any proceeds of the Notes set aside for payment of interest on the Notes as it becomes due and (b) proceeds to be derived from the issuance and sale of the Securities, which proceeds are hereby declared to constitute a special trust fund, hereby created and established, to be held by the City Clerk and expended solely for the payment of the principal of and interest on the Notes until paid. The City hereby agrees that, in the event such monies are not sufficient to pay the principal of and interest on the Notes when due, if necessary, the City will pay such deficiency out of its annual general tax levy or other available funds of the City; provided, however, that such payment shall be subject to annual budgetary appropriations therefor and any applicable levy limits; and provided further, that neither this Resolution nor any such payment shall be construed as constituting an obligation of the City to make any such appropriation or any further payments.

Section 7. Segregated Debt Service Fund Account. (A) Creation and Deposits. There be and there hereby is established in the treasury of the City a separate and distinct fund account designated as the "Debt Service Fund Account for \$2,000,000 Note Anticipation Notes, Series 2008, dated November 1, 2008" ("Debt Service Fund Account"), and said account shall be maintained until the obligation evidenced by the Notes is fully paid or otherwise extinguished. The City Clerk shall deposit in the Debt Service Fund Account (i) all accrued interest received by the City at the time of delivery of and payment for the Notes; (ii) any proceeds of the Notes representing capitalized interest on the Notes or other funds appropriated by the City for payment of interest on the Notes, as needed

to pay the interest on the Notes when due; (iii) proceeds of the Securities (or other obligations of the City issued to pay principal of or interest on the Notes); (iv) such other sums, including tax monies, as may be necessary at any time to pay principal of and interest on the Notes when due and which are appropriated by the Common Council for that purpose; and (v) surplus monies in the Borrowed Money Fund as specified in Section 9 hereof.

(B) Use and Investment. No money shall be withdrawn from the Debt Service Fund Account and appropriated for any purposes other than the payment of principal of and interest on the Notes until all such principal and interest has been paid in full and canceled; provided that such monies may be invested in permitted municipal investments under the pertinent provisions of the Wisconsin Statutes ("Permitted Investments"), which investments shall continue as a part of the Debt Service Fund Account. Said account shall be used for the sole purpose of paying the principal of and interest on the Notes and shall be maintained for such purpose until the Notes are fully paid or otherwise extinguished, and shall at all times be invested in a manner that conforms with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and any applicable Treasury Regulations (the "Regulations").

(C) Remaining Monies. When all of the Notes have been paid in full and canceled, and all Permitted Investments disposed of, any money remaining in the Debt Service Fund Account shall be transferred and deposited in the general fund of the City, unless the Common Council directs otherwise.

Section 8. Covenants of the City. The City hereby covenants with the owners of the Notes as follows:

(A) It shall issue and sell the Securities as soon as practicable, as necessary to provide for payment of the Notes;

(B) It shall segregate the proceeds derived from the sale of the Securities into the special trust fund herein created and established and shall permit such special trust fund to be used for no purpose other than the payment of principal of and interest on the Notes until paid. After the payment of principal of and interest on the Notes in full, said special trust fund may be used for such other purposes as the Common Council may direct in accordance with law; and,

(C) It shall maintain a debt limit capacity such that its combined outstanding principal amount of general obligation bonds or notes or certificates of indebtedness and the \$2,000,000 authorized for the issuance of the Securities shall at no time exceed its constitutional debt limit.

Section 9. Proceeds of the Notes; Segregated Borrowed Money Fund. All monies received by the City upon the delivery of the Notes to the Purchaser thereof, except for accrued interest and premium, if any, shall be deposited by the City Clerk into a special fund (the "Borrowed Money Fund") which shall be maintained separate and distinct from all other funds of the City and shall be used for no purpose other than the purposes for which the Notes are issued. Monies in the Borrowed Money Fund may be temporarily invested in Permitted Investments. Any monies, including any income from Permitted Investments, remaining in the Borrowed Money Fund after the purposes for which the Notes have been issued have been accomplished, and, at any time, any monies as are not needed and which obviously thereafter cannot be needed for such purposes, shall be deposited in the Debt Service Fund Account created herein.

Section 10. No Arbitrage. All investments made pursuant to this Resolution shall be Permitted Investments, but no such investment shall be made in such a manner as would cause the Notes to be

"arbitrage bonds" within the meaning of Section 148 of the Code or the Regulations and an officer of the City, charged with the responsibility for issuing the Notes, shall certify as to facts, estimates, circumstances and reasonable expectations in existence on the date of delivery of the Notes to the Purchaser which will permit the conclusion that the Notes are not "arbitrage bonds," within the meaning of the Code or Regulations.

Section 11. Compliance with Federal Tax Laws. (a) The City represents and covenants that the Project financed by the Notes and its ownership, management and use will not cause the Notes to be "private activity bonds" within the meaning of Section 141 of the Code. The City further covenants that it shall comply with the provisions of the Code to the extent necessary to maintain the tax-exempt status of the interest on the Notes including, if applicable, the rebate requirements of Section 148(f) of the Code. The City further covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Notes) if taking, permitting or omitting to take such action would cause any of the Notes to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause interest on the Notes to be included in the gross income of the recipients thereof for federal income tax purposes. The City Clerk or other officer of the City charged with the responsibility of issuing the Notes shall provide an appropriate certificate of the City certifying that the City can and covenanting that it will comply with the provisions of the Code and Regulations.

(b) The City also covenants to use its best efforts to meet the requirements and restrictions of any different or additional federal legislation which may be made applicable to the Notes provided that in meeting such requirements the City will do so only to the extent consistent with the proceedings authorizing the Notes and the laws of Wisconsin and to the extent that there is a reasonable period of time in which to comply.

Section 12. Designation as Qualified Tax-Exempt Obligations. The Notes are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265 of the Code, relating to the ability of financial institutions to deduct from income for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations.

Section 13. Execution of the Notes; Closing. The Notes shall be prepared in printed form, executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk, authenticated, if required, by its fiscal agent, if any, sealed with its official or corporate seal, if any, or a facsimile thereof and delivered to the Purchaser upon payment to the City of the purchase price thereof, plus accrued interest to the date of delivery (the "Closing"). The facsimile signature of either of the officers executing the Notes may be imprinted on the Notes in lieu of the manual signature of the officer but, unless the City has contracted with a fiscal agent to authenticate the Notes, at least one of the signatures appearing on each Note shall be a manual signature. In the event that either of the officers whose signatures appear on the Notes shall cease to be such officers before the Closing, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the Closing. The aforesaid officers are hereby directed and authorized to do all acts and execute all documents, certificates and acknowledgements as may be necessary and convenient to effectuate the Closing.

Section 14. Payment of the Notes. The principal of and interest on the Notes shall be paid in lawful money of the United States of America by the City Clerk or City Treasurer.

Section 15. Persons Treated as Owners; Transfer of Notes. The City shall keep books for the registration and for the transfer of the Notes. The persons in whose name any Note shall be

registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of either principal or interest on any Note shall be made only to the registered owner thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Any Note may be transferred by the registered owner thereof by surrender of the Note at the office of the City Clerk, duly endorsed for the transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing. Upon such transfer, the Mayor and City Clerk shall execute and deliver in the name of the transferee or transferees a new Note or Notes of a like aggregate principal amount, series and maturity and the City Clerk shall record the name of each transferee in the registration book. No registration shall be made to bearer. The City Clerk shall cancel any Note surrendered for transfer.

The City shall cooperate in any such transfer, and the Mayor and City Clerk are authorized to execute any new Note or Notes necessary to effect any such transfer.

Section 16. Record Date. The fifteenth day of each calendar month next preceding each interest payment date shall be the record date for the Notes (the "Record Date"). Payment of interest on the Notes on any interest payment date shall be made to the registered owners of the Notes as they appear on the registration book of the City at the close of business on the Record Date.

Section 17. Utilization of The Depository Trust Company Book-Entry-Only System. In order to make the Notes eligible for the services provided by The Depository Trust Company, New York, New York ("DTC"), the City agrees to the applicable provisions set forth in the Blanket Issuer Letter of Representations previously executed on behalf of the City and on file in the City Clerk's office.

Section 18. Official Statement. The Common Council hereby approves the Preliminary Official Statement with respect to the Notes and deems the Preliminary Official Statement as "final" for purposes of SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934 (the "Rule"). All actions taken by officers of the City in connection with the preparation of such Preliminary Official Statement and any addenda to it or Final Official Statement are hereby ratified and approved. In connection with the Closing, the appropriate City official shall certify the Preliminary Official Statement and any addenda or Final Official Statement. The City Clerk shall cause copies of the Preliminary Official Statement and any addenda or Final Official Statement to be distributed to the Purchaser.

Section 19. Undertaking to Provide Continuing Disclosure. The City hereby covenants and agrees, for the benefit of the owners of the Notes, to enter into a written undertaking (the "Undertaking") required by the Rule to provide continuing disclosure of certain financial information and operating data and timely notices of the occurrence of certain events in accordance with the Rule. This Undertaking shall be enforceable by the owners of the Notes or by the Purchaser on behalf of such owners (provided that the rights of the owners and the Purchaser to enforce the Undertaking shall be limited to a right to obtain specific performance of the obligations thereunder and any failure by the City to comply with the provision of this Undertaking shall not be an event of default with respect to the Notes).

The City Clerk, or other officer of the City charged with the responsibility for issuing the Notes, shall provide a Continuing Disclosure Certificate for inclusion in the transcript of proceedings, setting forth the details and terms of the City's Undertaking.

Section 20. Record Book. The City Clerk shall provide and keep the transcript of proceedings as a separate record book (the "Record Book") and shall record a full and correct statement of every step or proceeding had or taken in the course of authorizing and issuing the Notes in the Record Book.

Section 21. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the Common Council or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-08-209**

BE IT RESOLVED, by the Common Council of the City of Wauwatosa THAT the claim filed by Time Warner Cable for damages be and the same is hereby denied and placed on file for the reason that no liability exists on the part of the City;

BE IT FURTHER RESOLVED THAT the City Clerk is hereby authorized and directed to notify said claimant of this action of the Common Council as provided by law.

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

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

BILLS AND CLAIMS FOR THE PERIOD 10/8/08 – 10/21/08 --

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 10/8/08 – 10/21/08: \$3,094,632.45

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

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-08-210**

BE IT RESOLVED, By the Common Council of the City of Wauwatosa, Wisconsin that the following be and hereby are the policies for 2009 construction pertaining to street improvements and corresponding rates:

(1) Due to the relative value of the benefits conferred upon different types of properties by the public improvements described herein, assessments for original permanent pavement shall be at the following rates per assessable foot based upon property classification:

- a) \$58.00 for one or two family residences, churches, schools, public parks (“single family rate”)
- b) \$72.50 for multiple family residences of three or more (1-1/4 x single family rate)
- c) \$87.00 for business or commercial property (1-1/2 x single family rate)
- d) \$116.00 for industrial property (2 x single family rate)

(1.1) a) A pavement improvement that terminates only partially abutting a parcel of land, shall have only such *prorata* portion assessed in the year that the Final Resolution is adopted by the Common Council

b) On streets that Federal and/or State Aid is not available, the rate of assessment may be adjusted to recover 60% of the paving costs.

c) On streets where sidewalks are to be newly constructed on one side only, in conjunction with a street scheduled for improvement, the cost of the sidewalk plus 25% for engineering and overhead may be prorated by total street frontage and added to the basic assessment for each property abutting said improvement or on both sides of that portion of said street.

(2) The assessments for reconstruction of a permanent pavement shall be at the following rates per assessable foot (average width) for one or two family residences (other classes proportioned as in (1) above).

- a) Repaving Type “A” \$38.00 for completely removing existing curb and pavement regrading and replacing with new concrete curb and gutter and either concrete pavement or asphalt pavement with a new road base.
- b) Repaving Type “B” \$30.40 for completely removing existing curb and gutter, milling the existing pavement as required, and replacing with concrete curb and gutter and asphalt pavement on the existing road base.
- c) Repaving Type “C” \$15.20 for replacing defective curb and gutter (not to exceed 25% of the total length of curb and gutter existing on the street segment to be improved), milling the existing pavement surface as required, and surfacing with new asphalt pavement.

If Type “C” Repaving is required on arterial streets less than 25 years after Type “A” repaving has been performed, all one and two family residences shall receive total assessment credit equal to 4% for each year under 25 years.

To recover the cost of public sidewalk replacement when done in conjunction with repaving, the assessable rates may reflect an amount of \$10.50 added against each frontage foot of adjacent properties.

Sidewalk replacement when not assessed by frontage foot shall be assessed at actual cost plus the cost of engineering and overhead as described in paragraph 11.

Any property where the entire city sidewalk was replaced within twelve years may be exempt from sidewalk assessment provided walk is at proper grade and condition.

Drive approach replacement shall be assessed at actual cost plus the cost of engineering and overhead as described in paragraph 11.

- (3) Alleys shall be considered individually assessable at actual cost plus the cost of engineering and overhead as described in paragraph 11 with the abutting property owner being assessed at a unit rate per assessable foot for permanent new construction, reconstruction, or asphaltic resurfacing, as follows:

Property Classification Factors

- (a) 1-Unit - one and two family residences, churches, schools, public parks
- (b) 1-1/2 Units - three or more family residences, apartments (3 or more units)
- (c) 2 Units - business, commercial, industrial

Assessable Factors

- (a) Rear alley - Average of front and rear lot lines.
  - (b) Side alley - Average of front and rear lot lines.
  - (c) Rear and side alley - Single assessment only: average of front and rear lot lines.
  - (d) One and two family lots with primary vehicle access from a public street assessed at 50% of the unit rate.
- (4) (a) Side yards, consistent with the definition in sec. 24.02.340 of the Wauwatosa Municipal Code, for original permanent pavement, reconstruction of permanent pavement, and asphalt resurfacing shall be assessed at the rate of 50% of the assessable side yard footage, abutting on the street being improved, for 1 and 2 family, church, school, and public park uses only. All other classes of property shall be assessed for full assessable footage.
- (b) A platted or divided lot that extends through and abuts two streets, provided such lot does not consist of two or more platted or divided lots, shall have the longer of the two sides considered a side yard for purposes of assessment. The rate of assessment shall be determined as described in Paragraph (4) (a) herein.

Should both abutting frontages be equal in length, the frontage first improved or reconstructed or resurfaced, as the case may be, shall be considered the front for assessment purposes. Irregular shaped lots may be assessed based on the actual abutting frontages.

- (c) Properties with 3 sides adjacent to streets shall have the two longest assessable footage sides assessed at 50%. Remaining side is assessed at 100% of assessable footage.
- (5) Permanent asphalt driveway approaches placed at existing driveways, in connection with the construction of original permanent pavement, shall be assessed at cost plus 12.5% for engineering and overhead.
- (6) Concrete drive approaches replaced under public contract, in connection with the construction of all permanent paving, shall be assessed at actual cost plus the cost of engineering and overhead as described in paragraph 11. Concrete drive approaches six years old or less are to be replaced at no cost, and those seven to twelve years old at one-half cost.
- (7) Defective permanent curb replaced either by contract or City forces, when requested by the property owner in writing, or replacements not in connection with the resurfacing of a permanent street, shall be assessed at the rate of \$40.00 per foot replaced.

- (8) Service walk replacement shall be assessed at actual cost plus the cost of engineering and overhead as described in paragraph 11, when done in conjunction with all permanent paving.
- (9) Costs of service walks removed and replaced with sod in conjunction with permanent paving or sidewalk repair contract are not assessed to abutting property owners.
- (10) Sidewalk, driveway approaches, and service walk removal and replacement, when not done in conjunction with permanent paving or when ordered replaced by the Board of Public Works due to deterioration or defective condition, when done under public contract, shall be assessed at cost plus 25% for engineering and overhead. Sidewalks and service walks when not done in conjunction with permanent paving, which require replacement because of city tree roots damaging same, shall receive a 1/3 credit.
- (11) To recover the cost of engineering and overhead in connection with repaving and related work involving special assessments, a charge of 12.5% shall be made against the contract amount of such work, unless a different amount is specifically stated in this resolution.
- (12) Drive approaches, sidewalk, service walk, and/or sodding replaced under public contract in excess of that required for construction of all permanent paving as determined by the Engineering Department, when requested by the property owner in writing, shall be assessed at actual cost plus the cost of engineering and overhead as described in paragraph 11.
- (13) Federal, state, and railroad properties are exempt from special assessments.
- (14) Street projects that have been postponed shall be assessed at the rate the project was originally approved by the Common Council unless the Common Council subsequently sets a new rate.
- (15) This policy of assessment shall apply commencing with the date of adoption and will remain in effect until such time as modified by the Common Council.

It was moved by Ald. Maher, seconded by Ald. Meaux  
to approve the foregoing resolution. Ayes 13, Noes 1  
(Meaux)

## **FROM THE BOARD OF PUBLIC WORKS**

### **RESOLUTION R-08-211**

BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin that a public hearing be held before the Common Council in the Council Chambers at 7:30 p.m. Local Time, on Tuesday, December 2, 2008 in the City Hall of the City of Wauwatosa, Wisconsin at which time all persons interested, or their agents or attorneys, will be heard concerning matters relating to the City's intent to perform street construction work in the City of Wauwatosa.

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-08-212**

BE IT RESOLVED by the Common Council of the City of Wauwatosa that the proper city officials be and they are hereby authorized and directed to enter into a contract with J & A Pohl, Inc., for the work of parking lot improvements, Fire Station #3 and Glenview water tank, and work incidental thereto under Contract 08-08 for the amount of \$71,426.55, this being the lowest and best bid.

BE IT FURTHER RESOLVED that Alternate bid A-1 and Division B are not part of this award.

BE IT FURTHER RESOLVED that the surety deposits, if any, be returned to the unsuccessful bidders.

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-08-213**

BE IT RESOLVED by the Common Council of the City of Wauwatosa that the proper city officials be and they are hereby authorized and directed to enter into a contract with Faust Company for the work of water piping modification and meter installation, Blanchard Street Pumping Station, and work incidental thereto under Contract 08-36 for the amount of \$59,900, this being the lowest and best bid.

BE IT FURTHER RESOLVED that \$14,900 of the Available for Capital Projects funds with the Waterworks System Improvement Fund be allocated for this work.

BE IT FURTHER RESOLVED that the surety deposits, if any, be returned to the unsuccessful bidders.

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

There being no further business, the meeting adjourned at 8:37 p.m.

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Carla A. Ledesma, CMC, City Clerk