

CITY OF WAUWATOSA
MEMORIAL CIVIC CENTER
7725 WEST NORTH AVENUE
WAUWATOSA, WI 53213
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COMMON COUNCIL
Regular Meeting, Tuesday, October 21, 2003

PRESENT: Alds. Becker, Casey, Ecks, Grimm, Heins, Herzog, Jenkins, Kopischke, Matthews, Stepaniak, Subotich, Sullivan, Treis, Bruderle-Baran -14

EXCUSED: Alds. Krol and McCarthy

ALSO PRESENT: Mr. Wontorek, City Administrator; Ms. Plass, Acctg. Manager; Mr. Kesner; City Attorney; Mr. Kappel, Dir. of Public Works; Ms. Welch, Community Development Director; Police Capt. Sutter; Ms. Ledesma, City Clerk; Ms. Williams, Deputy City Clerk

Mayor Estness in the Chair

The Mayor called the meeting to order at 7:35 p.m.

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

Accompanied by Mayor Estness and Common Council President Bruderle-Baran, Kevin O'Toole of Hunzinger Construction Company presented the Building Department with the 2003 Award of Excellence. Award recipients are selected by Hunzinger employees for having demonstrated exceptional service and cooperation to the company during a construction project. Effort put forth by members of the Building Department enabled Hunzinger to construct the St. Joseph Outpatient Center, 201 N. Mayfair Road, in ten months.

APPLICATIONS, COMMUNICATIONS, ETC.

1. Wauwatosa Water Utility Statement of Receipts and Disbursements for month ended September 30, 2003 and Statement of Financial Condition as of 9/30/03
Place on file
2. Notice of Appeal: B & G Realty, Inc., 100 E. Wisconsin Ave., Milwaukee
City Attorney
3. Letter and petition with 125 signatures from residents and property owners of an area bounded by N. 60th Street, W. Wright Street, W. Center Street and N. 61st Street requesting the city enter into negotiations with the City of Milwaukee for reannexation of this area into the City of Wauwatosa
Director of Community Development, City Attorney
4. Special Use application to construct a dormer addition to a legal, non-conforming structure at 2229 N. 66th Street
Plan Commission, Board of Zoning Appeals
5. Special Use application to operate a women's fitness center at 10100 W. Capitol Drive
Plan Commission, Board of Zoning Appeals

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT FOR INTRODUCTION

1. Ordinance amending Chapter 15.22.010(A) and 15.22.020 of the City Code by adding familial status as a protected basis
Re-refer to originating committee

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

ORDINANCE O-03-25

AN ORDINANCE AMENDING CHAPTER 6.08 AND CREATING SECTION 6.08.400 OF THE WAUWATOSA MUNICIPAL CODE TO ALLOW ISSUANCE OF RETAIL "CLASS C" WINE LICENSES

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

Part I: Section 6.08.130 of the Wauwatosa Code of Ordinances shall be repealed in its entirety and recreated to read as follows:

6.08.130 Class "B", "Class B" and "Class C" licenses--Persons permitted to sell and serve.

- A. No person other than the licensee shall be permitted to sell or serve alcoholic beverages in any place operated under a class "B", "Class B" or "Class C" retailers license unless he or she:
 1. Has an operator's license;
 2. Is a member of the immediate family of the licensee who has attained legal drinking age;
 3. Has a provisional operator's license as set forth in Section 6.08.270.
- B. The spouse of an officer of a Wisconsin corporation holding a valid retail "Class B" liquor or "Class C" wine license is permitted to sell or serve intoxicating liquors upon such licensed premises within the city of Wauwatosa wherever such corporate officer holds a valid operator's license issued by the city of Wauwatosa, and provided that the spouse of such corporate officer is working under the immediate supervision of the approved agent for the licensed corporation, or a person holding an operator's license who is at the time of such service upon the licensed premises.
- C. A member of the immediate family of the licensee shall be the wife, husband, son, daughter, mother or father of the licensee.

Part II. Section 6.08.230 B. of the Wauwatosa Code of Ordinances shall be repealed in its entirety and recreated to read as follows:

- B. No person shall consume alcoholic beverages outside the building and area defined within the "licensed premises" of the licensee holding a Class "A," or Class "B" fermented malt beverage or "Class A" or "Class B" intoxicating liquor license or a "Class C" Wine license.

Part III: The text portion of Section 6.08.390 of the Wauwatosa Code of Ordinances shall be repealed in its entirety and recreated to read as follows:

There shall be three classes of licenses:

- A. Retail "Class A" License. A retail "Class A" license, when issued by the city clerk under authority of the common council, shall permit its holder to sell, deal and traffic in intoxicating liquors only in original packages or containers, and to be consumed off the premises where sold. The fee for such retail "Class A" license shall be as shown in the fee schedule and shall be prorated based on the number of months remaining in the licensing period.

B. Retail "Class B" License. A retail "Class B" license, when issued by the city clerk under authority of the common council, shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed, and in the original package or container, in multiples not to exceed four liters at any one time to be consumed off the premises where sold. The fee for such retail "Class B" license shall be as shown in the fee schedule and shall be prorated based on the number of months remaining in the licensing period.

C. Retail "Class C" License. A retail "Class C" license as described in sec. 6.08.400, below. The fee for such retail "Class C" license shall be as shown in the fee schedule and shall be prorated based on the number of months remaining in the licensing period.

Part IV: Section 6.08.400 of the Wauwatosa Code of Ordinances shall be created to read as follows:

Retail "Class C" licenses.

(a) In this section "barroom" means a room that is primarily used for the sale or consumption of alcohol beverages.

(b) A "Class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.

(c) A "Class C" license may be issued to a person qualified under W.S.A. § 125.04(5) for a restaurant in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts and which does not have a barroom or for a restaurant in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts and which has a barroom in which wine is the only intoxicating liquor sold. A "Class C" license may not be issued to a foreign corporation, a foreign limited liability company or a person acting as agent for or in the employ of another.

(d) A "Class C" license shall particularly describe the premises for which it is issued.

Part V: Section 6.08.440 of the Wauwatosa Code of Ordinances shall be repealed in its entirety and recreated to read as follows:

"Class A" licensed premises--Seller's license or immediate family member required.

No person other than the licensee shall be permitted to sell, deal, or traffic in intoxicating liquors in any place under a retail "Class A" liquor license unless he or she has a seller's license or unless he or she is a member of the immediate family of the licensee who is of legal drinking age or unless he or she is under the immediate supervision of the licensee or of a person holding a seller's license.

Part VI: Section 6.08.450 of the Wauwatosa Code of Ordinances shall be repealed in its entirety and recreated to read as follows:

6.08.450 Closing hours--Intoxicating liquor sales.

No premises for which a license for retail sale of intoxicating liquor has been issued shall be permitted to remain open for the sale of liquor:

A. If a retail "Class A" license, between nine p.m. and eight a.m.;

B. If a retail "Class B" or "Class C" license, on weekdays, between two a.m. and six a.m., and Saturday and Sunday between 2:30 a.m. and 6 a.m.; on January 1st of each year, no closing;

C. No premises for which a "Class B" license has been granted shall be allowed between the hours of nine p.m. and eight a.m. to sell intoxicating liquor or other alcoholic beverages in the original unopened package or container for consumption off the licensed premises.

Part VII: Section 6.08.460 of the Wauwatosa Code of Ordinances shall be repealed in its entirety and recreated to read as follows:

6.08.460 “Class B” or “Class C” license--Conformance to state health regulations required.

No retail “Class B” or “Class C” license shall be issued unless the premises to be licensed conform to the rules and regulations of the State Board of Health applicable to restaurants as contemplated in subsection (5) of Section 125.68 of the Wisconsin Statutes, and also conform to all ordinances and regulations adopted by the city.

Part VIII: Section 6.08.470 of the Wauwatosa Code of Ordinances shall be repealed in its entirety and recreated to read as follows:

6.08.470 Conditions of license.

All retail “Class A”, “Class B” and “Class C” licenses granted hereunder shall be granted subject to the following conditions, and all other conditions of Section 6.08.220 to 6.08.440, and subject to all other ordinances and regulations of this city applicable thereto:

A. Every applicant procuring a license hereby consents to the entry of any peace officer as defined in Chapter 125 of the Wisconsin Statutes, or other public officers of the city, at all reasonable hours for the purposes of inspection and search, and consents to the removal from the premises of all things and articles there had in violation of city ordinances or state laws and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such purposes and offenses.

B. No retail “Class B” or “Class C” licensee shall employ any person under legal drinking age to sell or serve intoxicating liquors in any part of the licensed premises, unless such person has been issued a valid operator’s license under this chapter.

No retail “Class B” or “Class C” licensee shall employ any person under sixteen years of age to perform services other than the sale or service of intoxicating liquors in any part of the licensed premises.

C. No club shall sell any intoxicating liquor except to members and guests invited by members.

D. Each licensed premises shall at all times be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.

E. No premises licensed for the sale of intoxicating liquor at retail shall, during the days they are required to close or during the hours in which the sale of liquor is prohibited, obstruct by use of curtains, blinds, screens, or in any other manner, a full and complete view of the interior from the outside. During the hours in which the sale of intoxicating liquor is permitted, the premises shall be properly and adequately lighted.

Part IX: Section 6.08.500 of the Wauwatosa Code of Ordinances shall be repealed in its entirety and recreated to read as follows:

6.08.500 Licensees to maintain a signature book.

A. The holder of a “Class A”, “Class B” or “Class C” liquor license shall maintain a book to be signed by any patron who purchases or attempts to purchase any beverage on the licensed premises if there is doubt as to the validity of either the identification card produced or as to the true identity of the person presenting such card. When such doubt exists, the person presenting the card shall be required to sign such book which shall also contain the date and time of sale, description of the identification card produced, and shall be initialed by the person dispensing the beverages.

B. Any person who refuses to sign such book may be removed from such premises.

C. The signature book shall be open to inspection by the police of the city of Wauwatosa at any time.

D. Any person violating any provision of this section shall be subject to the general penalty provisions of Chapter 1.12.

Part X: The consolidated fee schedule shall reflect an annual fee of \$100.00 for the issuance of a “Class C” Wine license.

Part XI: This ordinance shall be effective on and after its date of publication.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-03-256

WHEREAS, Travis McCall, 3363 N. Cramer, Milwaukee, WI applied for an operator’s license in conjunction with his employment at Applebee’s Bar & Grill, 2500 N. Mayfair Road, Wauwatosa, WI; and

WHEREAS, a background investigation revealed prior convictions; and

WHEREAS, Mr. McCall has failed to appear or respond to multiple requests from the Committee; and

WHEREAS, applicant’s prior convictions and his failure to appear substantially relate to his ability to perform required duties as an operator in the City of Wauwatosa;

NOW, THEREFORE, BE IT RESOLVED THAT the operator’s license application of Travis McCall is hereby denied;

BE IT FURTHER RESOLVED THAT the Clerk shall notify Mr. McCall in writing of this decision and the reasons for the denial.

It was moved by Ald. Treis, seconded by Ald. Ecks to adopt the foregoing ordinance and to approve the foregoing resolution. -14

FROM THE COMMITTEE ON TRAFFIC AND SAFETY

ORDINANCE O-03-26

AN ORDINANCE AMENDING WAUWATOSA CODE SECTION 11.32.080 TO INCORPORATE REVISED PARKING RESTRICTIONS ON 104TH STREET AND 105TH STREET IN THE CITY OF WAUWATOSA

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

Part I. The North 104th Street – east side portion of the “schedule of streets and portions” subsection of Wauwatosa Code Section 11.32.080 is hereby amended by deleting the following:

“(a) from Fisher Parkway to W. North Avenue” and replacing it as follows:

“(t) from W. Garfield to W. North Avenue”

Part II. The north corner of 105th Street – east side portion of the “schedule of streets and portions” subsection of Wauwatosa Code Section 11.32.080 is hereby amended by repealing the following:

“(l) from W. Garfield Ave. to Fairview Building Parking Lot” and replacing it with the following:

“(t) from W. Garfield Avenue to Fairview Building Parking Lot.”

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

FROM THE COMMITTEE ON TRAFFIC AND SAFETY

ORDINANCE O-03-27

AN ORDINANCE AMENDING WAUWATOSA CODE SECTION 11.32.080 TO INCORPORATE REVISED PARKING RESTRICTIONS ON WEST WISCONSIN AVENUE IN THE CITY OF WAUWATOSA

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

Part I. The Wisconsin Avenue – north side portion of the “schedule of streets, and portions” subsection of Wauwatosa Code Section 11.32.080 is hereby amended by adding the following restriction:

“(a) from 75 feet east of North 103rd Street to 50 feet west of North 103rd Street”

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

FROM THE COMMITTEE ON TRAFFIC AND SAFETY

RESOLUTION R-03-257

WHEREAS, Trinity Episcopal Church, 1717 Church Street, Wauwatosa, has requested two loading zones, one on the north side of West Milwaukee Avenue, 42 feet west of the corner of Milwaukee Avenue and Church Street, and the second on the west side of North Church Street, 50 feet from the corner of Church Street and Milwaukee Avenue; and

WHEREAS, a special privilege permit granting the two loading zones will require an annual fee of \$52.50;

NOW, THEREFORE, BE IT RESOLVED THAT the 35-foot loading zone on Church Street and the 27-foot loading zone on Milwaukee Avenue at the locations described above are hereby approved and special privilege permits for the establishment of these loading zones pursuant to Section 11.32.310 of the Wauwatosa Municipal Code are hereby granted commencing with the year 2003.

It was moved by Ald. Herzog, seconded by Ald. Matthews to adopt the two foregoing ordinances and to approve the foregoing resolution. -14

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-03-258

WHEREAS, the Budget Reduction Implementation Plan for the year 2003 requires a hiring freeze for all vacant positions without the specific approval of the Common Council; and

WHEREAS, there currently exist two Arborist I vacancies in the forestry section of the Department of Public Works due to the transfer of one person to the water department and the retirement of another; and

WHEREAS, winter season pruning and maintenance operations require the department to be operating in full strength; and

WHEREAS, the department of public works has met its budget reduction targets for the budget year 2003;

NOW, THEREFORE, BE IT RESOLVED THAT the request for an exception to the hiring freeze to fill the two positions of Arborist I within the forestry section of the department of public works is hereby approved.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-03-259

WHEREAS, the City of Wauwatosa currently has 163 electrical transformer units and does not have sufficient information to know whether the insulating oil in the units contain PCB's, a substance which is regulated by the Environmental Protection Agency; and

WHEREAS, obtaining information on whether electrical transformer units contain PCB's would allow the City to more accurately determine the cost and nature of any future work to be performed on these transformer units; and

WHEREAS, it is estimated that the cost of such testing of electrical transformer units would be approximately \$16,000.00; and

WHEREAS, in the Department of Public Works, the Electrical Services Sundry Contractual Services Account currently has funds sufficient to cover this testing, although such funds were previously targeted toward contractual assistance for the street lighting program;

NOW, THEREFORE, BE IT RESOLVED THAT a change of purpose in the Electrical Services Sundry Contractual Services Account in the Department of Public Works in the amount of \$16,000.00 is hereby authorized in order to allow the purchasing department to request proposals for the purpose of testing existing electrical transformer units for the presence of PCB's.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-03-260

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 Mill Coatings, Inc., of Suamico, Wisconsin for the work of cleaning and painting steel light poles and reconditioning concrete light pole foundations at Hart Park athletic field and work incidental thereto under Contract 03-27 at and for their bid price of \$54,600, this being the lowest and best base bid.

BE IT FURTHER RESOLVED that the budget be amended by \$25,000 with fund transfers within the Capital Projects fund to cover the cost of this work as follows:

- \$9,250 from account 03-551-5980-070
- \$7,750 from account 03-367-5980-050
- \$8,000 from account 03-336-5980-080

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

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-03-262

WHEREAS, the planning staff and the Department of Community Development are currently working with the Joint Committee on the Comprehensive Plan to update the City’s Comprehensive Plan pursuant to the statutory obligations; and

WHEREAS, the State of Wisconsin Department of Administration is making available grants for comprehensive planning projects; and

WHEREAS, receipt of such grant would provide for additional resources to be available in preparation of the Comprehensive Plan during the year 2004;

NOW, THEREFORE, BE IT RESOLVED THAT the Department of Community Development is hereby authorized to apply for the 2004 Comprehensive Planning grant from the State of Wisconsin – Department of Administration.

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

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-03-261

WHEREAS, the budget reduction implementation plan for the year 2003 requires a hiring freeze for all vacant positions without the specific approval of the Common Council; and

WHEREAS, there currently exists a vacancy in the position of Property Maintenance Inspector within the Building & Safety Division of the Department of Community Development; and

WHEREAS, the Department of Community Development has met its budget reduction guidelines for the year 2003; and

WHEREAS, the description of the position has been changed to a part-time position in the 2004 budget year;

NOW, THEREFORE, BE IT RESOLVED THAT the request for an exception to the hiring freeze to fill the position of Property Maintenance Inspector on a part-time basis beginning in the year 2003 is hereby approved.

It was moved by Ald. Stepaniak, seconded by Ald. Matthews to approve the foregoing resolution. –

It was moved by Ald. Grimm, seconded by Ald. Sullivan to refer the matter back to committee for further consideration of restoring this position to full time, and funding it accordingly. Upon roll call vote, the vote was Ayes 5 (Grimm, Stepaniak, Subotich, Sullivan, Treis), Noes 9. –Motion failed.

Vote on the original motion, Ayes 13, Present 1 (Grimm).

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-03-263

BE IT RESOLVED THAT the proposed settlement on the matter of Toni Seydel v. City of Wauwatosa, Milwaukee County Case #02-CV-003133, in the amount of \$18,000.00, is hereby approved.

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

FROM THE COMMITTEE ON BUDGET AND FINANCE

BILLS AND CLAIMS FOR THE PERIOD 10/8/03 – 10/21/03

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 10/8/03 – 10/21/03: \$1,924,621.50

It was moved by Ald. Ecks, seconded by Ald. Casey that each and every one of the accounts of bills and claims be allowed and ordered paid. Upon roll call vote, the vote was Ayes 14.

FROM THE BOARD OF PUBLIC WORKS

RESOLUTION R-03-264

BE IT RESOLVED by the Common Council of the City of Wauwatosa 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, 2003 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.

It was approved by Ald. Herzog, seconded by Ald. Heins
to approve the foregoing resolution. -14

There being no further business, the meeting adjourned at 7:55 p.m.

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Carla A. Ledesma, CMC, City Clerk