

# **REGULAR CITY COUNCIL MEETING**

## **MONDAY, JANUARY 10, 2011 – 7:00 PM**

### **COUNCIL CHAMBERS, CITY HALL**

Mayor Connors called the meeting to order at 7:12pm.

The Pledge of Allegiance was led by Alderman Marsala.

Roll Call. Present: Aldermen Marsala, Kehoe, Fesenmaier, Krohn, Tolar, Krause, Hartz, and Mott. Also present: Administrator Jordan, City Attorney Draper, DPW Winkler, and Clerk Reale.

#### **Awards, Presentations, and Proclamations.**

Mayor Connors read a proclamation establishing January 15, 2011 as “Lions Club International Day” in the City of Lake Geneva.

**Re-consider business from previous meeting.** None.

#### **Comments from the public as allowed by Wis. Stats. §19.84(2), limited to items on this agenda, except for public hearing items. Comments will be limited to 5 minutes.**

Terry O’Neill, 954 George Street, addressed the Council with respect to the drafted minutes of the December 11, 2010 Special Council Meeting. He noted that the minutes, as prepared, did not include a response given by DPW Winkler to a question that had been posed with respect to spending on street repairs. Specifically, DPW Winkler had been asked how much the City had spent on street repairs since 2005, other than TIF funding and the \$65,000.00 allocated for this year. The response given by DPW Winkler had basically indicated that the City had not spent any additional money on road repairs. Noting that the City had received over \$3 million in state aid for roadways during that same period, Mr. O’Neill felt that it was important that this response be included in the approved record of the proceeding.

Cass Kordecki, 715 North Street, addressed the Council to speak on the subject of Ordinance 11-03 regarding commercial indoor lodging uses. She noted that transient rental activity had been going on in residential areas of Walworth County for over a century and that tourist and transient activity had a significant, positive impact on the local economy. She also spoke to a distinction between “tourists” and “transients”, noting that not all transient renters would be classified as “tourists” even though the proposed ordinance would not draw that distinction. Ms. Kordecki stated that many travelers were now looking for places that could accommodate single families and pets for extended periods of time, suggesting that the City needed to change in order to meet the changing travel paradigm. She stated that transient rentals to single families is a low-impact potential revenue stream that would take advantage of existing infrastructure without the need for new high-rise hotels and condominium structures. She urged the Council to consider allowing transient rentals subject to local regulations rather than adopting a “broad brush” ban on the practice. Ms. Kordecki further offered to serve as a member of any ad hoc committee that might be created to review potential regulations.

#### **Acknowledgement of Correspondence.**

Clerk Reale reported that an item of correspondence and supporting documentation had been received from Cass Kordecki regarding the proposed regulations of free-standing commercial indoor lodging, as included in Ordinance 11-03. He stated that copies had been distributed to the alderman and the documents were on file in the City Clerk’s office.

Mott/Marsala motion to suspend the rules to permit a moment of silence in memory of the victims of the shooting that had taken place in Tucson, Arizona on January 8. Unanimously carried. The Council observed a moment of silence.

## **Approval of Minutes**

Tolar/Krause motion to approve Regular City Council Meeting minutes of December 13, 2010 and Special City Council Meeting minutes of December 11, 2010, as published and distributed. Unanimously carried.

## **Discussion/Action on removal of current City Assessor at pleasure, pursuant to Wis. Stats. 17.12 (1)(c)**

*(reconsidered at the Regular Meeting of December 13, 2010)*

Mayor Connors restated for the record that he was not opposed to the removal of the City Assessor. Attorney Draper advised that the original motion to remove the current Assessor was now before the Council, adding that it would be appropriate for this motion to be seconded. Alderman Hartz so seconded the motion.

Roll Call: Marsala, Kehoe, Tolar, Krause, Hartz, and Mott voted “yes”. Fesenmaier and Krohn voted “no”. Motion carried by vote of 6 to 2.

## **Discussion/Action on permitting diagonal parking along Townline Road adjacent to Veterans Park, including staff recommendations** *(referred to City staff at the Regular Meeting of November 22, 2010)*

Mott/Tolar motion to permit diagonal parking in the indented area of Townline Road. Discussion was opened as to the proposed angle of the parking stalls, with the designs submitted by staff including both forty-five (45) and sixty (60) degree options. DPW Winkler stated that 60-degree stalls would require 18 feet of aisle for vehicles to back out safely, while 45-degree stalls would require 13 feet of aisle. He noted that shifting the center line on Townline Road by five or six feet to the south of its present location would accommodate either of these scenarios to provide motorists with sufficient space to safely exit the spaces. DPW Winkler added that the parking stalls that had previously been located on the section of Townline Road in question had been set at 60-degree angles. Alderman Hartz suggested that a time be established to revisit the parking situation at a later date to review any outstanding traffic issues along that stretch of roadway. Alderman Krause asked DPW Winkler for his recommendation on the angling of the stalls. DPW Winkler responded that he would probably favor the 45-degree angles; however, either scenario would work.

Mott/Tolar motion to amend to stipulate that parking stalls would be angled at sixty (60) degrees and that the center line on Townline Road would be relocated four to five feet south of its present location.

Roll Call on amendatory motion: Marsala, Kehoe, Tolar, and Mott voted “yes”. Fesenmaier, Krohn, Krause, and Hartz voted “no”. A tie having thereupon been declared, Mayor Connors voted “no”. Motion failed by vote of 4 to 5. Mayor Connors stated that he would not support the 60-degree angles, given the recommendation of DPW Winkler had been to approve 45-degree angles.

Mott/Krause motion to amend to stipulate that parking stalls would be angled at forty-five (45) degrees and that the center “no passing” line on Townline Road would be relocated six feet south of its present location.

Roll Call on amendatory motion: Marsala, Kehoe, Tolar, Krause, and Mott voted “yes”. Fesenmaier, Krohn, and Hartz voted “no”. Motion carried by vote of 5 to 3.

Alderman Hartz offered a friendly amendment to establish a date of approximately October 1, 2011 to review any outstanding safety concerns or issues regarding the parking and traffic flow along Townline Road. The amendment was accepted as friendly.

Roll Call on the original motion, as amended: Marsala, Kehoe, Tolar, Krause, Hartz, and Mott voted “yes”. Fesenmaier and Krohn voted “no”. Motion carried by vote of 6 to 2.

## **Acceptance of Petition for Direct Annexation by Unanimous Consent (Potter)**

Hartz/Krause motion to accept and forward to Plan Commission a petition for direct annexation by unanimous consent of electors and property owners of territory located in the Town of Bloomfield, Walworth County, Wisconsin, to the City of Lake Geneva, Walworth County, Wisconsin, pursuant to Wis. Stats. § 66.0217 (2). Unanimously carried.

## **Discussion/Action to provide consent for continuing representation of the City of Lake Geneva by Stafford Rosenbaum, LLP, in the matter of *Marina Bay Boat Rentals, Inc. v. City of Lake Geneva***

Tolar/Kehoe motion to consent to continuing representation by Stafford Rosenbaum, LLP. Attorney Draper noted that legal firms have an ethical obligation to disclose any potential conflicts of interest. As the aldermen had been dismissed from the Marina Bay case, it appeared that there would be no conflict with the firm continuing to represent the City in that case while it also represented the City in the matter of *Fesenmaier, et al. v. City of Lake Geneva*. Alderman Fesenmaier asked if Attorney Draper could provide any background information on the change of lawyers associated with the case. Attorney Draper responded that he was not familiar with the subject. Motion carried by vote of 6 to 0, with Aldermen Fesenmaier and Krohn abstaining.

**Acceptance of request for granting an easement to AT&T for placement of telecommunications equipment on the property located at 1003 Host Drive**

Tolar/Kehoe motion to accept the request for easement and forward to the Plan Commission and Public Works Committee for review. DPW Winkler noted that AT&T has facilities at the Host tower and would like to add an additional utility box as part of an upgrade to those facilities. Unanimously carried.

**Discussion/Action on amendment to agreement for professional construction engineering services with Crispell-Snyder for Sheridan Springs traffic control signal project**

Mayor Connors noted that the agreement had been previously approved contingent upon the addition of a reciprocal limitation of liability for the City. Attorney Draper stated that Crispell-Snyder had simply struck the language in the original contract regarding its limitation of liability rather than specifying a reciprocal limitation for the City. As this was not technically the solution approved by Council, the amendment was being brought before the Council for its consideration.

Tolar/Mott motion to accept the amendment to the agreement, as presented. Unanimously carried.

**Second Reading and Approval of Ordinance 10-15, providing for the compensation of members of the Plan Commission**

Tolar/Kehoe motion to approve Ordinance 10-15. Alderman Hartz noted that this change would have the effect of making Plan Commissioners employees of the City, meaning that additional costs for FICA would be placed upon the City. Alderman Mott stated that he had requested this ordinance change in consideration of the amount of time and effort that members of the commission put into their work. Alderman Marsala responded that members of other boards and committees did not receive salaries, adding that he didn't necessarily believe that Plan Commissioners were any more deserving of compensation than members of those other bodies. It was noted that deductions had not been taken out of Plan Commission salary payments in past years; however, Comptroller Pollitt had learned that this was a requirement following the results of an audit of the City of Elkhorn. Alderman Krohn opined that these were appointed positions and should not be compensated.

Roll Call: Tolar and Mott voted "yes". Marsala, Kehoe, Fesenmaier, Krohn, Krause, and Hartz voted "no". Motion failed by vote of 2 to 6.

Krause/Hartz motion to deny Ordinance 10-15.

Roll Call: Marsala, Kehoe, Fesenmaier, Krohn, Krause, and Hartz voted "yes". Tolar and Mott voted "no". Motion carried by vote of 6 to 2.

**Second Reading and Approval of Ordinance 10-16, providing for the monthly collection of room tax returns**

Krause/Marsala motion to approve Ordinance 10-16.

Roll Call: Marsala, Kehoe, Fesenmaier, Krohn, Tolar, Krause, Hartz, and Mott voted "yes". Unanimously carried.

**Finance, License and Regulation Committee Recommendations – Alderman Krause**

**RESOLUTIONS**

**Resolution 11-R01, a resolution amending the City of Lake Geneva 401(a) Plan**

Krause/Hartz motion to table Resolution 11-R01 to the regular meeting of January 24, 2011. Unanimously carried.

## ORDINANCES

### **First Reading of Ordinance 11-01, amending Section 54-34 of the Lake Geneva Municipal Code to permit trapping on certain City property**

Krause/Hartz motion to refer Ordinance 11-01 to staff for revisions, to be returned for continued First Reading. Unanimously carried.

## LICENSES & PERMITS

### **Original Class “B” Fermented Malt Beverage and “Class C” Wine License application for Hong Kong Restaurant Inc., d/b/a Happy Restaurant, 526 Wells Street, Lake Geneva, Min Ting Zhong, Agent**

Krause/Marsala motion to approve. Unanimously carried.

### **Temporary “Class B”/Class “B” License application for Knights of Columbus Council #1647 for the sale of fermented malt beverages and wine at St. Francis De Sales Church, 148 W. Main Street, Lake Geneva, for Italian Festival on January 15, 2011**

Krause/Marsala motion to approve. Unanimously carried.

### **Original Operator Licenses for Christopher Cline, Jill Perry, Regan Graham, and Kyle Kaefer**

Krause/Marsala motion to approve. Unanimously carried.

### **Discussion/Action on purchase of solar-powered speed control signage for Townline Road**

Krause/Mott motion to approve purchase and installation using Contingency funds for an amount not to exceed \$3,500.00. This item would provide for the installation of two “blinker” speed control signs on Townline Road in the Veterans Park area, as had been recommended in conjunction with the addition of angled parking stalls along the roadway. DPW Winkler had reported that a price of \$1,600.00 per unit had been obtained, with installation estimated to cost an additional \$200.00 to \$300.00.

Roll Call: Marsala, Kehoe, Tolar, Krause, Hartz, and Mott voted “yes”. Fesenmaier and Krohn voted “no”. Motion carried by vote of 6 to 2. Alderman Krause noted that the Council would need to pass a budget amendment for this item at the next regular meeting.

### **Discussion/Action on purchase of banquet tables for the Riviera building**

Krause/Marsala motion to approve purchase of forty (40) tables for the total amount of \$5,211.05. Alderman Krause reported that the purchase of tables and chairs for the Riviera had been excluded from the original remodeling contract with Scherrer Construction, as staff had believed a more favorable price could be obtained for those materials as a separate purchase. The recommendation of the committee had been to approve the purchase of forty 60-inch round tables directly from the manufacturer at a savings of approximately \$2,500.00 from the original bid price for the tables. DPW Winkler had noted that the Public Works Committee was expected to discuss the purchase of new chairs at its next meeting; however, samples had not yet been received by the City.

Roll Call: Marsala, Kehoe, Fesenmaier, Krohn, Tolar, Krause, Hartz, and Mott voted “yes”. Unanimously carried.

### **Discussion/Action to authorize the sale of surplus property to the Town of Delavan**

Krause/Marsala motion to authorize the sale of surplus microphones on E-Bay, with proceeds from the sale to be returned to the General Fund. Alderman Krause reported that the committee had recommended listing the set of old “gooseneck” microphones from the Council Chambers on E-Bay to obtain the most competitive sale price, rather than simply selling the items to the Town of Delavan. He also noted that staff would be compiling a list of other surplus items that could be listed for sale on a City E-Bay account in the future. Alderman Mott requested that it be specified that the sale would include only the microphones not currently being used by the City. Mayor Connors stated that, if approved, the microphones would be posted for sale as one complete lot on E-Bay.

Roll Call: Marsala, Kehoe, Fesenmaier, Krohn, Tolar, Krause, Hartz, and Mott voted “yes”. Unanimously carried.

**Discussion/Action on disallowance of claim filed by Paul and Jane Wagner pursuant to Wis. Stats. 893.80 (1g)**  
Krause/Marsala motion to disallow the claim. Alderman Krause reported that this had been a claim for damages related to a sewer backup and the City's insurance provider had recommended that the claim be disallowed, as the City was determined not to be at fault. He added that the committee had instructed staff to prepare an historical summary of claims made against the City, including the various amounts of damages claimed. Alderman Hartz reiterated the concerns he had expressed at the committee level, namely that he did not feel the City was engendering goodwill with its citizens by flatly denying these claims. He stated that he would favor some type of solution wherein residents were not left to bear the total costs associated with City sewers backing up into their residences. Alderman Marsala stressed that it was the responsibility of each homeowner to ensure that his or her property was insured for this type of damages. Mayor Connors noted that most standard homeowner's policies did not cover sewer backups, adding that it was important for residents to consult with their insurance providers to determine whether or not their properties are adequately covered.

Motion carried by vote of 7 to 1, with Alderman Hartz opposed.

#### **Plan Commission Recommendations – Alderman Hartz**

**Conditional Use Resolution 11-R02, a resolution filed by Scott Timm/Colortech of Wisconsin on behalf of Tom Kaczmarek to modify an existing non-conforming pole sign by replacing the faces with new signage at 605 Williams Street, Lake Geneva, WI 53147, Tax Key Number ZR 00046, including staff recommendations**

Alderman Hartz reported that this conditional use application had been recommended for approval by the Plan Commission, including several staff recommendations. The applicant was requesting replacing the faces of an existing non-conforming pole sign, as there was no location on the property deemed practical for the installation of a compliant monument sign. Among the approved recommendations were: the addition of a planter box below the existing sign; the removal of the smaller "hot dog" sign immediately below the sign to be refaced; and allowing the Zoning Administrator to determine the type of material to be used for the planter box.

Hartz/Krause motion to approve Conditional Use Resolution 11-R02. Unanimously carried.

**Conditional Use Resolution 11-R03, a resolution filed by Fairwyn Ltd. on behalf of Frank Sottrel for construction of a new single-family residence in the ER-1 District using the setback requirements of the SR-4 District at 1084 La Grange Drive, Lake Geneva, WI 53147, Tax Key Number ZLE 00003, including staff recommendations**

Alderman Hartz reported that this conditional use would permit the applicant to raze an existing single-family dwelling and construct a new single-family dwelling utilizing the lot area and setback requirements of the SR-4 District. Alderman Fesenmaier commented on the prevalence of conditional uses of this type, asking if the zoning of a subdivision would revert on the comprehensive plan in the event enough conditional uses were granted. Attorney Draper confirmed that these conditional uses would have no effect on the zoning.

Hartz/Tolar motion to approve Conditional Use Resolution 11-R03. Motion carried by vote of 7 to 0, with Alderman Krause abstaining.

**First Reading of Ordinance 11-02, an ordinance providing for direct annexation by unanimous consent of electors and property owners of territory located in the Town of Linn, Walworth County, Wisconsin, to the City of Lake Geneva, Walworth County, Wisconsin (Palicka)**

First Reading; no action taken.

**First Reading of Ordinance 11-03, amending the Zoning Ordinance to clarify the regulation of free-standing commercial indoor lodging uses**

First Reading; no action taken.

#### **Ad Hoc Committee on Policy and Procedure Recommendations – Aldermen Marsala & Fesenmaier**

**Discussion/Action on approval of revised Chapters 1 through 3 of the Policy Manual of the City of Lake Geneva**  
Marsala/Hartz motion to approve the revisions to Chapters 1 through 3 of the City Policy Manual.

Alderman Fesenmaier noted that the paragraph of Section 1.3 regarding petty cash accounts stated that “all reconciliations and reports shall be submitted to the Treasurer”, suggesting that it might be prudent to add language to state how often these items should be submitted.

Krause/Marsala motion to suspend the rules to permit the City Treasurer to address the Council. Unanimously carried. Treasurer Klein stated that the current practice was to submit the reports every four to five weeks, depending upon the department. She recommended that it would be sufficient to state that reconciliations and reports would be submitted once a month.

Fesenmaier/Mott motion to amend Section 1.3 to specify that all reconciliation reports shall be submitted to the City Treasurer on a monthly basis by not later than the fifteenth day of the following calendar month. Unanimously carried.

Mott/Hartz motion to amend Section 1.1 to strike the reference to “City Clerk” in the “Overdrafts Prohibited” paragraph and replace with “City Comptroller”. Unanimously carried.

Mott/Marsala motion to amend page 2 of Section 1.2 to change reference to “purchase order” to “purchase request” and to strike the reference to “City Clerk” and specify that the “City Comptroller shall be empowered to act for the City Administrator in his/her absence”. Unanimously carried.

Mott/Hartz motion to amend page 3 of Section 1.2 to strike the reference to “City Clerk” and specify that recommendations for purchases in excess of \$10,000.00 shall “include the acknowledgement (signature) of the City Comptroller that funds are available”. Unanimously carried.

Fesenmaier/Krause motion to amend page 5 of Section 1.3 to state that “the City Administrator shall investigate all complaints and report the results of the investigation to the Finance, License and Regulations Committee, the Common Council, and the complainant.” Unanimously carried.

Mott motion to amend page 5 of Section 1.3 (B) to strike all language after “the City Clerk shall review the recommended bidder’s insurance documentation to determine compliance prior to approval by the Council”. Motion died for lack of second.

Fesenmaier/Krause motion to amend page 2 of Section 1.7 (“Coding”) to strike reference to “purchase order” and replace with “purchase request”. Unanimously carried.

Alderman Fesenmaier noted that Section 1.9 had been added to the Policy Manual to discuss the subject of financial audits and comprehensive internal controls audits. The committee had recommended that internal controls audits be performed at least once every five years, specifying that such audits were to be conducted by a firm other than the firm used to perform the annual financial audits.

Alderman Kehoe noted that Section 3.1 stated that only one new speed bump location would be considered per year. DPW Winkler responded that this limitation had been put into place for budgetary reasons.

Mott/Kehoe motion to amend page 2 of Section 1.7 (“Coding”) to add that “obsolete documents shall be securely disposed of”. Motion carried by vote of 7 to 1, with Alderman Fesenmaier opposed.

Fesenmaier/Kehoe motion to amend to continue discussion on Chapter 3 to the next regular Council meeting. Motion carried by vote of 7 to 1, with Alderman Mott opposed.

Administrator Jordan stated that he would like an opportunity to revise Section 1.2 regarding the procedures for bid openings at which only one bid is received. Alderman Hartz also suggested that a pre-qualified vendor list should be maintained in a location where it would be accessible to everyone.

Fesenmaier/Krause motion to amend to continue discussion on Chapter 1 to the next regular Council meeting. Unanimously carried.

Original motion, as amended, carried unanimously. The revised Chapter 2 of the City Policy Manual was thereby adopted, with Chapters 1 and 3 continued to the regular meeting of January 24, 2011. The City Clerk was directed to make the approved modifications to the policy document and provide copies of the updated version to the members of the Council prior to the next regular meeting.

#### **Presentation of Accounts – Alderman Krause**

Purchase Orders. None.

Krause/Marsala motion to approve Prepaid Bills in the amount of \$34,756.07

Roll Call: Marsala, Kehoe, Fesenmaier, Krohn, Tolar, Krause, Hartz, and Mott voted “yes”. Unanimously carried.

Krause/Hartz motion to approve Regular Bills in the amount of \$244,643.45

Roll Call: Marsala, Kehoe, Fesenmaier, Krohn, Tolar, Krause, Hartz, and Mott voted “yes”. Unanimously carried.

#### **Mayoral Appointments – Mayor Connors**

##### **Appointment of Accurate Appraisal LLC as City Assessor, with appropriate agent designated**

Mayor Connors announced his appointment of Jim Danielson, of Accurate Appraisal, as City Assessor. Krause/Hartz motion to approve the appointment of Mr. Danielson as City Assessor and to include any necessary revisions to the contract with Accurate Appraisal as recommended by the City Attorney. Attorney Draper stated that Accurate Appraisal had consented to make certain changes to the approved contract to clarify Mr. Danielson’s position with the City and to make the office more easily accessible to Lake Geneva residents. He noted that the City was currently without an assessor, having earlier removed Ms. Lininger from the position, and Mr. Danielson would assume responsibilities as City Assessor as soon as the contract was executed. Alderman Fesenmaier stated that she would be uncomfortable acting on any changes to the contract without having the proposed revisions formally stated in writing before the Council. Attorney Draper noted that all proposed changes would be to the benefit of the City and that Mr. Danielson had indicated he had no issue with any of the recommended changes. For the record, Attorney Draper stated that the changes would include the following:

- Stipulation that Accurate Appraisal understands and agrees that it is an independent contractor and not an employee of the City of Lake Geneva; nevertheless, for the purposes of Section 2-3 of the Lake Geneva Municipal Code, Accurate shall designate a qualified representative to be appointed by the City. Said representative shall be subject to all municipal regulations and state statutes applicable to city assessors.
- Stipulation that Accurate will also be available to the public by phone and will also schedule appointments with the public at no additional expense to the client.

Roll Call: Marsala, Kehoe, Tolar, Krause, Hartz, and Mott voted “yes”. Fesenmaier and Krohn voted “no”. Motion carried by vote of 6 to 2.

##### **Closed Session**

Hartz/Krause motion to enter into Closed Session pursuant to Wis. Stats. 19.85 (1)(e) for deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business whenever competitive or bargaining reasons require a closed session, for the discussion of the possible sale of the WE Energies Building (Administrator Jordan).

Roll Call: Marsala, Kehoe, Fesenmaier, Krohn, Tolar, Krause, Hartz, and Mott voted “yes”. Unanimously carried.

The Council entered into Closed Session at 9:45pm. Also present were: Administrator Jordan, City Attorney Draper, and Clerk Reale.

Tolar/Kehoe motion to return to open session pursuant to Wisconsin Statutes 19.85 (2) and take action on any items discussed in closed session.

Roll Call: Marsala, Kehoe, Fesenmaier, Krohn, Tolar, Krause, Hartz, and Mott voted “yes”. Unanimously carried.

The Council reconvened in open session at 10:22pm.

Hartz/Marsala motion to direct Administrator Jordan to solicit an offer from the interested party for the potential sale of the WE Energies Building. Unanimously carried.

**Adjournment**

Hartz/Mott motion to adjourn at 10:25pm. Unanimously carried.

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/s/ Jeremy A. Reale, City Clerk

**THESE ARE NOT OFFICIAL MINUTES UNTIL APPROVED BY THE COMMON COUNCIL**