

**CITY OF WACONIA**  
**September 6, 2016**

Pursuant to due call and notice thereof, the regular meeting of the City Council of the City of Waconia was called to order by Mayor Jim Sanborn at 6:00 p.m. The following members were present: Jim Sanborn, Kent Bloudek, Lynn Ayers, Charles Erickson. Absent: Marc Carrier.

Staff Present: Susan Arntz, Lane Braaten, Ann Meyerhoff, Nicole Lueck, Mike Melchert, Craig Eldred.

Visitors: Paul & Vici Scheuble, Dave Zelinsky, Kellie Sites, Tom Kaliher.

Pledge of Allegiance was led by Mayor Jim Sanborn.

**ADOPT AGENDA:** Susan Arntz stated that there were 3 additions to the consent agenda and 1 addition to Council Business. Motion by Erickson, seconded by Ayers to adopt the agenda as amended. All present voted aye. **MOTION CARRIED.**

**VISTOR'S PRESENTATION:** Kellie Sites from the Chamber of Commerce came forward and spoke about Nickle Dickle day on September 17<sup>th</sup>.

**ADOPT CONSENT AGENDA**

- 1) Approve August 15, 2016 City Council Meeting Minutes.
- 2) Authorize Payment of September 6, 2016 Expenditures.
- 3) Adopt a Motion Approving Pay Estimate No. 6 to GMH Asphalt for the 2016 Infrastructure Improvement Project.
- 4) Adopt Resolution No. 2016-175, Accepting Cash Donation from Tour de Tonka.
- 5) Adopt Resolution No. 2016-176, Authorizing Staff to Apply for Source Water Protection Grant with Minnesota Department of Health.
- 6) Adopt Resolution No. 2016-177, Accepting Bike Rack Donation from Waconia VFW.
- 7) Adopt Resolution No. 2016-179, Authorizing Execution of Contract for Joint Assessment.
- 8) Adopt Resolution No. 2016-180, Support for Carver County's 2016 Capital Appropriation Request for Public Boat Access at Lake Waconia Regional Park.
- 9) Adopt Resolution No. 2016-181, Approval of Request of Support for "Imagine a Day Without Water" Campaign for September 15, 2016.
- 10) Adopt Ordinance 698, Amending Chapter 580 Regarding Alcoholic Beverages.
- 11) Adopt Ordinance 630, Amending Chapter 630 Regarding Parking Regulations.
- 12) Adopt Resolution No. 2016-183, Granting Exhibition License.
- 13) Adopt Resolution No. 2016-182, Approving Appointment of Travis Esler to Regular Status.
- 14) Adopt a Motion Authorizing Use of Streets for Gravel Fondo 25 & 50 Bike Rides Within and Near Waconia.

Motion by Bloudek, seconded by Erickson to Adopt the Consent Agenda as amended. All present voted aye. **MOTION CARRIED.**

**COUNCIL BUSINESS**

**Reversal of Utility Bill Charges & Penalty Fees:** Nicole Lueck stated that the City recently received a request for the reversal of the utility bill charges and penalty fees for the property located at 16 1<sup>st</sup> Street West (formally Waconia Lanes). The State Bank of Hamburg has requested the bills be put in their name as they are the party that will be taking over the property due to foreclosure. The effective date of the foreclosure is August 22, 2016.

The last payment made in November 2015 on the utility billing account was by the previous property owner. This paid for service through October 31, 2015. Since then, there have been no payments for service. Water service was terminated at the property per the City's shut off policy in February 2016. There was regular water use at the property up until service was terminated in February; this including a leak at the property in the month of February that resulted in 92,000 gallons of water use. Since water service was terminated in February, there has been 4,000 gallons of use at the property. In confirmation with utility staff and the fire chief, this use is likely due to the fire suppression system in the building. Charges that have accumulated on the account are base rate fees for all City

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utility services including water, sewer, storm water, and street lighting. The total balance due on the utility billing account for service and penalties is \$3,890.83 as of August 31, 2016. Service for each month is listed below:

November 2015 - \$298.30 – 29,000 gallons of water use	April 2016 - \$64.57 – 1,000 gallons of water use
December 2015 - \$332.93 – 33,000 gallons of water use	May 2016 - \$64.57 – 1,000 gallons of water use
January 2016 - \$234.71 – 20,000 gallons of water use	June 2016 - \$71.85 – 2,000 gallons of water use
February 2016 - \$939.14 – 92,000 gallons of water use	July 2016 - \$57.29 – 0 gallons of water use
March 2016 - \$57.29 – 0 gallons of water use	August 2016 - \$64.57 – 0 gallons of water use

The total penalties for door hanger notices, shut off fees, and monthly penalties is \$1,705.61.

The State Bank of Hamburg has made a request to have all the fees forgiven on the account up to the date they took position of the property. They have made this request to quickly restore water service at the property and get the property on the market for sale.

Council Member Ayers asked what the past practice has been on a foreclosure. Lueck responded by saying that normally the city would receive a call from the bank or foreclosure company and because the water bill stays with the property they normally assume the debt. We have never had anyone ask for forgiveness in a foreclosure process.

Council Member Erickson asked why there are still charges when there is zero usage. Lueck explained that the city charges base rates for water, sewer, street lighting and storm water. When the balance is unpaid there is a 10% penalty each month.

Mayor Sanborn went over the four options which were to forgive the fees, add the fees as a special assessment, negotiate some kind of middle ground with a settlement or not alter the bill at all.

Council Member Bloudek stated that he would lean to not alter the bill because we have set a precedent over time. We have been asked this in the past and we did not do it at that time. Water has been used and with that comes a cost.

Council Member Ayers asked if the penalties represented actual costs. Lueck responded saying it was looked at what it costs to dispatch someone to go out to the property, print the door hangers, monitor the list etc. That cost came out to \$40 which is what we charge. The monthly fee was established in our fee schedule.

Dave Zelinsky from the State Bank of Hamburg came forward and expressed that he understood that water had been used. He is asking for forgiveness of the penalties since it was before they acquired the property. He said that there are a lot of issues with the building that need to be addressed. They have paid the back taxes and are now trying to get the utilities back on so that they can put the property on the market.

Council Member Ayers expressed concern about setting a precedent in waiving fees.

Susan Arntz added that the city has not dealt with a request like this from a business in her tenure here. What the council decides to do here definitely set a precedent.

Council Member Erickson suggested that they could possibly reduce or eliminate the penalties since they are not actual cost.

Council Member Bloudek and Ayers agreed that the council is setting a precedent and ordinances are set in place for a reason.

Arntz shared some thoughts saying that the council could direct that the State Bank of Hamburg pay for the water used and then the water can be turned on. The issue of the penalties and fees could be brought back on the 19<sup>th</sup> when there will be 5 Council Members in attendance.

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Motion by Erickson, seconded by Ayers to collect \$2185.22 before water is turned on, Council will forward discussion of remaining \$1,705.61 to the September 19<sup>th</sup> Council meeting for consideration and penalties will remain on account pending action by the Council.. All present voted aye. **MOTION CARRIED.**

**Outdoor Area of Chumly's Bar:** Lane Braaten stated that Paul Scheuble (dba. Chumly's Bar), has submitted an application for an Outdoor Area pursuant to Chapter 580 of the City Code for the property located at 116 Main Street West (PID# 750503640). Mr. Scheuble is proposing the construction of a 23 ft. x 40 ft. (920 sq. ft.) outdoor patio space directly adjacent to the west side of Chumly's Bar, which is located at 112 Main Street West. Braaten went through the outdoor area analysis and planning considerations which included:

1. Pursuant the requirements of Chapter 580, Alcoholic Beverages, the applicant is requesting review and consideration of a 920 sq. ft. concrete patio to be located and used in association with Chumly's Bar. The outdoor area would include 9 tables, 34 seats total, and a 12 inch bar rail along the entire western fence/wall (42 ft. in overall length).
2. The applicant is proposing 1 ft. x 6 ft. natural dog ear fencing along the east and west walls. The north wall is proposed to be a solid plywood wall faced with the same 1 ft. x 6 ft. dog ear fencing, with the intent to paint the plywood surface black, which will show through the small gaps between the fence boards. The south fence, adjacent to Main Street, is proposed to be constructed of the same materials, but only be 3 ft. in overall height and include a gate for access to Main Street from the outdoor space. The proposed fencing is compliant with the requirements stated in Chapter 580.
3. The applicant has not indicated any improvements with this application that, pursuant to Minn. Stats. 144.413 would constitute an enclosed space. Any future improvements of the outdoor space shall require review by City staff and possibly the City Council prior to improvement to insure compliance with the City Code and State Statute.
4. The outdoor area, as proposed, would be approximately 132 feet from the closest residentially zoned property to the north. As the outdoor area is within 200 feet, as designated by City Code, the area is required to be screened in a manner approved by the City Council to prevent viewing of the outdoor area from the residential properties and dampen/deflect noise. The applicant is proposing a solid north wall to dampen/deflect noise, but is also requesting the opportunity to install three windows along the north wall. The Council should discuss if the proposed north windows meet the requirements of the City Code and if operable or fixed inoperable windows would be appropriate (see condition #7).
5. The proposed lighting would include 6 lights mounted on the west façade of the existing Chumly's Bar structure. The applicant is proposing a galvanized, 13 inch, round, down lit wall lantern (see attachment #3). Further the applicant is proposing a 60W dimmable LED bulb. The proposed height of 7-8 ft. causes staff concerns as the fencing/wall height is only 6 feet. Staff recommends a condition of approval requiring a dimmer switch for all of the proposed/installed outdoor area light fixtures to help mitigate any future lighting concerns as this outdoor space is in such close proximity to the residential properties to the north.
6. The Council should determine if the proposed outdoor space and proposed landscaping complements the Chumly's Bar building as required by Chapter 580. The outdoor space is comprised of a concrete patio surface and dog ear fencing (3 ft. and 6 ft.). The proposed landscaping consists of a retaining wall, or walls, on the north side of the building, grass, and bushes. The outdoor patio plans indicate tiered block retaining walls with each tier at a 30 inch (max.) height and 36 inch (min.) depth with 12 landscape plantings, six in each tier. The Outdoor Patio Description (see Attachment #3) provided by the applicant indicates a boulder retaining wall with the installation of natural grass and bushes. It is staff's understanding, based on a conversation with the applicant, that Mr. Scheuble is proposing the installation of the boulder wall and that, based on the grade, he will only need one wall which will not exceed 4 ft. in height. The spacing between the proposed retaining wall and the north wall of the patio should be clarified as well as the number of plantings proposed in said area and the plans updated to reflect said improvements. The improvement of the outdoor patio space shall require a submittal to the Metropolitan Council for a SAC determination as the application includes additional seating for Chumly's Bar, which is an intensification of the use. The applicant has been made aware of the possibility that additional SAC and City Trunk Fees may be due upon a response from the Metropolitan Council. The determination from the Metropolitan Council is required before a building permit may be issued.

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7. The applicant is not proposing any additional outdoor signage as part of this application. Any proposed future outdoor signage shall comply with City Code requirements.
8. The improvement of the outdoor patio space shall require a submittal to the Metropolitan Council for a SAC determination as the application includes additional seating for Chumly's Bar, which is an intensification of the use. The applicant has been made aware of the possibility that additional SAC and City Trunk Fees may be due upon a response from the Metropolitan Council. The determination from the Metropolitan Council is required before a building permit may be issued.

Braaten stat that if the City Council determines that the proposed outdoor space meets the City Ordinance criteria stated in Chapter 580, City staff would recommend approval of said application with the following conditions:

1. The proposed improvements shall be completed as approved and as conditionally revised by the City Council.
2. All indirect costs with the building permit, review, and final plans associated with engineering and administrative costs shall be paid by the applicant/owner.
3. The applicant shall work with City staff to re-describe the liquor license premises for Chumly's Bar and the outdoor area shall not be used until such time as the applicant has received final confirmation from the City Administrator that this process has been completed.
4. The applicant shall submit the patio plans to the Metropolitan Council for review and consideration to determine if any further SAC units will be charged to the property. If the Metropolitan Council determines further additional SAC payments are due the applicant will be responsible to pay for the applicable SAC and City Trunk Fees associated with the project.
5. The outdoor area shall not be enclosed in such a manner that the space becomes an indoor area as defined by Minn. Stats. 144.413.
6. The applicant shall provide a written acknowledgement from the licensee's dram shop liability carrier indicating that the outdoor area is covered by dram shop insurance prior to any use of the proposed outdoor area.
7. The north fence/wall barrier shall not include any windows as they are not compliant with the City Code **OR** The north fence/wall shall be allowed to include fixed inoperable windows as they cannot be opened and still provide for noise mitigation while allowing minimal view of the outdoor area from the residentially zoned properties.
8. A dimmer switch shall be installed for all of the proposed outdoor area light fixtures to help mitigate any future lighting concerns as this outdoor space is in such close proximity to the residential properties to the north.
9. The plans shall be updated to reflect the proposed boulder retaining wall and the number of bushes proposed. Installation of a retaining wall with a height of 4 ft. or more shall be designed by a licensed engineer and require a building permit through the City.
10. The applicant shall contact the Community Development Department for a final site inspection when all conditions of approval regarding this application have been completed.

After discussion it was suggested that the gate going out to the sidewalk be moved back 3 feet so that it doesn't swing out on to the sidewalk. The windows on the north side of the wall were also brought up and Paul Scheuble explained that they will be inoperable and put in to make it not feel as though patrons were in a cave with the four walls surrounding them. He also addressed the concern about how the patio would be monitored as far as the liquor licensing aspect and said he would be hiring another person to monitor the patio at all times.

Motion by Ayers, seconded by Bloudek to Adopt Resolution No. 2016-178, Approving an Outdoor Area for Chumly's Bar with the amendment on #7 including the fixed inoperable windows and adding the 11<sup>th</sup> point reflecting the gate swing to be within the property line. All present voted aye. **MOTION CARRIED.**

**Contract with Ethical Leaders in Action:** Susan Arntz stated that as part of the Fire Department Strategic Plan, that was adopted earlier this year, some of the key work items included:

- Developing a staffing plan to meet community needs, consistent with national standards.

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- Leadership succession planning.
- Aligning the training program with continuous professional development.

Arntz and the Fire Chief have meet with an organization named, Ethical Leaders in Action (ELA). This group does similar consulting and training work with public safety professionals from a wide variety of organizations. As part of this work, they will partner with members of the department, Council, and rest of organization in studying and developing recommendations for our future structure. In addition, they will work to identify and provide recommendations regarding the current culture. That may need to be fostered or addressed.

Arntz explained that the work that they are recommending has a fixed fee of \$18,500, with a payment up front and a final payment after the final work product is received. In reviewing the current budget, there are funds available within the existing Fire Department operating budget that can be allocated to this work as well as some funds within the Administration budget that can be made available if needed. Upon approval of the contract, the Fire Chief and I will commence working with ELA to start their work in the next 30 days.

Motion by Erickson, seconded by Ayers to Adopt Resolution No. 2016-184, Approving Contract with Ethical Leaders in Action. All present voted aye. **MOTION CARRIED.**

**ITEMS REMOVED FROM CONSENT AGENDA:** None

**STAFF REPORTS:** None

**BOARD REPORTS:**

Councilmember Erickson – No Report

Councilmember Bloudek – No Report

Councilmember Carrier – Absent

Councilmember Ayers – Attended a learning seminar titled “The Dirt on Sediment Polution”.

Mayor Sanborn – Nickle Dickle day on September 17<sup>th</sup>, Candidate Forum on September 20<sup>th</sup> and State wide forum on September 22<sup>nd</sup>.

**ANNOUNCMENTS:** None

Mayor Sanborn recessed the Regular City Council meeting to meet in Closed Session to consider the purchase of real property in accordance with the Minn. Statute 13D.05. The property identified is located at 136 Elm Street South, 75.0501450.

**ADJOURN:**

Motion by Erickson, seconded by Bloudek to adjourn the meeting at 7:40 p.m. All present voted aye. MOTION CARRIED

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James P Sanborn, Mayor

ATTEST: \_\_\_\_\_  
Ann Meyerhoff, Office Assistant