

**REGULAR CITY COUNCIL MEETING
MONDAY, OCTOBER 24, 2016 – 7:00 PM
COUNCIL CHAMBERS, CITY HALL**

Mayor Kupsik called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was led by Alderman Gelting

Roll Call. Present: Mayor Kupsik, Aldermen Chappell, Skates, Kordus, Flower, Gelting, Horne, Hedlund, Howell.
Also Present: City Attorney Draper, City Administrator Oborn, Director of Public Works Earle, Comptroller Pollitt and City Clerk Waswo.

Awards, Presentations, and Proclamations.

Mayor Kupsik read a proclamation declaring October as Breast Cancer Awareness Month.

City Clerk Waswo stated the deadline has passed to mail in voter registration applications. Anyone wishing to register can still do so in person at City Hall until Friday, November 4 and on Election Day. Absentee ballots are still available at the Clerk's Office until Friday, November 4.

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 to be limited to 5 minutes.

Mary Jo Fesenmaier, 955 George St., requested more information regarding the collateral in the theater contract.

Acknowledgement of Correspondence. None.

Approval of Minutes. Kordus/Skates motion to approve the Regular City Council Meeting minutes of October 10, 2016 and Special City Council Meeting minutes of October 18, 2016, as prepared and distributed. Unanimously carried.

Consent Agenda

Original 2016-2017 Operator's (Bartender) License application filed by Briana Krowlek, Kiersten Riese-Squire, Patrick Staggs, Stephanie Najera-Diaz, and Tania Parat
Kordus/Gelting motion to approve. Unanimously carried.

Items removed from the Consent Agenda. None.

Finance, License and Regulation Committee Recommendations – Alderman Kordus

Discussion/Action on Park System – Memorial and Donation application filed by Anne Brunk Peterson for the donation of 2 wind sculptures to be placed in front of the Brunk Pavilion in Flat Iron Park (recommended by the Board of Park Commissioners on Oct. 5, 2016)
Skates/Chappell motion to approve.

Mr. Kordus noted this was sent to council without recommendation by FLR. Mayor Kupsik stated Mrs. Brunk Peterson is donating these to be placed in front of Brunk Pavilion in memory of her parents. Alderman Flower was curious if this is necessary as there have been several items donated to parks recently. She questioned if these may be in the way. Alderman Skates has seen these in other places and feels they are unique. The Street Department can remove them if there is a blocking issue. He feels it would be a nice addition to the park and doesn't feel like they clog up the park. Mr. Howell feels they look fine and asked if there was any discussion at Park Board about possible vandalism. Mr. Skates stated the Street Department and Mr. Winkler looked at the area and addressed the vandalism. The sculptor stated this

would be too tall for someone to climb up. The sculptor will come and personally install it. Mayor Kupsik stated Ms. Brunk Peterson is very dedicated to this and if anything happens to it, she would take care of it. Alderman Kordus doesn't feel it's the right location as there are many events that are held there. Just because someone is donating it doesn't mean it's the appropriate thing to do. Alderman Flower questioned if the City is donated something, will the City allow them to put it in the park no matter what. Alderman Skates stated no, they have really vetted things and have told people in the past if it's not the right location. Mr. Oborn stated the Memorial Exhibit and Donations Policy Manual is in the packet and does help the Parks Commission and City Council to vet these donations out. Ms. Flower stated we have needs and suggested letting donors know what those needs are. Alderman Hedlund feels these are cool but really doesn't like the idea of 2 poles sticking out of the ground. He feels if there was a planter, it would be less accessible. Mr. Kordus added the appropriateness of the placement is issue. He felt the Home Depot sculpture park would be the perfect place for this. This would be perfect for the entry way to the park. Mayor Kupsik added she is aware of the Home Depot park area and stated possibly future sculptures could go there. Ms. Flower does think this would fit better out in the Home Depot area and is in favor of putting them there.

Roll Call: Chappell, Skates, Howell, Gelting, Mayor Kupsik voting "yes." Motion carried 5 to 4 with Kordus, Flower, Horne, Hedlund voting "no."

Discussion/Action/Presentation on Geneva Theater Redevelopment Grant Project and amendment to Development Agreement with Shad Branen

Mr. Oborn went over the changes with the agreement. The first change is to increase the lien and collateral by \$200,000. The aggregate lien would go up to \$931,000. We would be third but we would only have \$931,000 in front of us. With the additional collateral, it made sense to allow 2 more months. Mr. Kordus questioned what the collateral consists of. If it is it going to be cash, he doesn't understand the need. He also is bothered by the fact we are moving from 2nd lien position to a 3rd lien position. The City's point of recovery is the \$200,000 cash which is probably it, as they would have to sell that building for more than a million dollars in order for the 3rd lien position to recoup any losses.

Shad Branen with the Geneva Theater Development stated Peter Jurgens is the General Contractor and will given an update on the construction. Peter Jurgens, 262 Center Street with Geneva Bay Construction, stated they are moving ahead. This past summer they put a new roof on the building and reinsulated it. There was a lot of wet insulation which was removed. The building has been made ADA compliant including first and second floor bathrooms. They worked with the state of Wisconsin to get a waiver for an elevator. They are expecting the insulator to do the sound deadening this week. They have isolated the second floor balcony from the first theater. The Electricians are 2/3rds complete with their work. The sprinkler fitters have started. A new water main system and new fire alarm system will be installed. All the glass is being replaced and installed in the next two weeks. The signage has been ordered but probably won't go in until the first week of December. The final colors, flooring, fabrics, seating, and projector have been ordered. The goal is to be open for the December Star Wars premier. The objective is to be done before the December 31 deadline.

Mr. Branen stated they have hired a General Manager, Daniel Coldwell, who has worked with Marcus Theatres. He will be handling the day to day operations and coordinating the cinema and live stage performances. The goal is to open as quickly as possible and hoping to make the December 31 deadline. The \$200,000 was going to be a stock that was pledged as collateral. Mr. Kordus questioned the concern if the stock falls. He has a tough time taking stock as collateral. Mr. Branen doesn't think the position necessarily changes. Mr. Gelting said the original intent was to allow a structure that would accommodate something similar when we set it up. The accommodation has slightly changed and that's why there is additional collateral being pledged. The structure of multiple liens in front of us was the intent. We were allowing a certain dollar amount in front of us that we would have to deal with if there was a default. When he purchased the theater, he put 20% of his own money down, leaving a balance of \$731,000 in front of our lien. The risk isn't the additional lien position, it's the dollar amount in front of that lien. The risk in this whole transaction is that the project is not complete. He's offering additional collateral that's more liquid than real estate to mitigate that risk. Once the project is performing, we would be forgiving portions of that collateral pool over the course of the amount of time that we already agreed to.

City Attorney Draper stated the actual agreement was a grant. The condition was that he keep the business in operation for 10 years. That's always been the risk. Mr. Branen is trying to get longer term financing to 20 years from 10. He asked us to allow an additional \$200,000 to give up in a position. If we have to foreclose and have to buy out those positions, we are still buying out \$731,000. We are using \$200,000 in the collateral to buy out the remainder. Alderman Korus is right;

there is always risk in taking stock as collateral. What we've always said is we are giving them a grant to do this project. The only condition we want is 10 years of business. If he doesn't do that, we have a right to foreclose.

Alderman Kordus added in the agreement it looks like the collateral would be the first thing that was released. He would be more comfortable releasing the \$200,000 over the same terms as the grant and let it go a little at a time. He is more concerned about the long term and that we make it past 3 to 5 years.

Shad Branen said the budget is on track. The \$200,000 was anticipated from the beginning, the bank has requested that. It was not the intent to put the city in a lesser position. Mayor Kupsik stated the amendment would allow staff to write in the additional verbiage to amend the agreement per the terms presented in the City Administrator's memo. Mr. Oborn said item 2 would be modified to cash or stock equivalent. Mr. Gelting is not sure if a 65 advanced rate against that is something that the City Attorney is comfortable determining what the fair market value of that is or has been in the last 12 months based on published data. Mr. Hedlund is not comfortable pledging securities for the citizens of the City of Lake Geneva for \$200,000. Mr. Kordus said if we amend the agreement we should strike the \$27,500 for the elevator. Mr. Kordus asked if Mr. Branen would be willing to spread the collateral out over a period of 2 to 3 years and release it over time so that we hold our position until we are more certain that the business is successful around the 4th or 5th year. Mr. Branen said potentially yes, he doesn't feel there would be an issue with that. Mayor Kupsik stated everything he is looking at is completion of the construction part of the project. He asked if we are looking at the long-term, 10 year payment or the actual completion of construction which would give that building more value. Mr. Kordus explained we put the \$800,000 in for a period of 10 years. He is looking at the long-term viability. The completion of the building doesn't automatically make the building and business worth \$1,500,000. We didn't give the grant for him to update the building and walk away; we are expecting the business to be viable over the next 10 years.

Kordus/Horne motion to continue to the next meeting, November 14th.

Alderman Howell stated Mr. Branen is not the banker so we need to speak with representatives of the bank and SBA. The question is when the bank will be available to talk with us. He asked how soon Mr. Branen needs an answer without it affecting the project. Mr. Branen stated sooner is better as the money is going to be used for completion of the project. Mr. Kordus asked if a sub-committee is needed to work through the details of this as part of the continuation. Alderman Chappell asked what happens if we don't do this. Mr. Branen answered there are other SBA options that are much more complicated. From the bank's prospective this was much cleaner and a better way to approach this funding. Mr. Gelting stated from a general SBA standpoint there are 2 typical SBA loans done by banks, a 504 and 7a. The banker prefers to do it in an SBA 504 fashion which is what we are discussing. City Attorney Draper would be comfortable reviewing with Alderman Gelting and/or Alderman Hedlund.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action on the 2017 Budget and setting the Public Hearing date for the Budget

Kordus/Horne motion to set the Budget Public Hearing for November 21, 2016 at 5:30pm and publish the draft budget.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action on the 2017 replacement of a Police Department Vehicle from Capital/Equipment Replacement Funds in the amount of \$29,765

Kordus/Horne motion to approve. Mr. Kordus said this is the buy now pay later, save 3% that has been done in the past.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action on Cost Allocation Plan to/from the Water/Sewer Funds for Administrative and Public Works Services

Kordus/Horne motion to approve. Mr. Kordus stated this was discussed in the budget plan. We agreed they were reasonable. This is a good budgeting move.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action to award the 227 South Lake Shore Drive Parking Lot Paving Project bid to The Wanasek Corporation of Burlington, WI in the amount of \$119,444 (recommended by the Public Works Committee on Oct. 13, 2016)

Kordus/Horne motion to approve. They are trying to get this done this year before the weather gets bad. The City received 7 bids and this bid came in \$16,000 less than the engineer's estimate.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action on approval of a 48 month Lease Agreement with Martin Group in the amount of \$158.30 per month for a copy machine located at the Fire Department

Kordus/Horne motion to approve. Alderman Kordus explained this was approved by the PFC. This is an extension of the lease agreement.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action on Michael's Signs Escrow Draw Request No. 4 for \$16,739.70

There is one more draw for a couple more signs to be placed. We are on budget and just about done.

Kordus/Horne motion to approve. There is one area where they need to put a sign in, which is why we are holding back \$1,000.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action on draft language for Sidewalk Right of Way Permit for Creameries

Kordus/Gelting motion to approve the language as outlined in the packet. They still need to set a penalty and explain how to enforce it. There are outstanding items with ADA access to our sidewalks. City Attorney Draper stated staff is going to explain at a chamber of commerce meeting that there is a problem with access to our sidewalks and the City will be enforcing it. He can put together a proposed schedule with escalated penalties. The Building Inspector has the authority to enforce it regardless if we have a Code Enforcer or not. There are multiple identities looking at the enforcement.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action on Resolution 16-R50, amending the Schedule of Fees for Dog License Fees

Kordus/Gelting motion to approve. These fees are driven by the County. They are a direct pass through. We would have to pay the difference if we don't increase them.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action on approval of the Luke II Agreement not to exceed \$62,900 funded from Parking Fund-Support Contracts and Lakefront Fund-Luke Operating Expenses contingent on Attorney review *(recommended by the Public Works Committee on Oct. 13, 2016)*

Kordus/Horne motion to approve.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Plan Commission Recommendations – Alderman Skates

Discussion/Action on Resolution 16-R48, a Conditional Use Application filed by Robert & Christine Jankowski, 1004 Tolman St, Lake Geneva to construct a fence in the street yard setback in excess of three feet (six) at 1004 Tolman St, Lake Geneva, Tax Key No. ZWB 00020 including all staff recommendations and Findings of Fact *(recommended by Plan Commission on Oct. 17, 2016)*

Skates/Chappell motion to approve. Alderman Skates stated this is an increase in security and privacy on this busy corner. Mr. Kordus asked if it creates a blind spot where you can't see around the curve. He was told this was applied for 5 years ago and denied. Alderman Flower said there is a fence between that property and the property to the west. She feels it is difficult to see around that curve and would see that as a potential safety hazard. City Attorney Draper added this is a conditional use, which can be revoked if there is an issue.

Roll Call: Chappell, Skates, Gelting, Horne, Hedlund, Howell voting "yes." Motion carried 6 to 2 with Kordus and Flower voting "no."

Discussion/Action on Resolution 16-R49, a Conditional Use Application filed by FYF, LLC, 43 South Water St East, Fort Atkinson, WI 53538 to operate a Commercial Indoor Lodging facility at an existing Commercial Building in the Central Business (CB) zoning district located at 640 W Main St, Lake Geneva, Tax Parcel ZOP 00306 including the Findings of Fact, staff recommendations, parking for two vehicles onsite and six vehicles offsite at their other facility, fence in street yard setback, Downtown Design review setting building envelope, landscaping plan, deck additions, and signage, with the applicant to return to the Plan Commission with samples of the more

durable siding and lower fence materials and the Conditional Use limited to this Applicant/Operator only
(recommended by Plan Commission on Oct. 17, 2016)

Skates/Kordus motion to approve to include 5 onsite parking spots and 3 offsite parking spots.

Mr. Oborn stated there is not a fire lane at that location, so they can have 5 onsite and 3 offsite. We can modify that and the applicant is requesting the 3 more spaces. Mr. Hedlund was concerned if there is a market for a 16 person house and the parking as well. Ms. Chappell stated it is our zoning that says they have to have one parking spot per room, so it's our requirement. Where they find the extra spots is something they work out with their guests.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action on Zoning Text Amendment, Section 98-206 Commercial Land Uses, pertaining to Tattooing, filed by the City of Lake Geneva, 626 Geneva St, Lake Geneva (recommended by Plan Commission on Oct. 17, 2016)

Skates/Chappell motion to approve and instruct City Attorney to include option 5b as a first reading of an ordinance.

Ms. Chappell noted she brought this forward as she thought spas or beauty salons would like to provide permanent make-up, which is tattooing. In order to do that, they would also have to be licensed by the state. There is a lot more control making it a conditional use. Mr. Kordus felt this ordinance opens up downtown to tattoo parlors wherever they want.

Roll Call: Chappell, Skates, Gelting voting "yes." Motion failed 3 to 5 with Alderman Kordus, Flower, Horne, Hedlund, Howell voting "no."

Chappell/Skates motion to approve option 3, above the clavicle with the conditional use.

City Attorney Draper added by putting it into a professional business service, you can put those in any number of areas within the City, not just industrial. By changing the definition of the tattooing above clavicle, you're saying it is not really tattooing, it is a professional business service.

Roll Call: Chappell, Kordus, Skates, Gelting, Horne, Hedlund voting "yes." Motion carried 6 to 2 with Alderman Flower and Howell voting "no."

Discussion/Action on rescheduling a Joint Workshop with the City Council and Utility Commission regarding coordination and interaction between City operations and Utility operations as they currently exist

Mayor Kupsik stated the meeting needs to be rescheduled as we did not have a quorum at the last meeting. Mr. Oborn suggested meeting Nov. 17 at 5:15pm or Nov. 15.

Skates/Kordus motion to reschedule the meeting for November 17 at 5:30pm. Skates/Kordus withdrew motion.

Alderman Hedlund stated they would like to have it earlier to allow staff to attend.

Howell/Horne motion to reschedule the meeting for November 17 at 5:15pm.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Discussion/Action on approval of website design

Kordus/Horne motion to go with option 1 and direct City Clerk to move forward with website.

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Presentation of Accounts – Alderman Kordus

Purchase Orders. None.

Kordus/Gelting motion to approve Prepaid Bills in the amount of \$5,297.59

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Kordus/Gelting motion to approve Regular Bills in the amount of \$307,659.44

Roll Call: Chappell, Kordus, Skates, Flower, Gelting, Horne, Hedlund, Howell voting "yes." Unanimously carried.

Mayoral Appointments. None.

Adjournment. Kordus/Hedlund motion to adjourn at 9:24 pm. Unanimously carried.

/s/ Sabrina Waswo, City Clerk

THESE ARE NOT OFFICIAL MINUTES UNTIL APPROVED BY THE COMMON COUNCIL