

OFFICIAL PROCEEDINGS OF THE WAUSAU COMMON COUNCIL
held on Tuesday, January 28, 2014, at 7:00 pm in the Council Chambers at City Hall.
Mayor Tipple presiding.

Roll Call

01/28/2014 7:00:00

Roll call indicated 11 members present.

<u>District</u>	<u>Aldersperson</u>	<u>Present</u>
1	Nagle, William P.	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

Public Comment (Pre-registered citizens for matters appearing on the agenda)

Comments Regarding File # 14-0107 Restriction on Servers

- 1) Danielle Fischer, 627 ½ S 5th Ave, spoke in opposition to the sober server ordinance. She felt the Tavern League should have been involved and that the problem bars should be policed regarding this on an individual basis. She also felt the BAC should be 0.08 as it is for OWI.
- 2) Tyler Vogt, 1004 Spur Ln, owner of Malarkey's, agreed that licensed bartenders should stay sober and believed in the spirit of the sober server ordinance, but felt it should be tabled to discuss unintended consequences and enforcement issues.
- 3) John Larson, 1919 Cty Rd Y, former Medical Examiner, encouraged the Council to override the Mayor's veto of the sober server ordinance. He felt it was best for the public health and safety of the community.
- 4) Daniel Maas, 102 S 2nd Ave, Owner of Chatterbox and agent of Tribute Golf Course & Bunkers, objected to the sober server ordinance and excessive compliance checks. He felt this would prohibit him from drinking in his own establishments because he is responsible for the activities on the premises.
- 5) Timothy Thomas, 11420 S Cty Rd K, President of Marathon County Tavern League, opposed the sober server law and questioned what's next. He felt they have enough power through the statutes to deal with troublesome bars and most are responsible business owners that should be able to make their own business decisions.
- 6) Cory Young, 154 Ethel St, General Manager of the Great Dane, feared the unintended consequences of the sober server law. At the brewpub they need to be able to taste the beer and 0.04 doesn't give a lot of room for that.
- 7) Randy Olmstad, 828 N 2nd Ave, agent for Wausau Labor Temple, believed the law was unnecessary and agreed they already have all the necessary means to deal with problem bars; he asked the Council to let us do our job.
- 8) Carolyn Bronston, 817 Becker Dr, was in favor of the sober server law which would help with the prevention of drunk driving and she believed 0.04 was a reasonable BAC.
- 9) Melissa Dotter, 1000 Lakeview Dr, AOD Partnership, spoke in favor of the ordinance and clarified they weren't saying that alcohol was the problem, rather the *misuse* of alcohol was. She stated servers are our first line of defense and if they are impaired they can't do their job. She provided statistics regarding BAC levels.
- 10) Sue Gantner, 109 N 36th Ave, Board Member of Healthy Marathon County, indicated they were in support of the ordinance.
- 11) Mayor Tipple referred to email correspondence regarding the ordinance for the record and on file.

Communications and Committee Reports

Mayor Tipple announced the retirement of Fire Chief, Gary Buchberger, and indicated that Police Chief Hardel will fill in beginning January 31st through the transition. He commended Chief Buchberger and all his accomplishments in his 15 years of service. Chief Buchberger addressed and thanked the Council and citizens of Wausau.

Consent Agenda

01/28/2014 7:30:13 PM

Motion by Nutting, second by Mielke to approve all items on the consent agenda as listed:

**Nagle requested item 14-0110 be pulled off the Consent Agenda.*

14-0101 Minutes of the previous meeting. (01/14/2014)

14-0109 Resolution of the Capital Improvements and Street Maintenance Committee approving Easement and Hold Harmless Agreement for the installation of fiber optic cable across the north side of Broadway Avenue and the west side of King Street.

13-1109 Resolution of the Finance Committee approving Budget Carryover Request - Inspections Department.

08-0608 Resolution of the Human Resources Committee approving amendments to Part-time, Seasonal, and Temporary Wage Rates.

Yes Votes: 11 No Votes: 0 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

14-0110 (to table)

01/28/2014 7:32:51 PM

Motion by Nagle, second by Abitz to table the Resolution of the Finance Committee authorizing acceptance of conveyance, by donation, of Kwik Trip, 1500 Grand Avenue, to the City of Wausau from Kwik Trip until staff receives a recommendation from DNR that it is safe for the City to take title.

Nagle indicated he was in support of taking title to this property which is in his district, but staff still has some work to do with regard to making a recommendation on whether this site has a DNR approval on environmental issues. He felt it should be tabled until a recommendation is received that we can safely take title.

Yes Votes: 11 No Votes: 0 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

14-0107 (Veto Override)

01/28/2014 8:06:33 PM

Motion by Abitz, second by Rasmussen to adopt an ordinance of the Public Health & Safety Committee creating Section 5.64.034 Restriction on Servers - prohibiting a licensee from serving alcohol or supervising the service of alcohol while under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of the foregoing. **Vetoed by Mayor on 1/15/14 - Requires 2/3 vote to override.*

Mayor Tipple commented this was a classic example of what happens when you don't engage the public, the businesses, and go ahead without any input. He indicated he was not against the ordinance; he was just against the process in which it was brought forth. He encouraged the Council to sustain his veto so that it could go back for more discussion and input. Tipple stated they cannot table it anymore at this point; they have to vote yes or no. Jacobson noted if the veto is sustained the ordinance could be reintroduced after 30 days by Council rule. Tipple stated a public hearing can be held to hear everyone's concerns before adopting an ordinance.

Abitz indicated she would still like to see a task force formed to receive input from people affected by this law which she felt would be fair to the small business owners.

Rasmussen stated this vote will send one of two messages to the community. Sustaining the veto will show the public the strength and power of the alcohol culture, Tavern League and tavern owners in this area when they don't want positive changes. Overturning the veto shows our community that when this Council makes a decision to create policy for the greater good and ensure public safety that we are willing to stand firm in that effort. She pointed out a few months ago this Council stared down a room full of angry landlords that didn't want to be regulated in any possible way and we stood firm. This ordinance was passed by an 8-2 vote on January 14th and the veto throws it out the window. She noted Weston is considering a similar ordinance with a 0.04 BAC in a couple weeks, partially because of Wausau's lead and if we cave in tonight we limit their ability to succeed. She believed it was an important ordinance and believed it was done right; it was researched, identified, brought forth and discussed like every other issue. She stated if stakeholders and tavern owners want to have an open discussion with us about the BAC level that discussion can happen if the ordinance exists. She indicated she would put it on a March Public Health & Safety Committee agenda to discuss possibly amending the BAC level if that is what they wanted, but they need to override the veto first.

Brezinski stated he supported the ordinance, but did not agree with Rasmussen that if we don't override the veto the ordinance is gone. He felt there was an opportunity for us to engage the community in its largest sense and the people most directly affected by having it go back to Public Health & Safety. He believed that if people have confidence that the process has integrity they are more inclined to accept the results. He pointed out he was not saying the work of the committee was flawed, just incomplete. He indicated a bar owner called him and said it wasn't just the BAC that was in question; there were other issues that need discussion.

Winters stated Weston got their ordinance from Neenah and are pursuing an independent process. In March we intend to have an intra-community conference committee with their ordinance and ours and will take stakeholder input, as well as inviting additional municipalities to participate. He felt that will be the time to refine the ordinance, but it was necessary to override the veto and move forward.

Oberbeck stated he did not believe in ordinances that need to be amended after the fact. If we are going to put an ordinance in place, we need to do it right the first time. He indicated everything he has heard tonight tells him there is more discussion to be had and he supports sustaining the veto.

Yes Votes: 9 No Votes: 2 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	NO
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	NO
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

82-1252 (Veto Override)

01/28/2014 8:07:20 PM

Motion by Wagner, second by Mielke to adopt an ordinance of the Public Health & Safety Committee amending Section 1.01.025(c)(1)(b) Schedule of cash deposits to include restriction on server violations. **Vetoed by Mayor on 1/21/14 - Requires 2/3 vote to override.*

Yes Votes: 11 No Votes: 0 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES

8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

03-0425 (Veto override)

01/28/2014 8:08:01 PM

Motion by Rasmussen, second by Nutting to adopt an ordinance of the Public Health & Safety Committee amending Section 5.64.078(b) Point Schedule to include restriction on server violations. *Vetoed by Mayor on 1/21/14 - Requires 2/3 vote to override.

Yes Votes: 11 No Votes: 0 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

12-0110

01/28/2014 8:08:42 PM

Motion by Abitz, second by Rasmussen to adopt a Joint Resolution of the Capital Improvements & Street Maintenance Committee and the Plan Commission approving Relocation Order and Map for the construction of Curling Way from its current termini north to Junction Street.

Yes Votes: 11 No Votes: 0 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

14-0111

01/28/2014 8:09:19 PM

Motion by Nutting, second by Wagner to adopt a Resolution of the Economic Development Committee waiving City's right to purchase property in the Wausau Business Campus in order to allow the title transfer of 7333 Stewart Avenue from the David W. Graebel Family Trust to Stewart Avenue Holdings, LLC

Yes Votes: 11 No Votes: 0 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES

9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

01-1213

01/28/2014 8:13:44 PM

Motion by Winters, second by Brezinski to adopt a Resolution of the Finance Committee authorizing Public Access employees to negotiate and the Mayor and City Clerk to execute public access production agreements with entities for the purpose of providing production services and broadcasting of PEG programming as presented and amended at Finance Committee.

Mayor Tipple stated at Finance Committee prior to this meeting they amended the agreement from a fee of \$25 per hour to \$40 per hour. Chris Berge, Public Access, commented he was concerned it would be hard to get contracts at \$40 per hour.

Yes Votes: 10 No Votes: 1 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	NO
11	Mielke, Robert	YES

14-0112

01/28/2014 8:14:22 PM

Motion by Wagner, second by Mielke to adopt a Resolution of the Human Resources Committee approving Creation of Administrative Position in Community Development (0.75 FTE).

Yes Votes: 11 No Votes: 0 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

Closed Session

01/28/2014 8:15:24 PM

Motion by Nagle, second by Mielke to move into CLOSED SESSION: pursuant to Sec. 19.85(1)(g) conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, for the purpose of conferring with legal counsel regarding the HWY 52 Bird median project on Stewart Avenue, and any potential action or motion thereon.

Yes Votes: 11 No Votes: 0 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES

6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

Reconvened into Open Session

14-0113

01/28/2014 9:02:06 PM

Motion by Brezinski, second by Abitz to adopt a Resolution of the Committee of the Whole directing appropriate staff to execute whatever documents are necessary to apply for a prevailing wage determination regarding the HWY 52 Bird Median Project on Stewart Avenue and to comply with and implement the determination.

Yes Votes: 11 No Votes: 0 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

14-0113

01/28/2014 9:02:44 PM

Motion by Nutting, second by Winters to adopt a resolution of the Committee of the Whole approving waiver of the attorney-client privilege with respect to that Legal Opinion obtained from Axley Brynelson LLP December 10, 2013, regarding the Hwy 52 Bird Median Project on Stewart Avenue.

Yes Votes: 10 No Votes: 1 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	NO
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

Mayor Tipple read a press release of the legal findings regarding the Hwy 52 Bird Median Project on Stewart Avenue.

Public Comment (or suggestions for items not on the agenda)

- 1) Robert Baumann, 1040 ½ S 5th Ave, questioned the status of the Thomas Street project. Mayor Tipple indicated he would have staff provide him with the information.

Adjourn

01/28/2014 9:05:04 PM

Motion by Mielke, second by Abitz to adjourn. Meeting adjourned at 9:10 pm.

Yes Votes: 11 No Votes: 0 Abstain: 0 Not Voting: 0 Result: PASS

<u>District</u>	<u>Aldersperson</u>	<u>Vote</u>
1	Nagle, William	YES
2	Wagner, Romey	YES
3	Nutting, David E.	YES
4	Brezinski, Jim	YES
5	Gisselman, Gary	YES
6	Winters, Keene	YES
7	Rasmussen, Lisa	YES
8	Kellbach, Karen	YES
9	Oberbeck, David	YES
10	Abitz, Sherry	YES
11	Mielke, Robert	YES

James E. Tipple, Mayor
Toni Rayala, City Clerk