

## CITY COUNCIL PROCEEDINGS

### Agenda Item:

March 28, 2011

1. Following the Pledge of Allegiance, a regular meeting of the City Council of the City of St. Cloud, Minnesota, was held on March 28, 2011, at 6 p.m. in the City Council Chambers.
2. A Moment of Silence was held for our men and women serving in the Armed Forces.
3. City Council members Sonja Berg, Jeff Goerger, Nancy Gohman, John Libert, and Dave Masters were present. City Council members George Hontos and Jeff Johnson were absent.

### Consent Agenda:

4. **APPROVAL OF AGENDA.** ACTION TAKEN: Approved with the inclusion of discussion regarding the train crossing on the east side of St. Cloud as requested by Councilmember Gohman.

5. **APPROVAL OF THE MINUTES AND SUMMARY OF PROCEEDINGS OF THE REGULAR MEETING HELD FEBRUARY 28, 2011.** ACTION TAKEN: Approved.

6. **MAYOR'S RE-APPOINTMENTS TO THE BOARD OF EXAMINERS FOR MECHANICAL INSTALLER (HEATING BOARD).** ACTION TAKEN: Confirmed the re-appointments of Michael Fitch and Paul Loidolt for terms to commence immediately and expire March 1, 2014.

7. **MAYOR'S APPOINTMENT TO THE ZONING BOARD OF APPEALS.** ACTION TAKEN: Confirmed the appointment of James Newman for a first term to commence May 1, 2011 and expire April 30, 2014.

8. **MAYOR'S APPOINTMENT TO THE PLANNING COMMISSION.** ACTION TAKEN: Confirmed the appointment of Mary Jo Thometz for a first term to commence immediately and expire April 30, 2014.

9. **RESOLUTION AUTHORIZING THE ISSUANCE OF AN OFF-SITE GAMBLING PERMIT FOR CATHEDRAL HIGH SCHOOL FOR ACTIVITIES TO BE CONDUCTED AT THE ST. CLOUD CIVIC CENTER ON MAY 14, 2011.** ACTION TAKEN: Resolution adopted and assigned number 2011-3-33.

10. **APPROVAL OF "ART FAIR IN THE GARDENS" SPECIAL EVENT IN MUNSINGER PARK; THE APPLICATION FOR AN EXEMPTION FROM THE CITY'S NOISE ORDINANCE; AND THE APPLICATION FOR A TEMPORARY INTOXICATING LIQUOR LICENSE FOR THE MUNSINGER CLEMENS BOTANICAL SOCIETY TO CONDUCT THE EVENT ON JULY 21, 2011 FROM 11:00 AM TO 8:00 PM.** ACTION TAKEN: Approved the special park event; approved the noise

exemption; and approved the temporary liquor license subject to any conditions noted by the Police Department.

**11. RESOLUTION CALLING FOR A PUBLIC HEARING ON APRIL 25, 2011, ON THE PROPOSED ISSUANCE BY THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF ST. CLOUD, MINNESOTA OF HOUSING REVENUE REFUNDING BONDS WITH THE CITY OF ST. CLOUD'S GENERAL OBLIGATION PLEDGE.** ACTION: TAKEN: The resolution was adopted and assigned number 2011-3-34.

**12. (A) RESOLUTION APPROVING THE CITY OF ST. CLOUD'S ANNUAL ACTION PLAN FOR THE 2011 CDBG PROGRAM YEAR; AND (B) RESOLUTION ADOPTING REVISIONS TO THE CITY OF ST. CLOUD COMMUNITY DEVELOPMENT BLOCK GRANT CITIZEN PARTICIPATION PLAN.** ACTION TAKEN: A public hearing was set for April 11, 2011, on both items.

**13. RESOLUTION ADOPTING THE HEARING OFFICER'S FINDINGS OF FACT, CONCLUSION, AND RECOMMENDATION REGARDING VIOLATIONS OF THE LANDLORD RESPONSIBILITY ORDINANCE, SECTION 1051, CONCERNING RENTAL PROPERTY LOCATED AT 707 6TH AVENUE SOUTH, ST. CLOUD, MINNESOTA.** ACTION TAKEN: Councilmember Masters pulled this item for separate discussion. At Master's request, City Attorney Matt Staehling spoke to the proposed consequences of another violation at this property. Following a brief discussion, Masters/Berg moved approval of the resolution. The motion unanimously carried. The adopted resolution was assigned number 2011-3-35.

**14. THE 2011 "4TH OF JULY COMMUNITY FIREWORKS" CELEBRATION – PYROTECHNICS DISPLAY CONTRACT.** ACTION TAKEN: Approved.

**15. CHANGE ORDER #5 FOR THE WASTEWATER TREATMENT FACILITY REHABILITATION, UPGRADE AND EXPANSION PROJECT.** ACTION TAKEN: Approved.

**16. CHANGE ORDER #2 FOR THE WATER TREATMENT FACILITY GENERATOR & REHABILITATION PROJECT.** ACTION TAKEN: Approved.

**17. AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH SEH FOR CONSULTANT SERVICES ASSOCIATED WITH THE TED GRANT FUNDING FOR T.H. 15 AND 33RD STREET SOUTH INTERCHANGE.** ACTION TAKEN: Approved.

**Open Forum:** No one spoke.

**Public Hearings:**

**18. APPLICATION FOR AN OFF-SALE INTOXICATING LIQUOR LICENSE FOR J T ESTABLISHMENTS, LLP DBA DIVISION LIQUOR & WINE, 2301 DIVISION STREET, SUITE 400.**

City Attorney Matt Staehling introduced the agenda item noting that the City of St. Cloud has no set limit to the number of Off-Sale liquor licenses. City Council President Libert opened the public hearing. No one spoke. The public hearing was closed. The applicants, Travis Jackson and Jamie Christensen, were in attendance and addressed the Council at Councilmember Berg's request. She interpreted the staff's memo to read that the two applicants were previously convicted of serving alcohol to minors. However, City Attorney Staehling clarified that records indicate that each applicant was convicted of underage drinking/consumption approximately 5 to 6 years ago. Councilmember Goerger suggested that the applicants should have been forthright with that information. Upon clarification and with staff's support for approval, Goerger/Gohman moved approval of the Off-Sale Intoxicating Liquor License for JT Establishments, LLP dba Division Liquor & Wine. The motion unanimously carried.

**19. AN ORDINANCE AMENDING SECTION 145 OF THE CODE OF ORDINANCES ENTITLED, "UNCLASSIFIED SERVICE, CERTAIN DESIGNATIONS."**

City Administrator Mike Williams gave a brief overview of administration's recommendation to place the position/job description of "Senior Accountant" into the "Unclassified" designation and retain its Classified non-bargaining status. All "Unclassified" positions must be designated by the City Council and included in the listing of Section 145 of the City Code of Ordinances. City Council President Libert opened the public hearing. No one spoke. The public hearing was closed. Berg/Masters moved approval of the Ordinance to amend Section 145 as presented. The motion unanimously carried. The adopted Ordinance was assigned number 2492.

**20. AN ORDINANCE AMENDING THE HOME RULE CHARTER BY REDUCING THE SIZE OF THE CHARTER COMMISSION FROM 15 TO 9 MEMBERS, AND ELIMINATING OBSOLETE LANGUAGE FROM THE CHARTER.**

City Attorney Matt Staehling explained that the Charter Commission recommends that the Home Rule Charter be amended to set its membership at nine members. Minnesota Statute §410.05 provides that Charter Commissions shall be comprised of not less than seven nor more than 15 members.

Currently, the St. Cloud Charter Commission membership is set at 15 members, however, there are only 8 appointed members serving. The Commission further recommends the elimination of obsolete language in a number of sections (all information provided in full text on-line and in Council packet). Since there wasn't a full Council at this meeting, City Attorney Staehling asked for the public hearing to be held and closed and that the formal vote be held over to an April Council meeting when all members are in attendance. Council President Libert opened the public hearing. The following individual spoke:

**Phil Terry, 1236 Whitney Drive;** stated that he currently serves as a member of the St. Cloud Charter Commission. He previously served two full terms from 1992-2000 on the Charter Commission, at which time there was a full membership of 15 members, and the merger of the Township and the City of St. Cloud took place and the board met almost monthly. When he returned to serve on the Commission this past year, he found there were seven vacancies. He explained that he was the only dissenting vote on the Commission regarding the vote to reduce the size of the board. He suggested that by maintaining a 15 member board, it requires at least 8 members for a quorum. He explained the appointment process for becoming a member of the Charter Commission (appointments made by District Court Judges) and explained the timeframe allowed to complete appointments as referenced by state law. If appointments aren't made within 30 days, the City Council can appoint members. He also referenced the state law as it applies to the term lengths. State law has changed and individuals can serve unlimited terms, noting that terms do not expire until a reappointment is made. He noted that City Attorney Staehling met with the Charter Commission as they prepared and finalized its by-laws. Attorney Staehling advised the group that only one meeting a year is required unless the City Council asks the Charter Commission to convene. He disagreed with that interpretation and felt the group should meet on a monthly basis.

There being no one else wishing to speak, the public hearing was closed. City Attorney Staehling agreed with many of Mr. Terry's references to state law, as ultimately the City looks to state law as it governs Home Rule Charters. However, he disagreed with other comments/interpretations by Mr. Terry. City Attorney Staehling stated that the Charter Commission is not a proactive advisory group, but rather a reactive advisory group. He confirmed that administration supports the Charter Commission's recommendations as submitted. He intends to bring this item back for formal vote at an April meeting when all City Council members are in attendance. Councilmember Goerger suggested that Jeff Johnson and George Hontos review the video of the meeting with regard to Mr. Terry's presentation. Goerger/Master moved to table this item to a formal vote at an April meeting. The motion unanimously carried.

21. **AN ORDINANCE AMENDING SECTION 555 - MISCELLANEOUS LICENSES AND PERMIT CHARGES TO SIMPLIFY DOG LICENSE LATE FEES.** Health Director Lisa Schreifels explained that the proposed ordinance simplifies the late payment process for residents and city staff. St. Cloud residents would pay a flat rate fee of \$10 for a late dog license. City Council President Libert opened the public hearing. No one spoke. The public hearing was closed. Goerger/Master moved approval of the ordinance as presented. The motion unanimously carried. The adopted Ordinance was assigned number 2393.

22. **A. RESOLUTION AMENDING THE WESTWOOD PARKWAY PLANNED UNIT DEVELOPMENT (PUD) GENERAL DEVELOPMENT PLAN TO CHANGE AN AREA APPROVED FOR SINGLE FAMILY LOTS TO A SINGLE STORY 20-SUITE SKILLED NURSING FACILITY FOR THE ELDERLY. (LOCATION: WESTERN EXTENT OF VOYAGEUR STREET) (DPA-2011-02)** Community Development Director Matt Glaesman gave an overview of the applicant's request for a General Development Plan amendment to the Westwood Parkway Planned Unit Development to develop a single story 20-suite skilled nursing facility for the elderly. Glaesman also displayed several schematics of the area. He advised that the Planning Commission has recommended approval of the PUD amendment. Council President Libert opened the public hearing. The following person spoke:

**Robert C. (Bob) Coborn, 712 Riverside Avenue N., Sartell** (property owner); spoke on behalf of Marshall Weems of Cherrywood Advanced Living, LLC, who was not able to attend the meeting. Mr. Coborn explained that Cherrywood Advanced Living, LLC, is owned by four partners: Marshall Weems, Wendy Hulsebus, Nancy Kollmann, and himself. He serves as Chairman of the Board. His presentation included schematics/drawings/floor plans of the proposed facility that they hope to build in the Westwood Planned Unit Development. The building would be a single story 20-suite skilled nursing facility to serve older adults called "Cherrywood of St. Cloud." There would be two wings (10 suites in each wing) joined by a great room that would be used for larger gatherings and special occasions. Each resident would have a 400 sq.ft. suite with a private bath. Also, he noted that each wing would have a communal kitchen, dining and living room area, a spa, a beauty parlor, an office and a laundry room. He spoke to the need for such a facility as the number of seniors will double in our area in the next decade. He also addressed the licensing aspect of the facility, noting that there are two different licenses, one for nursing care and the other for non-nursing care. Cherrywood will carry a Class L license.

There being no one else wishing to speak, the public hearing was closed. Councilmember Goerger asked for clarification regarding the licensing of the facility. Mr. Coborn responded that

a Class A license facility cannot be in a residential area. Nursing homes carry Class A licenses as they provide medical services. Cherrywood will carry a Class L license and will provide assisted living care. Berg/Goerger moved approval of the resolution as presented. Goerger moved to amend the resolution by adding language that sets an age limit (to define elderly) as a commitment to the neighborhood. As the maker of the original motion, Berg disagreed and suggested that would be discriminatory. Community Development Director Glaesman suggested the term “elderly” is adequate. Goerger withdrew his amendment motion. The original motion carried unanimously. The adopted resolution was assigned number 2011-3-36.

**22 B. PRELIMINARY PLAT OF WESTWOOD PARKWAY PLAT 12.** Goerger/Masters moved approval of the preliminary plat as presented. The motion unanimously carried.

**Open Discussion & Announcements:**

Councilmember Gohman brought up community concerns regarding the train whistle quiet zone at 4½ Street NE. City Engineer Foss stated that the city is pursuing grant funding to cover the additional cost overruns associated with work required of railroad track system to complete the train crossing quiet zones.

City Administrator Michael Williams announced that the City Council Retreat will be held on Friday and Saturday, April 8 & 9, 2011, at the Brewer Room of the Whitney Senior Center. The times of the retreat will be Friday from 2:30 p.m. – 8:00 p.m. and Saturday from 8:00 a.m. to 1:30 p.m. Williams will serve as the facilitator.

Mayor Dave Kleis announced that he will present the State of the City address on Tuesday, April 5, 2011, at noon at the Herberger Room of the Civic Center. It is free and open to the public.

The mayor also announced that the Joint Area Cities meeting will be held on March 29, 2011, at the St. Cloud Police Department in Training Room B&C at 5:30 p.m. Also, the area mayors will meet at 4:30 p.m. at the Police Department.

**Adjournment:**

There being no further business to discuss, City Council President Libert adjourned the meeting at 7:08 p.m.

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City Council President John Libert

Respectfully submitted by  
Sandy Hilsgen  
Recording Council Secretary