



City of Fort Atkinson
City Manager's Office
101 N. Main Street
Fort Atkinson, WI 53538

**CITY COUNCIL MEETING
IN PERSON AND VIA ZOOM
TUESDAY, JULY 2, 2024 – 7:00 PM
CITY HALL – SECOND FLOOR**

MINUTES

1. Call meeting to order

President Lescohier called the meeting to order at 7:00 pm.

2. Roll call

Present: Cm. Becker, Cm. Jaeckel, Cm. Johnson, Cm. Schultz and President Lescohier. Also present: City Manager, City Attorney, City Engineer, City Clerk/Treasurer/Finance Director, Public Works Superintendent, Building Inspector, Fire Chief and Park and Recreation Director.

3. Public Hearings

None.

4. Public Comment

David Frigo, 409 Milo Street. Spoke about the Farmer's Market and meetings those representatives have had regarding the location of the market. He suggested using other parking areas. He also discussed the former community garden on Grove Street and relocating/reopening it.

Jean Heiman, 709 Van Buren Street. She referenced a sewer back up in December 2023. She submitted an insurance claim which was reviewed by the City's Insurance Company and recommended be disallowed. She would like the City to pay half of her expenses.

John Hausz, 104 Jefferson Street. He inquired on broken-up sidewalks in the City and progress to repair those sections. He spoke with the Rock River Coalition and invasive species, wondering if something is being done. He commented on a rezoning request for a property owned by Mr. Logan and the anticipated use of that property. He also discussed an uncle that served and then recited the Pledge of Allegiance.

5. Consent Agenda

Cm. Becker moved, seconded by Cm. Johnson to approve the Consent Agenda as presented.

*a. Review and possible action relating to the **minutes of the regular June 18, 2024 City***

Council meeting (Ebbert, Clerk/Treasurer/Finance Director)

- b. Review and possible action relating to the minutes of the June 25, 2024 regular Plan Commission meeting (Ebbert, Clerk/Treasurer/Finance Director)***
- c. Review and possible action on a Special Event: Fourth of July Glow Run, July 4, 2024, from 6 pm to 9 pm at the Jones Market and Glacial River Trail (Ebbert, Clerk/Treasurer/Finance Director)***
- d. Review and possible action relating to Citizen Appointments to Committees, Commissions, and Boards (Houseman, City Manager)***

6. Petitions, Requests, and Communications

None.

7. Resolutions and Ordinances

- a. Second and possible third/final reading of an Ordinance relating to a Zoning Map Amendment to change the zoning for the property located at 1233 Janesville Avenue (226-0514-0924-004) from Light Industrial (LI) to Urban Mixed Use (UMU) (Draeger, Building/Zoning Administrator)***

Building Inspector Draeger reviewed the submission by property owner Andrew Logan has applied for a Zoning Map Amendment for the property located at 1233 Janesville Avenue. The property is currently Zoned LI- Light Industrial, and the applicant is seeking to rezone to UMU - Urban Mixed Use to provide for greater flexibility in the permitted uses on the site. Draeger added, at the meeting on June 11, 2024, the Plan Commission reviewed this matter and recommended that the City Council adopt an Ordinance changing the zoning of the property with the following conditions: • Site Plan review and approval by the Plan Commission for New Signage and Exterior Alterations. • Any other recommendations of City staff and the Plan Commission. The council had the first reading of the ordinance at the meeting on June 18, 2024. There have been no comments received by staff since this last meeting.

Cm. Becker moved, seconded by Cm. Johnson to suspend the rules and waive the third reading of the ordinance to amend the Official Zoning Map of the City of Fort Atkinson, Wisconsin. Motion carried on a unanimous voice vote.

Cm. Becker moved, seconded by Cm. Johnson to adopt the Ordinance relating to a Zoning Map Amendment to change the zoning for the property located at 1233 Janesville Avenue from Light Industrial to Urban Mixed Use. Motion carried on a unanimous voice vote.

8. Reports of Officers, Boards, and Committees

- a. City Manager's Report (Houseman, City Manager)***

No action was taken.

9. Unfinished Business

None.

10. New Business

a. Review and possible action relating to Change Order #2 for the Public Works and Parks Operations facility (Williamson, Public Works Superintendent)

Public Works Superintendent Williamson reviewed the contract approved by the City Council included 5% (\$577,200) of the construction contract cost as contingency to address unknown items outside the original scope of the construction contract. Change Order #2, included with this memorandum, documents two items added, changed, or altered to improve the original intended design. The first additional item is the result of requested changes by City staff. There are five steel doors on the existing West (Parks) Shed. The replacement of these doors were not included in the original construction project, but the condition of such have deteriorated to the point that replacement with this project is economical and efficient. The replacement fiberglass doors, which match the new facility, will improve the aesthetic and long term maintenance of the West (Parks) Shed. The cost of the five doors is \$25,372. The second item included with Change Order #2 is the additional costs associated with the poor soil conditions found during excavation of the building footings. As a result of this poor structural material in areas intended to support the walls and roof structure of the new facility, the contractor has been required to remove the poor soils and replace them with a more structurally sound crushed aggregate material. This cost has been documented at \$94,000, with a small section of interior footings remaining. Staff has reviewed the previous data with the design architect, soils engineer, and contractor, and have requested the \$105,000.00 contained in the attached change order, anticipating this last section of footing.

Cm. Becker moved, seconded by Cm. Johnson to approve Change Order 2 of the Public Works and Parks Operations facility construction contract at a cost not to exceed \$130,372.00. Motion carried on a unanimous voice vote.

11. Claims, Appropriations and Contract Payments

*a. Review and possible action relating to the **Verified Claims** presented by the Director of Finance and authorization of payment (Ebbert, Clerk/Treasurer/Finance Director)*

Cm. Jaeckel moved, seconded by Cm. Johnson to approve the list of Verified Claims as presented. Motion carried on a unanimous voice vote.

*b. Review and possible action relating to **disallowance of a claim** against the City of Fort Atkinson, Majewski (Ebbert, City Clerk/Treasurer/Finance Director).*

Clerk/Treasurer Ebbert stated that in July 2021, the League of Wisconsin Municipalities

Mutual Insurance (LWMMI) became our insurance carrier for property, liability and worker's compensation. Statewide Services, Inc administers the claims for the LWMMI and performs an investigation and obtain facts regarding submitted notice of claims. Their research includes interviewing employees and on-site investigation. A final determination is then made and provided to Staff.

The claimant sustained a back-up of sewer water into their basement. A notice of incident was filed on January 31st and submitted to the City's insurance company for review. Statewide Services spoke with City employees to learn the cause of loss was an unnoticed clog within the City's sewer main, and that the City did not cause the clog by their operations. It was confirmed there is no evidence that the City failed to adhere to any ministerial duties or mandates regarding the maintenance of the sewer main, and absent a ministerial duty, WI statute 893.80 affords the City discretionary immunity. Statewide's investigation has revealed that the City was not negligent for this incident and therefore, recommends that the City disallow this claim pursuant to the Wisconsin Statute for disallowance of claim 893.80(1g). The disallowance of the claim shortens the statute of limitations period to six months for any future lawsuit relating to this matter.

Cm. Jaeckel moved, seconded by Cm. Johnson to disallow the claim against the City of Fort Atkinson pursuant to Wis. Stat. 893.80(1)(g). Motion carried on a unanimous voice vote.

c. *Review and possible action relating to **disallowance of a claim** against the City of Fort Atkinson, Heiman (Ebbert, City Clerk/Treasurer/Finance Director).*

Clerk/Treasurer Ebbert stated that in July 2021, the League of Wisconsin Municipalities Mutual Insurance (LWMMI) became our insurance carrier for property, liability and worker's compensation. Statewide Services, Inc administers the claims for the LWMMI and performs an investigation and obtain facts regarding submitted notice of claims. Their research includes interviewing employees and on-site investigation. A final determination is then made and provided to Staff.

The claimant sustained a back-up of sewer water into their basement. A notice of incident was filed and submitted to the City's insurance company for review. Statewide Services spoke with City employees to learn the cause of loss was an unnoticed clog within the City's sewer main, and that the City did not cause the clog by their operations. It was confirmed there is no evidence that the City failed to adhere to any ministerial duties or mandates regarding the maintenance of the sewer main, and absent a ministerial duty, WI statute 893.80 affords the City discretionary immunity. Statewide's investigation has revealed that the City was not negligent for this incident and therefore, recommends that the City disallow this claim pursuant to the Wisconsin Statute for disallowance of claim 893.80(1g). The disallowance of the claim shortens the statute of limitations period to six months for any future lawsuit relating to this matter.

Cm. Becker moved, seconded by Cm. Jaeckel to disallow the claim against the City of Fort Atkinson pursuant to Wis. Stat. 893.80(1)(g). Motion carried on a unanimous voice vote.

- d. *Review and possible action relating to **disallowance of a claim** against the City of Fort Atkinson, Root (Ebbert, City Clerk/Treasurer/Finance Director).*

Clerk/Treasurer Ebbert stated that in July 2021, the League of Wisconsin Municipalities Mutual Insurance (LWMMI) became our insurance carrier for property, liability and worker's compensation. Statewide Services, Inc administers the claims for the LWMMI and performs an investigation and obtain facts regarding submitted notice of claims. Their research includes interviewing employees and on-site investigation. A final determination is then made and provided to Staff.

The claimant sustained a back-up of sewer water into their basement. A notice of incident was filed on January 31st and submitted to the City's insurance company for review. Statewide Services spoke with City employees to learn the cause of loss was an unnoticed clog within the City's sewer main, and that the City did not cause the clog by their operations. It was confirmed there is no evidence that the City failed to adhere to any ministerial duties or mandates regarding the maintenance of the sewer main, and absent a ministerial duty, WI statute 893.80 affords the City discretionary immunity. Statewide's investigation has revealed that the City was not negligent for this incident and therefore, recommends that the City disallow this claim pursuant to the Wisconsin Statute for disallowance of claim 893.80(1g). The disallowance of the claim shortens the statute of limitations period to six months for any future lawsuit relating to this matter.

Cm. Jaeckel moved, seconded by Cm. Johnson to disallow the claim against the City of Fort Atkinson pursuant to Wis. Stat. 893.80(1)(g). Motion carried on a unanimous voice vote.

12. Miscellaneous

- a. *The City Council may consider a motion to convene in closed session pursuant to State Stat. §19.85(1)(g) in order to confer with legal counsel who is rendering oral or written advice concerning strategies to be adopted by the Council with respect to **current litigation***

Cm. Becker moved, seconded by Cm. Johnson to convene in closed session pursuant to State Stats. Section 19.85(1)(g) in order to confer with legal counsel who is rendering oral or written advice concerning strategies to be adopted by the Council with respect to current litigation. Motion carried on a unanimous voice vote.

- b. *The City Council may return to open session to take action on an Agreement relating to current litigation (Houseman, City Manager)*

Cm. Jaeckel moved, seconded by Cm. Becker to reconvene into open session. Motion carried on a unanimous voice vote.

Cm. Becker moved, seconded by Cm. Johnson to approve the Settlement Agreement and Mutual Release relating to the Hwy 12 LLC/Estate of Ramesh Shah Lawsuit. Motion carried on a unanimous voice vote.

13. Adjournment

Cm. Jaeckel moved, seconded by Cm. Becker to adjourn. Meeting adjourned at 8:09 pm.

Respectfully submitted

Michelle Ebbert

City Clerk/Treasurer/Finance Director