



**CITY OF NEWPORT  
REGULAR COUNCIL MEETING  
NEWPORT CITY HALL  
AUGUST 2, 2012 – 5:30 P.M.**

MAYOR: Tim Geraghty  
COUNCIL: Tom Ingemann  
Bill Sumner  
Tracy Rahm  
Steven Gallagher

City Administrator: Brian Anderson  
Supt. of Public Works: Bruce Hanson  
Chief of Police: Curt Montgomery  
Fire Chief: Mark Mailand  
Executive Analyst: Renee Helm

**AGENDA**

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. ADOPT AGENDA
5. ADOPT CONSENT AGENDA – All items listed under this section are considered routine and non-controversial by the Council and will be approved by a single motion. An item may be removed from the consent agenda and discussed if a Council member, staff member, or citizen so requests.
  - A. Minutes of the July 19, 2012 Regular City Council Meeting
  - B. List of Bills in the Amount of \$421,563.55
6. VISITORS PRESENTATIONS/PETITIONS/CORRESPONDENCE
7. MAYOR'S REPORT
8. COUNCIL REPORTS
9. ADMINISTRATOR'S REPORT
  - A. **Ordinance No. 2012-10** – Amending Chapter 6, Animals
  - B. **Ordinance No. 2012-11** – Amending Chapter 4, Licensing, and Chapter 5, Alcoholic Beverages
  - C. City Sanitary Improvement Plan
    1. **Resolution No. 2012-22** – Authorizing City Staff to Upgrade the 15<sup>th</sup> Street Lift Station
    2. **Resolution No. 2012-23** – Establishing Procedures Relating to Compliance with Reimbursement Bond Regulations Under the Internal Revenue Code
10. ATTORNEY'S REPORT
11. POLICE CHIEF'S REPORT
12. FIRE CHIEF'S REPORT

Agenda for 08-02-2012

13. ENGINEER'S REPORT

14. SUPERINTENDENT OF PUBLIC WORKS REPORT

15. NEW / OLD BUSINESS

16. ADJOURNMENT

Upcoming Meetings and Events:

- |                                |                 |                        |
|--------------------------------|-----------------|------------------------|
| 1. Planning Commission Meeting | August 9, 2012  | 7:00 p.m.              |
| 2. Pioneer Day Festival        | August 12, 2012 | 11:00 a.m. – 5:00 p.m. |
| 3. City Council Meeting        | August 16, 2012 | 5:30 p.m.              |



**City of Newport  
City Council Minutes  
July 19, 2012**

**1. CALL TO ORDER**

Mayor Tim Geraghty called the meeting to order at 5:30 P.M.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL -**

**Council Present** – Tim Geraghty, Tom Ingemann, Bill Sumner, Tracy Rahm, Steven Gallagher

**Council Absent** –

**Staff Present** – Brian Anderson, City Administrator; John Neska, Assistant Supt. of Public Works; Curt Montgomery, Police Chief; Mark Mailand, Fire Chief; Renee Helm, Executive Analyst; Fritz Knaak, City Attorney; John Stewart, City Engineer; Sherri Buss, TKDA Planner

**Staff Absent** – Bruce Hanson, Supt. of Public Works;

**4. ADOPT AGENDA**

**Motion by Ingemann, seconded by Gallagher, to adopt the Agenda as presented. With 5 Ayes, 0 Nays, the motion carried.**

**5. ADOPT CONSENT AGENDA**

**Motion by Sumner, seconded by Rahm, to approve the Consent Agenda as presented, which includes the following items:**

- A. Minutes of the June 21, 2012 Regular City Council Meeting
- B. List of Bills in the Amount of \$190,526.78
- C. North Ravine Partial Payment #3
- D. Lion's Annual Park Permit
- E. Gambling Permit for Foster My Pet
- F. **Resolution No. 2012-18** – Appointment of 2012 Election Judges
- G. **Resolution No. 2012-19** – Identifying the Need for Livable Communities Demonstration Account Funding and Authorizing an Application for Grant Funds

**With 5 Ayes, 0 Nays, the motion carried.**

**6. VISITORS PRESENTATIONS/PETITIONS/CORRESPONDENCE**

**7. MAYOR'S REPORT –**

**Mayor Geraghty** – I attended the transit open house meeting on June 28 for the City Council and Commissions. I also attended the Booya parade on July 7 and Booya on July 8, it was a good turnout. I also attended the HPC meeting and they talked about their inventory of the historic landmarks. We also discussed the Veterans' Memorial. We still need to decide who can put bricks in the Memorial. We did set the rate at \$75/

## 8. COUNCIL REPORTS

**Councilman Rahm** – I attended the open house yesterday on the Red Rock Transit Station. I also gave a presentation at a NEWCO meeting on the strategic plan that the City is working on.

**Councilman Ingemann** – I also attended Booya. I was at a Planning Commission meeting last Thursday; a couple of the items will be on the agenda tonight. I also attended the open house last night, it was a good turnout.

**Councilman Sumner** – I was also at the Booya parade and Booya event, as well as the meeting last night.

**Councilman Gallagher** – I was also at Booya and the meeting last night. I also attended the NEWCO meeting where Tracy presented and he did a good job on that. I also attended a few Met Council TAB meeting. My idea is to get MnDot to change Maxwell Avenue from a collector to arterial road to bring in more money.

## 9. ADMINISTRATOR'S REPORT

**Mayor Geraghty** – Before we get started I just want to make a comment. I know there are a number of issues tonight that people want to speak about and I would ask people to be recognized by me when they speak, including Council members and staff. I want to run a respectful meeting in a professional manner. If you would like to speak, step up to the podium and give your name and address.

### A. Request from Martin Vietoris

1. **Resolution No. 2012-20** – Approving a Rezoning Request from Martin Vietoris
2. **Resolution No. 2012-21** – Approving a Planned Unit Development and Minor Subdivision from Martin Vietoris

Sherri Buss, TKDA Planner, presented on this item as outlined in the July 19, 2012 City Council packet. The Planning Commission held a public hearing at its July 12, 2012 meeting and approved two resolutions recommending that the City Council approve a rezoning request and a planned unit development and minor subdivision.

**Councilman Rahm** – Did the Planning Commission vote unanimously on it?

**Executive Analyst Helm** – Yes.

**Councilman Gallagher** – Do we know what the square footage of the homes would be?

**Martin Vietoris, 2154 Hastings Avenue** – I looked at the MLS for Newport and there are 11 homes for sale and 9 of those are under \$175,000, so the price point will be around the \$160,000 to \$170,000 range, so you'll be lucky to get a 1,400 square foot home on these properties. The one clarification I wanted to make was that the lots, even though they do not meet the width requirements of R1 zoning, they meet the square footage requirements.

**Mayor Geraghty** – Will there be basements?

**Mr. Vietoris** – No but it'll be a two-level house. The area outlined in the plan is the buildable area allowed. It won't have a basement but it will have a larger garage for storage.

**Mayor Geraghty** – Are you building them yourself?

**Mr. Vietoris** – Yes, that's what we do.

**Motion by Ingemann, seconded by Rahm to approve Resolution No. 2012-20 approving a rezoning requested by Martin Vietoris, 2154 Hastings Avenue, Suite 100, Newport, for property located just west of Valley Road and south of Ford Road. With 5 Ayes, 0 Nays, the motion carried.**

**Motion by Ingemann, seconded by Geraghty to approve Resolution No. 2012-21 approving a planned unit development and minor subdivision requested by Martin Viotoris, 2154 Hastings Avenue, Suite 100, Newport, for property located just west of Valley Road and south of Ford Road. With 5 Ayes, 0 Nays, the motion carried.**

**B. Appeal from Veolia Environmental Services of Denied Building Permit to Install a 15,000 Gallon Above-Ground Storage Tank at 1545 7<sup>th</sup> Avenue**

Admin. Anderson and Sherri Buss presented on this item as outlined in the July 19, 2012 City Council packet. At the December 8, 2011 Planning Commission meeting, the members discussed a request from Veolia Environmental Services to install a 10,000 gallon above-ground storage tank at its facility, located at 1545 7<sup>th</sup> Avenue. City staff informed both the Planning Commission and Veolia that the building became nonconforming when the zoning district changed to MX-1 in 2000 and that expansion is only allowed for an existing use, building or structure. The Planning Commission informed Veolia that their request is not allowed per the Code and requested that the City continue to work with Veolia regarding their request. City staff met with Veolia in January and informed Veolia that an aboveground storage tank of any size is considered a new accessory use and therefore is not allowed per the Code. After the meeting, Veolia submitted a building permit application for a 15,000 gallon above-ground storage tank, at which time City staff denied the permit. Veolia appealed staff's decision to deny the building permit and the Planning Commission held two Board of Appeals meetings on April 12 and April 19, 2012. At the April 19, 2012 meeting, the Planning Commission, acting as the Board of Appeals, approved a Findings of Facts upholding staff's decision to deny the building permit.

**Councilman Rahm** – What's the difference between an aboveground propane tank and this tank?

**Ms. Buss** – Your code does allow a gas station use to have a small aboveground propane tank consistent with any state rules and they can also have underground tanks. The issues related to fire and safety is really different for aboveground tanks and there are different state rules. That's why your code treats them differently. This use is defined very differently in your code and it's only allowed in the industrial district.

**Motion by Geraghty, seconded by Gallagher to uphold the Board of Appeals decision to deny the appeal based on the Findings of Fact. With 5 Ayes, 0 Nays, the motion carried.**

**C. Ordinance No. 2012-9** – Amending Chapter 7, Section 760, Archery Deer Hunting

Admin. Anderson presented on this item as outlined in the July 19, 2012 City Council packet. It is recommended that the ordinance be amended to remove salt licks from the regulation against feeding of deer.

**Bob Whiting, President of the Metro Bowhunters Resource Base** – Mr. Whiting was present to discuss the Metro Bowhunters Resource Base (MBRB). The MBRB was organized in 1995 and use archery has a safe and efficient way to control deer in cities. MBRB provides hunt coordinators for each city and has less than 500 members. MBRB is conducting 22-23 hunts in 2012.

**Councilman Rahm** – Do you know how many deer you take in a typical hunt?

**Mr. Whiting** – It varies a lot depending on the number of deer there are in the first place. We get anywhere from 2 to 70 in one hunt. We concentrate on the mature does to reduce the breeding potential. It would not be a one year thing in terms of success.

**Admin. Anderson** – Their bylaws and board member information is available, it's just not on the website. We do not plan to conduct a hunt this year, so the first one would be in 2013.

**Mr. Whiting** – We would develop a hunt plan that identifies the areas and rules for the City.

**Bob Graves, 1420 Wild Ridge Trail** – I support the resolution. I would like to recommend that the resolution would require doe only hunting. This gentleman said he thought that would work but I think with the numbers involved, I don't think there would be a notable drop unless it was doe only.

**Mayor Geraghty** – Is that typically a request from cities?

**Admin. Anderson** – That can be in the terms of the hunt so we may not want to limit ourselves by placing it in the ordinance.

**Tom Aguilar-Downing, 1550 Wild Ridge Court** – Thank you for considering the recommendations that the neighborhood group put out. I had a question about the grouping together of properties. Again, to deal with the safety issues, I think the neighborhood feels that having the five acres only allows local hunters to hunt but still keeps it out of the small areas. If the Council is concerned, I hope you have some discussion in front of the public here.

**Councilman Gallagher** - I would like to amend Section 760.05 by removing MBRB, Loveland Park and Bailey School Forest so we don't limit ourselves.

**Councilman Sumner** – Do we need to talk about the aggregating of land for the five acres or is that a separate discussion.

**Mayor Geraghty** – Under this proposal it is still allowed. It's my opinion that this is a private rights issue for landowners to have that capability. I understand that there are a lot of people who don't allow hunting on their land but as times change or people change they may want to. So I agree with how it is written now.

**Councilman Rahm** – I attended the neighborhood meetings as well and I think Tom did a very good job of balancing the different issues and putting together the proposal. I go along with the property rights issue too. We can always revisit it.

**Councilman Gallagher** – What would be the limit, are we talking five houses with one acre a piece?

**Councilman Rahm** – When I look at the map, it looks like it would be hard to find five acres. I think we're more limited with what we're doing now.

**Corb Hopkins, 1790 1<sup>st</sup> Avenue** – I have a couple questions regarding the land. The question came up with how about the cemetery? Also, what about the area that is a buffer zone, owned by the refinery. Are those areas included in there or are they considered?

**Mayor Geraghty** – The refinery land is in the map now and it's up to them to allow hunting on that land. I'm not sure about the cemetery.

**Mr. Aguilar-Downing** – I believe many of the Councilmembers received an email from Dr. Adams, our neighbor, regarding the feeding ban. My personal feeling is that the ban should not be required but instead an educational process. As I'm hearing our talk about freedom to use your property, Dr. Adams talks about the freedom of his property to feed the deer.

**Mayor Geraghty** – We did receive that email and I think we removed the salt licks from the list but the remainder will stay.

**Councilman Rahm** – I replied to Dr. Adams and I think his primary concern was the salt licks, which we

removed.

**Mayor Geraghty** – Tom, thank you for your work on it. I know there was a lot of good discussion and the neighborhood committee did a good job on it.

**Motion by Rahm, seconded by Ingemann, to approve Ordinance No. 2012-9 as amended. With 5 Ayes, 0 Nays, the motion carried.**

#### **D. Discussion of Fishing Pier – Under Separate Cover**

Admin. Anderson presented on this item. In 2009, a fishing pier committee was formed and recommended that a fishing pier be placed in the Mississippi River at the sixth street entrance. In 2010, the City placed a fishing pier in the River. A resident has addressed concerns about the fishing pier not being ADA compliant. The City has not put the fishing pier in the River to date. The Council will need to discuss regarding what should be done about the fishing pier.

**Attorney Knaak** – The issue is not with the structure of the fishing pier but with access to the pier. There has not been a complaint, but former councilmember Schottmuller did indicate that she was concerned about the compliance issue and was aware of a potential complaint. That is why our staff recommended that the pier not be put in the water until the issue was resolved. We've looked at it and discussed it with the engineer. It would appear that, even with grandfathering provisions that the access would have to be in compliance with the 1991ADA standards, it has to do with the grade of access, among other things. That is one of the issues that you can look at and resolve. Another issue is that it is, as structured, a usable boat landing, which has different standards. That could be utilized under a lesser access standard. Nonetheless, I think it's understood that it has been announced has a fishing pier, which presents other issues. Right now, it's not out of compliance because it's not in the water. There has not been a formal complaint but these issues have been raised and this has also raised an analysis of other access points to the river. Those are not immediately before you but they are being reviewed.

**Admin. Anderson** – Just this past week I had a meeting with the National Parks Service. We took a look at sixth street and other access points. He saw a lot of potential with those sites. There is a grant that we can apply for to get his technical expertise to help us on our parks and have them be ADA compliant. He is here to address the capacity of our parks.

**Randy Thorseth, National Parks Service** – The program I'm involved with helps communities that have national parks in their area. Through my program I work with access points and trails. The more I talked with Brian, the more I realized that the grant would be good for the City. If awarded, I would provide the City with technical expertise to get involved with your whole string of parks. I brought some information along that I'll leave with you.

**Pauline Schottmuller, 97 10<sup>th</sup> Street** – For those that don't know me, I was twelve years on the Newport City Council and voted yes on the fishing pier when it was first proposed, I am also a member of the Washington County Parks and Open Space Board, I was also the Council member, who in 1999 pushed the City to do the rehab of the three WPA walls. Those are my credentials for pushing public access to the river and appreciating parks and open space. I'm also the one who brought, has Fritz has termed, concerns about the fishing pier. I felt I had to bring those concerns back because when I first voted on the fishing pier, there was supposed to be a committee formed, which there was, because there was a laundry list of concerns about that site and I felt that the committee would do their work properly, that the City would do their work properly, and that we would have a true municipal facility. That's not what happened. What happened is the City bought a dock off of craigslist and jerryrigged it for the Mississippi River. It's a dock that's meant to go in front of someone's lakefront property and we tried to turn it into a river fishing pier for public use.

**Mayor Geraghty** – Excuse me, if I'm not mistaken that pier was made for the river. I would ask that when you're talking to at least speak the truth.

**Mrs. Schottmuller** – My understanding of that is that it's more appropriate for lake use. We tried to make it work for river use. Anyway, the pier went in and then there was at least one if not more who have mobility problems who approached the former Mayor Kevin Chapdelaine because his house is right next to the fishing pier and they let Kevin know about their feelings about a site that isn't ADA compliant. Kevin brought those concerns to me because I was still on the City Council at that time. I looked into ADA compliance and at that time there were guidelines but they were not yet regulations. Although anybody who works for a municipality knows that the guidelines are out there for a few years and they build their facilities according to the guidelines. So I wasn't really able to do much until March of 2012 when these guidelines became regulations for fishing piers, not for access site. I mean the site was always noncompliant and those guidelines have been there for decades. For fishing piers, there are design regulations that took effect March of 2012 even though everybody saw it coming for a number of years. If you've ever been on a fishing pier in any other city, you realize what an ADA compliant fishing pier looks like. I contacted the State and Margo Imdieke came down and talked to the City. What her job is, because the State doesn't enforce Federal regulations, her job is to help municipalities understand the Federal regulations and help them come in to compliance. Margo kept talking to me. I want to read the final email that she sent to me:

“Pauline, I recently received word from DNR that after a thorough review of the record and after conversations with specific DNR staff, they are confident that they never gave any approval for the Newport fishing pier. So although, individuals representing the City of Newport say that they received State and Federal approval for the installation of the fishing pier at that location I now know that the DNR was not one of the entities that gave such approval. According to the info I received from the DNR, in 2009 a Newport City employee and a DNR employee met onsite to discuss the proposed fishing pier location where sixth street meets the Mississippi River, the DNR noted the following accessibility issue with the plan: the area between the parking and fishing pier was too steep and did not have a wide enough right of way to construct an agreeable route with accessible profile grades. Further, DNR staff specifically stipulated that the DNR employee did tell the City that it was not worth their time to apply for a grant to have the DNR assist with the fishing pier costs because the site did not lend itself to being accessible. Based on the communications that I have received from individuals representing the City of Newport, I believe that there will not be a willingness to negotiate an amicable solution. I strongly suggest that you proceed with your federal complaint.”

The thing is, the Federal Government enforces those regulations. I have spoken with Brian and told him that if the City places the fishing pier in the water, I will file a federal complaint and let the Federal Government hash it out with the City. The design of the fishing pier is not ADA compliant. You can go on the website, you can see the drawings and you know how far out of compliance it really is. And the site itself is not accessible. If there's grant money out and a way for making it accessible, I'm all for it. But it needs to be acceptable because we have disabled people in Newport that have the right to use our recreational facilities. It's not just the people that we traditionally think of as disabled. Us baby boomers are slowing down, any grandparent pushing a stroller knows what it's like to have mobility problems, you have a hip replacement, a hip replacement, you got mobility problems, you walk with a cane, you got mobility problems. Us baby boomers that are being diagnosed with diabetes, which affects the feeling in feet, have a difficult time walking on anything that's not a smooth surface. A large portion of our population has mobility problems. The City needs to recognize that and be responsive to that. I really feel that because I voted yes on the fishing pier that I still have a responsibility to make it right, which is why I'm kind of forcing things year. At the end of 10<sup>th</sup> street, we have a serpentine sidewalk. We tried really hard to make that site ADA compliant, and that site is much like the sixth street site in terms of length, size and incline. We couldn't do it. In terms of the overlooks, we're ok because we have two other overlooks that are flat, they don't have sidewalks but they're flat so someone with mobility problems can still access them. So as far as what I do next determines what this Council does next. If the fishing pier goes in the water then a federal complaint is made. I've already had an initial conversation with the woman who would come from Chicago to talk with you people. I've been told by someone who does building code enforcement in health care facilities, he told me that the City needs to understand that they do not want someone from the Federal Government to come in because when they do, they use that initial complaint to look at the whole city. That person is going walk in our front door,

that's not ADA compliant, maybe they're going to use our bathroom back here, that's not ADA compliant, if they have to talk with the police, that's not ADA compliant. Think of all of the things in the City that are not ADA compliant and the feds will come in and look at the whole city. I don't know if we want that kind of problem, I think we need to solve this ourselves and not have to get the Federal government involved, which means get the fishing pier out of the site and let's work with the people who are experts and let's make it a true facility.

**Mayor Geraghty** – Are you advocating that we make everything ADA compliant or are you just focusing on the one fishing pier issue?

**Mrs. Schottmuller** – It's really pretty clear, that if you have only one type of recreational facility that it needs to be ADA compliant. We only have one fishing pier so that needs to be ADA compliant. I'm saying let's solve this on our own, get the fishing pier out of there, let's work on providing river access the way it's supposed to be provided, let's find a way to do that, and keep the feds out.

**Mayor Geraghty** – I want to be clear on our choices. How does this affect 10<sup>th</sup> Street? To me, it's the same issue because it's noncompliant as well.

**Attorney Knaak** – I'm not suggesting that you...

**Mayor Geraghty** – I want to know the answer though. Is it the same rational? It's a public access, recreational access. You've admitted that people go down there fishing. I assume those same handicapped people would want to get down there and fish as well. And you just said that it's not ADA compliant.

**Mrs. Schottmuller** – No it's not but we have two overlooks that are.

**Mayor Geraghty** – I would like to have the attorney answer. I mean if we don't put it in I would like to make a clear choice that we're going to be treating properties fairly and equally.

**Attorney Knaak** – Compliance tends to be complaint-based. Technically, you have a threat of complaint. The question is what would be required. In this case, you've already done what you need to do in order to avoid a complaint, which is to not put the fishing pier in the water until you've dealt with the access. It's still a passive use, people still come to it and you're not really required as long as it's unimproved to do anything to it. Tenth street is more of a concern because there have been improvements to it. My suggestion is that unless it appears to be an egregious situation that you wait and see whether or not there is going to be a complaint. If you're going to be doing improvements then you do need to look at making it ADA compliant.

**Mayor Geraghty** – What if we do call it a boat landing or boat launch? Because we've already publically acknowledged that we have invited kayakers and canoeists there.

**Attorney Knaak** – A boat launch has different standards. The fact of the matter is that it's likely its primary use will be a fishing pier.

**Mayor Geraghty** – But we really want to advocate people landing and launching there and make it a permanent use. When it originally went in, I advocated people landing and launching there.

**Attorney Knaak** – You can certainly do that. It would change the character of it and eliminate some of these issues. However, I would point out, especially since it's already been used as a fishing pier that you would need to at least deal with the issue with signage indicating that it's no longer a fishing pier.

**Councilman Ingemann** – If we were to call it a canoe/kayak launch facility and a dock was used to load items into the canoe/kayak, the primary purpose is to load the canoe or kayak. If they fish off of it, that's their problem because it wouldn't be a fishing pier.

**Attorney Knaak** – Again, I would suggest placing signs there stating that the dock is intended for loading canoes/kayaks and not fishing. Again, this is not a clear issue unless you're going to be using it as a fishing pier. It's not the structure, it's the access to the structure, it's the grade from the road to the pier.

**Councilman Ingemann** – I think we need to wait for the Park Service to see what they come up with.

**Attorney Knaak** – Well the whole problem goes away with money.

**Dave Engfer, 1390 2<sup>nd</sup> Avenue** – In my past, I was on the board of the St. Paul Yacht club for about a dozen years. During that period of time, we totally rebuilt the yacht club, we built over 200 slips. Early on, we hired an engineer who had a specialty in designing floating docks. At the time, I thought we didn't need that because we had building docks for years. Boy was I mistaken. Once he got into it, it was pretty impressive. What you need to build is something fairly substantial, especially on the main channel. It's not just an ADA compliant issue, it's a safety issue. If a kid is on the dock and a boat comes by and rocks the dock and the kid falls off and drowns, you're liable. Fritz is right, in order to get these docks into compliance, it needs to be a fairly substantial dock, anchored into the river bottom with pilings. Otherwise, it's going to move. As far as the ADA compliance, the City of St. Paul required us to do that just as they were required to make their dock ADA compliant. Basically, what you end up with are some very long ramps that need to be substantial. You're not looking at something that is going to be simple to fix but you need to. You're talking about opening a new park in the tank farm area; you should spend some time to figure out how you can build an appropriate dock in that area. It's not that difficult, but it's not cheap either.

**Mayor Geraghty** – I agree with that and we'll look at other areas as well.

**Mrs. Schottmuller** – I know that a letter has been sent to Brian to enter into the record in terms of the safety that's been observed at the pier. One thing I want to point out that I have learned is that the legal liability that a municipality assumes with these recreational facilities and oftentimes with recreational activities, if someone gets hurt, that's part of the activity. People volunteer for the activity. There's also another thing that you need to be aware of and that is when a dangerous condition exists and the city is aware of it the city is liable. People have sued and won because a municipality has ignored a dangerous condition that they were aware of. Keep in mind that you have now been notified of the dangerous conditions that exist when that pier is in the water. We're insured by the League of Minnesota Cities and I would think that they would have an interest in looking at that if it goes back in the water.

**Mayor Geraghty** – I accept your notice and I'll say that the tenth street overlook is a dangerous issue as well.

**Admin. Anderson** – We did receive a letter from Kevin Chapdelaine to include in the official record and I did forward that to the City Council.

**Attorney Knaak** – Mayor, as a practical matter, because this is a recreational facility, you have immunity under the statute that a private entity such as the Yacht club wouldn't have. You also have discretionary immunities in what you decide or not decide to do there. While you should be concerned for health and safety, I don't want you to think that there is an absolute liability involved for allowing activity on this site. You do have some protections.

**Councilman Ingemann** – I think we should wait until the National Parks gets back to us. Let's see where our application goes.

**Mayor Geraghty** – I think we need to weigh in on whether or not it'll go in. I see all of the arguments and I do want to advocate using the River. I would be willing to utilize it as a loading dock instead of a fishing pier so that people can still get access to the River. If we do nothing, then I say we don't put it in and move to 10th Street.

**Councilman Rahm** – I'm looking at the longer term. We're trying to improve access to the River, which we haven't done in 60-80 years and I think that's important. One thing about it is that we're all aging and because of

that we might want to have access to the River but we won't be mobile. I think longer term, we want to make sure that all of our facilities are ADA compliant. My concern is that we've already sent the intent up that this is a fishing pier and so going away from that I think there would be some legal liabilities. If we want to have a fishing pier than let's do it right.

**Mayor Geraghty** – The loading dock would be an interim use until we can find a site that allows for handicapped accessibility.

**Councilman Rahm** – I understand that, I just think the original intent was a fishing pier and I think we should be compliant in the longer term.

**Councilman Ingemann** – I think we should keep the dock out for this year and see what the National Parks Service comes up with.

**Councilman Gallagher** – I agree.

**Councilman Rahm** – I think we should keep it out as well. It's not strategically in our best interest to put the dock in for two months at most.

**Councilman Sumner** – Fishing access will still be permitted from the river?

**Councilman Ingemann** – Yes.

**Mayor Geraghty** – I guess we'll table it until next spring.

**Councilman Gallagher** – Can we remove the dock from the area?

**Councilman Rahm** – We're not going to use it so let's put it away.

**Admin. Anderson** – I'll work with the Public Works Department to move the dock. Right now, there is a construction zone going on at their site so we may not be able to remove it right away.

#### **E. Approval of 2012-2013 Liquor License – Under Separate Cover**

Admin. Anderson presented on this item. Stephen Linn, CEO of Linn Companies, has applied for an off-sale liquor license, to open one at 1594 Hastings Avenue.

**Stephen Linn, CEO of Linn Companies** – As you all know, we recently built the new NAPA Auto Parts store that opened last fall. Since then, we vacated the building that is currently there and remodeled. We have been marketing the space to see what's out there. At this point, we've decided to move forward. Our company is progressively getting into many different businesses; we're in the automotive parts business, gas station business, laundry mat business, and real estate business. Off-sale liquor is one of the businesses that we've always anticipated opening. Our intent is to fill 100% of the 4,300 square feet of vacant space. We would operate the liquor store internally. I would open it up for any questions.

**Councilman Rahm** – Up and down Highway 61, there are several liquor stores at each access point. Do you think the market is saturated at all for liquor stores?

**Mr. Linn** – No, we don't think its saturated at all, especially not in the City of Newport, you only have one liquor store that I'm aware of. Yes, there is liquor on 80<sup>th</sup> Street in Cottage Grove but it's not like there are easy access points up and down Highway 61. In fact we think this is the easiest access point up and down Highway 61. We've experienced from our NAPA store that we're servicing a much larger base than that of Newport. We're getting customers from St. Paul Park, north side of Cottage Grove, south side of Woodbury, South St. Paul and Inver

Grove Heights. We think this deal is the exact same thing. There's a great deal of people that live off of Glen Road in Woodbury but their easiest access point is Glen Road and Highway 61. That holds true for the north side of Cottage Grove. To me, this is an easy access point. We also anticipate delivery service for large orders such as graduation parties or holiday functions.

**Councilman Ingemann** – Tell me if I'm wrong, I've heard from numerous sources that someone in your organization stated that if someone decided to not rent from you that you would either run them out of business or you would make sure another pizza parlor came in to replace them. Now, in some parts of the country that is considered extortion or threats or whatever you want to call it but that's not a good way to encourage happy renters. If you want to rent a space you should have a competitive rate and not charge, what is considered out of the ordinary, expensive high rent for prospective customers. My suggestion is, I don't think we need another liquor store.

**Mr. Linn** – I take great offense to that. I did not threaten anybody.

**Councilman Ingemann** – Tell me I'm wrong.

**Mr. Linn** – You are wrong, you are dead wrong.

**Councilman Ingemann** – I've heard from numerous sources.

**Mr. Linn** – I have never threatened anybody in my life.

**Councilman Ingemann** – Somebody in your office maybe.

**Mr. Linn** – No one in my company handles our real estate side of business besides me. There is nobody in our organization who handles dealing with any lease negotiations besides me. So you are only accusing me. And what sort of proof do you have of that?

**Councilman Ingemann** – I've heard it from numerous sources, unnamed.

**Mr. Linn** – Numerous sources?

**Councilman Ingemann** – Correct

**Mr. Linn** – Can you reveal those sources?

**Mayor Geraghty** – If we get to public comment we may hear some of it, I don't know. It's up to the people if they speak.

**Mr. Linn** – Here's the deal, I am not asking unreasonable rents for the facility. Do you know what I'm asking for rent for the facility?

**Councilman Ingemann** – I believe you're asking \$24 per square.

**Mr. Linn** – Really? Gross or net?

**Councilman Ingemann** – What are you asking?

**Mr. Linn** – Where did you get that? Is it published anywhere? When have I ever said that?

**Councilman Ingemann** – It doesn't make a difference.

**Mr. Linn** – I just don't understand, why would you start accusing me?

**Mayor Geraghty** – I don't know where he got that number, whether it's gross or net, I don't know.

**Mr. Linn** – I would also like to address your statement that the City doesn't need another liquor store. What does your current ordinance allow for now? Is it only one? Does it limit it to only one?

**Mayor Geraghty** – No but it's at our discretion. There's a lot of discretion.

**Mr. Linn** – If in fact, you believe that the City should only allow for one liquor store in the City then I would suggest, you as a City, change your ordinance to that.

**Councilman Ingemann** – We don't have to.

**Councilman Rahm** – First of all, we have more than one liquor store in the City. We don't have just one.

**Councilman Ingemann** – And just because we have a liquor license doesn't mean we have to issue it.

**Mr. Linn** – I understand that. But if you're specifically going to deny my application for a liquor license based on accusations then I would ask that there's some sort of proof of those accusations.

**Councilman Ingemann** – At this time sir, I don't believe another liquor store would be in the best public interest.

**Mayor Geraghty** – Anyone else from the audience that would like to make comments?

**Paul Hanson, 1925 10<sup>th</sup> Avenue** – Simply put, we do not need another liquor store in Newport.

**Corb Hopkins, 1790 1<sup>st</sup> Avenue** – As some of you know, I am a semi-professional demonstrator of spirits and wines and have been for ten years. I'm employed by Johnson Brothers Wholesale Liquors, and basically I've been doing this for ten years and am very good at it. In the process, I've visited many twin city liquor stores. I've seen what works, what is very desirable, that high service stores succeed, and I've seen what happens when basically other things are ignored. I've also seen the areas where the northwest airlines philosophy was followed. A new liquor store comes to town and says they'll do everything they can to get business and they start by cutting prices. That is the only way a new airline could ever get into the twin cities. They've undercut the competition until that small airline could no longer operate and it had to drop service and then Northwest had their monopoly and high prices. Well, I've seen some of that in the liquor industry. Secondly, how far back can you cut prices? Well, when you cut prices, you have to give up something. Like we say, the quality, the service, something suffers. Now, I've known Newport Liquor and I've done business with them the twelve years that I've lived here. G has developed, what I consider, a local "I Care" business. He cares for his customers; he knows them, knows their needs, caters to them and makes sure that they are satisfied. That is a recipe for success. It's done by the Apple Valley municipals, the finest wine stores on Lyndale. Overall, they serve and they survive. If a new store were to open besides one of these fantastic stores, they couldn't do it. There's more to running a store than stocking the shelves with what you think the customers will buy and cutting the prices to entice them to do it. The liquor business is hugely competitive. It is not at all uncommon, to see ads for liquor that are less than what the store paid for them. But that is the case in what can happen in the liquor business. Does Newport need another liquor store? I think not. What Newport has is an established group, they're not making a million dollars. They are working successfully, they are paying their rent, they are making their payments, they are paying their employees. What more can you ask from honest people who are trying to make an honest living by serving the public and serving them well? For all this, I would say, I do not believe in my experience that Newport needs another liquor store or that it should have one. Thank you.

**Councilman Gallagher** – I think Mr. Linn would actually say that he runs a honest business also.

**Mr. Linn** – I appreciate the business input but I would like to point out that our organization has been around since 1964. I operate several businesses, I have over 300 employees, many of them here in the City of Newport. I do think I know how to run a business and a very, very quality business. We are not all about price and if anyone knows me you would know that we are certainly competitive but we run very good businesses and a lot of what we do is provide top notch facilities, we have quality employees, we offer great products at a competitive price. I can tell you that what we could bring to the City of Newport is a facility that would have a much larger selection than you currently have in Newport, it would have a beer cave, which I don't believe is in Newport, it would have delivery service, which I'm not aware of in the City of Newport, it would have many of the opportunities that I'm not aware of that you have in the City of Newport, and it would have by far, the best access and visibility in the City of Newport and would be in what I believe is the nicest building in the City of Newport. We do know how to run a business and it's not just about price. I do understand there's a liquor store in town and they have local relationships. If they're great operators, then why are they afraid of competition? Competition is what made America great and if we're just here to say that there shouldn't be any competition in the City of Newport, I think you're making a bad decision. I can tell you that recently we opened a brand new Holiday station in Coon Rapids. There are seven gasoline facilities within a mile from our store but the City was happy to have us come in. They didn't say we have too many gas stations. They had very poor service in that area of town. Yes, there were seven gas stations in that part of town but they didn't offer what we were able to bring to the market. I'm just saying that competition is not a bad thing. You shouldn't look at it as a bad thing.

**Mayor Geraghty** – I've received a lot of calls on this. Obviously, it's a big local issue. I've struggled with it because I believe in capitalism and the free markets and to let the free markets work. At the same time, we're a small town city and to have another liquor store within 400 to 500 feet and this gentleman struggled for ten/fifteen years through construction and everything. I'm not saying I ever want to say that I want one liquor store because who knows what the transit station or something else will bring. I agree with you. I never thought the City could handle five body shops, or three gas stations but we have. The market may or may not handle two liquor stores, I don't know but to have it that close.

**Mr. Linn** – What competition tends to do is bring everybody up. You rise to the level of your competitors, you have to.

**Mayor Geraghty** – I understand, I've struggled with the issues. I understand capitalism, I believe in capitalism and free markets. But I do believe we have some discretion on issuing this particular permit. We can argue on the reasons but I think 500 feet is too close.

**Councilman Gallagher** – What would you say if Kwik Trip came up 500 feet from Super America?

**Mayor Geraghty** – We'd say yes.

**Councilman Ingemann** – Alright

**Councilman Gallagher** – So why are we now limiting what comes in? What comes next, are we going to say that a restaurant can't come in because we already have one? The point is that we shouldn't be limiting the competition; we shouldn't be limiting people from coming in.

**Mayor Geraghty** – No, but the law gives us the right to.

**Mr. Linn** – You could deny a gas station too but yet your saying that you wouldn't do that. You're stating that specifically, you're going to deny competition to protect one competitor because it may or may not be closer than you believe it should be.

**Councilman Rahm** – I'm not saying that. I do believe in competition too and that consumers can benefit from that. I think we do have a little bit of an issue here. One of our strategies is improving the first impression of the Highway 61 corridor and the types of businesses that we attract and having a diverse ecosystem of businesses that

can contribute to our economic development. I'm not sure, right now that a liquor store fits in that longer-term plan. It's not because we don't like competition, it's that we have a developed plan that we're trying to exercise and does a liquor store fit in that? I'm not sure about that when it comes right down to it.

**Mayor Geraghty** – Do you want to go to the point of limiting ourselves by only allowing one?

**Councilman Rahm** – No, I'm not saying that. I just don't know if a liquor store improves our economic mix right now. Maybe five years from now but not now.

**Mr. Linn** – So if a liquor store applied to go over where the old Knox Lumber site is, would you allow that?

**Councilman Ingemann** – That would have a better chance?

**Mr. Linn** – Why is that?

**Councilman Ingemann** – It's on the other side of the highway.

**Mr. Linn** – So the intent here is just to protect them?

**Councilman Ingemann** – No, it's not.

**Mr. Linn** – So it's allowed in the City, it's just not allowed here?

**Councilman Ingemann** – I'll make the motion that we deny the applicant a liquor license because I don't believe it's in the best public interest.

**Mayor Geraghty** – I'd like to get additional comments if people would like to make them.

**Mr. Linn** – I would like clarification. A liquor store would be allowed in the City, as long as it's not too close too them?

**Attorney Knaak** – Mr. Mayor, that is not the issue.

**Mayor Geraghty** – No, that's going to be answered by this Council or another Council. All we can do is answer the question before us tonight and give our explanation of it. I'm not attacking your business integrity. I know you're a successful businessman and I appreciate you having your businesses in Newport and I have struggled with this issue since it's been raised. In no way am I attacking your principles or business.

**Mr. Linn** – I was attacked right away, not by you, but I was certainly attacked. My integrity was attacked.

**Mayor Geraghty** – You're a successful businessman and I accept that and I'm not attacking your integrity or business methods. I can't speak for other members of the Council, but speaking for myself.

**Councilman Sumner** – I remember attending Council meetings as a resident before I was on the Council and a question came up about opening some new auto dealerships. I remember the Council did not allow the opening of a new auto dealership because they felt there were enough of that type of business in Newport at that time and they were also interested in developing a diversity of businesses that could come in and support the needs of Newport and I'm thrilled that the NAPA store is doing so well and serving local communities. I just don't think that in that location, it serves Newport the best to have another liquor store. I don't think that is the kind of business that we want to add to the mix. Putting myself in the position of you as the business owner, I was thinking what else I could suggest to you to go in there. And these are just two quick thoughts. I was thinking in the long term that we might have a need for childcare facilities. I know that there are some in Cottage Grove and Woodbury.

**Mr. Linn** – This facility is not designed for childcare. You can't do childcare in that type of a retail establishment. You have to have outdoor areas. Its uses are based on what the markets...

**Attorney Knaak** – Mr. Mayor this is your meeting to run, a gentleman is interrupting you. I'm sorry but there is supposed to be a public hearing here. I normally don't intervene but you're not in charge of the meeting, the Mayor is.

**Mayor Geraghty** – Do you want to make another comment?

**Councilman Sumner** – As a suggestion, there is a possibility of opening some medical offices. Those are only two suggestions so I didn't come with just nos.

**Mayor Geraghty** – I look for additional public comment if anybody has it. Please come forward and state your name and address.

**Mai Vu, Owner of Newport Liquor Store** – I just would like to say thank you for giving me this opportunity today. I know this has been a very difficult discussion and lots of concerns. I just wanted to say that I do respect your decisions to bring new business to the City of Newport. I just looked at this and thought do we need another liquor store because as we discussed earlier, we already have three off-sale liquor stores. With a city of 3,400 is that viable for another liquor store? This is only less than a block away from Newport Liquor Store. I understand what Mr. Linn is talking about with competition; I think competition is great and good for every business but this kind of competition where you are less than a block away. If Mr. Linn opens his liquor store, you know that the small owner liquor store is going to be out of business. Not only that, but I don't know if this is good for the community as we discussed earlier, but is this going to be good for the community as well as business owners? As you know, we lived through the construction on 61 and 494 and we know that there are three gas stations that were there but now there's only one. We really lived through that difficult time and survived it. Now, Mr. Linn wants to put a liquor store in his vacant building where he couldn't find anybody to rent it because the rent is pretty high, it's about \$23.50 per square foot. In the past three years, we have worked with Mr. Linn's brokers about possibly relocating to his space but obviously due to the high rent we would not survive if we relocated there. Since then, we have heard verbal intimidation stating that if nobody rented his space he would put a liquor store there. I know that Mr. Linn is building his empire and he has good intentions, obviously he's a great businessman but we are just small business owners and are just basically trying to make a living like everybody else. Mr. Linn is a multi-million businessman. Just so you know that Newport Liquor has served this community for the last 16 years and I understand that you have an obligation to make a decision but please rethink what the community really needs and I think that many of the people in the audience would agree with me that we do not need another liquor store. Thank you.

**Tom Aguilar-Downing, 1550 Wild Ridge Court** – I hadn't considered this at all. I'm hearing from the Council about a free market. Does Newport need another liquor store? Newport doesn't need any liquor stores; you don't need a liquor store. To open it up to the competition, ok. As far as Tracy is talking about the look of it, the building looks nice. Newport Liquor Store is kind of hidden away so I don't think we're going to give any investors the idea that we're overcrowded with liquor stores. Also, for the folks who do like the business and I tend to go to local stores before I go anywhere else, we always have that option of going there. As Mr. Linn is talking about, he may be drawing in more business to Newport. Again, Newport Liquor is hidden away and doesn't have a big image there so it's probably not drawing that traffic in. He's got a better viewpoint so he'll probably draw new business in. He'll be paying rent, he'll be paying taxes. I think the question is, can Newport or the area support two liquor stores? The only way you're going to find that out is by giving it a chance. Just some thoughts that I had.

**Chuck Williams, 627 12<sup>th</sup> Street** – I go to G's liquor store most of the time. The second time I walked in he says "Hi Chuck." I couldn't even remember telling him my name but he remembered it and got my business. At the moment, I don't think Newport needs another liquor store there. I would love to see Newport develop the former

Knox area that would be a great location for a liquor store and other businesses. The current location in question, the property adjacent to it on the corner there, I would like to see that be developed. I thought I remembered that there was going to be a Linn gas station. I'm incorrect. It got started and stopped. I would like to see Newport finish that. Also, down the street there is the other empty gas station and I would like to see that be filled. I would like something done with existing, unfinished projects before accepting any new business offers like this. Thank you.

**Mr. Linn** – I would like to point out that business does drive business. I know there are many vacant buildings in the City of Newport, there are many development opportunities. There is the go-kart area, the Knox Lumber area, there's certainly the closed down gas station but if you don't drive business to the City, you're not going to attract other businesses. For instance, when you do bring in a Home Depot and a Wal-Mart and places like that, and I'm not saying that you'll ever get places like that in Newport nor should you because of the density but we all know that they drive many, many other businesses. That you'll get other businesses and restaurants and things that build up around it and they do that because they feed off of that traffic and what I can tell you about your existing liquor facilities. And there's only one, full-fledged liquor store that I'm aware of. But in my opinion, and it's simply my opinion, you're not pulling traffic off of the highway. I don't think people heading home to Cottage Grove, St. Paul Park or Woodbury are shopping in Newport. Yes, absolutely, the people of Newport are buying local and no one has to stop doing that but what I believe that I brought to the City of Newport with our NAPA store and can bring to you again today, is the ability to pull off of the highway, the ability to pull from south Woodbury, north Cottage Grove, St. Paul Park, and to drive traffic to your City so that other businesses will come to this town and occupy some of the other vacant buildings. If you don't start doing that you're not going to get them. There aren't people busting down the door to get into this City. It's a great City, I love it, it's been great to our organization, we appreciate being here, I really do. As far as the other parcel we have in town to develop, we're not going to develop another parcel in town when we can't fill the parcel we have. And as far as rents, I can tell you, we have buildings all over the twin cities. I'm much attuned to what rent is going for in the twin cities and I can tell you that first of all, we're not at \$23 a square foot.

**Audience Member** – Yes

**Mayor Geraghty** – Excuse me, comments should be directed to me only and not outbursts.

**Mr. Linn** – First of all, rents depend on the level of investment that they're asking the landlord to put in. In other words if you come to me and say "I want you to do all my build out for me and put in the bathrooms and put up the walls and by the way I only want a small space, 1,800 square feet." You have to take that investment and divide that over the term of the lease and back into your rents. We deal in net rents, when they talk about any rent, they're talking about gross rent. Gross rent includes property tax. By the way, Washington County's property tax on the building is \$4.30 per square foot, sitting vacant. That's inside the \$23 but there are other costs you have to deal with, you have to heat the building, plow the snow, mow the lawn, there are maintenance costs associated with it. That's all in that number and again it's not \$23 a square foot. Do you want to know what they offered me? \$9 a foot, gross but that's neither here nor there. I do know how to negotiate rents. We are not outrageous people. We have lots of good buildings, I have many outside tenants outside of our organization but I beg you to at least consider this as a positive for the City. Will it impact their business? I would ask that you let the market decide that. It is not the position of the Council, in my opinion, to individually protect a business based on competitive factors. You should very well protect a business in other aspects to help them in any way you can as a City but in protecting them from competitors, in my opinion, is not the position of government. Thank you.

**Jeerasak Poophakumpanart, Owner of Newport Liquor Store** – Thank you Mayor, City Council and everybody. As you know, we are hard working people. We have been there, serving the community for more than eight years. I don't ask for you to help, I want you to think clearly. One thing, I would like to point out is, Newport, 3,400 population, we have two off-sale licenses. St. Paul Park, only one, population of 5,000. Cottage Grove, 22,000 people, five liquor stores. I want you to see the population to liquor stores. I don't want you to help; I want you to think the right way. Mr. Linn says the same thing what he try before. He's been saying that before to our broker. He said if we didn't do it, he would put a liquor store in and drive me out of business for the

past three years. He threaten me for more than three years. It's true.

**Mr. Linn** – I don't want to keep coming up but I want to make it very clear. Early on, I made it clear to many people that our company was looking into entering the liquor business and that this may be a location that we had interest in doing so. But that by no means was a threat. I don't threaten people. We were in fact looking into and will get into the liquor store business, whether that happens to be in Newport or other facilities, I can assure you, we will enter into that business but we did not do it through threats and I have no interest in threatening anybody. Thank you.

**Councilman Ingemann** – I'll make a motion to deny the liquor store request because in my determination I have decided that it is not in the best public interest for the City of Newport.

**Councilman Sumner** – I'll second.

**Councilman Gallagher** – I'm not supporting that motion because I don't believe we should be limiting competition in our City. It should be open for competition. If he comes in and you have to close, I'm sorry but I can't make my decision because of that. I have to make my decision on trying to drive business here. I can't make it on friendships, emotions, or relationships but rather what becomes here in the City. It's nothing against any other operation or business in the City of Newport but I have to respect everyone that comes here. We don't have an ordinance that limits the number of off-sale licenses here. I'm assuming he's done some research that says that he can make money here and it'll drive business. I don't think it's for the Council to deny such an application, it's free market and how things work.

**Mayor Geraghty** – I agree with free market but the law gives us the right to control this particular product and these licenses. We control a lot of things and the free market doesn't work entirely across all properties and businesses. The law does give us the right.

**Councilman Gallagher** – The law does give us the right, however we need to look at all pieces of it.

**Councilman Ingemann** – I don't think this is the image we want.

**Councilman Gallagher** – I don't think it's the image we want to...

**Mayor Geraghty** – I understand where it's going and what it's going to mean through this fall and the election. I'll be anti-business and you'll be pro-business. I am pro-business, I struggled with this decision the whole time and I'll take the heat no matter which way it goes. Not everybody is going to be happy with the decision tonight, not everybody is happy with any of the decisions tonight but we certainly have the right to limit the issuance of this. All I can say is it's been difficult and it's no way on your business operations or integrity. It's a personal decision that I think it is too close. Across, the highway, I think it would be a totally different thing and if you want to call that protecting a business than that's what you're calling it but I don't necessarily call it that.

**Councilman Rahm** – Again, do we think we have some other compelling interests here with what Steve said. I agree with what you said, free enterprise.

**Mayor Geraghty** – I agree, I told you that a week ago.

**Councilman Rahm** – I think a lot of us are but the compelling interest is, is that the type of business we want to attract for that area. If it was across the street at the old Knox site would we be having this discussion?

**Councilman Ingemann** – No.

**Councilman Rahm** – I don't think we would. So the thing is that we're looking at because of what that type of business is for that area and what our vision is for that area in the longer term and in my opinion trying to drive a

diverse customer base. I agree, maybe you would have a lot of draw but there's a little bit more than the free market here. This is a tough one; it's not an easy one.

**Councilman Sumner** – But this hinges on the City's long-term strategic development. And that's probably the overriding factor that is going to drive my decision. We would love to welcome alternative uses at this site. I say that very sincerely.

**Councilman Gallagher** – I think we as a Council then should state how many liquor licenses we have for on-sale or off-sale and even specify for both sides of the highway.

**Mayor Geraghty** – I agree with you, a geographic distance or whatever. We did talk about the issue and decided not to do anything about it.

**Councilman Rahm** – I think Bill made a very good point on the car dealership. The past Council decided, based on what type of business mix they want to encourage, so it's not like the Council hasn't done this before.

**Motion by Ingemann, seconded by Sumner, to deny the off-sale liquor license application submitted by Linn Companies. With 4 Ayes, 1 Nay, the motion carried.**

#### **10. ATTORNEY'S REPORT –**

**Attorney Knaak** – You do have the prosecution report before you and I have nothing to add other than to say the total number is 52. These high numbers are remaining and they're reflected in the hearing officer's numbers as well. It's not consistent with what is going on in the rest of the county. I give all credit to the Police Department.

#### **11. POLICE CHIEF'S REPORT**

##### **A. Code Red Presentation**

Chief Montgomery gave a presentation on Washington County's Code Red system. Code RED is a web based system which allows residents to sign up for email or phone notifications on issues such as a evacuation notice or missing children/individuals, not for severe weather. A link to sign up for the system is on the City's website. Residents will sign up through the Washington County Sherriff's Office.

##### **B. June 2012 Activity Report**

**Chief Montgomery** – You have the activity report before you and I will stand for any questions on it.

**12. FIRE CHIEF'S REPORT** – Chief Mailand reported on the number of calls in the past month, which include: downed power lines, gas leaks, mutual aid to St. Paul Park and Cottage Grove, garage fire and balcony fire. Chief Mailand also thanked Public Works for repairing items and the residents for helping make the 59<sup>th</sup> Annual Booya a success!

#### **13. ENGINEER'S REPORT –**

**Engineer Stewart** – Things are progressing with the North Ravine project. I'm estimating that the equipment will be leaving town in about two weeks, weather permitting.

#### **14. SUPERINTENDENT OF PUBLIC WORKS REPORT –**

**Asst. Supt. Neska** – This morning we poured the footings for the Bailey School Learning Facility. Street sweepers are out right now, I expect them to be finished by tomorrow.

**Councilman Rahm** – Are we doing something in Loveland Park?

**Asst. Supt. Neska** – Yes, we're resurfacing.

**Admin. Anderson** – Regarding the tennis court in Loveland, we couldn't get anybody in this year to repair the tennis court but we are working with a company to repair it early next spring. It'll be before Council later this

**15. NEW/OLD BUSINESS**

**16. ADJOURNMENT**

**Motion by Ingemann, seconded by Sumner, to adjourn the regular Council Meeting at 7:54 P.M. With 5 Ayes, 0 Nays, the motion carried.**

Signed: \_\_\_\_\_  
Tim Geraghty, Mayor

Respectfully Submitted,

Renee Helm  
Executive Analyst

April 20, 2012

Subject: Newport floating fishing pier ADA compliance investigation.

Ms. Margot Imdieke,

I Thank Pauline Schottmuller for inviting me but I will decline attending the meeting set up with you, Newport Administrator Brian Anderson, Newport City Attorney Fritz Knaak and Pauline Schottmuller regarding the Newport floating fishing pier. I'm afraid my presence will be misinterpreted and cause unnecessary political angst which could cloud the pursuit of a positive outcome in this matter. But I would ask that our questions and concerns be addressed by your department, and if possible placed into the public record file on this project.

I do want to state that we both very much support the public's right to access the Mississippi River and the concept of a community fishing pier, whether it be a floating or fixed design. Our issues in this case are with safety, design and location, not concept.

Wendy and I are very concerned about public safety, for both folks requiring ADA accessibility assistance and the public at large. The Newport fishing pier is located on the main channel of the Mississippi River where large wakes and fast currents are very common and conditions are ever changing. We have lived at this location for 20 years and hope our riparian experience and civic record will constitute some credibility.

The unsafe condition that concerns us the most occurs when a larger [30feet+] boat passes the floating fishing pier quickly leaving a sizable wake in its path. This wake can and often does create a very violent upset condition on the fishing pier causing it to quickly jump from left to right while following the waves up and down. When the fishing pier is in a downward movement, the pier floats strike the river bottom causing a sudden change in direction. We've witnessed many people who have been forced to run from the pier at the last second or quickly sit down and hold on to keep from being thrown about and possibly hurt. People requiring ADA approved access to enjoy this location will possibly not be able to protect themselves in this situation. The danger caused by this type of event has never been taken seriously by any Newport representative although this continued action did result in breaking one of the piers' vertical pipe supports in Oct 2011. If the fishing pier is put back into the water we could provide a video of this type of occurrence if it would be helpful, please let us know.

Another concern is that small children [under 8 years old] often visit the floating fishing pier without adult supervision. For the reasons given above and others, this can be very scary. We have called Newport Police in some cases and compelled the kids to leave in others. Our concerns are what if we don't see the kids walk down to the floating fishing pier and something horrible happens. We shouldn't have to be burdened with this responsibility, we didn't ask for it. We know this not an ADA issue but we felt it was important to state it for the record.

I also would like to state for the record, I was appointed by the Newport City Council to sit on the Floating Fishing Pier advisory committee in 2009. We were given very narrow design specifications. The Pier had to fit within Minnesota DNR fishing pier permit requirements of less than 20 feet long and 8 feet wide. The city did not want to apply for a Minnesota DNR fishing pier permit because of concern approval would not be granted. My goal was to create the safest floating fishing pier under these constraints. I'm not sure we achieved that but Newport City Council proceeded anyway.

Finally, it's our opinion based on 20 years of living on and 40 years of boating the Mississippi River that the main channel of this working river is not an appropriate place for a public floating fishing pier. The river just moves too much for a safe public ADA accessible environment.

Thank you for your diligence in this matter.

Kevin and Wendy ChapdeLaine  
601 2<sup>nd</sup> Ave Newport, Minnesota  
Chapdelaine61@comcast.net 651-458-3422

Text25	Text26	Text27	Text28	Comments
Paid Chk# 000066E	FEDERAL TAXES	41116	8,417.40	withholding, medicare, fica
Paid Chk# 000067E	MN REVENUE	41116	1,898.06	state withholding
Paid Chk# 000068E	ING LIFE INSURANCE & ANNUITY	41116	416.98	hcsp
Paid Chk# 013837	ADVANCE SPECIALTIES COMPANY	41109	274.45	pavillion tubes
Paid Chk# 013838	Cardmember Services	41109	3,319.03	visa
Paid Chk# 013839	FLEET ONE LLC	41109	2,563.27	fuel
Paid Chk# 013840	JOHN BARTL HARDWARE	41109	104.15	supplies
Paid Chk# 013841	MENARDS - COTTAGE GROVE	41109	21.34	shop supplies
Paid Chk# 013842	MMKR	41109	850.00	state auditor reporting
Paid Chk# 013843	OVERLINE & SON, INC.	41109	945.00	sewer tv inspection
Paid Chk# 013844	PITTNEY BOWES POSTAGE BY PHO	41109	319.99	
Paid Chk# 013845	SAMS CLUB/GECRB	41109	70.00	annual fees-anderson/neska
Paid Chk# 013846	SEAN MCARDELL	41109	50.00	training reimb.
Paid Chk# 013847	SELECTACCOUNT	41109	34.77	administration fee
Paid Chk# 013848	SO WASH. CO. WATERSHED DIST.	41109	13,492.60	north ravine
Paid Chk# 013849	ST. PAUL PARK REFINING CO. LLC	41109	2,242.88	
Paid Chk# 013850	STANTEC CONSULTING SERV. INC.	41109	1,200.00	red rock consulting
Paid Chk# 013851	T.A. SCHIFSKY & SONS, INC.	41109	234.41	sand mix
Paid Chk# 013852	TKDA	41109	3,688.23	planning
Paid Chk# 013853	VIKING ELECTRIC SUPPLY	41109	192.83	lighting
Paid Chk# 013854	WASHINGTON CO. PUBLIC HEALTH	41109	132.00	special event licenses Pdays
Paid Chk# 013855	XCEL ENERGY	41109	7,899.75	electricity
Paid Chk# 013856	SO WASH. CO. WATERSHED DIST.	41109	287,836.00	north ravine state aid
Paid Chk# 013862	A-1 HYDRAULIC SALES & SERVICE	41116	118.50	motor repair
Paid Chk# 013863	AMERICAN FLAGPOLE & FLAG CO	41116	102.78	park flags
Paid Chk# 013864	ARCADE ASHALT INC.	41116	33,144.00	loveland parking lot
Paid Chk# 013865	CURT MONTGOMERY	41116	25.75	new squad title
Paid Chk# 013866	DEBORA HILL	41116	39.87	petty cash
Paid Chk# 013867	GALLS, LLC	41116	37.89	uniforms
Paid Chk# 013868	ING LIFE INSURANCE & ANNUITY	41116	1,024.62	
Paid Chk# 013869	INTERNATIONAL UNION OF OP. ENC	41116	162.50	
Paid Chk# 013870	KENNEDY & GRAVEN, CHARTERED	41116	178.50	façade loan program
Paid Chk# 013871	LAW ENFORCEMENT LABOR SERVICE	41116	270.00	
Paid Chk# 013872	LEAF	41116	619.83	
Paid Chk# 013873	MENARDS - COTTAGE GROVE	41116	83.66	school forest
Paid Chk# 013874	MINNESOTA BENEFIT ASSOC.	41116	61.43	neska
Paid Chk# 013875	MINNESOTA NATIVE LANDSCAPES	41116	270.00	weed control
Paid Chk# 013876	MN CHILD SUPPORT PAYMENT CNT	41116	528.60	child support
Paid Chk# 013877	MN FIRE SERVICE CERT. BOARD	41116	300.00	cert. exams
Paid Chk# 013878	NEW IMAGE SIDING AND WINDOWS	41116	24.34	refund
Paid Chk# 013879	ON SITE SANITATION	41116	518.35	sanitation
Paid Chk# 013880	PERA	41116	7,495.66	
Paid Chk# 013881	SELECTACCOUNT	41116	581.00	
Paid Chk# 013882	STANDARD INSURANCE CO.	41116	462.35	ltd, life, add
Paid Chk# 013883	VERIZON	41116	426.46	cell phone

Paid Chk# 013884	WASHINGTON CTY PROPERTY REC 41116	46.00 recording fee
Paid Chk# 013885	WASHINGTON CTY SHERIFF 41116	6,835.00 records, alerts, mdc
	WAGES	32,003.32
		421,563.55



# MEMO

TO: Mayor and City Council  
Brian Anderson, City Administrator

FROM: Renee Helm, Executive Analyst

DATE: July 25, 2012

SUBJECT: Ordinances for Regulating Chickens and Honeybees

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## **BACKGROUND**

Over the last few months, the Planning Commission has been drafting language to allow for the keeping of chickens and honeybees in Newport. The Planning Commission approved a resolution at its July 12, 2012 meeting to allow residents on any single-family residential property in the R1, R1-A, RE, or MX-1 Districts to keep chickens and to allow residents in the RE District to keep honeybees.

In regards to chickens, the ordinance states that residents who wish to keep chickens on their property must obtain a permit from the City and the application must detail where the chicken coops and runs will be located and number of chickens. Per the ordinance before you, residents are only allowed to keep four (4) chickens on their property and must receive written consent from 75% of property owners within 150 feet from the chicken coop. The regulation regarding written consent was common in other municipalities' ordinances regarding chickens. Furthermore, residents are not able to keep roosters. The ordinance also stipulates the setbacks and sizes of the chicken coops and runs. Chicken coops and runs must be located at least 50 feet from a residential structure and 10 feet from a property line and are only allowed in the backyard. Similar to Farm Animal permits and Kennel licenses, the Chicken permit will expire on December 31 of each year.

The Planning Commission placed honeybees in Section 600.21, Farm Animals, since they are recommending that honeybees only be allowed in the RE District. Residents who wish to keep honeybees on their property will be required to fill out a Farm Animal permit, which will need to be approved by the City Council. The ordinance before you states that a resident must provide written notification to occupied property owners within 250 feet from the hive. Additionally, hives must be located at least 150 feet from any property line. The ordinance also states that residents with properties between one (1) and five (5) acres may have a maximum of eight (8) colonies and that the City Council may set the number of colonies for properties larger than five (5) acres.

## **DISCUSSION**

The Planning Commission approved Resolution No. P.C. 2012-7 recommending that the City Council approve the attached ordinance. One item the City Council will need to discuss is the fee for the Chicken permit. It is recommended that the fee for a Chicken permit be the same as the Farm Animal permit fee, which is \$25. If the City Council agrees with this fee, staff will include it on the 2013 Fee Schedule.

## **RECOMMENDATION**

It is recommended that the City Council approve Ordinance No. 2012-10, amending Chapter 6, Animals and a fee of \$25.

**CITY OF NEWPORT  
ORDINANCE 2012-10**

**AN ORDINANCE OF THE CITY OF NEWPORT, MINNESOTA, AMENDING THE CITY CODE OF  
ORDINANCES CHAPTER 6, ANIMALS**

THE CITY COUNCIL OF THE CITY OF NEWPORT, MINNESOTA, HEREBY ORDAINS THAT:

**Section 600 - General Regulations**

**600.01 Definitions.**

**Subd. 4 Chicken.** "Chicken" shall mean a domesticated fowl of the genus Gallus and species G. gallus.

**Subd. 5 Chicken Coop.** "Chicken coop" shall mean any structure used for the housing of chickens.

**Subd. 6 Chicken Run.** "Chicken run" shall mean a fenced outside yard for the keeping and exercising of chickens.

**Subd. 7 Farm Animal.** "Farm animal" shall mean any horse, colt, pony, mule, donkey, cattle, swine, sheep, goat, duck, goose, or honeybees, or similar animal, bird, fowl or poultry commonly associated with agricultural uses.

**600.20 Chickens within City Limits**

**Subd. 1 Permit Required.** No person shall keep or maintain chickens on any single-family residential property in the R1, R1-A, RE, or MX-1 Districts without a permit.

**Subd. 2 Application.** Each application for a chicken permit shall state the name and address of the applicant, a complete description of the premises and the owner thereof and adjoining owners, and shall set out in detail fence lines, shelter information, number of chickens to be kept, and such other information as may be required by the Council.

**Subd. 3 Requirements.** No chicken permit shall be issued unless the following standards are met:

- A. No person shall keep more than four (4) chickens on their property.
- B. The applicant must receive written consent from 75% of property owners situated within 150 feet from the chicken coop.
- C. **Standards of Practice.** Any person obtaining a permit pursuant to this section shall comply with the following standards of practice:
  1. No person shall keep roosters, or adult male chickens, on any property within the City
  2. Cockfighting is prohibited within the City.
  3. No person shall raise chickens for breeding purposes within the City.
  4. Chicken grains and feed must be stored in rodent-proof containers.
- D. **Chicken Coops and Chicken Runs.** Chickens shall be properly protected from the weather and predators in a chicken coop, and have access to the outdoors by the means of a chicken run. The

chicken coop and run shall meet the following requirements.

1. Chickens shall be kept in the chicken coop and/or run at all times, which shall be kept in sound and usable condition.
2. Chicken coops and runs shall not be in the front or side yard.
3. Chicken coops and runs shall be located at least fifty (50) feet from any residential structure on adjacent lots and ten (10) feet from the property line.
4. Chicken coops and runs shall be screened from view with a solid fence with a minimum height of four (4) feet and must be constructed in accordance with Section 1330.05, Subdivision 21.
5. Chicken coops and runs shall be considered accessory structures.
6. All chicken coops must have a minimum size of ten (10) square feet per chicken, a maximum size of forty (40) square feet, and must not exceed six (6) feet in total height and must be built according to the zoning code.
7. Chicken coops must be elevated a minimum of twelve (12) inches and a maximum of twenty-four (24) inches to allow for circulation beneath the coop.
8. Chicken runs may not exceed eighty (80) square feet and fencing must not exceed six (6) feet in height and must be built according to the zoning code.
9. Chicken runs may be enclosed with wood and/or woven wire materials, and may allow chickens to contact the ground.
10. Chicken runs must have a protective overhead netting to keep the chickens separated from other animals.
11. Chicken coops must have a roof to keep the chickens separated from other animals.

**Subd. 4 Term.** All chicken permits shall expire on December 31 of each year.

**Subd. 5 Revocation.** Any chicken permit may be revoked by the Council for violation of any provision of this Code or any State law or regulation governing the keeping of animals. No chicken permit shall be revoked without a hearing preceded by ten days written notice stating the time and place of the hearing and the nature of the charges. Any person whose permit is revoked shall within ten days of the revocation humanely dispose of the chicken(s).

#### **600.21 Farm Animals.**

**Subd. 3 Requirements.** No farm animal permit shall be issued unless the following standards shall be met:

- C. The barn, stable, housing, or hive shall be located at least 150 feet from the nearest property line of adjacent property owners and must be built according to the zoning code.
- D. The barn, stable, housing or hive shall be considered accessory structures.
- F. Keeping of Honeybees.

1. No person shall keep or maintain any hive or other facility for the housing of honeybees on or in any property in the RE District without a permit.
2. The applicant must provide written notification to occupied property owners situated within 250 feet from the hive.
3. **Definitions.** As used in this section:
  - a. **Apiary** means the assembly of one (1) or more colonies of honeybees at a single location.
  - b. **Beekeeper** means a person who owns or has charge of one (1) or more colonies of honeybees.
  - c. **Beekeeping equipment** means anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors.
  - d. **Colony** means an aggregate of honeybees consisting principally of workers, but having, when perfect, one (1) queen and at times drones, brood, combs, and honey.
  - e. **Hive** means the receptacle inhabited by a colony that is manufactured for that purpose.
  - f. **Honeybee** means all life stages of the common domestic honeybee, *Apis mellifera* species of European origin.
  - g. **Lot** means a contiguous parcel of land under common ownership.
  - h. **Nucleus colony** means a small quantity of honeybees with a queen housed in a smaller than usual hive box designed for a particular purpose.
  - i. **Undeveloped property** means any idle land that is not improved or actually in the process of being improved with residential, commercial, industrial, church, park, school or governmental facilities or other structures or improvements intended for human occupancy and the grounds maintained in associations therewith. The term shall be deemed to include property developed exclusively as a street or highway or property used for commercial agricultural purposes.
4. **Standards of practice.** Any person obtaining a permit pursuant to this section shall comply with the following standards of practice:
  - a. Honeybee colonies shall be kept in hives with removable frames, which shall be kept in sound and usable condition.
  - b. Each beekeeper shall ensure that a convenient source of water is available to the colony prior to and so long as colonies remain active outside of the hive.
  - c. Each beekeeper shall ensure that no wax comb or other material that might encourage robbing by other bees are left upon the grounds of the apiary lot. Such materials once removed from the site shall be handled and stored in sealed containers, or placed within a building or other insect-proof container.
  - d. For each colony permitted to be maintained under this ordinance, there may also be maintained upon the same apiary lot, one (1) nucleus colony in a hive structure not to exceed one (1) standard nine and five-eighths (9<sup>5</sup>/<sub>8</sub>) inch depth ten-frame hive body with no supers.

- e. Each beekeeper shall maintain their beekeeping equipment in good condition, including keeping the hives painted, and securing unused equipment from weather, potential theft or vandalism and occupancy by swarms. It shall be a violation of this section for any beekeeper's unused equipment to attract a swarm, even if the beekeeper is not intentionally keeping honeybees.
  - f. Each beekeeper shall enclose the hive with a latching fence. The fence shall be located at a maximum of ten (10) feet from the hive. The fence shall be between four (4) and six (6) feet in height.
5. **Colony density.** Any person obtaining a permit pursuant to this section shall comply with the following restrictions on colony density based upon the size of the lot:
- a. One (1) acre but small than five (5) acres: No more than eight (8) colonies
  - b. Larger than five (5) acres: As determined by the City Council
  - c. Regardless of lot size, so long as all lots within a radius of at least two hundred and fifty (250) feet from any hive, measured from any point on the front of the hive, remain undeveloped, the maximum number of colonies may be increased by the City. No grandfathering rights shall accrue under this subsection.

G. Paragraphs A, B, and E of Section 600.21, Subdivision 3 shall not apply to ducks, geese, pygmy goats, or honeybees.

The foregoing Ordinance was moved by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_.

The following Councilmembers voted in the affirmative:

The following Councilmembers voted in the negative:

**Effective Date**

This Ordinance becomes effective upon its passage and publication according to law.

**Adopted** by the City Council of the City of Newport, Minnesota on the 2<sup>nd</sup> day of August, 2012.

Signed: \_\_\_\_\_  
Tim Geraghty, Mayor

Attest: \_\_\_\_\_  
Brian Anderson, City Administrator

## CHAPTER 6. ANIMALS

## Section 600 - General Regulations

## 600.01 Definitions.

**Subd. 1 Owner.** "Owner" shall mean any person, partnership, corporation, or association owning, keeping, harboring, or having custody of a dog or other domestic animal, or the parent, guardian, or custodian of any minor who owns, keeps, harbors, or has custody of a dog or other domestic animal.

**Subd. 2 Dog.** "Dog" shall include both male and female dogs and shall refer to the commonly accepted domesticated breeds of the canine family. It shall not include wolves, hyenas, and other non-domesticated members of the canine family, nor mixed breeds where more than one-half of the animal is of a commonly accepted domesticated canine breed.

**Subd. 3 Other Domestic Animal.** "Other domestic animal" shall mean any domesticated cat or any other of the various animals commonly adopted by humans to live in a tame condition or in custody. It shall exclude animals such as lions, tigers, and other animals defined as farm animals or wild or exotic animal under this Chapter.

**Subd. 4 Chicken.** "Chicken" shall mean a domesticated fowl of the genus Gallus and species G. gallus.

**Subd. 5 Chicken Coop.** "Chicken coop" shall mean any structure used for the housing of chickens.

**Subd. 6 Chicken Run.** "Chicken run" shall mean a fenced outside yard for the keeping and exercising of chickens.

**Subd. 7 Farm Animal.** "Farm animal" shall mean any horse, colt, pony, mule, donkey, cattle, swine, sheep, goat, ~~chicken~~, duck, goose, or honeybees, or similar animal, bird, fowl or poultry commonly associated with agricultural uses.

**Subd. 8 Animal.** "Animal" shall mean any dog, other domestic animal, or farm animal.

**Subd. 9 Wild or Exotic Animal.** "Wild" or "Exotic" animal shall mean any mammal, amphibian, reptile, bird, poultry or fowl, which is of a species not usually domesticated and of a species which due to its size, wild nature, or other characteristics, is dangerous to humans and would ordinarily be confined to a zoo or found in the wild. This shall include animals and birds the keeping of which is licensed by the State or Federal government, such as wolves, raptors, and pheasants. Examples of wild animals shall include, but not be limited to, the following:

- A. Any large cat of the family "Felidae" such as lions, tigers, jaguars, leopards, cougars and ocelots, but excluding commonly accepted house cats.
- B. Any member of the family "Canidae" such as wolves, coyotes, dingoes, jackals, and hyenas, but excluding commonly accepted house dogs.
- C. Any poisonous snake such as a rattlesnake, coral snake, water moccasin, puff adder, or cobra, regardless of whether or not the snake has been de venomized.
- D. Any snake or other reptile which by its size, vicious nature, or other characteristic is

dangerous to humans such as boa constrictors.

- E. Any skunk, raccoon, fox, whether captured in the wild, domestically raised, descended or not descended, vaccinated against rabies or not vaccinated against rabies.
- F. Any bear, ape, gorilla, monkey, or badger.
- G. Any other similar animal, reptile, amphibian, bird, fowl, or poultry which is commonly considered wild and not domesticated, or which is prohibited by State or Federal law.

**Subd. 10 Running at Large.** A dog or other domestic animal shall be deemed to be running at large unless it is either on the premises of its owner, or is on a leash not exceeding 15 feet in length and is accompanied by a responsible person, or otherwise restrained by a cage or other barrier. A farm animal shall be deemed to be running at large unless it is on the premises of its owner, or is accompanied by its owner or an agent or employee of its owner.

**600.02 Running at Large.** No owner shall permit any dog, farm animal, or wild or exotic animal to run at large.

**600.03 Sanitation.** The owner of any animal shall keep his or her property clean and free from accumulations of manure, fecal matter, and other wastes, so as to prevent offensive odors or smells. The premises shall not be allowed to become unsightly or harbor rodents, flies or insects.

**600.04 Clean-up.**

**Subd. 1 Removal.** Any owner or other person in responsible charge of an animal off the premises of the owner shall pick up and remove all feces to a proper receptacle located on the property of the owner.

**Subd. 2 Exception.** The provisions of Subsection 600.04 shall not apply to seeing eye dogs owned or used by blind persons, dogs used in police activities by the City, or tracking dogs when used by or with the permission of the City.

**600.05 Cruelty.** No owner shall fail to provide animals with sufficient good and wholesome food and water, proper shelter and protection from the weather, and veterinary care when needed to prevent suffering. No owner shall fail to provide humane care and treatment to animals. No person shall beat, cruelly ill-treat, torment, overload, overwork, or otherwise abuse any animal, or cause or permit any fight or other combat between animals or between animals and humans.

**600.06 Abandonment.** No person shall abandon any animal.

**600.07 Nuisance.** Any animal which does any of the following shall be deemed to be a nuisance which may be abated as provided by this Chapter.

- A. Damages or destroys property, plantings, or structures;
- B. Deposits feces on public property or private property of others;
- C. Attacks or bites any person off the owner's premises;
- D. Is vicious or shows vicious habits;

- E. Molests pedestrians, automobiles, or bicycles;
- F. Is kept under unsanitary conditions so as to create obvious odors to the annoyance of the public in the vicinity;
- G. Barks or makes or utters any other sound or cry habitually or excessively; Habitual barking shall mean any barking or other sound or cry audible off of the owner's premises for a period of 5 minutes or more with interruptions of less than 1 minute.
- H. Habitually visits school grounds, public property, or other places where persons frequent or gather;
- I. Does not possess a license or permit as required by Subsections 600.10 or 600.21.

**600.08 Females.** Every female animal in heat shall be confined in a building or other secure enclosure in such manner that the female animal cannot come in contact with another animal except by planned breeding.

**600.09 Bites.**

**Subd. 1 Impounding.** Whenever the owner of any animal learns that the animal has bitten a human being, or that the animal has been bitten or otherwise exposed to rabies, the owner shall immediately provide for impoundment of the animal for a period of 14 days. The animal shall be kept apart from other animals until it shall be determined whether the animal has or has had rabies. Impounding may be by the owner if the animal has a current rabies vaccination at the time the bite occurred and if approved by the Animal Control Officer. If the animal does not have a current rabies vaccination at the time the bite occurs, the animal shall be impounded at the City pound or by a licensed veterinarian. In either case, impounding shall be at the owner's expense.

**Subd. 2 Destruction.** Any animal which is impounded pursuant to this Section and which is determined to have rabies shall be destroyed. No animal which has bitten any person or other animal shall be destroyed unless it has been determined to have rabies; provided that a person who kills an animal in the good faith defense of his or her person or property or another person shall not be deemed to have violated this Section.

**Subd. 3 Notice.** The owner shall immediately notify the police and the animal control officer of the bite and impoundment.

**Subd. 4 Impoundment by City.** If the owner cannot be notified of the bite within two hours, or if the owner fails to impound the animal, the police or animal control officer shall impound the animal, as provided by Section 600.14 of this Code.

**600.10 Dog License.**

**Subd. 1 License Required.** No person shall own, harbor, or have custody of any dog over the age of six months within the City without first obtaining a license for the dog.

**Subd. 2 Application.** Every application for a dog license shall state the name and address of the owner, the address where the dog shall be kept, and the sex, breed, age, color, and markings of the dog. Every application shall be accompanied by a certificate from a licensed veterinarian that the dog has been vaccinated for rabies during a three year period preceding the application. The certificate shall not be required for any dog under the age of six months, but shall be furnished to the Clerk-

Administrator upon the dog reaching the age of six months.

**Subd. 3 Term and Fee.** An annual fee in an amount set by the Council shall be paid for each license. All licenses shall expire on December 31 of each year. The fee shall not be prorated for a partial year. An additional late license penalty fee as set by the Council shall be charged for any license which is not renewed on or before January 31 of each year, or for any license purchased more than 60 days after a dog is acquired or residence established in the City.

**Subd. 4 Tags.** The Clerk-Administrator shall issue a license in the form of a metal identification tag bearing an identifying number for each dog. The tag shall be fastened to the dog's collar or harness and shall be worn at all times. The Clerk-Administrator shall maintain and make available to the public a record of the identifying numbers. No person except the owner or his or her agent shall remove a license tag from a dog collar or harness, or remove from a dog any collar or harness with a license tag attached. No person shall keep, harbor, or have custody of a dog bearing a fictitious, altered, or invalid license tag or a license tag not issued for the dog wearing it. No person shall transfer a license tag from one dog to another.

**Subd. 5 Owner Responsibility.** The owner of any licensed dog, as recorded by the Clerk-Administrator, shall be responsible for all fees and charges accruing by reason of owning, harboring or having custody of any dog in the City. If the ownership of a dog changes, it shall be the responsibility of the recorded licensee to notify the City of that fact.

**Subd. 6 Minors.** No dog license shall be held by a minor.

**Subd. 7 Revocation.** Any dog license may be revoked by the Council if the licensee refuses or fails to comply with this, Chapter, or any other State or local law or regulation governing the keeping of animals or cruelty to animals. No license shall be revoked without a hearing, preceded by ten days' written notice stating the time and place of the hearing and the nature of the charges. Any person whose license is revoked shall within ten days of the revocation, humanely dispose of the dog. No part of the license fee shall be refunded.

**600.11 Rabies Vaccination.** No person shall own, harbor, or have custody of a dog within the City unless that dog has been vaccinated for rabies within a three year period.

**600.12 Animal Control Officer.** The Council may employ an animal control officer or officers for the purpose of enforcing the provisions of this Chapter and have them deputized with police powers, including the power to issue complaints for violations. No person shall interfere with, molest, hinder the officer in the performance of his or her duties.

**600.13 City Pound.**

**Subd. 1 Establishment.** A City pound shall be continued at a location within or outside the City as designated by the Council. The pound shall be under the care of a pound master appointed by the Council. The pound master shall house and feed in a humane manner all impounded animals. The pound master shall account promptly to the treasure for all expenses incurred and fees collected.

**Subd. 2 Interference.** No unauthorized person shall break open the City pound, or attempt to do so, or take or let out any animal from the pound, or take or attempt to take from any officer or pound master any animal taken up by him or her as provided by this Chapter. No person shall hinder, obstruct, or interfere with the pound master in the performance of his or her duties.

**600.14 Impounding.**

**Subd. 1 Authorization.** The animal control officer, any other law enforcement officer or any person may seize or impound any unlicensed dog or any animal running at large in violation of this Section, or any animal which has bitten a person or other animal. The fact that a dog is without a license tag attached to its collar shall be presumptive evidence that the dog is unlicensed. Any officer or other person impounding or restraining an animal shall immediately deliver the animal to the pound master. The pound master shall thereupon give notice of the impounding to the owner, or if the owner is unknown or cannot be found, he or she shall post notice of the impounding at the City Hall.

**Subd. 2 Redemption.** Any animal impounded for running at large or for being unlicensed may be redeemed by the owner within five regular business days from the date of impoundment by payment of the impounding fee. Animals impounded for biting and considered dangerous or potentially dangerous may be redeemed within seven days of the date of impoundment by payment of the impounding fee, provided however that the provisions of Subsection 600.09 shall still be satisfied by the owner. No unlicensed dog shall be released by the pound master unless a license shall be first procured for the dog. Any impounded animal found to be rabid may not be redeemed but shall be destroyed immediately.

**Subd. 3 Disposal - Research.** When any hospital or reputable institution of learning shall apply to the Clerk-Administrator for permission to use for research purposes on the study of prevention or cure of disease for the betterment of mankind any impounded animal remaining unclaimed after the required holding period, the pound master upon direction by the Council shall surrender to the institution or hospital the unclaimed animals as are requested.

**Subd. 4 Disposal Generally.** Any unclaimed impounded animal may be sold by the pound master, and the proceeds remitted to the treasurer after deduction for the cost of care of the animal. Any impounded animal not redeemed, surrendered to a hospital or institution, or sold shall be humanely disposed of by the pound master. The owner of any animal disposed of shall pay a disposal fee established pursuant to 600.15.

**600.15 Fees.** Licensing, impounding, boarding, and disposal fees shall be as established from time to time by the Council by resolution.

**600.16 Dangerous Animals.** Notwithstanding any other provisions of this Chapter, any animal which is diseased, vicious, dangerous, rabid, exposed to rabies, or which has been bitten by another animal including wild animals, and which cannot be impounded after a reasonable effort, or which cannot be impounded without serious risk to persons attempting it, may be immediately, destroyed by or under the direction of a police officer or animal control officer.

**600.17 Adoption of Reference.** Minnesota Statutes 35.67, 35.68, 35.69 and 35.71 shall be adopted by reference.

**600.18 Implied Consent.** Any owner of an animal shall be deemed to have given implied consent to the entry on his or her premises by the animal control officer or a police officer for the purpose of enforcing this Chapter.

**600.19 Exceptions.** Hospitals, clinics, and other premises operated by licensed veterinarians exclusively for the care and treatment of animals shall be exempt from the provisions of this Chapter unless otherwise specifically provided.

## **600.20 Chickens within City Limits**

**Subd. 1 Permit Required.** No person shall keep or maintain chickens on any single-family residential property in the R1, R1-A, RE, or MX-1 Districts without a permit.

**Subd. 2 Application.** Each application for a chicken permit shall state the name and address of the applicant, a complete description of the premises and the owner thereof and adjoining owners, and shall set out in detail fence lines, shelter information, number of chickens to be kept, and such other information as may be required by the Council.

**Subd. 3 Requirements.** No chicken permit shall be issued unless the following standards are met:

- A. No person shall keep more than four (4) chickens on their property.
- B. The applicant must receive written consent from 75% of property owners situated within 150 feet from the chicken coop.
- C. **Standards of Practice.** Any person obtaining a permit pursuant to this section shall comply with the following standards of practice:
  1. No person shall keep roosters, or adult male chickens, on any property within the City
  2. Cockfighting is prohibited within the City.
  3. No person shall raise chickens for breeding purposes within the City.
  4. Chicken grains and feed must be stored in rodent-proof containers.
- D. **Chicken Coops and Chicken Runs.** Chickens shall be properly protected from the weather and predators in a chicken coop, and have access to the outdoors by the means of a chicken run. The chicken coop and run shall meet the following requirements.
  1. Chickens shall be kept in the chicken coop and/or run at all times, which shall be kept in sound and usable condition.
  2. Chicken coops and runs shall not be in the front or side yard.
  3. Chicken coops and runs shall be located at least fifty (50) feet from any residential structure on adjacent lots and ten (10) feet from the property line.
  4. Chicken coops and runs shall be screened from view with a solid fence with a minimum height of four (4) feet and must be constructed in accordance with Section 1330.05, Subdivision 21.
  5. Chicken coops and runs shall be considered accessory structures.
  6. All chicken coops must have a minimum size of ten (10) square feet per chicken, a maximum size of forty (40) square feet, and must not exceed six (6) feet in total height and must be built according to the zoning code.
  7. Chicken coops must be elevated a minimum of twelve (12) inches and a maximum of twenty-four (24) inches to allow for circulation beneath the coop.
  8. Chicken runs may not exceed eighty (80) square feet and fencing must not exceed six (6) feet in height and must be built according to the zoning code.

9. Chicken runs may be enclosed with wood and/or woven wire materials, and may allow chickens to contact the ground.
10. Chicken runs must have a protective overhead netting to keep the chickens separated from other animals.
11. Chicken coops must have a roof to keep the chickens separated from other animals.

**Subd. 4 Term.** All chicken permits shall expire on December 31 of each year.

**Subd. 5 Revocation.** Any chicken permit may be revoked by the Council for violation of any provision of this Code or any State law or regulation governing the keeping of animals. No chicken permit shall be revoked without a hearing preceded by ten days written notice stating the time and place of the hearing and the nature of the charges. Any person whose permit is revoked shall within ten days of the revocation humanely dispose of the chicken(s).

**600.21 Farm Animals.**

**Subd. 1 Permit Required.** No person shall keep, stable, board or harbor any farm animal within the City without first obtaining a farm animal permit from the Council.

**Subd. 2 Applications.** Each application for a farm animal permit shall state the name and address of the applicant, a complete description of the premises and the owner thereof and adjoining owners, and shall set out in detail fence lines, pasturage area, shelter, sanitation provisions, the kind and number of animals to be kept, and such other information as may be required by the Council.

**Subd. 3 Requirements.** No farm animal permit shall be issued unless the following standards shall be met:

- A. There shall be at least four acres for the first farm animal, and one additional acre for each additional farm animal.
- B. No more than five farm animals may be kept on a single tract. A separate permit shall be required for each separate tract.
- C. The barn, stable, ~~or~~ housing, or hive shall be located at least 150 feet from the nearest property line of adjacent property owners and must be built according to the zoning code.
- D. The barn, stable, housing or hive shall be considered accessory structures.
- E. All farm animals shall be kept confined by a sturdy wood or metal fence for pasture. The fence shall not be located nearer than 50 feet from any building used for human habitation. Barbed wire fences shall not be permitted.
- F. Keeping of Honeybees.
  1. No person shall keep or maintain any hive or other facility for the housing of honeybees on or in any property in the RE District without a permit.
  2. The applicant must provide written notification to occupied property owners situated within 250 feet from the hive.

3. **Definitions.** As used in this section:
  - a. **Apiary** means the assembly of one (1) or more colonies of honeybees at a single location.
  - b. **Beekeeper** means a person who owns or has charge of one (1) or more colonies of honeybees.
  - c. **Beekeeping equipment** means anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors.
  - d. **Colony** means an aggregate of honeybees consisting principally of workers, but having, when perfect, one (1) queen and at times drones, brood, combs, and honey.
  - e. **Hive** means the receptacle inhabited by a colony that is manufactured for that purpose.
  - f. **Honeybee** means all life stages of the common domestic honeybee, *Apis mellifera* species of European origin.
  - g. **Lot** means a contiguous parcel of land under common ownership.
  - h. **Nucleus colony** means a small quantity of honeybees with a queen housed in a smaller than usual hive box designed for a particular purpose.
  - i. **Undeveloped property** means any idle land that is not improved or actually in the process of being improved with residential, commercial, industrial, church, park, school or governmental facilities or other structures or improvements intended for human occupancy and the grounds maintained in associations therewith. The term shall be deemed to include property developed exclusively as a street or highway or property used for commercial agricultural purposes.
4. **Standards of practice.** Any person obtaining a permit pursuant to this section shall comply with the following standards of practice:
  - a. Honeybee colonies shall be kept in hives with removable frames, which shall be kept in sound and usable condition.
  - b. Each beekeeper shall ensure that a convenient source of water is available to the colony prior to and so long as colonies remain active outside of the hive.
  - c. Each beekeeper shall ensure that no wax comb or other material that might encourage robbing by other bees are left upon the grounds of the apiary lot. Such materials once removed from the site shall be handled and stored in sealed containers, or placed within a building or other insect-proof container.
  - d. For each colony permitted to be maintained under this ordinance, there may also be maintained upon the same apiary lot, one (1) nucleus colony in a hive structure not to exceed one (1) standard nine and five-eighths (9 $\frac{5}{8}$ ) inch depth ten-frame hive body with no supers.
  - e. Each beekeeper shall maintain their beekeeping equipment in good condition, including keeping the hives painted, and securing unused equipment from weather, potential theft or vandalism and occupancy by swarms. It shall be a violation of this section for any

beekeeper's unused equipment to attract a swarm, even if the beekeeper is not intentionally keeping honeybees.

- f. Each beekeeper shall enclose the hive with a latching fence. The fence shall be located at a maximum of ten (10) feet from the hive. The fence shall be between four (4) and six (6) feet in height.
5. **Colony density.** Any person obtaining a permit pursuant to this section shall comply with the following restrictions on colony density based upon the size of the lot:
  - a. One (1) acre but small than five (5) acres: No more than eight (8) colonies
  - b. Larger than five (5) acres: As determined by the City Council
  - c. Regardless of lot size, so long as all lots within a radius of at least two hundred and fifty (250) feet from any hive, measured from any point on the front of the hive, remain undeveloped, the maximum number of colonies may be increased by the City. No grandfathering rights shall accrue under this subsection.

G. Paragraphs A, B, and E of Section 600.21, Subdivision 3 shall not apply to ducks, ~~chickens~~, geese, ~~or~~ pygmy goats, ~~or honeybees~~.

**Subd. 4 Term.** All farm animal permits shall expire on December 31 of each year. All permits shall be issued for a one year period, except for the first permit issued to the owner of a farm animal.

**Subd. 5 Revocation.** Any farm animal permit may be revoked by the Council for violation of any provision of this Code or any State law or regulation governing the keeping of animals. No farm animal permit shall be revoked without a hearing preceded by ten days written notice stating the time and place of the hearing and the nature of the charges. Any person whose permit is revoked shall within ten days of the revocation humanely dispose of the farm animal or animals.

#### 600.22 Horses.

**Subd. 1 Night Riding.** No person shall ride or drive a horse after the hour of sunset and before the hour of sunrise along or crossing any public street, road, alley, or highway without appropriate lighting or reflectorized clothing.

**Subd. 2 Riding-Where Permitted.** No person shall ride or drive a horse in any public park or other public property except within the right of way of public streets, roads, alleys or highways and in areas duly designated for such use.

**Subd. 3 Riding-private Property.** No person shall ride or drive any horse upon any private property without the written permission of the owner thereof; provided that proof that the owner of the property permitted or consented to the riding or driving of the horse on his or her property shall be a defense to prosecution under this Section.

**Subd. 4 Rider Responsibility.** Any person who rides or drives a horse on any private or public property, including streets, roads, alleys, or highways, shall be responsible for any damage to the property or to any vegetation, buildings, or fences located thereon.

#### 600.23 Wild or Exotic Animals.

**Subd. 1 Purpose.** The purpose of this Subsection shall be to protect the health, safety, and welfare of the public by controlling potential exposure to species of animals that are known to be a threat to the public's health, safety and welfare.

**Subd. 2 Prohibition.** No person shall own, keep, or otherwise harbor any wild or exotic animal within the corporate limits of the City except as otherwise permitted under this Subsection.

**Subd. 3 Permit.** Any person desiring to keep a wild or exotic animal within the City shall apply for a temporary Special Use Permit from the City Council. The permit may only be issued for a period of time not to exceed thirty (30) days and shall specify conditions under which the animal must be kept. Not permit shall be issued except for animals brought into the city for entertainment, exhibition, or show purposes, or by persons keeping wild or exotic animals as volunteers of a public zoo, docents, or otherwise. A public zoo or other institution engaged in a permanent display of animals, any bona fide research institution, and any veterinary hospital may be issued a permanent Special Use Permit pursuant to applicable zoning regulations and requirements.

**Subd. 4 Certain Animals.** Snakes not prohibited by this Section, birds kept indoors, hamsters, mice, rabbits, gerbils, white rats, guinea pigs, chinchillas, lizards, and similar small animals capable of being kept continuously in cages or aquariums, shall be exempt from the permit requirement of this Subsection.

**Subd. 5 Animal Assistants.** Animals such as guide dogs and monkeys trained as personal helpers to people with disabilities may be kept without a permit but shall be recorded with the City.

**Subd. 6 Fur Farming.** The raising of wild animals for pelts may be permitted by Special Use Permit but the applicant shall provide the City with proof of insurance including public liability insurance with limits of not less than one hundred thousand dollars (\$100,000). The insurance shall provide coverage for liability resulting from the ownership or possession of the specific animal or animals allowed under the permit.

**Subd. 7 Impounding.** Any wild animal kept in violation of this Section may be impounded by the City. Unless the animal is reclaimed and removed from the City, or unless a special use permit is issued allowing the animal to remain within the City, or unless the owner of the animal petitions the Courts for a determination that the animal is exempt from the provisions of this Section, the animal may be sold or destroyed by the City after at least five regular business days following notice to the owner of the animal's impoundment. Before any animal is reclaimed, the owner shall pay the cost of the impoundment plus all costs of boarding and caring for the animal.

**Subd. 8 Existing Wild Animals.** Any person keeping or maintaining any wild animal at the time this Code is adopted shall have ninety (90) days in which to comply with this Section. Extensions beyond the ninety (90) days may be granted by the City Council for good cause, but in no case shall the extension permanently exempt an animal or its owner from the requirements of this Section.



# MEMO

TO: Mayor and City Council  
Brian Anderson, City Administrator

FROM: Renee Helm, Executive Analyst

DATE: July 25, 2012

SUBJECT: Penalties for Liquor and Tobacco Violations

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## BACKGROUND

At the June 21, 2012 City Council meeting, the City Council discussed penalties for liquor and tobacco violations. The City Council requested that staff draft an ordinance with language similar to Cottage Grove's liquor license penalties, which are below, for both liquor and tobacco licenses. The City Council requested that the penalties be within four (4) years instead of three (3).

### **Violations need to be within 3 years of each other**

- 1<sup>st</sup> Violation** – At least 1 day suspension in addition to any criminal or civil penalties
- 2<sup>nd</sup> Violation** – At least 3 day suspension in addition to any criminal or civil penalties
- 3<sup>rd</sup> Violation** – At least 7 day suspension in addition to any criminal or civil penalties
- 4<sup>th</sup> Violation** – License will be revoked

## DISCUSSION

Attached for your review is Ordinance No. 2012-11 amending Chapter 4, Licensing, and Chapter 5, Alcoholic Beverages. In regards to tobacco licensing, the penalties have been added to Section 410. Additionally, staff is recommending that it replace the word “cigarette” with “tobacco” to include all tobacco-related products such as cigarettes, cigars, and chewing tobacco. In regards to liquor licensing, staff removed the “Revocation and Suspension” part under each section (500.10, 510.09, and 520.05) and instead created Section 530, Revocation or Suspension of License, Penalty.

## RECOMMENDATION

It is recommended that the City Council approve Ordinance No. 2012-11 amending Chapter 4, Licensing, and Chapter 5, Alcoholic Beverages.

**CITY OF NEWPORT  
ORDINANCE 2012-11**

**AN ORDINANCE OF THE CITY OF NEWPORT, MINNESOTA, AMENDING THE CITY CODE OF  
ORDINANCES CHAPTER 4, LICENSING AND CHAPTER 5, ALCOHOLIC BEVERAGES**

THE CITY COUNCIL OF THE CITY OF NEWPORT, MINNESOTA, HEREBY ORDAINS THAT:

**Section 410 –Tobacco Sales**

**410.01 Definition.** “Tobacco” or “Tobacco Products” shall mean any substance or item containing tobacco leaf, including, but not limited to, cigarettes; cigars; pipe tobacco; snuff fine cut or other chewing tobacco; cheroot; stogies; perique; granulated plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

**410.02 Persons Ineligible.** No license shall be issued except to a person of good moral character.

**410.03 Places Ineligible.**

**Subd. 1 Business.** No license shall be issued to an applicant for tobacco sales at any place other than by place of business.

**Subd. 2 Movable Businesses.** No license shall be issued for a moveable place of business.

**Subd. 3 Multiple Location.** No license shall be issued for tobacco sales at more than one place of business. Each individual cigarette machine shall be licensed.

**410.04 Prohibitions.**

**Subd. 1 Age.** No person shall sell, allow to be sold, or give away any tobacco products to any person under the age of 18.

**Subd. 2 Drugs.** No person shall sell, keep for sale, or otherwise dispose of any cigarette containing opium, morphine, jimson weed, belladonna, strychnia, cocaine, marijuana, or any other poisonous or deleterious substance except nicotine.

**410.05 Administrative Penalties.** Any licensee found to have violated this chapter or whose employee shall have violated this chapter shall be charged an administrative penalty. Penalties occurring within a forty-eight (48) month period shall be as follows:

**Subd. 1 First Violation.** At least one day suspension or, at the city council's discretion, participation of all employees in an educational program approved by the public safety director, in addition to any criminal or civil penalties which may be imposed.

**Subd. 2 Second Violation.** A least three (3) consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.

**Subd. 3 Third Violation.** At least seven (7) consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.

**Subd. 4 Fourth Violation.** The license shall be revoked.

## **Section 500 - Intoxicating Liquor**

### **500.01 Provisions of State Law Adopted.**

### **500.02 Licenses.**

- Subd. 1 License Required.**
- Subd. 2 On-sale Licenses.**
- Subd. 3 Sunday On-sale Licenses.**
- Subd. 4 On-sale Wine Licenses.**
- Subd. 5 Off-sale Licenses.**
- Subd. 6 Licensed Area.**

### **500.03 Application for License.**

- Subd. 1 Form.**
- Subd. 2 Bond.**
- Subd. 3 Approval of Security.**

### **500.04 License Fees.**

- Subd. 1 Fees.**
- Subd. 2 Payment.**
- Subd. 3 Term; Pro Rata Fee.**
- Subd. 4 Refunds.**

### **500.05 Granting of Licenses.**

- Subd. 1 Investigation.**
- Subd. 2 Hearing and Issuance.**
- Subd. 3 Persons and Premises Licensed.**
- Subd. 4 Transfers.**

### **500.06 Persons Ineligible for License.**

### **500.07 Places Ineligible for License.**

- Subd. 1 General Prohibition.**
- Subd. 2 Delinquent Taxes or Charges.**

### **500.08 Conditions of License.**

- Subd. 1 In General.**
- Subd. 2 Licensee's Responsibility.**
- Subd. 3 Inspections.**
- Subd. 4 Federal Stamps.**
- Subd. 5 After Hours.**

### **500.09 Restrictions on Purchase and Consumption.**

- Subd. 1 Liquor in Unlicensed Places.**
- Subd. 2 Hours of Sale.**
- Subd. 3 Hours of Consumption.**
- Subd. 4 Entertainment.**
- Subd. 5 After Hours.**
- Subd. 6 Consumption on Public Streets or Licensed Premises.**

## **Section 510 - Beer Licensing**

### **510.01 Definitions.**

- Subd. 1 Beer.**
- Subd. 2 Cafe.**
- Subd. 3 Beer Store.**

**510.02 License Required.**

- Subd. 1 Licenses.**
- Subd. 2 On-Sale.**
- Subd. 3 Temporary On-Sale.**
- Subd. 4 Off-Sale.**

**510.03 License Applications.**

**510.04 License Fees.**

- Subd. 1 Fees.**
- Subd. 2 Payment.**
- Subd. 3 Term; Reduced Fee.**

**510.05 Investigation.**

**510.06 Persons Ineligible for License.**

- Subd. 1 Age.**
- Subd. 2 Criminal Record.**
- Subd. 3 Manufacturer.**
- Subd. 4 Citizenship.**
- Subd. 5 Morals.**
- Subd. 6 Federal Stamp.**
- Subd. 7 Non-Proprietor.**

**510.07 Places Ineligible for License.**

- Subd. 1 Conviction or Revocation.**
- Subd. 2 Church and Schools.**
- Subd. 3 Delinquent Taxes.**

**510.08 Conditions of License.**

- Subd. 1 General.**
- Subd. 2 Sales to Minors.**
- Subd. 3 Intoxicated Persons.**
- Subd. 4 Intoxicating Liquor.**
- Subd. 5 Inspection.**
- Subd. 6 Licensee Responsibility.**
- Subd. 7 Hours of Sale.**
- Subd. 8 Entertainment.**

**Section 520 - Liquor Entertainment Licenses**

**520.01 License Required.**

**520.02 Licensing Procedure.**

- Subd. 1 Application.**
- Subd. 2 Fee.**
- Subd. 3 Term.**

**520.03 Premises Ineligible.**

**Subd. 1 Consent Required.**

**Subd. 2 Dance Floor.**

**520.04 Hours of Operation.**

**Section 530 - Revocation or Suspension of License, Penalty**

**530.01** The City Council shall either suspend for a period not to exceed sixty (60) days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter.

**530.02** The following are minimum periods of suspension or revocation which shall be imposed by the city council for violations of the provisions of this chapter or Minnesota statutes section 340A.509, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:

**Subd. 1** For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor whether the only license is for 3.2 percent malt liquor, the license shall be revoked.

**Subd. 2** After a finding under this subsection A that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter, the license shall be suspended for at least the minimum periods as follows:

- A. For the first violation within any four (4) year period, at least one (1) day suspension.
- B. For the second violation within any four (4) year period, at least three (3) consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.
- C. For the third violation within any four (4) year period, at least seven (7) consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.
- D. For a fourth violation within any four (4) year period, the license shall be revoked.

**Subd. 3** The City Council shall select the day or days during which the license will be suspended.

The foregoing Ordinance was moved by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_.

The following Councilmembers voted in the affirmative:

The following Councilmembers voted in the negative:

**Effective Date**

This Ordinance becomes effective upon its passage and publication according to law.

**Adopted** by the City Council of the City of Newport, Minnesota on the 2<sup>nd</sup> day of August, 2012.

Signed: \_\_\_\_\_  
Tim Geraghty, Mayor

Attest: \_\_\_\_\_  
Brian Anderson, City Administrator

## Section 410 – Cigarette Tobacco Sales

**410.01 Definition.** ~~"Cigarette sales" shall mean the selling or keeping for sale, either directly or indirectly, of cigarettes or cigarette wrappers, and includes sales by vending machine. "Tobacco" or "Tobacco Products" shall mean any substance or item containing tobacco leaf, including, but not limited to, cigarettes; cigars; pipe tobacco; snuff fine cut or other chewing tobacco; cheroot; stogies: perique; granulated plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.~~

**410.02 Persons Ineligible.** No license shall be issued except to a person of good moral character.

### 410.03 Places Ineligible.

**Subd. 1 Business.** No license shall be issued to an applicant for cigarette tobacco sales at any place other than by place of business.

**Subd. 2 Movable Businesses.** No license shall be issued for a moveable place of business.

**Subd. 3 Multiple Location.** No license shall be issued for cigarette tobacco sales at more than one place of business. Each individual cigarette machine shall be licensed.

### 410.04 Prohibitions.

**Subd. 1 Age.** No person shall sell, allow to be sold, or give away any cigarette, or cigarette wrapper tobacco products to any person under the age of 18.

**Subd. 2 Drugs.** No person shall sell, keep for sale, or otherwise dispose of any cigarette containing opium, morphine, jimson weed, belladonna, strychnia, cocaine, marijuana, or any other poisonous or deleterious substance except nicotine.

**410.05 Administrative Penalties.** Any licensee found to have violated this chapter or whose employee shall have violated this chapter shall be charged an administrative penalty. Penalties occurring within a forty-eight (48) month period shall be as follows:

**Subd. 1 First Violation.** At least one day suspension or, at the city council's discretion, participation of all employees in an educational program approved by the public safety director, in addition to any criminal or civil penalties which may be imposed.

**Subd. 2 Second Violation.** A least three (3) consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.

**Subd. 3 Third Violation.** At least seven (7) consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.

**Subd. 4 Fourth Violation.** The license shall be revoked.

**CHAPTER 5. ALCOHOLIC BEVERAGES****Section 500 - Intoxicating Liquor**

**500.01 Provisions of State Law Adopted.** The provisions of Minnesota Statutes, Chapter 340A, relating to the definition of terms, licensing, consumption, sales, conditions of bonds of licensees, hours of sales, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor shall be adopted and made a part of this Chapter as if fully set out herein.

**500.02 Licenses.**

**Subd. 1 License Required.** No person, except a wholesaler or manufacturer to the extent authorized under State license, shall directly or indirectly deal in, sell, or keep for sale in the City any intoxicating liquor without a license to do so. Licenses shall be of four kinds: on-sale, Sunday on-sale, on-sale wine and off-sale.

**Subd. 2 On-sale Licenses.** On-sale licenses shall be issued only to hotels, clubs, restaurants, or exclusive liquor stores, and shall permit the sale of liquor only for consumption on the licensed premises. No more than five on-sale licenses shall be issued.

**Subd. 3 Sunday On-sale Licenses.** A Sunday on-sale license authorizes the licensee to sell or serve liquor between the hours of 12:00 noon and 12:00 o'clock midnight on Sundays to persons who are seated at tables. Sunday on-sale licenses shall be issued only to a hotel or restaurant having facilities for serving at least thirty guests at a time, and which has an on-sale license. No Sunday on-sale license shall be valid unless a valid on-sale license is also in effect for the same premises.

**Subd. 4 On-sale Wine Licenses.** On-sale wine licenses shall be issued only to restaurants meeting the qualifications of Minnesota Statute 340A.404, Subd. 5, and shall permit only the sale of wine not exceeding 14 percent alcohol by volume, for consumption on the licensed premises only in conjunction with the sale of food.

**Subd. 5 Off-sale Licenses.** Off-sale licenses shall be issued only to restaurants or exclusive liquor stores, and shall permit the sale of liquor only in its original container or packaging and for consumption off of the licenses premises. No more than five off-sale licenses shall be issued.

**Subd. 6 Licensed Area.** No license shall be effective beyond the compact and contiguous space named in the license. All licenses shall state the exact location within the building structure where sales shall be permitted.

**500.03 Application for License.**

**Subd. 1 Form.** Every application for a license to sell intoxicating liquor shall state the name of the applicant, his or her age, representations as to his or her character, with such references as the Council may require, his or her citizenship, the type of license applied for, the business in connection with which the proposed license will operate and its location, whether the applicant is owner and operator of the business, how long he or she has been in business at that place, and such other information as the Council may require from time to time. In addition to containing the information, the application shall be in the form prescribed by the Commissioner of Public Safety, and shall be verified and filed with the Clerk-Administrator.

**Subd. 2 Bond.** Each application for a license shall be accompanied by a surety bond, or in lieu thereof cash or United States Government bonds. The surety bond or other security shall be in the sum of \$3,000.00 for an on-sale or an on-sale wine license and \$1,000.00 for an off-sale license. If a liability insurance policy is made subject to all the conditions of a bond under that statute, the policy may be accepted by the Council in lieu of a bond.

**Subd. 3 Approval of Security.** The security offered under Subd. 2 shall be approved by the Council, and in the case of applicants for on-sale wine licenses and off-sale licenses, by the State Commissioner of Public Safety. Surety bonds and liability insurance policies shall be approved as to form by the City Attorney. Operation of a licensed business without having on file with the City at all times effective security as required in Subd. 2 shall be a cause for revocation of the license.

#### **500.04 License Fees.**

**Subd. 1 Fees.** The annual fees for on-sale liquor licenses, Sunday on-sale liquor licenses, on-sale wine licenses, and off-sale liquor licenses shall be as established from time to time by the Council. There is a \$1,250.00 annual fee for an on-sale wine license.

**Subd. 2 Payment.** Each application for a license shall be accompanied by payment in full of the license fee and the investigation fee required under 500.05, Subd. 1. If an application for a license is rejected, the Clerk-Administrator shall refund the amount paid as the license fee.

**Subd. 3 Term; Pro Rata Fee.** Each license shall be issued for a period of one year, except that if the application is made during the license year, the license may be issued for the remainder of the year. Where a license is granted and a period of less than one year remains before the license shall expire, one-twelfth of the annual license fee shall be charged for each month, or fraction of a month of one-half or more remaining. Every license shall expire on June 30 of each year.

**Subd. 4 Refunds.** No refund of any fee shall be made except as authorized by statute.

#### **500.05 Granting of Licenses.**

**Subd. 1 Investigation.** On an initial application for an on-sale license and on any application for transfer of license, and, where the Council deems it in the public interest, on any renewal of an on-sale license, the City shall conduct a preliminary background and financial investigation of the applicant as provided by Minnesota Statutes 340A.412. The application in such case shall be on a form prescribed by the State Bureau of Criminal Apprehension with such additional information as the Council may require. If the Council determines that a comprehensive background and financial investigation of the applicant is needed, it may conduct the investigation or contract with the Bureau of Apprehension to do so. No license shall be issued, transferred, or renewed if the results show to the satisfaction of the Council that it would not be in the public interest to do so. The applicant shall pay the actual cost of the investigation, not to exceed \$500.00, or, if investigation outside the State is required, \$10,000.00. The investigation fee shall not be refunded, whether or not the license is granted. Payment of the maximum investigation fee shall be made prior to the investigation with any difference refunded when the investigation is completed.

**Subd. 2 Hearing and Issuance.** The Council shall investigate all facts set out in the application, and not covered by the preliminary background and financial investigation conducted pursuant to Subd. 1. Opportunity may be given to any person to be heard for or against the granting of the license. After the investigation, the Council shall in its discretion grant or refuse the application. No on-sale wine license or off-sale license shall become effective until it, together with the security furnished by the applicant, has been approved by the Commissioner of Public Safety.

**Subd. 3 Persons and Premises Licensed.** Each license shall be issued only to the applicant and for the premises described in the application.

**Subd. 4 Transfers.** No license may be transferred to another person or place without Council approval. Any transfer of a controlling interest or any lesser transfer of at least ten percent in stock of a corporate licensee shall be deemed a transfer of the license, and a transfer of stock without Council approval shall be a ground for revocation of the license. The Council shall be informed of any change in the officers of a corporation holding a license.

**500.06 Persons Ineligible for License.** No license shall be granted to any person made ineligible for the license by State law.

**500.07 Places Ineligible for License.**

**Subd. 1 General Prohibition.** No license shall be issued for any place or any business ineligible for the license under State law. No license shall be issued for premises located within 800 feet of an existing church or public school or in an area where the use of the premises for sale of liquor is forbidden by the Zoning Ordinance or any other Ordinance or provision of this Code.

**Subd. 2 Delinquent Taxes or Charges.** No license shall be granted for operation on any premises on which taxes, assessments, or other financial claims of the City are delinquent or unpaid.

**500.08 Conditions of License.**

**Subd. 1 In General.** Every license shall be subject to the conditions in the following Subdivisions and all other provisions of this Chapter and of any other applicable Ordinance, State law or regulation.

**Subd. 2 Licensee's Responsibility.** Every licensee shall be responsible for the conduct of his or her place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises authorized to sell intoxicating liquor shall be deemed the act of the licensee as well, and the licensee shall be liable for all penalties provided by the Code and the law equally with the employee.

**Subd. 3 Inspections.** Every licensee shall allow any peace officer, health officer, or other properly designated officer or employee of the City to enter, inspect, and search the premises of the licensee during business hours without a warrant.

**Subd. 4 Federal Stamps.** The licensee shall not possess a Federal wholesale liquor dealer's special tax stamp or a Federal gambling stamp.

**Subd. 5 After Hours.** Every licensee shall display, at all times, in the licensed premises, a sign of such size and placed in such a position as to be clearly visible to all patrons, reading substantially as follows:

"The laws of Newport prohibit drinking and or loitering in this establishment and its parking lots after the hour of sale authorized by State Law"

Except as provided in Subsection 500.09, Subd.5 of this Code, no person shall remain in the licensed premises after the legal hour of sale.

**500.09 Restrictions on Purchase and Consumption.**

**Subd. 1 Liquor in Unlicensed Places.** No person shall mix or prepare liquor for consumption in any public place or place of business unless it has a license to sell such liquor on-sale or a Consumption and Display permit from the Commissioner of Public Safety under Minnesota Statutes 340A.414, and no person shall consume liquor in any such place.

**Subd. 2 Hours of Sale.** No on-sale of liquor shall be made after 12:45 a.m. on Sunday until 8:00 a.m. on Monday, except that holders of Sunday On-Sale licenses may sell liquor between 10:00 a.m. and 11:45 on Sunday; nor after 5:45 p.m. on Christmas Eve; nor between 1:00 a.m. and 8:00 p.m. on any election day. No On-Sale shall be made between the hours of 1:00 a.m. and 8:00 a.m. on any other weekday.

No Off-Sale shall be made before 8:00 a.m. or after 10:00 p.m. Monday through Saturday. No Off-Sales shall be made on Sundays. No Off-Sale shall be made on New Year's Day, January 1; Independence Day, July 4; Thanksgiving Day, or Christmas Day, December 25; and no Off-Sale shall be made on December 24 after 8:00 p.m.

**Subd. 3 Hours of Consumption.** No person shall consume, and no On-Sale licensee shall permit any person to consume liquor on his or her premises prior to the authorized time of sale, or more than fifteen minutes after the time for the last authorized sale.

**Subd. 4 Entertainment.** No dancing wherein the public participates and no dancing, singing or other live entertainment shall be permitted on the premises for which an On-Sale or On-Sale wine license has been issued unless an entertainment license has also been issued for the premises as provided in this Code.

**Subd. 5 After Hours.** It shall be unlawful for any person, except the licensee, his or her agents, servants and employees in the performance of their official duties to remain on the licensed premises, or to permit any person, other than the licensee, his or her agents, servants and employees to remain on the licensed premises, more than fifteen minutes after the time of the last authorized on-sale, or at any time following the time for the last authorized off-sale.

**Subd. 6 Consumption on Public Streets or Licensed Premises.** It shall be unlawful for any person to drink or consume any beverage containing alcohol in any amount whatsoever, at any time, upon the public streets of the City of Newport, Minnesota. Furthermore, it shall be unlawful for any person to drink or consume any beverage containing alcohol in any amount, except in the building in which a licensee dispenses and sells alcoholic beverages.

~~**500.10 Revocation and Suspension.** The Council may suspend for a period not to exceed 60 days, or revoke any license for violation of any provision or condition of the Chapter or any State law or regulation regulating the sale of intoxicating liquor, and shall revoke the license if the licensee willfully violates any provision of Minnesota Statutes 340A. Except in the case of a suspension pending a hearing on revocation, revocation or suspension of a license by the Council shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least ten days notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The Council may, without any advance notice or hearing, suspend any license pending a hearing or revocation for a period of not exceeding thirty days.~~

### Section 510 - Beer Licensing

**510.01 Definitions.** For purposes of this Section, the following definitions shall apply.

**Subd. 1 Beer.** "Beer" or "3.2 malt liquor" shall mean any malt beverage with an alcoholic content of more than one-half of one percent by volume and not more than three and two-tenths percent by weight.

**Subd. 2 Cafe.** "Cafe" shall mean any place where preparing and serving lunches or meals to the public to be consumed on the premises constitutes the main business thereof.

**Subd. 3 Beer Store.** "Beer Store" shall mean an establishment for the sale of beer, and the incidental sale of cigars, cigarettes, all forms of tobacco, beverages and soft drinks at retail.

#### **510.02 License Required.**

**Subd. 1 Licenses.** No person, except wholesalers and manufacturers to the extent authorized by law, shall directly or indirectly deal in, sell or keep for sale any beer within the City without having received a license as provided in this Chapter. Licenses shall be of three kinds: "on-sale", "temporary on-sale", and "off-sale".

**Subd. 2 On-Sale.** On-sale licenses shall be granted only to bona-fide clubs, beer stores, cafes, and hotels where food is prepared and served for consumption on the premises, and shall permit the sale of beer for consumption on the licensed premises only.

**Subd. 3 Temporary On-Sale.** Temporary on-sale licenses shall be granted only to bona-fide clubs and charitable, religious, and non-profit organizations for the sale of beer for consumption on the licensed premises only.

**Subd. 4 Off-Sale.** Off-sale licenses shall permit the sale of beer at retail in the original package or container for consumption off the licensed premises only.

**510.03 License Applications.** All applications for any license to sell beer shall be made on forms supplied by the City, setting forth the name of the person asking for the license, his or her age, representations as to his or her character with such references as may be required, his or her citizenship, the location where the business is to be carried on, the type of license applied for, the business in connection with which the proposed license will operate, whether the applicant is owner and operator of such business, the time the applicant has been in business in that place, and any other information as the Council may require from time-to-time. No person shall make any false statement on an application.

#### **510.04 License Fees.**

**Subd. 1 Fees.** All beer licensing fees shall be as established from time to time by the Council.

**Subd. 2 Payment.** Each application shall be accompanied by payment in full of the license fee. If an application is rejected, the fee shall be refunded.

**Subd. 3 Term; Reduced Fee.** Every license, except a temporary on-sale license, shall expire on June 30 of each year. For any license, except a temporary on-sale license, issued on or after March 1, the license fee shall be reduced to one-half of the regular fee.

**510.05 Investigation.** The Council shall cause an investigation to be made of all facts set forth in the application. Opportunity shall be given for any person to be heard for or against the granting of any license. After the investigation and hearing, the Council shall grant or refuse the license in its discretion.

**510.06 Persons Ineligible for License.** No license shall be granted to or held by any person who comes within the following categories.

**Subd. 1 Age.** Is under the legal drinking age as established by State law.

**Subd. 2 Criminal Record.** Has within five years prior to the application been convicted of a felony, or of violating any law of this State or local Ordinance relating to the manufacture, sale, distribution, or possession for sale or distribution of intoxicating liquor or beer, and cannot show competent evidence under Minnesota Statute 364.03 of sufficient rehabilitation and present fitness to perform the duties of a beer licensee.

**Subd. 3 Manufacturer.** Is a manufacturer of beer or is interested in the control of any place where beer is manufactured.

**Subd. 4 Citizenship.** Is an illegal alien.

**Subd. 5 Morals.** Is not of good moral character.

**Subd. 6 Federal Stamp.** Is or during the period of this license becomes the holder of a Federal retail liquor dealer's special tax stamp for the sale of intoxicating liquor at any place unless there has also been issued to him or her a local license to sell intoxicating liquor at such place.

**Subd. 7 Non-Proprietor.** Is not the proprietor of the establishment for which the license is issued.

#### **510.07 Places Ineligible for License.**

**Subd. 1 Conviction or Revocation.** No license shall be granted for any premises where a licensee has been convicted of a violation of this Chapter, or the State beer or liquor laws, or where any beer license has been revoked for cause, until one year has elapsed after such conviction or revocation.

**Subd. 2 Church and Schools.** No license except a temporary on-sale license shall be granted for any premises within 800 feet of an existing church or public school.

**Subd. 3 Delinquent Taxes.** No license shall be granted for any premises upon which taxes or assessments or other financial claims of the City are delinquent and unpaid.

#### **510.08 Conditions of License.**

**Subd. 1 General.** Every license shall be granted subject to the conditions in the following Subdivisions and all other provisions of this Chapter and of any other applicable provision of the Code or State law.

**Subd. 2 Sales to Minors.** No beer shall be sold to any person under the legal drinking age as set by State law, or to any person under guardianship.

**Subd. 3 Intoxicated Persons.** No beer shall be sold to any intoxicated person.

**Subd. 4 Intoxicating Liquor.** No licensee who is not also licensed to sell intoxicating liquor and who does not hold a consumption and display permit shall sell or permit the consumption and display of intoxicating liquor on the licensed premises or serve any liquids for the purpose of mixing with intoxicating liquor. The presence of intoxicating liquor on the premises of such a licensee shall be prima facie evidence of possession of intoxicating liquor for the purpose of sale; and the serving of any liquid for the purpose of mixing with intoxicating liquors shall be prima facie evidence that intoxicating liquor is being permitted to be consumed or displayed contrary to this Chapter.

**Subd. 5 Inspection.** Every license shall allow any peace officer, health officer, or other properly

designated officer or employee of the City to enter, inspect and search the premises of the licensee without a warrant. Any such officer or employee may seize any intoxicating liquors found on the premises in violation of Subd. 4.

**Subd. 6 Licensee Responsibility.** Every licensee shall be responsible for the conduct of his or her place of business and shall maintain conditions of sobriety and order. The act of any employee on the licensed premises authorized to sell or serve beer shall be deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this Code equally with the employee.

**Subd. 7 Hours of Sale.** No sale of beer shall be sold between the hours of 1:00 a.m. and 8:00 a.m. Monday through Saturday; nor between 1:00 a.m. Sunday and 12:00 noon Sunday; nor between 12:00 midnight Sunday and 8:00 a.m. Monday; nor after 5:45 p.m. on Christmas Eve and 5:45 p.m. New Years Eve; nor between 1:00 a.m. and 8:00 p.m. on any election day.

**Subd. 8 Entertainment.** No dancing wherein the public participates, and no dancing, singing, or other entertainment shall be permitted on the premises of any on-sale licensee unless an entertainment license has been issued for the premises.

~~**510.09 Suspension and Revocation.** The violation of any provision or conditions of this Chapter or any State law or regulation regulating the sale of beer or intoxicating liquor by a beer licensee or his or her agent shall be ground for revocation or suspension of the license. The license of a person who holds a Federal retail liquor dealer's special tax stamp without a license to sell intoxicating liquors at such place shall be revoked without notice, and without hearing. In all other cases, a license granted under this Chapter may be revoked or suspended by the Council after written notice to the licensee and a public hearing and shall state the nature of the charges against the licensee. The Council may suspend any license pending a hearing on revocation or suspension. No suspension shall exceed 60 days.~~

### Section 520 - Liquor Entertainment Licenses

**520.01 License Required.** No person to whom a beer or intoxicating liquor license has been issued shall permit, on the premises for which the beer or intoxicating liquor license has been issued, any dancing in which the public participates, or any dancing, singing, or other entertainment, unless an entertainment license has also been issued for the premises. However, in order to protect the health, safety, and welfare of the public against the problems associated between alcohol and nudity, no person shall be allowed on, nor shall the licensee allow any person to remain on, the licensed premises without having his or her buttocks, anus, genitals, and breasts covered by a non-transparent material.

#### **520.02 Licensing Procedure.**

**Subd. 1 Application.** Every application for an entertainment license shall be made to the Clerk-Administrator, on a form supplied by the City, setting forth the name and place of residence of the applicant, the location of the premises for which the license is desired, whether the applicant has ever been engaged in a similar business, and if so, the date and location thereof, and whether the applicant proposes to offer public dancing. The application shall also state the amount of floor space to be provided and maintained for dancing.

**Subd. 2 Fee.** The annual fee for an entertainment license shall be as set from time to time by the Council.

**Subd. 3 Term.** Every entertainment license shall be issued for a term concurrent with the beer or intoxicating liquor license in conjunction with which it shall be issued. Where a license shall be issued for a period of less than one year, the fee shall be reduced in the same manner as the fee for the beer or

intoxicating liquor license in conjunction with which the entertainment license shall be issued.

### 520.03 Premises Ineligible.

**Subd. 1 Consent Required.** Except for premises located in an industrial zone, no entertainment license shall be issued for any premises within two hundred feet of a residential zone unless the applicant shall present with the application a statement in writing signed by the owners and tenants of all private residences, dwelling or apartment houses located within two hundred feet of the premises for which the application is made, to the effect that the owners and tenants have no objection to the granting of an entertainment license or the operation of a tavern at that location.

**Subd. 2 Dance Floor.** No dancing in which the public participates shall be permitted unless at least 400 square feet of floor space shall be available and maintained for dancing.

**520.04 Hours of Operation.** Any beer store or exclusive liquor store for which an entertainment license has been issued shall be closed during the hours when beer or liquor sales are prohibited.

~~**520.05 Revocation and Suspension.** Any entertainment license may be suspended for up to 60 days or revoked for violation of any provision or condition of this Chapter or any State law or regulation regulating the sale of beer or intoxicating liquor, after written notice to the licensee and a public hearing. The notice shall give at least ten days notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The Council may temporarily suspend any license pending a hearing on suspension or revocation. This Section shall not be deemed to require separate notice and hearing where proceedings for suspension of licensee's beer or intoxicating liquor license are simultaneously undertaken.~~

## **Section 530 - Revocation or Suspension of License, Penalty**

**530.01** The City Council shall either suspend for a period not to exceed sixty (60) days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter.

**530.02** The following are minimum periods of suspension or revocation which shall be imposed by the city council for violations of the provisions of this chapter or Minnesota statutes section 340A.509, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:

**Subd. 1** For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor whether the only license is for 3.2 percent malt liquor, the license shall be revoked.

**Subd. 2** After a finding under this subsection A that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter, the license shall be suspended for at least the minimum periods as follows:

- A. For the first violation within any four (4) year period, at least one (1) day suspension.
- B. For the second violation within any four (4) year period, at least three (3) consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.

C. For the third violation within any four (4) year period, at least seven (7) consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.

D. For a fourth violation within any four (4) year period, the license shall be revoked.

**Subd. 3** The City Council shall select the day or days during which the license will be suspended.



# MEMO

TO: Mayor and City Council  
Brian Anderson, City Administrator

FROM: Renee Helm, Executive Analyst

DATE: July 30, 2012

SUBJECT: City Sanitary Improvement Plan

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## BACKGROUND

The City currently has seven lift stations located throughout the City. Six of the seven lift stations have dry and wet well system and none of them currently have SCADA technology

Location	Year Built	Current System	Upgraded System	Upgraded Technology
15 <sup>th</sup> Street	1963	Dry Well/Wet Well	Submersible	SCADA
17 <sup>th</sup> Street	1964	Dry Well/Wet Well	Submersible	SCADA
12 <sup>th</sup> Street	1964	Dry Well/Wet Well	Submersible	SCADA
5 <sup>th</sup> Street	1964	Dry Well/Wet Well	Submersible	SCADA
RDF	1987	Dry Well/Wet Well	Submersible	SCADA
Cold Storage	1988	Dry Well/Wet Well	Submersible	SCADA
10 <sup>th</sup> Avenue	2002	Submersible	None	SCADA

## DISCUSSION

City staff would like to begin the process of overhauling the four lift stations that were built between 1963 and 1964. By doing this it would turn the dry well/wet well system into a submersible system allowing for more effective maintenance by reducing man hours. Furthermore, staff would like to install telemetry technology in all of the lift stations. This would allow staff to monitor all aspects of the system remotely and send advanced alarms indicating any issues. City staff is still finalizing details for the telemetry system but would like to begin upgrading the lift station systems, starting with the 15<sup>th</sup> Street station.

Attached for your review are two quotes for upgrading the 15<sup>th</sup> Street station. The first quote is from Quality Flow Systems Inc. and is for \$53,250, which does not include tax. The second quote is from Usemco and is for \$57,860, which does not include tax either. The cost to upgrade the 5<sup>th</sup>, 12<sup>th</sup>, and 17<sup>th</sup> Street stations is estimated at \$50,000 each. This project was approved in the 2012 budget. However, the SCADA technology has increased, causing staff to further refine its financial strategy. As the City Council may recall, the City is allowed through a resolution to reimburse itself for projects such as this. The City followed this procedure in 2010 for the purchase of the new water meters.

## RECOMMENDATION

It is recommended that the City Council approve Resolution No. 2012-22 authorizing staff to upgrade the 15<sup>th</sup> Street station at a cost of \$53,250 plus tax. Additionally, it is recommended that the City pay for these upgrades by reimbursing itself through Resolution No. 2012-23.

# Quality Flow Systems, Inc.

800 – 6<sup>th</sup> Street NW  
New Prague, MN 56071

PH: 952-758 – 9445

Fax: 952-758-9661

C: 952--292-5979

To: City Of Newport

Fax: 651-459-2043

Attn: Bruce Hanson

Date 5/30/12

From: Jim Pettit

Bruce we are pleased to quote you on the remodel of your 15<sup>th</sup> street lift station to include the following equipment and labor.

- 2 KSB F100-250 114XG Pumps, 15 HP, F-215 vortex impeller to pump 500GPM @ 39 TDH, with 50 feet of power cord and 20 ft of stainless steel chain.
- 2 KSB base elbows
- 2 `Stainless steal upper guide bar brackets
- 2 Flex check valves
- 2 Gate valves
- 1 Lot of Flange x Flange spool pieces, reducers, flange sets and all necessary piping `to change the dry well into a wet well
- 1 Removal of existing equipment from lift station, and flush clean (**City to dispose of old equipment**)
- 1 36" x 48" aluminum hatch cover with safety grate
- 1 Lot of 2 inch stainless steel guide pipes
- 1 Lot of cement cutting for hatch cover and between wet well and dry well.
- 1 Sloping of dry well with cement so sewage flows to the pumps
- 1 By- pass pumping of lift station
- 1 NEMA 3R 48" H x 36" W x 12" D, three point latch, stainless steel panel, freestanding control panel for operation on 230 three phase, 4 wire, 60 Hertz service, to control two 15 HP pumps in a pump down mode.
- 1 Lighting arrestor
- 1 Three phase power monitor
- 2 NEMA size 2 motor starters
- 1 Circuit breaker 230v 1P10A control power
- 1 Circuit breaker 230v 1P20A receptacle
- 2 Pump breakers for 15 HP pumps
- 1 100 amp service rated breaker
- 1 100-amp emergency generator breaker with manual inter-lock
- 2 Pilot lights for pump run (green)
- 6 Pilot lights for pumps 1 & 2 over temperature, pumps 1 & 2 overload, high alarm, and float backup control.
- 2 Reset buttons for alarms
- 1 Intrinsically safe dual pump control with alarms

- 2 KSB pump safe modules
- 1 100-watt condensate heater fan forced
- 1 CT-1500 pump with color touch screen operator interface
  - a. Volumetric flow calculations
  - b. Automatic pump selection with selectable alteration styles
  - c. Pump run totalization
  - d. Low alarm
  - e. High alarm
  - f. Integral alarm logging and level trending
- 1 Top mount alarm light
- 1 Duplex outlet
- 1 Lot of labor to install control panel by a licensed electrician and all permits

Total price for above equipment and labor..... \$53,250.00 + tax

City is to remove all old equipment from site once it is removed from the lift station  
 City is to provide barricades for by pass equipment

If you have any questions or if we can be of further assistance please give us a call.

Thank You,  
 Quality Flow Systems Inc.

Jim Pettit



1602 Rezin Road  
Tomah, WI 54660  
(608) 372-5911

January 24, 2012

To: City Of Newport  
John Neska

Fax: 651-459-2043

Re: **15<sup>th</sup> Street Remodel**

John;

Please find below our proposal to supply KSB pumps, a control panel as specified, a cellular alarm dialer, and associated install labor including the licensed electrician.

**Lift Station Remodel:**

- |     |     |  |
|-----|-----|--|
| Two | (2) | "KSB" Model F100-250/114XG (215), 15 hp, 230/3, heavy duty vortex pump capable of pumping 500GPM @ 39 TDH. To include: <ul style="list-style-type: none"><li>- 50 feet of power cord</li><li>- 20 ft of stainless steel chain.</li><li>- Pump safe modules</li></ul> |
| Two | (2) | 4" base discharge elbows   |
| Two | (2) | Upper brackets and 2" stainless steel guide pipe as needed   |
| Two | (2) | Each of 4" flex check valves and gate valves   |
| One | (1) | Internal piping and fittings   |
| One | (1) | Removal of existing equipment from lift station, and flush clean<br><b>(City to dispose of old equipment)</b>  |
| One | (1) | (36" x 48") aluminum access cover with safety grate  |
| One | (1) | Replacement aluminum ladder  |
| One | (1) | NEMA 3R , 230/3, 4 wire, duplex control panel to control two 15 HP pumps in a pump down mode per your specification. To include the 1500 ct controller, and Mission cellular unit.   |
| One | (1) | Licensed electrician to do the electrical install.   |

**Total Installed Sell Price - - - \$57,860.00 ( + tax)**

UseMco appreciates the opportunity to offer this proposal. If we can be of further service, please give me a call.

Sincerely,

*Bill Draeger*

Bill Draeger

**RESOLUTION NO. 2012-22**

**A RESOLUTION AUTHORIZING CITY STAFF TO UPGRADE THE 15<sup>TH</sup> STREET LIFT STATION**

**WHEREAS**, the City of Newport is statutorily authorized, to purchase goods and services for the betterment of the City; and

**WHEREAS**, the purchase of goods and services in excess of \$10,000.00 shall be made according to law and City Ordinance, Chapter 2, Section 220.02, Subd. K.; and

**WHEREAS**, the City has seven lift stations located throughout Newport; and

**WHEREAS**, City staff has established a sanitary improvement plan to upgrade the seven lift stations by upgrading the current dry well/wet well system with a submersible system and installing SCADA technology; and

**WHEREAS**, City staff has identified the 15<sup>th</sup> Street lift station has the first lift station to be upgraded with a submersible system; and

**WHEREAS**, the City Council approved this project in the 2012 budget.

**NOW, THEREFORE, BE IT RESOLVED**, that the Newport City Council hereby authorizes City staff to upgrade the 15<sup>th</sup> Street lift station at a cost of \$53,250 plus tax.

Adopted this 2nd day of August, 2012 by the Newport City Council.

Motion by: \_\_\_\_\_, Seconded by: \_\_\_\_\_

VOTE:	Geraghty	_____
	Ingemann	_____
	Sumner	_____
	Gallagher	_____
	Rahm	_____

Signed: \_\_\_\_\_  
Tim Geraghty, Mayor

ATTEST: \_\_\_\_\_  
Brian Anderson, City Administrator

## **RESOLUTION NO. 2012-23**

### **A RESOLUTION ESTABLISHING PROCEDURES RELATING TO COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE**

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council (the "Council") of the City of Newport, Minnesota (the "City"), as follows:

1. Recitals.

- (a) The Internal Revenue Service has issued Treasury Regulations, Section 1.150-2 (as the same may be amended or supplemented, the "Regulations"), dealing with "reimbursement bond" proceeds, being proceeds of bonds used to reimburse the City for any project expenditure paid by the City prior to the time of the issuance of those bonds.
- (b) The Regulations generally require that the City (as the issuer of or the primary obligor under the bonds) make a declaration of intent to reimburse itself for such prior expenditures out of the proceeds of subsequently issued bonds, that such declaration be made not later than 60 days after the expenditure is actually paid, and that the bonding occur and the written reimbursement allocation be made from the proceeds of such bonds within 18 months after the later of (1) the date of payment of the expenditure or (2) the date the project is placed in service (but in no event more than 3 years after actual payment).
- (c) The City heretofore implemented procedures for compliance with the predecessor versions of the Regulations and desires to amend and supplement those procedures to ensure compliance with the Regulations.
- (d) The City's bond counsel has advised the City that the Regulations do not apply, and hence the provisions of this Resolution are intended to have no application, to payments of City project costs first made by the City out of the proceeds of bonds issued prior to the date of such payments.

2. Official Intent Declaration. The Regulations, in the situations in which they apply, require the City to have declared an official intent (the "Declaration") to reimburse itself for previously paid project expenditures out of the proceeds of subsequently issued bonds. The Council hereby authorizes the Administrator to make the City's Declarations or to delegate from time to time that responsibility to other appropriate City employees. Each Declaration shall comply with the requirements of the Regulations, including without limitation the following:

- (a) Each Declaration shall be made not later than 60 days after payment of the applicable project cost and shall state that the City reasonably expects to reimburse itself for the expenditure out of the proceeds of a bond issue or similar borrowing. Each Declaration may be made substantially in the form of the Exhibit A which is attached to and made a part of this Resolution, or in any other format which may at the time comply with the Regulations.
- (b) Each Declaration shall (1) contain a reasonably accurate description of the "project," as defined in the Regulations (which may include the property or program to be financed, as applicable), to which the expenditure relates and (2) state the maximum principal amount of bonding expected to be issued for that project.

- (c) Care shall be taken so that the City, or its authorized representatives under this Resolution, not make Declarations in cases where the City doesn't reasonably expect that reimbursement bonds will be issued to finance the subject project costs, and the City officials are hereby authorized to consult with bond counsel to the City concerning the requirements of the Regulations and their application in particular circumstances.
  - (d) The Council shall be advised from time to time on the desirability and timing of the issuance of reimbursement bonds relating to project expenditures for which the City has made Declarations.
3. Reimbursement Allocations. If the City is acting as the issuer of the reimbursement bonds, the designated City officials shall also be responsible for making the "reimbursement allocations" described in the Regulations, being generally written allocations that evidence the City's use of the applicable bond proceeds to reimburse the original expenditures.
  4. Effect. This Resolution shall amend and supplement all prior resolutions and/or procedures adopted by the City for compliance with the Regulations (or their predecessor versions), and, henceforth, in the event of any inconsistency, the provisions of this Resolution shall apply and govern.

Adopted this 2nd day of August, 2012 by the Newport City Council.

Motion by: \_\_\_\_\_, Seconded by: \_\_\_\_\_

VOTE:	Geraghty	_____
	Ingemann	_____
	Sumner	_____
	Gallagher	_____
	Rahm	_____

Signed: \_\_\_\_\_  
 Tim Geraghty, Mayor

ATTEST: \_\_\_\_\_  
 Brian Anderson, City Administrator

## EXHIBIT A

### Declaration of Official Intent

The undersigned, being the duly appointed and acting Administrator of the City of Newport, Minnesota (the "City"), pursuant to and for purposes of compliance with Treasury Regulations, Section 1.150-2 (the "Regulations"), under the Internal Revenue Code of 1986, as amended, hereby states and certifies on behalf of the City as follows:

1. The undersigned has been and is on the date hereof duly authorized by the Newport City Council to make and execute this Declaration of Official Intent (the "Declaration") for and on behalf of the City.
2. This Declaration relates to the following project, property or program (the "Project") and the costs thereof to be financed:  
  
City Sanitary Improvement Plan - \$53,250 plus tax
3. The City reasonably expects to reimburse itself for the payment of certain costs of the Project out of the proceeds of a bond issue or similar borrowing (the "Bonds") to be issued after the date of payment of such costs. As of the date hereof, the City reasonably expects that \$53,250 plus tax is the maximum principal amount of the Bonds which will be issued to finance the Project.
4. Each expenditure to be reimbursed from the Bonds is or will be a capital expenditure or a cost of issuance, or any of the other types of expenditures described in Section 1.150-2(d)(3) of the Regulations.
5. As of the date hereof, the statements and expectations contained in this Declaration are believed to be reasonable and accurate.

Date: August 2, 2012

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Brian J. Anderson,  
City Administrator  
City of Newport, Minnesota