

**WORTHINGTON CITY COUNCIL  
REGULAR MEETING, DECEMBER 8, 2008**

The meeting was called to order at 7:00 p.m. in City Hall Council Chambers by Mayor Alan E. Oberloh with the following Aldermen present: Lyle Ten Haken, Mike Woll, Ron Wood, Mike Kuhle, Bob Petrich. Council Elect: Scott Nelson.

Staff present: Craig Clark, Administrator; Gary Hoffmann, Interim Administrator; Brad Chapulis, Director of Community/Economic Development; Jim Laffrenzen; Public Works Director; Brian Kolander, Finance Director; Mike Cumiskey, Public Safety Director; Bob Fritz, Worthington Police Department.

Others present: Andy Johnson, YMCA; Laura Grevis, Daily Globe.

**AGENDA APPROVED**

The motion was made by Alderman Wood, seconded by Alderman Ten Haken and unanimously carried to approve the agenda with the addition of *Set Public Hearing for an Amendment to the Tax Increment Financing Plan for Darling's Third Addition*, and to take the agenda out of order.

**CONSENT AGENDA APPROVED**

The motion was made by Alderman Woll, seconded by Alderman Ten Haken and unanimously carried to approve the consent agenda as follows, with a correction to the City Council Minutes of special meeting November 17, 2008 to reflect the adjournment time as a.m. instead of p.m.:

- City Council Minutes - Special meeting November 17, 2008; Special meeting November 19, 2008; Special meeting November 20, 2008; City Council/ Nobles County Commissioners Joint Meeting November 24, 2008; Regular meeting November 24, 2008.
- Minutes of Boards and Commissions - Water and Light Commission Minutes of November 1, 2008; Memorial Auditorium Advisory Board of November 11, 2008; Planning Commission Minutes of December 2, 2008.
- License Renewal Applications -

On-Sale Beer

Panda House, 913 Fourth Avenue  
The Ground Round Grill & Bar, 1290 Ryan's Road  
Eagles Aerie 3282, 205 Oxford Street  
A & T Tap, 107 12<sup>th</sup> Street  
Queen Sheba Restaurant, 304 Tenth Street  
La Azteca Restaurant, 223 Tenth Street  
Pizza Hut, 1551 N. Humiston Avenue

Off Sale Beer

Bob & Steve's Shell, 1408 Oxford Street  
Worthington Travel Plaza, Inc., 2411 Highway 60 E.  
Casey's General Store #2166, 1007 Oxford Street  
Casey's General Store #1686, 1704 Oxford Street  
Top Asian Food, 312 Tenth Street  
Travel Express, 2021 Highway 59 N.  
Hy-Vee Food Store, 1635 Oxford Street  
Walmart - 1055 Ryan's Road  
Cenex - Interstate, 1710 N. Humiston Avenue  
La Azteca Grocery Store, 219 Tenth Street

- Audit Engagement Proposal for year-end audit services from Turbes Drealan Kvilhaug, Mammen & Co., PA
- Internal Control Policy
- Bills Payable and totaling \$298,940.24 be ordered paid.

**MINNESOTA INTERNET CRIMES AGAINST CHILDREN TASK FORCE MULTI-AGENCY LAW ENFORCEMENT AGREEMENT BETWEEN THE CITY OF ST. PAUL, MINNESOTA AND THE CITY OF WORTHINGTON, MINNESOTA APPROVED**

The motion was made by Alderman Woll, seconded by Alderman Kuhle and unanimously carried to approve the Minnesota Internet Crimes Against Children Task Force Multi-Agency Law Enforcement Agreement between the City of St. Paul, Minnesota and the City of Worthington, Minnesota.

**2009 YMCA CONTRACT APPROVED**

The motion was made by Alderman Wood, seconded by Alderman Woll and unanimously carried to approve the 2009 YMCA Contract.

**SALE OF S & L PARKING LOT DECLARED NULL AND VOID**

The motion was made by Alderman Wood and seconded by Alderman Ten Haken to declare the sale of the S & L Parking Lot as null and void, and the property be put back up for bid with the minimum bid equal to what this bid was on that property. Following discussion on the benefits of keeping the lot and the maintenance it would require, Aldermen Wood and Ten Haken withdrew their motion and second.

The motion was made by Alderman Kuhle, seconded by Alderman Petrich and unanimously carried to declare the sale of the S & L Parking Lot as null and void, and remove it from the surplus property.

**RESOLUTION NO. 3369 ADOPTED CALLING FOR PUBLIC HEARING ON APPROVAL OF MODIFICATION TO FINANCING PLAN FOR TIF DISTRICT NO. 7 IN THE CITY OF WORTHINGTON**

The motion was made by Alderman Woll, seconded by Alderman Wood and unanimously carried to adopt the following resolution calling for a public hearing:

RESOLUTION NO. 3369

RESOLUTION CALLING FOR A PUBLIC HEARING ON APPROVAL OF A MODIFICATION TO THE TAX INCREMENT FINANCING PLAN FOR TAX INCREMENT FINANCING (REDEVELOPMENT) DISTRICT NO. 7 IN THE CITY OF WORTHINGTON

(Refer to Resolution File for complete copy of Resolution)

**AMENDMENT TO WATER AND LIGHT BY-LAWS APPROVED**

The motion was made by Alderman Wood, seconded by Alderman Woll and unanimously carried to approve the following language amendment to the Water and Light Commission By-Laws, as approved by the Water and Light Commission at their November 3, 2008 regular meeting:

Former Language

An annual meeting shall be held at the first regular meeting at which all members are present following the appointment of a new commissioner for a full term, but no later than the second meeting following the appointment.

New Language

The Annual Meeting of the Water and Light Commission shall be held on the first Monday in May each year.

**APPROVAL OF 2009 UTILITY DEPARTMENT STRATEGIC FINANCIAL PLANS TABLED FOR FURTHER INFORMATION**

The motion was made by Alderman Kuhle, seconded by Alderman Wood and unanimously carried to continue this item to the December 22, 2008 regular City Council meeting to allow staff to address some concerns regarding fund balances.

**COUNTER-OFFER FROM NOBLES COUNTY FOR CITY PURCHASE OF COUNTY SHARE OF SPEC BUILDING APPROVED WITH CONTINGENCY**

The motion was made by Alderman Wood, seconded by Alderman Woll and unanimously carried to accept the County's counter offer at a cost of \$206,000, with the contingency that we have to have confirmation that the \$1.3 million is still available, and that we would like this to be held open for the time period of three months.

**ACCOUNTS RECEIVABLE AGREEMENT WITH AAA COLLECTIONS, INC. TABLED**

The motion was made by Alderman Ten Haken, seconded by Alderman Wood and unanimously carried to table this item to allow staff to investigate other options.

**SECOND READING PROPOSED ORDINANCE ADOPTING SALES AND USE TAX FOR THE CITY OF WORTHINGTON**

Pursuant to published notice, this was the time set for the second reading of a proposed ordinance adopting a sales and use tax for the City of Worthington as approved by voters at the General Election November 4, 2008, as follows:

AN ORDINANCE ADOPTING A SALES AND USE TAX FOR THE CITY OF  
WORTHINGTON

The City Council of the City of Worthington, do ordain:

Section I. AUTHORITY

Subd. 1. The Minnesota Legislature has, by Laws of Minnesota 2005 First Special Session, Chapter 3, Article 5, Section 44 and Laws 2006 Chapter 259, Article 3, Section 8, and Laws 2007 Chapter 13, Article 1, Section 22 (the 'Act'), authorized the City of Worthington to impose a one-half percent sales and use tax and an excise tax of up to \$20 per motor vehicle to pay the costs of a community center complex and for renovations to the Memorial Auditorium. The City of Worthington approved the Act in accordance with applicable law.

Subd. 2. At the special election held November 4, 2008, the voters approved the imposition of a one-half percent sales and use tax and an excise tax of up to \$20 per motor vehicle for the exclusive purpose of paying the costs of a community center complex and for renovations to the Memorial Auditorium which tax shall terminate 10 years after the date of initial imposition of the tax or when the City council determines that the amount of revenue received from the taxes to pay for the projects equals or exceeds \$6,000,000.00, plus the costs related to the issuance of bonds all as described more fully in City Resolutions Nos. 3344 and 3366 approved July 14, 2008, and November 24, 2008 respectively.

## Section II. DEFINITIONS

The words, terms and phrases used in this Ordinance shall have the meaning ascribed to them in Minnesota Statutes, Section 297A, except where the context clearly indicates otherwise. In addition, the following definitions shall apply:

Subd. 1. Act means Laws of Minnesota 2005 First Special Session, Chapter 3, Article 5, Section 44 and Laws 2006 Chapter 259, Article 3, Section 8, and Laws 2007 Chapter 13, Article 1, Section 22;

Subd. 2. City means the City of Worthington;

Subd. 3. Commissioner means the Commissioner of Revenue for the State of Minnesota acting under the authority of an agreement entered into between the City and the State of Minnesota pursuant to the Act, or such other person or entity designated to administer and collect the Worthington Tax;

Subd. 4. Worthington Sales and Use Tax means the sales and use tax imposed and collected pursuant to this Ordinance;

Subd. 5. Ordinance means this ordinance in its present form and as subsequently codified in the Worthington City Code;

Subd. 6. Retailer maintaining a place of business in the City or any like term shall mean any retailer having or maintaining within the City, directly or by a subsidiary or an affiliate, an office, place of distribution, sales or sample room or place, warehouse or other place of business, or having any representative, including an affiliate, agent, sales person, canvasser or solicitor operating in the City under the authority of the Retailer or its subsidiary, for any purpose, including the repairing, selling, delivering, installation, or soliciting of order of the Retailer's goods or services, or the leasing of tangible personal property located in the City, whether the place of business or agent, representative, affiliate, sales person, canvasser, or solicitor, is located in the City permanently or temporarily, or whether or not the Retailer or subsidiary is authorized to do business within the City.

## Section III. SALES & USE TAX

Except as otherwise provided in this Ordinance, there is hereby imposed an additional excise tax in the amount of one-half of one percent of the gross receipts from the sales at retail, and the storage, use, distribution or consumption of goods or services which are taxable, pursuant to Minnesota Statutes, Chapter 297A and occur within the City of Worthington. The imposition, administration, collection and enforcement of this tax shall be governed by the provisions of Minnesota Statute Chapters 297A, 270C, and 289A.

Section IV. SEPARATE STATEMENT: COLLECTION FROM PURCHASER;  
ADVERTISING NO TAX; MINIMUM UNIFORM TAX COLLECTION METHODS

The Worthington Sales and Use Tax shall be stated and charged separately from the sales price or charge for service insofar as practical, and should be a debt from the purchaser to the seller recoverable at law in the same manner as other debts. In computing the tax to be collected as a result of any transaction, any amount of tax less than one-half of one cent may be disregarded and amounts of tax one-half cent or more may be considered an additional cent. If the sales price of any sale at Retail is ninety-nine cents or less, no tax shall be collected.

Section V. EXEMPTION CERTIFICATES

A fully completed exemption certificate taken from a purchaser to the effect that the property purchased is for resale or that the sale is otherwise exempt from the application of the tax imposed by this Ordinance will conclusively relieve the Retailer from collecting and remitting the tax. A person who has obtained from the Commissioner an exemption certificate pursuant to the Minnesota Statute Section 297A may use such exemption certificate for the purposes of the sales tax imposed by the City.

Section VI PRESUMPTION OF PURPOSE OF SALE.

For the purpose of the proper administration and enforcement of Section 3 of this Ordinance, it shall be presumed that all retail sales for delivery in the City are for storage, use, or other consumption in the City until the contrary is established.

Section VII. COLLECTION OF SALES AND USE TAX AT TIME OF SALE.

Subd. 1. Any retailer making deliveries within the City, any Retailer maintaining a place of business in the City, or any other Retailer otherwise doing business within the City, upon making sales or any items described in Section 3 which are not exempted from the sales tax imposed under that section and which are to be delivered or caused to be delivered within the City to the purchaser, shall at the time of making such sales and collect the Sales and Use tax from the purchaser. The tax collected by such retailer shall be remitted to the Commissioner on behalf of the City.

Subd. 2. Any retailer required to collect the Worthington Sales and Use Tax and remit such tax to the Commissioner pursuant to this section shall register with the Commissioner and provide such other information as the Commissioner may require.

Section VIII. AGENT OF RETAILER.

When in the opinion of the Commissioner it is necessary for the efficient administration of the tax, the Commissioner may regard any salesman, representative, trucker, peddler or canvasser as the agent of the dealer, distributor, supervisor, employer or other person under whom such salesman, representative, trucker, peddler or canvasser operated or from whom the tangible property is being sold is obtained, and may regard the dealer, distributor, supervisor, employer or other person as a Retailer for the purposes of this Ordinance.

Section IX. EFFECTIVE DATE, TRANSITIONAL SALES.

Except as otherwise provided herein, the Worthington Sales and Use Tax authorized by this Ordinance shall apply to sales made on or after April 1, 2009 and shall be in addition to all other taxes now in effect. The Worthington Sales and Use Tax shall not apply to the following:

Subd. 1. The gross receipts from the purchase or lease of tangible personal property made under an enforceable contract entered into before April 1, 2009, provided that delivery or possession of items is taken on or before May 31, 2009.

Subd. 2. Payments made prior to April 1, 2009, for contracts to provide taxable services, provided that such contracts were enforceable prior to April 1, 2009, however the Worthington Sales and Use Tax shall apply to payments made pursuant to such contracts to provide services on or after April 1, 2009.

Subd. 3. The gross receipts from the purchase of construction materials used to complete a lump sum or fixed price construction contract that was signed and enforceable before April 1, 2009, and that does not provide for an allocation of future taxes, provided that the construction materials are used exclusively in performing the contract and the materials are delivered before December 1, 2009.

Subd. 4. The gross receipts from the purchase of utility services if the utility bill includes charges for services furnished before April 1, 2009, however, the Worthington Sales and Use Tax shall apply to all utility bills for services provided after April 1, 2009.

Section X. COLLECTION AND ENFORCEMENT.

The Worthington Sales and Use Tax imposed by the City pursuant to this Ordinance shall be subject to the same interests, penalties, and other rules as are applicable to the State general sales tax imposed by Minnesota Statutes Chapter 289A and 297A. The Worthington Sales and Use

Tax imposed by the City pursuant to this Ordinance may be collected by the State on behalf of the City as provided by an appropriate agreement with the Minnesota Commissioner or Revenue.

Section XI TAX CLEARANCE ISSUANCE OF LICENSES.

The City may not issue or renew a license for the conduct of trade or business in the City if the Commissioner notifies the City that the applicant for such license owes delinquent Worthington Sales and Use Taxes as provided in this Ordinance, or penalties or interest due on such taxes. For the purposes of this Section 11, the following terms have the following meanings:

Subd. 1. Worthington Sales and Use Taxes include sales and use tax as provided in this Ordinance. Penalties and interest are penalties and interest due on taxes included in this definition.

Subd. 2. Delinquent taxes do no include a tax liability if:

- a. in administrative or court action which contests the amount of validity or the liability has been filed or served;
- b. the appeal period to contest tax liability has not expired; or
- c. the applicant has entered into a payment agreement and is current with the payments.

Subd. 3. Applicant means an individual if the license is issued to or in the name of an individual or the corporation, partnership or other entity if the license is issued to or in the name of a corporation, partnership or other entity.

A copy of the notice of delinquent taxes given to the City shall also be sent to the applicant taxpayer. In the case of renewal of a license, if the applicant requests a hearing in writing, within thirty (30) days of the receipt of the notice of delinquent taxes, then a contested case hearing shall be held by the Commissioner under the same procedures as provided in Minnesota Statutes, Section 270C.72 for the State sales and use tax imposed under Minnesota Statutes, Chapter 297A, provided that if a hearing must be held on the State sales and use tax, hearings may be combined.

Section XII.

The ordinance shall be in full force and effect from and after its passage and publication.

Passed and adopted by the City Council of the City of Worthington, Minnesota, this \_\_\_\_ day of December, 2008.



The motion was made by Alderman Woll, seconded by Alderman Kuhle and unanimously carried to give a second reading to the proposed ordinance.

**2009 RENTAL RATE AGREEMENT APPROVED**

The motion was made by Alderman Woll, seconded by Alderman Petrich and unanimously carried to approve the 2009 rental rate agreement between Joel Lorenze and the City of Worthington which sets the total 2009 rate at \$15,957.00.

**RESOLUTION ADOPTED APPROVING THE 2008 TAX LEVIES COLLECTIBLE IN 2009**

The motion was made by Alderman Woll, seconded by Alderman Wood and unanimously carried to adopt the following resolution approving the 2008 tax levies collectible in 2009:

RESOLUTION APPROVING 2008 TAX LEVIES COLLECTIBLE IN 2009

Be it resolved by the City Council of the City of Worthington, County of Nobles, State of Minnesota, that the following sums of money are to be levied for the current year, collectible in 2009 upon the taxable property in said City of Worthington, Minnesota for the following purposes:

LIMITED GENERAL PURPOSE TAX:	2008/2009 LEVY	SPECIAL TAX LEVIES:	2008/2009 LEVY
General Fund	634,020	G.O. Debt Service Funds including Improvement Bonds (MS 275.50 Subd. 5e and MS 429.091)	
Community Center Fund	19,450		
Recreation Fund	834,753	PIR Series 20002A \$920,000	42,200
Economic Development Authority Fund	15,506	Public Facility Lease Rev 2004A	92,872
Improvement Construction Fund	305,017	PIR Series 2004A \$3,055,000	239,000
Airport	0	PIR Series 2007A \$4,370,000	<u>309,000</u>
Memorial Auditorium Fund	59,692		
<b>TOTAL GENERAL PURPOSE TAX</b>	<u><b>1,868,438</b></u>	<b>SUBTOTAL DEBT SERVICE FUNDS</b>	<b>683,072</b>
		Economic Development Tax Abatement	45,000
		<b>TOTAL SPECIAL TAX LEVIES</b>	<u><b>728,072</b></u>
<b>SPECIAL TAX LEVIES: (Other than Debt Service)</b>			
Housing & Redevelopment Authority (MS 462.545 Subd. 6)	Separate Certified Levy	<b>RECAP OF TAX LEVY TOTALS:</b>	
		General Purpose Levy	1,868,438
		Special Tax Levies	<u>728,072</u>

TOTAL NET LEVY 2,596,510

**RESOLUTION ADOPTED APPROVING HOUSING AND REDEVELOPMENT  
AUTHORITY TAX LEVIES COLLECTIBLE IN 2009**

The motion was made by Alderman Wood, seconded by Alderman Woll and unanimously carried to adopt the following resolution approving the Housing and Redevelopment Authority 2008 Tax Levies collectible in 2009:

RESOLUTION APPROVING 2008 TAX LEVIES COLLECTIBLE IN 2009

BE IT RESOLVED, by the City Council of the City of Worthington and the Housing and Redevelopment Authority of the City of Worthington, County of Nobles, State of Minnesota, that the following sum of money be levied for the current year, collectible in 2009, upon the taxable property in said City of Worthington, Minnesota, for the following purposes:

SPECIAL TAX LEVY	CERTIFIED LEVY 2008/009
HOUSING AND REDEVELOPMENT AUTHORITY TAX LEVY (Minnesota Statute 469.033, Subdivision 6)	
Special Tax for Operations	\$84,296.84

NET CERTIFIED LEVY \$84,296.84

**RESOLUTION NO. 3370 ADOPTED APPROVING THE 2009 FUND BUDGETS FOR THE  
CITY OF WORTHINGTON**

The motion was made by Alderman Petrich, seconded by Alderman Woll and unanimously carried to adopt the following Resolution approving the 2009 Fund Budgets for the City of Worthington:

RESOLUTION NO. 3370

A RESOLUTION FOR THE APPROVAL OF THE 2009 FUND BUDGETS FOR THE CITY OF WORTHINGTON, MINNESOTA

(Refer to Resolution File for complete copy of Resolution)

### **AQUATIC CENTER DISBURSEMENTS**

The motion was made by Alderman Ten Haken, seconded by Alderman Woll and unanimously carried to appoint Alderman Wood to the YMCA/Aquatic Center construction oversight committee, to bring change orders back to Council as he determines necessary, and authorize payment of invoices when presented as long as they are in the approved budget.

### **PROPOSAL FOR CITY ATTORNEY SERVICES WITH MALTERS SHEPHERD AND VON HOLTUM LAW OFFICE APPROVED**

The motion was made by Alderman Woll, seconded by Alderman Kuhle and unanimously carried to approve the proposal from Malters Shepherd and Von Holtum Law Office for City Attorney services, with Mark Shepherd reappointed as City Attorney for a one-year period from and after January 1, 2009, and David Von Holtum and James E. Malters reappointed as Assistant City Attorneys for that period, at a rate of \$143.50 per hour plus expenses.

### **WATER AND LIGHT TRANSFER RATE AND ECONOMIC DEVELOPMENT ASSISTANCE**

Council discussed the recent decision by the Water and Light Commission to not approve an increase in the transfer amount from Worthington Public Utilities to the General Fund, but to instead defer until additional information was received regarding budgets.

### **COUNCIL COMMITTEE REPORTS**

Mayor Oberloh - reported there will be a hearing on Wednesday regarding the potential LGA cuts. Also reported on a grant workshop he and Brad Chapulis attended, presented by Congressman Tim Walz - very worthwhile.

Alderman Ten Haken - nothing to report.

Alderman Woll - nothing to report.

Alderman Wood - attended the first YMCA/Aquatic Center preconstruction meeting. Also attended a meeting with reps from the University of Minnesota in Mankato with Glenn Thuringer.

Alderman Kuhle - nothing to report.

Alderman Petrich - will be starting with the Revision Committee on Thursday at the Auditorium.

### **CITY ADMINISTRATOR REPORT**

Craig Clark, City Administrator, thanked Council for choosing him as the new Administrator for the City of Worthington, adding he expects to work hard for the City.

**CLOSED SESSION (UNDER MINN. STAT. § 13D.03, SUBD. 1 (B)) TO DISCUSS LABOR NEGOTIATIONS**

The motion was made by Alderman Woll, seconded by Alderman Wood and unanimously carried to close the meeting under Minn. Stat. § 13D.03, Subd. 1 (b) for the purpose of labor negotiations. Mayor Oberloh requested a roll call vote of those in attendance for the session: Janice Oberloh, City Clerk; Alderman Ten Haken; Alderman Woll; Scott Hain, General Manager Worthington Public Utilities; Brian Kolander, Finance Director; Mike Cumiskey, Public Safety Director; Scott Nelson, Council Elect; Alderman Wood; Alderman Kuhle; Alderman Petrich; Craig Clark, Administrator; Gary Hoffmann, Interim Administrator; Mayor Oberloh.

Following the closed session, the motion was made by Alderman Wood, seconded by Alderman Kuhle and unanimously carried to re-open the meeting.

**ADJOURNMENT**

The motion was made by Alderman Wood, seconded by Alderman Woll and unanimously carried to adjourn the meeting at 10:16 p.m.

Janice Oberloh  
City Clerk