1. 08/03/2020 City Council Meeting Agenda

   Documents:

   08-03-2020 COUNCIL MEETING AGENDA.PDF

Winona City Council
Zoom Meeting Access and Procedures

August 3, 2020

Meeting type: The regular meeting of the Winona City Council is being conducted electronically pursuant to Minnesota State Statute 13D.021, following the adoption of Resolution 2020-17 Declaring a Special Emergency, as adopted by the Winona City Council on Monday, March 16, 2020.

All interested parties are invited to watch or listen to meeting via electronic means. This meeting is open to the public via web or phone. This meeting begins at 6:30 p.m.; please log in prior to the start of the meeting. You may exit the meeting at any time.

- To join the Zoom Meeting via the web, go to: https://zoom.us/j/896465916 and enter meeting ID:
  896 465 916

- To join via phone, dial either phone number:
  1-312-626-6799 US (Priority)
  1-646-558-8656 US (Backup)
  When prompted, enter the following Meeting ID: 896 465 916

For participants:

- Only use one audio source; audio from computer is preferred if available.
- Be aware of background noise from your location.
- If using phone, do not use the speaker function. Please note that your phone number and/or name will be visible to other participants.
- If using a web cam, be aware of what is in your background.
- If you have headphones, please use them as that will limit background noise.
- Please mute your audio until you wish to speak. Then unmute your audio, and ask the Mayor for permission to talk.

Winona City Council Agenda

Monday, August 3, 2020
6:30 P.M., Meeting No. 15
City Council Chambers – City Hall
3rd Floor - 207 Lafayette Street

Mayor Mark Peterson

1st Ward Al Thurley
2nd Ward Eileen Moeller
3rd Ward Pamela Eyden
4th Ward George Borzyskowski
At-Large Michelle Alexander
At-Large Paul Schollmeier

1. Call to Order – Mayor & City Manager's Comments – Roll Call	
2. Required Public Hearings	
3. Petitions, Requests, Communications	
City Clerk	1. Appointment to the Citizen's Environmental Quality Committee
City Clerk	2. Broadway Street Closure Request
City Manager	3. Higher Education Updates
4. Unfinished Business	
5. New Business	
City Engineer	1. Certification of Completion, Final Estimate, Resolution of Acceptance – 2019 Bituminous Mill & Overlay Project
Library	2. Winona Public Library Youth Services Moisture Repairs Professional Services Contract
Public Works	3. Request For Letter of No Objection for Encroachment into Flood Control Easement
City Manager	4. Ordinance to License Massage Therapists
City Clerk	5. Ordinance to Ban Conversion Therapy
City Clerk	6. Renewal of Winona State University Transit Service Agreement
City Clerk	7. Set Recessed Meeting to Certify Results of City Primary Election
6. Reports of Committees	
7. Council Concerns	
City Clerk	1. Council Concerns
8. Consent Agenda	
City Clerk	1. Approval of Minutes – July 20, 2020
City Clerk	2. Ordinance to Annex Bublitz Property
City Clerk	3. Claim against the City by Kieran McDonnell
9. Adjournment	

REQUEST FOR COUNCIL ACTION

Agenda Section: **Petitions, Requests, Communications**	*Originating Department:*	*Date:*
No: **3**	**City Clerk**	**08/03/20**

Item: **Appointment to the Citizen's Environmental Quality Committee**

No. **3.1**

SUMMARY OF REQUESTED ACTION:

Following is a communication from Mayor Mark F. Peterson.

August 3, 2020

City Council
City Hall
Winona, MN 55987

Dear Councilmembers:

This letter is to advise that I am this date appointing Nicole Ciulla to serve on the Citizen's Environmental Quality Committee. The term would be effective August 4, 2020 and expire on October 8, 2022.

I trust that you will confirm this appointment.

Sincerely,

Mark F. Peterson
Mayor

Department Approval:	**City Manager Approval:**
Monica Hennessy Mohan	

REQUEST FOR COUNCIL ACTION

Agenda Section: **Petitions, Requests, Communications**	*Originating Department:*	*Date:*
No: **3**	**City Clerk**	**08/03/20**
Item: **Broadway Street Closure Request**		
No. **3.2**		

SUMMARY OF REQUESTED ACTION:

Dear Councilmembers,

I would like to ask permission, on behalf of Habitat for Humanity Winona-Fillmore Counties, to close East Broadway Street between Chatfield and Wall streets from 4:00 p.m. to 6:00 p.m. on Friday, August 14, 2020 for the purpose of a groundbreaking ceremony for our parcel located at 863 East Broadway Street.

We will have a maximum group size of 60 people dispersed throughout the block and future build parcel, all of whom will be required to wear masks and observe physical distancing requirements of 6' separation between groups of unrelated individuals. Only prepackaged food and drink will be served.

If you have any questions or would like more information, I am here and happy to help. And thank you for your consideration of our request!

Warmly,

Amanda Hedlund
Executive Director
D: (507) 457-0003 x4 | C: (507) 458-9370
director@habitatwinona.org

Department Approval:	**City Manager Approval:**
Monica Hennessy Nolan	

REQUEST FOR COUNCIL ACTION

Agenda Section: **Petitions, Requests, Communications**	*Originating Department:*	*Date:*
No: **3**	**City Manager**	**08/03/20**
Item: **Higher Education Updates**		
No. **3.3**		

SUMMARY OF REQUESTED ACTION:

I have invited the Presidents of each of the three higher education institutions in our city to provide an update to the Council on their campus planning for the fall semester. Scott Olson of Winona State University, Larry Lundblad of Minnesota State College - Southeast, and Father Burns of Saint Mary's University will each give a report and then will be available to answer questions from the Council.

Department Approval:	**City Manager Approval:**

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**	*Originating Department:*	*Date:*
No: **5**	**City Engineer**	**8/3/20**

Item: **Certification of Completion, Final Estimate, Resolution of Acceptance – 2019 Bituminous Mill & Overlay Project**

No. **5.1**

SUMMARY OF REQUESTED ACTION:

Honorable Mayor & City Council:

CERTIFICATION OF COMPLETION

This is to certify that the above-referenced work performed by Dunn Blacktop of Winona, Minnesota, under its contract with the City of Winona has been completed in compliance with the plans and specifications governing the work and authorizing the final estimate in the amount of $749,144.75.

The mill and overlay budget will pay $749,144.75 as this fits within budget and monies in the account

Respectfully submitted,

Brian DeFrang
City Engineer

The attached resolution approves the project and authorizes the final estimate.

If Council concurs, a motion to approve the attached resolution would be in order.

Department Approval:	**City Manager Approval:**

Form 16A

RESOLUTION ACCEPTING THE WORK AND AUTHORIZING THE FINAL ESTIMATE ON LOCAL IMPROVEMENTS

Resolution Number 9

WHEREAS, a contract has been let for the following local improvements:

2019 Bituminous Mill & Overlay Project

and

WHEREAS, the original contract price for these improvements is $798,375.00; and

WHEREAS, the contract has been completed according to the plans and specifications; and

WHEREAS, the final estimate for such improvements is $749,144.75.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Winona, Minnesota:

1. The City Council hereby accepts the work.
2. The City Council hereby authorizes the final estimate in the amount of $749,144.75.

Passed and adopted by the City Council of the City of Winona, Minnesota at a meeting thereof held this 3rd day of August 2020.

_____

Mark Peterson, Mayor

Attest:

_____

Monica Hennessy Mohan, City Clerk

City of Winona

2019 Bituminous Mill and Overlay Project

ESTIMATE OF WORK COMPLETED
Payment Date: 8-3-2020

Final Estimate
Dunn Blacktop

No.	Description	Bid Quantity	Unit	Actual Quantity	F	Unit Price	Percent Complete		Total Cost
2105.504	Remove Brick Pavement	670	S.Y.	670		$ 9.00	100%	S	6,030.00
2215.504	Full Depth Reclaimation	28,250	S.Y.	31,600		$ 3.95	112%	S	124,820.00
2232.504	Mill Bituminous Surface 2"	16,180	S.Y.	16,654.00		$ 2.75	103%	S	45,798.50
2357.506	Bituminous Material for Tack Coat	500	Gallon	1,390.00		$ 2.25	278%	S	3,127.50
2360.509	SP 12.5 Wearing Course Mixture 3B	7,825	Ton	7,635.00		$ 64.25	98%	S	490,548.75
2506.502	Adjust Manhole Frame Ring and Casing	36	Each	32.00		$ 1,100.00	89%	S	35,200.00
2506.502	Adjust Gate Valve and Box	17	Each	2.00		$ 300.00	12%	S	600.00
2105.507	Common Excavation	700	C.Y.	442.00		$ 20.00	63%	S	8,840.00
2211.509	Class 5 Aggregate Base	1,550	Ton	612.00		$ 15.00	39%	S	9,180.00
2564.601	Traffic Control	1	L.S.	1.00		$ 25,000.00	100%	S	25,000.00

Total Work Completed	$ 749,144.75	94%
Bid Price	$ 798,375.00	

Total Work Completed	$	749,144.75
Subtotal	$	749,144.75
Less Previous Payments	$	705,959.01
Net Payment This Estimate	**$**	**43,185.74**

Prepared and Certified Correct:

7/30/20
Brian DeFrang, City Engineer, License #40971 *Date*

7-30-20
Dunn Blacktop Co. *Date*

7-30-2020
Stephen Sarvi, City Manager *Date*

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**	*Originating Department:*	*Date*
No: **5**	**Library**	**08/03/20**

Item: **Winona Public Library Youth Services Moisture Repairs Professional Services Contract**

No. **5.2**

SUMMARY OF REQUESTED ACTION:

Winona Public Library has moved into the next phase of the water intrusion project, which involves design development in repairing/sealing interior walls and window wells and then replacing bookshelves in the Youth Services area, as allocated in the 2020 budget.

Staff has received a professional services proposal from OWA Architects for architectural services on the moisture repairs project. The scope of work outlined would provide the necessary documents to proceed with bidding if directed by Council.

Staff recommends entering into a professional services contract with OWA Architects. The proposal and preliminary project phases from OWA Architects is attached for your review.

If Council concurs, a motion to authorize and direct execution of a contract with OWA Architects on a form directed by the City Manager would be in order.

Department Approval:	**City Manager Approval:**
Sylvia Habeke	

OWA ARCHITECTS LLC

355 W 2nd St
Suite 200
Winona, MN 55987

July 16, 2020

PROPOSAL FOR ARCHITECTURAL SERVICES

To: Lezlea Dahlke – Library Director
City of Winona
151 West Fifth Street
Winona, MN 55987

Re: Children's Library Casework and Moisture Repairs

Mrs. Dahlke,

Thank you for the opportunity to submit this proposal for architectural services for the above-referenced project. Following is our understanding of the scope of the work for which you are requesting services:

Project Scope of Work

The project consists of removing existing built-in bookshelves along the perimeter of the children's library. Moisture damaged wall finish and existing window openings and shall be repaired. Once the shelving is removed, evaluation of the wall substrate and finishes behind shall be completed and any additional required repairs designed and performed. Glazing replacement may be included as an alternate to the scope of work. Minor wall modifications and repairs shall be made to the space. The main reading room for the children's library shall be repainted. No modifications to the mechanical, electrical, data, or other building systems is a part of the scope except for removing abandoned components.

Architectural Services

Proposed services include the following:

Design phase:

- Field verify existing site conditions and dimensions as required.
- Meet with you to finalize programmatic requirements.
- Review applicable State Building Code requirements.
- Prepare schematic design options for your approval. Drawings are to include floor plans, exterior elevations, and building sections.
- Provide opinion of probable cost

Construction Document Phase:

- Prepare construction documents based upon approved schematic design drawings.
- Drawings are to include:
    - Architectural floor plans.
    - Exterior and interior elevations.
    - Cabinetry detailing.
    - Miscellaneous details as required.
- Prepare specifications and bidding documents contained within a bound Project Manual.

Bidding Phase:

- Distribute documents to builder's exchanges, prospective bidders, as directed by City staff.
- Provide clarification and addenda to the construction documents as required to assist Bidders.
- Administer an on-site, pre-bid walk through meeting with interested Bidders.

- Administer bid opening, review bids, recommend award of contract, and assist in executing the contract.

Construction Phase:

- Administer a pre-construction meeting.
- Review shop drawings.
- Administer, at minimum, bi-weekly progress meetings with on-site observation.
- Assist General Contractor with clarification and/or interpretation of the Construction Documents.
- Review and approve payment request(s).
- Administer changes to the scope of Work.
- Administer Substantial Completion including a site visit and issuance of a Substantial Completion Punch List.
- Review closeout submittals for compliance with the Contract Documents and forward to City.

Schedule

The preliminary schedule is that design shall begin once Notice to Proceed is received by OWA Architects, LLC. Bidding and start of construction is estimated to begin in late summer/early fall. Construction schedule cannot be determined at this time due to unknown conditions which will be discovered during the course of demolition work. All effort shall be made to minimize the amount of time that the Children's Library must be closed to the public.

Sub-Consultant

None Included

Fee Schedule - Services

Our fees for the above services are as follows:

Fee: Compensation shall be based on direct expenses not to exceed **Eight Thousand, Seven Hundred dollars** ($8,700.00).

We would bill monthly for services completed. If additional services are requested, or the scope of the project changes substantially, additional proposals will be submitted.

Our hourly rate schedule for this project is as follows:

Architect	$100.00/hr.
Senior Architect	$95.00/hr.
Technical Staff II	$68.00/hr.
Intern Architect	$58.00/hr.
Office Manager	$48.00/hr.

Fee Schedule – Reimbursable Expenses

Reimbursable expenses directly relating to this project may include:

- postage, and handling expenses
- plan review and regulatory fees
- printing and reproduction expenses requested by Owner other than clarified below.

All reimbursable expenses shall be based upon direct expenses and be cost supported.

Clarifications

In proposing this fee, we are assuming the following:

- Hazardous material survey, testing, abatement, and related services are not included and, if required, shall be provided by others.
- No structural engineering services are included.
- No mechanical, electrical, or plumbing engineering services are included.
- Additional design effort required for unobservable conditions is not included.
- Scope of glazing replacement and repairs is not determined at this time and may require additional services.
- Construction contracts shall be standard AIA documents and reference documents.
- Design and specification of furnishings and equipment are not included. Style and color selection of finishes will be by others or as additional services.
- Plan review fees are not included.
- Costs to advertise Bid are not included.
- Reimbursable printing and reproduction items shall include additional requests for materials outside of the Project Phase deliverables. Copies required for regulatory approval shall not be considered reimbursable and are included in this Proposal.

Insurance

OWA Architects, LLC will maintain professional liability insurance with The Hanover Company, in the amount of $2,000,000 per claim per policy year, with a $2,000,000 aggregate limit of liability per policy year.

The standard of care for all professional services performed or furnished by OWA Architects, LLC under this proposal will be the skill and care used by architects practicing under similar circumstances at the same time and in the same locality. OWA Architects, LLC makes no warranties, expressed or implied, under this proposal or otherwise, in connection with our services.

Closing

Thank you for your consideration of this proposal. Please call if you have any questions.

Sincerely,

Jacob Nicklay
OWA Architects, LLC

Proposal Acceptance

Your signature on a returned copy of this proposal is our authorization to proceed.

Title: _____

Printed Name: _____

Signature: _____

Date: _____

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**	*Originating Department:*	*Date*
No: **5**	**Public Works**	**08/03/20**

Item: **Request For Letter of No Objection for Encroachment into Flood Control Easement**

No. **5.3**

SUMMARY OF REQUESTED ACTION:

The property owner at 586 Prairie Island Road, Mr. Chris Meier, has requested approval to modify the Winona Flood Control project and easement. His proposed project is to place landscape block on the river side of the Prairie Island levee, followed by fill material and topped with pavers. This would provide a larger area for a fire pit and gatherings.

The Army Corps of Engineers (ACOE) considers any occupation or modification of the original Flood Control project or easement to be subject to ACOE review pursuant to "Section 408." That review considers risk to the levee system, ability to provide required maintenance and operations as well as emergency operations. Such emergency operations may include increasing the levee height. The considerations of risk may include hydraulic and geotechnical evaluations for items such as scour protection. The City of Winona's primary responsibility is to carry out required maintenance and operation and to provide protection from encroachments into the levee easement area.

Details of Mr. Meier's proposal are attached for Council review and consideration. If the Council provides a "letter of no objection" for the proposed project Mr. Meier could then submit his request to the ACOE. Any requests for further analysis or information would be the responsibility and expense of Mr. Meier. Additionally any "letter of no objection" would be conditioned on Mr. Meier entering into a License Agreement with the City of Winona. That license agreement would be created after the ACOE made their 408 review and provided a letter of approval.

Informal comments have been provided by ACOE staff that it would be likely that this proposal could proceed. It remains critical to City Staff that standards be available for future requests by other property owners. Mr. Meier and others have varying levels of encroachments into the existing easement, many of which have never received formal ACOE approval. All areas along the levee are seeing a growing desire for additional use, encroachment and modification. As property owners build out additional property over the existing levee crest, they would be moving into the view up or down the river of adjoining neighbors. I anticipate that would be an ongoing concern.

Department Approval:	**City Manager Approval:**

Council is asked to review and the attached material. City Staff recommends that a letter of no objection be provided, conditioned on a subsequent license agreement be entered into by Mr. Meier and the City of Winona on the City's required license agreement form once the ACOE reviews the request and if a Section 408 permit is granted by the ACOE.

If the City Council concurs with the staff recommendation, staff recommends a motion to authorize and direct City staff to submit a letter of no objection to the ACOE for a Section 408 review of the proposed project, with commencement of the project conditioned upon and subject to subsequent approval by ACOE through issuance of an ACOE Section 408 permit, and subsequent City Council approval of a license agreement, on the City's required license agreement form, between the owners of the subject property and the City thereby allowing the encroachment upon the City's levee easement.

If the City Council does not concur with the staff recommendation, staff recommends a motion to deny the request.

Retaining block to be used.
Three to 5 courses high depending on
location on top of rock river side.

Existing area. I want to expand behind the fire ring towards the river approx. 3 feet to create seating around the fire ring.

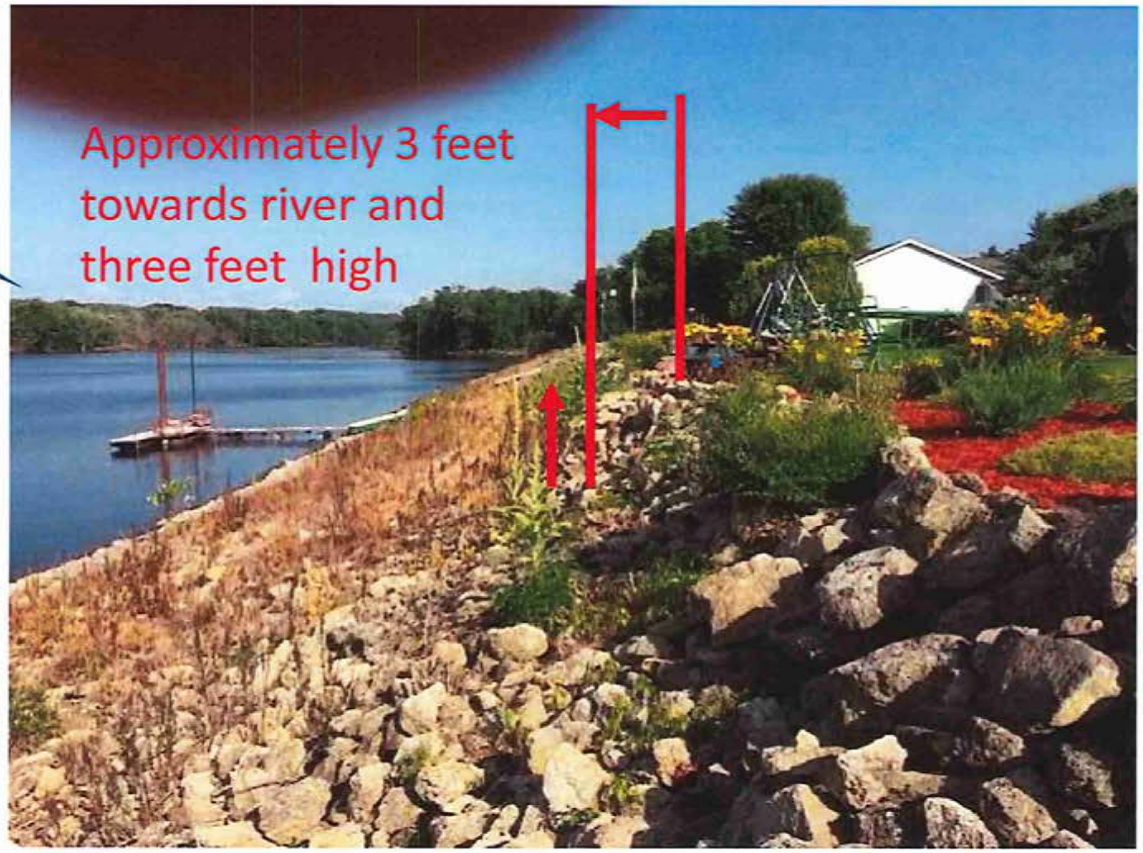
The fire ring sits on top of the pavers and is removable.

The area to be expanded is behind the swing set and is not in the path for travel of vehicles if necessary.

The area affected is to the left of the green table and chairs. Note: I will not encroach into the area for vehicle traffic.

The wall will be set on top of the dike approx. three feet out and two to three feet high with class I sand for fill and pavers to match the rest of the area.

Looking east



586 Prairie Island fire wring expansion

Looking west

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**	*Originating Department:*	*Date:*
No: **5**	**City Manager**	**08/03/20**

Item: **Ordinance to License Massage Therapists**

No. **5.4**

SUMMARY OF REQUESTED ACTION:

I was contacted earlier this year by two individuals who operate as massage therapists requesting that the City of Winona require a City license for all those who work as a massage therapist or operate a massage therapy business within the City.

An informational session was held prior to the July 20 Council meeting to review the proposed ordinance. The final draft includes proposed license fees for both the massage therapist and the massage therapy business, and requires that each massage therapist provide credentials with their license application showing that they have been trained in the practice of massage therapy. The ordinance would take effect on January 1, 2021, providing sufficient time for those currently providing these services to become licensed.

Therefore, if the Council concurs, a motion to introduce the attached ordinance would be in order.

Department Approval:	**City Manager Approval:**

ORDINANCE NO. _____

AN ORDINANCE AMENDING WINONA CITY CODE, CHAPTER 51 – LICENSES AND PERMITS AND SERVICE CHARGES OF THE CITY, AND CHAPTER 52 – BUSINESS REGULATIONS

THE CITY OF WINONA DOES ORDAIN (new material is underlined, deleted material is lined out; sections which are not proposed to be amended are omitted; sections which are only proposed to be re-numbered are only set forth below as to their number and title):

SECTION 1. That Winona City Code, Chapter 51 – Licenses and Permits and Service Charges of the City, Section 51.01, Fees and Charges Established, be amended as follows:

Initial Investigation Fee – Massage Therapist or Massage Therapy Business License - $150;

Massage Therapist – Biennial License: $200;

Massage Therapy Business – Biennial License: $200;

SECTION 2. That Winona City Code, Chapter 52 – Business Regulations, Section 52.17, Regulation of Various Commercial Adult-Orientated Services, be amended as follows:

(a) Statement of Policy. In order to protect the public health, safety and welfare and to guard against the inception and transmission of disease, the City Council of the City of Winona deems it necessary to provide for the special and express regulation of businesses or commercial enterprises which operate as ~~massage parlors,~~ saunas, rap parlors, conversation parlors, adult sensitivity groups, adult encounter groups, personal escort services, dancing services, hostess services, and similar adult oriented services operating under different names. The City Council further finds that commercial enterprises such as the type described above, and all other similar establishments whose services include sessions offered to adults, conducted in private by members of the same or opposite sex, and employing personnel with no specialized training, are susceptible to operation in a manner contravening, subverting or endangering the morals of the community by being the sites of acts of prostitution, illicit sex and occasions of violent crimes, thus requiring lose inspection, licensing and regulation.

~~In the case of commercial enterprises such as those described above which are currently licensed, such establishments may be allowed to retain their licenses but not beyond _____, 1987, provided that the establishments do not violate the provisions of this ordinance and that~~. The City Council determines that it is in the City's best interest to renew the licenses provided in this Section annually pursuant to the procedures set forth in this ordinance.

(b) Definitions. For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

~~(1) The term "massage" means the rubbing, stroking, kneading, tapping or rolling of the body of another with the hands or objects for the exclusive purpose of physical fitness, relaxation, beautification and for no other purpose.~~

~~(2) The term "masseur" means a male person who practices or administers a massage.~~

~~(3) The term "masseuse" means a female person who practices or administers a massage.~~

~~(4) The term "massage parlor" means any establishment or place providing the to the public at large massage services, other than a hospital, sanitarium, rest home, nursing home, boarding home, or other institution for the hospitalization or care or human beings duly licensed under the provisions of Minnesota Statutes, Section 114.50 through 144.69, and other than a health and fitness club as described in Section(s) of this ordinance.~~

~~(5) The term "massage services" means a business offering or providing massages to others where a fee is charged whether or not the massage services are rendered at the licensed location.~~

~~(6)~~(1) The term "sauna" means any public facility used for the purpose of bathing, reducing or relaxing, utilizing steam as a cleaning, reducing or relaxing agent.

~~(7)~~(2) The terms "rap parlor" or "conversation parlor" or "adult encounter group" or "adult sensitivity group" mean any person, establishment or business advertising, offering, selling, trading or bartering the services of itself, or its employees or agents as nonprofessional counselors, or teachers or therapists who may talk to, discuss or have conversation with patrons or who deal in any way with a patron's physical senses, whether or not other goods or services are simultaneously advertised, offered, sold, traded or bartered and regardless of whether said goods or services are also required to be licensed.

~~(8)~~(3) The terms "personal escort service" or "model service" or "dancing service", or "hostess service" mean any person, establishment or business advertising, offering, selling, trading, or bartering the services of itself or its employees or agents as hostesses, models, dancers, escorts, dates or companions whether or not goods or services are simultaneously advertised, offered, sold, traded or bartered and regardless of whether said goods or services are also required to be licensed.

~~(9)~~(4) The term "similar adult-oriented services" is meant to include all other services which fall within the definitions of subparagraphs ~~(4) - (8)~~ (1) – (3) of this section but are operated under different names.

~~(10) The term "certificate" as used herein means a certificate issued by the City authorizing the holder thereof to practice or administer a massage in the City of Winona.~~

(c) License Required.

(1) No person shall engage in the business of operating an enterprise as defined in section (b) ~~(4)~~ (1) through ~~(9)~~ (4) of this ordinance, either exclusively or in connection with any other business enterprise, or ~~hold himself or herself out as being a masseur or masseuse or~~ engage in or offer his or her services as a model, hostess, dancer, escort or counselor in a rap parlor, conversation parlor, adult sensitivity group or adult encounter group without a license.

(2) No person shall hold out any establishment as providing services as defined in section (b) ~~(4)~~ (1) through ~~(9)~~ (4) of this ordinance, unless such establishment is licensed as provided in this section. Whenever any establishment ceases to be licensed as a ~~massage parlor,~~ sauna, rap parlor, conversation parlor, adult encounter group, adult sensitivity group or model service, personal escort service, dancing service, hostess service or similar adult-oriented service, whether through the suspension, cancellation, revocation, non-renewal or lapse of its license, its owners shall immediately remove from public view any sign or display which identifies the establishment as being an enterprise as defined in section (b) ~~(4)~~ (1) through ~~(9)~~ (4) or this ordinance.

(d) Contents of Application for License. Application for a license shall be made only on the forms provided by the City Manager. Four complete copies of the application must be submitted to the City Manager's office containing the following:

(1) Address and legal description of the property to be used.

(2) The name, address and telephone number of two persons who shall be residents of Winona County who may be called upon to attest to the applicant's, manager's or operator's character.

(3) Whether the applicant, manager or operator has ever been convicted of a crime or offense and, if so, complete and accurate information as to the time, place, and nature of such crime or offense, including the disposition thereof.

(4) The names and addresses of all creditors of the applicant, owner, lessee or manager insofar as and regarding credit which has been extended for the purposes of constructing, equipping, maintaining, operating, furnishing or acquiring the premises, personal effects, equipment or anything incidental to the establishment, maintenance and operation of a ~~massage parlor,~~ sauna, rap parlor, conversation parlor, adult encounter group, adult sensitivity group, personal escort service, model service, dancing service, hostess service or similar adult-oriented service.

(5) If the application is made on behalf of a joint business venture, partnership or any legally constituted business association other than a corporation, it shall submit, along with its application accurate and complete business records showing the names and addresses of all partners, officers and owners and, in the case of a corporation, the names and addresses of all officers, general managers and members or the Board of Directors.

(6) If the application is made on behalf of a joint business venture, partnership, legally constituted business association or corporation, the applicant shall also submit the names and addresses of any and all creditors who have extended credit for the acquisition, maintenance, operation or furnishing of the establishment.

(7) All applicants shall furnish to the City, along with their applications, complete and accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon which the enterprise is proposed to be located in the furnishings thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreement, security agreement and any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise offering services as defined in section (b) ~~(4)~~(1) through ~~(9)~~ (4) of this ordinance.

(8) The application shall also contain blueprints, diagrams, plans, layouts and the like, showing the construction, revision, remodeling, alteration or additions of or to the premises and specifically showing the layout, design and arrangement of the bathing and restroom facilities and the size and type of equipment and facilities to be used.

(9) All applicants shall state whether they are licensed in other communities, and if so, where.

(10) All applicants shall state any other licenses for which they have applied within the last ten years and any denial, suspension or revocation of a license along with an explanation of any such denial, suspension or revocation.

(e) License Fee, License Investigation and License Year. The annual license fee and the annual fee for the investigation for the purposes of issuing a license shall be as set forth in Section 51.01. The license fee and fee for the investigation of the license shall be paid when the application is filed. In the event that the license is denied upon application the license fee shall be refunded, however, no part of the license investigation fee shall be returned to the applicant. In the event that the license once issued is revoked, cancelled or surrendered, no part of the annual license fee or fee for the investigation for the issuance of a license shall be returned to the applicant unless by express action of the City Council. A separate license shall be obtained each calendar year for each place of business. The licensee shall display the license in a prominent place on the licensed premises at all times. A license, unless revoked, is for the calendar year or a part thereof for which it has been issued. The fee for the investigation for issuance of a license must be tendered with each new application for a license, if the establishment has violated the provisions of this ordinance or if the Police Department has received an inordinate number of complaints concerning the establishment or if the City Council should act requiring that the investigation fee be paid. The investigation fee must also be paid at any time when there is a proposed change of ownership or reapplication for a license wherein additional or different parties other than the

original licensee and parties are proposing to be licensed. All licenses granted herein are nontransferable.

(f) Conditions Governing Issuance of a License.

(1) Licenses shall be issued only if the applicant and all of its owners, managers, employees, agents or interested parties are persons of good moral character and repute.

(2) Licenses shall be issued only if the applicant and all of its owners, managers, agents, employees or interested parties are free of convictions for offenses which involve moral turpitude or which relate directly to such person's ability, capacity or fitness to perform the duties and discharge the responsibility of the licensed activity.

(3) Licenses shall be issued only to applicants who have not, within three years prior to the date of application, had a license of this type revoked or suspended in or by any community or political entity and whose owners, managers, or any interested parties have not been similarly revoked or suspended.

(4) Licenses shall be issued only to applicants who have answered fully and truthfully all of the information requested in the application, who have paid the full license fee and fee for investigation and have cooperated fully and truthfully with the City in the review of the application.

(5) If the applicant is a natural person, a license shall be granted only if such person is 18 years of age or older.

(6) Licenses may only be granted when the premises involved are in complete conformity with the zoning code of the City of Winona.

(7) Licenses shall be granted only to establishments which meet the fire and building code requirements of the City of Winona.

(8) A license shall not be granted if granting a license (a) would be inconsistent with the comprehensive development plans of the City of Winona or (b) would otherwise have a detrimental effect upon other property or properties in the vicinity.

~~(g) Certificate Required. No person shall engage in or hold himself or herself out as being engaged in the practice of massage nor shall any person administer or practice massage commercially or for hire, or for the exchange of any valuable consideration without first having obtained a certificate as herein provided, except that a certificate shall not be required for any person who is currently registered by the State Board of Medical Examiners or except as elsewhere provided in this ordinance.~~

~~(h) Contents of the Application for Certificate. Application shall be made only on forms provided by the City Manager. The application shall include the following~~

~~information together with any other information which the City Manager may require:~~

~~(1) Evidence of the applicant's educational qualifications, including originals or certified copies of degrees, diplomas or certificates, if any.~~

~~(2) Evidence of applicant's practical qualifications to practice massage.~~

~~(3) Evidence that the applicant is of good moral character.~~

~~(4) The names and addresses of two persons, residents of Winona County, who can attest to the applicant's character.~~

~~(5) Whether the applicant has ever been convicted of a crime or offense and, if so, information as to the time, place and nature of such crime or offense.~~

~~(6) Evidence in the form of a current certificate from a licensed physician practicing in Minnesota indicating (a) that within the past 30 days he has examined the applicant, and (b) that such examination was for the purpose of determining whether applicant had any communicable disease and (c) that as a result of such examination he believes that applicant is not suffering from any communicable disease.~~

~~(7) Evidence that the applicant is at least 18 years of age.~~

~~(i) Certificate Fee, Certificate Investigation Fee and Certificate Year. The annual certificate fee and the investigation fee for the purposes of issuing a certificate shall be as set forth in Section 51.01. The certificate fee and fee for the investigation of the certificate shall be paid when the application is filed. In the event that the certificate is denied upon application, the certificate fee shall be refunded; however, no part of the certificate investigation fee shall be returned to the applicant. In the event that the certificate once issued is revoked, cancelled or surrendered, no part of the annual certificate fee or fee for the investigation for the issuance of a certificate shall be returned to the applicant unless by express action of the City Council. A separate certificate shall be obtained each calendar year. The certificate holder shall display the certificate in a prominent place on the premises of the certificate holder at all times. A certificate, unless revoked, is for the calendar year or a part thereof for which it has been issued. The fee for the investigation for issuance of a certificate must be tendered with each new application for a certificate if the applicant has violated the provisions of this ordinance. A certificate permitting the holder thereof to practice massage is nontransferable.~~

~~(j) Conditions Governing Issuance of the Certificate.~~

~~(1) Certificates shall be issued only to persons of good moral character and repute and persons who are in good health and free from any communicable disease.~~

~~(2) Certificates shall be issued only to persons free of convictions of offenses which involve moral turpitude or which relate directly to the person's ability,~~

~~capacity or fitness to perform the duties and discharge the responsibilities of the occupation.~~

~~(3) Certificates shall not be issued to persons who, within one year prior to the date of application, have been denied certification licensing or who have had their certificate or license revoked or suspended by any community political entity or by the State of Minnesota.~~

~~(4) Certificates shall be issued only to persons who have fully and truthfully answered all of the information requested in the application and have paid the full certification fee and certification investigation fee.~~

~~(5) Certificates shall be issued only to persons 18 years of age or older.~~

(~~k~~ g) Granting or Denial of Licenses ~~and Certificates~~. License applications ~~and certificate applications~~ shall be reviewed by the Police Department, Planning Department and such other departments as the City Manager shall deem necessary. The review of license applications shall include an inspection of the premises covered by the application to determine whether the premises conform to all applicable code requirements. Licenses shall be issued upon the approval of the City Council only after a public hearing has been conducted.

A license permitting the conduct of an establishment offering services as a ~~massage parlor,~~ sauna, rap parlor, conversation parlor, adult encounter group, adult sensitivity group, personal escort service, model service, dancing service, hostess service or other similar adult-oriented service is nontransferable and nonrenewable and application must be made each year for a license permitting and allowing the conduct of such business for the succeeding year.

~~A certificate permitting the holder thereof to practice or administer massage commercially is nonrenewable and nontransferable and application must be made each year for a certificate permitting and allowing the holder thereof to administer or practice massage for the succeeding year.~~

(~~l~~ h) Restrictions and Regulations.

(1) The licensee and any persons in his and her employ or agents or officers thereof and any and all persons with an interest in said business shall comply with all applicable ordinances, regulations and laws of the City of Winona, the State of Minnesota, and the United States.

(2) If the licensee is a partnership or corporation, the applicant shall designate a person to be manager and in responsible charge of the business and employees. Such person shall remain responsible for the conduct of the business and employees until another suitable person has been designated in writing by the licensee. The licensee shall promptly notify the Police Department in writing of any such change indicating the name, address and telephone number of the new manager and the effective date of such change.

(3) Every licensee shall allow an examination and inspection of every part of the premises by any police, fire or building authority of the City during normal business hours four times each year. Refusal to allow such inspection or to answer the request of City police, fire or building authority to be admitted to a licensed premises shall be grounds for suspension or revocation of all licenses.

(4) The licensed premises shall not be open for business nor shall patrons be permitted on the premises between the hours of 9:00 p.m. and 8:00 a.m. on any day.

(5) Upon demand of any police officer, any person employed in any licensed premises shall identify himself by giving his true legal name and his correct address.

(6) No person under 18 years of age shall be employed in an establishment requiring a license under the provisions of this ordinance.

(7) The licensee shall furnish the Police Department with a list of current employees, indicating their names and addresses and designating the duties of the employees within the licensed premises. The licensee shall promptly notify the Police Department of any additions or deletions in the list of employees or changes in their job descriptions or duties.

(8) The licensed premises must be kept and maintained in a sanitary condition defined as being free from the vegetative cells of pathogenic microorganisms and all equipment, personal property, tables, beds, towels, clothing and the like used in or for the licensed premises shall also be maintained in a sanitary condition as defined herein.

~~(9) No licensee shall employ any person as a masseur or masseuse without first insuring that said employee possesses a valid certificate for the administration or practice of massage except as otherwise provided in this ordinance.~~

~~(10) Every person to whom a certificate is issued shall appear personally at the Police Department to receive delivery of the certificate and upon such appearance, shall be photographed for identification purposes. One copy of the photograph shall be permanently affixed to the certificate and a second copy thereof shall be kept in the files of the Police Department.~~

~~(11) Except as otherwise provided in this ordinance, any person acting as a masseur or masseuse shall have his or her certificate displayed in a prominent place at his or her place of employment and upon demand by any police officer or other authorized officer or agent of the City of Winona, any person engaged in practicing massage shall identify himself or herself giving his or her true legal name, correct address and phone number.~~

~~(12) Except as otherwise provided in this ordinance, any person practicing massage within the City of Winona shall initially advise the City of his or her~~

~~address and telephone number and shall further advise the City of any changes in address or telephone number within 30 days of such change.~~

~~(13) Except as otherwise provided in this ordinance, it is unlawful for a masseur to practice massage upon any person except a male and for a masseuse to practice massage on any person except a female.~~

(~~14~~ 9) ~~Any masseur or masseuse practicing massage shall remain fully clothed in a nontransparent uniform or clothing at all times.~~ At all times during the operation of any enterprise as defined in section (b) ~~(4) through (9)~~ (1) through (4), of this ordinance, both employees and customers must be and remain fully clothed in nontransparent clothing.

(~~m~~ i) Construction and Maintenance Requirements.

(1) Each licensed premises shall have a separate restroom and separate locker room for members of each sex.

(2) All ~~massage rooms,~~ locker rooms, restrooms and bathrooms used in connection therewith shall be constructed of materials, including ceramic tile, quarry tile, glazed finish cement block or other similar material, which are impervious to moisture, bacteria, mold or fungus growth and shall be maintained in a sanitary condition defined as being completely free from the vegetative cells of pathogenic microorganisms. The floor-to-wall joints shall be constructed to provide a sanitary cove with a minimum radius of one inch. All equipment, personal property, beds, towels, clothing and the like ~~used in the massage parlor~~ shall be of a sanitary design and kept in a sanitary condition.

(3) All restrooms shall be provided with mechanical ventilation with 2 cfm per square feet of floor area, a hand washing sink equipped with hot and cold running water under pressure, sanitary towels and a soap dispenser.

(4) All rooms in the licensed premises including, but limited to, ~~massage rooms,~~ sauna rooms, restrooms, bathrooms, rap rooms, conversation rooms, modeling rooms, dancing rooms, janitor's closets, hallways and reception areas shall be illuminated with not less than 30 foot candles of illumination, measured 30 inches from the floor.

(5) Each licensed premises shall have a janitor's closet which shall provide for the storage of cleaning supplies. Such closet shall have mechanical ventilation with 2 cfm per square foot of floor area. Such closet shall include a mop sink.

(6) Floors, walls and equipment in ~~massage rooms,~~ sauna rooms, restrooms, bathrooms, rap rooms, conversation rooms, modeling rooms and dancing rooms must be kept in a state of good repair and sanitary at all times. Linen and other materials shall be stored at least 12 inches off the floor. Clean towels, washcloths and linens must be available for each customer.

(7) Individual lockers shall be made available for use by patrons. Such lockers shall have separate keys for locking.

(8) Such establishments shall provide adequate refuse receptacles which shall be emptied as required.

(~~n~~ j) Health and Disease Control. No person while afflicted with any disease in a communicable form or while a carrier of such disease or while afflicted with boils, infected wounds, sores or any acute respiratory infection shall work in or use the services of any licensed premises and no person known or suspected of being afflicted with any such disease or condition shall be employed or permitted in such area or capacity.

(~~o~~ k) Revocation, Suspension or Nonrenewal of License.

(1) The license may be revoked, suspended or not renewed by the City Council upon recommendation of the City Manager by showing that the licensee, its owners, manager, employees, agents or any other interested parties have engaged in any of the following conduct:

(i) Fraud, deception or misrepresentation in connection with the securing of the license.

(ii) Habitual drunkenness or intemperance in the use of drugs including, but not limited to, the use or drugs defined in either 26 U.S.C.S. 4731 or Minnesota Statutes, Section 152.02, barbiturates, hallucinogenic drugs, amphetamines, benzedrine, dexedrine or other sedatives, depressants, stimulants or tranquilizers.

(iii) Engaging in conduct involving moral turpitude or permitting or allowing others within their employ or agency to engage in conduct involving moral turpitude or failing to prevent agents, officers, or employees from engaging in conduct involving moral turpitude.

(iv) Failure to fully comply with any requirements of the ordinances of the City of Winona regarding fire code requirements, building code requirements or ordinances, the violation of which involves moral turpitude or failure to comply fully with any requirements of this ordinance.

(v) Conviction of an offense involving moral turpitude by any court of competent jurisdiction.

(vi) Operation of the establishment without a valid license or during periods in which the license has been suspended or revoked.

(vii) Engaging in any conduct which would constitute grounds for refusal to issue a license herein.

(2) The licensee may appeal such suspension, revocation or nonrenewal to the City Council. The Council shall consider the appeal pursuant to the

procedures set forth in Section 51.03 of the Winona City Code. The Council may appoint a committee of the Council or an independent hearing officer to hear the matter, report findings of fact and a recommendation for disposition to the Council. Hearings on the appeal shall be open to the public and the licensee shall have the right to appear and be represented by legal counsel and to offer evidence in its behalf. At the conclusion of the hearing, the Council may order:

(i) That the revocation, suspension or nonrenewal be affirmed.

(ii) That the revocation, suspension or nonrenewal be lifted and that the license be returned to the license holder.

(iii) The City Council may base either suspension or issuance of the certificate upon any additional terms, conditions and stipulations which they may, in their sole discretion impose.

~~(p) Revocation, Suspension or Nonrenewal of Certificate.~~

~~(1) Certificate may be revoked or suspended by the City Manager or not renewed by the City Council for any of the following:~~

~~(i) Fraud, deception or misrepresentation in connection with the securing of certification.~~

~~(ii) Habitual drunkenness or intemperance in the use of drugs including, but not limited to, the use of drugs defined either in 26 U.S.C.S. 4731 and Minnesota Statutes, Section 152.02, barbiturates, hallucinogenic drugs, amphetamines, benzedrine, dexedrine or other sedatives, depressants, stimulants or tranquilizers.~~

~~(iii) Conduct inimical to the interests of the public health, safety, welfare or morals.~~

~~(iv) Engaging in conduct involving moral turpitude.~~

~~(v) Failure to fully comply with the requirements of this ordinance.~~

~~(vi) Conviction of an offense involving moral turpitude.~~

~~(q) Prohibited Acts. Except as provided elsewhere in this ordinance, no employer shall employ a person to practice or administer massage nor permit, suffer or allow a person to practice or administer a massage unless that person has been granted a valid certificate pursuant to this ordinance and every employer shall require that the certificate be prominently and openly displayed on the premises in plain view.~~

~~(r) Massage Distinguished. The practice of massage is hereby declared to be distinct from the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry and persons duly licensed in this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry, nurses who work solely under the direction of any such persons, athletic directors and trainers are hereby~~

~~expressly excluded from the provisions of this section. Beauty culturists and barbers, licensed by the State of Minnesota, who do not give, or hold themselves out to give, massage treatments, as defined herein, other than are customarily given in such shops or places of business for the purpose of beautification only, shall be exempt from the provisions of this section.~~

(~~s~~ l) Exceptions.

(1) This ordinance does not apply to bona fide health sports establishments which meet the following criteria:

(i) The establishment has conducted business in the City of Winona for one year and is in good repute.

(ii) The primary purpose of the establishment is health and fitness~~; massage service is subsidiary~~.

(iii) No more than 20% of the establishment revenue is derived from a business activity listed in Section 52.17(b) of this ordinance. ~~massage~~.

(iv) The financial records of the establishment are at all times available to the City for inspection.

(v) The establishment has an ongoing membership which list is available to City officials for inspection at any time.

Establishments which meet the above provisions shall not be required to pay the annual license fee or investigation fee, unless specifically ordered by the City Council. Masseur and masseuses employed by such establishments are not required to be certified under this ordinance.

(2) In addition, this ordinance does not apply to nor include:

(i) Bona fide legal, medical, psychiatric, psychological, family or marriage counseling services by a person, persons or businesses appropriately licensed by the State of Minnesota or by local units of government or any other appropriate licensing authority.

(ii) Bona fide financial counseling services or bona fide educational institutions completely complying with State and local regulations or the regulation of any licensing authorities.

(iii) Bona fide nonprofit organizations or institutions, including those organized in compliance with Section 501 (c) (3) of the Internal Revenue Code or to seminars, panel discussions or group classes sponsored by such bona fide nonprofit organizations or institutions.

(~~t~~ m) Separability. Every section, provision or part of this ordinance is declared separable from every other section, provision or part to the extent that if any

section, provision or part of this ordinance shall be held invalid, such holding shall not invalidate any other section, provision or part thereof.

(~~u~~ n) Penalties. Whoever does any act forbidden by this ordinance or omits or fails to do any act required by this ordinance shall be guilty of a misdemeanor and upon conviction thereof by lawful authority be punished by a fine not to exceed ~~$700.00~~ $1,000 and by imprisonment not to exceed 90 days or both or any combination of either. Each day that a violation exists constitutes a separate and distinct offense.

(~~v~~ o) Liability for the Crimes of Another. Every person who commits or attempts to commit, conspires to commit or aids and abets in the commission of any act constituting a violation of this ordinance or any act which constitutes an omission and, therefore, a violation of this ordinance whether individually or in connection with one or more persons or as principal, agent, or accessory shall be guilty of such offense and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any of the provisions of this chapter is likewise guilty of such offense.

SECTION 3. That Winona City Code, Chapter 52 – Business Regulations be amended to add a new Section 52.19 as follows:

52.19 MASSAGE THERAPISTS AND MASSAGE THERAPY BUSINESSES

(a) Purpose. The city recognizes and accepts therapeutic massage as a scientific health care and/or maintenance technique or procedure for the human muscles, tendons, tissues and the like. The city finds that persons with specialized and standardized training who provide massage services provide a legitimate and necessary service to the general public. The city also finds that business establishments offering therapeutic massage services best serve the general public's interests when they operate in accordance with state laws and city ordinances. Accordingly, in order to protect the public's health, safety and welfare, including the protection of the city's legitimate massage therapists' profession and reputation, the city deems it necessary to regulate therapeutic massage establishments and massage therapists through the licensing process.

(b) Definitions. The following terms, as used in this section, shall have the meanings stated:

(1) "Accredited institution" means an educational institution holding accredited status from a regional accrediting agency approved by the United States Department of Education presently or at the time the applicant obtained his or her diploma or certificate of graduation. The term "accredited institution" also includes a state-licensed institution.

(2) "Applicant" means any person filing an application with the city clerk seeking a massage therapist or massage therapy business license pursuant to this Section.

(3) "Licensed premises" means the premises described in the application for a massage therapy business license issued pursuant to this Section.

(4) "Massage therapist" means a person who practices or provides therapeutic massage to another for a fee or other consideration paid either directly or indirectly, and possesses at least one of the following credentials:

i. Is a member of a relevant professional organization of massage therapists such as American Massage Therapy Association or the Associated Bodywork & Massage Professionals

ii. Has been certified as a massage therapist by the National Certification Board for Therapeutic Massage and Bodywork

iii. Has passed the Massage and Bodywork Licensing Examination.

A massage therapist does not include a medical doctor, chiropractor, osteopath, podiatrist, licensed nurse, physical therapist, athletic doctor or trainer, or beautician (cosmetologist) or barber who confines his treatment to the scalp, face and neck or the lower leg and feet in the case of a pedicure.

(5) "Massage therapy or therapeutic massage" means the scientific health care or health maintenance techniques or procedures carried out by a massage therapist involving the rubbing, tapping, pounding or kneading of a person's skin, muscles, and tissues or the stretching of body limbs (e.g., Thai massage) for the purpose of easing mental and physical tension, the breaking up of fatty tissues, relaxing muscles, or alleviating muscle spasms, pain relief, aiding in the healing process, promoting health and wellness, and the improvement of circulation through the body.

(6) Massage therapy business means:

i. Any enterprise, establishment, or operation, whether under the control of an individual or legal entity, providing or offering to provide massage therapy within the city for a fee or other consideration paid either directly or indirectly, that:

1. Has one or more massage therapists, other than the owner, employed or contracted to provide massage therapy for the massage therapy business; and

2. Is located in a fixed location in a zoning district which permits massage therapy.

ii. A massage therapy business does not include a health or medical facility, office or clinic operated by a state-licensed medical professional, or any health or medical-related business operated by a state-licensed medical professional, which provides therapeutic massage to its patients.

(7) "State-licensed institution" means a private educational institution (collegiate or career school) holding licensed status, registration and financial aid eligibility approved through the state in which it is located,

presently or at the time the applicant obtained his or her diploma or certificate of graduation.

(8) "Student of massage therapy" means a person who is enrolled in and attends classes at an accredited institution or at a state-licensed institution.

(c) License Required.

(1) Massage therapist license. No person may act as a massage therapist within the city without a biennial license issued by the city.

(2) Massage therapy business license. No person may operate a massage therapy business within the city without a biennial license issued by the city.

(d) Exceptions to Licensure.

(1) Section 52.19(c)(1) does not apply to, and no massage therapist license shall be required of, a student of massage therapy provided:

i. The massage therapy is provided during and as part of a course or clinical component of an accredited program or course work; and

ii. The massage therapy student is supervised by an instructor or participating in a school-sponsored externship or internship while providing or performing massage therapy. A notice, advising the public that the person who may provide massage therapy is a student of massage therapy and is not licensed by the city, shall be posted in a conspicuous location in a public area of the school.

(2) No massage therapist license is required if the massage therapist is hired or employed by, and exclusively provides treatment on the premises of, a medical professional licensed under Minn. Stat. ch. 147 or 148 or a dental professional licensed under Minn. Stat. ch. 150A. A massage therapist is not limited to providing treatment to patients of the medical or dental professional.

(3) Section 52.19 (c)(2) does not apply to, and no massage therapy business license shall be required for:

i. A health care office, clinic or facility owned by a municipality, the state or its agencies or licensed by the state;

ii. A business or entity owned and operated by a state-licensed medical professional through whom therapeutic massage is provided to its patients as a secondary health care treatment;

iii. Hospitals, hospice facilities, nursing homes or other approved institutions established for the hospitalization or care of human beings that are duly licensed under Minn. Stat. ch. 144;

iv. A health or sport establishment allowing persons of all ages on the premises and which meet the following criteria:

1. The primary purpose of the establishment is health and fitness, and the massage therapy is secondary;
2. No more than 20 percent of the establishment revenue is derived from massage therapy; and
3. Massage therapy does not occupy more than ten percent of the establishment's public floor space; or

v. An accredited institution which provides an accredited program of study or course work in massage therapy or therapeutic massage provided:

1. The massage therapy is provided during and as part of a course or clinical component of the school's program or course work; and
2. The massage therapy student is supervised by an instructor or participating in a school-sponsored externship or internship while providing or performing massage therapy.

vi. Sole proprietors sharing office spaces with other sole proprietors.

(e) License Fees. Biennial license fees shall be established by the city council from time to time and shall be as set forth in Section 51.01 of city code. The biennial massage therapist license fee and biennial massage therapy business license fee shall be prorated and reduced, on a quarterly basis, during the first year of licensure.

(f) License Application for Massage Therapists. An application for a massage therapist license shall be filed, along with all required fees, with the city clerk. The application shall be made on a form supplied by the city and shall contain the following information:

(1) The applicant's name and current home address;

(2) The applicant's current employer, unless self-employed;

(3) The applicant's addresses for the previous five years;

(4) The applicant's date of birth, home telephone number, weight, height, color of eyes and color of hair;

(5) Proof of the applicant's identification and proof that the applicant is a United States citizen or is legally permitted to be in the United States. Proof of identification may be established only by one of the following:

i. A valid driver's license that includes the person's photograph and date of birth, issued by the state, another state, a province of Canada or a state of Mexico.

ii. A valid identification card, that includes the person's photograph and date of birth, issued by the state, another state, Mexico or Canada.

iii. A valid military identification card issued by the United States Department of Defense;

iv. A valid passport issued by the United States; or

v. In the case of a foreign national, a valid passport;

(6) Whether the applicant has ever been convicted of any felony, crime or violation of any ordinance other than a minor traffic offense and, if so, the time, place, and offense for which convictions were had;

(7) Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five years of the date the license application is submitted to the issuing authority;

(8) Whether the applicant is a United States citizen or resident alien or has the legal authority to work in the United States;

(9) Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used;

(10) Proof that the applicant has met the definition of massage therapist in Section 52.19(b)(4) of this code; and

(11) Such other information as the City Clerk or issuing authority shall require.

(12) A certificate of Insurance by an insurance company authorized to do business in the State of Minnesota, evidencing professional liability insurance for the practice of massage, with a limit of not less than one million dollars ($1,000,000) each occurrence. The amount of required insurance shall be at least the minimum amounts provided herein, but shall include any higher amounts above the above stated minimum as contained in the Certificate of Insurance.

(13) The Certificate of Insurance shall state that the insurance policy or policies are in full force and effect for the duration of the period that the license is issued;

(14) A copy of the applicant's Minnesota Sales Tax ID number.

(g) License Application-Massage Therapy Business. An application for a massage therapy business license shall be filed, along with all required fees, with the city clerk. For purposes of proof of identification, the term "applicant" means the on-site manager or agent for a massage therapy business filing the application and the person signing the application for a massage therapy business license. The application shall be made on a form supplied by the city and shall contain the following information:

(1) State whether the applicant is an individual, corporation, partnership or other form of organization;

(2) State the full name, address, date and place of birth, and telephone number of the applicant, all owners and operators, including the designated on-site manager or applicant's agent;

(3) State the address of the premises where the massage therapy business is to be located if proposed to have a fixed location in which the services are to be provided and, if the applicant does not own the premises, a copy of the lease agreement allowing the applicant to occupy the premises;

(4) Describe the premises to be licensed;

(5) State the name of the business if the business is to be operated under a name or designation other than the applicant's name. The application must contain a certified copy of the certificate required by Minn. Stats. §§ 333.01 and 333.02;

(6) A certificate of Insurance by an insurance company authorized to do business in the State of Minnesota, evidencing the following forms of insurance. The amounts of required insurance shall be at least the minimum amounts provided herein below, but shall include any higher amounts above the below minimums as contained in the Certificate of Insurance:

i. Commercial general liability insurance, with a limit of not less than one million dollars ($1,000,000) each occurrence. If such insurance contains an annual aggregate limit, the annual aggregate limit shall be not less than two million dollars ($2,000,000);

ii. Workers compensation insurance (statutory limits) or evidence of exemption from state law;

(7) Contain proof of the applicant's identification and proof that the applicant is a United States citizen or is legally permitted to be in the United States. Proof of identification may be established only by one of the following:

i. A valid driver's license, that includes the person's photograph and date of birth, issued by the state, another state, a province of Canada or a state of Mexico;

ii. A valid identification card, that includes the person's photograph and date of birth, issued by the state, another state, Mexico or Canada;

iii. A valid military identification card issued by the United States Department of Defense;

iv. A valid passport issued by the United States; or

v. In the case of a foreign national, a valid passport;

(8) Identify the full name, address, date and place of birth, and telephone number of the person designated by the applicant as the massage therapy business' on-site manager or agent along with the notarized written consent of such a person to:

i. Take full responsibility for the conduct of the licensed premises and operation; and

ii. Serve as agent for service of notices and other process relating to the license;

(9) With respect to the applicant, owner, operator, or any person who has a five percent financial interest in the proposed licensed massage therapy business and the appointed on-site manager or agent of the applicant:

i. Information as to any and all criminal convictions of any state, county, or local law or regulation; and

ii. Information as to any license denied, revoked, or suspended by any local unit of government or any state, and the business activity or occupation of that person following the license denial, revocation or suspension;

(10) State whether all taxes and special assessments due and owing on the premises on which the applicant proposes to operate the massage therapy business are current. If the taxes or special assessments are delinquent, state for which years they are delinquent (only if the applicant or other entity in which the applicant has an interest has a legal duty to pay those taxes or assessments); and

(11) For individual applicants, the application must:

i. State the applicant's full name, address, date and place of birth, and telephone number;

ii. State whether the applicant has ever used or has been known by a name other than his name on the application and, if so, the name used and information concerning dates and places where used;

iii. State the street and city addresses at which the applicant and on-site manager or agent lived during the preceding five years;

iv. State whether the applicant or on-site manager or agent have ever been engaged in the operation of a business providing massage therapy. If so, they shall state the name, place and length of time of their involvement in such a business;

(12) If the applicant is a partnership, the license must be issued in the name of the partnership and the applicant must designate a person to be manager and responsible for the conduct and operation of the applicant's business. Such person shall remain responsible for the business' operation until the licensee designates in writing another suitable person. The licensee shall promptly notify the police department in writing of any such change indicating the name, address and telephone number of the new manager, and the effective date of the management change. The application must:

i. State the full name, address, date and place of birth, and financial interest of all general partners and all of the information concerning each general partner that is required in subsection (b)(1)b of this section;

ii. State the full name, address, date and place of birth, and telephone number of the managing partner and the interest of each managing partner in the business;

iii. Provide a copy of the partnership agreement;

(13) If the applicant is a corporation, the applicant must designate a person to be manager and responsible for the conduct and operation of the applicant's business. Such person shall remain responsible for the business' operation until the licensee designates in writing another suitable person. The licensee shall promptly notify the police department in writing of any such change indicating the name, address and telephone number of the new manager, and the effective date of the management change. The application must:

i. State the name of the corporation or business and, if incorporated, the state of incorporation;

ii. Provide a copy of the certificate of incorporation. If the applicant is a foreign corporation, the applicant must provide a certificate of authority as required by Minn. Stats. § 303.06;

iii. State the name of the manager, proprietor, or other agent in charge of the business and all of the information concerning each manager, proprietor or agent that is required in subsection (b)(1) of this section;

iv. Provide a list of all persons who own or have a five percent or more interest in the corporation or organization or who are officers of said corporation or organization, together with their addresses and all of the information regarding such persons as is required in subsection (b)(1) of this section; and

(14) Such other information as the city shall require.

(h) License Ineligibility

(1) An application for a massage therapist license shall be denied upon any of the following grounds:

i. The applicant has, within five years of the date of application, a conviction for, or was charged with, but convicted of a lesser charge of, a crime directly related to the massage therapy license. These crimes shall include, but not be limited to, any of the crimes listed at Minn. Stat. §§ 146A.08, subd. 1(b), 609.321, 609.322, 609.324, 609.3243, 609.33, 609.52, 609.527, 609.528, 609.582, 609.74, or 617.23 or a felony crime involving Minn. Stat. ch. 152, or a crime committed in another state under a statute in conformity with any of the statutes listed above. The council must consider evidence of rehabilitation as provided in Minn. Stat. § 364.03, subd. 3;

ii. The applicant had a massage therapist or massage therapy business-related license in this or another jurisdiction that was suspended or revoked within the five years preceding the date of application;

iii. The applicant is not 18 years of age or older;

iv. The applicant is not a United States citizen and is not legally permitted to be in the United States;

v. The application was incomplete or failed to comply with all of the requirements of this Section; or

vi. The applicant provided false or misleading information on the application form, or has failed to pay the applicable fees.

(2) An application for a massage therapy business license shall be denied upon any of the following grounds:

i. The proposed fixed location or premises in which the massage therapy business proposes to provide massage therapy services is not located in a properly zoned district in which a business, or medical or health care facilities or uses are permitted by the zoning ordinances of this Code;

ii. The owner, operator, or any person who has a five percent financial interest in the proposed massage therapy business or the appointed on-site manager or agent of the applicant has, within five years of the date of application, a conviction for, or was charged with, but convicted of a lesser charge of, a crime directly related to the massage therapy business license. These crimes shall include, but not be limited to, any of the crimes listed at Minn. Stat. §§ 146A.08,

subd. 1(b), 609.321, 609.322, 609.324, 609.3243, 609.33, 609.52, 609.527, 609.528, 609.582, 609.74, or 617.23 or a felony crime involving Minn. Stat. Chapter 152, or a crime committed in another state under a statute in conformity with any of the statutes listed above. The council must consider evidence of rehabilitation as provided in Minn. Stat. § 364.03, subd. 3;

iii. The owner, operator, or any person who has a five percent financial interest in the proposed massage therapy business had a massage therapist or massage therapy business-related license in this or another jurisdiction that was suspended or revoked within five years preceding the date of application;

iv. The application was incomplete or failed to comply with all of the requirements of this Section;

v. The applicant provided false or misleading information on the application form, or has failed to pay the applicable fees;

vi. The proposed licensed premises is the subject of delinquent or unpaid taxes, assessments, or other financial claims by the state, county or city and the applicant has an interest or legal duty to pay those taxes, assessments or claims; or

vii. The applicant has been denied a license under this Section within the previous 12 months.

(i) Investigation and Decision on License Application. Every license application must be reviewed by the city clerk, police department, planning department and such other entities as the city manager deems necessary, to determine whether the application satisfies all applicable legal requirements. The police department must conduct a review of the applicant's criminal history. If warranted by the police department's review of the applicant's criminal history, the department may require the applicant to provide valid identification, fingerprints and/or a photograph. The license application, along with any referral department comments, shall be delivered to the city council for its review and action. The council must approve a license application only if it satisfies all of the requirements of this Section.

(j) Restrictions and Regulations.

(1) A massage therapy business license may only employ a massage therapist licensed under this Section to perform massage therapy. A massage therapy business license allows the licensee to operate the business only at the licensed premises except as otherwise provided in this subsection. A massage therapist employed or contracted by a massage therapy business licensee may provide massage therapy:

i. To a client at the client's residence;

ii. In a long-term or short-term care facility, such as a hospital, nursing home, or convalescence facility;

iii. In connection with a special event or function whereby the massage therapist provides massage therapy to attendees of the event or function;

iv. At a place of business (provided the license designates off-site therapeutic massage); or

v. In a hotel/motel room (provided the license designates off-site therapeutic massage).

(2) The licensed premises shall, during operating hours, be open to inspection by any building, zoning, code or law enforcement officer to determine whether the licensed premises are in compliance with applicable laws and ordinances. As a condition to being issued a massage therapy business license, the licensee consents to these inspections by these officers. It is unlawful for any licensee, its agent, or employee to hinder or prevent these inspections by these officers. Those performing the inspections shall make every reasonable effort to honor and protect the privacy of the client.

(3) The act of any employee of the licensee is deemed to be the act of the licensee. The licensee shall be responsible for all acts and conduct attributable to and in connection with massage therapy services provided by the licensee or occurring on the licensed premises; however, the licensee's good faith actions taken in the operation of the massage therapy business and in response to the acts or conduct of licensee's employees shall be considered in determining whether the licensee has acted responsibly.

(4) The person receiving massage therapy shall at all times have his or her anus, intergluteal cleft (buttocks crease) and genitals covered with clothing or properly draped with nontransparent material. The person who is receiving massage therapy of the breast or buttocks (gluteal) shall have the breast or buttock (gluteal muscle) that is not then immediately receiving massage therapy properly covered and draped with nontransparent material.

(5) The licensee and licensee's employees shall at all times be fully clothed.

(6) A massage therapist may not touch or offer to touch, or provide massage therapy to, the penis, scrotum, mons veneris, vulva, or vaginal area of any customer or person inquiring of massage therapy.

(7) No alcoholic beverage, narcotic drug or controlled substance, as such terms are defined by state law or this Code, shall be used, ingested or present during any massage therapy session. This prohibition does not apply to the consumption of alcohol at public, community events where massage therapy is not the primary purpose of the event, but is offered to attendees.

(8) The licensee shall not knowingly bring or possess, or knowingly allow another person to bring or possess, a contraceptive device or obscene material.

(9) Except as provided in Minn. Stat. § 471.709, only a massage therapy licensee shall practice or provide therapeutic massage for:

i. A massage therapy business licensee;

ii. A health care office, clinic or facility owned by a municipality, the state or its agencies or licensed by the state;

iii. A business or entity owned and operated by a state-licensed medical professional through whom therapeutic massage is provided to its patients as a secondary health care treatment;

iv. Hospitals, hospice facilities, nursing homes or other approved institutions established for the hospitalization or care of human beings that are duly licensed under Minn. Stat. ch. 144;

v. A health or sport establishment allowing persons of all ages on the premises;

vi. Athletic directors and trainers who perform massage therapy in the course of any athletic program or event which is sponsored by a local unit of government or an educational institution that complies with all applicable state and local regulations; or

vii. Nonprofit corporations or associations duly organized under the laws of the state for civic, fraternal, social or business purposes.

(10) The licensee, its agents and employees must comply with all applicable ordinances, regulations and statutes.

(11) The licensed premises of a massage therapy business licensee shall not be open between the hours of 10:00 p.m. and 6:00 a.m. of any day.

(12) A massage therapist licensee shall have the city-issued license in his possession while providing massage therapy. A massage therapy business shall conspicuously post its city-issued license upon the licensed premises.

(13) No license issued under this Section may be transferred. A massage business therapy license shall terminate upon any change in the licensee's officers or ownership interests unless the change is approved by the common council, in which case, the license shall continue in force until the end of the license term.

(14) All licensees shall comply with all health and sanitation laws and ordinances.

(k) Suspension or Revocation of a License. The suspension or revocation of any license issued under this section shall be governed by the procedures contained is Section 51.03 of city code. A license issued pursuant to this section may be suspended or revoked, or, in connection with the application or renewal of a license, denied, upon a finding by the city clerk that the licensee has violated any provisions of this section, or upon occurrence of any of the following events:

(1) The licensee fails to comply with any applicable state law, city ordinance or building, safety or health regulation relating to a massage therapist or massage therapy business;

(2) The licensee employed or contracted with a person to perform massage therapy who is required to be licensed by this Section, but who was not so licensed at the time of employment or contract;

(3) The licensee failed to comply with any condition set forth in the license, set forth in a council action regarding the license, or set forth as part of the placement of the license on probation;

(4) The licensee allowed the licensed business to be operated or maintained in a way that unreasonably annoyed, endangered or injured the safety, health, morals, comfort or repose of any considerable number of members of the public; or

(5) The licensee or proposed licensee provides false or misleading information on the licensee's application.

(l) Criminal Penalty. In addition to or in lieu of any administrative or civil penalty, a licensee may be criminally charged for a violation of this section. Violation of this ordinance shall be a misdemeanor. Each separate day such violation is continued shall constitute a separate offense.

SECTION 4. That this ordinance shall take effect on January 1, 2021.

Passed by the City Council of the City of Winona, Minnesota, this _____ day of _____, 2020.

_____
Mayor

Attested By:

_____
City Clerk

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**	*Originating Department:*	*Date:*
No: **5**	**City Clerk**	**08/03/20**

Item: **Ordinance to Ban Conversion Therapy**

No. **5.5**

SUMMARY OF REQUESTED ACTION:

The Human Rights Commission presented a resolution against conversion therapy to the City Council at the March 16, 2020, meeting. The resolution stated:

> **Therefore Be It Resolved** that in order to secure and maintain the safety of LGBTQ+ youth and families in the City of Winona, the Winona Human Rights Commission recommends that the Winona City Council makes a formal statement and sends letters to local and state representation requesting the Minnesota State Legislative and Executive branch take the necessary steps to pass a state-wide measure that would make it unlawful for any provider to provide conversion therapy or reparative therapy to a minor.

The City Council concurred with this resolution, and the Mayor signed a letter to the State representatives. However, no action was taken by the Minnesota Legislature on the proposed legislation, and therefore the HRC is requesting that the City draft a local ban on these practices. Four other cities in Minnesota have already adopted a similar ban, including Minneapolis, St. Paul, Duluth and Red Wing.

Therefore, if the Council concurs, a motion to introduce the attached ordinance would be in order.

Department Approval:	**City Manager Approval:**
Monica Hennessy Mohan	

ORDINANCE NO. _____

AN ORDINANCE AMENDING WINONA CITY CODE, CHAPTER 62 – OFFENSES AGAINST PUBLIC PEACE, SAFETY AND MORALS

THE CITY OF WINONA DOES ORDAIN (new material is underlined; deleted material is lined out; sections which are not proposed to be amended are omitted; sections which are only proposed to be re-numbered are only set forth below as to their number and title):

SECTION 1. That Winona City Code, Chapter 62 – Offenses Against Public Peace, Safety and Morals be amended to add a new Section 62.34, as follows:

Section 62.34 PROHIBITION OF CONVERSION THERAPY

(a) Findings and Purpose.

(1) Conversion therapy is an ineffective and unsafe practice based on the discredited premise that a person's gender identity or sexual orientation is a mental disorder that can be cured or corrected; and

(2) The practice of conversion therapy has been found to be dangerous to an individual's mental health and physical well-being, and there is no scientifically valid evidence that supports the practice of conversion therapy; and

(3) The American Psychological Association, American Medical Association, and American Academy of Pediatrics, among many others, have all been critical of conversion therapy; and

(4) The purpose of this Section is to protect the physical and psychological well-being of minors, including LGBTQ minors, from the harm caused by conversion therapy.

(b) Definitions. For the purposes of this Section, the following terms shall have the meanings stated below:

(1) *Conversion therapy* means any practice or treatment by a provider that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy shall not include counseling that provides support and assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, identity exploration, development, including sexual orientation and gender identity, and neutral interventions to prevent or

address unlawful conduct or unsafe sexual practices, if such counseling is not conducted with the goal of changing the person's sexual orientation or gender identity.

(2) *Gender expression* means a person's expression of gender identity through appearance and behavior, including how an individual believes that they are perceived by others.

(3) *Gender identity* means a person's sense of self as a woman, man, another gender, or genderless. When a person's gender identity or gender expression and sex assigned at birth are not congruent, the individual may identify along the transgender spectrum.

(4) *Minor* means any person under the age of eighteen (18) years of age.

(5) *Provider* means an individual who is licensed, certified, or registered under the laws of the State of Minnesota, including mental health practitioners and mental health professionals as defined in Minnesota Statutes, Section 245.462, to provide mental health services. Providers include, but are not limited to, physicians specializing in the practice of psychiatry, psychologists, marriage and family therapists, social workers, clinical counselors, behavioral clinicians or therapists, nurses, or any other persons offering such mental health services. A provider does not include members of the clergy who are acting in their roles as clergy or pastoral counselors and providing religious counseling to congregants.

(6) *Sexual Orientation* means a component of identity that includes a person's sexual and emotional attraction to another person and the behavior and/or social affiliation that may result from this attraction. A person may be attracted to men, women, both, neither, and/or to people who are genderqueer, androgynous, or have other gender identities. Individuals may identify as lesbian, gay, heterosexual, bisexual, queer, pansexual, or asexual, among others.

(c) Prohibited Practices. It shall be unlawful for a provider to provide conversion therapy to a minor.

(d) Enforcement. Any violation of this Section is a misdemeanor.

(e) Severability. If any of the parts or provisions of this Section or the application thereof to any person or circumstances is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this Section, including the application of such parts or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Section are severable.

SECTION 2. That this ordinance shall take effect upon its publication.

Passed by the City Council of the City of Winona, Minnesota, this ____ day of _____, 2020.

_____
Mayor

Attested By:

_____
City Clerk

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**	*Originating Department:*	*Date:*
No: **5**	**City Clerk**	**08/03/20**

Item: **Renewal of Winona State University Transit Service Agreement**

No. **5.6**

SUMMARY OF REQUESTED ACTION:

The City of Winona has been providing public transportation between the main Winona State University campus and its west campus and the East Lake apartments for the past decade.

WSU would like to renew the agreement for the 2020-2021 academic year. The routes and terms would be the same as provided for in the previous agreement. As in previous years, WSU will pay 100% of the operating costs for these routes.

Attached is a draft of the agreement between the City and Winona State University for these routes. Therefore, if the Council concurs, a motion to approve the agreement and direct staff to execute the agreement would be appropriate.

Department Approval:	**City Manager Approval:**
Monica Hennessy Stolan	

F.Y.	Cost Center	Obj. Code	Amount	Vendor #	P.O. #
2021					

STATE OF MINNESOTA

MINNESOTA STATE COLLEGES AND UNIVERSITIES

Winona State University

JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT, and amendments and supplements thereto, (hereinafter "contract") is between the State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of Winona State University (hereinafter "STATE"), which is empowered to enter into joint powers agreements pursuant to Minnesota Statutes, Chapter 471.59, Subd. 10, and City of Winona, address 207 Lafayette Street, Box 378, Winona, MN 55987 (hereinafter "CONTRACTOR"), which is empowered to enter into joint powers agreements pursuant to Minnesota Statutes, Chapter 471.59, Subd. 10;

WHEREAS, CONTRACTOR represents that it is duly qualified and willing to perform the services set forth herein.

NOW, THEREFORE, it is agreed

I. A. CONTRACTOR'S DUTIES. (Attach additional page(s) if necessary which is incorporated by reference and made a part of this agreement.) The CONTRACTOR shall:

Provide additional subscription public transit in the City of Winona to provide safe transportation between the WSU Main Campus and East Lake Apartments and West Campus. The CONTRACTOR will provide a Winona Transit Service bus and contracted drivers to provide public transportation beginning **Monday, August 24, 2020 through Thursday, May 6, 2021**. The buses will run on the following schedule:

- East Lake Apartments Route: Monday through Friday 7:00 a.m. to 6:00 p.m.
- West Campus Route: Monday through Friday 7:30 a.m. to 9:30 a.m.
- Night Route: Monday through Thursday 6:00 p.m. to 10 p.m.
- Additional hours if needed, will be provided upon written request from WSU.

No service shall be provided on the following dates:

September 7, 2020	Labor Day
November 11, 2020	Veteran's Day
November 25-27, 2020	Thanksgiving Break
December 11, 2020	Fall Commencement
December 12, 2020 – January 11, 2021	Winter Break
January 18, 2021	Martin Luther King Day
March 8-12, 2021	Spring Break
April 16, 2021	Spring Break Day
May 7, 2021	Spring Commencement

CONTRACTOR will provide insurance within the municipality for bodily injury liability and property damage liability and related coverages, including physical damage insurance on the buses.

The drivers of the buses will be contracted by the CONTRACTOR. The buses remain property of the CONTRACTOR. WSU shall not be liable for injuries to persons or damage to property associated with the public transportation outlined above.

CONTRACTOR holds and shall maintain the State of Minnesota Public Service Commission License and shall make all necessary reports and applications in connection with the State of Minnesota Public Service Commission and Department of Transportation.

CONTRACTOR retains authority to establish and determine routes and schedules of service for public transportation in the transit area. CONTRACTOR reserves the right to make necessary changes to conduct a more efficient route.

Any change in the hourly rate and/or total number of hours must be approved by both parties in writing.

CONTRACTOR will maintain records to determine usage of the subscription service. The records will be used to determine the success of the service and to assist in making changes to the service to improve ridership.

B. STATE'S DUTIES. (Attach additional page (s) if necessary which is incorporated by reference and made a part of this agreement.) STATE shall:

WSU will fund the entire cost of the subscription route.

II. CONSIDERATION AND TERMS OF PAYMENT.

A. Consideration for all services performed by the CONTRACTOR pursuant to this contract shall be paid by the STATE as follows:

1. Compensation not to exceed ninety-seven thousand six hundred fifty-six dollars ($97,656), unless a rate increase for the spring semester has been approved prior to December 31, 2020. Attachment A, which is attached hereto and incorporated herein by reference, shows the proposed budget for the program. The City shall bill on an hourly basis, plus actual fuel charges.

The CONTRACTOR agrees that it shall not charge the STATE any fuel surcharge fees greater than the actual cost of the fuel incurred by the CONTRACTOR. The CONTRACTOR shall provide the STATE thirty (30) days written notice and documentation demonstrating necessity regarding any changes in the cost per hour, which will not exceed an increase of 2%.

Any additional hourly services requested by CONTRACTOR will be provided at $34.75 per hour before May 1, 2021 plus actual fuel surcharges and $36.10 per hour after May 1, 2021 plus actual fuel surcharges or as amended in writing.

B. Terms of Payment. Payments shall be made by the STATE promptly after the CONTRACTOR'S presentation of invoices for services performed and acceptance of such services by the STATE'S authorized representative pursuant to Clause VI. Invoices submitted by CONTRACTOR shall show the actual fuel costs incurred by CONTRACTOR and shall be submitted according to the following schedule:

October 31, 2020

December 31, 2020
February 28, 2021
May 31, 2021

III. CONDITIONS OF PAYMENT. All services provided by the CONTRACTOR pursuant to this contract shall be performed to the satisfaction of the STATE, as determined at the sole discretion of its authorized representative, and in accord with all applicable federal, state, and local laws, ordinances, rules and regulations. The CONTRACTOR shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

IV. TERM OF CONTRACT. This contract shall be effective on **August 24, 2020, or upon the date that the final required signature is obtained by the STATE, whichever occurs later,** and shall remain in effect until **May 31, 2021**, or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. The CONTRACTOR understands that NO work should begin under this contract until ALL required signatures have been obtained, and the CONTRACTOR is notified to begin work by the STATE'S Authorized Representative.

V. CANCELLATION. This contract may be canceled by the STATE or the CONTRACTOR at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, the CONTRACTOR shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.

VI. STATE'S AUTHORIZED REPRESENTATIVE. The STATE'S Authorized Representative for the purposes of administration of this contract is Chris Cichosz, P.O. Box 5838, Winona, MN 55987-5838.

VII. The CONTRACTOR'S Authorized Representative for the purposes of administration of this contract is Monica Hennessy Mohan. The STATE'S Authorized Representative shall have final authority for acceptance of the CONTRACTOR'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Clause II, paragraph B.

VII. ASSIGNMENT. The CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE.

VIII. AMENDMENTS. Any amendments to this contract shall be in writing, and shall be executed by the same parties who executed the original contract, or their successors in office.

IX. LIABILITY. Each party agrees it will be responsible for its own acts and behavior and the results thereof. MnSCU's and Winona State University's liability are governed by the Minnesota Tort Claims Act, Minn. Stat. § 3.736, and other applicable laws. For liability purposes, bus drivers and all other transit personnel are contracted from Three Rivers Community Action, Inc. and shall not be deemed employees of the City of Winona or Winona State University. For the purposes of the Minnesota Municipal Tort Liability Act (Minn. Stat. c. 466), under no circumstances shall CONTRACTOR be required to pay on behalf of itself and other parties, any amounts in excess of the limits on liability established in Minnesota Statutes, Chapter 466 applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for any party.

X. STATE AUDITS. The books, records, documents, and accounting procedures and practices of the CONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor.

XI. GOVERNMENT DATA PRACTICES ACT. The CONTRACTOR must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the STATE in accordance with this contract, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the CONTRACTOR in accordance with this contract. The civil remedies of Minnesota Statutes Section 13.08, apply to the release of the data referred to in this Article by either the CONTRACTOR or the STATE. In the event the CONTRACTOR receives a request to release the data referred to in this Article, the CONTRACTOR must immediately notify the STATE. The STATE will give the CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released. DATA PRACTICES ACT. The CONTRACTOR shall comply with the Minnesota Data Practices Act as it applies to all data provided by the STATE in accordance with this contract and as it applies to all data created, gathered, generated or acquired in accordance with this contract.

XII. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS.

A. The STATE shall own all rights, title and interest in all of the materials conceived or created by the CONTRACTOR, or its employees or subcontractors, either individually or jointly with others and which arise out of the performance of this contract, including any inventions, reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer based training modules, electronically, magnetically or digitally recorded material, and other work in whatever form ("MATERIALS").

B. The CONTRACTOR hereby assigns to the STATE all rights, title and interest to the MATERIALS. The CONTRACTOR shall, upon request of the STATE, execute all papers and perform all other acts necessary to assist the STATE to obtain and register copyrights, patents or other forms of protection provided by law for the MATERIALS. The MATERIALS created under this contract by the CONTRACTOR, its employees or subcontractors, individually or jointly with others, shall be considered "works made for hire" as defined by the United States Copyright Act. All of the MATERIALS, whether in paper, electronic, or other form, shall be remitted to the STATE by the CONTRACTOR, its employees and any subcontractors. The CONTRACTOR, its employees, and any subcontractors shall not copy, reproduce, allow or cause to have the MATERIALS copied, reproduced or used for any purpose other than performance of the CONTRACTOR'S obligations under this contract without the prior written consent of the STATE'S authorized representative.

The CONTRACTOR represents and warrants that MATERIALS produced or used under this contract do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. The CONTRACTOR will indemnify and defend the STATE at the CONTRACTOR'S expense from any action or claim brought against the STATE to the extent that it is based on a claim that all or part of the MATERIALS infringe upon the intellectual property rights of another. The CONTRACTOR shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees arising out of this contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in the CONTRACTOR'S or the STATE'S opinion is likely to arise, the CONTRACTOR shall at the STATE'S discretion either procure for the STATE the right or license to continue using the MATERIALS at issue or replace or modify the allegedly infringing MATERIALS. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

XIII. PUBLICITY. Any publicity given to the program, publications, or services provided resulting from this contract, including, but not limited to, notices, informational pamphlets, press releases, research, reports, signs,

and similar public notices prepared by or for the CONTRACTOR or its employees individually or jointly with others, or any subcontractors shall identify the STATE as the sponsoring agency and shall not be released prior to receiving the approval of the STATE'S authorized representative.

XIV. GENERAL TERMS.

a. **Voluntary and Knowing Action.** The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
b. **Authorized Signatories.** The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
c. **No Partnership, Joint Venture, or Fiduciary Relationship.** Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the WSU and City.
d. **Governing Law.** This Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of this Agreement without regard to its choice of law or conflict of laws principles.
e. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
f. **Entire Agreement.** These terms and conditions constitute the entire agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.
g. **Headings and Captions.** Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.

[*Remainder of page left intentionally blank*]

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

APPROVED:

1. MINNESOTA STATE COLLEGES AND UNIVERSITIES
Winona State University

By (authorized college/university/office of the chancellor initiating agreement)
Title
Date

By (approved signature)
Title
Date

2. VERIFIED AS TO ENCUMBRANCE

By (authorized college/university/office of the chancellor initiating agreement)
Title Contract Administrator
Date

3. **CITY OF WINONA:**

Contractor certifies that the appropriate person(s) have executed the contract on behalf of the contractor as required by applicable articles, by-laws, resolutions, or ordinances.

By (authorized signature)
Title
Date

By (authorized signature)
Title
Date

4. **AS TO FORM AND EXECUTION:**

By (authorized college/university/office of the chancellor initiating agreement)
Title Contract Administrator
Date

REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**	*Originating Department:*	*Date:*
No: **5**	**City Clerk**	**08/03/20**

Item: **Set Recessed Meeting to Certify Results of City Primary Election**

No. **5.7**

SUMMARY OF REQUESTED ACTION:

The City Council is requested to hold a recessed meeting of the City Council at 11:00 a.m. on Friday, August 14, 2020, for the purpose of certifying the results of the City Primary Election to be held on Tuesday, August 11, 2020.

If Council concurs, a motion to set the meeting would be in order.

Department Approval:	**City Manager Approval:**
Monica Hennessy Nolan	

REQUEST FOR COUNCIL ACTION

Agenda Section: **Council Concerns**	*Originating Department:*	*Date:*
No: **7**	**City Clerk**	**08/03/20**
Item: **Council Concerns**		
No. **7.1**		

SUMMARY OF REQUESTED ACTION:

Time is reserved for Council Concerns.

Department Approval:	**City Manager Approval:**
Monica Hennessy Nolan	

REQUEST FOR COUNCIL ACTION

Agenda Section: **Consent Agenda**	*Originating Department:*	*Date:*
No: **8**	**City Clerk**	**08/03/20**

Item: **Consent Agenda**

No. **8.**

SUMMARY OF REQUESTED ACTION:

City Clerk: ***Item No. 8.1:*** **Approval of Minutes – July 20, 2020**
Minutes of the July 20, 2020 City Council meeting have been distributed. If the minutes are satisfactory, a motion to approve same would be in order.

City Clerk: ***Item No. 8.2:*** **Ordinance to Annex Bublitz Property**
An ordinance to annex a 9.35 acre parcel of land at 22839 County Road 17 into the City was introduced at the July 20, 2020 Council meeting. The purpose and effect of the proposed ordinance has been published by law. Accordingly, the ordinance may now be considered for final adoption.

City Clerk: ***Item No. 8.3:*** **Claim against the City by Kieran McDonnell**
Kieran McDonnell has filed a claim against the city for a fall on a City street. The claim has been forwarded to the League of Minnesota Cities- Insurance Trust, and is on file in the City Clerk's Office.

Department Approval:	**City Manager Approval:**
Monica Hennessy Nolan	