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**COMMUNITY DEVELOPMENT COMMITTEE MEETING**
**Tuesday, September 30, 2003**

PRESENT: Alds. Becker, Ecks, Heins, Herzog, Kopischke, Krol, Sullivan, Treis -8

ALSO PRESENT: N. Welch, Community Dev. Dir.; A. Kesner, City Atty.; Capt. J. Sutter, Police; E. Miller Carter, Asst. City Atty.; N. Kreuser, Health Officer; L. Nielsen, Public Health Nurse Supv.; C. Anderson, Public Health Specialist

Ald. Heins in the Chair called the meeting to order at 8:05 p.m.

**Land Combination – 9832 Ridge Boulevard**

Ms. Welch outlined a request by the city for a land combination at 9832 Ridge Boulevard. The Plan Commission unanimously recommended approval. The property was acquired by the city as part of the MMSD flood protection project. All structures were demolished, and any future structures are prohibited. The city does not wish to maintain this vacant land and has an offer to purchase from the adjacent resident to the north. The proposed land combination would be contingent upon final sale of the property to that resident by the end of the year.

In response to a query from Cheryl Hogusen, 7440 Melrose Avenue, Ms. Welch confirmed that the parcel could never be split off or built upon.

Moved by Ald. Treis, seconded by Ald. Herzog to recommend to Council approval of the land combination –

Ald. Herzog commented that this is a win-win situation that results in an increased lot size for the resident and relief from the responsibility for maintenance on the part of the city.

Vote on the motion, Ayes: 7; Noes: 1 (Sullivan)

**Zoning Change at approx. 1601 N. 113th Street (Public Works Site)**

Ms. Welch reported that the request by the City of Wauwatosa for rezoning of that portion of the public works site at approximately 1601 N. 113th Street from AA Light Manufacturing District to Business Planned Development has been discussed by this committee several times before. The Plan Commission has now forwarded a 6-2 vote in favor of the zoning change. The only action needed tonight is to schedule a public hearing before the Common Council. The matter would return to this committee for discussion and recommendation prior to a Council vote.

The Chair emphasized that there would be two opportunities for public input—at the Council hearing and when the matter returns to this committee. The public hearing would be held November 4, 2003. She noted that it is the committee's prerogative to withhold from any discussion or hear public input tonight.

Questions arose as to when this committee would next address this issue. City Attorney Kesner explained that the committee has the option of scheduling it either before or after the November 4 public hearing date.

> Moved by Ald. Krol, seconded by Ald. Becker to recommend to Council that a public hearing be scheduled for November 4, 2003, with the intent that the matter would be re-referred to this committee for further discussion on November 11th –

Richard Bachman, 2229 N. 115th Street, objected to the committee not allowing the public to speak tonight. Referring to the upcoming opportunities for public input, the Chair ruled the question out of order.

> Vote on the motion, Ayes: 8

**Proposed Ordinance Amending Definition of "Sign"**

Mr. Kesner reviewed the purpose of the proposed ordinance, which amends the definition of "sign" in Section 15.14.020 of the Code. In 1999 there was an inadvertent omission of the word "visible" in the definition of "sign" whereby something was considered a sign only if it was in the city right-of-way. Reinserting the word "visible" will clarify that it is a sign if it is *visible* from the public right-of-way.

> Moved by Ald. Kopischke, seconded by Ald. Ecks to recommend to Council adoption of the proposed ordinance. Ayes: 8

**Transitional Agreement on Policing of Milwaukee Regional Medical Center**

City Attorney Kesner reviewed the background of the effort by the county sheriff's department to eliminate their policing services on the entire county grounds. They currently provide services there on an interim basis. In an effort to fill the void, the city has been in discussions with the Milwaukee Regional Medical Center (MMRC) and its members regarding provision of police services to the medical center portion of the grounds. Those entities have agreed to reimburse the city for costs associated taking on that service, and an interim agreement has been drafted to serve while working out further details of county grounds policing.

Mr. Kesner noted that a September 23, 2003, memo from Capt. Sutter outlines staffing options for providing service. Option #2, which seems to be the most favored and is the one recommended by the police department, would redefine existing squad areas to absorb the increased workload with existing patrol personnel. Staffing would be increased by one detective and one dispatcher., and the budget would also provide for some increased overtime that might be necessary. The MRMC entities have been apprised of an approximate cost of slightly over $300,000 per year for this option. The proposed Transitional Law Enforcement Services Funding Agreement states that those entities—Froedtert, Children's, Curative, the Blood Center, and the Medical College as well as independent entities of MRMC—will split the cost of those services until this agreement ends at the end of 2004. Mr. Kesner advised the committee of the option to move into closed session for further discussion given that negotiations with the county are still underway regarding other parts of the county grounds. He noted the presence of Linda Cutler and other MRMC representatives to respond to any questions.

Ald. Sullivan thanked Mr. Kesner for his work on this agreement. He said he is deeply concerned about taking on additional responsibility, especially at this time of serious budget crunch. Even with reasonable reimbursement, he felt that the city would lose the ability to maintain and control those services and we would be assigning ourselves a new realm of responsibility going forward. He also expressed concern that this is part and parcel of the county shifting its services and costs to municipalities, mostly Wauwatosa, and then saying they have a balanced budget and have a 0% increase. He acknowledged that this is a reasonable agreement on its terms but said that he will oppose it.

Mr. Kesner pointed out that this agreement doesn't have a set dollar amount but rather says the city will bill for the actual incremental cost of providing this service. The numbers cited are estimated incremental costs.

Ald. Becker asked if the committee would be voting specifically on option #2. Mr. Kesner said the agreement itself doesn't specifically commit to any one option, but #2 is what the police department recommends. Ald. Becker said he is concerned that response times to the rest of the city would be low under option #2. Why do we have to suffer, he asked; why not staff to the level the police department feels we should, even if the costs are then $500,000?

Capt. Sutter advised that discussion of some of the relevant issues may involve aspects of ongoing negotiations or deployment of police personnel, which may warrant a closed session

> Moved by Ald. Kopischke, seconded by Ald. Ecks to convene into closed session per Wis. Stat. 19.85(1)(e): Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session; with the option of reconvening in open session. Ayes: 8

The committee convened into closed session at 8:29 p.m.

The committee reconvened in open session at 8:59 p.m.

> Moved by Ald. Krol, seconded by Ald. Ecks to hold this matter for two weeks. Ayes: 8

**Proposed Ordinance – Smoke-Free Restaurants**

The committee reviewed a proposed ordinance creating Chapter 8.12 of the Code pertaining to smoke free restaurants. The Chair outlined the public comment process, stating that she would first call upon those in favor of the ordinance, then those opposed, and then would allow a spokesperson for those in favor to offer a final response.

Kathleen Barry, 608 N. 62nd Street, Coordinator of HART (Healthy Air for Restaurants in Tosa), asked for the committee's support of the proposed ordinance language that was reviewed at the previous meeting. She said that among the 30 organizations and businesses that have signed on in support of the ordinance are the American Heart Association, the Lung Association, a number of dentists, doctors, and PTAs, Tosa United, WAATCH, the Board of Health, and other health groups and churches. In the process of gathering support through petitions, phone calls, newspaper articles, and response cards, nearly 2,700 people have shown their support, including about 340 non-Wauwatosa residents who may work in or visit Wauwatosa to do business or dine. Protection is sought not only for restaurant patrons but also for people who work here. Research reports show that hospitality workers are exposed to 3 to 6 times the rate of secondhand smoke as someone with a smoker in the house.

Ms. Barry noted that the business of running a restaurant is highly regulated in areas ranging from food temperatures to employee hand washing. Given that tobacco smoke and secondhand smoke contain well over 3,000 chemicals, over 40 being carcinogens, she felt the city should act now to protect people who work at and visit restaurants. She noted that there is a long history of the government stepping in to protect workers from harmful substances, from sexual harassment, from underage employment, etc. Ms. Barry referred to a health department survey this spring that revealed that 87% of those surveyed do not smoke. Only 13% indicated they are smokers, which is less than the state average of 23% and national average of about 24%. Seventy-three per cent of those surveyed indicated that they would like totally smoke free restaurants in Wauwatosa. Change can be hard, she acknowledged, but HART can help. People will come to the restaurants more often or for the first time in years because they can breathe more easily. Those who smoke would have to hold off only for that time while in the establishment. Ms. Barry said the challenge is to step up to protect citizens, future constituents, people who work in the restaurants, and people who come to spend money in our restaurants.

Comments in Favor of Smoke Free Restaurants Ordinance

- Maureen Bruss, 12030 Meadow Court, an employee of Grandma's House in Wauwatosa, expressed concerns about children. Her son has described an asthma attack as similar to trying to breathe through a straw that someone has pinched.
- Kathy Franke, 610 N. 61st Street, related family history of cancer. She said smoking is a personal choice but she would feel safer to be smoke free.
- Jessica Thielke, 7436 Kenwood Avenue, said her job brings her into contact with smokers and those trying to quit. She works closely with educating children, young adults, and employees of the dangers of secondhand smoke. It is the third leading cause of preventable death in our country, and the EPA declared it a Class A carcinogen, meaning there is no safe level of exposure. It is the responsibility of city government to adequately protect public health, she stated.
- Diane Herman, 2223 N. 72nd Street, said she manages a small bio-tech business that produces wooden models for researchers. She displayed a model of DNA and explained the process leading to the mutation that causes lung cancer. She has asthma and the quality of her life has been severely impaired because of secondhand smoke. She and her family eat out in Wauwatosa almost every night, often with at least two adult children, but cannot go to restaurants that allow smoking. She objected to any amendment that would allow smoking later in the evening, stating that diners should not be exposed to smoke after 8 p.m. any more than unhealthy food preparation practices would be allowed after 8 p.m.
- Fred Kehoe, 5449 S. Sunny Slope Road, New Berlin, told of having had a laryngectomy and being unable to tolerate smoke. Smoking is not allowed in public places, and stores and restaurants should be in that same category for health reasons alone. .
- David Ahrens, research program manager at UW Comprehensive Cancer Center, Madison, said reducing exposure to direct or indirect tobacco smoke is a key method of cancer prevention, but the tobacco industry's position these days is that the harm to businesses is more serious than the known harm of smoke. When Madison passed the first state ordinance in 1993, many restaurants predicted a 25-30% decline in business, but a study five years later to address economic impact found a 24% revenue increase for Madison restaurants compared to a 19% increase in the rest of the state. Smokers, just like non-smokers go to restaurants to eat, not smoke; and the 80% that don't smoke are more comfortable and spend more. The number of restaurants in Madison has grown as well as employment—an increase of 1,200 employees in five years. Cities immediately adjacent passed smoke-free ordinances within a year of Madison's ordinance. A similar study in LaCrosse showed a 6% increase in revenue in the two years following adoption of the ban, which mirrored statewide revenue growth. Every major state and city has conducted similar studies with similar findings. The restaurant association and tobacco industry have not submitted a single report demonstrating their claim of fiscal harm. Environmental smoke is a serious health concern.
- Bryan Mowry, advocacy director for American Heart Association, Madison, spoke of the effect of smoke on the cardiovascular system. A person's right to smoke cannot and should not impede another's right to remain healthy Separating smokers does not protect non-smokers; even occasional exposure increases the risk for heart disease by 58%. He cited statistics relating tobacco smoke exposure to heart disease, increase in LDL cholesterol, risk of irregular heartbeat, or as a heart attack trigger. The effects appear to be cumulative and irreversible. He supported the strongest possible ordinance.
- Jill Gaertner, 6829 Terrace Court, reported that friends are enthused about the ordinance and would come to restaurants they have been avoiding because of smoky dining or waiting areas. The original ordinance language would be very good for the businesses in Wauwatosa, not only restaurants, in terms of bringing new customers from outside the city. She recalled a restaurant owner's comment that no one has complained to him about smoke and noted the adage that a customer with a complaint will tell 10 people about it. If you have a reputation as a smoky restaurant, you are losing business because of it, she said.
- Janet McMahon, 4144 Menomonee River Parkway, a health education and disease prevention professional, said one thing that remains constant is the significant risk that smoke poses to everyone's health. While we can teach young children about non-smoking and health risks, what they see and experience around them becomes more important. She endorsed the ordinance as a tremendous move for the image of the city and expressed hope that elected representatives would reflect the wisdom and knowledge of their constituents.

- Pat Ziperski, 2110 Swan Boulevard, said she and her large circle of friends often march right out of restaurants that are not smoke free. Restaurants that are concerned about a decline in business may be surprised to find their business increase. She supported previous statements and urged passage of the ordinance.
- Judith Firtzgerald Miller, 614 N. 77th Street, a member of the Board of Health and Senior Commission and a nurse, said that no one can dispute that smoking damages the health of the smoker and those in that environment. It is a leading cause of premature death and increased health care costs. Government controls have been key to increasing health and decreasing harm in other cities. Ms. Miller cited several articles on the effect of smoking bans on increased employment as well as statistics on health care costs. She said that one of the committee's most important responsibilities is to safeguard the citizens of this city.
- Donna Wininsky, 1728 N. Hi Mount Boulevard, Milwaukee, representing the Lung Association of Wisconsin, said there are 105,000 people in Milwaukee County with lung disease and about 5,000 in Wauwatosa, or about 11% of the city's population. If not considering the issue from a health point of view, it should be looked at from the viewpoint of personal rights—everyone has the right to breathe clean air. People who have difficulty breathing have the right to choose based on the merits of the school, job, or restaurant, not based on whether or not they may compromise their health. A person in a wheelchair would not be told to go to the restaurant down the street, but those who can't tolerate smoke are told to go somewhere else. Why turn away a potential market of 105,000 people—it makes no economic sense. Why talk about becoming an island but not about becoming an oasis; the economic door swings both ways. Twenty-seven per cent of all health care is related to tobacco use representing $3 billion in direct and indirect costs in Wisconsin and $4 billion in lost productivity. We all share in the economic burden.
- Lynn Morgan, 1727 Church Street, asked the opposite question: if smoking were not allowed, would you vote to allow it? Would restaurant workers be told to just get another job if people chose to smoke there? Would we decide smokers have a right to expose other people to a carcinogen? Would we say children have no choice? The situation we have now is a relic of the past, she said; we know that smoke kills
- Elizabeth Sanger, 6548 Washington Circle, a student an UW-Madison, told of working on the HART campaign this summer collecting petition signatures in favor of ordinance. The response was overwhelmingly positive from both residents and non-residents, affirming this was the right thing for Wauwatosa. She supports the original ordinance language. The health issue doesn't go away if a section with different ventilation is set aside for smokers.
- Jill Tiempe, 2121 N. 72nd Street, asked for consideration of the rights of those who can't be exposed to secondhand smoke without being affected. We have a right to clean indoor air, and that right is being violated.
- Elizabeth Stuberg, 523 N. 113th Street, strongly supported the ordinance. She felt there is a need to take it a step beyond what children learn in school.
- Susan Schoenmarklin, 130 N. 86th Street, said she has worked on tobacco control for about 14 years. All around the country proposals like this are met with claims violating fundamental rights. More fundamentally, the public should be free to breathe clean air. In response to comments that proponents use the same supporting data in all of these campaigns, she observed that the Wisconsin Restaurant Association's letter to the committee contained many of the talking points that are on the Philip Morris web site (copy provided). When WRA speaks, you hear the voice of Philip Morris. You can give all the examples of people who say they will go elsewhere, but in the long run you have to look at what actually happens.

The following individuals registered in favor of the proposed ordinance:

Janet Adams, 10323 W. Park Ridge Ave.
Maria Arvoy, 10637 W. Wisconsin Ave.
J. Mark Baker, 3433 N. 90th St., Milw.
Camille T. Bell, 3931A N. 92nd St., Milw.
Nicole Bickham, 2050 Ludington Ave.
Linda Brown, 828 N. 64th St.
Beth Brunner, 748 N. 113th St.
Steve Brunner, 748 N. 113th St.
Tari Bryan, 8805 W. Center St., Milw.
Molly Callahan, 1633 Church St.
Kay H. Claflin, 2002 Swan Blvd.
Caroline Conrad
Emma Christan
Todd Dinigan, 2429 N. 111th St.
Trish Dulka, 2040 N. 51st St., Milw.
Tana Feiner, 270 E. Highland Ave., Milw.
Robert Fewel, 1614 Ridge Ct.
Tyler Finlinson, 2568 N. 68th St.
Jason Flaid, 8359 W. Gridley Ave.
Kristin Franke, 257 N. 114th St.

Kurt Franke, 257 N. 114th St.
Joshua Haslem, 7930 Harwood Ave.
Tim Herman, 2223 N. 72nd St.
Cheryl Hokenson, 7440 Melrose Ave.
Ellen Krueger, 2587 N. Terrace Ave.
Suzanne Lent, 9010 Jackson Park Blvd.
Elaine Lewandowski, 2107 Ludington Ave.
Barbara Lynch, 8121 Stickney Ave.
Brian Matthews, 2478 N. 66th St.
Kristin Matthews, 2478 N. 66th St.
Jill McGuire, 3302 S. 86th St., Milw.
Elizabeth Miller, 2326 N. 70th St.
Joy Nolte, 9995 W. North Ave.
Spencer Rogers, 1503 Mower Ct.
Tyler Roberts, 3211 S. Landl Lane
Ron Rutowski, W302 S2679 Boettcher Ct., Waukesha
Lilo Sewell, 1025 Laurel Ct.
Thomas Shefchik, 2117 N. 70th St.
Dean Smith, 142 N. 86th St.
Shirley Smith, 142 N. 86th St.
Ann Terwilliger. 1025 Laurel Ct.
Linda Twelmeyer, 2231 N. 119th St.
Becky Veigel, 3172 N. 75th St., Milw.
Brian Vernon, 2414 N. 111th St.
Maria Zanoni, 962 N. 124th St.

Written comments in favor of the ordinance made by the above individuals included the following:

- Do not allow the ordinance to become watered down by the tavern league or anyone else.
- Since I choose not to smoke, I'd prefer not to breathe secondhand smoke.
- Wauwatosa is known for its family-focused atmosphere; this will improve what the city has to offer.
- Those who advocate letting people choose which restaurants to patronize fail to consider children who often have no such freedom.
- Over 1,000 Wisconsinites die each year as a result of secondhand smoke; it is vital that clean indoor air policies start being enacted.
- There are so many places that people with lung, heart, or breathing problems cannot go; smoking is proven to be harmful even if you don't smoke yourself.
- All employees deserve the right to work in a safe environment; it is the government's job to ensure that safety.
- I'm with the Waukesha County Tobacco-Free Coalition and Support this ordinance.
- Family frequently eats in local restaurants and strongly prefers a completely smoke-free atmosphere.
- The only place that people with allergies such as mine can go is establishments that are completely smoke-free.
- Lost my upper left lung from smoking and feel businesses would actually be helping smokers to break the habit and addiction.
- Tosa United's focus is keeping youth substance-abuse free & we are pleased that the ordinance not only protects children eating in Wauwatosa restaurants but also protects teens who may be working there. Also, removing adult smokers from the view of children avoids having children view smoking as socially acceptable.
- You have the right to change this; please do.
- Have stopped going to restaurants that allow smoking and would enjoy going back to them.
- The Bill of Rights makes no provisions for polluting indoor air. This is the future…let's get on with it!
- This will help get non-smokers into Wauwatosa restaurants; would be great to take the lead in Wisconsin.
- There is nothing worse than having cigarette smoke drift over in the midst of a meal.
- We would frequent more Wauwatosa restaurants if they were smoke-free.

Additional written comments in support of the ordinance were submitted by Chris Morgan and Shawn Koterki, two 7th grade students at Muskego's Bay Lane Middle School. E-mails were submitted on behalf of Emma Cristan, a Wauwatosa East student, who detailed the problems encountered by asthmatics when faced with secondhand smoke, and Todd Siefert, 1417 Martha Washington Drive, who advocated taking a lead in Wisconsin on this issue.

(The meeting recessed at 9:58 p.m. and reconvened at 10:08 p.m.)

Comments in Opposition to the Proposed Ordinance:

- Marija Madunic, 957 N. Glenview Avenue, spoke of operating with free choice in a free market. Her new restaurant has two dining rooms that are smoke free and separate from the lounge so that guests may choose the area in which to dine. Until you have made a million-dollar investment, it is easy to say what you think is best for someone else, she said. They chose Wauwatosa and built their restaurant as a destination location. They rely

on new patronage and on the patronage of those markets that will not have this restriction put on them. When you have businesses that don't just draw from this city, it has to remain a free, open market for all of us to compete in.

- Tom Warren, 3041 N. Mayfair Road, representing the Chamber of Commerce as well as himself, said the backbone of our community comes from the Chamber businesses that support this city. He read a September 30, 2003, letter from the Chamber to the Mayor and Common Council stating that the Chamber "*supports the right of business establishments, such as restaurants, to provide accommodations within their premises to meet the needs of the public. This process will allow consumers the right to make their own choices and give individual restaurants the ability to determine their own smoking policies.*" There are currently 17 bans in the state and every single one, including Madison, has a variance to allow smoking in a lounge connected to a restaurant. They also offered hardship variances. The Alioto family has put everything on the line, and you have no right to take that away, Mr. Warren said. They built up great relationships with customers over time, satisfying both smokers and non-smokers. The signatures gathered in Wauwatosa represent less than 3.5% of the residents determining the fate of the restaurant owner's investment
- Tim Capper, 6822 W. Wells Street, owner of Colonel Harts at 7342 W. State Street, said he has been told that his business, as a tavern, will never be included. He cited a statement by Kathy Barry as reported in the Express News: "We will not target taverns at this time but smoking knows no boundaries." He does not have faith that it will never affect taverns. His concern is incrementalism, whereby it starts with a little and then goes on and on. His physical or financial health is his own responsibility as a responsible citizen in a free society. There are times when people and groups with differing opinions must agree to disagree, and they must carry on in this society in a way that they respect each other's choice. As long as we as consumers and citizens are provided with the proper facts and proper information, we have a responsibility to make individual decisions and not always turn to government to make those decisions for us. He stated that he has a right to operate his business as he sees fit, and you have the right to refuse to do business with him. He asked: Why does someone's right to a smoke-free environment in a privately run business supersede the right of the business owner to conduct business so long as it is legal and so long as he forces no one to patronize the establishment?
- George Grbich, owner of Walter's on North, spoke of choices. He chose to get into the bar business. People choose where to eat. With 30-40 smoke-free restaurants in Wauwatosa, he said, you can choose to go somewhere else if my establishment is too smoky.
- George Glavas of Bluemound Gardens, 11703 W. Blue Mound Road, spoke of restaurant owners' investments. If you say guests cannot smoke, banquet and meeting business will be taken elsewhere, he believes.
- Angelo Alioto, 3041 N. Mayfair Road, said he has never believed in secondhand smoke. Alioto's has contributed $120,000 to cancer research and has given money to heart foundations and others, but he suggested that perhaps they weren't doing their job or we wouldn't have this trouble. Don't try to tell us how to run the business, he said.
- Michael Warren, 2650 N. 63rd Street, grandson of Angelo Alioto and possible third generation owner, said there are between 20 and 25 customers who smoke and come to their bar two to fives times a week for lunch, which is a large part of their everyday business. Those customers will not quit smoking; they will probably just go elsewhere. Nearby restaurants will benefit. Where will the compensation for my lost wages come from, he asked.
- Joe Bartolotta, 6005 W. Mountain Avenue, said he is in the middle of this issue. Both of his Wauwatosa restaurants are smoke free, but two other restaurants allow smoking at the bar but not in the dining room. It was his decision 10 years ago to make his restaurant non-smoking, and he believes the owners of businesses, who have gambled and invested everything they have, have a right to make decisions based on the market they serve. We will make decisions that benefit our business; it makes no sense to alienate customers.
- Richard Papke, 623 N. 79th Street, owner of two smoke-free restaurants in Wauwatosa that will remain smoke free, said he chooses to avoid restaurants that allow smoking. Aside from the freedom of choice issue, the best argument is how little effect the ordinance would have. Smoke-free restaurants are by far the majority here. Most restaurants that allow smoking are coffee shops or bars. The health effects of secondhand smoke have never been substantially proven. He cited comments on a "junk science" web site. He has suggested to HART that an education program would be easy to do and even volunteered to assist but was told that it wouldn't work. He commented that he has never heard of a restaurant employee that favors the ban. Mailings from HART did not present both sides of the issue. Someone has paid for this campaign, and if one penny my tax dollars went

for this, it is tantamount to promoting one candidate over another and therefore illegal. This uses taxpayer dollars and health department time and effort to solve a problem that doesn't exist. Put yourself in the shoes of someone who has mortgaged a house and run up debts, put everything on the line to run a business in a legal atmosphere they depended on. They have the right to make decision for themselves.

- Patrick Smith, 4047 N. 86th Street, Milwaukee, who has asthma and has worked at a Wauwatosa restaurant for six years, felt that people should continue to have the right to make choices.
- Karen Coman, 5643 N. 58th Street, said she has worked at a Wauwatosa restaurant that allows smoking since 1988, which has been her choice. If she felt it was a hazard to her health, she could work elsewhere. With all the information on secondhand smoke, perhaps restaurant owners may change their minds, but that should be their choice.
- Dawn LaFond, 8554 W. Villard Avenue, Milwaukee, a George Webb employee, said her husband has lung cancer and chose to smoke. Her children will still have the right to choose whether to smoke. We legalized smoking and we have that choice, right or wrong. Customers have a choice whether to come in or not, and people are respectful of others.
- Bonnie Goldstein, 8607 Glencoe Circle, said this is too much to be decided without the input of many Wauwatosa citizens. It is an issue of citizens' rights, freedoms and liberties. Public knowledge and awareness is limited. HART relied on a random telephone survey of 400 individuals, which is supposed to represent the entire population of Wauwatosa. What it really represents is 400 people's opinion. Eight-seven per cent, or 348 people, were non-smokers. The number who supported this ordinance dropped to 73%. Over 4,000 fliers were put in the News Times and Journal Sentinel in July. As of September 23, they have reportedly received 559 responses or 3.9%. Ms. Barry was quoted as saying that 2,700 people have said they support this ordinance. All these numbers represent less than 7% of the total population of this community. There should be a referendum on this issue in February or April when the cost would not be significant to answer the question of what everyone's choice is.
- Valentine Pritti, 11811 W. Blue Mound Road, a Days Inn employee, said Days Inn has almost 35% smoking rooms and gets 40% of its total turnover from those rooms. Two categories of guests ask about a restaurant—senior citizens and smokers. If restaurants become smoke free, they will lose those types of customers. He noted that no one speaking in favor of the ordinance was a restaurant owner. Twenty years ago there were no smoke free sections or smoke free restaurants. It was the restaurant owners who identified that need and created the smoke free sections, and they should be able to run their businesses and fill their customers' needs.
- Jayne Aliota, director of restaurant operations for George Webb, said she opposes the ordinance as a matter of principal. Government should stay out of telling businesses how to run. You have an obligation to support this ordinance only with solid evidence that it is necessary for the public welfare, she said. Proponents have made a variety of statements about supposed risks. The same claims can be found in press releases across the country, the same articles show up on the internet, and the information and statistics are similar to the proposal for smoke free restaurants in West Bend. Ms. Aliota disputed arguments presented by HART that secondhand smoke is a known cause of lung cancer and that secondhand smoke poses health risks for children and adults. An article in which the American Heart Association says an additional 62,000 nonsmokers die from heart disease caused by exposure to secondhand smoke contains no substantiating footnotes. In her research she found that the actual information reads "about *35,000* nonsmokers die from exposure to environmental tobacco smoke." If they are going to use data and statistics they have a responsibility to present accurate information. She noted other quoted statistics related to respiratory diseases and workers' health that she found are not documented or substantiated. George Webb's employees understand their work environment, know we accommodate both smokers and nonsmokers, and assume this risk by choice to work in this industry. HART says 'Tosa will be the 15th city in Wisconsin to pass a ban; but with 1,979 municipalities in the state, there are many more that have not considered or passed ordinances. The West Bend ordinance was defeated last October, and similar ones were defeated in Marshfield and Beloit. Bans have been overturned in court in some cases. It carries government intervention too far. Ms. Aliota was most concerned about basing a decision on inaccurate data. Take the time to do your own research into the statistics and the data provided, and also research economic hardships, she advised.
- David Stamm, 16945 Sanctuary Trail, Brookfield, president of the George Webb Corporation, told of a directive issued in 1998 that all restaurants should have clearly defined smoking areas. They also have implemented air cleaning systems that are very effective in reducing the amount of smoke in the restaurants and removing other airborne pollutants. He spoke of adverse economic impacts as detailed in published articles. Owners ended up

out of business, nearby towns without bans ended up with much of their business. He said he is vehemently opposed to government directing business policy decisions. Where does government responsibility end and ours begin.? He has over 200 signatures from customers who agree with their position. They patronize other businesses and participate in other activities here as well. Success or failure of a business is a very fragile dynamic. Government regulation should end where our ability to make responsible choices begins.

- James Sierszyn, 3262 S. 22nd Street, Milwaukee, a Wauwatosa George Webb employee, said he also patronizes other businesses here. He felt that parents should do the parenting, not the government. He thinks about where to eat because of a child with medical problems, but that is his job and responsibility. He also doesn't need government to tell him when he is at risk in working at a restaurant. He spoke of the economic impact on him and people like him who live day to day or week to week, counting on tips. A smoking ban would affect his ability to earn a living. It is not government's place to mandate choices for citizens engaging in an activity that is not illegal. Why should government ban that activity in some places and not in others?
- Helen Demopoulos, 10333 W. Grange Avenue, general manager of Milwaukee's Own Wood Grill (formerly Briscoe County), said there are currently 42 nonsmoking restaurants in Wauwatosa, which offers plenty of choices. Patrons she spoke with said they would leave this area and venture elsewhere to seek their smoking environment. She felt that business operators need to make their own decisions.
- S.K. Walecki, 10309 W. Villard Avenue, Milwaukee, an employee of the café in the Fairview building, said his income has decreased by 34% since the business has gone nonsmoking.
- Chris Leffler, 644 Honey Creek Parkway, said he is a nonsmoker who works in a smoking environment at his business, Leff's Lucky Town. When choosing a place to eat, he tries to avoid a smoky environment. He applauded the efforts of HART and said the effects of secondhand smoke cannot be denied. He asked for understanding of the efforts restaurants put into their business and making the right decisions for their own business. Clearly there is a need for smoke free restaurants and bars in Wauwatosa, but that is coming in the future. If he wanted to start something new, that might be an opportunity to take a risk.. This is not worth risking current businesses.
- Joe DeRosa, president of DeRosa Corporation, 7613 W. State Street, said his operation was probably the first to go non-smoking in all dining rooms about 13 years ago. The general manager of the Wauwatosa Chancery recently decided to go nonsmoking in the main bar also and allow smoking only in an adjacent room. He disputed facts that were cited and said that the restaurants that were affected by the smoking ban in Madison should have been surveyed and questioned. He applauded the grassroots efforts but noted that the petition people signed did not contain a copy of the proposed ordinance. He cited various studies and quoted articles relating to economic losses. We represent the livelihood of hundreds of employees. Why do we want clean air only in restaurants—how about bowling alleys, offices, etc. HART should put everyone in the state on an even keel. Look at the right data to see what happens. You have a duty to do some good solid research. Mr. DeRosa submitted a report entitled, "Evaluation of the Most Recent Ordinance Changes Regarding Smoking Restrictions in Restaurants" prepared by the Director of Environmental Health and Laboratories.

The following individuals registered in opposition to the proposed ordinance:

Tom Aldridge, 6108 W. Blue Mound Rd.
Brad Behrens, 145 Gilas St.
Middy Bloodroot, 6822 W. Wells St.
Angela Ethel, 2873 N. 51st St., Milw.
David J. Foci
Jennifer Foti, 15280 Turnberry Dr.
Nancy A. Foti, 2231 N. 61st St.
Sue Gomilla, 2541 N. Lake Dr., Milw.
Patti Haas, 1143A N. 44th St., Milw.
Michael Hackett, 7410 W. Blue Mound Rd.
Margaret Healy, 2320 N. 70th St.
Marissa Jablonski, 645 Crystal Ln., Elm Grove
Joe Janz, 2202 N. 69th St.
Brad Lux, Hector's, 7118 W. State St.
Chris Murphy, 7110 Cedar St.
Bill Poull, Club Tap, 8828 W. North Ave.
Sandra Pruitt, 4505 N. 101st St.
Paul V. Quinn, 436 S. 94th St., Milw. Co. Tavern League
Jon Walkup, 10425 W. North Ave.
Kiki Warren, 3041 N. Mayfair Rd.
Monica E. Warren, 2650 N. 63rd St.
Janet Woelffer, N66 W15406 Ravenway Dr.

Their comments are summarized as follows:

- The government should not tell a business owner how to run his business.
- If you don't like smoking, go elsewhere.
- I have a right to smoke in a smoking environment.
- Smoking or not smoking is a personal choice.
- You will hurt the restaurant business in Wauwatosa and its employees; will increase unemployment.
- There are options for those who dislike secondhand smoke.
- This legislation would put our business and employees at a competitive disadvantage.
- Employee health is a consideration when hiring as to whether the work environment is health enough.
- Make it a state-wide initiative, not Wauwatosa only.
- As a bartender, who will pay my bills when my customers go elsewhere?

A Milwaukee County Tavern League representative submitted petitions signed by approximately 600 bar/restaurant owners, patrons, and employees opposing the proposed ordinance.

Offered an opportunity for a final statement, Ms. Barry reiterated that this is a public health issue. She told the committee that it is their right and responsibility as elected officials to protect us and people who come to our city. She expressed appreciation for the time and investment of our restaurants, and said that this effort is not to hurt their business but to help people in Wauwatosa who have health concerns and are not able to enter the restaurants. She felt that restaurants would be amazed at how much their bottom lines would increase once people know there is no smoking in any Wauwatosa restaurants, not just fast food establishments or those connected with the mall. Look at this as public health issue and vote accordingly, she concluded.

(The meeting recessed at 11:38 p.m. and reconvened at 11:48 p.m.)

Ald. Sullivan thanked everyone for their heartfelt comments and said he has very legitimate concerns about health but also has a great deal of sympathy and understanding for the people in the restaurant industry. Commenting on the rhetoric involved, he noted that there was a comparison of the smoking ban to Communist China two weeks ago, and this week he received a Wisconsin Conservative Digest column comparing the ban to a Nazi. Some of the information has been called lies. We need to be reasonable here, he said. This isn't about rights; these legitimate concerns don't rise to the level of rights. He quoted from the September 12, 2003 memo of Assistant City Attorney Miller Carter addressing that issue: *"…such a ban does not violate equal protection or due process rights. The proposed ordinance would not be susceptible to constitutional challengers. Courts do not characterize smoking as a fundamental or constitutional right. Because it is not a right, to ban it does not violate the equal protection clause of the Fourteenth Amendment of the United States Constitution or the due process clause."*

Ald. Sullivan said the ordinance is right because it is about health, it is a reasonable restriction whose time has come and it will not hurt restaurants, it will protect employees, enhance the dining experience, limit future liabilities of business owners from actions taken against them by employees, and it will help to turn over tables. It has been said that it will cause diners to flee to other communities and will negatively impact our restaurants, but the Health Department's study revealed that only 7% said the won't go to a restaurant if they can't smoke. We don't want this to be an island but an oasis, he said, and the word should go out to welcome people to come here and dine.

Moved by Ald. Sullivan, seconded by Ald. Kopischke to recommend to Council adoption of the ordinance as written effective January 1, 2004 –

Ald. Kopischke thanked everyone for the passion and reasoning brought to this issue that was articulated so well on both sides. He indicated that he would make a further statement if this ordinance moves on to the Common Council next week.

Ald. Herzog said that if we lowered the speed limit here to 5 mph everywhere we would save lives, prevent injuries and save money connected with car accidents and lost work. We use limits, however, that take into account that the negatives do not outweigh the benefits of going faster. In the case of smoking, we have limits such as air exchangers and separate areas to prevent secondhand smoke from affecting patrons. He said that he would not deny that secondhand smoke is somewhat detrimental, but he felt that cause and effect are being mixed—how does it relate to someone three sections removed or in a completely different room? He said that he would propose three exceptions to the ordinance, the first being a hardship exception which he has heard exists in every other ordinance in the state. If the ban does not affect businesses here, it would never kick in. He commented that the correct question in the Madison situation should have been how much revenue would have increased if the smoking ban had not been place. The economy was strong then, he noted, but we are in a different economy now. He felt that the ordinance should include exceptions for a separate room with a door that closes it off and a separate ventilating system. Technology can solve this problem, not government intervention, which should be the last resort, if we have in place the kind of regulations we have for new buildings. He agreed that health considerations are an important factor when trying to come up with regulations, but he said it is not the only factor. There has to be consideration of the impact on the businesses. He said that he has to speak not only for the residents but also for the businesses in his district. Referring to concerns about setting a proper example for children, he commented that the same analogy could be made for drinking, but that is a legal product also. Regarding statistics that have been cited, he noted that California and New York have whole-state bans; other statistics were taken from Dane County and small suburbs. Wauwatosa is unique, he said, with the density of restaurants and so many surrounding communities.

> Moved by Ald. Herzog to amend the motion by adding an exemption that could take effect if restaurants lose 10% of their gross receipts --.

Ald. Kopischke felt that adding a time limit would be appropriate. The Madison exception applies if revenue decreases 10% during the first three months immediately following the effective date compared to the same three months in the preceding three years. Their exceptions expire in 2006. In some of the cities, exemption is available only in the first year. In Madison they expire in 2006. Ald. Herzog commented that it should be an ongoing process, but the Chair expressed problems with it being unending, feeling that there are many economic factors that could reduce income by 10%. She suggested a one-year limitation

> Ald. Herzog restated the amendment: to add a hardship exception that would permit those establishments that could prove a decrease in sales of 10% as compared to the same 3 months in the previous 3 years to claim hardship and be granted permission to allow smoking, with expiration of that hardship rule in one year –

Ald. Krol noted that Mr. Warren of Alioto's commented about other communities having certain exceptions and other items that were different than this. Is this ordinance unique as indicated by Mr. Warren? Is ours more restrictive than all other ordinances in Wisconsin or fairly on a par?

Mr. Kesner said that a lot of ordinances in other cities do have a number of exceptions such as hardship. As drafted, this ordinance is fairly limited in the number of exceptions compared to others in the state. There are different restrictions in different places. Madison, for example, doesn't just prohibit smoking in restaurants but in all public places, which includes elevators, retail stores, laundromats, etc.

Ald. Krol asked if there is any problem from a legal standpoint with targeting just restaurants or should we look at something more like Madison's. Mr. Kesner indicated that the Council would have to make that policy determination. The draft is based on the HART group's request. Legally there is no problem with just restaurants or all if you choose to go that far.

Ald. Herzog called the question, but Ald. Ecks objected to ending discussion.

Ald. Ecks commented that the amendment oversimplifies, since there could be a lot of causes for a 10% decline in receipts in one particular quarter. Ald. Kopischke agreed, and questioned what the one-year expiration refers to. Mr. Kesner clarified that application could be made after the first three months showing a 10% drop in receipts and get an exemption to the end of that calendar year. No further exemptions would be available after that point. It would be a temporary, one-time exemption, which is the way other ordinances have been written.

Ald. Treis observed that the committee has received materials that members haven't yet had a chance to read, there have been a lot of motions, and there may be other information that he has not yet seen. He felt that the committee should allow more time to get all the information together and then move forward.

Moved by Ald. Treis, seconded by Ald. Sullivan to hold the matter for two weeks – (Motion to hold supersedes motions on the floor.)

The Chair said that there would be no further public input at the next meeting; the matter would pick up at the point at which the committee is right now. The public could contact their alderpersons in the meantime, she noted. She indicated that she will be unable to attend the next meeting.

Ald. Sullivan suggested that it would be helpful to know of the other amendments that Ald. Herzog had planned to offer. Mr. Kesner suggested that anyone with proposed amendments in mind could get that information to him so that he could draft some suggested language for consideration by the committee. The draft amendments would not have to be disclosed prior to the meeting.

Alds. Treis and Sullivan amended the motion by holding the matter for four weeks (meeting of October 28) --

Ald. Ecks said that four weeks is too long to hold this item; he felt that discussion should proceed.

Vote on the motion to hold, Ayes: 7; Noes: 1 (Ecks)

The meeting adjourned at 12:25 a.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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