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COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, October 28, 2003

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

ALSO PRESENT: N. Welch, Community Dev. Dir.; A. Kesner, City Attorney; E. Miller Carter, Asst. City Atty.; N. Kreuser, Health Officer; L. Nielsen, Public Health Nurse Supv.

Ald. Heins in the Chair called the meeting to order at 8:02 p.m.

Amendments to Fair Housing Ordinance

The committee reviewed a proposed ordinance amending Chapters 15.22.101 (A) and 15.22.020 of the Code by adding familial status as a protected basis.

Moved by Ald. Kopischke, seconded by Ald. Ecks to recommend approval. Ayes: 8

Indoor Electric Go-Cart Tracks as Conditional Use in AA Light Manufacturing District

Ms. Welch outlined a request by Robert Lacourciere for a zoning code amendment to allow indoor electric go-car tracks as a Conditional Use in the AA Light Manufacturing District. She noted that the current prohibition on any type of go-cart was instituted at a time when the only option was outdoor tracks with gasoline powered engines that would produce a lot of odor and noise. Many of the objections to go-carts are eliminated with indoor tracks. By making this a Conditional Use, the Common Council will be able to review individual applications and place appropriate conditions. The Plan Commission recommended approval by a 4-1 vote.

Robert Lacourciere, 4665 Hastings Drive, Brookfield, said he has owned the property at 12132 W. Capitol Drive for a number of years and owned Mobile Shredding at that site for some years but recently sold it. Along with putting an indoor go-cart track there, he is considering a family entertainment center with activities for children and adults that may include rock climbing, batting cages, bumper cars, and other active features. He would tear down one area of the building to create a 28,000 square foot space for the track. He foresaw hours of operation of perhaps 7:30 or 8:00 a.m. to between 9 p.m. and midnight. With electric go-carts there would be no fuel storage, no explosive materials, and no noise, he said.

The Chair pointed out that only the zoning code amendment is under consideration at this time. The proposed use at a particular site would require separate action.

Ald. Matthews urged support of an ordinance change to allow for indoor go-carts in order to update the code and reflect changing technology. Regardless of where they are sited, she said, indoor electric go-cart tracks don't have the objectionable elements that an outdoor facility would have.

> Moved by Ald. Treis, seconded by Ald. Kopischke to recommend approval [introduction of an ordinance implementing the requested change and adoption of a resolution setting a public hearing date] –

Ald. Kopischke reiterated that the matter before the committee is an ordinance change and not a particular project. He felt that this is a good use for the AA Light Manufacturing District.

> Vote on the motion, Ayes: 8

Proposed Ordinance – Smoke-Free Restaurants

Prior to opening discussion of the proposed ordinance creating Chapter 8.12 of the Code pertaining to smoke free restaurants, the Chair announced that this committee has not discussed this matter together in any way since the last meeting on this issue on September 30th. She outlined the reasons why the committee itself would discuss the issue without public comment tonight, although the public may register in support or opposition and provide written comments. She noted that there were 17 speakers in favor of the ordinance and 45 others who registered in favor at the previous meeting. There were 21 speakers who opposed the ordinance and 22 others who registered in opposition. She assured everyone that the committee has listened well to arguments on both sides of the issue and has read the messages they have received. Also, the committee packet received on Friday contains the complete minutes of the September 30th meeting on this subject as well as copies of communications relating to that meeting.

The Chair noted that the city's health officer, Dr. Kreuser, provided the committee with a memo clarifying some of the source credibility of items previously cited. Dr. Kreuser referred to questions regarding the sample size used in the Wauwatosa Community Assessment Survey and provided background information that indicates the sample size was appropriate. In addition, a letter from Dr. Tommye Schneider, Director of Environmental Health & Laboratories, Madison Department of Public Health, also clarified information regarding the Madison smoke free restaurants ordinance. Committee members have also received many e-mails and phone calls and personal letters as well as letters from the George Webb Corporation, the president of the Milwaukee County Tavern League, owners of several restaurants, HART, and from Attorney John Fuchs on behalf of several restaurant owners. The committee received still more letters tonight.

The Chair further stated that this committee understands fully and takes very seriously their responsibility to guard the health and welfare of the citizens. They take equally seriously their responsibility to businesses to provide a business climate that is conducive to success. They appreciate the contributions that those in opposition have made to the city, not just in the area of providing good food and places to take friends and neighbors but also the volunteer hours and financial contributions to many organizations in the city. The committee's discussion in no way indicates a lack of appreciation for the role you have played in our community, she stated.

The Chair noted that the September 30th meeting ended with some confusion and a variety of proposed amendments, none of which were still alive when the meeting ended. **The motion by Ald. Sullivan, with a second by Ald. Kopischke to recommend adoption of the proposed ordinance is the point to which**

we return tonight. To provide some structure before taking any amendments to that motion, the Chair asked the City Attorney to first review the proposed ordinance section by section.

City Attorney Kesner proceeded to review each section of the proposed ordinance and respond to questions and comments. He noted that the proposed ordinance is based on a draft presented by HART.

8.12.010 Findings and Purpose: This section cites statistics and studies, copies of which have been provided or are available in a binder and notebooks in the City Clerk's office. It is an important part since there have to be reasons for enacting a new ordinance in order to uphold contestability.

8.12.020 Definitions: This is where a number of factors such as the fact that taverns are excluded and the 50% alcohol exemption are addressed. Some changes could come in definitions that would affect the rest of the ordinance. In response to a question about employee break rooms, Mr. Kesner indicated that if the room is within the premises it may very well be covered by the ordinance. Regarding service bars, he said that there does not seem to be a separate requirement for walls and doors. Madison's new ordinance does allow a separately ventilated lounge with full walls and separate doors; some there are being grandfathered until January 2006.

8.12.030 Prohibition of Smoking in Restaurants: In response to further discussion about Madison's regulations, Mr. Kesner referred to a handout from Ald. Herzog outlining their restrictions under various situations. He noted that smoking Madison allows smoking in full service bar areas of restaurants with alcohol sales less than 33% until January 2, 2005 and in full service bar areas of restaurants with alcohol sales between 33-50% until January 2, 2006.

8.12.040 Exception: Taverns are exempt from the ordinance based on a written audited statement from an independent, licensed CPA confirming that gross sales of alcohol beverages during the 12 months prior to the effective date of this ordinance exceeded 50% of the total gross sales during that same period. Mr. Kesner clarified that the statement does not have to cite actual audited figures, and he will work on making that clearer in the final draft since that has been a concern of restaurant owners. Any information that is submitted can be kept confidential if the Council so chooses. The information would be required on an annual basis to maintain the exemption. Ald. Kopischke suggested using the term "certification" rather than "audited statement."

8.12.050 Declaration of Restaurant or Tavern as Smoke Free: Any restaurant or tavern not otherwise covered by the ordinance that wishes to declare itself smoke free can make itself subject to the ordinance.

8.12.060 Posting of Signs: Signs must be posted as specified indicating that the establishment is smoke free. The signs must contain phone numbers for the police and health departments. Mr. Kesner said that, in his experience, it is almost always the business owner's responsibility to provide the signs in a specific format. Sometimes signs are provided by the city at a charge. Ald. Krol reported that the George Webb Corporation has expressed some concern about signs conflicting with point-of-sale advertising throughout the store. He felt that the requirement for placement in prominent locations throughout the establishment is somewhat nebulous and non-specific. Ald. Ecks suggested coming up with a requirement based on square footage to better define the requirement.

8.12.070 Enforcement: Owners, operators, and employees must inform the person in violation of the non-smoking provision and request that person to refrain from doing so or request the person to leave. Also, ashtrays, cigarette vending machines, and other smoking paraphernalia must be removed from any area where smoking is prohibited. The health officer and police department are responsible for enforcement. Provisions of the ordinance shall be provided to all restaurant license applicants. The health, police, or fire departments have the power to inspect for compliance and may issue a citation, summons, or complaint.

8.12.080 No Retaliation: This section prohibits retaliation in any manner against any person or patron who exercises any right to a smoke-free environment as established under the ordinance.

8.12.090 Violations and Penalties, Appeal: A person who smokes in an area where smoking is prohibited or a person who manages, operates, owns, or otherwise controls use of such an establishment is subject to penalties outlined in this section. Appeal rights are similar to that for other ordinance violations. In response to a query about whether the proposed fines are consistent with those of other communities, Assistant City Attorney Miller Carters said that most have a flat fine of about $100 as opposed to the staggered fines in this ordinance.

8.12.100 Other Applicable Laws: This ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

8.12.110 Severability: If parts of the ordinance are found to be invalid, such invalidity shall not affect other provisions of the ordinance.

8.12.120 Effective Date: As amended from the original draft, the ordinance would be effective on and after January 1, 2004. Ald. Krol was concerned that licenses expire annually on June 30th and that the regulations and requirements upon which they were granted should not be changed midway through that license period. Mr. Kesner said that it is not unusual for a licensed facility to have changes throughout the year. When the drinking age was changed, it became effective at different times that were not based upon the license year. Or if, for example, there was a new health regulation relating to food temperature, that could become effective during the license year.

Referring back to the Exception section, Ald. Herzog noted that taverns would have to put forth their certification/statement not later than 30 days after enactment of the ordinance, although subsequent reports are required no later than June 30 of each year. He felt that July 1st would be a better starting point in order to be consistent. That section also touches upon making the initial determination when someone starts a new business or remodels an existing one. As proposed, it appears that a restaurant that closes down and becomes a tavern according to the new owner could have smoking for at least three months. Mr. Kesner said that the new establishment would have to provide certification based on the first three months of business and could not allow smoking during that time. This would apply to any new tavern that also has a restaurant license. That may not be the desired effect, but it is not specifically addressed in this draft.

Ald. Herzog questioned why restaurants would be prohibited from selling cigarettes from vending machines. The machines don't infringe on anyone else's rights, he felt. Mr. Kesner noted that his office did not draft the original structure of this ordinance as it was requested by HART, but it is his understanding that that requirement is part of the bigger non-smoking picture. Ald. Sullivan added that it is related to the direct health benefit in reducing the overall amount of exposure to smoke of people who dine or work in that environment and also to decreasing the normalization of tobacco use. Ald. Becker noted that many establishments have removed cigarette vending machines to eliminate access by minors.

In response to questions about the Madison ordinance, Mr. Kesner said that it is a complicated ordinance that in general is titled "smoking prohibited in certain areas." It defines quite a number of places where smoking is prohibited along with specific provisions and regulations regarding the restaurant industry. Regarding bowling alleys in Madison, Susan Schoenmarklin, 130 N. 86th Street, a member of the public who works in the tobacco control field, responded that the question has been somewhat up in the air; Madison 's city attorney has been interpreting the ordinance to say that they are not included in the no smoking requirement.

Ald. Herzog referred to his handout entitled "Proposed Amendments to Smoking Ban," which also includes a summary of smoking bans in other municipalities and a summary of Madison's smoking ordinance. The first amendment he proposed was clarification of the term "restaurants."

> Moved by Ald. Herzog, seconded by Ald. Krol to amend the motion recommending adoption of the ordinance by adding an exception to clarify the definition of restaurants by specifically excluding private clubs, bowling alleys, hotels, churches, religious, fraternal or patriotic organization that prepare and serve or sell meals to members and guests only, and bed and breakfast establishments –

Ald. Sullivan spoke in opposition to the amendment. He agreed that the intent of the ordinance is not necessarily to ban smoking at bowling alleys, but based on the public health rationale on which he has seen some consensus, he felt that none of the other groups should be exempt from the ban.

Ald. Krol said he supports smoke-free environments in general but doesn't want Wauwatosa to have an ordinance that is more restrictive than most others in the state and also does not want something that would be open to constant debate. He felt that clarification of the restaurant definition would be a good start. The Madison Department of Public Health letter urged being specific enough initially to minimize the need for clarification.

Ald. Ecks said it seems to make sense to prohibit smoking in settings where there might be a massive number of people and the possibility of smoking being offensive is relatively high. A bed and breakfast establishment seems to be too small in that sense, he said, and shouldn't be micro-managed.

The Chair was concerned about expanding the spirit of the ordinance. The issue of bowling alleys was not originally the intent of the HART group, she noted. The spirit of the amendment is to more specifically define what is included and excluded.

Ald. Herzog said that Janesville has 10 exceptions, including bed and breakfasts, and they also specifically exclude concession stands. A bed and breakfast is mainly a home where rooms are rented and breakfast is served, and he felt that the ordinance should not state that a person can't smoke in their own home. He noted that Bluemound Country Club is mainly a golf course but also has a building with a restaurant (where they currently do not allow smoking), and a bar, locker rooms, showers, etc. As it stands, this ordinance says that there is no smoking anywhere in a building where there is a restaurant. Their dining room is far distant from the men's locker room where they have set aside a place for men to play cards, but the ordinance would ban smoking there. The intent of the ordinance was toward the general public, and the general public is not in a private club.

Ald. Kopischke noted that there is some value in clarifying the language in that the excepted establishments would then be exempt from certifying their food/alcohol ratios.

The Chair asked for clarification on hotels. Ald. Herzog said that under the ordinance, no one could smoke anywhere in a hotel that holds a restaurant license, even in their designated smoking guest rooms. The Chair noted that the intent is to control smoking in the restaurant area but we may be taking it to all public buildings very quickly because of the wording. Mr. Kesner said that a restaurant is defined as "any building or location where meals are prepared or served or sold to patrons or the general public." Perhaps a change in terminology could clarify that the rest of a hotel or country club is not included in the definition, he suggested. Ald. Herzog indicated that his intent is to clarify the policy and agreed that other language could be developed prior to presenting the ordinance to Council.

In ensuing discussion, Ald. Sullivan indicated that he doesn't want to make an exception for a private club but sees the reasoning when other facilities are distant from the dining room or in a hotel where guest rooms are far removed from meal preparation. He suggested consideration of language referencing a building or establishment where the primary purpose is serving of food, which would also be in keeping with the 50% requirement for taverns.

> With consent of the second, Ald. Herzog amended the motion by removing hotels and bed and breakfast establishments from the list of exceptions –

In further discussion, Ald. Krol pointed out that Bluemound Country Club does restrict smoking in their dining area. Other parts of their building are really not accessible to the public. Ald. Kopischke was concerned with creating a loophole and felt the definition should prevent someone from declaring a restaurant to be a private club. Ald. Sullivan favored naming Bluemound Country Club specifically and also including bowling alleys, hotels, and churches, but he saw the other proposed exceptions as potentially problematic and broad. The Chair urged considering the spirit of the amendment and leaving language in the City Attorney's hands, taking into account all of the comments that have been made. Ald. Krol opposed naming a specific establishment such as Bluemound Country Club, since a name or ownership could change. Ald. Kopischke suggested adding a "grandfather" clause for private clubs that exist as of a particular date.

> With consent of the second, Ald. Herzog further amended the motion to add the word "existing" before "private clubs" –

Ald. Ecks suggested looking at all the private clubs, noting that others may be amenable to opening a restaurant at some time.

Mr. Kesner reported that LaCrosse County's definition of a private club says that when it is open to the public it does not meet the definition of a private club, which is another way this could be addressed.

> With consent of the second, Ald. Herzog further amended the motion to approve language to be developed by the City Attorney that would except establishments that serve food but are generally not open to the public.
>
> Vote on the motion as amended, Ayes: 7; Noes: 1 (Sullivan)

(The meeting recessed at 9:33 p.m. and reconvened at 9:40 p.m.)

Addressing the question of <u>hotels and banquet halls</u>, Ald. Herzog indicated that he believes the intent of the ordinance is to ban smoking in the restaurant portion of hotels. He felt that intent should be better defined. He also does not want room service to be considered a portion of a restaurant.

> Moved by Ald. Herzog, seconded by Ald. Kopischke to direct the City Attorney to draft language to clarify that the intent is to ban smoking only in the restaurant portion of hotels and not in other portions of the hotel or in hotel banquet rooms –

Ald. Kopischke said that he fully supports the motion with regard to hotel rooms but is uncertain about the banquet room portion. Ald. Becker questioned the difference between banquet rooms in hotels and those in restaurants. Ald. Herzog said the exception would be for a separate hall functions somewhere in between serving the general public and being a private club. He would like to address this for now as it relates to hotels.

With consent of the second, Ald. Herzog amended the motion by removing banquet rooms from the language –

Vote on the motion as amended, Ayes: 8

Next addressing hardship exceptions, Ald. Herzog referred to the spreadsheet he submitted that details smoking bans in other Wisconsin municipalities. He pointed out that all but 3 of the 14 listed have hardship exceptions, some specifying a 10% decrease in the first three months and others requiring 15% decrease in the first 3 months or any decrease in the first 6 months, 15% in the first 6 months, or 15% in the first 12 months. The period of exemption ranges from 1 to 5 years, although LaCrosse County has an indefinite term.

Moved by Ald. Herzog, seconded by Ald. Becker to amend the motion recommending approval of the ordinance by adding a provision for a one-time 2 year exemption for businesses having a 10% decrease in gross sales in the first 3months following enactment of the ordinance or any decrease for a period of not less than 6 months resulting from complying with the provisions of the ordinance, both as compared with the same period of time in the previous year, with the onus being on the restaurant to show that they qualify, and further requiring a warning sign to indicate that smoking is permitted if such exemption is granted by the Common Council –

Ald. Sullivan supported the fact that the exemption is for a maximum of two years, it is a one-time exemption, and that Common Council approval is required, but he felt that the action is premature. He said that everything seems to indicate that sales go up following enactment of a smoking ban. New York restaurants saw about a 29% increase in sales when a citywide ban was enacted. He felt that the question of hardship could be addressed once the impact of the ordinance is determined. He was uncomfortable with the city being the guarantor of a restaurant's continued sales level but indicated willingness to consider a hardship exemption down the road if needed.

Ald. Kopischke said some communities have reported some restaurants see some initial downturn and then an increase. He recommended keeping the first two months out of the look-back period entirely; otherwise, he felt the language is too broad. Ald. Becker felt there should be a sunset clause on the hardship exemption and it should be addressed again in a year or two to see if it is being addressed correctly. He observed that a lot of the issues will need to be readdressed because we don't know exactly what is going to happen and we may run into problems that other communities have not experienced.

With consent of the second, Ald. Herzog amended the motion by adding that any financial documentation or any reports with financial information provided by a restaurant would be treated as confidential and would not be open to the public –

Ald. Herzog explained that financial information would not specifically be required, but the burden would be on the restaurant to provide appropriate information to enable the Common Council to make a decision.

Ald. Ecks felt that this is contrary to the intent of the legislation. There could easily be a 10% drop in the first three months for reasons that have nothing to do with provisions of this ordinance. Causation is not so easily proven, he said. He also noted that this is a rather poor time in the business cycle in terms of people

spending money freely, but people may point to the ordinance as the cause for their business downturn, which is not provable.

In response to questions by Ald. Kopischke, Ald. Herzog confirmed that the provision regarding the first three months applies to any 10% loss but the six-month provision requires demonstrating that the loss is a result of compliance with provisions of the ordinance. He also confirmed that no restaurant would be allowed to have smoking 2 ½ years after passage of the ordinance since the two conditions would have to be from the onset of the ordinance. It is actually a self-sunsetting provision, he said.

The Chair was concerned about determining causation and also was uncomfortable with the provision regarding decrease in the first three months, suggesting that six months may be more appropriate.

> Roll call vote on the motion as amended, Ayes: 4; Noes: 4 (Ecks, Kopischke, Sullivan, Heins) Motion fails.

Ald. Herzog next proposed a <u>separate room exception</u> for rooms within a restaurant that are separately ventilated and have negative air pressure.

> Moved by Ald. Herzog, seconded by Ald. Krol to amend the motion recommending approval of the ordinance by adding an exception for a separately ventilated room designated by the restaurant as a smoking room, such room being completely enclosed with walls, a floor and ceiling, except for openings for light, egress, ingress, ventilation, that is ventilated in such a manner as to prevent any smoke from leaving that area and traveling to the non-smoking areas by using negative air pressure in the designated smoking area –

Ald. Becker sought clarification of the type of room this might cover. Ald. Herzog said it could be a bar room such as the Chancery's bar that is separate from their dining area and regular restaurant bar. He said that all but one of the 14 Wisconsin municipalities with non-smoking ordinances have this exception. Middleton doesn't have it but has a 33% standard for the alcohol exception and they have a full-service bar exception. A restaurant may or may not serve alcohol in this separately ventilated room.

Ald. Krol commented that this provision may apply to a room similar to one he has seen at the state department of administration in Madison where they have a cafeteria/restaurant on the main floor and also have a separate, glass-enclosed smoking room. He has never had any problems with ventilation or smoking odors when eating there. He suggested allowing restaurants that may have a separate room a certain period of time to convert to a negative air pressure environment, which could take some time.

Ald. Sullivan argued that by establishing this exception we would not only cause restaurants to spend a great deal of money to create this environment but it also gets around the whole point of the ordinance, which is that this is a public health concern. Ald. Kopischke said he is not totally opposed a separate smoking room within the same building. He felt that there should be a requirement for a self-closing door that could not be propped open, and it probably should not directly open onto a non-smoking dining area. The Chair noted previous concerns that have been voiced about wait staff or servers in situations like this. She cautioned against holding a carrot out to restaurant owners and perhaps encouraging them to spend big money in creating a separate ventilation system that they may see as a way around the ban only to find out that there is a broader ordinance somewhere down the road. Ald. Krol reiterated that he doesn't want our ordinance to be the most restrictive in the state. He felt that if this is done in a state office building, something similar here meeting the same standards should be permitted.

Referring to the Chair's remark about creating a "carrot" only to have it become moot, Ald. Ecks said that this proposal seems to be part of a much larger cultural movement and things will be more restrictive in a few years.

> Roll call vote on the motion, Ayes: 4; Noes: 4 (Ecks, Kopischke, Sullivan, Heins) Motion fails.

Turning to a full-service bar exception, Ald. Herzog said that all 14 of the 14 Wisconsin municipalities with non-smoking ordinance have passed such an exception.

> Moved by Ald. Herzog, seconded by Ald. Becker to amend the motion recommending adoption of the ordinance by adding an exception for full service bar areas, meaning a counter-like object accessory seating for customers over which fermented malt beverages or intoxicating liquors are sold for consumption on the premises, and the area immediately adjacent to it in which the service of food is incidental to the consumption of alcoholic beverages –

Ald. Kopischke said that this seems to most blatantly subvert the intent of the ordinance. There would be clear seepage of smoke into adjacent dining areas, he felt.

Ald. Becker reported that callers he spoke with who opposed smoking in restaurants were not opposed to smoking in bars or lounges when asked that question. The majority of people in this community just want smoke-free restaurants. The rights of smokers, non-smokers, and restaurant owners have to be balanced, he said. He would like to have smoke free restaurants, he added, but he has no objection to someone who is with him going into the bar to smoke. He favored a state law that would make economic terms equal for everyone.

Ald. Ecks said we are trying to be balanced on this matter. He indicated that he could support the amendment if this is a totally adults-only environment where no child would be seated or working. He was concerned about situations where middle-teenagers can sit in the smoking section or work there without being challenged. We have a duty to make the environment for our kids as safe as possible, he said.

Ald. Sullivan said that if any of the amendments would blow a hole right through the ordinance it would be this one, because there are a lot of full service bars in Wauwatosa restaurants. If the hazard is smoking, it affects you no less as an employee in the bar than on the dining floor and it affects patrons as well.

Ald. Krol said he agrees with many of the comments on both sides but also feels that achieving a balance is important. We should consider both the health and the business aspects, he said, noting that 14 out of 14 Wisconsin communities have this exception. Many of the restaurants with full service bars are really two businesses in one—a bar business and an eating establishment—with people coming there for both reasons. He suggested having some demarcation with doors that close to provide some division between the restaurant and bar. Youth are generally not permitted in a full service bar unless under the supervision of a parent, he said. Although there are exceptions, we cannot worry about covering every single situation. The ordinance can be amended further in the future.

There was further discussion and comments regarding young people working in full service bars. Ald. Ecks reiterated his concern about making this an adults-only environment. He said that he has found Ald. information indicating a very high probability that kids working in these environments are damaging themselves. Ald. Krol commented that we have to start somewhere and this would be a good compromise

that is also respective of the business owners who have established two businesses in one location. This should be viewed as a way of reaching the majority of the occupants of this type of facility, he argued.

The Chair said she is concerned about health here where we are not talking about separate ventilation, negative air pressure, or even walls and doors. She reported receiving many phone calls encouraging her to include bars and taverns in the ban. Many advocate a stiffer policy, she noted.

> Roll call vote on the motion, Ayes: 4; Noes: 4 (Ecks, Kopischke, Sullivan, Heins) Motion fails.

Ald. Herzog next proposed an <u>exception for private function rooms</u>. This would include separate rooms such as those at Alioto's and also banquet rooms that are part of a hotel, he indicated.

> Moved by Ald. Herzog, seconded by Ald. Becker to amend the motion recommending approval of the ordinance by adding an exception for rooms or areas in restaurants or other establishments used for private functions such as weddings, anniversaries, parties, receptions, and other private events if said rooms or areas re separate from the public dining areas –
>
> It was moved by Ald. Becker to forward the entire matter to the Common Council for review by the full body.
> (Motion to forward takes precedence over prior motion.)

The Chair said that the arguments presented both for and against tonight would give insight to the committee's colleagues. Just because a tie vote occurs does not mean that discussion was a waste of time, she commented.

> Motion to forward to Council fails for lack of a second.

Ald. Kopischke suggested incorporating some of the language from the separate room exception discussed earlier as it relates to a non-contiguous area or at least an area in which a door doesn't open into a dining area. Ald. Krol pointed out that minors are more likely to be working in or moving through an area like this than in a full service bar.

Ald. Sullivan opposed this amendment. He said that everyone attending a wedding would want to be exposed to smoking nor would someone attending some type of work function or meeting. There is also a greater likelihood of exposure of minors who are working at or attending a function. If based on public health impact, there is a greater impact with this amendment than with the bar exception, he said.

Ald. Ecks wondered about enforcement and if there should ever be an enforcement attempt at a really large private function in a private room. He commented that this exception would apply to occasional functions; wait staff is unlikely to be there four nights a week.

The Chair said that her concern with this exception is lack of a separate ventilation system. She expressed concern about public health and said she is convinced that separate rooms do not eliminate the carcinogens and other dangerous elements. She commented that if you pass an ordinance, you find a way to enforce it.

Ald. Sullivan said he would expect people to observe the no smoking sign in a banquet hall. He spoke of large gatherings of people who make up the general public, some of whom may be required to be there for work or social reasons and have not consented to exposure to smoking.

Roll call vote on the motion, Ayes: 2 (Becker, Herzog); Noes: 6
Motion fails.

Ald. Herzog commented that everyone wants to protect the patrons, workers, and children, yet no one has talked about taverns where kids can go with adults and 18 year olds are allowed to work.

Moved by Ald. Herzog to amend the motion to recommend approval of the ordinance by removing the taverns exception, thereby including taverns in the no smoking ban – Motion fails for lack of a second.

Ald. Herzog proposed a change in reporting requirements for taverns to every two years, thereby taking some of the burden off of the Clerk's office in reviewing the reports and off the taverns in hiring a CPA every year.

Moved by Ald. Herzog, seconded by Ald. Sullivan to amend to motion recommending approval of the ordinance by changing reporting for taverns to every other year with half of the taverns reporting in odd years and the other half reporting in even years; and making tavern reports confidential and not open to the public.

Ald. Kopischke noted that it has been stated that the requirement would be for a CPA's statement that the books have been audited and the percentage of alcohol sales has been found to be greater than 50%. Mr. Kesner confirmed that intention but said that some people may have a broader interpretation and submit more detailed reports, in which case the reports could be withheld from public release.

Vote on the motion, Ayes: 8

Ald. Ecks called the question on the amended ordinance. Ald. Kopischke objected, however, suggesting that it may be appropriate to bring this back in two weeks to review some of the options that have arisen before sending this on. He asked the City Attorney to draft something for discussion that is somewhat stricter than the separate room exception proposed by Ald. Herzog. It should include provision for a self-closing door that can't be propped open, and the area should not open directly onto or be continuous to the dining area.

The Chair noted that the ordinance has a January 1, 2004 implementation date that still stands at this time. Ald. Sullivan said there is sure to be continued discussion of this at the Council level, and language can still be changed then. It is incumbent on this committee to move it along and take action tonight, he argued. Ald. Krol favored holding the matter in committee rather than using the Council floor to discuss it.

Moved by Ald. Krol, seconded by Ald. Kopischke to hold this matter in committee pending revisions to the draft ordinance by the City Attorney –

The Chair supported the motion, reminding committee members that the budget hearing, which could be quite lengthy, is scheduled for the next Council meeting. Ald. Sullivan spoke strongly in favor of moving the matter on to Council. Making changes on the Council floor is part of the process, he said. He noted that there is some unanimity on different language. Ald. Kopischke said it is appropriate for this committee to take its time and do its work so things are fleshed out for Council consideration. Ald. Ecks opposed holding the matter, noting that the Council is free to refer it back to the committee. Ald. Krol said that the committee has not yet really reached consensus; no amendments of any significance have advanced. He reiterated his concerns about not having the most restrictive ordinance.

Ald. Kopischke said the budget hearing at the next Council meeting would be followed by the Council's vote on the budget at the November 18th meeting. He decided, therefore, to reverse his position on holding the matter in committee.

Roll call vote on the motion to hold, Ayes: 4; Noes: 4
Motion fails.

Ald. Ecks called the question. There were no objections.

Roll call vote on the recommendation to adopt the proposed ordinance, as amended, Ayes: 4; Noes: 4 (Becker, Herzog, Krol, Treis)
Motion fails.

Moved by Ald. Ecks, seconded by Ald. Kopischke to moved the matter forward to Council without recommendation.
Roll call vote, Ayes: 4; Noes: 4 (Becker, Herzog, Krol, Treis)
Motion fails.

Mr. Kesner advised the committee that, by tradition, the 4-4 vote would move the matter to Council without recommendation.

The following individuals turned in registration/comment sheets in favor of the proposed ordinance: Kathy Barry, 608 N. 62nd St.; Barbara Lynch. 8121 Stickney Ave.; Jessica Thieleke, 7436 Kenwood Ave.; Jill Trempe, 2121 N. 72nd St.; Maria Zanoni, 962 N. 124th St.. Their comments emphasized that this is a health issue and reflected concerns about the right of both customers and employees to breathe clean air.

The following individuals turned in registration/comment sheets in opposition to the proposed ordinance: Atty. John F. Fuchs, 620 N. Mayfair Rd., representing various local owners and operators; Bradley J. Lux, 1573 N. 119th St.; June Verette, 308 N. 110th St.; Terry P. Wolfe, 7839 W. North Ave. Comments included the following: "A restaurant should be able to accommodate everyone." "I can only hope that no money or city resources will be used to legislate a lifestyle. Cigarette smoking is legal and no money should be spent to police a legal substance. Budgets are tight; let's spend our money wisely!"

The meeting adjourned at 11:10 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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