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COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, November 11, 2003

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

ALSO PRESENT: N. Welch, Community Dev. Dir.; A. Kesner, City Atty.; B. Weber, Police Chief; N. Kreuser, Health Officer; L. Nielsen, Public Health Nurse Supv.

Ald. Heins in the Chair called the meeting to order at 8:04 p.m.

Proposed Zoning Code Amendment – Indoor Electric Go-Cart Tracks

Proposed ordinance amending Section 24.34.020 of the Code to allow indoor electric go-cart tracks as a Conditional Use and Section 24.34.030 specifying outdoor go-cart tracks as a prohibited use in the AA Light Manufacturing District. Ms. Welch noted that this ordinance merely amends the zoning code to allow indoor tracks. A request for a specific use at a specific location would be a separate matter that would have to go through the Conditional Use process. With a public hearing on the zoning code amendment scheduled for December 2, she indicated that the committee may act tonight on a recommendation regarding adoption or may choose to wait until after the public hearing.

Moved by Ald. Kopischke, seconded by Ald. Ecks to hold this matter until after the public hearing. Ayes: 8

Land Combination – 3265 N. Menomonee River Parkway

Request by Patricia A. Josten, 4848 N. Lydell, Glendale, for a land combination at approximately 3265 N. Menomonee River Parkway. The Plan Commission unanimously recommended approval. Ms. Welch reported that the applicant would like to combine two parcels that are each approximately 53 feet wide. Minimum buildable lot width in the AAA Single Family zoning district is 75 feet. The Plan Commission unanimously recommended approval.

Moved by Ald. Sullivan, seconded by Ald. Herzog to recommend approval. Ayes: 8

Transitional Agreement on Policing of Milwaukee Regional Medical Center

Noting that this item has been on previous agendas and the committee has discussed some of the background in closed session, Mr. Wontorek reported that this is basically a transitional agreement covering approximately the next 12 months through the end of 2004. It is a mechanism for providing services initially under contract with the county sheriff. Costs would be as they are today for the medical entities. As we are able to staff policing with our own forces, we would receive reimbursement from those entities for those services up to the amounts they are

currently paying. If our costs are greater, some further agreement would need to be reached. Mr. Wontorek advised that details of the draft agreement, which was included in committee packets, could again be discussed in closed session if the committee so desired.

Ald. Sullivan voiced discomfort with moving on with this agreement or discussing it in closed session.

Moved by Ald. Sullivan, seconded by Ald. Ecks to hold this matter for two weeks –

There was further discussion on the merits of proceeding. Ald. Herzog noted that the matter has been before the committee several times and there has been ample opportunity to review the agreement, which is transitional, not permanent. Ald. Treis also advocated moving it on to Council where further discussion can be had if necessary. Ald. Sullivan expressed concern that this would set a precedent and allow the county to shift the tax burden and thereby claim to have a zero-percent budget increase. This sets us up for major costs in the future, he stated. Mr. Wontorek indicated that all parties are interested in resolving this fairly quickly; he would be concerned if it were extended beyond January.

Ald. Krol spoke in favor of holding this item or going into closed session, noting that he wasn't present for the last discussion. He would like to hear the police confirm that we have adequate resources to handle this. He noted that there is a large discrepancy in the number of county officers now patrolling compared to the number we propose using. In response to his question on input from the Budget and Finance Committee, Mr. Wontorek indicated that this does not require an appropriation; we would be reimbursed by the medical entities.

Roll call vote on the motion, Ayes: 5; Noes: 3 (Becker, Herzog, Treis)

Proposed Ordinance - Smoke Free Restaurants

The proposed ordinance creating Chapter 8.12 of the Code pertaining to smoke free restaurants was re-referred to the committee by the Common Council. The Chair stated that the issue is recognized to be both a health issue and economic issue and, perhaps, also a freedom and responsibility issue. She noted that Council members continue to receive many phone calls and e-mails, mostly in support, as well as letters in opposition. More information has been given to each committee member tonight. She indicated that each side of the issue, proponents and opponents, would be allowed 15 minutes to present summary statements.

In Favor of the Proposed Ordinance:
Judith Miller, 614 N. 77th Street, said she has a doctorate in nursing and is a member of the Wauwatosa Board of Health and Senior Commission. She acknowledged the rights of restaurant owners to make responsible business decisions and to profit from their businesses but said they also have a responsibility to not subject patrons and workers to direct risks to their health. She noted the relationship between smoking and various diseases and said that avoiding smoke has been promoted by the Centers for Disease Control as the most readily effective strategy in preventing illness. There is no safe level of secondhand smoke, she said. Costly ventilation systems mask the odor but do not remove the hazard. She said that going smoke free is risk free and offers real savings in terms of maintenance, insurance, labor costs, and productivity. Elected public officials have a responsibility to protect the health of the public, she concluded.

Maggie Butterfield, 1421 N. 120th Street, chair of the Wauwatosa Board of Health, said the city is seen as a leader in public health throughout the state and beyond and has not faltered in providing quality service to the community. She questioned why city leaders would be willing to lose sight of what is important for the community. She spoke of the cost of environmental smoke exposure in terms of health risks, noting that it contains over 4,000 chemicals and at least 40 known carcinogens and is linked to declining health of young

children. There is no evidence that ventilation provides adequate protection, she stated. In the best health interest of the community, she advocated passage of the ordinance without watering it down.

Kathy Barry, 608 N. 62nd Street, coordinator of HART (Healthy Air for Restaurants in Tosa), also supported the ordinance, which would make the air in Wauwatosa restaurants safer for everyone. She noted that the city's health survey shows that 73% of the citizens want such an ordinance. She quoted a Mequon restaurant owner's comments on increased business and new customers after going smoke free. She also related comments by health officers in various smoke-free communities. La Crosse reported that the hardest fighting restaurant went the ventilation route but subsequently went smoke free because of loss of business. Financial loss associated with the ordinance never materialized. Eau Claire reported that Applebee's is doing well there. Janesville reported finding that their hardship clause wasn't needed. In Fond du Lac where smoking was allowed at full-service bars to accommodate three establishments, one has since gone smoke free. Ms. Barry emphasized that people know that smoke harms them and they won't visit places that continue to allow it. She said that separately ventilated rooms may remove the odor but they do not truly protect people from secondhand smoke. If amendments to the ordinance are passed, she said, we will not have smoke free restaurants in Wauwatosa but merely smoking restrictions. Ms. Barry spoke of an accelerating smoke free trend across the country. Currently, 149 cities and six states have 100% smoke free restaurant ordinances, and 976 have ordinances with various exemptions. She supported ordinance language provided by HART, indicating that HART is willing to compromise but would like the committee to use as its standard what works best based on what we know today.

The following registered in favor of the ordinance, some also offering written comments: Linda Barikmo, 622 N. 62nd Street; Kathy Franke, 610 N. 61st Street; Sue Marten, 2433 Dovo Court, Cedarburg; G. V. Merrill, 1343 N. 72nd Street; Caroline Roberts, Milwaukee; Tyler Roberts, Milwaukee; Bonnie Sumner, 2900 W. Range Line Court, Mequon.

Opposed to the Proposed Ordinance

Atty. John Fuchs, 620 N. Mayfair Road, spoke as a representative of various restaurants. He asked the committee to consider that there already is a smoking ban in effect and restaurants have non-smoking areas. The question is to what extent that ban would be increased, he said, asking for that to be done in a balanced fashion. He pointed out that Wauwatosa is an island, unlike Madison where students don't go to Sun Prairie to find a different restaurant. It is an incredible irony, he said to think that restaurant owners do not know their own business. He spoke of the inherent contradictions in not banning smoking entirely if it a health hazard. This does not eliminate smoking but picks one level of business on which the law is laid. This could have been approached on a statewide basis, he said, but don't take a chance with your own community. He felt that a restaurant/tavern exception is a good idea to the extent that it defines a lounge. Requiring a loss of 15% over six months for a hardship exception doesn't work though, he said. A business can't lose than much and sustain it for six months. Full service bar and banquet room exceptions are very important, he added. Don’t rush to judgment to come up with something, he urged. It is a question of freedoms and should not be one business that gets hit with this, he concluded..

Jayne Aliota, Director of Operations for George Webb Corporation, N7 W220-81 Johnson Drive, Waukesha, read comments from a November 10, 2003, letter submitted to each alderperson. She spoke of the volume of information submitted by restaurant representatives and commented that most of that information apparently hasn't been given the time of day by some committee members while information from HART has been used to write the legislation under consideration. She said that the three George Webb restaurants in Wauwatosa will be hurt the most by this ordinance. She felt that the health consequences of exposure to smoke have been overstated, and she asked the committee to seriously look at other options, primarily holding the ordinance until a statewide ban is passed, which her company would fully support. Ms. Aliota told of local smoking bans enacted in Boston, Scottsdale, and Austin over the past decade that were changed dramatically by amendments, rescinded, or superseded by statewide bans. A statewide ban in Massachusetts leveled the playing field for local communities that had become islands. In Austin, Texas, a report on the direct economic impact of their nearly 10-year old originally drafted ban led to a revised ordinance that will allow smoking in restaurants and bars to continue.

Austin's ordinance has some contingencies including prohibiting entry of a person under age 18 into a smoking establishment or smoking section unless accompanied by a parent or legal guardian. Ms. Aliota appealed for either legislation that is fair to all or waiting for a statewide ban to be enacted.

Ed Lump, President and CEO of the Wisconsin Restaurant Association, said restaurants should have the freedom to establish their own policies and he supports those that have decided to become smoke free. Consumers have made choices in the marketplace, he observed. In Wauwatosa, individual restaurants can be devastated, he said, since this is a small community surrounded by others without smoking bans. A restaurant just inside the city limits could lose to one just up the road. In connection with fairness issues, he noted that establishments may not accurately report food and beverage sales. Mr. Lump emphasized that restaurant owners have to please their customers in order to proceed and have taken big risks in a high failure business. There is a large group of stable, successful restaurants in Wauwatosa that will be put at risk by forcing them into a very non-competitive position with surrounding communities, he stated.

Marija Madunic, 7754 Harwood Avenue; Harriett Alioto, 3041 N. Mayfair Road; and Angelo J. Alioto, 3041 N. Mayfair Road registered in opposition to the ordinance.

Proposed Ordinance

City Attorney Kesner reported that the ordinance now under consideration incorporates changes made at the previous committee meeting, including the definition of restaurant and a two year reporting requirement for taverns that is randomized by street address number. Also, references to "statements" have been changed to "certification forms," so as to not imply that financial statements are being required. He referred the committee to his November 7, 2003, memo and attached amendment language proposals being offered for discussion by various committee members.

Hardship Exemption

> Moved by Ald. Becker, seconded by Ald. Sullivan to amend the proposed ordinance by inserting the following exception:
> *An establishment which realizes a loss of gross receipts greater than 15 percent as a result of complying with the provisions of this chapter for a 6 month period when compared to the same six-month period of the prior year may make a request to the city council for a temporary exception not to exceed 12 months. Concurrent with the request, the establishment shall provide to the city a certified report of an independent certified public accountant containing sufficient information to substantiate such loss of gross receipts. The city clerk shall verify the accuracy and interpretation of the report of the independent certified public accountant. This section shall be automatically repealed two years from the effective date of this chapter and all exceptions then in effect shall expire on such date.*
>
> Moved by Ald. Herzog, seconded by Ald. Ecks to hold the ordinance until such time as the state comes up with a statewide ban; and further, to adopt a resolution encouraging legislators to enact a statewide ban –

Ald. Kopischke reported being informed that a statewide ban would be a long way off and the Wisconsin Restaurant Association is not actively working on it, reportedly believing much member education would be required and that taverns should be included. It has also been said that the state legislature would not support such a move. Ald. Sullivan also spoke against the motion, noting that there will be no statewide ban with the current makeup of the state legislature. He advocated getting back to the substance of the ordinance. Ald. Ecks spoke of the money targeted for tobacco cessation that is now entirely gone by action of the state legislature, leading him to also conclude that Madison has no interest in this initiative.

Vote on the motion to hold, Ayes: 1 (Herzog); Noes: 7 Motion fails.

Moved by Ald. Kopischke, seconded by Ald. Ecks to amend the motion by Ald. Becker on a proposed hardship amendment by inserting after "prior year": *"and demonstrates that it can be reasonably expected that compliance with this ordinance will result in a continuing loss of business…"*

Ald. Becker questioned how future losses could be proven since projecting into the future is not exact. Ald. Kopischke said he is suggesting that trends should be examined to see if there is something that may have created a drop or if there is an upward trend that mitigates the hardship. We can look at that kind of data and draw more information than looking simply at six month totals, he felt. Ald. Sullivan indicated that he doesn't support having a hardship exemption but is willing to support the language in order to make the restaurant community more comfortable.

Vote on the motion by Ald. Kopischke to amend the hardship exception motion, Ayes: 8

Moved by Ald. Herzog, seconded by Ald. Treis to amend the motion by Ald. Becker on a proposed hardship exception by changing 15% to 10%, changing the period of exception to 24 months, changing the 6 month comparison period to 3 months, and requiring that the information should be verified by the city clerk, who can make a determination that can be appealed to the Common Council –

Upon further discussion of the verification and appeal process, it was determined that the Common Council should make any decisions regarding exceptions.

With consent of the second, Ald. Herzog withdrew the final portion of the motion following "3 months" –

Ald. Ecks indicated his preference for the original language of the hardship exception motion made by Ald. Becker. He felt that the six month comparison period allows a long enough period of time to see what is going on and there are too many variables in just three months. Ald. Kopischke advocated a period of 90-180 days to provide more data, if needed, on which to base the exception. He also felt the temporary exception period should not exceed 18 months.

Roll call vote on the motion to amend by Ald. Herzog, Ayes: 4, Noes: 4 (Becker, Kopischke, Sullivan, Heins) Motion fails.

Moved by Ald. Becker, seconded by Ald. Sullivan to amend the original hardship exception motion by changing the 6 month comparison period to 90-180 days, changing 15% to 10%, and changing the period of exception to not to exceed 24 months –

Vote on the preceding motion, Ayes: 6; Noes: 2 (Treis, Sullivan)

Ald. Treis raised a question about how a business just starting up would get an exception. Mr. Kesner said that any business starting now may have a significant record of business by the time the ordinance takes effect. A new business that just started around the effective date would not be subject to the hardship exception. Also, this language doesn't require the demonstrated loss to be in the very first 90-180 day period after the effective date.

Ald. Sullivan moved the previous question. There were no objections.

Vote on the hardship exception motion by Ald. Becker, as amended: Ayes: 7; Noes: 1 (Treis)

(The meeting recessed at 9:32 p.m. and reconvened at 9:42 p.m.)

Separate Room Exception

Moved by Ald. Herzog, seconded by Ald. Becker to amend the proposed ordinance by adding the following exception to sec. 8.12.020:
8. "Separately Ventilated Room" means a space within a building 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.
Part II: Proposed sec. 8.12.040 shall be renamed "Exceptions" and the original text of the section shall be designated as sec. 8.12.040 A.
Part III: A new proposed sec. 8.12.040 B. is created as follows:
B. The prohibitions of this ordinance do not apply to a Separately Ventilated Room within a restaurant designated by the owner or operator as a smoking room.

In response to questions, Mr. Kesner said that this language allows a restaurant to create a separate room without saying specifically that the room has to be open to the public or where it has to be. Asked if a self-sealing door would be required, he said that this language allows for openings. Ald. Sullivan supported the exception without a sunset provision, saying he would be concerned about encouraging businesses to invest in a room like this only to see it sunsetted out of existence.

Moved by Ald. Sullivan, seconded by Ald. Becker to amend the motion by Ald. Herzog on a separately ventilated room exception by adding after "… ingress and ventilation": "*including a self-sealing door that shall remain closed at all times except when patrons or employees enter or leave the room…*" –

Ald. Kopischke opposed this exception since he felt a separate smoking room should not be allowed if we are trying to establish a smoke free environment. Ald. Sullivan said that this exception obviates some of the benefits we would otherwise see for patrons and employees. He was concerned with building in an incentive to invest large amounts of money in ventilation. The Chair suggested the addition of a sunset clause of perhaps two years.

Moved by Ald. Heins, seconded by Ald. Kopischke to amend the motion by Ald. Herzog on a separately ventilated room exception by adding a sunset clause limiting use of such separately ventilated rooms to two years – Roll call vote on the motion, Ayes: 3 (Kopischke, Sullivan, Heins), Noes: 5 Motion fails.

Ald. Ecks asked about the possibility of an entire restaurant becoming this "separate room." Mr. Kesner responded that restrictions in state law would prohibit someone from doing that.

Vote on the separately ventilated room exception motion by Ald. Herzog and the amendment by Ald. Sullivan: Ayes: 5; Noes: 3 (Kopischke, Sullivan, Heins) Motion passes.

Restaurant/ Tavern Area Exception

Moved by Ald. Kopischke, seconded by Ald. Ecks to amend the proposed ordinance by adding the following exception:
Part I. Add the following to proposed sec. 8.12.020:
6. "Separately ventilated" means that the area is ventilated to a standard specified in the Wisconsin Commercial Building Code, Wisconsin Administrative Code, §Comm. 64.0403, and that there is a ventilation system for the smoking area which is separate and distinct from the ventilation system for the nonsmoking area so that there is no cross-circulation of air between the smoking and nonsmoking areas. Particulate air cleaners or filtration systems are not considered a ventilation system.
B. The "Tavern Area" of a business which operates as a combination Restaurant/Tavern shall be exempted from the provisions of this ordinance, provided that it is in a separate room or fully separated by its location or the building construction from other dining areas, upon application to the Wauwatosa Health Department, if all of the following apply:
1. The establishment holds Class "B" licenses issued by the City of Wauwatosa for the sale of Fermented Malt Beverages and Intoxicating Liquors throughout the entire premises; and
2. The operator provides to the Wauwatosa Health Department a scale diagram or architectural plan of the premises clearly delineating areas of the premises to be designated as the "Tavern Area" and the "Restaurant Area;" and
3. The Tavern Area is separately ventilated in order to prevent cross-circulation of air between the tavern Area and the Restaurant Area; and
4. The owner or operator provides proof to the City Clerk, pursuant to the procedure described in Part A, above, that the sale of alcoholic beverages accounts for fifty percent (50%) or more of gross receipts attributable to the Tavern Area for the most recent licensing year; and
5. Customers of the Restaurant Area are not required to pass through the Tavern Area when entering the Restaurant Area through its primary public entrance or utilizing restroom facilities; and
6. Wait staff and others working in the Restaurant Area are not required to enter into or pass through the Tavern Area in order to perform their duties, including the task of obtaining alcoholic beverages for service to customers in the Restaurant Area.
7. If the Tavern Area is adjacent to a dining area, it is completely separated from the dining area by walls, a floor and ceiling, except for openings for light, egress, ingress and ventilation, including a self-sealing door that shall remain closed at all times except when patrons or employees enter or leave the room.

Discussion of the "separately ventilated" definition ensued. Ald. Kopischke said that he would be willing to tweak the language to allow for a room that is not adjacent to the dining area to meet less stringent requirements. That would allow for an operation such as at Bjonda's, he noted.

With consent of the second, Ald. Kopischke amended the motion by changing the definition of "separately ventilated" in Part I to reflect the previously agreed-upon wording for the term –

Referring to the requirement in #4 for 50% of sales being attributable to alcohol, Ald. Herzog pointed out that restaurants may not break down sales within the tavern area. Most other municipalities describe the tavern area as a full service bar area where there could be some food sales as well, he said. Ald. Becker referred to his suggested amendment on full service bar areas. He said he does not want to be too restrictive on the owners of a lounge. He asked how this would affect a restaurant with a bar in the middle of the room such as Applebee's. Mr. Kesner said that a bar with seats around it in the middle of a larger room that is open to the dining area could allow smoking under an exception drafted by Ald. Herzog but couldn't under this version because it requires it to be in a separate room or fully separated from other areas. Ald. Becker preferred the requirement for a separate room. He felt that 100% of the sales in a separate room are likely to be liquor rather than food. Ald. Sullivan objected to trying to accommodate the needs of a particular restaurant. In the spirit of compromise, he indicated, he could vote for a restaurant tavern area exception only if it had a sunset that would take effect two years from the effective date of the ordinance.

> Moved by Ald. Sullivan to amend the motion by Ald. Kopischke on a restaurant/tavern area exception by adding language for a two year sunset provision – Motion fails for lack of a second.

Ald. Kopischke pointed out that he was careful, in Section B, to not have an open area bar in the middle of a dining area. He asked Mr. Kesner about using language specifying that the service of food is incidental to the consumption of alcoholic beverages. Mr. Kesner indicated that that terminology is widely used statewide; it is a judgment call based on the use or structure of a room. Ald. Kopischke pointed out the provision that customers or wait staff would not pass through the area.

> With consent of the second, Ald. Kopischke amended the original motion by changing #4 to read: *The owner or operator provides proof to the City Clerk that the service of food in this area is incidental to the sale and consumption of alcoholic beverages –*

Ald. Sullivan spoke to the issue of approval being made at the Council level, which is not contained in the exception as proposed. There is a lot that would require some oversight, he noted. Given that it would be relatively rare and probably would occur only at the onset of the ordinance, Ald. Kopischke agreed to allow for Council approval.

> With consent of the second, Ald. Kopischke agreed to incorporate a friendly amendment at the end of section B, following "upon application to the Wauwatosa Health Department,": *and approval of the Common Council –*
>
> Vote on the motion by Ald. Kopischke for a restaurant/tavern area exception, as amended: Ayes: 8

<u>Private Functions Exception</u>

> Moved by Ald. Becker, seconded by Ald. Herzog to amend the proposed ordinance by adding the following exception:
> *The prohibitions of this ordinance do not apply to private functions within restaurants conducted in a separate room or hall which is not open to the general public, where the sponsor of the event exercises control over invitations to and the conduct of participants in the function, where the sponsor of the event has elected to permit smoking, and notifies the invitees that smoking at the event will be permitted –*

Ald. Sullivan said he opposes this exception from the standpoint of the original intent being to enact a smoking restrictive ordinance for restaurants. He questioned why there would be a difference between guests at a work-related event or a wedding and other people patronizing a restaurant. For whatever reason they are there, they will still be exposed to secondhand smoke, creating the same problems we are trying to address with the ordinance. We already have an exception for an event in a separate hall with a separate ventilation system, he pointed out. Ald. Becker argued from the standpoint of individual rights within a private room. The sponsors have purchased the room, food, and bar within the room, he stated. Ald. Kopischke said that we haven't taken care here to really separate this private function room from the other dining areas of the restaurant so that smoke might invade the space we are trying to protect. He agreed with the comment that there are other exceptions such as the separately ventilated room exception that would cover this situation. Ald. Sullivan added that this would probably be very difficult to enforce. If smoking is that important, he stated, there are available locations such as private clubs that would allow smoking. Ald. Herzog responded that the idea is to give business to restaurants in Wauwatosa rather than to private clubs. Alioto's has a lot of separate rooms with doors that are perfect for private events, he noted. He felt that the amendment is a good compromise. It allows an exception for a separate room that is not open to the general public without requiring separate ventilation. Ald. Ecks commented that he doesn't see a problem with a party in a separate smoking room, but he was concerned about rapid turn-arounds for back-to-back events where the ventilation system may not clean the air in time for the next party, which may be designated as smoke free.

Ald. Sullivan moved the previous question. Ald. Becker objected.
Vote on moving the question was: Ayes: 6; Noes: 2 (Ecks, Sullivan)

Roll call vote on the motion by Ald. Becker on a private function exception: Ayes: 3 (Becker, Herzog, Treis); Noes: 5 Motion fails.

Required Signage

Ald. Kopischke said that his proposed amendment to this section requires signage only at every restaurant entrance. It does not requirement placement of signs throughout the establishment. It reduces the required size of the signs and also gives an option for the signs to either say that the establishment is smoke free or say that smoking is allowed only in designated areas.

Moved by Ald. Kopischke, seconded by Ald. Becker to amend the proposed ordinance by substituting the following in sec. 8.12.060:
1. The proprietor or other person having control of a restaurant shall post, in a conspicuous place at every restaurant entrance, a sign not smaller than five and one-half inches by eight and one-half inches (5 ½" x 8 ½") indicating that the restaurant is smoke free, or that smoking is allowed only in designated areas. Each sign shall contain the phone number for the City of Wauwatosa Police and Health Departments. The signs shall be posted in such a manner that the public has reasonable notice of the establishment's smoking policy and such signs must be present at any time the establishment is open for business.
2. It shall be unlawful for any person to remove, deface or destroy any sign required by this section.

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

Effective Date

Moved by Ald. Krol, seconded by Ald. Sullivan to amend the proposed

ordinance by substituting the following in sec. 8.12.120:
This ordinance shall be effective on and after July 1, 2004.

Ald. Treis spoke of his belief that smoking is unhealthy and is a public health issue, but he felt that getting legislation like this through the state legislature would be next to impossible. Right now we have bar people on one side and restaurant people on the other, he observed. The only way to accomplish something is when the whole team pulls in one direction, and right now they are going in different directions, he said. He advocated setting a 2006 deadline for the ordinance with the understanding that the meter is running in the meantime. Bars, restaurants, and private clubs would then be encouraged to put together a law for the whole state that puts everyone on an even keel. He was concerned that some of the exceptions to the ordinance would allow bars that serve food to continue to have smoking, which would especially hurt the small restaurants that could not have smoking. He said he is disturbed that the Restaurant Association hasn't done what they said they would do to get this type of statewide legislation moving. He doubted that Wauwatosa alone would be able to push the state in that direction. We want to encourage more good restaurants to consider locating in Wauwatosa on a level playing field, he said, but that is unlikely to happen by July 2004.

Ald. Sullivan restated his feeling that there is no possibility of action by the state legislature on this issue. The dollars and energy of the bar and restaurant people would be spent at the highest level to avoid it, he said. He added that the state legislature is not charged with protecting the health and safety of the citizens of Wauwatosa—this body has that responsibility. He reminded Ald. Treis that he previously voted for this smoking restriction and noted that the only way it has changed is the addition of exemptions discussed tonight. Also, the January 1, 2004 date is now being pushed back to July 1.

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

Vote on the motion, Ayes: 6; Noes: 2 (Treis, Herzog)

Ald. Kopischke called the question on recommending adoption of the proposed ordinance as amended. There were no objections.

Vote on recommending adoption of the proposed ordinance as amended was: Ayes: 6; Noes: 2 (Treis, Herzog)

The meeting adjourned at 11:04 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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