



CITY OF WAUWATOSA

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COMMUNITY DEVELOPMENT COMMITTEE MEETING

Tuesday, March 25, 2008

PRESENT: Alds. Birschel, Didier, Donegan, Herzog, Krill, Meaux -6

EXCUSED: Alds. Minear, Treis

ALSO E. Carter Miller, Asst. City Atty.; D. Wheaton, Chief Bldg. Official; N. Kreuser, Health Officer;
PRESENT: J. Archambo, City Admin.

Ald. Herzog as Chair called the meeting to order at 8:10 p.m.

Ordinance - Revisions to Title 15, Buildings and Construction

Mr. Wheaton, Chief Building Official, summarized proposed changes to Title 15 of the Code, Buildings and Construction. Effective March 1, 2008, the State of Wisconsin's adopted the 2006 edition of the International Codes and renumbered the State Administrative Code, necessitating updates in Title 19, which adopts the Administrative Code by reference. The proposed ordinance also eliminates standards for alterations, decks, and accessory buildings, since they are now included in the Administrative Code, and makes some editorial and format changes as well as changes in nomenclature.

Moved by Ald. Krill, seconded by Ald. Meaux to recommend to Council introduction of the proposed ordinance –

Mr. Wheaton confirmed that there are no substantive changes, just updates to references to adopted standards. The goal is to maintain a degree of consistency, something in which Wauwatosa has been a leader for a number of years. Wauwatosa's residential building code adopted in 1921 was the first in the entire area with the exception of the City of Milwaukee. Mr. Wheaton explained that the commercial portion of the code can be made more restrictive but cannot be made any less than the national standard. Under the residential code, homes erected after 1980 come under statutory regulations that cannot be modified.

Vote on the motion, Ayes: 6

Proposed Amendment to Smoke-Free Restaurant Ordinance

The committee reviewed a proposed ordinance amending Section 8.12.040 B of the Code to eliminate the sunset date for hardship exceptions to the prohibition on smoking in restaurants. The Health Officer submitted a memo containing additional information and clarification of discussion at the previous meeting, regarding the request by Rob Messinger of Hector's—A Mexican Restaurant for extension of the exception.

Ms. Carter Miller reported that, as drafted, she believes the ordinance amendment may create some enforcement issues. The baseline period for revenue comparison is unclear, she felt, and it is also not clear if it applies only to existing hardship exceptions or if new establishments can apply. She suggested adding a statement that the ordinance applies to those establishments that have received a hardship exception as of the date of the amendment's passage. She also was concerned that there is no mechanism to verify that a restaurant's losses attributable to the smoking ban continue, thereby giving them a blanket exception until there is a statewide ban.

The Chair explained that an establishment had to show that they suffered a loss while under the smoking ban; they don't have to continually show the loss. At this point, an existing establishment would have been under the smoking ban for both the current and previous year and, thus, would have no basis for comparison. He noted that, at the previous meeting, Dr. Kreuser stated the passage of a statewide ban was imminent, but the legislature has since failed to act on that bill. As time passes without a state ban, the ordinance can always be amended.

Referring to her memo, Dr. Kreuser observed that Hector's sees their competition as taverns and claimed that, while under the smoking ban, theirs was the only smoke-free establishment on State Street. They are, in fact, a restaurant and received the exemption as such. She noted that a map she included shows there are more than 30 restaurants that are smoke free in the surrounding area. Also, the original ordinance provided a number of years in which to adjust to the requirements. Dr. Kreuser pointed out that Mr. Messinger has bought another restaurant and says his salary from Hector's was only \$14,000, but there was no question of salary from other sources. When looking at disease, death, disability and a community's overall health, she said, tobacco exposure is a known risk factor. The only way to eliminate that risk is to totally eliminate smoking in restaurants and taverns. We set rigorous requirements and most people met them in very good faith. We would be the only community weakening an existing ordinance. There are approximately 135 restaurants in Wauwatosa, and at least 80% were smoke free before the ban. In 2003, we were the only municipality that moved forward. The ordinance was a good one at that time, but a lot more information has come forth. In Milwaukee County, Shorewood has an ordinance effective July 2009 that will totally ban smoking in workplaces, bus shelters, taxis, day cares, educational buildings, restaurants, and bars.

Further comments were offered by: Susan Schoenmarklin, 7204 Aetna Court; Eileen Gilbert, Mequon, professor of medicine and director of lung disease and smoking cessation programs; Carrie Pucell, 525 N. 108th Place; Janet McMahon, 4144 Menomonee River Parkway; Susan Ward, 6100 W. State Street; Kimberly Stanwyck, 2640 N. 69th Street; Ms. Zetting, 3457 N. 78th Street, Milwaukee, chair of the Cancer Society's Wauwatosa Relay for Life; Donna Winiski, 1728 Hi Mount Boulevard, Milwaukee; and Steve Luke, 8602 Stickney Avenue. Angela Bath of the Southeast Regional Tobacco Control Coalition Coordinators' Network submitted a written statement supporting elimination of secondhand smoke.

The speakers commented on the health hazards of secondhand smoke and overall felt that the proposed amendment would weaken the smoke-free ordinance. There was support for a 100% ban under which everyone would be playing by the same rules. Many spoke of avoiding restaurants that allow smoking, including Hector's since they received the exemption. It was noted that the Surgeon General found that every bit of secondhand smoke is hazardous. Twenty-three states totally ban smoking in bars and restaurants. An increased risk for heart disease and lung cancer was cited as well as the fact that Milwaukee ranks number one in hospitalizations and emergency rate for children with asthma. It was reported that Eau Claire's ordinance will soon cover all workplaces including restaurants and taverns, and similar actions are anticipated in other municipalities given the lack of state action.

The Chair indicated some support for a statewide ban. We became an island and put a lot of businesses at risk, he said, although there were promises that the ban would increase business. He felt that extending exemptions to the point when the state passes statewide legislation is not weakening the ordinance.

Ald. Krill proposed additional language stating that, "no further exceptions shall be granted pursuant to this paragraph after March 1, 2008." He saw the proposed amendment as a solution to a particular problem and noted that there wouldn't be any further exemptions. He was confident that a statewide ban would be passed within the next 24 months, and felt that giving Hector's a lifeline until then will help them survive.

Ald. Birschel asked about the number of restaurants within one mile of Hector's that have a separate bar. Dr. Kreuser said that there are seven restaurants within that radius and two have separate bars. Ald. Birschel commented that the Hector's situation is unique and noted that there ultimately will be just two exemptions out of 135 restaurants. He agreed that language should be added to clearly prevent any further exemptions.

Ald. Donegan said that the committee's basic concern is that by not granting an extension to these few businesses, particularly Hector's, we place them at an extreme competitive disadvantage. The establishment's direct competitors are not restaurants such as Bartolotta's or George Webb but rather bars on State Street such as Leff's Colonel Harts, the Chancery, and also Saz's in Milwaukee. Although not on the Council when the ordinance was originally debated, Ald. Donegan reported that he followed the discussion and found that in the end there was consensus on a balanced ordinance that essentially ensured that no one would be driven out of business. He has talked to the people at Hector's, met their banker, and gone over some of the numbers. Five employees separately approached him with a lot of passion and anger about the prospect of losing their jobs. We don't jeopardize much by allowing Hector's to stay in Business, he concluded.

Moved by Ald. Krill, seconded by Ald. Donegan to recommend adoption of the ordinance with the addition of language stating that no further exceptions pursuant to this chapter will be granted after March 1, 2008.
Ayes: 6

The meeting adjourned at 9:08 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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