

CITY OF WAUWATOSA  
MEMORIAL CIVIC CENTER  
7725 WEST NORTH AVENUE  
WAUWATOSA, WI 53213  
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**COMMON COUNCIL**  
**Regular Meeting, Tuesday, November 18, 2003**

PRESENT: Alds. Ecks, Grimm, Heins, Herzog, Kopischke, Krol, Matthews, McCarthy, Stepaniak, Subotich, Sullivan, Treis, Bruderle-Baran, Becker, Casey -15

EXCUSED: Ald. Jenkins

ALSO PRESENT: Mr. Wontorek, City Administrator; Mr. Braier, Finance Director; Mr. Kesner; City Attorney; Mr. Kappel, Dir. of Public Works; Ms. Welch, Community Development Director; Police Chief Weber; Fire Chief Redman; Dr. Kreuser, Health Officer; Mr. Wehrley, City Engineer; Ms. Plass, Acctg. Mgr.; Police Capt. Reit; Ms. Ledesma, City Clerk; Ms. Williams, Deputy City Clerk

Mayor Estness in the Chair

The Mayor called the meeting to order at 7:30 p.m.

It was moved by Ald. Grimm, seconded by Ald. Kopischke that the reading of the minutes of the last regular meeting be dispensed with and they be approved as printed. -15

**PUBLIC HEARING**

The first order of business was a public hearing to consider the following proposed ordinance:

**ORDINANCE**

The Common Council of the City of Wauwatosa do ordain as follows:

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF WAUWATOSA BY REZONING THE LAND AT THE SOUTHWEST CORNER OF 113<sup>th</sup> STREET AND WALNUT ROAD FROM AA LIGHT MANUFACTURING DISTRICT TO BUSINESS PLANNED DEVELOPMENT DISTRICT

The Common Council of the City of Wauwatosa do ordain as follows:

Part 1. The Official Zoning Map of the City of Wauwatosa is hereby amended to reflect the following change:

A part of the northeast quarter and the southeast quarter, a Subdivision of Part of Section 19, in Township 7 North, Range 21 East, City of Wauwatosa, County of Milwaukee, State of Wisconsin, more accurately described on the attached map, is Rezoned from AA Business District to Business Planned Development District.

Part II. The City Administrator is hereby directed to change the Official Zoning Map of the City of Wauwatosa to conform to the provisions of the Ordinance, and said Map is declared amended accordingly.

Part III. This ordinance change is contingent upon an approval of a development plan for the site by April 1, 2004.

Part IV. This ordinance shall take effect on and after its date of publication.

Proof of publication is in the file.

Community Development Director Nancy Welch explained that the area proposed for rezoning is an 18-acre parcel adjacent to the public works site, and owned by the City of Wauwatosa. Approximately one year ago, the city solicited requests for proposals (RFP) to determine what the market would sustain in terms of best-use development of the site. No offer of subsidy was made by those submitting RFP's.

Based upon this exercise, the decision was made to pursue a Business Planned Development District rezoning. Ms. Welch stressed that *no* developer has been selected for any project to date, and that the proposal before the Council at present is *only* for the rezoning of the property. Assuming rezoning is approved, the Plan Commission and Common Council will consider proposals. This will be a six- to nine-month process requiring both preliminary and final plan approvals. Several public meetings will be held at which time public comment can be made.

The final design of the site (taking into account the impact on traffic, the tax base, utilities, etc.) will be part of the final developer agreement. Since it owns the property, the City will be able to impose a greater degree of control over development.

The public hearing was declared open. The Chair inquired if anyone of the public present wished to be heard in favor of the proposed ordinance.

David Plank, 8213 Rockway Place, opined that this is an excellent development opportunity for the City. Because it owns the site, the City can assure high quality development. With the declining enrollment within the Wauwatosa School District, the development of residential sites could bring an influx of students into the District.

The Chair inquired if anyone of the public present wished to be heard in opposition to the proposed ordinance.

Dave Dvorak, 805 N. 113th Street, submitted written comments indicating his support for the development of green space (parks/playing fields) on the site.

Dan Hayes, 8230 Jackson Park Boulevard, President of the Tosa Baseball League, stated that this independently operated organization has been in existence for 30 years. The League must borrow and rent fields from Milwaukee Public Schools and the Wauwatosa School District. The League is proposing an alternate use for the land and will be submitting a proposal in the future. They hope to secure green space for children interested in participating in sports. There are rumors that the School District is considering disposing of property to generate revenue; this could further reduce the number of available playing fields.

Anton Hessner, 1636 N. 116th Street, expressed concern about a potential increase in crime and noted that the rental market in this area is weak.

Richard Bachman, 2229 N. 115th Street, urged consideration of the Tosa Baseball League's proposal. If the School District sells the administration building at N. 122nd Street and W. North Avenue, Breitlow Field may be lost. Developing this property for residential use may create more traffic problems than already exist. He questioned why this matter hadn't been forwarded to the Comprehensive Plan Commission for consideration.

Mr. Bachman contended that former City Planner Gordon Rozmus had many meetings concerning possible use of this site, and how best to integrate it into the neighborhood. There was agreement that traffic should exit onto N. 113th and then onto Watertown Plank Road. There have been no notices sent to residents about recent meetings, just official notices in the newspaper. The area bounded by North Avenue, Watertown Plank Road, N. 116th Street, N. 115th Street, and N. 115th Street south of Watertown Plank Road should be notified. A proposal to develop three acres for manufacturing uses has reportedly been made. If this is accepted, no loading docks should be allowed on the west side of buildings, since they would face existing residential uses. He opined that two proposals for residential housing have been before the City for some months, despite comments to the contrary. The proposals call for between 200 and 480 dwelling units. Who wants to live in this low area? Ald. Heins' November 14, 2003 comments saying that there is nothing before the Community Development Committee is inaccurate.

Don Schweda, 1616 N. 116th Street, questioned whether a Brookfield business owner has expressed interest in locating to this site. If so, were they told the building has to be a two-story structure? All buildings on N. 113th Street are single story.

John Kissinger, 1829 N. 68th Street, opined that the site should be developed for recreational uses. It is one of the few parcels left in the city and the development that is approved thereon will last a long time.

Walter Pyskit, 1664 N. 117th Street, a 42-year resident of the city, stated that they had been told the area would be developed for recreational uses. Building 200-400 units will increase traffic; more apartments are not needed. Who would install the infrastructure?

Frank Bruce, 2621 N. 81st Street, stated that he would like to relocate his Brookfield business to Wauwatosa, but there is nowhere to build. He clarified that the 2-story height comment referenced earlier pertains only to the Research Park.

Marian Schweda, 1616 N. 116th Street, voiced opposition to more income housing. The rental units on N. 116th Street have several vacancies. Placing 400 more units on the site is criminal.

Patrick Reed, 4746 N. 118th Street, submitted comments supporting the development of green space.

Colleen Pomeroy, 2616 Normandy Court, asked for the development of green space on the site.

The Chair inquired whether anyone of the public present had any questions or comments. No one of the public present had any questions or comments.

In addressing questions about green space, the Mayor pointed to the expansion of Hart Park, attempts to preserve the northeast quadrant of the County grounds, and the reservation of the area north of the police station for park/open space uses.

The public hearing was declared closed. Ordered held for two weeks to the December 2, 2003 Common Council meeting.

## **OLD BUSINESS**

With the consent of the Council, the Mayor moved Community Development Committee Item #2 to Old Business:

## ORDINANCE

### AN ORDINANCE CREATING CHAPTER 8.12 OF THE CODE OF THE CITY OF WAUWATOSA PERTAINING TO SMOKE FREE RESTAURANTS

Part I. Chapter 8.12 of the Code of the City of Wauwatosa is hereby created to be entitled, "Smoke Free Restaurants"

The Common Council of the City of Wauwatosa do ordain as follows:

Part II. Section 8.12.010 if hereby created to read as follows:

#### **8.12.010 Findings and Purpose**

The Common Council does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, stroke, and respiratory disease in healthy nonsmokers. The U.S. Surgeon General has determined that secondhand smoke is responsible for the early deaths of 65,000 Americans annually.

The Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen.

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke.

The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.

Wauwatosa has numerous restaurants, some of which are not accessible to patrons sensitive to tobacco smoke.

The Common Council finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in restaurants; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

Part III. Section 8.12.020 of the Code of the City of Wauwatosa is hereby created to read as follows:

#### **8.12.020 Definitions**

The following words and phrases, whenever used in this ordinance, shall be construed as defined in this section:

1. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling.
2. "Restaurant" means any building or portion of a building where meals are prepared or served or sold to patrons or the general public.

The term "restaurant" shall not include the following:

- a. A "tavern" as defined below.
  - b. Any establishment not being used as a public accommodation, including but not limited to churches, civic, fraternal, patriotic or religious organizations, and private or service clubs which prepare and serve or sell meals to members and guests only.
  - c. Bowling centers.
  - d. Areas of a building not connected with the restaurant, if the restaurant is located in a hotel, motel, bed and breakfast, or lodging establishment, hospital, office building, retail store, strip mall, or shopping mall. In such case, "restaurant" means the bar area, closet, coatroom, dining area, entrance area, kitchen, restroom, seating area, and supply or storage area that are used in connection with the restaurant.
3. "Smoke Free" means absence from the air of the smoke and smoke by-product from the burning, inhaling, exhaling, or carrying of a lighted cigarette, cigar, pipe, weed, plant or other combustible substance.
  4. "Smoking," means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.
  5. "Tavern" means a licensed establishment with a full service bar in which fermented malt beverages and intoxicating liquors are sold for consumption on the premises and whose sale of alcoholic beverages accounts for fifty percent (50%) or more of the establishment's gross receipts of the most recent licensing year, as determined pursuant to the procedure in sec. 8.12.040, below.
  6. "Separately Ventilated Room" means a space within a building completely enclosed with 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, 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 IV. Section 8.12.030 of the Code of the City of Wauwatosa is hereby created to read as follows:

#### **8.12.030 Prohibition of Smoking in Restaurants**

Smoking shall be prohibited in all enclosed areas of restaurants.

Part V. Section 8.12.040 of the Code of the City of Wauwatosa is hereby created to read as follows:

#### **8.12.040 Exceptions**

- A. "Taverns" shall be exempt from the provisions from this ordinance. Every establishment that claims to be a tavern shall:
  1. Provide a written certification from an independent, licensed, certified public accountant confirming that gross sales of alcohol beverages at the establishment during the twelve (12) month period prior

to the effective date of this ordinance exceeded 50% of the total gross sales of the establishment during that same period. This verification shall be provided to the City Clerk not later than thirty (30) days after the enactment of this ordinance. Any establishment failing to file timely documentation shall be considered a “restaurant” for purposes of this ordinance until such time as appropriate documentation is provided.

2. Thereafter provide to the City Clerk, once every two years, an additional written certification from an independent, licensed, certified public accountant confirming that gross sales of alcohol beverages at the establishment during the previous two (2) year period exceeded 50% of the total gross sales of the establishment during that same period. Establishments whose street address number is an even number shall provide such certification in even-numbered years, and those whose street address number is an odd number shall provide such certification in odd-numbered years. This verification shall be provided not later than June 30 of the required year. Any establishment failing to file timely documentation shall be considered a “restaurant” for purposes of this ordinance until such time as appropriate documentation is provided.
  3. Every new or remodeled establishment that requires a new occupancy permit for any reason must provide a certification projecting its food and alcohol sales, and shall comply with the verification and documentation provisions of subsection 1, above, for a period covering the first three months immediately following the time the final certificate of occupancy is issued by the city, and then annually thereafter as set forth in subsection 2, above.
  4. Upon receipt of the verification documentation required by this section, the City Clerk shall make a determination whether the documentation satisfies the requirements of this section. If the requirements are met, the City Clerk shall issue an exemption to said establishment for the following two year period. If the City Clerk determines that the documentation does not satisfy the requirements of this section, then no exemption shall be issued and smoking shall be prohibited in said establishment.
  5. All records submitted to the City pursuant to this section shall be maintained as confidential records and are not subject to release under the Wisconsin Open Records Law.
  6. Appeal. Any establishment wishing to appeal a determination made under this section may follow the procedure set forth in sec. 8.12.090 hereunder.
  7. Any establishment denied an exemption under this provision may reapply for an exemption twelve (12) months after the date on which the application was made.
- B. An establishment which realizes a loss of gross receipts greater than ten (10) percent as a result of complying with the provisions of this chapter for a 90-180 day period when compared to the same 90-180 day period of the prior year, and demonstrates that it can be reasonably expected that compliance with this ordinance will result in a continuing loss of business, may make a request to the common council for a temporary exception not to exceed twenty-four (24) 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.
- C. 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.

- D. 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, and approval of the Common Council, if all of the following apply. For purposes of this section only, "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 or areas so that there is no cross-circulation of air between the smoking and nonsmoking areas. Particulate air cleaners or filters are not considered a ventilation system.
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 that the service of food in this area is incidental to the sale and consumption of alcoholic beverages; 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.

Part VI. Section 8.12.050 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.050 Declaration of Restaurant or Tavern as Smoke Free**

A manager, operator, owner, or other person in control of any tavern or restaurant may prohibit smoking in said establishment, or in any portion not so designated by this ordinance, including outdoor areas. Such declaration shall be noticed to patrons in the same manner as required by section 8.12.060, below, and shall be enforceable in the same manner as any other violation of this chapter.

Part VII. Section 8.12.060 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.060 Posting of Signs**

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 1/2" x 8 1/2") 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.

Part VIII. Section 8.12.070 of the Code of the City of Wauwatosa is hereby created to read as follows:

#### **8.12.070 Enforcement**

1. Any employee, manager, operator, or owner of any restaurant subject to this ordinance shall inform persons violating this ordinance of the appropriate provisions thereof. Such person shall request any person who smokes in areas where smoking is prohibited to refrain from smoking, and if the person does not refrain from smoking after being requested to do so, request the person to leave.
2. The manager, operator, owner or other person having control of a restaurant shall remove all ashtrays, cigarette vending machines, and other smoking paraphernalia except souvenir-related items from any area where smoking is prohibited by this ordinance.
3. The Health Officer or his or her designee and the Police Department shall have the power to enforce this ordinance.
4. Notice of the provisions set forth in this ordinance shall be given to all applicants for a restaurant license in the City of Wauwatosa.
5. Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the Wauwatosa Health or Police Department.
6. The City of Wauwatosa Health Department, Police Department or Fire Department may inspect for compliance with this ordinance and shall have the power, whenever deemed necessary, to enter upon restaurant to ascertain whether it is in compliance with this ordinance. Enforcement may be by citation or through issuance of a summons and complaint.

Part IX. Section 8.12.080 of the Code of the City of Wauwatosa is hereby created to read as follows:

#### **8.12.080 No Retaliation**

No person or entity shall retaliate in any manner against any person or patron because such person or patron exercises any right to a smoke free environment as established under this ordinance.

Part X. Section 8.12.090 of the Code of the City of Wauwatosa is hereby created to read as follows:

#### **8.12.090 Violations and Penalties. Appeal.**

1. A person who smokes in an area where smoking is prohibited by the provisions of this ordinance shall be subject to the penalties in subsection 3, below.
2. A person who manages, operates, owns or otherwise controls the use of an establishment subject to this ordinance and who fails to comply, or fails to direct employees and contractors of the establishment to comply, with any of its provisions, shall be subject to the penalties in subsection 3, below.

3. A person who violates this chapter shall be assessed:
  - a. A penalty not exceeding one hundred dollars (\$100), plus court costs, for a first violation.
  - b. A penalty not exceeding two hundred dollars (\$200), plus court costs, for a second violation of this ordinance occurring within one (1) year of the first offense.
  - c. A penalty not exceeding three hundred dollars (\$300), plus court costs, for each additional violation of this ordinance occurring within one (1) year of the latest offense.
4. Each act of smoking as prohibited under this ordinance shall constitute a separate violation.
5. Appeal. A person adversely affected by an order or citation may, within 30 days of issuance of the order or citation, request a hearing in writing before the municipal court to review the order. The court shall conduct a hearing as soon as reasonably possible after receiving a request for a hearing. A request for a hearing shall not stay an order.

Part XI. Section 8.12.100 of the Code of the City of Wauwatosa is hereby created to read as follows:

**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.

Part XII. Section 8.12.110 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.110 Severability**

If any provision, subsection, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Part XIII. Section 8.12.120 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.120 Effective Date**

This ordinance shall be effective on and after July 1, 2004.

It was moved by Ald. Heins, seconded by Ald. Sullivan  
to adopt the foregoing ordinance. –

It was moved by Ald. Kopischke, seconded by Ald. Ecks  
to amend the ordinance by including the following amendments:

*Part I: The definition of “Separately Ventilated Room” in proposed sec. 8.12.020 shall be amended to read as follows:*

6. *“Separately Ventilated Room” means a space within a building which is in a separate room or fully separated by its location or the building construction from other dining areas, 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. Particulate air cleaners or*

*filters are not considered a ventilation system. If the proprietor provides certification of compliance from an appropriate Wisconsin registered professional, the room shall be deemed to meet this definition.*

*Part II: Proposed sec. 8.12.040 A.5. shall be amended to read as follows:*

- 5. Certifications submitted to the City pursuant to this section are to be maintained by the City as confidential business records, describing trade secrets of the businesses to which they refer, and may be withheld from release pursuant to the terms of the Wisconsin Open Records Law, except that the fact of whether an establishment receives more than fifty percent (50%) of gross receipts from the sale of alcoholic beverages shall not be confidential.*

*Part III: Proposed sec. 8.12.040 C. is amended to read as follows:*

*C. 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, if customers of the restaurant are not required to pass through the separately ventilated room when entering the restaurant through its primary public entrance or utilizing restroom facilities.*

*Part IV: Proposed sec. 8.12.040 D. is amended to read as follows:*

*D. 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 located in a separately ventilated room, upon application to the Wauwatosa Health Department, and approval of the Common Council, 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 that the service of food in this area is incidental to the sale and consumption of alcoholic beverages; 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. 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.*

*Part V: The first sentence of proposed sec. 8.12.060 1. shall be amended to read as follows:*

*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 1/2" x 8 1/2") indicating either that the restaurant is smoke free or that smoking is allowed only in designated areas, as appropriate to the particular establishment.*

With the consent of the Second, Ald. Kopischke changed the word “its” in proposed Section 8.12.040 C to “a”.

With the consent of the Second, Ald. Kopischke changed the wording of proposed Section 8.12.040 D to read as follows: ‘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, and approval of the Common Council, if all of the following apply. For purposes of this section only, “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 non-smoking area or areas so that there is no cross-circulation of air between the smoking and nonsmoking areas. Particulate air cleaners or filters are not considered a ventilation system.’

Upon roll call vote, the vote on the amendment was Ayes 10, Noes 5 (Grimm, Herzog, Krol, McCarthy, Subotich).

It was moved by Ald. Treis, seconded by Ald. Sullivan to amend the proposed ordinance by creating an implementation date of July 1, 2006. Upon roll call vote, the vote was Ayes 8, Noes 7 (Ecks, Heins, Kopischke, Krol, McCarthy, Stepaniak, Bruderle-Baran).

RECESS 9:25 p.m. – 9:30 p.m.

It was moved by Ald. Kopischke, seconded by Ald. Ecks to amend the proposed ordinance by adding the following language to 8.12.120: “or concurrent with the effective date of a similar ordinance passed by either the City of Milwaukee or two other communities contiguous to Wauwatosa, whatever is sooner.” Upon roll call vote, the vote was Ayes 8, Noes 7 (Grimm, Herzog, Krol, Matthews, McCarthy, Subotich, Casey.)

It was moved by Ald. Sullivan, seconded by Ald. Ecks to reconsider (that motion amending the effective date). Upon roll call vote, the vote was Ayes 6, Noes 9 (Grimm Herzog, Krol, Matthews, McCarthy, Subotich, Treis, Becker, Casey) -- Motion failed.

It was moved by Ald. Becker, seconded by Ald. Herzog to amend Section 8.12.040 of the proposed ordinance by creating B., “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.” Upon roll call vote, the vote was Ayes 11, Noes 4 (Kopischke, Stepaniak, Sullivan, Bruderle-Baran).

Vote on the ordinance, as amended, upon roll call vote was Ayes 8, Noes 7 (Grimm, Herzog, Krol, Matthews, McCarthy, Subotich, Casey).

The ordinance as adopted is as follows:

**AMENDED ORDINANCE** O-03-29

**AN ORDINANCE CREATING CHAPTER 8.12 OF THE CODE OF THE CITY OF WAUWATOSA PERTAINING TO SMOKE FREE RESTAURANTS**

The Common Council of the City of Wauwatosa do ordain as follows:

Part I. Chapter 8.12 of the Code of the City of Wauwatosa is hereby created to be entitled, “Smoke Free Restaurants”

Part II. Section 8.12.010 if hereby created to read as follows:

**8.12.010 Findings and Purpose**

The Common Council does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, stroke, and respiratory disease in healthy nonsmokers. The U.S. Surgeon General has determined that secondhand smoke is responsible for the early deaths of 65,000 Americans annually.

The Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen.

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke.

The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.

Wauwatosa has numerous restaurants, some of which are not accessible to patrons sensitive to tobacco smoke.

The Common Council finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in restaurants; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

Part III. Section 8.12.020 of the Code of the City of Wauwatosa is hereby created to read as follows:

### **8.12.020 Definitions**

The following words and phrases, whenever used in this ordinance, shall be construed as defined in this section:

6. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling.
7. "Restaurant" means any building or portion of a building where meals are prepared or served or sold to patrons or the general public.

The term "restaurant" shall not include the following:

- a. A "tavern" as defined below.
  - b. Any establishment not being used as a public accommodation, including but not limited to churches, civic, fraternal, patriotic or religious organizations, and private or service clubs which prepare and serve or sell meals to members and guests only.
  - c. Bowling centers.
  - d. Areas of a building not connected with the restaurant, if the restaurant is located in a hotel, motel, bed and breakfast, or lodging establishment, hospital, office building, retail store, strip mall, or shopping mall. In such case, "restaurant" means the bar area, closet, coatroom, dining area, entrance area, kitchen, restroom, seating area, and supply or storage area that are used in connection with the restaurant.
8. "Smoke Free" means absence from the air of the smoke and smoke by-product from the burning, inhaling, exhaling, or carrying of a lighted cigarette, cigar, pipe, weed, plant or other combustible substance.
  9. "Smoking," means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.
  10. "Tavern" means a licensed establishment with a full service bar in which fermented malt beverages and intoxicating liquors are sold for consumption on the premises and whose sale of alcoholic beverages accounts for fifty percent (50%) or more of the establishment's gross receipts of the most recent licensing year, as determined pursuant to the procedure in sec. 8.12.040, below.
  6. "Separately Ventilated Room" means a space within a building which is in a separate room or fully separated by its location or the building construction from other dining areas, 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. Particulate air cleaners or filters are not considered a ventilation system. If the proprietor provides certification of compliance from an appropriate Wisconsin registered professional, the room shall be deemed to meet this definition.

Part IV. Section 8.12.030 of the Code of the City of Wauwatosa is hereby created to read as follows:

### **8.12.030 Prohibition of Smoking in Restaurants**

Smoking shall be prohibited in all enclosed areas of restaurants.

Part V. Section 8.12.040 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.040 Exceptions**

- A. "Taverns" shall be exempt from the provisions from this ordinance. Every establishment that claims to be a tavern shall:
1. Provide a written certification from an independent, licensed, certified public accountant confirming that gross sales of alcohol beverages at the establishment during the twelve (12) month period prior to the effective date of this ordinance exceeded 50% of the total gross sales of the establishment during that same period. This verification shall be provided to the City Clerk not later than thirty (30) days after the enactment of this ordinance. Any establishment failing to file timely documentation shall be considered a "restaurant" for purposes of this ordinance until such time as appropriate documentation is provided.
  2. Thereafter provide to the City Clerk, once every two years, an additional written certification from an independent, licensed, certified public accountant confirming that gross sales of alcohol beverages at the establishment during the previous two (2) year period exceeded 50% of the total gross sales of the establishment during that same period. Establishments whose street address number is an even number shall provide such certification in even-numbered years, and those whose street address number is an odd number shall provide such certification in odd-numbered years. This verification shall be provided not later than June 30 of the required year. Any establishment failing to file timely documentation shall be considered a "restaurant" for purposes of this ordinance until such time as appropriate documentation is provided.
  3. Every new or remodeled establishment that requires a new occupancy permit for any reason must provide a certification projecting its food and alcohol sales, and shall comply with the verification and documentation provisions of subsection 1, above, for a period covering the first three months immediately following the time the final certificate of occupancy is issued by the city, and then annually thereafter as set forth in subsection 2, above.
  4. Upon receipt of the verification documentation required by this section, the City Clerk shall make a determination whether the documentation satisfies the requirements of this section. If the requirements are met, the City Clerk shall issue an exemption to said establishment for the following two year period. If the City Clerk determines that the documentation does not satisfy the requirements of this section, then no exemption shall be issued and smoking shall be prohibited in said establishment.
  5. Certifications submitted to the City pursuant to this section are to be maintained by the City as confidential business records, describing trade secrets of the businesses to which they refer, and may be withheld from release pursuant to the terms of the Wisconsin Open Records Law, except that the fact of whether an establishment receives more than fifty percent (50%) of gross receipts from the sale of alcoholic beverages shall not be confidential.
  6. Appeal. Any establishment wishing to appeal a determination made under this section may follow the procedure set forth in sec. 8.12.090 hereunder.
  7. Any establishment denied an exemption under this provision may reapply for an exemption twelve (12) months after the date on which the application was made.

- B. An establishment which realizes a loss of gross receipts greater than ten (10) percent as a result of complying with the provisions of this chapter for a 90-180 day period when compared to the same 90-180 day period of the prior year, and demonstrates that it can be reasonably expected that compliance with this ordinance will result in a continuing loss of business, may make a request to the common council for a temporary exception not to exceed twenty-four (24) 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.
- C. 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, if customers of the restaurant are not required to pass through the separately ventilated room when entering the restaurant through a public entrance or utilizing restroom facilities.
- D. 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, and approval of the Common Council, if all of the following apply. For purposes of this section only, "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 or areas so that there is no cross-circulation of air between the smoking and nonsmoking areas. Particulate air cleaners or filters are not considered a ventilation system.
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 that the service of food in this area is incidental to the sale and consumption of alcoholic beverages; and
  5. Customers of the Restaurant Area are not required to pass through the Tavern Area when entering the Restaurant Area through a public entrance or utilizing restroom facilities; and
  6. 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.
- E. 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.

Part VI. Section 8.12.050 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.050 Declaration of Restaurant or Tavern as Smoke Free**

A manager, operator, owner, or other person in control of any tavern or restaurant may prohibit smoking in said establishment, or in any portion not so designated by this ordinance, including outdoor areas. Such declaration shall be noticed to patrons in the same manner as required by section 8.12.060, below, and shall be enforceable in the same manner as any other violation of this chapter.

Part VII. Section 8.12.060 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.060 Posting of Signs**

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 1/2" x 8 1/2") indicating either that the restaurant is smoke free or that smoking is allowed only in designated areas, as appropriate to the particular establishment. 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.

Part VIII. Section 8.12.070 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.070 Enforcement**

1. Any employee, manager, operator, or owner of any restaurant subject to this ordinance shall inform persons violating this ordinance of the appropriate provisions thereof. Such person shall request any person who smokes in areas where smoking is prohibited to refrain from smoking, and if the person does not refrain from smoking after being requested to do so, request the person to leave.
2. The manager, operator, owner or other person having control of a restaurant shall remove all ashtrays, cigarette vending machines, and other smoking paraphernalia except souvenir-related items from any area where smoking is prohibited by this ordinance.
3. The Health Officer or his or her designee and the Police Department shall have the power to enforce this ordinance.
4. Notice of the provisions set forth in this ordinance shall be given to all applicants for a restaurant license in the City of Wauwatosa.
5. Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the Wauwatosa Health or Police Department.
6. The City of Wauwatosa Health Department, Police Department or Fire Department may inspect for compliance with this ordinance and shall have the power, whenever deemed necessary, to enter upon restaurant to ascertain whether it is in compliance with this ordinance. Enforcement may be by citation or through issuance of a summons and complaint.

Part IX. Section 8.12.080 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.080 No Retaliation**

No person or entity shall retaliate in any manner against any person or patron because such person or patron exercises any right to a smoke free environment as established under this ordinance.

Part X. Section 8.12.090 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.090 Violations and Penalties, Appeal.**

1. A person who smokes in an area where smoking is prohibited by the provisions of this ordinance shall be subject to the penalties in subsection 3, below.
2. A person who manages, operates, owns or otherwise controls the use of an establishment subject to this ordinance and who fails to comply, or fails to direct employees and contractors of the establishment to comply, with any of its provisions, shall be subject to the penalties in subsection 3, below.
3. A person who violates this chapter shall be assessed:
  - a. A penalty not exceeding one hundred dollars (\$100), plus court costs, for a first violation.
  - b. A penalty not exceeding two hundred dollars (\$200), plus court costs, for a second violation of this ordinance occurring within one (1) year of the first offense.
  - c. A penalty not exceeding three hundred dollars (\$300), plus court costs, for each additional violation of this ordinance occurring within one (1) year of the latest offense.
4. Each act of smoking as prohibited under this ordinance shall constitute a separate violation.
5. Appeal. A person adversely affected by an order or citation may, within 30 days of issuance of the order or citation, request a hearing in writing before the municipal court to review the order. The court shall conduct a hearing as soon as reasonably possible after receiving a request for a hearing. A request for a hearing shall not stay an order.

Part XI. Section 8.12.100 of the Code of the City of Wauwatosa is hereby created to read as follows:

**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.

Part XII. Section 8.12.110 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.110 Severability**

If any provision, subsection, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Part XIII. Section 8.12.120 of the Code of the City of Wauwatosa is hereby created to read as follows:

**8.12.120 Effective Date**

This ordinance shall be effective on and after July 1, 2006, or concurrent with the effective date of a similar ordinance passed by either the City of Milwaukee or two (2) other communities contiguous to Wauwatosa, whichever is earlier.

**OLD BUSINESS**

Consideration of the proposed 2004 City of Wauwatosa budget was held for two weeks following the public hearing on November 4, 2003.

**RESOLUTION** R-03-277

WHEREAS, a summary of the proposed budget for the year 2004 has been published in the official newspaper of the City on October 16, 2003, together with the notice of public hearing on the proposed budget to be held on November 4, 2003; and

WHEREAS, said public hearing was held at the time and place stated in said notice and opportunity given to everyone present who desired to be heard on the proposed 2004 budget;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Wauwatosa THAT pursuant to said hearing as follows:

1. That the departmental balances, if any, in the general appropriations account shall, on December 31, 2003 revert to the Unappropriated General Fund Balance, except for the following:

<u>Account No.</u>	<u>Account Title</u>
111-5980-020	County Grounds
113	Youth Commission
114	Historic Preservation Commission
211-5980-015	Fire Expenditures from Donations
211-5980-020	Police-Expenditures from Donations
211-5980-060	Federal Reimbursement Program
211-5980-150	Drug Asset Forfeiture
223	Fire Equipment Reserve
522	July Fourth
551 & 561	Parks & Forestry
221-5980-015	Fire Expenditures from Donations

2. That there be and there is hereby appropriated for the various City purposes for the year 2003, the amounts as shown in the attached estimated 2003 budget and for the year 2004, the amounts shown in the attached proposed budget as amended by the Budget and Finance Committee.

3. That the revenues and expenditures for the Debt Service Fund, Special Revenue Funds, Capital Projects Fund, Proprietary Funds and Insurance Reserve Funds are also approved as amended.

4. That the position distribution be amended to reflect those positions created or abolished by the budget.

BE IT FURTHER RESOLVED THAT the sum of \$30,286,743 be and it is hereby levied and assessed upon all of the taxable property, both real and personal, in the City of Wauwatosa, assessed for taxation in said City for the year 2004 for City purposes.

It was moved by Ald. Stepaniak, seconded by Ald. Bruderle-Baran to approve the foregoing resolution. –

It was moved by Ald. McCarthy, seconded by Ald. Sullivan to amend the proposed budget by restoring one Community Support police officer (\$85,000), one full-time desk clerk (\$58,000), and restoring a part-time clerk to full-time status (\$25,000) in the police department, for a total addition of \$168,000. –

It was moved by Ald. Herzog, seconded by Ald. Becker to amend the amendment to offset the proposed addition of \$175,000 (\$168,000 plus \$7,000 that the proposed 2004 levy is over the 2003 levy) by removing the proposed \$95,000 allocation from the Wauwatosa Economic Development budget (WEDC), and by removing \$5,500 from the Municipal Complex budget for painting and furniture, for a total of \$100,500. The balance, \$74,500, shall be offset by the remaining city budgets (except for the Police and Fire Departments), said percentage based upon what percent each department's budget is of the current budget. Upon roll call vote, the vote was Ayes 3, Noes 12 (Ecks, Grimm, Heins, Kopischke, Krol, Matthews, Stepaniak, Sullivan, Treis, Bruderle-Baran, Becker, Casey). –Motion failed.

RECESS 11:22 p.m. – 11:30 p.m.  
(Ald. Subotich excused) -14

It was moved by Ald. Grimm, seconded by Ald. Herzog to amend the amendment by eliminating the Administrative Intern position (\$41,800) and applying that amount to offset the proposed \$168,000 additions to the police budget. Upon roll call vote, the vote was Ayes 5, Noes 9 (Heins, Kopischke, Matthews, Stepaniak, Sullivan, Treis, Bruderle-Baran, Becker, Casey). –Motion failed.

Roll call vote on the amendment was Ayes 5, Noes 9 (Ecks, Heins, Kopischke, Krol, Matthews, Stepaniak, Bruderle-Baran, Becker, Casey). –Motion failed.

It was moved by Ald. Sullivan, seconded by Ald. McCarthy to restore only the Community Support officer (\$85,000) to the police budget. –

It was moved by Ald. Krol, seconded by Ald. Ecks to amend the amendment by removing \$41,800 from the budget for the Administrative Intern, and an additional \$44,000 from the WEDC budget to fund the addition of the Community Support officer. Upon roll call vote, the vote was Ayes 4, Noes 10 (Ecks, Grimm, Heins, Kopischke, Matthews, Stepaniak, Sullivan, Treis, Bruderle-Baran, Casey.) -- Motion failed.

Roll call vote on the amendment to restore the Community Support officer was Ayes 6, Noes 8 (Ecks, Heins, Kopischke, Matthews, Stepaniak, Bruderle-Baran, Becker, Casey).  
– Motion failed.

Roll call vote on the original motion to approve the 2004 budget was Ayes 9, Noes 5 (Grimm, Herzog, Krol, McCarthy, Treis.)

## **APPOINTMENTS BY THE MAYOR**

### Design Review Board A

Ann Larson, 6128 Washington Blvd. (reappointment)  
John Niemer, 7424 Kenwood Avenue (reappointment)  
Wayne Rappold, 6618 Romona (reappointment)  
(Terms end 12/31/05)

### Historic Preservation Commission

Art Chadek, 1821 Alta Vista (reappointment)  
Carolyn Edwards, 1850 N. 74th Street  
Kathleen Ehley, 7437 Kenwood Avenue  
(Term ends 11/30/06)

### Board of Health

Margaret Butterfield, 1420 N. 120th Street (reappointment)  
Leslie F. Martin, M.D., 6814 W. Wells Street (reappointment)  
(Terms end 12/31/08)

Foregoing appointments ordered held as this was the first reading.

## **APPLICATIONS, COMMUNICATIONS, ETC.**

1. Notice of Claim: Barbara Leland, 11015 W. Derby Avenue  
Lawsuit: Jimmy Harris vs. City of Wauwatosa and Michael McDermott, Police Department  
**City Attorney**
2. Wauwatosa Water Utility Statement of Receipts and Disbursements for month ended October 31, 2003  
**Place on file**
3. Conditional Use application to operate a store selling secondhand collectable merchandise at 12201 W. North Avenue  
**Plan Commission, Committee on Community Development**
4. Donation: Ideal Arc-Fault circuit analyzer by Electrical Inspectors Association of Southeastern Wisconsin, Inc. to the Building Department  
**Place on file**
5. City of Wauwatosa Investment Summary as of October 31, 2003  
**Place on file**
6. Conditional Use application to operate an indoor electric go-kart track and family entertainment center at 12132 W. Capitol Drive  
**Plan Commission, Committee on Community Development**
7. Letter from John F. Fuchs, Fuchs, Destefanis & Boyle, S.C., regarding proposed smoke-free restaurants ordinance

- Add to existing file**
8. Letter from Jerry Arenas, WI Chapter President, Cystic Fibrosis Foundation, regarding proposed smoke-free restaurants ordinance
- Add to existing file**
9. Letter from Thomas E. Warren, Alioto's Restaurant, Inc., regarding proposed smoke-free restaurants ordinance
- Add to existing file**
10. Letter from Roxanne Schmidt, 3330B N. Fratney Street, Milwaukee, regarding proposed smoke-free restaurants ordinance
- Add to existing file**
11. E-mail from Vesna Madunic, Bjonda Restaurant, regarding proposed smoke-free restaurants ordinance
- Add to existing file**
12. Letter from Karen Tibbits on behalf of the West Suburban Chamber of Commerce, regarding the proposed ordinance pertaining to smoke-free restaurants
- Add to existing file**

**FROM THE COMMITTEE ON EMPLOYEE RELATIONS**

**RESOLUTION R-03-278**

WHEREAS, a former employee of the City of Wauwatosa who was rehired in a different unrelated position through open competitive examinations has requested that previously accrued sick leave, which had been accumulated prior to his initial departure, be reinstated; and

WHEREAS, the City of Wauwatosa is not in a position to create a precedent by allowing the request in this situation;

NOW, THEREFORE, BE IT RESOLVED THAT the individual employee's request for reinstatement of previously accrued sick leave benefits upon rehiring to an unrelated position is hereby denied.

It was moved by Ald. Casey, seconded by Ald. Heins  
to approve the foregoing resolution. Ayes 12, Noes 2  
(McCarthy, Grimm)

**FROM THE COMMITTEE ON EMPLOYEE RELATIONS**

**RESOLUTION R-03-279**

WHEREAS, the 2004 City of Wauwatosa budget eliminates funding within the police department for the Court Officer for Municipal Court and places such responsibility within the Office of the City Clerk; and

WHEREAS, a new position, being supervised by the City Clerk, would most appropriately be a position within the contract of the OPEIU Local 35 contract; and

WHEREAS, a Memorandum of Understanding creating the position and placing it in the listing of positions in the appendixes to the Local 35 bargaining agreement shall be appropriately concluded upon agreement by this Council;

NOW, THEREFORE, BE IT RESOLVED THAT the creation of the position of Court Officer for Municipal Court within the contract of OPEIU Local 35, pursuant to a Memorandum of Understanding to be reached with Local 35, is hereby approved.

**FROM THE COMMITTEE ON EMPLOYEE RELATIONS**

**RESOLUTION R-03-280**

WHEREAS, in 2002 the City of Wauwatosa authorized the creation of a flexible spending/reimbursement plan for medical and dependent care expenses be made available to full-time employees; and

WHEREAS, upon approval of the medical reimbursement accounts, the City elected to choose an annual level of \$3,000.00 for employees' contributions to such accounts; and

WHEREAS, at least one employee has requested that the limit for medical reimbursement accounts be raised from \$3,000.00 per year to \$5,000.00 per year; and

WHEREAS, the increase in the balance of the account would have little or no fiscal impact upon the City;

NOW, THEREFORE, BE IT RESOLVED THAT the annual limit for employee contributions in the medical reimbursement accounts is increased from \$3,000.00 to \$5,000.00, effective January 1, 2004.

It was moved by Ald. Casey, seconded by Ald. Heins  
to approve the two foregoing resolutions. -14

**FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS**

**RESOLUTION R-03-281**

WHEREAS, Reum Restaurant Services, d/b/a The Ground Round, 10842 W. Blue Mound Road, Wauwatosa, WI, has applied for a Class B beer and liquor license;

NOW, THEREFORE, BE IT RESOLVED THAT a Class B beer and liquor license be awarded to Reum Restaurant Services, d/b/a The Ground Road, 10842 W. Blue Mound Road, Wauwatosa, WI, for the period ending June 30, 2004.

It was moved by Ald. Treis, seconded by Ald. Ecks  
to approve the foregoing resolution. -14

**FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT**

**RESOLUTION R-03-282**

BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin THAT permission be and the same is hereby granted to Patricia A. Josten to combine the parcels located at approximately 3265 N. Menomonee River Parkway, Wauwatosa. These parcels are more particularly described as follows:

Lots 4 and 5, Block 5 in the Sheraton Lawns Subdivision, in the Southeast ¼ of Section 8, in Township 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin.

All in accordance with the application attached hereto and made a part of this resolution, and in compliance with Section 24.56.010 of the Code of the city of Wauwatosa and the payment of all outstanding special assessments on the aforescribed property which is being subdivided.

It was moved by Ald. Heins, seconded by Ald. Kopischke to approve the foregoing resolution. -14

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-03-284**

BE IT RESOLVED THAT the proposed settlement in the matter of Richard Otallah v. City of Wauwatosa, Milwaukee County Case #02-CV-00928, in the amount of \$10,500.00, is hereby approved.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-03-285**

WHEREAS, the Board of Directors of the Village of Wauwatosa Business Improvement District has submitted its 2004 Work Plan for review and approval; and

WHEREAS, the proposed 2004 work plan includes an increase in assessments of 5.0%, which was adopted by the Village B.I.D. Board;

NOW, THEREFORE, BE IT RESOLVED THAT the 2004 Village of Wauwatosa Business Improvement District work plan, a copy of which is attached to this resolution and incorporated herein, is hereby accepted, approved, and placed on file.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-03-286**

WHEREAS, following the year 2000 Presidential Election, the State of Wisconsin enacted legislation requiring certification for the Chief Inspectors at polling locations at the City; and

WHEREAS, such training was tentatively scheduled to occur during the year 2003 but has been delayed until the year 2004; and

WHEREAS, funding necessary to pay Chief Inspectors and Substitute Chief Inspectors in the amount of \$2,800.00 for attendance at this training was provided in the 2003 budget; and

WHEREAS, funding to pay the cost of certifying Substitute Chief Inspectors at the City's expense, at a cost of \$1,600.00 was also included in the 2003 budget;

NOW, THEREFORE, BE IT RESOLVED THAT the carryover of \$4,400.00 from the 2003 Elections budget to the 2004 Elections budget for costs associated with state certification of poll workers, as more particularly described in the October 31, 2003 memorandum of the City Clerk, is hereby approved.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-03-287**

WHEREAS, the City Clerk has sought permission to execute a hardware maintenance agreement with Election Systems & Software (ES&S) for maintenance of the City's 25 Optic III-P voting tabulators; and

WHEREAS, the extended warranty period on the voting tabulators expires on December 31, 2003, requiring the hardware maintenance agreement to become effective after that date; and

WHEREAS, the annual cost of \$6,900.00 for this maintenance contract has been allocated in the proposed 2004 Elections budget;

NOW, THEREFORE, BE IT RESOLVED THAT the City Clerk is authorized to execute the hardware maintenance agreement with Election Systems & Software for one year including up to two additional years for renewal.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-03-288**

WHEREAS, the Health Department and Fire Department have jointly requested permission to upgrade the fire department information systems for purposes of assisting in the development of standardized plans for public health emergency responses; and

WHEREAS, the departments work together to coordinate emergency response mechanisms; and

WHEREAS, no City funds are available for this project, but the health department has received authorization to utilize bioterrorism grant fiscal agent funds for this purpose;

NOW, THEREFORE, BE IT RESOLVED THAT the Wauwatosa Fire Department is hereby authorized to expend funds in the amount of \$27,486.25, utilizing Health Department Bioterrorism Consortium Grant fiscal agent money, for purposes of upgrading computer equipment and software to facilitate reliable recordkeeping in response to public health emergency response plans, as more particularly described in the November 5, 2003 memorandum from the Health Officer, Fire Chief, and the Purchasing Director.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-03-289**

WHEREAS, the Wauwatosa Fire Department has requested permission to submit an application to the Federal Emergency Management Agency for expansion of the Fire Safety Education Program in an amount of \$11,000.00, which would require 10% local matching funds; and

WHEREAS, outside of the local matching funds, no additional ongoing costs will be incurred as a result of acceptance of the grant; and

WHEREAS, equipment purchased with the grant would be used to target higher risk groups such as seniors and pre-school age children for fire safety education;

NOW, THEREFORE, BE IT RESOLVED THAT the Wauwatosa Fire Department is hereby authorized to apply for a FEMA grant in the amount of \$11,000.00 for fire safety education programming, as more particularly described in the November 5, 2003 memorandum of the Fire Chief.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-03-290**

WHEREAS, the Budget Reduction Implementation Plan for the year 2003 requires a hiring freeze for all vacant positions without the specific approval of the Common Council; and

WHEREAS, there currently exist two vacancies within the engineering and operations department, the first being a Laborer II in the street section as a result of a promotion and the second an Arborist I position; and

WHEREAS, winter season operations require the department to be operating a full strength; and

WHEREAS, the department of public works has met its budget reduction targets for the budget year 2003;

NOW, THEREFORE, BE IT RESOLVED THAT the request for an exception to the hiring freeze to fill the two positions within the Department of Public Works as described above is hereby approved.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-03-291**

RESOLUTION AUTHORIZING THE ISSUANCE OF WATERWORKS SYSTEM REVENUE REFUNDING BONDS AND RATIFYING REDEMPTION OF A PORTION OF \$2,200,000 WATERWORKS SYSTEM REVENUE BONDS, SERIES 1992, DATED NOVEMBER 15, 1992

WHEREAS, the City of Wauwatosa, Milwaukee County, Wisconsin (the "City") has heretofore issued its \$2,200,000 Waterworks System Revenue Bonds, Series 1992, dated November 15, 1992 (the "1992 Bonds");

WHEREAS, the Common Council hereby finds and determines that it is necessary, desirable and in the best interest of the City that the 2005 through 2009 maturities of the 1992 Bonds (the "Callable 1992 Bonds") be called for prepayment and prepaid at their earliest redemption date, January 1, 2004;

WHEREAS, the Common Council hereby finds and determines that waterworks system revenue refunding bonds in an amount not to exceed \$900,000 (the "Bonds") should be issued to pay the cost of refunding the Callable 1992 Bonds (the "Refunding"), and it is now necessary and desirable to authorize their issuance and sale;

WHEREAS, the Bonds shall be sold at the December 2, 2003 Common Council meeting;

WHEREAS, the provisions of the 1992 Bonds require that notice of such redemption be given at least 30 days prior to January 1, 2004;

WHEREAS, in anticipation of the sale of the Bonds, the City hereby authorizes and directs the City Clerk to work with its financial advisor, Hutchinson, Shockey, Erley & Co., to take the steps necessary to call the Callable 1992 Bonds at their earliest redemption date; and

WHEREAS, after the issuance of the Bonds, the City shall prepay the 1992 Bonds on January 1, 2004.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1. Authorization of the Bonds. For the purpose of paying the cost of the Refunding, there shall be borrowed pursuant to Chapter 67 of the Wisconsin Statutes, the principal sum of not to exceed NINE HUNDRED THOUSAND DOLLARS (\$900,000) from a purchaser to be determined by subsequent resolution of the Common Council (the "Purchaser").

Section 2. Award of the Bonds. Pursuant to such subsequent resolution, the Common Council shall take further action to provide the details of the Bonds and to award the Bonds to the Purchaser.

Section 3. Deposit to Special Redemption Fund. The City shall deposit sufficient funds from the proceeds of the Bonds into the Special Redemption Fund for the 1992 Bonds for the redemption of the Callable 1992 Bonds.

Section 4. Call of the Redeemed 1992 Bonds. The Common Council hereby calls the 1992 Bonds due on January 1, 2005 through January 1, 2009 for redemption on January 1, 2004 at the price of par plus accrued interest to the date of redemption and authorizes and directs the City Treasurer to provide sufficient funds to The Depository Trust Company, New York, New York, (the "Depository") prior to January 1, 2004 to pay the Callable 1992 Bonds.

Section 5. Call Notice to Depository for Redeemed 1992 Bonds. The Common Council authorizes and directs the City Clerk to work with the City's financial advisor to cause timely notice of the call of the Callable 1992 Bonds to be given by providing a notice thereof, in substantially the form attached hereto as Exhibit A, by facsimile transmission, registered or certified mail or overnight express delivery to the Depository not less than 30 days nor more than 60 days prior to January 1, 2004. Such notice to the Depository shall be given no later than December 1, 2003.

Section 6. Additional Call Notices for Redeemed 1992 Bonds. In addition to the official notice of redemption provided for in Section 5, the City Clerk is hereby authorized and directed to work with the City's financial advisor to cause further notice of the redemption of the Callable 1992 Bonds to be provided to other registered securities depositories in the business of holding substantial amounts of obligations of types such as the 1992 Bonds, and to nationally recognized municipal securities information repositories that disseminates notices of redemption of obligations such as the 1992 Bonds. Each further notice shall contain the information set forth in the Notice of Call provided on Exhibit A.

Adopted and recorded this 18th day of November, 2003.

EXHIBIT A

NOTICE OF FULL CALL\*

Regarding

CITY OF WAUWATOSA  
MILWAUKEE COUNTY, WISCONSIN  
\$2,200,000 WATERWORKS SYSTEM REVENUE BONDS, SERIES 1992  
DATED NOVEMBER 15, 1992

NOTICE IS HEREBY GIVEN that the Bonds of the above-referenced issue which mature on the dates and in the amounts; bear interest at the rates; and have CUSIP Nos. as set forth below have been called by the City for prior payment at the principal amount thereof plus accrued interest to the date of prepayment on January 1, 2004 at par:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
1/1/2005	\$150,000	6.30%	943521HG2
1/1/2006	175,000	6.40	943521HH0
1/1/2007	175,000	6.50	943521HJ6
1/1/2008	200,000	6.60	943521HK3
1/1/2009	200,000	6.70	943521HL1

The City shall deposit federal or other immediately available funds sufficient for such redemption at the office of The Depository Trust Company on or before January 1, 2004.

Said Bonds will cease to bear interest on January 1, 2004.

It was moved by Ald. Stepaniak, seconded by Ald. Krol to approve the seven foregoing resolutions. -14

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION**

WHEREAS, the City Attorney has been charged with pursuing legal action to collect debts owed to the City as a result of personal property taxes, property damage and various other items not covered by other collection agreements; and

WHEREAS, the City Attorney has recommended the utilization of the law firm of O'Neill, Schimmel, Quirk and Carroll, S.C. for purposes of pursuing legal action to collect outstanding debts owed to the City, which firm shall charge 30% of the amount of the outstanding debt as a fee for its service in addition to actual Court costs upon collection of the funds; and

WHEREAS, O'Neill, Schimmel, Quirk and Carroll, S.C. has been retained by the City for many years for other purposes and has provided satisfactory work for the City, as well as having a familiarity with the operations of City government;

NOW, THEREFORE, BE IT RESOLVED THAT the firm of O'Neill, Schimmel, Quirk and Carroll, S.C. shall hereby be retained for purposes of collecting debts owed to the City by the filing of the necessary legal action, with fees paid upon collection of each debt, in the amount of 30% of the outstanding debt amount plus costs.

It was moved by Ald. Herzog, seconded by Ald. Stepaniak to issue Requests for Proposals for this work. -14

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-03-283**

WHEREAS, the City Attorney has requested to retain the Baller Herbst Law Group to assist in negotiations for a new franchise agreement with Time Warner cable television for the City of Wauwatosa; and

WHEREAS, income to the City from the franchise agreement brings well over \$300,000.00 in revenue to the City each year for the length of the agreement; and

WHEREAS, the budget for the conclusion of the negotiations with Time Warner cable television has been estimated to be \$30,065.00 during approximately the next 2-3 years;

NOW, THEREFORE, BE IT RESOLVED THAT the transfer of \$30,065.00 from the Reserve for Contingencies to the Cable Television Account for the purpose of retaining the Baller Herbst Law Group during negotiations for a new cable television franchise agreement with Time Warner cable television is hereby approved;

BE IT FURTHER RESOLVED THAT funds allocated in the cable television account for this purpose shall be carried over from year to year until such time that they have been utilized or the project has been completed.

It was moved by Ald. Stepaniak, seconded by Ald. Krol to approve the foregoing resolution. Upon roll call vote, the vote was Ayes 14.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

BILLS AND CLAIMS FOR THE PERIOD 11/05/03 – 11/18/03 --

The Committee on Budget and Finance hereby reports to the Common Council that it has examined the accounts of bills and claims and hereby certifies the same as correct and recommends that each of said accounts be allowed and paid.

Total bills and claims for 11/05/03 – 11/18/03: \$1,270,158.05

It was moved by Ald. Casey, seconded by Ald. Ecks that each and every account of bills and claims be allowed and ordered paid. Upon roll call vote was Ayes 14.

There being no further business, the meeting adjourned at 12:08 a.m.

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Carla A. Ledesma, CMC, City Clerk