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**COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, March 11, 2003**

PRESENT: Alds. Becker, Ecks, Heins, Herzog, Kopischke, Krol, Sullivan (8:16 p.m.); Treis -8

ALSO

PRESENT: A. Kesner, City Atty.; N. Welch, Community Dev. Dir.

Ald. Heins in the Chair called the meeting to order at 8:11 p.m. -7

Proposed Noise Ordinances

City Attorney Kesner reported that he has fielded many questions and concerns about noise and noise ordinances since coming to Wauwatosa. In the process of drafting the proposed ordinances, he became aware that this committee discussed noise regulation in late 2000 and early 2001 and specifically requested that a decibel-based noise ordinance be drafted. The experience of other cities and at the state level with decibel based noise ordinances, however, indicates that it is not the best enforcement method. It requires expensive equipment that costs from \$2,000 to \$5,000 per unit, yearly calibration at about \$1,000, and specially trained personnel. Even then, it is difficult to cite violators. There are a few offending noises that reach 70-75 decibels, but most annoying noises occur at quiet times like 3 a.m. and are at 30-40 decibels, which wouldn't violate a decibel-based ordinance.

Mr. Kesner further outlined the three proposed ordinances that he drafted:

1. A general noise ordinance created as Chapter 7.46 of the Code that basically prohibits annoying noises. The language has been tested in court cases around the country and seems to be well established. The ordinance is modeled on a City of Madison ordinance that has worked fairly effectively.

(Ald. Sullivan present. -8)

2. A decibel-based noise regulation ordinance created as Chapter 8.20 of the Code that allows for different decibel levels in different zoning districts. It is based on a West Allis ordinance and an attorneys' association model. Mr. Kesner drafted this ordinance since it was what the committee had requested, but he is not recommending it.
3. A general motor vehicle noise control ordinance created as Chapter 11.38 of the Code that has some decibel-based enforcement for use when appropriate. It has a general prohibition on excessive noise levels especially those resulting from defective or modified exhaust systems or audio devices.

Mr. Kesner recommended ordinances #1 and #3. He plans to make some changes based on comments from a number of city departments, particularly public works where there is a need to ensure that our operations will be in compliance with these ordinances.

Barb St. George, 12223 Woodside Court, complained of loud noises from the state fair park race track that reach Wauwatosa, and she also mentioned annoying wind chimes and screeching pet birds. Mr. Kesner said that the race track is on state property over which Wauwatosa has no control, and it is a function specifically allowed there. He said that an owner of pet birds would be responsible for controlling their noises—but it is one of those things that is difficult to enforce.

Ald. Ecks noted his district's experience with late night/early morning noise during previous Harley Fest events and he asked how the ordinance addresses motorcycles. Mr. Kesner said that the most important provision is that exhaust systems on light motor vehicles (the category of motorcycles) are required to be either the original noise abatement device or a device that works equally well. Motor vehicle noise is difficult to enforce, he noted, because the vehicle is gone by the time police get there. The ordinance does provide the ability for enforcement in appropriate situations.

Ald. Ecks favored having the ordinance in place in time for this summer's Harley gathering. He referred to a clipping regarding informational signage that the city might consider to inform people that a noise ordinance is enforced. Mr. Kesner said that public works would probably be able to provide that type of signage but would need a funding source.

Ald. Kopischke asked about defining a standard of reasonableness. Mr. Kesner said the concept of the reasonable person standard is longstanding in law. It allows police officers to do pursuit as they deem appropriate and to take appropriate action. This would allow enforcement of the 3 a.m.-type noises that are at lower levels as well as louder noise at other times. This standard has been upheld in other noise ordinances.

Ald. Kopischke asked how a noise ordinance would affect current businesses practices such as construction or an existing business that is gradually surrounded by residential uses. Mr. Kesner said that certain ongoing noises might be grandfathered and newly created or portable noises would be given a reasonable time to comply. He is working with the Director of Public Works to make sure various types of equipment that the city uses will be in compliance, which is sometimes done through exceptions. There are some exceptions for governmental activities and some emergency situations right now that will be clarified as this moves forward.

Ald. Kopischke indicated his support for ordinance drafts #1 and #3 but agreed that it would be difficult to enforce specific decibel levels as outlined in the second ordinance. He will discuss some concerns about specific language with Mr. Kesner separately. He asked about financial penalties, and Mr. Kesner responded that a general penalty clause allows a lot of flexibility and the maximum is close to the limits of what a municipality can impose.

Ald. Herzog was concerned about grandfathering existing conditions. He noted that a constituent has complained about an existing rooftop air conditioner that he felt was extremely noisy. If it is considered in compliance, will it be harder to enforce under the reasonable person standard? Mr. Kesner said the ordinance doesn't address some of the specific things we have in the building codes now, but we wouldn't be allowing any more noise that we currently are and it will probably cut down noise. Air conditioner noise is specifically addressed by a current ordinance.

Ald. Herzog asked why #1 and #2 couldn't be melded together, noting that we already have a decibel based ordinance for air conditioners and vehicles. If using a decibel measuring instrument for those situations,

why not use it for all, he asked. Mr. Kesner said that all three could be put in place, but he cautioned about the expense of enforcing a decibel-based ordinance. There is also concern from the enforcement departments about the need for training and calibration of instruments. Many cities have decibel based ordinances, but many regret having them, he stated.

Ald. Sullivan noted that under this ordinance and without expensive equipment, police could pull over a vehicle with loud pipes as a quality of life issue. Mr. Kesner confirmed that police would have enforcement ability in situations like that. Enforcement on a complaint basis would be the most difficult.

Ald. Krol said that he hasn't had any noise complaints from constituents over the past two years or so since this committee last discussed a noise ordinance. He felt this would be difficult to enforce and asked about current ordinances on disturbing the peace. Mr. Kesner said that our general ordinances on disturbing the peace and disorderly conduct do not specifically address noise. Ald. Krol suggested that residents who have a noise concern should call their alderperson. He would talk to the person who is violating and try to get them to stop. Since this has been in file for two years without any major violations, he felt that the timing may not be right to proceed unless we get a great number of complaints or a stream of complaints about noise.

Moved by Ald. Krol, seconded by Ald. Becker to place the matter in file for at least another two years –

Ald. Becker advocated holding the motor vehicle ordinance for six months. He noted that the city will have 50,000 Harley guests this summer who will make a lot of noise for four or five days and probably could be cited for having modified exhaust systems.

With consent of the second, Ald. Krol amended the motion by moving to hold the matter for six months –

Ald. Krol said that within that six month period residents could contact their elected officials and provide input on whether noise is really a problem. If there are critical issues, the matter could be brought back sooner. Ald. Kopischke disagreed with waiting to pass an ordinance until there is a stream of complaints. Ald. Herzog suggested separating ordinances #1 and #3 to resolve some of the issues with the anticipated Harley event.

Ald. Krol withdrew the motion.

Moved by Ald. Herzog, seconded by Ald. Kopischke to recommend to Council introduction of a general noise control ordinance under Chapter 7.46 of the Code and to place the motor vehicle noise control ordinance draft in file for six months –

Ald. Ecks said the Council would be abrogating its responsibility on motor vehicle noise control if action isn't taken now. He felt that officers should be empowered to issue citations when there are 30,000 motorcycles on the streets. Ald. Sullivan also had some concerns with holding the motor vehicle ordinance and waiting until complaints are received.

With consent of the second, Ald. Herzog amended the motion by moving to recommend to Council introduction of a general noise control ordinance under Chapter 7.46 of the Code –

The Chair was concerned about noise from public works operations and the firing range at the city yard. She also noted that a recent water main break resulted in trucking out loads of ice and slush at 3 a.m. Development proposals under discussion by this committee could result in moving more people into that area. Mr. Kesner reiterated that he has been working with the Director of Public Works to be sure that the city's legitimate operations will not be affected. Some of the language changes in the final draft will address that. Decibel levels at the public works yard were measured today. Right now emergency public works operations and government functions are not required to meet noise regulations.

Vote on the motion, Ayes: 8

Moved by Ald. Ecks, seconded by Ald. Sullivan to recommend to Council introduction of a motor vehicle noise control ordinance under Chapter 11.38 of the Code –

Ald. Sullivan observed that the concern is not just motorcycles but also cars with loud exhaust systems or amplified music.

Moved by Ald. Becker, seconded by Ald. Krol to hold the matter of a motor vehicle noise control ordinance for six months. (Motion to hold takes precedence)
Ayes: 5; Noes: 3 (Kopischke, Sullivan, Ecks)

Moved by Ald. Sullivan to recommend to Council introduction of an ordinance creating Chapter 8.20 of the Code relating to decibel levels –
Motion fails for lack of a second.

Proposed Standards for Review of Development Proposals for Public Works Site

Ms. Welch reported that she was directed at the previous meeting to work with the three developers selected by the committee and come back with more detail about their development proposals for the former public works site south of Walnut Road and west of N. 113th Street. She is not yet at that point since she still needs to work with some of them, particularly on one proposal that needs extensive work in order to come forward with something that can be evaluated by the committee.

Ms. Welch said that she was also asked to bring forward some proposed standards that the committee might use in communicating with the developers. She mentioned density, sewer credits, and traffic as top priorities. As reported at the previous meeting, existing sewer credits would allow for 350 two-bedroom units on the site or 550 one-bedroom units, both using the entire allocation of sewer credits. When considering desired density, she advised weighing the value of development with increased density against concerns about increased traffic and the matter of sewer credits. Most of the proposals varied from 13.2 to 23.9 units per acre. Is this committee comfortable with 23.9 units per acre, which is the densest? If the committee doesn't want to set a density, she would continue to work with the developers at the density levels they proposed.

Regarding traffic, Ms. Welch said that there are rough estimates that say development would produce traffic somewhere in the neighborhood of 1,400 cars per day. 116th Street is identified as a connector street, which means it is constructed to handle 13,000-16,000 vehicles per day. The current level is around 6,000-7,000 vehicles per day, which is under the design capacity of the street.

It is also time to address issues such as landscaping and lighting standards and construction materials, Ms. Welch said. She assumes that the direction is toward high quality materials such as brick and masonry

products. Do we want to set lighting standards? How do we want to handle the site plans as we refine the proposals?

Ald. Kopischke asked if we would want to use all of the sewer credits or preserve some for future use. Are there other potential developments in that area of the city? He asked for guidance as to what it might be prudent to preserve. Ms. Welch responded that there are always possibilities, there are always sites ready for redevelopment. There are still a number of under-utilized locations along North Avenue and Blue Mound Road. The basin for this area covers pretty much of the west side of the city south of Burleigh Street. The question is whether to hold off on making a decision on a potentially good development for fear of turning down future developments.

Ald. Herzog suggested adding to the list of considerations the question of including development of a park north of the police station as part of the plan, as mentioned by one developer. Ms. Welch agreed and noted that another developer also mentioned a walking course on "Mt. Tosa."

Asked by Ald. Herzog about infrastructure considerations such as looping the water main, hydrants, reconstructing 113th Street, and traffic signals, Ms. Welch said those issues are part of the cost of any of the proposals and were listed in the RFP.

Ald. Treis asked what would happen in that area of the city in the future if all of the sewer credits were used on this one project. Ms. Welch said that future development would not occur unless there was a way to come up with more credits or if MMSD's 2020 plan gives us more. Some communities have developed beyond their capacity without MMSD taking any enforcement action, but MMSD is now threatening fines and the possibility of closing off access to the sewer system if projects don't have their approval.

Asked how the sewer credits would apply to the proposed sports complex, Ms. Welch said that project would fall under a commercial use and would not use up sewer credits. They would still need to provide basic infrastructure, but the sizing would be different than that provided for a housing development. The committee should be aware that adequate facilities would be provided but shouldn't necessarily be concerned about the fact that it might cost more or the developers might pay more.

Ald. Ecks asked if there are achievable I and I (infiltration and inflow) improvements that can create future credits in this basin. Ms. Welch answered affirmatively, indicating that we have greater capacity for base flow than for peak flow but we have more possibilities for addressing peak flow through I and I reductions.

Ald. Kopischke said he does not feel qualified to state a number on density but is a little uncomfortable with 23.9 units per acre. He was uncertain, however, about restricting density too much. He felt we would want to see high quality materials. Traffic doesn't seem to be a huge problem, he stated. The addition of 1,400 cars to 116th Street would be a significant increase but would still be half the street's capacity. He acknowledged concern in terms of change in the neighborhood.

The Chair said she assumes that Watertown Plank Road could accommodate additional traffic. She felt that residents would not only use 116th Street but also 115th Street south of Watertown Plank Road, especially in light of the proposed development on the Circle Electric parcel. She would like to see an update on the traffic impact studies done in connection with the Circle Electric proposal. If attracting residents who work in the Research Park, they might very well use 115th Street and Potter Road, which raises concerns in connection with Underwood School.

The Chair said it is important to get neighborhood input, perhaps in the next two weeks, before decisions are made. Ald. Kopischke agreed that neighborhood participation is very important but suggested that the most appropriate time may be when the three developers have something concrete to put in front of them.

Ald. Sullivan indicated that he would not want to tie developers' hands in terms of density to the point of making the finalists make significant changes to the plan. He noted that Toldt Development's proposal had one of the highest densities but it had some unique qualities. He would not necessarily want to go with the highest density, but that is a project that everyone liked.

Ms. Welch said she will continue working to refine the proposals. Now is the time to apprise the developers of any considerations or limitations. Before selling any city land, it will be critical to look at the demonstrated financial capacity of the developer and experience with similar projects. The concern would be to avert having a developer complain when a project is partially done that he can't make ends meet. Ms. Welch will work on firming up financial background information.

The meeting adjourned at 9:16 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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