

Aiken City Council Minutes

May 20, 2008

Worksession

Present: Mayor Cavanaugh, Council members Clyburn, Dewar, Price, Smith, Vaughters, and Wells.

Others Present: Roger LeDuc, Richard Pearce, April Bailey of the Aiken Standard, Gary Smith, Janis Ladd, Sam and Donna Erb, Jet Beckum, Dan Carrigan, Carla Cloud, Donald Swindler, Gina Lane, Johnny Johnson, Neal Shah, Dave and Carolyn Best, Scott Singer, and other interested citizens.

Mayor Cavanaugh called the meeting to order at 7:04 P.M. and stated the purpose of the meeting was to discuss a proposed City of Aiken smoking ban ordinance. He continued to explain this is not a regular Council meeting or a meeting where Council will vote to approve or disapprove anything, but rather a meeting to discuss the issue of a non-smoking ordinance.

Roger LeDuc, City Manager, shared that a number of local governments in South Carolina have either passed or are in the process of passing a smoking ban (Aiken County, Beaufort County, Town of Bluffton, City of Charleston, Columbia, Greenville, Hilton Head, and others). Aiken basically used two ordinances, Greenville and Aiken County, to create Aiken's proposed ordinance. Greenville's ordinance was chosen because it was reviewed by the Supreme Court, who ruled that the Greenville smoking ordinance meets all state requirements. They found nothing wrong with the ordinance, itself. Aiken County's ordinance was considered because it is desired that within our county and community there is a similarity of what is being done. He reviewed the differences between the proposed city and county ordinances. Differences included: enforcement, sports arenas, bars, private facilities, or a private party within a particular room that was off-limits for the general public, smoking in confined spaces, and the definition of confined spaces. Most of the proposed City ordinance is in line with the County ordinance. He asked Council members to indicate if there are areas in the ordinance where they would like to make changes. The intention is to bring a draft ordinance to City Council for first reading on June 9, 2008, and second reading on June 23, 2008. Mr. LeDuc referred members to the Restrictions and Non-Restrictions attachment with his memo to the Council.

Councilwoman Vaughters asked for clarification of "private club" but not for pecuniary gain (Sec. 22-65. Definitions). Staff Attorney Pearce answered, that under the current draft, there would not be a "so-called private bar" where people pay \$10.00 for membership and go to drink because that would be "for profit." That anticipates the 501C3, the non-profit organizations that may have a meeting hall. Those are locations where people would be allowed to smoke. Councilwoman Vaughters asked for clarification of Sec. 22-68 (a) concerning private offices. Staff Attorney Pearce explained the reason for those type areas in the ordinance is that Greenville based their ordinance on the Surgeon General's Report which is the 600 page report of a four-year study which made detailed findings about the deleterious effects of secondhand smoke. In the report, it concluded that even in these enclosed spaces that have air-scrubbers which remove large particulate matter and some odor, the carcinogens found in cigarette smoke were not removed. Private offices are considered as enclosed spaces.

Another request for clarification was Section 22-69 (b) concerning the status of smoking and nonsmoking rooms in a hotel or motel may not be changed except to add additional nonsmoking rooms. Questioned was a new motel/hotel. Staff Attorney Pearce explained that he interprets the draft to say that a new motel/hotel could have a designated smoking floor, but steps need to be taken so the smoke in rooms on the smoking floor does not infiltrate into the nonsmoking rooms.

Councilman Dewar asked for clarification concerning a "private club" hosting a function that serves alcohol and a meal. Staff Attorney Pearce explained that under the current draft, the "private club" could not have smoking if anyone from the public can go in. If

there is a private party and the general public is not entering the building (invitation only), smoking could be permitted. However, if the function is held in a "for profit" business hall, such as, Newberry Hall, smoking would not be allowed.

Mayor Cavanaugh commented that he had conversed with Mr. LeDuc and Mr. Pearce concerning the definition of the partial-wall. Should any height solid wall constructed on three sides of an open porch area be considered as a partial wall and smoking not allowed in that area (example – the new Pizza Restaurant on Newberry Street at Richland Avenue)?

Staff Attorney Pearce replied that in this draft, "partial wall" language has been removed (see page 4 at the bottom). It must be totally open on three sides before smoking is allowed. A partial wall is not totally open on three sides.

Councilman Smith agreed that Council should consider clarifying the definition of partial wall.

Staff Attorney Pearce said that a percentage of the wall area could be considered as the basis for the definition of a "partial wall."

Councilwoman Price asked about a front porch situation. Staff Attorney Pearce replied that the whole project would have to be considered, but that is a good issue to consider. He shared that the Greenville ordinance says that any smoking would have to be 10' away from the entrance door so smoke doesn't waft in.

Jet Beckum, of 188 Governor Lane, said he was opposed to the ordinance. He had been through the same issue with the county. Basically, people have quit smoking, and only 10% to 20% of the citizens still smoke. All of a sudden, why would any reasonable body want to get into trying to legislate a smoking ban? It is ridiculous. The County approved the ordinance with the sheriff standing there saying he would not enforce the law. Why pass a law when the main law enforcement division stated he would not enforce it?

Mayor Cavanaugh replied that was not the reason the sheriff said he couldn't enforce it. The reason he could not enforce the ordinance is that he doesn't have the forces to do so.

Mr. Beckum disagreed. He said the sheriff said he didn't have time to chase people for violating a smoking ban when there are drug dealers killing people.

Mayor Cavanaugh said the reason the City is looking into a smoking ban is because of the numerous organizations that have identified the fact that smoking is a health issue.

Mr. Beckum said there is no correlation between secondhand smoke and anybody's health. Just because a nonprofit organization makes statements isn't a reason. All you are doing is taking the freedom away from people. If this is kept up we will have a Russia.

Mayor Cavanaugh countered that statement by saying he knows the truth of the issue is that smoking is a health risk and gave testimony to his family members who suffered from smoking.

The Council is trying to make the community as healthy as possible and protect younger citizens as well as those who must work in such environments.

Mr. Beckum said the legislative job is not to protect the people from themselves. The legislative job is to protect the people from the government.

Sam Erb, of 1556 Dibble Road, said he is not against the ordinance because he knows it will happen. He has been dealing with the smoking ordinance throughout the state for many years and dealt with the county through their process. Mr. Erb said unfortunately the State legislature didn't make the issue one uniform State law. This should be a State law to have uniformity throughout the state. Instead, it was passed down to municipalities to adopt their own rules and regulations. Therefore, it will create unfair competition. From municipality line to municipality line the rules will be different.

When a visitor or tourist visits the state, even if there is a nonsmoker who doesn't want to go into a smoking establishment, there is no way for that visitor to know what ordinance that town/municipality has. His point is to stress that there is an ordinance in Aiken County that works, so why is the city inventing the wheel. Let's show the rest of the state that Aiken, North Augusta, and other surrounding municipalities can all work together and have uniformity in one – the same – ordinance. Working together is important and says a lot.

In answer to a question, Mr. Erb explained how the County ordinance affected his restaurant. Mr. Erb replied that his restaurant has been nonsmoking for 16 years and is laid out so that there is 35 feet between the nonsmoking restaurant area and the bar area. The County ordinance indicates that an attached bar is a restaurant and bar under one roof. His is classified as an attached bar, but the restaurant is equipped to make sure the smoke doesn't infiltrate into the nonsmoking area. The County has regulations that a person must be 18 years of age to frequent the bar, and allows for signage that says "This is a smoking bar." Mr. Erb shared that the State legislation does not know the word "bar" because it does not appear in any of the State statutes. He continued by giving an example of the Super Bowl sport event – the business wants customers to come and enjoy the game with fellow citizens. They purchase drinks and food and pay taxes for four hours during the game, yet they are required to go out the door to smoke when they are in a bar where the door could be closed. Most likely that patron would go out the door and not come back. That is a concern. Not jeopardizing the strong hospitality business in Aiken County should be the goal. Augusta is our major competitor. Business operator fines were mirrored from the Greenville ordinance. Greenville's ordinance states that if a person has stepped outside a building to smoke, that person cannot stand there but must keep walking. They also must be at least 10 feet from the door before "lighting up." He emphasized the smoking person has to be moving and cannot stand still. Mr. Erb commented that he prefers Aiken County and Georgia's side of the law better than upper state SC.

Councilman Wells asked for clarification of County Ordinance Section 11-71, "smoking is prohibited in an attached bar." Mr. Erb referred to Section 11-74-(f) and Section 11-74-2. Councilman Wells reiterated Section 11-71, where smoking is prohibited....item (c).

Mr. Erb said true unless the establishment meets the requirements. He gave an example of Applebee's where the bar is in the dead center of the restaurant. Proper signage will alleviate the problem.

Mr. LeDuc said that under the City's proposed ordinance, smoking would not be allowed in that area.

Mr. Erb pointed out that is a major difference between the County and City's proposed ordinance. That is the point he was trying to make – a city within a county having different regulations.

Mr. LeDuc said that was one of the problems considered when compiling the ordinance – wait staff, customers, and others who have to walk through that area to get to a patio area or to the outside.

Mr. Erb replied that a patio is a smoking area.

Mr. LeDuc said the wait staff has to walk through the smoking area to serve the food on the other side of the bar area.

Mr. Erb said his point in being present at this meeting is to create uniformity and not unfair competition. Business owners will find a way to get around the law and smokers will frequent the most available place. Is that fair?

Councilwoman Price said she works around some employees who smoke and has found that they are extremely conscious and respectful of nonsmokers. She gave examples of

courtesies. One courtesy she pointed out was a smoker not smoking in a car with nonsmokers.

Mr. Erb implied that is another point. Some states do not allow smoking in a car if children are in the vehicle. What about smoking parents who desire a hotel/motel room and they have two children with them. Will they be allowed to stay in a "smoking" room and the children be allowed in the same room? Is this a law telling parents what they can or cannot do with their children? He again emphasized there must be uniformity and he intends to stress his points at any gathering where this issue is addressed.

Councilwoman Clyburn explained why the state has not acted on the issue. She said the hospitality industry has a very prominent presence in Columbia. She asked if Mr. Erb thought individual businesses would have objected to legislation.

Mr. Erb replied that he is a member of the Hospitality Industry group and the group chose not to fight because the issue would eventually surface. He is in favor of state legislation. There are many municipalities in the State of South Carolina, and by the end of the issue, there will be that many different ordinances in effect, and that is absurd. Mr. Erb pointed out it took 18 years for SC to get rid of mini-bottles and join the rest of the nation with large bottles. Now, there will be 350 different ordinances for smoking—that is absurd.

The next discussion concerned employees complaining about having to work under smoking conditions.

Councilman Smith asked if there was any chance of getting the County to change their ordinance.

Mr. Erb replied that if the City feels so strongly about what they are proposing, go to the County and ask, but let's all work together. We are all adults.

Carla Cloud, Executive Director of the Aiken Downtown Development Association, indicated she had spoken with the downtown member restaurant owners to get a feel for their thoughts. She said their first concern was this is a "slippery slope" of government regulation of something where people have a right to choose. All restaurants that were contacted are "no smoking" and are doing this on their own. There was concern about outside smoking areas. There are tables in alcoves of buildings which would be affected. Bar and tavern patrons should be allowed to smoke. Ms. Cloud said that some felt this should be on the state level, and the Georgia regulations should be considered. There should be uniformity. She agreed with Mr. Erb in that we should be more in-line with Georgia regulations than upper state.

Donald Swindler, of 608 Douglas Drive, commented that he hopes the proposed ordinance is not "watered down." He stated he has visited Greenville numerous times and their smoking ordinance is well done. The owners of every bar and restaurant he has visited have indicated their business has increased since the ordinance. Mr. Swindler stated facts about cigarettes containing 4,000 substitutes that can kill—some cancer causing. He has family members who have died of lung cancer because they refused to stop smoking. He has asthma and smoke is a health issue. He spends money every month so he can keep breathing, but none of the medicine he takes prevents the asthma from kicking in if smoke is present. Mr. Swindler suggested that the ordinance include verbiage to regulate the distance that smoking is allowed from a doorway or entrance to a business.

Gina Lane, of the South Carolina Tobacco Collaborative, handed out a packet that included business costs, economic impact of smoke free laws, and some of the Surgeon General's report. She said she teaches smoking sensations and helps people who want to quit smoking. She spoke about employee and worker's health. According to the Surgeon General, there are no safe levels of secondhand smoke exposure. Ms. Lane said that Columbia is revisiting and voting on changes to their ordinance. Had they come up with a 100% comprehensive ordinance saying "protect all workers in all work places" this would not be necessary. She said that the South Carolina Tobacco Collaborative is available to help in any way to get a comprehensive ordinance passed as well as in the

implementation process. Ms. Lane asked that Aiken consider the 100% comprehensive smoke-free ordinance to protect all workers from the affects of secondhand smoke.

Toni Korhoren, Director of Student Health of USCA, answered some of the questions concerning the employees who work in bars. She said that many college students do work in bars and restaurants because of their schedules and their need for a job. They are breathing the smoke from the establishment's patrons. She stated statistics about secondhand smoke and the facts proven about chemicals released from a burning tobacco product of which 50% are cancer causing. Ms. Korhoren identified some of the released chemicals and their poisonous characteristics. She said Ireland went to smoke free pubs and bars in 2004. She visited Ireland in 2005-2006 and was shocked when she visited a bar. They didn't lose money, it was packed. One solution for their smoker patrons was a provided smoking area which was heated in winter and visually inviting. To protect the students and employees who must work in bars, the bars and restaurants can and should go smoke-free.

Johnny Johnson said he concurs with most everything Mr. Erb had said. He compared Sec. 11-74(b) the Aiken County ordinance (hotel/motel) with the proposed City ordinance and suggested it be added to the City ordinance. The outdoor dining areas Sec. (e) should be better defined. Section (f) Bars and Restaurants 1. and 2. should be added to the City ordinance. Mr. Johnson questioned "Private Clubs" (Sec. 22-69(e) – Smoking Not Regulated) private clubs that have no employee.... He gave the example of the VFW. Mr. LeDuc replied that unless there is a function, those types of facilities usually don't have an employee working there all the time.

Mr. Johnson asked how the 10' rule concerning the distance from a doorway would affect businesses that serve food to tables outside the establishment. Another question was how the ordinance would be enforced. He emphasized that he was not against an ordinance. Most smokers use common sense and choose where they smoke, in a restaurant and places where alcohol is served.

Neal Shah, who resides at 1009 Evans Road, said he owns and operates motels in Aiken. Speaking from the hotel side, he is in full support of the ordinance. Mr. Shah said the Marriott International took the initiative to make all their hotels in North America nonsmoking. They see it as a global perspective that even smokers want to stay in nonsmoking rooms. He sees a huge economic impact in his hotels – for the good. All the new hotels/motels being built in his franchise chain will be nonsmoking.

Carolyn Best, of 401 Northwood Drive, addressed the 10' distance from a doorway for people smoking at small tables outside the eateries. She said it is disturbing for a nonsmoker to have to walk through the smoke to get to inside the smaller restaurants to order. Ms. Best said that nonsmokers will shy away from establishments that do allow smoking at the tables placed on the sidewalks outside the business. Perhaps the city could have smoking places – alleyways or designated smoking areas. If a business chose to make their business nonsmoking, she felt their business would increase. She gave an example of one particular restaurant in Aiken. It was suggested that she contact the owner and suggest to them that their business become nonsmoking. She suggested that the proposed ordinance include that smoking be banned at least 10 feet from a doorway.

Councilwoman Price said she personally sees the issue pertaining to indoors, but if the ordinance says "here is open space and we are going to stop a business from using open space for a patron to enjoy a meal," that may be overly-restrictive.

Councilman Dewar said he understood the point Ms. Best was making in that we are regulating the inside of establishments but allowing contamination of the outside getting into the facility.

Councilwoman Vaughters said she felt there is a difference in staying in a motel room that reeks with smoke and walking through a smoke area to reach another area that is nonsmoking. We are talking about the levels and exposure to smoke. She has a great sympathy with people who have allergies and asthma. Ms. Vaughters said she is not afraid to take her children through a bar area to reach an outside eating area.

Ms. Best said it is her opinion that if a person wants to smoke in the confines of their own home or vehicle that is up to them. If there is a person who has a bad habit that may adversely affect someone else's health, it needs to be controlled as best as possible.

Don Swindler commented that two years ago Boulder, Colorado was going through the same issue. The state got involved, and there is a state law that says no smoking in bars and restaurants. However, it may be worth the Council's time to get in touch with Boulder's mayor or councilmember to see how they are resolving the issue of smoking outside a facility. Mr. Swindler further indicated there was no smoking on the main street of town, but there were facilities a few blocks from the downtown area with tables outside and the patrons were smoking. He could not explain that difference. When he spoke with restaurant owners, the owners said they adhered to the ordinance which regulated the distance to 20 feet from a doorway.

Dave Best, of 401 Northwood Drive, said he visited Hilton Head last fall. Hilton Head has a no smoking ban in restaurants and bars. Mr. Best said it was a pleasure to go to a bar and sit on a stool, drink a beer, and not have smoke blown in your face. There were loyal patrons who came into the bar, placed their cigarettes and lighter on the bar. When they wanted to smoke, they went outside and returned to the bar when they finished smoking. Loyal customers will continue to patronize a favorite establishment for whatever reason. Mr. Best said he felt a number of restaurant owners were not at this meeting because they know this is the right thing to do.

He said he was convinced and proud that the Council was committed to making a difference in considering the issue. There is a sense of commitment.

Scott Singer, 317 Live Oak Road, said he just came from the County Council meeting and several citizens had come to speak about the smoking ban in the City of Aiken. They raised a number of interesting issues and he wanted to share those with this Council. Mr. Singer said he did not represent the whole County Council but did represent District 2. There is some validity in making sure there is some consistency and uniformity in the application of a smoking ban throughout Aiken County. County Council indicated to an individual that they would be more than happy, once the City of Aiken and North Augusta address the issue, to sit down and discuss ways to make sure that uniformity and consistency exists. The citizens would be confused in many cases as to what they could or could not do. As long as the county is consistent and uniform, those competitive advantages or disadvantages the business owners would have would go away. Mr. Singer said the cities and county have cooperated on many issues, and he wanted to communicate that County Council stands ready and willing to address this issue with the municipalities. This is not an easy call. To Mr. Singer, public health and welfare is the most important aspect of the issue. Cooperation is needed to make the best ordinance for all Aiken County citizens.

Dan Carrigan, of 1616 River Road, Johns Island, SC, handed out highlights from the Surgeon General's report along with statistics concerning Air Pollution in Smoking vs. Smoke-free Venues in Charleston County, SC. He requested to speak last so he could address some of the concerns expressed by citizens. Mr. Carrigan's work is to promote smoke-free indoor workplaces and public places through local ordinances to protect the health of the workers in those establishments. The primary concern is about workers. He works in coordination with the American Lung Association, the American Heart Association, the American Cancer Society, the Department of Health, and groups like the S.C. Tobacco Collaborative who focus on tobacco. The difference in his organization is that he is not affiliated with the Department of Health, but a community based organization working with S.C. African/American Tobacco Control Network that works under a grant from the Robert Wood Johnson Foundation. They desire a smoke-free ordinance centered around the fact that everyone has the right to breathe clean air.

He explained that several things are going on at the state level despite the Supreme Court decision, which was about whether or not local governments have the right to create their own smoke-free laws. They were discussing this because in 1996 the tobacco industries spread around a lot of money in Columbia through large and small contributions to a large number of the legislature as to how they voted on the language inserted into State

law that said, "No local or municipal government may create their own smoke-free laws or make a law related to tobacco products." They didn't preempt local laws as intended. This was a victory delivered by the Supreme Court. Across the nation, the tobacco industry tries to pass the preempted laws because they know it can weaken or block a smoke-free law at the state level. Tobacco lobbyists love these issues to come to the statehouse because they have friends at the statehouse.

As far as a State solution, there is no state solution. The issue was in the House Judiciary Committee which was trying to pass a statewide law that had been drafted by the tobacco industry. This law had a \$100.00 exemption so you could buy your way out of compliance by posting the hours on the door that said when the establishment allowed smoking. During those hours, children are not permitted. The \$100.00 fee was paid to the State. The purpose is because the tobacco industry wants to make it confusing, hard to enforce, and make it where nobody will bother to enforce the law. The practice of preemption of local laws has gone across America, but no one has passed a preempted state law in years. Georgia's state law has no preemption. The reason to preserve that is if the state passes a law that looks great but includes preemption, that indicates that no local municipal government may pass their own smoke-free law. The next year the tobacco industry can come back with bar owners and make an issue of who suffered in loss of business on "Super Bowl Sunday." One action at the statehouse can roll back the smoke-free law and put 1,000's of workers back in a smoke environment. That is why there is no state solution. Health groups were unanimously opposed to any statewide law at this time.

The enforcement of these laws will be easy if the ordinances are consistent. Mr. Carrigan said his organization would like Aiken County to change their law. It is the weakest law in the state covering a large population. He pointed out some of the weak points and indicated that the verbiage is similar to the law written at the statehouse by the tobacco industry. He gave reasons for his opinions.

Mr. Carrigan indicated that the proposed City ordinance satisfies the requirements of every health group in the state. It follows Greenville's Supreme Court upheld rule and does not create or exclude a subclass of workers that are not allowed the same protection as other workers in the workplace.

Councilwoman Vaughters asked what a local government is to do when pedestrians walk down a street and get emission from vehicles? Some of the statements are over the top. She indicated she was upset with parts of the ordinance indicating that SIDS is caused by secondhand smoke. That is not proven. It is in the General Surgeon's report but there are many opinions on this. Councilwoman Vaughters said she had a niece who died of SIDS, and she wouldn't want her mother to think that secondhand smoke cause that death. We should be very careful when making generalizations that we are looking for the overall health of the community. That is not a problem, but when we start making all these specific statements that supposedly are facts or factual but are very debatable, that is a problem.

Mr. Carrigan said that when one looks at research, the source of that research should be considered. Only peer reviewed studies not funded by the tobacco industry are the ones to be considered.

Councilwoman Vaughters answered that she has experience in a business that the government has gotten involved in and the government tells that business what good they have done, but the professionals involved in the business do not necessarily agree with that all the time. She is skeptical of generalizations.

Mayor Cavanaugh said with all the statistics being heard, there are different opinions. He continued by saying he felt the majority of the information the council has to consider is true.

Mr. Carrigan said that is one reason why so many smoking laws are being passed across the country. There are horrific health statics and disparities in S.C., and they want to do what they can to reduce those statistics. He handed out a packet of research material

about key points of worker's health. He closed by saying he hopes the City Council sticks with the draft ordinance.

Councilwoman Clyburn said she agreed with the gentleman who spoke about how much money he spends on asthma medication. There are many people who realize what those costs are. Today, there are many people who realize that smoke is no respecter of area. If one goes into a restaurant with a no smoking area and it is located across the isle from a smoking area, smoke is going to cross over. A lot of restaurants have gone to no smoking and realize their businesses have not suffered. She agrees the City of Aiken needs to do something but doesn't want to criticize what others are trying to do to solve the problem. She agrees that it would be better to have a statewide initiative. She asked that Council put forth their best effort in such a way as to craft something that perhaps the state may look at and adopt statewide preventing other smaller cities from going through the process. The hospitality industry would look at this and study what they needed to do. The effort should be to not put someone out of business and not to craft something that cannot be lived with and hurt the character of Aiken. We need to move forward in a positive way, bring in all the partners, and listen to what has been said at this meeting.

Councilman Smith said he wants to coordinate with the county, but having done his own study, he doesn't feel it makes sense to match the county totally. Mr. LeDuc and Staff Attorney Pearce have done a great favor by giving what is considered to be a good, workable, and sensible ordinance, and we should stick close to it. There may be a rub somewhere, but little compromises can take place. Councilman Smith said he wished he could have responded to Mr. Beckum's accusation that Council is imposing its will on the small group of smokers. He said that was not the intent of the ordinance, rather it is to protect the welfare of the lives of the 90% of the people who do not smoke.

Councilmember Clyburn indicated that she wanted Council to clarify the "partial wall" definition.

Mr. LeDuc said that Council needs to direct what they determine to be a "partial wall." It would be easier to enforce if "partial wall" is define by percentage or number that can be calculated for each case. The County Ordinance defines that smoking is allowed in an outdoor area but it must be open on three sides. Mr. LeDuc agreed that on page 4 of the proposed ordinance the word "partial wall" must be defined for interpretation purposes.

Mr. Erb indicated that North Augusta is also working on a similar ordinance and asked if there had been any communication between them and the City of Aiken concerning uniformity. Mr. LeDuc replied that he had not spoken with North Augusta because he was not certain as to how this Council felt about some of the specifics in this ordinance.

Councilwoman Vaughters said she had received four calls concerning this issue. Most restaurants in Aiken do not allow smoking. The callers referred to posting of signs on businesses that allow smoking as allowed under the County ordinance. She said if Aiken's ordinance included a provision for warning the citizens that smoke may be a problem in some establishments, that citizens could choose whether or not to patronize that establishment. In most cases, our business owners have been very sensitive to patrons' expectations.

Mayor Cavanaugh asked if Council was ready to bring the ordinance, as is, to public hearing at the June 9, 2008, meeting or whether another work session is required.

Councilwoman Price said she would like what constitutes three sides and partial walls identified in the ordinance before a public hearing is held.

Johnny Johnson commented that perhaps the Zoning Ordinance or OSHA regulations require railings or fences to enclose an outdoor eating area. That needs to be considered.

Councilman Dewar said he agrees with consistency. He felt North Augusta and Aiken County will go along with Aiken if a good job has been done. Aiken is in line with the decision of the Supreme Court, but he is still bothered with the 10' clearance of doorways. Maybe it can't be applicable to restaurants because there are unique

considerations, but this is not just for restaurants. This ordinance is creating a smoke-free environment. He would like the 10' clearance of doorway rule considered in work places. Maybe it would be exempted in the business community. What are we gaining if we say you can't smoke in a bank but you can smoke out in front of the bank and patrons have to walk through the smoke to get into the bank?

He asked if there is a smoking ban in the city that covers the athletic fields.

Mayor Cavanaugh replied, "No, it is an open area."

Councilwoman Price said she was supportive of the ordinance, but at what point do you infringe on a person's right with air.

Councilman Dewar replied it is not air when there is smoke. He asked about Citizens Park because predominantly that is where there are a lot of children. This is not about restaurants. The discussion has been predominantly about restaurants. This is about a smoke-free environment for workers. It may manifest itself more in restaurants because there are more smokers, but it is about a smoke-free environment. This must be kept in mind as we work through the issue.

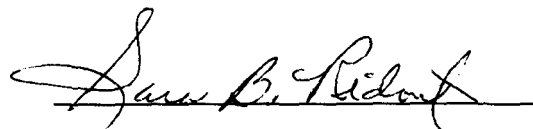
Councilwoman Price reiterated she was supportive of the ordinance, but if we get into banning someone standing around their car smoking a cigarette, not around anyone, and the law says you are violating our ordinance, she would like to see the City win that case in a court of law. If you are talking about banning smoking from an entire location, that means you cannot stand and smoke at your car.

Councilwoman Clyburn commented that for the most part, today people are not seen standing outside places where they work or patronize, as they once did, smoking. Smokers seem to be more considerate of the nonsmoker now than they previously were. Many businesses have designated a smoking area for their employees so the general public is not subjected to the smoker.

Councilman Wells said he has spent many hours at Citizens Park with his boys who play ball, and he has not seen anyone smoking on the grounds. He did agree with Councilwoman Vaughters in that the issue can be taken way too far and make it a much bigger problem than what it is. Also, we must respect the personal property rights of the business owner. Mr. Wells said he changed his store to a nonsmoking area inside the store 6 or 7 years ago. That was his decision to do so. It has not adversely affected his business. His customers started to complain about the smell of the store and that prompted him to change the business to a nonsmoking area. Aiken has tremendous business owners who responded to what the public outcry has been to them and Aiken will continue to have that. A business owner should have the right to choose what goes on within that business; a patron has the right to choose whether to patronize that business or not, and an employee has the right to choose whether to work there or not. He is for protecting people from secondhand smoke, but government can go too far.

Councilman Smith said he agrees and feels that all the Council members agree that the draft ordinance doesn't go too far, but they don't want to carry it to the next phase.

The meeting was adjourned at 9:32 P.M.



Sara B. Ridout
City Clerk