



MINUTES
SPECIAL CITY COMMISSION MEETING
TUESDAY, AUGUST 26, 2008
7:00 P.M.

The Special Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor Mark Hatesohl and Commissioners Bob Strawn, Bruce Snead, James E. Sherow, and Tom Phillips were present. Also present were the City Manager Ron R. Fehr, Assistant City Manager Jason Hilgers, Assistant City Manager Lauren Palmer, City Attorney Bill Frost, City Clerk Gary S. Fees, 5 staff, and approximately 58 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Hatesohl led the Commission in the Pledge of Allegiance.

RESOLUTION NO. 082608-A – PETITION – NO SMOKING IN PLACES OF EMPLOYMENT AND PUBLIC PLACES

Bill Frost, City Attorney, presented an overview of the item and responded to questions from the Commission.

Stan Watt, 2817 Arbor Drive, Chairperson, Clean Air Manhattan, presented the item and highlighted the proposed ordinance, economic impact, expectation of businesses, economic savings, and informed the Commission that adopting this ordinance is the right thing to do.

Steve Short, 3624 Anderson Avenue, Physician, informed the Commission that this is a quality of life issue and provided research indicating the risk factors associated with smoking and exposure to second hand smoke. He asked the Commission to adopt the proposed ordinance.

Jeff Levin, 3704 Everett Road, Chair, Manhattan Area Chamber of Commerce, informed the Commission that they oppose the proposed ordinance as it's written and questioned the fairness of the proposed fine structure. He stated that he looks forward to working with members of Clean Air Manhattan and asked that the Commission to send the proposed ordinance on to the voters to decide.

SPECIAL CITY COMMISSION MEETING (*CONTINUED*)

RESOLUTION NO. 082608-A – PETITION – NO SMOKING IN PLACES OF EMPLOYMENT AND PUBLIC PLACES (*CONTINUED*)

Russ Loub, 120 North Dartmouth Drive, Owner, Little Apple Brewing Company, voiced opposition to the proposed ordinance and stated that it violates the essential freedom of choice this nation was founded on. He stated that he was opposed to anything limiting business owner's rights and freedoms and voiced concern with those proponents in favor of government mandate and regulation.

David Darling, 131 EJ Frick Drive, provided pull factor statistics for Manhattan and informed the Commission that by making our community a healthier environment will improve the pull factor.

Kendra White, 1123 Vattier Street, voiced support for the proposed ordinance and stated that she plays in a band and the ordinance would eliminate her exposure to second hand smoke in places that she works.

Pat Asche, 1215 Laramie Street, stated that this should be a freedom of choice that needs to work for everyone and if specific questions can't be addressed, that the proposed ordinance should not be passed.

Walt Gatsche, VFW Post, informed the Commission that certain areas of the Post are smoke-free and asked that the proposed ordinance not be passed by a percentage that has petitioned, but to let the public decide.

Billy Porter, 3708 Crossgate Circle, business owner, asked the Commission how this ordinance will help their business and stated that some of the bars in Lawrence lost business and some did not recover after adoption of its no smoking ordinance. He stated the proposed ordinance is about a small percentage of people wanting control and that this ordinance is forcing patrons in the streets and sidewalks outside our establishments.

Robert Hertzell, 3014 Cherry Hill, informed the Commission that he was a veteran and suffers from chronic lung problems. He stated that when he is exposed to second hand smoke, that he is down for days and asked to protect the freedoms of those against toxic substances.

Lydia Peele, 1829 Anderson Avenue, spoke on behalf of the K-State Student Body and stated that a resolution was passed by the K-State Student Senate supporting the concept of a smoke free ordinance. She urged the Commission to ensure the health and safety of our citizens and voiced support for the proposal to eliminate smoking in workplaces in Manhattan.

SPECIAL CITY COMMISSION MEETING (*CONTINUED*)

RESOLUTION NO. 082608-A – PETITION – NO SMOKING IN PLACES OF EMPLOYMENT AND PUBLIC PLACES (*CONTINUED*)

Keith Eyestone, 518 South 18th Street, Aggieville Business Association member, voiced opposition to the way the proposed ordinance is written.

David Zuck, 524 Edgerton Avenue, Owner, Zuckey Bowl, stated that the proposed ordinance does little to protect the constituency that Clean Air Manhattan cites, especially children. He stated that the restrictive smoking proposal is not healthy for the community and needs to be defeated by the Commission and by the voters.

Dee R. Ross, 2304 Brockman Street, informed the Commission that America is a free democratic society that our veterans have fought for and now our freedoms are being trampled on by a few seeking to eliminate our freedoms.

Joan Coovert, 900 Gillespie Drive, informed the Commission that this is an issue about health that will affect everyone and will eventually make us sick.

Bill Reece, 2013 Deerfield Square, stated that when exposed to second hand smoke, he becomes very ill and that it takes about a week for him to recover. He stated that we all have a right to be healthy and we can change our environment now or wait for the State of Kansas to do it.

Doug Long, P.O. Box 126, Manhattan, informed the Commission that he has been in the industry for 34 years and that everyone has a right to choose to go to a smoke free or a smoking facility.

Marion Schroll, 318 N. Noble, Riley, stated that he has been a smoker most of his life and that alcohol and obesity is not healthy either and asked if these conditions would be regulated next. He stated that nothing is worse to a person's health than killing an unborn baby if we are going to protect the innocent.

Hillary Esry, 407 Ehlers Road, stated that pregnant women should not have to suffer a miscarriage because of second hand smoke. She stated that the Commission has had ample time to pass an ordinance and now people have been forced to stand up for themselves. She asked the Commission to vote for the proposed ordinance and if not, stated that it will go to the ballot.

Dr. James Gardner, Past President, Kansas Lung and Heart Association, provided an example of a former patient that experienced acute asthma and stated that if the Commission would pass the proposed ordinance with a unanimous decision, that it would send a strong message to the community.

SPECIAL CITY COMMISSION MEETING (*CONTINUED*)

RESOLUTION NO. 082608-A – PETITION – NO SMOKING IN PLACES OF EMPLOYMENT AND PUBLIC PLACES (*CONTINUED*)

Dr. Roger Reitz, 1332 Sharingbrook Drive, informed the Commission that he appreciated the comments shared tonight and stated that this item will be important this year in the State legislature. He said that smoking is a malignant quality to public health and has significant financial implications to all of us.

Austin Schuldt, 3210 Windgate Circle, stated that most food establishments do not have patio space nor 20 feet of space from its entrance for those that want to smoke.

Dennis Cook, 6854 Chinkapin Circle, informed the Commission that individuals have their lives invested in their businesses and the rules being proposed are not fair. He questioned the parameters established for business establishments, golf courses, and the impact on business operations.

David Seay, 803 Pierre Street, stated that the data is clear on the advantages of going smoke free in businesses. He asked the Commission to stand up and support the proposed ordinance.

Nick Powers, 816 Butterfield Road, stated that he has been in the bar business for three years and it is the customers right to be there.

Chuck Murphy, Director, Riley County Health Department, informed the Commission that four parties are involved: the smoker, the business owner, the employees of those businesses, and the public. He stated that businesses do not have the right to harm others and showed a video about the affects of second hand smoke.

At 9:00 p.m., the City Commission took a brief recess.

Katie Jackson, Assistant City Attorney, responded to questions relating to the proposed ordinance submitted by Clean Air Manhattan.

Bill Frost, City Attorney, responded to questions from the Commission regarding how the proposed ordinance would apply to Kansas State University property and the meaning of the provision liberal construction and residence.

After discussion, Commissioner Sherow moved to approve first reading of an ordinance eliminating smoking in places of employment and public places. Commissioner Snead seconded the motion.

SPECIAL CITY COMMISSION MEETING (*CONTINUED*)

RESOLUTION NO. 082608-A – PETITION – NO SMOKING IN PLACES OF EMPLOYMENT AND PUBLIC PLACES (*CONTINUED*)

Commissioner Sherow stated that this ordinance came to us from a public initiative and that the previous and current Commission had an opportunity to pass such an ordinance. He stated that the ordinance proposed is a protection of a fundamental right to life that was jeopardized by subjecting non smokers to the health risks associated with cigarette smoke. He called the regulation a proper role of government and said that freedoms end when they start affecting another person's life.

Commissioner Phillips stated that this would not be the ordinance that he would draft and questioned the need to prohibit smoking in outdoor seating areas. He stated that his preference would be for the item to go to public vote.

Commissioner Snead stated that he has been through this before as a Commissioner and the item has been unsuccessful in the past. He said the state legislature failed to bring this item forward and the petition ordinance is the result of democracy, and cited economic, medical, and political advantageous in enacting the ordinance. He stated the facts are clear and the time has come to pass an ordinance with no exemptions.

Commissioner Strawn said this is difficult choice because he promised to vote for an ordinance that eliminated smoking in restaurants, bars, hotels, and similar businesses, but stated that the Clean Air Manhattan proposed ordinance went beyond public places. He questioned the provisions to outdoor sporting events under the proposed ordinance and said that he could not support the ordinance submitted by Clean Air Manhattan.

Mayor Hatesohl stated that if 90 percent of the people can avoid 90 percent of second hand smoke, 90 percent of the time, then there should not be a law. He stated that majority of restaurants are already smoke free and stated if there is significant city-wide support for this ordinance, it will pass easily. If not, it will be because a majority of Manhattanites do not need government to protect them from themselves. He asked that the item go to a vote of the people.

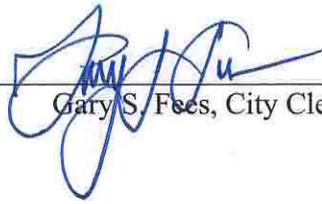
On a roll call vote, motion failed, 3-2, with Mayor Hatesohl and Commissioners Phillips and Strawn voting against the motion.

Ron Fehr, City Manager, provided clarification on the item.

After additional discussion, Mayor Hatesohl moved to approve Resolution No. 082608-A submitting a question to eliminate smoking in places of employment and public places to the electorate for a vote. Commissioner Phillips seconded the motion. On a roll call vote, motion carried 5-0.

ADJOURNMENT

At 9:45 p.m., the City Commission adjourned.

A handwritten signature in blue ink, appearing to read "Gary S. Fees", is written over a horizontal line.

Gary S. Fees, City Clerk