

**COMMITTEE ON HEALTH
AD HOC COMMITTEE
MARSHFIELD, WISCONSIN
MINUTES OF AUGUST 30, 2010**

Meeting called to order by Chairperson Feddick at 5:03 p.m., in the Council Chambers of City Hall Plaza.

PRESENT: Alderpersons Feddick, Spiros and Wagner, Marvin Duerr, Chris Jockheck, Andy Martin and Dr. Steven Kirkhorn (arrived at 5:15 p.m.).

ABSENT: None

ALSO PRESENT: City Attorney Hutchinson, Deputy Fire Chief Erickson, Lieutenant Larson, Deputy Clerk Panzer, David Wille, Susan Youngwith and Mayor Meyer (arrived at 5:26 p.m.)

Chairperson Feddick read the following questions that the Committee on Health would like answered for the Council.

1. What are the significant differences between the City Code and the State law and which are most restrictive and which are less restrictive?
2. Which of those provisions must by law apply?
3. What are the possible solutions to reconcile those differences?
4. What happens if the State law is repealed? What if it is amended? How can the mandates of the referendum be preserved? Can they be preserved in the face of State law?
5. Can the proposed changes be enforced by law enforcement, code enforcement, and fire inspection?
6. What do other communities do?
7. What can we do as a municipality under State law?
8. What did the referendum really say? What did the voters vote on?

Chairperson Feddick invited the witnesses present to address their testimony to the above questions.

City Attorney John Hutchinson addressed the differences between State Statutes and the current City code.

1. State Statute prohibits smoking in enclosed places and it defines enclosed places. That is significantly different from the City Code which refers to an indoor area or indoor place. The two (indoor area and indoor place) are used interchangeably in our City Code and the City Code doesn't define what constitutes an indoor area or an indoor place.

The definition of an enclosed place per State Statutes is a structure that has a roof and more than two substantial walls. State Statutes then proceeds to define a substantial wall which is a wall with no opening or with an opening that either does not allow air in from the outside or is less than 25 percent of the wall's surface area. The Department of Commerce has proposed an alternate to that. That alternate says the substantial wall is defined as having a surface area of closed and/or closeable space exceeding 75 percent of the total surface area. .011 gauge screening with 18 x 16 mesh counter similar screening materials which are less restrictive for free air flow are permitted and as such would not be counted as a portion of the closed surface area. The later portion of that, which talks about less restrictive for free air flow was a modification that an earlier committee the City had developed on their own. The concept behind allowing the mesh was that it would somehow allow continuous air flow.

Chris Jockheck asked City Attorney Hutchinson if the wall that they are referring to is a wall that isn't an existing wall to the place of business. When they talk about the 25 percent opening that is if they were building a deck. They could build a wall protecting and that is where the 25 percent comes in.

City Attorney Hutchinson said he thinks the context that they are using in the statute is that it is a wall that is part of the structure that you are defining as being either an enclosed place or not an enclosed place.

Chairperson Feddick asked how the Department of Commerce's definition fit into the State Statute. Is it something that they are trying to amend into the State Statute?

City Attorney Hutchinson said he believes that is the idea. There are arguments that the current statutory definition of a substantial wall is somewhat ambiguous and doesn't address the possibility of this screen mesh for example, and so the Department of Commerce perhaps in conjunction with some other advisors, outside personnel, the Tavern League being noteworthy on this attempted to expand or clarify better what is allowable and not allowable for X substantial wall.

Marvin Duerr said he attended Department of Commerce meetings in Madison when they were doing the discussion before they passed the State law and one of the reasons they had put this amendment forward is the fact that if you want to build a structure off your existing building you could structure wall off. The structure wall must meet building code, must have an airway between the two structures whether it is ventilated, fanned or whatever. One wall is your substantial wall and the other one on the other end is your closure wall where you get out with your door, because you have to have an entrance and egress either on both sides. The other two walls had to be 25 percent wall and 75 percent variable, which means windows can open and the reasoning for that was because people are building four seasons rooms. There are many of them throughout the State right now that meet the State code. And the reason they do that is because the patrons go out there, they have their screen televisions out there and they are allowed to go out there and smoke. Employees don't go out there unless they choose to go out there. No one can force an employee to go into a smoking area. The reason that they changed this as much as they did was the fact that if you have an investment like that and you put in a flat screen TV or furniture out there, you have to be able to lock it up at night. If the windows are not closeable and can't be closed whatsoever. Whatever you put in there will be deteriorated over weather conditions over a period of time. The Abares just built a brand new structure by State law. Tommy's Hilltop has one pretty much the same thing by State law. He feels the City should have a back up plan that if the State law is repealed, the City automatically adopts the ordinance as it used to be.

Chris Jockheck asked Marvin Duerr what the separation was between that space like Abares has and the interior bar area.

Marvin Duerr said there is no definition of safe distance. You can not define the distance separation in any book or any law.

Chris Jockheck expressed concerns about patrons standing right outside the door of a business smoking sort of half in and half out come December.

Marvin Duerr agreed with Chris Jockheck's concerns, but he didn't think the bar owners would allow their patrons to do that.

Marvin Duerr suggested using a variable, a hall between the two structures. This is not in the State law.

Dr. Kirkhorn arrived at 5:15 p.m.

Alderson Wagner said he only talked with one other community about this and his understanding from that community was that, because it wasn't in the statute as to what the definitions of a wall were or what the definitions of indoor were, Commerce was going to embark on a rule that would show up at the Wisconsin Administrative Code. They abandoned that. He asked Marvin Duerr if he knew why they abandoned that.

Duerr said last minute preparation was the fact because the original law that was written would have prohibited any stores, grocery stores, liquor stores, convenience stores, C stores to sell cigarettes or matches or lighters. When they wrote the law they had a part that said you can not supply or sell and they didn't put a definition in there of what was constituted as a place of sale. There were enough members from the Tavern League and also the CEO from the Tavern League that brought it to their attention, so they had to make a lot of significant changes real fast at the end. Some of the things that they had talked about or discussed earlier were inadvertently not put back in, because it was last minute. How do we correct these mistakes that we've already made? That was one of the reasons that the wording for definition of what a reasonable distance is, which can not be defined, was ambiguously taken out of there, because they wanted to have a distance between that door and the door where you went into the smoking area that was ventilated completely through. That was their original plan, but because of the last minute changes that they had to make those parts never got back in there. That is why their building code is going to be what they think it should be when they pass that for what a structure should be.

2. In our code we permit a hotel, motel; characterized as a lodging establishment to designate up to 25 percent of their rooms as smoking rooms. State Statute has no such provision. In fact, State Statute expressly prohibits smoking in lodging establishments.

Attorney Hutchinson explained that our City Code was an earlier form of the State Statute that was being considered that died in committee two years ago and obviously the committee or others that worked on it subsequent to that time, changed the State Statute and we certainly weren't privy to that or kept up with it.

3. State Statute prohibits smoking in sports arenas. City Code doesn't have any such provision. State Statute defines sports arena as any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held. Ex: Beell Stadium and Hefko Pool.

Alderson Spiros said the State code supersedes us quite a bit. Bottom line is we aren't going to have a choice, we are going to have to adopt the State code, because that is going to be law. He asked Attorney Hutchinson if our Municipal Code was significantly stronger than the State code in any area.

Attorney Hutchinson said at this point he did not note any such differences. It is possible that something there is stronger, but he didn't think so.

Alderson Spiros said his biggest issue with the phone calls and emails that he received was that nobody really took the time to look at the differences between our code and the State code. The bottom line is, what are the differences between the two and are we opening a can of worms that we don't even know what's inside yet?

Alderson Wagner said one of the things he noted in the State law is that no smoking is allowed in the public conveyance. He has had several complaints recently on our local taxis where when the drivers don't have somebody in there they will pull over to the side and smoke with the window down in the taxis and then the people get in and gag. He asked if that would be prohibited under the State code.

Attorney Hutchinson said that would be prohibited. Under 2(e) (3) it talks about a public conveyance, the definition of a public conveyance includes a mass transit vehicle, a school bus, or any other device by which persons are transported for hire, on highway, etc. The City Code talked about a passenger vehicle at one time and prohibited smoking in that. However, it doesn't apply to your personal vehicle. He said he would have to look up State Statutes 340.01 (28m) to see if that includes a taxi cab.

Duerr believed the taxi cabs would be included as a mass transit, because they are a shared subsidized State taxi service, so that would constitute the fact that the vehicle is under the State.

Chairperson Feddick asked the City Attorney to confirm that for the next meeting.

Jockheck believed smoking was prohibited in taxis ten years ago, long before any of this came about, because they are city funded.

4. The State Statute defines an assisted living facility, we do not. We use a retirement home and it is significant in that there are provisions under subsection 3, the exceptions which means that smoking is permitted is in a room used by only one person in an assisted living facility as his or her residence. We have a somewhat similar provision that perhaps should be clarified, but it does say a room used by a person in a retirement home. He recommended that the wording be changed to say that the room is used by only one person rather than just a person.
5. Penalty provisions are quite different. The City has lesser dollar amounts for fines that range from \$50.00 to \$100.00 for the first violation, \$100.00 to \$200.00 for the second violation and \$200.00 to \$500.00 for the third violation. The State Statutes says not less than \$100.00, not more than \$250.00. State Statute says that if you give the person in charge or intend to give the person in charge a citation, first time offense they are limited to a warning not a citation for a violation. We have no such provision in our code.

Chairperson Feddick asked if the State code would preempt then for any City issuing a citation for a first offense.

City Attorney Hutchinson said he and Mr. Wolfgram have had an ongoing discussion about that, because it is his opinion that the State Statute preempts our right to use lesser or greater fines, he thinks it preempts our authority to say you get a warning on the first violation. Mr. Wolfgram doesn't agree. He is not entirely certain that we couldn't adopt our own no smoking ordinance, which we have already done and perhaps provide for more or lesser fines without a warning. We both agree that in the interest of consistency, enforcement between the County Sheriff who steps outside the City of Marshfield and our law enforcement inside the City it makes a lot more sense to have them consistent. Secondly, it certainly avoids a challenge and perhaps court proceedings when the violator decides to fight the citation and says you can't do that, because it is preempted over here.

Chairperson Feddick asked how (4m) of the State Statutes relates to what we could do as a City. She mentioned how some people stand right outside of the public entrance with their cigarette, so you have to walk through a cloud of smoke to get into the building. She asked how we could fashion something that might be appropriate.

City Attorney Hutchinson referred to (4m) which basically says the City has the authority to adopt an ordinance, you do not have to adopt an ordinance because you got the State law already in place. If you choose to you may adopt one. It goes on to say that if you elect to regulate outdoor smoking that you can not define a "reasonable distance". You can say that the person in charge has the responsibility to make sure that persons who are smoking outdoors are a reasonable distance from the enclosed place, but

you can't define it. On the other hand, what we have done in earlier discussions to try to address this issue, was to say we won't define distance but it needs to be far enough removed to allow ventilation to preclude the smoke from entering the enclosed place. It is going to be hard to provide an absolute objective standard for law enforcement to come out there. It is going to be on their discretion, the term "reasonable distance" or set any specified measured distance as being a "reasonable distance." Perhaps an accommodation that the person in charge of the facility could make would be to provide containers for cigarette butts that are a reasonable distance away from the door.

Chairperson Feddick asked if we would need a specific ordinance related to (4m).

Attorney Hutchinson said no. It gives you the authority to adopt an ordinance and it can be more stringent than what is in State Statutes. It allows you to address additional issues. He is not sure that it gives us the authority to establish higher fines when it says shall not, but that is where Mr. Wolfgram and he diverge. On the other hand, it has been asked what happens if the State Statute gets repealed. Clearly the City because of the referendum should have something on the books. We currently have Section 11-11 and perhaps if we change it, modify or amend it so it conforms to State Statute we have law in place if State Statute gets repealed. One question that has been asked is what if they change State Statute. In that context, we may get caught short. We try to keep up with changes, but State Statutes change by the hundreds every year. A subtle change could be made. He doesn't anticipate a dramatic change without some kind of publicity or notice and then we could pick that up.

Duerr asked what constitutes littering. A biodegradable material is not littering by law. He is not sure if the substance of a filter is biodegradable, but a cigarette end made of paper and tobacco is biodegradable. If you adopt the State law as your ordinance if the State law is repealed or changed that would be the best thing in the interest for business people because of the fact that if we put an investment in a structure as a smoking building by City ordinance that building would be useless to us, because it would not meet the City's, so we would be between catch 22. If you build a building the way the State regulates it now, you are going to spend \$30,000. If you adopt the City ordinance to mirror State law then if the State law is repealed or changed the buildings that are constructed by the law by the State would still be in compliance with City.

Alderman Wagner said when we were considering this originally on the council floor, the proposed ordinance that came in had one provision in it that was more stringent than State law and that was what we talked about at the very beginning of this discussion in that we basically had the Department of Commerce language in ours about what that substantial wall was when we were trying to get around this possibility that those openings could be windows and could be closed and could make the place a completely enclosed building. Essentially, that is one thing we had in our proposed ordinance that was neither in the existing city code nor the State law. He asked Attorney Hutchinson if he recommended adopting that also if we change the ordinance.

City Attorney Hutchinson said yes he would. It is his opinion that the intent when they tried to define a substantial wall is to ensure each wall other than the first two walls at least has an opening of at least 25 percent of the square foot of that wall that cannot be closed.

City Attorney Hutchinson addressed question #6; What do other communities do? He subscribes to the Municipal Attorney's List Serve and some of the communities have done nothing, and some communities have adopted the State Statute by incorporation. In other words, they didn't rewrite the whole statute as part of their code they simply adopted it. They clearly are subject to the risks that if that State Statute did get repealed they would have no no smoking ordinance in effect.

Alderman Wagner said he spoke to both the Public Information Officer and the Chief of Police in Oshkosh as well as the Director of Communications for Oshkosh and Oshkosh had an ordinance. They

did theirs a year before us and they repealed theirs and adopted the State ordinance, but the problem was that they have not addressed the issue of the smoking shacks. The message he got on his voice mail from the Chief was that they basically intend to address that one issue at a time or as it comes up. They have no standards. The Council gave them no direction. The Director of Communications told him that their Council took approximately five minutes to discuss it, repeal it and adopt the State by reference.

Mayor Meyer feels the answer is that some of these have just been done. Last week there was a City ordinance that was upheld, but he forgot where. It was by Madison or over by Eau Claire for a community that had a smoking ban. They had the same discussion and they chose to keep theirs in addition to the State Statute. He said he doesn't think there is a trend one way or the other. He hears about two that do one thing and two that do it another, so whatever we choose to do will not be out of line with what other communities have done.

Dave Wille said Appleton, Madison and Eau Claire have all had early comprehensive ordinances. There are a lot of places that had just the restaurant only ordinance and several of them have repealed and went with the State law. Madison of course went with the smoking ban fairly early. Appleton had three referendums and each time the public voted for the smoking ban. In Eau Claire, the City Council enacted a smoking ban just prior to our election and then it took effect just after ours did. All three of those seem very similar to our own in that they didn't address smoking shacks either. None of these early ones did. They were clearly designed to protect people from the hazards of secondhand smoke. They weren't designed to spell out, carve out places where people could smoke and perhaps do it in an ambiguous way as the State law does, which allows for exploitation or mischief. He spoke with Shawn Bogart, Health Educator at UW Medicine Hospital in the Fox Valley area and she actually chaired the campaign for the three referendas in Appleton and in that case there has been some discussion of doing that. Some of the tavern owners wanted to repeal the local ordinance and replace it with the State ban and basically the City Council said we have had three referendums on this we know how the people stand that is it we are leaving things the way they are. In Eau Claire, he talked to a Health Educator and she said the language was problematic, because it doesn't address smoking shacks. She said however the City government sat down with the City Attorney and worked out some common sense parameters for their local ordinance. In Madison, again they didn't address smoking shacks either. He talked with someone from the health department there and they have a municipal ordinance that addresses smoking in parking ramps and they have to be 40 percent open, so that is the language they use there. He understands Appleton has some pretty strict enforcement in regards to smoking structures. Decks can be okay, but not elaborate smoking structures. Of those three early ones, it seemed as if they were way more strictly enforced than in Marshfield, so you could make a case that the State law is less restrictive than the local ordinances in those three places and obviously more restrictive than in Marshfield. Our concern is that there could be a court case that could interpret in an unfavorable way what the State law means. We don't want to be tied absolutely to the State law and whatever it comes to mean. His second concern is the ambiguity of the language in regard to these smoking structures. What does this mean? Is this going to allow carve outs? Could you carve out a room then and put in a couple of walls, the existing outer walls put in a few windows and we now have indoor smoking, but does it comply with the State law. We don't understand why anything needs to be done. Couldn't the local ordinance stay on the books as a safety vow against repeal or exploitation with possible indoor smoking areas? Take our local ordinance amend it so that if something happens to the State law this also doesn't take effect in Marshfield too. And also some iron clad language that protects against exploitation and indoor smoking. We understand the need for the change, but if it were done in that manner we would be quite receptive if it were done the right way. Appleton and Eau Claire still have their local ordinances. Madison took sections of the State law that were fairly benign and did incorporate them in into their municipal code, but not the section that deals with smoking shacks. They deliberately left that out. The City of Milwaukee just enacted a local ordinance that adopted essentially that 50 percent language that was the commerce department's language, so that is now on the books in Milwaukee.

Deputy Fire Chief Erickson explained the definition between private and public building when doing inspections. Any private building is apartment buildings of three or more. They don't inspect duplexes or single family homes. Anything other than single family and duplexes they inspect, so we consider that a public property. Our inspection is defined from inside the property line all the way through the building. We have authority to go on all public type properties. We don't have authority to enforce smoking bans or anything like that. Our authority is just to make sure that the fire code is complied with. We are checking for extension cords and we are checking the exits that they aren't blocked. That type of stuff. When it gets to the building itself, it is solely the building services. With saying that, if we see something that we know is done wrong, maybe it was done by a permit or not done by a permit those types of things we will write up and we will do a referral to the building services and consult with them and then they will generally take the hand in applying that. When you get to the point of what is allowed and what is not allowed for smoking huts or what the walls are and those definitions those would be solely approved by building services and then we would help them enforce it that it stays that way. Some of the concerns that we will have as the Fire Department though when those definitions are defined and what is approved maybe through here or the State will be any building. A hut is going to create a more of a hazardous portion to the building. In other words, it will depend by what it is made out of, how structurally sound it is. We are going to be concerned with that type of stuff to protect the public safety. As long as it doesn't contribute to the flame spread. An example of that is when we give out permits for tent permits. Tents can't just be made out of canvass or blue tarp type paper they have to be a flame resistant. We are going to be enforcing flames spread and that kind of stuff in that order. As long as the building is structurally sound we are just going to enforce what has been approved. So as far as what we can contribute to this discussion, it is solely on the Building Services and then we just make sure that whatever they approve or whatever this ordinance approves stays complete.

Chairperson Feddick asked what Deputy Fire Chief Erickson's feelings were on smoking shacks. Do you see them as being an issue?

Deputy Fire Chief Erickson said when this smoking ordinance first came about, we were seeing smoking shacks mostly in bar/tavern type settings. They were setting up just about anything they wanted to at the time. Some were just setting up the blue tarp windbreaks outside their bars. Those we referred on to Building Services and at that time Roland Donath was the Building Inspector and he addressed some of those for us.

Aldersperson Wagner referred to Nutz Deep and said they had one structure that had the windows on top that was deemed as legal under the City Ordinance, but then they also put out some kind of a plastic fence around the outside and they had like an outside patio and at one point they were told that they couldn't have any access way through that patio for them to keep minors out it wasn't a fire problem, but then again later on they were told by one of the inspectors that they had to have an opening there, so people could get out of that patio. What is the rule on patios? Do they have to have ingress and egress on the open patios too?

Deputy Fire Chief Erickson said they do have to have the ingress and egress for those patios.

Aldersperson Wagner asked how we reconcile that with keeping minors out.

Deputy Fire Chief Erickson said he didn't have an answer for that. As far as fires and dangers for us, if you can't get out of it and get away from that building it is a hazard to whoever is there whether you are a minor or an adult. The part that they referred onto building services was the egress concern for getting people out of the buildings.

Jockheck asked if he was concerned with the location of these separate structures.

Deputy Fire Chief Erickson said yes, anything that is connected to the building becomes part of that building and then the building code comes into effect and has to be built per building code. He gave an example of dumpsters next to buildings. The fire code is written that dumpsters need to be ten feet away from a building. So yes, it depends what these buildings are made out of. We are going to have a concern for our response time. If it delays getting to the entrances and getting people out. If it blocks certain areas of the building where they get out. We are flexible on what decision needs to be made, but we just want to be involved in it.

Jockheck asked where it would appropriately be addressed. In fire code? Where does it say that dumpsters have to be ten feet away? And would it be appropriate to say that a smoking shack should be at least ten feet away?

Deputy Fire Chief Erickson said the dumpsters are addressed in the fire code. And his opinion would be that smoking shacks should also be ten feet away.

City Attorney Hutchinson said we don't address location of any outside smoking at this point. The State Statute says we can't define a distance.

Jockheck asked if smoking shack language was used in State Statutes anywhere.

City Attorney Hutchinson said no, it is not.

Duerr said the problem we have as business owners right now is that we have a State law that took effect in July and we have a City ordinance. The buildings that were built for smoking areas by city code and passed that they could use no longer comply by State law. But the city ordinance won't allow us to build one by statute by the State law, so we are in a catch 22. We can't build one as the State recommends that we can use for a structure, because it doesn't pass the City ordinance. And we can't build one by the City ordinance because it doesn't pass the State ordinance, so we have nothing. We can't do anything right now as an owner. A prime example is Nutz Deep's. Mr. Schutz has about \$40,000 in the one that he had on his bar and it is no longer acceptable for use. That is the reason he has the fenced out south side area for an outside smoking area with no structure whatsoever, because that is permissible by State law and city ordinance.

Mayor Meyer said the whole definition of the outdoor smoking space when we passed the ordinance in the City of Marshfield was incredibly difficult. It shouldn't be hard to figure out if you are outside or not, but it took us about three hours one day at the fairgrounds to determine whether or not sitting under the grandstands in the Lions Den and the American Legion stands constituted being outdoors or not. He believed it was determined that it did not, and that was classified as an indoor smoking area. In the State Statute we can't define a distance for the purpose of prohibiting smoking near doors, but we could in the fire code specify a distance for a smoking area for fire safety.

City Attorney Hutchinson said he would hesitate doing that unless you can find appropriate justification under the fire code. If somebody sought to challenge that we might have some serious problems with it.

Mayor Meyer said we aren't preventing people from walking outside and standing five feet from the door if a bar owner allows that and smoking a cigarette. What we are saying is if you have a designated smoking area it needs to be within X number of feet of the building, so there is something enforceable for the police officers and there is something concrete for people to understand what they need. Maybe we would be skirting State Statute, but we wouldn't be in violation of it, because it is a legitimate fire concern. If you have a building or enclosed structure something that passed the State Statute solely designated smoking generally speaking, it is going to be unattended. There are going to be people going

out there and coming back in. You aren't going to have waitresses going out. You aren't going to have people monitoring it necessarily.

City Attorney Hutchinson said this is certainly an avenue to explore. He would have to review the fire code and get Deputy Chief Erickson's response to it.

Jockheck asked City Attorney Hutchinson to look into that for the next meeting.

Lieutenant Larson said as far as the current ordinance is, the Police Department has not been inundated with complaints. We are certainly gaining experience as we go along the way. Difficultly in trying to enforce the ordinance when it comes to the smoking shacks is certainly something we have encountered. Certainly we are prepared to enforce whatever the City decides and what this committee recommends.

Chairperson Feddick asked if the Police would more likely enforce the State code if the City Code as it currently stands and the State code as it currently stands continue to be dually effective.

Lieutenant Larson said it would be difficult to enforce under the State Statute unless we had an ordinance to adopt. Currently, we would site any violation of the code under Section 11-11. We would not write it under the State Statute. Generally speaking, State Statute violations are more often held in criminal court, so all of our current 11-11 violations are through our Municipal Court. Experience shows that when we have ordinances that are adopted by State Statutes that the forfeitures that are imposed whether they are fair and they are consistent with other jurisdictions is at least a consideration that our officers use when they are enforcing it. Common sense approach to trying to resolve these issues, particularly in an area where we have a number of jurisdictions that kind of merge to be consistent is important for us. Because if Marshfield is perceived as being heavy handed and with a higher than average forfeiture amounts on these violations certainly that is a negative perception that we don't want and certainly our citizens and representatives don't want. We take care in trying to evaluate each circumstance and make sure we aren't being heavy handed and that we are approaching these things from a common sense stand point and trying to deal with them in that fashion.

Chairperson Feddick asked Lieutenant Larson if the State code was fully adopted by the City and the State code went away would the State code then be used for enforcement.

Lieutenant Larson said yes.

Aldersperson Wagner said that when the council punted on adopting State law, Police Chief Jepsen told us at that meeting that starting that next morning at 12:01 a.m. he would start enforcing the provisions as they existed in the State law. We were told that as of that moment there were four establishments in Marshfield that did not comply with those requirements. Since then all four of those establishments have complied with the State Statutes and basically we have nobody in town that is out of compliance with those statutes now.

Lieutenant Larson said he was not aware of any currently that are in violation. There were a number of them and Chief Jepsen made a point of addressing those concerns directly with the business owners to try to come to some understanding again the common sense approach in trying to resolve those issues. The State has included some issues that we are currently not enforcing. For example some of the structures that have been described here today. The Police Department even though Chief Jepsen has addressed those structures and the construction of those with the business owners, we haven't taken enforcement action. We tried to address it on a lower level. We have taken some enforcement action since July with smoking in establishments.

Jockheck asked the City Attorney if we adopt the State ordinance as our local ordinance do we have to do anything with the penalties as defined in the State ordinance versus the penalties within the City ordinance.

City Attorney Hutchinson said yes. If you adopt the State law, the City ordinance should conform to the penalty provisions of the State law. We would dispense of the penalty fees in the City ordinance right now and replace it.

Jockheck asked if we could keep the City's penalties if we adopted the State law.

City Attorney Hutchinson felt we could not.

Andy Martin asked if we were giving anything up by adopting the State code for employee health issues.

City Attorney Hutchinson said he wasn't aware of anything that we would be giving up for employee health. That has been the objective under both of these from inception. If there is, it has to be some sort of a subtle thing.

Andy Martin asked if there was some way the existing businesses that have invested money in building structures for smoking per the City code might be able to use them if we adopt the State code.

Chairperson Feddick said no, because either way the State code is more stringent and would apply.

City Attorney Hutchinson said Chief Jepsen has worked with three or four businesses and he believes those businesses already have brought their external smoking facilities into compliance.

Aldersperson Wagner said the most questionable of all the smoking shacks has been abandoned completely and that would be the one at Nutz Deep.

City Attorney Hutchinson will do some research in his office regarding the penalty issues and come back with a definitive answer as to whether we are preempted or whether we have flexibility to adopt something other than the State Statute.

The next meeting date was scheduled for Wednesday, September 8th at 5:30 p.m.

Motion by Spiros, second by Jockheck to adjourn at 6:38 p.m.

Motion Carried

Lori A. Panzer
Deputy City Clerk