

The final say: No smoking

Smoking issue splits council down the middle

By Linda Stinnett

The final vote on a comprehensive clean indoor air ordinance came down to one person: Mayor Dion Avello had to cast a ballot when the council was evenly split on the issue.

Avello said yes to a comprehensive ban with no exemptions for businesses which have liquor or cereal malt beverage licenses. A previously adopted ordinance would have allowed those exemptions but the issue came back to the table after Wichita passed an ordinance with different regulations.

"We decided to discuss the issue this month because we wanted to consider whether we should follow Wichita's example of an ordinance that gave bars and restaurants a choice between smoking and allowing people under 18 years of age," Avello said. "Once we reviewed the details of Wichita's ordinance, we determined its enforcement would be too complex and that a comprehensive ordinance would best protect public health and be most fair."

He said he was straddling the fence on the issue as a business owner who dislikes government interference, but it was an incident involving a smoker at Little Buster's which persuaded him to vote for the ban.

That incident involved a woman at another table who kept holding her cigarette over the table at which Avello and his wife sat. When she finally blew smoke at them, Avello said they found the actions highly offensive.

He said he also believed the incident occurred because of the council's work on clean indoor air. It was enough to send him voting for a complete across-the-board ban on smoking in public places, he said.

Council members voting in favor of the ordinance were George Arnold, Charlie Schwarz, Jim Craig and Jim Meidinger. Those against were Cheryl Bannon, Mark Staats, Vaughn Nun and Chuck Warren.

The council members listened to impassioned pleas on both sides of the issue before they voted. Six members of the Derby VFW Post 7253 and American Legion Riders asked the council to consider their post home as an exemption because they are a private organization. At least 20 members of the organization attended the council meeting.

Joe Dinino, who serves on the VFW's House Rules Committee, said the difference between the organization and a bar can be noted in the civic efforts by the organization. It recognizes the upstanding members of emergency services each year, has the Voice of Democracy speech contest for students and puts up over 100 flags at the cemetery each Memorial Day.

"What bar in this town donates to the Historical Society?" Dinino said.

"If you're not a member or a guest, you don't get in," he said. "Contrary to belief, we are not a public organization. I would ask the city council to reconsider this proposed ban."

Several of the veterans emphasized the need to preserve personal rights.



Photo by Linda Stinnett

Members of the American Legion Riders Post 408 attended the Derby City Council meeting this past week in an effort to convince the council to exempt their post from a local smoking ban.

They also stressed the fact that veterans are responsible for those freedoms.

"Thanks to our veterans we can have a meeting here tonight," said Cregg Hansen, state and local chairman of the American Legion Riders.

"What gives us the right to take away the rights of the people who gave you the right to sit where you are today?" said Mike Saindon, VFW and Legion Riders member. "To have somebody tell me I can't smoke is an infringement on my rights."

Bannon asked her fellow council members to consider the exemption for the VFW. She reminded them she had previously pointed out it would be difficult to tell veterans they couldn't smoke at the post.

"One of my first questions was which one of you guys is gonna go in and tell them they can't smoke?" she said. "Not a one of you guys was willing."

This time, three council members were willing, while expressing their respect for veterans. Meidinger said he felt badly for the VFW, but felt exemptions to the ordinance would lead to additional ones in the future and would be difficult to enforce.

"This is one of the most difficult and emotional votes I've had to make," he said, to members of an audience who were clapping enthusiastically to statements for their sides of the issue.

Craig, who noted he is a veteran, made the motion to adopt the ordinance and declined to amend it to exclude the VFW.

"I look at it a different way," he said.

He was joined in that viewpoint by two residents who spoke in favor of the ordinance. Derek Smith, representing the Derby Community Coalition Promoting Healthy Choices, said he respects the opinions of both sides of the issue and has seen valid points on both.

"For us, it's a public health issue," he said.

He noted that government organizations have implemented public building codes, regulations to meet the needs of the disabled, and many public health laws.

"It's not unprecedented for councils to regulate public health," he said. "Because of council leadership, the community is going forward ... I feel

it is a great step."

The coalition has concerns with the enforceability of the ordinance in Wichita and believes the comprehensive ordinance is most appropriate, he said.

Vicki Walton of Derby also spoke in support of the comprehensive ordinance. She said she and her husband are cancer survivors and she

spoke for the nine members of her family who live smoke-free in Derby.

"I'm here for a 10th person, my father, a 31-year Air Force veteran," she said. "He's a cancer survivor, but he's surviving in heaven."

She encouraged the VFW members to make the post smoke-free. It would follow statements by their national president who, she said, has

encouraged posts to go smoke-free in an attempt to overcome declining memberships.

"I am not taking away from you all's service," she told the Legion Riders.

She urged the council to vote for the ordinance and protect the health of the majority of local residents.

"Wichita didn't do what it should have done," she said. "Let's get it right this time."

The ordinance will ban smoking in all public places and places of employment in Derby as of Sept. 1.

The original ordinance would also have limited smokers from being within 20 feet of all entrances to public places. The new ordinance, which was reworded to make that limit to within 20 feet of the main public entrance, allows businesses with patios to place seating closer to doors which aren't the main entrance.

The complete ordinance which bans smoking in public places can be seen on page 15 of this edition of the *Derby Informer*. More information, including a brochure outlining how employers, businesses and the public can comply with the ordinance, can be found at www.derbyweb.com.

What council members said before the vote:

Vaughn Nun said he believed the staff reports showing overwhelming support for the ordinance were misleading because they were not scientific surveys. A question was put on the city's Web site asking for input on the issue, but there was no way to know how many people responded, City Manager Kathy Sexton said.

Charlie Schwarz said he supports the overall ban because it eliminates potential court challenges against the law. He also said he could only speak from the viewpoint he has seen by his own family, but the veterans he is related to will not join veteran service organizations because of the smoking in the building.

Cheryl Bannon said she believes the city needs to exempt the bars and restaurants which have liquor licenses to give them a level playing field with their Wichita competitors. She also chided her fellow council members for stepping into an arena with a legal activity.

"If you guys really want to put a stop to this step right up there and ban cigarette sales in the city," she said.

Jim Meidinger said he opposed the previous city ordinance because he believed it would be difficult to enforce. "One exemption leads to another," he said.

George Arnold said public health ordinances are a way of life and he pointed out how many cities are also banning trans fatty oils. Health care costs are also related to the problem of smoking, he indicated, along with the 47 million people who don't have health care.

"Who pays for that, you and I do," he said.

Mark Staats said he grew up in a family which did not smoke and he prefers not go into businesses which allow it.

"I choose not to go in there," he said. "Let the market dictate how we do things."

He also said in his own personal interviews, 76 percent of the people he talked to told him to let the previous ordinance stand.

Jim Craig said he is a veteran and has "merit badges" to prove it. He said he has great empathy for the right to smoke, but was in favor of the comprehensive ban.

Chuck Warren said he had hoped the council would find a middle ground on the issue. He said children should be protected from smoke, but he opposed the ordinance because it did not exempt the businesses at which children are not allowed.

What changed from April 2007:

Mayor Dion Avello voted for the exemptions for bars and restaurants which sold liquor in 2007. At the time, he said as a private business owner he knew how difficult government regulations were on small business.

He said his mind was changed over the course of the year when someone appeared to intentionally blow smoke at he and his wife in a local business. He also said it is a difficult decision to not allow the exemptions and he continually straddles the fence, moving from one side to the other, even after the final vote was done.

George Arnold, council member, changed his vote from 2007. At that time, Arnold said he supported the compromise which allowed smoking in bars and restaurants so it would help level the playing field for businesses. He said it appeared a compromise was the best the council was going to do a year ago but he would have preferred the total ban.

"I really did not change my mind, I've always felt that way," he said. "I just finally decided a comprehensive ban is the only way to go."

He said when he learned Derek Frazier, owner of Derby Bowl, was taking the step to be a smoke-free business he believed it was time for everyone else to do the same.

"In all honor to him, we owed him that," Arnold said.

Ken Mulanax, council member in 2007, voted against the compromise ordinance which granted the exemptions. His seat was filled just minutes after the vote by **Mark Staats**, who voted against the current comprehensive ordinance.

Jim Craig, **Jim Meidinger** and **Charlie Schwarz**, voted against the compromise in 2007. They maintained the same stance in this election.

Cheryl Bannon and **Chuck Warren** supported the compromised ordinance in 2007. They voted the same with this ordinance.

Vaughn Nun, who voted against the current ordinance, was appointed to the council after Loren Johnson resigned in September. Johnson had supported the compromise ordinance in 2007.