



City of Milwaukee

200 E. Wells Street
Milwaukee, Wisconsin
53202

Meeting Minutes ZONING CODE TECHNICAL COMMITTEE

TEODROS MEDHIN, CHAIR
Stuart Mukamal, Ed Richardson, Ronald Roberts
Staff Assistant: Tobie Black, 286-2231, Fax: 286-3456,
tblack@milwaukee.gov

Tuesday, May 24, 2011

2:00 PM

Room 301-B, City Hall

Meeting called to order at 2:05 p.m.

Also in attendance:

Jeff Osterman, Legislative Reference Bureau

Mr. Osterman is acting as chair in Mr. Medhin's absence.

1. 110130 An ordinance repealing zoning regulations for adult entertainment establishments.

Sponsors: THE CHAIR

Atty. Mukamal said that the Chairs of the Zoning, Neighborhoods and Development Committee and the Licenses Committee, and representatives of the Legislative Reference Bureau and the Department of City Development have had discussions with the City Attorney's office regarding this ordinance. Atty. Mukamal said that the ordinance being considered by this committee is joined with another ordinance relating to licensing procedures that is still undergoing some revisions.

The purpose of both ordinances is to take references to adult content out of both the zoning code and the ordinance regulating licensing.

Atty. Mukamal said that ordinances that reference adult content raise First Amendment issues. Adult uses are protected uses under the First Amendment, and there is a lawsuit currently pending against the city that instigated an examination of some of the city's provisions regarding adult establishments. The consensus of the people involved in the discussion of the ordinances is that there is a better way of dealing with adult licenses than what currently exists.

Atty. Mukamal said that content-based provisions are viewed with a higher level of scrutiny by the courts than provisions aimed at secondary effects. There are two ways of dealing with this problem. One is changing the provisions but keeping the content-based orientation of the current codes and the other is taking out references to adult entertainment and content entirely, which can make provisions virtually unassailable from a constitutional standpoint.

Atty. Mukamal said that the ordinance being considered by the committee removes the definition of an adult entertainment establishment from the zoning code. At some point in the future, the city will have to deal with adult retail establishments. The ordinance also removes the use category of adult entertainment establishment from all of the use tables in the code. This means that for zoning purposes only, adult

uses will be regulated based on their underlying uses, not based on their adult uses. For example, an adult theater will be zoned as a theater and an adult cabaret as a cabaret. A companion ordinance to this one, which will go through the Licenses Committee, will strengthen the standards applicable to evaluation of adult venues in order to ensure that those standards are directed toward combating secondary effects. Secondary effects are those such as litter, noise and crime. These are effects that the courts have regarded as within the legitimate purview of regulation by municipalities. Atty. Mukamal said that that licensing ordinance will contain a detailed list of standards regarding things such as security and crowd sizes that will be placed upon applicants for adult establishments and establishments in general.

Atty. Mukamal said that this will transfer regulation of adult establishments from the Board of Zoning Appeals to the Common Council and will give individual aldermen a greater say in the process. The Board of Zoning Appeals would only regulate the underlying zoning of the particular uses involved irrespective of any adult content. This appears to be the cleanest and most effective way to avoid First Amendment challenges to the zoning code provisions regulating adult entertainment establishments and, further down the road, adult retail establishments. He said that the ordinance is legal and enforceable and is designed to make this area of the code more legal and enforceable than it is currently.

Mr. Richardson said that the ordinance will improve administrative efficiency and will be even more consistent with the format of the zoning code.

Mr. Richardson moved that the ordinance meets the standards of legality and enforceability, administrative efficiency and consistency with the format of the zoning code. Mr. Roberts seconded. There were no objections.

2. 110088

A substitute ordinance relating to zoning regulations for chicken coops.

Sponsors: Ald. Kovac

Individual at the table:

Ald. Nik Kovac, 3rd District

Mr. Osterman stated that the purpose of the ordinance is to exempt a chicken coop from requiring a building permit. City staff suggested the 50 square foot size and ten foot height thresholds. The companion ordinance relating to the keeping of chickens in the city passed at the May 24th Common Council meeting.

Mr. Richardson said that this was designed to make it easy for a resident to build a chicken coop provided that the coop does not exceed the standards set by the zoning code. The ordinance creates a divide between what is and what is not an accessory structure.

Ald. Kovac asked if zoning regulations would apply to a chicken coop if it exceeded the zoning standards. Mr. Richardson said they would.

Mr. Richardson moved that the ordinance meets the standards of legality and enforceability, administrative efficiency and consistency with the format of the zoning code. Atty. Mukamal seconded. There were no objections.

**Meeting adjourned at 2:15 p.m.
Staff Assistant Tobie Black**

