

CITY OF SOUTH BEND - COMMON COUNCIL

PRESENT: 9

ROLL CALL SHEET

ABSENT: 0

REGULAR MEETING: March 29, 2016

<u>NAME</u>	<u>ROLL CALL</u>							
			To form a study committee on the Smoking Ban related to Bill 11-16	Send Bill 11-16 to the Full Council with a favorable motion	Motion to defeat Bill 11-16	Bill 11-16	Bill 16-30	Bill 16-31
REGINA PRESTON	PRESENT		AYE	NAY	AYE	NAY	AYE	AYE
RANDY KELLY	PRESENT		NAY	AYE	NAY	AYE	AYE	AYE
JO BRODEN	PRESENT		NAY	AYE	NAY	AYE	AYE	AYE
DR. VARNER	PRESENT		AYE	NAY	AYE	NAY	AYE	AYE
MR. OLIVER DAVIS (Vice President)	PRESENT		AYE	NAY	AYE	NAY	ABSENT	ABSENT
MR. FERLIC (Committee of the Whole)	PRESENT		NAY	AYE	NAY	AYE	AYE	AYE
MR. VOORDE	PRESENT		NAY	AYE	NAY	AYE	AYE	AYE
KAREN WHITE	PRESENT		AYE	AYE	NAY	AYE	AYE	AYE
TIM SCOTT (President)	PRESENT		NAY	AYE	NAY	AYE	AYE	AYE
TOTAL:	9/0		4/5	6/3	3/6	6/3	8/0	8/0

REPORT OF SUB-COMMITTEE ON MINUTES

TO THE COMMON COUNCIL OF THE CITY OF SOUTH BEND:

THE SUB-COMMITTEE HAS INSPECTED THE MINUTES OF THE

March 29, 2016

MEETING OF THE COUNCIL AND FOUND THEM TO BE CORRECT.

THEREFORE, WE RECOMMEND THE SAME BE APPROVED:



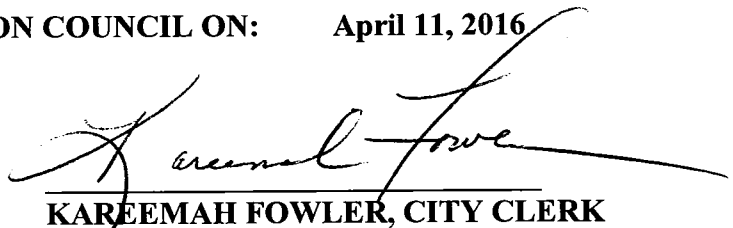
TIM SCOTT



DAVID VARNER

APPROVED BY THE COMMON COUNCIL ON: April 11, 2016

ATTEST:



KAREEMAH FOWLER, CITY CLERK

Be it remembered that the Common Council of the City of South Bend, Indiana met in the Council Chambers of the County-City Building on Tuesday, March 29, 2016 at 7:00 p.m. The meeting was called to order by Council President Tim Scott and the Invocation and Pledge to the Flag were given.

ROLL CALL

COUNCIL MEMBERS:

Tim Scott	1 st District, President
Regina Williams-Preston	2 nd District
Randy Kelly	3 rd District
Josephine Broden	4 th District
Dr. David Varner	5 th District
Oliver J. Davis	6 th District, Vice President
John Voorde	At-Large
Gavin Ferlic	At-Large, Chairperson Committee of the Whole
Karen L. White	At-Large

OTHERS PRESENT:

Kathleen Cekanski-Farrand	Council Attorney
Adriana Rodriguez	Legal Research Assistant
Kareemah Fowler	City Clerk
Jennifer Coffman	Chief Deputy Clerk
Alkeyna Aldridge	Deputy Clerk
Joseph Molnar	Clerk Executive Assistant

REPORT FROM THE SUB-COMMITTEE ON MINUTES

Councilmember Gavin Ferlic made a motion that the minutes of the March 14th 2016 meeting of the Council be accepted and placed on file. Councilmember Karen White seconded the motion which carried by a voice vote of nine (9) ayes.

SPECIAL BUSINESS

REPORTS OF CITY OFFICES

Representing the city administration will be Mayor Pete Buttigieg and James Mueller.

RESOLVE INTO THE COMMITTEE OF THE WHOLE

At 7:04 p.m. Councilmember Karen White made a motion to resolve into the Committee of the Whole. Councilmember Gavin Ferlic seconded the motion which carried by a voice vote of nine (9) ayes. Councilmember Gavin Ferlic, Chairperson, presiding.

Due to Bill 11-16 being presented by Councilmember Gavin Ferlic, the role of Chairperson of Committee of the Whole was filled by Council Vice President Oliver Davis. Councilmember Oliver Davis explained the procedures to be followed for tonight's meeting in accordance with Article 1, Section 2-11 of the South Bend Municipal Code.

Council Vice President Oliver Davis asked the Council Attorney about how long members of the public can speak in opposition and in favor of a particular bill.

Council Attorney Kathleen Cekanski-Farrand stated regarding time limits on public input the favorable side will speak first. If the side in favor of the motion speaks for more than thirty (30) minutes the opposition will get to speak as long as the people in favor spoke. If the side in favor speak for less than thirty (30) minutes the opposition can speak no longer than thirty (30) minutes.

PUBLIC HEARINGS

11-16

PUBLIC HEARING ON AN ORDINANCE OF THE
SOUTH BEND COMMON COUNCIL AMENDING
CHAPTER 14 OF THE SOUTH BEND MUNICIPAL
CODE BY ESTABLISHING NEW ARTICLE 13
ENTITLED SMOKE FREE AIR REGULATIONS FOR
WORKPLACES AND PUBLIC PLACES

Councilmember John Voorde reported that the Health and Public Safety Committee met and sends this bill to the full Council without recommendation.

Councilmember Gavin Ferlic made a motion to accept the second substitute bill on file in the City Clerk's Office. Councilmember John Voorde seconded the motion which carried by a voice vote of nine (9) ayes.

Councilmember Gavin Ferlic served as the presenter and petitioner of this bill. Councilmember Ferlic gave a presentation on the benefits of smoke free work places, the power point is on file in the City Clerk's Office.

Councilmember Ferlic thanked his co-sponsors Councilmembers Jo M. Broden, Randy Kelly and John Voorde. He also thanked everyone on both sides who came out to discuss this important issue. He asked that the people in support of Bill 11-16 please be respectful and kind of everyone throughout the evening.

The second substitute ordinance has two primary changes. The first change regards the wording about spacing and open windows due to a legal opinion they received. The second change was pushing back the implementation date to January 2nd 2017. After hearing from business owners, it was clear that it was important to provide a long implementation period so that businesses could adjust properly to this change and remain successful.

Over fifty (50) percent of the United States population is covered by comprehensive clean air policies, including 802 cities in the United States that are not covered by state-wide bans. Indianapolis, Fort Wayne, Bloomington, and Elkhart all have comprehensive clean air policies along with over seventy-five (75) percent of the sixty (60) largest cities in the United States.

Councilmember Ferlic stated he is asking for the passage of this bill to protect public health both for patrons to these establishments and the employees. Second hand smoke contains hundreds of toxic chemicals and about seventy (70) that are carcinogenic, including carbon monoxide, hydrogen cyanide, and arsenic. Secondhand smoke can cause among smokers and non-smokers heart disease, lung disease, cancer, and stroke. Approximately 600,000 people die each year worldwide from secondhand smoke.

Regarding second hand aerosol, the byproduct of e-cigarettes and vaping, at least ten (10) chemicals identified in ESD aerosol are carcinogens and toxins, including benzene, formaldehyde and nicotine. The World Health Organization as well as the National Institute of Occupational Safety and Health recommend that e-cigarettes not be used indoors or in workplaces.

South Bend will be far from the first city to pass this type of ordinance and far from the first city to implement such an ordinance, we have the benefit of studying other communities and the health benefits these ordinances bring. A national study of counties where at least fifty (50)

percent of a county's population was covered by a comprehensive ban saw a twenty (20) percent reduction in heart attacks, an eleven (11) percent reduction in pulmonary disease. When the country of Scotland decided to implement comprehensive clean air, they saw a seventeen (17) percent reduction of heart attacks and coronary infection. In just the first year when New York passed a clean air ordinance they saw an eight (8) percent decrease in hospital admissions for heart attacks and a \$56 million dollar decrease in hospital costs. These are statistics but every one of those numbers is a human being. So when you have a twenty (20) percent reduction in heart attacks that means many did not have a heart attack that would have without a clean air ordinance. The health benefits of clean air are undeniable and we expect to see the same results in South Bend.

Some people make the argument that it is an adult's decision in where they work and where they patronize businesses. However, we don't use the same logic when a business or factory has dangerous levels of carbon monoxide. We don't just tell workers that you're an adult you can make a choice to work in that factory and we don't tell members of the public that if they're going to be shopping at a store with dangerous levels of carbon monoxide that they can simply make a choice as an adult. We know the dangers of these chemicals and we have laws that protect the public and laws that protect workers from things like carbon monoxide.

Again, South Bend is far from the first city to look into a comprehensive air ordinance and the vast majority of economic research concludes there is no negative economic impact to a clean air ordinance. These studies are academic, peer reviewed, and published in highly respected journals. There are some other tobacco industry funded outlier studies that say the opposite but the vast majority of research regarding economics is that these ordinances do not have an effect on business.

There is a recent CDC study from 2013, which was the most comprehensive study to date on this issue, which looked at 216 cities in eight (8) states without statewide smoke-free air laws. This is similar to the situations South Bend would be in if we were to adopt this ordinance. The study stated unequivocally that smoke free laws did not have an adverse economic impact and it provided a small economic benefit to cities in one (1) state. This study cited over twenty-two (22) individual studies that confirmed that exact same research. More importantly, smoke-free laws improve both employee and general population health.

The Indiana State Department of Health estimates the cost of secondhand smoke at \$20 million dollars for the City of South Bend on annual basis.

Other communities who have adopted smoke free ordinances have had no trouble enforcing them because primarily these ordinances are self-enforcing. People follow the law and as a result citations are really not needed. For example, the City of Indianapolis had over four hundred (400) affected establishments and in the first year they issued around three (3) citations. When laws are passed people follow the law. For South Bend, a volunteer phone-line established by Smoke Free St. Joe will help take away any burden from Code Enforcement. If a number of calls are received regarding an establishment, Code Enforcement will go take a look at the property. If a violation is found, the first penalty is simply a warning. If that business is only open after 5:00 p.m. they will coordinate the Police Dept. potentially using the volunteer police officers to go out and make a check to enforce. Again over time these ordinances are self-enforcing. Both Code Enforcement and the Police Department sent a letter stating they were comfortable with the ordinance and its expectations of them and that letter is on file in the City Clerk's Office.

Indiana Code has given municipalities an express right to pass an ordinance that is more comprehensive than the state law. Many ordinances have been challenged in the past due to their exemptions, to prevent such a challenge this bill contains no exemptions. We are going to protect all workers and were going to protect the public everywhere. Any sort of indoor workplace will be covered by clean air policy. Some may cite the Evansville case from 2011, but their ordinance was overturned because they provided exemptions without stating good reason to do so and they did not include a severability clause. This bill does have a severability clause to preserve the remainder of the ordinance if it is challenged and any provision is found unconstitutional only that provision would be invalidated. This ordinance was reviewed extensively by national and state legal experts and found this ordinance is valid.

In terms of helping the businesses affected by the ordinance there will be support available for them including the extended implementation time to January 2nd 2017. Smoke Free St. Joe will provide four (4) scheduled marketing seminars, the administration will help with permitting for letting the bars invest in outdoor patios and the process will be as easy as possible, marketing support from American Lung Association and Smoke Free St. Joe in terms of social media promotion for any bars that might decide to go smoke free before the implementation date, as well as help with signage and education regarding the ordinance.

One argument that has been heard is the case of the City of Elkhart and the possible negative effect the smoking ban had in Elkhart. Councilmember Ferlic asked that the Council not rely on any anecdotal evidence but instead rely on academic scientific research that looks into many different factors. Elkhart's smoking ban was passed immediately before the Great Recession and Elkhart had the third highest unemployment rate in the entire country during that time. If any sort of businesses suffered during that time period it clearly was for multiple reasons. At the time the ordinance was passed Elkhart was already seeing a decline in employment. Concerning the rebound of employment in Elkhart, Leisure & Hospitality employment levels are higher than they were when the ordinance was passed.

Councilmember Ferlic cautioned the Council against viewing anecdotal evidence and instead look at the academic and peer reviewed studies. He provided the case of Plainfield IN which saw their food and beverage tax revenue grow despite the recession and town's ban on smoking in public places to show anyone can bring anecdotal evidence forward to tell the story they want.

Councilmember Ferlic addressed the questions brought forward during the Health and Public Safety Committee. Regarding Elkhart it is important to note that correlation does not equal causation. Ice cream used to be thought to cause polio because there was a spike in polio for kids during the summer months. Now clearly polio is not caused by ice cream. This is an example of correlation does not equal causation.

In South Bend during that time, even though the recession hit us less hard than Elkhart, bars and restaurants did close. Those bars and restaurants closed even though we currently allow smoke at those establishments.

Regarding the questions on home offices and the impact of this ordinance on them. If a home is operating as a business and has employees and is open to the public then yes this ordinance would apply. If it is someone simply sitting inside their own home, working on a computer, running their own business this would not apply to them.

There were claims that research has been debunked on economics and invalidated. For every one (1) study showing a potentially negative economic affect there are ten (10) studies saying the opposite. The CDC study cites twenty-two (22) different articles that back the position that these ordinances have no adverse effects economically.

Regarding the question on whether this ordinance will affect the casino, any casino organized by the Pokagon Band would not be in the City of South Bend. It would be on sovereign land and the decisions for that land would be made by the Tribal Council. Councilmember Ferlic stated he has reached out to the tribal leaders many times and requested several meetings to encourage going smoke free as there are many casinos in the U.S. who don't allow smoking. He encourages them for the benefit of their workers and the people who enter their casino, if it is built, that it be smoke free.

Councilmember Ferlic stated he received a checklist from Smoke Free St. Joe who reached out to every bar and affected establishment. He stated he personally called every single bar and retail establishment, he did not talk to some but he did leave a message when he could. It was a Saturday from noon on until he called each one. He stated he had several meetings with bar owners and always said he would be available to meet them.

Some people have asked about possible exemptions for retail tobacco and vape shops. This ordinance is designed to promote public health to provide clean air to all public areas and all employees in South Bend. Exemptions for certain businesses would not be a way to advance public health. Yes some cities do exempt those establishments but some, like San Francisco, do not. If we are looking for this ordinance to reduce as many cancers as possible, as many cases of

heart disease as possible, and as many heart attacks as possible then providing certain exemptions would run counter to that goal.

Regarding vaping, Councilmember Ferlic stated he has talked to a number of vape shop owners and their state lobby group. They provided a number of different studies citing vaping is not harmful but they seem to be industry funded. The World Health Organization, Food and Drug Administration and National Institutes for Occupational Safety and Health have all provided recommendations on vaping and do not recommend it indoors or in the workplace.

Councilmember Ferlic asked the City Council Attorney to address the question regarding the substitute bill and whether proper procedure was followed.

Council Attorney Kathleen Cekanski-Farrand stated proper procedure was followed for Bill 11-16 and the two substitute bills. The original bill was filed on Wednesday March 9th prior to the noon deadline on that date. That filing satisfied all standards on a filing and properly accepted by the Office of the City Clerk. Sometime thereafter the Clerk's office gave the filing Bill Number 11-16 and placed on the agenda for the next regularly scheduled Common Council meeting for first reading and set for public hearing for this evening and referred to the Health and Public Safety Committee. The first reading of the bill is only the title of the bill. City Clerk Kareemah Fowler read the title of Bill 11-16. That title has not been amended, only if the title has been amended does the procedure start over because it would have to be republished by the Clerk's staff. The procedures of both substitute filings were completed properly. The Council has their responsibility to see if reasonable steps were taken with regard to their analysis.

Councilmember Ferlic stated nothing in this ordinance prohibit tobacco shops or vape shops from selling their products on a retail basis and they are welcomed to do so in South Bend. What this ordinance protects is from smoking indoors. Regarding flavoring for e-cigarettes, there is a Harvard study from 2015 showing the flavoring within vaping solutions is carcinogenic.

Councilmember Ferlic acknowledged there is going to be fear with any sort of change and that is understandable. Four (4) years ago there was a lot of fear regarding the GLBT Equality ordinance and there were people then afraid about any negative impacts on business. Similar to now, we relied on research and on data and experiences from other communities and did what was right for South Bend. We want businesses to succeed in South Bend and we want people to be healthy and reduce cancer, heart disease, and lung disease. This ordinance can help us achieve both goals. Everyone has been affected in some way by heart disease, lung disease, and cancer. These are brutal diseases, yes sometimes they happen without exposure to secondhand smoke but we do know that second hand smoke tremendously increases the chance of these diseases. We can take a major step here tonight to reduce those diseases and save people's lives.

Council Vice President Davis asked if any of the Councilmembers had questions for Councilmember Ferlic at this time.

Councilmember Jo M. Broden stated she has no questions based on months and months of research on this topic and going back to before when it was before the state legislature.

Councilmember Dr. Varner stated this is the third time we have discussed this and not much has changed to the proposal.

Council Vice President Oliver Davis asked regarding the City of Indianapolis and Fort Wayne if they were unigov and the County and City governments were combined.

Councilmember Ferlic stated the City of Indianapolis is but there are distinct municipal entities within the city that are separate and do not fall under the ordinance. Fort Wayne and Allen County are not unigov and actually the town of New Haven is right next to Fort Wayne.

Council Vice President asked if the Indianapolis ordinance covers all of Marion County.

Councilmember Ferlic responded no it does not cover some areas that are not part of their unigov system. He stated he does not know the percentage of how much is not covered. He asked if anyone from Smoke Free St. Joe had that information to bring it forward during their time to speak. We are not just looking at Indianapolis and Fort Wayne.

Council Vice President Oliver Davis asked the supporters of the Bill to find the numbers for the percentage of Allen and Marion counties not affected by the city smoking bans. He asked Councilmember Ferlic if there is any reason for why the bars in the city of Elkhart closed but the businesses in the county of Elkhart did not close.

Councilmember Ferlic stated he had no confirmation that evidence is true.

Council Vice President stated he has been given information that during this recession the Elkhart County area did not lose any bars but the City did under the ban.

Councilmember Ferlic stated he does not know if that is verified and he can't speak for why that would happen. There is a wealth of data analyzing many cities in similar situations to South Bend that it does not have an economic impact.

Council Vice President Davis stated he is trying to focus on Indiana cities and specifically the ones closest to them, which would be Elkhart, and we have done no studies on Elkhart or on the potential impact on South Bend. He asked the supporters or anyone who would answer why did that city get negatively impacted by a smoke free ordinance when all the national studies said that would not happen.

Councilmember Ferlic stressed that we should look at the viable research on this issue that can isolate certain factors to really determine what happened when these ordinances were passed.

The public was given an opportunity to speak in favor and opposition of the bill.

Those wishing to speak in favor to Bill 11-16:

Mayor Pete Buttigieg, Offices on the 14th Floor of the County City Building, stated as Mayor he is responsible for both the public safety and economic direction of South Bend. He has been following this debate closely and hearing from the public on both sides of the issue. In reviewing the bill, there are things the Mayor stated he likes about the bill and things he does not like but this is clearly a move in the right direction. If it passes it will be signed and enforced effectively. The lead departments charged with enforcement have all stated without issue they could enforce this bill if it becomes ordinance.

There are three (3) reasons for why he intends to sign the legislation if passed by the Council. The first reason is public safety. Any tradeoff between safety and liberty deserves to be taken seriously but here the case for safety is very clear. Research tells us secondhand smoke will kill an average of fourteen (14) people in the City of South Bend this year alone. That is just non-smokers. If we knew of any threat that was going to kill over a dozen residents of South Bend and injure many more in a single year, we would of course act to stop it. Just like seat belts, restaurant inspections, or building inspections it is a tradeoff in personal liberty that we accept in order to save lives.

The second reason is to reinforce South Bend's standing as a leading community. We have all been working hard together to place South Bend ahead of our peers, but in this respect we are behind. South Bend is the last of the five (5) major Indiana communities to enact such protections. Eighty (80) percent of Americans already live under some kind of smoking bans and fifty (50) percent live under one that bans smoking in all restaurants and all bars. We are uncharacteristically behind the times. This is not an experimental policy and we don't have to speculate on the effects because such policies are already the law of the land for most Americans. His office was not able to find a single case of an American city that moved in the opposite direction. If this were such a bad idea you would expect that at least some of those cities would have decided to repeal their smoking ban. We found no evidence of any community that chose to go from smoke free back to the old way.

Third, the Mayor stated he has tremendous confidence in the bars and restaurants in this City. If it were not for that confidence he would not be comfortable signing this legislation. Both as a Mayor and a resident he has enormous appreciation for what these businesses mean to our community. Hospitality and retail have never been an easy line of business to be in. Any disruptive change can be a threat to them but he has enormous confidence in these businesses. He does not expect to see them fail where others have succeeded. If a law like this did not ruin

the industry in Indianapolis, Fort Wayne, Evansville, or Hamilton County then our small businesses should do even better.

The research is very clear on this issue. The Mayor thanked the Council for creating a longer implementation time for compliance and added his administration will seek out ways to support affected businesses throughout the transition. No one likes being told what to do but that's how laws passed by elected officials work in American democratic elected processes. It is time for South Bend to join the rest of the county and recognize a choice between public health and small business is a false choice. This is an emotional issue but we make decisions based on evidence, especially life and death decisions. He thanked the Council for their work, diligence, and leadership on this issue.

Tony Flora, 202 E. Angela South Bend, spoke not only as a resident but also in his capacity as the President of the AFL-CIO for our area. In about a month we will be having an event at the Workers Memorial site at Howard Park to recognize the passage of the Occupational Safety and Health Act in 1970, when for the first time in our country we said it was a basic right of all workers to have safe and healthy work places. We also began at that time to establish fair and scientific standards to constitute safe work places and what did not. We have continued to expand those rights and that understanding. There is no argument today that secondhand smoke is not detrimental to people's health. He spoke for employees and people who would want to be an employee of one of these businesses. Never should a worker have to choose between making a living and giving up some of their health because that is the essential argument tonight. Our state finally passed legislation that work places should be smoke free but they carved out a little exception and community by community we have to address it. It is time for South Bend to say all workplaces should be healthy workplaces. Secondhand smoke is an impediment to employment and a problem for those people who want to be employees. We do not argue that an employee can make it a choice and work in a less healthy work environment and we don't say we will allow some businesses to have free floating asbestos or some places to have high amounts of silicon dust and you make that choice to work there. The time is now to address this one last area of where people work.

Mike Sabith, 5629 Slerting Dr. Granger, stated he is new to the community and has been here for four (4) years. He is a cardiothoracic surgeon who is here to talk about public health risks of secondhand smoke. Back in 1919 the first case of lung cancer, at that time the disease was unheard of and no one thought they would see it again. In 1936 the association between lung cancer and smoking was first brought forward even though those doctors were castigated at the time. It took thirty (30) years until the Surgeon General actually made the association between smoking and lung cancer. We have had twenty (20) million Americans die from lung cancer in the fifty (50) years since the Surgeon General made that report. Two and a half million Americans have died from second hand smoke during that time. Ninety (90) percent of his practice is related to smoking related diseases. The only economic impact you will see from this is that it will put me out of business and that's a good thing. The only people that don't think this is a health risk are those in the tobacco industry and those that smoke. He encourages the Council to pass this bill.

Sam McGrath, Radiation Oncologist at the Memorial Regional Cancer Center, thanked the Council for allowing him to speak about the dangers of secondhand smoke. His position on this issue is shared by all five (5) of the oncologists within the Beacon Medical Group. Secondhand smoke is one of the silent public health crisis of our era. As was stated before two and a half million Americans have died from secondhand smoke exposure and this year alone 42,000 Americans will die from secondhand smoke. It also goes beyond lung cancer, secondhand smoke exposure exacerbates asthma, contributes to heart disease and stroke, and can increase susceptibility to contracting tuberculosis. Dr. McGrath stated he has treated a bartender in a smoking establishment whose biggest concern was not the cancer they were dealing with but repeated mucus plugs within their lungs. He has treated a musician who contracted cancer of the larynx due to the secondhand smoke he received during his performances. The physicians in oncology can tell the Council story after story of similar instances and they are all absolutely heart breaking. The economic effects of smoking also need to be discussed. Smoking related illness within the United States costs us more than \$300 billion dollars each year, \$170 billion

for direct medical care and \$156 billion in lost productivity. That included \$5.6 billion in lost productivity from secondhand smoke. It is incumbent upon all of us to protect the health of the general public and individuals working in establishments where smoking is allowed many of whom absolutely need the employment and some of whom who have few other job alternatives. He is not suggesting that the right to smoke is taken away but that we act to protect those who choose not to smoke. If we can acknowledge ones right not to smoke we must also support one's right to breath clean air.

Steve Toepp, 52762 Brookdale Dr. South Bend, is a musician in three (3) bands and all twenty (20) musicians in those bands as well as hundreds of others he has spoken to are really hoping that this bill will pass. Musicians, especially local ones, are not rich and cannot afford to turn down work at some places. We have to take everything we can get. He stated his opposition to big government but in his mind the government's role is to protect people. It is getting so bad in some of these bars that they can barely get through two (2) sets. They post their shows on Facebook and the first question always asked is if the bar is smoking or non-smoking and we don't like to say if it is smoking because we will get a smaller crowd then. He estimated they get approximately forty (40) percent less of their normal crowd if it is at a smoking bar. The bars will get more people to his bands performances if they are all non-smoking.

Kelli Brien, 115 E. Woodside St. South Bend, spoke as a business owner working in public health for almost nine (9) years. Clients come in everyday with issues about their pregnancies and will secondhand smoke affect them. St. Joseph County has one of the very highest infant mortality rates in our country. This ordinance can help that rate. Both secondhand and thirdhand smoke affects children and babies. This is a very high indicator in SIDS.

Amy Nuner, 6115 Miami Rd., stated in 2003 when New York City passed their non-smoking ordinance she lived there and worked in the hospitality industry and it did not affect her income in anyway. Also she lived in Chicago when they passed their non-smoking ordinance and it did not have a negative effect on bars. Having three (3) small kids she hopes when they are adults they don't have to go through this fight.

Victoria Zellmer, 1233 N. Eddy St. Apt 303, stated she loves South Bend and it has become her home over the past eight (8) years. She is a PHD candidate at the University of Notre Dame studying cancer but is not speaking on the science and health risks of smoking because that has been well covered. She came to talk about what it is like to go out in a non-smoke free city as a twenty something who goes to bars frequently. First she supports this bill out of concern for this community so the workers and employers have the right to clean air. Also this ordinance will provide a healthy image for our city, this ordinance will show South Bend cares for and protects all residents and all employees in the City. This ordinance will also encourage the young professionals in the City to come out to new and different establishments. She stated she is less likely to frequent a bar, and here friends are also less likely to frequent a bar, if it is a smoking establishment. This ordinance is a positive way to connect young professionals with this amazing city.

Craig Clark, 3267 Chalk Maple Ct. South Bend, spoke on behalf of the Indiana Black Expo expressed their organizations support of a strong smoke free air ordinance in South Bend. We advocate for smoke free air laws because of the disproportionate impact that it would have on African Americans. These workers being protected will be the most vulnerable in our society. Unfortunately many African American workers in Indiana work in low paying jobs where smoking is the norm. Saying that these workers have a choice to walk away from these jobs is a false assertion.

Isis Dixon, 1021 E Irvington Ave, stated she had a grandmother who smoke for many years and even though she stopped smoking she still ended up suffering from that. While her grandmother had a choice as a child she did not have a choice to be around her and take in that secondhand smoke. If this ordinance helps stop people smoking or helps people never start smoking so they don't affect their family members then it will be worth it.

Kevin O'Flarrerty, 178 Housatome Drive, CT, is a regional advocacy director for the campaign Tobacco Free Kids. In that capacity he covers eleven (11) states throughout the U.S. including Indiana. He was asked to talk specifically about the legal aspects of the ordinance. Tobacco Free

Kids strongly supports this ordinance and this bill is set up properly by presenting a comprehensive ordinance that provides exceptions to certain industries. This protects all workers and all businesses. The stumbling points for other city ordinances in the past is providing exceptions to some work places, by not having that this ordinance is better written. By saying this a threat to all workers and protecting all workers equally that problem is avoided. In all the cases he has been a part of where the ordinance was written comprehensively like this they have been upheld fully. This bill has been reviewed by three (3) independent attorneys and all have found this proposed law one that would hold up against a legal challenge. Regarding e-cigarettes, while they are a relatively new product, a third of the states that have comprehensive smoke free laws include e-cigarettes in their smoke free laws. There is no question based on the evidence today that e-cigarettes are safer than normal cigarettes but that does not mean that they are safe. This would help rid all workplaces of pollutants and carcinogens. Based on the current science, all major health organizations recommend e-cigarettes be included in smoke free laws. Economically what the data shows is what usually happens is that for a month or so after these laws there is a little bit of a blip in revenue for these bars but then that city goes back on whatever trend it was on before. If business was going up it continues to go up, if business was going down it continues to go down, unfortunately for Elkhart that was the situation they were in when they passed that law. You should look at the empirical data if you want good data. No matter where this fight takes place it is always the same fight, the health community comes out and talks about public health while the business community comes out and talks about their fears of losing business but the reality is five (5) or ten (10) years from now all of you who vote for this ordinance will look back and say it's one of the best things you did as councilmembers. Also if past experience is any indication a good chunk of people wearing the red shirts (opposition) will have changed their mind too.

Traci Kennedy, Columbia Missouri, she works for an organization titled Americans for Non Smoker's Rights. All workers deserve the right to breathe clean air at work no matter where they work. This is a public health issue but also there is a negative economic impact on South Bend due to second hand smoke. The reality is the Tobacco Industry are spending \$288 million dollars to recruit Indiana youth to become addicted to their products and they are not offering to recoup the cost for building fires, maintenance and cleaning, and worker's sick leave. They are not offering any assistance to these businesses that then have to foot the bill to pay for exposure to smoke and secondhand smoke. We know that smoke free laws save both lives and money for the communities they are enacted in and they are not only popular in the beginning but they also grow in popularity over time after being enacted.

Nick Torez, works for the American Lung Association in Indianapolis, spoke about the questions regarding Elkhart. At the request of Councilmember Ferlic they reached out to the Alcohol and Tobacco Commission for the state of Indiana to request data to show the alcohol permits for the city of Elkhart. In the short time they have had they have tried to compare the data from the state to the list provided by the opponents of the ordinance. There are several discrepancies on the list provided by the opponents and this goes to the question of relying on anecdotal evidence to base some of these decisions on. In particular several of the bars listed on the sheet are still listed by the state as having active liquor licenses and several were listed as having gone out of business before the ordinance was enacted in Elkhart. It calls into question some of the anecdotes we have been asked to rely on. Also this sheet does not show any of the new bars opened in Elkhart since the ordinance passed. Manufacturing was a huge loss for Elkhart during the recession and that had an enormous impact on the bar industry there. The Elkhart Truth posted a moving article about the effects of the recession in Elkhart and quoted one of the bar owners after the ordinance went into effect saying business had been very hard but he did not cite the smoking ordinance he cited that all of the shift workers from the manufacturing sector were out of work. To answer Councilmember Oliver Davis's question the Indianapolis ordinance covers ninety-two (92) percent of the population of Marion County.

Latonya Green, 1028 Ebeling Dr. South Bend IN., stated it is clear the dangers of secondhand smoke fifty-nine (59) people from our community will die each year due to secondhand smoke. We must honor their memory by protecting all workers regardless of where they work. All residents of South Bend deserve to work, study and play in a smoke free environment. This ordinance will not only protect health immediately it will also motivate people to quit smoking

and reduce the number of people who start smoking. The research is clear and the time is now to protect all workers.

Karl Nichols, 1530 College St., spoke about the assistance Smoke Free St. Joe would offer any business affected by the ordinance. He focused on the implementation benefits that Smoke Free St. Joe was willing to provide to the affected businesses during the implementation period. They would help in three main ways including community education, event promotion, and marketing workshops. This would include sending implementation tool kits to all affected businesses. They would set up a smoke free hotline which would answer questions about the new law, provide information about compliance and other resources. They would help with daily and weekly advertisements about the new law prior to enforcement dates. They would coordinate with the Common Council to identify early implementers who would be interested in promotion from Smoke Free St. Joe and have the Smoke Free St. Joe monthly meetings at some of the early adopters' bars. Promote events and bars on the Smoke Free St. Joe social media sites and interview and profile one business per month. They would hold at least four (4) two (2) hour marketing workshops for the affected businesses regarding marketing via social media, branding and promoting the venue, event planning, and expanding the customer base. Smoke Free St. Joe wants this potential transition to be positive for anyone involved.

Jonathan Anderstorm, 526 W Western Ave., stated there are parts of this ordinance that he has questions about such as the inclusion of volunteers as employees as well as the enforcement on non-profits should a complaint be filed. He does however support the ordinance for three (3) reasons. First, as the Executive Director of the Monroe Circle Community Center in South Bend he has a daily reminder of the adverse effects of smoking on this community. Many people have limited options when it comes to employment and many feel their only choice is to work in any place they can find even if it is a smoking establishment. He also sees the results of children who experience the adverse effects of secondhand smoking. This ordinance would prohibit smoking in public housing areas. Secondly, many of the negative affects of secondhand smoke on our city are preventable and our City is in dire need of health protection. Third, people are God's treasure and every person here has eternal value and worth, this ordinance will help extend people's time on earth as long as possible. Yes some may not agree with me but it is hard to keep doing funerals for people dying for heart disease or for a child born six (6) months premature because his mother was a smoker. Yes this may cause some people some personal trouble it has great potential to extend the greatest gift God has given us which is human life.

Council Vice President Davis announced the opposition will have forty (40) minutes to speak.

Council President Tim Scott made a motion to recess for five (5) minutes. Councilmember Karen White seconded the motion which carried by a voice vote of nine (9) ayes.

The Committee of the Whole recessed at 8:41 p.m.

The Committee of the Whole reconvened with Council Vice President presided with nine (9) members present at 8:46 p.m.

Those wishing to speak in opposition to Bill 11-16:

Frank Julian, 1620 South Bend Ave, stated those speaking in favor of this bill have already won this issue. It is not hard in this county to find a place of business or restaurant that is smoke free. He stated he had to sit down and think of any bars or restaurants that still allow smoking when he was first approached about this. This is no longer the public health issue these statistics make it out to be and the data presented today proves that with widely different claims of how many people would die from secondhand smoke in our area. That data Councilmember Ferlic has used have been debunked as not being of sound basis and that was stated in the Journal of the American Medical Association. This is going to drive people from these bars to the bars in St. Joseph County and Mishawaka. This is going to drive people to the casino and it is funny that the Mayor wants to talk about public safety but takes \$2 million dollars from the casino. The studies that showed no economic impact were mostly done in southern states where it is easy to have an outside facility where people can smoke. South Bend is not like that where most of the year patrons cannot comfortably be outside on a patio. The economic studies also look at tax data and those studies do show it all equals out because T.G.I Friday or Applebees will take in more

money when they go smoke free but studies have also shown that individual businesses, small business, get devastated by these smoking bans. When we come in a year from now these businesses will not be here and it is not anecdotal what happened in Elkhart. Anecdotal evidence is not an expert in the field saying there were thirty-eight (38) taverns in the city of Elkhart that were in business and that there are only fourteen (14) businesses left now. Those are facts. If these businesses even lose ten (10) percent of their gross income they will go out of business, they have a very thin margin and this will take it away because you want to enforce your morality on other people. You don't smoke so you don't want anybody to smoke and that's all this is because there are not enough businesses here to have such a public health impact. Also the health impact for smoking and secondhand smoke is not as bad as Councilmember Ferlic made out.

James A. Masters, 350 Columbia St. South Bend, spoke on the behalf of Richman Master Distributor Inc. They are a wholesale distributor of products for grocery and convenience stores including tobacco products. They have 320 employees company wide and operates fifty-three (53) Low Bob's tobacco stores in the South Bend metropolitan area. Six (6) of those Low Bob's are in the city limits and employee twenty-five (25) people. This proposed ordinance gives no exception to anyone and Richman Masters asks the Council to remove tobacco stores from the list of places where smoking is prohibited. If this bill is passed South Bend will have the most strict smoking ban in the state of Indiana. All other Indiana cities that have adopted anti-smoking ordinances all expressly exempt retail tobacco stores from the ban. The business of a retail tobacco store is wholly dependent upon tobacco sales and has no other way to make up profits. Restaurants and bars have other principle profits. The courts have said exempting tobacco stores is reasonable because that is all the store can sell and their very livelihood depends on it. It is unreasonable for South Bend not to exempt tobacco stores and this ordinance will put tobacco stores at a disadvantage to other stores in the area. This bill would put the tobacco stores in South Bend at an unfair disadvantage to the stores outside of the city limits in the County and Mishawaka. This ordinance regulates the sale of tobacco in a tobacco store and goes beyond the city's powers to adopt regulations on restrictions of smoking in public places and if it is enacted without change would be subject to a legal challenge.

Scott Carrico, 4202 Technology Dr., Vice-President of Master Distributors and Low Bob's spoke against the bill. As Jim mentioned earlier, this company employees 325 families and they depend upon me to make the right decisions and fight for the rights of the people we take care of. For the state, local, and federal government they collect over \$60 million dollars in tax. We also pay \$2.1 million dollars in payroll tax plus property taxes that benefit South Bend and our warehouse is here in the city limits. We are asking for the state law to be upheld and the exemption of tobacco stores remain in place. Our business has been here since 1936 and we do not have to be here. It would make more sense for us to be in Indianapolis by pure geography but we stay here because it is our home. A committee should be formed and we need to be a part of that discussion. Mr. Carrico stated he is not here to argue for secondhand smoke, he is here to argue for the employees under his care that will be hurt by this bill. People talk about jobs they can't get, we can't hire enough people for our warehouse that is smoke free. That is a fact. So when they talk about not being able to get good quality jobs in South Bend, we are actively looking for good quality people in a smoke free area. This is not fair to our industry and our company. Smokers are under attack, it is a dirty product, but it is a choice that can be made by an adult and if that is taken away what is next. Don't take this choice away from adults.

Drew Duncan, 439 S. Michigan St., student and store manager of a vape shop in South Bend. Life as God's gift has been mentioned already but free choice is also a gift from God. As an adult once you reach the age of eighteen (18) you can make choices. There are plenty of establishments in South Bend that are nonsmoking. Mr. Duncan requested that the Council sends this bill to a working committee so that these unanswered questions can be analyzed. There are still questions about what happened in Elkhart. It needs to be studied what will happen to businesses in this city not in any other city. Vape shops will have to leave town and that is the definition of being economically affected. Mr. Duncan claimed a vote in favor of this bill robs him of the ability to invest in the city of South Bend and it will take his job. When things like this get passed without being thoroughly vetted they harm people like him. It is easy to be a

political coward and vote this, but what is really difficult is to stand with the common people and make a choice and stand in the face of people who wish to oppress your choice takes bravery.

John Hosinski, 502 W. Washington St., stated he came here as someone who has a great love of this Council and served on this Council in the past. All seven (7) of his children hate that he smokes and he can remember a time when he used to sit in his office in this building where he would smoke and it was totally legal, times have changed. Everyone here gets it that smoking is bad for people, people tell him that all the time and everyone knows it. Those arguments are not disputed and it's banned basically everywhere already. Mr. Hosinski asked what big problem are we trying to fix because the problem no longer exists. We have not really seen any aggrieved party in this case. Smoking bans should be everywhere except these few private establishments left and have a sign on the door saying these are the people who haven't figured it out yet and quit.

Pat Mulligan, 1705 South Bend Ave., this ordinance will murder our businesses. Mr Mulligan loves this City and this community. Mr. Mulligan stated he moved to this great city of South Bend because he loves Notre Dame. He cashed in everything he had to start his bar and he is proud of his business that he has worked eight (8) years to build his customer base both smokers and non-smokers both blue collar workers and white collar workers and on the door is a sign that says twenty-one (21) and up. We need to focus on the two (2) shootings that happened last night not this issue, lets protect our police and firefighters. Let's make this City and community safe, we are not bothering anybody. People have a choice to come into my bar, no one is forced. The casino is coming in and it's going to have smoking. This bill will kill our businesses. Things are starting to go well in this city, we have seen the turnaround, let's not jeopardize that. We don't want vacant buildings in this city. He implored the Council to think real hard tonight about this decision because it will murder these bars.

Warren Diltz, 1454 Garland Circle South Bend IN, stated his family has been doing business in Northern Indiana and Southern Michigan for over seventy (70) years. His family has been putting video games, juke boxes, pool tables and other bar games in every location that would allow them to do so and bars are a big part of his business. He was the one that brought the comparison list of bars from Elkhart. When a bar closes the liquor license does not go away immediately. Some claimed that the bar closed earlier but bar names do not necessarily correspond with the corporation name on the license. Mr. Diltz stated his information is not anecdotal and he is the expert in this area, there are at least seventeen (17) vacant taverns in the city of Elkhart and none outside the city limits. Yes some businesses have opened but they have been big corporations that don't reinvest that money back in the town like these small businesses. The fact that you find this information anecdotal is proof that a fact finding study needs to be undertaken because there is information you don't have, don't understand, and could learn from businesses in these areas. Mr. Diltz stated he would be happy to be a part of a study to answer some of those questions.

Don Ruscoski, 5028 Ford St., stated he is the finance officer of the American Legion Post 357 and has been on their board for eleven (11) years. This post has done so much remodeling on this smoking area, they had to put in special doors that cost over \$8,000 to satisfy smoking requirements and now if this is passed all of that was for nothing and it's ridiculous because that is money thrown right out the window. Our post went non-smoking for one week and lost \$3,861 during that week alone. Gavin Ferlic has never once came to our club or called us and we have an answering machine. He has not contacted every bar. Right across the street from our post is another one that is in St. Joseph County and if you pass this it will only take a year or year and a half until we close because our customers will leave and join that club. Mr. Ruscoski asked if these councilmembers are going to go to their employees and tell them they are out of a job. Mr. Ruscoski asked the Council to not pass this bill.

Donna Mitchel, 1236 Longfellow South Bend, stated the Council has gone about this in the wrong way. She has had several people in her family who have died of cancer but her problem is that these people have businesses and the people who go there do not have a gun to their head they are adults. The Council is elected to represent us and you should have made a law stating all bars in the future cannot have smoking in their bars so then the owner could make the choice if they want to open the business. Then they have other choices but this way these owners have no

choices. The government does not know what is best for me or for these people. Look at public education or other public services, nothing comes out like the government promises. She stated she does not trust the Council or the government.

Rick Ruskowski, 233 S. Main St., thanked the Council for his opportunity to speak. Mr. Ruskowski stated no one here from the bars has heard from Gavin Ferlic in person or on their answering machine, he has not reached out to any of them. Mr. Ruskowski stated Gavin Ferlic held a news conference upon the proposal of this ban and issued a statement that the Council has enough votes to pass this legislation and that third times the charm. At the time of this press conference no public hearing had happened. Mr. Ruskowski stated he is not comparing Gavin Ferlic to the Castros but dictatorship and communism started somewhere. This legislation is nothing more than a personal agenda of the few despite the impact it has on the many. The Councilmembers he spoke with were selected because of their willingness to hear, listen, and reason to opposition to what might be a strong belief for them not because they may be weak or persuadable. This proposed ordinance will not benefit anyone. The argument that it protects employees or patrons who do not have a choice is a lie. The stereotyping of people in the bar industry shows Gavin Ferlic's demeaning mentality. Most of the bartenders at Finnies have a white collar job during the day and bartend at night to supplement their own dreams and desires. The general manager at Finnies chooses to work there and also chooses not to smoke. Why does Gavin Ferlic and a few others on this Council feel the right to dictate what is right for me and the public? This Council is attempting to deny freedom to people and is an attack on our right to choose for ourselves, freedom of enterprise, and freedom of a privately owned business to make their own decisions. To Gavin Ferlic, Mr. Ruskowski stated he stands with an army behind him and will stay quiet no more. Mr. Ruskowski claims Gavin Ferlic his attempt to place reigns on free enterprise and freedom of choice is deplorable and despicable, he has overstepped his bounds and ignored the oath and mission statement he swore to uphold. This behind the scenes work will not be forgotten.

Thomas Plempe Sr., third district commander of the American Legion and oversees the four (4) county areas around South Bend, when Post 308 went nonsmoking a few years back they reversed it after a year because they almost went out of business.

Jason Nielson, 52936 Highland Dr. 46635 South Bend, stated he owns a vape shop in South Bend that deal with the liquids and devices. He asked the Councilmembers if anyone of them learned anything about his business and vaping. He stated vaping has been lumped in with tobacco and it is not right. Vaping and smoking are not the same thing. He asked if they have learned anything about vaping, it is not the same thing.

John Burgraph, 52187 Fur Rd. Granger, stated he owned a bar for twenty-six (26) years and it was a smoking bar. He submitted petitions that he stated have eight-hundred signatures online and he went to twenty-three bars and collected signatures from them as well. Both petitions were submitted to the City Clerk's Office.

Councilmember Gavin Ferlic spoke in rebuttal to the opposition. He reported that Fort Wayne is seventy (70) percent of the population of Allen County, Columbus is fifty-five (55) percent, Franklin is sixteen (16) percent, West Lafayette is sixteen (16) percent, and Zionsville is twenty-three (23) percent. This is a broad range of cities with a comprehensive smoking ban with a number of different percentages of the county population. The CDC study does focus on cities where the county surrounding the city does not have a ban so the claim that we don't have data on a similar situation to South Bend is false. These were cities where the state did not have a ban just like our case would be. Regarding the changes that Indiana made bars make and spend money on, that was not the City of South Bend that required any sort of vents or doors, and Councilmember Ferlic stated his disappointment that Indiana did not take it a step further and provide comprehensive smoke free air like other states have done. Councilmember Ferlic stated he never said the Council majority had made up their mind or that "third times the charm". The data is undeniable, secondhand smoke kills. The data is undeniable, that economically the bans do not have an economic impact. He implored the Council to think about the health of this City and think about members of their family and community that have suffered from heart disease, lung disease and cancer. The economic costs of secondhand smoke to the City of South Bend is

twenty (20) million dollars per year. Looking beyond costs, if this ordinance is passed the City of South Bend will see a reduction in lung disease, heart disease and cancer.

The Councilmembers were given an opportunity to voice their opinion on Bill 11-16.

Councilmember Karen White stated this is a tough issue and has been for a number of years. When it came to the Council in previous years she supported it at that time and she continues to believe it is a public health issue. She stated concern about the implementation and she did ask the sponsors for a longer implementation period and thanked them for doing so. During that time a lot can get done working with these businesses and we will always have an opportunity to come back and have further conversations to tweak or edit the ordinance if it is passed. She stated she has met with business owners and managers and will continue to meet with them at any time but she has been very clear about where she is at on this issue. The Council does not want us to lose any businesses and that is not her intent, hopefully by everyone working together strategies can be developed to make sure South Bend does not lose businesses.

Councilmember John Voorde stated he has tried to listen and understand the concerns of both sides. Councilmember Voorde was one of the original co-sponsors and also one who thought it was more realistic to extend the implementation date. He stated he was most persuaded by the comments made by the head of the local AFL-CIO, that we have a responsibility to ensure that workers have a healthy workplace.

Council President Tim Scott stated he echoes what Councilmember White has already said. He pledged his support to help the bars if this does go forward and help with any type of development or aid we can lend to them.

Councilmember Dr. David Varner stated there are without a doubt health issues which have been documented, but despite the efforts to say otherwise there will be economic consequences. Whether it is the relocation of a distribution center from South Bend or the loss of a bar from one side of the street to another there will be some loss of businesses. Smoking is legal in this country and tobacco products are legal, personal property is personal property. He stated he has no problem with what the city or state wish to do with the property they own but the constant badgering of government on personal rights issues has got to slow down or be halted. This is an issue that is difficult for both sides. Four (4) years ago we visited this and we adopted a requirement that all bars that wish to allow smoking place a notice by their entryway and no one walks in to these bars without knowing they are walking into a smoking bar. Councilmember Varner stated he believes over the past four (4) years with employment the way it is that no one has recently been employed in a bar that does not know it is a smoking bar. People are not dragged into these establishments or forced to take a job. If it was my office or my home there is no smoking but this is a personal property issue as much as a health issue and it weighs more heavily on the personal property side of the argument. Yes there will be some people who die from secondhand smoke but they made the choice themselves and are adults. It is not the job of the Council to legislate on behalf of every citizen everything that will be best for them. He suggested the ordinance that is already in affect remain in affect.

Councilmember Jo M. Broden thanked everyone for coming out tonight especially the individuals she has had the opportunity to talk to this past month regarding this issue. There is decades of health data to show the negative outcomes of secondhand smoke. Balancing the individual rights of the bar owners and the right of workers and patrons is tricky and where she is having the most trouble. This ordinance would give almost a year to get this right as a community and would involve people on both sides coming together for the better of South Bend. It would mean as partners in city government working with these local business to prevent any detrimental effects to business in South Bend. No one on this Council takes that concern lightly and has been working to balance good health and make this transition in South Bend. Councilmember Broden stated she is looking for partnerships on this and middle ground to work with people because that is what South Bend does best. We work hard but we also work together. She stated she is confident in making this tough decision because she believes these two interests can partner and work together for the better of everyone. Yes it can be tough and yes people can walk away from these businesses and go to Mishawaka or the County. This is about establishing safe working environments across the board and she is not interested in carving out special

exemptions where we say some workers should not be protected. She stated she is interested in trying to push this initiative county wide in addition to her vote tonight.

Councilmember Randy Kelly stated as a co-sponsor of the bill everyone knows where he stands. This is primarily a public health issue and he agrees with Councilmember Voorde that this is about workplace safety. He stated he does appreciate Councilmember Dr. Varner's statement about personal choice. What has not been discussed much this evening is that we already subsidize smokers through increased insurance premiums, Medicare and Medicaid taxes, and higher medical costs. Those costs come with living in a free society and we already pay the taxes and he is willing to do that even though he is not a smoker. Councilmember Kelly stated his father was diagnosed with lung cancer more than twenty (20) years after he had quit smoking and that was before work place bans had been put in place. He was one of the lucky ones and lived more than five (5) years but then subsequently had heart disease which was attributable to secondhand smoke. We as a society are paying for smokers and their increased healthcare already but that again is the cost of a free society. There does need to be a line drawn and that line should be drawn in public places.

Councilmember Regina Williams-Preston stated she has learned a lot and thanked everyone for their comments. She has spent a fair amount of time talking to her peers on the Council and also the public about this issue because it is her first time with this conversation. There is still more to learn and a big concern is enforcement. The City should not make a rule or law that it cannot be consistent with regarding enforcement. The Police Dept. and Code Enforcement have so many more issues that are more pressing than somebody in their private space smoking. There has to be better ways to promote public health. South Bend has to become a more healthy community but forcing people not to smoke in spaces that are their own is not the way to do it.

Councilmember Williams-Preston stated she has been surprised by talking with people in her district that did not even know this conversation was going on or what they thought about and as elected officials we need to do a better job at figuring out what the people who elected us want. We should be talking about fifty-six (56) percent of people who live in Portage Township live at or below the poverty line and that is important because our smoking rate would be much lower if that percentage of people in poverty were lower. Those young people are stressed and that drives people to smoking more than anything else and we solve that with education and jobs. There is a better way to address the health issue than just saying people cannot smoke. Even though this has been talked about for a while things change, we may have a casino coming and vaping is still a very new thing. She stated she wants to learn more about Elkhart because that is important what happened next door. On the issue of exemptions many cities give exemptions that have been held up in court so why did we not include those exemptions. Yes it is important to bring these two sides together as Councilmember Broden brought up but we need to do that before we pass an ordinance not after and if that takes a year then so be it.

Council Vice President Oliver Davis stated he is happy about the decision the Council made four (4) years ago when we passed a more restrictive non-smoking law than the state had in place and that should have been the end of this issue. His concern is that even after this the issue will come back again. It is a misnomer to say we have not already voted more strict measures than the state mandates. This would be a completely different issue if we were going to try to outlaw alcohol even though alcohol is a big health issue. If we want to talk about health issues why do we not address how people eat in this city. Even though those things are bad we are not going to outlaw them. Regarding Marion County, Indianapolis law covers ninety-two (92) percent which means those bars only have to compete against eight (8) percent of the county. Fort Wayne bars only have to compete against thirty (30) percent of their county. If this Council passes this law, South Bend bars will have to compete against sixty (60) percent of the St. Joseph County. That is a huge difference from Indianapolis and Fort Wayne and I want to talk about Indiana not the rest of the country or the world. We keep talking about this new South Bend and all the new young people coming here but what about the people who have always been here. This law is just going to run those people out of town. With all due respect to Smoke Free St. Joe, their name specifically says St. Joseph County. The County has the health department go talk to them and ask them to institute this change because I don't see your group talking to them. And where most of you have jobs and getting your money from is a hospital that left South Bend and moved to Mishawaka. Councilmember Oliver Davis stated he was concerned Smoke Free St. Joe has not

worked with any bars going smoke free and if they have had any success in the past. He stated there is new information and education is an ongoing process. The last two (2) times the Council never once talked about vaping and the casino was not an issue so there are new things to talk about regardless of what the editorial board at the South Bend Tribune wants to say.

Councilmember Davis also questioned the ability for some bars to place their patios fifteen (15) feet from the door because many bars do not have that much space. He also raised concerns about people having to leave their drinks in the bar when they go smoke and then people putting drugs in those drinks and also raised concerns about the severability clause. Councilmember Davis asked what if this was the president of Notre Dame in the red shirts asking for a study committee or the president of the Chamber of Commerce. What if it was not Mr. Mulligan but someone who owns 1st Source Bank then would be more receptive to listen. When Elbel came out and were mad about that the Council did not rush to judgment about that issue. It has taken eleven (11) years to try to figure out where Dr. Martin Luther King St. should be. So if we can put together a committee for Elbel and Dr. King we should be able to put together a committee to look into this smoking ban.

Councilmember Regina Williams-Preston made a motion to form a special committee on this issue and send Bill 11-16 to that committee. Councilmember Dr. David Varner seconded the motion. The motion was defeated by a roll call vote of four (4) ayes (Council Vice President Oliver Davis, Councilmember Regina Williams-Preston, Councilmember Dr. David Varner, and Councilmember Karen White) and five (5) nays.

Councilmember Gavin Ferlic made a motion to send Bill 11-16 to the full Council with a favorable recommendation. Councilmember Randy Kelly seconded the motion which carried by a roll call vote of six (6) ayes and three (3) nays (Council Vice President Oliver Davis, Councilmember Dr. David Varner, Councilmember Regina Williams-Preston).

RISE AND REPORT

Councilmember Gavin Ferlic made a motion to rise and report to full Council. Councilmember Oliver Davis seconded the motion which carried by a voice vote of nine (9) ayes.

REGULAR MEETING RECONVENED

Be it remembered that the Common Council of the City of South Bend reconvened in the Council Chambers on the fourth floor of the County-City building at 10:22 p.m. Council President Tim Scott presided with nine (9) members present

BILLS – THIRD READING

11-16

THIRD READING ON AN ORDINANCE OF
THE SOUTH BEND COMMON COUNCIL
AMENDING CHAPTER 14 OF THE SOUTH
BEND MUNICIPAL CODE BY ESTABLISHING
NEW ARTICLE 13 ENTITLED SMOKE FREE
AIR REGULATIONS FOR WORKPLACES AND
PUBLIC PLACES

Councilmember Oliver Davis made a motion to defeat Bill 11-16. Councilmember Regina Williams-Preston seconded the motion which was defeated by a roll call vote of three (3) ayes (Councilmember Oliver Davis, Councilmember Regina Williams Preston, and Councilmember Dr. David Varner) and six (6) nays.

Council Attorney Kathleen Cekanski-Farrand stated there needs to be a motion to amend as was in the Committee of the Whole. So moved by Councilmember Gavin Ferlic and seconded by Councilmember Randy Kelly, the motion carried by a roll call vote of six (6) ayes and three (3)

nays. (Councilmember Oliver Davis, Councilmember Dr. David Varner and Councilmember Regina Williams-Preston).

Councilmember Gavin Ferlic made a motion to pass Bill 11-16. Councilmember Randy Kelly seconded the motion which carried by a roll call vote of six (6) ayes and three (3) nays (Councilmember Oliver Davis, Councilmember Dr. David Varner, Councilmember Regina Williams-Preston).

Councilmember Oliver Davis left the meeting at 10:26 p.m.

Council President Tim Scott asked people to please be respectful and quiet as there were two (2) resolutions left for the Council to consider and two (2) bills for first reading.

RESOLUTIONS

16-30

A RESOLUTION OF THE COMMON COUNCIL
OF THE CITY OF SOUTH BEND, INDIANA
CORRECTING SCRIVENER'S ERROR IN
RESOLUTION NO. 4537-16 APPROVING THE
DESIGNATION OF CERTAIN AREAS WITHIN
THE CITY OF SOUTH BEND, INDIANA,
COMMONLY KNOWN AS: 211 WEST
WASHINGTON STREET AS AN ECONOMIC
REVITALIZATION AREA FOR PURPOSES OF
A TEN (10) YEAR REAL PROPERTY TAX
ABATEMENT FOR: RETAIL PROPERTY
LOCATED AT THE TOWER AT WASHINGTON
SQUARE LLC

Councilmember Gavin Ferlic reported that the Community Investment Committee met and sends this bill forward with a favorable recommendation.

Brian Pawlowski, Offices on the 14th Floor of the County-City Building, served as the presenter for this bill. This is a minor adjustment to the tax identification number on Resolution No. 4537-16 due to a scrivener's error.

Mark Neal, Offices at 112 West Jefferson South Bend, served as the petitioner for this bill. This is just fixing an error in the retail property tax identification number for the property.

There were no questions from the Council and no one from the public spoke in favor or in opposition to the bill.

Councilmember John Voorde made a motion to adopt Bill 16-30. Councilmember Karen White seconded the motion which carried by a roll call vote of eight (8) ayes.

16-31

A RESOLUTION OF THE COMMON COUNCIL
OF THE CITY OF SOUTH BEND
DESIGNATING CERTAIN AREAS WITHIN THE
CITY OF SOUTH BEND, INDIANA,
COMMONLY KNOWN AS INTERSECTION OF
MAYFLOWER RD AND WESTERN AVENUE
SOUTH BEND, IN 46619 AS AN ECONOMIC
REVITALIZATION AREA FOR PURPOSES OF
A SIX (6) YEAR REAL PROPERTY TAX
ABATEMENT FOR COUNTY DEVELOPMENT,
LLC

Councilmember Gavin Ferlic reported that the Community Investment Committee met and sends this bill forward with a favorable recommendation.

Brian Pawlowski, Offices on the 14th Floor of the County-City Building, served as the presenter for this bill. Highlighted that this will be a new construction with about \$6.8 million dollars in investment and a total square footage of 40,000 square feet. The estimated total taxes on the new building construction are \$1.18 million, the estimated taxes to be abated are \$464,000 and the estimated taxes to be paid during the six (6) year abatement are \$715,00.00. This will add an additional thirteen (13) employees which excludes the current thirty (30) employees at their existing store and will add approximately 450,000.00 in payroll.

Rob Bartles, 760 Cotter St. South Bend 46613, served as the petitioner for this bill. They are very excited about this project and all the time and talent that has gone into it. This abatement would help them with the costs and will help bring a beautiful store to the Westside and a store they deserve out there.

There were no questions from Council and no one from the public spoke in favor or in opposition to the bill.

Councilmember Karen White made a motion to adopt Bill 16-31. Councilmember Dr. David Varner seconded the motion which carried by a roll call vote of eight (8) ayes.

BILLS FIRST READING

18-16

FIRST READING ON AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, AMENDING CHAPTER 2, ARTICLE 1 OF THE SOUTH BEND MUNICIPAL CODE BY DELETING SECTIONS 2-9.1 ADDRESSING POLICIES AND PROCEDURES GOVERNING CITY-OWNED TECHNOLOGIES, FACEBOOK STANDARDS, SOCIAL MEDIA AND SOCIAL NETWORKING POLICIES AND PROCEDURES

This bill was given first reading. Councilmember Karen White made a motion to send Bill 18-16 to the Information and Technology Committee and set public hearing for April 11th. Councilmember Gavin Ferlic seconded the motion which carried by a voice vote of eight (8) ayes.

19-16

FIRST READING ON AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, TO ADDRESS BUSKERS AND SIDEWALK PERFORMERS BY REPEALING CHAPTER 4, ARTICLE 4, SECTION 4-21 OF THE SOUTH BEND MUNICIPAL CODE, RE-CODIFYING AND AMENDING IT WITHIN A NEW ARTICLE 13 OF CHAPTER 14, NEW SECTIONS 14-123 THROUGH 14-126 OF THE MUNICIPAL CODE, AND FURTHER AMENDING CHAPTER 13, ARTICLE 12, SECTION 13-26 CONCERNING SOLICITATIONS

This bill was given first reading. Councilmember Karen White made a motion to send Bill 19-16 to the Health and Public Safety Committee and set public hearing for April 11th. Councilmember Gavin Ferlic seconded the motion which carried by a voice vote of eight (8) ayes.

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

There was no new business.

PRIVILEGE OF THE FLOOR

Gary King, 730 N. Hill Street South Bend, stated with no disrespect to the people who designed the new flag or to the selection committee but the current design does not adhere to the guidelines set out by the Council in their flag resolution. The flag includes a red star with six (6) points, supposedly to represent the six (6) council districts, which was a guideline not established by the Council. This star also mimics the star on Chicago's flag and South Bend should not try to mimic Chicago we should be our own city.

Jason Banicki Critchlow, 3822 W. Ford St. South Bend, stated he enjoyed seeing so many people come out today and wishes they came out like that more often because the more voices that come out can only strengthen our democracy. He wanted to point out that there were two (2) shootings last night and the additional \$25,000 is not enough to the police to stem that tide. Yes the economy is improving but we need to do more to thoroughly analyze how our police can keep us safe and make a dent in the rising crime.

ADJOURNMENT

There being no further business to come before the Council, President Tim Scott adjourned the meeting at 10:40 p.m.

