

Amherst City Council was brought to order in a Regular Session with President Wasilk opening the meeting at 7:00 P. M. Also present in the Council Chambers were Mr. Heberling, Mr. Janik, Mr. Winiarski, Mr. Wachholz, Ms. Smith, Mayor Costilow, Auditor Phillips, Law Director Pecora, Safety/Service Director Jeffreys, Treasurer Ramsey, Assistant Law Director Ward. Mr. Dembinski was absent and had a letter on file. Ms. Smith motioned to excuse Mr. Dembinski as he had a letter on file. Seconded by Mr. Heberling. Voice vote 6-0 to excuse Mr. Dembinski. Also present were council elect Mr. Nahorn and council elect Ms. Harmych. There were also owners of retail stores, representative from the American Heart Association, representative Lorain County Board of Health, Police Chief Cawthon, and a reporter from the Chronicle.

The Prayer was invoked by: Chaplain Janik followed by the Pledge to the Flag led by acting Sergeant at Arms Cowger.

Consent Agenda: The Clerk read the Consent Agenda: Mr. Heberling motioned to accept the Consent Agenda as read. Seconded by Ms. Smith. Voice vote 6-0 to accept the Consent Agenda as read.

Acknowledgement of the Public pertaining to items on the Agenda: There was no one speaking.

#### **ORDINANCES AND RESOLUTIONS FIRST READING:**

- (a) An Ordinance re-appropriating funds in the Water Improvement Fund of the City of Amherst, Ohio to cover engineering costs; and declaring an emergency. (A-23-68)

Mayor Costilow asked that this be adopted under suspension of rules. Mr. Janik motioned to suspend all Council rules so that this may be passed in its first reading. Seconded by Mr. Cowger. Roll call vote 6-0 to suspend rules. Mr. Heberling motioned to adopt. Seconded by Mr. Janik. Roll call vote 6-0 to adopt. Becomes 0-23-62.

- (b) An Ordinance authorizing the Mayor to enter into a contract for professional services with Bramhall Engineering & Surveying Company relating to the Waterline Feeder Replacement Project; and declaring an emergency. (A-23-69)

Mayor Costilow asked that this be adopted under suspension of rules. Mr. Heberling motioned to suspend all Council rules so that this may be passed in its first reading. Seconded by Mr. Janik. Roll call vote 6-0 to suspend rules. Mr. Cowger motioned to adopt. Seconded by Mr. Janik. Roll call vote 6-0 to adopt. Becomes 0-23-63.

- (c) An Ordinance re-appropriating funds in various departments of the City of Amherst, State of Ohio per the attached Appendix "A"; and declaring an emergency. (A-23-70)

Auditor Phillips asked that this be adopted under the suspension of rules. Mr. Janik motioned to suspend all Council rules so that this may be passed in its first reading. Seconded by Ms. Smith. Roll call vote 6-0 to suspend rules. Mr. Cowger motioned to adopt. Seconded by Ms. Smith. Roll call vote 6-0 to adopt. Becomes 0-23-64.

- (d) An Ordinance authorizing Sandstone Joint Ambulance District to enter into an Ambulance Service Agreement with Lifecare Ambulance Inc. on behalf of the City of Amherst, Ohio; and declaring an emergency. (A-23-71)

Mayor Costilow stated that two changes were made and everyone received the information. He asked for suspension of rules. Mr. Cowger motioned to suspend all Council rules so that this may be passed in its first reading. Seconded by Ms. Smith. Mr. Winiarski asked if Mr. Nahorn will be on that Board. Mayor Costilow explained that the Board will be preparing new By-laws so it will be known at that time. Mr. Winiarski said now that he knows more about this Board, he would like to become more involved in it. Roll call vote 6-0 to suspend rules. Mr. Cowger motioned to adopt. Seconded by Mr. Heberling. Roll call vote 6-0 to adopt. Becomes 0-23-65.

- (e) An Ordinance authorizing the City of Amherst, Ohio to accept a bequest through the estate of Paul J. Goldthorpe in the amount of \$176,342.36 for the Amherst Office On and an increase in the Revenue Account for such office; and declaring an emergency. (A-23-72)

Mr. Cowger motioned to suspend all Council rules so that this may be passed in its first reading. Seconded by Ms. Smith. Roll call vote 6-0 to suspend rules. Mr. Janik motioned to adopt. Seconded by Mr. Cowger. Roll call vote 6-0 to adopt. Becomes 0-23-66.

- (f) An Ordinance amending Part Seven (Business Regulation Code) of the Codified Ordinances of the City of Amherst, Ohio adding Chapter 763 Creating Tobacco q Retail Establishment Licensing for the sale of tobacco products; and amending Section 537.16 of the Codified Ordinances of the City of Amherst, Ohio regarding illegal distribution of cigarettes, other tobacco products, or alternative nicotine products; transaction scans. (A-23-53)

Mayor Costilow asked about the age verification as this bothers him. Even tho is it not the intent to card people who are 50 or 60 years old, the way this language is written, everyone must be carded. He has found language in other cities that would help with that. Those do not require verification for those who appear over 30. This puts some discretion on the Clerk. He gave examples of older people not being carded and a person from the Health Department might be standing there. He would like a better explanation of who will get penalized. There is some language that can be changed. He also questioned the fees that are proposed to be charged. He has realized that the county is also going to charge a \$125 fee every year. This would be on top of the \$450 being proposed. He spoke to other places that charge less fees. Some charge a bigger fee the first year as that's when the work is done and after that it would be a smaller fee. He feels these fees are high, especially for those retailers that may have two stores in town.

Mrs. Wasilk asked for a motion before the discussion continues. Mr. Cowger motioned to send this back to committee. There was no second. Ms. Smith motioned to send this on to its second reading. Seconded by Mr. Wachholz.

Commissioner for Public Health Mark Adams spoke and verified that there is a \$125 charge by the Auditor's Office. He cannot answer what they do with these funds. He agreed that the first year entails the most work done. He explained. He said every single program is reevaluated every year. Mayor Costilow feels the county should have come with a solution to this. He also asked about the age verification. Mr. Adams said he completely understands if they did not feel they needed to card someone of a certain age. They will make every piece of this work. He understands both sides and of getting into a pattern.

Mr. Cowger thanked Mr. Adams for coming and asked how much time the person doing the inspection would need. Mr. Adams said 20-25 minutes. He explained further. Mr. Cowger asked if there would be any reason for them to go out to inspect should this ordinance not pass. Mr. Adams said they would not have the power to do that. They do not have jurisdiction of power over a law that does not exist. Mr. Cowger asked when they did the math, did they assume that cities and counties would join the program? Mr. Adams said they did not. Mr. Cowger asked about the differences in the number of businesses – such as Lorain being a larger city. His concern is that the fee is still the same. Mr. Adams said going from municipality to municipality is not as clear for this as it were for food service licenses. He explained further. Mr. Cowger said he would challenge how this would alleviate minors getting the cigarettes and vaping products. He has not heard how this is a good thing for the city. He explained further.

Mr. Heberling asked what they are looking for in a proper retail sale. Mr. Adams said that is not his expertise. He said they look for signage and where the displays are at but there is a lot more to that inspection process that he is not familiar with. There are other aspects of this, and he can expand on what he is looking for between the retailer and customer. Mr. Heberling asked how long it would take for an actual sale to happen. Mr. Adams said it would be very quick, maybe a two minute period. Mr. Heberling stated that the point of this to make sure the sales are not to minors.

Mr. Winiarski asked if the \$450 was based on anticipated cost? Should there be a reminder to get together with him next August should this pass? Mr. Adams said this will be based on a full year cycle. The data begins immediately.

Ms. Smith spoke to the numbers and said we don't want Amherst to foot any extra bills. We want to make sure and pay the actual cost. This is almost like a pilot program. So they would have the necessary documentation so we could annually take a look at this and agreed that this makes sense. Mr. Adams said as their health department, they would produce what is asked of them. Yes, this would be a pilot program. It is good to obtain information of what it costs in other areas.

Mr. Ali Mohammed – of Sunoco Gas Station 979 Leavitt Road, Amherst. He thanked council for having this meeting before pushing this through and Mr. Adams, whose services he values greatly. He has seen what the Health Department does and they have an amazing staff. In the 23 years, the staff that has come in to his establishments is amazing. Some are more strict than others but they are all concerned with the health of the public. He spoke of how the staff was stressed during COVID. He explained the routine when the staff comes in to his gas station to keep everyone protected. He felt inspecting cigarette sales will not take as long. He spoke further explaining about the cashiers and what their jobs entail and that they change frequently.

Mr. Ryan Coleman with PURE gas stations at 109 N Main and 199 Cooper Foster and one on Leavitt Road. He said hearing the Mayor speak about ID-ing everyone – that made him cringe. He relayed an incident of when they used to ID every single person that came into their establishment and one gentleman did not have his ID with him – it was in his car. This man got very, very angry; got his wallet out of his car, threw it at the clerk and she was so upset, she quit. It was very obvious that this man was over 21 and probably over 60 years of age. So to hear that our employee could get punished for not IDing a 60 year old man buying cigarettes, seems a bit outrageous. And now we are losing employees trying to enforce a rule like that. They pay \$200 a year for a food license, and \$125 a year for a tobacco license from the state, and which they require signage, so they are already paying fees for those licenses. They also have liquor and other licenses to pay. And then \$450 license? They want to say in business.

Mr. David Coleman of 812 Lincoln St. introduced himself and said he and his family are all from Amherst. He wondered why it would take an hour to check his station as he had had the FBI checking it and it did not take them an hour. He questioned whether he needs to run Mayor Costilow's driver's license through the register even though he knows him and knows he is over 21? He heard that there are 26 municipalities but only 2 are involved in this. He wonders what happened to the other 24? He read the cigarette license that he had with him and it states that "this list can be periodically updated." He questioned having duplicate or triplicate lists. Mr. Adams said that this is not able to be a countywide initiative since their organization does not have county wide legislation on this matter. When people don't have authority or permission, they go and request it whether it's through the county or through the state. In their case, they did not have permission to have Sunday sales at Leavitt Road and had to get it on the ballot and that's how they got permission. He advised Mr. Adams as to getting permission through a ballot. He complements Mr. Cowger on his stance on this matter. He thanked others for taking time to discuss this matter.

Mr. Adams said he appreciates this entire process. As far as the other municipalities, no other discussions had been held by them. The state and State Legislature have chosen not to make this a state law. They also chose, when there was discussion about secondhand smoke rules, they chose not to include vaping and everyone has seen what happened with that. The vaping problem rose and as the school resource officers noted, there is no smoking, it is all vaping. Because of the failure at the state levels is why the locals take action. What they are doing is the legal process where people get to speak and they go to communities and see if they want to pass something like this. This is not happening at the state level so it comes to them and they see what is happening in the communities. 30% of the sellers are still not being responsible. There are things that have been solved over the years. The biggest complement to them is when they work themselves out of a job. He explained further and answered some questions.

Chief Cawthon spoke and said to Mr. Adams's viewpoint that we as a municipality could handle this issue – sure the police department could go out and do compliance checks, and we do that with alcohol and tobacco products as well. However, we do not have ability to fill the void which has taken place to partner with the Health Department and give them "teeth" to pull a license if there are repeat offenders. He explained the process when a business is cited for selling alcohol to an underage person. With the current ordinance in place, we do not have that mechanism when it comes to cigarettes and vaping products. A business can

be cited over and over again for selling to an underage person and the only recourse is that they pay a fine; a small fine at that. With the proposed ordinance, we are looking to educate, and that's where the Health Department would come in in partnership with them. He feels the ownership would be responsible for educating their employees. They already have ordinance section 537 in place, but they are looking to partner with the Health Department with this proposed ordinance.

Mr. Dustin Holfinger, State Government Relations Director for the American Heart Association said there is a lot of confusion in this ordinance that has been discussed this evening. He explained the \$125 fee covers those retailers that sell only traditional tobacco products. Vape products are not part of this license. Nothing coming with that license as far as compliance checks. Nothing comes with the \$125 except permission to sell the traditional tobacco products. Those fees are not being put forward toward compliance checks. County legislation is not possible, as this is not a charter county. Cuyahoga and Summit counties are the only ones that can create this under the county level. There are over 25 communities in the State of Ohio that have a tobacco retail license in place at this time. Regarding compliance checks, no one will stand around for an hour. This is not like a food inspection check. There are only two compliance checks per year for this legislation. One if for the proper signage, the second is an underage buy attempt. This is where the health department employs an individual between the ages of 18-20 that goes in with their vertical license and attempts to purchase a product. If the purchase is made, that individual goes to the car and writes an affidavit, and they process all the information. That information is forwarded to the Health Department, then the retailer receives the letter of violation. It is not a continual standing around watching people make the purchase. These two items are listed in 763.06. The reason that brought him to this meeting is to discuss something different than all of these items. In section 763.08, uniformity is essential to the American Heart Association and other organizations have done on this topic. They want the communities to have the same uniformity, especially in the same jurisdictions. He highly recommends that in 763.04 the language actually states that Amherst City Council rather than Lorain County Health shall have the authority to adjust. The Health Commissioner and Health Departments do not have the authority to make the changes, only Council can change their laws. He also recommends that all the words "may" should be changed to "shall." The AHA would be comfortable with a first warning, then it will become "shall." Otherwise, there is no point to this ordinance. He related issues that Clark County has with their ordinance. His job as a lobbyist is to work with the law and to make sure that the law is as clear as possible. He related his own personal story as to what brought him from his cigarette addiction to helping people. His goal is to keep these products out of the hands of children. He said to not allow the children to get their hands on these products just because they don't the health commissioners and their employees come through twice a year to make sure those sales are not being made.

Ms. Smith said Mr. Coleman asked her questions regarding the liquor control laws, 4301.252, and asked if there could be money forfeiting rather than suspension of licenses. She gave examples of clerks who left and replaced with others who also sold to underage. Why the 36 month wait? Mr. Holfinger said he has not talked to anyone who has gotten past that second violation. He believes the reason is that they don't want their license to be revoked. The 36 months is the best practice that is used around the county. There was a discussion on the proposed ordinance whether the verbiage is may or shall. Mr. Winiarski said he was not able to get this to the web site, but the correct version will say "may." Mr. Coleman spoke to the two words and said they are two different meanings and he wished for clarification of what this word should be. Ms. Smith explained when these words were discussed, there was talk about using discretion and that's why the word "may" was used in the ordinance. She explained further. Mr. Coleman said going back to his earlier question, will he have to card Mayor Costilow? His signage said that is you appear to be under age 40, you will be carded.

Mr. Cowger discussed legislation and when it goes on to other readings and needs to be "tweaked" due to questions, is the reason he motioned to send this back to committee. There are many questions, and he does not understand how this will continue through readings. He does not understand the attempt to push this through when it's not totally correct. Mr. Holfinger said he did not live in our city, but lives in Ohio and his concern is the health of our children and such as the community he lives in, they passed an ordinance that they do not want children to have access to these products. He believes in the health of all Ohioans and the ability to keep everyone from this addiction. This ordinance creates a compliance check and has nothing to do with a 70 year old man coming in and buying tobacco products. It only adheres to a compliance program. He explained further.

Mr. Coleman asked again about the point of carding individuals. Mayor Costilow said the way this is written, you must card everyone. A discussion ensued or you could be in violation. Mrs. Wasilk said this is something we can work on in committee. Mr. Winiarski said he has five items that need to be worked through.

Mr. Mohammed said he is concerned about underage smoking and if his business could make it without selling tobacco products he would. Unfortunately, he does have to sell them but does it responsibly because he does not want to see anyone smoking. But if he does not sell the products, they will go elsewhere. He spoke regarding vaping, and we need to up our standards of educating these kids on the dangers of vaping. Nicotine addiction needs to be addressed highly. We should be contacting our state representatives to ask for funds for educating our kids at a state level. The kids need to be shown the dangers of this. He is all for controlling the bad retailers but not at the price of all the good retailers in town. There is a difference between having teeth regarding a violation and biting one's head off. 36 months with two violations is too many. He suggested that this ordinance is dropped and they come up with a new program. The longer he listens to this, the more problems he hears. He feels the state representatives need to be involved. He feels there should be a way to hit up on the bad retailers without affecting the rest of them. He agreed that the words may and shall need to be addressed. He gave an example of one retailer being shut down and another one not or a difference in the amount of fines fined. A retailer may decide to sue the City for the difference in violation fees. He spoke to the cost of the lawsuit and the possibility that a retailer may sue the city, so he does not lose his business. He cares about the city and its residents. He suggested scrapping this and beginning from the ground up.

Mr. David Coleman spoke to two of the 27 municipalities and that one of those is on his back. So 25 of them pay nothing extra past the \$125. So he is already carrying over a \$1,000 burden. That is very unfair. He feels it's an insult if he has to have the Mayor pull out is ID sine he knows the Mayor and has known him for years.

Ms. Smith withdrew her second and Mr. Wachholz withdrew his motion to send this on to its second reading. Mr. Cowger motioned to send this back to committee. Seconded by Mr. Heberling. Roll call vote 6-0 to send this back to committee.

#### **ORDINANCES AND RESOLUTIONS SECOND READING:**

- (a) An Ordinance approving the 2024 Interim Budget; and declaring an emergency.  
(A-23-63)

Mr. Cowger motioned to suspend all Council rules so that this may be passed in its second reading. Seconded by Ms. Smith. Roll call vote 6-0 to suspend rules. Mr. Cowger motioned to adopt. Seconded by Mr. Wacholz. Roll call vote 6-0 to adopt. Becomes 0-23- 67.

- (b) An Ordinance authorizing the execution of the 2023 NPP Power Participant Schedule with American Municipal Power, Inc. ("AMP")

Ms. Smith motioned to suspend all Council rules so that this may be passed in its second reading. Seconded by Mr. Wachholz. Roll call vote 6-0 to suspend rules. Ms. Smith motioned to adopt. Seconded by Mr. Wachholz. Roll call vote 6-0 to adopt. Becomes 0-23-68.

#### **ORDINANCES AND RESOLUTIONS THIRD READING: NONE**

Miscellaneous and acknowledgement of the public: There was no one speaking.

Agenda requests and committee meeting schedules: There were no Agenda Requests provided this evening.

Mr. Winiarski noted that the TRL proposed ordinance will be discussed on January 16, 2024 (Tuesday)

No other committees were called for at this time.

Reports of the Administration:

Auditor Phillips: They are in the process of closing out for the year and all the departments have been notified.

Treasurer Ramsey: Asked anyone that has received a letter about filing their taxes to follow through on this.

Law Director Pecora: No report

Safety/Service Director: No report

Mayor Costilow. This is the end of the year, and it's been a great and productive year. He appreciates all the support and we all work great together. We will hit the ground running next year so he wanted to welcome our two new council people, Ms. Harmych and Mr. Nahorn. His office is always open and he invited all to come in and visit. He would like to hear things that they may want to see accomplished. He will be happy to work with them. He spoke to Mr. Cowger and Ms. Smith who are leaving us. This is always a tough time of the year. He said it was an honor to work with Ms. Smith. She has been here a short time, but has been products and has added a lot to their council and should be very proud of what she did in the time she was here. He has worked with Mr. Cowger from the day he began on council. It's been an extreme honor. Mr. Cowger has been in charge of the Finance Committee during this time. He will miss both of them. He wished them both good luck and told them to stop in and visit sometime.

There was a round of applause.

Mr. Cowger motioned to accept the Reports of the Administration. Seconded by Mr. Heberling. Voice vote 6-0 to accept the Reports of the Administration.

Acknowledgement of the receipt of the November reports from the Auditor and Treasurer: Mr. Janik motioned to acknowledge the receipt of the November reports from the Auditor and Treasurer. Seconded by Ms. Smith. Voice vote 6-0 to acknowledge the receipt of the reports.

Mr. Cowger motioned to adjourn, seconded by Ms. Smith. Voice vote 6-0 to adjourn.

The meeting adjourned at 9:03 p.m.

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Olga Sivinski, Clerk of Council

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Jennifer Wasilk, President of Council

This meeting may be viewed at [amherstohio.org](http://amherstohio.org) Live stream and archived video.