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Minutes of the Police and Fire Committee Meeting held September 18, 2023, at 7:10cc P.M. Present in Council Chambers were Chairman Winiarski, Mr. Cowger, Mr. Dembinski, Mr. Heberling, Ms. Smith, Mr. Janik, Mr. Wachholz, President Wasilk, Treasurer Ramsey, Auditor Phillips, Safety/Service Director Jeffreys, Mayor Costilow and Assistant Law Director Ward.

A-23-53 Tobacco Retail Licensing

The Chair explained that in 2019 the Governor and state legislature moved tobacco sales from 18 to 21. With that comes additional enforcement but no additional finances to make that happen. With studies being done was the impact of sales to youth. He referenced packets that were put together that shows some results from visits to retail locations. He was glad that we also have a retailer here; someone that has to live with our decision.

Mayor Costilow said he would listen first but he does have questions.

Wendy Hyde, representing the Preventing Tobacco Addiction Foundation, introduced herself and spoke to the information provided in the packet she distributed. (on file) She spoke of a 19 year old male who attempted to purchase cigarettes at 31 different retail stores and 18 retail stores in Amherst sold him the cigarettes. There was a 55% failure rate.

Mr. Dustin Holfinger, Government Relations Director, and he is also associated with the American Heart Association in Columbus, Ohio spoke. He said that every retail store that sells tobacco products would have to apply for a tobacco retail license. He explained what this would entail. He referenced HB 166. Research has shown that compliance is most effective when the tobacco retailer or license holder is the one being held accountable rather than non-management employees who are often low wage clerks.

Kat Bray of Lorain County Health Department spoke to the community health assessment as well as some youth surveys that have been done in Lorain County schools as well as Amherst schools. 22% of adults in Lorain County are smokers. But what's more concerning is the vaping epidemic. When surveyed, almost 17% of Lorain County Youth admitted that they had used a tobacco or vaping product. Tobacco Retail

Licensing is one way we can help protect our youth and promote health. Their mission is to promote a healthy community. She spoke about how this program would be established. In Lorain County this would be the first wave. None of the cities in Lorain County have established this yet.

Mayor Costilow asked why the County can't establish this instead of the cities. Ms. Hyde responded to this.

Mr. Darryl McCarty asked some questions on behalf of retail stores. He asked why would the retailer be held accountable and not the person selling the products? Mrs. Hyde said the tobacco retail license kind of closes the loophole and continued to explain possible amendments. This can be designed to what the city wants best. Mr. McCarty pointed out that there are no other tobacco retailers at the meeting besides he and his wife. The Chair said this is just the beginning and should it go to the floor, there will be other meetings.

Police Chief Cawthon noted that a lot of information was brought to the floor. He said there is a definite need to have some enforcement. He did look over the potential ordinance and it does need some language adjustment. Right now we do compliance testing. He spoke to accountability and some of the items in the ordinance he does not agree with. He feels there should be layers in the ordinance. He wants the kids held accountable.

Ms. Smith asked what the under age is and Chief Cawthon said it was under 21. Ms. Smith asked if he was aware of the decoy buys. Chief Cawthon said he was made aware when he spoke recently to Mr. Winiarski. She asked Ms. Hyde what were the protocols when their department did this? Ms. Hyde explained and said they used the same protocols at each place. Ms. Smith asked if there were any follow ups on those retailers that sold to underage. Ms. Hyde said no, it was simply to see if the retailers sold to underage. Ms. Smith said she would have liked to know if there was some kind of follow up as far as the sales to underage kids. Ms. Hyde said they are not an enforcement agency to follow up. Ms. Hyde and Ms. Bray spoke further to the decoy purchases. Ms. Smith asked several other questions.

Mr. Ramsey said his concern was the funding. Is all the keeping of the information going to be on the city? The answer was yes. Mr. Ramsey reminded all that if they are going to collect information or funds in the 44001 area, there are two other entities with those zip codes. He asked how much money is involved? Mr. Holfinger said it could be about \$450/year per average. The violation period is a two year look back period. He explained further.

Mr. Cowger said if one city passes this, but another does not, the kids will go over even across the street. If we are really looking to make a difference, it has to happen on a large scale. He does not see that this is dealing with the problem itself. He sees this as a way to monitor but not dealing with the problem itself. He believes this

has not been thought through and that it should not be different when crossing the street (to make purchases). Mr. Holfinger said the law is 21 and that will not change. This is the enforcement mechanism to enforce the under age children are not sold these products. He said they are working with other cities to implement these enforcement. Mr. Cowger disagrees with the proposal. If these kids want these products, they will find a way to get them. He feels it should be part of a state or federal mandated ordinance with it being initialized all at once with everyone knowing about it. Not to have it tweaked here, but not there is not correct.

Mr. Dembinski agreed with many of Mr. Cowger's points and feels this should be done at a state level. But when the 21-year law was passed, it was all left up to the cities. He is concerned about the coordination between the police and Lorain County Board of Health. If this was to be passed, it would be an additional law for the retailer. He has not seen the draft ordinance. Chair said there was a template but he chose not to distribute it. If this is approved, we'd let the police chief work with the health department and the ordinance is being organized per our discussion right now. There was a discussion between Mr. Dembinski and Chief Cawthon.

Law Director Pecora had some questions that Mr. Holfinger answered.

Mr. Janik asked if there was any data on comparison with other cities. That would have been helpful to see. To Mr. Cowger's point, youth knows where they need to go to get these products and he feels it should be on a county level. Ms. Hyde answered Mr. Janik's questions about how these illegal purchases are made. Mr. Janik would like to see more data from cities around us before making any decision; if the county will buy into this, and he feels the retailer's perspective on this is important.

Mr. Heberling summarized what we are looking at. Mr. Holfinger said there are no penalties on the purchaser in this case, per the way the ordinance is written, it would fall on the retailer. Mr. Heberling, being a sixth grade teacher, spoke to all the vape pens and other equipment that is used that they find all over school property. He said it's a huge problem. Whatever we can do to curtail this, he is in support. Having this discussion will be helpful to our youth. He is in support of this.

Mr. Dembinski noted that you cannot sell to anyone under 21, but if you are 18-21 you can possess these items? When you are under 18, then it's criminal. Chief Cawthon said then you would be cited into juvenile court.

Mr. Janik asked if compliance checks could be for both tobacco and alcohol? Mr. Pecora would have to check into that. Chief Cawthon said they are here to discuss this licensing.

Ms. Smith asked about vaping products in retail stores and how would anyone know they has these products. Ms. Bray said they do have food

inspectors and public health workers who hear what's underground that would contribute to them being able to identify these. Theoretically speaking, there could be a "snack shop" that no one know of these sales except for the youth. So food inspectors could potentially catch these products. Ms. Smith so it sounds like retailers selling cigarettes will be put on a list, but not the ones selling vape products. Ms. Smith asked how a retailer can dispute this - if they say that it was not sold in their store or was not how it happened. Mr. Holfinger said there would be a standard appeal process.

Mayor Costilow asked about the taxing of vaping products that contain nicotine. Mr. Holfinger said it was on the wholesaler.

Mayor Costilow spoke to several points in this ordinance and what parts could/should be worked out. He felt this could be better done "in house." Mr. Wachholz asked if the Chief felt this could be done "in house." Chief Cawthon said they will continue to do compliance checks as they have been doing. He is not sure what the future would look like about the licensing. Mr. Wachholz asked if doing this licensing would present vape shops from popping up. Ms. Bray felt it would. Mr. Wachholz said he also works in the schools and he would like to see anything to limit this from continuing. He feels we have been elected by the citizens of Amherst to do our job to make sure everyone is safe. Part of this is improving the health of our community. The shops in our city is where our responsibility lies.

Mr. Cowger agrees that we are putting in place something to protect the citizens of Amherst. We also have a responsibility to the retailers of Amherst. If this is not put in place statewide, it will not keep these things from coming in Amherst. It will only put another cost on the retailers. He still feels this needs to be on a broader scale - if we adopt this ordinance - all they will do is "cross the street" and go to the Township or S. Amherst.

Mr. Daniel Fishman worked with Ms. Hyde and he is the 22 year old that worked undercover. Coming from a vaper, then smoker, then vaper, if he did not have these vape and tobacco products, if he did not have access to these products, there is a really high percentage that he would probably not have begun in the first place. So to combat youth smoking and addiction to nicotine, he feels this is the best place to start. If he did not have the access, he would not have started.

Mr. Heberling said he liked the idea that we could be a city that is tough on youth that were making illegal purchases. He understand that this could be hard on a retailer when you have a customer service person that sells to underage, unbeknown to that owner of the establishment, so that could be one of our discussion points. Being an area that is tough on getting these products would be great. Let them go to another city and make the purchase. Maybe that city might follow what we potentially do here. He is in support of this.

Mr. McCarty spoke on the little profit that is made on cigarettes. He felt all the vape shops should be just as accountable as he is. If

the Clerk, the retailer and the minor is accountable, then he has no problem with that. They are talking about getting rid of it and then calling it a general store rather than a convenience store because of that reason. He wished more retailers knew about this meeting. They did not have the good representation the other side does. They only have his voice to speak to this. Council is making decisions and he should have someone with him to speak. Definitely, something has to be done, but the kids will get the products from friends, cousins and others. To make it harder for them is fine, but everyone needs to be accountable, not just the owner. They employ good people and some make bad mistakes. He is in favor to a point, but it's got to be fair across the board. He can't believe there is no accountability for the vape shops. He believes the vape shops should also have some kind of license. Ms. Hyde agrees that it should be the same level for all.

Mrs. Wasilk thanked everyone for coming and providing information. She agreed with the McCartys and feels we need to take our time on this. The McCartys in her opinion are the good kind of representatives we want in this town. She spoke to the comments made by Mr. Heberling and Mr. Wachholz as to the availability of vaping products in our town because they are not regulated at all. And we also need to address the problems that our merchants have identified about who is subject to penalties. She suggested tabling this then spoke of the timeline of passage if it gets to that point. It could be a couple of months before this would be passed.

Ms. Smith asked if the license would be like a liquor license where there is a specific criterion and that it also could be denied. She asked about the procedure and how a license could be revoked. Mr. Hofinger said there is basically model language that we give to communities which they can tailor to their own needs. He read the list of reasons why a license can be denied. They try to keep them as uniform as possible.

Ms. Smith thanked everyone for being here and she said it was quite eye opening for her. She struggles with the legislature not making criminal penalties in several aspects of this. She struggles with that 18-21 age situation. Mr. Hofinger said he believes the legislation made for the 18-21 was for the military personnel.

Mr. Heberling asked if tobacco, nicotine and vaping are the three things they will be looking at? Or are there other terms we should be looking up in our research. Mr. Hofinger said he thought he sent all Council with an example of a retail license that had passed in other communities. He stated the definition of a tobacco product.

Mr. Wachholz motioned to table. Seconded by Mr. Janik. Mayor Costilow said however this goes, they have his support. He spoke to how the process of compliance checks could have been handled better.

Chair Winiarski made closing statements about sharing ideas. He believes there is a good framework here. Roll call vote 6-1 to table with Mr. Cowger voting no.

Mr. Wachholz motioned to adjourn, seconded by Mr. Dembinski. Voice vote 7-0 to adjourn.

The meeting adjourned at 9:00 P. M.

Chuck Winiarski, Chairman
Police and Fire Committee

This meeting may be viewed at amherstohio.org under Committee Meetings 9/18/23.