

RECORD OF PROCEEDINGS

Minutes of ATHENS CITY COUNCIL (SPEC. SESS.)

Meeting

BARRETT BROTHERS - DAYTON, OHIO

Form 6101

Held DECEMBER 11, 2023

ATHENS CITY COUNCIL: SPECIAL SESSION, MONDAY, DECEMBER 11, 2023, 7:00 P.M.

Athens City Council met in Special Session at the above hour with the following members present: Crowl, Grace, McCarey, Risner, Swank, Spjeldnes, and Ziff.

Also present: President Knisely, Mayor Patterson, Law Director Eliason, and Service-Safety Director Stone.

ORDINANCES FOR THIRD READING:

0-119-23

AN ORDINANCE AMENDING ATHENS CITY CODE TITLE 3, ADMINISTRATIVE PROVISIONS, CHAPTER 3.07, ADMINISTRATIVE DEPARTMENTS; BOARDS AND COMMISSIONS, SECTION 3.07.74, ESTABLISHMENT OF COMMISSION. Crowl moved for Adoption; Risner seconded. Adoption was approved unanimously.

0-127-23

AN ORDINANCE AMENDING ORDINANCE 48-23; AUTHORIZING DESIGN, CONSTRUCTION, AND CONSTRUCTION ENGINEERING OF THE DAIRY LANE/STAGECOACH SEWER AS PART OF THE CITY/COUNTY SEWER EXPANSION (PROJECT (#317)). McCarey moved for Adoption; Ziff seconded. Adoption was approved unanimously.

0-128-23

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT TO PROVIDE FINANCIAL SUPPORT FOR THE OPERATION OF THE ATHENS COUNTY CONVENTION AND VISITORS BUREAU; AND DECLARING AN EMERGENCY. Crowl moved for Adoption; Ziff seconded. Adoption was approved unanimously.

0-129-23

AN ORDINANCE AUTHORIZING EXPENDITURES FOR CITY HALL RENOVATIONS, PROJECT #356. Crowl moved for Adoption; Ziff seconded. Discussion: McCarey requested highlights on the upcoming improvements.

Service-Safety Director Stone responded that the first improvements were to the first floor front conference room, and the forthcoming renovations will be returning the bell, adding a clock mechanism and clock faces, and updated lighting to the cupola, as well as weather improvements. The Hebe statue that used to be adjacent to the County Courthouse and later moved to the Water Treatment Plant will be relocated to the first floor of the City Building, and finally, tuckpointing the brick on the City Building for maintenance. The Administration would like this work to be completed in 2024 given it is the 150th anniversary of the City Building.

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Paul Wiehl, former Mayor, asked if the bell would be functional.
Service-Safety Director Stone responded that it will be a working bell, not to ring every hour, but intent is to have it ring when appropriate.

Adoption was approved unanimously.

0-130-23

AN ORDINANCE TO MAKE APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF ATHENS, OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31, 2024. Crawl moved for Adoption; Risner seconded. Discussion: Swank asked if the \$65 million includes the fire station construction.

Service-Safety Director Stone responded that it does.

Adoption was approved unanimously.

0-131-23

AN ORDINANCE AUTHORIZING 2024 STAFFING LEVELS AND NON-UNION COMPENSATION; REPEALING ALL ORDINANCES INCONSISTENT THEREWITH; AND DECLARING AN EMERGENCY. Crawl moved for Adoption; Risner seconded. Adoption was approved unanimously.

0-132-23

AN ORDINANCE ADOPTING A FRINGE BENEFITS PACKAGE FOR NON-UNION PERSONNEL WITHIN THE CITY OF ATHENS AND REPEALING ALL ORDINANCES INCONSISTENT THEREWITH; AND DECLARING AN EMERGENCY. Crawl moved for Adoption; Ziff seconded. Adoption was approved unanimously.

0-133-23

AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO A CONTRACT WITH THE EMPLOYEE BENEFIT SERVICE CENTER TO SERVE AS THE CITY'S THIRD PARTY HEALTH INSURANCE ADMINISTRATOR (TPA); AND DECLARING AN EMERGENCY. Crawl moved for Adoption; Grace seconded. Adoption was approved unanimously.

0-134-23

AN ORDINANCE AUTHORIZING A STOP-LOSS/GROUP EXCESS LOSS MEDICAL INSURANCE CONTRACT; AND DECLARING AN EMERGENCY. Crawl moved for Adoption; Ziff seconded. Adoption was approved unanimously.

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0-135-23

AN ORDINANCE AMENDING ORDINANCE 04-23; REALLOCATING REVENUES FROM THE CITY INCOME TAX; AND DECLARING AN EMERGENCY. Crowl moved for Adoption; Risner seconded. Adoption was approved unanimously.

0-136-23

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A ONE-YEAR AGREEMENT WITH SUNDAY CREEK HORIZONS, A CONSULTING FIRM. Grace moved for Adoption; Ziff seconded. Adoption was approved unanimously.

0-137-23

AN ORDINANCE AUTHORIZING THE ADOPTION OF AN AGREEMENT WITH THE ATHENS CITY FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC., AND THE CITY OF ATHENS PATROL OFFICERS AND LIEUTENANTS, CONCERNING WAGES AND WORKING CONDITIONS. Crowl moved for Adoption; Ziff seconded. Adoption was approved unanimously.

0-138-23

AN ORDINANCE AUTHORIZING THE MAYOR'S EXECUTION OF AN AGREEMENT WITH THE ATHENS CITY FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, AND THE CITY OF ATHENS COMMUNICATION OFFICERS, CONCERNING WAGES AND WORKING CONDITIONS. Crowl moved for Adoption; Ziff seconded. Adoption was approved unanimously.

0-142-23

AN ORDINANCE AMENDING ORDINANCE 64-23, ATHENS CITY CODE TITLE 1, GENERAL PROVISIONS, CHAPTER 1.03, CODE FEES ESTABLISHED, SOLID WASTE, RECYCLING AND OPTIONAL COMPOSTING RATES; AND DECLARING AN EMERGENCY. Swank moved for Adoption; Risner seconded. Discussion: Crowl reiterated that communications, individually or as a group, were received by Council, noting that he has received an additional 22-25, including those from a number of individuals who have worked very hard in helping the City sustainably manage our waste issues that includes Ohio University move-out. He acknowledged that composting will still be available under the new contract. Also, he is aware that some local concerned citizens have organized a Town Hall meeting to be held at the Athens Community Center this Wednesday, December 13, from 6-8 p.m., where there will be a number of speakers talking about the history and development of solid waste management in the City of Athens, including the initial creation of the Athens Hocking Recycling Centers, and the environmental and economic value of building our local economies, and the idea of forming a Council of Governments.

Swank pointed out that the 60-day opt-out clause in the Rumpke contract is not within the first 60 days, but rather, allows either the City or Rumpke to

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terminate the contract with 60-days notice. He also clarified that the one-container rate is for a 32-gallon container, not a 64-gallon container, which would be equivalent to the two-container rate.

Spjeldnes asked about the advantages of contracting with Rumpke for this service.

Service-Safety Director Stone called attention to the document he provided to Council Members several weeks ago, along with the needed rate increases associated with the contract. To provide a brief synopsis of that, as the bids were evaluated it was clear that both entities are capable of providing the requested services, with one being \$300,000 a year less than the other one. Ultimately, that is where the decision lies. As mentioned in his earlier statement, he is concerned about the potential of a monopoly being established here, and in the future, he is open to consideration of setting up a Council of Governments (COG) as a counterbalance. There is a threat of litigation, given this is the third time the City has received a bid that was lower than the bid that was accepted, and the Administration felt it was wisest to take the action of awarding the contract to the lowest bidder, as they are capable of providing the same level of services to our residents.

Spjeldnes asked how soon residents would be provided information on the change in rates and specifics about changes they may see with the new provider.

Stone responded that a letter will be mailed directly to the customers and placed on the City's website and social media outlets, and will be sent upon the approval of this ordinance.

Spjeldnes asked for clarification on the City's obligation to pay the fees under the new contract, as increased by this ordinance.

Stone stated that the rates currently in place would not collect enough revenue to cover the solid waste contract. When current revenue can no longer sustain the services, the 60-day opt-out clause could be exercised, placing the City in a crisis situation.

McCarey asked about any updated information on the reusability of customers' old containers.

Service-Safety Director Stone has had conversations with Rumpke, and if possible, disposed of receptacles that can be recycled, will be recycled. In some cases, they may be too contaminated.

Mayor relayed his interest in exploring a COG.

Paul Wiehl, former Mayor, believes the purchase of new containers is unnecessary. He then requested a review of the current Athens-Hocking Solid Waste Management Plan (noting the current 5-year plan expires soon), and questioned whether the City's solid waste contract with Rumpke is congruent with the current plan.

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Catherine Galla, Ohio University Environmental Studies student, finds the change in vendors upsetting when the City of Athens brands itself on "keeping it local." The goal of a non-profit, Athens Hocking Recycling Centers, is to uplift and economically stimulate our economy through local jobs and investing money back into it. She questioned how Rumpke will handle our curbside compost. Currently, the compost soil that is made through the Compost Project is sold back to local farmers at the Athens Farmers Market.

Adoption was approved by a 6/1 vote, with Crowl voting in opposition.

ORDINANCES FOR SECOND READING:

0-140-23

AN ORDINANCE AMENDING ATHENS CITY CODE, TITLE 11, BUSINESS REGULATIONS TO ENACT SECTION 11.13, TOBACCO RETAILER LICENSE (TRL), ADDING PROVISIONS REQUIRING RETAILERS TO OBTAIN A LICENSE FOR SELLING TOBACCO PRODUCTS. Grace moved to Amend, as attached; Crowl seconded. Discussion: Swank suggested the need for a definition of a "daycare." He then expressed concerned with Section 11.13.02 (C), "...The transfer of any license to another location, person, or business is prohibited." He questioned that a current business would not qualify under Section 11.13.03 (B)(6), "...This restriction does not apply to an existing tobacco retailer holding a current state tax license for the sale of tobacco products in that same location for at least one year before the date this section was enacted into law." He also shared his concern with the (30) consecutive day closure condition set out in Section 11.13.03 (C)(2). Finally, he questioned 11.13.04, Appeals. Again, he fully supports the concept of minimizing and reducing underage consumption of tobacco, but feels this legislation needs additional modification.

Grace believes the "daycare" definition can easily be addressed by inserting the word "licensed" for clarification. In terms of the issues regarding the transfer of the license, it is an intentional decision that the licenses are not transferrable. However, there is nothing to prevent a new owner of the business, whether inherited or purchased, from applying for a license. The only situation where it would be prohibited is if the location prohibits it, such as the geographical proximity to a youth-oriented facility. Section 11.13.03 (B)(6) is also an intentional decision. If the business currently holds a State tax license for the sale of tobacco, and they have held that for one-year prior to the date this ordinance goes into effect, they are eligible. She feels that is reasonable, and is just one of the reasons for which a license "may" be denied or failed to be renewed. If a license is denied, there is an appeals process in place. She doesn't see this as a significant concern. She also believes the appeals timeline is sufficient.

Clay Keller, attorney representing GoMart, addressed his concerns (see attached letter). He also questioned the proposed amendment to the definition of

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a "Youth-Oriented Facility" that states, "...or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors." He sees an ambiguity in that and difficulty in determining what exactly that covers. He also questioned the proposed amended language in 11.13.03 (C)(3), as GoMarts will often times totally remodel a location. Statements such as these come with unintended consequences that are frightening to a business owner. He asked that Council reconsider that language, and possibly simplify the transfer issue. Finally, he would like to see the appeal timeline extended to possibly 30 days and extend the notification as to the time and place of the appeals hearing.

Grace clarified that in the sections that state, "where the tobacco retailer does not substantially change the business premises" only applies if the application is made for a license within the geographic proximity to a youth-oriented facility.

Keller questioned if a State Park qualifies as a youth-oriented facility.

Wendy Hyde, representing the Preventing Tobacco Addiction Foundation, Tobacco 21, first addressed the purpose for the language speaking to remodeling of a business. She explained there are some businesses who could establish themselves as "exotic snack shops" where they determine that the products they plan to sell are primarily convenience foods, when it is really under the guise of a vapor or nicotine shop.

She, too, suggested that Council might want to consider extending the appeals timeframe.

In October 2019, the Ohio General Assembly raised the minimum sales age to 21, and in December 2019, the Federal age of sales for all tobacco and nicotine products was to be 21. She explained that raising the minimum sales age to 21 is an important part of reducing youth access to these products, but a law is only as good as its enforcement, and currently Federal and State enforcement efforts are proving to be inadequate at deterring retailers from selling tobacco products to underage youth. From January 2019 through December 2023 there have been only 15 retailer checks completed of all tobacco retailer shops in the City of Athens. With those 15 retailer checks, there is a 27% violation rate. Clearly, the number of compliance checks is way too low and the number of violations is way too high, and retailers are not complying with the law because there are no teeth in the FDA compliance checks and regulatory oversight. Under Ohio's current tobacco control system, the State has a tax licensing system for cigarette sales only. There is no revocation of retailer licenses for those who continue to sell to those underage. The State also does not have a comprehensive list of vapor shop only retailers. And there is only a very small percentage of all retailers in the State who must be checked on an annual basis.

The ordinance being addressed this evening will close existing loopholes in our current State Code. It requires that every tobacco and nicotine retailer have a license that is renewed annually, which will level the playing field for all

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retailers. The retailer license fees will fund robust enforcement as well as cessation and education efforts. This legislation will hold retailers accountable for underage sales through a graduated penalty structure, and the ability to suspend or revoke a license. This is an effective measure and enforcement mechanism for making sure that the City's most vulnerable population is safe from this very addictive and deadly product. She added there are 25 other cities across the State that have established this Tobacco Retail License, with 3 or 4 others in the queue; it is an effective mechanism.

Swank asked whether, of those cited, there were any repeat violators and about any fine revenue generated.

Hyde said none of the violators paid a fine. There was one repeat violator that faced a civil penalty of \$500, but for the first violation through the FDA, it is a warning letter that is sent to the retailer, and if the retailer is not rechecked within a 3-year accrual period, it ends there.

Law Director Eliason asked Ms. Hyde if she could address Mr. Keller's concern about Section 11.13.03 (B) (3), "The applicant was convicted within the past 3 years of any violation of a federal, state, or local law, ordinance provision or other regulation relating to tobacco products;" that the City amended to reduce from five to three years.

Hyde does not have exact clarity to answer that question at this time.

Grace questioned whether this section would apply to a GoMart at a different location, or simply at the applicant's location where the conviction occurred.

Hyde responded that it would be for the location where the violation occurred.

Swank questioned if a company store, like GoMart, would have the same applicant for several stores in the Athens area how that would be handled.

Attorney Keller reiterated his concern with this lack of clarity, noting that one corporate officer could be the licensee for multiple locations.

Grace asked to modify the amendment to add "licensed" before the term daycare and to adjust the appeal submission time from five to 30 days, and change the notification to the Board of the time and place of the appeals hearing from 12 to 48 hours in advance.

Amendment was approved by a 6/1 vote, with Swank voting in opposition.

0-143-23

AN ORDINANCE APPROVING A THEN-AND-NOW CERTIFICATE FOR PAYMENT TO BRUNK'S OVERHEAD DOORS; AND DECLARING AN EMERGENCY. Crowl moved for Suspension of the Rules in order to pay a past due bill; Suspension of the Rules was approved unanimously. Crowl moved for Adoption; Swank seconded. Adoption was approved unanimously.

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ORDINANCES FOR FIRST READING:

0-144-23

AN ORDINANCE AUTHORIZING THE ATHENS CITY SHADE TREE COMMISSION, IN COLLABORATION WITH OHIO UNIVERSITY, TO SUBMIT AN APPLICATION AND ENTER INTO AN AGREEMENT WITH THE OHIO DEPARTMENT OF NATURAL RESOURCES (ODNR), USDA FOREST SERVICE, FOR PARTICIPATION IN THE URBAN FORESTRY GRANT PROGRAM; AND DECLARING AN EMERGENCY.

ORDINANCE FOR FIRST READING:

0-144-23

AN ORDINANCE AUTHORIZING THE ATHENS CITY SHADE TREE COMMISSION, IN COLLABORATION WITH OHIO UNIVERSITY, TO SUBMIT AN APPLICATION AND ENTER INTO AN AGREEMENT WITH THE OHIO DEPARTMENT OF NATURAL RESOURCES (ODNR), USDA FOREST SERVICE, FOR PARTICIPATION IN THE URBAN FORESTRY GRANT PROGRAM; AND DECLARING AN EMERGENCY. Discussion: Gene Deubler, First Street, Member of the Shade Tree Commission, explained this is a collaborative effort. The specific scope of the work in Athens will be planting a food forest at the West State Park in collaboration with the Ohio University student farm. The application is due December 29.

Swank asked about the specific location.

Deubler responded it will be next to the bike path, east of the Community Gardens, and west of the student farm research site, and at the north end of the driving range.

Spjeldnes asked about the types of trees that will be planted.

Deubler responded native fruit trees, shrubs and perennials that will serve as both a public site for enjoyment and will contribute to food security projects in southeast Ohio, as well as serve as a research site for Ohio University to determine species that are adapting to this climate zone as it gets warmer, and what can best be grown in an urban space.

RESOLUTION FOR SECOND READING:

R-11-23

A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR.

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At approximately 8:45 p.m., Ziff moved for Adjournment; McCarey seconded. Adjournment was approved unanimously.

Christine B. Kinsely
President of Council

ATTEST:

Debra Z. Walker
Clerk of Council

11.13.01. - Definitions.

"Compliance Checks" the system that the Athens City-County Health Department uses to investigate and ensure that those authorized to sell tobacco products are following and complying with all the requirements of this Chapter. Compliance Checks involve the use of persons over the age of 18, but under the age of 21 who purchase or attempt to purchase tobacco products. Compliance checks may also be conducted by the City or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to tobacco products.

"Delivery Sale" the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. Delivery Sale includes but is not limited to the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery Sale includes delivery by licensees or third parties by any means, including curbside pick-up.

"Department" means the Athens City-County Health Department and its authorized designees, employees and agents.

"Electronic Smoking Device" any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, accessory of, or substance used in the device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration for cessation purposes, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

"Health Commissioner" means the Health Commissioner of the Athens City-County Health Department or the Health Commissioner's authorized representative.

"Moveable Place of Business" means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the counter sales transactions.

"Purchaser" means any person who obtains or attempts to obtain a tobacco product.

"Sale" any transfer of goods for money, trade, barter, or other consideration, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

"Self-Service Display" any display from which customers may select a tobacco product without assistance from the tobacco retailer or the tobacco retailer's agent or employee and without a direct person-to-person transfer between the purchaser and the tobacco retailer or tobacco retailer's agent or employee. A vending machine is a form of self-service display.

"Tobacco product" (1) any product containing, made of, or derived from tobacco or nicotine or nicotine derivatives, regardless of source, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of them contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

"Tobacco Retail Establishment" any place of business where tobacco products are available for sale, whether or not the business is open to the general public, whether the business is a "movable place of business" defined under this section, or a business or entity that maintains a private membership-based point of sale. The term includes, but is not limited to grocery stores, tobacco product shops, "retail tobacco store" as defined under Sec 9.13.03(l) of the Athens Code of Ordinances; kiosks, convenience stores, gasoline service stations, bars, night clubs, and restaurants.

"Tobacco Retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Tobacco retailer does not mean the non-management employees of any tobacco retail establishment.

"Vending Machine" means any mechanical, electric or electronic, or other type of device that dispenses tobacco products upon the insertion of money, tokens, or other form of payment into or onto the device by the person seeking to purchase the tobacco product.

"Youth-Oriented Facility" means a licensed daycare, a preschool, an elementary school, a middle school, a high school, a public park, and any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or establishment that primarily sells, rents, or offers advertises in a manner that identifies the establishment as catering to or providing services or products that are consumed or used primarily by persons intended for minors under the age of 21. Youth-oriented facility includes, but is not limited to, schools, playgrounds, recreation centers, and parks, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

11.13.02. - License Required; Application, Term, and Fees.

(A) As of September 1, 2024, each retailer engaging in the sale of tobacco products, at each location within the City of Athens, shall secure and display at all times, a tobacco retail license (TRL) from the City of Athens Office of Code Enforcement and Community Development

(Code Enforcement) before engaging or continuing to engage in such business. No retailer may sell tobacco products without a valid TRL after September 1, 2024.

(B) The application for a TRL must be made on a form provided by Code Enforcement. The application must contain the full name of the applicant, the applicant's business address and telephone number, the name of the business for which the license is sought, and any additional information Code Enforcement deems necessary.

(C) All tobacco retail licenses are valid only at the business address provided on the license application and only for the person and business to whom the license was issued. The transfer of any license to another location, person, or business is prohibited.

(D) The TRL shall be valid beginning the first day of September through the last day of August of the following year.

(E) TRL Applications must be received by Code Enforcement no later than 30 days before the first valid day of the license.

(F) The application fee, license fee, and subsequent license renewal fees, and other fees as applicable, shall be as provided by separate ordinance.

(G) The license fee remains the same regardless of the time of application. The license fee will not be prorated no matter the date an application is filed during the standard term period.

11.13.03. - License Approval, Renewal, Denial, and Revocation.

(A) The Director of The Athens Office of Code Enforcement and Community Development may approve or deny the application for a TRL, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.

(B) Applications for Tobacco Retail Licenses may be denied or failed to be renewed and such licenses may be revoked, for any of the following:

- (1) The applicant is under 21 years of age;
- (2) The applicant has unpaid fines from violations of this chapter.
- (3) The applicant was convicted within the past 3 years of any violation of a federal, state, or local law, ordinance provision or other regulation relating to tobacco products;
- (4) An order by a court of competent jurisdiction that a retail tobacco sales location owned and/or operated by the licensee/applicant constitutes a public nuisance;
- (5) Information contained in the application is misleading, inaccurate, or false;
- (6) The business for which the license is requested operates within 500 feet of a youth-oriented facility, as measured to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing tobacco retailer holding a current state tax license for the sale of tobacco products in that same location for at least one year before the date this section was enacted into law.

- (7) The business for which the license is requested operates within 500 feet of another licensed tobacco retail establishment, as measured by the shortest line from the property line of the space to be occupied by the applicant for a license to the nearest property line of the existing licensee. This restriction does not apply to an applicant that holds a current state tax license to sell tobacco products in the same location for at least one year before the date this section was enacted into law.
- (8) The business for which the license is requested operates under a vending, peddling or soliciting license and is not a fixed-location retail establishment;
- (9) The licensee/applicant fails to comply with applicable U.S. Food and Drug Administration regulations, the Ohio Revised Code, and the Ohio Administrative Code including relating to building, health, or fire.
- (10) The licensee/applicant fails to pay the annual license fee.

~~(C)~~ A tobacco retailer operating lawfully on the date this ordinance is adopted that would otherwise be ineligible for a future tobacco retailer license due to geographic proximity to an existing youth oriented facility pursuant to (B)(6), may be considered for a new tobacco retail license for that location so long as all of the following conditions are met:

- (1) The license is timely obtained and with appropriate application by the new tobacco retailer,
- (2) The tobacco retail establishment is not closed for business or otherwise suspends tobacco sales, whether voluntarily or due to license suspension for more than thirty (30) consecutive days;
- (3) The tobacco retailer does not substantially change the business premises or business operation. A substantial change to the business operation includes, but is not limited to, the sale or transfer or ownership of a tobacco retail location for which a significant purpose is avoiding the effect of violations of this ordinance; and
- (4) The tobacco retailer retains the right to operate under all other applicable laws.
- (5) If the City of Athens determines that a tobacco retailer has substantially changed their business premises or operation and the tobacco retailer disputes this determination, the tobacco retailer bears the burden of proving by a preponderance of evidence that such change(s) do not constitute a substantial change.

(D) Any tobacco retailer holding a valid TRL may apply for renewal of such license. Renewal applications must be received by Code Enforcement no later than 30 days prior to the expiration of the current license.

(DE) Issuance is a privilege and not a right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

(~~EF~~) If a license is mistakenly issued or renewed to an applicant, Code Enforcement, or its designee may revoke the license upon the discovery that the applicant was ineligible for the license under this ordinance. Code Enforcement, or its designee, will provide the tobacco retailer license holder with notice of the revocation, along with information on the right to appeal.

(~~FG~~) If a tobacco retail license is suspended or revoked, whether due to applicant or licensee ineligibility, or determination of a violation under this ordinance, or any other federal, state, or local law or regulation, the license fee is forfeited and shall not be refunded to the applicant or licensee.

11.13.04. - Appeals.

Any person aggrieved by denial or nonrenewal of a tobacco retail license application, suspension or revocation of an existing tobacco retail license may, within ~~fivethirty~~ working days, submit to the clerk of council an appeal to be heard by the License Appeals Board.

The License Appeals Board shall consist of two members of city council, the service-safety director, and two Tobacco Retailers who are retail license holders. The Tobacco Retailers shall be appointed by the mayor.

The clerk of council shall notify all members of the Board of the time and place of the appeals hearing, not less than ~~1248~~ hours in advance thereof. The appellant may appear and be heard in person or by counsel. If, after the hearing, a majority of the members at such hearing declare in favor of the appellant, the license must be approved or reinstated, as the case may be; otherwise, the order appealed from shall become final.

11.13.05. - Sign Distribution and Posting

(A) Upon approval of a license application, Code Enforcement will provide to the licensee the approved license.

(B) The Athens City-County Health Department shall provide to each licensed tobacco retailer a printed sign or signs stating that tobacco products shall not be sold to anyone under the age of twenty-one.

(C) The Tobacco Retailer shall prominently and conspicuously post the approved, current license and the printed signage provided by the Department at each point of sale prior to the sale of tobacco products. Notice of the legal sales age for the purchase of tobacco products, age verification requirements, and possible penalties for underage sales must be posted within 6 feet of each cash register or place where payment may be made in a place conspicuous to both employees and customers, and where the sign(s) are unobstructed in their entirety. The sign shall state, "THE SALE OR PROVISION OF TOBACCO PRODUCTS, INCLUDING E-CIGARETTES, TO AN INDIVIDUAL UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW." The sign required shall be 5 ½ inches by 8 ½ inches and the statement required shall be printed in 36-point boldfaced type.

11.13.06. - Prohibited Sales

(A) No individual, tobacco retailer or their employee or agent shall sell, offer to sell, or furnish tobacco products:

- (1) Without a valid TRL.
- (2) To any person under the age of 21.
- (3) By means of a self-service display.
- (4) By means of delivery sales. All sales of tobacco products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.
- (5) Without prior age verification of purchaser. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser of any tobacco product is at least 21 years of age in accordance with this Chapter prior to any tobacco sales transaction.
- (6) Samples prohibited. No tobacco retailer, tobacco retail establishment, or person shall gift or distribute samples of any tobacco product free of charge or at a nominal cost, regardless of the age of the person acquiring the product. The distribution of a tobacco product as a sample, free donation, gift, or at otherwise nominal cost, is prohibited and shall subject the tobacco retailer or tobacco retail establishment to the penalties prescribed under this Chapter and those prescribed by other local, state or federal laws pertaining to samples, donation, or otherwise nominally priced tobacco products.
- (7) From a moveable place of business.
- (8) By any other means, to any other person, or in any manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

11.13.07. - Education and Compliance Checks

(A) The Athens City-County Health Department shall engage in a continuing public health education program to explain and clarify the purposes and requirements of this ordinance to persons affected by it, and to guide tobacco retailers and their agents or employees in their compliance. This may be conducted through distribution of a brochure for affected tobacco retailers explaining the provisions of this ordinance and signage mandated by this ordinance.

(B) All licensed premises must be open to inspection by the Athens City-County Health Department inspectors or other authorized designees during regular business hours.

(C) The Athens City-County Health Department shall conduct two unannounced compliance checks each year. Unannounced follow-up compliance checks of all non-compliant tobacco retailers are required within three months of any violation of this chapter. The results of all compliance checks shall be compiled by the Department at least annually and made available to the public upon request.

11.13.08. - Enforcement and Penalties

(A) The City shall have authority to implement and enforce all provisions of this chapter. The Athens Office of Code Enforcement and Community Development and the Athens City-County Health Department or its designees, shall have authority to conduct Compliance Checks and issue citations for violations. The Director of The Athens Office of Code Enforcement and Community Development, or its designees shall have the authority to conduct all licensing functions.

(B) Any tobacco retailer found to have violated this ordinance in person, by agent, representative, or employee or in any other way shall be subject to a citation.

(C) The city shall impose the following penalties for violations of this chapter.

- (1) For a first violation, an administrative fine of \$350.00;
- (2) For a second violation within a 36-month period, an administrative fine of \$500.00 and the TRL shall be suspended for 7 days;
- (3) For a third violation within a 36-month period, an administrative fine of \$750.00 and the TRL shall be suspended for 30 days;
- (4) For a fourth violation within a 36-month period, an administrative fine of \$1,000.00 and the TRL shall be revoked. The tobacco retail license holder shall be prohibited from selling tobacco products or applying for a tobacco retail license for a period of 3 years.
- (5) For a fifth and any subsequent violations within a 36-month period, an administrative fine of \$1,000 and the tobacco retail license holder shall be permanently ineligible to apply or acquire a tobacco retailer license in the City of Athens.
- (6) The penalties associated with a violation of this chapter are in addition to, not in lieu of, any other penalty applicable under Ohio law or any other legal remedy available to the City.

(D) Sale of multiple items in violation of Section 11.13.06, where the sales occur in a single transaction, shall constitute one violation. For example; sale of three packs of cigarettes and a vial of liquid nicotine to a 19-year old in one transaction shall constitute one violation. Sale of one pack of cigarettes to one 19-year old, one pack of cigarettes to the 18-year old next in line, in two transactions, shall constitute two violations.

(E) It is an affirmative defense for any tobacco retailer charged with a violation of this chapter that a purchaser or recipient exhibited to the tobacco retailer, or to the tobacco retailer's agent, employee, or representative, a valid driver's license or other form of federal or state identification showing that the purchaser was at least 21 years of age at the time of the alleged offense.

(F) Any person cited with a violation of this section who does not pay the required administrative fine within 30 days shall receive an unclassified misdemeanor citation into court. Any person cited with a violation of this section who wishes to contest the violation shall visit the Athens Police Department and receive an unclassified misdemeanor citation into court, providing notice and an opportunity to be heard, which shall serve as an appeals process. An

unclassified misdemeanor is punishable with a fine of up to \$1,000 and up to 500 hours of community service.

(G) License Fees and Fines collected under this chapter are primarily to be used to fund tobacco retail licensure, compliance and enforcement measures. Any additional funds may be used to for other tobacco control, prevention, and education programs at the Department's discretion.

11.13.09. - Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or any part thereof, is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The city council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional or invalid.

SECTION II: This Ordinance shall be in full force upon the earliest moment permitted by law upon its passage and approval by the mayor.

JACKSONKELLY^{PLLC}

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December 11, 2023

VIA ELECTRONIC MAIL

City of Athens Council Members
8 E. Washington St.
Athens, OH 45701
dwalker@ci.athens.oh.us

Re: Council Meeting

Dear Council Members:

Jackson Kelly PLLC has been retained by Go-Mart, Inc. in connection with the proposed ordinance requiring retailers to obtain a license for selling tobacco products. As a member of the community since 2012 and a financial supporter of Ohio University, we join with the Council to prevent the sale of tobacco products to underage customers. It is our sincere desire to work with the City of Athens to implement the amendment to achieve the desired result of preventing the sale of tobacco products to underage consumers while ensuring that there are no adverse unintentional consequences of such amendment.

Go-Mart, Inc. would request that the following revisions to the latest draft of the amendment be included for discussion and acceptance by the Council.

- 1) Paragraph 11.13.03 (B)(3). We would like to see the 3 year “clawback” relate to a pattern of violations during the past 3 years instead of a single, minor violation without consideration of the facts and circumstances of such violation. A simple minor violation should not prevent future sales of tobacco products which, in most instances, constitutes roughly 40% of overall store sales. The effect of being denied such license would cause the closing of such store which would negatively affect all consumers as well as Go-Mart.
- 2) Paragraph 11.13 03 (B)(6). While the “grandfather clause” does not prevent the current owner of a Go-Mart store located within 500 feet of a youth-oriented facility from obtaining a license, such clause must also apply to a successor or assignee of the business. We suggest the following sentence be added “. . . nor does such restriction

apply to a successor or assignee of the working existing tobacco retailer provided that said retailer is not otherwise in violation of Chapter 11.13.”

- 3) Paragraph 11.13.04 needs to include time constraints that provide a more fair opportunity to respond. We request that the appeal time be 30 days and that notice of hearing be 5 days and not 12 hours.

We look forward to actively participating in the adoption of such amended ordinance and respectfully ask that our input be considered.

If you should have any questions, please feel free to contact me. Thank you.

Very truly yours,

Clay K. Keller

Clay K. Keller, Esq.
CKK/cs

cc: Phil Shuman, President
Go-Mart, Inc.