

RECORD OF PROCEEDINGS

Minutes of ATHENS CITY COUNCIL (REG. SESS.)

Meeting

BARRETT BROTHERS - DAYTON, OHIO

Form 6101

Held DECEMBER 18, 2023

ATHENS CITY COUNCIL: REGULAR SESSION, MONDAY, DECEMBER 18, 2023, 7:00 P.M.

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

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

DISPOSITION OF MINUTES:

Grace moved approval of the minutes from the Regular Session of Council held November 20, 2023; Ziff seconded. Minutes were approved unanimously.

COMMUNICATIONS:

Council Member Crawl acknowledged receipt of approximately (45) additional emails and phone calls, and one text message about the solid waste contract. About (20) of those included specific comments about our going to new bins, and a number of those shared personal stories and experiences with waste haulers.

Council Member Swank received several communications on both the tobacco-licensing ordinance and the ordinance changing the fire penalties.

Council Member McCarey received additional concerns from community members who would like the City to stay with Athens Hocking Recycling Centers (AHRC), and he echoed the sentiment that folks have recommended that Council consider delaying the acquisition of waste receptacles from Rumpke in favor of seeing how plans develop for establishing a Council of Governments (COG) that could potentially take over our waste management system.

REPORTS AND COMMUNICATIONS FROM OTHER ELECTED OFFICIALS:

Mayor Patterson acknowledged that he, too, received a large number of emails from concerned citizens about upcoming changes to our trash hauling.

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 for Suspension of the Rules since this is the final meeting of this Council, noting this

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issue has been discussed in Committee and this is the fourth reading of the Ordinance; Crowl seconded. Suspension of the Rules was approved by a 6/1 vote, with Swank voting in opposition. Discussion: Grace feels it is important to note that the City has been collaborating with professionals who work to protect our youth from nicotine addiction that can lead to serious health consequences. The Centers for Disease Control (CDC) recommends that states, or municipalities, adopt licensure structures to prevent premature death. The Surgeon General has found that licensing tobacco retailers is an evidence-based tobacco control measure to reduce tobacco use. The National Academy of Medicine along with the American Heart Association and Tobacco 21 all recommend and support adoption of these licensures.

Grace moved for Adoption; Crowl seconded. Discussion: McCarey asked about steps that should be taken next year should this ordinance be adopted.

Grace indicated that the fee structure would need to be established for this licensure, appropriate to the cost of administering the program. Additionally, she thinks it would be beneficial to work with the Planning Commission to address the possibility of zoning changes, specifically looking at the density of tobacco retail establishments in the City.

Swank believes that anything the City can do to minimize, or even eliminate, teen smoking is a good thing, but he sees no reason to rush this legislation. He supports the concept of this ordinance; however, he noted that the Ohio House voted to overturn Governor DeWine's veto of a tobacco measure that would prohibit cities from enacting this type of legislation. It will now go to the Senate. Not knowing how the Senate will act, this legislation might be a moot point early next year. In addition, he still has a concern with the section that can effectively shut down a private business.

As Chair of the Planning & Development Committee next year, he will return this issue to the floor in January for additional discussion.

Grace responded that the legislation in the Ohio House to overturn the Governor's veto is a different issue. Governor DeWine vetoed a bill that would have prohibited municipalities from banning the sale of flavored vapes. It does not affect the effectiveness or legality of this legislation. In the interest of public health, state and municipal governments absolutely have the authority, and she feels the duty, to impose regulations and guidelines on businesses. This ordinance does not ban or prohibit the sale of any products, it simply states that businesses who sell tobacco need to obtain a license and will be subject to compliance checks to be sure it is being sold legally, only to individuals who are at least 21 years of age. This is not rushed legislation; it has been adopted in many cities and is enforced around the State as we speak. This is well-researched, well-informed legislation to protect the health of youth across our State. It is in the interest of the professionals who worked with the City on this ordinance to make sure that the guidance they provide to municipalities is accurate and that the legislation that they support will withstand challenges, and

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is appropriate according to the law. Again, this is well-vetted, well-researched and appropriate legislation.

Swank disagrees that it is a separate issue that was overturned by the Ohio House. He read from HB 33, "...preempts local jurisdictions from regulating the sale, licensing, and marketing of tobacco products." He still feels this legislation is being rushed through this Council.

Wendy Hyde, Tobacco 21, stated that the Ohio House did override the Governor's veto. This is a broad sweeping preemptive action. The Senate may or may not concur. There are (25) municipalities across the State, starting with the City of Columbus in 2016 that have passed effective tobacco retail licensing measures. The preemptive action is more about Home Rule. We have a privilege in Ohio to be able to regulate and design our communities for what is best for our constituents. This ordinance simply puts an enforcement mechanism in place, holding tobacco retailers accountable. She encouraged the City of Athens to move forward with passage this evening.

Alex Schwartz, Central Avenue, General Manager of Silver Serpent, has been in the vape industry for fifteen years, and there is not one distributor he has purchased from that would sell to him unless he had an up to date vendor's license, cigarette dealer's license, and federal employee identification number. Ohio's Tobacco 21 law includes all alternative tobacco and nicotine products.

Joe Radwany, Albany, Ohio, agrees the underage issue needs to be thoughtfully addressed. He questioned the role of our government on this issue. He supports less government, fewer regulations and fewer taxes. He encouraged Council to take its time with this legislation, talk with the business owners, and consider the larger ramifications.

Aaron Dunham, Washington Street, an employee of Silver Serpent, expressed concern that this may be the first step to imposing bans on nicotine products.

Grace reiterated this legislation does not set the City up to ban the sale of certain products; it simply creates a process to license tobacco retailers. The license fees would then be used to support education about the risk of tobacco and nicotine addiction, and to support the City-County Health Department in doing compliance checks for sales to individuals under the age of 21.

Kristie Thomas, Avon Place, asked if the City of Athens has statistics on the prevalence of underage tobacco use among our youth, about the number of documented instances of State violations by Athens businesses, and whether this ordinance is a response to ongoing issues. If our businesses are compliant, then it suggests that our youth may be obtaining tobacco products through alternative means, similar to alcohol and drugs. She questioned whether licensure and compliance checks by our Code Enforcement Office and City-

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County Health Department are practical or only adding a burden to already overworked staff. Perhaps redirecting resources toward educating youth on smoking and vaping would be more impactful; education is key.

Aaron Thomas, Avon Place, expressed concern that regulations in the City of Athens are detrimental to bringing businesses to our area. He questioned what has been done in the last 24 months to draw businesses to Athens.

James Wanke, E. State Street, challenged City Council to do the right thing tonight, by either withdrawing this misguided ordinance or by regulating alcohol and tobacco laws equally. He believes this legislation is the enabling of selected targeting of small business in a way that is disproportionate, unfair, unconstitutional, and will no doubt lead to disaster for marginalized sections of our community, namely local business, service workers and minorities.

David Whealey, West Hills Drive, agrees that underage smoking is a serious health issue, and tobacco needs to be regulated.

Rob Delach, Morris Avenue, encouraged City Council to adopt this legislation; it is common sense and well vetted. This is a very important health issue for this country, for our City and for our youth.

Ella Collins, S. Court Street, an employee of Puff for Tobacco, LLC, believes the necessary underage laws are already in place.

Wendy Hyde, Tobacco 21, pointed out that, under current Ohio Law, when there is an underage violation, the violation is placed upon the clerk that sold that product to the underage buyer; it does not go on the retailer. The clerk would get the misdemeanor charge and the financial penalty. This legislation would hold the retailer accountable, and the license fee would go toward cessation and prevention education efforts at the local schools and within the Athens community specifically.

Swank moved to Table; McCarey seconded. Discussion: McCarey is hopeful this legislation will be addressed again next year.

Swank plans to return it to the Planning & Development Committee next year in a form that discourages and decreases teen smoking, and allows businesses to operate in a responsible manner, free from intrusive overreach by a government body.

McCarey believes when that happens the work that Council Member Grace has put into this legislation will be evident and recognized in the final version.

Motion to Table was approved by a 6/1 vote, with Grace voting in opposition.

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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. Ziff moved for Suspension of the Rules in order to meet the year-end grant deadline; Risner seconded. Suspension of the Rules was approved unanimously. Ziff moved for Adoption; Swank seconded. Adoption was approved unanimously.

ORDINANCE FOR FIRST READING:

0-145-23

AN ORDINANCE AMENDING ORDINANCE 141-23; AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO CONTRACT FOR CONSTRUCTION OF THE NEW FIRE HEADQUARTERS, PROJECT #346; AND DECLARING AN EMERGENCY. McCarey moved for Suspension of the Rules, as these finances need to be in place by year-end; Ziff seconded. Suspension of the Rules was approved unanimously. McCarey moved for Adoption; Ziff seconded. Adoption was approved unanimously.

RESOLUTION FOR THIRD 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. Crawl moved for Adoption; Risner seconded. Adoption was approved unanimously.

ANNOUNCEMENTS & OTHER BUSINESS:

McCarey moved to remove Ordinance 93-23 from the Table; Swank seconded. Motion was approved unanimously.

0-93-23

AN ORDINANCE AMENDING ATHENS CITY CODE, TITLE 9, GENERAL REGULATIONS, CHAPTER 9.05, FIRE CONTROL; PETROLEUM LIQUIDS, SECTION 9.05.99, PENALTIES. Discussion: McCarey noted the ultimate goal during earlier discussions has been to understand why these bar violations are happening with overcrowding and occupancy concerns, and to encourage increased dialogue between bar owners and City Administration to determine training practices and other incentives that can help reduce these kinds of safety issues. He added the idea of making the penalties more severe is not unique to Athens. It is his understanding that there have been an increase in violations

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since he last requested an update in October, and that the movement on improving dialogue between tavern owners and the City Administration, while moving forward, has now stalled.

McCarey moved to amend to remove the jail time, as attached; Swank seconded. Discussion: Swank asked what "person" would receive the minor misdemeanor charge.

McCarey understands that it would be the bar owner that would be held responsible.

Swank asked if the minor misdemeanor charge could be removed, simply leaving in place the monetary fine.

Law Director Eliason explained that if the fine were made to be administrative then an appeals process would need to be in place. The current appeal is through the court. There are other ways to do this, but right now, it is a minor misdemeanor.

Crowl expressed concern with the timetable of amending, suspending and taking a vote to approve at this meeting.

Ziff agrees, he too, is uncomfortable with all of this happening in one meeting.

Spjeldnes also agrees there should be time for additional feedback and input.

In October, Mayor Patterson had suggested reengaging in some type of tavern owners' association to include himself and the Police and Fire Chiefs. He understands the association met today, and he will continue to encourage an invitation to the City Administration as those meetings move forward to make sure everyone is understanding each other.

McCarey, too, understands the interest that this is to be an ongoing dialogue focused on community safety, and what has been presented are a number of incentives for compliance that is intended to result in a lower number of violations. Council's City & Safety Services Committee will continue to follow this matter.

Service-Safety Director Stone believes compliance is important, and the City fire officials will continue to enforce standards as they see fit. Since the Council has addressed this matter, he has seen some improvement, and one of those is with the installation of fire suppression systems.

Ziff moved to Table; Swank seconded.

Dan DeLuca, Red Brick Tavern, explained that the meeting by the association today was to begin establishing guidelines and membership, and has nothing to do with the issue at hand. The City Administration will be invited to the first official meeting.

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President Knisely asked about their timeline.

DeLuca hopes to have it in place by mid to late January.

Tabling was approved unanimously.

Grace moved to appoint Shay Myers and Maria Modayil to serve on the Affordable Housing Commission; Crowl seconded. Appointments were approved unanimously.

Risner moved to accept the November 2023 financial reports; Ziff seconded. Motion was approved unanimously.

Ziff moved to approve the November Credit Card transactions; Risner seconded. Motion was approved unanimously.

OPPORTUNITY FOR CITIZENS TO SPEAK ON LEGISLATIVE ITEMS AND CITY SERVICES NOT COVERED ON THE AGENDA:

David Whealey, West Hills Drive, expressed concern about the large deer population in the City, and suggested the City hire a professional bow hunter.

Richard Zalinsky, Avon Place, believes a Council of Governments (COG) is a good way to move forward with the City's solid waste issue. It seems logical for the COG to use the assets of the Athens Hocking Recycling Centers, and he indicated the need for that to happen within the next six months.

Aaron Thomas, Avon Place, has been working with City officials on bringing more diversity to the City of Athens, mainly more diverse businesses. He met today with the Lieutenant Governor and the Ohio Department of Development to secure funds to encourage more minority businesses to our area. He encouraged Council to take the initiative to make Athens more inclusive.

ONE-READING RESOLUTIONS:

R-12-23

A RESOLUTION EXPRESSING THE APPRECIATION OF THE CITY OF ATHENS, OHIO, TO COUNCIL MEMBER BEN ZIFF FOR HIS PUBLIC SERVICE. McCarey moved for Adoption; Grace seconded. Adoption was approved unanimously.

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R-13-23

A RESOLUTION EXPRESSING THE APPRECIATION OF THE CITY OF ATHENS, OHIO, TO COUNCIL MEMBER SARAH GRACE FOR HER PUBLIC SERVICE. Risner moved for Adoption; Ziff seconded. Adoption was approved unanimously.

R-14-23

A RESOLUTION EXPRESSING THE APPRECIATION OF THE CITY OF ATHENS, OHIO, TO COUNCIL PRESIDENT CHRISTINE KNISELY FOR HER PUBLIC SERVICE. Crowl moved for Adoption; Risner seconded. Adoption was approved unanimously.

At approximately 9:05 p.m., Crowl moved to Adjourn; Risner seconded. Motion was approved unanimously.

Christine B. Knisely
President of Council

ATTEST:

Debra L. Walker
Clerk of Council

0-93-23

Introduced by Micah McCarey, Chair
City & Safety Services Committee

AN ORDINANCE AMENDING ATHENS CITY CODE, TITLE 9, GENERAL REGULATIONS, CHAPTER 9.05, FIRE CONTROL; PETROLEUM LIQUIDS, SECTION 9.05.99, PENALTIES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The Athens City Zoning Code, Title 9, General Regulations, Chapter 9.05, Fire Control; Petroleum Liquids, Section 9.05.99, Penalties, is hereby amended to read as follows:

9.05.99. – Penalties.

(A) Any person who shall violate any of the provisions of Sections 9.05.01 through 9.05.05, 9.05.07, and 9.05.09, 9.05.11, 9.05.13, and 9.05.14 of the Athens City Code shall ~~severally, for each and every such violation and noncompliance respectively,~~ be deemed guilty of a fourth degree misdemeanor, punishable by not more than 30 days in jail and a fine of not more than \$250.00. ~~as defined in Sections 2929.21 of the Ohio Revised Code.~~

(B) Any person who violates Section 9.05.08 of the Athens City Code, on a first offense, shall be deemed guilty of a minor misdemeanor and be fined not more than \$150.00. An offender who, within two years, has previously been convicted of or pleaded guilty to a violation of 9.05.08 shall be deemed guilty of an unclassified misdemeanor and be fined \$250 on a second offense, \$500 on a third offense, \$750 on a fourth offense, and \$1000 for any subsequent offenses. Each time a violation occurs shall constitute a separate and complete offense.

~~(B)~~(C) Whoever is convicted of or pleads guilty to a violation of 9.05.06 9.05.12 and 9.05.15 through 9.05.22 herein shall be deemed guilty of a minor misdemeanor ~~as defined in Section 2929.21 of the Ohio Revised Code.~~, and fined not more than \$150.00.

SECTION II: This Ordinance shall be in effect and full force upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor