

Safety Committee Minutes

Honorable Council
City of Newark, Ohio
February 18, 2025

The Safety Committee met in Council Chambers on February 18, 2025 following the Finance Committee meeting with these members present:

Mark Labutis, Chair
Bill Cost, Vice Chair
Beth Bline
Michael Houser
Jeff Rath

We wish to report:

1. **Resolution No. 25-10** A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SAFETY FOR THE CITY OF NEWARK, OHIO, TO RELEASE THE LIEN PREVIOUSLY PLACED AGAINST THE PROPERTY LOCATED AT AND KNOWN AS 900 JONES AVENUE, NEWARK, OHIO (PARCEL NO. 054-192078-00.000) AND DECLARING AN EMERGENCY

Tim Hickman, Safety Director - Thank you, Mr. Chairman. This is a resolution to release property maintenance liens on a piece of property. It's one of those situations where the property had sold its share of sale by the time the lien was placed.

Mr. Labutis - It has the emergency clause on it, and the reason for that is?

Director Hickman - Well, typically we do that in these circumstances because it delays the sale of the property and the people that are buying the property are not the ones who created the problem to begin with.

Motion to send to full Council by Mr. Rath, Second by Mr. Houser

Mr. Houser – Are the issues that are still at that property, do they still exist now? Have the violations been remedied at this point, or do we not know yet?

Director Hickman – I can't answer that.

Spencer Barker, councilman 5th Ward – This is our third one of these.

Director Hickman - This is the second property maintenance. We had a couple with water.

Spencer Barker – I know water is going to have a process to avoid this again. Is it going to be mirrored for property maintenance to avoid this same...?

Director Hickman – Well, I don't know if it is avoidable. Joe goes over this with a fine-tooth comb. It's just a matter of timing that we don't always know when a property is going up for

sheriff sale. So, by the time that we go through the process of placing the liens, they're working over here in another lien to do a sale.

Mr. Barker – A sheriff sale is a public record, so we would know. Right?

Director Hickman – I suppose we could, yes.

Mr. Barker – My thing is, we have two in water and now this. Essentially, could have been paid on the closing.

Director Hickman - They are supposed to disclose that at the time of closing, however, that doesn't always happen obviously.

Mr. Barker – So, I guess my thing is how can we avoid this in the future with property maintenance now? We are already working on water. We partnered with them to figure out how they are going to (inaudible) and mirror that on the property maintenance side.

Director Hickman – Yeah, we can do that. Like I said, we do our due diligence on these things. We just don't create a document without doing any research on it and I would say based on the number of liens that we place, you know, several hundred thousand dollars a year, that you know having a couple is probably a pretty good batting average.

Mr. Barker - It is, but it also could have been revenue (inaudible). I just see it as, if we can fix this, I'd like to see us fix it.

Doug Marmie, councilman 6th Ward – So, we place the lien after the sale?

Director Hickman – Yeah, the timeline is spelled out in the resolution as far as the dates that everything occurred, and without looking at it here, without being able to give you the specific dates without reading the whole thing, basically what happened is by the time that the document got filed with the auditor's or the treasurer's office (inaudible) we filed with over there, it had already gone through sheriff sale. So, they had been granted foreclosure.

Mr. Marmie – Okay, very good. Thank you.

Motion passed 5-0

2. **Ordinance No. 25-06** AN ORDINANCE AMENDING PART 8, TITLE TWO: BUSINESS REGULATIONS OF THE CODIFIED ORDINANCES OF THE CITY OF NEWARK, OHIO WITH MARKETING CARTRIDGE-BASED ELECTRONIC NICOTINE DELIVERY SYSTEMS (ENDS) PRODUCTS AND OTHER ENDS PRODUCTS THAT HAVE NOT OBTAINED PREMARKET AUTHORIZATION

Mr. Barker - Thank you, Mr. Chair. This legislation, and I'm going to ask that I have the law director up here with me to clarify some things as she and I've been working on this together. This was recently passed last year in the city of Heath and it goes after stores such as vape stores who are selling non-FDA approved product to the public. These are items that are in the little vape boxes things like that. I'd ask the law director to correct me if I'm wrong, but this now is in a case at the Supreme Court. The state legislature has the ability to also fix this, but when Heath passed it, I was made aware that three of their facilities closed in Heath because they didn't want to get FDA approved, and at least two that I know of have moved into Newark already, one across from an elementary school. This legislation the law directors put together is trigger legislation, so if either the state legislature would pass a resolution confirming this or the Supreme Court would rule in favor of this, it would then become active in the city of

Newark. It is enforced by the Health Department, which is something we've already talked to the Health Department about. They're the ones enforcing it in Heath. I just would ask that the committee would consider this trigger legislation. I'm happy to answer any questions. I know the law director is happy to answer any questions on it, but it's something that I feel strongly we need to enact here in the city to protect our citizens.

Tricia Moore, Law Director - The timeline for this is that there were several municipalities that passed legislation to regulate what was being sold in vapes in their city. In response to that, the state legislature passed a law stating that cities could not regulate tobacco sales. In response to that, the city of Columbus along with Heath, Reynoldsburg, and multiple other jurisdictions sued the state of Ohio. That was in front of the Franklin County Common Pleas Court. That judge actually made a declaratory judgment stating that the section passed by the General Assembly saying that cities could not regulate the tobacco sales in their jurisdiction was unconstitutional and a violation of the Home Rule. That is now being reviewed by the 10th District Court of Appeals. The legislation that you have in front of you is mimicking Heath's regulations. So those cities that had an ordinance before filed the lawsuit. They are now allowed to enforce their regulation, which is causing the migration from cities that are enforcing it to cities like ours that don't have it. Now, we will not be able to enforce this if and until the courts decide we can or the General Assembly, I guess, changes their mind based on the court case. That's what's in there, that this will not be enforced until a court of competent jurisdiction says that it can be enforced or the General Assembly acts to allow cities to do it.

Mr. Labutis - I appreciate your work on the front end of this. So, if it does pass or if it is resolved, then this goes into effect...

Director Moore - We can begin enforcement.

Mr. Houser - Thank you, Mr. Chair. So, from a timing standpoint, let's say we do have some of these businesses, you mentioned a couple in the city already. Let's say the court cases get settled, we get guidance on that. What's the impact of these businesses? I mean, if they don't seek that approval or are unable to get it, they're going to close essentially. Is that the mentality probably at this point?

Mr. Barker - That's what happened in Heath. They didn't choose to stop selling their non-FDA products, and so the Health Department enforced the rule. They ended up closing to move to Newark where they can do it legally at this point.

Director Moore - Well, there's a federal regulation that says that you can't sell non-FDA-approved vape cartridges, and I guess that's just not being followed. So, all that the Health Department is doing is making sure that they're following the law. Similar to skilled gaming, when people don't want to play by the rules, instead of changing, they move. So, you know, until we can enforce this though, I mean, will that stop them from moving to Newark? I don't know, but at least it would be a warning.

Mr. Cost - I understand there are two in the city of Newark now?

Mr. Barker - Two that we definitely know of, but I think we're both under the understanding from the Health Department, there are multiple others.

Mr. Cost - Is there anything to stop from having more and more at this point?

Mr. Barker - No. I mean, no. Zoning would be the only other thing.

Mr. Rath - So is this involving nicotine only?

Director Moore - It's involving ENDS, which are electronic nicotine delivery system products and other ENDS products. So, anything, if you look at the definitions of the ordinance, that can be used, vape, to inhale through the vaping process.

Mr. Rath - So the name itself contains nicotine. So, is this nicotine or is it something?

Director Moore - Some of them do. But that's why they say in other ENDS products. So, it is in the definition, nicotine delivery system.

Mr. Rath - So I guess my question is, I apologize if I'm being too dense here, but ENDS is electronic nicotine dispensing system.

Director Moore - Yes.

Mr. Rath - So when you say other ENDS, that makes me believe or leads me to believe that you were talking about nicotine only. Because ENDS, nicotine, the N in ENDS is nicotine. So, are we regulating other things that are vaped or is it just nicotine?

Director Moore - E-liquids are a type of end products and generally refer to liquid nicotine and nicotine containing E-liquids. Liquids that do not contain nicotine or other material made or derived from tobacco that are intended or reasonably expected to be used with or for the human consumption of a tobacco product may be components of parts and therefore subject to FDA's tobacco control rules.

Mr. Rath - Okay, so put that more technically.

Director Moore - Yes, it's nicotine or products to be used like nicotine in the same sort of way.

Mr. Barker - Could be like a synthetic product.

Mr. Rath - Okay, so are we talking about, you said synthetic, it went right out of my head because that's exactly what I'm thinking about.

Director Moore - It is nicotine.

Mr. Rath - Delta-8 is what I'm talking about. Is that something that is...

Director Moore - Well, I think there are Delta-8 cartridges. I don't shop ENDS products. So, anything that is not approved by the FDA cannot be sold in that form. However, what we're finding is that there are a lot of things being sold on that farm that are safety hazards, risk to a lot of issues, and they're inhaling material that we don't know what it is because it's not approved.

Mr. Rath - Sure, this is not just being sold at vape stores. This is being sold at every...

Director Moore - There are drive-thrus. So, any place that sells ENDS product would be subject.

Mr. Barker - So for instance, I talked to a couple owners of local convenience stores and asked them, would this affect you? It would not affect them because they only sell FDA-approved product. They don't put things in stores that are non-FDA-approved.

Mr. Houser - So a question I have is, are there major players in this space that have products that aren't FDA? What's the source? Again, I also don't shop. So, are there major manufacturers of this that are not seeking the FDA approval? I'm just trying to understand that. Or what's the source of these products, essentially?

Director Moore - I don't know what the source of the products are. I don't know the manufacturers that are involved.

Mr. Barker - That's something we can talk with the health department to find out. They obviously are the ones that would be enforcing this and have all the detail on it. But again, hearing the fact in December when I got a call that two were moving into town because they

were asking, does Newark have this legislation? I said, no, from what I can find, no, we don't, and confirmed that with the law director. They said, well, then we're moving into town. And then one moved across the street from an elementary school. Which to me feels like a major zoning issue, but we don't have anything in zoning to dictate that. So, speaking with the health department, this was the first best thing to implement to protect citizens.

Mr. Rath - It definitely sounds like we need to revisit the zoning. I also have been concerned in the past and still are about the Delta products. Delta eight is a derivative, but it's a synthetic, like we said, and there's Delta nine and Delta 10. As soon as you outlaw eight, nine, and 10 they're going to come up with Delta 11. It's not that difficult to expect.

Director Moore - And that's what's being advertised on their windows. That's the big draw in.

Mr. Rath - It's true, but it's also a very dangerous product.

Director Moore - It is, absolutely. I'm not disagreeing with that.

Mr. Rath - And it's being marketed to children.

Director Moore - Absolutely. That's these vape stores big thing is you see Delta nine on everything in their store.

Mr. Rath - So this would not include that?

Director Moore - If it's anything in a cartridge for a vape, including Delta nine, it would.

Mr. Rath - Only in that format? I don't shop Delta products either, so I don't know how it's ingested.

Mr. Barker - I'm happy to contact the health department and kind of see if we can get some type of product list.

Mr. Rath - If we could include that, that would be awesome. It would be absolutely for an amendment. I know you're talking about lawyers and judicial systems and court systems, and you can't get anything accurate and predicted, but do you kind of have a sense of what the timeline is, and if we pass this today, when would this be enforceable? I have a little problem with passing a piece of legislation that's not enforceable.

Director Moore - I get that. I understand that. It would only become enforceable when we would either be given the green lights by the courts, or the General Assembly would change their mind. So, I have had conversations with people like Representative Miller about what we're trying to do, that we're not trying to regulate FDA products that are sold in the store. We are only trying to make sure that they're following the law, like we did with skilled gaming parlors. He was interested in that conversation, and he wants me to send him what I have about our regulation of other industries, like scoop gaming and marijuana, and just making sure that they are selling products they are legally allowed to sell and nothing else.

Mr. Barker - And I've talked to State Senator Schaffer about this as well, from the Senate side, and he's interested in fixing it as well.

Mr. Rath - What do you anticipate the impact of us passing this, if we were to send this forward and send it to Council and it passes? What are you anticipating the impact being, and does the Health Department have any opinion as to how this may impact our businesses today and in the near future before the legislation becomes enforceable? In other words, is there a benefit of passing this even though it's not enforceable?

Mr. Barker - Yeah, so I think two things. One, we haven't had distinct discussions with the Health Department about that. I personally think that if we have it on our books as a trigger legislation, that will assist property owners and realtors in our area that know that that is a

potential, that they would not be then putting someone's business in jeopardy by bringing them into town. It also, I think, would put these stores on notice that if something happens, it triggers active in our municipality, and they then have their own problems, and they then either have to become compliant or leave.

Mr. Labutis - Just to echo that, again, like I said earlier, I appreciate your work on the front end of this. For me personally, I'd much rather have something on the books waiting so that if it goes through the legal system and it's passed, that we can enforce it immediately, and it's already in place. I appreciate that.

Mr. Barker - There are some other private citizens who have connections to the legislature who are also working on some additional items that are working with the law director and myself to tie this into the same ENDS legislation to hope to get the General Assembly to fix it.

Ms. Bline - I want to thank you for doing this. This is so important. As far as a product list, I don't know that that's necessary because you're setting a boundary, and that's all we need. This is approved. This is not. Forget about it. It'll be very helpful to our neighborhoods, very helpful to existing businesses. Again, thank you for your time.

Motion to send to full Council by Ms. Bline, Second by Mr. Houser, Motion passed 5-0

Safety Committee stands adjourned

Mark Labutis, Chair