

Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:00 P.M., on Monday, June 6, 2016. Mayor Peggy Dunn presided.

Councilmembers Present: Debra Filla, Chuck Sipple, Jim Rawlings, Julie Cain, Andrew Osman, and James Azeltine

Councilmembers Absent: None

Staff present: Scott Lambers, City Administrator
Chief Troy Rettig, Police Department
Debra Harper, City Clerk

Patty Bennett, City Attorney
Joe Johnson, Public Works Director
Cindy Jacobus, Assistant City Clerk

Others Present:

Lougene Marsh, Director, Johnson County Department of Health and Environment
Nicole Brown, Chronic Disease Program Coordinator, Johnson County Department of Health and Environment
Stephen Duerst, Lobbyist and Law Clerk, Federico Consulting
Ali Campbell, Journalism Student, University of Missouri-Columbia
Jerry LaMartina, Reporter, Blue Valley Post

Continued Discussion on Tobacco 21 Initiative

Mayor Dunn called the meeting to order, thanked all for their interest and introductions were made.

Ms. Bennett stated the meeting packet contained a table presenting high-level tobacco law information as of May 17, 2016 for Lenexa, Prairie Village, Olathe, Overland Park and Leawood, as well as detailed supporting documentation for the laws of those cities. As shown in the table, most cities have a fine for purchase of \$25 and Lenexa scales the fine for repeat offenders. Most of these cities fine the person selling and the retailer, if the retailer was aware.

The meeting packet included an updated map showing the status of the Tobacco 21 [T21] initiative in area municipalities, as well as the minutes of the Governing Body Work Session held April 18, 2016, on T21.

As per the Governing Body's consensus to move forward, an ordinance for consideration was drafted based on Ms. Bennett's research. At this time, staff would require further direction from the Governing Body.

Mayor Dunn stated T21 was one of the Greater Kansas City Chamber of Commerce's Healthy KC initiatives. Ms. Bennett stated their model ordinance language was not Kansas-specific and very lengthy.

Ms. Bennett confirmed for Councilmember Sipple that T21 information from Kansas City, Missouri, was not in the meeting packet, and would contact Mr. Scott Hall, Vice President Strategic Initiatives, Greater Kansas City Chamber of Commerce, to see if this information was available. Mayor Dunn suggested the T21 ordinances of Kansas City, Missouri, and Kansas City, Kansas, were similar.

Mayor Dunn stated real-world experience feedback is limited, but there have not been concerns raised by local proprietors as expected. She was not aware of any enforcement task force used by area municipalities that have adopted T21, and she reminded Mr. Hall had previously stated only 2% of tobacco sales would be affected. Leawood currently has only eight tobacco retailers.

Additional information and discussion, as follows:

Education/Notices

1. Prior to the April 18, 2016 Work Session, the City Clerk had provided notice by telephone to tobacco retailers.
2. There are no formal Johnson County Department of Health education programs for the public or retailers regarding tobacco sales.
3. Johnson County Mental Health has applied for a grant to provide education since many municipalities are adopting T21. Decision on grant is expected by the end of the week.
4. Ms. Bennett stated Olathe has referenced education programs of the Kansas Department of Revenue.
5. Education could be conducted as a conversation with Chief Rettig or via an on-line class.
6. A roll-out period before effective date would be beneficial.
7. Since there are no high schools in Leawood, notice to school superintendents would not be warranted.
8. Councilmember Sipple noted there are typically point-of-sale displays/stickers in regard to the sale of alcohol.
9. Kansas Department of Revenue provides training on how to read identification documents for alcohol sales.

Fines/Enforcement

1. Per Kansas statutes, fines for public offenses without a stated maximum would be \$500.
2. Most fines in area municipalities call for actual knowledge of the offense by the owner and do not include provisions for providing notice or escalating responsibility to the owner, when an employee is fined.
3. In Olathe, at the judge's discretion, violation may require a tobacco education program as part of a fine for purchase.

4. Chief Rettig was not aware of any Leawood cases of purchase or possession by anyone under the age of 18. Vast majority of such cases involve a traffic stop where cigarettes are noted to be in the vehicle.
5. T21 does not change the age of use or possession, only purchase and sale.
6. Enforcement would be handled by Police Officers, by targeted investigations of complaints or through undercover stings similar to those used by the Kansas ABC for alcohol.
7. Chief Rettig confirmed no special ticket form would be required.
8. There are no special considerations concerning volume product packaging; carton versus package.
9. At a future time, the State of Kansas could preempt municipalities from adopting ordinances increasing the age of tobacco purchase and sales.
10. Leawood's current fine for sale of alcohol to a person under age 21 is with knowledge to the owner, but otherwise to the employee. Kansas Alcoholic Beverage Control [ABC] conducts periodic undercover checks of retailers and repeat violations can result in retail license being pulled.

Leawood Draft T21 Ordinance

1. Leawood currently uses the Uniform Public Offense Code in regard to sale, purchase and possession by under the age of 18.
2. Current code requires a court appearance and it is typical for a parent to be present in court with a child under the age of 18 [juvenile].
3. Current code does not include liquid nicotine. The broad definition of liquid nicotine shown on Page 3 of Article 3-5-1 Definitions in the Lenexa ordinance could be included to cover vapor products.
4. Imprisonment is not favored or feasible.
5. Inclusion of an education program was favored.
6. Owner can be fined only with actual knowledge.
7. Mayor Dunn questioned if Lenexa's language regarding samples should be incorporated.
8. It was noted Prairie Village's ordinance uses "may" in regard to both court appearance and completion of a tobacco education program.
9. It was suggested minimum fine for sale of \$200 for first offense, escalating with repeat offenses to \$1,000 maximum.
10. Repeat offenses could be addressed at a later time, based on experience, by ordinance revision.
11. All offenses would need to go before the judge unless a fine is pre-set for which the officer can take payment.
12. Escalating fines could be addressed by having a wide range for fine and allowing the judge to decide or by following a documented fine schedule.
13. An officer in the field would not have access to information regarding possible previous violations.
14. In regard to criminal history record, a T21 violation would be an ordinance violation like a speeding ticket.

15. It was noted a driver could run a red traffic light and not be required to appear in court, but depending on the language of the T21 ordinance, a court appearance for violation may be required.
16. Having commonality with area municipality ordinances could facilitate enforcement and education efforts.
17. Ordinance would be a living document that could be revised in the future, as needed.

Summary

- A. Minimum age for sale or purchase 21; possession and use 18.
- B. Include Lenexa's definition of vapor products; ensure this would cover liquid nicotine or include definition of liquid nicotine.
- C. Fine for purchase of \$25 minimum to \$100 maximum. Judge may require court appearance with parent for a juvenile and/or may require education program.
- D. Fine for sale \$200 minimum to \$1000 maximum. No other specific statement of fines.
- E. Fine for sale applies to employee/seller or owner/retailer with actual knowledge.
- F. Address samples, as appropriate.
- G. Ordinance effective date of October 1, 2016.
- H. Draft ordinance to be prepared by Ms. Bennett and placed on the June 20, 2016 Governing Body meeting agenda for possible passage.

Mayor Dunn thanked everyone for great discussion and participation, with special thanks to Ms. Bennett for her work.

Councilmember Osman advised he would be unable to attend the next Governing Body meeting scheduled for June 20, 2016. Councilmember Filla advised she could not be present for that meeting, but would plan to participate by teleconference [Skype].

There being no further business, the work session was adjourned at 7:03 P.M.

Debra Harper, CMC, City Clerk

Cindy Jacobus, Assistant City Clerk