

**Minutes of the Meeting of the Safety/Legal Committees of Council
Held in the Council Chambers of the Municipal Building
On Monday, January 28, 2019
6:30 P.M.**

The Chairman of the Safety Committee, Scott Radcliffe, called the meeting to order.

Safety Committee Members Present:

Chairman, Ward 4 Councilman Scott Radcliffe
Ward 3 Councilman Tony Moore; Councilwoman-at-Large Tammy Holtzmeier

Legal Committee Members Present:

Chairman, Councilman-at-Large Brian Fischer
Ward 4 Councilman Scott Radcliffe; Ward 1 Councilman Bob Butkowski

Others in Attendance:

Law Director John Gasior; Council President Craig Witherspoon; Mayor Bryan Jensen; Resident Larry Escalante; Police Chief Rich Bosley

Presentation and Discussion of Vaping

Mrs. Holtzmeier stated that we are here to gain a better understanding of vaping and how it might affect Avon. The schools are having concerns about it and announced a seminar to talk about it with parents and how it affects minors in the community. That led her to look at whether there were concerns with vaping that we need to address in our Code. She felt that a good place to start is to understand what vaping is or what it is not and to get a sense of what we need to know as far as the community is concerned. So she invited Jillian Cremona, a health education expert with the Lorain County Public Health Department, to come and talk to us, and she then introduced Ms. Cremona.

Ms. Cremona referred to information that was given to the Committees and pointed out pictures of different vaping devices. She stated that the first thing to know about vaping is that it is an inhaled vapor. It is not a combustible burned product. The two big points that she wanted to start with are: a lot of the research on this is very new. It is a new product, a new phenomenon so we are following the research pretty closely. There are some things that they can say for sure and some things they cannot. One thing that they can say for sure, and which is the second very important point here, is that most of these vaping products contain nicotine and nicotine is never appropriate for developing brains so that is adolescents, minors, young adults up to 25, and pregnant women.

Ms. Cremona then went on to talk about e-cigarettes. This is aerosol vapor and there is the question of whether it is safer than combustible tobacco and the answer is "maybe". They are not sure as the science is not done yet. They have not been able to have long term studies on the effects of what is in there. They know that there are some harmful elements in the vapor and there is a chance that e-cigarettes are safer, especially for adult users who may be trying to quit smoking. They are not yet allowed in this country to say that it is an approved cessation method.

Ms. Cremona highlighted some big points on the information: First, any of these products that contain nicotine are harmful to developing brains and we know that nicotine is highly addictive. Right now, the manufacturers are not required to say how much, if any, nicotine is in the products. Juul, one of the

manufacturers, has stated that the Juul pods contain the equivalent of an entire pack of cigarettes. There are about 20 puffs, so each puff is equivalent to a cigarette. It takes the same amount of time to smoke an e-cigarette as it does to smoke a cigarette, and each puff on a Juul, one inhale, would be the equivalent of one whole cigarette. Someone asked if you can puff it and then put it away and Ms. Cremona said, yes, you can do that or do several puffs in a row. Mr. Butkowski said, and none of this is regulated by the FDA, and Ms. Cremona said that is correct. Mr. Butkowski stated, so it can have nicotine in it but it is not regulated. Ms. Cremona said, that is correct. The laws are written for combustible material. She said that one other thing she wanted to mention is that many of the refill pods are not required to be child-proof which is concerning because if you have that much nicotine concentrated in it, it could be a fatal dose for a toddler or a baby.

Ms. Cremona stated that the next page of the information talks about research that is going on right now. There is a possibility that e-cigarettes could be used as a cessation aid in the future and these studies are in progress. We do not have any long term data on this. The key on this would be getting combustible tobacco users to quit via e-cigarettes. One thing we do not want to see is people who are non-tobacco users starting to use electronic cigarettes if they are non-tobacco users to begin with. We are seeing this in the high school population so again, if that recommendation comes down the line it will be for current users for cessation methods. One other point is what we are seeing in adults is that often the users are dual users; they are using both the traditional tobacco and also the e-cigarettes. Youth are more likely to start using e-cigarettes vs. moving off from another tobacco product to e-cigarettes. The current research shows that up to 20% of high schoolers or 1 in 5 may be using e-cigarettes of some sort.

Mayor Jensen stated that Ms. Cremona had said that with the e-cigarette, one puff is like smoking a whole cigarette. From his understanding, when people started out smoking, they were doing it as a social thing and would be taking their time, but now if it is one hit, what is the attraction to the nicotine and why would someone want to do that? Ms. Cremona said there are a couple issues there. First, nicotine is a stimulant and is very addictive and has the addictive possibilities of many other drugs. She does not have a great answer as to why students start using it, but she thinks it might be the social aspect – their friends are using – but it is a stimulant so it is like caffeine. The important thing with nicotine in the adolescent brain is that it has been shown to prime developing brains for addictions later on in life. It can make them susceptible to later addictions.

Mr. Radcliffe noted that e-cigarettes do not have to be nicotine based. They can be based on oils or other chemicals or marijuana or anything like that. So this covers not just the nicotine side of it but the drug side of it also. Ms. Cremona said that is correct and that is why we say that “many” or “most” e-cigarettes contain nicotine because there are some that do not. And some of the refillable ones that you can mix yourself, people are using marijuana or mixing nicotine and marijuana together.

Mr. Witherspoon asked if you mix marijuana with nicotine, does it smell like marijuana? Ms. Cremona said that is a good question and she does not know. Her guess would be that it does not. Part of the idea here is that an e-cigarette is not combustible. You are not burning it, which is why it is easier to use because it is inhaled vapor that is just heated. It is not burned so that is why it does not smell like a typical cigarette, but with marijuana she is not sure. Mr. Witherspoon said that he has been told that smoking marijuana smells like smoking garbage and it would be easy to detect somebody doing that but if it is in an e-cigarette he would think it would be extremely difficult to detect. Ms. Cremona said, yes, and that is why we think we are seeing some use is because you do not get the same bad smell that everyone associates with traditional cigarette use. Mr. Witherspoon asked if there was a heating

element in the e-cigarette that heats up whatever you put in there and Ms. Cremona said that was correct.

Mr. Moore stated that in some of the videos he has watched, it seems that the young users seem to be fascinated with the vapor itself, with the blowing of the smoke, and with the flavors. So they are not realizing the dangers of it; they just think it is cool. Ms. Cremona agreed that, yes, there is the cool factor, the social factor, and that is one of the reasons why the Health Department is happy to come out and speak to schools, etc. to get the message out that it is not just kids having fun. These e-cigarettes probably do have nicotine in them and parents and educators need to be aware of that.

Mayor Jensen asked why there was not a rush to regulate the e-cigarettes. The device itself looks very innocent but then you look at all the different things that can be added to it and how we regulate that device is going to be very difficult. Ms. Cremona said that with the research being new, she thought that everyone was being very cautious. It could come out in 10 or 15 years that this is a great cessation device, and help adults with long-term cigarette use to quit smoking. If that happens, she thought that we want to be careful that we are in a place that allows us to use it. So the philosophy of not having a rash “putting your foot down” response right now is definitely there. And that is just because we do not have all of the answers that we need to but otherwise she knows there are things going on at CDC to try and get things regulated. Juul has a huge lobbying effort going on right now, mostly at the federal and state levels, so one of the things that they have told us as public health experts is if we want to look at controlling any of these, the local level is probably a better way to go.

Mr. Moore asked Ms. Cremona if she was familiar with the New York Indoor Clean Air Act and if there was any help that had trickled down from that because he knows it has only been like two years. Mrs. Cremona answered not that she knows but she can look into and get back to Mr. Moore.

Mr. Witherspoon asked if there was a current law in the State of Ohio that forbids anyone under the age of 18 to participate in the use of e-cigarettes and Ms. Cremona said she does not want to speak for the entire State, but locally Oberlin and Avon Lake have passed some laws around public use and smoking bans that include e-cigarettes. She also knows that there is legislation in progress about purchasing at age 18 and a lot of talk around the Tobacco 21 movement which may or may not include e-cigarettes. Mr. Witherspoon said, but currently, a 15-year-old can go into one of these vapor places and buy this. Ms. Cremona said that a 15-year-old should not be able to but again, if a seller cannot determine if there is nicotine in that or not, that is where there are some of the issues we run into. You should not be able to purchase tobacco-derived products if you are under the age of 18 but again if they are not saying if there is nicotine in a product and where it was derived from, that is hard to enforce.

Mr. Moore asked how the law applies now. For instance, you know that you cannot go into a restaurant and smoke, but can you go in there and smoke vapors? Ms. Cremona said that it depends exactly how it is written; in most cases, it is not written to cover e-cigarettes. That would be something that places would want to look at on an individual basis. Mr. Radcliffe said that is one of the things that we need to look at, to update our Codes to include that ban so that the people who do not want the smoking around them, whether it be vaping e-cigarettes or regular smoking, can have the same type of protections. He said that he has walked through stores and has seen people vaping in there, and to him that is smoking but maybe it is not defined like that. Mr. Moore added, and that is a good question because second hand smoke is a problem with regular smoking; is there second hand vaping? Ms. Cremona said that, unfortunately, we do not know exactly. We do not really know what is in the vapor. We do know that when nicotine is in the vapor, you can absolutely get that second hand. As far as what

other compounds are in the second hand vape, we do not know; there is not research on that yet. Mayor Jensen said he just wondered if the vape can land on you and be absorbed in through your skin. Mr. Butkowski noted, and that is the problem. It is not regulated. We do not know what is in there. They can put whatever compound they want in there because nobody is looking and overseeing it and defining what that is so we do not know what that vapor does have in it that you are walking into and breathing.

Mayor Jensen asked Police Chief Bosley what he has seen in his experience in the City of Avon. Chief Bosley said that, in talking to our School Resource Officers, it is definitely a presence in the schools. Our officers have come across it in town and one of the issues that we have is the way Ohio law is written, an e-cigarette or anything that is used for vaping would be an alternative tobacco product. The problem is we would have to have a lab test it because to actually be the definition of an alternative tobacco product, we have to be able to show that there is nicotine in there. And it is hard to find a lab that will test these little cartridges. If it has nicotine in it, it is the exact same offense as if they are smoking a cigarette under the age of 18 in the State of Ohio. Mayor Jensen stated that we talked about mixing in marijuana or oil and Chief Bosley said there was a large bust in NE Ohio recently of several thousand cartridges for use for vaping that contained marijuana, so they are being targeted in this area. He added that he saw an article from the FDA last week that said at the high school level, there was over a 70% increase in one year on vaping and at the middle school level, there was over a 40% increase nationwide. Mayor Jensen said, so it is an epidemic right now at this point.

Mr. Witherspoon asked what would be the cost of analyzing an e-cigarette? Chief Bosley responded that we first have to find a lab that will do it, that has a capability to test what is in these cartridges. Mr. Witherspoon asked how long that would take and the Chief said he did not know, but he can start tomorrow trying to find a lab. Mr. Witherspoon noted that we have to pay for that and the Chief said, yes, because we were reaching out to local labs and we were not getting results back. Mr. Butkowski asked if they made portable test kits like the police have for drugs and Chief Bosley said, not that he was aware of. He added that they are not even using portable test kits for street drugs now because of the advent of fentanyl; they do not want their officers touching it. Mrs. Holtzmeier asked what happens when a minor is in possession of this device and Chief Bosley said that, currently, under Ohio law, we have to show that it has nicotine in it for it to be illegal for a minor to possess. Mrs. Holtzmeier then asked if there is any alternative to being able to determine if a minor has nicotine in their system. Chief Bosley said that there are home test kits that can be used. Mrs. Holtzmeier said she brought that up because in our community, within the school system, we have a zero tolerance policy and she knows we have the "Test Your Teen" kits available and that has a whole panel of kits that are effective. And there is also a nicotine test that we have discussed that could possibly be added to that panel. She asked the Chief if that was a potential to be of help to him. Chief Bosley answered, yes and no. It would be extremely cumbersome for the Police Department to do that because they would have to compel someone to submit their test and to do that, they would have to get a court order, so they would be tying up the court getting search warrants to test children to see if there was nicotine in their system. And that is for the Police Department to do it, but parents can do it as a parental right. Mayor Jensen asked what the police do now if they find a student or a child with cigarettes on them and Chief Bosley said we can cite them into Juvenile Court but once a case goes to Juvenile Court, we do not know what happens. The way the law is written, there is a maximum fine of \$100. but there is a mandatory drug intervention program.

Mrs. Holtzmeier stated that many times parents will say that they were just not aware that their child was using e-cigarettes and she likes the idea of having an option for parents to be able to test their kids.

And it is also a great tool for the students themselves to defer, to say, “no thanks”, my parents might test me. Chief Bosley said that he thinks that right now, the best option we have is to try to work with the parents, with the schools, and on education factors, and get the message out there that way. It seems at the federal level, they have done a good job of pushing the anti-marijuana message, so we need to pick up the ball on the issue that is prevalent in our local community.

Mr. Radcliffe asked, in regard to our local actions, are there things that we should be talking about updating to include these e-cigarettes? Are there things that we can improve upon with that, especially with this proliferation of marijuana coming down the pike on that side of it also. Mr. Gasior said that he would talk to Chief Bosley and the City Prosecutor and see what we need to do. He will have to take a look at it as he has not had a chance to really review much. He knows that we have a “no smoking” policy in the City, but would that be broad enough to include vaping? He does not know, but he thinks that we would treat it that way for the second hand smoke issue. The State has a no smoking policy; you cannot smoke 50 ft. from a doorway and it is totally forbidden inside a public place. He does not know what else we could do but he can look into it. Mr. Radcliffe said, and that is the real question. Is vaping a part of that also? As long as the laws cover it that way, then that is fine but if not, we need to take a look at this to see if there are improvements that can be made to help protect those that do not want the smoke around them.

Mr. Moore asked if businesses can on their own say that they do not want vaping? Can they legally say “no vaping”? Mr. Gasior said that the law says “no smoking”, but do they define what smoking is? Chief Bosley said he did not know; you would have to look at the definition of what smoking is because it does not necessarily mean tobacco. You are exhaling something that appears to be smoke; it could be that simple but he does not know. He has to check the definitions and see where we go. Mr. Moore asked the Chief asked if there was anything that we could do from a legal standpoint to assist him or make his job easier with the underage? He said he thought that education was going to be the big thing with the younger kids but is there anything we can do for the Chief on the legal side? Chief Bosley said that he did not know at this time. One of the concerns that he has is, if we would pass legislation that is not in State law, what teeth do we have when we go to Juvenile Court? Are they going to look at it like our curfew ordinances where they accept those or would they look at it as not a violation of State law so something they are not going to act on? He would have to get an answer to that first. Mr. Gasior said that he never thought of that, but Juvenile Court might not want to deal with anything but State Code. Chief Bosley said that the only thing we send to Juvenile Court right now that is not a State law, is our curfew ordinance and we have not had a problem with that.

Mrs. Holtzmeier said that, from the information in our packets from other communities that have approached this recently, if any of their legislation changed, it was merging the distinction of smoking vs. vaping so that it was the same, and updating the language to reflect that. Our schools have already acknowledged that vaping is a problem. As a community, we need to see how we can support the schools and how we can work together to find a reasonable solution for our young people and again, to put some education and responsibility for the parents to be able to manage their children in a way they see fit. The high school principal has said that the schools are very open to continuing this discussion with the City and the Department of Health, and looking to see how we can be collaborative to come up with a solution. She said that she thought the discussion tonight has been positive and by the attendance and questions, everyone is showing that it is one that they wanted to have. She asked Ms. Cremona if the Public Health Department would like to be part of another discussion if one does take place and Ms. Cremona said, yes, they are always willing to come and be part of the conversation and offer anything they can. Mrs. Holtzmeier stated that what she heard a lot is that education is an

important component of this as well as giving parents the ability to make some decisions about their own kids and how do we define vaping in a community.

Mr. Radcliffe stated that the starting point for going on is to help benefit the community, schools, and parents so we absolutely want to continue. Mrs. Holtzmeier asked if they were clear on what they want to see happen in those next steps? She noted that Mr. Moore had said that he wanted to have some discussion about smoking in parks and we were not able to cover that tonight. She asked if he was still interested in discussing that and Mr. Moore answered, yes, as he has seen vaping in the parks where he has taken his son and he has asked about it. Obviously he does not want his son to be doing that, and it is a bad influence when he sees these older kids doing it. The question was asked if we were talking about vaping being illegal in City parks or is it only smoking cigarettes that is illegal? Mr. Gasior said he believes that our current Ordinance prohibits smoking on any City property. Mr. Radcliffe said, so we need to define if vaping falls under the Ordinance and he thought that is one of the next steps for Mr. Gasior to look at.

Mr. Gasior corrected what he had said about prohibiting smoking on any City Property. Ordinance No. 14-97 prohibits smoking in municipal buildings. The Ordinance also says that a no smoking area may include the entire place of public assembly, which could be a park. Mr. Gasior said that he has to look at State law. Where the State has decided to legislate in this area, we may be limited as to what we can do and he will find that out.

Mr. Radcliffe adjourned the meeting at 7:15 P.M.

Transcribed by Gail Hayden, Assistant Clerk of Council