

SAFETY COMMITTEE MINUTES

September 14, 2010

The Safety Committee meeting was held on September 14, 2010, at North Royalton City Hall, 13834 Ridge Road. The meeting was called to order at 6:30 p.m.

PRESENT: Committee Members: Chair Dan Kasaris, Vice Chair Gary Petrusky, Larry Antoskiewicz; Council: Vince Gentile, Paul Marnecheck, Don Willey, John Nickell; Administration: Police Chief Paul Bican, Fire Chief Mike Fabish, Safety Director Bruce Campbell, Assistant Prosecutor Donna Vozar; Police Department: Detective David Sword, Detective John Barsa, Officer Glen McGraw.

APPROVAL OF MINUTES

Moved by Mr. Petrusky, seconded by Mr. Antoskiewicz to **approve the July 13, 2010 Minutes.** Yeas: 3.
Nays: 0. **Motion carried.**

UNFINISHED BUSINESS

1. Staffing in the Police and Fire departments

No update.

2. Retirement Planning in the Police and Fire departments

No update.

3. Ambulance Transport Fees

Mr. Campbell said this was brought up to compare what the city currently charges for transport fees compared to other communities. He said he believes we are low on the mileage portion of the transport fees. Mr. Campbell said we currently charge \$400 and some other communities charge between \$700 and \$1,000. He said we also want to look at the input from the Chief's assistant, Kathy Salvo, who handles all of this for the Fire Department. He said she is also the expert in Medicaid and Medicare reimbursement. Mr. Campbell said on our Advanced Life Support (ALS) we charge \$450 and on our Basic Life Support (BLS) we charge \$350 which he feels is pretty relevant. Mr. Willey asked if we have ever raised our rates. Chief Fabish said we may have raised the rates by \$50 at one time, but that was several years ago.

Chief Fabish said North Royalton is a community that has two levies that support the Fire Department. He said when they talk to residents about their portion of the bill they use what they refer to as a soft policy which means they try to explain to residents where the dollars collected are going. Chief Fabish said their policy states that if residents are opposed to the charges and they are willing to describe why they are opposed, they can document that in a letter to the Fire Department and they will in turn attach that to the squad report. Chief Fabish said he feels we can take a look at the mileage and maybe impose a slight increase but he is concerned that there might be a risk since we do have the support of the levies. He said he does not want to shift more of the mileage burden to residents because of their 20 percent co-pay. Chief Fabish said he is pretty comfortable where we currently are. He recommends that we review this very cautiously.

Mayor Stefanik said we are not reviewing this information to raise rates. He said we just want to stay competitive with other communities. He said we raised cemetery fees last year because we needed to update the cemetery. He said we are not doing this to gouge our residents. Mayor Stefanik said the cost of fire prevention has gone up as well. He said we had a lot of runs last year and that is a lot of wear and tear on the equipment. Chief Fabish said the money we collected has been reserved for Capital Improvement in the Fire Department. He said the Fire Department has money budgeted for a squad this year. Chief Fabish said they try to let residents know that the money they pay for their co-pay is reinvested into the Fire Department.

Mr. Kasaris asked Chief Fabish if he can put together a revised fee schedule and bring that to the next meeting.

NEW BUSINESS**1. Oil and gas well safety forces response**

Mr. Kasaris asked Chief Fabish what the plan is when the Fire Department receives a phone call regarding an issue with an oil well. Chief Fabish said with any fire their number one responsibility is life safety. He said the firefighters survey the situation, assess whether it is going to be an aggressive attack or a defensive operation. He said their secondary mission is to protect property. Chief Fabish said there are a number of gas transmission lines running through North Royalton, but people keep focusing on the gas and oil wells in the city. He said he is not saying that this is not an additional feature for the Fire Department, but said the riskiest time is during the actual drilling process. Chief Fabish said the Fire Department is as prepared as possible. He said if they get a call they are going to assess what the situation is. He said if this is a defensive operation, they will contact mutual aid immediately and if they have to evacuate, they will evacuate the area immediately.

Mr. Kasaris asked what would happen if there was an explosion at Valley Vista. Chief Fabish said we would evacuate the area. He said the Fire Department would confer in a unified command approach with the Police Department and contact the well driller. He said if there was an actively burning fire, they would not be able to do anything until the oil well driller and his technical team arrived. Chief Fabish said they will deal with the issues as they are happening around them.

Chief Bican said the Police Department and Fire Department's response revolves around each individual incident.

2. Radio Communication System

Mr. Kasaris announced that Mr. Campbell secured a grant for a radio communication system. Mr. Campbell said he has been working with members of the Cuyahoga County Communications Committee who have been working on a multi-year project trying to provide inner operable radios over the last several years. He said he started attending their meetings and subsequently requested an application to get funded. He said the nice thing about this committee is they are not funding with money, they require cities to go out for Request for Proposals for purchasing. Mr. Campbell said the committee gave us the equipment. He said the equipment is top of the line equipment. Mr. Kasaris asked if we need anything in addition to the equipment we received in order for these to work. Mr. Campbell said there are some pieces that still need to be purchased. He said he and Chief Bican attended a meeting and applied for money through a grant where they anticipated receiving \$10,000 and actually received \$100,000 which is more than enough to purchase what they need. Mr. Kasaris asked if he will need any additional money from the General Fund. Chief Fabish said they may have to because they are members of the Southwest Regional 800 System. He said he suspects that they may have to pay to have users on the system. Mr. Campbell said we will not need any additional money for hardware.

Mr. Kasaris asked when we will start programming these radios. Mr. Campbell said we will have to wait until we can sit down with the police officers to get them involved as well.

Mr. Campbell said there will be an annual user fee that we will have to pay. He said we will probably have to subscribe to a statewide program called MARCS (Multi Agency Regional Communication System) which will be in place for disaster purposes.

Mr. Campbell said these radios meet the FCC requirements that will go into effect on January 1, 2013 and it will also give the police officers the capability to click over and talk to the Fire Department or a policeman from another city if necessary.

This item can be removed from the agenda.

3. Entertainment Devices/Arcades – Ordinance 10-104

Mr. Kasaris announced that there were a couple of detectives in attendance to discuss the entertainment device ordinance chapter. He said he asked that this ordinance be placed on the Safety Committee

agenda because he would like input from the Police Department and Law Department prior to Council considering this legislation.

Mr. Kasaris said he believes Chapter 810 which deals with amusement devices applies in this situation and feels this is the section we should look at possibly amending, however when he was reviewing Chapter 878 he believes that if the city does pass such an ordinance it could place us at risk of liability.

Mr. Kasaris noted that there are several discrepancies in Chapter 878 including the fact that schools and churches are considered in the chapter but day care centers are not. He said he does not see much of a difference between a school and a day care center. He said Section 878.06c states that the Director of Public Safety can dismiss a complaint filed by an individual, but the next section states that the Building Commissioner can dismiss a complaint. Mr. Kasaris said that Section 878.06a states that the Building Commissioner needs satisfactory proof that violation of the laws of the state, ordinances of the City of this Chapter occur on the premises. He feels this should be re-worded so it is clear as to what satisfactory proof means. He also questioned whether there is a fee to have the Fire Department inspect the premises which cannot be in a bar or within 500 feet of a bar. He said the licensing process requires a photo ID and suggested that a state ID be required. Mr. Kasaris also discussed Section 878.08j which states that RITA has the authority to revoke a license. He said he is not sure that RITA does have this type of authority. He also discussed the prizes that have been contemplated. He said he believes if the prize is cash and in excess of \$10 this may run a foul of the gambling code.

Mr. Kasaris said there are two experienced detectives in attendance who have been trained in the gambling code and liquor law. Mr. Kasaris said he would like to hear from Detective John Barsa, Detective David Sword and Chief Bican to see how they feel about Chapter 878.

Chief Bican said he agrees with Mr. Kasaris that there is confusion when listing both the Building Commissioner and the Director of Public Safety in Section 878.06a. He said we should list one or the other. He said his concern with the ordinance, although he feels the intentions are good, is that if the city goes ahead and develops the procedures and policies for approving a license it may hinder the Police Department's ability to enforce the gambling laws. Chief Bican said if this law is implemented he feels the \$50 penalty is not sufficient as this is lower than the cell phone ordinance fine. He said if we are going to implement a fine it should be stiffer so that someone may be more likely to follow the Code. Chief Bican asked that Detective Barsa and Detective Sword give more insight to these establishments.

Detective Barsa said we do not want to get into a situation where the city issues a permit for this type of establishment then we shut it down as this could be construed as entrapment. Detective Sword said their concern is with Section 2915 of the Ohio Revised Code, specifically Section 2915.02 which defines gambling. He said in gambling there are either games of chance or skill based games. He said these definitions have been changed over the years because these businesses state that these games are games of skill, not games of chance. He said if these establishments operate under a game of skill, people can win prizes instead of cash. He said a game of chance is more of a gambling type situation. Detective Sword said this is not allowable in the State of Ohio unless it is for a charitable organization. He said in the past the city has had to enforce the gambling laws when it came to instant bingo parlors and other such facilities.

Detective Sword said the Police Department is concerned about exactly how these café's will be run. He said that there have been two rulings so far in Ohio; one in Toledo where the court ruled these internet café's are not gambling and are not violating the statutes in the State of Ohio. He said in the City of Akron, the Akron Municipal Court ruled and convicted a woman for her role in opening up an internet café. Detective Sword said due to the controversial rulings on this issue, it is going to take a lot of research to determine whether or not these establishments should be allowed in the city.

Mr. Antoskiewicz asked Detective Sword if he has contacted the Attorney General's Office. Detective Sword said the Attorney General's Office has no ruling or opinion on this. He said he was told that when the state changed the laws in recent years they never named a regulatory agent for the State of Ohio as to who would oversee or enforce on the state's behalf what was going on. He said due to this, the Attorney General has left it up to the municipalities to determine what is appropriate.

Mr. Kasaris asked Detective Barsa if he contacted the County Prosecutor's Office. Detective Barsa said he contacted the County Prosecutor's Office and the Financial Crimes Unit. He is expecting a call back as no one was available at the time of his call.

Sergeant Glen McGraw said he and Detective Barsa dealt with two of the gambling establishments in North Royalton about six years ago and said after investigating the establishment on Wallings Road, it was determined that it was run by Hell's Angels. He said the situation with the establishment on Ridge Road was similar in the respect that it was a bogus charity and the money went to various individuals on the east side of Cleveland. Sergeant McGraw said they are very concerned where the money from this type of establishment will go and also concerned that if the city permits this type of business, and then goes in and shuts it down six months later it may cost the city a lot of money. He said the Police Department would rather look at this from a criminal standpoint rather than from a licensing standpoint. He said they have probable cause that they follow in the Ohio Revised Code as far as what gambling violations are and if they have probable cause they can go in and shut these businesses down. He said in the end it will cause a lot of aggravation for the Police Department, the city and the residents. Sergeant McGraw said at this point they are not sure if licensing these establishments is the best way to go.

Mr. Antoskiewicz asked the detectives if they have talked to officers in other communities where these businesses currently exist. Detective Barsa said he spoke to a Lieutenant in Strongsville who told him that two companies have applied in their city and said after reviewing the situation they decided that they would not grant them a permit. Mr. Antoskiewicz asked if we do nothing to deter this type of business coming into the city and this type of business does open up, will the Police Department be there the next day to close them down. Detective Barsa said it will take some time to investigate, but if they find ORC violations, they will shut the establishment down. Mr. Antoskiewicz asked what happens if this type of business opens up and we find that there is nothing legally the Police Department can do to stop them because they are not violating any of the rulings. Detective Sword said the Police Department reports to the ORC and will charge on the ORC if it is a gambling violation. He told Mr. Antoskiewicz these are questions that need to be directed to the Law Department. Mr. Antoskiewicz said he is concerned because if these places are legal, and there is nothing that states they are not legal, he wants to make sure there is something we can do to keep them in a proper area. Chief Bican said these establishments are illegal in his opinion.

Mr. Willey asked if some of the concerns above can be addressed during the application process. Chief Bican said these establishments do not consider this type of business gambling.

Mr. Gentile said he feels we should amend Chapter 810 and redefine the definition of gambling to include these internet café's and not allow them into the city, or we can adopt something that would allow this under certain circumstances, other than a charitable organization, but take a look at our tax code and start taxing gambling winnings. He said some cities have embraced these businesses as a way to raise revenue. Mr. Willey said he concurs with Mr. Gentile and said we should take the approach to outlaw these establishments altogether and if they challenge us we will go from there. Mr. Petrusky feels we should just amend Chapter 810.

Mayor Stefanik said these internet café's were brought to his attention a couple of months ago. He said at that time the Law Department and Mayor's of various cities got together to see what they could do to prevent this from happening in their cities. He said this all goes back to the Attorney General's Office because they are not saying it is legal and they are not saying it is illegal. He said they are not giving the

municipalities the tools to shut these places down. Mayor Stefanik said he does not want to see these places open up in North Royalton. He said there is a misconception that he and the Safety Director were drafting this legislation to permit these café's. He said that is far from the truth. He said due to the inaction from the Attorney General's Office, what they want to do is regulate it at this point. He said their hope is that the Attorney General's Office will realize that this is gambling.

Mr. Kelly said these establishments are new to the area and relatively new to the state. He said being the new business model that it is it has a variety of appearances. He said whether gambling is prohibited by the ORC will be investigated by our Police Department and they will bring to the Law Department what their findings are and the Law Department will determine whether or not charges will be filed. Mr. Kelly said until we have definitive information as to whether or not these establishments are illegal, we cannot do anything. Mr. Kelly said we do not get to decide what is gambling and what is not gambling, we are preempted by the State of Ohio.

Mr. Kasaris asked Mr. Kelly if he feels the applicant who is interested in opening up this type of business in North Royalton could fall into Chapter 810 having to do with entertainment devices. Mr. Kelly said part of the reason we did not want to go under Chapter 810 is because we anticipate that sooner or later the state will make a determination whether to regulate these businesses or outlaw them. He said if they outlaw them we can repeal Chapter 878 and will not have to touch 810. He said if they regulate them then we are preempted and we can repeal Chapter 878 as necessary. Mr. Kasaris said if we use Chapter 810 and we make this applicant follow these rules and it is determined that this is gambling it will have to stop without touching Chapter 810. He feels Chapter 810 already covers this type of situation. Mr. Gentile said the city does not have to regulate this type of business in the city. He said if the state comes back and states that this type of business is legal, we cannot prohibit what the state permits, but currently they have not made any type of determination. Mr. Gentile said he would prefer not to allow this type of establishment in the city. Mr. Kelly said he does not know if any municipality has the right to declare any business illegal.

Mr. Petrusky asked if we can increase the taxes so that these businesses do not want to come into the city. Mr. Kelly said the problem is that we cannot apply a specific tax to one business. Mayor Stefanik said Garfield Heights raised their per fee rate per machine and they are now in a lawsuit. He said Brookpark did something similar to try keep these businesses out of their city.

Mr. Antoskiewicz said the issue becomes, either through Chapter 810 or the new ordinance, are we going to regulate where this type of business will try to open within the city. Ms. Vozar said when Detective Barsa was discussing the gambling cases we had in the city a while back, and how successful we were, she said at that time we had the Attorney General's Office standing by us agreeing that this was gambling. She said now we do not have the Attorney General's office standing behind us. She said there is a big difference between where we were then and where we are now. Ms. Vozar said even though we have Chapter 810 she feels we should have something more specific. She said she has a very specific ordinance from the City of Elyria that she will forward on to Council.

Mayor Stefanik said we may want to consider moving this establishment to the Industrial Park. He said he is concerned that if we do nothing, the first one may open up at the old Arabica. If we cannot find anything wrong with these places they will be popping up all over the city.

Mr. Gentile said some people view these entertainment devices as gambling and some people feel it is not. He feels that because the Attorney General's Office has not yet done anything with this, under our home rule we have the ability to define it as gambling and amend our Chapter 810 to include it as prohibited in the city.

Mr. Kasaris said assuming Chapter 810 applies these businesses can go into any General Business District. He asked Ms. Vozar if she could draft legislation amending Chapter 810 to regulate the zoning. Ms. Vozar said she will have draft legislation for Council prior to the next Council meeting. Mr. Gentile

said we have an applicant that Mr. Alvarez will have to respond to within the next two and a half weeks. He said this will have to go through the Safety Committee, Building and Building Codes Committee and adopt something at the September 21st Council meeting. Mr. Kelly said the applicant has rights too. He said the Law Department will do their best to provide Council with some type of appropriate legislative response that will restrict the location of these amusement experiences to a particular zone. He said there is a mandatory referral to the Planning Commission so he is not sure if this will pass before it goes to the Planning Commission. Mr. Gentile said it will have to go to the Planning Commission for zoning purposes but if Council changes the definition of 810 and not deal with zoning it will not have to go through the Planning Commission.

Mr. Petrusky said 878.04 states that an entertainment device arcade may be located in a shopping center district location. He asked if there is contradiction between Chapter 810 and Chapter 878. Mr. Gentile said there is contradiction because 810 says no and Towne Center District permit use says yes according to Mr. Alvarez. He said we need to decide at the Council meeting on September 21st if we are going to prohibit or restrict this type of establishment within the city. Mr. Kelly said he does not know how the Law Department can draft legislation prohibiting a legal business. He said restrictions are appropriate when they are applied and are in the best interest of the community consistent with the public's health, safety and welfare. He said we may be able to restrict by zoning to certain locations but that is not the case here. Mr. Kelly said we cannot prohibit a business just because we do not want that type of business in the city.

Mr. Kelly said Chapter 878 was a work in progress. He said this was something that was drawn up to give Council a chance to regulate these businesses. Mr. Kasaris asked if the applicant that applied to operate one of these businesses in the city currently falls under Chapter 810 and he wants to open up at the old Arabica. Mr. Kelly said yes. Mr. Kelly said Mr. Alvarez has the authority to deny that application based upon his interpretation supported by the Law Department. He said Chapter 810 would prohibit this type of business within the DCD3 District. Mr. Kasaris said he would rather draft another chapter then discuss this again. He said he agrees with Mayor Stefanik and Mr. Antoskiewicz that we should move this facility to the Industrial Park. Mr. Willey disagreed. He said he does not believe this would be a good place to have one of these establishments.

Mr. Antoskiewicz would like to see if we can come up with a draft that would be easier for Mr. Alvarez to follow. He said he would like to work through this process and get it done the right way.

Mr. Kelly said there is no consensus on Chapter 878 therefore Chapter 878 does not appear to be moving forward. He said if only Chapter 810 exists Mr. Alvarez will have to rely upon that. He said there is a possibility that Mr. Alvarez will not approve any application in a DCD District for an amusement experience because it is not permitted. He said if the applicant wants to move to some other location where it is permitted that is up to him.

Mr. Gentile said if the Law Department can draft another version of Chapter 810 or another piece of legislation and get it into Council's hands we can move forward with something on Tuesday. Mr. Kasaris said we do not have to move forward on Tuesday since we have Chapter 810. Mr. Kasaris said he does not want to rush into something. He said this is something that should be reviewed and discussed with the Police Department, Mayor Stefanik, and Mr. Campbell.

Mr. Gentile said he feels Chapter 810 leaves loopholes open. He said he does not want to vote for something that is going to permit these businesses into the city.

Mr. Kelly said his understanding is that there is some consensus to restrict this type of business to the Industrial Park. He said if this is the case we are amending the Permitted Uses under the Industrial Zoning Section to specifically exclude that use from other districts.

Mr. Kelly said the priority for the legislation that he and Ms. Vozar will be working on include restricting these establishments to the Industrial District. He said the second priority is the regulatory piece which is covered under Chapter 800. Mr. Kelly said they will draft a second piece to that and Council can pick and choose which they want to use.

ADJOURNMENT

Moved by Mr. Petrusky, seconded by Mr. Antoskiewicz **to adjourn the meeting**. Yeas: 3. Nays: 0. **Motion carried**. Meeting adjourned at 8:10 p.m.