

City Council Meeting Minutes
March 23, 2017
Special Session
5:30 p.m.

The Xenia City Council met in a Special Session on March 23, 2017, at 5:30 p.m. in the City Council Chambers, City Administration Building, with the following members present: Wesley Smith, Edgar Wallace, Dale Louderback, Sarah Mays, Jeanne Mills, Marsha J. Bayless, and Michael D. Engle.

Special Events Alcohol Policy: Mr. Merriman said there was a fair amount of dialogue regarding the Special Events Alcohol Policy at the last Regular Session meeting, and he has been asked several times why the City is pushing the issue. He did not think Council was pushing the issue, and staff was not pushing the issue either. Rather, they are addressing requests made by various organizations over the last three years. Staff felt it was their obligation to bring the issue before Council to make an official policy decision. There were a number of requests regarding the policy at the last Council meeting, which staff attempted to address with assistance from the Law Director. The Law Director incorporated specific considerations as directed by Council, which have been highlighted in the attached policy document provided in the agenda report. Information from the Attorney General's Office was also included that speaks to the broader responsibilities and implications related to a host of alcohol-permitted events. Specific guidance, general Q & As, and the permit schedule from the Department of Commerce, Liquor Control Office, were also included in the agenda packet. The Law Director and staff feel the F Permit would likely be applicable to the types of events the City would limit alcohol sale and consumption, which is a fairly simple and non-descript permit. Mr. Schierloh noted the information provides a number of variations the organization would have to seek approval for and receive as part of the process. Since staff did not have a full understanding of the groups interested in obtaining a permit, the information provides a wide range of permits available.

Mr. Merriman said XPD Sgt. Beegle is the Command Officer liaison for special events, he is very involved in many of the City's festival-type events and the security implications involved, and he was present to answer any concerns or questions from a law enforcement aspect. He said Sgt. Beegle is also intricately involved in the Greene County Fair; principally, he coordinates the beer sale function at the fair. Therefore, he can speak from an organizational oversight and experiential standpoint regarding the issue. Staff wishes to have a very concentrated discussion on the issue with Council before recommending taking a definitive action to either approve the policy or not. Mr. Schierloh noted for those who were not present at the last Council meeting, the revised policy includes an expiration date for the policy as requested by Council. The addition was made with the understanding that this is just a trial phase to see if it will draw interest into the City, and if there are collaborators that want to provide this option for the benefit of the City and the recreational activities it provides. The policy includes a provision that identifies two major events that would be used for the trial phase of the policy, while providing experience to the residents. The policy has an expiration date, but Council can direct staff to address further action after the expiration date if they choose.

President Engle asked Sgt. Beegle if he wanted to address any specific points or experiences that would be helpful to Council. Sgt. Beegle said he had a brief conversation with Chief Person, and

he was not opposed to the idea; XPD deals with alcohol nearly every day in their duties. From the Fair Board point-of-view, he said there has only been one problem out of 10,000-15,000 people per year since the fair started selling alcohol five years ago, and that one problem was a problem before he ever showed up because he was intoxicated prior to arrival. The Fair started off with very strict limitations, but they have eased up over the years due to a lack of alcohol related issues. Consumers are not able to walk freely around the fair, but they can purchase and consume beer in the designated beer garden and grandstand area. He has not read the proposed policy, but he recommended a beer garden area to designate that the alcohol has to be contained within that area at all times to be controlled by one police officer at the gate. Mr. Schierloh noted one of the rules of conduct listed in the policy states the sale of alcoholic beverages will only occur at specific designated areas at a scheduled event, and staff will work with the collaborators and police to identify those areas prior to the event. Sgt. Beegle said the applicant has to present a site map of the property to indicate where the beer will be sold as part of the liquor permit process with the state agency, which will be the only location the beer can be sold once the permit is approved. Additionally, all liquor permits have to go through the lead law enforcement officer of that municipality, which is the Xenia Chief of Police in the city limits or the Greene County Sheriff (for the Fairgrounds). The Fair Board has not had a problem with the sale of beer at the fair despite a lot of naysayers in the beginning. They netted approximately \$3,000 the first year, which has increased each year thereafter to approximately \$20,000 per year if they have bigger entertainment events.

President Engle said a cut off time is listed in the revised policy for a sunset clause on the sale of alcohol that may be permitted at any particular event. Mr. Schierloh said the revised policy includes a provision that all alcohol sales must cease one hour prior to the end of that scheduled event. Sgt. Beegle said they instituted a similar practice at the fair, and beer sales are shut down approximately 30 minutes before the fair closes, which allows time to get everything locked down, people to finish their final drinks, and to get everyone moved out with the rest of the crowd when the event is over.

Vice President Smith asked what would happen with beer sales if the Community Festival event is moved back downtown. Mr. Merriman said it is a good question, but he thinks the organizers plan to remain at Shawnee Park and the policy restricts the sales only to Shawnee Park. Mr. Schierloh said the policy could be modified. Staff is seeking two actions to put the policy in place as well as a motion suspending enforcement of the ordinance that prohibits the consumption, sale, and distribution of alcohol on City property.

Mayor Bayless said in talking with surrounding communities, she found that Fairborn has already implemented a similar policy, and they require the business/organization to pay the cost of police presence. She asked if the revised policy addresses that issue. Mr. Merriman said if Council recalls, they had a discussion about special events and any additional costs associated to staffing for the special events being charged back to the organizers; therefore, if a XPD is required to be a part of the security detail, then the cost would be charged back to the organizers pursuant to the Special Events policy. Fairborn had this conversation in 2015 and laid out similar provisions in their ordinance. Beavercreek's circumstances are different because some of their venues, such as the golf course, allow the sale of alcohol on public property for certain events in certain locations. Some communities around Dayton allow the sale of alcohol while others do

not; he noted Miamisburg allows limited sales of certain types of alcohol for consumption at outdoor events or performances. There is a mix across the board.

Councilman Louderback apologized for being absent at the last meeting and asked which two events are being considered for alcohol sales. Mr. Merriman said the two specific events discussed within the context of the policy are the Criterium and the Community Festival, but as of right now, the Criterium event will mostly likely not occur this year because the organizers have not been able to get the event on the State's schedule for this year. Therefore, this policy will essentially only be effective this year and only for the Community Festival. Councilman Louderback said he had a long conversation with a lady whose mother originally donated a large amount of money to Shawnee Park, which she believed included a prohibition to sell alcohol at the park. He did not know if it is true, but he wanted staff to be aware. Mr. Merriman said he did not know if there is some kind of covenant as part of that donation, and he was not sure where to look for that information. However, it is worth looking into and staff can conduct some research. Councilman Louderback said he will ask the lady to call Mr. Schierloh.

Councilwoman Mays said if an event is relying on alcohol sales to 'save' the event, that it is a huge red flag to her. She understands that alcohol sales could benefit an event financially, but she asked what, if any, is the benefit to Xenia. Mr. Merriman said in his capacity, he was not formally advocating the policy; however, he will relay what he was told, which is the organizers feel it is an additional amenity that is not currently provided at other similar events. They see it as an opportunity to draw a more diverse crowd, and perhaps most importantly, an opportunity as an additional revenue stream for the festival to help them reinvest in the event. The entire operation would be permitted under the City but not administered by the City; it would be administered by the private organization under the provisions of the policy and would have to be separately insured and the City be indemnified under that policy. The City would have the ability to provide oversight and regulate it but would not actually be selling the alcohol. Again, they feel it is an opportunity for a revenue stream that could then provide resources back into the programming for the festival.

President Engle said in regard to Councilwoman Mays' question about what is in it for the City, there is nothing in it for the City. He was not speaking in favor or opposition of the policy at this time but would suggest that Council is stewarding and shepparding for the City, while also attempting in many different ways to assist volunteer groups to be better able to deliver these kinds of events for the community in a robust or more robust fashion. The organizers see this as an amenity that could bring additional revenue to them, which will then further their ability to host the event in following years. Mr. Merriman said it is important to note that the organizing committee is a 501(c)3 not-for-profit tax status under the IRS Code. They operate under the auspices of the Chamber of Commerce, which occurred a number of years back; therefore, any proceeds from this cannot be for individual profit. In fact, the permit they would be seeking prohibits individual profit—there are statutory guidelines in addition to local expectations that prohibit individuals from making a profit. Sgt. Beegle said historically, one of the Criterium's biggest sponsors is Heidelberg.

Councilwoman Mays said she genuinely understands the distinction that is being made; however, her concern is that most people who have not sat through the Council meetings will go to the festival and hear "Xenia Community Festival" and think it is Xenia's event rather than one of the

Chamber's events. She is concerned that it will appear that Council is endorsing the policy in the middle of a drug epidemic. She is not anti-alcohol, but she did not understand why the City would want to put their name on something like this when anyone can walk to a nearby bar to get a drink, which would not be "city-sponsored." She recognized the Community Festival is not city-sponsored, but she feels it will have that appearance to the public. Mr. Schierloh said he cannot agree or disagree with her comments, and that is one of the considerations that Council has to make. As Mr. Merriman said earlier, staff is not advocating or trying to talk Council into something. Staff is just trying to give an option if Council should choose to allow these types of alcoholic beverages to be sold at limited events. President Engle added it would be a trial run for just this year. Mr. Schierloh confirmed. Staff feels they have done their due diligence by looking at regulations, talking with police and fire, etc., to make sure the policy is adequate and safeguards not only the interest of the City but also the interest of the event itself before they presented it to Council.

Councilman Wallace said his one concern with the previous policy and the revised policy is the \$125 permit fee, which is the only direct revenue the City will get out of the deal. Staff has spent a lot of time on this issue, and the nominal amount did not seem sufficient. He suggested the fee be increased to \$500 if the policy is approved. He agreed with Councilwoman Mays that if the festival is called the Xenia Community Festival, then it makes it sound like it is a City event.

Councilwoman Mills asked who would ultimately be responsible if there was an incident. The event is not hosted by the City but it takes place in a City park. Sgt. Beegle said the Fair Board called their insurance company before they started selling alcohol and ultimately had to increase their policy. However, from the standpoint of the XPD, the totality of the incident would have to be considered, i.e., did the person show up to the event intoxicated, etc. People are not going to plan their night around coming to the Xenia Community Festival to get smashed. The Fair Board has had some pretty large concerts with very few problems. Mr. Schierloh agreed it would depend on the type of incident that occurs. If someone were to drink to an excessive level and get hurt from tripping over something, he did not think the City would be responsible. If someone were to drink to an excessive level and trip over some defect on the property that the City is supposed to maintain, he did not think the City would have any liability. If someone were to do something that would harm another individual while under the influence of alcohol, he still did not think the City would be liable. Councilwoman Mills said the fair is different because it is a County Fair on County property. Sgt. Beegle said Greene County does not own the property; it is owned by the Greene County Agricultural Society.

Mr. Merriman said the City's policy as well as the permit language sites that a responsible party has to be identified, and that party is responsible for any inadvertent sales to minors, for cutting off people who appear to be inebriated, etc.; therefore, they have specific responsibilities. Montgomery Insurance is the City's local broker through PEP, and he spoke with Brad Montgomery a few weeks ago. Mr. Montgomery emailed his response, which read, "*Per our recent discussion on alcohol consumption on City property, the main exposure to loss would be with the vendor who is serving under the Liquor License. The vendor would have primary liability and responsibility for their operations. The City should obtain a Certificate of Liability [which would be required by the City] and be named as an additional insurer [which is also stated in the policy] on the insurance for the vendor. The City would still be covered by the PEP insurance policy should a claim or suit arise out of the vendor's operation on City property. All*

descriptions of coverage are subject to the actual policy contract language.” Mr. Schierloh clarified that the City is named as additional insured under their insurance policy to make sure the City is not only covered under its own umbrella but also under the vendor’s policy. Sgt. Beegle said they do not actually touch the alcohol through the Fairgrounds because they contract it through an organization. Everyone of the organization’s people are trained through the State of Ohio in regard to the pouring of alcohol, detecting already intoxicated individuals, when to cut people off, etc., which has really helped the Fair Board. Mr. Merriman said Mr. Montgomery also advised that it would be appropriate for the liquor vendor to have specific liquor liability coverage as part of the City’s administrative oversight. He noted most restaurants or other types of vendors probably already have that liquor liability insurance, but it would be another required box to be checked with regard to the City’s policy.

Vice President Smith asked if the fairgrounds sold alcohol at other events besides the Greene County Fair. Sgt. Beegle said yes, which include events for Ducks Unlimited and the National Wild Turkey Federation; beer is sold inside the Assembly Hall only, and they have to obtain their own Liquor Permit. However, liquor is permitted to be sold at any given point on the fairgrounds. If someone is renting the fairgrounds, then they are permitted to sell beer. For instance, Hamvention people drink a lot of beer; therefore, they will have four beer tents, and patrons will be allowed to walk all over the fairgrounds while drinking beer. Mr. Merriman said that is not what staff is recommending for the Community Festival. President Engle asked if those guidelines were set forth by the Sheriff’s Office and the governing body that would be overseeing that event. Sgt. Beegle said the Sheriff does not get involved because the County doesn’t actually own the property. Mr. Merriman noted they do sign off on the events though. Sgt. Beegle confirmed. He noted their policy for the Fair is working, and they have no intentions of allowing individuals to carry or consume alcohol throughout the fair anytime in the future.

Councilwoman Mills noted some events provide wristbands or a limited number of tickets for the purchase of alcohol, and she is concerned that people will share their tickets with others. Sgt. Beegle said they offer wrist bands for larger events but not the smaller events. Additionally, the issue with transferring tickets goes back to who is pouring the beer; if they are trusted, then there won’t be a problem. Councilwoman Mills asked if they are accountable to the Ohio Division of Liquor. Sgt. Beegle and Mr. Merriman confirmed. Mr. Merriman said they are also accountable to the event organizer under their permit. Under the policy, the City would obtain the authority to shut down the sale at any point.

Mayor Bayless asked how St. Brigid handles their events. Sgt. Beegle said they have to obtain their own liquor license through the State then run the liquor permit through Chief Person. If they give beer away, they do not need a liquor license; however, if they are selling it, a liquor license is required. Sgt. Beegle added St. Brigid runs their permit through the Chief’s office. Again, it is an event that is in the City, but it is also held on their own private property. The XPD has never responded to an alcohol-related incident at St. Brigid.

Mary Burr, 1404 N. Regency Drive, Community Festival organizer, said she has attended St. Brigid’s Fish Fry, and they wristband people when they enter. The sale and consumption of beer at St. Brigid’s festival is contained in a specific area. She then distributed maps showing where the proposed beer garden would be located in Shawnee Park for the Community Festival. She noted the beer garden may be enclosed to prevent anyone from leaving the area with alcohol.

President Engle said they have another issue to discuss; therefore, they should bring the alcohol policy discussion to a close. He asked if the motion should be made during the open Regular Session. Mr. Schierloh confirmed. Mr. Merriman said he would initiate the item during the Regular Session meeting.

A gentleman from the audience asked to address Council. President Engle permitted him to briefly address Council.

Ronald Dodge, Allison Avenue, said he listened to the comments, but he wanted to ask why Council is considering the issue and wondered if it was about making money. He asked why drinking needed to be at everything. He did not understand that way of thinking. A festival at the park is at a park, and he wondered why people cannot have family events without drinking. Smoking is bad, but alcohol is leading to other issues. The more it is made available, the higher the risks. There are only two family restaurants in Xenia that do not offer alcohol, and seven or eight that serve drinks. People can have family fun without having alcohol. Alcohol is an epidemic, and it is getting out of hand. People do not have to drink in order to have fun. There are so many issues with kids drinking and driving. Why can't Xenia be different? Bellbrook put in a beer garden after 47 years. Dayton is going to have a man riding around on a bicycle that allows people to ride and drink at the same time. How far will it go? He was surprised there are not more audience members at the Special Session to oppose the issue; no one wants to say anything anymore. He thanked Council for their time.

Marijuana Moratorium: Mr. Schierloh said over the past few years, the introduction of legislation that allows for medical marijuana uses in Ohio has surfaced. The rules guiding this implementation should be in effect by September 2017 and has to do with how doctors can administer marijuana to patients and under what rules they can do it, which included dispensaries and cultivators. The purchase and use of medical marijuana in Ohio is expected to begin by September 2018. The legislation gave cities the unique authority to ban cultivators, processors, and dispensaries within their city limits, if they so choose. Staff has discussed the issue with the City Manager's Office and City Planner's Office, and they are proposing that City Council consider such a ban within the City of Xenia limits. If Council recalls, a moratorium was in place to prevent people from applying for certain applications to install a dispensary within the city limits, which has now expired, and it is time for Council to take further action. Staff's recommendation is to put forth a ban through an ordinance to prohibit dispensaries, cultivators, and processors within the city limits. He noted his recommendation was influenced by his recent family trip to Colorado where he observed marijuana dispensaries located nearly every 20 feet, which he found to be quite an eyesore and interfered with the beauty of the natural scenery.

Mr. Merriman said staff has discussed the issue with the Police Division and Planning Department and determined the only potential benefit would be economic, but it would not be a positive benefit for the City of Xenia. If Council directs staff to move forward with developing legislation for a complete ban, it did not prevent Council from changing their minds at a later date. Staff's recommendation is to take a definitive action on the issue, move in a direction that the community seems to be desiring, and revisit it sometime in the future if necessary.

Mr. Schierloh said he looked at a lot of articles, literature, and research pieces that talked about how medical marijuana can be a real benefit to Veterans who suffer from various anxiety-related disorders. Additionally, he looked at studies that show allowing medical marijuana, and in some states recreational marijuana, have shown to actually decrease the opioid addiction that most communities are facing. However, the Federal Government through the DEA has claimed a lot of these tests are unreliable, and marijuana is still a Schedule 1 drug under the Federal Government criminal guidelines. The previous administration was a little lax on enforcing marijuana-type offenses; however, it is his understanding that the current federal administration will be stricter as it pertains to enforcing these offenses. That in and of itself presents a challenge to the Police Division when they find marijuana on a person.

Councilman Louderback said he polled some citizens in the community and has determined that the marijuana issue is a no brainer, and the City did not need it. He also talked to several different drug counselors and found that medical marijuana helps some people who are ill, but it can also lead to recreational marijuana use. He talked with several different people and churches regarding the alcohol issue, and determined there was a 50/50 split decision. Unfortunately, Council has to make these tough decisions. After prayer and thought about the issue, he will be voting in favor of the sale of alcohol on a limited basis.

Councilwoman Mills said she also conducted research and talked with citizens, and she was concerned that the dispensing, cultivating, and processing of marijuana is being grouped as a unit. She believed there are some uses for medical marijuana, but not recreational marijuana, and there is a difference. Thirty states passed laws against marijuana in 1930, but 18 states permitted recreational growing, and the Federal Drug Policy in 1937 taxed marijuana. Sometimes they have to look at history when moving forward. She will support the ban as it stands now because she did not like the cultivating and processing involved with the dispensary. She noted the City was able to pass legislation to limit the number of loan companies in the City; therefore, she was in favor of limiting the possibilities of dispensaries in the future. If people are ill, they will get their medication. If medical marijuana is something they can purchase to use at home to help their condition, then they will figure out a way to get it. It did not necessarily have to be purchased in Xenia. She noted that she did not think some people understand that if they go to Colorado and use marijuana, then return to Ohio and test positive, they could face legal action. Additionally, most businesses do not allow an employee to test positive for marijuana, even if it is medical marijuana. Therefore, this matter should be taken very seriously. She supports the ban as it stands now.

Mr. Schierloh said the City cannot ban possession of medical marijuana if someone has authentic documentation allowing them to possess it. He will be discussing the issue with the Police Division once the rules are proposed in a final form to make sure an individual who possesses medical marijuana provides the proper documentation to law enforcement. From an economic standpoint, there will only be 40 dispensaries located throughout the State of Ohio. People who follow the issue more closely and have even written literature on the subject have said most of the cultivators, dispensaries, and processors will be located around bigger cities such as Columbus, Cincinnati, Cleveland, Dayton, etc. He is not sure what the risk is to Xenia, but the City certainly cannot prevent people from possessing it within the city limits, but they can prevent it from being grown, cultivated, and dispensed here. On a final note, the legislation also gave the City the authority to continue to enforce a drug-free workplace policy; therefore, it can

still be prevented in the work place and disciplinary action can still be taken if an employee is caught using marijuana, even if the individual has a prescription for medical marijuana. This stipulation has been added to the City's policy.

Councilman Wallace asked when the item would be introduced. Mr. Schierloh said staff will prepare an ordinance for Council consideration at a later date.

At 6:13 p.m., the Council adjourned their Special Session to go into Executive Session immediately following.

Motion by President Engle, seconded by Vice President Smith, to adjourn to Executive Session to discuss the Purchase or Sale of Property per XCO §206.04(a)(2) and ORC §121.22(G)(3) and Pending Litigation per XCO §206.04(a)(3) and ORC §121.22(G)(3). No discussion followed. The Roll on this was the following:

Ayes: Smith, Wallace, Louderback, Mays, Mills, Bayless, and Engle

Nays: None motion carried.

Michelle D. Johnson
City Clerk

Michael D. Engle
President, Xenia City Council