

Allegheny County Council

*County of Allegheny
436 Grant Street
Pittsburgh, PA 15219
Phone (412) 350-6490*



Meeting Minutes

Wednesday, March 1, 2017

4:00 PM

Conference Room I

Committee on Health & Human Services

*John Palmiere, Chair; Thomas Baker, Patrick Catena, James Ellenbogen, Nick Futules,
Cindy Kirk, Paul Klein, Ed Kress, Robert Macey, Sue Means*

I. Call to Order

The meeting was called to order at 4:01.

Invited Guests:

William D. McKain, CPA, Allegheny County Manager or designee(s)
Dr. Karen Hacker, Director, Allegheny County Health Department

Mr. McKain was present from the Office of the County Manager.

Mr. Szefi was present from the Law Department.

Dr. Hacker and Mr. Parker were present from the Health Department.

Mr. Barker and Mr. Szymanski were present from the Office of County Council.

II. Roll Call

Members Present: 7 - John Palmiere, Tom Baker, Jim Ellenbogen, Cindy Kirk, Paul Klein, Ed Kress and Sue Means

Members Absent: 1 - Nick Futules

Members Phone: 1 - Bob Macey

Members 2 - Patrick Catena and Sam DeMarco

Non-Members:

Members Present: 7 - John Palmiere, Tom Baker, Jim Ellenbogen, Cindy Kirk, Paul Klein, Ed Kress and Sue Means

Members Absent: 1 - Nick Futules

Members Phone: 1 - Bob Macey

Members 2 - Patrick Catena and Sam DeMarco

Non-Members:

III. Approval of Minutes

IV. Agenda Items

Ordinances

[9961-17](#)

An Ordinance of the Council of the County of Allegheny to adopt an Allegheny County Health Department Rule and Regulation and to ratify amendments to Allegheny County Health Department Rules and Regulations pursuant to Section 12011 of the Local Health Administration Law, 16 P.S. § 12001 et seq.

Sponsors: Chief Executive

At the request of the Chair, the clerk read the title of the bill.

Ms. Means indicated that she has not yet seen anything demonstrating the reason why the regulation is being proposed, although it is implied that there is a concern regarding

second hand e-cigarette vapor exposure. Dr. Hacker offered to forward information regarding the matter to Ms. Means.

In response to a question from Ms. Means, Mr. Szefi indicated that he is not concerned with the potential for substantive Due Process litigation, noting that the format of the ordinance has been used repeatedly in the past.

In response to a question from Ms. Means, Dr. Hacker drew a distinction between any toxins that may be present in vapor and long-term carcinogens, and noted that the English study that had been referenced on the subject during the public hearing evaluated a specific set of e-cigarettes, but that the products are variable.

In response to a question from Mr. Baker, Mr. Parker indicated that the ordinance would become effective immediately upon final approval.

Ms. Krik noted that the data regarding secondhand vapor dangers appears to be unsettled, and that she is reluctant to authorize a regulation that will have an impact on private business based on data that is not definitive at this point in time. Dr. Hacker noted that some of the businesses that operate within the County are visited by the public to some significant extent, so she would not be terribly comfortable with exempting all places of business.

Ms. Kirk suggested that, while she does agree with significant portions of the proposed regulation, the breadth of applicability for the proposed regulation causes her some concerns. Dr. Hacker noted that vaping would be permitted in the same places that smoking is permitted. Mr. Szefi discussed the distinction between personal property rights and public rights. Ms. Kirk suggested that, in order to restrict the public's rights, she would be far more comfortable if definitive data were available as a foundation.

In response to a question from Ms. Kirk, Dr. Hacker indicated that the FDA is in the process of formulating vaping guidelines or regulations.

Mr. Klein indicated that legislative decisions commonly involve some degree of uncertainty or conflicting evidence and/or opinions, and suggested that a definitive finding of deleterious effects may be hard to come by or may take quite a bit of time to be found. Mr. Klein continued to note that his personal tendency would be to err on the side of caution, but with that said, he also acknowledged that smoking cessation is both difficult and desirable. Mr. Klein suggested that there may not be a social benefit to the non-smoking public that is exposed to e-cigarette vapors, and that this in his view defines the more cautious approach.

Mr. DeMarco noted that he agrees with Ms. Kirk's feeling that regulating behavior in private businesses in light of the lack of data demonstrating a clear hazard linked to secondhand e-cigarette vapor. Mr. DeMarco indicated that the studies that he had seen indicate that vapor is far less dangerous than tobacco smoke, and that the dangers identified are theoretical at this time. Mr. DeMarco expressed reservations about criminalizing individuals' cessation activities and the aggressive civil penalty structure.

Mr. Parker noted that the Local Health Administration Law categorizes any violation of a local health department regulation as a summary criminal offense.

In response to a question from Mr. DeMarco, Mr. Parker indicated that the CIAA does not regulate vaping, and that there is no preemption issue as a result.

Mr. DeMarco and Mr. Parker discussed the notion of protecting employees from secondhand vapor in various business environments. Mr. DeMarco noted that the proposed regulation is broadly applicable even in terms of publicly accessible businesses.

In response to a question from Mr. Kress, Mr. Parker indicated that the Health Department is authorized to enact health regulations by the Local Health Administration Law. Dr. Hacker suggested that there is evidence demonstrating a health risk associated with e-cigarettes, and noted that other jurisdictions have undertaken similar actions.

Mr. Kress suggested that there might be wisdom in looking at the issue from the perspective of the burden of proving the necessity or importance of the proposed regulation. Dr. Hacker argued that e-cigarettes are not an approved smoking cessation methodology, and that the vaping equipment and solutions used will have a significant impact upon the dangers inherent in the vapor.

Mr. Kress asked what standard the Board of Health employed to decide that the regulation is wise or warranted. Mr. Szefi noted that there is no statutorily defined standard for the Board of Health of the Council in deciding to vote in favor of or against a proposed regulation.

In response to a question from Mr. Kress, Dr. Hacker noted that nicotine is an addictive substance, although she could not discuss the quantity or character of nicotine that might be necessary to generate addiction, nor could she comment on the potential benefits of nicotine.

In response to a question from Mr. Kress, Mr. Parker indicated that the "medicinal use" exemption for vaping equipment was stricken because vaping had not been certified as a smoking cessation methodology. Mr. Kress, Mr. Parker and Mr. Szefi discussed the interaction between the Commonwealth's Medical Marijuana Act and the ordinance, with Mr. Kress expressing reservations about the "medicinal use" exemption being deleted and noting that other jurisdictions have included similar language in their regulations.

In response to a question from Mr. Catena, Dr. Hacker noted that the ACHD, Tobacco Free Allegheny and the American Lung Association have attempted to publicly promulgate information on the topic. Mr. Catena suggested that there may be wisdom in attempting to increase the education efforts with regard to younger residents.

In response to a question from Mr. Catena, Dr. Hacker indicated that there was no need to begin with a small scale program, as other jurisdictions have already gone down this path.

Mr. Catena noted that he has concerns regarding the language of the proposed regulation.

The Chair and Mr. Ellenbogen discussed the procedure for voting on the matter.

Mr. Ellenbogen suggested that there is a danger inherent in picking an outcome, and then acting to reach that outcome. Mr. Ellenbogen continued to observe that he had received extensive information from the medical community that convinced him that vaping is not completely harmless, and discussed the other factors that he regards as relevant, including the existence of collective bargaining or other agreements that might

be impacted, personal freedom, and the like.

Ms. Means moved to table the bill, Mr. Kress seconded, and the motion failed by a vote of 4-4, with Mr. Baker, Ms. Kirk, Mr. Kress and Ms. Means voting in favor, and the Chair, Mr. Ellenbogen, Mr. Klein and Mr. Macey voting against.

Mr. Catena noted that he still has concerns regarding the language of the bill. In response to his question, Mr. Parker noted that the bill cannot be amended, but would, rather have to be re-submitted in an altered form.

Ms. Means indicated that she is not satisfied that the danger of secondhand vapor inhalation is established firmly enough to justify the regulation, and noted that she is uncomfortable with the extensive potential for fines.

The Chair indicated a willingness to accept a motion for an affirmative or neutral recommendation.

Mr. Baker expressed a belief that a neutral recommendation might have a better chance of passing, given the vote on the prior motion to table.

Mr. Ellenbogen moved to release the bill to the full Council with an affirmative recommendation, Mr. Macey seconded, and the motion failed by a vote of 4-4, with the Chair, Mr. Ellenbogen, Mr. Klein and Mr. Macey voting in favor, and Mr. Baker, Ms. Kirk, Mr. Kress and Ms. Means voting against.

A motion was made by Kirk, seconded by Baker, that this matter be Returned Without Recommendation. The motion carried by the following vote:

Members Yes: 5 - Palmiere, Baker, Ellenbogen, Kirk and Kress

Members No: 2 - Klein and Means

Members Absent: 1 - Futules

Members Yes Phone: 1 - Macey

Members Non-Member: 2 - Catena and DeMarco

Members Yes: 5 - Palmiere, Baker, Ellenbogen, Kirk and Kress

Members No: 2 - Klein and Means

Members Absent: 1 - Futules

Members Yes Phone: 1 - Macey

Members Non-Member: 2 - Catena and DeMarco

V. Adjournment

The meeting was adjourned at 5:11.