

**MANAGEMENT AND FINANCE POLICY COMMITTEE (M&F)  
MEETING**

**TUESDAY, MAY 28, 2019  
2:30 PM, Ponderosa, Aurora Municipal Center**

Council Member Gruber, Chair  
Council Member Lawson, Vice Chair  
Council Member Richardson  
Deputy City Manager Michelle Wolfe  
Finance Director Terri Velasquez

The Management and Finance Committee oversees the following Council goal and objectives:

**PROVIDE A WELL-MANAGED AND FINANCIALLY STRONG CITY**

- Ensure the delivery of high quality services to residents in an efficient and cost effective manner.
- Maintain superior financial reporting, financial controls, appropriate reserves, budgeting financial management, and transparency, and invest in capital and infrastructure to support efficient and effective long-term provision of services.
- Maintain a high financial credit (bond) rating, maintain debt policies and debt practices that allow the assessment of appropriate debt levels, and periodically review debt and debt service to minimize costs.
- Provide appropriate stewardship of natural resources to ensure long-term sustainability for the city.

**1. APPROVAL OF APRIL 23, 2019 DRAFT MINUTES**

**2. CONSENT ITEMS**

- **Sales Tax Chart**

Presenter: Greg Hays, Budget Officer

**3. CAMPAIGN FINANCE**

Presenter: Steve Ruger, City Clerk (30 minutes)

**4. LIQUOR CODE UPDATES**

Presenter: Trevor Vaughn, Manager of Tax and Licensing (15 minutes)

**5. MISCELLANEOUS MATTERS FOR CONSIDERATION**

- Next meeting is on June 25 at 2:30 PM.

*Total projected meeting time: 45 minutes*

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## MANAGEMENT AND FINANCE POLICY COMMITTEE

April 23, 2019

Members Present: Council Member David Gruber – Vice Chair, and Council Member Charlie Richardson – Member

Absent: Council Member Angela Lawson

Others Present: M. Wolfe, T. Velasquez, M. Geyer, A. Jeffress, C. Brown, N. Wishmeyer, G. Hays, T. Vaughn, D. Giordano, B. Rulla, A. Morales, T. Joyce, H. Hernandez, M. Shannon, R. Wichterman, N. Finer, D. Sedbrook, N. Hoover, M. Dilenschneider, and T. Hoyle

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### MINUTES

March 26, 2019 minutes were approved.

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### CONSENT ITEMS

#### Sales Tax Chart

##### Summary of Issue and Discussion

February of 2019 was 5.9 percent higher than February of 2018.

##### Outcome

The Committee thanked staff.

##### Follow-up Action

No follow-up needed.

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### EXCLUSION OF PROPERTY FROM THE PORTEOS BUSINESS IMPROVEMENT DISTRICT

##### Summary of Issue and Discussion

The JA Green Development Corporation recently purchased three (3) parcels of land, approximately 247 acres in size, in the northeast portion of the Porteos project. A petition was received and approved by the Board of Directors of the Porteos Business Improvement District (BID) to exclude this property from the district.

As required by state statute, the exclusion also requires City Council approval. Therefore, the developer has submitted Petitions requesting the exclusion of the parcels identified as PA6A North, PA6A South and PA 5A.

Council Member Gruber asked will this cause an impact to the BID's expected income. Bill Wichterman stated no, most of the BID's income comes from public improvement fees that's imposed upon the commercial properties, i.e. hotels, retail and restaurants, etc. Council Member Gruber asked and there should be no impact on Metro District's multiple chief established properties in Porteos. Bill Wichterman replied correct. JA Green Development has been excluded from a Metro District before they closed. And they plan to form a Metro District to handle their own public improvement financing.

Outcome

Committee Members Gruber and Richardson recommended this item be sent to Study Session.

Follow-up Action

Staff will forward this item to May 6, 2019 Study Session

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**ACCELA UPDATE**

Summary of Issue and Discussion

Craig Brown provided an update on the Accela implementation including the customer campaign and the employment approach for the future.

Council Member Gruber stated his concern were the different silos that existed and getting the integration across all the departments of the City. C. Brown said, his goal is to setup a community forum internally to encourage those types of conversations. A. Jeffress said, across the City we have a governance model group, therefore as we bring on new products or look at integrating products all those requests will go through the governance model.

Council Member Gruber acknowledged that things seemed to be moving forward.

Outcome

The Committee thanked staff.

Follow-up Action

No follow-up needed.

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**2018 EXTERNAL AUDIT PRE-AUDIT LETTER**

Summary of Issue and Discussion

BKD, LLP, the city's external auditors, provide a pre-audit letter to communicate various matters related to the scope and timing of the 2018 financial statement audit. BKD, LLP also provided an engagement letter dated November 29, 2018 that was presented at the January 15, 2019 Management & Finance Policy Committee meeting. The engagement letter is the contract for the upcoming audit and defines auditor and city management responsibilities as well as fees. The pre-audit letter communicates various matters related to audit scope that are more appropriately communicated as the engagement begins.

The pre-audit letter is required auditor communication to the city's audit committee at the beginning of the audit engagement. The letter outlines audit risk areas and the corresponding audit approach to address those risks. The pre-audit letter also outlines areas that governance should be particularly aware of as it oversees the financial reporting process. Finally, the pre-audit letter discusses how the auditors address fraud.

Outcome

The Committee thanked staff.

Follow-up Action

No follow-up needed.

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## **ELIMINATION OF GOING OUT OF BUSINESS LICENSE REQUIREMENT**

### Summary of Issue and Discussion

This is a staff proposal to eliminate a rarely enforced ordinance dating back to 1960 requiring licensing for going out of business or altered goods sales. The current ordinance requires a license for these sales. However, only one license was issued in the last twenty years when a business inquired if the city had such a requirement.

The intent of the ordinance is to prohibit deceptive going out of business or altered goods sales. Deceptive going out of business sales attempt to lure in consumers with promises of significant price reductions as the result of a need to clear inventory. However, a business engaged in the practice would have no intent of going out of business and price reductions would be fabricated. However, with the increased information available online, consumers are less susceptible to this tactic and deceptive going out of business sales are no longer seen as a significant consumer issue. The current ordinance was adopted in 1960. A licensing structure is used as a screening and proactive measure, in practice it is likely that an enforcement action would only occur under this ordinance after a sale has started. Staff is recommending elimination of the requirement altogether. However, if the city were to maintain regulation in this area, it would be less cumbersome to business and use less enforcement resources if it is maintained as a regulation and not as a license.

### Outcome

Committee Members Gruber and Richardson recommended this item be sent to Study Session.

### Follow-up Action

Staff will forward this item to Study Session.

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## **LIQUOR CODE UPDATES**

### Summary of Issue and Discussion

The proposed ordinance updates Chapter 6 of the city code relating the licensing of Alcoholic Beverage Businesses. The proposed ordinance includes technical changes to change references to State code for the re-codification of liquor licensing from Title 12 to Title 44. The ordinance also merges both classes of cabaret licenses as there is no longer 3.2% fermented malt beverages. The proposed ordinance also adds several new license types to the exemption from the distance requirement from schools. New liquor licenses must be 500 feet from schools unless exempted by local ordinance. Hotel/Restaurant licenses are exempted from the distance limitation. The proposed ordinance adds the following restaurant type licenses to the exemption list; Vintners Restaurant, Distillery Pub, and Brew Pub. These businesses must have at least 15% food sales. The Lodging and Entertainment License is also exempted by this ordinance from the distance limitation. These businesses must primarily derive revenue from Entertainment or Lodging and not alcohol sales. Examples would be a paint and sip studio or a business offering cooking classes as its primary function.

Additionally the proposed ordinance makes any violations of the state liquor code a municipal offense. These changes allow for a summons to be issued to municipal court for failure to have a liquor license. The proposed ordinance also specifies that businesses are responsible for conduct

of their establishment consistent with state liquor rule 47-900. This conduct is also clarified to include the immediate vicinity. The city and state prosecute for activity surrounding a business under regulation 47-900. However, adding this to city code will provide more clarity that a business is not only responsible for activity directly inside the walls but also for violent or other activity offensive to the neighborhood occurring in the immediate vicinity as a result of their business operation. Most issues of violence occur immediately outside of a licensed establishment. These incidents are often a result of poor business practices such as over service of alcohol, failure to report disturbances from inside the business, permitting loitering and drinking in the parking lot, and entry or service to minors.

The requirements of running a decent and orderly establishment are extended to the cabaret license. An option to summarily suspend a cabaret license similar to a liquor license is also added. Entry of minors into a cabaret licensed business is clarified to avoid abuse of the provision.

Council Member Gruber wondered if it's common with other cities to leverage the responsibility on a facility owner for conduct outside a business establishment.

T. Vaughn replied yes, case law indicates incidents that have occurred that were the responsibility of the business. Otherwise the incident wouldn't have happened if the business wasn't there.

Council Member Gruber asked Council Member Richardson, do you approve to move this forward to Study Session.

Council Member Richardson replied that as it is now, no. He wants to see the proposed ordinance come back to the Committee without the owner's responsibility for disturbances of former customers hanging out in an owner's property parking lot.

#### Outcome

The Committee asked that the item be provided to the Colorado Restaurant Association, Visit Aurora, and the Chamber of Commerce for comments to be brought back in May. Council Member Richardson asked that City research a ruling from the 1980s that the City would be unable to discipline a business for activities in the parking lot.

#### Follow-up Action

Staff will solicit comments from the organizations mentioned and will research the case law indicated by Council Member Richardson. Staff will return with additional information and any proposed edits to the ordinance and comments received to the May meeting for further discussion by the Committee.

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## **LODGERS TAX CODE CORRECTION AND TECHNICAL ADJUSTMENT**

### Summary of Issue and Discussion

The proposed ordinance is technical in nature to clarify administration of the City's Lodger's Tax and remove an outdated reference to the vendor's collection allowance. As of January 1, 2018 ordinance 2017-52 eliminated the 0.5% vendor's fee for sales and use taxes. Lodging taxes are considered a sales tax and are in practice collected using the same collection and enforcement provisions that are used for sales taxes. In 1983 the lodger's tax was placed in a separate article from sales tax in the city's code when the rate was modified to be higher than the city's sales tax

rate. However, it was intended the provisions for enforcement and collection for sales tax would still apply to lodger's tax. While most of the collection provisions were not placed in the new article, filing requirements were placed in the new article which has led to a conflict after the vendor's fee was repealed. The duplicate language in the lodger's tax was not identified. However, in practice vendors have not been allowed to claim the allowance after January 1, 2018. The proposed ordinance deletes the duplicative filing requirements language in the lodger's tax article.

Additionally this ordinance adds a provision to clarify that the collection and enforcement provisions in Article II – Sales and Use Tax also apply to this article.

Council Member Richardson remarked that he doesn't agree with the removal of the vendor fee and when the proposed ordinance goes to full Council he's voting no.

#### Outcome

Council Member Gruber voted yes and Council Member Richardson voted no. Staff will forward this item to Study Session.

#### Follow-up Action

Staff will forward this item to Study Session.

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## **UPDATE ON COLLECTING ONLINE SALES TAX**

### Summary of Issue and Discussion

This is an informational item regarding online sales tax collections after the South Dakota v Wayfair. Previous to that ruling, states could only compel collection of sales tax by a retailer that had physical presence in the state, the ruling changed the test to include economic nexus as a factor.

In Colorado, the home rule cities have taken a wait and see approach allowing online retailers to voluntarily comply with sales tax collection. It is believed that if a home rule city begins mandating collections that lawsuits may be filed against the city and the state to determine what is an undue burden on retailers. The Supreme Court indicated the South Dakota model appeared reasonable but did not expressly rule what would and would not create an undue burden under the commerce clause. South Dakota has state centralized collections and a uniform tax base. Colorado is much more complicated.

The Colorado Department of Revenue released new emergency rules as part of the implementation of the Wayfair ruling. These rules impacted both in state and out of state retailers. The state now requires all in state retailers to collect sales tax for all state collected jurisdictions that they sell into. This rule was effective December 1, 2018 but has a compliance grace period until May 31, 2019. Additionally, the state is requiring out of state retailers to collect sales tax if they have more than \$100,000 in gross sales or 200 or more transactions of tangible personal property into the state. While the change in the rules do not technically affect

home rule cities, many businesses either do not understand the difference or have elected to collect for home rule cities for simplicity and to ensure that they do not have liability under the Wayfair ruling. The city registered record numbers of new business license applications in

January and February. Additionally, the city will allow non-physical premise retailers the ability to activate a tax account to remit tax without obtaining a business license.

The state legislature passed Senate Bill 19-006. This bill directs the Department of Revenue to issue a request for proposal for a simplified sales tax system. This system if successfully implemented could allow the city to voluntarily accept sales tax returns through the system. Additionally the bill includes other simplification measures including a single address locator and taxability matrix. The system may provide a path to mandated collections.

Several other bills have been introduced this session to address the in state on out of state impacts on retailers with implementation of the new rules. Senate Bill 19-130 and Senate Bill 19-131 were bills that did not make it out of committee. House Bill 19-1240 is still under consideration. The bill would codify destination sourcing rules for the state. The bill also adds language to address sales tax collections by marketplace facilitators that process orders on behalf of others. Home rule cities are excluded from the destination rules.

The city has worked with the Sales Tax Committee at the Colorado Municipal League. Currently all home rule cities are in agreement to take a cautious approach and to not mandate sales tax collections by non-physical premise retailers at this time. This is to allow for any test cases at the courts and the State to set up the additional infrastructure as authorized in Senate Bill 19-006. Voluntary compliance that is also occurring will help to demonstrate that the system will not overly burden retailers.

Council Member Richardson stated he wants to see the non-physical premise revenue tax information shared with Council.

T. Velasquez said that it would be included with the revenue sales tax, however, having it classified as its own source, that's something they will have to figure out.

Council Member Gruber asked that staff report back at the next Management and Finance meeting.

#### Outcome

The Committee thanked staff. Staff will report back at the next month's meeting whether it can be classified on the revenue sales tax chart.

#### Follow-up Action

Staff will report back at the next Management and Finance meeting whether it can be classified on the revenue sales tax chart.



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**MISCELLANEOUS MATTERS FOR CONSIDERATION**

Summary of Issue and Discussion

- Campaign Finance – May 28
- The next meeting is on Tuesday, May 28, 2019.

THESE MINUTES WERE APPROVED AS SUBMITTED

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David Gruber, Chair of the Management and Finance (M&F) Committee

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Date

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Sales Tax Chart
<b>Item Initiator:</b> Greg Hays
<b>Staff Source:</b> Greg Hays, Budget Officer
<b>Deputy City Manager Signature:</b> Michelle Wolfe
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

### **ACTIONS(S) PROPOSED** *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

### **HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

Members of the Management and Finance Policy Committee have asked for the monthly sales tax performance chart.

### **ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Attached is the March sales tax performance chart. March of 2019 was 5.8 percent higher than March of 2018.

### **QUESTIONS FOR Committee**

N/A, Information Only

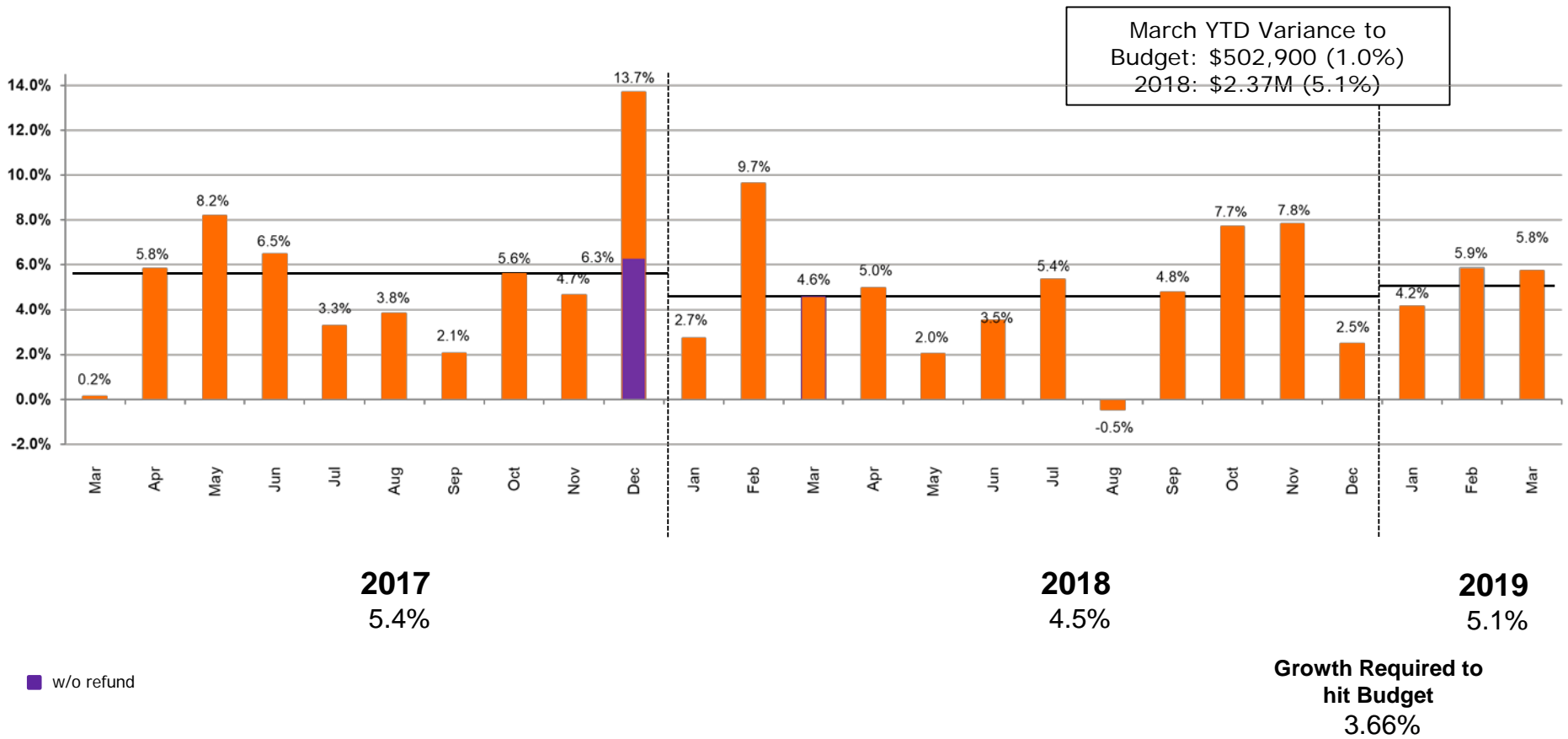
### **EXHIBITS ATTACHED:**

Sales Tax Chart Collections\_Mar19.pdf

# March Sales Tax Performance



## Percent Change from Prior Year By Month



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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> An Ordinance of the City Council of the City of Aurora, Colorado, Amending Section 54-105 Of The City Code Related to Requirements for Filing Campaign Reports.
<b>Item Initiator:</b> Stephen Ruger, City Clerk
<b>Staff Source:</b> Stephen Ruger, City Clerk
<b>Deputy City Manager Signature:</b> Michelle Wolfe
<b>Outside Speaker:</b> Sponsor: Council Member Nicole Johnston
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

### **ACTIONS(S) PROPOSED** *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

### **HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

At the April 17, 2019, Election Commission meeting, Council Member Nicole Johnston proposed certain changes to the City's ordinance related to campaign financing. Specifically, she would like to amend the reporting requirements for campaign finance activity to add additional reports as follows: All candidate, issue, political, and exploratory committees must file reports on the 90th day, **on the 60th day, on the 30th day, on the 14th day, on the 21st day**, on the Friday before, and 30 days after the municipal election. In addition, she proposed language that will make the reporting requirements for Independent Expenditure Committees clearer. The Election Commission has reviewed this proposal and have no concerns.

### **ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Adoption of this item will not change the reporting requirements for campaign committees other than to add additional required reports. There are no changes to contribution limits.

### **QUESTIONS FOR Committee**

Does the Committee wish to forward this item on to a City Council Study Session?

### **EXHIBITS ATTACHED:**

Council Member Johnson - Agreed Final Draft 5-15-19.docx

ORDINANCE NO. \_\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING SECTION 54-105 OF THE CITY CODE RELATED TO REQUIREMENTS FOR FILING CAMPAIGN REPORTS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA COLORADO:

Section 1. That Section 54-104(c) of the City Code of the City of Aurora is hereby amended to read as follows:

Section 54-104 – Requirements for reporting contributions and expenditures.

(c) All candidate committees, issue committees, political committees and exploratory committees shall report to the city clerk all contributions received, **specifically including but not limited to in kind contributions**, including the name and address of each person who has contributed \$20.00 or more; all expenditures made; and all obligations entered into by the committee.

Section 2. That Section 54-105 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 54-105. - Requirements for filing campaign reports.

(a) ~~In an election year, a~~ All candidate, issue, political, and exploratory committees must file reports on the 90th day, **on the 60th day, on the 30th day, on the 14th day**, ~~on the 21st day~~, on the Friday before, and 30 days after the municipal election.

(b) In years following the election for which the committee was established, all candidate, issue, political, and exploratory committees shall file such reports annually, on the first day of the month in which the anniversary of the municipal election occurs.

(c) The reports required by this section shall also include the balance of funds at the beginning of the reporting period, the total contributions received, **whether monetary or in kind**, the total of expenditures made during the reporting period, and the name and address of the financial institution used by the committee.

(d) In addition to any report required to be filed with the city clerk under this section, all candidate committees, issue committees, political committees and exploratory committees shall file a report of any contribution or contribution in kind of more than \$1000.00 **in the aggregate** received at any time within 30 days preceding the date of a municipal election. This report shall be filed with the city clerk no later than five days after receipt of said contribution(s) or contribution(s) in kind.

(e) Any issue committee whose purpose is the recall of an elected official shall file a statement of organization with the city clerk within ~~ten~~ **10** business days of receiving its first

contribution, **or contribution in kind**. Reports of contributions and expenditures shall be filed with the city clerk within 15 days of the filing of the statement of organization and every 30 days thereafter until the date of the recall election has been set and then 14 days and 7 days before the recall election and 30 days following the recall election.

(f) Any issue committee supporting an incumbent in a recall election shall file reports of contributions, **or contribution in kind**, and expenditures with the city clerk 14 and ~~seven~~ **7** days before the recall election and 30 days after the recall election.

(g) A committee shall be considered open and active until such committee is affirmatively closed and a termination report is filed with the city clerk.

Section 3. That Section 54-105.5(d) of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 54-105.5. – Independent expenditure committees

Independent expenditure committees:

- (a) Shall register with the city clerk within two days of making an expenditure totaling more than \$1000.00 or accepting donations for independent expenditures in excess of \$1000.00; **and**
- (b) May not contribute to candidate committees or coordinate expenditures with candidates; **and**
- (c) Must itemize all expenditures of more than \$20.00 and all donations of more than \$250.00, including **listing with specificity the occupation of the contributor** and employer information for ~~donors~~ **contributors** giving, **in aggregate**, \$250.00 or more.
- (d) Reports ~~are~~ **shall be filed 90, 60, 30, and 21 14 days prior to the municipal election, and on the Friday immediately** prior to the date of the **municipal** election, and 30 days after the date of the **municipal** election.

Section 4. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 5. Repealer. All acts, orders, resolutions, ordinances, or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.



PASSED AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
BOB LEGARE, Mayor

ATTEST:

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STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM

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DAVID LATHERS, City Attorney's Office

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 6 OF THE CITY CODE RELATED TO ALCOHOL BEVERAGES AND CABARETS.
<b>Item Initiator:</b> Trevor Vaughn, Manager of Tax and Licensing
<b>Staff Source:</b> Trevor Vaughn, Manager of Tax and Licensing
<b>Deputy City Manager Signature:</b> Michelle Wolfe
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong Cit

### **ACTIONS(S) PROPOSED** *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

### **HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

This item is a follow up to the original presentation in April. The committee requested that the item be forwarded to the Colorado Restaurant Association, Visit Aurora, and The Chamber of Commerce. The item was provided to The Chamber and Visit Aurora on April 30th. Visit Aurora commented there were no issues with the changes presented. No comments have been received from the Chamber. The Colorado Restaurant Association expressed a concern regarding language on conditions of the establishment stating "upon any parking area(s) used by licensee's patrons". This language has been deleted. Additionally they had some questions regarding entry of minors in a Cabaret business. While this language was mostly existing in the ordinance, staff is proposing a few changes to the language. The changes clarify that minors can be in an event center with their parents but should not be in a night club or bar environment that has a cabaret after 11pm.

Additionally, staff removed the term "Knowingly" from several bullets on conditions of an establishment. The language now matches the language in Regulation 47-900 of the Colorado Liquor rules. Additionally, case law indicates that licensee not have actual knowledge but constructive knowledge of the activity. The term permit indicates constructive knowledge and the interpretation of the courts is explained in the Colorado Court of Appeals case Full Moon Saloon, Inc. v. City of Loveland.

The committee also requested additional research regarding a case from the 1980s where a judge ruled against the city regarding discipline against a bar for activity in the parking lot or immediate vicinity of the

bar by patrons of the establishment. Unfortunately, staff has been unable to find the record of this case and therefore unable to evaluate the details. Analysis of published case law detailed in the attached memo from the City Attorney's office demonstrates that a licensee can be disciplined for activities occurring outside of the walls of the business. The case law indicates that a licensee assumes an obligation to supervise the conduct of its clientele so as to preclude the creation of conditions within the surrounding neighborhood which would amount to a nuisance to those who reside in the area.

The authority to discipline a licensee for these activities exists whether or not the language is incorporated into the ordinance. However, having the language in the ordinance provides additional clarity going forward.

Colorado Liquor Regulation 47-900(A) Conduct of the Establishment is shown below. This language is proposed as conditions of the establishment in the proposed ordinance:

*A. Orderliness, loitering, serving of intoxicated persons.*

*Each person licensed under Article 3, Article 4, and Article 5 of Title 44, and any employee or agent of such licensee shall conduct the licensed premises in a decent, orderly and respectable manner, and shall not serve a known habitual drunkard or any person who displays any visible signs of intoxication, nor shall they permit a known habitual drunkard or any person who displays any visible signs of intoxication to remain on the licensed premises without an acceptable purpose, nor shall the licensee, his employee or agent knowingly permit any activity or acts of disorderly conduct as defined by and provided for in Section 18-9-106, C.R.S., nor shall a licensee permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.*

**ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)**

The following agenda item summary is repeated from the April 23 Management and Finance Committee item.

Over the last few years significant changes have occurred in state liquor code including the addition of new license types and the change from 3.2% beer to full strength beer. The liquor code also was moved from title 12 of the Colorado Revised Statutes to Title 44. The ordinance incorporates a number of these changes and also includes amendments making violations of the state code a municipal offense and clarifying in city code that liquor licensed establishments are responsible for taking mitigating action to prevent acts of disorderly conduct for their entire business location including exterior areas such as the entryway or parking lot.

The ordinance also adds the ability for summarily suspending a cabaret license (dance floor) if the business is willfully violating the requirements of the license and also extends the requirements of running a decent and orderly establishment and location to the cabaret license. Language regarding entry of minors is also clarified to remove ambiguity about when minors are permitted into a restaurant with an accessory dance floor.

This ordinance updates Chapter 6 of the city code relating the licensing of Alcoholic Beverage Businesses. The ordinance includes technical changes to change references to State code for the re-codification of liquor

licensing from Title 12 to Title 44. The ordinance also merges both classes of cabaret licenses as there is no longer 3.2% fermented malt beverages.

The proposed ordinance also adds several new license types to the exemption from the distance requirement from schools. New liquor licenses must be 500 feet from schools unless exempted by local ordinance. Hotel/Restaurant licenses are exempted from the distance limitation. This ordinance adds the following restaurant type licenses to the exemption list; Vintners Restaurant, Distillery Pub, and Brew Pub. These businesses must have at least 15% food sales. The Lodging and Entertainment License is also exempted by this ordinance from the distance limitation. These businesses must primarily derive revenue from Entertainment or Lodging and not alcohol sales. Examples would be a paint and sip studio or a business offering cooking classes as its primary function.

Additionally this ordinance makes any violations of the state liquor code a municipal offense. These changes allow for a summons to be issued to municipal court for failure to have a liquor license. The ordinance also specifies that businesses are responsible for conduct of their establishment consistent with state liquor rule 47-900. This conduct is also clarified to include the immediate vicinity. The city and state prosecute for activity surrounding a business under regulation 47-900. However, adding this to city code will provide more clarity that a business is not only responsible for activity directly inside the walls but also for violent or other activity offensive to the neighborhood occurring in the immediate vicinity as a result of their business operation. Most issues of violence occur immediately outside of a licensed establishment. These incidents are often a result of poor business practices such as over service of alcohol, failure to report disturbances from inside the business, permitting loitering and drinking in the parking lot, and entry or service to minors.

The requirements of running a decent and orderly establishment are extended to the cabaret license. An option to summarily suspend a cabaret license similar to a liquor license is also added. Entry of minors into a cabaret licensed business is clarified to avoid abuse of the provision.

#### **QUESTIONS FOR Committee**

Does the committee desire any changes to the proposed ordinance?

Does the committee approve of moving the item to study session?

#### **EXHIBITS ATTACHED:**

5-22-19 ordinance with track changes.doc  
Memo re Outside Premise Discipline 2019.docx  
v5-22-19 Aurora Ordinance 2019 Alcohol Beverage code update.doc

ORDINANCE NO. 2019-\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 6 OF THE CITY CODE RELATED TO ALCOHOL BEVERAGES AND CABARETS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That section 6-1 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-1. - Definitions.

The definitions set forth in C.R.S. tit. ~~12~~ **44**, arts. ~~46, 47 and 48~~ **3, 4 and 5**, as amended, as well as the definitions set forth in the Colorado Liquor Rules, 1 C.C.R. 203-2, as amended, shall apply equally to this article, except where specifically defined below. Except as otherwise indicated by the context, the following words and phrases shall have the following meanings for purposes of this article:

*Ancillary facility* means a permanent, temporary or movable structure located on an optional premises which is used to sell or serve malt, vinous or spirituous liquors.

*Applicant* means any person who has applied for but has not yet been issued, a license to sell alcohol beverages.

*Colorado Beer Code* means article ~~46~~ **4** of title ~~12~~ **44** of the Colorado Revised Statutes, as amended.

*Colorado Liquor Code* means article ~~47~~ **3** of title ~~12~~ **44** of the Colorado Revised Statutes, as amended.

*Finance director* means the director of finance of the City of Aurora, Colorado; the term "finance director" shall include such person's designee.

*Licensee* means a person licensed to sell alcohol beverages at retail within the city.

*Licensing authority* or *local licensing authority* or *authority* means the alcoholic beverage local licensing authority of the city.

*Liquor special events permits code* means article ~~48~~ **5** of title ~~12~~ **44** of the Colorado Revised Statutes, as amended.

*Person* means a natural person, partnership, association, company, corporation, or organization, or a director, officer, shareholder, partner, manager, agent, servant, or employee thereof.

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Section 2. That section 6-67 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-67. - Application and investigation fees.

(a) In addition to any application fees required to be paid to the state department of revenue, each person, upon filing an application with the local licensing authority for an alcohol beverage license, shall pay to the local licensing authority an application fee to defray all actual and necessary expenses incurred by the city in its investigation of, processing of and hearing upon the following applications:

- (1) New license application.
- (2) Concurrent review of a new license application by the state licensing authority.
- (3) Application for transfer of location.
- (4) Application for transfer of ownership.
- (5) Application for renewal of license.
- (6) Application for renewal of expired license.
- (7) Temporary permit application.

Such fees shall be established by the finance director in accordance with the provisions of section 2-587, subject to the limitations set forth in C.R.S. § ~~12-47-505(4)~~ **44-3-505(4)**, as amended.

(b) In addition to any investigation fees required to be paid to the state department of revenue, each licensee that is a corporation or limited liability company shall pay to the local licensing authority an investigation fee for each fingerprint analysis and background investigation undertaken to qualify new officers, directors, stockholders, or members of currently licensed corporations and limited liability companies pursuant to C.R.S. § ~~12-47-307(1)~~ **44-3-307**, as amended. Such fee shall be established by the finance director in accordance with the provisions of section 2-587, subject to the limitations set forth in C.R.S. § ~~12-47-505(4)~~ **44-3-505(4)**, as amended.

Section 3. That subsection (b) of section 6-68 of the City Code of the City of Aurora, Colorado is hereby amended to read as follows:

Sec. 6-68. - Public notice.

(b) It shall be the responsibility of the applicant to provide notice of the public hearing to the following persons at least ~~30~~ **10** days prior to the date of the hearing:

- (1) The president or representative of any and all neighborhood organizations registered with the planning department which exist within any part of the relevant neighborhood to be considered by the local licensing authority.
- (2) The principal or representative of any school located in the relevant neighborhood.

Section 4. That section 6-70 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-70. - Schedule of license and special events permit fees.

(a) In addition to any license fees required to be paid to the state department of revenue, each licensee shall pay to the local licensing authority an annual local license fee. The schedule of local license fees for each license issued under this division shall be established by the finance director in accordance with the provisions of section 2-587, subject to the limitations set forth in C.R.S. §§ ~~12-47-505(1)~~ **44-3-505(4)** and ~~12-46-107(2)~~ **44-4-107(2)**, as amended.

(b) Eighty-five percent of the local license fees set forth in subsection (a) of this section shall be paid to the state department of revenue, as provided for in C.R.S. § ~~12-47-505(3)~~ **44-3-505(3)**, as amended.

(c) In addition to any fees required to be paid to the state department of revenue, each applicant shall pay to the local licensing authority a fee for the investigation and issuance of a special events permit. The fee schedule for special events permits issued under this division shall be established by the finance director in accordance with the provisions of section 2-587, subject to the limitations set forth in C.R.S. §§ ~~12-48-107(2)~~ § **44-5-107(2)**, as amended.

Section 5. That section 6-71 of the City Code of the City of Aurora, Colorado, is hereby amended to add a new subsection, to be numbered (d), which subsection shall read as follows:

Sec. 6-71. - Location of premises.

**(d) The distance restriction set forth in subsection (a) shall not apply to lodging and entertainment, limited winery, vintner's restaurant, brew pub, or distillery pub licenses.**

Section 6. That section 6-72 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-72. - Conditions on every new, transferred and renewed liquor license.

(a) For purposes of enforcing the requirements of Colorado Regulation 1 C.C.R. 203-2, Liquor Code, Regulation 47-900(A), it shall be a condition for the issuance and renewal of every alcoholic beverage license and permit issued by the city for the licensee to comply with the provisions of city Code section 94-111. The licensee, manager, agent(s), and employee(s) thereof shall immediately notify the police department of any disturbance, any act of disorderly conduct, or any other criminal activity occurring on or within the licensed premises, **upon any adjoining grounds or property under the control or management of the licensee, upon any parking area(s) under the control or management of the licensee—**~~or any parking area(s) used by~~



**licensee's patrons.** Failure to comply with city Code section 94-111 may result in the suspension or revocation of the alcoholic beverage license.

(b) No new liquor license shall be issued, no liquor license shall be transferred, and no liquor license shall be renewed until such time as all fees, fines, costs, taxes, penalties and interest due and owing to the city by the licensee or applicant are paid in full.

(c) It shall be a condition on every alcohol beverage license, permit, or special event permit issued or renewed by the city the licensee, and every employee or agent of the licensee, shall conduct business in a decent, orderly and respectable manner. The following is strictly prohibited from occurring in or on the licensed premises, upon any adjoining grounds or property under the control or management of the licensee, upon any parking area(s) under the control or management of the licensee, ~~or upon any parking area(s) used by licensee's patrons:~~

(1) ~~Knowingly p~~**Permit the loitering of a known habitual drunkard or any person displaying any visible signs of intoxication without an acceptable purpose;**

(2) ~~Knowingly p~~**Permit any activity or acts of disorderly conduct as defined by state statute or City Code;**

~~(3) Knowingly p~~**Permit any activity or acts of rowdiness, undue noise, or other disturbances or activities offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.**

~~(3) Knowingly permit any criminal act;~~

~~(4) Knowingly permit any activity or acts of rowdiness, undue noise, or other disturbances;~~

~~(5) Knowingly permit activity offensive to the senses of the average citizen or the residents of the neighborhood in which the licensed establishment is located; or~~

(d) It shall be a condition on every alcohol beverage license, permit or special event permit issued or renewed by the city the licensee shall timely file and pay local taxes as required by chapter 130 of the City Code.

Section 7. That Chapter 6 of the City Code of the City of Aurora, Colorado, is hereby amended to add a new subsection, to be numbered 6-73, which section shall read as follows:

**Sec. 6-73. – Unlawful acts.  
It shall be unlawful for:**

- (a) **Any person licensed pursuant to article 3, article 4, or article 5 of title 44, C.R.S., or any employee or agent of such licensee, to violate any provision, section, or subsection of C.R.S. § 44-3-901, as amended;**
- (b) **Any person to manufacture, sell, or possess for sale, any alcohol beverage unless licensed to do so pursuant to article 3, article 4, or article 5 of title 44, C.R.S. and this article; or**
- (c) **Any person engaged in business as defined by City Code to permit the consumption of alcohol beverage(s) within their business when the business is not licensed for the consumption of alcohol beverages on the premises pursuant to article 3, article 4, or article 5 of title 44, C.R.S. and this article.**

Section 8. That subsection (b) of section 6-106 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-106. - Liquor occupation tax.

(b) There is hereby levied and assessed an annual occupation tax upon the business of selling fermented malt beverages, or malt, vinous, and spirituous liquors at retail in the city in accordance with the following schedule:

- (1) For all licensees who possess a hotel and restaurant, vintner's restaurant, tavern, **lodging and entertainment, limited winery** brew pub, distillery pub, racetrack, or optional premises license or who sell liquor under a lodging facility contract ~~approved pursuant to C.R.S. § 12-47-119(2)(c)~~ ..... \$650.00
- (2) For all licensees who possess a beer and wine or beer and wine (resort hotel) license ..... 450.00
- (3) For all licensees who possess a retail liquor store license ..... 400.00
- (4) For all licensees who possess a liquor-licensed drugstore license ..... 300.00
- (5) For all licensees who possess a club or arts license ..... 275.00
- (6) For all licensees who possess a fermented malt beverage (on-premises consumption) license ..... 500.00
- (7) For all licensees who possess a fermented malt beverage (off-premises consumption) license ..... 275.00
- (8) ~~For all licensees who possess a fermented malt beverage (on/off premises consumption) license ..... 800.00~~

Section 9. That section 6-108 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-108. - Effect of delinquency.

No delinquency in payment of the tax provided for in this division shall be grounds for suspension or revocation of any license granted to any licensee by the licensing authority pursuant to the state statutes. In performance of any duties imposed upon the authority by such statutes, the licensing authority shall exclude from consideration any delinquency in payment of the tax provided for in this division, except as set forth in subsection ~~6-66(e)(1)~~ **6-66(d)**.

Section 10. That section 6-136 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-136. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* means any person who is applying for, but has not yet received, ~~either a class A or class B~~ cabaret license pursuant to this division.

~~Class A cabaret~~ **Cabaret** means a location licensed for the sale of intoxicating liquors for consumption on the premises wherein entertainment may be either live or recorded vocal or instrumental music and no other entertainment shall be permitted and where dancing by the customers is permitted.

~~Class B cabaret~~ means a location licensed for the sale of fermented malt beverage for consumption on the premises wherein entertainment may be either live or recorded vocal or instrumental music and no other entertainment shall be permitted and where dancing by the customers is permitted.

Section 11. That section 6-138 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-138. - Violations.

**Any violation of this division may result in the suspension, the imposition of a fine in lieu of a suspension, or revocation of the cabaret license. A cabaret license may be summarily suspended for a period not to exceed fifteen days, without notice pending prosecution and public hearing, when reasonable grounds exist a licensee committed a deliberate and willful violation of any provision of this division.** In addition to the possibility of revocation or suspension of the license, or the imposition of a fine in lieu of such suspension, ~~all as provided for in section 6-77(e)~~, any person who violates any of the provisions of this division or who fails to perform any act required by this division and who is convicted thereof, shall be subject to the penalties set forth in section 1-13.

Section 12. That section 6-140 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-140. - Hours permitted for entertainment.

No entertainment shall be offered or provided in a ~~class A or class B~~ cabaret prior to 12:00 noon or later than 2:00 a.m. the succeeding day **in locations permitted by the zoning code to remain open until 2:00 a.m., or no later than 12:00 midnight in locations required by the zoning code to close at 12:00 midnight.**

Section 13. That section 6-141 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-141. - Entry of minors.

(a) It shall be unlawful for any person to permit anyone under 21 years of age to patronize a ~~class A or class B~~ cabaret or for any person under 21 years of age to gain entry or attempt to gain entry into such an establishment unless accompanied by a parent or legal guardian; provided, however, that this prohibition shall not preclude a person under 21 years of age from patronizing a bona fide restaurant **before 11:00 p.m., or at any time the dance floor is not in use, that** habitually and continuously ~~serv~~<sup>es</sup> meals to guests **at all times minors are permitted, seats all guests, and maintains complete books and records. This prohibition shall also not apply if the business is rented for a bona fide private event and is closed to the general public and the minor is accompanied by a parent or guardian.;** that is, if the establishment whose principal purpose is the preparation of food and serving of meals to guests, which food service represents 50 percent or more of the business revenues of the establishment **in total and at all times that minors are permitted.**

~~(b) Any person of the age of 16 years through 20 years shall be allowed to patronize a class B cabaret or to gain entry into a class B cabaret during the hours that fermented malt beverages are neither being served nor being consumed by anyone on the licensed premises if all provisions of this Code pertaining to teen club licenses have been complied with. During the hours that fermented malt beverages are not being served, all such beverages and their dispensers shall be secured, covered, and kept out of public view. Once the premises have been converted to a nonalcohol status, there shall be no reconversion to alcohol beverage service during the next succeeding 12 hour period.~~

Section 14. That section 6-144 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-144. - Report of disorderly conduct.

Any licensee under this division or, in such licensee's absence, any manager or employee thereof, shall immediately report to the Aurora Police Department any unlawful or disorderly conduct or criminal activity committed, or occurring, at the location, on the premises, or within the licensed premises set forth on the license of the license holder. For the purposes of this section the terms "location", "premises", and "licensed premises" shall ~~have that meaning and definition set forth in Section 12-47-103 of the Colorado Revised Statutes~~ **include any adjoining grounds or property under the control or management of the licensee, upon any parking area(s) under the control or management of the licensee, or any parking area(s) used by licensee's patrons.**

For purposes of this section "report" shall mean to either: (1) immediately, verbally, and directly in person, notify any onsite uniformed Aurora Police Officer whether on duty or working secondary employment; or (2) place and complete a phone call to the non-emergency dispatch telephone number for the Aurora Police Department; or (3) place and complete a telephone call to the emergency \*911 operator. Contacting individual officers out of uniform or not directly on the licensed premises shall not suffice as a report or reporting within the meaning of this section.

Section 15. That the City Code of the City of Aurora, Colorado, is hereby amended to add a new section to be numbered 6-145, which section shall read as follows:

**Sec. 6-145. – Conduct of Establishment.**

**The licensee, and every employee or agent of the licensee, shall conduct business in a decent, orderly and respectable manner. The following is strictly prohibited from occurring in or on the licensed premises, upon any adjoining grounds or property under the control or management of the licensee, upon any parking area(s) under the control or management of the licensee, ~~or upon any parking area(s) used by licensee's patrons:~~**

(a) **~~Knowingly p~~Permit the loitering of a known habitual drunkard or any person displaying any visible signs of intoxication without an acceptable purpose;**

**~~(b) Permit any activity or acts of disorderly conduct as defined by C.R.S. § 18-9-106;~~**

**~~(c) Permit any unlawful act prohibited by Chapter 94 of the Aurora, Colo. Code; or~~**

**~~(d) Permit any activity or acts of rowdiness, undue noise, or other disturbances or activities offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.~~**

**~~(b) Knowingly permit any activity or acts of disorderly conduct as defined by state statute or City Code;~~**

**~~(e) Knowingly permit any criminal act;~~**

**~~(d) Knowingly permit any activity or acts of rowdiness, undue noise, or other disturbances; or~~**

**(e) — Knowingly permit activity offensive to the senses of the average citizen or the residents of the neighborhood in which the licensed establishment is located.**

Section 16. That section 6-171 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-171. - Required.

**It is unlawful to** ~~No person shall~~ operate any establishment or business as a ~~class A or B~~ cabaret without having first obtained a valid license to do so as provided in this division. No person shall offer or provide any entertainment other than that permitted under the ~~class~~ license issued. ~~All class B cabaret licenses so issued shall remain in full effect, notwithstanding the fact that fermented malt beverages are not being served on the licensed premises during a teen night.~~

Section 17. That section 6-172 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-172. - Application.

Application for a ~~class A or B~~ cabaret license shall be made to the finance director or his or her designee upon forms to be provided by him or her for that purpose, which forms shall contain the following information:

- (1) Name and address of the applicant and manager of the establishment or business if they are not one and the same person.
- (2) Name and address of the establishment or business for which application is made.
- (3) Type and class of license applied for.
- (4) Type of entertainment to be offered or provided.
- (5) Floor space and seating capacity of the establishment for which application is being made.
- (6) Such other information or evidence as reasonably may be required to establish to the satisfaction of the licensing authority that the character and reputation of the applicant is such so as to warrant the confidence of the licensing authority that the establishment or business will be lawfully operated and that the health, welfare and morals of the community will not be adversely affected should the license issue.
- (7) No person shall apply for a ~~class A or B~~ cabaret license for the same location more frequently than once every two years.

Section 18. That subsection (b) of section 6-174 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-174. - Hearing; notice.

(b) In addition to the notice requirements contained within subsection (a) of this section, a change of ownership or modification of premises, which will affect and/or change the current use of the premises for which the current license was issued, shall be required to notify the president or representative of any and all neighborhood organizations registered with the department of planning and the principal or representative of any and all schools which are located within any part of the relevant neighborhood to be considered by the authority. The licensing authority shall always hold a public hearing in the event of such an application. The applicant has the burden of proving that notification to the neighborhood organizations and schools occurred not less than ten days prior to the public hearing. The notification form and the transmittal affidavit shall be available in the office of the licensing administrator. For the definition of "relevant neighborhood," see section ~~6-71(a)~~ **6-69(a)**.

Section 19. That section 6-237 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-237. - Application.

(a) In addition to the requirements of the Colorado Liquor Code (C.R.S. § ~~12-47-101~~ **44-3-101** et seq.) and the provisions of this division, the applicant for an optional premises license shall submit the following information:

- (1) A detailed map of the optional premises on which is shown:
  - a. The service area of the outdoor sports and recreational facility;
  - b. The location of all proposed ancillary facilities;
  - c. Seating, if any;
  - d. Restroom facilities, if any;
  - e. Restrictions to access to the optional premises, if any; and
  - f. The location of all secured areas used to store malt, vinous and spirituous liquors for use in the optional premises.

(2) Such other information as may be reasonably required to satisfy the licensing authority that the control of the optional premises will be ensured and that the health, safety, and welfare of the surrounding neighborhood will not be adversely affected should the optional premises be licensed.

(3) Golf courses do not require fencing around the perimeter.

(b) If the applicant for the optional premises license does not own the premises, the applicant shall submit to the licensing authority written authorization for the license from the owner of the optional premises.

(c) Prior to licensing the optional premises, the applicant shall provide to the licensing authority proof that the state has approved the optional premises, as well as the locations proposed for the optional premises and the storage areas for malt, vinous and spirituous liquors for use thereon, as required by C.R.S. § ~~12-47-135(6) and (7)~~. **44-3-310.**

Section 20. That section 6-242 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-242. - Authorization.

The city hereby authorizes tastings to be conducted in the city in accordance with and pursuant to C.R.S. § ~~12-47-301(10)~~, **44-3-301(10)**, as amended.

Section 21. That section 6-260 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-260. - Purpose.

It is the purpose of this division for the City of Aurora, Colorado, to exercise its local option to allow common consumption areas in the city by establishing an entertainment district as provided in C.R.S. § ~~12-47-301(11)~~, **44-3-301(11)**, as amended. The requirements in this division shall be considered in addition to all the requirements set forth in the Colorado Liquor Code to allow common consumption areas in the city.

Section 22. That subsection (b) of section 6-261 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-261. - Authority.

(b) The local licensing authority shall have the authority to impose reasonable conditions on the licensing of common consumption areas, the certification of promotional associations, and the attachment of licensed premises to common consumption areas, not inconsistent with C.R.S. §§ ~~12-47-301(11) and 12-47-909~~ **44-3-301(11) and 44-3-910**.

Section 23. That subsection (b) of section 6-262 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-262. - Application for certifying a promotional association.

(b) *Attachments.* In addition to the requirements of C.R.S. § ~~12-47-301(11)~~, **44-3-301(11)**, the promotional association seeking certification by the local licensing authority shall be required to submit:

- (1) A detailed map showing the boundaries of the common consumption area including the location of physical barriers, entrances, and exits on the perimeter of the common consumption area;
- (2) A detailed description of the security arrangements, the approximate number of security personnel and the approximate location of security personnel within the common consumption area;
- (3) Documentation showing permission to use all portions of the common consumption area;
- (4) An insurance certificate of general liability and liquor liability insurance naming the city as an additional insured in a minimum amount of \$1,000,000.00 or as may be increase by the director of finance; and
- (5) In addition to any fee required to be paid to the state department of revenue, each promotional association seeking certification by the local licensing authority shall pay to the local licensing authority an application fee. The schedule of the application fee shall be established by the director of finance in accordance with



the provisions of section 2-587 of the City Code subject to any limitations set forth in the Colorado Liquor Code.

Section 24. That section 6-265 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-265. - Application for attachment to a common consumption area.

(a) *Obtaining forms.* A certified promotional association may operate a common consumption area within an entertainment district and authorize the attachment of a licensed premises to the common consumption area, subject to approval by the local licensing authority. Application for attachment of a licensed premises to the common consumption area shall be made in a manner consistent with the provisions of C.R.S. § ~~12-47-301(11)~~. **44-3-301(11)**. Application forms shall be available at the office of the local licensing authority or through the internet. No application will be considered by the local licensing authority which is not complete, with such additional information as the local licensing authority deems necessary to facilitate the proper administration of this division.

(b) *Attachments.* In addition to the requirements of C.R.S. § ~~12-47-301(11)~~, **44-3-301(11)**, the license premises seeking attachment to the common consumption area shall be required to submit:

- (1) Authorization for attachment from the certified promotional association;
- (2) Name of the representative from the licensed premises proposed for attachment who would serve as an additional director on the board of the certified promotional association;
- (3) A detailed map of the boundaries of the common consumption area including the location of currently attached licensed premises of the promotional association, identification of the location of the proposed authorized licensed premises, and identification of licensed premises that are adjacent but not to be attached to the common consumption area;
- (4) A detailed description of the security arrangements, the approximate number of security personnel and the approximate location of security personnel within the common consumption area;
- (5) The location of physical barriers, entrances, and exits on the perimeter of the common consumption area;
- (6) Documentation showing permission to use all portions of the common consumption area; and
- (7) In addition to any fee required to be paid to the state department of revenue, each licensee seeking to attach to a common consumption area shall pay to the local licensing authority an application fee. The schedule of the application fee shall be established by the director of finance in accordance with the provisions of section 2-587 of the City Code subject to any limitations set forth in the Colorado Liquor Code.

(c) *Terms and conditions.* No person shall make an application nor shall an application for the attachment of a licensed premises be received by the local licensing authority until such time as all fees, fines, costs, taxes, penalties and interest due and owing to the city by the licensed premises seeking to be authorized as part of the promotional association are paid in full.

Section 25. That section 6-266 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-266. - Hours of operation.

The common consumption area and their attached licensed premises may serve alcohol beverages and the customers may consume alcohol beverages up to 24 hours a day as permitted by C.R.S. § ~~12-47-311(f)~~ **44-3-301(11)(f)** and subject to approved by the local licensing authority.

Section 26. That section 6-267 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-267. - Creation of entertainment district.

(a) In order to exercise the city's local option to allow common consumption areas in the city and to effectuate the purposes and intent of C.R.S. § ~~12-47-301(11)~~, **44-3-301(11)**, as amended, there is hereby established and designated the Westerly Creek Entertainment District whose boundaries include all land, inclusive of rights-of-way, located in the area described in exhibit A, attached to the ordinance from which this division is derived and incorporated herein by this reference. Properties may be included or excluded from the Westerly Creek Entertainment District by resolution of the city council. By establishing the Westerly Creek Entertainment District, the city authorizes the licensing of designated common consumption areas in which alcohol beverages may be sold and consumed subject to the requirements of this division, the City Code, and the Colorado Liquor Code.

(b) Additional entertainment districts may be created, deleted or modified by resolution of the city council.

Section 27: All ordinance or parts of ordinance of the City Code of the city of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 28. Pursuant to Section 5-5 of the Charter of the city of Aurora, Colorado, the second publication of this ordinance shall be by reference, utilizing the ordinance title. Copies of this ordinance are available at the office of the City Clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PASSED AND ORDERED PUBLISHED BY REFERENCE this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
BOB LEGARE, Mayor

ATTEST:

\_\_\_\_\_  
STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
TIM JOYCE, Assistant City Attorney

F:/Dept/City Attorney/CA/Tim/Ordinance/2019 Alcohol Beverage code update/Ordinance 2019 Alcohol Beverage code update

ORDINANCE NO. 2019-\_\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 6 OF THE CITY CODE RELATED TO ALCOHOL BEVERAGES AND CABARETS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That section 6-1 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-1. - Definitions.

The definitions set forth in C.R.S. tit. ~~12~~ **44**, arts. ~~46, 47 and 48~~ **3, 4 and 5**, as amended, as well as the definitions set forth in the Colorado Liquor Rules, 1 C.C.R. 203-2, as amended, shall apply equally to this article, except where specifically defined below. Except as otherwise indicated by the context, the following words and phrases shall have the following meanings for purposes of this article:

*Ancillary facility* means a permanent, temporary or movable structure located on an optional premises which is used to sell or serve malt, vinous or spirituous liquors.

*Applicant* means any person who has applied for but has not yet been issued, a license to sell alcohol beverages.

*Colorado Beer Code* means article ~~46~~ **4** of title ~~12~~ **44** of the Colorado Revised Statutes, as amended.

*Colorado Liquor Code* means article ~~47~~ **3** of title ~~12~~ **44** of the Colorado Revised Statutes, as amended.

*Finance director* means the director of finance of the City of Aurora, Colorado; the term "finance director" shall include such person's designee.

*Licensee* means a person licensed to sell alcohol beverages at retail within the city.

*Licensing authority or local licensing authority or authority* means the alcoholic beverage local licensing authority of the city.

*Liquor special events permits code* means article ~~48~~ **5** of title ~~12~~ **44** of the Colorado Revised Statutes, as amended.

*Person* means a natural person, partnership, association, company, corporation, or organization, or a director, officer, shareholder, partner, manager, agent, servant, or employee thereof.

Section 2. That section 6-67 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-67. - Application and investigation fees.

(a) In addition to any application fees required to be paid to the state department of revenue, each person, upon filing an application with the local licensing authority for an alcohol beverage license, shall pay to the local licensing authority an application fee to defray all actual and necessary expenses incurred by the city in its investigation of, processing of and hearing upon the following applications:

- (1) New license application.
- (2) Concurrent review of a new license application by the state licensing authority.
- (3) Application for transfer of location.
- (4) Application for transfer of ownership.
- (5) Application for renewal of license.
- (6) Application for renewal of expired license.
- (7) Temporary permit application.

Such fees shall be established by the finance director in accordance with the provisions of section 2-587, subject to the limitations set forth in C.R.S. § ~~12-47-505(4)~~ **44-3-505(4)**, as amended.

(b) In addition to any investigation fees required to be paid to the state department of revenue, each licensee that is a corporation or limited liability company shall pay to the local licensing authority an investigation fee for each fingerprint analysis and background investigation undertaken to qualify new officers, directors, stockholders, or members of currently licensed corporations and limited liability companies pursuant to C.R.S. § ~~12-47-307(1)~~ **44-3-307**, as amended. Such fee shall be established by the finance director in accordance with the provisions of section 2-587, subject to the limitations set forth in C.R.S. § ~~12-47-505(4)~~ **44-3-505(4)**, as amended.

Section 3. That subsection (b) of section 6-68 of the City Code of the City of Aurora, Colorado is hereby amended to read as follows:

Sec. 6-68. - Public notice.

(b) It shall be the responsibility of the applicant to provide notice of the public hearing to the following persons at least ~~30~~ **10** days prior to the date of the hearing:

- (1) The president or representative of any and all neighborhood organizations registered with the planning department which exist within any part of the relevant neighborhood to be considered by the local licensing authority.
- (2) The principal or representative of any school located in the relevant neighborhood.

Section 4. That section 6-70 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-70. - Schedule of license and special events permit fees.

(a) In addition to any license fees required to be paid to the state department of revenue, each licensee shall pay to the local licensing authority an annual local license fee. The schedule of local license fees for each license issued under this division shall be established by the finance director in accordance with the provisions of section 2-587, subject to the limitations set forth in C.R.S. §§ ~~12-47-505(1)~~ **44-3-505(4)** and ~~12-46-107(2)~~ **44-4-107(2)**, as amended.

(b) Eighty-five percent of the local license fees set forth in subsection (a) of this section shall be paid to the state department of revenue, as provided for in C.R.S. § ~~12-47-505(3)~~ **44-3-505(3)**, as amended.

(c) In addition to any fees required to be paid to the state department of revenue, each applicant shall pay to the local licensing authority a fee for the investigation and issuance of a special events permit. The fee schedule for special events permits issued under this division shall be established by the finance director in accordance with the provisions of section 2-587, subject to the limitations set forth in C.R.S. §§ ~~12-48-107(2)~~ § **44-5-107(2)**, as amended.

Section 5. That section 6-71 of the City Code of the City of Aurora, Colorado, is hereby amended to add a new subsection, to be numbered (d), which subsection shall read as follows:

Sec. 6-71. - Location of premises.

**(d) The distance restriction set forth in subsection (a) shall not apply to lodging and entertainment, limited winery, vintner's restaurant, brew pub, or distillery pub licenses.**

Section 6. That section 6-72 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-72. - Conditions on every new, transferred and renewed liquor license.

(a) For purposes of enforcing the requirements of Colorado Regulation 1 C.C.R. 203-2, Liquor Code, Regulation 47-900(A), it shall be a condition for the issuance and renewal of every alcoholic beverage license and permit issued by the city for the licensee to comply with the provisions of city Code section 94-111. The licensee, manager, agent(s), and employee(s) thereof shall immediately notify the police department of any disturbance, any act of disorderly conduct, or any other criminal activity occurring on or within the licensed premises, **upon any adjoining grounds or property under the control or management of the licensee, upon any parking area(s) under the control or management of the licensee.** Failure to comply with city Code section 94-111 may result in the suspension or revocation of the alcoholic beverage license.

(b) No new liquor license shall be issued, no liquor license shall be transferred, and no liquor license shall be renewed until such time as all fees, fines, costs, taxes, penalties and interest due and owing to the city by the licensee or applicant are paid in full.

(c) **It shall be a condition on every alcohol beverage license, permit, or special event permit issued or renewed by the city the licensee, and every employee or agent of the licensee, shall conduct business in a decent, orderly and respectable manner. The following is strictly prohibited from occurring in or on the licensed premises, upon any adjoining grounds or property under the control or management of the licensee, upon any parking area(s) under the control or management of the licensee:**

- (1) **Permit the loitering of a known habitual drunkard or any person displaying any visible signs of intoxication to remain on the licensed premises without an acceptable purpose;**
- (2) **Permit any activity or acts of disorderly conduct as defined by C.R.S. § 18-9-106;**
- (3) **Permit any activity or acts of rowdiness, undue noise, or other disturbances or activities offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.**

(d) **It shall be a condition on every alcohol beverage license, permit or special event permit issued or renewed by the city the licensee shall timely file and pay local taxes as required by chapter 130 of the City Code.**

Section 7. That Chapter 6 of the City Code of the City of Aurora, Colorado, is hereby amended to add a new subsection, to be numbered 6-73, which section shall read as follows:

**Sec. 6-73. – Unlawful acts.**

**It shall be unlawful for:**

- (a) **Any person licensed pursuant to article 3, article 4, or article 5 of title 44, C.R.S., or any employee or agent of such licensee, to violate any provision, section, or subsection of C.R.S. § 44-3-901, as amended;**
- (b) **Any person to manufacture, sell, or possess for sale, any alcohol beverage unless licensed to do so pursuant to article 3, article 4, or article 5 of title 44, C.R.S. and this article; or**
- (c) **Any person engaged in business as defined by City Code to permit the consumption of alcohol beverage(s) within their business when the business is not licensed for the consumption of alcohol beverages on the premises pursuant to article 3, article 4, or article 5 of title 44, C.R.S. and this article.**

Section 8. That subsection (b) of section 6-106 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-106. - Liquor occupation tax.

(b) There is hereby levied and assessed an annual occupation tax upon the business of selling fermented malt beverages, or malt, vinous, and spirituous liquors at retail in the city in accordance with the following schedule:

- (1) For all licensees who possess a hotel and restaurant, vintner's restaurant, tavern, **lodging and entertainment, limited winery** brew pub, distillery pub, racetrack, or optional premises license or who sell liquor under a lodging facility contract ~~approved pursuant to C.R.S. § 12-47-119(2)(e)~~ ..... \$650.00
- (2) For all licensees who possess a beer and wine or beer and wine (resort hotel) license ..... 450.00
- (3) For all licensees who possess a retail liquor store license ..... 400.00
- (4) For all licensees who possess a liquor-licensed drugstore license ..... 300.00
- (5) For all licensees who possess a club or arts license ..... 275.00
- (6) For all licensees who possess a fermented malt beverage (on-premises consumption) license ..... 500.00
- (7) For all licensees who possess a fermented malt beverage (off-premises consumption) license ..... 275.00
- ~~(8) For all licensees who possess a fermented malt beverage (on/off premises consumption) license ..... 800.00~~

Section 9. That section 6-108 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-108. - Effect of delinquency.

No delinquency in payment of the tax provided for in this division shall be grounds for suspension or revocation of any license granted to any licensee by the licensing authority pursuant to the state statutes. In performance of any duties imposed upon the authority by such statutes, the licensing authority shall exclude from consideration any delinquency in payment of the tax provided for in this division, except as set forth in subsection ~~6-66(e)(1)~~g **6-66(d)**.

Section 10. That section 6-136 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-136. - Definitions.



The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* means any person who is applying for, but has not yet received, ~~either a class A or class B~~ cabaret license pursuant to this division.

~~Class A cabaret~~ **Cabaret** means a location licensed for the sale of intoxicating liquors for consumption on the premises wherein entertainment may be either live or recorded vocal or instrumental music and no other entertainment shall be permitted and where dancing by the customers is permitted.

~~Class B cabaret~~ means a location licensed for the sale of fermented malt beverage for consumption on the premises wherein entertainment may be either live or recorded vocal or instrumental music and no other entertainment shall be permitted and where dancing by the customers is permitted.

Section 11. That section 6-138 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-138. - Violations.

**Any violation of this division may result in the suspension, the imposition of a fine in lieu of a suspension, or revocation of the cabaret license. A cabaret license may be summarily suspended for a period not to exceed fifteen days, without notice pending prosecution and public hearing, when reasonable grounds exist a licensee committed a deliberate and willful violation of any provision of this division.** In addition to the possibility of revocation or suspension of the license, or the imposition of a fine in lieu of such suspension, ~~all as provided for in section 6-77(e),~~ any person who violates any of the provisions of this division or who fails to perform any act required by this division and who is convicted thereof, shall be subject to the penalties set forth in section 1-13.

Section 12. That section 6-140 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-140. - Hours permitted for entertainment.

No entertainment shall be offered or provided in a ~~class A or class B~~ cabaret prior to 12:00 noon or later than 2:00 a.m. the succeeding day **in locations permitted by the zoning code to remain open until 2:00 a.m., or no later than 12:00 midnight in locations required by the zoning code to close at 12:00 midnight.**

Section 13. That section 6-141 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-141. - Entry of minors.

~~(a)~~ It shall be unlawful for any person to permit anyone under 21 years of age to patronize a ~~class A or class B~~ cabaret or for any person under 21 years of age to gain entry or attempt to gain entry into such an establishment ~~accompanied by a parent or legal guardian;~~ provided, however, that this prohibition shall not preclude a person under 21 years of age from patronizing a bona fide restaurant **before 11:00 p.m., or at any**

**time the dance floor is not in use, that habitually and continuously serving meals to guests at all times minors are permitted, seats all guests, and maintains complete books and records. This prohibition shall also not apply if the business is rented for a bona fide private event and is closed to the general public and the minor is accompanied by a parent or guardian.**; that is, ~~if the establishment whose principal purpose is the preparation of food and serving of meals to guests, which food service represents 50 percent or more of the business revenues of the establishment.~~

~~(b) Any person of the age of 16 years through 20 years shall be allowed to patronize a class B cabaret or to gain entry into a class B cabaret during the hours that fermented malt beverages are neither being served nor being consumed by anyone on the licensed premises if all provisions of this Code pertaining to teen club licenses have been complied with. During the hours that fermented malt beverages are not being served, all such beverages and their dispensers shall be secured, covered, and kept out of public view. Once the premises have been converted to a nonalcohol status, there shall be no reconversion to alcohol beverage service during the next succeeding 12 hour period.~~

Section 14. That section 6-144 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-144. - Report of disorderly conduct.

Any licensee under this division or, in such licensee's absence, any manager or employee thereof, shall immediately report to the Aurora Police Department any unlawful or disorderly conduct or criminal activity committed, or occurring, at the location, on the premises, or within the licensed premises set forth on the license of the license holder. For the purposes of this section the terms "location", "premises", and "licensed premises" shall ~~have that meaning and definition set forth in Section 12-47-103 of the Colorado Revised Statutes~~ **include any adjoining grounds or property under the control or management of the licensee, upon any parking area(s) under the control or management of the licensee.**

For purposes of this section "report" shall mean to either: (1) immediately, verbally, and directly in person, notify any onsite uniformed Aurora Police Officer whether on duty or working secondary employment; or (2) place and complete a phone call to the non-emergency dispatch telephone number for the Aurora Police Department; or (3) place and complete a telephone call to the emergency \*911 operator. Contacting individual officers out of uniform or not directly on the licensed premises shall not suffice as a report or reporting within the meaning of this section.

Section 15. That the City Code of the City of Aurora, Colorado, is hereby amended to add a new section to be numbered 6-145, which section shall read as follows:

**Sec. 6-145. – Conduct of Establishment.**

**The licensee, and every employee or agent of the licensee, shall conduct business in a decent, orderly and respectable manner. The following is strictly prohibited from occurring in or on the licensed premises, upon any adjoining grounds or property under the control or management of the licensee, upon any parking area(s) under the control or management of the licensee:**

- (a) **Permit the loitering of a known habitual drunkard or any person displaying any visible signs of intoxication without an acceptable purpose;**
- (b) **Permit any activity or acts of disorderly conduct as defined by C.R.S. § 18-9-106;**
- (c) **Permit any unlawful act prohibited by Chapter 94 of the Aurora, Colo. Code; or**
- (d) **Permit any activity or acts of rowdiness, undue noise, or other disturbances or activities offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.**

Section 16. That section 6-171 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-171. - Required.

**It is unlawful to** ~~No person shall~~ operate any establishment or business as a ~~class A or B~~ cabaret without having first obtained a valid license to do so as provided in this division. No person shall offer or provide any entertainment other than that permitted under the ~~class~~ license issued. ~~All class B cabaret licenses so issued shall remain in full effect, notwithstanding the fact that fermented malt beverages are not being served on the licensed premises during a teen night.~~

Section 17. That section 6-172 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-172. - Application.

Application for a ~~class A or B~~ cabaret license shall be made to the finance director or his or her designee upon forms to be provided by him or her for that purpose, which forms shall contain the following information:

- (1) Name and address of the applicant and manager of the establishment or business if they are not one and the same person.
- (2) Name and address of the establishment or business for which application is made.
- (3) Type and class of license applied for.
- (4) Type of entertainment to be offered or provided.
- (5) Floor space and seating capacity of the establishment for which application is being made.
- (6) Such other information or evidence as reasonably may be required to establish to the satisfaction of the licensing authority that the character and reputation of the applicant is such so as to warrant the confidence of the

licensing authority that the establishment or business will be lawfully operated and that the health, welfare and morals of the community will not be adversely affected should the license issue.

- (7) No person shall apply for a ~~class A or B~~ cabaret license for the same location more frequently than once every two years.

Section 18. That subsection (b) of section 6-174 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-174. - Hearing; notice.

(b) In addition to the notice requirements contained within subsection (a) of this section, a change of ownership or modification of premises, which will affect and/or change the current use of the premises for which the current license was issued, shall be required to notify the president or representative of any and all neighborhood organizations registered with the department of planning and the principal or representative of any and all schools which are located within any part of the relevant neighborhood to be considered by the authority. The licensing authority shall always hold a public hearing in the event of such an application. The applicant has the burden of proving that notification to the neighborhood organizations and schools occurred not less than ten days prior to the public hearing. The notification form and the transmittal affidavit shall be available in the office of the licensing administrator. For the definition of "relevant neighborhood," see section ~~6-71(a)~~ **6-69(a)**.

Section 19. That section 6-237 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-237. - Application.

(a) In addition to the requirements of the Colorado Liquor Code (C.R.S. § ~~42-47-101~~ **44-3-101** et seq.) and the provisions of this division, the applicant for an optional premises license shall submit the following information:

- (1) A detailed map of the optional premises on which is shown:
  - a. The service area of the outdoor sports and recreational facility;
  - b. The location of all proposed ancillary facilities;
  - c. Seating, if any;
  - d. Restroom facilities, if any;
  - e. Restrictions to access to the optional premises, if any; and
  - f. The location of all secured areas used to store malt, vinous and spirituous liquors for use in the optional premises.

(2) Such other information as may be reasonably required to satisfy the licensing authority that the control of the optional premises will be ensured and that the health, safety, and welfare of the surrounding neighborhood will not be adversely affected should the optional premises be licensed.

(3) Golf courses do not require fencing around the perimeter.

(b) If the applicant for the optional premises license does not own the premises, the applicant shall submit to the licensing authority written authorization for the license from the owner of the optional premises.

(c) Prior to licensing the optional premises, the applicant shall provide to the licensing authority proof that the state has approved the optional premises, as well as the locations proposed for the optional premises and the storage areas for malt, vinous and spirituous liquors for use thereon, as required by C.R.S. § ~~12-47-135(6) and (7)~~. **44-3-310.**

Section 20. That section 6-242 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-242. - Authorization.

The city hereby authorizes tastings to be conducted in the city in accordance with and pursuant to C.R.S. § ~~12-47-301(10)~~, **44-3-301(10)**, as amended.

Section 21. That section 6-260 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-260. - Purpose.

It is the purpose of this division for the City of Aurora, Colorado, to exercise its local option to allow common consumption areas in the city by establishing an entertainment district as provided in C.R.S. § ~~12-47-301(11)~~, **44-3-301(11)**, as amended. The requirements in this division shall be considered in addition to all the requirements set forth in the Colorado Liquor Code to allow common consumption areas in the city.

Section 22. That subsection (b) of section 6-261 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-261. - Authority.

(b) The local licensing authority shall have the authority to impose reasonable conditions on the licensing of common consumption areas, the certification of promotional associations, and the attachment of licensed premises to common consumption areas, not inconsistent with C.R.S. §§ ~~12-47-301(11) and 12-47-909~~ **44-3-301(11) and 44-3-910.**

Section 23. That subsection (b) of section 6-262 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-262. - Application for certifying a promotional association.

(b) *Attachments.* In addition to the requirements of C.R.S. § ~~12-47-301(11)~~, **44-3-301(11)**, the promotional association seeking certification by the local licensing authority shall be required to submit:

- (1) A detailed map showing the boundaries of the common consumption area including the location of physical barriers, entrances, and exits on the perimeter of the common consumption area;
- (2) A detailed description of the security arrangements, the approximate number of security personnel and the approximate location of security personnel within the common consumption area;

- (3) Documentation showing permission to use all portions of the common consumption area;
- (4) An insurance certificate of general liability and liquor liability insurance naming the city as an additional insured in a minimum amount of \$1,000,000.00 or as may be increase by the director of finance; and
- (5) In addition to any fee required to be paid to the state department of revenue, each promotional association seeking certification by the local licensing authority shall pay to the local licensing authority an application fee. The schedule of the application fee shall be established by the director of finance in accordance with the provisions of section 2-587 of the City Code subject to any limitations set forth in the Colorado Liquor Code.

Section 24. That section 6-265 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-265. - Application for attachment to a common consumption area.

(a) *Obtaining forms.* A certified promotional association may operate a common consumption area within an entertainment district and authorize the attachment of a licensed premises to the common consumption area, subject to approval by the local licensing authority. Application for attachment of a licensed premises to the common consumption area shall be made in a manner consistent with the provisions of C.R.S. § ~~12-47-301(11)~~. **44-3-301(11)**. Application forms shall be available at the office of the local licensing authority or through the internet. No application will be considered by the local licensing authority which is not complete, with such additional information as the local licensing authority deems necessary to facilitate the proper administration of this division.

(b) *Attachments.* In addition to the requirements of C.R.S. § ~~12-47-301(11)~~, **44-3-301(11)**, the license premises seeking attachment to the common consumption area shall be required to submit:

- (1) Authorization for attachment from the certified promotional association;
- (2) Name of the representative from the licensed premises proposed for attachment who would serve as an additional director on the board of the certified promotional association;
- (3) A detailed map of the boundaries of the common consumption area including the location of currently attached licensed premises of the promotional association, identification of the location of the proposed authorized licensed premises, and identification of licensed premises that are adjacent but not to be attached to the common consumption area;
- (4) A detailed description of the security arrangements, the approximate number of security personnel and the approximate location of security personnel within the common consumption area;
- (5) The location of physical barriers, entrances, and exits on the perimeter of the common consumption area;
- (6) Documentation showing permission to use all portions of the common consumption area; and

(7) In addition to any fee required to be paid to the state department of revenue, each licensee seeking to attach to a common consumption area shall pay to the local licensing authority an application fee. The schedule of the application fee shall be established by the director of finance in accordance with the provisions of section 2-587 of the City Code subject to any limitations set forth in the Colorado Liquor Code.

(c) *Terms and conditions.* No person shall make an application nor shall an application for the attachment of a licensed premises be received by the local licensing authority until such time as all fees, fines, costs, taxes, penalties and interest due and owing to the city by the licensed premises seeking to be authorized as part of the promotional association are paid in full.

Section 25. That section 6-266 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-266. - Hours of operation.

The common consumption area and their attached licensed premises may serve alcohol beverages and the customers may consume alcohol beverages up to 24 hours a day as permitted by C.R.S. § ~~12-47-311(f)~~ **44-3-301(11)(f)** and subject to approved by the local licensing authority.

Section 26. That section 6-267 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 6-267. - Creation of entertainment district.

(a) In order to exercise the city's local option to allow common consumption areas in the city and to effectuate the purposes and intent of C.R.S. § ~~12-47-301(11)~~, **44-3-301(11)**, as amended, there is hereby established and designated the Westerly Creek Entertainment District whose boundaries include all land, inclusive of rights-of-way, located in the area described in exhibit A, attached to the ordinance from which this division is derived and incorporated herein by this reference. Properties may be included or excluded from the Westerly Creek Entertainment District by resolution of the city council. By establishing the Westerly Creek Entertainment District, the city authorizes the licensing of designated common consumption areas in which alcohol beverages may be sold and consumed subject to the requirements of this division, the City Code, and the Colorado Liquor Code.

(b) Additional entertainment districts may be created, deleted or modified by resolution of the city council.

Section 27: All ordinance or parts of ordinance of the City Code of the city of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 28. Pursuant to Section 5-5 of the Charter of the city of Aurora, Colorado, the second publication of this ordinance shall be by reference, utilizing the ordinance title. Copies of this ordinance are available at the office of the City Clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PASSED AND ORDERED PUBLISHED BY REFERENCE this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
BOB LEGARE, Mayor

ATTEST:

\_\_\_\_\_  
STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
TIM JOYCE, Assistant City Attorney

F:/Dept/City Attorney/CA/Tim/Ordinance/2019 Alcohol Beverage code update/Ordinance 2019 Alcohol Beverage code update





## CONFIDENTIAL MEMORANDUM

TO: Councilmember Gruber, Chair, Management and Finance Committee  
 Terri Velasquez, Director of Finance  
 Michelle Wolfe, Deputy City Manager

FROM: Tim Joyce, Assistant City Attorney

THROUGH: Nancy Rodgers, Deputy City Attorney

DATE: May 22, 2019

RE: Case law supporting the imposition of discipline on a liquor license holder for incidents that occur outside licensed premises

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Councilmember Charlie Richardson recalled the City had an Adams County case possibly in 1987 where he argued the City should be able to impose discipline on a liquor license holder for events that occur in their parking lot. CM Richardson recalls the Court ruled against him. I have not been able to locate the ruling referenced by CM Richardson. There may likely have been such a ruling.

Notwithstanding the possibility of an adverse ruling on this issues by the Adams County district court, there is sufficient case law from the Colorado Supreme Court and the Colorado Court of Appeals to support the City's proposal to make liquor license holders accountable for incidents that occur in parking lots or upon adjoining grounds under the control or management of the licensee that directly relate to the conduct and operation of the licensed establishment.

Summary.

The City is proposing, as part of the Chapter 6 liquor code update, a change that would allow the City to impose discipline, such as a suspension or revocation or fine, upon a liquor license holder for certain prohibited acts that may occur upon any adjoining ground or property under the control of the management of the licensee, or upon any parking lot area under the control or management of the licensee when that act is related to the conduct and operation of the licensed establishment.

The prohibited acts in the proposed ordinance are failing to prohibit:

- a known habitual drunkard or persons displaying visible signs of intoxication to loiter;
- acts of disorderly conduct; and
- any activity or acts of rowdiness, undue noise, or other disturbances or activities offensive to the senses of the average citizen, or to the residents of the neighborhood in which the liquor licensed establishment is located.

The prohibited acts are identical to the prohibited acts in Colorado Department of Revenue Liquor Enforcement Division Liquor Rules, Regulation 47-900(A), 1 CCR 203-2.

Regulation 47-900(A) does not clearly state *where* the prohibited acts shall not be permitted and has been utilized to apply to both inside and outside the licensed establishment. The City's proposed ordinance would specifically state that it applied to acts occurring *inside* the licensed establishment, as well as *outside the establishment* upon any adjoining grounds or property or parking lot under the control or management of the licensee.

There is sufficient case law to support local restriction that mirror Regulation 47-900(A) being applied to incidents occurring outside the licensed premises, and therefore sufficient support for the City's proposed ordinance change.

Supporting Case Law:

In 1961, the Colorado Supreme Court determined it was entirely proper for a licensing authority to take into account not only the conduct of the licensee, but also conditions which render a continuance of a license in a particular location against public interest. *Manitou Springs v. Walk*, 367 P.2d 744 (Colo. 1961), *reh'g denied* Jan. 22, 1962. In this case the Walks had a license to sell 3.2 beer in their dance hall. Located near the dance hall was the arcade which consisted of shops and amusement centers and is one of the tourist attraction of Manitou Springs. Neighbors living within 300 yards of the dance hall presented two petitions asking the city not to renew the liquor license on the grounds the operation of the dance hall caused noise and rowdiness. The Chief of Police and local businesses supported the petition because of fights, lost business, loitering, and disturbances. The city council, acting as the local licensing authority, denied the renewal of the Walk liquor license because of the disturbances and activities outside the dance hall. The Colorado Supreme Court upheld the denial.

In 2010, the Colorado Court of Appeals reviewed a license renewal application which was denied based on activities that occurred both inside and outside the establishment. *Morris-Schindler, LLC v. City and County of Denver*, 251 P.3d 1076 (Colo. App. 2010). In this case, there was evidence of twelve emergency dispatch calls to the licensed location to the establishment or in its immediate vicinity. Employees regularly attempted to run off loiters and remove drunks from outside the establishment. Neighbors testified they observed drug sales outside the establishment, numerous over-intoxicated individual entering and leaving the establishment and altercations outside the establishment. The hearing officer found the regular presence of over-served, drunken patron coming out of and standing in front of the establishment was a violation of the liquor code. The Court of Appeals determined there was sufficient competent evidence to support the finding of a violation.

In 1994, the Colorado Court of Appeals reviewed the denial of a license renewal in a due process case. In its detailed order, the Court of Appeals noted that it was acceptable for licensing authorities are required to consider the reasonable requirements of the neighborhood. *Squire Rest. & Lounge v. City & County of Denver*, 890 P.2d 164, 170 (Colo. App. 1994), modified and as modified, *reh'g denied* Aug. 11, 1994, cert. denied March 6, 1995. The Court reversed the denial of the license renewal but not because it was based on activities outside the establishment but because the term "good cause" was not defined in the liquor code. The next year the state legislature defined the term "good cause." The *Squire* Court noted that the authority "should not be precluded from addressing neighborhood concerns about such matters as unacceptable levels

of neighborhood noise, parking and traffic congestion, and litter and disorderly conduct when considering the renewal of a liquor license.” *Id.* An authority is not required to exact “extensive and detailed regulations.” *Id.* However, an authority must sufficiently define the bases for possible violation or license denial. As an example, the Court supported a “regulation providing that a license need not be renewed if the licensed premises constitute a nuisance or adversely affect *the surrounding environment* by interfering with public decency and good order.” *Id.* at 171 (emphasis added).

*Supporting Regulatory Decisions:*

In 2016, the Colorado Liquor Enforcement Division ruled that a liquor license holder can be held accountable for incidents directly related to the conduct and operations of their establishment that occur *outside* the licensed premises. *In the Matter of Goldenwings, Inc., dba II Tekilas, Colorado Department of Revenue Liquor Enforcement Hearings Division*, case number 16L014 (August 31, 2016). In this case Thornton Police Officers testified they were dispatched to or filed reports of criminal activity at II Tekilas on at least fifteen different occasions over the previous year. The incidents included assaults, fights, intoxicated or unwanted patrons, and disturbances and occurred either in the licensed premises or ***outside in the shared parking lot***. Officers broke up fights outside II Tekilas, witnessed an intoxicated female pass out leaving the bar and have seen other intoxicated persons leaving II Tekilas. They even posted an officer outside II Tekilas as a deterrent to potential crime committed by patrons leaving II Tekilas. The Hearing Officer determined the credible and persuasive evidence of activity was directly related to the conduct and operations of II Tekilas. The Hearing Officer went further to state the licensee may not serve its customers too much alcohol and then argue they have no liability for the incidents which ***occur just outside their front door***.

In 2012, Denver’s hearing officer issued a similar ruling regarding the hotel and restaurant liquor license for the Rockbar. *In the Matter of the Hotel Restaurant Liquor License and Dance Cabaret License Issued to Hotel Restaurant LLC, Doing Business as Rockbar, For the Premises Know and Designated as 3015 E. Colfax Ave., Denver, Colorado*, September 26, 2012. There was substantial credible evidence the Rockbar had been operated in a manner that adversely affected the public health, welfare, or safety of the immediate neighborhood. The evidence consisted of a sheer number of police calls and crime reports involving the Rockbar’s address ***and the immediate vicinity***, first-hand witness reports of disorderly conduct of patrons ***leaving the Rockbar***. Crime reports showed approximately 167 crimes within 500 feet of the Rockbar’s address of which 45 were reports of incidents occurring at the Rockbar’s address, and approximately 223 calls for service at the Rockbar’s address. The Hearing Officer determined the Licensee knowingly permitted such acts and concluded good cause was presented not to renew the liquor license.

In October 2012, the Director of Excise and Licensing reviewed the *Rockbar* case and upheld the Hearing Officer’s determination the Rockbar’s liquor license should not be renewed mostly based on events that occurred ***outside the Rockbar***.

In April 2019, the City's own Hearing Officer<sup>1</sup> made a similar ruling in the case of: *In re Barralaga, LLC, dba Tierra Maya Sports Bar & Grill*, City of Aurora, Colorado, Local Licensing Authority Order (April 23, 2019). The Hearing Officer determined that the fights in a ***parking lot adjacent to the licensed facility*** violated Regulation 47-900. In so finding, she determined that the neighborhood disturbance portions of Regulation 47-900, "by its express terms, is not limited to the Licensed Premises." She found that "the fights in the parking lot started as a result of rowdiness inside the Licensed Premises, rowdiness which was permitted by Licensee, even if unknowingly."

### Conclusion.

It is possible that the City may have been given an adverse ruling in the past related to a liquor license case involving action taking because of behavior ***outside*** the license premises. However, we believe that the case law and the City's own hearing officer's recent ruling support the proposed ordinance to hold licensees accountable to for off-premises behavior and disturbances that mirror Regulation 47-900. We believe the proposed ordinance puts license holders and the public on sufficient notice of the type of behavior that will be prohibited by a licensed establishment, whether it occurs inside or outside the establish, so long as the prohibited act is relating to the operation of the facility.

As succinctly said by a court in Rhode Island in a case challenging the nonrenewal of a liquor license for "cause": "[O]nce a licensee... receives a liquor license, it assumes an obligation to supervise the conduct of its clientele so as to preclude the creation of conditions within the surrounding neighborhood which would amount to a nuisance to those who reside in the area. This burden ... is 'onerous,' but it is a part of the continuing responsibility assumed by the licensee or renewal of a license." *A.J.C. Enterprises, Inc. v. Pastore*, 473 A.2d 269, 275 (R.I. 1984), cited for different reasons in *Squire Rest. & Lounge v. City & County of Denver*, 890 P.2d 164, 170 (Colo. App. 1994). (The licensee in this case argued there was no direct connection between the neighbors' complaints and the licensee's patrons. The court however determined there was a link between the incidents occurring outside or nearby the liquor establishment and its patron when it was reasonably inferred from the evidence that the incidents that occurred outside a particular establishment and had their origins within the establishment.)

If this memorandum raises any additional questions, please let me know.

<sup>1</sup> The City employs a licensed attorney and experience liquor licensed professional as its hearing officer.