

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

MINUTES

March 26, 2019 minutes were approved.

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.

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

ACCELA UPDATESummary 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.

2018 EXTERNAL AUDIT PRE-AUDIT LETTERSummary 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.

ELIMINATION OF GOING OUT OF BUSINESS LICENSE REQUIREMENTSummary 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.

LIQUOR CODE UPDATESSummary 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.

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.

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.

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



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

28 May 2019

Date