

MANAGEMENT AND FINANCE POLICY COMMITTEE

May 28, 2019

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

Others Present: Council Member Nicole Johnston, M. Wolfe, T. Velasquez, G. Hays, S. Ruger, T. Vaughn, D. Lathers, A. Morales., R. Allen, T. Joyce, H. Hernandez, A. Fitch, K. Mason, M. Lanterbach, and T. Hoyle

MINUTES

April 23, 2019 minutes were approved.

CONSENT ITEMSSales Tax Chart

March of 2019 was 5.8 percent higher than March of 2018.

Capital Plan

G. Hays gave a brief update on capital projects.

Outcome

The Committee thanked staff.

Follow-up Action

No follow-up needed.

CAMPAIGN FINANCESummary of Issue and Discussion

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, **30th** day, **14th** day, and 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. 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. She stated that part of her motive for sponsoring the ordinance is the belief that special interest groups will donate more to local races this year because of passed legislation and it gives more local control on various issues.

Council Member Gruber asked what year would this take place. Council Member Johnson replied it would be for this year.

Council Member Lawson asked if the proposed new campaign finance reporting was similar to the State of Colorado's requirements. She mentioned that as state elections get closer, candidates report biweekly. Council Member Johnston stated Aurora's reports would be less frequent than

the state. It's mainly every 30-days, and when it becomes closer, a report is due two weeks before the election. This year with a lot of the legislation that passed there's significant local control on various issues. It's anticipated there will be more money and more donors. As such there may be more activity in this election in the interest of the public and having more transparency on what's being donated. This proposal gives Aurora the opportunity to narrow the gap in reporting between the 89 days and the 22 days currently prescribed by the Municipal Code. All the information will be there when the ballots go out.

Council Member Gruber asked if there could be a situation where someone becomes a candidate after the first report is due 90 days before the election and wouldn't have to submit their first report until the 60th day before the election. S. Ruger said yes, that can happen now with the existing law. August 27 is the date when petitions are due in and that's what establishes a person as a candidate. Once they come in and register at my office they can start collecting funds for their campaign, so it's a step that is required. This proposal will require us to track and gather additional campaign finance reports in the process.

Council Member Gruber stated he recognizes the two separate processes, one for petitioning to be on the ballot and one for campaign finance reporting, but he's not yet convinced based on verbiage that they are integrated. S. Ruger replied that they are not. If someone decides to run after 85 days and they haven't collected any money or campaigned then we won't do anything until they actually start collecting funds on the campaign finance reporting side.

Council Member Johnston stated that strengthens the reason even more to add additional reporting dates as it would capture sooner those candidate's campaign finance activities.

Council Member Richardson asked about the report of contributions in the aggregate received. If contributions are more than a \$1000.00 in the aggregate received, does it mean that you have to report on the 59th day? D. Lathers replied it doesn't change the dates of required reporting, but it does change the amount that has to be reported. We had concerns particularly with contributions in-kind as small multiple sequential donations don't get reported if contributions come in from one company. Council Member Richardson asked is that's per donor? S. Ruger replied yes, noting that it is not written clearly in the current draft, and as such, language denoting per contributor should be added.

Council Member Richardson said he views this ordinance as anti-incumbent and felt that the timing of its execution was not a coincidence. He stated that he believes there is a political agenda to this initiative, but he will vote to move it forward.

Council Member Richardson stated that when he took an initial run at updating campaign finance he got bogged down in this whole area because of the enforcement provision. He asked S. Ruger do you have a concern on enforcement.

S. Ruger said enforcement is a big deal. Whenever people have to report to my office, it's my job to make it happen. Certainly, a lot of things can happen through all of this, if we don't know about it, I'm not sure how we can track it and enforce it.

Council Member Richardson said, if there's assertive violation of this what is the City Clerk's office going to do? Arrest somebody, are you going to cite them into municipal court? I'm serious here, what are you going to do?

D. Lathers said that is something that Council Member Johnston and Mr. Ruger talked about. Currently we would refer the matters to the Secretary of the State. The Secretary of the State has a provision within their rules (Colorado Court Regulations) they would always refer those back to us for dealing with them. The way the Secretary of the State deals with it, they have a panel of administrative law judges they send these to. There's a process setup and those judges have authority depending upon the nature of the violation, fines are \$40 or \$50 a day up to \$1,000 a day. There's a different level of violations. We have not been organized in the past, we believe that we have a comprehensive code. These infirmities came forward little bit in the last election. We had allegations that a candidate was not obeying the residency requirements. How do we enforce that? The City has begun looking at that. We've called the Secretary of the State to see if we can get a list of those law judges. Council Member Johnston did tell us that she did not believe that there was adequate time to consider the issue comprehensively, I think much like the wall you ran into. It's such a large issue we could not get that done comprehensively and intelligently in a limited time, so she focused on the subset issues. Yes, you identified it, and she's identified it.

S. Ruger said, I apologize Council Member Richardson you're talking about specifically about the "specificity" provision. We wouldn't be able to enforce "specificity".

Council Member Richardson said, Thank you! I hope the minutes got that!

S. Ruger said, I apologize, I didn't know what you were talking about specifically. But today's point on the residency requirement. There is very clear definitions on what that is. So we would be able to enforce that. You're absolutely right. On "specificity", I don't know what measure we would use to enforce that.

Council Member Lawson asked about candidates missing deadlines for filing reports and if there is a defined penalty. S. Ruger said, yes. Council Member Angela Lawson asked if it was possible to implement the changes proposed by the ordinance for the 2019 Regular Municipal Election. S. Ruger explained that he is concerned about the timing, because certain changes would be required in the City's campaign finance reporting system to accommodate additional reports. He also stated that the schedule of key dates has already been provided to the candidates and that his office would need to work directly with candidates to impose any changes at this point. He noted that he has let candidates know that this change is being proposed.

Council Member Richardson suggested that the effective date be January 1, 2020.

Council Member Gruber said that the Clerk Office is not ready to implement this and there's concerns when it actually becomes an ordinance and concerns about how they would instruct and educate the candidates for this election.

S. Ruger said, there are concerns we would need to address if this passed; yes.

Council Member Gruber recommended that the word “specificity” be removed to avoid any court action. Council Member Johnston stated she agrees with the removal and keeping the code as is.

CM Gruber said, what I heard previously is that the Clerk’s Office is not ready to implement but given the fact that the candidates have already been told.... Council Member Johnston said excuse me, I don’t think he said he’s not ready to implement, but I want clarification.

S. Ruger said, I mean that we will make it happen. CM Gruber asked, Steve are you ready to implement this right now? S. Ruger replied, well....Steve, this is a yes or no question. S. Ruger said no, we don’t have the system.... Council Member Gruber interrupted, and reiterated that the Clerk said they’re not ready to implement right now and the candidates are already informed on what our processes is, and said to Council Member Richardson, I believe you made a recommendation to make this effective in January 2020? He then asked Council Member Lawson what her thoughts were.

Council Member Lawson said, I don’t think it was fair that you just cut him off. He was basically telling you his concern from an IT perspective. He didn’t say that. You didn’t allow him to answer and I thought that was very unprofessional.

Council Member Gruber and Council Member Richardson voted to move the item forward with an amendment that it is not become effective until January 1, 2020. Council Member Lawson voted to move the item as is.

Outcome

The Committee agrees staff should remove the phrase listing “with specificity” and add “per contributor” after the word “aggregate” in Section 54-105.5. The Committee unanimously agreed to move the item forward to Study Session. Council Member Gruber and Council Member Richardson voted to move the item forward with an amendment that it not take effect until January 1, 2020. Council Member Lawson voted to move the ordinance forward as is.

Follow-up Action

Staff will forward this item to the June 6, 2019 Study Session.

LIQUOR CODE UPDATES

Summary of Issue and Discussion

The 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 need 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 memo attached to the agenda item 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.

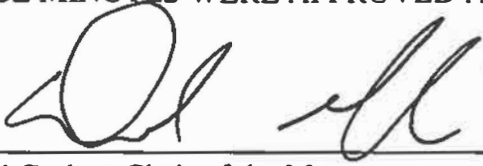
Outcome

The Committee thanked staff and approved moving the item forward to the June 24, 2019 Study Session.

Follow-up Action

Staff will forward this item to the June 24, 2019 Study Session

THESE MINUTES WERE APPROVED AS SUBMITTED



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

7/23/19

Date