

MANAGEMENT AND FINANCE POLICY COMMITTEE

December 3, 2019

Members Present: Council Member David Gruber – Chair, Council Member Angela Lawson – Vice Chair, and Council Member Juan Marcano

Others Present: Council Member Hiltz, City Manager Jim Twombly, R. Venegas, T. Velasquez, G. Hays, T. Vaughn, M. Shannon, W. Sommer, H. Hernandez, A. Jamison, M. Crawford, S. Van Buren, A. Garcia, A. Ramaswami, N. Amaha-Gallhick, K. Staats, A. Ogg and T. Hoyle

INTRODUCTIONS AND MINUTES

October 22, 2019 minutes were approved.

CONSENT ITEMS**Sales Tax Chart**

September of 2019 was 9.8 percent higher than September of 2018.

Council Member (CM) Marcano noted that in August it appeared to be a huge spike. G. Hays replied that it was partially from the recent Wayfair decision. These online companies that are out of state were now submitting the sales tax and some of the smaller companies were submitting quarterly. They also received some huge payments from businesses that were IT computer related.

CM Lawson asked when we get these opportunity zones and businesses that are coming in here will that be factored into this too? T. Velasquez replied yes, if they pay sales tax, however this is net of any incentives.

Outcome

The Committee thanked staff.

Follow-up Action

No follow-up needed.

RAISE TOBACCO SALES TO AGE 21**Summary of Issue and Discussion**

T. Vaughn introduced Kathy Staats, Tri-County Health and stated this ordinance was requested by Councilmember Richardson. Several local jurisdictions are looking at or have implemented an increase in the tobacco sales age to 21. Most recently the City and County of Denver raised the minimum age for tobacco sales. Altria is the parent company of Phillip Morris and publicly supports raising the legal age to 21. Several state legislators have indicated support of state-wide legislation to raise the legal age to 21.

The ordinance utilizes model language in part supplied by Tri-County Health to increase the legal sales age of tobacco products to 21. The ordinance amends chapter 94 to add a general offense for sales to someone under 21 as well as adding a business regulation to increase the sales age.

A recommended best practice is to institute a retailer licensing program to ensure that resources are adequate to ensure compliance and to create a revenue source to implement administration of the program. However, staff is initially proposing a structure utilizing the City's general business license to avoid creating a new license with corresponding need for resources. There are an estimated 300-400 tobacco retailer locations in the City. This ordinance is presented with another ordinance that amends Chapter 86 Business Licenses to allow for fines and to have violations of Chapter 26 Business Regulations be a reason for suspension, revocation or fine of a licensee.

The ordinance prohibits tobacco vending machines, requires signage warning minors, and requires that tobacco products be stocked securely so assistance from a retail clerk is required.

This ordinance may have an impact on tax revenues to the City. The exact amount is difficult to determine but it may result in a sales tax loss of up to \$90,000 annually.

Kathy Staats said there's currently compliance efforts for the state of Colorado, but they're few and far between and there's not a lot of capacity. Really it would be more ideal to have it more a local oversight.

CM Gruber asked what the cost would be to the City, what are the fines and how are they setup to cover the anticipated expenses, and who will do the enforcement or the sting operations.

T. Vaughn said in the ordinance it talks about adding fines along with the general business license. The intent of the proposal is that the fines would cover some of the costs as far as implementing enforcement. The enforcement would be handled through the Finance department through Tax & Licensing.

CM Gruber said I understand that part would come from that side but who does the enforcement and the stings and how will that be paid for? T. Vaughn said I don't have the projected financial impact with that, but it would depend how heavy we did the enforcement. The assumption is the fines will offset the costs as far as the proactive enforcement and how it fits with enforcement priorities. Additional complaints and non-compliance would likely lead to higher enforcement efforts but also more fines. The proposal included as part of this ordinance is to conduct compliance checks with existing resources on only a small number of licensees each year so that it can be done with existing resources.

CM Lawson said that in Section 26-152 (c) it says, "deemed appropriate". What does that mean, that its complaint driven and how would that be determined if the retailer is abiding by the law or not? T. Vaughn replied yes. The idea there is that it is complaint driven as it is for liquor stores that may be selling to minors. Follow up stings would be conducted to verify compliance.

Kathy Staats said there already exists a tobacco retailer access Colorado system web-based mapping application of locations of tobacco retailers and their current compliant checks responses. She will send the link so staff will be able to track on who has failed compliant checks previously so that there is some follow up performed.

CM Marcano questioned if the \$90,000 figure was based off the recently changed tax structure for cigarettes? T. Velasquez replied, yes.

CM Marcano asked if currently there was anything on the books of purchasing policy penalties for minors. T. Vaughn replied, currently it's a violation of general offences and it's been updated from 18 to 21 as part of the ordinance. It's on the books as a general offense if cited. He added that there's been some debate whether that should be replaced.

CM Hiltz said that in the approved budget we have a smoking cessation campaign that is in coordination with Tri-County Health. Since that's part of the sales tax exemption removal, can we work to maybe add in a targeted use component that specifically targets the 18 and 21 level? T. Velasquez replied we certainly can coordinate that with Kim Stuart.

Kathy Staats said we have an education program available called "Ask Able Adult" that is used for training in schools where they work with teachers or coaches that are interacting with young kids that have expressed that they have an addiction and need support. This is especially helpful with the E-cigarettes that are so potent and addictive. So, Tri-County is happy to support any part of that as well.

CM Gruber said it's a crime to sell cigarettes to someone less than 18-years old with the state and federal law but if the City raises the age to 21, would the ticket and the severity of the fine be the same? H. Hernandez replied it would be based on the City's ordinance and where we can be more restrictive.

CM Gruber said what he would like to see is how it's going to be enforced and the projection costs of the enforcement. T. Vaughn said he could do some research in other locations to see how it's been implemented and what kind of compliance efforts were made.

The Committee asked for more research on the compliance costs and what the program would look like with the removal of minor's penalties and bring it back to the Management and Finance Policy Committee.

Outcome

The Committee recommended this item come back to the Management and Finance Policy Committee.

Follow-up Action

Staff will perform the research and bring it back to the Management and Finance Policy Committee for further discussion.

AMEND BUSINESS LICENSING VIOLATIONS AND PENALTY OPTIONS

Summary of Issue and Discussion

This item allows the Finance Director to impose civil fines against the holder of a business license. The fine schedule is mirrored to the amounts under Chapter 1-13 of the City code which places a maximum fine of \$2,650. Previously fines were not listed as a possibility for violations and the only options were suspension and revocation. This will allow penalties against a business that are less punitive than closure.

Additionally, the reasons for imposition of a suspension, fine, or revocation of a business license are amended to include violations of Chapter 26 of the City code and failure to have a state professional license.

The ability to impose a penalty for a violation of Chapter 26 allows for the City to leverage the general business license to impose business regulations without the need for the creation of a new license type. This provision will also allow an enforcement provision for the new detention center health hazard reporting requirement and potential additional regulations including raising the minimum age to purchase tobacco products if approved.

The requirement to have the state professional license allows for additional recourse against a licensed business that may be operating without a state required professional license. The state regulatory agency does not have law enforcement powers and will only send a cease and desist letter. Recently City inspectors have encountered unlicensed operations such as barber shops, massage therapy, alternative therapy, pharmacy, and medical practice. The unlicensed operations cause a risk to the safety and welfare of the general public and the addition of this provision will allow for an emergency suspension and revocation of the business license if necessary.

CM Gruber said, can you explain how fines will be applied the adjudication process and does it go through a judicial court. T. Vaughn replied, it goes through an administrative hearing with an appointed hearing officer and is a civil process and not criminal. The process is similar to a liquor code violation. For many offenses an accusation letter is sent with a proposed stipulation. The licensee can accept the stipulation or request a hearing. An independent hearing officer would then be brought in by the Finance Director. The hearing officer would determine if the violation was substantiated or not. CM Gruber asked are there lawyers on either side? H. Hernandez replied they could if they want to. CM Gruber said as far as the implementation of this, how much is concentrated on manpower? T. Vaughn replied, it's something we're already doing. CM Gruber said, so you're already implementing the process but now there is the fine process. T. Vaughn replied yes. CM Gruber said as far as the administrative hearings, do you expect protests to the fines that will be issued. T. Vaughn said or perhaps less though because now instead of having suspension as an option now the officer can have the option to offer the fine right away.

CM Marcano asked how does our current fines structure compare with other jurisdictions when it comes to these kinds of offenses? T. Vaughn said this is on the administrative side, but the proposed ordinance references the municipal criminal fines structure. I don't know how ours compares with other jurisdictions. H. Hernandez said a few years ago the state raised the

maximum penalty from \$1,000 to \$2,650 plus inflation. We decided to just leave it at \$2,650. I'm not sure that we're limited on a civil penalty to that specific amount but to be prudent we decided to equate civil penalties to the same amount we can collect on a criminal penalty. Because of any event, when we have to go to a business for more than a thousand dollar fine, we have a bigger problem than the money. So, we can still suspend the business or revoke their license. CM Marcano said so we're on par pretty much. H. Hernandez replied yes, we're not exceeding the maximum civil and there may be a city that would like to go \$5,000 for a civil penalty but we're limiting everything to the \$2,650.

Outcome

The Committee recommended that this item be forward to Study Session.

Follow-up Action

Staff will forward this item to Study Session.

UPDATE CITY CODE FOR CLEAN INDOOR AIR ACT

Summary of Issue and Discussion

Indoor smoking is currently regulated in in the City code under Chapter 74 Health and Sanitation. This code dates back prior to 1979 and is inconsistent with current state law. The Colorado Clean Indoor Air Act was passed in 2005 and updated in 2019. This ordinance updates City code to implement the Colorado Clean Indoor Air Act.

This ordinance repeals chapter 74 of the City code. Only two items were in chapter 74, smoking in public places, and interference with a health officer. The violation for interference with a health officer will be moved to chapter 94 general offenses. Adoption of the Colorado Clean Indoor Air Act will be placed in Chapter 26, Business Regulations.

City code regarding smoking in public places has not been updated since prior to 1979. The current code is inconsistent with state law. Adoption of the Clean Indoor Air Act will allow the City to more effectively enforce the state statute and ensure a level playing field for businesses complying with the state law.

Outcome

The Committee recommended that this item be forwarded to Study Session.

Follow-up Action

Staff will forward this item Study Session.

HEALTHY KIDS MEALS ORDINANCE

Summary of Issue and Discussion

Consideration of this item was requested by Councilmember Lawson. This item was presented to the Business Advisory Board at November 18, 2019 meeting. Feedback will be provided to the Committee if available.

This ordinance creates a new City regulation in chapter 26 of the City code requiring restaurants in the City that offer kid's meals to have a default drink option without added sweeteners. This would only be a default option and would not prevent the customer from ordering a sugar sweetened beverage. A restaurant that is found not in compliance with the ordinance will have 60 days to comply.

Tri-County Health will assist the City with implementing the ordinance by identifying compliance during regular health inspections. Enforcement of this ordinance will be conducted by the Finance Department through business licensing. A separate ordinance implementing the ability to impose a civil fine to a licensee for violations of Chapter 26 Business Regulations will be presented separately. Violations of this regulation will be civil and not criminal.

CM Gruber asked what are the results if they don't comply? T. Vaughn replied, there's the possibility of a fine or suspension of license if it's not resolved.

CM Lawson responded there is the three months of education and in addition to that 60-days to comply.

CM Gruber asked has this gone to the Business Advisory Board (BAB) or the Restaurant Association? T. Vaughn replied yes. The BAB was not in favor of this and we haven't heard back from the Restaurant Association.

CM Lawson said the BAB plans to send their response to the Finance Director however the Committee should also receive a copy. A lot of the stakeholders are reaching out to restaurants so there's been efforts to get more of a robust stakeholder process. There's around 200 restaurants and the BAB wanted to cover at least a 100. The goal is to bring it to a Study Session in January. Could there be a timeline provided of the important date for this to move through the process? H. Hernandez replied we could once we know the Council calendar. We have to look at 90 days from the day it's presented and without knowing the dates I can't provide a timeline.

Kathy Staats said, we're willing for some flexibility on that too, because there's that date of passage and then the effective date. So, we're aiming for a three-month period. H. Hernandez said that will work and make it 90-days from the date the ordinance becomes effective. K. Staats said Tri-County Health is doing proactive outreach to the restaurants now, so hopefully we'll develop relationships with most of them and in that three-month implementation period send them the letter letting them know the standard far before the actual effective date. Additionally, there is the 60-day period where if they need a little more time for such as technical assistance or educational supplemental materials, Tri-County Health would be there to provide that for them.

CM Gruber said my concern is that many of the restaurants are not local Aurora restaurants and they don't really have the choice to do what's mandated from their corporate headquarters. K. Staats said with other places that have passed this they have been able to work with that and what we found with a lot of the restaurants is if they have a regional portfolio, they end up passing it for their entire regional portfolio. This work is regional, I have counterparts in Jefferson County, Boulder County, and Denver County. So, for the City of Aurora we would make sure that at least those sites are covered by the standard that would be set which has not been an issue many places across the country that this has passed.

CM Hiltz noted that she went on the website for the National Restaurant Association and it appears that they also have the similar program that encourage restaurants to sign up and join and is supportive to changing the default beverage which is milk, water, and juice.

CM Gruber recommended that before moving forward this to a Study Session that the formal response from the Restaurant Association and the Business Advisory Board be included.

Outcome

The Committee recommended that this item be forwarded to Study Session.

Follow-up Action

Staff will forward this item to Study Session.

2020 ACLC FLEET PROGRAM FINANCING ORDINANCE ROLLING STOCK

Summary of Issue and Discussion

This is the continuation of a fleet financing program begun in 2012 through the use of the Aurora Capital Leasing Corporation (ACLC). The 2019 fleet financing is pending close with anticipated terms of ~\$4.0 million for 6.3 years at a rate under 2.0 %. In 2018, ACLC completed a 7.5-year fleet financing for \$1.75 million at a rate of 3.13%. In 2017, ACLC completed a 7.5-year fleet financing for \$1.22 million at a rate of 1.98%. In 2016, ACLC completed a 7.5-year fleet financing for \$2.0 million at a rate of 1.46%. In 2015 ACLC completed a seven-year fleet financing for \$3.2 million at a rate of 1.68%. Staff seeks to replicate this program in 2020.

Beginning in 2012, staff solicited third party financing for annual fleet acquisitions. The results were quite favorable to the City. Given this success and the continued interest among local banks to provide such financing, staff will again solicit financing proposals for 2020 fleet needs. The first step is to seek Council approval of a Lease Purchase and Financing Ordinance followed by a request for financing proposals later this year.

In the approved 2020 budget, Public Works will acquire up to three vehicles (3 Dump Trucks) and Fire will acquire four vehicles (2 Pumpers, Ladder, & Heavy Rescue) for a total cost not to exceed \$5,000,000, financed for a term not to exceed 96 months at a rate not to exceed 4.00%.

Staff recommends approval.

CM Gruber asked the number of fire trucks and dump trucks and are they replacements or new requirements? M. Shannon said except for the new fire stations its replacement equipment.

CM Hiltz said a new fire station was approved with a new fire truck but otherwise replacements for fire trucks is something that will come up every year.

Outcome

The Committee approved moving the item forward to Study Session.

Follow-up Action

Staff will forward this item to Study Session.

2020 AUDIT PLAN

Internal Audit Manager, Wayne Sommer, presented the approved 2020 annual audit plan to the Committee for review and affirmation. Mr. Sommer noted that the plan is an aggressive one that will require the team to be as efficient as possible. The plan will include (4) active rollover engagements from 2019. The proposed plan includes the following engagements and projects by planned quarter start:

- Q1: traditional APD recurring engagements.
- Q2: Marijuana Enforcement Process
Secondary Employment Compliance
APD Body Cam Compliance
- Q3: Citywide Governance including a citywide employee culture survey
Construction Project Review
Courts Case Management Review
Citywide Risk Assessment, Part 1
- Q4: Citywide Risk Assessment, Part 2
Audit Quality Assessment—required by the Institute for Internal Auditors every 5 years; Internal Audit has no evidence of an review ever taking place in the City; no costs have been estimated for the review, but the team believes they may be able to trade-off services with another entity

Mr. Sommer also noted that under their agile audit approach that they have the flexibility to adjust audit priorities as new risks arise and that, during an engagement, they have curtailed audit work if they determine that further work would not add value.

CM Gruber noted that this was an aggressive plan and expressed confidence that the team would not have proposed it if they did not believe they could accomplish it.

Outcome

The Committee thanked staff.

Follow-up Action

No follow up. Informational only.

2019 RECAP

T. Velasquez, Director of Finance provided a review.

Outcome

The Committee thanked staff.

Follow-up Action

No follow up. Informational only.

MISCELLANEOUS MATTERS FOR CONSIDERATION

Summary of Issue and Discussion

- The next meeting will be determined.

THESE MINUTES WERE APPROVED AS SUBMITTED



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

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Date