

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

**MEETING**

**TUESDAY, December 3, 2019**

**2:30 PM, PONDEROSA, Aurora Municipal Center**

Council Member Gruber, Chair

Council Member Lawson, Vice Chair

Council Member Vacant

Interim Deputy City Manager Roberto Venegas

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 OCTOBER 22, 2019 DRAFT MINUTES**

**2. CONSENT ITEMS**

- **Sales Tax Chart**

Presenter: Greg Hays, Budget Officer (5 minutes)

**3. RAISE TOBACACO SALES TO AGE 21**

Presenter: Trevor Vaughn, Manager of Tax & Licensing (10 minutes)

**4. AMEND BUSINESS LICENSING VIOLATIONS AND PENALTY OPTIONS**

Presenter: Trevor Vaughn, Manager of Tax & Licensing (10 minutes)

**5. UPDATE CITY CODE FOR CLEAN INDOOR AIR ACT**

Presenter: Trevor Vaughn, Manager of Tax & Licensing (10 minutes)

**6. HEALTHY KIDS MEALS ORDINANCE**

Presenter: Trevor Vaughn, Manager of Tax & Licensing (10 minutes)

**7. 2020 ACLC FLEET PROGRAM FINANCING ORDINANCE ROLLING STOCK**

Presenter: Andrew Jamison, Debt & Treasury, Sr. Analyst (10 minutes)

**8. 2020 AUDIT PLAN**

Presenter: Wayne Sommer, Internal Audit Manager (10 minutes)

**9. 2019 RECAP**

Presenter: Terri Velasquez, Finance Director (5 minutes)

**10. MISCELLANEOUS MATTERS FOR CONSIDERATION**

- Next meetings will be determined.

*Total projected meeting time: 70 minutes*

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**MANAGEMENT AND FINANCE POLICY COMMITTEE**

October 22, 2019

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

Others Present: N. Freed, R. Venegas, T. Velasquez, G. Hays, M. Geyer, V. Irvin, M. Shannon, M. Lawson, W. Sommer, C. Dancy, T. Vaughn, H. Hernandez, N. Wishmeyer, J. Ehmann, K. Claspell, G. Jetchick, C. Argentar, J. Cox, J. Giddings, C. Toth, A. Morales, E. Rehwalt, M. Crawford, S. Van Buren, B. Bell, G. Pennington, E. Watson, J. Campbell, K. Hancock, B. Dalton, M. Rogers, Z. White, M. Murphy, N. Finco, and T. Hoyle

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**INTRODUCTIONS AND MINUTES**

September 24, 2019 minutes were approved.

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**CONSENT ITEMS**

Sales Tax Chart

August of 2019 was 19.5 percent higher than August of 2018.

Council Member Gruber said this is very good news, I hope it stays that way. I noticed with the NAICS Code there were a lot of IT and computer type things. Would this have anything to do with the work going on with the data centers that are being built on E-470 and Colfax? J. Ehmann replied we can only make assumptions. There are warehouse automation and IT solution companies that are paying sales tax. We can assume that the IT solutions are a result of security issues that are happening in the world. I do think that the development in the city and especially with commercial and industrial building there’s an ongoing component whenever you have an IT solution or a robotic solution. We have had recent payments from a large data center equipment company.

Outcome

The Committee thanked staff.

Follow-up Action

No follow-up needed.

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**2020 FALL SUPPLEMENTAL**

Summary of Issue and Discussion

One of the first steps of the annual budget process is to prepare an updated projection of current year requirements. During this process revenue adjustments, potential savings, as well as new and additional requirements are identified and serve as the basis for the majority of supplemental appropriation requests in both the fall and following spring supplemental processes.

The 2019 Fall Supplemental Appropriation Request includes operating expenditures and capital projects that require appropriations and inter-fund transfers for 2019 in the funds listed in

Attachment A. Nearly all of the requests were identified and included in the 2019 projection in the 2020 proposed budget document. Alternatively, several items that were identified and projected are not included in this fall process. Those items that are subject to change will be included in the 2020 spring supplemental as needed. Significant 2020 spring supplementals are expected in the public safety departments including Police overtime related to large protests, Police Pension Defined Benefit Plan development, Fire over hires, compensation adjustments in Public Safety Communications, and Civil Service background investigations.

The vast majority of requests included in this supplemental process have been previously reviewed by Council or Council Committee. Council review includes items included in the 2019 projection and reviewed as part of the 2020 Proposed Budget as well as items reviewed at either a Council Committee meeting or City Council meeting. Technical items are typically budget lapses or reallocations, zero-dollar amendments with appropriation offset by revenue, and accounting or other adjustments. These items are indicated by including “technical” in the title and may or may not have been reviewed by Council. Council review details are included in the narrative for each supplemental request.

The attachments for this agenda item reflect summary and detail information regarding the requested appropriation changes for each fund and department. Transfers result in a move of funding from one fund to another. The details of these appropriation amendments are found in:

- Attachment A: 2019 Appropriation Summaries by Fund; and
- Attachment B: 2019 Appropriation Detail by Fund.

The following discussion will identify and focus on significant changes included for this budget year by fund, rather than the list in its entirety. Please see attachments B for details on each request.

### 2019 Supplemental Amendment Requests

Appropriation requests in the Capital Projects Fund total **\$8.2 million**. Most significant items were included in the 2019 projection and reviewed by Council as part of the 2020 budget process with the exception of:

- The appropriation of the Arapahoe County contribution of **\$500,000** and the South Aurora Regional Improvement Authority contribution of **\$2.3 million** for initial scoping and preliminary design of the Gun Club Road Improvements.
- The appropriation of the Highway Safety Improvement Program (HSIP) grant of **\$192,100** for the design phase for traffic signal and equipment upgrades at five intersections.

Significant items that were projected include:

- The appropriation of **\$5.2 million** for various street and traffic related capital projects to include Imboden and Picadilly road improvements, street overlay, and Jewell pedestrian crossing.
- The reduction (lapse) of **\$1.1 million** for the Westerly Creek TIP project that was accidentally appropriated twice.



- The appropriation of **\$597,100** for new grant-funded bike detectors for selected intersections.
- The appropriation of **\$550,000** for the installation of a remediation system that will mitigate contamination caused by the prior Highway 30 Landfill.

Significant supplemental items in other funds include:

- The appropriation of **\$45.1 million** in the Water Fund for the pre-payment of 2016 bonds.
- The appropriation of capital grant awards totaling **\$10.3 million** in the Gifts and Grants Fund for various PROS projects, including Buckley Buffer grants totaling \$9.7 million.
- The reduction in appropriation (lapse) of **\$521,200** in the E-911 Fund for the completion of the radio system infrastructure upgrade.
- The reduction in appropriation (lapse) of **\$553,500** in the Designated Revenues Fund and an offsetting appropriation of **\$353,400** in the General Fund for Court Surcharge Program adjustments associated with the elimination of the Photo Red Light Program.

Council Member (CM) Gruber asked, was the Meadowood Entry/Front Desk project being moved? B. Bell said initially we were told the project could be done for a lesser amount of money and after the bids came in it was decided to lapse the project and revisit for a later time. CM Gruber said lapse means it won't be executed this year but then for next year? G. Hays said or it goes away, and the funds return to its fund balance.

CM Gruber asked, the Gun Club improvements analysis is that part of the multi-phase for moving the infrastructure under the road and Engineering building the road once the utilities were out of the way? E. Watson replied correct, 1<sup>st</sup> phase is for relocating the utilities and future phases include design and construction once all the funding is identified.

#### Outcome

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

#### Follow-up Action

Staff will forward this item to November 4, 2019 Study Session.

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## **2020 BUSINESS IMPROVEMENT DISTRICT ANNUAL OPERATING PLANS AND BUDGETS**

### Summary of Issue and Discussion

State statute requires that each Business Improvement District (BID) organized within the city file their proposed annual budget for the upcoming year with the City Clerk for City Council review and approval.

- The Havana Business Improvement District was approved for organization by City Council in 2007. The Havana BID Board met and approved the 2020 annual budget and operating plan on September 19, 2019. The 2020 annual budget is projected at \$767,514 which is comprised of \$510,454 to be raised through a 4.5 mil levy based upon assessed value on real

commercial property and the BID's portion of urban renewal tax increment revenue from the Buckingham Urban Renewal Area, in addition to other revenue from specific ownership taxes, sponsorships and funds carried over from the prior year.

CM Gruber asked is there a trend or what's causing the closing of some businesses in the Havana District. G. Jetchick replied, a lot of them are retiring and not continuing the business. However, when the tenant puts the space up for sale a new business moves right in.

CM Richardson said, I think the group is doing a tremendous job, we're so lucky to have this organization in this part of the city and so thank you.

CM Lawson said, you are doing a fabulous job. I know there were issues with the homeless in the beginning, is there still or is it getting better. G. Jetchick replied, it's getting a lot better. For an example, there was a gentleman that was passed out in front of the Bank West building. We called, and the street outreach was there within a half-an-hour. The next day he was given a homeward bound bus ticket so he could get back to Texas. So, it's so much better now that we have the procedure between Neighborhood Services and Police.

Bruce Dalton, Visit of Aurora said, I wanted to comment that we're also finalizing budgets and earmarked some money to partner with the BIDS. We done a lot in the past and seen some success with some crossover and so we will have that available in 2020.

CM Gruber said I want to pass on my thanks as well, I think with all the improvements and the transition of Havana for these past years it has been significant, and it was because of your work.

- The Fitzsimons Business Improvement District was approved for organization by City Council in 2011. The 2020 operating plan and budget anticipates funding from square foot charges of commercial buildings for its \$9,766 revenue and expected expenditures. The Fitzsimons BID does not anticipate any major public improvements for 2020 only parking striping.
- The Porteos Business Improvement District was approved for organization by City Council in 2016. The 2020 operating plan and budget anticipates mainly developer advances for its \$225,092 revenue and expected expenditures. The Porteos BID does not anticipate any major public improvements for 2020.
- The Parkside at City Center Business Improvement District was approved for organization by City Council in 2017. The 2020 operating plan and budget anticipates developer advances and bond proceeds for its \$5,250,900 revenue and expected expenditures (General, Capital Projects and Debt Service Funds). The Parkside at City Center BID will continue the construction and financing of public improvements in 2020.

- The Citadel on Colfax Business Improvement District was approved for organization by City Council in 2017. The 2020 operating plan and budget anticipates mainly developer advances for its \$50,000 revenue and expected expenditures. The Citadel on Colfax BID does not anticipate any major public improvements for 2020.
- The Painted Prairie No. 1 Business Improvement District was approved for organization by City Council in 2017. The 2020 operating plan and budget anticipates developer advances for its \$30,942 revenue and expected expenditures. The Painted Prairie No. 1 BID does not anticipate any major public improvements for 2020.
- The Painted Prairie No. 2 Business Improvement District was approved for organization by City Council in 2017. The 2020 operating plan and budget anticipates developer advances for its \$25,000 revenue and expected expenditures. The Painted Prairie No. 2 BID does not anticipate any major public improvements for 2020.
- The Tower Business Improvement District is anticipated for organization by City Council in 2019. The 2020 operating plan and budget anticipates developer advances for its \$2,475,000 revenue and expected expenditures (General and Capital Projects Funds). The Tower BID will continue the construction and financing of public improvements in 2020.

V. Irvin stated that in the past the Office Development Assistance were the ones that would bring the annual BIDs budget plans to Council however they have asked Finance assistance in taking the lead in the review of the budgets but will still be involved.

CM Gruber asked what is the latest with the construction on Citadel. N. Finco replied we're meeting tomorrow, and movement is anticipated in 2020.

CM Lawson asked what's the thought or vision for that Colfax BID? N. Finco said it's combined with a metropolitan district (Colfax & Sable) therefore there will be a mixture of both residential and commercial.

#### Outcome

The Committee recommended that all these BIDs be forwarded to Study Session.

#### Follow-up Action

Staff will forward the BIDs to November 4, 2019 Study Session.

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## **BUCKLEY METROPOLITAN DISTRICT NOS. 1-4**

### Summary of Issue and Discussion

In 2004, the City adopted a model service plan for Title 32 metropolitan districts with the intent that any proposed service plan for a metropolitan district will be compliant with the model. The model service plan provides the following key features:

1. Maximum debt mill levy of 50 mills (Gallagher adjusted)
2. Maximum term for debt repayment of 40 years (for residential districts)
3. Agreement to impose the Aurora Regional Improvements (ARI) mill levy.

A new service plan for the Buckley Metropolitan District has been submitted in anticipation of the spring district election cycle. The proposed service plan is in compliance with the Aurora model service plan and is attached. The proposed Buckley Metropolitan District is located at the southeast corner of 6th Avenue and Picadilly Road.

The District will service a mixed-use development consisting of both residential and commercial property. The service area (initial and inclusion areas) is approximately 160 acres in size. The population of the District is estimated to be approximately 3,069 people.

CM Richardson asked, is it residential? Jacob Cox replied it's both. There will be a mixture. It will be similar to Horizon that's to the north. It will have commercial and residential component and its anticipated there will be around 3,000 people and 160 acres.

CM Lawson asked and the taxation is 30 years or are we doing something special. J. Cox said no, this follows the regular model service plan.

### Outcome

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

### Follow-up Action

Staff will forward this item to November 4, 2019 Study Session.

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## **AURORA CROSSROADS METROPOLITAN DISTRICT NOS. 1-3**

### Summary of Issue and Discussion

The consolidated service plan for Aurora Crossroads Metropolitan District Nos. 1-3 was originally approved in February 2008. The existing district is generally located at the southeast corner of E-470 and I-70.

The District is seeking the inclusion of additional real property consisting of approximately 56.888 Acres. This inclusion property is located along Powhaton Road just south of East Colfax Avenue.

The Aurora Crossroads Metropolitan District Nos. 1-3 is requesting inclusion of an additional 56.888 Acres into the existing District.

CM Gruber asked is the spending authority and things like that, is that going to fall in the existing service plans or are they asking for an increase in spending authority. Z. White, White Bear Ankele replied it is not to increase the spending compacity or anything like that, only to add territory.

#### Outcome

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

#### Follow-up Action

Staff will forward this item to November 4, 2019 Study Session.

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### **APPOINT NEW DIRECTORS FOR FITZSIMMONS VILLAGE METROPOLITAN DISTRICT**

#### Summary of Issue and Discussion

Fitzsimons Village Metropolitan Districts No. 1, 2, & 3 were formed in 2006 with subsequent amendments for boundary changes in 2008 and 2015. The districts are located south of Colfax Avenue and east of Ursula Street.

The Fitzsimons Village Metropolitan Districts is requesting the City Council appoint new Board members for the Director's parcel. The Director's parcel was previously included in a greater parcel that was subsequently sold earlier this year. The directors for these districts were qualified as electors by a contract for sale of real property that obligated the buyer to pay property taxes prior to closing (this is one of the methods for qualification described by state statute). However, the contract was not recorded, and their interest was terminated at closing.

New directors' parcels have now been created for each District and five new Colorado voters have been identified to serve as board members. The District is asking the City Council to appoint these new members as is described in state statute.

CM Gruber asked was this unusual and were they announced that this sale was coming? M. Geyer said Nicole Finco, representing the Metro District, is here, she can tell us what happened. It's not unusual, recently the MJC District disqualified directors and there was a reappointment, but for a different reason. In this particular case the property was sold, and nobody caught it.

CM Gruber asked if these people that are chosen to be on the board are landowners. N. Finco said, each proposed board member is an employee or otherwise affiliated with Corporex and has been qualified through the completion of a new contract for sale as required by statute.

CM Richardson asked, how do you get disqualified? N. Finco replied, because they all were qualified under option contracts and when that property was sold to a different buyer those option contracts terminated immediately. That's how they were qualified as electors and that was the only method that they qualified under. And because they are no longer electors, they don't qualify to serve on the board any longer.

CM Gruber said what gets me is the option part. How can you be an option buyer and have the authority over several millions of dollars and the option terminates? N. Finco said under the statute there's a requirement which you must be obligated to pay the taxes for that property, so that's how they're connected in addition to the option contract in general.

CM Gruber said the board that was disqualified, did they make any financial decisions that encumbered the metro district which they won't be associated with? N. Finco said she's not sure they are not counsel to that.

CM Gruber said. I'm concerned about the fact that people have an option, they execute a contract for millions of dollars and the option cancels the contract and the district is still liable, and the metro district still owns it and there's no board or anybody in charge and yet the metro district is still spending money.

V. Irvin said, what we can do given your questions and concerns, is ask for a letter from the attorney to address those concerns.

CM Gruber recommended a follow up once the new board is seated and that they are comfortable with the expenses that were incurred by the previous board.

#### Outcome

The Committee approved moving the item forward to Study Session. In addition, the Committee requested a letter acknowledging that the new board is comfortable with the expenses that were incurred by the previous board.

#### Follow-up Action

Staff will forward this item to Study Session. In addition, the Committee requested a letter acknowledging that the new board is comfortable with the expenses that were incurred by the previous board.

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### **REVENUE ENHANCEMENTS**

At the April 27, 2019 Council Spring Workshop, staff presented eight options for augmenting the city's General Fund revenues. The Council directed staff to further research four of the eight options for viability. The remaining four options were not advanced for further consideration.

The four options receiving additional research include:

- Assess adequacy of fees to cover costs
- Trash hauling fee
- Remove city cigarette sales tax exemption
- Increase occupational privilege tax (OPT)

The options not advanced by the Council include:

- Assess a PILOT on city utilities
- Right-of-way/transportation maintenance fees

- Vehicle impact fees
- Remove other city sales tax exemptions (health and athletic clubs and coin-operated self-service car washes)

Staff has made progress in advancing each of the first four options.

CM Gruber requested this item come back to the Management and Finance Committee for further discussion. An update on the progress made in researching and implementing the four revenue options advanced by Council at the April 27 Spring Workshop will be given. The four options not advanced will be reviewed with the Committee as well.

The Committee is requested to make a recommendation to the full Council on whether it believes additional revenue options should be explored further by staff.

CM Lawson asked if Council has been presented with different bonding types the City may consider for transportation in general. T. Velasquez said we did a general update a couple years ago for Council to consider for financing transportation items. N. Freed stated in 2017 there was a fair amount of effort involved in identifying both the needs and options, however they didn't move forward to a vote of the people.

T. Velasquez said on October 28<sup>th</sup>, the Budget Office will be giving an update on the Capital Projects plan and how the process is moving forward.

CM Richardson said, so then this will take a TABOR vote? T. Velasquez replied yes, if we were to increase the OPT, that tax increase will require a vote.

CM Lawson asked, if the Proposition CC measure passes will that impact the City? T. Velasquez replied no, it's only the state. There's a possibility of pass through funds from state grants but we haven't heard of any.

CM Gruber asked, have we looked at services and done a comparison to what the charter calls for and are there services we could stop or modify to come up with some other solution other than the City paying for it? Now I know, that when you provide a service it's hard to take it away. However, the other part of the equation is, could it reduce costs. We're doing something similar with the Courts, we're looking at what our municipal courts are providing versus what the county districts are providing. This isn't a short-term discussion either, but I think we could kick-off a discussion on what are we doing that's above and beyond what the charter calls for and should we continue non-charter related services.

#### Outcome

The Committee asked staff to provide a list of city services that are expanded beyond services that the city charter calls for and bring them back in the future.

#### Follow-up Action

Staff will provide a list of city services that are expanded beyond services that the city charter calls for and bring them back to the Management and Finance Committee in the future.

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**REVIEW OF SERIES 2019 COPS AND RATING UPGRADES**

M. Shannon, Debt and Treasury Manager provided a review. At the July 23, 2019 M&F meeting, an Ordinance was presented concerning the refinancing of the Series 2009A COPS.

As Committee members may recall, the City has the opportunity to refund the Series 2009A COPS which are related to the original construction of the AMC. In 2009 this new debt was issued with a 10-year par call which means it can be refinanced with new debt in 2019. The current 2009A COPS have a final maturity of 2030, annual debt service payments of \$7.7 million, \$72.785 million outstanding, and an interest rate of 5%.

By refinancing this outstanding debt now, staff believes new debt can be issued with a final maturity of 2031, annual debt service payments of \$7.1 million, and an interest rate below 3%. This will result in NPV savings of \$12.7 million or 17.5%. The reason for adding one more year to the maturity is to enable the issuance of up to \$6 million in additional debt for improvements and repairs to any of the properties located on the Aurora Municipal Campus (AMC). Studies are currently underway to see what types of repairs/improvements might be necessary. Expected items may include, but are not limited to, security additions to the AMC administrative building, repairs to the garage, and other items that could extend the useful life of the properties on the AMC campus. Also, this transaction will un-encumber the AMC and several fire stations which were pledged to the 2009A COPS. So far, the refinancing has gone well with the pricing scheduled to occur on October 16, 2019. This should allow staff enough time to provide a summary of the transaction results at the October 22 M&F meeting.

The underwriters for this transaction are Stifel as the bookrunner and Key as a Co-manager.

Particularly noteworthy so far is the results from the rating agencies -- Moody's and S&P -- who both spent a full day in town touring various projects and meeting with staff for a working lunch at the Hyatt Conference Center.

To summarize, the City received very good news with Moody's increasing the City's rating to Aaa -- the highest rating provided by Moody's. S&P also provided positive news with a change to positive outlook from stable outlook on Aurora's AA+ issuer rating. A positive outlook often leads to a ratings upgrade over the short term.

Pertaining to the Moody's rating, the only other cities in Colorado with Aaa ratings are Denver, Boulder, Ft. Collins, and Aspen. Of all the cities in the US that receive Moody's ratings (2,741), less than 8.5% are rated Aaa.

The deal was well-received by the markets at final pricing on October 16<sup>th</sup>. The transaction generated a project fund of \$9 million at an interest rate of 1.84% while maintaining the decreased annual debt service payments of \$7.1 million. The pledged assets are the AMC Parking Garage, Police HQ, and Courts. These assets will be released over time as principal is paid off.

CM Gruber asked if this amount had been entered in the budget yet? T Velasquez replied no. This came after the budget since the pricing occurred last week and this information wasn't



known at budget time. It will be adjusted in the 2020 spring supplemental and fully reflected in the 2021 budget.

CM Gruber stated, staff you couldn't have done a better job. This is a grand slam! I'm incredibly excited about this and proud of the work that you have done here. The amount of money you saved the City it's just phenomenal. T. Velasquez said Mike did a great job leading the transaction. He insisted that the rating agencies needed to come to the City and see everything that has been accomplished over the past few years. The tour with the rating agencies enabled them to see firsthand the projects completed since their last visit such as the fire stations, the Central Rec, the Gaylord, and all the development around the Anschutz Campus and along E-470. It appeared to make a difference in the rating agency reports since information in the reports came only from the site tours. The rating agencies also commented favorably on the city's overall financial management.

CM Richardson said that Mike deserves a bonus for this, and the City Manager should be told. CM Gruber agreed.

#### Outcome

The Committee thanked staff.

#### Follow-up Action

No follow up. Informational only.

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### **INTERNAL AUDIT QUARTERLY PROGRESS REPORT**

Internal Audit develops an annual audit plan. Internal Audit provides quarterly progress reports against the plan to the M&F Committee acting as the Audit Committee.

Internal Audit has made substantial progress against its 2019 audit plan, having 86% of all engagements either completed or active through the 3<sup>rd</sup> quarter. 71% of all audit recommendations have been closed, 3% are completed awaiting closure, and 26% are still active. Internal Audit provided engagement summary reports for the House Aurora Partnership (HAP) and APD Expenses Review engagements.

#### Outcome

The Committee thanked staff.

#### Follow-up Action

No follow up. Informational only.

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### **MISCELLANEOUS MATTERS FOR CONSIDERATION**

#### Summary of Issue and Discussion

- The next meeting is on Tuesday, December 3, 2019 in the Ponderosa Conference Room.

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> Roberto Venegas
<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 September sales tax performance chart. September of 2019 was 9.8 percent higher than September of 2018.

### **QUESTIONS FOR Committee**

N/A, Information Only

### **EXHIBITS ATTACHED:**

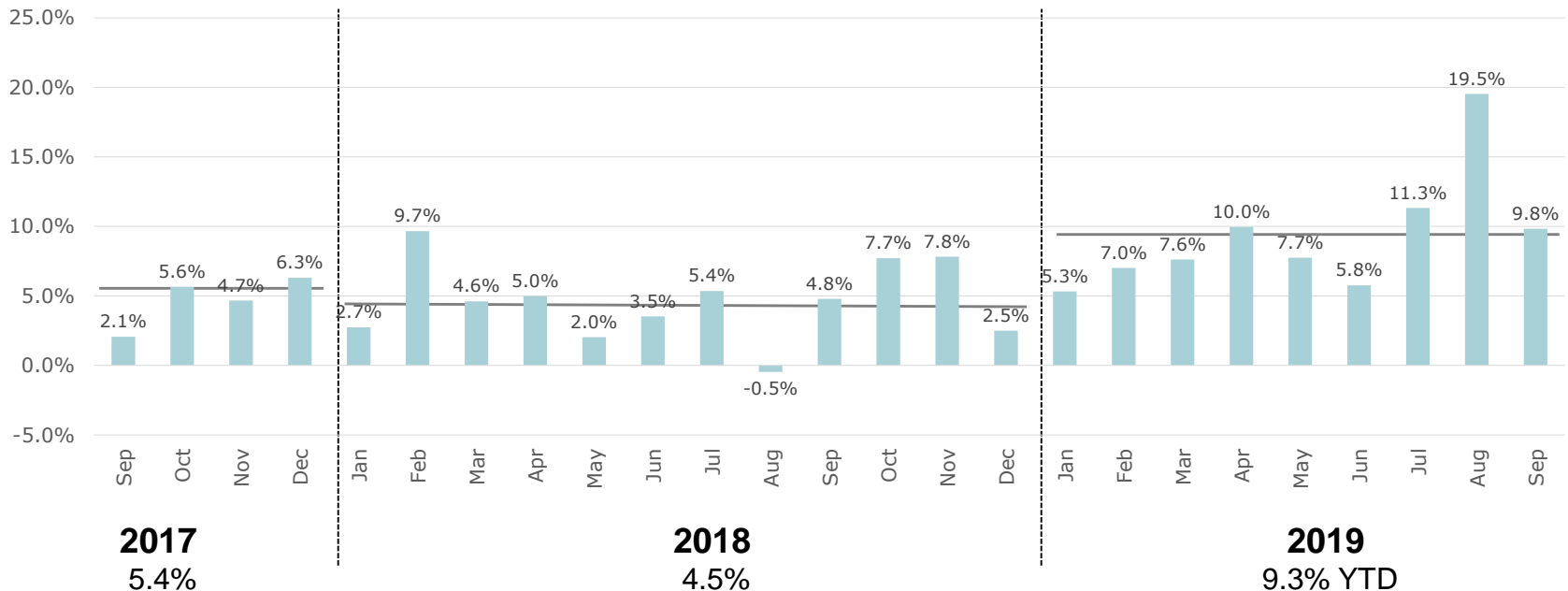
Sales Tax Chart\_Sep19.pdf

# September 2019 Sales Tax Performance



## Percent Change from Prior Year By Month

**Sept. 2019 YTD Variance to:**  
 Budget - \$7.3m (5.0%)  
 Projection - \$887,300 (0.6%)  
 2018 - \$13.0m (9.3%)



**Growth over remaining months to hit full-year projection**  
 1.84%

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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 DIVISION V CHAPTER 94 AND ENACTING ARTICLE IV CHAPTER 26 TITLED "SELLING OF TOBACCO PRODUCTS" AND OTHER RELATED MATTERS
<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> Roberto Venegas
<b>Outside Speaker:</b> Maura Proser, Public Health Policy and Prevention Manager, Tri-County Health
<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.)*

This ordinance was requested by Councilmember Richardson. A number of local jurisdictions are looking at or have implemented an increase in the tobacco sales age to 21. Most recently the City 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.

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

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 penalties 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 for violations of Chapter 26, Business Regulations.

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.

**QUESTIONS FOR Committee**

Is the committee in favor of forwarding this item to full City Council for consideration at a future study session.

**EXHIBITS ATTACHED:**

- 2019\_08\_06\_tobacco21\_model\_policy.pdf
- 2019-Smoking-Age-Ordinance.doc
- Memo\_T21\_enforcement.pdf
- T21 and the Military.pdf
- T21-Fact-Sheet-8-05-2019-1.pdf



# Tobacco 21: Model Policy



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American Heart Association.



PUBLIC HEALTH LAW CENTER  
at Mitchell Hamline School of Law



PREVENTING TOBACCO ADDICTION FOUNDATION



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ChangeLab Solutions



# Tobacco 21: Model Policy

Tobacco products kill half a million Americans each year. Youth access to tobacco products compounds this problem because young people exposed to nicotine are particularly likely to become lifelong users.

A strong tobacco minimum legal sales age (MLSA) 21 policy will:

- Define tobacco products to include current and future tobacco products, including e-cigarettes;
- Prohibit the sale of tobacco products to persons under the age of 21;
- Require the tobacco retailer or their employee to verify the age of the purchaser prior to the sale;
- Require tobacco retailers to post signs stating that sales to persons under the age of 21 are prohibited;
- Designate an enforcement agency and establish a clear enforcement protocol;
- Create a tobacco retail licensing program if the jurisdiction has the authority to do so under state law,
- Dedicate funding to fully cover enforcement costs, either through licensing fees or as a provision in a state statute or local ordinance;



- Provide authority for the state, county, or municipality to inspect tobacco retailers for compliance with MLSA 21 and a mandated minimum number of annual compliance checks for every tobacco retail establishment;
- Provide penalties focused on the tobacco retailer or licensee rather than the youth purchaser or non-management employee. This would mean eliminating Purchase, Use, and Possession (PUP) penalties where they exist in current tobacco sales laws or policies;
- Establish a civil penalty structure for violations rather than a criminal penalty structure to avoid unintended consequences that disproportionately impact marginalized communities and undermine the public health benefits of the policy, and
- Where state legislation is pursued, ensure that local jurisdictions have the authority to enact more stringent regulations for tobacco products than state or federal law. *(See the context box on preservation of local authority below at page 13)*

#### ADDRESSING MLSA THROUGH LICENSING

A tobacco retail license allows states and municipalities to comprehensively regulate all tobacco retailers, fund enforcement programs, and create a penalty structure that suspends or revokes a license for retailers that continue to violate a MLSA 21 policy. For jurisdictions that have the legal authority to enact a tobacco retail licensing program, additional provisions specific to licensing should be considered for adoption in the final policy, such as the following:

Each tobacco retailer engaging in the distribution of tobacco products, at each location in [state/county/municipality], shall secure, and display at all times, a tobacco retail sales license from the [Health Department/Issuing Authority] before engaging or continuing to engage in such business. No tobacco retailer may distribute tobacco products without a valid tobacco retail sales license.

The fee for a tobacco retail sales license shall be set and used to cover the administrative cost for licensing administration, education and training, retail inspections, and unannounced compliance checks. The tobacco retail sales license fee should not exceed the cost of the regulatory program authorized beyond this [statute/ordinance].

A tobacco retail sales license cannot be renewed if the tobacco retailer has outstanding fines pursuant to this [statute/ordinance].

No tobacco retail sales license shall be issued or renewed to a tobacco retail sales licensee unless the tobacco retailer signs a form stating that the tobacco retailer has read this [statute/ordinance] and has provided training to all employees on the sale of tobacco products. Such training shall include information that the sale of tobacco products to persons under 21 years of age is illegal, the types of identification legally acceptable for proof of age, and that sales to persons under 21 years of age shall subject the tobacco retailer to penalties.

Any business found to be selling tobacco products without a license shall be issued a No Sales Order for Tobacco Products and be ineligible to receive a tobacco retail license for a period of three (3) years.

Created by a consortium of national public health organizations, the following sample policy can assist states, counties, and municipalities that are considering raising the MLSA for tobacco products. The document provides detailed annotations in shadowed

boxes explaining the reasoning behind the policy language. These annotations are intended to be used only as a guide and would not typically be included in a final policy. Each jurisdiction should consider modifications that reflect its unique needs and situation. For state laws in particular, care will need to be exercised in how this model language is incorporated into existing laws on tobacco sales. Be sure to review your policy with an attorney familiar with the laws of your jurisdiction to ensure consistency with other laws in your jurisdiction, especially if you change terms or delete provisions. For city and county policies, you should also ensure that your community has adequate legal authority to adopt a tobacco MLSA 21 ordinance.

## I. FINDINGS OF FACTS AND PURPOSE

- a. [State/county/municipality] recognizes that the use of tobacco products has devastating health and economic consequences.
- b. Commercial tobacco use is the foremost preventable cause of premature death in America.<sup>1</sup> It causes nearly half a million deaths annually<sup>2</sup> and has been responsible for 20.8 million premature deaths in the U.S. since the first Surgeon General's report on smoking in 1964.<sup>3</sup>
- c. Tobacco product use leads to more than \$300 billion in health care and lost worker productivity costs each year.<sup>4</sup>
- d. [State/county/municipality] further recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and youth that begin using tobacco products are particularly likely to become lifelong users.
- e. Young brains are particularly susceptible to the addictive properties of nicotine.<sup>5</sup> As a result, approximately 3 out of 4 teen smokers end up smoking into adulthood.<sup>6</sup>
- f. An estimated 5.6 million of today's American youth aged 0 to 17 are projected to die prematurely from a commercial tobacco-related illness if prevalence rates do not change.<sup>7</sup>
- g. National data show that about 95 percent of adults who smoke begin smoking before they turn 21. The time between ages 18 to 20 is a critical period when many adults who smoke move from experimental smoking to regular, daily use.<sup>8</sup>
- h. Data from the National Youth Tobacco Survey demonstrates that youth use of e-cigarettes continues to increase. The overall use rate of e-cigarettes among youth continues to be higher than other forms of tobacco and has stymied previous progress in the reduction of the overall tobacco use rate for youth.<sup>9</sup> Furthermore,

### FINDINGS

The purpose of including findings in a tobacco MLSA 21 policy is to clearly identify the problems to be addressed with the policy. Findings provide guidance to the policy drafters and decision-makers, as well as readers of the policy. In addition, in the event of litigation, findings will provide courts with a record of the legislature's intent and rationale for the policy.

Common findings associated with a comprehensive tobacco MLSA policy will identify health concerns and other problems related to use and/or access to commercial tobacco.

Findings specific to your jurisdiction, such as use rates among local teens and young adults, will provide further rationale for your policy.

the popularity among youth of newer products, such as the brand JUUL, which currently dominates the market, is likely responsible for the significant increase of e-cigarette usage among high school students.<sup>10</sup>

- i. In 2015, the Institute of Medicine (now the National Academy of Medicine) concluded that raising the minimum legal sales age for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12 percent decrease in smoking prevalence.<sup>11</sup>
- j. The Institute of Medicine also predicted that raising the minimum legal sales age for tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019, and would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome.<sup>12</sup>
- k. A growing number of state and local jurisdictions have enacted minimum legal sales age 21 policies to further restrict access to commercial tobacco.<sup>13</sup>
- l. Three-quarters of adults support raising the minimum legal sales age for tobacco products to 21, including seven out of ten adults who smoke.<sup>14</sup>
- m. The financial impact of tobacco minimum legal sales age 21 policies on retailers is likely to be minimal. Minimum legal sales age 21 policies work gradually over time to reduce rates of smoking initiation and smoking prevalence. As a result, it is likely that there will be little short-term effect on tobacco sales revenue.

#### RETAIL IMPACT

Tobacco retailers may oppose a tobacco MLSA 21 policy out of concern that they may lose business. The above finding addresses that concern.

- n. Raising the minimum legal sales age of tobacco products is consistent with raising the legal drinking age to 21, which led to reduced alcohol use and dependence among youth, and contributed to the decline in drunk driving fatalities.<sup>15</sup>

#### LEGAL DRINKING AGE

Raising the legal drinking age to 21 has had significant public health benefits. Predictive modeling and early data indicates that raising the minimum legal sales age for tobacco MLSA to 21 would likely have similar health benefits.

- o. Local governments have used their authority to enact tobacco control policies to protect communities from tobacco-related harms and youth tobacco initiation.<sup>16</sup>

## II. JURISDICTION

Pursuant to [provide applicable citation], this [statute/ordinance] applies throughout [describe geographic area subject to regulation].

### JURISDICTION

Some policies include a description of where the regulations that follow will apply.

This type of provision can be particularly important when one type of local government (such as a county) has the authority to enforce its regulation within another unit of government (such as a city or village).

## III. DEFINITIONS

### DEFINITIONS

A comprehensive definitions section explains the language and wording used in a policy and also helps ensure the language is consistent throughout the entire document. A well-thought-out definitions section can help reduce ambiguity and confusion. For example, defining “tobacco products” is important so that those responsible for enforcing and complying with the policy know which products are regulated. This is critical because the tobacco industry is continually developing new ways to deliver nicotine to users.

As used in this [statute/ordinance]:

- a. **“Distribute” or “Distribution”** means to furnish, give, provide, sell, or to attempt to do so, whether gratuitously or for any type of compensation.
- b. **“Electronic smoking device”** means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

### ELECTRONIC SMOKING DEVICES

Electronic smoking devices should be defined to create a clear, comprehensive definition of the range of electronic devices and their component parts that are intended to be defined as tobacco products covered by this policy’s MLSA.

- c. **“Person”** means any natural person.

#### PERSON

Although this model policy defines person to include only natural persons, many state statutes and municipal codes already contain a more expansive definition of person that applies to, for example, businesses and other legal entities. Consult an attorney who is familiar with the laws of your jurisdiction to ensure that the appropriate definition of person is applied to the provisions of this model policy.

- d. **“Purchaser”** means any person who obtains or attempts to obtain a tobacco product.
- e. **“Self-service display”** means any display from which customers may select a tobacco product without assistance from the tobacco retailer or the tobacco retailer’s agent or employee and without a direct person-to-person transfer between the purchaser and the tobacco retailer or tobacco retailer’s agent or employee. A vending machine is a form of self-service display.
- f. **“Tobacco product”** means: (1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

#### TOBACCO PRODUCT

A strong tobacco control policy must contain a comprehensive “tobacco product” definition. Providing a comprehensive definition of “tobacco product” can aid in compliance and enforcement by clearly specifying what exactly is being prohibited

A comprehensive definition will cover all current, known tobacco products, which include not only cigarettes, cigars, and smokeless tobacco, but also products like pipes, rolling papers, electronic smoking devices, and other related devices. A strong definition will also be broad enough to capture future products.

- g. **“Tobacco retail establishment”** means any place of business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.
- h. **“Tobacco retailer”** means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Tobacco retailer does not mean the non-management employees of any tobacco retail establishment.

#### IV. MINIMUM LEGAL SALES AGE FOR TOBACCO PRODUCTS

The distribution of any tobacco product to a person under the age of 21 is prohibited.

#### V. AGE VERIFICATION

Before distributing any tobacco product, the tobacco retailer or the tobacco retailer's agent or employee shall verify that the purchaser is at least 21 years of age. Each tobacco retailer or tobacco retailer's agent or employee shall examine the purchaser's government-issued photographic identification. No such verification is required for a person over the age of 30. That a purchaser appeared to be 30 years of age or older shall not constitute a defense to a violation of this section.

##### AGE VERIFICATION

Federal regulations require tobacco retailers or their employees to check the identification of tobacco purchasers younger than 27 years old. 21 C.F.R. §§ 1140.14(a)(2) & (b)(2). However, state and local governments generally can adopt more restrictive tobacco regulations without being preempted by federal law. 21 U.S.C.A. § 387p.

Because this policy raises the MLSA for tobacco products, it is consistent to make a corresponding increase to the minimum carding age. Moreover, 30 years old is a simple, intuitive visual age line.

#### VI. SELF-SERVICE DISPLAYS

No tobacco retailer or their employee or agent shall sell or otherwise distribute tobacco products by or from a self-service display except in places where persons under the age of 21 are not permitted access at any time.

#### VII. SIGNAGE

No tobacco retailer shall sell, permit the sale of, or distribute tobacco products in [state/county/municipality] unless a notice is posted at any location where tobacco products are available for purchase. All notices must be posted in a manner conspicuous to both employees and consumers, unobstructed from view in their entirety, and within six feet of each register where tobacco products are available for purchase. The [state/county/municipality] shall provide this notice, which shall state "NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES." The notice must be at least 14" by 11" and the words on the notice must be legibly printed in a high contrast red color with capitalized letters at least one inch high.



**SIGNAGE**

Requiring tobacco retailers to post a standardized notice raises awareness of the age restriction, both among tobacco retailers and the general public, and helps promote compliance.

If there is an existing signage requirement at the state level and a county or municipality raises the MLSA higher than the state MLSA, it may be preferable to mirror the state required signage. In that case, consider requiring that the signage:

1. Clearly indicate that the local government is raising the MLSA (e.g., “NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES, IN [local government jurisdiction]”).
2. Be posted adjacent to any state-mandated signage.

**VIII. EDUCATION**

The [Health Department/Issuing Authority] shall engage in a continuing public health education program to explain and clarify the purposes and requirements of this [statute/ordinance] to persons affected by it, and to guide tobacco retailers and their agents or employees in their compliance. The program may include publication of a brochure for affected tobacco retailers explaining the provisions of this [statute/ordinance] and signage mandated by this [statute/ordinance].

**IX. ENFORCEMENT**

The tobacco retailer shall be subject to at least two unannounced compliance checks per year. The [Health Department/Designated Authority] shall conduct compliance checks by engaging persons between the ages of 18 and 20 to enter the tobacco retail establishment to attempt to purchase tobacco products. Unannounced follow-up compliance checks of all non-compliant tobacco retailers are required within three months of any violation of this [statute/ordinance]. The results of all compliance checks shall be published by the [Health Department/Issuing Authority] at least annually and made available to the public upon request.

**ENFORCEMENT<sup>17</sup>**

An enforcement section empowers a state, county, or municipality to inspect tobacco retailers for compliance. It may be helpful to grant enforcement authority to multiple agencies, such as the health department and the local agency that enforces general business licensing laws.

In addition, the policy should specify the minimum number of compliance checks that must be undertaken each year. Local jurisdictions raising the MLSA to 21 may also include any state-mandated compliance checks as well as additional checks to effectively enforce the local MLSA 21 policy.

## X. PENALTIES

- a. **Tobacco retailers.** Any tobacco retailer found to have violated this [statute/ordinance] shall be subject to: (1) For a first violation, a fine no less than \$500; (2) For a second violation within a 36 month period, a fine no less than \$750 and the tobacco retailer shall be prohibited from distributing tobacco products for a minimum of seven days; (3) For a third violation within a 36 month period, a fine no less than \$1,000 and the tobacco retailer shall be prohibited from distributing tobacco products for a minimum of 30 days; and (4) For a fourth and any subsequent violations within a 36 month period, a fine no less than \$1,000 and the tobacco retailer shall be prohibited from distributing tobacco products for a period of three years.
- b. **Employees.** Any person found to have violated this [statute/ordinance] while acting as a non-management agent or employee of a tobacco retailer shall be subject to non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion programs, and community services.
- c. **Other persons.** Any person 21 years of age or older, besides a tobacco retailer or a tobacco retailer's agent or employee, who violates this [statute/ordinance] is subject to an administrative fine of \$50.

### PENALTIES

A penalties section specifies the consequences for violations. The primary burden for sales to underage purchasers should fall on the retailer who is profiting from the sales of the product and not the purchaser or non-management employee. States and local governments often have the ability to impose criminal and/or civil penalties for violations of the policy. When determining the appropriate penalty structure, a jurisdiction should review its authority for assessing penalties for similar offenses.

Tobacco retailers are responsible for the actions of their agents and employees in regard to the distribution of tobacco products in the tobacco retail establishment. The distribution of any tobacco product by an agent or employee shall be considered an act of the tobacco retailer. To ensure that penalties are not unfairly imposed only on an employee, a jurisdiction could require that the tobacco retailer shall be fined or prosecuted if any person acting as an agent or employee of the tobacco retailer is found in violation of this policy.

To ensure that the impact of penalties on an employee do not impose a disproportionate burden, a jurisdiction could provide that the required activities (education, diversion, community service) may be completed "during hours when the person is not employed and is not attending school" (see, e.g., HI ST § 321-214). A jurisdiction could also provide that education/programs must be free to participants (see, e.g., Cal. Health & Safety Code § 11362.4) and that any education/programs be available online or in some other format to accommodate geographic access. A jurisdiction could also include modest monetary penalties in lieu of the alternative penalties to ensure that any penalties on employees are appropriate and proportional to the penalties on the tobacco retailer.

While retailer education is an important component of tobacco retail licensure and compliance, it is critical that such education programs do not deplete the funding provided through licensure and/or penalties, which must be preserved for effective administration and implementation of the policy to protect public health.

## POSSESSION, USE, AND PURCHASE BY UNDERAGE PERSONS

An evidence-based, best practices tobacco MLSA 21 policy should focus penalties on the tobacco retailer who profits from the illegal sale rather than the youth who is likely addicted to the product. While prohibiting the possession, use, and purchase (PUP) of tobacco products by underage persons is a part of many existing MLSA policies, this model does not include restrictions on PUP by those under 21. To align with evidence-based best practices, state and local governments that currently penalize underage youth in PUP laws should repeal PUP penalties.

PUP laws may be unlikely to reduce youth smoking significantly. Also, they may undermine other conventional avenues of youth discipline, divert attention from more effective tobacco control strategies, and relieve the tobacco industry of responsibility for its marketing practices. Some communities are concerned that these provisions may be enforced inconsistently with respect to youth from certain racial and ethnic groups, resulting in their introduction into the criminal justice system.

Similarly, many prohibitions on the use of false identification to obtain tobacco products focus on criminalizing the behavior of youth rather than retailers. If such provisions are included, a community might consider including non-monetary, non-criminal consequences for youth who attempt to use false identification to purchase tobacco products, such as the following:

The city may establish non-criminal, non-monetary penalties for persons under the age of 21 who use a false ID to purchase tobacco products, including, but not limited to, education classes, diversion programs, and community services.

A jurisdiction could provide that the required activities (education, diversion, community service) may be completed “during hours when the person is not employed and is not attending school” (see, e.g., HI ST § 321-214). A jurisdiction could also provide that education/programs must be free to participants (see, e.g., Cal. Health & Safety Code § 11362.4) and that any education/programs be available online or in some other format to accommodate geographic access.

For a discussion of the merits of PUP laws, see Gary Giovino & Melanie Wakefield, Teen Penalties for Tobacco Possession, Use and Purchase: Evidence and Issues, 12 Tobacco Control 6 (2003), [http://tobaccocontrol.bmj.com/content/12/suppl\\_1/i6.full](http://tobaccocontrol.bmj.com/content/12/suppl_1/i6.full).

- d. **Related violations.** A violation of any federal, state, or local law, ordinance provision, or other regulation relating to tobacco products is also a violation of this [statute/ordinance]. In addition to any other penalty, a tobacco retailer who violates any provision of this [statute/ordinance] or any federal, state, or local law, ordinance provision, or other regulation relating to tobacco products, shall be subject to penalties stated in this [statute/ordinance], including fines and a prohibition of the distribution of tobacco products.
- e. **Criminal Prosecution.** The [state/county/municipality] shall not initiate criminal proceedings against any person other than a tobacco retailer for any alleged violation of this [statute/ordinance].

## XI. EXCEPTIONS AND DEFENSES

- a. The penalties in this [statute/ordinance] do not apply to a person younger than 21 years old who purchases or attempts to purchase tobacco products while under the direct supervision of [state/county/municipal] staff or their authorized appointees for training, education, research, or enforcement purposes.
- b. Nothing in this [statute/ordinance] prohibits an underage person from handling tobacco products in the course of lawful employment by a tobacco retailer.

### CONSIDER ESTABLISHING A MINIMUM CLERK AGE

This exemption clarifies that underage employees can sell or otherwise handle tobacco products. Because a primary reason for adopting a tobacco MLSA 21 policy is to address social sources of tobacco products for youth, it may be preferable to omit this provision and establish a minimum clerk age of 21. At least one study demonstrates that illegal sales were 7.6 times more likely if the clerk appeared to be underage versus if the clerk appeared older.<sup>18</sup> However, no studies have examined the effects of minimum clerk age provisions and establishing a minimum clerk age could create difficulty in communities with smaller pools of potential employees. If a jurisdiction was interested in establishing a minimum clerk age, such a provision could state:

*Persons employed by a tobacco retailer must be at least 21 years of age to distribute tobacco products.*

If the jurisdiction requires clerks to be age 21 or older, provision XI(b) should be deleted.

For further arguments in support of establishing a minimum clerk age of 21 to sell tobacco, see Joseph DiFranza & Mardia Coleman, *Sources of Tobacco for Youths in Communities with Strong Enforcement of Youth Access Laws*, 10 *Tobacco Control* 323 (2001).

- c. Nothing in this [statute/ordinance] prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- d. It shall be an affirmative defense to a violation of this [statute/ordinance] for a tobacco retailer or their agent or employee to have reasonably relied on proof of age as described by state law.

### OTHER KINDS OF EXEMPTIONS

During the consideration of tobacco MLSA 21 policies, it is common to confront calls to exempt members of the military from the minimum legal sales age. This kind of exemption should be avoided to ensure that the health protections this policy can deliver are extended to members of the military. It is essential to ensure fairness in access to health protections. Additionally, tobacco use hinders military readiness.

Another common proposal is to “grandfather” in persons who are currently able to legally purchase tobacco products but who would not be under the policy change. This approach raises compliance and enforcement challenges and allows addiction to become further entrenched for the young adults who would be exempted.

## XII. LIBERAL CONSTRUCTION

This [statute/ordinance] shall be liberally construed so as to further its purposes.

### PRESERVATION OF LOCAL AUTHORITY

Local governments have a critical role to play in reducing the deadly toll of tobacco and preventing youth from ever picking up the habit in the first place. Unfortunately, as states consider Tobacco 21 legislation, the tobacco industry often attempts to insert legislative language to prevent policies from being adopted at the local level. Tobacco industry-sponsored legislation sometimes includes the specific term “preemption,” but the tobacco industry may also use alternative terminology, such as, “supersede,” “occupy the field,” “of statewide concern,” or “uniform and equitable application.”

Including an anti-preemption clause in state Tobacco 21 legislation makes it clear that the legislative intent is to preserve local authority to enact tobacco control protections that address local concerns and local health issues, and that are more stringent than state or federal law. This provision may be added to state legislation to preserve local authority to enact tobacco control regulations:

#### PRESERVATION OF LOCAL AUTHORITY

Nothing in state law shall be construed to limit a local jurisdiction from licensing tobacco retail establishments or regulating tobacco products more stringently than state law. Notwithstanding any other law to the contrary, a local jurisdiction may adopt and enforce ordinances and regulations related to tobacco retail establishments or tobacco products if the ordinance or regulation is at least as stringent as state law.

When using this model language in state legislation, this clause would be inserted before the “Severability Clause.” If this clause is included then a relevant finding could also be added to the “Findings of Fact and Purpose” section of the legislation, above, such as: “Public health and medical communities have concluded that preempting local tobacco control measures has far reaching, deleterious public health consequences.<sup>19,20,21</sup> Many health authorities, including the U.S. Department of Health and Human Services, have prioritized restoring authority for local tobacco control policies as a way to better protect public health.”<sup>22</sup>

The bottom line is: Tobacco 21 legislation should not introduce new tobacco control preemption, nor expand any existing tobacco control preemption, and can be used as an opportunity to assert local authority or repeal existing tobacco control preemption. For more information on preemption and the importance of local tobacco control laws, see the Public Health Law Center’s publications, [Preemption: the Biggest Challenge to Tobacco Control](#) and [Untangling the Preemption Doctrine in Tobacco Control](#), and ChangeLab Solutions’ web page [Understanding Preemption](#).

### **XIII. SEVERABILITY**

If any provision of this [statute/ordinance], or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision of this [statute/ordinance] that can be given effect without the invalid provision or application. Each invalid provision or application of this [statute/ordinance] is severable.

#### **SEVERABILITY CLAUSE**

A severability clause improves the likelihood that even if some part of this policy is found invalid, the rest will stand.

### **XIV. EFFECTIVE DATE**

This [statute/ordinance] shall take effect on [effective date].

#### **EFFECTIVE DATE**

A state, county, or municipality should select an effective date that will provide sufficient time to educate tobacco retailers and the public of these new restrictions.

## ENDNOTES

- <sup>1</sup> U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING - 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL, 659 (2014), [https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf\\_NBK179276.pdf](https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf).
- <sup>2</sup> *Id.*
- <sup>3</sup> *Id.*
- <sup>4</sup> *Id.* at 679; see also Xin Xu et al., *Annual Healthcare Spending Attributable to Cigarette Smoking: An Update*, 48 AM. J. PREVENTATIVE MED. (2015).
- <sup>5</sup> U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 1.
- <sup>6</sup> Campaign for Tobacco Free Kids, *Tobacco Use Among Youth* (April 12, 2019) (citing PDAS, Nat'l Survey on Drug Use and Health, 2016 available at <https://pdas.samhsa.gov/#/survey/NSDUH-2016-DS0001>; David Hammond, *Smoking Behaviour Among Young Adults: Beyond Youth Prevention*, 14 TOBACCO CONTROL 181–5 (2005); Paula M. Lantz, *Smoking on the Rise Among Youth Adults: Implications for Research and Policy*, 12 TOBACCO CONTROL (Suppl. I) i66 – i70 (2003).
- <sup>7</sup> U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING - 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL, (2014), [https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf\\_NBK179276.pdf](https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf).
- <sup>8</sup> U.S. DEP'T OF HEALTH & HUM. SERVS., PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL (2012), available at <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use>.
- <sup>9</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, *Tobacco Use Among Middle and High School Students – United States, 2011 - 2018*, 68 MORBIDITY & MORTALITY WKLY. 157 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6806e1-H.pdf>.
- <sup>10</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, *Sales of JUUL E-cigarettes Skyrocket, Posing Danger to Youth* (2018), <https://www.cdc.gov/media/releases/2018/p1002-e-Cigarettes-sales-danger-youth.html>.
- <sup>11</sup> INST. OF MED., *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products* (2015), <http://iom.nationalacademies.org/Reports/2015/TobaccoMinimumAgeReport.aspx>.
- <sup>12</sup> *Id.*
- <sup>13</sup> *Tobacco 21 Cities*, tobacco21.org (Apr. 2015), <http://tobacco21.org/state-by-state>; HAW. REV. STAT. § 709-908 (2015); CAL. BUS. & PROF. CODE § 22958(a)(2).
- <sup>14</sup> Brian A. King et al., *Attitudes Toward Raising the Minimum Age of Sale for Tobacco Among U.S. Adults*, 49 (4) AM. J. PREVENTATIVE MED. 583, 583 (2015).
- <sup>15</sup> William DeJong & Jason Blanchette, *Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States*, J. STUD. ALCOHOL DRUGS 108 (Supp. 17 2014).
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## RAISING THE TOBACCO SALE AGE TO 21: BUILDING STRONG ENFORCEMENT INTO THE LAW

Raising the minimum legal sale age of tobacco products to 21 (Tobacco 21) is an important, emerging policy strategy to reduce smoking that complements and builds on proven approaches such as tobacco prevention and cessation programs, higher tobacco taxes and smoke-free air laws. Raising the tobacco sale age to 21 will have a substantial positive impact on public health and save lives.

Under federal law, and the law of every state, it is illegal for a retailer to sell tobacco products to persons younger than 18 years of age; a few states have set the minimum age at 19.<sup>1</sup> Twelve states – Arkansas, California, Delaware, Hawaii, Illinois, Massachusetts, Maine, New Jersey, Oregon, Utah, Washington and Virginia – have raised the tobacco age to 21, along with at least 450 localities, including New York City, Chicago, San Antonio, Boston, Washington, DC, Cleveland, Minneapolis, and both Kansas Cities

The momentum for Tobacco 21 was strengthened in 2015 with the release of an Institute of Medicine report predicting that raising the tobacco sale age to 21 nationally would, over time, reduce the smoking rate by about 12 percent and smoking-related deaths by 10 percent, which translates into 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer and 4.2 million fewer years of life lost.

To be effective, youth access laws must be rigorously enforced. Unfortunately youth access laws are often poorly enforced. The national "Monitoring the Future" survey reports that over 60 percent of 10th grade students found cigarette access to be "fairly easy or very easy."<sup>2</sup> The most recent federally mandated retailer compliance rate survey under the Synar Program found that one in ten retailers sell to kids aged 14-17.<sup>3</sup> Moreover, too few retailers are fined or suffer license suspension. Because adolescents readily identify those retailers who will sell to them, an effective law must substantially reduce these levels of retailer non-compliance.

It is critical that age of sale laws are strictly enforced to ensure a high rate of compliance. **The most effective way to ensure compliance is to take enforcement into account in drafting an ordinance or regulation, rather than considering it only after a proposal is adopted.**

The purpose of this Memorandum is to provide recommendations for enforcement to localities considering raising the tobacco sale age to 21.



In part, these recommendations are drawn from ordinances that already have been adopted. They are also drawn from lessons learned from setting the sale age at 18.<sup>4</sup> Jurisdictions considering raising the sale age should review their current laws to identify weaknesses that can be addressed in new minimum age legislation. We have provided alternatives because each locality is unique and the best way to include language in any ordinance may vary from jurisdiction to jurisdiction. Nevertheless, these suggestions are based on common principles that apply to all situations and each suggested provision should be considered by any state, city or county in crafting language to raise the tobacco sale age.

### ***Designate an Enforcement Agency***

Designating an enforcement agency in advance and making clear who is responsible for enforcement, and the tools that will be available to the enforcement agency, always enhances enforcement, but not all existing ordinances do so.

Some existing sale-at-21 ordinances define violations and specify the penalties for violation, without designating a particular agency as responsible and accountable for enforcement of the ordinance. Practically, this may be less of a problem in jurisdictions that have existing youth access laws, have previously designated the enforcement agency for enforcing those laws, and are merely raising the age from 18 to 21 under the same authority. However most state and local authorities rely on compliance checks organized and funded by the FDA under the 2009 Family Smoking Prevention and Tobacco Control Act. Unfortunately the FDA can only enforce up to age 18. If the FDA or its contract agent does all of the youth access enforcement in a jurisdiction, an alternative arrangement may be needed to enforce age 21.

After understanding what agency or authority currently enforces youth access to tobacco, it is important to ascertain how successful the retailer compliance program has been. Enforcement programs often consist of compliance checks in which “decoy” underage purchasers test compliance with age-verification requirements as well as minimum-age restrictions under the supervision of an adult. Effective programs visit each retail tobacco outlet at least once or twice per year to conduct random unannounced inspections, with follow-up checks on non-compliant stores.

For those with no preexisting youth access law or for local jurisdictions in which enforcement of age 18 has been handled entirely by a state enforcement agency or the FDA, it is important to designate a local enforcement agency and to give that agency explicit authority to enforce the ordinance, in the text of the ordinance itself. This will provide certainty as to what entity is responsible for enforcement and, just as important, what agency is accountable for enforcement. Determining who will enforce, and how enforcement will be conducted, will require pre-planning to allow time to communicate with key stakeholders. It is advisable to identify the intended enforcing agency in advance, consult with the agency where possible, and then include its representatives in discussions as the language is drafted.

Some existing ordinances designate the local public health department or officer, some designate local law enforcement, and others designate both a public health enforcement entity and a law enforcement entity. The designation of more than one locus of enforcement responsibility may provide needed flexibility, as long as there is no confusion as to responsibility and accountability. When possible under state law, we advise using existing regulatory authorities such as health department inspectors or experienced contractors rather than relying on the police or sheriff's office where resources may be stretched. Enforcement should focus on the retailer who sells to a person under 21, not on the below-age purchaser. Generally

enforcement does not take place at the time of the compliance check. Instead a violation letter is sent later describing the violation and stipulating the warning or penalty.

### ***Identify a Dedicated Funding Source for Enforcement***

Regardless of what agency is designated for enforcement duties, effective enforcement requires a consistent, dependable source of funding for enforcement efforts. Such a program of decoy-based compliance checks, of course, requires commitment and adequate resources.

A jurisdiction should not automatically assume that existing funding is adequate because a local authority already has funds to enforce the existing youth access law. For example, it may be that localities currently receive funding from state tobacco control programs or the FDA to enforce 18 as the minimum age under current state or local law, but this money may not be available to enforce local ordinances raising the age to 21 because selling tobacco products to 18-20 year olds does not violate state or federal law. Compliance checks to enforce Tobacco 21 ordinances necessarily involve decoys in the 18-20 age range and state or federal funding may not be available to recruit and deploy decoys of that age group.

Identifying funds is important for success and the source of such funds should be specified in the ordinance. Again, determining the source of funding will require a pre-drafting planning process to consult with stakeholders. For example, some localities specify that fines for non-compliance are to be used to fund compliance checks and other enforcement activities. When establishing the level of fines for violation of the ordinance, jurisdictions should consider not only the minimum necessary to encourage compliance, but also the level sufficient to provide a dependable source of enforcement funding going forward.

Where a jurisdiction requires a license to sell tobacco products, license fees can also be specified as a source of enforcement funds. Some jurisdictions (e.g. Boston, MA) provide for the use of both fines and fees. To the extent possible, it is desirable that tobacco enforcement and/or regulatory activity be self-funding (through the use of fines and fees) to ensure continuous and dependable funding. The ordinances of some jurisdictions identify a preexisting fund for enforcement not limited to tobacco enforcement (e.g. county or city general funds).

### ***Require a Specified Number of Compliance Checks***

Localities should also consider including a provision mandating a minimum number of compliance checks per retailer for a specific period of time. For example, the Minneapolis, MN licensing law enforces the minimum age of 18 for tobacco sales by requiring unannounced compliance checks to be conducted at least annually at each location where tobacco is sold and then, in the event of a first violation, mandating another check within the following six months and at least twice within a year of the first violation. The Santa Clara County, CA ordinance specifies a minimum standard of two decoy-based compliance checks each year for implementation of its age 21 law. This kind of requirement should be a substantial incentive for compliance, as well as making the enforcement authority easily accountable for a given level of enforcement activity.

### ***License Tobacco Retailers or, Where There Is An Existing Licensing System, Use Threat of License Suspension or Revocation as an Enforcement Sanction***

A tobacco retailer licensing system can be important in enhancing enforcement. Not only does a license fee provide a stable and reliable source of funding for enforcement, but also the threat of license suspension and revocation can be a powerful incentive for compliance. As example, Needham, MA, often cited as the progenitor city for Tobacco 21, developed excellent retailer compliance only after it issued a 60 day suspension to one retailer. The requirement of license renewal also allows local enforcement agencies to keep a current census of tobacco retailers. In several jurisdictions, including Boston, MA and Santa Clara County, CA, license suspension or revocation is expressly available as a sanction for non-compliance with the minimum legal sale age of 21. Most states already have a tax-license system for tobacco, but we suggest that age 21 ordinances contain a revocable local license that also funds enforcement efforts.

### ***Provide for Citizen Complaints of Violations***

The ordinances of several jurisdictions, including Bergenfield, NJ, Rutherford, NJ and Boston, MA, provide for citizen complaints of violations. While some citizens currently contact agencies in their community to report violations of laws, this type of provision may help invite the community to assist in enforcement of these ordinances, while providing an additional incentive for compliance and enhance accountability. Ordinances should make clear how, and with what agency, such complaints should be filed, as well as providing for public education to ensure general knowledge of the complaint mechanism.

### ***Require Appropriate Signage at Retail Stores***

Local Tobacco 21 ordinances also can enhance compliance by requiring retailers to post appropriate signage, or change existing signage, in prominent locations easily readable by consumers and the public, making it clear that 21 is the minimum age to purchase tobacco products. Cleveland's ordinance, for example, has an express provision for signage. In addition, if the public is more aware of the new minimum age, it will tend to encourage citizen complaints of violations. Signage should include information about state and local resources to help tobacco users quit. In the pre-drafting planning phase, it is important to determine who will be responsible for printing and distributing signs, including covering the cost. It also is important to work with the enforcing agency ahead of time to determine how the newly-required signs concerning the local 21 ordinance will relate to any preexisting signage required by state law for sales to persons under 18.

### ***Provide for Retailer Education***

Local ordinances should provide for the education of retailers as to the new minimum age and specify the agency responsible for conducting such education. Retailer education will prevent inadvertent non-compliance due to ignorance of the new age limit, as well as laying the groundwork for successful enforcement actions and the application of appropriate penalties when violations occur. It is important to build in time between enactment of the policy and its effective date to make sure there is enough time to educate retailers, adopt new signage, etc.

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<sup>1</sup> The states with the tobacco sale age at 19 are Alaska and Alabama.

<sup>2</sup> University of Michigan, 2018 Monitoring the Future Study, *Trends in Availability – Tables 15-17*. See <http://monitoringthefuture.org/data/18data/18drtbl15.pdf> and <http://monitoringthefuture.org/data/18data/18drtbl16.pdf>.

<sup>3</sup> Tobacco Sales to Youth. Annual Synar Reports FFY 2014. Substance Abuse and Mental Health Services Administration.

<sup>4</sup> DiFranza, Joseph R. "Best practices for enforcing state laws prohibiting the sale of tobacco to minors," *Journal of Public Health Management and Practice* November-December 11(6), 2005.



## RAISING THE TOBACCO SALE AGE TO 21: IMPLICATIONS FOR THE MILITARY

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Military leaders recognize the toll tobacco takes on troop readiness and on the military health care system and are actively taking steps to reduce tobacco use in the military. Tobacco use remains this nation's number one preventable cause of premature death and disease, killing more than 480,000 Americans annually.<sup>1</sup> The Department of Defense (DoD) estimates that 175,000 current Active Duty Service members will die from smoking unless they are able to quit.<sup>2</sup> Almost all smokers start smoking before the age of 21,<sup>3</sup> and the ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use.

Tobacco use is not a rite of passage or an expression of freedom. It is an addiction. Tobacco companies target young people before they can fully appreciate the consequences of becoming addicted to the nicotine in tobacco. Nearly 70% of adult smokers want to quit<sup>4</sup>, but once a person is addicted to nicotine, it is difficult to stop, and the health consequences begin immediately and accumulate over a lifetime.

Tobacco companies have a long history of promoting tobacco to members of the military and have a vested interest in tobacco use by the military, an important market for recruitment of the next generation of smokers.<sup>5</sup> Raising the tobacco sale age to 21 will help prevent our service members from starting to use this deadly and addictive product and support DoD efforts to reduce tobacco use among service members.

### **Military Leaders Support Tobacco Prevention and Cessation**

Tobacco use is bad for military preparedness. The military recognizes the negative impact of tobacco on troop readiness and soldiers' health and has initiated a series of actions to curb tobacco use in the military.<sup>6</sup> The Department of Defense and the Army, Navy, Marines, and Air Force have each set goals to become tobacco-free.<sup>7</sup> In April 2016, the Department of Defense approved actions "to ensure a comprehensive tobacco policy that assists with preventing initiation of tobacco use, helping those who want to quit using tobacco succeed, and decreasing exposure to secondhand smoke for all our people."<sup>8</sup>

Our military leaders understand the toll tobacco takes on our troops. In a letter to all servicemembers, the surgeons general of the Air Force, Army, Navy, and the United States stated that, "Tobacco product use is a threat to the health and fitness of our forces and compromises readiness, the foundation of a strong national defense."<sup>9</sup> DoD's *Quit Tobacco—Make Everyone Proud* cessation campaign advertised quotes and videos from high-ranking military officials about the toll tobacco has on health and military readiness:

- General Robert Magnus, now retired Assistant Commandant of the Marine Corps, stated, "*Tobacco impairs reaction time and judgment. It stands in the way of a Marine's number one priority: to be in top physical and mental shape - combat ready.*"<sup>10</sup>
- Rodney J. McKinley, now retired Chief Master Sergeant of the Air Force has stated, "*Tobacco use impacts physical fitness, night vision and healing – it impairs mission readiness.*"<sup>11</sup>

Military officers and veterans have also spoken out in favor of tobacco 21 policies:

- After Hawaii raised its tobacco sale age to 21, effective January 1, 2016, Hawaii's military bases opted to comply with the higher age in recognition of its benefits to readiness, health and finances:<sup>12</sup>
  - Bill Doughty, spokesman for the Navy Region Hawaii, stated, *"We see it as a fitness and readiness issue. When we can prevent sailors from smoking or using tobacco, if we can get them to quit, then that improves their fitness and readiness, and it saves them a ton of money too."*<sup>13</sup>
  - Rear Admiral John Fuller, Navy Region Hawaii and Naval Surface Group Middle Pacific stated, *"I've heard this argument by some shipmates against cracking down on tobacco: 'If someone is young enough to die for their country, they should be free to be allowed to smoke.' But, turning that argument on its head: 'If someone is young enough to fight for their country, they should be free from addiction to a deadly drug.' Tobacco harms people's physical wellbeing, leads to illness and costs them money."*<sup>14</sup>
- Major General Michael Stencel, the Adjutant General for the state of Oregon, submitted testimony on behalf of the Oregon Military Department and the Oregon National Guard in support of the proposal to raise the state's tobacco sale age to 21. His statement included the following, *"Reducing tobacco use within the Oregon National Guard will have an immediate, positive impact on the resiliency and readiness of our Soldiers and Airmen."*<sup>15</sup>
- 27-year senior officer of the Air Force and Chautauqua, New York, County Executive Vince Horrigan, stated, on signing a bill to raise the tobacco sale age to 21: *"As a retired 27-year senior officer of the Air Force, I join with many other military leaders in the perspective that tobacco products are a threat to our military readiness and too often compromise the health of our professional military who put their lives on the line to defend our freedoms."*<sup>16</sup>
- Major General Bret Daugherty, the Adjutant General for the state of Washington and Commander of the Washington National Guard stated in testimony supporting raising the tobacco sale age: *"...I want to address the age-old argument that if someone is old enough to serve their country in the military, then they are old enough to use tobacco products. This is clearly an outdated argument. There is a laundry list of things that we as a country have decided are contrary to the interest of young people and public health, whether they are in the military or not. Decades ago, this very body saw the wisdom in raising the drinking age to 21. That policy change significantly reduced drunk driving deaths and contributed to the overall health of our public here in the state."*<sup>17</sup>
- Retired military leaders supported an Illinois bill to raise the tobacco sale age to 21. Major General (Ret) William Enyart, U.S. Army, Former Adjutant General of Illinois, 2007-2013; Major General (Ret) Randal Thomas, U.S. Army Former Adjutant General of Illinois, 2003-2007; Brigadier General (Ret) John "Jay" Sheedy, U.S. Air Force, Brigadier General (Ret) Avrum Mark Rabin, Illinois Air National Guard stated: *"Americans owe much to the young people who choose to serve in our military. But early addiction to a deadly drug is no reward. Their physical fitness and health should be paramount in policymaking decisions."*<sup>18</sup>

### **Tobacco Use Hurts Military Readiness and Is Costly**

While tobacco use takes an enormous toll on all users, it has particularly detrimental consequences for active duty military personnel. Tobacco use reduces soldiers' physical fitness

and endurance and is linked to higher rates of absenteeism and lost productivity. In addition, service members who use tobacco are more likely to drop out of basic training, sustain injuries and have poor vision, all of which compromise troop readiness.<sup>19</sup> Tobacco use places a significant burden on the Department of Defense (DoD). The DoD spends more than \$1.6 billion each year on tobacco-related medical care, increased hospitalizations, and lost days of work.<sup>20</sup>

### **Tobacco Use Among Active Duty U.S. Military**

Smoking rates are higher among active duty military than among civilians. Nearly one-quarter (24.0%) of active duty military personnel in 2011 reported currently smoking, compared to 19 percent of civilians at that time.<sup>21</sup> Smoking rates vary significantly by service, ranging from 16.7 percent in the U.S. Air Force to 30.8 percent in the U.S. Marine Corps. Many of the military's current cigarette smokers are dual users of smokeless tobacco.<sup>22</sup> In addition, close to half of all military service members (49.2%) used a nicotine product\* in the past twelve months.<sup>23</sup>

Alarming, many current military smokers - 36 to 40 percent - report initiating tobacco use *after* joining the military.<sup>24</sup> Given everything we know about what smoking does to the body and how it weakens our combat preparedness, it is unacceptable that soldiers smoke at higher rates than the general population and that more than 1 in 3 soldiers who are current smokers started smoking *after* joining the military.

### **Raising the Minimum Legal Sale Age Will Help Save Lives**

Raising the tobacco sale age is an evidence-based policy that is an important part of a comprehensive approach to tobacco prevention. A 2015 report by the Institute of Medicine (IOM) concluded that raising the tobacco age to 21 will have a positive impact on public health and save lives.<sup>25</sup> Specifically, raising the age to 21 is predicted to, over time, reduce the smoking rate by about 12 percent and smoking-related deaths by 10 percent, which translates into 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost.

Tobacco use is a deadly and addictive behavior that compromises the readiness and health of our military and prematurely kills half its adult users.<sup>26</sup> Raising the tobacco sale age to 21 is an important step that will protect young people and service members from a deadly addiction and will complement other tobacco prevention and cessation efforts being undertaken by the military.

### ***Campaign for Tobacco-Free Kids, July 17, 2019 / Laura Bach***

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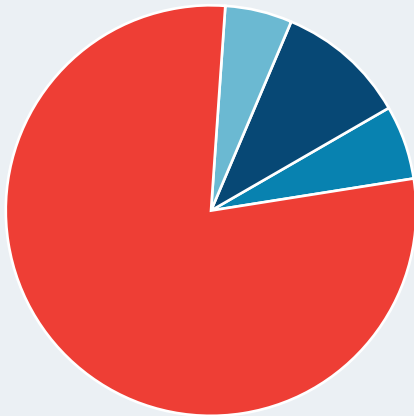
\* Nicotine product includes cigarettes, chewing tobacco, snuff, other smokeless tobacco including new forms of smokeless (e. g. dissolvables), cigars, pipes, and electronic nicotine delivery products.

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## The Toll of Tobacco

- **Tobacco kills half a million people a year:** equivalent to three 747s crashing each day, and more than car crashes, gun violence and drug overdoses combined.
- The developing teenage brain is particularly vulnerable to the addictive effects of nicotine.
- Early nicotine use in susceptible teens may lead to addiction and multi-substance abuse, as well as mental illnesses including anxiety, depression, suicidality, bipolar and schizophrenia.



LEADING PREVENTABLE CAUSES OF DEATH



All nicotine and tobacco-related deaths: **500,000** deaths annually.



All gun-related deaths (including homicide, suicide, unintentional, and undetermined): **34,000** deaths annually.



All drug-related overdose deaths: **64,000** deaths annually.



All automobile & traffic related deaths: **37,000** deaths annually.

- **More than 95% of smokers started before age 21**
- **350 teens become regular smokers each day in the U.S.**
- **The Centers for Disease Control (CDC) projects that without a trajectory change nicotine addiction and tobacco use will dramatically shorten the lives of 5.6 million kids alive today.**

## The Rise of Juul

### The Addiction Sweeping American Schools

Imagine a potent little device, as slender as a USB memory stick and as sleek as an iPhone. From it comes only the pleasant smell and taste of Mango, Mint or Creme Brulee, yet it packs the nicotine punch of a full pack of cigarettes. Juuls give a quick head rush of stimulation that kids love, but soon can't stop.



Essentially unregulated, Juul through its intense social media campaign and new formulation of nicotine has exploded in popularity. In 18 months, Juuls climbed to a dominant market share and a \$15 billion valuation by addicting teens. To view a frightening middle-school video go to [www.tobacco21.org/juuls](http://www.tobacco21.org/juuls)

## Cutting the Supply

- On average American kids try smoking for the first time at age 13.7.
- The primary source of tobacco products for underage smokers are their 18 to 20 year old peers.
- Tobacco 21 laws disrupt the social availability of all Nicotine products to young people. **But without strict enforcement this intervention ultimately fails.**



Tobacco 21 is only effective if there is real enforcement, but the current age-18 system that depends on the police arresting the minimum-wage clerk simply doesn't work. Using Health Department inspectors to insure retailer compliance is the secret to giving kids just a little more time to grow up addiction free.

—Rob Crane, MD  
President, Preventing Tobacco Addiction Foundation



## Minimal Impact on Tobacco Retailers



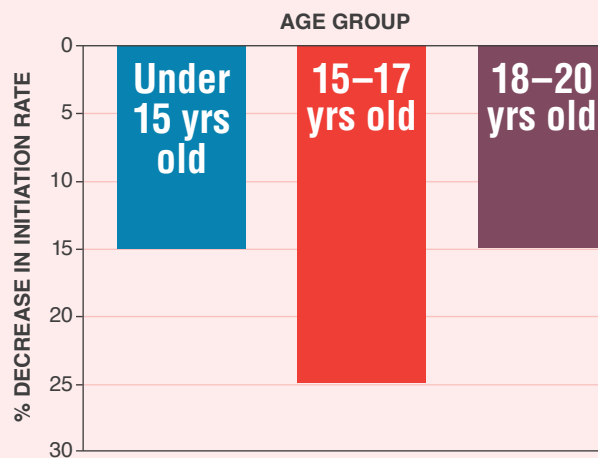
### SALE OF CIGARETTES BY AGE

21 years and older ■ 18-20 years ■

**The economic impact of T21 is minimal. Only 2% of U.S. cigarette sales go to those under 21.**

## Dramatic Impact on Initiation

A 360 page report by the National Academy of Sciences projected that if the entire country enacted Tobacco 21 legislation there would be a 25% drop in smoking initiation among high school students.



## Tobacco 21 In Effect

### Over 50% of the nation's population is covered by T21 policy

Tobacco 21 has decreased youth tobacco use in localities that have adopted it.

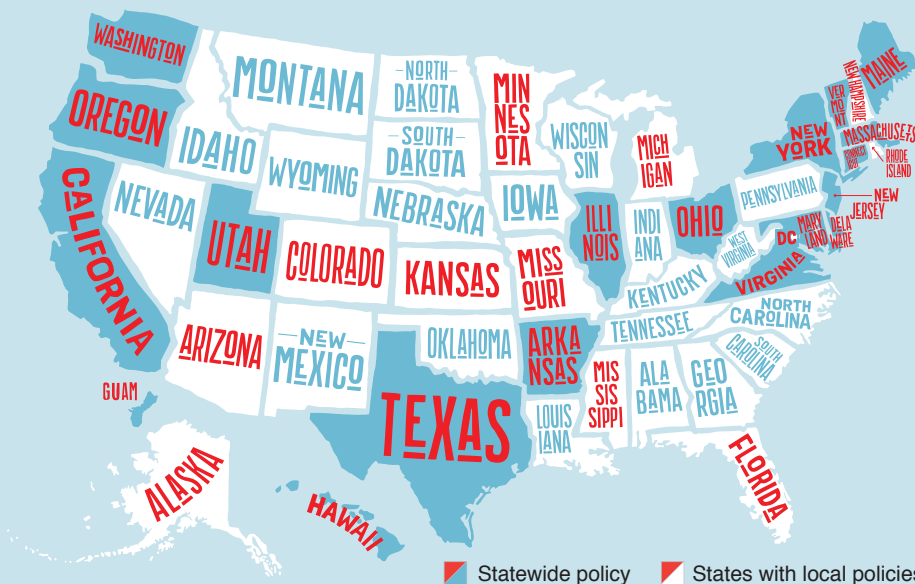
**Needham Massachusetts** showed a 48% drop in high school smoking rates after policy implementation, a drop three times that of neighboring communities.

In the year after implementation, **Chicago** found a 36% decrease in 18-20 year olds that reported currently smoking cigarettes.

In **California**, statewide retailer rates to under 18 year-olds decreased from 10.3% to 5.7% since implementation of their Tobacco 21 law.

In **Oregon**, recent initiation rates dropped statewide from 34% to 25% in 13 - 17 year-olds and from 23% to 18% in 18 - 20 year-olds within two years of T21.

### 485+ Cities & Counties in 29 States



### Public Support for T21

**75%** of U.S. adults favor raising the Minimum Legal Sales Age for all tobacco products to 21.

### Endorsing Organizations

American Academy of Family Physicians, American Academy of Pediatrics, American Public Health Association, American Heart Association, American Cancer Society, American Lung Association, American Veterans (AMVETS), Preventing Tobacco Addiction Foundation, Campaign for Tobacco Free Kids, American Medical Association, March of Dimes.

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

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING DIVISION V CHAPTER 94 AND ENACTING ARTICLE IV CHAPTER 26 TITLED "SELLING OF TOBACCO PRODUCTS" AND OTHER RELATED MATTERS

WHEREAS, the City of Aurora, Colorado, (the "City"), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, the City is authorized under Article XX, Section 6 of the Colorado Constitution to pass ordinances and regulate local affairs including ordinances intended to protect the public health of the Citizens of Aurora; and

WHEREAS, the City recognizes that there are proven scientific facts that youth access to tobacco carries a great health risk; and

WHEREAS, the City has found that raising the age limit to access nicotine and tobacco products promotes a legitimate governmental interest and protects the public health, safety and welfare of the Citizens of Aurora.

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

Section 1. Division V, section 94-343 of the Aurora City code is hereby amended to read as follows:

Sec. 94-343. - Dispensing of tobacco products.

(a) For the purpose of this section, the following definitions shall apply: ~~term "tobacco products" means cigars, cigarettes, cheroots, stogies, periques, granulated, plus cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plus and twist tobacco, fine cut and other chewing tobaccos, and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing, to be placed in the oral cavity or nasal passage, or for smoking in a pipe or otherwise or both for chewing and smoking.~~

***Cigarette* means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:**

- (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (2) Tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or
- (3) Roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1)(a) above.
- (4) The term includes all "roll-your-own," i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

***Electronic smoking device*** means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation of vapor from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco - cessation product, or for other medically approved or certified purposes.

***Minimum legal sales age*** means twenty-one (21) years of age or older.

***Self-service display*** means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without assistance from the licensee or an employee of the licensee through a direct, person-to-person transfer between the recipient and the licensee or an employee of the licensee. A vending machine is a form of self-service display.

***Tobacco paraphernalia*** means any item designed for the consumption, use, or preparation of tobacco products.

***Tobacco product*** means and includes (1) any product that is made or derived from tobacco or that contains nicotine or synthetic nicotine that is intended for human consumption or is likely to be consumed whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means including, but not limited to a cigarette, cigar, pipe tobacco, chewing tobacco, snuff or snus (2) electronic smoking device (3) tobacco paraphernalia and any component or part used in the consumption of a tobacco product(s) such as filters, rolling papers pipe and liquids used in electronic smoking devices whether or not said product contains nicotine. Tobacco product does not include drugs, devices or combination products authorized for sale as a

cessation product by the United States Food and Drug Administration as the terms are defined in the Federal Food, Drug and Cosmetic Act.

***Tobacco product retailer*** means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco or nicotine products, or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(b) It shall be unlawful for any person to knowingly furnish to any person who is under ~~18~~ **21** years of age, by gift, sale, or any other means, any tobacco product **or tobacco paraphernalia**. It shall be an affirmative defense to a prosecution under this subsection that the person furnishing the tobacco product was presented with and reasonably relied upon a document ~~valid state driver's license or other government-issued form of photographic identification~~ which identified the person receiving the tobacco product as being ~~18~~ **21** years of age or older.

(c) It shall be unlawful for any person who is under ~~18~~ **21** years of age to purchase any tobacco product.

~~(d) Except as otherwise stated in this subsection, it shall be unlawful for any person to sell or offer to sell any tobacco products by use of a vending machine or other coin-operated machine. Cigarettes may be sold at retail through vending machines only in:~~

~~(1) Factories, businesses, offices, or other places not open to the general public;~~

~~(2) Places to which persons under the age of 18 years are not permitted access;~~

~~or~~

~~(3) Places where the vending machine is under the direct supervision of the owner of the establishment or any adult employee of the owner including, but not limited to establishments holding a valid liquor license.~~

~~As used in this subsection, the term "under direct supervision" means the vending machine shall be in plain vision of the employee or owner during regular business hours. It shall be an affirmative defense to a prosecution under this subsection that the person selling or offering to sell the tobacco product was presented with and reasonably relied upon a document which identified the person purchasing the tobacco product as being 18 years of age or older.~~

Section 2. Article IV of Chapter 26 of the Aurora City Code shall read as follows:

ARTICLE IV. Selling of tobacco products.

Sec. 26-151. Definitions.

For the purpose of this Article IV, the following definitions shall apply:

***Cigarette*** means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (2) Tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or
- (3) Roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1)(a) above.
- (4) The term includes all "roll-your-own," i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

***Electronic smoking device*** means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation of vapor from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco - cessation product, or for other medically approved or certified purposes.

***Minimum legal sales age*** means twenty-one (21) years of age or older.

***Self-service display*** means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without assistance from the licensee or an employee of the licensee through a direct, person-to-person transfer between the recipient and the licensee or an employee of the licensee. A vending machine is a form of self-service display.

***Tobacco paraphernalia*** means any item designed for the consumption, use, or preparation of tobacco products.

***Tobacco product*** means and includes (1) any product that is made or derived from tobacco or that contains nicotine or synthetic nicotine that is intended for human consumption or is likely to be consumed whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means including, but not limited to a cigarette, cigar, pipe tobacco, chewing tobacco, snuff or snus (2) electronic smoking device (3) tobacco paraphernalia and any component or part used in the consumption of a tobacco product(s) such

as filters, rolling papers pipe and liquids used in electronic smoking devices whether or not said product contains nicotine. Tobacco product does not include drugs, devices or combination products authorized for sale as a cessation product by the United States Food and Drug Administration as the terms are defined in the Federal Food, Drug and Cosmetic Act.

*Tobacco product retailer* means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco or nicotine products, or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

#### **Section 26-152. Prohibition.**

- (a) It shall be unlawful for any person to furnish to any person who is under 21 years of age, by gift, sale, or any other means, any tobacco product or tobacco paraphernalia. It shall be an affirmative defense to a prosecution under this subsection that the person furnishing the tobacco product was presented with and reasonably relied upon a valid state driver's license or other government-issued form of photographic identification which identified the person receiving the tobacco product as being 21 years of age or older.
- (b) Any person who sells or offers to sell any tobacco products shall display a warning sign in a place that is visible to employees and consumers at all times. Said warning sign shall have a minimum height of eleven (11) inches and a minimum width of fourteen (14) inches and shall read as follows: "NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING ELECTONIC SMOKING DEVICES" in legibly printed words in high contrast red color with capitalized letters at least one inch high.
- (c) The city may conduct compliance checks as it deems appropriate so as to allow the city to determine if the tobacco product retailer is conducting business in a manner that complies with laws regulating access to tobacco products. When the city deems appropriate, compliance checks shall determine compliance with other laws applicable to tobacco products.
- (d) No person shall sell or permit the sale of tobacco products by use of a self-service display. Tobacco Product Retailers shall stock and display all tobacco products and tobacco paraphernalia in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the tobacco product or tobacco paraphernalia from an employee of the business to the customer.

Section 3. All ordinances or parts of ordinances of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 4. 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
MIKE COFFMAN, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Hanosky Hernandez,  
Assistant City Attorney



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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, AMENDING ARTICLE II OF CHAPTER 86 OF THE CITY CODE RELATING TO THE SUSPENSION, CIVIL FINES, AND REVOCATION OF A BUSINESS LICENSE
<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> Roberto Venegas
<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.)*

The Finance Director has the ability to suspend or revoke a business license for certain violations. This ordinance amends those violations and allows for a provision to impose a fine instead of suspension or revocation of the license.

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

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.

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.

**QUESTIONS FOR Committee**

Is the committee in favor of forwarding this ordinance for full City Council consideration at a future study session?

**EXHIBITS ATTACHED:**

2019-Business-License-Regulations.doc

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

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, AMENDING ARTICLE II OF CHAPTER 86 OF THE CITY CODE RELATING TO THE SUSPENSION, CIVIL FINES, AND REVOCATION OF A BUSINESS LICENSE

WHEREAS, the City of Aurora, Colorado, (the “City”), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, the City is authorized under Article XX, Section 6 of the Colorado Constitution to regulate local affairs including businesses operating within the City; and

WHEREAS, the City has enacted a comprehensive business regulation code, and the City would like to make clarifications in some sections.

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

Section 1. Article II Section 86-47 subsection (a) of the city code of the City of Aurora is hereby amended to read as follows:

Sec. 86-77. Suspension, **civil fines**, and revocation.

(a) The director may, on the motion of the licensing administrator or on complaint, suspend, **impose a civil fine not to exceed the maximum fine penalty in Section 1-13 of the City Code**, or revoke a license if, after notice and hearing thereon, he or she finds that:

(7) The licensee, or any officer, agent, or employee thereof, either knowingly or without the exercise of due care to prevent the same, has violated any of the terms and conditions placed upon a license or violated any of the provisions of this chapter 86, **chapter 26** or chapter 6 of the city Code relating to such license, or any rule or regulation promulgated pursuant thereto;

**(13) The licensee, or any officer, agent or employee thereof, has failed to obtain or renew a state professional license, or if after obtaining or renewing such license the license is revoked, suspended, or surrendered.**

(c) If the director finds that the license should be suspended or revoked, the licensee shall be provided written notice of such suspension or revocation and the

reasons therefor within 20 days following the date of the hearing or such other time as is specified by the provisions of this chapter relating to such license. **Nothing in this section shall preclude the director from imposing a civil fine upon a settlement agreement with the licensee.**

Section 2. All ordinances or parts of ordinances of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 3. 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
MIKE COFFMAN, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
HANOSKY HERNANDEZ,  
Assistant City Attorney

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## Management and Finance Policy Committee Agenda Item Commentary

**Item Title:**

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REPEALING CHAPTER 74 OF THE AURORA CITY CODE AND AMENDING CHAPTER 26 BY ENACTING ARTICLE; III TITLED "CLEAN INDOOR AIR ACT" AND AMENDING ARTICLE VI OF CHAPTER 94 BY ADDING SECTION 94-392

**Item Initiator:** Trevor Vaughn, Manager of Tax and Licensing

**Staff Source:** Trevor Vaughn, Manager of Tax and Licensing

**Deputy City Manager Signature:** Roberto Venegas

**Outside Speaker:**

**Council Goal:** 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.)*

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.

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

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.

**QUESTIONS FOR Committee**

Is the committee in favor of forwarding the ordinance for full City Council consideration?

**EXHIBITS ATTACHED:**

2019a\_1076\_signed.pdf  
2019-Clean-Indoor-Act-Adoption-Ordinance.doc  
Chapter\_74\_\_\_HEALTH\_AND\_SANITATION.doc



# Attachment: Current Chapter 74 Health and Sanitation

Chapter 74 - HEALTH AND SANITATION<sup>11</sup>

Footnotes:

--- (1) ---

**Cross reference**— Animals, ch. 14; environment, ch. 62; nuisances, § 62-26 et seq.

ARTICLE I. - IN GENERAL

Secs. 74-1—74-25. - Reserved.

ARTICLE II. - SMOKING IN PUBLIC PLACES

Sec. 74-26. - Definitions.

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

*Public meetings* includes all meetings open to the public.

*Public place* means any enclosed, indoor area open to and frequented by the public, including but not limited to arenas, auditoriums, banks, child care establishments, commercial establishments, educational facilities, grocery stores, hospitals, meeting rooms, nursing homes, public conveyances, recreational facilities, restaurants, retail stores and theaters.

*Smoking instrument* means any cigar, cigarette, pipe or other smoking equipment.

(Code 1979, § 27-159)

**Cross reference**— Definitions generally, § 1-2.

Sec. 74-27. - Legislative intent.

In order to serve the public health, safety and general welfare, it is the declared purpose of this article to prohibit smoking in areas which are used by or open to the public unless such areas are designated as smoking areas pursuant to this article.

(Code 1979, § 27-158)

Sec. 74-28. - Responsibilities of proprietors.

The proprietor or person in charge of a public place or public meeting shall make reasonable efforts to obtain compliance with this article in such places by:

- (1) Posting appropriate signs.
- (2) Arranging seating and work areas to provide a smoke-free area.
- (3) Asking smokers to refrain from smoking upon request of a client or an employee suffering discomfort from the smoke.
- (4) Affirmatively directing smokers to designated smoking areas.

# Attachment: Current Chapter 74 Health and Sanitation

- (5) Using existing physical barriers and ventilation systems to minimize the toxic effect of transient smoke in adjacent no smoking areas.
- (6) Any other means which may be appropriate.

(Code 1979, § 27-165)

Sec. 74-29. - Smoking prohibited except in permitted areas.

No person shall smoke or carry any lighted smoking instrument in a public place or at a public meeting except in permitted smoking areas.

(Code 1979, § 27-160)

Sec. 74-30. - Permitted smoking areas.

Smoking may be permitted in the following public places:

- (1) Establishments in which malt, vinous or spirituous liquors are sold for consumption on the premises pursuant to a license other than a special events permit, except for those areas within such establishments which are utilized primarily for restaurant purposes.
- (2) Fully enclosed offices or rooms occupied exclusively by smokers, even though the offices or rooms may be visited by nonsmokers.
- (3) Rooms or halls being used by a person or group for a social or business function where the seating arrangements are under the control of the sponsor of the function.
- (4) Retail businesses primarily engaged in the sale of tobacco or tobacco products.
- (5) Restaurants with a seating capacity of 50 or fewer persons.
- (6) Smoking areas designated by the proprietor or person in charge of a public place or public meeting pursuant to section 74-31.

(Code 1979, § 27-161)

Sec. 74-31. - Designation of smoking areas.

Under this article, the proprietor or person in charge may designate no more than 50 percent of a public place or public meeting as a smoking area except as follows:

- (1) In no event shall lobbies, hallways or other common areas constituting a public place and typically shared by smokers and nonsmokers be designated as smoking areas, except that lobbies, hallways or other common areas which exceed 5,000 square feet in area may have within them designated smoking areas, provided that no more than 25 percent of the total area of such lobby, hallway or common area is so designated and, further, provided that such designated smoking areas are located such that it is not necessary for nonsmokers to pass through such areas to reach other no smoking areas.
- (2) In restaurants with a seating capacity of over 50 persons, the proprietor or person in charge shall provide a no smoking area of sufficient size to accommodate patrons who request to be seated in such an area. Patrons must be advised orally and through signs that no smoking areas are available.
- (3) In no event shall public restrooms be designated as smoking areas.

(Code 1979, § 27-162)

# Attachment: Current Chapter 74 Health and Sanitation

## Sec. 74-32. - Signs.

To advise persons of the existence of "no smoking" or "smoking permitted" areas, signs shall be posted as follows:

- (1) In public places where the proprietor or person in charge prohibits smoking in the entire establishment, a sign using the words "no smoking" or the international no smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the establishment.
- (2) In public places where certain areas are designated as smoking areas pursuant to this article, the statement "no smoking except in designated areas" shall be conspicuously posted on all public entrances or in a position clearly visible on entry into the establishment.
- (3) In public places where smoking is permitted in the entire establishment, a sign using the words "smoking permitted" or the international smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the establishment.

(Code 1979, § 27-163)

## Sec. 74-33. - Areas where smoking is prohibited.

Smoking shall not be permitted and smoking areas shall not be designated in those areas where smoking is prohibited by the fire chief, state statute, ordinances or regulations of the city or other applicable laws.

(Code 1979, § 27-164)

## Secs. 74-34—74-50. - Reserved.

## ARTICLE III. - TRI-COUNTY HEALTH DEPARTMENT

## Secs. 74-51, 74-52. - Reserved.

**Editor's note**— Ord. No. 2005-12, §§ 128, 129, adopted Apr. 11, 2005, repealed §§ 74-51, 74-52, which pertained to designated as health agency; powers, respectively and derived from Code 1979, §§ 2-40, 2-41.

## Sec. 74-53. - Interference with health officer.

It shall be unlawful for any person to molest, hinder, interfere with or in any manner prevent any individual of the Tri-County Health Department or any official of the city from performing any duties imposed upon the individual or official by any city, state or federal law or the rules and regulations of the Tri-County Health Department.

(Code 1979, § 2-42)

# An Act

HOUSE BILL 19-1076

BY REPRESENTATIVE(S) Michaelson Jenet and Larson, Caraveo, Cutter, Jackson, Mullica, Arndt, Buentello, Duran, Exum, Galindo, Garnett, Herod, Kipp, McCluskie, Roberts, Snyder, Tipper, Titone, Becker, Bird, Buckner, Hansen, Jaquez Lewis, Kennedy, Landgraf, Lontine;  
also SENATOR(S) Priola and Donovan, Ginal, Court, Fields, Foote, Gonzales, Moreno, Pettersen, Story, Tate, Todd, Williams A., Garcia.

CONCERNING UPDATES TO THE "COLORADO CLEAN INDOOR AIR ACT", AND,  
IN CONNECTION THEREWITH, REMOVING CERTAIN EXCEPTIONS AND  
ADDING PROVISIONS RELEVANT TO THE USE OF ELECTRONIC SMOKING  
DEVICES.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **amend** 25-14-202 as follows:

**25-14-202. Legislative declaration.** (1) The general assembly hereby finds and determines that:

(a) It is in the best interest of the people of this state to protect ~~nonsmokers~~ THE PUBLIC from involuntary exposure to ~~environmental~~

*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

~~tobacco and marijuana~~ EMISSIONS FROM SECONDHAND smoke AND ELECTRONIC SMOKING DEVICES (ESD) in most indoor areas open to the public, IN public meetings, IN food service establishments, and IN places of employment; ~~The general assembly further finds and determines that~~ AND

(b) ~~A balance should be struck between the health concerns of nonconsumers of tobacco products and combustible marijuana and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products, and combustible marijuana in certain designated public areas and in private places~~ ESD EMISSIONS CONSIST OF ULTRAFINE PARTICLES THAT ARE SIGNIFICANTLY MORE HIGHLY CONCENTRATED THAN PARTICLES WITHIN CONVENTIONAL TOBACCO SMOKE. THERE IS CONCLUSIVE EVIDENCE THAT MOST ESDS CONTAIN AND EMIT NOT ONLY NICOTINE BUT ALSO MANY OTHER POTENTIALLY TOXIC SUBSTANCES AND THAT ESDS INCREASE AIRBORNE CONCENTRATIONS OF PARTICULATE MATTER AND NICOTINE IN INDOOR ENVIRONMENTS. IN ADDITION, STUDIES SHOW THAT PEOPLE EXPOSED TO ESD EMISSIONS ABSORB NICOTINE AT LEVELS COMPARABLE TO THE LEVELS EXPERIENCED BY PASSIVE SMOKERS. MANY OF THE ELEMENTS IDENTIFIED IN ESD EMISSIONS ARE KNOWN TO CAUSE RESPIRATORY DISTRESS AND DISEASE, AND ESD EXPOSURE DAMAGES LUNG TISSUES. FOR EXAMPLE, HUMAN LUNG CELLS THAT ARE EXPOSED TO ESD AEROSOL AND FLAVORINGS SHOW INCREASED OXIDATIVE STRESS AND INFLAMMATORY RESPONSES.

(2) Therefore, the general assembly hereby declares that the purpose of this part 2 is to preserve and improve the health, comfort, and environment of the people of this state by ~~limiting exposure to tobacco and marijuana smoke~~ PROTECTING THE RIGHT OF PEOPLE TO BREATHE CLEAN, SMOKE-FREE AIR. NOTHING IN THIS PART 2 IS INTENDED TO INHIBIT A PERSON'S ABILITY TO TAKE MEDICINE USING AN INHALER OR SIMILAR DEVICE, NOR TO PREVENT AN EMPLOYER OR BUSINESS OWNER FROM MAKING REASONABLE ACCOMMODATION FOR THE MEDICAL NEEDS OF AN EMPLOYEE, CUSTOMER, OR OTHER PERSON IN ACCORDANCE WITH THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", AS AMENDED, 42 U.S.C. SEC. 12101 ET SEQ.

**SECTION 2.** In Colorado Revised Statutes, 25-14-203, **amend** (7), (16), and (18); **repeal** (1); and **add** (4.5) as follows:

**25-14-203. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) ~~"Airport smoking concession" means a bar or restaurant, or both, in a public airport with regularly scheduled domestic and international commercial passenger flights, in which bar or restaurant smoking is allowed in a fully enclosed and independently ventilated area by the terms of the concession.~~

(4.5) "ELECTRONIC SMOKING DEVICE" OR "ESD":

(a) MEANS ANY PRODUCT, OTHER THAN A PRODUCT DESCRIBED IN SUBSECTION (4.5)(c) OF THIS SECTION, THAT CONTAINS OR DELIVERS NICOTINE OR ANY OTHER SUBSTANCE INTENDED FOR HUMAN CONSUMPTION AND THAT CAN BE USED BY A PERSON TO ENABLE THE INHALATION OF VAPOR OR AEROSOL FROM THE PRODUCT;

(b) INCLUDES ANY PRODUCT DESCRIBED IN SUBSECTION (4.5)(a) OF THIS SECTION AND ANY SIMILAR PRODUCT OR DEVICE, WHETHER MANUFACTURED, DISTRIBUTED, MARKETED, OR SOLD AS AN E-CIGARETTE, E-CIGAR, E-PIPE, E-HOOKAH, OR VAPE PEN OR UNDER ANY OTHER PRODUCT NAME OR DESCRIPTOR; AND

(c) DOES NOT INCLUDE:

(I) A HUMIDIFIER OR SIMILAR DEVICE THAT EMITS ONLY WATER VAPOR; OR

(II) AN INHALER, NEBULIZER, OR VAPORIZER THAT IS APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION FOR THE DELIVERY OF MEDICATION.

(7) "Entryway" means the outside of the front or main doorway leading into a building or facility that is not exempted from this part 2 under section 25-14-205. "Entryway" also includes the area of public or private property within a specified radius outside of the doorway. The specified radius ~~shall~~ MAY be determined by the local authority ~~or~~ PURSUANT TO SECTION 25-14-207 (2)(a), BUT MUST BE AT LEAST TWENTY-FIVE FEET UNLESS SECTION 25-14-207 (2)(a)(II)(B) OR (2)(a)(II)(C) APPLIES. If the local authority has not acted, the specified radius ~~shall be fifteen~~ IS

TWENTY-FIVE feet.

(16) "Smoking" means ~~the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or marijuana~~ INHALING, EXHALING, BURNING, OR CARRYING ANY LIGHTED OR HEATED CIGAR, CIGARETTE, OR PIPE OR ANY OTHER LIGHTED OR HEATED TOBACCO OR PLANT PRODUCT INTENDED FOR INHALATION, INCLUDING MARIJUANA, WHETHER NATURAL OR SYNTHETIC, IN ANY MANNER OR IN ANY FORM. "SMOKING" ALSO INCLUDES THE USE OF AN ESD.

(18) "Tobacco business" means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, INCLUDING ESDS, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

**SECTION 3.** In Colorado Revised Statutes, 25-14-204, **amend** (1) introductory portion, (1)(k), (1)(u)(I), (1)(bb), (1)(cc), and (2); **repeal** (1)(q); and **add** (1)(dd), (1)(ee), (1)(ff), and (3) as follows:

**25-14-204. General smoking restrictions.** (1) Except as provided in section 25-14-205, ~~and in order to reduce the levels of exposure to environmental tobacco and marijuana smoke,~~ smoking shall IS not be permitted and ~~no~~ A person shall NOT smoke in any indoor area, including: but not limited to:

(k) (I) Any place of employment that is not exempted, WHETHER OR NOT OPEN TO THE PUBLIC AND REGARDLESS OF THE NUMBER OF EMPLOYEES.

(II) In the case of employers who own facilities otherwise exempted from this part 2, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe ~~environmental tobacco~~ SECONDHAND smoke ~~Every employee shall have a right to work in an area free of environmental tobacco smoke~~ AND EMISSIONS FROM ELECTRONIC SMOKING DEVICES.

(q) ~~Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests;~~

(u) (I) The common areas of retirement facilities, publicly owned housing facilities, and ~~except as specified in section 25-14-205 (1)(k);~~ nursing homes, but not including any resident's private residential quarters. ~~or areas of assisted living facilities specified in section 25-14-205 (1)(k);~~

(bb) Other educational and vocational institutions; ~~and~~

(cc) ~~The entryways of all buildings and facilities listed in paragraphs (a) to (bb) of this subsection (1).~~ AIRPORTS;

(dd) HOTEL AND MOTEL ROOMS;

(ee) ASSISTED LIVING FACILITIES, INCLUDING NURSING FACILITIES AS DEFINED IN SECTION 25.5-4-103 AND ASSISTED LIVING RESIDENCES AS DEFINED IN SECTION 25-27-102; AND

(ff) THE ENTRYWAYS OF ALL BUILDINGS AND FACILITIES LISTED IN SUBSECTIONS (1)(a) TO (1)(ee) OF THIS SECTION.

(2) A cigar-tobacco bar:

(a) Shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005; ~~A cigar-tobacco bar~~ AND

(b) Shall PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE AND SHALL display signage in at least one conspicuous place and at least four inches by six inches in size stating: "Smoking allowed. Children under eighteen years of age ~~must be accompanied by a parent or guardian~~ MAY NOT ENTER."

(3) A RETAIL TOBACCO BUSINESS:

(a) SHALL PROHIBIT ENTRY BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE; AND

(b) SHALL DISPLAY SIGNAGE IN AT LEAST ONE CONSPICUOUS PLACE AND AT LEAST FOUR INCHES BY SIX INCHES IN SIZE STATING EITHER:

(I) "SMOKING ALLOWED. CHILDREN UNDER EIGHTEEN YEARS OF AGE

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MAY NOT ENTER."; OR

(II) IN THE CASE OF A RETAIL TOBACCO BUSINESS THAT DESIRES TO ALLOW THE USE OF ESDS BUT NOT OTHER FORMS OF SMOKING ON THE PREMISES, "VAPING ALLOWED. CHILDREN UNDER EIGHTEEN YEARS OF AGE MAY NOT ENTER."

**SECTION 4.** In Colorado Revised Statutes, 25-14-205, **amend** (1) introductory portion, (1)(d), (1)(g), and (1)(i); and **repeal** (1)(c), (1)(f), (1)(h), and (1)(k) as follows:

**25-14-205. Exceptions to smoking restrictions.** (1) This part 2 ~~shall~~ DOES not apply to:

~~(c) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent;~~

(d) Any retail tobacco business; EXCEPT THAT THE REQUIREMENTS IN SECTION 25-14-204 (3) AND ANY RELATED PENALTIES APPLY TO A RETAIL TOBACCO BUSINESS;

~~(f) An airport smoking concession;~~

(g) The outdoor area of any business; OR

~~(h) A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;~~

(i) A private, nonresidential building on a farm or ranch, as defined in section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars. ~~or~~

~~(k) (I) The areas of assisted living facilities:~~

~~(A) That are designated for smoking for residents;~~

~~(B) That are fully enclosed and ventilated; and~~

~~(C) To which access is restricted to the residents or their guests.~~

~~(II) As used in this paragraph (k), "assisted living facility" means a nursing facility, as that term is defined in section 25.5-4-103, C.R.S., and an assisted living residence, as that term is defined in section 25-27-102.~~

**SECTION 5.** In Colorado Revised Statutes, 25-14-206, **amend** (1); and **repeal** (2) as follows:

**25-14-206. Optional prohibitions.** (1) The owner or manager of any place ~~not specifically listed in section 25-14-204, including a place~~ otherwise exempted under section 25-14-205 may post signs prohibiting smoking. ~~or providing smoking and nonsmoking areas.~~ Such posting shall have the effect of including such place ~~or the designated nonsmoking portion thereof,~~ in the places where smoking is prohibited or restricted pursuant to this part 2.

~~(2) If the owner or manager of a place not specifically listed in section 25-14-204, including a place otherwise exempted under section 25-14-205, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by section 25-14-204 (1)(k)(II), the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (1) of this section.~~

**SECTION 6.** In Colorado Revised Statutes, 25-14-207, **amend** (2)(a) as follows:

**25-14-207. Other applicable regulations of smoking - local counterpart regulations authorized.** (2) (a) (I) A local authority may, pursuant to article 16 of title 31, ~~C.R.S.~~, a municipal home rule charter, or article 15 of title 30, ~~C.R.S.~~, enact, adopt, and enforce smoking regulations that cover the same subject matter as the various provisions of this part 2; ~~No~~ EXCEPT THAT, UNLESS OTHERWISE AUTHORIZED UNDER SUBSECTION (2)(a)(II)(B) OR (2)(a)(II)(C) OF THIS SECTION, A local authority may NOT adopt ~~any~~ A local regulation of smoking that is less stringent than the provisions of this part 2. ~~except that~~

(II) (A) A local authority ~~may~~ IS SPECIFICALLY AUTHORIZED TO specify a radius of ~~less~~ MORE than ~~fifteen~~ TWENTY-FIVE feet for the area included within an entryway.

(B) A LOCAL REGULATION THAT WAS ADOPTED BY A LOCAL

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AUTHORITY BEFORE JANUARY 1, 2019, AND THAT SPECIFIES A RADIUS OF LESS THAN TWENTY-FIVE FEET FOR THE AREA INCLUDED WITHIN AN ENTRYWAY REMAINS VALID AND MUST BE GIVEN EFFECT AFTER THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED.

(C) IF A PERSON OWNS OR LEASES BUSINESS PREMISES THAT WERE UNDER CONSTRUCTION OR RENOVATION ON JULY 1, 2019, AND THAT COMPLIED WITH A LOCAL REGULATION OF SMOKING THAT SPECIFIED A RADIUS OF LESS THAN TWENTY-FIVE FEET FOR THE AREA INCLUDED WITHIN AN ENTRYWAY, AND, AS OF JULY 1, 2019, HAS APPLIED FOR OR RECEIVED FROM THE MUNICIPALITY, CITY AND COUNTY, OR COUNTY IN WHICH THE PREMISES ARE LOCATED, A CERTIFICATE OF OCCUPANCY FOR THE STRUCTURE TO BE USED FOR THE BUSINESS PREMISES, THE PERSON IS DEEMED IN COMPLIANCE WITH ALL LOCAL REGULATIONS SPECIFYING THE RADIUS OF THE AREA INCLUDED WITHIN AN ENTRYWAY.

**SECTION 7.** In Colorado Revised Statutes, 25-14-208, **amend** (3) as follows:

**25-14-208. Unlawful acts - penalty - disposition of fines and surcharges.** (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION 25-14-208.5, a person who violates this part 2 is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars for a first violation within a calendar year, a fine not to exceed three hundred dollars for a second violation within a calendar year, and a fine not to exceed five hundred dollars for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

**SECTION 8.** In Colorado Revised Statutes, **add** 25-14-208.5 as follows:

**25-14-208.5. Signage violations - limitation on fines.** (1) FOR A VIOLATION OF SECTION 25-14-204 (2) OR (3), THE PENALTY SHALL BE AS FOLLOWS:

(a) A WRITTEN WARNING FOR A FIRST VIOLATION COMMITTED WITHIN A TWENTY-FOUR-MONTH PERIOD; AND

(b) FINES AS SPECIFIED IN SECTION 25-14-208 (3) FOR A SECOND OR

SUBSEQUENT VIOLATION WITHIN A TWENTY-FOUR-MONTH PERIOD.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, NO FINE FOR A VIOLATION OF SECTION 25-14-204 (2) OR (3) SHALL BE IMPOSED UPON A PERSON THAT CAN ESTABLISH AS AN AFFIRMATIVE DEFENSE THAT, PRIOR TO THE DATE OF THE VIOLATION, IT:

(a) HAD ADOPTED AND ENFORCED A WRITTEN POLICY AGAINST ALLOWING PERSONS UNDER EIGHTEEN YEARS OF AGE TO ENTER THE PREMISES;

(b) HAD INFORMED ITS EMPLOYEES OF THE APPLICABLE LAWS REGARDING THE PROHIBITION OF PERSONS UNDER EIGHTEEN YEARS OF AGE TO ENTER OR REMAIN IN AREAS WHERE SMOKING IS PERMITTED;

(c) REQUIRED EMPLOYEES TO VERIFY THE AGE OF PERSONS ON THE PREMISES BY WAY OF PHOTOGRAPHIC IDENTIFICATION; AND

(d) HAD ESTABLISHED AND IMPOSED DISCIPLINARY SANCTIONS FOR NONCOMPLIANCE.

(3) THE AFFIRMATIVE DEFENSE ESTABLISHED IN SUBSECTION (2) OF THIS SECTION MAY BE USED ONLY TWICE AT EACH LOCATION WITHIN ANY TWENTY-FOUR-MONTH PERIOD.

**SECTION 9.** In Colorado Revised Statutes, 30-15-401, **amend** (1.5) as follows:

**30-15-401. General regulations - definitions.** (1.5) In addition to any other powers, the board of county commissioners has the power to adopt a resolution or an ordinance:

(a) Prohibiting minors from possessing cigarettes or tobacco products, as defined by section 39-28.5-101 (5); ~~C.R.S.~~ AND


(b) LIMITING SMOKING, AS DEFINED IN SECTION 25-14-203 (16), IN ANY MANNER THAT IS NO LESS RESTRICTIVE THAN THE LIMITATIONS SET FORTH IN THE "COLORADO CLEAN INDOOR AIR ACT", PART 2 OF ARTICLE 14 OF TITLE 25.


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**SECTION 10. Effective date.** (1) Except as provided in subsection (2) of this section, this act takes effect July 1, 2019.

(2) Section 25-14-204 (2) and (3), as amended and enacted, respectively, in section 3 of this act, take effect October 1, 2019.

**SECTION 11. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

  
\_\_\_\_\_  
KC Becker  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

  
\_\_\_\_\_  
Leroy M. Garcia  
PRESIDENT OF  
THE SENATE

  
\_\_\_\_\_  
Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

  
\_\_\_\_\_  
Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED May 29 2019 at 12:25 pm  
(Date and Time)

  
\_\_\_\_\_  
Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO

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

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REPEALING CHAPTER 74 OF THE AURORA CITY CODE AND AMENDING CHAPTER 26 BY ENACTING ARTICLE III TITLED “CLEAN INDOOR AIR ACT” AND AMENDING ARTICLE VI OF CHAPTER 94 BY ADDING SECTION 94-392

WHEREAS, the City of Aurora, Colorado, (the “City”), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, the City is authorized under Article XX, Section 6 of the Colorado Constitution to pass ordinances and regulate local affairs including health and sanitation; and

WHEREAS, the City has decided that adopting each and every provision of the State Clean Indoor Air Act as regulated in Section 25-14-201 et. seq. C.R.S., promotes the public health, safety and welfare of the Citizens of Aurora.

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

Section 1. Chapter 74 is hereby repealed.

Section 2. Article III of Chapter 26 of the Aurora City Code shall read as follows:

**ARTICLE III. CLEAN INDOOR AIR ACT**

**Sec. 26-61 Colorado Clean Indoor Air Act Adoption.**

**The Aurora City Council does hereby adopt each and every provision of the Colorado Clean Indoor Air Act as regulated in Section 25-14-201 et. seq. C.R.S., and subsequent amendments.**

Section 3. Article VI of Chapter 94 is hereby amended by adding section 94-392 that shall read as follows:

**Sec. 94-392. Interference with Health Officer.**

**It shall be unlawful for any person to molest, hinder, interfere with or in any manner prevent any individual of the Tri-County Health Department or any official of the city from performing any duties imposed**

**upon the individual or official by any city, state or federal law or the rules and regulations of the Tri-County Health Department.**

Section 4. All ordinances or parts of ordinances of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 5. 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
MIKE COFFMAN, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Hanosky Hernandez,  
Assistant City Attorney

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## Management and Finance Policy Committee Agenda Item Commentary

**Item Title:**

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 26 BY CREATING A "NON-SUGARY DEFAULT BEVERAGE OPTION ON CHILDREN'S MENUS" UNDER ARTICLE IX OF THE CITY CODE

**Item Initiator:** Trevor Vaughn, Manager of Tax and Licensing

**Staff Source:** Trevor Vaughn, Manager of Tax and Licensing

**Deputy City Manager Signature:** Roberto Venegas

**Outside Speaker:** Kathy Staats, Prevention & Policy Specialist, Tri-County Health Department

**Council Goal:** 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.)*

Consideration of this item was requested by Councilmember Lawson. This item was presented to the Business Advisory Board at their November 18th Meeting. Feedback will be provided to the committee if available.

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

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.

### **QUESTIONS FOR Committee**

Is the committee in favor of forwarding the ordinance for full council consideration at a future study session?

**EXHIBITS ATTACHED:**

2019-Children-Default-Beverage-Ordinance-Regulations.doc  
BAB One Pager\_11.12.19.pdf

# Aurora Healthy Kids' Meals

## Make the Healthy Drink Choice the Easy Choice

### What is the proposed policy?

Aurora Healthy Kids' Meals is a city ordinance that would create a new standard for drinks offered by all food establishments in the City of Aurora that have a bundled children's meal (a kids' meal with a drink included in the price of the meal). This ordinance will make our children healthier and allow parents to choose the items they wish for their children to consume. This will also empower them to choose the healthiest beverage option for their child, and put Aurora on the map as a leader in the fight against childhood obesity and other chronic conditions that are costly to taxpayers, employers, and most importantly, the health of our kids and families.

### Why target sugary drinks?

Sugary drinks are the single leading source of added sugars in the American diet and nearly 50% of two- to five-year-olds have at least one sugary drink daily. Medical evidence suggests children who drink at least one sugary drink per day are 55% more likely to experience overweight or obesity; and children experiencing obesity are at increased risk for health conditions including type 2 diabetes, heart disease, stroke, high blood pressure, cancer, asthma, and depression. According to the Centers for Disease Control and Prevention, the cost to our health care system is staggering; it costs at least \$500 billion a year to treat the chronic disease burden in our country. Lowering consumption of sugary drinks is one strategy to reduce development of chronic diseases, and thereby curb healthcare spending.

### What is the restaurant industry's perspective on this proposed policy?

We have been meeting with restaurants that offer a bundled kids' meal to explain the policy and solicit input on how best to support them with the implementation of this ordinance if it becomes law. As part of our restaurant engagement, we are partnering with the Aurora Chamber of Commerce to host discussions with their members. We appreciate that it is a restaurant industry trend to offer healthy beverages; however, voluntary efforts have been insufficient to turn the tide on obesity. In fact, of the top 50 restaurant chains with children's menus, 61% still offer default sugary beverages to kids.

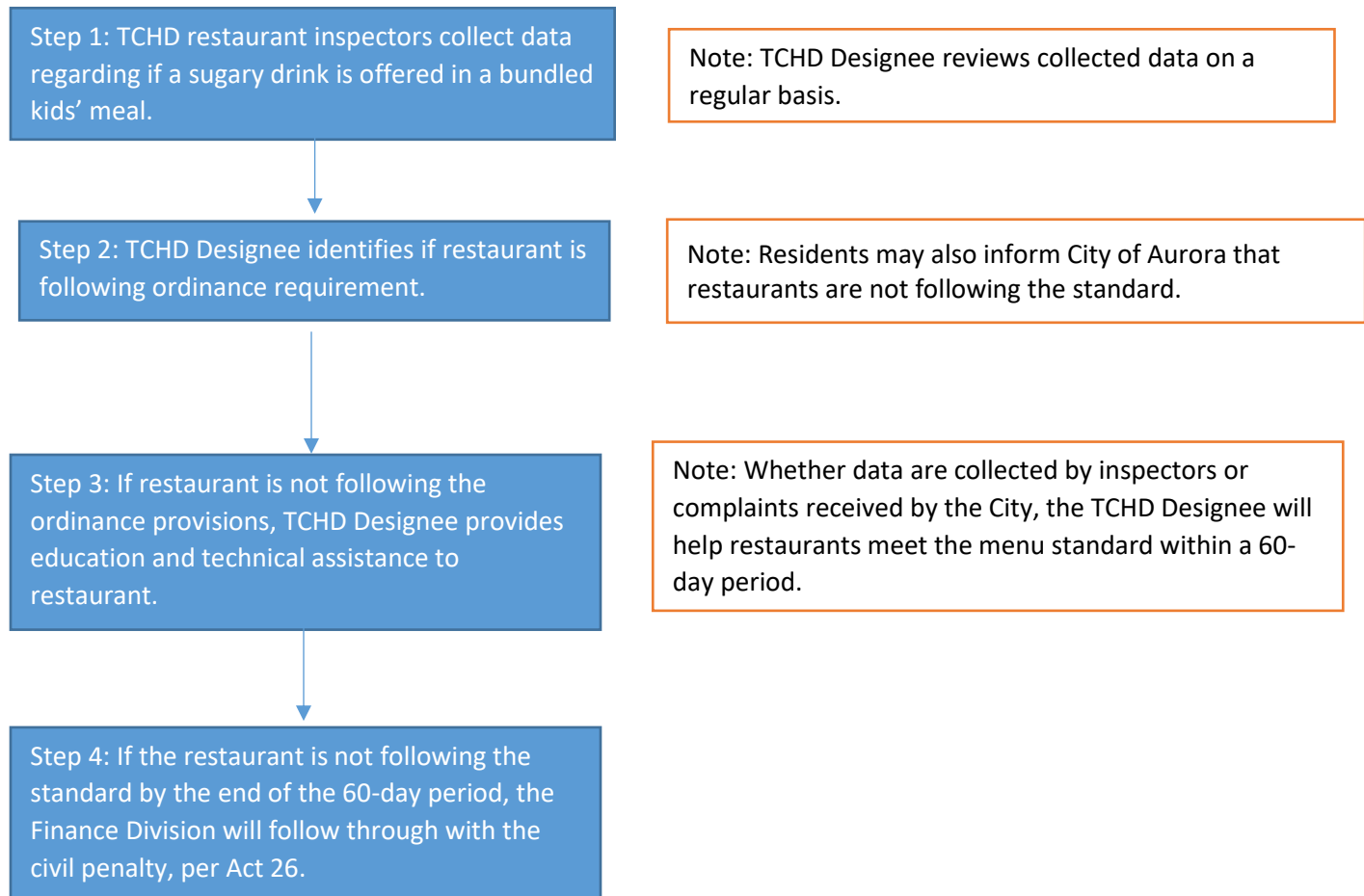
### Who supports this proposed policy?

So far, the following organizations have endorsed the policy: American Academy of Pediatrics: Colorado Chapter, American Diabetes Association, American Heart Association, Aurora Health Alliance, Children's Hospital Colorado, Colorado Academy of Family Physicians, Colorado Children's Campaign, Colorado Dental Association, DentaQuest, Healthier Colorado, Healthy Beverage Partnership, Kids in Need of Dentistry (KIND), LiveWell Colorado, The Center for African American Health, and Tri-County Health Department.



# Enforcement Pathway for Aurora Healthy Kids' Meal Drink Ordinance

Created by: Kathy Staats, Tri-County Health Department (TCHD)



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

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 26 BY CREATING A “NON-SUGARY DEFAULT BEVERAGE OPTION ON CHILDREN'S MENUS” UNDER ARTICLE IX OF THE CITY CODE

WHEREAS, the City of Aurora, Colorado, (the “City”), is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, the City wishes to exercise its regulatory powers under the home rule authority granted by the Colorado Constitution, recognizing that the City Council (the “Council”) supports the health and welfare of all residents of Aurora with special regard to children; and

WHEREAS, through Resolution No. R2013-55 of the Council and in partnership with the LiveWell Colorado HEAL Cities and Towns Initiative, the City has affirmed its commitment to encouraging healthy opportunities and choices for members of our community; and

WHEREAS, considering statistics and health studies showing that increasing the sugar intake leads to multiple health issues affecting the quality of life of residents and especially children and that Council supports reasonable measures that increase the health and wellness of the residents and visitors of Aurora; and

WHEREAS, sugary drinks are the single leading source of added sugars in the American diet and nearly 50 percent of 2- to 5-year-olds have at least one sugary drink daily, and medical evidence suggests children who drink at least one sugary drink per day are 55 percent more likely to experience overweight or obesity; and children experiencing obesity are at increased risk for health conditions including type 2 diabetes, heart disease, stroke, high blood pressure, cancer, asthma, and depression; and

WHEREAS, diversity enriches Aurora, the 3<sup>rd</sup> largest and most diverse city in Colorado, with 29% Hispanic or Latino residents, 16% Black or African American residents, 20% foreign-born residents, and over 30% of Aurorans who speak a language other than English at home; and

WHEREAS, unfortunately Black and Latino Americans disproportionately experience high rates of obesity and chronic diseases as compared to their White counterparts, and in Colorado, 15 percent of children consume one or more sugary drinks per day while 23% of Black children do and 18 percent of Latino children do; and

WHEREAS, to protect the health and well-being of all children and families within the City, including those most impacted by adverse health conditions and diseases, Council has decided to create a new default drink requirement for all food establishments in the City offering a children's meal.

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

Section 1. Chapter 26, Article IX, of the City Code of the City of Aurora, Colorado, is hereby amended to add an additional section to read as follows:

**Article IX. Children default beverage option.**

**Section 26-441. Definitions**

Except as otherwise indicated by the context, the following words, terms and phrases, shall have the following meanings for purposed of this Article:

*Children's meal* means a food or bundle of food items listed on a menu or menu board and intended for consumption by children. It shall be a rebuttable presumption that a children's meal is offered if the food items are offered with a toy or kid's game; alongside a cartoon illustration or puzzle; or alongside any of the following words: "child", "children", "kids", "junior", "kiddie", "kiddo" or any combination of such or any other wording that clearly indicates to a reasonable person that the food item is intended for children.

*Employee* means any person who performs any service at a food establishment on a full-time, part-time, or contract basis. Employee does not include a person exclusively engaged in the repair or maintenance of the food establishment, or physically present for the delivery of goods to the food establishment.

*Person* shall have the meaning as defined in Section 86-26.

*Food establishment* means any establishment licensed for the sale of food service, for immediate consumption.

**Section 26- 442. Default beverage option.**

- (a) On and after [01/01/2020 effective date for now] a food establishment that sells a children's meal that includes a beverage in the price of the meal shall make the default beverage sold with said children's meal one of the following items:

- 1) Water, still or sparkling, with no added natural or artificial sweeteners; or
- 2) Dairy milk or milk substitute with no added natural or artificial sweeteners.

(b) Nothing in this section prohibits a food establishment or any employee of the food establishment to sell, or the customer's ability to purchase, any other beverage that is available per request outside the default beverage.

#### **Section 26-443. Complaints.**

- (a) Any person may lodge a complaint with the Finance Director or designee for any violations of this Article. Upon receiving a complaint of non-compliance with this Article the Finance Director or designee shall verify the complaint and after verification shall notify in writing the food establishment of the violation and advise the food establishment that the violation has to be corrected within sixty days (60) to comply with this Article. The food establishment may satisfy compliance by sending a copy or a picture of the corrected menu.

#### **Section 26-444. Cooperation with Tri-County Health Department.**

The City Manager is authorized to enter into any agreements with the Tri-County Health Department to assist in the implementation of the regulations contained in this Article IX.

Section 2. All ordinances, or parts of ordinances, of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 3. That, notwithstanding any provision of the Charter or the City Code of the City of Aurora, Colorado, to the contrary, this ordinance shall take effect on January 1, 2020.

Section 4. 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
MIKE COFFMAN, Mayor

ATTEST:

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

APPROVED AS TO FORM

\_\_\_\_\_  
HANOSKY HERNANDEZ,  
Assistant City Attorney



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## Management and Finance Policy Committee Agenda Item Commentary

**Item Title:**

FOR AN ORDINANCE AUTHORIZING THE USE OF LEASE-PURCHASE FINANCING TO ACQUIRE CERTAIN EQUIPMENT DURING THE 2020 FISCAL YEAR PURSUANT TO THE TERMS OF AN EQUIPMENT LEASE-PURCHASE AGREEMENT BY AND BETWEEN THE AURORA CAPITAL LEASING CORPORATION, AS LESSOR, AND THE CITY OF AURORA, COLORADO, AS LESSEE; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF WITH THE PROCEEDS FROM SUCH LEASE AND RELATED MATTERS.( Rolling Stock)

**Item Initiator:** Andrew Jamison

**Staff Source:** Mike Shannon, Manager Debt, Treasury & Investments X37538

**Deputy City Manager Signature:** Roberto Venegas

**Outside Speaker:**

**Council Goal:** 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 is the continuation of a fleet financing program begun in 2012 through the use of the Aurora Capital Leasing Corporation. 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.

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

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.

**QUESTIONS FOR Committee**

Does the Management & Finance Committee support soliciting third party financing for the 2020 fleet acquisition and moving this item forward to Study Session?

**EXHIBITS ATTACHED:**

2020- ACLC Equipment ordinance.doc

2020 Rolling Stock Equipment Detail-Preliminary.pdf

**EXHIBIT B**  
**DESCRIPTION OF EQUIPMENT**  
**LEASE NO. 2020-x**

<b>Type of Equipment</b>	<b>Estimated Cost*</b>
Fire Pumper & Equipment	\$762,500.00
Fire Pumper & Equipment	\$762,500.00
Fire Ladder Truck & Equipment	\$1,240,000.00
Fire Brush Truck & Equipment	\$278,000.00
Three Dump Trucks	\$855,000.00
<b><i>Equipment Total</i></b>	<b><i>\$3,898,000.00</i></b>
Estimated Costs of Issuance	\$25,000.00
Title / Reg / Misc Costs	\$1,000.00
<b>Total Loan amount</b>	<b>\$3,924,000.00</b>

***\*Preliminary cost indications, Purchase Orders are NOT finalized***

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

A BILL

FOR AN ORDINANCE AUTHORIZING THE USE OF LEASE-PURCHASE FINANCING TO ACQUIRE CERTAIN EQUIPMENT DURING THE 2020 FISCAL YEAR PURSUANT TO THE TERMS OF AN EQUIPMENT LEASE-PURCHASE AGREEMENT BY AND BETWEEN THE AURORA CAPITAL LEASING CORPORATION, AS LESSOR, AND THE CITY OF AURORA, COLORADO, AS LESSEE; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF WITH THE PROCEEDS FROM SUCH LEASE AND OTHER RELATED MATTERS (Rolling Stock)

WHEREAS, the City of Aurora, Colorado, (the “City”), is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, the City is authorized pursuant to Section 31-15-801 C.R.S., as amended, the City’s home rule powers, and Section 2-683 of the Aurora City Code to enter into long-term or short-term rental or leasehold agreements in order to provide necessary land, buildings, equipment, and other property for governmental or proprietary purposes, which agreements may include an option to purchase and acquire title to such leased or rented property, and may have a term, at the discretion of the City, in excess of 30 years; and

WHEREAS, in order to provide for the capital asset needs of the City, the City Council of the City (the “Council”) hereby determines that it is necessary and in the best interests of the City and its citizens that the City undertake lease-purchase financing of equipment for use by the City for governmental or proprietary purposes; and

WHEREAS, the City wishes to obtain lease-purchase financing of certain equipment, to be acquired during the 2020 fiscal year (the “Equipment”), including vehicles for use by the Public Works Department (“Public Works”), and the Fire Department (“Fire”) to be completed within 12 months of the date hereof; and

WHEREAS, the Equipment is hereby authorized to be financed by tax exempt municipal lease purchase financing from the Aurora Capital Leasing Corporation (“ACLC”) with cash balances made available to ACLC by the City or pursuant to a direct placement of a lease-purchase agreement, or an assignment thereof, as a tax-exempt obligation, with one or more banks or institutional investors selected by the Finance Director by an informal competitive process (a “Financing”); and

WHEREAS, the Council intends to declare its official intent for federal income tax purposes, pursuant to 26 CFR § 1.150-2, to reimburse the City for any capital expenditures with the proceeds of the Financing; and

WHEREAS, there has been presented to this meeting of the Council a proposed form of Equipment Lease Purchase Agreement (the “Lease”), to be entered into by and between ACLC, as lessor, and the City, as lessee; and

WHEREAS, as specific items of equipment are acquired by ACLC for the City’s use during the 2020 fiscal year, one or more Leases may be executed by and between ACLC and the City in accordance with the parameters set forth in this ordinance (the “Ordinance”).

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

Section 1. *Ratification of Actions.* All action heretofore taken, not inconsistent with the provisions of this Ordinance, by the Council or the officers of the City, directed toward the acquisition of the Equipment and the preparation of the form of the Lease are hereby ratified, approved and confirmed.

Section 2. *The Equipment.* The City is hereby authorized to obtain lease-purchase financing through one or more lease-purchase agreements with ACLC for up to and including eight (8) vehicles for use by Public Works and Fire to be acquired during the 2020 fiscal year, including all equipment, software, warranties, and service contracts accessory thereto and/or associated therewith.

Section 3. *Maximum Principal Amount; Interest Rate; Term.* The principal amount to be financed shall not exceed Five Million Dollars (\$5,000,000.00), the interest component of rental payments to be made by the City shall accrue at a rate not to exceed four percent (4.00%), and the term of any Lease hereunder shall not exceed ninety-six (96) months. Rental payments may be made annually, semi-annually, or at any other convenient interval as determined by the Director of Finance.

Section 4. *Findings; Authorizations.* The Council hereby finds and determines, pursuant to the City’s home rule powers and the laws of the State of Colorado, that the acquisition of the Equipment is necessary, convenient, and in furtherance of the governmental purposes of the City and in the best interests of the City and its citizens; and the Council hereby authorizes the acquisition of the Equipment by means of lease-purchase financing.

Section 5. *Agency Relationship.* The City shall accept the appointment of ACLC to act as its agent solely for the purpose of acquiring the Equipment. The City will do all things necessary to effect the acquisition of the Equipment free and clear of any encumbrances and subject the same to any security interests as may be contemplated under the Lease.

Section 6. *Approval and Execution of Documents; Authorized Officers.* The Lease, in substantially the form filed in the office of the City Clerk prior to the final adoption of this Ordinance, is in all respects approved, authorized and confirmed. The Mayor is hereby authorized and directed to execute and deliver, and the City Clerk is hereby authorized and directed to affix the seal of the City to, and attest, each Lease hereunder in substantially the form filed with the City Clerk, with such changes as are not inconsistent with the intent of this Ordinance and as approved by the City Attorney. The Council hereby designates the Director of Public Works, the Chief of the Fire Department and the Director of Finance to act as “Authorized Officers” under each Lease (the “Directors”). The Directors shall cause all title to, or other indicia of ownership of, the Equipment to be issued in ACLC’s name. Prior to the execution of each Lease, the description and price of the Equipment subject to the Lease and the schedule of rental payments allocated to the Equipment under the Lease shall be approved by a certificate executed by the Director of Finance (the “Final Terms Certificate”) and attached as a schedule to the Lease.

Section 7. *Additional Documents.* The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance. The Mayor and the Authorized Officers are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance.

Section 8. *No General Obligation or Other Indebtedness.* The obligation of the City to make rental payments under each Lease is subject to annual appropriation by the Council, and constitutes an undertaking of the City to make current expenditures. Such payments are subject to termination and nonrenewal by the City in accordance with the provisions of the Lease. No provision of this Ordinance or any Lease hereunder shall be construed as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year.

Section 9. *Expression of Need.* The City hereby declares its current need for the Equipment. It is hereby declared to be the present intention and expectation of the Council that each Lease will be renewed annually until title to all of the Equipment is acquired by the City pursuant to the Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City.

Section 10. *Reasonable Rentals.* The Council hereby determines and declares that, after execution and delivery of each Lease, the rental payments due thereunder will represent the fair value of the use of the Equipment and the purchase price, as defined therein, will represent, as of any date upon which the City may exercise its option to purchase such Equipment, the fair purchase price of such Equipment. The Council further hereby determines and declares that, after the execution and delivery of each Lease, the rental payments due thereunder will not exceed a reasonable amount so as to place the City under an economic or practical compulsion to

renew the Lease or to exercise its option to purchase the Equipment pursuant to the Lease. In making such determinations, the Council has given consideration to the cost of acquiring and installing the Equipment, the uses and purposes for which the Equipment will be employed by the City, the benefit to the citizens of the City by reason of the acquisition and use of the Equipment pursuant to the terms and provisions of each Lease, the City's option to purchase the Equipment, and the expected eventual vesting of title to, or other indicia of ownership of, the Equipment in the City. The Council hereby determines and declares that, after execution and delivery of each Lease, the maximum duration of the portion of the Lease allocable to any item of Equipment separately identified in the payment schedule appended thereto will not exceed the weighted average useful life of such item of Equipment.

Section 11. *Declaration of Official Intent.* The City presently intends and reasonably expects to initially finance all or a portion of the costs of the Equipment with legally available funds of the City that are not derived from a Financing.

Section 12. *Dates of Capital Expenditures.* All of the capital expenditures covered by this Ordinance were or will be made on or after the date that is 60 days prior to the effective date of this Ordinance.

Section 13. *Participation in Financing.* The City presently intends and reasonably expects to obtain a Financing within 18 months of the date of the expenditure of moneys on the Equipment or the date on which the Equipment is placed in service, whichever is later (but in no event more than three years after the date of the original expenditure of such moneys), and to allocate from such Financing an amount to reimburse the City for its capital expenditures incurred in connection with all or a portion of the Equipment.

Section 14. *Confirmation of Prior Acts.* All prior acts and doings of the officials, agents and employees of the City which are in conformity with the purpose and intent of this Ordinance and in furtherance of the purchase of the Equipment are in all respects ratified, approved and confirmed.

Section 15. *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 16. *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.

Section 17. *Publication.* Pursuant to Section 5-5 of the City Charter, 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
MIKE COFFMAN, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
HANOSKY HERNANDEZ,  
Assistant City Attorney

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Affirmation of the 2020 Approved Audit Plan
<b>Item Initiator:</b> Wayne Sommer
<b>Staff Source:</b> Wayne Sommer, Internal Audit Manager, 37075
<b>Deputy City Manager Signature:</b> Jason Batchelor
<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.)*

The M&F Committee is the City Council's audit committee. The City Manager approves the annual audit plan. The M&F Committee reviews the approved plans and affirms it. M&F may also propose new engagements for the plan.

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

Internal Audit has drafted and the City Manager has approved the 2020 Annual Audit Plan. The Plan is presented for the M&F Committees review and affirmation.

### **QUESTIONS FOR Committee**

### **EXHIBITS ATTACHED:**

2020 Approved Annual Audit Plan.pdf



**2020 Approved**

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**Annual Audit Plan**

**Prepared by the Internal Audit Office**

**Approved by the City Manager**  
City of Aurora, Colorado



# Background

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The City of Aurora Internal Audit Department, established by City Ordinance CD2: 10.1, Sec. 2-66, operates as an independent, objective assurance and consulting activity designed to add value to and improve the City's operations. Internal Audit's mission is to be partners for meaningful performance improvement. Internal Audit executes its mission through a systematic, disciplined, professional, risk-based approach to evaluating and improving the effectiveness of risk management, internal control, and governance processes. Internal Audit offers a wide range of engagements including financial, compliance, performance, consulting, and fraud investigations. Internal Audit is an internal independent staff function residing in the Office of the City Manager. The Management and Finance Committee (M&F) acts as the City Council Audit Committee. Internal Audit provides quarterly progress reports to the M&F Committee and presents the approved annual audit plan for affirmation.

The Internal Audit function is separate and distinct from the external auditor role in local government. According to the State of Colorado Financial Management Manual: A Guide for Colorado Local Governments, *"The goal of [external] auditing is to provide assurance for citizens, legislators and others that government funds are accounted for properly and that government organizations are in substantial compliance with laws and regulations."*

The Local Government Audit Law (Section 29-1-601 et seq., C.R.S.) requires Colorado local governments to have an annual audit of their financial statements. The law states that the audit must be performed by an independent Certified Public Accountant (CPA) and be in accordance with generally accepted auditing standards.

The Internal Audit department prepares an annual audit plan that the City Manager approves and the City Council's Management and Finance Committee (M&F), which acts as the Audit Committee for the Council, affirms.

# 2020 Annual Audit Plan

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## PLAN DEVELOPMENT PROCESS

The City of Aurora Internal Audit function applies the professional standards of the Institute of Internal Auditors (IIA), the internal audit profession's global voice, recognized authority, acknowledged leader, chief advocate, and principal educator.

The International Standards for the Professional Practice of Internal Auditing require that an entity develop its annual audit plan using a risk-based approach.

**Standard 2010 – Planning: The chief audit executive must establish a risk-based plan to determine the priorities of the internal audit activity, consistent with the organization’s goals.**

*IIA Interpretation: The chief audit executive is responsible for developing a risk-based plan. The chief audit executive takes into account the organization’s risk management framework, including using risk appetite levels set by management for the different activities or parts of the organization. If a framework does not exist, the chief audit executive uses his/her own judgment of risks after consideration of input from senior management and the board. The chief audit executive must review and adjust the plan, as necessary, in response to changes in the organization’s business, risks, operations, programs, systems, and controls.*

Internal Audit defines “risk” using the professional literature.

**Risk** *is the possibility of an event or condition occurring that will have an impact on the ability of the City of Aurora to achieve its strategic objectives.*

Management is responsible for identifying and managing the risks facing the City. Internal Audit provides an independent review of the policies, processes, and controls in place to manage and mitigate risk to acceptable levels. Our 2020 risk-based approach included an assessment of various City activities, a prioritization of those areas for Internal Audit’s attention, and the development of a proposed audit plan to address those areas commensurate with the resources available and the audit team’s skill sets.

## ANNUAL RISK ASSESSMENT SURVEY

Internal Audit conducted its annual risk assessment via a survey and meetings<sup>1</sup>. This year we also included a sampling of staff below the supervisor level in our survey population to add to our perspective. In non-respondent situations, we considered the number and level of respondents from the various divisions or departments and satisfied ourselves that we had sufficient responses from within the division or department to proceed to analysis. In situations where we determined further input was necessary, we

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<sup>1</sup> We held in-person meetings with the Deputy City Managers and the APD Police Chief.

scheduled meetings with appropriate staff. The table below shows the number of surveys received and completed.

Survey Responses	Surveys Complete	Surveys Sent	% Complete
<b>Supervisors - Directors</b>	207	268	77%
<b>Staff</b>	124	226	55%
<b>Total</b>	<b>331</b>	<b>494</b>	<b>67%</b>

The risk assessment survey included questions—some repeated from prior years’ surveys—covering:

- general operation practices designed to assess management’s attitude and department morale, access to adequate personnel and professional development resources;
- IT support and technology use;
- critical process automation;
- contact with regulatory agencies;
- inventory controls;
- the safety environment;
- IT privacy, security risks, and emergency preparedness;
- data management, including access and security practices;
- fraud risk; and,
- business priorities and risks.

Internal Audit analyzed the survey results and selected individuals from specific departments or functions for follow up interviews. These efforts produced the following risk observations and proposed Internal Audit engagements.

**Risk Observations**

Risk is often measured in terms of the *likelihood* of an event occurring and the *impact* it would have if it did occur. High likelihood/high impact events should be an organization’s greatest concern. We offer these observations to encourage Management’s continued focus on them.

INFORMATION TECHNOLOGY

*Cybersecurity:* As we noted last two years, attacks on the City’s network continue. We anticipate that as long as capabilities and opportunities exist for the perpetrators, these attacks will continue and likely increase in quantity and sophistication. City IT Staff continue to respond to the attacks while strengthening City defenses. This seemingly never-ending threat will require continued long-term investments in staff, resources, and a commitment to changing the culture (staff behavior) and business practices to reduce the risk from daily operations and third-party interactions. These efforts must be continuous and involve staff

at all levels as the Information Security Office forecasts privacy as being a significant security driver in 2020.

A danger to preparation is complacency. IT continues its mandatory staff cybersecurity training. This is the fourth year for this training. While some staff consider the annual training to be redundant, repetition is the key to retention and changing behavior.

The City continues to determine proper access and security controls for its critical environments, and ensure those efforts are accountable to, and defined within, City policy and regulatory requirements. It has enhanced its environmental monitoring to decrease the time it takes to identify possible vulnerabilities and attacks.

*Resource Demands:* Demand on IT resources and support has grown significantly in 2019 and there doesn't appear to be any slowing in this trend. Risk arises when maintaining rigorous and disciplined technology and security governance within an organization that has an insatiable need to maintain and improve existing technology, especially when resources are limited, and the technology is rapidly changing. Innovation and stronger integration must be embraced to address these growing risks. Achieving secure, effective and rapid technology adoption to meet the business challenges facing the City will require the City to evaluate and, in some cases, change existing processes and mindsets, in addition to maturing governance. Lastly, establishing partnerships with private sector companies that can provide a higher level of service and more innovative solutions can be an option to address resource demands.

Applications and hardware that are coming to the end of their useable and supportable life will force the City to invest in replacements and upgrade models or risk business outages and increased potential for cyber-attack. Consolidating applications across the City wherever possible will help in easing the impact of end-of-life replacements as well as identifying the overall life cycle early in the design process.

The City is developing a Smart Cities Strategic Plan which should be completed by the end of 2019. A Smart Cities strategy will produce expectations as it is implemented. The City will need to establish priorities and develop creative funding approaches to move forward with this key initiative. Resource allocation and project management processes and practices that support rigorous, disciplined, consistent approaches to managing technology investments will be critical to ensuring that staff have the technology they need to provide cost-effective services to City residents and businesses, and that the City will be able to attract and maintain a skilled, motivated workforce.

*Emergency Preparedness:* Business stakeholders, residents, and City staff rely heavily upon technology for efficient service delivery. This reliance will increase during emergencies where the technology backbone will be critical to maintaining and restoring City functions while responding to the emergency itself. Establishing and maintaining the required redundancies is expensive, but necessary to support City service delivery in an emergency. Efforts to take advantage of cloud computing will increase as the opportunities and resources become available.



### SAFETY AND SECURITY

These two topics were prominent in the survey responses from staff and middle management. This is not surprising considering recent events across the country. City Management takes these concerns seriously and several initiatives are in process as a result.

#### *Physical Security*

Internal Audit completed a physical security assessment in 2017. Then City Manager Skip Noe instituted a Physical Security Steering Committee to address the assessment's findings and recommendations. The Steering Committee is composed of members from Facilities, IT, Human Resources, Aurora Fire and Rescue, and Aurora Police Department (APD). A representative from Internal Audit facilitates the meetings and provides regular progress reports to the City Manager. The Steering Committee has generated recommendations to increase Aurora Municipal Center (AMC) security, many of which are being implemented or are funded through 2020 budget requests.

Part of the Steering Committee's charge included addressing internal policy gaps related to physical security. As part of that effort, the Steering Committee recently completed a draft Security Camera Policy to bring consistency and rigor to the City's security camera installations and operations.

Steering Committee members have also been active in promoting active shooter training for staff and providing recommendations to improve the use of safe rooms.

#### *Safety*

The City Manager reenergized a Safety Initiative in 2019. An employee work group has developed a health, safety and environmental vision statement. They are also working to define long-term goals and crafting new strategic approaches to health and safety for the City. The group will also be spearheading an initiative to promote safety awareness across the City. Internal Audit attends the Safety meetings to keep abreast of their progress.

## 2020 PROPOSED ENGAGEMENTS

Based upon the results of our annual risk assessment, Internal Audit proposes the following engagements for 2020. The engagement periods shown in the graphic below are projected commencement times. Except for the two annually recurring APD engagements in the First Quarter, the actual time investment required for each engagement is unknown as each engagement is new and unique. We avoid beginning new engagements in the Fourth Quarter unless absolutely necessary. We prefer to use that quarter to complete active engagements and to prepare for the coming year. In the proposed engagement details that follow, the engagement objectives are subject to change in accordance with changes noted in operations or in planning. Internal Audit will inform the City Manager and the M&F Committee of any material changes to the objectives.

The 2020 plan is an aggressive plan. Our approach will include a significant use of surveys in the engagements as a way of improving engagement efficiency. This will allow us to gather and process information on multiple engagements simultaneously.

Our priority order for engagements in 2020 will be:

1. Recurring engagements (these are time sensitive)
2. Carryforward engagements (those that could not be initiated or completed in 2019)
3. New proposed engagements
4. Ad hoc engagement requests (we evaluate the requirements associated with these requests and determine where they fit in our priorities)



## First Quarter

<p><b>APD</b>                  Property and Evidence Chain of Custody Audit for Commission on Accreditation of Law Enforcement Agencies (CALEA) Accreditation</p> <p><i>Recurring</i></p>	<p>Internal Audit conducts this recurring annual engagement to review controls that ensure the evidence chain of custody remains unbroken. An annual audit of property and evidence, in compliance with Appendix K, is conducted by a supervisor not routinely or directly connected with control of property and evidence is a requirement for CALEA accreditation.</p> <p>Objectives:</p> <ul style="list-style-type: none"> <li>❖ Ensure compliance with CALEA Standard 84 – Property and Evidence Control.</li> <li>❖ Ensure the reliability and integrity of internal controls that ensure the chain of custody for property and evidence is not broken.</li> </ul>
<p><b>APD</b>                  Vice and Narcotics Financial Audit</p> <p><i>Recurring</i></p>	<p>To protect the confidential nature of Vice and Narcotics’ operations, Internal Audit performs this recurring annual engagement. We assess the adequacy of operational controls that safeguard assets used in the prosecution of vice and narcotics criminal activity and review the accuracy of the division’s financial information. We provide the results and audited financial statements to the City’s Finance Department for inclusion in the City’s annual audited financial statements.</p> <p>Objectives:</p> <ul style="list-style-type: none"> <li>❖ Assess the accuracy of the calendar year financial statements.</li> <li>❖ Verify that financial records (electronic and manual) used for the financial statements are accurate.</li> <li>❖ Review compliance with procedures currently in place for handling financial transactions including financial statement preparation, review of financial records, and cash handling procedures.</li> </ul>
<p><b>Internal Audit</b>                  Carryforward Engagements</p>	<p>These engagements will be carried forward into 2020 if not completed in 2019.</p> <ul style="list-style-type: none"> <li>❖ Grant Administration Processes Part 1<sup>2</sup></li> <li>❖ Payroll</li> <li>❖ P-card Transactions</li> <li>❖ Succession Planning Survey</li> </ul>

<sup>2</sup> We will reconsider Grant Administration Processes Part 2 during our 2021 risk assessment.

## Second Quarter

<b>Internal Audit</b> Carryforward Engagements	<p>These engagements will be carried forward into 2020 if not completed in 2019.</p> <ul style="list-style-type: none"><li>❖ Grant Administration Processes Part 1</li><li>❖ Payroll</li><li>❖ P-card Transactions</li><li>❖ Succession Planning Survey</li></ul>
<b>Finance</b> Marijuana Enforcement Processes	<p>The Marijuana Enforcement Department has been in operation for almost five years. Internal Audit will review the effectiveness and efficiency of its processes and ensure compliance with required regulations.</p> <p>Objectives:</p> <ul style="list-style-type: none"><li>❖ How effective and efficient are the current Marijuana Enforcement processes in ensuring compliance with City policies?</li></ul>
<b>Citywide</b> Secondary Employment Policy Compliance	<p>The City maintains a policy to manage secondary employment for City employees. The expectation is that City employment is an individual's primary responsibility; secondary employment is allowed but must be approved. Maintaining secondary employment is contingent upon demonstration that City employment is not adversely impacted by the second job. Fatigue and injury on second jobs can impact City operations and may make the City liable for workers compensation even though an injury did not occur while on the City job. Some departments, such as APD, have a process to manage secondary employment. Other departments follow the City policy and processes. In this engagement, we will examine the existing processes and assess compliance with City policies.</p> <p>Objectives:</p> <ul style="list-style-type: none"><li>❖ Do City policies and processes effectively and efficiently manage secondary employment?</li><li>❖ How well do City staff comply with the City's secondary employment policies?</li><li>❖ What has been the impact of secondary employment on the City's workers compensation liability?</li></ul>

**APD**  
Body Cam Compliance

When used properly, body cameras can bring the transparency the public is demanding to their encounters with law enforcement. They can also protect officers by providing critical context leading up to acts of force. Their effectiveness can depend—to an extent—upon how well the officers and the Department comply with the policies and laws that regulate their usage.

Objectives:

- ❖ How well does the Aurora Police Department comply with policies and laws related to the use of body cameras?

**Third Quarter**

**Citywide**  
City Governance  
Practices

According to the International Standards for the Professional Practice of Internal Audit (The Standards), the internal audit activity must assess and make appropriate recommendations to improve the organization’s governance processes for:

- Overseeing risk management and control.
- Promoting appropriate ethics and values within the organization.
- Ensuring effective organizational performance management and accountability.
- Communicating risk and control information to appropriate areas of the organization.
- Coordinating the activities of, and communicating information among, the board, external and internal auditors, other assurance providers, and management.

The Standards also require Internal Audit to evaluate the design, implementation, and effectiveness of the organization’s ethics-related objectives, programs, and activities and to assess whether the information technology governance of the organization supports the organization’s strategies and objectives.

Objectives:

- ❖ Understand the City’s governance practices as referenced in the Standards.
- ❖ Assess and make appropriate recommendations to improve the organization’s governance processes.
- ❖ Assess the state of the City’s work culture.

<b>Public Works</b> Construction Project Compliance Review	<p>Internal Audit has never examined a City construction project. We will select a project and review compliance with City policies and contract terms from start to completion or current state, depending upon the project selected.</p> <p>Objective:</p> <ul style="list-style-type: none"><li>❖ How well does the City comply with its policies and contract terms in major construction projects?</li></ul>
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<b>Courts</b> Case Management Process Review	<p>Internal Audit will process map the case management review process for Courts Administration.</p> <p>Objective:</p> <ul style="list-style-type: none"><li>❖ Assess the efficiency and effectiveness of the case management review process.</li></ul>
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<b>Citywide</b> 2021 Risk Assessment and Audit Planning- Part 1	<p>Internal Audit conducts its annual risk assessment used in preparing 2021 proposed audit engagements. Part 1 will include developing and disseminating the risk assessment survey, collecting responses, and analyzing results.</p>
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## Fourth Quarter

<b>Citywide</b> 2021 Risk Assessment and Audit Planning- Part 2	<p>Part 2 will include follow-up interviews, developing the proposed annual audit plan, and obtaining the City Manager’s approval and the M&amp;F Committee’s affirmation.</p>
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<b>Internal Audit</b> Quality Assessment	<p>The professional standards of the Institute of Internal Auditors require audit shops seeking compliance with their standards to conduct an external quality assessment every five year. We have not found any records indicating that the City of Aurora’s Internal Audit Department has ever conducted an external assessment.</p>
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<b>Engagement Wrap-up</b>	Work to complete any outstanding engagements.
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## **INTERNAL AUDIT COOPERATIVE ACTIVITIES**

### **Information Technology (IT)**

Internal Audit and the Chief Information Security Officer (CISO) meet quarterly throughout the year to discuss matters related to IT security. The CISO assists Internal Audit in developing questions for the annual risk assessment survey. Internal Audit participates on the IT Security Council and in other technology security initiatives as appropriate.

### **Internal Audit and Risk Operations**

Internal Audit meets quarterly with Risk Operations to discuss issues of mutual concern. The meetings foster communication on a range of potential risk issues that may lead to an audit engagement proposal. Risk Operations contributes the questions in the annual risk assessment survey related to employee safety.

## **OBJECTIVITY AND AFFIRMATION OF ORGANIZATIONAL INDEPENDENCE**

**IIA Standard 1100 – Independence and Objectivity:** The internal audit activity must be independent, and internal auditors must be objective in performing their work.

### **IIA Interpretation:**

*Independence is the freedom from conditions that threaten the ability of the internal audit activity to carry out internal audit responsibilities in an unbiased manner. To achieve the degree of independence necessary to effectively carry out the responsibilities of the internal audit activity, the chief audit executive has direct and unrestricted access to senior management and the board. This can be achieved through a dual-reporting relationship. Threats to independence must be managed at the individual auditor, engagement, functional, and organizational levels. Objectivity is an unbiased mental attitude that allows internal auditors to perform engagements in such a manner that they believe in their work product and that no quality compromises are made. Objectivity requires that internal auditors do not subordinate their judgment on audit matters to others. Threats to objectivity must be managed at the individual auditor, engagement, functional, and organizational levels.*

### **Internal Audit Compliance (IAC):**

Internal Audit has access to senior management and the City Council through a dual-reporting relationship where Internal Audit reports to the City Manager on all audit matters (in accordance with the City Ordinance noted below) and to the M&F Committee, the Audit Committee of the City Council. We conduct our work with objectivity and do not subordinate our judgment on audit matters to others.

**IIA Standard 1110-Organizational Independence:** The internal audit activity must be independent and internal auditors must be objective in performing their work. The chief audit executive must report to a level within the organization that allows the internal audit activity to fulfill its responsibilities. The chief audit executive must confirm to the board, at least annually, the organizational independence of the internal audit activity. [Note: Internal Audit notes its compliance with this standard in the sub-bullets below marked **IAC** (Internal Audit Compliance.)]

### **IIA Interpretation:**

*Organizational independence is effectively achieved when the chief audit executive reports functionally to the board. Examples of functional reporting to the board involve the board:*

- ✧ *Approving the internal audit charter;*
- **IAC:** Internal Audit functions under an approved charter and operates under City Ordinance-CD2: 10.1, Sec. 2-66, Office of the Internal Auditor which reads:
  - The office of the internal auditor shall be an independent staff function reporting to the city manager on all audit matters. The auditor shall conduct financial and performance audits of all departments, boards,

activities, and agencies of the city. All city officers and employees shall furnish the auditor with requested information and records within their custody regarding powers, duties, activities, organization, property, financial transactions, and methods of business required to conduct an independent evaluation.

- ✧ *Approving the risk based internal audit plan;*
  - **IAC:** The City Manager reviews and approves the annual audit plan; the M&F Committee, the Audit Committee of the City Council, ratifies the approved plan.
- ✧ *Approving the internal audit budget and resource plan;*
  - **IAC:** The City Manager approves the Internal Audit resource budget and includes it as part of the City's budget. The City Manager proposes the City's budget to the City Council for final approval.
- ✧ *Receiving communications from the chief audit executive on the internal audit activity's performance relative to its plan and other matters;*
  - **IAC:** Internal Audit provides weekly updates to the City Manager and quarterly updates to the M&F Committee.
- ✧ *Approving decisions regarding the appointment and removal of the chief audit executive;*
  - **IAC:** The City Manager has authority to appoint and remove the Internal Audit Manager.
- ✧ *Approving the remuneration of the chief audit executive; and*
  - **IAC:** The Internal Audit Manager's salary and benefits are included in the City budget that the City Manager proposes to the City Council and that the City Council approves.
- ✧ *Making appropriate inquiries of management and the chief audit executive to determine whether there are inappropriate scope or resource limitations.*
  - **IAC:** Internal Audit communicates regularly—as appropriate and necessary—on audit matters with the City Manager and the M&F Committee. The M&F Committee has direct access to the Internal Audit Manager for any questions.
- ✧ **1110.A1** – *The internal audit activity must be free from interference in determining the scope of internal auditing, performing work, and communicating results.*
  - **IAC:** Management approves the annual work plan. Internal Audit determines the audit scope of each engagement, performs its work uninhibited in accordance with the City Ordinance noted above, and regularly and freely communicates its results to the City Manager and the M&F Committee.

**Internal Audit affirms our organizational independence for 2020 in accordance with IIA Standard 1110.**

## INTERNAL AUDIT TEAM

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### **Wayne Sommer** | Internal Audit Manager

Wayne is a Certified Public Accountant (CPA) and a Chartered Global Management Accountant (CGMA) with 39 years of diverse work experience. He began his career as an auditor for KPMG in Washington, DC (then known as Peat Marwick Mitchell and Co), advancing to the Audit Senior level with specialization in not-for-profit entities and financial institutions. He spent the next seven years in various financial and management capacities at Trustbank Savings, FSB in Virginia (also known as Dominion Federal Savings and Loan.) Prior to coming to the City of Aurora, Wayne spent 23 years at the International City/County Management Association (ICMA) in Washington, DC with 14 of those as Director, Administration and Finance, and the last nine working in executive management roles performing strategic planning, business development, and organizational change and development. Wayne also managed ICMA's U.S. Programs, which offered research and consulting products and services to local governments, the private sector, and the Federal government. Wayne has been with the City of Aurora since May 2014.

**Professional Associations:** American Institute of Certified Public Accountants; Institute for Internal Auditors; Association of Local Government Auditors; Government Finance Officers Association

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### **Michelle Crawford** | Internal Audit Staff

Michelle is a Certified Internal Auditor (CIA), a Certified Fraud Examiner (CFE), and has 12 years of experience in governmental auditing. She began her education at the University of Montana where she received her Bachelors in Business Administration. She then obtained her Masters in Accountancy from Missouri State University. Upon graduation from Missouri State University, she started her career at the Missouri State Auditor's office as a Staff Auditor I and progressed over the next seven years to a Senior Auditor. As an auditor with the State Auditor's office, she conducted performance audits of local governments and worked on the statewide Single Audit. Michelle has been with the City of Aurora since October 2014.

**Professional Associations:** Association of Certified Fraud Examiners; Institute for Internal Auditors; Association of Local Government Auditors; Government Finance Officers Association

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### **Sheree Van Buren** | Internal Audit Staff

Sheree is a Certified Internal Auditor (CIA) with eight years of auditing experience, the last 5 being with the City of Aurora. She graduated from Colorado State University in 2010 with a Bachelor of Science in Business Administration – Accounting degree. Prior to joining the City of Aurora, she spent three years as an Audit Associate with PwC, LLP. During this time, Sheree worked in the financial services industry, performing year-end financial statement audits for local and international investment companies.

**Professional Associations:** Institute for Internal Auditors; Association of Local Government Auditors; Government Finance Officers Association

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Management and Finance Policy Committee&nbsp;2019 Recap
<b>Item Initiator:</b> Velasquez, Terri
<b>Staff Source:</b> Terri Velasquez, Finance Director
<b>Deputy City Manager Signature:</b> Roberto Venegas
<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.)*

Annually the Management and Finance Policy Committee reviews the committee activity.

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

Attached is the Management and Finance Policy Committee 2019 Recap.

### **QUESTIONS FOR Committee**

Information Only

### **EXHIBITS ATTACHED:**

MF Committee 2019 Recap.pdf

## **M&F Committee 2019 Recap**

(Meetings are held on the fourth Tuesday of each month at 2:30 pm in the Ponderosa Room) unless changed due to conflicts in schedule.

### **January**

- SALES TAX CHART
- VELOCITY METROPOLITAN DISTRICT AMENDMENT TO INCREASE DEBT LIMIT
- 2018 BKD AUDIT ENGAGEMENT LETTER
- 2019 MANAGEMENT AND FINANCE WORK PLAN

### **February**

- SALES TAX CHART
- POLICE PENSION UPDATE
- DRCOG AURORA SENIOR TRANSPORTATION 2018 YEAR END REPORT
- THE POINT INCLUSION AREA
- COLORADO OPEN RECORDS ACT (CORA) PROPOSED RESOLUTION
- PROPOSED MARIJUANA TAX REVENUE FUND ORDINANCE
- 2018 INTERNAL AUDIT ANNUAL REPORT

### **March**

- SALES TAX CHART
- SPRING SUPPLEMENTAL
- DEBT MANUAL

### **April**

- SALES TAX CHART
- EXCLUSION OF PROPERTY FROM THE PORTEOS BUSINESS IMPROVEMENT DISTRICT
- ACCELA UPDATE
- 2018 EXTERNAL AUDIT PRE-AUDIT LETTER
- ELIMINATION OF GOING OUT OF BUSINESS LICENSE REQUIREMENT
- LODGERS TAX CODE CORRECTION AND TECHNICAL ADJUSTMENT
- UPDATE ON COLLECTING ONLINE SALES TAX

### **May**

- SALES TAX CHART
- CAMPAIGN FINANCE
- LIQUOR CODE UPDATES

## **June**

- SALES TAX CHART
- PROPOSED NEW AND AMENDED SERVICE PLANS FOR METRO DISTRICTS
- PROPOSED NEW METRO DISTRICTS
- INTERNAL AUDIT Q1 PROGRESS REPORT

## **July**

- SALES TAX CHART
- 2018 COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR)
- CIGARETTE TAX REMOVE SALES TAX EXEMPTION
- AURORA MUNICIPAL CENTER REFINANCING
- IT UPDATE
- 2019 CITY FACILITIES
- INTERNAL AUDIT Q1 PROGRESS REPORT CONTINUED

## **August**

- SALES TAX CHART
- 2020 SERVICE FEES
- SADDLEROCK SOUTH METROPOLITAN DISTRICT DISSOLUTION OF DISTRICT NO. 1
- TOWER BUSINESS IMPROVEMENT DISTRICT
- TOWER METRO DISTRICT SERVICE PLAN AMENDMENT
- ELECTION COMMISSION
- CAREER SERVICE COMMISSION
- OVERVIEW OF ELECTRIC VEHICLE PROGRAM
- GERP UPDATE
- WATER PREPAY

## **September**

- SALES TAX CHART
- PEER TO PEER MOTOR VEHICLE SHARING
- 2020 PAY RESOLUTION
- 2020 EMPLOYEE BENEFITS
- GENERAL IMPROVEMENT DISTRICT (GID) BUDGETS
- GERP ORDINANCE DEFINITIONS CORRECTION
- POLICE PENSION UPDATE

## **October**

- SALES TAX CHART
- 2019 FALL SUPPLEMENTAL
- 2020 BUSINESS IMPROVEMENT DISTRICT ANNUAL OPERATING PLANS AND BUDGETS
- BUCKLEY METROPOLITAN DISTRICT NOS. 1-4



- AURORA CROSSROADS METROPOLITAN DISTRICT NOS. 1-3
- APPOINT NEW DIRECTORS FOR FITZSIMMONS VILLAGE METROPOLITAN DISTRICT
- REVENUE ENHANCEMENTS
- REVIEW OF SERIES 2019 COPS AND RATING UPGRADES
- INTERNAL AUDIT QUARTERLY PROGRESS REPORT

**November/December**

- SALES TAX CHART
- RAISE TOBACACO SALES TO AGE 21
- AMEND BUSINESS LICENSING VIOLATIONS AND PENALTY OPTIONS
- UPDATE CITY CODE FOR CLEAN INDOOR AIR ACT
- HEALTHY KIDS MEALS ORDINANCE
- 2020 ACLC FLEET PROGRAM FINANCING ORDINANCE-ROLLING STOCK
- 2020 AUDIT PLAN
- 2019 RECAP