

MANAGEMENT AND FINANCE POLICY COMMITTEE
WEBEX

Members Present: Council member Gardner – Chair, Council Member Gruber

Others Present: T. Velasquez, T. Sedmak, T. Hoyle, W. Sommer, D. Hudson, T. Vaughn, M. Callison, D. Sisneros, E. Watson, D. Brotzman, K. Hancock, J. Ehmann, G. Hays, A. Morris, J. Marcano, M. Franks, J. Giddings, R. Lantz, H. Hernandez, B. Bell, T. Taylor, A. Jamison, R. Venegas, A. Amonick

I & II. INTRODUCTIONS AND MINUTES

The meeting was called to order by Council Member Gardner at 1:01 PM.

September 28, 2021 minutes were approved.

III. CONSENT ITEMS

a. SEPTEMBER 2021 SALES TAX CHART – GREG HAYS

Hays claims that September is a big month for the Council because last year September was the first month the council started getting the marketplace facilitator revenue, 13.2% up with none coming from marketplace facilitator. Almost all the growth is in the top taxpayers and most departments are up except for beer, wine, and liquor stores which is great news for the city. Hays states he guesses this growth will continue for the rest of the year.

Committee Discussion

Council Member Gardner asks with inflation increasing significantly if less spending is expected, if it will be part of the analysis, or thoughts.

Hays claims he was already expecting less spending and gives an example of auto dealers. There’s a lot of negative economic talk going on that can cause its own downturn so the projection from the budget book won’t be changed and he is uncertain if there will be a cliff. The city is currently on the right side of the risk of coming in higher.

Council Member Gruber observes that the marketplace facilitator for the month is the lowest it has been in a year.

Hays explains that the low piece is the additional amount of marketplace facilitator. The marketplace facilitator is the small piece on top of the big piece from last September.

Outcome

Information only.

Follow-up Action

No follow-up needed.

IV. GENERAL BUSINESS

a. 2021 FALL SUPPLEMENTAL – MIKE FRANKS

Franks states that the fall supplemental is an opportunity for staff to make changes to the 2021 budget. There is a net total appropriation of almost \$113 million, majority of it being associated with three adjustments. \$30.8 million from the general fund to the capital projects fund for I-70/Piccadilly Interchange, the transfer of \$12 million from the general fund to capital projects fund for the leading ERP, and the appropriation of \$19.8 million for the early repayment of the 2018 Wastewater interfund loan. A vast majority of the items have been discussed with the council and were projected in the 2022 budget. Franks states he is open to any questions.

Committee Discussion

Council Member Gruber discusses attachment A, the general fund totals and capital fund totals, 42 million and 46 million, and asks Mike to explain the net total appropriation and if they are additional funds that have come in.

On the general fund side, money is being appropriated from the non-departmental department moving the general funds to the capital fund and also appropriating it there, so it shows up twice.

Outcome and Follow-up Action

The item is approved to move forward.

b. REVIEW OF OUTSTANDING MORAL OBLIGATIONS – TERESA SEDMAK

Sedmak explains the city has a Moral Obligations Policy that requires the obligations to be reviewed annually. A moral obligation is a nonbinding commitment to provide financial support to a project, allowing for a lower cost of funding in the markets due to the City's support. Since it is nonbinding, it is not considered debt and doesn't require a vote of the people. In the event the city was called to support projects and did not do so, significant negative effects on the credibility, stability of market debt, and credit rating of the city. The decision to honor those commitments rests with city Council.

The City has been selective in use of the MO Pledge for projects and previously had two projects supported by the pledge. The city currently has MO Pledges on two projects, the Hyatt Hotel and Conference Center and the Biosciences 3 project at the Fitzsimons Campus. With both projects, the city is funded debt service reserves that are utilized in the event the project can't support service on its own. Each of the MOs run through 2024. The city is currently supporting the Hyatt Hotel and Conference Center as COVID decimated the hospitality industry. This industry has picked up somewhat, but it is nowhere near where it was before. AURA has allocated available funds to support operations until it becomes self-supporting.

The city has not been asked to exercise its financial support for the Biosciences 3 project. The FRA indicated that they are not fully leased in the building, and they are using funds

available to them to build out the spaces because they want it to be finished out before they lease. Sedmak claims that they do not foresee adding financial support to that project, but they will continue to monitor and report on it. Sedmak states she is happy to answer any questions.

Committee Discussion

Council Member Curtis Gardner asks Sedmak to discuss what impact any outstanding moral obligations has on credit rating and how they are looked at.

Because it's a nonbinding commitment, it is not looked at too seriously. Sedmak does not recall even outlining the obligations. These projects are fairly small compared to others and the support promised for these projects was fulfilled. If not honored, it would effect credibility and could affect credit rating. Having a strong policy, using it judiciously, and using it on projects that are expected to be self-supporting helps meeting these promises.

Council Member Gruber discusses further the policy for moral obligations and is concerned it doesn't have a defined process or a risk analysis and he would like to see some sort of analysis done by staff prior to bringing another obligation to council. The credit rating is the most valuable virtual asset and if it changes a little bit, it will effect every major program and the cascading effect on a debt could be devastating. Council Member Gruber wants to see a scoresheet that defines the staff assessment and a grading system on the recommendation to council if someone brings a moral obligation that meets the thresholds defined. David would like the policy modified to say when staff comes to council that staff has considered the risk and the ability to pay, but the primary risk factor to the city is the potential to impact credit rating.

Outcome

Information only.

Follow-up Action

Sedmak will review the policy and put more parameters on what will be looked at.

c. ORDINANCE PERTAINING TO ALCOHOL BEVERAGE FESTIVAL PERMIT – TREVOR VAUGHN

Vaughn states that the state legislature opened the ability for someone who has an on premise liquor license to travel with the license and have a festival. Previously a special event permit was required to have alcohol at a festival. A lot of local jurisdictions are scrambling to put some ordinances in place for this. It is a good idea to have this permit because it can bring outside businesses into Aurora that are looking to do the same. This ordinance is to set up a local process and put the procedures in place for special permits.

Committee Discussion

Council Member Gardner states he thinks it's a good idea but asks if there is a fee set in place or if a new one needs to be made.

Vaughn states a new one will need to be created and it will probably be around \$200 which is probably similar to what other jurisdictions charge.

Council Member Gruber states that he thinks this could help and asks about not being able to carry out unfinished alcohol samples and if there are any conflicts with vendors who want to sell product.

This permit is specific for on premise licenses for consumption of alcohol only on the premise. If they do coordinate with somebody who can sell off premise, sealed alcohol and sealed containers, Vaughn does not see that there would be any conflict.

Council Member Gruber asks how to make it easy for a beer fest or distillery fest or wine fest to operate within the city.

Vaughn states he does not believe this permit will do that. Under the state liquor law, the business would have to have the premises to sell off prem like that. This process sets up a festival for the on premise consumption. Under the existing state law, it is allowed to set up a temporary tasting room to sell off prem.

Council Member Gruber then asks how to get the word out and suggests the city produce a user's guide.

Vaughn states they do a big FAQ for the committees that cover a lot of that information. Liquor is regulated by state law so a lot would need to change at the state level.

Council Member Gruber supports the ordinance.

Council Member Gardner asks if it would be allowed to purchase the bottle that the taste test was from.

Vaughn does not believe this would be allowed for whisky since it is already opened. A sealed bottle would probably be sold.

Outcome and Follow-up Action

The item was approved to move forward.

d. ORDINANCE REPREALING THE REQUIREMENT FOR STABLE LICENSES – TREVOR VAUGHN

The stable license is one that does not have a lot of code behind it, it enforces other laws and does not provide a regulatory benefit to keep in place. The city will still be able to enforce the other laws, still has the general business license, animal control still goes out and does inspections, and Vaughn does not have any record of any disciplinary action done with a stable license.

Outcome and Follow-up Action

The item was approved to move forward.

**e. SHORT TERM RENTAL REGULATIONS UPDATE AND ORDINANCE –
TREVOR VAUGHN**

Vaughn introduces an updated policy regarding short term rental regulations. Rentals exploded five years ago from basically nothing to around 300 and have remained at that level since. Council decided five years ago that they did not want investment properties and that they wanted the rentals to be people's primary residences. The potential for a limit on the amount of the residence that could be used for short term rentals was rejected. The council did not want to go that way and decided to have the option for somebody to leave or be deployed and have the rental used as long as it was their primary residence without a limit.

There are around 269 individual units being used for short term rentals. Around 40% are partial units and around 60% rent out the entire home. There is a very high address identification rate of 97.4% using a company called Host Compliance and internal identification. Only about a third of short term rentals will obtain a business license before posting the advertisement. The major providers for and rentals are done through Airbnb and Vrbo/HomeAway. Those companies also collect the city's lodger's tax. Even if the business is not licensed, Aurora gets the lodging tax because those providers are collecting it. 189 are compliant, and 88 are noncompliant. Addresses are identified and then a notice to obtain a business license is sent.

Vaughn displays a map and states that the struggle is that the requirement of the home being the primary residence of the individual will be cheated. There may be some ways to enhance the management of these with some changes to the code, part of that being requiring the booking platforms to ask for license numbers before posting to get the city out of doing extra administration. Right now the short term rentals are regulated as a home occupation under the zoning code. Moving them to a business regulations code allows the tax and licensing staff to write summonses, avoid the double process of code enforcement, and provide a clear definition of primary residence. There is a day limit of 180 days if it's the full property. This is a fallback provision in case the person tries to claim they live there when they are really renting it out.

Committee Discussion

Council Member Gardner comments that it seems like the compliance work is shifting from the city to the operators of the booking service and he is concerned how Airbnb enforces the regulations of the city.

Vaughn explains that when it's obvious, the city will send a take down notice to remove the advertisement. Currently Airbnb will only send a notice to the individual to comply with the city's codes.

Council Member Gardner asks how it would be obvious and how it is policed.

Stats are a fallback enforcement provision when they've foiled the other elements. One way to address this is to ask for their records to make it clear if they are living there or not.

Council Member Gardner asks about renting out a spare bedroom 365 days a year and it not mattering.

Vaughn confirms and states even if you have a separate entrance, it would not be considered as an entire unit. If it was a three bedroom unit and you remained in one, you can still rent out the other two rooms, but it has to be to the same party.

Council Member Gruber asks to clarify that for Denver, Airbnb would not accept the unit without a business license applied on the application.

Airbnb/Vrbo can not list properties that don't have a city business license in Denver.

Council Member Gruber then asks if the house is rented for over six months will the city go back to the brokerage and ask for the yearly records and if the house was rented for 200 days, it is a violation.

Vaughn confirms and clarifies that the operator is asked for the records.

If the house is owned and still being lived in, another room can be rented out for 365 days. The 180 days applies to entire homes when the owner is not there.

Council Member Gardner states that Airbnb/Vrbo are not enforcing provisions other than getting the license when somebody applies and then remove it if records indicate it's not their primary residence. So the operator is not policing in other words, the city still is, the unit just cannot be on that service.

The operator is only responsible for the obvious and to take the listing down.

Outcome and Follow-up Action

This item was approved to move forward.

f. AMENDING THE CITY CODE RELATING TO TAX CLARIFICATIONS – TREVOR VAUGHN

Vaughn mentions issues that come up during audits, adding some additional clarifications, doing some cleanup of error in a couple places, and applying the statute to limitations that's in sales tax to occupational tax.

Committee Discussion

Council Member Gruber appreciates the changes and asks about television and entertainment services and how that tax would be applied. He sees how it would be applied under the city Comcast contract, but if one was purchasing it separately how do those services apply that tax? and does it go against the ISP or the provider?

Vaughn states that it depends on who is selling it. Even if it's part of a package deal, it's still subject to tax. A number of services are also doing a separate streaming which is subject to tax.

Council Member Gruber still does not understand how the tax is applied.

Netflix is probably the biggest one and it collects the city's tax. You just use your internet service provider to access that, and those streaming providers collect the tax.

Council Member Gruber states that he guesses it is whoever the end user is paying.

If Xfinity is the one selling you HBO, they collect the tax. If Xfinity is the ISP with no other services and a separate contract with a streaming service is acquired, the streaming service charges the tax.

Outcome and Follow-up Action

This item was approved to move forward.

g. Q3 2021 INTERNAL AUDIT PROGRESS REPORT – WAYNE SOMMER

Sixty-eight percent of the current plan engagements are either active or completed. This is lower than normal, but it has been an exceptional year. Sommer states they transitioned early in the year to the police auditor which opened up a position on internal audit that needed to be filled, which took time. The succession planning survey will be reconsidered in 2022. At the time of writing the report, Sommer states he considered it to be a lower risk engagement than the others but will reconsidered in light of current trends and turnover. There will still be a conversation with Human Resources in 2022 to make sure they are ready to pursue this engagement and to make sure the engagement structure will provide significant value before they apply resources.

Regarding the status of other engagements, marijuana enforcement is still an active engagement but has been set aside to apply staff resources to complete the audit of the mayor and council expenditures, as well as to P-Card monitoring activities for 2021. The audit will be rejoined in 2022 as soon as the other engagements are completed.

The AFR culture survey follow-up to a survey conducted in 2016. It is on hold for now to make sure the results weren't impacted excessively by recent reports from the Elijah McClain reports. They are currently focusing on the Visit Aurora engagement which was requested by Council Member Hiltz and is going along smoothly. The audit and mayor/council expenses is also going smoothly; it was requested by this committee. P-Card monitoring continues. The police auditor has started the CRT Program Review engagement.

The 2022 audit plans have been completed and have been approved by the City Manager and will come to this community in November. This committee will review and affirm the engagements therein. Regarding outstanding recommendations, approximately 75% have been closed or completed and the 21% remaining are either actively being pursued or waiting for resources. There are no concerns that those will not be implemented.

Outcome

Information only.

Follow-up and Action

Council Member Gardner asks Sommer for an update on the audit of mayor/council expenses that are November management and finance.

V. MISCELLANEOUS MATTERS FOR CONSIDERATION

- The next meeting is scheduled for November 23, 2021 at 1:00 PM (WebEx).
- Council Member Gardner asks if it is possible to get a summary document of what was reviewed over the year.

VI. ADJOURNMENT