

CITY COUNCIL COMMUNICATION



MEETING DATE: April 30, 2024

ITEM NUMBER: 12.B

SECOND READING:

{{customfields.ResoOrdNumber}}

TYPE OF ITEM: Study Session

PRESENTED BY:

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SUBJECT/AGENDA TITLE:

Liquor, Marijuana And Other Licensing Code Updates - Continued

EXECUTIVE SUMMARY:

Staff presented to Council on January 9, 2024, regarding proposed liquor and marijuana code updates in relation to the following:

- 1 – Code amendments to add new license categories per Council direction (marijuana)
- 2 – Routine Updates to bring City codes in agreement with State laws (marijuana and liquor)
- 3 – Code amendments to allow for more efficient processes and to eliminate burdensome regulations (marijuana)

Council directed staff to proceed with the routine updates and the code amendments to eliminate burdensome process and regulations (items 2 and 3 above) but asked staff to come back for a more in-depth look at the new license categories. Staff will provide a presentation on Marijuana Hospitality licensing, a Social Equity Program for Marijuana licensing, and on Liquor Festival Permits.

Staff is seeking Council direction regarding whether to bring back an ordinance to allow for a Marijuana Hospitality licensing type, a Social Equity Program, and for a Liquor Festival Permit.

COUNCIL OPTIONS:

1. Provide staff direction on policies and direct staff to bring back ordinances amending Longmont Municipal Codes; or
2. Provide staff other direction; or
3. Make no policy changes at this time.

RECOMMENDED OPTIONS:

Council policy decision

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:

N/A

BACKGROUND AND ISSUE ANALYSIS:

Staff is seeking Council's direction on liquor and marijuana code updates in relation to the following:

- 1 – Marijuana Hospitality Licenses
- 2 – Marijuana Social Equity Program
- 3 – Liquor Festival Permits

#1 - Marijuana Hospitality License

Council directed staff to bring back a Marijuana Hospitality License for Council's consideration during the last portion of the Council Retreat in 2023 and staff presented on this topic on January 9, 2024, but Council asked staff to come back for a more in-depth look at this type of license. This item fulfills this direction.

Staff understood from general discussion on January 9th that Council did not necessarily have a desire to change the cap on marijuana retail stores (currently limited to four in city limits) but was interested in learning more about Marijuana Hospitality licensing. Legal staff has reviewed the cap and determined that should Council decide to allow Marijuana Hospitality licenses, there are ways to add this new license type without changing the cap on retail stores. Once staff has clear direction on how and if Council would like to move forward, staff will draft the legal documents to support the direction.

WHAT is a Marijuana Hospitality License?

Consumption of marijuana in public places is prohibited in the state of Colorado. A Marijuana Hospitality License provides a location for people to legally consume marijuana (whether it be smoked, ingested, or applied topically to the skin) without violating state law.

Marijuana Hospitality businesses may take three forms:

1. **Permanent Licensed Premises *without* Sales:** Allowing consumption of marijuana within a permanent licensed premises by a person 21 or over with no sales allowed using a 'bring your own' model.
2. **Permanent Licensed Premises *with* Sales:** Marijuana Hospitality and Sales Business allowing consumption of marijuana within a permanent license premises by a person 21 or over with limited sales of marijuana permitted and patrons may not bring their own marijuana.
3. **Mobile Premises:** Allowing adults over 21 to consume marijuana within a mobile license premises (like a shuttle or a bus) with no sales allowed.

On January 9, two members of the public spoke to Council in support of the addition of a Marijuana Hospitality License in Longmont. One is seeking to establish a permanent licensed premises without sales (License form #1 above) as a commercial entertainment facility and the

other is seeking to establish a permanent licensed premises with sales to provide personal massage services using topical Retail Marijuana (License form #2 above). Because both are focused on brick-and-mortar business, staff has focused this information on these types of businesses.

What are some examples of what can and cannot be done on the licensed premises of a brick and mortar (form 1 and 2 above) marijuana hospitality business?

SHALL	CAN – IF ALLOWED LOCALLY	CANNOT
Operate in a decent, orderly, and respectable manner AND Comply with all rules and laws for sales if selling on the premises	Operate in an isolated portion of a retail food business as long as the retail food business does not have a liquor license	Allow on-duty employees to consume marijuana on the premises
Ensure all sales, consumption and activities cease if an emergency requires law enforcement, firefighters, emergency medical providers to enter the establishment	Have an Outdoor Consumption Area <ul style="list-style-type: none"> All marijuana must be kept out of plain sight The area must be surrounded by a sight-obscuring wall, fence, hedge or other translucent barrier 	Allow consumption of alcohol on the premises
Operate between the hours of 7:00 a.m. and 2:00 a.m., Monday through Sunday	Serve/Sell hot coffee, hot tea, instant hot beverages, prepackaged food	Allow smoking of tobacco or tobacco products on the premises
Carry general liability insurance		Permit disorderly conduct
Display required signage indicating Consumption Area – No One Under 21 Years of Age Allowed		Admit any person under the age of 21 to the business
Report to the MED within 48 hours any criminal activity requiring in-person law enforcement		Allow display or consumption of marijuana that is visible from the outside of the licensed premises
Control of and dispose of marijuana left by consumer (for a license without sales)		Permit use or consumption by a patron who displays any visible signs of intoxication
Provide Consumer Education Materials regarding the safe consumption of marijuana		Add marijuana to foods served

Additionally, it is important to note that spa businesses have unique privileges and restrictions under the Licensed Marijuana Hospitality Businesses.

- They SHALL be licensed massage therapists, have protocols to prevent employees from consuming regulated marijuana on the premises, have a defined consumption area for massage services using topical Retail Marijuana Product, and comply with daily sales limits as defined in Marijuana Regulations.
- No other consumption of regulated marijuana is permitted in the consumption area for massage services other than the application of topical marijuana products.

Because Denver has led the way in all regulation of marijuana and were the first and still one of very few to license Marijuana Hospitality, staff looked to Denver's regulations as a starting point. Denver's regulations of Marijuana Hospitality are outlined in the attached informational presentation (Attachment 1).

WHERE should a Marijuana Hospitality License be located?

Location Considerations - Zoning

Neither the Colorado Marijuana Code, nor the Marijuana Enforcement Division's Rules provide setback or zoning requirements that restrict where a Marijuana Hospitality business may be located. However, the Colorado Marijuana Code does allow a local jurisdiction to impose these restrictions.

Longmont Municipal Code related to marijuana licensed businesses already requires that *"No application for a license or for a change of location shall be granted which proposes a licensed premises within 250 feet of a residentially zoned area or within 1,000 feet of any school serving students in any grade from kindergarten through 12th grade, inclusive."* (LMC Sec. 6.70.105.)

If allowed, a hospitality licensee operating as a commercial entertainment facility would be a permitted use in the MU-C, MU-D, MU-E, and MU-R zoning areas under Title 15 of the Longmont Municipal Code (LMC).

Massage would be considered "personal service," and would be a permitted use in MU-N, MU-C, MU-D, MU-E, and MU-R.

Because the possibilities are not all known and there are great entrepreneurs in Longmont, staff would recommend following the table of allowed uses in Longmont Municipal Code to determine the appropriate zone for a marijuana hospitality business.

Location Considerations - Distance Restrictions

In addition to requiring compliance with zoning regulations, Council could implement additional distance restrictions. Again, an example to follow would be the City and County of Denver which has imposed 1,000-foot distance restrictions from:

- a. Any public or private preschool, elementary school, middle school, junior high school, or high school;
- b. Any licensed childcare facility;
- c. Any licensed drug or alcohol treatment facility;
- d. Any city-owned recreation center or pool; or
- e. Any other marijuana hospitality business of the same type.

Thus, if Council desired to mirror Denver's distance restrictions, we would need to add public or private preschools and items b-e above for marijuana hospitality businesses. Because we also have a community college campus, Council could add that facility to the list.

HOW would someone obtain a Marijuana Hospitality License?

Application Criteria:

Longmont Municipal Code Sec. 6.70.100 requires extensive documentation with a new marijuana license application and some of those requirements are listed below to demonstrate the amount of detail required when applying for any marijuana business license in Longmont:

1. A site control plan
2. A zoning verification letter
3. Proof of ownership or lease
4. A business plan (with specific criteria of what is to be included in the business)
5. A security plan
6. Evidence of compliance with security and video surveillance requirements in statute and rule
7. A floor plan including location of cameras, alarm inputs, digital video recorder, restricted and public areas
8. The type of security training for personnel
9. A plan for preventing underage persons from entering the premises
10. An odor management plan preventing any odor from the licensed premises from being perceptible to an ordinary person at the exterior of the building of the licensed premises or at any space adjoining the licensed premises.

All applications are reviewed and approved or denied by the Marijuana Licensing Authority which has been designated to be our Municipal Judge. If licensed, licenses are valid for one year and licensees must undergo an annual inspection by building, fire, planning and police to

renew their license. They must also be approved for license and renewal by the State Marijuana Enforcement Division to operate.

Fees:

Fees for marijuana stores were established by City Council under Resolution R-2017-98. If Council decided to allow Marijuana Hospitality Licenses, a Resolution adopting the fees would also need to be brought back to Council.

Staff would recommend setting the same fees as the City and County of Denver:

\$1,000 Application Fee (one-time)

\$2,000 License Fee (annual)

#2 – Marijuana Social Equity Program

The State of Colorado set forth a commitment to fostering an inclusive and equitable cannabis industry in acknowledgement of the effects of decades of criminal enforcement of marijuana laws on communities of color. [The State Marijuana Enforcement Division \(MED\) has instituted a Social Equity Program](#) aimed at increasing diversity in the number of marijuana business owner licenses so that the industry is more reflective of Colorado's demographics. The framework was established with SB19-224 and HB20-1424. The City and County of Denver followed suit and created its own Cannabis Social Equity Program in 2021 (see Attachment 2).

These social equity programs offer certain marijuana license types and reduced application fees to applicants who meet the criteria of the programs to create equity in opportunity in this business arena and to achieve the goals of the Social Equity Programs.

Who qualifies as a Social Equity Applicant under Denver's program?

1. Colorado resident; AND
2. Meets one of these criteria, AND:
 - a. The applicant resides in an opportunity zone or Disproportionate Impacted Area for at least 15 years between 1980 and 2010; OR
 - b. The applicant or immediate family was arrested, convicted or suffered civil asset forfeiture due to a marijuana offense; OR
 - c. The applicant's household income did not exceed 50% of the state median income as measured by the number of people who reside in the applicant's household.
3. A Social Equity Applicant must own at least 51% of the marijuana business license.

4. A License granted to a Social Equity Applicant must be majority owned by a Social Equity Applicant until 2027* (*Denver's program started in May 2021 – therefore, requirement is for 6 years after initial issuance of license)

Using the State and Denver as examples, a Social Equity Program could:

- Reserve certain license types such as a Marijuana Hospitality License exclusively for Social Equity Applicants
- Reduce or waive application and license fees for some or those license types reserved for Social Equity Applicants

As noted in the attached information about Denver's Social Equity Program, the one-time application fee of \$1,000 is waived for Social Equity Applicants seeking a Marijuana Hospitality License.

QUESTIONS for City Council:

1. **Does Council wish to allow a Marijuana Hospitality license?**
 - a. How many or no limit?
 - b. With or without sales? Or both?
 - c. What about a Mobile Marijuana Hospitality license?
2. **If yes to #1a and #1b, Would Council like to impose additional zoning and/or distance restrictions?**
 - a. Should Longmont follow the table of allowed uses to determine appropriate zoning based on the type of business OR would Council like to restrict the zoning for marijuana hospitality brick and mortar businesses?
 - b. Should Longmont impose 1,000-foot distance restrictions and include private preschools, licensed childcare facilities, licensed drug and alcohol treatment facilities, city recreation centers and pools and other marijuana hospitality and retail facilities? What about college campuses?
3. **Should there be any other criteria or limitations on these licenses?**

(local jurisdictions may be more restrictive than statute and, thus, Council could impose additional restrictions on hours of operation or disallow outdoor consumption, for example)
4. **Should staff bring back a resolution adopting the fees as proposed by staff?**
5. **Should Longmont implement a Social Equity Program?**
 - a. Should Marijuana Hospitality Business Licenses be reserved for Social Equity Applicants?

- b. **Would Council like to waive the one-time application fee for Marijuana Hospitality Social Equity Applicants?**
- c. **Should Longmont's Social Equity Program mirror Denver's in terms of criteria for who qualifies and the percentage of a license owned by social equity applicants?**

#3 – Liquor Festival Permit

SB23-264 was signed into law by Gov. Polis on May 17, 2023, and changes were enacted effective June 1, 2023, to create a Festival Permit in Colorado Statute.

What is a Festival Permit and what does it allow?

A Festival Permit allows for the permittee and any licensees participating in the festival to conduct festival tastings and sales of their respective alcohol beverages on the festival site that the permittee or licensee could conduct at their own licensed premises.

Any qualified permittee may apply for and hold up to nine (9) festivals in a calendar year and may participate in up to 52 festivals in a calendar year. The following liquor license types are each eligible to apply for and hold a Festival Permit:

Beer and Wine, Hotel and Restaurant, Tavern, Brew Pub, Vintner's Restaurant, Distillery Pub, Manufacturer's License, Wholesaler's License, or Limited Wineries.

Where could a Festival take place with a Festival Permit?

A festival could be held in any viable location – public property or private property - that the applicant has permission and possession to occupy or is able to obtain permission and possession via a lease, rental agreement, letter of permission, ownership, or Use of Public Places permit.

How is a Festival Permit different from a Liquor Special Event Permit?

Liquor Special Event Permits (Liquor SEPs) were created primarily to allow non-profit entities to act as a retail liquor vendor for a specific date, time, and location to raise funds. The applicant for a Liquor SEP is the sole entity that may acquire, store, and sell and/or serve alcohol in the defined location as approved by the Licensing Authority. Each non-profit is limited to a maximum of 15 calendar days per year.

With a Festival Permit, for-profit liquor licensees apply for a permit to sell and serve alcohol for a specific date, time, and location and other qualified licensees can participate in the same festival and sell and serve alcohol under the same permit, in the same festival location. As a permit applicant, a qualified licensee may hold up to 9 festivals in a calendar year but they may participate in up to 52 in a calendar year.

What happens if Longmont does not opt-in and create a Festival Permit?

If Longmont does not opt-in, these types of permits will continue to be applied for, vetted, and issued by the State of Colorado Liquor Enforcement Division. Under current state law, an applicant for a Festival Permit must provide the City with at least 30 calendars days' notice of the proposed festival. The City may respond to the State with an objection or recommendation about the issuance of the permit if:

1. Past festivals have had a history of violation of the Colorado Liquor Code or Colorado Liquor Rules or violations of local ordinances;
2. If granted, the permit would result in violations of the Colorado Liquor Code or Colorado Liquor Rules, or the laws of the local government.

The State Liquor Enforcement Division is responsible for reviewing the application, accepting the fees, and making the final determination whether to issue the permit. While the City may have the opportunity to provide a strong recommendation should there be a potential issue, the City would not have the authority to make the final determination about any Festival Permit application for any festival taking place in Longmont city limits.

How many liquor-licensed establishments are there already in Longmont?

There are currently already numerous outlets providing alcohol to the community. In 2023, the City of Longmont, through the City's Liquor Licensing Authority, reviewed and issued 39 Liquor SEPs and renewed 178 liquor licenses for local businesses. In addition, there are various Tasting Rooms in town that are associated to local manufacturing licenses (e.g. "breweries") which are licensed by the State and not by the City. Because Festival Permits create another exponential opportunity for more alcohol consumption in and around the community, staff recommends the City opt-in and create a Festival Permit so that the Local Licensing Authority has an opportunity to vet each of these events and permittees to insure state and local laws are being adhered to in our community.

What are the recommended criteria for a Festival Permit?

Staff recommends that an Applicant provide the documentation and information as required in State Form DR 8420 (Attachment 3) and that the Local Licensing Authority review the application with the following considerations that are taken from the City of Aurora's municipal code:

- The local licensing authority may deny a festival permit or supplemental application for any of the following reasons:
 - (1) The location where the festival is to be held is unsuitable due to time and proximity of other inhabitants of the area that would be adversely impacted; or
 - (2) The record, reputation, and character of the applicant, other associated parties and venue associated with the event are not acceptable to the authority; or
 - (3) If the issuance of the permit would be injurious to the public welfare because of the nature of the festival or its location; or

- (4) The filing of an incomplete or late application; or
- (5) A finding that the application, if granted, would result in violations of the Colorado Liquor Code, the Colorado Beer Code, or the rules issued pursuant thereto, or violations of the City Code.
- The local licensing authority may place conditions on a festival permit or supplemental application necessary to ensure the public health, safety, and welfare.
- If a festival permittee notifies the local licensing authority of the location of and dates of each festival at least 30 business days before holding the festival, the permittee may hold up to, but no more than, nine festivals during the 12 months after the festival permit is issued.
- Permittee and participating licensees are authorized to use the licensed premises of the permittee to jointly conduct alcohol beverage tastings and to engage in the same retail sales of alcohol beverages that the permittee and participating licensees are authorized to conduct at their licensed premises.
- Permittee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.
- Permittee must comply with the Colorado Liquor Code, the Colorado Beer Code, and the rules issued pursuant thereto.
- If a violation occurs during a festival and the responsible licensee cannot be identified, the local licensing authority may fine each licensee the same dollar amount, which fine must not exceed \$5,000 in aggregate. A joint fine levied pursuant to this subsection does not apply to the revocation of a licensee's license under C.R.S. § [44-3-601](#), as amended.

Question for City Council:

Would Council like staff to bring back an ordinance to add Festival Permits in accordance with 44-3-404, C.R.S. and establish a permit application and process in conjunction therewith?

Note: Under LMC 2.68.010, the Local Licensing Authority (designated as the municipal judge) establishes liquor licensing fees, thus no Council action or direction is needed to establish fees for Festival Permits.

ATTACHMENTS:

- Att 1 – Marijuana Hospitality Information – City & County of Denver
- Att 2 – Social Equity Information – City & County of Denver
- Att 3 – DR 8420 Festival Permit Application Form