

STUDY SESSION NOTES
CITY OF WHEAT RIDGE, COLORADO
Virtual Meeting
November 16, 2020

Mayor Bud Starker called the Study Session to order at 6:30 p.m.

This meeting was conducted as a VIRTUAL MEETING.

No members of the Council or City staff were physically present at the Municipal building for this meeting; the public did not attend in person.

Mayor Starker welcomed the Council, other elected officials, staff and interested citizens.

The Mayor also explained the virtual meeting format, how citizens will have the opportunity to be heard, and the procedures and policies to be followed.

Council members present: Amanda Weaver, Judy Hutchinson, Zach Urban, Rachel Hultin, Korey Stites, Janeece Hoppe, Leah Dozeman. Councilmember Valerie Nosler Beck had to excuse herself.

Also present: City Attorney Jerry Dahl; City Clerk, Steve Kirkpatrick; City Manager Patrick Goff; Director of Administration Allison Scheck; Chief of Police Chris Murtha; Division Chief, Jim Lorenz; Assistant to the City Manager, Marianne Schilling; Ellen Stern, Jefferson County Public Health, other guests and interested citizens.

Citizen Comment on Agenda Items –

Lorrie Odom, MD, 11490 W. 38th Ave., Chair of Tobacco Free Jeffco Alliance and retired pediatrician. Called to address the first item on tonight's agenda. She cited public health research data and statistics that indicate terrible detrimental health and mental health consequences of vaping, especially among adolescents and young adults, including addiction to nicotine and use of marijuana. Dr. Odom also discussed the impacts of nicotine on the human brain, which is still developing until as late as age 26. She also discussed the lung damage, cardiac and other long-term effects of vaping and smoking tobacco. She discussed not only the familiar e-cigarette products now familiar to us all but also newer products. She supports the ordinance under discussion tonight.

Note about Wheat Ridge Speaks:

Citizens may visit the Wheat Ridge Speaks website and enter written comments of up to 1,000 words on any Council agenda item. The deadline for citizens to submit comments is 12:00 Noon Mountain Time on the day of a Council session so that Council members, other elected officials and City Staff have time to review the comments before the meeting on Monday evening.

The City Clerk's Office transcribes those Wheat Ridge Speaks comments into these minutes, placing each comment along with the record for that agenda item, including items that include a public hearing (verbatim, if the comments do not contain lascivious language or unlawful hate speech).

The following comments appeared in Wheat Ridge Speaks relating to item 1, below.

Mayor Starker and City Council Members: I'm Lorrie Odom, MD, a Wheat Ridge resident for over 44 years, retired pediatrician, co-chair of the Tobacco Free Jeffco Alliance and Chair of Health, Wellness, and Safety for Jeffco PTA. Thank you for this opportunity to revisit an ordinance establishing local tobacco retail licensing in Wheat Ridge and increasing the age of tobacco sales to 21.

The 2019 Healthy Kids Colorado Survey data show that more than one in four youth under 19 years of age in Jefferson County are currently vaping, and more than three in four saw ads for vape products in the prior 30 days. Several studies show that youth who use e-cigarettes are more likely to become lifelong smokers, with a recent study reporting that even adolescents who had no previous intention of smoking were four times more likely to begin using conventional cigarettes after vaping.

Cigarette smoking remains the leading cause of preventable death in the United States. Nearly 95% of adult smokers started smoking before age 21. It's known that brain development continues until at least age 25 and that the developing brain is particularly vulnerable to the detrimental effects of psychoactive drugs. In addition to the significantly increased risk of addiction, adolescent use of nicotine can lead to problems with attention, learning, and memory that can become long-term or even permanent, as well as an increased risk of addiction to other psychoactive substances. A 2019 study found that teens and young adults with a history of regular nicotine e-cigarette use were 3.5 times more likely to start using marijuana than their peers who never vaped. Studies also show that nicotine, toxins, carcinogens, and other components of e-cigarette aerosol can cause irreversible lung damage. Of great concern is recent data showing that smoking or vaping leads to an increased risk of severe illness with COVID-19.

Research also shows that more tobacco retailers exist in areas with larger black, Hispanic, and low-income residents and more stores sell tobacco products to underage customers in these locations. In addition to the JUUL, an extremely popular and discreet vaping device, there is now an array of similar disposable devices flooding the market, such as the Puff Bar, that also come in a variety of flavors that are very appealing to youth.

We recognize that efforts to prevent youth use of e-cigarettes must be approached comprehensively - with efforts by parents, guardians, trusted adults, education in our schools and community - and licensing of all tobacco retail establishments, allowing for enforcement of the measures you deem appropriate for Wheat Ridge. Again, thank you for your consideration of this ordinance that is so important for the youth of our thriving community as well as a consequential equity and social justice issue.

References:

<https://www.colorado.gov/pacific/cdphe/healthy-kids-colorado-survey-data-tables-andreports>

<https://pediatrics.aappublications.org/content/early/2020/11/05/peds.2020-002881>

<https://tobaccofreeca.com/e-cigarettes/the-effects-of-nicotine-on-the-adolescent-brain/>

U.S. Surgeon General. Surgeon General's Advisory on E-cigarette Use Among Youth. e-cigarettes. surgeongeneral.gov. 2018

<https://jamanetwork.com/journals/jamapediatrics/article-abstract/2748383>

<https://drugfree.org/drug-and-alcohol-news/teens-who-vape-more-likely-to-start-usingmarijuana/>

<https://med.stanford.edu/news/all-news/2020/08/vaping-linked-to-covid-19-risk-in-teensand-young-adults.html>

<https://www.who.int/news-room/commentaries/detail/smoking-and-covid-19>

<https://truthinitiative.org/research-resources/targeted-communities/tobacco-social-justiceissue-racial-and-ethnic-minorities>

<https://tobaccocontrol.bmj.com/content/early/2020/01/30/tobaccocontrol-2019-055485>

<https://www.npr.org/sections/health-shots/2020/02/17/805972087/teens-are-still-vapingflavors-thanks-to-new-disposable-vape-pens>

11/16/2020 10:18 am

Lorrie F. Odom, MD
11490 W. 38th Avenue
Wheat Ridge, 80033

Thank you for your consideration of this ordinance. Requiring tobacco retail licensing is an effective policy to help eliminate a critical point of access to tobacco, reduce youth use, and prevent the potential of lifetime addiction. Unlike alcohol, or recreational marijuana, we don't yet know who is selling tobacco in our city, which means we don't know who is illegally selling these products to our kids and cannot consistently hold retailers accountable. Adopting tobacco retail licensure ensures a comprehensive list of all retailers in Wheat Ridge and a consistent set of practices among all businesses that choose and are privileged to sell tobacco products. Retailers that participate in a licensure process are less likely to have violations for selling to minors compared to businesses without a process.

Amidst a respiratory disease pandemic and the tobacco industry's continued targeting of marginalized groups, tobacco control and prevention are more important than ever. I urge you to include a licensing fee that will adequately pay for effective enforcement efforts, require new tobacco retailers to be at least 1000 feet from a school, establish stiff penalties for selling without a license.

11/13/2020 1:59 pm

Lynnette Namba
2977 Reed St.
Wheat Ridge, 80033

End of comments entered in Wheat Ridge Speaks.

1. Vaping/Tobacco Ordinance Update

Discussion began at 6:36 pm, approximately 0:06 minutes into the recording of the session.

Issue

Tobacco and youth vaping continue to be on the rise in Wheat Ridge and Jefferson County. Based upon previous Council direction, staff presented options during a December 2019 study session to be considered for a youth vaping and tobacco ordinance. Staff received specific policy direction at that time, and in July 2020 the State passed House Bill 20-1001 (HB20-1001) which regulates the retail of cigarettes, tobacco and nicotine products in Colorado. Staff has returned with a proposed

regulation incorporating both previous Council direction and the requirements put forth by HB20-1001.

Mr. Goff introduced Ms. Schilling who spoke on this item, along with a proposed regulation incorporating both previous Council direction and the requirements put forth by HB20-1001.

Implementation Costs: JCPH and the Wheat Ridge Police Department have worked with the City to estimate the costs to initiate, administer and enforce a tobacco retailer license program. With an estimated 70-80 tobacco retailers in the City, the total administrative burden would be approximately \$300 per retailer in the first year, and \$250 ongoing. JCPH recommends that costs and fees are evaluated every 2-3 years for potential adjustments.

Separation Requirements: Since last meeting in December 2019, the State, through the passage of HB20-1001, has set a 500-foot perimeter for tobacco retail establishments to be separated from schools with a grandfather clause included. Some communities in Colorado have set their local license to add other provisions related to “youth-oriented facilities” such as playgrounds and recreation centers.

Penalties: HB20-1001 has set penalties for infractions related to tobacco retailers.

Allocation of Fine Revenues: Due to TABOR restrictions, the City would not be able to utilize revenue related to tobacco retailer infractions for educational purposes related to tobacco use. However, some communities in Colorado have referred ballot measures to voters to assess a local tobacco tax in order to fund public health and tobacco prevention programming. For example, Carbondale passed a ballot initiative in April 2020 which delineated how funds will be spent on tobacco education and cessation programs. Additionally, Proposition EE was passed in the November 2020 Colorado General Election, and it will increase the tax on a pack of cigarettes from 84 cents to \$2.64 by 2027. The money from the tax increases will be directed toward public education, universal preschool, and vaping cessation and education programs.

Ms. Stern discussed the public health implications of vaping, how it leads to nicotine addiction (usually for many decades if not for life) and its contribution to youth marijuana consumption.

PROPOSED REGULATIONS

Key topics that proposed regulations would address include:

- Registration
- Regulations
- Compliance and Enforcement

Whereas additional City staff time spent initiating, administering and enforcing the Tobacco Retail License is expected to be covered by the license fee.

Councilmembers had questions and comments:

Councilmembers had questions about the impacts of the proposed regulations on the public health statistics for youthful consumers.

There were further questions about the enforcement of tobacco and vaping products, the cost of enforcement and its impact on the Police Department resources.

Will additional Police Department staff be required to enforce the ordinance? Division Chief Lorenz and Chief Murtha replied that this additional enforcement will require that the existing staff and command make decisions about which priorities those staff will follow.

Councilmembers noted that fines alone will unlikely impact retailers decisions; a second or later offense should involve suspensions or revocations of the tobacco license. Some councilmembers indicated that they support more stringent penalties sooner than the fifth offense by the same retailer. Councilmember Hutchinson emphasized that five offenses before a license is revoked is ridiculously lenient in her opinion.

Sales online are a big challenge; the state is still working on statewide regulations, for online sales generally and for verification of the buyer's age specifically.

Councilmembers asked how varying levels of sanctions would be attached to the first, second and subsequent violations.

How will the enforcement of the law work in concert between the City and the state? Who will receive the fine monies? Will a single offense trigger both City sanctions/fines, state sanctions/fines or both? Council indicated that the ordinance should clarify that situation.

Are responsible retailers in favor of the licensing process contemplated here? How are retailers being prepared for this change, or how will they be alerted and informed?

What is the ideal distance from a school to a tobacco/vaping retailer? Councilmember Hultin advocated for a 1,000-foot distance from any schools or youth activity centers.

Councilmember Dozeman suggested the City follow the direction offered by the new state statute.

Council also expressed concern that the Ordinance not damage existing business. For instance, if a tobacco licensee closes their store, would a new owner of that same property have the same grand-parenting rights to obtain a tobacco license – even if they are within 1000 feet of a school or youth activity center.

Councilmember Hutchinson noted that we have a variety of regulations in terms of distance from a school, religious meeting place, or youth activity center for liquor and tobacco.

Councilmember Hoppe proposed a consensus to ask staff to bring forward ordinance language for Council's consideration that follows these parameters:

- Implement licensing program for \$300 for new licenses and \$250 for renewals.
- Allow grand parenting of tobacco sales licenses associated with a specific location so long as the business location is not dormant for one year or more.
- Any new tobacco licensing or those who have lost their grand-parenting status must be 1,000 feet from a school, and the two recreation centers.
- Sanctions for violations would follow these parameters: First offense \$500 fine, second offense 7 day suspension of the tobacco license, third offense 30 day suspension, fourth offense suspension for 1 year and fifth offense permanent revocation.
- The penalties follow both violations of City Code and state statute. Licensees would pay fines or suffer suspensions imposed by both the City and the State.
- To parallel the guidelines and timeframes for implementation enacted by the state.
- Warning sign violations will not trigger the fines or suspensions.
- Conduct further research into the City's authority to license and tax online sales of tobacco to City residents.
- Shops that only sell cigars (and paraphernalia for cigars) would be exempt.
- Council will consider this ordinance in late February or early March 2021 at the latest, hoping to parallel the state's implementation if feasible.

Consensus attained.

2. Staff Report(s)

Discussion began at 7:58 pm, approximately 1:28 hours into the session.

Nothing new from staff this evening.

3. Elected Officials' Report(s)

Councilmember Hoppe congratulated the operators on the opening of a new Four Seasons market, selling local food products and groceries.

Councilmember Hultin asked about the CARES funding. Mr. Goff reported that the County declined to grant the City an additional \$250,000 for additional business grants.

She also asked that Jeffco Public Health present to Council a report on public health issues related to vaping and smoking at a future Study Session.

The Wheat Ridge Transportation Advisory Team is distributing refurbished bicycles. Their current location, in a residence, is closing, and a new site is badly needed.

Councilmember Weaver asked how to identify places where one can get a rapid CoVid test. She had trouble finding that online. Mr. Goff replied that the hours, locations and

other details change very frequently, sometimes daily, making it impractical to attempt to keep the details updated on the City's website.

Mayor Starker thanked staff for their preparation and participation.

He also reminded all to wear a mask, watch social distancing and wash our hands.

ADJOURNMENT

The Study Session adjourned at 8:10 pm.

APPROVED BY CITY COUNCIL ON December 14, 2020.



Steve Kirkpatrick, City Clerk



Janeece Hoppe, Mayor Pro Tem