



Memo

To: City Commission
From: Collin Bielser, Deputy City Manager
Date: July 11, 2023
Re: July 20, 2023 Work Session

Please find the attached agenda and supporting documentation for the July 20, 2023, Work Session.

Item 2 – Common Consumption Area

This is a continuation from the discussion that the Commission held on July 6th. Staff will illustrate possible district boundaries and potential rules and regulations based on feedback Staff received. Also included is the original memo concerning the subject.

Item 3 – 2024 Budget Review

This is the first opportunity for the Commission to discuss and request modifications to the 2024 Budget. The budget will be discussed at the next two work sessions as well.

CITY OF HAYS
CITY COMMISSION WORK SESSION
CITY HALL, 1507 MAIN STREET, HAYS, KS
THURSDAY, JULY 20, 2023 – 4:00 P.M.
AGENDA

1. **July 6, 2023 Work Session Notes (PAGE 1)**
Department Head Responsible: Kim Rupp, Director of Finance
2. **Common Consumption Area (PAGE 7)**
Person Responsible: Collin Bielser, Deputy City Manager
3. **2024 Budget Review**
Person Responsible: Collin Bielser, Deputy City Manager
4. **Other Items for Discussion**
5. **Executive Session (if required)**
6. **Adjournment**

ANY PERSON WITH A DISABILITY NEEDING SPECIAL ACCOMMODATIONS TO ATTEND THIS MEETING SHOULD CONTACT THE CITY MANAGER'S OFFICE 48 HOURS PRIOR TO THE SCHEDULED MEETING TIME. EVERY ATTEMPT WILL BE MADE TO ACCOMMODATE ANY REQUESTS FOR ASSISTANCE.

City of Hays
City Commission
Work Session Notes
Thursday, July 6, 2023 – 4:00 p.m.

Present: Shaun Musil, Sandy Jacobs, Reese Barrick, Mason Ruder, Collin Bielser, Kim Rupp, and Melvin Sauer, Jr.

Alaina Cunningham joined the meeting by phone.

June 15, 2023 Work Session Notes

There were no corrections or additions to the minutes of the work session held on June 15, 2023; the minutes stand approved as presented.

Common Consumption Area

Collin Bielser, Deputy City Manager, stated that the idea of a Common Consumption Area (CCA) has been discussed in the past at City Commission retreats. A Common Consumption Area is a defined indoor or outdoor area where the possession and consumption of alcoholic liquor and cereal malt beverages (CMB) are allowed pursuant to an approved State permit. It gives business owners the ability to designate a defined area, allowing patrons of restaurants and bars to move freely in the public right-of-way with consumption allowances. Kansas law allows municipalities the ability to establish CCA's. Recent changes in State law have renewed interest for the possibility of establishing a CCA.

Prior to July 2023, it was a requirement for roads within a CCA to be blocked, prohibiting vehicular traffic. This was the primary hinderance of past efforts to establish a CCA. However, recent legislation modified this requirement, and now at a minimum, only requires boundaries of a CCA to be conspicuously posted with signage designating the boundaries of the area.

To establish a CCA, the City must pass an ordinance creating the area and designating the boundaries. Any City-specific rules or guidelines, such as

dates and time of operation, applicable to the area must be included in the ordinance. Following ordinance approval, the City would need to seek approval of a CCA permit from the State. Permits are valid for up to one year.

Businesses licensed to sell alcoholic beverages must apply to the State to participate in an established CCA. Only businesses located within or immediately adjacent to the district are eligible to participate. Drinks must be purchased inside the place of business, and then they may be carried outside into the CCA. Drinks must be served in a container that displays the licensee's trade name or logo or other identifying mark that is unique to the participating business.

The Hays Police Department has been consulted and their foremost request is for the district to be a clearly defined geographical shape. A district with zigzagging boundaries could create confusion for both law enforcement and patrons of the CCA, which could impact effective enforcement. The smaller the area, the easier it is to control. Including residential areas could be a concern. If a resident decides to have a party and walk out into the area, the CCA permit holder is going to be responsible for the violations if there are underage violations.

Dates and hours of operation would have to be posted on the signage. The boundaries of a CCA must be clearly marked using a physical barrier or any apparent line of demarcation. Every CCA shall have signs conspicuously posted identifying the boundaries of such area in a size and manner that provides notice to such persons entering or leaving the area. Signage will have to be on every access point, streets, alleys, and sidewalks.

Mr. Bielser stated that City Code Sections 14-141 and 14-143 prohibit public drinking and possession on public property except in the City's public parks and where an outdoor dining permit has been issued. If the City Commission desires to implement a CCA, the City Attorney recommends modifying sections 14-141 and 14-143 to include a statement that specifies the consumption and possession of alcoholic liquor and cereal malt beverages are allowed within a CCA established by the City pursuant to State law.

Justin Whyte, Enforcement Agent, Kansas Alcoholic Beverage Control, reviewed the changes to the CCA laws. Mr. Whyte clarified that the CCA permit holder is liable and can be fined for the violation of the person that leaves the common consumption designated area, not the establishment that served the drink. Mr. Whyte added that any business in the CCA has the right to say they won't allow alcohol in their business.

Mayor Musil stated that he has heard from customers that they would like a common consumption area downtown, but as a business owner he is a little concerned.

Vice-Mayor Jacobs stated that she believes this could be made simpler by thinking through what the Commission is trying to accomplish. She stated that if you have a defined area downtown, she thinks it would be enjoyable for certain events like the downtown Art Walk and Wines and Steins. She doesn't believe it would cause many issues. Mayor Musil stated that if you limit this to special events it will not benefit other downtown businesses.

Following a lengthy discussion, it was the consensus of the Commission to direct staff to prepare information regarding establishing a CCA in the downtown corridor. Boundaries would include a rectangular area from 7th Street to 13th Street and from Fort Street to Oak Street. Consideration of a CCA will be discussed at a future work session.

Commission Receives 2024 Proposed Budget

Collin Bielser, Deputy City Manager, presented the draft 2024 Budget to the City Commission and noted the following highlights.

- The budget is balanced.
- Reserves will continue to be funded.
- The budget contains a programmed 2% step and 3% COLA increase for all employees.
- The mill levy is maintained at 25.000 for the 15th year in a row.
- The total assessed valuation is up 11.6%.
- The budget includes a new fund, specific to the R9.

- The budget contains three additional employees - two for the R9 Ranch and the third is the Management Analyst in the City Manager's Office.

Mr. Bielser reviewed the budget calendar and stated the Commission will have the opportunity to review, discuss, provide input, and make modifications to the budget at the July 20, 2023, August 3, 2023, and August 17, 2023 Work Sessions. Outside Agency funding requests will be discussed at the August 3, 2023 meeting. The 2024 Budget will be presented to the Commission for final approval at the September 14, 2023 Commission meeting.

Mr. Bielser stated that as proposed, the budget does exceed the Revenue Neutral Rate by maintaining the 25 mills. Mr. Rupp stated that the County Clerk set the Revenue Neutral Rate at 22.571. Based on our current assessed valuation that is the number of mills it takes to raise the same amount of dollars as last year. There was Commission consensus to send a notification to the County Clerk stating the City of Hays will exceed the Revenue Neutral Rate.

Vice-Mayor Jacobs stated Mr. Bielser, Mr. Rupp, and the Department Heads have done an outstanding job in preparing this budget.

Mayor Musil stated that this budget is very clear and easy to understand. He also noted that it is important to provide raises and continue to take care of the City employees. He added that it is cheaper to retain than to retrain employees.

Other Items for Discussion

The Commissioners thanked staff for the work that went into preparing the 2024 Budget. They commented that they appreciate that the budget is balanced, maintains the 25 mills, all while adequately funding reserves.

Mayor Musil added that he appreciates that the community is moving forward with new developments and housing.

Executive Session

Mason Ruder moved, Sandy Jacobs seconded, that the Governing Body recess to an executive session at 5:42 p.m. under the justification and purpose of

the preliminary discussion pertaining to the acquisition of real property; pursuant to K.S.A. 75-4319(b)(6), for a period not to exceed 10 minutes. The executive session included the City Commission, City Attorney, Deputy City Manager, Management Analyst, and the Director of Grow Hays.

Vote: Ayes: Shaun Musil
Sandy Jacobs
Reese Barrick
Alaina Cunningham
Mason Ruder

The open session was resumed at 5:52 p.m. and no action was taken.

The work session was adjourned at 5:52 p.m.

Submitted by: _____

Brenda Kitchen – City Clerk

Commission Work Session Agenda

Memo

From: Collin Bielser, Deputy City Manager

Work Session: July 6, 2023

Subject: Common Consumption Area

Person(s) Responsible: Collin Bielser, Deputy City Manager

Summary

Downtown Hays is one of the more prominent neighborhoods in the community. As the area continues to flourish, the ability to designate a defined area, allowing patrons of restaurants and bars to move freely in the public right-of-way with consumption allowances has been desired from time to time. To accommodate this desire, Kansas law allows municipalities the ability to establish Common Consumption Areas (CCA). A Common Consumption Area authorizes the possession and consumption of alcoholic liquor or cereal malt beverages within a defined jurisdiction. Recent changes in State law have renewed interest for the possibility of establishing a CCA.

Background

Prior to July 2023, it was a requirement for roads within a CCA to be blocked, prohibiting vehicular traffic. This was the primary hinderance of past efforts to establish a CCA. However, recent legislation modified this requirement, and now at a minimum, only requires boundaries of a CCA to be conspicuously posted with signage designating the boundaries of the area.

Discussion

A Common Consumption Area is a defined indoor or outdoor area not otherwise licensed where the possession and consumption of alcoholic liquor and cereal malt beverages (CMB) are allowed pursuant to an approved permit issued by the Kansas Department of Revenue, Alcoholic Beverage Control division. There are two components involved, establishment of the CCA and approval of businesses to participate in the CCA.

To establish a CCA, the City must pass an ordinance creating the area and designating the boundaries. Any City-specific rules or guidelines, such as dates and time of operation, applicable to the area must be included in the ordinance. Following ordinance approval, the City would need to seek approval of a Common Consumption Area permit from the State. Permits are valid for up to one year.

Businesses licensed to sell alcoholic beverages must apply to the State to participate in an established CCA. Only businesses located within or immediately adjacent to the district are eligible to participate. Drinks must be purchased inside the place of business and then they may be carried outside into the CCA. Drinks must be served in a container that displays the licensee's trade name or logo or other identifying mark that is unique to the participating business.

Some of the questions/concerns that Staff needs guidance from the Kansas Department of Revenue - Alcoholic Beverage Control division, and issues the City Commission should consider include but aren't limited to:

- What area should the CCA encompass?
 - a. Should the CCA include portions of residential neighborhoods?
 - b. Should Fort Hays State University be consulted?
- Should the CCA have established dates and times of operation?
- What type of signage or markings designating the boundaries of the CCA are acceptable?
 - a. Do we need signage and/or markings on every street?
 - b. What about signage and/or markings on sidewalks and alleys?
- Can a drink be purchased in one business and taken into another CCA or non-CCA participating business?
- What are the responsibilities and liabilities of the participating businesses?
- What are the responsibilities and liabilities of the non-participating businesses?
- What are the responsibilities and liabilities of the CCA permit holder?
- What will the enforcement of the district rules and regulations entail?
- The city currently collects liquor and CMB fees. Should a local Common Consumption Area fee be established and levied to cover costs for the state permit fee, district signage, etc.
- State law authorizes the Secretary of Revenue to adopt rules and regulations to implement the new CCA provisions. Have any corresponding rules and regulations been established and if so, what are they?

The Hays Police Department has been consulted and their foremost request is for the district to be a clearly defined geographical shape. A district with zigzagging boundaries could create confusion for both law enforcement and patrons of the CCA, which could impact effective enforcement.

Downtown Hays Development Corporation (DHDC) is aware of this discussion and was asked to provide comments if desired. The organization has indicated they plan on submitting a letter prior to the work session.

Legal Consideration

The city has two ordinances that will need to be addressed if the Commission pursues the creation of a CCA. Sections 14-141 and 14-143 prohibit public drinking and possession on public property except in the City's public parks and where an outdoor dining permit

has been issued. If the City Commission desires to implement a CCA, the City Attorney recommends modifying sections 14-141 and 14-143 to include a statement that specifies the consumption and possession of alcoholic liquor and cereal malt beverages are allowed within a CCA established by the City pursuant to State law.

Other than that, there are no known legal obstacles to proceeding to preparing and designating a common consumption area.

Financial Consideration

The financial impacts are currently unknown. A CCA permit from the State is \$100; however, if a CCA is established, signage will have to be purchased and erected. This cost will be dependent on the size of the established area.

Options

Presently, this item is informational only. No action is being requested.

Recommendation

Presently, this item is informational only. No action is being requested.

Action Requested

Presently, this item is informational only. No action is requested; however, staff is prepared to receive further direction from the City Commission.

Supporting Documentation

House Bill No. 2059, Pages 7 & 8

comply with any provision of this section or K.S.A. 41-501 et seq., and amendments thereto, or any rules and regulations adopted pursuant to such statutes. Upon revocation of a special order shipping license for shipment of wine to a person not of legal age as required herein such winery shall not be issued any special order shipping license pursuant to this act for a period of one year from the date of revocation.

(g) The holder of a special order shipping license shall collect all gallonage taxes imposed by K.S.A. 41-501 et seq., and amendments thereto, shall on a ~~quarterly~~ *monthly* basis electronically remit such taxes in a manner prescribed by the secretary and shall accompany such remittance with any reports, documentation or other information as may be required by the secretary. In addition, an applicant for and a holder of a special order shipping license, as a condition of receiving and holding a valid license, shall:

(1) Collect and pay the applicable Kansas enforcement tax on each sale shipped to a consumer in Kansas imposed by K.S.A. 79-4101 et seq., and amendments thereto;

(2) accompany each remittance with such sales tax reports, documentation and other information as may be required by the director of taxation; and

(3) if the holder of the license is an out-of-state shipper, the licensee shall be deemed to have appointed the secretary of state as the resident agent and representative of the licensee to accept service of process from the secretary of revenue, the director and the courts of this state concerning enforcement of this section, K.S.A. 41-501 et seq., and amendments thereto, and any related laws and rules and regulations and to accept service of any notice or order provided for in the liquor control act.

(h) The secretary of revenue may adopt rules and regulations to implement, administer and enforce the provisions of this section.

(i) This section shall be a part of and supplemental to the Kansas liquor control act.

Sec. 7. On and after July 1, 2023, K.S.A. 41-2659 is hereby amended to read as follows: 41-2659. (a) (1) A city or a county may establish one or more common consumption areas within the limits of the city or within the unincorporated portion of the county, as applicable, by ordinance or resolution, respectively, and authorize the possession and consumption of alcoholic liquor or cereal malt beverage within the common consumption area. The ordinance or resolution shall designate the boundaries of any common consumption area and prescribe the times during which alcoholic liquor or cereal malt beverage may be consumed therein. The ordinance or resolution ~~shall~~ *may* require that any public street or roadway that lies within a common consumption area ~~shall~~ be blocked from motorized traffic during the hours in which alcoholic liquor or cereal malt beverage is consumed.

(2) The city or county shall immediately notify the director of the division of alcoholic beverage control of the establishment of a common consumption area and submit a copy of the ordinance or resolution along with such notice.

(b) A common consumption area permit shall allow the consumption of alcoholic liquor or cereal malt beverage in any area designated by such permit. The director may issue common consumption area permits to the city or county or any one person who shall be a resident of Kansas or an organization that has its principal place of business in Kansas and that has been approved by the respective city or county, in accordance with rules and regulations adopted by the secretary of revenue.

(c) Applications for common consumption area permits shall be submitted to the director, subject to the following:

(1) A copy of any ordinance or resolution promulgated in accordance with subsection (a) shall accompany any application for a common consumption area permit.

(2) Each application shall be accompanied by a non-refundable permit fee of \$100. All permit fees collected by the director pursuant to

this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(3) A common consumption area permit shall be issued for a period of not to exceed one year. A common consumption area permit shall not be transferable or assignable.

(d) Any licensee immediately adjacent to, or located within a common consumption area may request that the licensee's licensed premises participate in the common consumption area for the duration of the common consumption area permit. Such a request shall be made upon forms prescribed by the director.

(e) (1) Any licensee who has requested and received permission to participate in the common consumption area may allow its legal patrons to remove alcoholic liquor or cereal malt beverage purchased from the licensee into the premises described by the common consumption area permit. All alcoholic liquor and cereal malt beverage removed from a licensed premises in such fashion shall be served in a container that displays the licensee's trade name or logo or other identifying mark that is unique to the licensee.

(2) In addition to their licensed premises, one or more licensees that have requested and received permission to participate in a common consumption area may offer for sale, sell and serve alcoholic liquor or cereal malt beverage for consumption from one non-contiguous service area within the common consumption area, as designated and approved by the common consumption area permit holder. The licensee shall prominently display a copy of its drinking establishment license and the approval of the common consumption area permit holder at its non-contiguous service area.

(f) (1) Each licensee within a common consumption area shall be liable for violations of all liquor laws governing the sale and consumption of alcoholic liquor or cereal malt beverage that occur on the licensee's premises.

(2) Each common consumption area permit holder shall be liable for violations that occur off the licensee's premises, but within the common consumption area identified in the permit. No permit holder shall permit any person to remove any open container of alcoholic liquor or cereal malt beverage from the boundaries of the common consumption area.

(g) (1) For the purposes of this section, "common consumption area" means a defined indoor or outdoor area not otherwise subject to a license issued pursuant to the Kansas liquor control act or the club and drinking establishment act where the possession and consumption of alcoholic liquor or cereal malt beverage is allowed pursuant to a common consumption area permit.

(2) The boundaries of any common consumption area must be clearly marked using a physical barrier or any apparent line of demarcation. *Every common consumption area shall have signs conspicuously posted identifying the boundaries of such area in a size and manner that provides notice to persons entering or leaving the area.*

(h) The secretary shall adopt rules and regulations to implement this section.

(i) This section shall be a part of and supplemental to the club and drinking establishment act.

Sec. 8. K.S.A. 2022 Supp. 41-2704 is hereby amended to read as follows: 41-2704. (a) In addition to and consistent with the requirements of the Kansas cereal malt beverage act, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

(b) Within any city where the days of sale at retail of cereal malt