I. ROLL CALL

**Committee Members Present:** Jesse Kiehl, Chair; Mary Becker, Debbie White, Bill Peters, Dennis Watson, Mike Satre, Maria Gladziszewski

**Committee Members Absent:**

**Staff Present:** Amy Mead, Municipal Attorney; Deb Senn, Clerk/Law Office Manager; Bob Bartholomew, Finance Director; Clinton Singletary, Sales Tax Administrator; Chrissy McNally, Planner II, CDD; Bryce Johnson, Chief of Police

II. APPROVAL OF AGENDA

The agenda was approved as submitted.

III. APPROVAL OF MINUTES

**Motion** by Ms. Gladziszewski to strike the sentence on pg. 3 stating that she thought the market would bear an 8% sales tax.

Hearing no objection, the October 22, 2015 Draft Minutes were approved with noted change.

IV. PUBLIC PARTICIPATION

Benjamin Wilcox spoke to tax and zoning issues moving forward by the Committee. He thanked the Committee for the comments at the last meeting about them trying to be legitimate businesses and not criminals. Mr. Wilcox said with respect to the topics on the agenda for this meeting, there were a couple of items on the wish list that he saw as possibly problematic. In the desired places to restrict – adult care facilities. He said this is an adult product with the fastest growing population being the older people who are on a lot of meds. They may want to make some alternative choices and should be allowed to do so. As for regulating novelty devices and flavors, it seems a little overreaching. He said those items were initially created in response to people wanting to use the product without having to smoke it. He said cars were once a novel product and we would still all be riding horses today if they were not permitted.

V. AGENDA TOPICS

A. Marijuana Taxation Discussion Points and Marijuana Revenue Update, presented by Clinton Singletary, Sales Tax Administrator, CBJ Finance

Mr. Singletary explained the process for excise taxes and how it relates to those imposed by the State of Alaska (SOA) and how CBJ may be able to implement an excise tax. He also
stated that CBJ could implement an excise tax without voter approval. He said they contacted the SOA Tax Division and the current set rate for the state’s excise tax is $50 per ounce. They are currently looking into the possibility of taxing different parts of the marijuana plant at different rates depending on the prime portions of the plant. The State Attorney’s office is working on the legality issues related to that.

Mr. Singletary said that the Tax Division at the SOA suggested that if CBJ does go down the route of imposing an excise tax that CBJ may wish to structure its excise tax similarly and have different rates for different pieces of the marijuana plant. They also said that if CBJ adopted a tax structure similar to the SOA, there is an option that the SOA may be willing to administer the CBJ program for a fee. He noted that the states of Washington and Colorado both have percentage based excise taxes.

With respect to sales tax, as soon as retail sales of marijuana begin, they automatically begin collecting the 5% sales tax. He said there is nothing special that needs to happen there. The retail business would register with the Sales Tax office just like any other business and as soon as they start making sales, 5% will be going to the CBJ sales tax. He said that any additional sales tax rate on top of that would have to be voter approved. Any additional rate would be collected by business from customers, not when buying from wholesaler.

He said when comparing an excise tax vs. a sales tax, a sales tax would be administratively simpler for CBJ staff and merchants. The collection mechanism in already place for the 5% sales tax. He said if there was an excise tax, they would have to bring in the wholesalers as well who are not currently required to submit sales taxes.

He said with respect to medical marijuana, due to the way current state law and CBJ code is written, no marijuana sales would be exempt under CBJ 69.05.040(7)(b).

Mr. Singletary reviewed the staff recommendations contained in the packet. They are recommending a sales tax and not pursuing an excise tax at this time.

Discussion took place regarding the threshold of the number of merchants in any given category before the Sales Tax Office would be able to make information public in the aggregate of what those sales numbers may be. Mr. Singletary explained that it would depend on the total number of merchants in any given category before he would make the aggregate numbers public and due to the confidentiality clauses in the code, he would not make that information public if there were fewer than five merchants in any given class.

Additional discussion took place regarding medical marijuana, tax exemptions, and the various pros and cons of the collection and filing process of excise taxes vs. sales taxes.

Mr. Kiehl asked for a recommendation from the committee that they can forward to the Assembly. Ms. White suggested they treat marijuana like alcohol and start out taxing it at the regular 5% rate and then let the Assembly decide if it wants to propose an additional 3% sales tax on a ballot to the voters putting the total sales tax at 8% in the same way alcohol is taxed.

Additional discussion took place and Ms. Mead gave explanations of how the court determines the differences between excise taxes and sales based on the taxing event. If it is a tax based on the sale of an item, it is a sales tax regardless of who has to pay it. It cannot be based on the value of the sale; that can’t be the taxable event that triggers the tax. Ms. Gladziszewski asked in light of that, if it can be a percentage of wholesale value which is what it is in Colorado. Ms. Mead said that a wholesale value might pass. She explained that the way the Alaska Courts analyze whether something is a sales tax or excise tax is not by what it is called but rather by what triggers the taxable event and what the tax is based upon. She said what
Ms. Gladziszewski is referring to may pass muster but it would need to be built into the ordinance as to what the tax is for and what they are directing their efforts at.

Ms. Gladziszewski asked what the mechanism is for the cigarette tax that CBJ imposes. Ms. Mead explained that it is taxed per pack at the wholesale level. Ms. Gladziszewski asked if this could be done in a similar way. Ms. Mead said that the articulated purpose for that tax was to address the tobacco use in the municipality and to decrease it. Those reasons together are what the Supreme Court would look at if there were a challenge to the tax.

Mr. Watson said he thought the tobacco industry is somewhat different. He expressed his concern that there may be an uneven playing field if they go with the excise tax over the sales tax option if it comes down to one or two wholesalers in a cottage industry charging different prices to different retail establishments.

Ms. White had some questions about how the tobacco excise tax might compare to this issue and Ms. Mead explained the multiple facets of the tobacco ordinance, the language used to indicate that it was being enacted for the purpose of deterring smoking due to health reasons. Due to all the facets and the purpose of the tobacco ordinance, she explained that it would not fit for the marijuana ordinance in the same way.

Mr. Watson said he concurred with the 5% recommendation but felt it should refrain from recommending the additional 3% be put on the ballot. Ms. Gladziszewski said she was in favor of the excise tax options since it could be structured in the same manner as the SOA as opposed to any additional sales tax amount over the current 5% rate. Mr. Peters said he agreed with Ms. White’s recommendation of starting it at the 5% rate and then go to the voters for approval of an additional 3%.

Mr. Satre said there is no question that we will be charging the 5% sales tax just as any other purchases. He was interested in keeping the filing and payment of the taxes as simple as possible. He was concerned about the potential of any additional amount being too high and having to go back to the voters to lower it from the 8% total if that had been approved by the voters. Ms. Mead explained that the Assembly has the authority to impose a lower amount in sales tax than that approved by voters, they just cannot go higher than the limit set by the voters. An example she gave of this was if a 3% tax rate was approved by the voters and the Assembly chose to implement only a 1% rate, it would have the authority to do so. She also said the Assembly can choose to repeal any sales tax that had previously been approved by the voters and it did not require going back to the voters for that repeal to take place.

Ms. Becker said she favored a recommendation to the Assembly for the Assembly to decide whether to put a question on the October 2016 ballot for an additional 3% sales tax amount to treat it similarly to the alcohol tax. She said she didn’t think it needed to be done via a special election but to put it on the October 2016 regular ballot. Ms. White concurred with the regular election and suggested that if they were to have that question on the ballot that it might increase voter turnout.

Ms. Gladziszewski said they all agree with the 5% regular sales tax issue. She was in favor of having the Assembly look into the issue of a possible higher sales tax rate to be placed on the regular election ballot. She said she would still like to have more information about the excise tax: how the state will administer it, how Colorado administers their percentage of wholesale.

Ms. Mead explained that CBJ is only one of three municipalities within the state which has the ability to tax alcohol at a higher rate than the general retail sales. She said right now that is the case and it is likely to stay the case for a while but she wanted to make sure that they are not mislead into thinking that is definitely always an option.
MOTION by Ms. White to recommend the Assembly place on a future regular election ballot an additional 3% sales tax.

Ms. Gladziszewski objected to the motion. She said she doesn’t know if it should be an additional 2%, 3%, 4%, 5%, or what and she would like to get more information about the excise tax so she is not willing to support that as the recommendation of the committee at this time.

Roll Call Vote:
Ayes: Becker, Kiehl, Peters, White, Watson
Nays: Gladziszewski, Satre
Motion carried 5:2

B. Draft CBJ Marijuana Land Use Ordinance [audio begins at 6:46p.m.]
1. State of Alaska Marijuana Control Board Proposed Regulations
2. Marijuana Best Practices Public Health Policy Wish List, prepared by NCADD

Ms. Mead explained the additions to the draft ordinance which incorporated the changes based on the recommendations from CDD. She said that this committee’s recommendations were also incorporated into this draft. She said that those issues that the committee discussed putting into a special use chapter that ended up in the SOA regulations, she did not include substantive text in the CBJ ordinance but rather referred to the regulation citations. She said she hopes the committee will make decisions as to whether they are comfortable with the SOA regulations, or if they would like to see changes made to include more, different, or repetitive language from the regulations into the ordinance. She noted that the one place she was repetitive was the section on inspections. She said the reason for that is it was one of the issues CBJ recommended to the Marijuana Control Board (MCB): that they allow municipal officials to inspect premises. She said in case they did not incorporate that language in their regulations, it would be worth including in the draft ordinance.

Ms. Gladziszewski inquired about the hours of operation and if it could be modified for fewer hours if the conditional use permit (CUP) had a different set of hours imposed. Ms. Mead agreed that a CUP could impose fewer hours but that she would modify the language in the ordinance to make that clear.

Ms. Gladziszewski asked about the language on page 6 section 4 referring to time, place, and manner but that she thought that “taxes” weren’t eligible in that section. Ms. Mead noted that Ms. Gladziszewski was correct and she will make that correction to the ordinance.

Ms. Gladziszewski then asked about item (8) on page 4, line 4 that states “A copy of the Notice of Decision approving the conditional use permit by the City and Borough of Juneau Planning Commission.” She noted that with this language, an establishment is not even able to apply for a license until it has gone all the way through the CUP application process. Ms. Mead stated that was correct. They will need to go through the Planning Commission process first in order to get their state license because they have to show proof of the ability to operate at that location per the state regulations. She said the timing is OK now that CBJ has finished its Table of Permissible Use ordinance and can start accepting applications once the moratorium ends unless it is lifted.

Mr. Watson asked about the size of the signage that will be posted in accordance with 49.65.1150. Ms. Mead noted that could be decided administratively. The language in this section is specific to the borough’s license.
Discussion took place regarding signage other than the license itself and Ms. Gladziszewski said she would like to look at it more closely based on the CBJ sign ordinance and how any signs might be displayed in the historic district. Mr. Kiehl also explained some of the requirements by the MCB to display specific signage restricting access to the premises by those under 21 years of age as well as any advisory signs for use of the products by pregnant women. Ms. Mead explained that the state regulations 306.360 set out the sign requirements and she said our sign code may have different restrictions/dimensions. She also read some of the specific state regulation language pertaining to warning requirements for any advertising of marijuana products.

Mr. Peters said he still has some concerns about requiring a license at the municipal level if they already have to go through the CUP process in order to get their SOA license. His main concerns relate to the staffing requirement this would add and how much it might cost the city to administer those licenses. He said he struggles with a need for a license at the city level if they are already licensed by the state.

Ms. Mead explained that it is one license which is dependent upon what type of operator you are. She said it is the same process that is followed in both Washington and Colorado. She said that under state law in those two states, municipalities are required to have a local license in addition to the state license. This is an enforcement tool. She said the difference between a CUP and a license is that a CUP is to address a specific establishment’s impact on a neighborhood. She said the same CUP is not necessarily imposed on every greenhouse in town; it depends upon where the greenhouse is located. These licenses are of general applicability that we want ALL marijuana establishments to abide by. We want a ventilation and an odor plan. It is not something that will be specific to just one operator, we want them all to do it and if they do not do it, this mechanism provides the structure to prohibit it from operating. She said these are the generally applicable things and the things that we don’t want to tie to just one CUP and also that we want the ability to use it as an enforcement tool. That would provide an avenue to address a problem, and address it quickly which cannot be done as easily with a CUP.

Mr. Kiehl asked Ms. Mead to explain the correction process. Ms. Mead explained that if someone is doing something that is prohibited under the special use chapter, this gives the department the ability to issue a letter that provides a specific amount of time for them to come into compliance. She said the hope is that people who are violating these provisions are not doing so intentionally. She said the intent is to coerce voluntary compliance with the requirements. The notice of violation allows them the opportunity to come into compliance before a license is revoked.

Mr. Satre asked how the application process will work when someone applies for a license. He asked if this will be issued by CDD and if there is a public hearing process or how it would work. Ms. Mead said it is not a call by the Law Department but rather an administrative decision by the City Manager.

Discussion took place regarding what would be seen during the CUP process vs. the license process. Ms. Mead said those things that could be pulled out of this ordinance and put into the CUP ordinance process if the committee members wanted that changed around. Additional discussion also took place regarding enforcement of violations of law such as minors on the premises etc… vs. violations of conditions under a CUP.

Police Chief Bryce Johnson was present and asked to come forward to address how JPD currently handles liquor license violation enforcement issues. Chief Johnson explained that JPD only cites individuals who are in violation i.e.: serving alcohol to a minor, etc… and not the establishment. He said that what enforcement does occur on the licensed establishment is only done by ABC staff which is very limited in what it can do because of their staffing limitations.
Ms. Gladziszewski said that is exactly why she wanted to have a local enforcement control by having a local license. She said she does not wish to over-regulate this but to provide for a mechanism by which we could do what is needed to help the establishments operate within the law.

Mr. Kiehl said he appreciated Mr. Satre’s comments about where to address issues such as ventilation and how that would look in the ordinance. He asked if that could be provided the next time the ordinance came before the committee.

Mr. Satre said he would suggest adding that to the ordinance on the Special Requirements section under (b) (1)-(4) and he feels it would be important for those items to be included in the CUP application. He said he would also like to see the items starting on page 8 section 49.65.1145 where it addresses the hours of operation, section 49.65.1155 Odor, and the sections addressing the Waste Plan and Maintenance, Security Plan, and Signage included in the CUP application process.

Additional discussion took place regarding what was to appear in the CUP application vs. the overarching ordinance. Concerns brought up related to signage specifically for marijuana establishments that are different than the general CBJ sign ordinance. They also discussed hours of operation being the same for all establishments, noxious odors and brought up the "scarlet letter" signs that are required in Colorado for those establishments that had violations. Ms. Mead suggested that the ordinance language could be drafted to provide some side boards which would include hours of operations kept at general parameters but allow for the Planning Commission to impose additional conditions if a particular permit requires it.

Mr. Watson said he is comfortable with most of the suggestions but did not agree with the Planning Commission setting different hours of operations. He said the Assembly should put it in either this ordinance or the CUP application process. He also said that the section in 49.65.1155 Odor is setting them up for a situation similar to the noise ordinance which he felt was all in the eyes of the beholder type of scenario.

Ms. Mead said the other way to handle that issue would be to set specific standards.

Ms. Becker suggested they change that section on page 8 of the ordinance to read: All marijuana establishments shall utilize a ventilation and odor system that prohibits the detection of noxious odors from outside the licensed premises.

Mr. Satre said that given that he suggested adding the language to the CUP ordinance, it may run into problems with the moratorium being lifted in January and the recommended changes not being made in time for the Assembly and Planning Commission review prior to January 1.

Ms. Mead said that the danger when standards are not identified up front, is that they may run into arbitrary results. She said that by January she thinks this process will be mostly tied up. Ms. Mead said the pieces that she would like to clarify for sure are the odor/ventilation plan, security plan, and waste and to have standards identified for those.

Mr. Kiehl noted that the state will already require those plans for the license application process and he did not feel they needed to impose something different from what the state already was requiring. Ms. Mead said that SOA would require plans for those issues and asked if the plans being submitted to the state would also be submitted as part of the CUP process. Mr. Kiehl said, yes, he would think so.
Ms. Gladziszewski said she would also hope that anytime the SOA requires something of an applicant, whatever was being submitted to the SOA would also be sufficient for CBJ purposes and not make them do something else.

Mr. Kiehl said that Mr. Satre makes a good point with respect to the calendar and in light of the fact that there is not a Thanksgiving meeting planned, he asked if the committee has any other items for inclusion by staff when it comes back to the committee. Ms. Gladziszewski asked about the enforcement process and the penalty and if there were other penalties. Ms. Mead said there are multiple penalty options including civil fines, criminal penalties, injunctive relief. Ms. Mead explained that on page 9, there is a penalty section that speaks to what Chief Johnson was talking about.

Mr. Watson asked if CBJ has ever cited the landfill for noxious odors. Ms. Mead said that she was not aware of a code section that says the landfill cannot have noxious odors.

Ms. Mead said if the committee wished, she will bring two language options back for consideration: one set would have language with more civil violations and the other would have language with criminal violations and the committee can make its choices from those. Mr. Kiehl said his inclination is that we have a civil hammer and does not see the need for a criminal hammer.

Ms. Mead asked if the committee had some direction to her as to what the civil fine should be. They requested she look into other code sections and come up with something in parity with other civil fines.

VI. COMMITTEE MEMBER COMMENTS AND QUESTIONS

None

VII. SUPPLEMENTAL MATERIALS

VIII. ADJOURNMENT at 7:33 pm

Note: Agenda packets are available for review at the Juneau Municipal Libraries by request and online at www.juneau.org

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