

AGENDA ITEM SUMMARY

City Council

January 7, 2014

STAFF

Beth Sowder, Neighborhood Services Manager

SUBJECT

Second Reading of Ordinance No. 186, 2013, Amending Ordinance No. 158, 2013, to Phase In the Effective Date of the Regulations Adopted by Ordinance No. 158, 2013, for Outdoor Service Areas That Are Not Located Within or Adjacent to Public Sidewalks or Other Public Rights-of-Way.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on December 17, 2013, amends the effective date of the new City Code provisions that expanded the application of the smoking ordinance to outdoor serving areas. The Ordinance establishes a “phase-in” or delayed implementation date for outdoor service areas that are not within or adjacent to sidewalks or other public rights-of-way, in an effort to limit the negative impact of Ordinance No. 158, 2013, on affected businesses.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, December 17, 2013 (w/o attachments) (PDF)
2. Ordinance No. 186, 2013 (PDF)

AGENDA ITEM SUMMARY

City Council

December 17, 2013

STAFF

Beth Sowder, Neighborhood Services Manager

SUBJECT

First Reading of Ordinance No. 186, 2013, Amending Ordinance No. 158, 2013, to Phase In the Effective Date of the Regulations Adopted by Ordinance No. 158, 2013, for Outdoor Service Areas That Are Not Located Within or Adjacent to Public Sidewalks or Other Public Rights-of-Way.

EXECUTIVE SUMMARY

The purpose of this item is to amend the effective date of the new City Code provisions that expanded the application of the smoking ordinance to outdoor serving areas. The Ordinance would establish a “phase-in” or delayed implementation date for outdoor service areas that are not within or adjacent to sidewalks or other public rights-of-way, in an effort to limit the negative impact of Ordinance No. 158, 2013, on affected businesses.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

When City Council adopted Ordinance No. 158, 2013, regarding expansions to the smoking ordinance, some business owners expressed concerns about the potentially negative impact the Ordinance might have on their businesses. Implementation of the ordinance was moved from January 1, 2014 to January 17, 2014 so staff could bring an option for Council consideration to phase-in implementation of the Ordinance in an effort to limit the negative impact on certain businesses.

Some businesses have patios located away from the public right-of-way or public sidewalks, so smoking on their patios does not impact the general public or passersby. While the overall intent of the Ordinance is to protect the health of anyone exposed to secondhand smoke in these outdoor areas, the immediate concern is for members of the public who have not chosen to enter a patio that allows smoking. For this reason, the implementation date of January 17, 2014, as adopted by Council, should apply to all patios located within the public right-of-way or adjacent to public sidewalks.

Some patios that currently allow smoking are situated away from the public right-of-way and are not adjacent to public sidewalks, so secondhand smoke generated from those patios does not impact the general public or passersby. The perception is that people affected by secondhand smoke on these patios are there by choice. In an effort to limit the negative impact to these businesses, Council may choose to phase-in or delay the effective date of implementation specifically for patios located away from and not adjacent to public right-of-way or public sidewalks.

Feedback received from some of the businesses regarding a time frame that would limit the negative impact to their businesses includes either waiting until when/if Council chooses to ban smoking in the Old Town area (preferred) or delaying implementation until end of spring. Staff does not recommend waiting to delay implementation until when/if Council chooses to ban smoking in Old Town because there currently is not enough information to know when or if this will actually occur. Staff recommends a

reasonable delay of six months. This would give businesses time to get through the winter months and develop a marketing plan to limit negative impacts. Staff is open to Council's recommendation on the delayed implementation date.

FINANCIAL / ECONOMIC IMPACT

This could limit the financial/economic impact to certain businesses.

ENVIRONMENTAL IMPACTS

This will improve air quality by eliminating secondhand smoke in these outdoor dining areas.

PUBLIC OUTREACH

Staff discussed this with the businesses who identified themselves as having patios located away from the public right-of-way or public sidewalks to get feedback regarding what time frame would be helpful to them. As indicated above, their preferred option would be to delay implementation until City Council chooses to ban smoking from the Old Town area. If this option was not possible, they indicated that at least waiting until the end of spring would be helpful.

ATTACHMENTS

1. Powerpoint presentation (PDF)

COPY

ORDINANCE NO. 186, 2013
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ORDINANCE NO. 158, 2013, TO PHASE IN THE
EFFECTIVE DATE OF THE REGULATIONS ADOPTED BY
ORDINANCE NO. 158, 2013, FOR OUTDOOR SERVICE AREAS THAT
ARE NOT LOCATED WITHIN OR ADJACENT TO PUBLIC SIDEWALKS
OR OTHER PUBLIC RIGHTS-OF-WAY

WHEREAS, over the past few years, City staff has received increasing complaints and concerns regarding exposures to secondhand smoke; and

WHEREAS, the City Council has previously found and determined that there is no safe level of exposure to secondhand smoke; and

WHEREAS, the concern over the health impacts of secondhand smoke continues to rise among the citizens of Fort Collins; and

WHEREAS, on November 19, 2013, the City Council adopted Ordinance No. 158, 2013, (“the Ordinance”) which included smoking bans in outdoor serving areas of bars and restaurants; and

WHEREAS, the intent of the Ordinance is to create more smoke-free zones to reduce public exposure to secondhand smoke; and

WHEREAS, certain business owners have expressed concerns about the potentially negative impact the Ordinance might have on their establishments and have indicated that a phase-in of implementation would help to mitigate such impact; and

WHEREAS, the Ordinance already includes a provision that delays implementation of the Ordinance to January 17, 2014; and

WHEREAS, the purpose of that delay was to allow staff time to develop a recommended phase-in date and criteria as to which establishments should be phased in; and

WHEREAS, although the intent of the Ordinance is to protect all members of the general public from secondhand smoke emanating from all outdoor serving areas, the most immediate concern is for passersby who have not chosen to enter patios that allow smoking; and

WHEREAS, smokers who congregate in outdoor service areas within or adjacent to sidewalks and other public rights-of-way present a greater risk to the general public than do the persons smoking in those outdoor areas that are removed from the sidewalks and rights-of-way; and

WHEREAS, the City Council has determined that in order to balance the health and safety interests of the general public with the business interests of the affected business owners, it is in the best interests of the residents of the City that the Ordinance be amended to allow for a phase-in of the Ordinance for certain establishments as described above.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Section 3 of Ordinance No. 158, 2013, is hereby amended to read as follows:

Section 3. For businesses with outdoor serving areas within or adjacent to sidewalks or other public rights-of-way, the amendments made by this Ordinance shall take effect as of midnight, January 17, 2014. For businesses with outdoor serving areas not within or adjacent to sidewalks or other public rights-of-way, the amendments made by this Ordinance shall take effect as of midnight, June 17, 2014.

Introduced, considered favorably on first reading, and ordered published this 17th day of December, A.D. 2013, and to be presented for final passage on the 7th day of January, A.D. 2014.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 7th day of January, A.D. 2014.

Mayor

ATTEST:

City Clerk