

Memorandum

To: Town Council
From: Malcolm Fleming, Town Manager
Date: March 8, 2024
Re: 2024 Ballot Issues Status Update



Town Council directed staff to investigate the possibility of adding four issues to the 2024 Ballot. The possible issues are: Short-Term Rental Tax, Lodging Tax, Marijuana Excise Tax, and Annexation of Weld County parcels into the RTD District. This memo is intended to provide an update to Council on the current status of this work and recommendations from staff on which issues to put on the 2024 ballot or to conduct further research.

Recommendation

At this time, except for the RTD annexation question, which requires some additional research, staff recommend placing only the Marijuana Excise Tax question on the 2024 ballot and holding off on other possible ballot issues. This approach focuses on the highest priority issues that are ready and ripe for voter consideration. This approach will help keep voters' attention from being diverted away from the main topic on Erie's 2024 ballot: all seven seats of the Town Council.

To confirm staff is moving forward as Council desires, during Council's April 16 Study Session we will focus on additional research findings and details of the RTD annexation issue. We will also ask Council to confirm staff's recommendations on the other possible ballot questions discussed below.

Marijuana Excise Tax

Council asked staff to pursue this issue after reviewing the results of the 2023 Community Survey and the transition to Home Rule. The Town asked residents in the 2021 and 2023 Community Surveys about their support for lifting the current moratorium on marijuana sales. The questions posed to residents also asked if their support changes in two different scenarios: 1) having an excise tax in place, and 2) having strict zoning restrictions in place. In both of those scenarios 67% of respondents said they would Support or Strongly Support lifting the moratorium.

While lifting the moratorium is not a question that needs to go to the voters (it can be lifted by a vote of the Council in an Ordinance), the Town cannot impose a tax on marijuana sales without that tax being approved by voters.

Town staff conducted research into how other municipalities have handled their tax amounts and zoning areas. After reviewing this research, having discussions with the Erie Police Department, reviewing best practices for zoning and licensing, and gathering other relevant data, staff recommends putting the tax question to voters this year. Staff believes an Excise Tax amount of 5% would be appropriate for the Town at this time because it's consistent with most other municipalities across the state.

Lifting the current moratorium on marijuana sales could be conditioned on voters approving the Excise Tax. If the Excise Tax fails on the ballot, the moratorium would stay in place. Staff is developing proposed new zoning and regulations governing marijuana sales for Council consideration. Based on staff research, a maximum of 2 stores could be possible within the Town's current boundaries under the proposed zoning. Including this information in material on the matter would allow voters to clearly understand what would be implemented if they approve the Excise Tax.

Staff Recommendation: Staff recommend asking Erie voters to approve a 5% Excise Tax on Retail Marijuana sales as part of the 2024 Ballot. Staff will continue work on proposed zoning and operational regulations for recreational marijuana sales for Council consideration, with implementation of the zoning and regulations contingent on voter approval of the Excise Tax. Staff also believes the current survey results from 2021 and 2023 are sufficient for gauging public sentiment and further polling is not needed at this time. The Communications & Community Engagement Department will complete information and outreach between now and the setting of ballot language.

Short-Term Rental Tax

Town Council asked staff to consider this issue following the transition to Home Rule in Erie. The Planning & Development Department is evaluating the possibility and appropriate timing of a Short-Term Rental (STR) tax, but believes we should collect more data before proposing a ballot measure. As it stands, STRs are not addressed in the Erie Municipal Code and thus STRs, defined as stays of less than 30 days, are not an allowed use. Because STRs have not been a source of significant complaints to date, the Town has not enforced the de facto prohibition. However, not being an allowed use also means there is no mechanism for licensing or registration, and therefore no official data on the numbers, locations, or other details about STRs in Erie.

Staff proposes conducting research in 2024 on the current magnitude of STRs in Erie to better gauge what impact new regulations might have. Staff will also research STR best practices and lessons learned by other communities. Once staff determines the scope of the current use, staff will develop possible regulations for consideration by Council,

which at minimum would allow for licensing and monitoring.

Additionally, staff will reevaluate the specific tax-related question to determine the best course of action and most appropriate amount to propose on a ballot. This could be ready for the 2026 ballot if Council wants to pursue this issue.

Staff Recommendation: Staff recommend this possible tax be put on hold until the 2026 ballot while we collect data on the current status of short-term rentals in Erie and develop additional regulations for Council consideration on this use type before asking voters to consider a STR tax.

Lodging Tax

Town Council asked staff to also consider this issue—which is similar to the STR issue—following the transition to Home Rule in Erie. The Town does not have a hotel or other lodging type at this time. Though we anticipate a hotel as part of the Town Center build-out, that possibility is still a few years away before the hotel would be open for business. Staff can take the next year to reach out to neighboring municipalities and learn about best practices and lessons learned with regard to Lodging Taxes. This extra time would also allow the Finance Department to ensure all mechanisms for collecting this sort of tax are researched and prepared before a ballot question is created.

After identifying best practices and determining an appropriate amount to ask the voters to consider, this item could be ready for the 2026 ballot if Council wants to pursue this issue.

Staff Recommendation: We recommend waiting until we are closer to hotel construction before asking voters to consider this tax. Waiting allows time for staff to research best practices and set up mechanisms to collect this tax.

RTD Annexation – Weld County

This item was suggested for consideration by Town staff as a way to help secure more transit-related grant funding and to extend the areas that could be served by the Regional Transit District (RTD) in Erie. Annexing the out-of-RTD Weld County portions of Erie into the RTD would add a new 1% sales tax to goods and services purchased from businesses or by residences located in those annexed portions. Staff believes annexing these areas into the RTD requires an item on the ballot for residents to vote for or against.

Since suggesting this item to Council earlier this year, staff learned more about this process. Annexations of this sort must follow certain procedures. It is our

understanding from state statute, the Town Attorney, and RTD, that the Town must ask the Weld County Commissioners to pass a resolution for the Town to hold an election asking Erie voters to annex into RTD. We are still researching this issue to determine whether the vote would be among all Erie voters or just those voters from properties not already in the RTD. Because voters are likely to vote against something unless there are clear benefits, we are also compiling information on the benefits Town residents would see from including these properties in the RTD.

As an alternative to a ballot question on this matter, the Town could work with our Legislative delegation to craft proposed legislation to expand the RTD boundary to include all properties in Erie. This approach also requires additional research and work to prepare something for consideration during the 2025 Legislative Session.

Staff Recommendation: After completing additional research, staff will make a recommendation on whether to seek a resolution from Weld County Commissioners for the Town to hold an election with the RTD annexation question on the ballot or whether to pursue this matter through the legislative process in 2025. **This issue is scheduled for discussion during the Council's April 16 Study Session.**