

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2019

COUNCIL BILL NO. CB19-1110
COMMITTEE OF REFERENCE:
Business, Arts, Workforce & Aviation Services

A BILL

For an ordinance amending the alcohol beverages and retail marijuana chapter of the Denver Revised Municipal Code to create a licensing scheme in which promotional associations may operate common areas for the consumption of alcohol within approved entertainment districts in the City and County of Denver.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. Article II of Chapter 6 shall be repealed and reenacted as follows:

ARTICLE II. – ENTERTAINMENT DISTRICTS AND COMMON CONSUMPTION AREAS

Sec. 6-11. Definitions

As used in this article, the following words and phrases shall have the following meanings:

(1) *Alcohol beverage* means any fermented malt beverage or malt, vinous or spirituous liquors, as defined in the Colorado Liquor Code.

(2) *Attach* means the connection, as authorized by the director, of any of the liquor licensed premises identified in C.R.S. 44-3-301(11)(c)(II), as amended, to an adjoining common consumption area to provide alcohol beverages for consumption within the common consumption area.

(3) *Certified promotional association* means a promotional association that has been authorized by the director.

(4) *Colorado Liquor Code* means Article 3, Article 4, and Article 5 of Title 44 of the Colorado Revised Statutes, as amended.

(5) *Common Consumption Area* means an area as defined in C.R.S. § 44-3-103(11), as amended, where persons over the age of 21 may consume alcohol beverages outside of a liquor licensed premises.

(6) *Director* shall mean the director of the Denver Department of Excise and Licenses.

(7) *Eligible neighborhood organization* means any of the following organizations that includes within its boundaries all or a portion of the property where a common consumption area is proposed to be located and is a registered neighborhood organization as defined in the Denver Revised Municipal Code that has been in existence for more than two (2) years or any other type of association of residents and owners of real property designated by the director as an eligible

neighborhood organization.

(8) *Entertainment district* shall have the same meaning as in C.R.S. § 44-3-103(15).

(9) *Evidence of community support* means any of the following forms of documentation; provided, however, that such documentation is authorized by an officer, director, or agent of one (1) or more eligible neighborhood organizations:

a. A letter of community support or non-opposition;

b. A document indicating community support or non-opposition;

c. A good neighbor agreement; or

d. Any other evidence of community support deemed sufficient by the director.

(10) *Licensee* means a certified promotional association that has been issued a common consumption area license under the terms of this article.

(11) *Liquor License* means a license issued pursuant to the Colorado Liquor Code for the sale of fermented malt beverages or malt, vinous, or spirituous liquors.

(12) *Promotional Association* shall have the same meaning as in C.R.S. § 44-3-103(39), as amended.

Sec. 6-12. – License and Certification Required.

(a) It is unlawful for any person or entity to operate a common consumption area without a license and in compliance with all applicable state and local laws.

(b) The director may place conditions on a license to ensure that the premises will be operated lawfully, incorporate the specific and enforceable provisions of a good neighbor agreement, or add any operational requirements and/or restrictions included in any evidence of community support submitted with the application.

Sec. 6-13. – Application.

Any application for the certification of a promotional association shall be accompanied by an application for the issuance of a common consumption area license. Such applications shall be made to the director upon forms provided by the director and shall include, in addition to any information required by Chapter 32 of this code, all supplemental materials required by this article and any rules adopted pursuant thereto. Such applications shall also contain the following information necessary for the establishment of an entertainment district by city council. The director may, at the director's discretion, require additional documentation associated with the application, as may be necessary, to enforce the requirements of the Colorado Liquor Code and this article II.

(a) *Certified promotional association*. An application for promotional association certification shall include the following:

- (1) The name of the promotional association to which the common consumption area license would be issued;
- (2) The name and address of any liquor licensed establishment that would be attached to and providing alcohol beverages for consumption within the common consumption area;
- (3) The name and address of any non-liquor licensed establishments whose premises are included in the boundaries of the common consumption area license;
- (4) The name and address of each person that is on the board of directors of the promotional association;
- (5) A statement of whether there has been any disciplinary action at any of the attached liquor licensed premises within the past five years of the date of the application; and
- (6) Any other such information and documents as may reasonably be required by the director.
- (b) *Common consumption area license.* An application for a common consumption area license shall include the following:
- (1) A site plan for the common consumption area indicating the attached liquor licensees and any businesses whose premises are included within the boundaries of the common consumption area, with the boundaries of the proposed common consumption area outlined in red;
- (2) The name of the entertainment district in which the common consumption area would be located and a map indicating the location of the common consumption area within the entertainment district;
- (3) Proof of possession and evidence of permission authorizing alcohol consumption from any non-liquor licensed premises located within the common consumption area;
- (4) Proof of liability insurance carried by the promotional association within the liability coverage limits set by the director;
- (5) A description of the proposed days and hours of operation and, for common consumption area licenses that will operate on an event basis only, all dates for any event occurring within that calendar year;
- (6) Evidence of community support, which may include any additional operational requirements that the eligible neighborhood organization deems necessary to protect the health, safety, and welfare of the surrounding community;
- (7) A parking and transportation plan;
- (8) A health and sanitation plan;
- (9) A security and admission control plan; and

(10) Any required permits or authorizations including, but not limited to, right of way permits, zoning permits, and fire and building permits.

(c) *Entertainment District*. City Council has sole authority to approve and create entertainment districts within the City and County of Denver, either by ordinance or resolution. A request for an entertainment district shall include the following:

(1) The proposed name of the entertainment district;

(2) A detailed area map of the proposed entertainment district including the following:

a. The boundaries of the proposed entertainment district outlined in red;

b. The total acreage of the proposed entertainment district; and

c. The name, address, license type, and square footage of each liquor licensed premises, excluding temporary modifications, specified in C.R.S. § 44-3-103(15)(c), as amended.

Sec. 6-14. – Notice and public hearing.

(a) *Public notice; posting and publication*.

(1) Upon receipt of an application for certification of a promotional association and issuance of a common consumption area license, the director shall schedule a public hearing upon the application not less than sixty (60) days from the date of the application and shall post and publish the public notice thereof not less than thirty (30) days prior to such hearing. Public notice shall be given by the conspicuous posting of a sign at each participating business within and attached to the common consumption area and by publication in a newspaper of general circulation.

(2) Notice shall conform to the requirements of C.R.S. § 44-3-311, as amended, and any other requirements set forth by the director.

(b) *Conduct of public hearings*.

(1) At the public hearing held pursuant to this section, any party in interest shall be allowed to present evidence and to cross-examine witnesses. As used in this section, "party in interest" means any of the following:

a. The applicant;

b. An adult resident of the neighborhood under consideration;

c. The owner or manager of a business located in the neighborhood under consideration;

d. The principal or representative of any school located within five hundred feet of the boundaries of the common consumption area; or

e. An authorized representative of a registered neighborhood organization that encompasses all or part of the neighborhood under consideration.

(2) The director shall designate the neighborhood being affected by such application. The designation of the geographical extent and boundaries of such neighborhood shall be within the sole discretion of the director.

(c) Results of investigation; decision of director.

(1) Not less than five (5) days prior to the date of hearing, the director shall make known the director's findings based on the director's initial investigation of the application documents in writing to the applicant and other interested parties. The failure of the director to make these findings known five (5) days prior to the date of the public hearing shall not preclude the director from later determining that the application should be approved or denied.

(2) Before certifying a promotional association and issuing a common consumption area license, the director shall consider the reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that are or may be placed upon the neighborhood by the local licensing authority.

(3) Before entering any decision approving or denying the application, the director shall consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation and the public hearing required by this section, and any other pertinent matters affecting the qualifications of the applicant for issuance of a common consumption area license and certification of a promotional association including this article and Chapter 32 of this Code, or any rules and regulations adopted pursuant thereto.

(4) Unless additional time is necessary to fully investigate an application, any decision of the director approving or denying an application shall be in writing stating the reasons therefor, within thirty (30) days after the date of the public hearing, and a copy of such decision shall be sent by certified mail to the applicant at the address shown in the application and to the state licensing authority. The failure of the director to issue a final decision within thirty (30) days after the date of the public hearing shall not preclude the director from later determining that the application should be approved or denied.

Sec. 6-15. - Transfer of ownership; promotional association structure change.

(a) *In general.* Applications to change the composition of the board of directors of a certified promotional association shall be made upon forms provided by the director. The director may refuse to authorize a change in the certified promotional association membership for any of the reasons for which the director would refuse to certify a new promotional association.

1 (b) *Change in ownership of attached liquor licenses.* A change in ownership of a liquor license
2 attached to the common consumption area does not require recertification of a promotional
3 association certification. The certified promotional association shall submit the name and address
4 of each director to the Department within thirty (30) days of such a change.

5 (c) Nontransferable. No license granted pursuant to this article shall be transferable from one
6 (1) person or entity to another.

7 **Sec. 6-16. - Changing, altering, or modifying of common consumption area or**
8 **entertainment district.**

9 (a) After the issuance of a common consumption area license, a licensee shall make no
10 physical change, alteration, or modification to the common consumption area which materially or
11 substantially alters the boundaries or the usage of the common consumption area from the plans
12 and specifications submitted at the time of the original license application without a new application
13 pursuant to section 6-13 and approval of the director.

14 (b) If, after reviewing the application for a modification of the common consumption area, the
15 director finds that the proposed change materially or substantially alters the boundaries or usage
16 licensed premises the director shall conduct a public hearing in accordance with the requirements
17 of section 6-14 and shall issue written findings for the new application.

18 (d) The boundaries of an entertainment district may not be expanded, enlarged, or modified
19 without approval from City Council through an ordinance or resolution.

20 **Sec. 6-17. - Term of licenses; renewals.**

21 (a) Any certification or license issued pursuant to this article shall be valid for a period of one
22 (1) year from the date of issuance, or for such shorter or non-consecutive times as approved by the
23 director. A common consumption area license issued for a period of less than one (1) year shall not
24 be issued to a certified promotional association for more than a total of fifteen (15) days in one (1)
25 calendar year.

26 (b) If a certified promotional association has received notice of disciplinary action against any
27 attached liquor licensed premises the application for renewal shall include a notice.

28 (c) Upon receipt of an application for renewal of a common consumption area license, the
29 director may conduct a renewal hearing if there is reasonable cause to believe that:

30 (1) The licensee, or any of the agents, servants, employees, or members of the
31 licensee, have violated any ordinance of the city or any state law on the premises or have permitted
32 such a violation on the premises by any other person;

(2) There are grounds for denial, suspension, revocation or other licensing sanctions as provided in this article or any rules and regulations adopted pursuant thereto.

(d) In addition to the grounds set forth in Chapter 32 of this Code, a common consumption area license may not be renewed and a promotional association may not be recertified if there are causes for denial, suspension, revocation or other licensing sanctions.

(e) Except where the director has received a complete renewal application along with the requisite fees, it shall be unlawful for any certified promotional association to operate a common consumption area after the expiration date recorded upon the face of the common consumption area license.

Sec. 6-18. – Causes for denial.

In addition to the grounds set forth in Chapter 32 of this Code, a common consumption area license may not be issued and a promotional association may not be certified if:

(1) There is good cause to deny the application. The term “good cause” means:

a. The applicant or licensee has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Colorado Liquor Code or any rules and regulations promulgated pursuant thereto, or this article II or any rules and regulations promulgated pursuant to thereto;

b. The applicant or licensee has failed to comply with any special terms or conditions that were placed on its license;

c. The applicant has not established the reasonable requirements of the neighborhood or the desires of its adult inhabitants by a preponderance of the evidence;

d. Evidence that the issuance of the license will adversely impact the health, welfare or public safety of the neighborhood in which the common consumption area is proposed to be located.

(2) The applicant or licensee fails to establish and maintain evidence of community support;

(3) The information and evidence available to and considered by the director fails to reasonably establish that the proposed procedures for security and admission control will prevent the consumption of alcohol beverages by underage persons;

(4) The proposed common consumption area does not have adequate physical barriers to close the area to motor vehicle traffic and limit pedestrian access;

(5) The promotional association board is not composed of at least one director from each liquor licensed premises attached to the common consumption area;

(6) The proposed premise of the common consumption area is not a single, contiguous area;

(7) The proposed common consumption area overlaps with another common consumption area or any other liquor licensed premises, except the premises may overlap with a special event license operating in compliance with all state and local laws;

(8) The promotional association fails to establish, by a preponderance of the evidence, any of the qualifications for the license at a public hearing pursuant to section 6-14; or

(9) The application fails to comply with all state and local laws, and any rules and regulations adopted pursuant thereto.

Sec. 6-19. – Disciplinary actions; sanctions; penalties.

(a) *Disciplinary actions.* In addition to the grounds provided in Chapter 32 of this Code, a license may be suspended or revoked for any of the grounds for denial set forth in section 6-18 of this article II.

(b) *Civil penalties in lieu of fine.* In lieu of the maximum fine for license violations set forth in section 32-30(c) of the Denver Revised Municipal Code, the director is hereby authorized to impose civil penalties for license violations to the same extent and according to the same standards as are utilized by the Colorado Liquor Enforcement Liquor Code and any and all applicable rules and regulations adopted pursuant thereto.

Sec. 6-20. – Unlawful acts.

(a) It shall be unlawful for any person to violate any rule or regulation adopted by the director pursuant to section 6-21.

(b) It shall be unlawful for any person to operate a common consumption area between the hours of 2 a.m. and 8 a.m.

(c) It shall be unlawful for any promotional association to change or modify the common consumption area premises or usage without approval from the director.

(d) It shall be unlawful for any licensed liquor establishment to allow its patrons to consume alcohol beverages in a common consumption area without authorization from the director to attach to the common consumption area.

(e) It shall be unlawful for a promotional association or any liquor licensed establishment to sell or store alcohol within the common consumption area.

(f) It shall be unlawful for any promotional association to permit its patrons to remove an open alcohol beverage from the common consumption area.

(g) It shall be unlawful for any non-liquor licensed business or person located within the boundaries of the common consumption area to sell or serve alcohol.

Sec. 6-21. – Rules and regulations.

(a) The director may make such reasonable rules and regulations as may be necessary for the purpose of administering and enforcing the provisions of this article and any other ordinances or laws relating to and affecting the licensing and operation of common consumption areas.

Sec. 6-22. – Effective date; no vested rights.

(a) *Effective Date.* This article shall be effective ninety (90) days from the adoption of rules pursuant to section 6-21, and the requirements of this article shall apply to all applications submitted on or after that date.

(b) *Invalid license.* Any common consumption area license issued for an area that is not within a City Council approved entertainment district has no effect and is invalid.

(c) *No entitlement or vested right to licensing.* No person shall be deemed to have any entitlement or vested right to licensing under this article II by virtue of having received any prior license or permit from the city including, by way of example, but not limited to, any zoning permit, any building permit, or any sales tax license.

Sec. 6-23. – Sunset.

This article II shall be effectively repealed five years after the effective date of the ordinance.

Section 2. Division 1 of Article III of Chapter 6 of the Denver Revised Municipal Code shall be amended by adding the language underlined and deleting the language stricken to read as follows:

Sec. 6-31. – Definitions.

As used in this article, the following words and phrases shall have the following meanings, unless otherwise clearly indicated by the context:

(1) *Alcohol beverages* shall mean fermented malt beverages, or malt, vinous or spirituous liquors, as defined in the Colorado Liquor Code.

(2) *Cabaret* shall mean any establishment or business licensed to sell or allow consumption of alcoholic beverages ~~or 3.2% beer,~~ which offers or provides entertainment for patrons or guests.

Section 3. Division 2 of Article III of Chapter 6 of the Denver Revised Municipal Code shall be amended by adding the language underlined and deleting the language stricken to read as follows:

Sec. 6-64. – Special events cabaret permit.

(a) The director is authorized to issue a special events cabaret permit to any person or organization licensed to sell or allow consumption of alcoholic beverages ~~or 3.2 percent beer for consumption on the premises~~ for the purpose of allowing entertainment, other than adult entertainment, for any event held on a limited or one-time basis.

Section 4. Article IV of Chapter 6 of the Denver Revised Municipal Code shall be amended by adding the language underlined to read as follows:

Sec. 6-91. – Definitions.

As used in this article, the following words and phrases shall have the following meanings:

(1) *Alcohol beverages* shall mean fermented malt beverage or malt, vinous or spirituous liquors, as defined in the Colorado Liquor Code.

Section 5. Article I of Chapter 32 of the Denver Revised Municipal Code shall be amended by adding the language underlined to read as follows:

Sec. 32-11. – Issuance or denial.

If it shall come to the attention of the director of excise and licenses that one (1) or more of the above grounds exists, the application shall be denied. Otherwise the license shall be granted. The director shall furnish the applicant a copy of the order and the reasons supporting the denial upon the written request of the applicant in the event that the application is denied. Any applicant whose application has been denied without a hearing shall be entitled to a hearing on his application upon written request to the director. The director may place conditions on a license to ensure that the licensee will operate lawfully or to incorporate the specific and enforceable provisions of a good neighbor agreement. All such conditions attached to the license shall continue to apply to renewed or transferred licenses until the restrictions are removed by the director.

Section 6. Article II of Chapter 32 of the Denver Revised Municipal Code shall be amended by adding the language underlined to read as follows:

Sec. 32-52. – Alcohol beverages—Common consumption areas.

The fees for common consumption areas and promotional associations shall be as follows:

(1) Application fees

a. Common consumption area license ... \$250.00

b. Promotional association certification ... \$250.00

(2) Annual fees

a. Common consumption area license ... \$250.00

b. Promotional association certification ... \$250.00

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4 COMMITTEE APPROVAL DATE: October 23, 2019
5 MAYOR-COUNCIL DATE: October 29, 2019
6 PASSED BY THE COUNCIL: _____
7 _____ - PRESIDENT
8 APPROVED: _____ - MAYOR _____
9 ATTEST: _____ - CLERK AND RECORDER,
10 EX-OFFICIO CLERK OF THE
11 CITY AND COUNTY OF DENVER
12 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____;
13 PREPARED BY: Reginald Nubine, Assistant City Attorney
14 DATE: October 29, 2019
15 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
16 the City Attorney. We find no irregularity as to form and have no legal objection to the proposed
17 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
18 3.2.6 of the Charter.
19 Kristin Bronson, Denver City Attorney
20 BY: _____, Assistant City Attorney DATE: _____
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