

**CITY AND COUNTY OF DENVER  
DEPARTMENT OF EXCISE AND LICENSES**

**POLICIES AND PROCEDURES  
PERTAINING TO EXCISE AND LICENSING HEARINGS**

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# **POLICIES AND PROCEDURES GOVERNING HEARINGS**

## **BEFORE THE DEPARTMENT OF EXCISE AND LICENSES**

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### **ARTICLE I. GENERAL PROVISIONS**

#### **Section 1.01 Authority**

These Policies and Procedures are adopted by the City and County of Denver's Director of the Department of Excise and Licenses in accordance with the authority in Article II of the Charter of the City and County of Denver and Article V of Chapter 6, Article XII of Chapter 24, and Article 1 of Chapter 32 of the Denver Revised Municipal Code of the City and Country of Denver. These Policies and Procedures pertain to all licensing hearings conducted by the Department. The Policies and Procedures govern all proceedings initiated after the effective date herein, and supersede and replace any previous versions or editions adopted by the Department.

#### **Section 1.02 Definitions**

The following definitions of terms shall apply, unless the context requires otherwise:

"Applicant" means a person who has applied for a business or individual licenses with the Department, or any transaction relating thereto.

"Cabaret License" means a license granted to an establishment or business licensed to sell alcoholic beverages or 3.2% beer which offers or provides entertainment for patrons or guests.

"City" means the City and County of Denver, State of Colorado.

"Code" means the Denver Revised Municipal Code and any rules and regulations promulgated thereunder.

"Day" means calendar day unless expressly stated otherwise. If the last calendar day falls on a weekend or holiday, day means the following business day.

"Department" means the Denver Department of Excise and Licenses.

"Director" means the Director of the Department of Excise and Licenses, or the Director's designee.

"Designated Area" means the Department's designation on a map of an area around the proposed or licensed location.

"Final Decision" means the final order issued by the Department after review of a Recommended Decision, any objections filed thereto, and the entire record.

“Hearing Officer” means the person designated by the Director to conduct a public hearing to receive testimony and evidence, question the parties and any witnesses, and make a recommended decision on the matter. At her or his discretion, the Director may serve as the Hearing Officer in any particular matter.

“Liquor license” means a license granted to an individual or entity to sell alcoholic or fermented malt beverages issued pursuant to Title 12, Article 46, Article 47, or Article 48 of the Colorado Revised Statutes.

“Manager” means the individual who is responsible for managing, directing, and administering the general conduct of the entire business at the business location.

“Order” means any order issued pursuant to the Director’s authority under the Code.

“Party in Interest” has the meaning as set forth in Articles II, III, and IV of the Code.

“Marijuana License” means a license granted to an individual or entity to sell medical or retail marijuana pursuant to Chapter 6, Article V and Chapter 24, Article XII of the Code.

“Neighborhood Witness” means an adult resident over the age of 21, or the owner or Manager of a business within the Designated Area who testifies in favor or opposition of the Application.

“Recommended Decision” means a Hearing Officer’s findings of fact, conclusions of law, and the decision recommended to the Director following a hearing or review of written briefs.

“Relevant Registered Neighborhood Organization (RNO)” means a Neighborhood Organization as defined in Chapter 12, Article III of the Code, registered with the Community Planning and Development Department, whose boundaries overlap any portion of the Designated Area.

“Relevant City Council Member(s)” means the City Council member whose district boundaries overlap any portion of the Designated Area, including members at-large.

“Respondent” means the party who is recipient of an Order issued by the Director.

“Policies and Procedures” means these Policies and Procedures Governing Hearings before the Director of the Department of Excise and Licenses.

“State” means the State of Colorado.

### **Section 1.03 Scope and Construction of Hearing Rules**

- (a) **Scope.** The Department’s Policies and Procedures set forth the standard practices of the Department for informational and guidance purposes only. They may be modified or

adapted in the discretion of the Director of the Department, as required to address particular matters, to the extent permitted by law.

- (b) **Construction.** The Policies and Procedures shall be construed to promote the just and efficient determination of all matters presented.

## **ARTICLE II. PROVISIONS APPLICABLE TO ALL HEARINGS**

### **Section 2.01 Applicability**

The provisions in this Article apply to all hearings conducted by the Department. Additional rules may apply for specific license types or hearing matters.

### **Section 2.02 General Procedures**

- (a) **Hearing Location.** Unless the Director or Hearing Officer orders a change of location, hearings will generally be conducted at 201 West Colfax Avenue, Dept. 206, Denver, Colorado, 80202.
- (b) **Setting of the Hearing.** Hearing dates are set based upon availability on the Department hearing calendar, availability of hearing officers, and the date of the Application. No hearing shall be held before any notice, posting and publication requirements are met.
- (c) **Notice of Hearing.** The Department shall send written notice of the hearing date, location and time to the Applicant, Licensee or Respondent by e-mail. If an e-mail is not available, the Department will send notice via U.S. mail.
- (d) **Ex Parte Communication – Prohibited.** The Director and Hearing Officer act as quasi-judicial decision-makers. As such they shall not initiate, accept, or consider *ex parte* communications, or consider other communications made to them outside the presence of the Parties in Interest, or their lawyers, concerning the subject matter of the hearing except when scheduling or rescheduling a hearing. If the Director or Hearing Officer receives *ex parte* communication, they will promptly notify all known Parties in Interest of the substance of the *ex parte* communication, including RNO representatives, and give the parties the opportunity to respond if necessary.
- (e) **Communications with Director or Hearing Officer.** All communications with the Director or Hearing Officer concerning the subject matter of a hearing or a decision must be made on the record with all other parties present or with all parties-in-interest copied on written correspondence. Communications outside the hearing room must be in writing, sent to a designated e-mail address as provided by the Department, and must include all other Parties in Interest, including but not limited to the Applicant, the Applicant's Attorney, any witness, or RNO representatives within the designated area.
- (f) **Continuances.** Hearing dates may be revised or continued at the discretion of the Director

or Hearing Officer. In the event a hearing is continued, a new scheduling order setting new dates and deadlines shall be issued for the hearing. A continuance may be requested by any Party-in-Interest and must be submitted in writing.

- (g) **Hearings to be Open to the Public.** Pursuant to the Code, all hearings conducted by the Department shall be open to the public.
- (h) **Recommended Decision.** After considering all the evidence, the Hearing Officer shall make a Recommended Decision to the Director. If the hearing is uncontested, the Hearing Officer shall make all reasonable efforts to issue a Recommended Decision within five (5) business days after the date of the hearing.
- (i) **Email/Mailing Policy.** Recommended Decisions will be sent via email by the Hearing Officer to the below individuals. If an email address is not available for any of these individuals, the Department will send the Recommended Decision via U.S. mail.
  - (i) The Director;
  - (ii) Department Staff;
  - (iii) Assistant City Attorney;
  - (iv) Applicant's or Licensee's attorney;
  - (v) Applicant or Licensee (if not represented by an attorney); and
  - (vi) Parties in Interest or Authorized RNO representatives who request a copy of the Recommended Decision at the hearing.
- (j) **Objections to Recommended Decision.** Any Party in Interest may file written objections to the Recommended Decision within ten (10) days of the date the Recommended Decision is issued. Objections must be sent to all other parties who received the Recommended Decision.
- (k) **Response to Objections.** If written objections are filed, any Party in Interest may file a written response to the objections within fifteen (15) days of the date the Recommended Decision is issued. Responses to objections must be sent to all other parties who received the Recommended Decision.
- (l) **Comments regarding the Hearing.** Comments received prior to or after the Recommended Decision will be accepted by the Department; however, the Director will determine what weight, if any, such comment has in the Final Decision. Comments will not be afforded the same weight as petitions, remonstrances, testimony, and other exhibits admitted during the public hearing.

- (m) **Final Decision.** The Director shall issue a Final Decision after reviewing the Recommended Decision, any objections, and the entire record. The Department will send the Final Decision to all individuals who received the Recommended Decision.
- (n) **Judicial Review.** In accordance with applicable law, Final Decisions are subject to judicial review by the Denver District Court.
- (o) **Default.** Failure to appear at a scheduled hearing may result in the Application being denied. The Director or Hearing Officer, in his or her discretion, may deem an application “withdrawn” rather than “denied” if an applicant fails to appear at a scheduled hearing and there is no opposition to the license.

### **Section 2.03 Control and Conduct of the Hearing**

- (a) **Recording of Hearings – Required.** The Director or Hearing Officer shall cause all hearings to be electronically recorded.
- (b) **Hearing Officer Controls Hearings.** The Director or Hearing Officer shall control the conduct of all persons at the hearing to promote efficiency in the presentation of relevant evidence, preserve decorum, prevent disruption of the proceedings, prevent distraction, preserve fairness and respect for all parties, and prevent intimidation of witnesses and others. In order to control the conduct of persons at the hearing the Hearing Officer may, in his or her discretion:
  - (i) Reorganize the presentation of evidence and/or testimony to make reasonable accommodations for the schedules of witnesses or parties;
  - (ii) Limit the presentation of evidence, testimony, or cross-examination to prevent irrelevant, repetitive, or cumulative evidence or examination;
  - (iii) Admonish any person or order any person to perform any reasonable act or to refrain from engaging in discourteous conduct;
  - (iv) Expressly take notice of a person’s conduct on the record and consider that conduct as reflecting on that person’s credibility, character, or fitness to hold the license at issue;
  - (v) Order any person to leave the hearing room;
  - (vi) Enforce the provisions of these “Policies and Procedures Governing Hearings”; or
  - (vii) Order any person’s application, position, or defense withdrawn, denied, or defaulted as may be appropriate.

**(c) Witnesses and Testimony.**

- (i) All testimony shall be given under oath.
- (ii) Any Applicant, Respondent, Party in Interest or City Attorney may present evidence, witness testimony, and may cross-examine or question any witness.
- (iii) The Director or Hearing Officer may question any party or witness.

**(d) Introduction of Evidence at Hearings.**

- (i) Any party intending to participate in a public hearing should review the entire file before the hearing.
- (ii) Any document contained in the Department's official file does not automatically become part of the record unless it is specifically introduced as evidence at the hearing.
- (iii) The Hearing Officer may admit a letter or other document written by a person who is not present at the hearing, if a person who is present offers the writing as evidence and provides sufficient information for authentication purposes. If admitted, the appropriate weight given to such evidence is within the discretion of the Hearing Officer.
- (iv) All relevant evidence is admissible, including hearsay evidence that is offered with sufficient indicia of reliability.
- (v) In her or his discretion, the Hearing Officer may exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

**(e) Exhibits.** All parties shall provide four (4) identical copies of each exhibit that they intend to introduce as evidence at the hearing. All parties shall be responsible for their own copies of exhibits.

**(f) Hearing Length.** Subject to requests for additional time as provided in paragraph (i) of this section, hearings shall last no longer than four (4) hours.

**(g) Requests for Additional Time.** If the hearing extends longer than the time allowed in paragraph (h) of this section, any party may request that the hearing be scheduled to another date to continue the submission of evidence or testimony. Rescheduling for a continuation of the hearing may be granted in the Hearing Officer or Director's discretion.

**Section 2.04 Use of Cameras at Hearings**

- (a) **Photography and Videotaping – Approval Required.** The use of any camera at the hearing to photograph or videotape the proceedings is prohibited, unless approved in advance as provided in paragraph (b) of this section. If a person has not received prior approval as provided in paragraph (b), the use of cameras may be allowed at the hearing officer's discretion upon a showing of good cause for the person's failure to obtain prior approval.
- (b) **Request in writing to Photograph or Video Recording – Required.** Any person who wishes to photograph or videotape the hearing must file a written request with the Department at least two (2) days prior to the hearing. The request must state the following:
- (i) The date, time, and place of the hearing; and
  - (ii) The type of camera, microphones, and associated equipment proposed for use at the hearing; and
  - (iii) The proposed location of the camera, microphones and associated equipment in the hearing room; and
  - (iv) The names and phone numbers of the persons who will be operating the equipment.
- (c) **Limitations.** The Director or Hearing Officer, in their discretion, may impose additional restrictions related to the number, operation, or location of cameras at the hearing.
- (d) **Additional Rules regarding Cameras.** The Director and Hearing Officer, in their discretion, may impose additional restrictions on the use of cameras and associated equipment at hearings to preserve decorum, prevent disruption of the proceedings, prevent distraction, preserve fairness, and prevent intimidation of witnesses and others.

## **Section 2.05 Legal Representation before the Department**

- (a) **Department's Representation.** The Department shall be represented by the Denver City Attorney's Office.
- (b) **Attorney Entry of Appearance**
- (i) Licensed Attorneys. A licensed attorney may represent any Applicant, Respondent, Party in Interest, or RNO in a public hearing. A written entry of appearance must be filed with the Department that includes the attorney's full name, attorney registration number, business address, telephone number, fax number, and email address.

- (ii) Paralegals. Paralegals acting under the direction and supervision of an attorney who has entered an appearance may prepare applications, pleadings, or other procedural papers for filing before the Department on behalf of the attorney's client.
- (iii) Effect of Entry of Appearance. Once an attorney has entered an appearance on behalf of any Party-in-Interest, no action will be taken by request of that party unless the attorney withdraws his/her appearance or the party submits a signed statement that he/she is no longer represented by counsel.

**(c) Who May Represent Particular Forms of Entities**

- (i) Individuals and Sole Proprietors. A natural person may appear on his/her own behalf.
- (ii) Partnerships. A partnership may be represented by an active general partner.
- (iii) Corporations. Subject to certain exceptions, a corporation or limited liability company may appear before an administrative agency only through an attorney. Proceedings commenced or advocated and pleadings filed by a corporation or limited liability company without an attorney will be not be accepted, EXCEPT that:
  - (1) A closely held corporate entity (3 or fewer shareholders) may be represented by an officer of such closely held entity if the officer provides a corporate resolution authorizing the officer to appear on behalf of the entity in all matters before the Department.
  - (2) The following persons may be authorized by resolution to appear on behalf of the closely held corporate entity:
    - a. An officer of a cooperative, corporation, or nonprofit corporation;
    - b. A general partner of a partnership or of a limited partnership;
    - c. A person in whom the management of a limited liability company is vested or reserved; and
    - d. A member of a limited partnership association.

- (d) **Relevant Registered Neighborhood Organizations.** An RNO may be represented by any person who has evidence of authority to represent the RNO at the specific public hearing, which authority may be shown through a letter signed by the President or the Chair of the Board of Directors or other evidence satisfactory to the Director or the Hearing Officer.

## **Section 2.06 Unlicensed Practice of Law**

- (a) **Unlicensed Practice of Law Prohibited.** Unlicensed individuals are prohibited from practicing law in matters before the Department.
- (b) **Practices considered the Unlicensed Practice of Law.** When provided for another person or entity, the following activities are generally considered to constitute the practice of law before the Department:
  - (i) Instructing or advising another in regard to the applicable law on an agency matter;
  - (ii) Preparing documents requiring familiarity with legal principles beyond the knowledge of the ordinary layman;
  - (iii) Preparing applications, pleadings, or other procedural papers requiring legal knowledge and technique;
  - (iv) Appearing before a hearing officer in a disciplinary or public proceeding involving the other person's license(s) issued pursuant to the laws of the State or the City.
- (c) **Practices not considered the Unlicensed Practice of Law.** The following common activities do not constitute the practice of law:
  - (i) Completing forms which do not require any knowledge and skill beyond that possessed by the ordinarily experienced and intelligent layman.
  - (ii) Performing the services of engineers, non-legal experts, accountants, and clerks.
  - (iii) Acting in a Department proceeding involving the adoption of a rule or future action which affects a group and where no vested property rights are at stake.

## **ARTICLE III. PROVISIONS APPLICABLE TO HEARINGS FOR NEW LICENSES**

### **Section 3.01 Applicability**

Unless provided for otherwise, the provisions of this section apply to all hearings for new liquor or fermented malt beverages, marijuana, and cabaret licenses.

### **Section 3.02 Pre-Hearing Procedures**

- (a) **Setting of Hearing**
  - (i) Notice Packet. After license application forms, supplemental documents, and

appropriate investigation are complete to the satisfaction of the Department, the Department will send a Notice Packet to the Applicant addressing the following:

- (1) An Application Letter or Scheduling Order stating the date and time of the hearing and any other hearing requirements deemed necessary for purposes of the hearing;
  - (2) A copy of the written findings made by the Department;
  - (3) Standards for approval of the Application, and the burden that must be met by the applicant;
  - (4) Instructions for petitions, publication, postings, and requests for evening hearings;
  - (5) Instructions for filing pre-hearing briefs, exhibits, petitions, and testimony;
  - (6) A map of the Designated Area; and
  - (7) Any other such documentation as deemed necessary by the Director.
- (ii) Pre-Hearing Conference. The Director may require that the Applicant attend a pre-hearing conference with the Director or a designee to review the Application Letter. In the event a pre-hearing conference is scheduled, the Applicant or its representatives must notify the Department of any dates and times it will not be available to attend a hearing. The purpose of the pre-hearing conference is to:
- (1) Review supplemental information provided by the Applicant in response to the Department's written findings, or to provide additional information that may be required by the Department;
  - (2) Establish what contents shall be included on posting sign(s);
  - (3) Litigate evidentiary or other pre-hearing issues;
  - (4) Exchange exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;
  - (5) Define the scope and nature of testimony being offered;
  - (6) Prevent repetitive and cumulative evidence or examination;
  - (7) Establish all other pre-hearing requirements such as the date and time of the

hearing; and

(8) Consider any other matters which may expedite the disposition of the proceeding.

- (iii) Exhibits. All documents, exhibits, electronically stored information and tangible things that a party intends to introduce as evidence shall be filed with the Department at least seven (7) days prior to the hearing. At the Director or Hearing Officer's discretion, any of these types of documents filed after the deadline may be included.
- (iv) Pre-hearing Briefs. Any party may file a pre-hearing brief for review of the matter. The Director or Hearing Officer may also require that any interested party file a pre-hearing brief. Such brief must be filed at least fourteen (14) days prior to the hearing date. At the Director or Hearing Officer's discretion, any of pre-hearing briefs filed after the deadline may be included.
- (v) Responses to Pre-hearing Briefs. In the event that a party files a pre-hearing brief, other parties in interest may file a response. Such response must be filed at least seven (7) days prior to the hearing date. At the Director or Hearing Officer's discretion, any response filed after the deadline may be included.
- (vi) Scheduling Order Controls. In the event of conflict between these Rules and any Scheduling Order issued by the Department, the provisions of the Scheduling Order shall control.

**(b) Findings**

- (i) When Issued. Prior to scheduling a hearing for a new license, the Department will issue written findings to the Applicant and all known Parties in Interest.
- (ii) Purpose of Findings Document. Written findings represent an initial investigation by the Department to ensure that an application is both complete and accurate. If the application is deficient, or if the investigation has not been resolved to the satisfaction of the Director, the findings will identify such deficiency and a date by which the deficiency must be cured. The Department reserves the right to reject an application that has any deficiencies, or require that the application be resubmitted in correct form.
- (iii) Findings not Binding on Department. Nothing in this section shall preclude the Director from conducting further investigation, receiving additional evidence, and considering any pertinent matter affecting qualification of the applicant for licensure. The failure to make any specific finding shall not preclude the Director from later determining that the application should be approved or denied, or that the license should be suspended or revoked.

**(c) Designated Area**

- (i) Designated Area – How Determined. Prior to a hearing for a new license or for a change of location of an existing license, the Department shall generate a map of the Designated Area. The following guidelines Designated Areas will typically be created using the following guidelines:
  - (1) Downtown Denver. If the proposed premises are located in the downtown area, the Department will count approximately nine (9) square blocks from the proposed location following the pattern of the block ends, thereby creating a rectangle shaped area. Downtown Denver includes the Central Business District and Lower Downtown (LoDo).
  - (2) All Other Areas. If the proposed premises are located in an area outside of the downtown area, the Department will count approximately five (5) blocks from the proposed location to the north, five (5) blocks to the south, five (5) blocks to the east, and five (5) to the west. These four points will then be joined by a straight line following the pattern of the block ends. The result will be a rectangle shaped area.
  - (3) Areas Included. In the event that either of the above methods of measurement results in a rectangular area that splits a street, both sides of the street shall be included in the Designated Area.
- (ii) Modification of the Designated Area – Without Request. The Department may modify the Designated Area to avoid cutting through blocks, residences, or businesses, or as otherwise deemed necessary by the Director.
- (iii) Modification of the Designated Area – Upon Request. Any party in interest may request, in writing, that the Director modify an established Designated Area. The party must state the reason(s) for the request, and the decision to grant or deny such a request shall be within the sole discretion of the Director.

**(d) Notification, Notice of Posting, and Publication**

- (i) Notification by the Department. When scheduling the hearing, the Department shall provide an e-mail notification of the purpose, date, time, and place of the hearing to:
  - (1) Any RNOs whose boundaries overlap the Designated Area;
  - (2) The Denver Police Department's Designated Representative;

- (3) Relevant City Council Members.
- (ii) Notification to Registered Neighborhood Organizations. The Department shall provide written notification to RNOs as follows:
- (1) The notice will be sent by e-mail to the contact persons for each Relevant RNO.
  - (2) Contact information for registered neighborhood organizations is provided to the Department by the Department of Community Planning and Development (“CPD”). Any updates to this information should be made directly to CPD by RNOs as the Department relies upon the CPD database.
  - (3) RNOs are responsible for maintaining accurate e-mail addresses with CPD. The Department is not responsible for any failed e-mail communications due to full e-mail boxes, incorrect e-mail addresses, failure of the recipient’s e-mail system, or recipient’s failure to check e-mails.
- (iii) Requests for Additional Information. Any notified party may contact the Department for further information or documentation regarding an application. However, the Department will not make any preliminary findings or representations about whether an applicant may operate lawfully at a potential location.
- (iv) Notice of Posting – Required. The Applicant must post notice of the public hearing at the proposed location for a period of time provided in the Scheduling Order. The Department will make best efforts to require at least twenty (20) days of posting.
- (v) Posting Sign Requirements.
- (1) The sign posted must be sturdy and white, not less than 22 inches wide and 26 inches in height, with letters not less than one inch in height.
  - (2) The Department will provide applicants with contents to be included on the posting sign. The sign must be posted with all required contents at all times during the posting period.
  - (3) The sign shall indicate the name and address of the Applicant and any partners or officers of the Applicant.
  - (4) The sign may be posted inside of the proposed premises, but must be posted so as to be conspicuous and plainly visible to the general public.
  - (5) A map of the Designated Area must be attached to the sign and must indicate the area in which petitions for or against the Application may be circulated and

from which witnesses may testify.

(6) The sign must inform the public that petitions for evening hearings must be filed 15 days before the scheduled hearing date.

- (vi) Failure to Adhere to Posting Requirements. An inspector from the Department will make random inspections to ensure that posting requirements are met. If the Applicant fails to adhere to the posting requirements, the Director may cancel the hearing or reschedule the hearing and require an additional period of posting.
- (vii) Publication – Newspaper of General Circulation. The Department shall publish notice of the Application and hearing dates in a newspaper of general circulation. The publication shall identify the same information contained in posted notices, with the exclusion of the map of Designated Area.
- (viii) Publication – Department Website. The Department shall post notice of the Application and hearing dates on its website, and will make reasonable efforts to ensure that postings are current.

**(e) Petitions**

- (i) Petitions - Permitted. Petitions opposing or supporting the license may be circulated by the Applicant, by a firm or corporation retained by the Applicant, or by any other Party in Interest. Petitions are not required, nor are they the only method to establish the reasonable requirements and/or the desires of the adult inhabitants of the Designated Area.
- (ii) Petition Forms. Petitions must be circulated on forms prepared by the Department, or forms that include, at minimum, the same information contained in forms prepared by the Department.
- (iii) Circulator Age Requirement. Petition circulators must be eighteen (18) years of age or older, but do not need to be residents of the Designated Area.
- (iv) Commencement of Circulation. Circulators may begin gathering petitions on the date the Notice Packet is sent. Signatures obtained before this date will not be considered by the Department.
- (v) Signature Requirements. Any signature not in compliance with the following requirements may, at the discretion of the Hearing Officer, be disqualified from consideration:

(1) Signatures may be obtained only from individuals who are over twenty-one (21) years of age, and who reside in and/or own or manage a business within the

Designated Area.

(2) Petitions must be signed in the presence of the petition circulator.

(3) Individuals signing the petition must respond to each and every question presented on the petition.

- (vi) Limitation on Signatures. A person may sign no more than one petition regarding the same application. If a person wants to change his or her position regarding the issuance of the license, that person must appear at the public hearing and request that his or her name be stricken from one petition and added to the other.
- (vii) Pre-filed Petitions - Required. Petitions must be pre-filed with the Department at least seven (7) days prior to the date of the hearing. Petition circulators must sign a notarized affidavit provided by the Department that states they have complied with circulation procedures.
- (viii) Continuances. If the hearing is continued, all petitions collected after the original circulation date may be accepted by the Hearing Officer.
- (ix) Inspection of Petitions. The Department shall make petitions available to Parties in Interest. Any Party in Interest seeking a copy of the petitions must do so in writing.
- (x) Challenges to Validity. Any Party in Interest may challenge the validity of petition signatures and addresses that do not meet the requirements set out in this section (e). In addition, the Department reserves the right to verify all signatures.
- (xi) Objections to Petitions. All objections to petition signatures must be made in writing, and filed with the Department at least one (1) day prior to the hearing date. If the day before the Hearing falls on a Sunday, objections must be filed on the Friday before the Hearing. At the Director or Hearing Officer's discretion, any objection filed after the deadline or presented at the hearing may be included.

**(f) Special Pre-Hearing Rules for Evening Hearings**

- (i) Applicability. In addition to general provisions applicable to all hearings, the following special rules shall apply to all evening hearings conducted by the Department. Evening hearings may be scheduled for new license applications, change of location applications, material modification applications, or applications to renew an existing license.
- (ii) Grant or Denial. An evening hearing may be granted or denied at the discretion of the Director.

- (iii) Requesting an Evening Hearing. Requests for evening hearings may only be made by Parties in Interest. Such request must:
  - (1) Be submitted at least fifteen (15) days prior to the scheduled hearing date;
  - (2) Be in writing, on a form provided by the Department;
  - (3) Contain at least twenty-five (25) valid signatures of residents or owners/managers of businesses within the Designated Area, each of whom is over twenty-one (21) years of age, along with the person's address.
- (iv) Scheduling of Evening Hearing. If the request is granted, the Department will re-schedule the evening hearing at least thirty (30) days after the approval of the request. The hearing will be held at 6:00 p.m. in a location designated by the Director.
- (v) Notice Packet. If the request for an evening hearing is granted, the Department will issue a scheduling order that provides notice of the following:
  - (1) The date and time of the hearing;
  - (2) A copy of the written findings made by the Department;
  - (3) Standards for approval of the Application and the Applicant's burden of proof;
  - (4) Instructions for petitions, publication, and postings;
  - (5) A map of the Designated Area; and
  - (6) Any other such documentation as deemed necessary by the Director.
- (vi) Effect of Rescheduling Hearing. The Applicant shall amend the posting to reflect the rescheduled date and time of the hearing.

### **Section 3.03 Hearing Procedures**

- (a) **Burden of Proof.** The Applicant shall have the burden of proving by a preponderance of the evidence that it satisfies all of the requirements for the issuance of a new license.
- (b) **Presentation of Evidence and Testimony**
  - (i) Order of Presentation. In general, the Applicant will first present evidence in support of the Application. Any opponents will then have an opportunity to

introduce evidence against the Application. This order of presentation may be modified by the Hearing Officer at his or her discretion.

- (ii) Qualified to Testify. Testimony and evidence for or against the Application may be considered from the following sources:

(1) The Applicant;

- a. The Applicant must present at least one Neighborhood Witness (other than the Applicant) to testify establishing the need and desire of the neighborhood for the license to issue.
- b. Prior to the hearing date, the Applicant may request that the Director waive the one Neighborhood Witness requirement specified in the above paragraph; however, such requests must:
  - (i) Be in writing;
  - (ii) Demonstrate why it is impractical to present at least one Neighborhood Witness supporting needs and desires; and
  - (iii) Be mailed five (5) days prior to the hearing.
- c. The Decision whether to grant the request to waive the one Neighborhood Witness requirement is within the discretion of the Director.

(2) Neighborhood Witnesses;

- a. A maximum of three (3) Neighborhood Witnesses who qualify as Parties in Interest may testify at length in favor of the Application. This number does not include the Applicant, any RNO representatives, or any *en masse* testimony. All Neighborhood Witnesses are subject to cross-examination.
- b. A maximum of three (3) Neighborhood Witnesses who qualify as Parties in Interest may testify at length in opposition to the Application. This number does not include any RNO representatives or *en masse* testimony. All Neighborhood Witnesses are subject to cross-examination.
- c. Other parties in interest who attend the hearing may testify "*en masse*" (as a group) either for or against the issuance of the license. *En masse* testimony shall be limited to a determination of whether they qualify as a Party in Interest and support or protest issuance of the license. *En masse* witnesses may not be cross-examined, except as to qualifications to testify.

(3) City Council Member;

- a. Any member of city council, whose area of representation includes any part of the Designated Area, shall be allowed to testify in his or her official capacity regarding his or her position on the application and convey the

position of their constituents.

- b. For liquor and cabaret applications, members of city council are not Parties in Interest and, therefore, their testimony will have no evidentiary value. If a member of city council resides within the designated area, he or she may testify at length as one of the three (3) witnesses allotted to either side.
- c. For marijuana applications, members of city council, as described in section 3.03(b)(2)a, are Parties in Interest and may testify at length as one of the three (3) witnesses allotted to either side.

(4) Authorized RNO Representatives.

- a. A representative of a Relevant Registered Neighborhood Organization may testify as to the position taken by the organization regarding an Application.
- b. Except in marijuana hearings, such representative shall not be entitled to cross-examine witnesses or seek judicial review of the Department's decision.

(5) Expert Witnesses.

- a. A witness intending to give expert opinion testimony must first be qualified by the Hearing Officer as an expert at the hearing.
- b. At least five (5) days prior to the hearing, parties shall file a list of any experts they intend to call as an expert witness. The list should include the expert's name, the expert's field of expertise, and the subject matter of expert's opinion.

(iii) Admissibility. The Hearing Officer shall rule on the admissibility of evidence.

(iv) Ability to Present Evidence and Cross-Examine. All Parties in Interest, the Applicant, the Respondent, or the City Attorney shall be allowed to present evidence and to cross-examine witnesses.

(v) Hearing Preparation and Introduction of Evidence.

- (1) The Department shall make the hearing file available prior to the hearing. Any party may review the file in advance of the hearing at the Department. Any party seeking a copy of the hearing file must do so in writing to the Department.
- (2) Any document contained in the Department's hearing file must be offered by a proponent (such as the author of the representative of an organization's letter) to be admissible at the hearing.

- (3) The Hearing Officer or Director may admit a letter or other document written by a person who is not present at the hearing, if a person who is present offers the writing as evidence and provides sufficient information for authentication purposes. If admitted, the appropriate weight given to such evidence is within the discretion of the Director or Hearing Officer.
- (4) Hearsay evidence may be admissible if it is offered with indication of its reliability and possesses probative value.
- (5) Cumulative testimony is discouraged. Witnesses should not repeat the same or very similar testimony of another witness.

#### **ARTICLE IV. HEARINGS FOR A LIQUOR OR FERMENTED BEVERAGES LICENSE**

##### **Section 4.01 Applicability**

In addition to general provisions applicable to all hearings, the following provisions shall apply to all hearings for new liquor and fermented malt beverage licenses conducted by the Department.

##### **Section 4.02 Pre-Hearing Procedure**

- (a) **Parties in Interest.** As used in this Article III, “Party in Interest” means any of the following:
  - (i) The Applicant;
  - (ii) An adult resident of the Designated Area;
  - (iii) The owner or Manager of a business located in the Designated Area; or
  - (iv) The principal or representative of any school located within five hundred feet of the premises.

##### **Section 4.03 Hearing Procedures**

- (a) **Standards for Issuance.** In deciding whether to issue a license the Department shall consider evidence and testimony presented on each of the following:
  - (i) Needs and Desires. The Department will 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 license by the Department.

- (ii) Effect on Competition. With respect to a second or additional license for the same licensee, the Department shall consider the effect on competition of the granting or disapproving of additional licenses to such licensee. In no case, shall the Department approve an application for a second or additional hotel and restaurant license that would have the effect of restraining competition.
  - (iii) Undue Concentration. With respect to a new tavern or retail liquor store license, the Department may consider whether the issuance of such a license would result in or add to an undue concentration of the same class of license, and, as a result, require the use of additional law enforcement resources.
  - (iv) Additional Considerations. Nothing in this section shall preclude the Department from finding that the Application should be denied for any other reason under state or local law, or rules and regulations adopted pursuant thereto.
- (b) **Good Neighbor Agreements and Conditions.** The Department encourages regular communication between Registered Neighborhood Organizations and applicants/licensees for resolution of issues that are of concern to the community. Many neighborhood organizations have negotiated “Good Neighbor Agreements” (GNA) with applicants and licensees.
- (i) Keeping of Good Neighbor Agreements. A GNA submitted to the Department shall remain in the applicant’s/licensee’s permanent license file.
  - (ii) Agreed Upon Conditions. Upon agreement between the applicant/licensee and the Registered Neighborhood Organization(s), the Department, at the Director’s discretion, may attach specific GNA provisions as conditions on the license and will print those condition on the license, if the conditions are:
    - (1) Legal – conditions must be legal;
    - (2) Enforceable – conditions must be clearly and objectively enforceable by the Department; and
    - (3) Displayable – conditions must be displayable on the face of the license, allowing the public to easily see the conditions or restrictions.
  - (iii) Incorporation of Entire GNA. The Department will not incorporate the entire GNA on the face of the Applicant’s license. The GNA is an agreement between the applicant/licensee and the RNO. The Department does not enforce GNAs.
  - (iv) Conditions Tied to License. If conditions/restrictions are attached to a license, the conditions will remain on the license in the event of any transfer of the license to new ownership.

- (v) Modification of Conditions. The Director may modify conditions attached to the license in order to ensure that they are legal, enforceable, and displayable, or upon the request of the Registered Neighborhood Organization(s) and the licensee.

#### **Section 4.04 Post-Issuance Actions**

##### **(a) License Renewal.**

- (i) Discretionary Renewal Hearing. Upon written complaint, or by the Director's own motion, the Director may require a renewal hearing upon receipt of an application for renewal of any liquor license.
- (ii) Written Complaints.
  - (1) If the Department receives a written complaint(s) from residents or owners or managers of businesses in the neighborhood about a licensee, or a written request to not renew a license, the Director may set a renewal hearing, at his or her discretion.
  - (2) The complaints must be provided on forms prepared by the Department and be received at least forty-five (45) days prior to the expiration date for the license.
- (iii) Notice and Posting – Required. No renewal hearing shall be held until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days.
- (iv) Standards for Renewal. The Director may refuse to renew any license for good cause, subject to judicial review. For purposes of denying a renewal, good cause means:
  - (1) The licensee or applicant 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;
  - (2) The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceedings;
  - (3) Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the establishment is located, which evidence must include a continuing pattern of fights, violent activity, or disorderly conduct. For purposes of this paragraph (d), “disorderly conduct” has the meaning as provided for in section 18-9-106, C.R.S; or

- (4) The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Denver Revised Municipal Code or any rules and regulations adopted pursuant thereto.

**(b) Change of Location.** The hearing procedures for the change of location of a liquor license are the same as those for a new liquor license.

**(c) Transfer of Ownership.**

- (i) Qualification Hearing. The Department will only require a hearing on a transfer of ownership application if issues related to unsatisfactory character, record, or reputation are uncovered in the Application or in internal investigation of the Application.
- (ii) Scheduling of Hearing. The Director will issue a Order in the event a hearing is required.
- (iii) Purpose of Hearing. The purpose of the hearing is to address only the character, record, and reputation of the Applicant.
- (iv) Burden of Proof. The Applicant has the burden of proving that their character, record, or reputation is satisfactory, such that the transfer should be granted.
- (v) Standard for Issuance. The Director may refuse to approve a transfer of ownership upon a showing that the character, record, or reputation of the Applicant is unsatisfactory, or that any other requirement for transfer of ownership has not been met, subject to judicial review.
- (vi) Notice of Hearing. The Department will send notification of the hearing to the Applicant, Relevant RNOs, and City Council Members.

**(d) Change, Alteration or Modification of Licensed Premises or Usage.**

- (i) Prior Approval Required. A licensee must seek and obtain approval from the Department and the State Liquor Enforcement Division prior to any material or substantial modification of a licensed premise.
- (ii) Material or Substantial Modification – Determination. The Director will determine whether a modification is material or substantial. In addition to material and substantial modification identified by the Liquor Enforcement Division, the following types of modifications are generally considered to be substantial:

- (1) The addition or deletion of a patio or outdoor area;

- (2) Increases in bar areas that lengthen or add bar space; or
- (3) Additional levels added to liquor licensed establishments.
- (iii) Material or Substantial Modification – Hearing Required. If the Director determines the modification is material and substantial, a hearing will be held on the Application.
- (iv) Posting and Notification. The hearing shall not be conducted until the Director has posted or caused to be posted a notice of hearing on the licensed premises for a period of ten (10) days, and provided notice to each of the following at least ten (10) days prior to the hearing: the licensee; the city council representative for the district in which the licensed premises is located; and any registered neighborhood association entitled to receive notice as provided in the Code.
- (v) Burden of Proof. The Applicant bears the burden of proof to make a prima facie case that the premises, as changed, will meet all licensing requirements.
- (vi) Standards for Issuances. Factors taken into consideration by the Department to determine whether the Applicant has met its burden include, but are not limited to:
  - (1) The reasonable requirements of the Designated Area and the desires of its adult inhabitants for the modification;
  - (2) The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement;
  - (3) Compliance with the applicable zoning laws of the municipality, city and county, or county;
  - (4) Compliance with the distance prohibitions; and
  - (5) Economic and social welfare, health, peace, and morals of the public.

## **ARTICLE V. APPLICATIONS FOR A MARIJUANA BUSINESS LICENSE**

### **Section 5.01 Applicability**

In addition to general provisions applicable to all hearings, the following provisions shall apply to all hearings for new medical or retail marijuana licenses conducted by the Department.

### **Section 5.02 Pre-Hearing Procedure**

(a) **Parties in Interest.** As used in this article V, “party in interest” means any of the following:

- (i) The Applicant;
- (ii) An adult resident of the Designated Area;
- (iii) The owner or manager of a business in the Designated Area;
- (iv) An authorized representative of an RNO that encompasses all or part of the Designated Area; or
- (v) Any member of city council elected from a district that encompasses all or any part of the Designated Area.

### **Section 5.03 Hearing Procedures**

(a) **Standards for Issuance.** In deciding whether to issue a license the Department shall consider evidence and testimony presented on each of the following:

- (i) Good Cause. In accordance with the Denver Medical and Retail Marijuana Code, the Director has authority to refuse to issue any medical marijuana center or retail marijuana store license for good cause, subject to judicial review. “Good cause” means:
  - (1) The applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Colorado Medical or Retail Marijuana Code or any rule and regulations promulgated pursuant thereto, or the Denver Medical or Retail Marijuana Code or any rules and regulations promulgated pursuant thereto.
  - (2) With respect to a second or additional medical or retail marijuana business license proposed by the same applicant, the Director shall consider the effect on competition of the granting or disapproving of additional licenses to such licensee, and no application for a second or additional license that would have the effect of restraining competition shall be approved.
  - (3) For applications to license any medical or retail marijuana business in the same location where any medical or retail marijuana business is or has previously been licensed, evidence that the licensed premises have been previously operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the establishment is located.
  - (4) Evidence that the issuance of the license will adversely impact the health,

welfare or public safety of the neighborhood in which the medical or retail marijuana business is proposed to be located.

- (ii) Needs and Desires. The Department will 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 Department.
  - (iii) Additional Considerations. Nothing in this section shall preclude the Department from finding that the Application should be denied for any other reason under state or local law, or rules and regulations adopted pursuant thereto.
- (b) **Good Neighbor Agreements and Conditions.** The Department encourages regular communication between Registered Neighborhood Organizations and applicants/licensees for resolution of issues that are of concern to the community. Many neighborhood organizations have negotiated “Good Neighbor Agreements” (GNA) with applicants and licensees.
- (i) Keeping of Good Neighbor Agreements. A GNA submitted to the Department will remain in the applicant’s/licensee’s permanent license file.
  - (ii) Agreed Upon Conditions. Upon agreement between the applicant/licensee and the Registered Neighborhood Organization(s), the Department, at the Director’s discretion, may attach specific GNA provisions as conditions on the license and will print those condition on the license, if the conditions are:
    - (1) Legal – conditions must be legal;
    - (2) Enforceable – conditions must be clearly and objectively enforceable by the Department; and
    - (3) Displayable – conditions must be displayable on the face of the license, allowing the public to easily see the conditions or restrictions.
  - (iii) Incorporation of Entire GNA. The Department will not incorporate the entire GNA on the face of the Applicant’s license. The GNA is an agreement between the applicant/licensee and the RNO. The Department does not enforce GNAs.
  - (iv) Conditions Tied to License. If conditions/restrictions are attached to a license, the conditions will remain on the license in the event of any transfer of the license to new ownership.
  - (v) Modification of Conditions. The Director may modify conditions attached to the license in order to ensure that they are legal, enforceable, and displayable, or upon

the request of the Registered Neighborhood Organization(s) and the licensee.

- (vi) Conditions without Request. The Director may place conditions on the license as a result of evidence or testimony introduced at the hearing, or resulting from investigation.

#### **Section 5.04 Post-Issuance Actions**

- (a) **License Renewal.** Upon receipt of an application for renewal of any marijuana license, the director may set a hearing in accordance with the provisions of the Code. The hearing procedures will be the same as those for enforcement proceedings.
- (b) **Change of Location.** The hearing procedures for the change of location of a marijuana license are the same as those for a new marijuana license.
- (c) **Renewal of a Marijuana Grow.** Pursuant to the Code, a public hearing may be scheduled for a protested license renewal of any medical or retail marijuana cultivation license subject to the following conditions:
  - (i) Applicability. Hearings will only be granted for grows located in zone districts where plant husbandry is not a permitted use but is already occurring as a compliant or nonconforming use under the zoning code.
  - (ii) Form of Request. The hearing request must be submitted in the form of a petition prepared by the Department and must contain at least ten (10) valid signatures of parties in interest gathered within ninety (90) days of the renewal date.
  - (iii) Standards for Renewal. The marijuana cultivation license shall be eligible for renewal in its current compliant or nonconforming location unless it is shown by a preponderance of the evidence presented at the hearing that:
    - (1) The existence of the marijuana cultivation facility on the licensed premises has frustrated the implementation of the city's comprehensive plan and any adopted neighborhood plan applicable to the subject property;
    - (2) The existence of the marijuana cultivation facility on the licensed premises has negatively affected nearby properties or the neighborhood in general, including by way of example any adverse effects caused by excessive noise, odors, vehicular traffic, or any negative effects on nearby property values;
    - (3) The existence of the marijuana cultivation facility has caused crime rates to increase in the surrounding neighborhood;
    - (4) The continued existence of a licensed marijuana cultivation facility in the subject location will have a deleterious impact on public health, safety and the

general welfare of the neighborhood or the city;

- (5) The applicant or any person from whom the applicant acquired a marijuana business failed to meet one of the requirements for licensure;
  - (6) The licensee, or any of the agents, servants or employees of the licensee, have violated any ordinance of the city or any state law on the premises or have permitted such a violation on the premises by any other person; or
  - (7) There are grounds for suspension, revocation or other licensing sanctions as provided in the Code.
- (iv) **Posting and Notice.** The hearing shall not be conducted until the Director has posted or caused to be posted a notice of hearing on the licensed premises for a period of ten (10) days, and provided notice to each of the following at least ten (10) days prior to the hearing: the licensee; the city council representative for the district in which the licensed premises is located; and any RNOs entitled to receive notice as provided in the Code.

## **ARTICLE VI. CABARET LICENSES**

### **Section 6.01 Applicability**

In addition to general provisions applicable to all hearings, the following provisions shall apply to all hearings for a new cabaret license conducted by the Department.

### **Section 6.02 Pre-Hearing Procedure**

- (a) **Parties in Interest.** As used in this Article V, “Party in Interest” means any of the following:
- (i) The Applicant;
  - (ii) An adult resident of the Designated Area;
  - (iii) The owner or Manager of a business located in the Designated Area; or
  - (iv) The principal or representative of any school located within five hundred feet of the premises.

### **Section 6.03 Hearing Procedures**

- (a) **Standards for Issuance.** In deciding whether to issue a license the Department shall consider evidence and testimony presented on each of the following:

- (i) Needs and Desires. The Department will 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 Department.
  - (ii) Health, Safety, Welfare and Morals. The Department will consider evidence that the issuance of the license will adversely impact the health, welfare or public safety of the neighborhood in which the cabaret is proposed to be located.
  - (iii) Additional Considerations. Nothing in this section shall preclude the Department from finding that the Application should be denied for any other reason under state or local law, or rules and regulations adopted pursuant thereto.
- (b) **Good Neighbor Agreements and Conditions.** The Department encourages regular communication between Registered Neighborhood Organizations and applicants/licensees for resolution of issues that are of concern to the community. Many neighborhood organizations have negotiated “Good Neighbor Agreements” (GNA) with applicants and licensees.
- (i) Keeping of Good Neighbor Agreements. A GNA submitted to the Department will remain in the applicant’s/licensee’s permanent license file.
  - (ii) Agreed Upon Conditions. Upon agreement between the applicant/licensee and the Registered Neighborhood Organization(s), the Department, at the Director’s discretion, may attach specific GNA provisions as conditions on the license and will print those condition on the license, if the conditions are:
    - (1) Legal – conditions must be legal;
    - (2) Enforceable – conditions must be clearly and objectively enforceable by the Department; and
    - (3) Displayable – conditions must be displayable on the face of the license, allowing the public to easily see the conditions or restrictions.
  - (iii) Incorporation of Entire GNA. The Department will not incorporate the entire GNA on the face of the Applicant’s license. The GNA is an agreement between the applicant/licensee and the RNO. The Department does not enforce GNAs.
  - (iv) Conditions Tied to License. If conditions/restrictions are attached to a license, the conditions will remain on the license in the event of any transfer of the license to new ownership.
  - (v) Modification of Conditions. The Director may modify conditions attached to the license in order to ensure that they are legal, enforceable, and displayable, or upon

the request of the Registered Neighborhood Organization(s) and the licensee.

- (vi) Conditions without Request. The Director may place conditions on the license as a result of evidence or testimony introduced at the hearing, or resulting from investigation.

#### **Section 6.04 Post-Issuance Actions**

- (a) **License Renewal.** The procedures for hearings on cabaret license renewals are the same as those for new cabaret licenses. The Director may hold a hearing upon an application for renewal of a cabaret license at the Director's discretion or upon relevant and substantial complaints to the Director, pursuant to D.R.M.C. § 6-53(f).
- (b) **Change of Location.** The procedures for hearings on applications to change location of a cabaret license are the same as those for new cabaret licenses. The Director may hold a hearing upon an application for renewal of a cabaret license at the Director's discretion or upon relevant and substantial complaints to the Director, pursuant to D.R.M.C. § 6-53(f).
- (c) **Transfer of Ownership.** The procedures for hearings on cabaret license transfers of ownership are the same as those for new cabaret licenses. The Director may hold a hearing upon an application for transfer of ownership of a cabaret license at the Director's discretion or upon relevant and substantial complaints to the Director, pursuant to D.R.M.C. § 6-53(f).
- (d) **Change, Alteration or Modification of Licensed Premises.**
  - (i) Modifications – Approval Required. No licensed premises shall be expanded, enlarged, or modified without the written approval of the Director.
  - (ii) Hearing Required for Material or Substantial Modifications. The Director shall require a public hearing for any proposed modification that materially or substantially modifies the existing premises. The procedures for hearings on the modification of existing cabarets are the same as those for new cabaret licenses.

### **ARTICLE VII. HEARINGS FOR A SPECIAL EVENT LIQUOR LICENSE**

#### **Section 7.01 Applicability**

Unless otherwise stated, the following provisions shall apply to all hearings for special event liquor licenses conducted by the Department.

#### **Section 7.02 Special Event Liquor Hearing Procedure**

- (a) **Pre-Hearing Rules for Special Event Liquor Permits**
  - (i) Applicability. In addition to general provisions applicable to all hearings, the

following special rules shall apply to all Special Event Liquor permit hearings conducted by the Department. Special Event Liquor hearings may be scheduled for new Special Event Liquor permit applications after protests to the application have been received by the department.

- (ii) Eligibility. A Special Event Liquor permit may only be granted to:
  - (1) An organization that has been incorporated under the laws of the State of Colorado for purposes of a social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain;
  - (2) An organization that is a regularly chartered branch, lodge, or chapter of a national organization or society organized for such purposes and being nonprofit in nature;
  - (3) An organization that is a regularly established religious or philanthropic institution; or
  - (4) To any political candidate who has filed the necessary reports and statements with the Colorado Secretary of State or the Clerk and Recorder of Denver.
- (iii) Grant or Denial. A Special Event Liquor hearing may be granted or denied at the discretion of the Director.
- (iv) Posting. The Applicant must post notice of the special event application for ten (10) days. The posting period is the time during which any written objections to the application will be received.
- (v) Scheduling of Public Hearing. The Department will schedule a public hearing on the Application. Generally, the hearing will be set for the day after the posting period.
- (vi) Vacating the Hearing. If no objections are received during the posting period, the hearing will be vacated and the application will be approved if the Director is satisfied that:
  - (1) The Applicant is qualified for licensing pursuant to all state and local laws and regulations; and
  - (2) The Applicant will conduct the event lawfully.

### **Section 7.03 Hearing Procedures**

- (a) **Burden of Proof.** In the event a hearing is scheduled, the opposition to the application shall have the burden of proving by a preponderance of the evidence that Applicant does

not satisfy all of the requirements for the issuance of a new permit. All claims must be reasonably based in fact. Mere speculation or supposition is insufficient.

(b) **Standards for Issuance.** In deciding whether to deny a permit the Department shall consider evidence and testimony presented on each of the following:

- (i) Proper Notice Posting. The Department will consider evidence that public notice of the proposed permit and the procedure for protesting issuance of the permit was not conspicuously posted at the proposed location for at least ten days before approval of the permit.
- (ii) Effect on Public Welfare. The Department shall consider evidence that the issuance of the special event permit would be injurious to the public welfare because of the nature of the special event, its location within the community, or the failure of the applicant in a past special event to conduct the event in compliance with applicable laws.

(c) **Good Neighbor Agreements and Conditions.** The Department encourages regular communication between Registered Neighborhood Organizations and applicants/licensees for resolution of issues that are of concern to the community. Many neighborhood organizations have negotiated “Good Neighbor Agreements” (GNA) with applicants and licensees.

- (i) Keeping of Good Neighbor Agreements. A GNA submitted to the Department will remain in the applicant’s/licensee’s permanent license file.
- (ii) Agreed Upon Conditions. Upon agreement between the applicant/licensee and the Registered Neighborhood Organization(s), the Department, at the Director’s discretion, may attach specific GNA provisions as conditions on the license and will print those condition on the license, if the conditions are:
  - (1) Legal – conditions must be legal;
  - (2) Enforceable – conditions must be clearly and objectively enforceable by the Department; and
  - (3) Displayable – conditions must be displayable on the face of the license, allowing the public to easily see the conditions or restrictions.
- (iii) Incorporation of Entire GNA. The Department will not incorporate the entire GNA on the face of the Applicant’s license. The GNA is an agreement between the applicant/licensee and the RNO. The Department does not enforce GNAs.
- (iv) Conditions Tied to License. If conditions/restrictions are attached to a license, the

conditions will remain on the license in the event of any transfer of the license to new ownership.

- (v) Modification of Conditions. The Director may modify conditions attached to the license in order to ensure that they are legal, enforceable, and displayable, or upon the request of the Registered Neighborhood Organization(s) and the licensee.
- (vi) Conditions without Request. The Director may place conditions on the license as a result of evidence or testimony introduced at the hearing, resulting from investigation, or incidents occurring at past events.

## **ARTICLE VIII. DENIAL HEARINGS**

### **Section 8.01 Applicability**

In addition to the provisions applicable to all hearings, the provisions of this Article apply to any Applicant whose Application has been denied.

### **Section 8.02 General Procedures**

- (a) **Petition for Appeal.** Any Applicant or Licensee whose application for a business or individual license has been denied, prior to a hearing, may appeal the decision of the Director by submitting an appeal request on forms provided by Department within ten (10) days following the date of such decision.
- (b) **Scheduling the Hearing.** The Department will issue a scheduling order setting the denial hearing.
- (c) **Burden.** The Applicant shall have the burden of proving by a preponderance of the evidence that the license should not be denied. All claims must be reasonably based in fact. Mere speculation or supposition is insufficient.
- (d) **Continuances at the Hearing.** A party may request that the hearing be scheduled to a new day at the hearing. The grant of additional time or continuation of the hearing may be granted in the Hearing Officer or Director's discretion.

## **ARTICLE IX. ENFORCEMENT PROCEEDINGS**

### **Section 9.01 Applicability**

In addition to the provisions applicable to all hearings, the provisions of this Article apply to any enforcement proceeding before the Department.

### **Section 9.02 General Procedures**

- (a) **Proceedings to Investigate Violations.** If the Director becomes aware that a licensee has violated any state or local law or regulation, or a condition placed on the license, the Director may, in the Director's discretion, initiate enforcement proceedings for revocation or suspension of the license.
- (b) **Show Cause Order.** The Director will issue a show cause order to any licensee who is alleged to be in violation.
- (c) **Notice.** The Department shall provide the licensee with a copy of a show cause order. Such order shall include the basis of the complaint and notice of the date and time of a hearing at which the licensee must show cause why its license should not be suspended or revoked.
- (d) **Burden.** At the hearing, the Department shall bear the burden of proving by a preponderance that the licensee is properly subject to disciplinary action. The assigned Assistant City Attorney is a party to these matters, and the hearings are by definition contested.
- (e) **Oaths and Subpoenas.** The Department has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary for any hearing that the licensing authority is authorized to conduct.
- (f) **Standard for Hearing.** The Hearing Officer or Director will determine whether a violation has occurred and consider the statutory and regulatory penalty ranges as well as aggravating and mitigating circumstances in making a Recommended Decision.
- (g) **Stipulation in Lieu of Public Hearing.** Licensees subject to enforcement proceedings may meet with an Assistant City Attorney to discuss allegations in the complaint to resolve the show cause matter without a hearing subject to the following conditions:
- (i) Seventy-Two Hour Notice. The Director will not accept a proposed stipulation within seventy-two (72) hours of a scheduled hearing.
  - (ii) Director Approval – Required. The Director has sole discretion to either accept or reject a proposed stipulation.
  - (iii) Approval Order. If a proposed Stipulation is accepted, the Director will issue an Order to include any administrative action taken against the licensee. The Department will provide a copy of the order to the licensee.
  - (iv) Rejection Order. If a proposed Stipulation is rejected, the Director will issue an Order so indicating and will further order the parties to proceed to hearing as originally scheduled.

- (h) **Post Hearing Decision.** Following the Hearing, the Hearing Officer and Director will issue a Recommended Decision and Final Decision, respectively. In making the Decision, the Director may consider the penalty ranges and aggravating circumstances in accordance with applicable laws and regulations pertaining to the license.
- (i) **Conditions in Addition or Alternative to Penalties.** In addition to or in the alternative to any suspension, revocation, or administrative fine imposed for any violation, the Director may impose new or additional terms, requirements, conditions, or limitations on any license or permit.

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