



CITY OF BOULDER

BEVERAGE LICENSING AUTHORITY

RULES OF PROCEDURE

Approved by City Council Resolution No. 1013

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CHAPTER 1 APPLICABILITY AND EFFECTIVE DATE

Section 1-1 Applicability

In addition to any other laws, ordinances or regulations which may be applicable, these rules of procedure shall govern all applications and proceedings before the City of Boulder Beverage Licensing Authority ("Authority").

Section 1-2 Effective Date

These rules of procedure shall be effective as of the date of adoption or amendment noted on the cover page.

Section 1-3 Organization and Titles of Rules of Procedure

These rules shall be organized and referred to by chapter, section and subsection. Chapter, section, and subsection titles shall be used for convenience only and shall not be used as catchwords to construe the meaning of any provision of these rules of procedure.

CHAPTER 2 JURISDICTION, ORGANIZATION, AND MEETING PROCEDURES

Section 2-1 City Manager Shall Serve as Licensing Clerk

Pursuant to 2-3-3, B.R.C. 1981, the City Manager acting by and through the City Clerk shall serve as the Licensing Clerk for the Authority. The Licensing Clerk's duties may be delegated to staff other than the City Clerk should the City Manager so desire. The Licensing Clerk shall be the Authority's agent for all purposes specified by state or local law, including preliminary investigations and findings, and other actions necessary or desirable under these rules of procedure.

Section 2-2 Jurisdiction

The Authority shall have jurisdiction to hear and take final action upon all alcohol beverage license applications; renewals; changes of location; change, alteration or modification of premises or usage; transfer of ownership; change of ownership structure; change of business names or trade names; change of registered managers; transfer of ownership by operation of law; and, any other applications or actions responsibility for which is delegated to the Authority by state or local law.

Section 2-3 Regular Meetings

There shall be one (1) regular meeting of the Authority in each calendar month, provided that the Licensing Clerk may post notice canceling the meeting if at least one

licensing application or show cause order requiring a public hearing or other Authority action has not been timely filed. Regular meetings shall be held on the third Wednesday of each month and shall commence at 1:00 p.m. in the Council Chambers of the Municipal Building, 1777 Broadway, Boulder, Colorado. The Authority may by motion prescribe a different date, time or place for any such regular meeting, and may by motion or call of the Chair, schedule special meetings as deemed appropriate.

Section 2-4 Special Meetings

Special meetings may be called by motion of the Authority and may be conducted at any time and place within the City of Boulder. No special meeting may be conducted on a licensing matter without complying with the notice procedures required by law.

Section 2-5 Meetings to be Open and Public

Pursuant to Section 2-3-1(b)(5) B.R.C. 1981, all meetings of the Authority shall be open to the public, after full and timely notice of date, time, place, and subject matter of the meeting, and all meetings shall include an opportunity for public comment on any matter relevant to the Authority's responsibilities, subject to the discretion of the Chair on the time and length of such comment. This opportunity shall not be construed to permit public comment by persons other than Parties in Interest (as defined in Section 4-4) during public hearings required by law.

Section 2-6 Minutes

Pursuant to Section 2-3-1(b)(2), B.R.C. 1981, the Licensing Clerk shall keep minutes of all meetings and records of all transactions on behalf of the Authority.

Section 2-7 Quorum

Pursuant to Section 2-3-1(c), B.R.C. 1981, three members of the Authority shall constitute a quorum, and the Authority shall act only on an affirmative vote of at least three members.

Section 2-8 Election of Chair and Vice-Chair

Pursuant to Section 2-3-1(b)(3), B.R.C. 1981, the Authority shall appoint from amongst its membership a Chair and a Vice-Chair.

Section 2-9 Parliamentary Procedure

All questions of procedure or order shall be decided by the Chair, subject to appeal by a majority of the members present. The Chair may direct the City Attorney to provide advice and guidance on any question or procedure or order. *Robert's Rules of Order, Newly Revised (1981)* shall not be applicable to proceedings of the Authority.

Section 2-10 Supplemental Rules

The Authority may from time to time adopt supplemental rules not in conflict with these Rules of Procedure. Any supplemental rules shall be reviewed by the Licensing Clerk and approved as to form by the City Attorney.

CHAPTER 3 GENERAL APPLICATION REQUIREMENTS

Section 3-1 Forms

All applications and requests to the Authority shall be on forms promulgated by the state or City of Boulder, as applicable, and shall be filed in duplicate with the Licensing Clerk. All information supplied on applications and requests, except for drawings, plans and specifications, if any, shall be typewritten or clearly printed.

Subsection 3-1-1 Incomplete Applications

Application forms shall not be deemed filed or accepted unless and until they are determined to be complete by the Licensing Clerk.

Section 3-2 Fees

No application shall be deemed complete unless it is accompanied by the fees prescribed by Section 4-20-2, B.R.C. 1981 and any fees payable to the Colorado Department of Revenue pursuant to state law.

Section 3-3 Plans & Specifications

The applicant shall file at the time of application plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed.

Subsection 3-3-1 Plans & Specifications

All plans, specifications and detailed sketches or drawings shall be to scale on 8-1/2" x 11" paper and shall show the floor plan and layout of the interior of the building where the license is sought to be exercised.

If a liquor or fermented malt beverage on-premise license is applied for, the plans and specifications shall show, as a minimum, the following:

- (A) A separate page for each level or floor to be licensed;
- (B) Walls, partitions, entrances and exits;
- (C) Dimensions of the premises;
- (D) Clearly identify the nearest streets;

- (E) Indicate the North direction;
- (F) Clearly identify the bar(s);
- (G) Clearly identify where alcohol shall be stored;
- (H) Clearly identify any patio(s), if applicable;
- (I) Identify the type of barrier surrounding the patio, if applicable;
- (J) All tables and chairs; and,
- (K) List the total seating capacity.

If a hotel-restaurant license is applied for, plans and specifications shall, in addition to the above, show the following:

- (L) The total floor area where meals shall be served;
- (M) Location of all bar counters;
- (N) Size and dimension of the kitchen and other food preparation areas;
- (O) Location, number and kinds of ranges, stoves or ovens, refrigerators, food lockers, dishwashers, sinks and restrooms; and
- (P) Location and dimension of food storage areas, and any other fixtures and equipment to be installed and used in connection with the preparation and serving of meals.

Section 3-4 Fingerprints

At the time of submitting an application for a new license or transfer of ownership of an existing license, the applicant, registered manager (if applicable), all corporate officers, directors and stockholders with more than 10 percent interest, and all partners and members shall make arrangements to have fingerprints taken at the Boulder Police Department or other law enforcement agency on Boulder Police Department fingerprint cards (available from Licensing Clerk) and have them delivered directly to the City Clerk's office.

Section 3-5 Proof of Right to Possession of Premises

Each application for a new license, transfer of ownership of an existing license, change of location for a liquor or fermented malt beverage license and request for modification of licensed premises shall be accompanied by a deed, lease or other documentation supporting the applicant's right to occupy the premises where the license shall be exercised. The documentation must show a right of possession extending at least one year from the date of state license issuance.

Section 3-6 Training Requirements

All employees involved in the service of alcohol, including, without limitation, managers, clerks, bartenders and waitpersons, will attend the Boulder Police Department's Liquor Establishment Sellers & Servers class or any other seller server training class approved by the Director of the Liquor Enforcement Division of the Department of Revenue within six months from the approval of the license. New employees shall take a course within

six months of their hire date. The training shall be a continuous condition of the license, and all subsequent renewals, if the Authority approves the application. As to Tastings held at retail liquor stores or liquor licensed drugstores, all servers must complete a server and seller training program endorsed by the Director of the Liquor Enforcement Division of the Department of Revenue and recognized under the Responsible Alcohol Beverage Vendor Act.

CHAPTER 4 PREHEARING ACTIONS AND DETERMINATIONS

Section 4-1 Neighborhood Boundaries

Upon receipt of a completed application, the Authority shall establish the neighborhood boundaries for the application at the next available regular meeting. The boundaries will typically include an area of not less than a one-half (1/2) mile radius around the proposed establishment. In addition, factors including but not limited to zoning boundaries, land use designations, traffic flow, access roads, demographics, size of establishment, natural and human-made barriers, and consideration of other similar licenses in the area proposed may also be considered by the Authority in determining the neighborhood boundary. Any reference in these Rules to "Neighborhood" shall refer to the Neighborhood designated by the Authority pursuant to this Section 4.1

Subsection 4-1-1 Objections to Neighborhood Boundaries

An applicant or other Party in Interest may object to the boundaries as established by the Authority. Objections to Neighborhood boundaries must be made at the same Authority meeting during which the boundaries are established.

Section 4-2 Petitions

Subsection 4-2-1 Petitions Permitted

Petitions may be circulated by the applicant, firm or corporation retained by the applicant, or any Party in Interest opposing or supporting the issuance of the license. Petitions shall be submitted to the Licensing Clerk no later than ten days before the public hearing. Petitions are not the only means of establishing the reasonable requirements of the neighborhood and the desires of the adult inhabitants.

Subsection 4-2-2 Petition Format

The petition format must be approved by the Authority prior to entry into evidence at a hearing. A pre-approved format may be developed and made available from the Licensing Clerk. The Authority may approve and consider as evidence other petition formats upon good cause shown, and a sample of such other petition format shall be provided to the Licensing Clerk for review by the Authority at the hearing where the Neighborhood is designated. The Authority may, on its own motion, continue the

hearing to hear testimony from the person(s) who circulated the petition prior to approving or disapproving any submitted petition.

Subsection 4-2-3 Restricted to Approved Neighborhood Boundaries

Petitions must be circulated within the Neighborhood boundaries established by the Authority. Petitions circulated outside such neighborhood shall not be considered by the Authority. Each person signing a petition shall sign only his own name, address, and date petition was signed. No person shall sign more than one petition. A person is qualified to sign such petition upon attaining the age of twenty-one (21). No petitions will be considered unless the party or parties submitting them have first designated alongside each signature on the petition whether the party signing resides, or owns or manages a business, within the Neighborhood.

Subsection 4-2-4 Legibility

Each signature and accompanying address must be clearly legible in order to be entered into the record and considered by the Authority. Any member of the Authority may move at any time prior to the conclusion of the applicable public hearing to strike and disregard illegible signatures or signatures accompanied by illegible addresses.

Section 4-3 Notice of Hearing

Upon receipt of complete state and local applications, the Licensing Clerk shall schedule a public hearing upon the application. The hearing shall be set for the next regular meeting of the Authority, occurring not less than thirty (30) days from the date of the application. The Licensing Clerk shall: (i) timely provide applicant with a poster properly conforming with state and city posting requirements; (ii) have applicant confirm under oath completion of such mandatory postings; and, (iii) publish public notice of the hearing not less than ten (10) days before such a hearing. Public notice shall be given by the posting a sign in a conspicuous place on the premises that are the subject of the application, and by publication in the Boulder paper of record. Notice given by posting and publication shall conform to requirements set forth in Section 12-47-311, C.R.S.

Subsection 4-3-1 Special Notice and Hearing Requirements

The notice requirements of Section 4-3 do not apply upon receipt of applications for License Renewal, Licensing Clerk Interior Premises Approvals, Special Events, or Bed & Breakfast Permits. The Sections governing these permits specify special notice and hearing requirements.

Section 4-4 Definition of "Party in Interest"

"Party in Interest" as used in these Rules of Procedure means any of the following: (1) the applicant; (2) an adult resident of the Neighborhood under consideration; (3) the owner or manager of a business located in the Neighborhood under consideration; or,

(4) the principal or representative of any school located within five hundred (500) feet of the premises for which the license is sought. (Section 12-47-311(5)(b), C.R.S.).

CHAPTER 5 PRELIMINARY INVESTIGATIONS

Section 5-1 Matters Covered

Subsection 5-1-1 New Licenses

Upon receipt of a complete application for a new license, the Licensing Clerk shall conduct a preliminary investigation with regard to the following matters:

- (A) For applications for a malt, vinous, or spirituous liquor license, whether within two (2) years, preceding the date of the application, either the state or Authority has denied an application for the same class of license at the same location or within 500 feet of the same location, for the reason that the reasonable requirements of the neighborhood and the desires of the inhabitants were satisfied by the existing outlets. For applications for fermented malt beverages at retail, whether within one year preceding the date of the application, either the state or Authority has denied an application at the same location for the reason that the reasonable requirements of the neighborhood or the desires of the inhabitants were satisfied by the exiting outlets. This requirement is not applicable to applications for Bed and Breakfast Permits;
- (B) Whether it satisfactorily appears that the applicant is or shall be entitled to possession of the premises for which application is made under a lease or by virtue of ownership;
- (C) Whether the sale of liquor, or fermented malt beverages as contemplated by the applicant is in compliance with the zoning laws of the City of Boulder, and within any applicable State laws, rules or regulations, or regulations for restaurants of Boulder County and of the State Board of Health;
- (D) For liquor applications, whether the building in which the liquor is to be sold is located within five hundred (500) feet of any public or parochial school or the principal campus of any college, university or seminary. This requirement is not applicable to applications for Bed and Breakfast Permits;
- (E) The number and type of outlets located within the Neighborhood designated by the Authority as the neighborhood affected by the license applied for;

- (F) Any criminal history information on the applicant which has been discovered by or brought to the attention of the Licensing Clerk or Authority;
- (G) A report of all pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed. This report and attached Exhibits provided to the Authority shall specify any direct or indirect financial interests (including notes, mortgages, leases, etc.) in other licenses as reported on or attached to State forms. This report shall include reports from appropriate law enforcement agencies of the applicant's previous criminal record, if any, and shall include registered managers, if applicable, and all partners, principals or stockholders of a private corporation and all partners, principals or stockholders holding ten percent (10%) or more of the outstanding and issued stock of a public corporation subject to the Security and Exchange Act of 1934, as amended; and,
- (H) Such other matters as the Authority may direct.

Subsection 5-1-2 Transfer of Ownership

Upon receipt of a complete application for a transfer of ownership of an existing license, the Licensing Clerk shall conduct a preliminary investigation with regard to only those matters set forth in Subsection 5-1-1(B), (C), (F) and (G) above; and Subsection 5-1-4, "Change, Alteration, or Modification of Premises or Usage."

Subsection 5-1-3 Change of Location

Upon receipt of a complete application for a change of location of an existing license, the Licensing Clerk shall conduct a preliminary investigation with regard to all matters set forth in Subsection 5-1-1 above, except that the character of the applicant shall not be considered.

Subsection 5-1-4 Change, Alteration, or Modification of Premises or Usage

Upon receipt of a complete application for a change, alteration or modification of premises or usage, the Licensing Clerk shall conduct a preliminary investigation with regard to those matters set forth in Subsection 5-1-1(B), (C), (D), and (E) above.

Section 5-2 Undue Concentration of Taverns and Retail Liquor Stores

Subsection 5-2-1 State Law Permits Denial Based Upon Undue Concentration of Licenses

The Authority may deny the issuance of any new tavern or retail liquor store license whenever it determines that the issuance of such 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. (Section 12-47-301(2)(b), C.R.S.)

Subsection 5-2-2 Factors to Consider When Determining Undue Concentration Pursuant to State Liquor Code Regulation 47-301

For purposes of determining if the issuance of a new tavern or retail liquor store 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, the Authority may consider factors, including, but not limited to:

- (A) Whether the ratio of the number of tavern or retail liquor store licenses within Boulder County to the Boulder County's population exceeds the ratio of the statewide number of licenses of the same class to the state population;
- (B) Whether the ratio of the number of tavern or retail liquor store licenses within the census tract or census division in the Neighborhood in which the applicant premises are located to the population of the census tract or division exceeds the ratio of number of licenses of the same class in the City of Boulder to the population of the City of Boulder;
- (C) The distance between the applicant premises and the premises of other holders of the same class of license;
- (D) Published data concerning the concentration of tavern or retail liquor store licenses and its effect on the need for law enforcement resources; and,
- (E) Testimony concerning the use of law enforcement resources by law enforcement officials with the responsibility for enforcing state or local law in the area in which the applicant premises are located.

Subsection 5-2-3 Requirements for Usable Data

For purposes of this Section:

- (A) The number of tavern and retail liquor store licenses within a given area shall be as published by the state licensing authority;
- (B) The population shall be the estimate published by the most recent United States decennial or special census (for state, census tract, and census division data) or the most recent estimates published by the Department of Local Affairs (for county and municipal data); and,
- (C) "Neighborhood" shall refer to the Neighborhood designated by the Authority pursuant to Section 4-1 of these Rules of Procedure.

CHAPTER 6 HEARINGS, DECISIONS AND APPEALS

Section 6-1 Rules of Evidence

The rules of evidence and requirements of proof and procedure shall conform to the extent practicable to those in civil non-jury cases, but when necessary to ascertain facts affecting the substantial rights of the public or of the licensee, the Authority may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The rules of privilege required by law shall be respected, and the Chair may exclude incompetent and unduly repetitious evidence. Questions concerning the competency of witnesses to testify on behalf of, or in opposition to, the issuance of the license, the materiality, relevancy, or competency of their testimony, and other evidentiary matters shall be determined by the Chair. The Chair shall rule upon all questions of evidence and procedure, subject to being overruled on motion sustained by a majority vote of those members of the Authority present.

Section 6-2 Witnesses under Oath

All testimony shall be given under oath.

Section 6-3 Ability to Present Evidence and Cross-Examine

All Parties in Interest shall be allowed to present evidence and to cross-examine witnesses.

Section 6-4 Agreed Upon Conditions of Approval

The Authority may impose conditions of approval on any license, permit or action when agreed to by the applicant and other Parties in Interest, provided the Authority

independently concurs with the proposed condition. The Authority may, separate from the agreed upon conditions in this Section 6-4, direct at any time (pursuant to notice requirements set forth in Section 4-3) that any license renewal be changed to non-Summary Approval, thus removing the renewal from possible Summary Approval (as described in Subsection 8-1-5), and directing the Licensing Clerk to set the next annual renewal of such license for review in a hearing before the Authority, unless and until the Authority directs otherwise.

Section 6-5 Exhibits

All exhibits shall be marked and introduced as in civil cases. All exhibits shall be on 8-1/2" x 11" paper. For hearing purposes, exhibits may be enlarged and mounted on cardboard or similar material, but the mounted exhibits shall not be accepted or retained by the Authority and shall not become a part of the record.

Section 6-6 Time Limits

The Chair may limit the presentation of evidence and cross-examination, so as to prevent repetitive and cumulative evidence or examination.

Section 6-7 Preparation of Record

A stenographic reporter shall be provided by the Authority only upon request of the applicant with all requests for stenographic reporters to be made to the Licensing Clerk at least seven (7) days prior to the hearing at which a record is to be transcribed, and on the condition that all costs of preparing a transcript (including a copy for the Authority) and the reporter's appearance fee (including any fee for late cancellations be paid by the applicant. In all other instances, an audio recording shall be made of the proceedings and shall be retained for a period of the current year plus an additional 6 years. Summary minutes shall be created by the Licensing Clerk, approved by the Authority, and shall permanently be retained.

Section 6-8 Burden of Proof

During an application hearing, the applicant shall have the burden of proving that they are qualified to hold a license, has sufficient financial sources, that the reasonable requirements of the neighborhood are not being met by existing liquor or fermented malt beverage outlets and that the neighborhood needs and desires the applicant's particular outlet. In all other hearings before the Authority, except show cause hearings, the applicant shall have the burden of proving that they have met all the requirements of the state law and local ordinance governing the particular application.

Section 6-9 Presence of Applicant and Representation by Counsel

Applicants or other Parties in Interest may appear in person or be represented by counsel, except that the applicant or licensee, as the case may be, shall personally

appear before the Authority on all matters relating to their application or license unless such presence is waived by a majority vote of the members present.

Section 6-10 Continuances

The Licensing Clerk may grant an applicant's request to continue a matter set for hearing to the next following regular meeting, if such request is made prior to the time that publication and posting of notice of hearing on the matter has been made. After a matter has been scheduled for public hearing and public notice thereof has been given, the matter may be continued only by the Authority for good cause upon a majority vote at the time originally noticed. The Authority may by motion and majority vote continue a hearing on its own initiative for good cause, provided that the applicant and other Parties in Interest are first given an opportunity to state their position on the proposed continuance.

Section 6-11 Decisions

The decision of the Authority approving or denying an application or request after a public hearing or public meeting shall be in writing, shall state the grounds for the decision, and shall be made no later than thirty (30) days after the date of the public hearing. The City Attorney shall prepare a written decision on each application which shall be timely provided to the Licensing Clerk for certified mailing. A copy of the decision shall be sent, by certified mail or personal service, to the applicant at the address shown in the application.

Section 6-12 Appeals

Appeals of decisions of the Authority shall be to the District Court in the manner specified by the Colorado Rules of Civil Procedure.

CHAPTER 7 LICENSE ISSUANCE

Section 7-1 Confirmation of Conditions

Although the license may be approved by both the Authority and State Licensing Authorities, no license shall be issued by the Licensing Clerk until all Authority-approved conditions and all Authority directed contingencies are met and the building in which the business is to be conducted is ready for occupancy, with any necessary furniture, fixtures, and equipment in place, and then only after the Licensing Clerk's inspection of the premises has been made to determine that the applicant has complied with the drawings, plans and specifications submitted with the application.

CHAPTER 8 POST-ISSUANCE ACTIONS

Section 8-1 License Renewal

Subsection 8-1-1 Timely Application Required

All applications for renewal of alcohol beverage licenses, including both State and City forms with applicable fees for both parties, shall be submitted to the Licensing Clerk in the form prescribed by law no later than forty-five (45) days before the license expiration date together with the required license and renewal application fees. Any application received fewer than forty-five (45) days before the license expiration date shall be considered a late application.

Subsection 8-1-2 Late Applications Without Objections Received Before Expiration of License

The Licensing Clerk may process late applications received before expiration of the license, for which no objections have been received, provided that the licensee agrees to suspend the sale of alcohol beverages during the period between expiration of the license and the date the license is actually renewed. If the licensee does not agree to the temporary post-expiration suspension, the Licensing Clerk shall not allow Summary Approval (as described in Subsection 8-1-5) and shall set the matter for a renewal hearing before the Authority for the next available Authority hearing.

Subsection 8-1-3 Late Applications With Objections Received Before Expiration of License

When objections have been received, the Licensing Clerk shall set any late applications received before expiration of the license for a renewal hearing before the Authority for the next available Authority hearing.

Subsection 8-1-4 Expired Licenses

A licensee whose license has been expired for not more than ninety (90) days may file a late renewal application upon the payment of a nonrefundable late application fee to the City. A licensee who files a late renewal application for a license that expires before its Authority hearing, or a licensee who files a renewal not more than 90 days after a license is expired and pays the requisite fee, may continue to operate subject to the limitations set forth in Section 8-1-8, until the Authority has taken final action to approve or deny such licensee's late renewal application. (Section 12-47-302(2)(a), C.R.S.) No late renewal application shall be accepted more than ninety (90) days after the expiration of a licensee's permanent annual license. Any licensee whose permanent annual license has been expired for more than ninety (90) days must apply for a new license pursuant to Sections 12-47-302 and 12-47-311, C.R.S., and shall not sell or possess for sale any alcohol beverage until all required licenses have been obtained.

Subsection 8-1-5 Summary Approval of License Renewal by Licensing Clerk

After receiving a complete license renewal application including both State and City renewal forms with applicable fees for both parties, the Licensing Clerk shall review the application, together with the following information covering the period since the initial application or last renewal (whichever is more recent): (i) submissions to the applicant's file; (ii) City department comments; and, (iii) pertinent City records. Unless there is evidence to the contrary, whether contained in the applicant's file or otherwise, it will be presumed that the occupied premises comply with the provisions of the statutes and applicable regulations, that the character of the applicant continues to be satisfactory, and that such renewed license, if granted, continues to meet the reasonable requirements of the neighborhood and the desires of the inhabitants. If no such evidence counters these presumptions, the license renewal application shall be approved by the Licensing Clerk and forwarded to the State Department of Revenue, Liquor Enforcement Division. If the Licensing Clerk finds such evidence countering these presumptions, the Licensing Clerk shall set, for the next available Authority hearing, the license renewal application for a renewal hearing before the Authority. The Authority may, separate from the agreed upon conditions in this Section 6-4, direct at any time (pursuant to notice requirements set forth in Section 4-3) that any license renewal be changed to non-Summary Approval, thus removing the renewal from possible Summary Approval (as described in Subsection 8-1-5), and directing the Licensing Clerk to set the next annual renewal of such license for review in a hearing before the Authority, unless and until the Authority directs otherwise.

Subsection 8-1-6 License Renewal Hearings by the Authority

Whenever objections to the renewal of a license have been raised (by a Party in Interest, the State, or the City) before renewal of the license, the Licensing Clerk shall have the discretion to set the matter for a renewal hearing. An Objection to Renewal Hearing Notice shall be sent to licensee via certified mailing at least 30 days before the Authority renewal hearing date. All supporting evidence available at the time concerning the objection shall be provided to the licensee with the hearing notice. Renewal hearings shall be conducted in compliance with Chapter 6 of these Rules of Procedure.

Subsection 8-1-7 Notice and Hearing Requirements for License Renewal Hearings

A public hearing on the renewal application shall be held at the next available Authority hearing not less than thirty (30) days from the date of mailing of the notification of renewal objection to the licensee. A notice of hearing shall be conspicuously posted on the licensed premises for a period of no less than ten (10) days prior to the renewal hearing. If such objection is made less than thirty (30) days from the expiration of the license, the Licensing Clerk shall set the renewal hearing for the next available date

which provides the licensee with thirty (30) days notice and ten (10) days proper posting of the premises.

Subsection 8-1-8 Sales Permitted Pending Hearing

If the licensee requests a continuance of the hearing date, or if a late application set for a renewal hearing cannot be processed before the expiration of the license, the Authority may order the licensee not to sell alcohol beverages beyond the expiration date of the license until a determination has been reached ruling on the license renewal.

Subsection 8-1-9 Grounds for Non-Renewal of License

Objections to renewal of a license must be for good cause. Evidence of good cause to deny a renewal may include, but shall not be limited to, the following:

- (A) Evidence that 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 related rules and regulations;
- (B) Evidence that 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 proceeding; or,
- (C) 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, including a continuing pattern of fights, violent activity or disorderly conduct.

Section 8-2 Change of Location

An application for a Change of Location shall conform to all notice, hearing and substantive requirements for an application for a new license except as specifically provided otherwise in these Rules of Procedure. In addition, the reason for the requested change shall be specified.

Section 8-3 Change, Alteration or Modification of Premises or Usage

Subsection 8-3-1 Permission Required

A licensee shall not physically change, alter or modify the premises in a manner which materially or substantially alters the premises or the usage of the premises from the plans and specifications submitted at the time of obtaining the license without approval of the Licensing Clerk or Authority as provided below.

Subsection 8-3-2 Applicability Pursuant to State Liquor Code Regulation 47-302, As Applied

The physical changes, alterations or modifications of the premises, or in the usage of the premises requiring prior written consent, shall include, but not be limited to, the following:

- (A) Any increase or decrease in the total size or capacity of the premises;
- (B) The sealing off, creation or relocation of a common entryway, doorway, passage or other means of public ingress and/or egress, when such common entryway, doorway or passage permits access to the premises from or between public streets or thoroughfares, adjacent or abutting buildings, rooms or premises;
- (C) Any substantial or material enlargement of a bar, or relocation of a bar or addition of a separate bar; and,
- (D) Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure that existed in the plan on file with the latest prior application. The foregoing shall not apply to painting and redecorating of premises; the installation or replacement of fixtures or equipment, plumbing, refrigeration, air conditioning or heating fixtures and equipment; the lowering of ceilings; the installation and replacement of floor coverings; the replacement of furniture and equipment; or other similar changes. "Character" shall include "usage" as the term is used in Regulation 47-302.

Subsection 8-3-3 Licensing Clerk Interior Premises Approvals

The Licensing Clerk may make an administrative decision to approve any proposed change, alteration or modification of the interior premises ("interior proposal") which does not significantly or materially alter the premises or the usage of the premises. The Licensing Clerk shall consider the factors set forth in Subsection 8-3-2. The Licensing Clerk may seek informal direction from the Authority in these determinations. The Licensing Clerk's approval decision shall be final, subject to call up by the Authority for review in any Authority hearing. Such hearing will comply with Notice of Hearing requirements set forth in Section 4-3. The Licensing Clerk may also refer any proposal directly for a hearing before the Authority, in which case the Licensing Clerk's action shall be deemed a denial of approval and a determination that the interior proposal would significantly or materially alter the interior premises or the usage of the interior premises.

Subsection 8-3-4 Authority Change, Alter and Modify Determinations

Following notice and hearing as specified in Section 4-3, the Authority will make a decision with respect to any denial or referral of an interior proposal by the Licensing Clerk, and with respect to any proposed change, alteration or modification of the exterior premises, expansion of the premises, or any internal change, alteration or modification which significantly or materially alters the usage of the premises. The Authority shall consider the factors set forth in Subsection 8-3-5.

Subsection 8-3-5 Decision making Factors Pursuant to State Liquor Code Regulation Code 47-302, As Applied

The Authority must consider whether the premises, as changed, altered, expanded or modified, will meet the requirements of the Colorado Liquor Code and the regulations. The factors to be taken into account include, but are not limited to, the following:

- (A) The reasonable requirements of the neighborhood and the desires of the inhabitants. More specifically, the desires of the inhabitants (residents, tenants, store owners and managers) of the neighborhood for any proposed change, alteration, expansion or modification; and the need of the neighborhood for the proposed change, alteration, expansion or modification in view of the desires of the inhabitants and the ability of existing establishments of a similar type in or near the establishment to meet the needs of the inhabitants;
- (B) The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement;
- (C) Compliance with the applicable zoning laws of the municipality, city and county, or county. The Authority may for good cause shown permit concurrent processing of zoning permits, but only when the Authority has made a finding that the reasonable requirements of the neighborhood and the desires of the inhabitants as described in (A) above require approval of the application;
- (D) Compliance with the distance prohibition with regard to any public or parochial school or the principal campus of any college, university or seminary; and,
- (E) The legislative declaration that the Colorado Liquor Code is an exercise of the police powers of this state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.

Subsection 8-3-6 Notice of and Grounds for Denial

If the Authority denies permission to change, alter or modify the premises, written notice in accordance with Section 6-11 shall be given to the licensee stating the grounds for the denial.

Section 8-4 Transfer of Ownership

An application for transfer of ownership shall conform to the procedures, hearings, and requirements applicable to an application for a new license (see Chapter 3), except as provided in this Section.

Subsection 8-4-1 Character Investigation

The Licensing Clerk shall conduct an investigation into the character of the applicant, including when applicable, registered managers and the officers, members, partners or major shareholders.

Subsection 8-4-2 Review for Changes, Alterations or Modifications

The Licensing Clerk shall consider proposed physical alterations to a licensed premises as part of a license-transfer proceeding in determining the proper processing and necessary applications for a Transfer of Ownership. The Licensing Clerk shall compare original plans and specifications (from the existing licensee) to new plans, if any, to determine whether any proposed change, alteration or modification of the premises would significantly or materially alter the premises or usage of the premises.

- (A) If the Licensing Clerk determines that the changes would significantly or materially alter the usage of the premises then the Licensing Clerk shall schedule a hearing before the Authority with public notice of such hearing to be given in accordance with the Notice of Hearing requirements in Section 4-3 herein.
- (B) The Licensing Clerk shall permit concurrent processing of applications for permission for Change, Alteration or Modification of Premises or Usage and Transfers of Ownership, but in no case shall the Transfer of Ownership application be approved before the Licensing Clerk or the Authority (as applicable) have substantively addressed applications for permission for Change, Alteration or Modification of Premises or Usage.

Subsection 8-4-3 Agreement of Current Licensee

The applicant shall show proof documenting that the current licensee agrees to the transfer of ownership. A notarized statement by the current licensee requesting that the Authority transfer the license to applicant shall be sufficient. In addition, the current

licensee and the prospective applicant shall complete the proper City forms as provided by the Licensing Clerk and required state-approved transfer affidavit and forms.

Subsection 8-4-4 Limited Review

When determining whether a transfer of ownership should be granted, the Authority shall consider only the applicant's possession of the premises, the applicant's ability to conduct the business according to law, the requirements of Section 12-47-307, C.R.S., which includes but is not limited to the character of the applicant, and 1 CCR 203-2, Rule 47-302 as to whether any proposed change, alteration or modification of the premises would significantly or materially alter the premises or usage of the premises.

Subsection 8-4-5 Temporary Permits

A temporary permit to authorize the applicant to continue selling alcoholic or fermented malt beverages, during the period in which an application to transfer the ownership of the license is pending, may be issued by the Licensing Clerk upon application by the transferee licensee on forms provided by the Licensing Clerk with required attachments and accompanied by the appropriate fee. The Licensing Clerk shall issue a temporary permit within five (5) working days from the date of a completed application provided that all requirements of the Section 12-47-313, C.R.S., have been met by the applicant. The application shall be filed no later than thirty (30) days after the filing of a complete application for transfer of ownership. The temporary permit shall be good for no more than one hundred twenty (120) days or until such time as the application to transfer ownership of the license is granted whichever shall occur first; except that, if the transfer application has not been granted or denied within the one hundred twenty (120) day period and the transferee demonstrates good cause, the Authority may, in its discretion, extend the temporary permit for an additional period not to exceed sixty (60) days. In the event the application to transfer the ownership is denied by the Authority, the temporary permit is immediately void and the license remains in the name of the transferor licensee.

Section 8-5 Change of Corporate Structure

Subsection 8-5-1 Privately-Held Corporations

Any transfer of the capital stock, and any change in officers or directors of any corporation holding a license under the provisions of the Colorado Liquor Code and which is not subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended, shall be reported to the Licensing Clerk within thirty (30) days after such transfer or change. A licensee shall use state approved forms with required attachments and proper fees paid to both city and state.

Subsection 8-5-2 Publicly-Held Corporations

Corporate licensees subject to the Securities and Exchange Act of 1934, as amended, shall submit the names and addresses of all persons owning ten percent (10%) or more of the outstanding or issued capital stock not more than thirty (30) days after such ownership occurs; and shall submit to the Licensing Clerk the names and addresses of all corporate officers within thirty (30) days after their appointments. A licensee shall use state approved forms, with required attachments and proper fees paid to both city and state.

Section 8-6 Change of Ownership by Operation of Law

An application for transfer of ownership by Operation of Law shall conform to the procedures, hearings and requirements applicable to an application for a new license (see Chapter 3) and those set forth in Subsection 8-4-2, except as provided in this Section. When presented with an application for the issuance of a license by reason of a transfer of possession of the licensed premises by operation of law (bankruptcy, receivership, foreclosure, eviction, etc.), the Authority shall consider only the requirements of Section 12-47-307, C.R.S., which includes but is not limited to the character of the applicant and the requirements of 1 CCR 203-2, Rule 47-302 entitled "Changing, Altering, or Modifying Licensed Premises."

Subsection 8-6-1 Additional Requirements

In addition to the requirements of Section 12-47-307, C.R.S. and 1 CCR 203-2, Rule 47-302, the application for change of ownership by operation of law shall include evidence that possession of the licensed premises has been legally restored to the owner of the licensed premises and that thereafter possession of the licensed premises was legally transferred to the applicant if the applicant is a party other than the owner of the licensed premises. Such evidence shall consist of a certified court order, a certified transcript of judgment, a certified copy of the public trustee's deed or other similar certified official document establishing title to or a possessory interest in the licensed premises, or an affidavit of abandonment of the licensed premises from the applicant or agent thereof indicating the time and circumstances of the abandonment.

Subsection 8-6-2 Hearings Requirements

A public hearing will be held on the application and shall be noticed pursuant to Section 4-3 and conducted pursuant to Chapter 6. The Authority shall consider and act upon the evidence of the applicant's possession of the licensed premises, the requirements of Section 12-47-307, C.R.S., and the requirements of 1 CCR 203-2, Rule 47-302. The burden of proof is on the applicant to establish all requirements. The current licensee may appear at the hearing and contest the transfer of the license. The Authority shall consider the current licensee's evidence opposing the transfer. Such evidence shall be limited to the issue of legal possession of the premises or the character of the applicant. Should the current licensee fail to appear to contest the license transfer, the Authority shall act on the transfer considering the evidence presented by the applicant and any Parties in Interest.

CHAPTER 9 SPECIAL PERMITS

Section 9-1 Bed & Breakfast Permits

The application and procedure for obtaining approval for a Bed and Breakfast permit shall conform to the state and city approved application with required attachments and proper state and city fees and the procedure set forth in these Rules for the granting of a new license. A public hearing shall be held in all cases where a Bed and Breakfast permit is desired. Posting and public notice of such hearing shall be given.

Section 9-2 Special Events Permit

Applications for a special events permit shall be made not less than thirty (30) days prior to the proposed event under oath or affirmation to the Licensing Clerk, on such forms as are provided the City and the State Licensing Authority. Public notice of the proposed permit and of the procedure for protesting issuance of the permit shall be conspicuously posted at the proposed location for at least ten (10) days before approval of the permit by the Licensing Clerk. Any protest shall be filed by affected persons within ten (10) days after the date of initial posting of the proposed event. Protests shall be filed in duplicate with the Licensing Clerk. The Licensing Clerk may forward disputed applications to the Authority for a final decision.

CHAPTER 10 ENFORCEMENT

Section 10-1 Management Registration

Every licensee holding an alcohol beverage license shall personally manage such licensed premises or employ a separate and distinct manager on the premises and shall report the name of such manager to the Licensing Clerk. Such licensee shall report any change in managers to the Licensing Clerk within thirty (30) days after such change on state approved forms with required attachments and proper state and city fees. Failure to report the name of, or any change in, managers shall be grounds for suspension or revocation of the license.

Section 10-2 Suspension and Revocation of Licenses

The Authority has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke any license issued by the Authority for any violation by the licensee, or by any of the agents, servants or employees of such licensee of the provisions of the Colorado Liquor Code, or any of the rules, ordinances and regulations authorized pursuant to such Codes or of any of the terms, conditions or provisions of the license issued by the Authority.

Subsection 10-2-1 Investigation of Cause for Suspension and Revocation of Licenses

The Licensing Clerk shall cause an investigation to be commenced upon motion of the Authority, upon the Licensing Clerk's own initiative, upon request of the Police Department or City Attorney or whenever a sworn written complaint has been filed with the Authority. The investigation shall be conducted by the Licensing Clerk with the assistance of the Police Department.

- (A) If the investigation shows reasonable suspicion to believe that grounds for suspension or revocation exist, the Licensing Clerk may initiate proceedings as provided below.
- (B) If the investigation shows probable cause to believe that grounds for suspension or revocation exist, the Licensing Clerk shall initiate proceedings as provided below.

Subsection 10-2-2 Initiation of Suspension or Revocation Proceedings by Show Cause Order

Proceedings to suspend or revoke a license shall be initiated by providing at least thirty (30) days notice of hearing and an order to show cause why the license shall not be suspended or revoked. Such notice and order shall be sent by certified mail to the licensee at the address contained in the license, or personally served, and shall contain such information as shall reasonably notify or inform the licensee of the charges or alleged grounds for suspension or revocation.

Subsection 10-2-3 Show Cause Hearings

Except as provided in this Subsection, show cause hearings shall be conducted in a manner consistent with Chapter 6 of these Rules of Procedure.

- (A) The hearing shall be held at the place and time designated in the notice, or upon such other day as may be set for good cause shown. At the hearing, evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense and in explanation, and shall be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have committed the violation charged, or any other violation, evidence and statements in aggravation of the offense shall also be permitted.
- (B) The Authority has the power to issue subpoenas to require the presence of persons and the production of all papers, books and records necessary to its determination.

- (C) If the evidence presented at the hearing does not support the charges stated in the notice and order served upon the licensee, but standing alone establishes the guilt of the licensee of a violation of some other law, rule or regulation, the licensee shall be permitted to give evidence and statements in defense, explanation and mitigation if then prepared to do so. If such evidence is not then available but can be obtained by the licensee, the licensee shall state the substance thereof and upon his or her request, the hearing may be recessed until the next available date and shall continue under the same procedure as though no recess had occurred.
- (D) In the event the licensee is found not to have violated any law, rule or regulation, the charges against him shall be dismissed. If the licensee is found to have violated some law, rule or regulation, the license may be suspended or revoked. Suspension dates to be served shall be determined and approved by the Authority during the violation hearing and those suspension dates shall not be subject to change.
- (E) If a license has been suspended, the Authority shall order the posting of notices of suspension on the premises for the duration of suspension days served.

Subsection 10-2-4 No Tax Refunds

In the event of revocation or suspension, no portion of the license fee, application fee, or occupation tax for an issued license shall be refunded. In the event of a transfer of ownership, no portion of the license fee, application fee or occupation tax for an issued license shall be refunded, and all occupation tax must be made current by the existing licensee prior to final transfer of the license to the new applicant. In the event of surrender, expiration or non-renewal, no portion of the license fee or the application fee for an issued license shall be refunded, but the occupation tax shall be pro-rated to the official date of the surrender or expiration of that license.

Subsection 10-2-5 No Suspension Longer than Six Months

No suspension of a license shall be for a period longer than six (6) months.

Section 10-3 Summary Suspension

The Authority may summarily suspend for a period of up to fifteen (15) days any license or permit issued by the Authority or Licensing Clerk, without prior notice to the licensee, as provided in this Section.

Subsection 10-3-1 Violation of Law

The Authority may summarily suspend any license or permit issued if it has reasonable grounds to believe and finds that a licensee has been guilty of a deliberate and willful violation of any applicable law or regulation.

Subsection 10-3-2 Threat to Public Health

The Authority may summarily suspend any license or permit issued if it has reasonable grounds to believe and finds that the public health, safety or welfare imperatively requires emergency action.

Subsection 10-3-3 Prompt Hearing Required

The temporary suspension of a license without notice pending any prosecution, investigation, or public hearing shall be for a period not to exceed fifteen (15) days during which time the Authority shall commence and conduct suspension or revocation proceedings.

Section 10-4 Inspection of Records

The owner, licensee or operator of any establishment licensed by the Authority shall, upon request of the Licensing Clerk, furnish to the City within thirty (30) days satisfactory evidence to demonstrate whether the establishment is operating in compliance with the license category for which it was approved. Such evidence shall consist of accounting records for a period of time to be specified by the Licensing Clerk, showing separately the gross receipts from the sales of (i) food items ("meals"); (ii) non-alcoholic beverages; and, (iii) intoxicating liquors. Failure or refusal to comply with a records inspection request of the Licensing Clerk shall be grounds for revocation of the license.

Section 10-5 Inspection of Premises

If an application is approved before the building in which the business is to be conducted is ready for occupancy in compliance with law, the Licensing Clerk shall make further inspections to determine if the approved plans have been complied with before issuing the license. The Licensing Clerk may delegate that task of inspection to any other government employee and may act upon the report of such person. Nothing in this Chapter 10 shall be construed to limit the City's powers under state law or regulations, including but not limited to State Liquor Code Regulation 47-700.

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