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Basics of Colorado Liquor Licensing Law

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This article provides an overview of basic liquor licensing principles, including initial licensing, permissible locations, requirements and restrictions on holding a liquor license, renewal issues, violations and their consequences, and suggested procedures for hearings.

The practice of liquor licensing law in Colorado is somewhat complex and arcane because of the interplay of statutes, regulations, and case law that has evolved, often not in a particularly logical manner, since the repeal of Prohibition in 1932. Liquor law is particularly challenging for the attorney who does not specialize in this area. In smaller cities and counties, local officials do not have similar opportunities to gain expertise by experience and practice as those in larger counties or municipalities, which may have hundreds of liquor licenses and deal with dozens of new licenses and violations every year.

Types of Licenses

There are nineteen types of liquor licenses available. The five most common types are discussed below.[1]

Retail Liquor Store

A retail liquor store license[2] allows the sale of malt (beer), vinous (wine), or spirituous (distilled) liquors in sealed containers for off-premises consumption. No food items may be sold except those containing alcohol, such as liquor-filled candy or cocktail garnishes. A person, legal or natural, who holds a retail liquor store license may not have a financial interest in any other liquor licensed business.

Tavern License

A tavern license[3] allows the sale of beer, wine, or distilled liquor by the drink for consumption on the licensed premises. Sandwiches and light snacks must be available during business hours, but full meals do not need to be served. A person may have a financial interest in up to three tavern licenses.

Hotel and Restaurant License

A hotel and restaurant license[4] allows the sale of beer, wine, or distilled liquor by the drink for consumption on the licensed premises when full meals are available; after 8:00 p.m., light snacks must be available. Also, food sales must account for at least 25 percent of the gross income from the sale of food and drinks combined. There is no limit on the number of hotel and restaurant licenses in which a person may have a financial interest.

Fermented Malt Beverage License

A fermented malt beverage license[5] is also known as a 3.2 license. This allows the sale of fermented malt beverages that contain between 0.5 and 3.2 percent alcohol by weight. Licenses may be sold for on-premises consumption, off-premises consumption, or both. There is no limit on the number of fermented malt beverage licenses in which a person may have a financial interest.

Special Events License

A special events license[6] allows the sale of malt beverages (3.2 percent beer) or malt liquor (beer over 3.2 percent alcohol by weight), wine, or distilled liquors by the drink by various nonprofit organizations and political candidates. A special events license may not be issued to a specific nonprofit organization or political candidate for more than ten days in one calendar year.

The Application Process

Any natural person over the age of 21, a corporation, partnership, or limited liability company may apply for a Colorado liquor license. There is no requirement for Colorado residency. Applications for the various types of liquor licenses may be found on the Colorado Department of Revenue's website[7] or may be obtained from a county, city, or town clerk's office.

An individual planning to apply for a liquor license may wish to schedule a meeting with a representative of the clerk's office and a representative of the city, town, or county attorney's office prior to the formal submission of an application. At this pre-application meeting, the clerk and attorney can inform the applicant what is required to obtain a liquor license and suggest options to the applicant. For example, a hotel/restaurant license might fit the appli-

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cant's business goals better than a tavern license. The applicant can make sure that he or she knows what must be submitted and when. Also, the form of petitions that may be submitted during the formal hearing process should be addressed with the applicant. A person who is applying without the assistance of an attorney will particularly benefit from a pre-application meeting.

Receipt of the Application

The completed application for a liquor license must be formally received by the Local Liquor Licensing Authority (LLLA). This may be the city or town council sitting as the LLLA, or a separate liquor board. The "reception" generally is done at a meeting when the hearing on the license is set, but some jurisdictions may do this administratively. The county, city, or town clerk's office can advise an applicant of the local procedure.

Determining Neighborhood Boundaries

Usually, either the county attorney or the county clerk's office will prepare a map and legal description of a suggested neighborhood prior to the hearing where the application is received and the boundaries of the neighborhood are set. The applicant also may suggest a defined neighborhood. The applicant or staff may object to the proposed boundaries of the neighborhood. The LLLA then will set the boundaries. Only if the LLLA's decision is arbitrary or capricious would a court overturn the decision.

At the same time the application is received, the LLLA usually will set the boundaries of the neighborhood of the application. This may be as little as a half mile in high-density areas, or may be the entire city, town, or county in thinly populated areas. Setting the boundaries of the neighborhood is important because it determines who may comment on granting or denying the license. Only those individuals who live in or manage a business in the neighborhood may comment on the application. Anyone else is not considered to have a legal interest in whether the license application is granted.

Application Not Received or Acted On

Under several conditions, the application may not be received or acted on by the LLLA.[8] These are discussed below.

- An application would not be acted on if, within the previous two years, the same site or one within 500 feet of it has been proposed for the same type of license and the application was denied on the ground that granting it would not meet the needs and desires of the adult inhabitants of the neighborhood because existing liquor outlets met the reasonable needs and desires. For 3.2 percent licenses, the time limit is one year and the 500-foot radius does not apply.
- An application would not be acted on if the applicant cannot demonstrate that he or she is or will be in legal possession of the premises.
- An application would not be acted on when the location proposed is in violation of local zoning laws for the type of license proposed. For example, this could occur in a residential zone that prohibits retail businesses.
- An application would not be acted on when the proposed location is within 500 feet of a private or public school or college. The 500 feet is measured from the nearest part of the property used for school purposes to the nearest part of the building proposed to house the licensed premises as used by normal and legal pedestrian access. The local governing body may reduce or eliminate the 500-foot distance or eliminate certain types of schools from the requirement.

Evaluating the Application

Applicants should be aware that when a new license application is evaluated, particular attention is given to prohibited financial interests.[9] Often, a person is prohibited from having a financial interest in more than a certain number of a certain class of license. A common violation occurs after a private sale of a retail liquor store where the seller carries the note for the sale and later requests a license for a new operation at a new location. The seller is considered to have a continuing financial interest in the previous license and therefore would be barred from a new license.[10]

The Public Hearing

A public hearing must be held at least thirty days after the application has been received by the LLLA.[11] Public notice of the hearing must be published and posted on the proposed premises not less than ten days prior to the date of the hearing.[12]

At the hearing, the applicant has the burden of presenting a *prima facie* case that granting the license will meet the reasonable needs and desires of the residents of the neighborhood.[13] The applicant may determine how he or she will meet this burden—there is no required or suggested method. Applicants often present signed petitions or testimony given by residents of the neighbor-

hood. Petitions should be submitted to the city, town, or county clerk before the hearing so that the addresses of the persons signing the petition may be verified as being within the designated neighborhood.

Letters and petitions either in favor of or in opposition to issuing the license may be received by the LLLA. The number of signatures on petitions or persons testifying for or against issuing a license is not determinative or dispositive as to the reasonable needs and desires of the residents of the neighborhood.[14]

After the applicant has presented his or her case, persons in interest—neighborhood residents, owners or managers of businesses, and representatives of schools—may testify against the issuance of the license.[15] Opposition testimony based on speculation ("I think it will make my property value go down" or "I think there will be more crime") or testimony based solely on an abhorrence of all alcoholic beverages and the issuance of any liquor license should not be considered. Courts have held that such testimony is irrelevant.[16] Because the applicant has the burden of demonstrating that issuance of the license will meet the reasonable needs and desires of the residents of the neighborhood, the applicant has an opportunity for rebuttal of any opposition testimony or evidence.

Considerations for the LLLA

In addition to considering the reasonable needs and desires of the residents of the neighborhood for a particular type of license, the LLLA may consider whether the applicant is of "good moral character." Persons who are not of good moral character are prohibited from holding or being issued a liquor license.[17] Consideration of good moral character also includes stock holders of 10 percent or more of a corporation, officers of a corporation applying for a license, or persons holding a financial interest in the proposed license. "Good moral character" is particularly resistant to strict definition. However, it appears that blots on a person's record must either involve moral turpitude or have some rational connection with a person's ability to properly conduct business under the proposed license.[18]

The economic effect of granting a new license on existing liquor outlets through increased competition is not a criterion on which a decision may be based. However, the LLLA could determine that the neighborhood already is adequately served by similar liquor establishments.[19] Also, the economic wisdom of the applicant in wanting to conduct a particular type of business at a particular location is not to be considered. That is, the LLLA should not consider whether the applicant will be economically successful.[20]

Making a Record

Hearings before the LLLA are quasi-judicial in nature and may be appealed to the district court under Colorado Rule of Civil Procedure (Rule) 106. Therefore, it is in the best interests of the applicant, the local government, and any participating parties in interest that a good record is made. At a minimum, the proceedings should be recorded. If it appears that the application is controversial and an appeal may be taken whether the application is granted or denied, a court reporter should be present to record the proceedings. Particularly in the event of a denial, but also if an application is granted in the face of significant opposition, the LLLA should consider making specific written findings of fact supporting its decision so that the court, on an appeal, can determine the basis of the LLLA's decision.

A Note on References

- The Colorado Liquor Code can be found at CRS §§ 12-47-101 *et seq*.
- Regular statute books or online databases, even with the most current updates and annotations, are inadequate for those practicing liquor law. This is because the Colorado Department of Revenue's Regulations have equal weight as the statutory law (1 CCR § 203.2). These regulations, as well as relevant Department of Revenue provisions, are available online at www.revenue.state.co.us/liquor_dir/wrap.asp?ind=colregcode/1ccr203-2.
- The practice guide *Liquor and Beer Licensing Law Practice*, which is published by the Colorado Municipal League, may be helpful for attorneys who do not often practice in this area.

Violations and Show Cause Hearings

When a possible violation of the Colorado Liquor Code, Department of Revenue Regulations, any applicable municipal ordinances, or conditions that have been placed on a license has been brought to the attention of the LLLA, through law enforcement agencies, including the Colorado Department of Revenue, the reports or complaints of citizens, or otherwise, the LLLA must preliminarily find that there is probable cause to believe that a violation was committed.[21] The license holder need not be notified of the preliminary hearing on this; however, to be safe and avoid any possible due process allegations, he, she, or it should be notified and given a chance to appear. When the LLLA is satisfied that a violation has occurred, a date should be set for the actual show cause hearing. Due process requires that sufficient notice be given to the license holder[22] so that he or she may adequately prepare a defense.[23]

To find that a violation has occurred, the LLLA must find that the violation has been demonstrated by a preponderance of the evidence.[24] The most common violations of the Colorado Liquor Code and Regulations are service and sales to minors or visibly intoxicated persons, service or consumption after hours, and gambling violations.

Show cause hearings are held to determine if the LLLA has probable cause to believe that a statutory or regulatory requirement has been violated by the license holder or an employee or agent. In some jurisdictions, this hearing is before an administrative law judge or hearing officer, rather than the full LLLA. The LLLA has the power to administer oaths and issue subpoenas to compel the presence of persons and the production of books, papers, and records.[25]

Regulation 47-600 sets out the procedure to be used in a show cause hearing. The proceeding is conducted similarly to a criminal or civil court proceeding. The evidence demonstrating the violation is presented by the prosecutor, with the right of cross-examination by the license holder, followed by any defense evidence or testimony.[26]

A show cause hearing is an *in rem* proceeding regarding the license, not a personal proceeding against the license holder; therefore, certain personal rights do not apply. That said, because the li-

cense holder has a property right in the license, due process must be followed.[27]

The Colorado Court of Appeals has held that a license holder has constructive knowledge of all provisions of the liquor laws. Ignorance of the law is not a defense in a show cause hearing.[28]

Attorneys representing all parties should consider having a court reporter transcribe the show cause hearing. All parties have an interest in ensuring that a good record of the proceedings is made in the event the decision is appealed to the district court.

Suspension or Revocation of a Liquor License

If the LLLA finds by a preponderance of the evidence that a violation has occurred, it may permanently revoke the license or suspend the license for up to six months. If a violation is found, the LLLA should make findings of fact and specifically set out the discipline to be imposed.[29]

If a suspension is imposed for fourteen days or less, the license holder may petition the LLLA to pay a fine rather than serve the suspension.[30] The fine is to be roughly equivalent to 20 percent of the gross amount from the sale of alcoholic beverages for the period of suspension, but no less than $200 or more than $5,000. Whether the LLLA agrees to accept a fine in lieu of suspension is in its discretion, but the criteria of CRS § 12-47-601(3)(a)(I) to (III) must be applied.

It is common for an LLLA to suspend a license for a period of time and to hold a portion of the suspension in abeyance, as long as certain criteria are met. For example, if a violation of sale to minors occurred, the LLLA might impose a sanction of a suspension of thirty days, with all but twenty-three days held in abeyance on the conditions that there be no further violations for a period of one year and that all present and future employees successfully complete "TIPS training"—a liquor serving class presented by Anheuser-Buesch Co.—within sixty days of the order or hire, whichever is first.

If the LLLA has reasonable grounds to believe that a licensee is guilty of a deliberate and willful violation or that the public health, safety, or welfare requires emergency action, it may summarily suspend a license without prior notice to the licensee or a hearing for a period of not more than fifteen days.[31] Notice of the summary suspension should be made to the license holder immediately and the show cause hearing should be held within the fifteen-day period because the summary suspension may be only for a period of fifteen days. Summary suspension is used only for incidents where, for example, there have been serious breaches of the peace, including assaults or shootings, or activities such as drug dealing, prostitution, or intentional service to minors.[32]

Renewals

Ordinary, uncontested renewals are quite routine, as long as the licensee has completed the appropriate renewal forms and submitted them in a timely manner. Many LLLAs require the licensees to be present for a renewal hearing even though this is not legally re-

quired; it is common practice to have face-to-face contact between the LLLA and the licensee once per year. At the renewal hearing, the LLLA may discuss with the licensee any problems that occurred over the past year, any training the licensee or his or her employees have undergone, or any other subjects of mutual interest.

Procedural issues may arise when there have been problems on the premises or complaints regarding the premises, and there is a possibility that the license may not be renewed. CRS § 12-47-302(1) provides that an LLLA may "refuse to renew any license for good cause." The Colorado Court of Appeals in *Squire Restaurant and Lounge, Inc. v. City and County of Denver*[33] held that failure to renew a tavern license was a violation of the licensee's due process rights, because neither the Colorado Department of Revenue nor the City and County of Denver had promulgated any regulations or ordinances defining "for good cause."

In response to *Squire*, the Colorado General Assembly enacted House Bill 95-1145, which is codified at CRS § 12-47-103(9). It defines "good cause" as:

> "Good cause," for the purpose of refusing or denying a license renewal or initial license issuance, means:
> (a) [t]he licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this article or any rules and regulations promulgated pursuant to this article;
> (b) [t]he 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;
> (c) [i]n the case of a new license, the applicant has not established the reasonable requirements of the neighborhood or the desires of the adult inhabitants as provided in section 12-47-301(2);
> (d) [e]vidence 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 provided for in section 18-9-106 C.R.S.

When a renewal hearing is held and there is a possibility that the license may not be renewed, due process requires that the licensee be given notice of the factors on which the nonrenewal may be based. This is similar to the notice given for a show cause hearing.

A renewal hearing should be conducted in a similar manner to a show cause hearing. As with show cause hearings, all parties have an interest in creating and preserving an accurate record. Therefore, it is good practice that these hearings be recorded by a court reporter, because there is a high probability that a nonrenewal of a license will be appealed to the district court.

Appeals

A final decision by an LLLA may be appealed to the district court pursuant to Rule 106(a)(4). When an application for a new license or a renewal is denied, or a revocation or suspension has been imposed, the applicant or the license holder has standing to appeal that decision.

In *Kornfeld v. Perl Mack Liquors, Inc.*,[34] the Colorado Supreme Court ruled that a business competitor in the neighborhood of a new license did not have standing to appeal the granting of the license.[35] Unlike a business competitor, a resident of the neighborhood, regardless of whether he or she is a business competitor of the new license, does have standing to challenge the granting of the license.[36]

The appellant in a Rule 106 action challenging a decision of an LLLA has a heavy burden. To be successful, he or she must show, as is common in most Rule 106 cases, that the LLLA acted arbitrarily and capriciously. The general principles regarding judicial review of liquor license matters are: (1) local licensing authorities are granted wide discretion; (2) all reasonable doubts are to be resolved in favor of the LLLA's decision; and (3) the LLLA's decision will not be disturbed by the courts unless it appears that the authority abused its discretion.[37] In general, the decision of the LLLA will be upheld if there is any competent evidence to support it.

Conclusion

The Colorado Liquor Code and the Regulations are a complex and intricate area of the law. However, most legal questions can be resolved by a careful reading of the appropriate statutes and regulations, in addition to the comparatively small number of reported cases.

Notes

1. The other types of liquor licenses and permits are:
   - manufacturer's license (CRS § 12-47-402)
   - limited winery license (CRS § 12-47-403)
   - wine festival permit (CRS § 12-47-403.5)
   - importer's license (CRS § 12-47-404)
   - nonresident manufacturers and importers of malt liquor license (CRS § 12-47-405)
   - wholesaler's license (CRS § 12-47-406)
   - liquor-licensed drugstore license (CRS § 12-47-408)
   - beer and wine license (CRS § 12-47-409)
   - bed and breakfast permit (CRS § 12-47-410)
   - optional premises license (CRS § 12-47-413)
   - retail gaming tavern license (CRS § 12-47-414)
   - brew pub license (CRS § 12-47-415)
   - arts license (CRS § 12-47-417)
   - public transportation system license (CRS § 12-47-419).
2. CRS § 12-47-407.
3. CRS § 12-47-412.
4. CRS § 12-47-411.
5. CRS § 12-46-107.
6. CRS §§ 12-48-101 *et seq.*
7. *See* www.colorado.gov/revenue.
8. *See* CRS § 12-47-313.
9. CRS § 12-47-308.
10. *See Nobel, Inc. v. Colo. Dep't of Revenue*, 652 P.2d 1085 (Colo. 1982).
11. CRS § 12-47-311.
12. *Id.*
13. *Nat'l Convenience Stores, Inc. v. City of Englewood*, 556 P.2d 476 (Colo. 1976); *Bd. of County Comm'rs v. Nat'l Tea Co.*, 376 P.2d 909 (Colo. 1962).
14. *Vigil v. Burgess*, 404 P.2d 147 (Colo. 1965).
15. CRS § 12-47-311(5).
16. *Nat'l Convenience Stores, supra* note 13; *Ladd v. Bd. of County Comm'rs,* 361 P.2d 627 (Colo. 1961); *Self Land Corp. v. City of Westminster City Council*, 746 P.2d 1353 (Colo.App. 1987).
17. CRS § 12-47-307(1)(a)(II). *See also Duren, Inc. v. City of Lakewood*, 709 P.2d 74 (Colo.App. 1985); *Mr. Lucky's, Inc. v. Dolan*, 591 P.2d 1021 (Colo.App. 1979).

18. *See Wadlow v. Hartman*, 551 P.2d 201 (Colo. 1976).

19. *Canjar v. Huerta*, 566 P.2d 1071 (Colo. 1977); *Bd. of County Comm'rs of El Paso County v. Bonicelli*, 377 P.2d 124 (Colo. 1962).

20. Consideration of the business wisdom of the applicant is not a statutory criterion for the denial or issuance of a liquor license or permit. Once the personal requirements of the applicant have been met, the only considerations are the needs and desires of the neighborhood.

21. 1 CCR § 203-2, Reg. 47-600(A).

22. No specific time is set by statute or regulation. However, adequate time to prepare a defense is necessary to meet due process requirements.

23. *Chroma Corp. v. County of Adams*, 543 P.2d 83 (Colo.App. 1983).

24. Because no higher standard of proof is required by statute, rule, or case law, the preponderance of the evidence standard applies.

25. CRS § 12-47-601(1).

26. 1 CCR § 203-1, Reg. 47-600(C).

27. *Fueston v. City of Colorado Springs*, 713 P.2d 1323, 1326 (Colo.App. 1985).

28. *Full Moon Saloon, Inc. v. City of Loveland*, 111 P.3d 568 (Colo.App. 2005).

29. 1 CCR § 203-2, Reg. 47-600(E). Although the regulation does not require specific findings of fact, this ensures that the licensee is fully informed of the results of the hearing and that, in the case of an appeal, the district court knows the basis for the local liquor licensing authority's action.

30. CRS § 12-47-601(3).

31. CRS § 12-47-601(2); 1 CCR § 203-2, Reg. 47-602.

32. 1 CCR § 203-2, Reg. 47-602.

33. *Squire Restaurant and Lounge, Inc. v. City and County of Denver*, 890 P.2d 164 (Colo.App. 1994).

34. *Kornfeld v. Perl Mack Liquors, Inc.*, 567 P.2d 833 (Colo. 1977).

35. *See also Woda v. City of Colorado Springs*, 570 P.2d 1318 (Colo.App. 1977).

36. *Norris v. Grimsley*, 585 P.2d 925 (Colo.App. 1978).

37. *Bailey v. Bd. of County Comm'rs*, 376 P.2d 519 (Colo. 1962); *DiManna v. Kalbin*, 646 P.2d 403 (Colo.App. 1982); *Kerr v. Bd. of County Commr's*, 460 P.2d 235 (Colo.App. 1969).