

ORDINANCE NO. 2341

INTRODUCED BY: ALLEN-THOMAS, FRANK, GRIMES, GUARDIOLA, HURST, HUSEMAN, MADERA, NOBLE, SMITH

AN ORDINANCE REPEALING AND REPLACING ARTICLE II OF CHAPTER 3 AND AMENDING CHAPTER 1, CHAPTER 6, AND CHAPTER 9 OF THE COMMERCE CITY REVISED MUNICIPAL CODE RELATING TO ADMINISTRATIVE PROCESSES FOR CIVIL INFRACTIONS, NUISANCES, AND BUSINESS LICENSING

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

**SECTION 1. Findings.** This ordinance is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest.

**SECTION 2. Amendments.** The Commerce City Revised Municipal Code (“Code”) is amended as follows:

- a. Sections 1-3003(c-d) and 1-3004(a) of the Code are amended as set forth in Exhibit A to this ordinance.
- b. Section 6-1004 of the Code is amended as set forth in Exhibit B to this ordinance.
- c. Sections 9-1009 and 9-3710 of the Code are amended, and Section 9-1010 of the Code is repealed and reserved, as set forth in Exhibit C to this ordinance.
- d. Article II of Chapter 3 of the Code is repealed and reenacted as set forth in Exhibit D to this ordinance.

**SECTION 3. Repealer.** All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency.

**SECTION 4. Effective Date.** This ordinance shall be effective as provided in the City Charter.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS 2ND DAY OF AUGUST 2021.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 20TH DAY OF SEPTEMBER 2021.

CITY OF COMMERCE CITY, COLORADO

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Benjamin A. Huseman, Mayor

ATTEST

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Dylan A. Gibson, City Clerk

## EXHIBIT A TO ORDINANCE 2341

(Additions are blue, italicized text; deletions are red, strikethrough text)

### 1-3003. Penalties in general.

- (a) *Misdemeanors.* Except as specified below, any person who violates, disobeys, omits, neglects, refuses or fails to comply with or resists the enforcement of any provision of this Code, the Charter, or any provision of any code or other regulation adopted by reference shall be guilty of a misdemeanor and, upon conviction, shall be punished by the penalty specifically provided for such violation or, if none, then by a fine not to exceed the maximum fine permitted pursuant to C.R.S. § 13-10-113, as may be amended from time to time, or imprisonment for a term not to exceed three hundred and sixty-four (364) days, or by both such fine and imprisonment, in addition to any costs which may be assessed. Notwithstanding the foregoing, no person under the age of eighteen (18) years as of the date of the offense shall be subject to imprisonment.
- (b) *Traffic violations.* The violation of any of the following sections of the Commerce City Traffic Code shall constitute a misdemeanor and shall be punishable in accordance with paragraph (a) of this section: 238 (Blue and red lights - illegal use or possession); 606 (Display of unauthorized signs or devices); 607(2)(a) (Interference with official devices), but only if the use proximately causes bodily injury to another person; 611(2) (Paralegic persons or persons with disabilities - distress flag); 705(2), (2.5), and (2.6) (Operation of vehicle approached by emergency vehicle - operation of vehicle approaching stationary emergency vehicle); 1008.5 (Crowding or threatening bicyclist); 1105(1), (2), (3), and (8) (offenses related to speed contests and exhibitions), 1208(11) (fraudulently obtaining, using or making disability placards); 1401 (Reckless driving); 1402 (Careless driving), but only if the violation proximately causes the death or bodily injury to another person); 1409 (Compulsory Insurance); 1413 (Eluding or attempting to elude a police officer); and 1415 (Radar jamming devices prohibited). The violation of any other provision of the Commerce City Traffic Code shall constitute a traffic infraction. Any person convicted of a traffic infraction shall be subject to the penalty of a fine and any surcharge, the total of which shall not exceed the maximum fine permitted pursuant to C.R.S. § 13-10-113, as may be amended from time to time, but shall not be subject to imprisonment.
- (c) *Civil infractions.* Any person convicted *in the municipal court* of violating any provision of this Code designated as a civil infraction shall pay a civil penalty for such infraction of not more than the maximum fine permitted pursuant to C.R.S. § 13-10-113, as may be amended from time to time, and may be required to pay all costs, direct and indirect, which the city incurred in connection with the civil infraction, including the cost of abating a nuisance, but shall not be subject to imprisonment except as provided in paragraph (d) of this section. *This subsection shall not limit the application of article II of chapter 3 of this Code and the penalties provided therein when the enforcement is conducted through the processes established therein.*
- (d) *Multiple civil infractions.* If a person who is alleged to have committed a violation of any provision of this Code that is classified as a civil infraction has been convicted *in the municipal court or found liable through an enforcement order issued pursuant to article II of chapter 3 of this Code* of two (2) or more such violations within the

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twelve-month period immediately preceding the new alleged violation, then, whether or not the previous violations were committed at the same premises as the new alleged violation, the new alleged violation may be charged as a misdemeanor criminal offense that is subject to a penalty or imprisonment, costs, fees and any other orders imposed in accordance with this Code.

- (e) *Penalties for fireworks violations.* Any person convicted, including without limitation a plea of guilty or no contest, of a violation of any provision of this Code, including without limitation any edition of the International Fire Code adopted by reference, relating to the unlawful possession, manufacture, storage, sale, handling, discharge or use of fireworks shall be subject to a fine of five hundred dollars (\$500.00) for a first offense and seven hundred and fifty dollars (\$750.00) for each subsequent offense in addition to any other applicable penalty, fee, or cost imposed pursuant to this Code, provided the minimum monetary fine under this subsection shall not be suspended or waived except for persons under the age of eighteen (18) for whom the municipal judge imposes an alternative sentence.

### **Sec. 1-3004. - Other remedies.**

- (a) *Abatement authorized.* Upon a conviction, finding of liability, or entry of default for a violation of any provision of this Code, the administrative hearing officer or the municipal judge, as applicable, shall have the authority to order the violation abated. In the event the violation is not abated by the date specified in the order, *or in the event of an emergency abatement*, the city shall have the authority to enter the property on which the violation exists and abate the violation. The city is further authorized to assess against the defendant or responsible party the costs of such correction or abatement, *plus a fifteen (15) percent administrative fee*, in addition to any other cost, fee or fine authorized by this Code, *and collect such costs of abatement in the manner provided for the collection of costs of abatement in section 3-2103 of this Code.*
- (b) *Additional remedies.* In the event any person violates, disobeys, omits, neglects, refuses or fails to comply with or resists the enforcement of any provision of this Code, the charter, or any provision of any code or other regulation adopted by reference, the city may, in addition to imposing the penalties provided in section 1-3003, initiate any other action necessary or appropriate to secure compliance with the provisions of this Code and, in addition, shall be entitled to recover any costs and charges incurred in undertaking such action.

\*\*\*END EXHIBIT A\*\*\*

EXHIBIT B TO ORDINANCE 2341

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**Sec. 6-1004. - Abatement without hearing; assessment of costs.**

- (a) Nuisance on public property. Any nuisance located or found in or upon any street, avenue, alley, public sidewalk, highway, public right-of-way, public grounds, park, recreation facility, or public property in the city may be abated without notice or a hearing. *In addition to abatement, a peace officer may issue a summons or notice of violation regarding the nuisance.*
- (b) Emergency abatement. If the city manager reasonably believes that a nuisance poses imminent danger to the health, safety or welfare of any person or to any property, the city manager may cause the nuisance to be abated without notice or a hearing. *In addition to abatement, a peace officer may issue a summons or notice of violation regarding the nuisance.*
- (c) Recovery of expense of abatement. The *city may recover the costs of abatement, plus a fifteen (15) percent administrative fee in the manner provided for the collection of costs of abatement in section 3-2103 this Code.* ~~actual costs of abatement, plus fifteen (15) percent of such abatement costs, a minimum fine assessment of one hundred dollars (\$100.00) and other incidental costs of abatement, shall be assessed upon the lot, lots or tracts of land upon which such nuisance is abated.~~
- ~~(d) Such costs shall be paid to the city within thirty (30) days after the city has mailed notice of the assessment by certified mail to the owner of the property; provided, however, that if the property is occupied by someone other than the owner, the city shall mail such notice of assessment by certified mail, to both the occupant and the owner. Service shall be complete upon depositing the notice within the United States Postal Service, postage prepaid for certified mail. Every such assessment shall be a lien in the amounts assessed against such lot, lots or tract of land until paid.~~
- ~~(e) Failure to pay such assessment within the thirty-day period shall cause the assessment to become a lien against such lot, block or parcel of land and shall have priority over all liens, except general taxes and prior special assessments, and the same may be certified at any time after such failure to so pay the same, by the city to the county treasurer to be placed upon the tax list for the current year and to be collected in the same manner as other taxes are collected, with fifteen (15) percent penalty to defray the cost of collection.~~
- ~~(f) Objections to assessments may be made by the party in interest by filing a written notice of such objection with the city manager within thirty (30) days of the completion of the work. After reviewing the objection, the city manager will determine the reasonableness of the costs assessed and may reduce the assessment if he or she determines that extenuating circumstance(s) support the reduction.~~

\*\*\*END EXHIBIT B\*\*\*

EXHIBIT C TO ORDINANCE 2341

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**Sec. 9-1009. - Denials, suspensions, and revocations; appeals.**

(a) Grounds. The city may deny an application for, ~~or~~ *and the administrative hearing officer may* suspend or revoke, any business license issued pursuant to this chapter when it *is* ~~determine~~s that the operation of such business by the applicant or licensee is not in compliance with state, federal, or local law or has the potential for negatively impacting the health, safety or welfare of its citizens. Without limiting the foregoing, the following shall each constitute sufficient grounds for denial, suspension, or revocation:

- (1) The property on which the business is or will be conducted is not zoned for such business;
- (2) Fraud, misrepresentation, false statement or material omission made in connection with the application for a license *or renewal*;
- (3) Delinquent or unpaid taxes, assessments or other financial claims of any local, state or federal government;
- (4) Revocation of a licensee's sales and use tax license;
- (5) Failure to comply with the duty to supplement application information within thirty (30) days from the date of the change;
- (6) A violation of any condition placed on the license; and
- (7) Conduct of the business in any unlawful or dishonest manner, included but not limited to, any violation of the provisions of this chapter, any other section of the Code or any other federal, state or local law.

The failure of the city to discover the existence of a ground on which an application for initial licensing or renewal of a current license shall not preclude the city from taking action to revoke or suspend a license when such condition becomes known to the city.

(b) *Process.*

- (1) *Denial.* The city may deny the approval of any application, including an application for renewal, *without a hearing* based upon the grounds set forth in paragraph (a) of this section by issuing a written notice of such denial to the applicant. The written notice of denial shall set forth the grounds for the denial and shall be mailed via certified mail, return receipt requested, to the post office address given in the application.
- (2) *Appeal.* *An applicant may appeal the city's denial of an application, or approval of an application with conditions, pursuant to article II of chapter 3 of this Code. Such appeal must be submitted to the administrative hearing officer in writing, and shall be governed by the processes set forth in article II of chapter 3 of this Code.*
- (3) *Suspensions and revocations.* *The administrative hearing officer may suspend or revoke* ~~Before suspending or revoking~~ any license issued pursuant to this chapter, *after conducting a hearing in accordance with article II of chapter 3 of this Code. The hearing officer may initiate such proceeding on its own motion, or upon ex parte motion from the city, by issuing an order directing the licensee to show cause why the license should not be suspended or revoked and notifying the licensee of*

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*the time, date, and location of the hearing.* ~~Prior to such hearing, t~~ The licensee shall be *served with notice of the hearing and in writing of* the alleged cause(s) for revocation or suspension ~~and shall be afforded an opportunity to be heard~~ *Service of notice.* ~~Notice shall be served~~ not less than three (3) days prior to the date of the hearing. Service shall be deemed complete either upon personal delivery of the written notice or five (5) days after the date that such notice is sent by regular and certified mail, return receipt requested, to the post office address given in the application for the license.

(4) *The failure of any person to receive any notice required under this chapter shall not affect the validity of any proceedings taken under this chapter.* ~~The notice shall set forth the circumstances of the alleged violation.~~

~~a. *Hearing.* The administrative hearing officer shall conduct the hearing, which shall be open to the public, and shall hear such statements and consider such evidence as deemed relevant to the violation alleged in the notice. The hearing shall be recorded stenographically or by electronic recording device.~~

~~b. *Burden of proof.* The city shall have the burden of proof by a preponderance of the evidence.~~

~~c. *Written order.* The licensing agent shall issue a written order regarding the license within ten (10) business days after the hearing is concluded. Such order shall include findings of fact from the statements and evidence offered as to whether the violation occurred, and indicate the licensing agent's decision whether to suspend or revoke the license. A copy of the order shall be mailed to or served on the licensee at the address on the license.~~

### Sec. 9-1010. - ~~Appeals.~~ *Reserved.*

~~(a) *Administrative hearing officer.* An applicant may appeal the city's decision to deny the application, approve the application with conditions to the administrative hearing officer within thirty (30) days of the licensing agent's decision. Appeals shall be made in writing to and filed with the licensing agent. The city shall have the burden of proving by a preponderance of the evidence that it has not exceeded its jurisdiction or abused its discretion.~~

~~(b) *District court.* The findings of the administrative hearing officer shall be final and binding upon the parties unless appealed directly to the District Court of Adams County, Colorado, for judicial review of such decision pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. An appeal from the decision of the hearing officer may be taken by the applicant, the licensee or by the city. Failure to timely appeal constitutes a waiver of any right any party may otherwise have to contest an appealable decision of the appointed hearing officer.~~

### Sec. 9-3710. - Summary suspension.

(a) In addition to any other action involving a license provided in this chapter, if the licensing agent finds that probable cause exists for the suspension or revocation of massage facility license issued in accordance with this division as the result of conduct which constitutes a deliberate and willful violation of any part of this division that

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imposes an undue risk to the public health, safety, or welfare, ~~he or she~~ *they* may enter an order for the immediate suspension of such license, pending further investigation and hearing, for a period not exceeding fifteen (15) days from the date of service.

- (b) Such order shall be in writing, citing the reasons for such suspension, and, notwithstanding section 9-1009, shall be served upon the licensee, the manager, or any person temporarily or intermittently serving as manager of a massage facility at the time of service forthwith upon its execution, together with a notice to appear before the ~~licensing agent~~ administrative hearing officer ~~for a hearing~~ to show cause why the license should not be suspended or revoked. The order and notice shall also be mailed to the licensee to the post office address given in the application for the license.
- (c) Upon the service of such order and notice, without regard to the receipt of the order and notice by mailing, the massage facility subject to the order shall immediately cease operations.
- (d) Hearings on all orders issued pursuant to this section shall take place no later than fifteen (15) days following the date upon which such order is served and shall be conducted and heard by the city's administrative hearing officer *pursuant to article II of chapter 3 of this Code. The failure of any person to receive any notice required under this section shall not affect the validity of any proceedings taken under this chapter.*~~in the manner provided in subsection 9-1009(b)(2)b.—(b)(2)d.~~
- ~~(e) Decisions of the city's administrative hearing officer shall be appealable in the manner provided in subsection 9-1010(b).~~

\*\*\*END EXHIBIT C\*\*\*

## **ARTICLE II. - ADMINISTRATIVE ENFORCEMENT & HEARINGS**

### **DIVISION 1. - GENERALLY**

#### **Sec. 3-2100. - Applicability and scope.**

This article defines: (1) the administrative process when a notice of violation is issued pursuant to this article as an alternative to prosecution in the municipal court for any alleged violation of chapters 9 and 21 of this Code, any other alleged violations authorized by this Code to be prosecuted through the city's administrative hearing process, and any alleged violation of any provision of this Code designated as a civil infraction; and (2) the process for appeals pursuant to chapter of this Code. Nothing in this article shall be construed: (1) to limit the original jurisdiction of the municipal court to hear and determine all cases regarding criminal, decriminalized and civil violations and offenses under the Charter, ordinances, codes, and regulations of the city; (2) to require that any alleged violations be addressed through the process established in this article as a prerequisite to the municipal court's jurisdiction to hear and determine such violations and offenses; or (3) to apply to or require the application of the process established in this article prior to the revocation or suspension of any permit issued under chapter 21 of this Code.

#### **Sec. 3-2101. - Definitions.**

As used in this article, the following terms shall have the following meanings:

*Director:* The director of the Department of Community Development or their designee.

*Enforcement order:* An order issued by the hearing officer upon conclusion of an abatement proceeding, after a protestant or responsible party fails to appear at or take part in a hearing, or a protestant or responsible party appears at a protest hearing and is found to be liable for one or more violations.

*Abatement proceeding:* A proceeding before the hearing officer requested by the city to confirm any penalties and to seek the approval of any abatement.

*Hearing officer:* Pursuant to the provisions of this article, an individual appointed by the city council as an administrative hearing officer to preside over administrative hearings as designated by this Code and to issue such rulings, orders and decisions as may be required thereby.

*Licensee:* Any person subject to proceedings under this article with respect to a license or application for a license issued pursuant to chapter 9 of this Code.

*Notice of assessment:* The statement of penalties, costs, and fees owed by a responsible party relating to a violation, including any compliance order or enforcement order including an assessment of such amounts.

*Notice of violation:* A written notice provided to a responsible party identifying, among other things, the violations existing at, on, about or within the property identified in the notice.

*Protest:* A written objection to the issuance of a notice of violation stating the grounds therefor and requesting a protest hearing.



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(Article repealed and reenacted)

*Protest hearing:* The hearing held by the hearing officer in response to a protest filed in accordance with the provisions of this article.

*Protestant:* Each responsible party who submits a protest in accordance with the provisions of this article.

*Responsible party:* A person or entity charged with a violation of chapter 9 or 21 or any provision of this Code designated as a civil infraction or, in the case of property violations, the property owner, the occupant or an individual or an entity who, acting as an agent for or in any other legal capacity on behalf of the owner, has authority over property subject to a notice of violation under this article, including, but not limited to, any mortgagee, loan servicer or loan holder, whether in trust or otherwise, and any employee, agent or representative thereof including real estate agents and brokers.

*Secretary:* The personnel assigned by the city manager to support the hearing officer with respect to proceedings under this article.

*Violation:* Any act or omission that would constitute non-compliance with any provision of chapters 9 or 21 of this Code, any other provision of this Code that is authorized to be enforced through the city's administrative hearing process, or any provision of this Code designated as a civil infraction.

**Sec. 3-2102. – Administrative hearing officer and secretary.**

- (a) The city council is authorized and empowered to appoint one (1) or more administrative hearing officers to hear protests as provided herein and to act as a hearing officer in any other instance as provided in this Code, except where the authority to designate a hearing officer is separately established. The hearing officer shall be an attorney licensed to practice in the State of Colorado.
- (b) All appeal, suspension, or revocation hearings as provided for in chapter 9 of this Code, and all protest hearings and enforcement order hearings, as provided in this article, shall be conducted by the hearing officer. In each case, the hearing officer is charged with performing all functions necessary to render a final determination and order.
- (c) In addition to any functions and powers assigned in this article and elsewhere in the Code, the hearing officer has the authority to do all things necessary and incidental to hearing matters before it including, but not limited to, the following:
  - (1) Calling and questioning witnesses;
  - (2) Ruling on evidentiary questions and witness qualifications;
  - (3) Upon the request of any party, issuing subpoenas for witnesses and documentary and other tangible evidence where the attendance of the witness or the admission of evidence is deemed necessary to the determination of the issues at the hearing, provided all costs related to subpoenas, including witness fees in an amount established by the hearing officer, and mileage fees at the rate provided for witnesses by statute, shall be borne by the party requesting the subpoena;
  - (4) Hearing all evidence;

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- (5) Requiring the submission of briefing;
  - (6) Determining the order of proceedings; and
  - (7) Generally conducting the hearing as a quasi-judicial proceeding.
- (d) The hearing officer shall issue rules of procedure regulating the conduct of its hearings.
- (e) The city manager shall assign personnel to serve as the secretary to the hearing officer, which personnel shall provide secretarial and reporting services, post any required public notices, and perform such other duties necessary for the fair and impartial conduct of any hearings. In the absence of such assignment, the city clerk shall be the secretary.

**Sec. 3-2103. –Penalties and costs; collection.**

- (a) Penalties imposed on the responsible party for a civil infraction enforced under this article shall be as follows, provided the minimum penalties for violations of any provision identified as a civil infraction in chapter 4 of this Code shall be fifty (50) percent of the amounts set forth in this section:
- (1) A minimum penalty of one hundred dollars (\$100.00) shall be imposed against the responsible party for the first violation of a particular code provision within any consecutive twelve-month period.
  - (2) For each successive violation of the same code provision within any twelve-month period, minimum penalties shall be imposed against the responsible party as follows:
    - a. Second violation: three hundred dollars (\$300.00).
    - b. Third violation: five hundred dollars (\$500.00).
    - c. Fourth or greater violation: nine hundred ninety-nine dollars (\$999.00).
  - (3) Where multiple violations of a single Code provision are found, the applicable minimum penalty shall be imposed for each count.
  - (4) Payment of a penalty shall neither excuse the failure to correct a violation nor bar further enforcement action by the city.
- (b) Costs and fees may be assessed against the responsible party in addition to any applicable penalties under this article as follows:
- (1) Any fees and/or costs authorized by the city council;
  - (2) Actual costs of the protest hearing, including, but not limited to, the per-hour fee charged to the city by the hearing officer. In the event the protestant fails to appear at the protest hearing, one (1) hour of hearing officer time shall be assessed against the protestant. In the event a protest hearing is not held because the protestant has pled liable, has dismissed the protest, or has reached a settlement with the city, the costs provided for in this subsection (b)(2) shall not be assessed;

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- (3) In an enforcement order, other actual costs incurred by the city in the matter and awarded by the hearing officer, including costs of investigation, staffing costs to prepare for the hearing and conduct the hearing, and all reinspections necessary to enforce compliance;
  - (4) Reasonable costs of abating the violation, if applicable, plus an administrative fee equal to fifteen (15) percent of the costs of the abatement unless administrative costs have been awarded.
- (c) Penalties, fees, and costs assessed pursuant to this article shall be paid to the city within thirty (30) days after service of a notice of assessment by first-class U.S. mail to the responsible party; provided, however, that if the property is occupied by someone other than the owner of the property, the notice of assessment shall be mailed to both the occupant and the owner. Service shall be deemed complete upon depositing the notice of assessment in the United States mail, postage prepaid. The failure of any person to receive any assessment required under this chapter shall not affect the validity of the assessment or any collection efforts under this section.
- (d) The city shall assess a late fee in an amount set by city council resolution if the responsible party fails to pay any assessment in full within the thirty-day period.
- (e) Failure to pay any such assessment within the thirty-day period shall cause the unpaid amount of the assessment plus any late fee to become a lien against the property identified in the notice of assessment, which lien shall be a first lien having priority over all liens of whatever kind or nature, regardless of date, except general taxes and prior special improvement district assessments. Furthermore, at any time after such failure to pay the assessment and late fee, the same may be certified by the city to the county treasurer, as provided by state statute, to be placed upon the tax list for the current year and to be collected in the same manner as other taxes are collected, with a fifteen (15) percent penalty added to defray the cost of collection.
- (f) The city manager may refer any unpaid fines, fees, and costs for collection by whatever means are available to the city. Any action or other process provided by law may be maintained by the city to recover or collect any amounts, including late fees, interest and administrative costs, owing under this article.

### **Sec. 3-2104. – Licensing hearing costs; collection.**

- (a) The hearing officer may assess the following against an licensee in any revocation, suspension, or appeal hearing regarding a license issued under chapter 9 of this Code as follows, in addition to any appropriate penalties or conditions:
- (1) Any fees and/or costs authorized by the city council;
  - (2) Actual costs of the appeal hearing, including, but not limited to, the per-hour fee charged to the city by the hearing officer. In the event the licensee fails to appear at the hearing, one (1) hour of hearing officer time shall be assessed against the protestant. In the event an appeal hearing is not held because the licensee has dismissed an appeal or has reached a settlement with the city, the costs provided for in this subsection (a)(2) shall not be assessed; and

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(Article repealed and reenacted)

- (3) Other actual costs incurred by the city in the matter and awarded by the hearing officer, including costs of investigation, staffing costs to prepare for the hearing and conduct the hearing, and all reinspections necessary to enforce compliance;
- (b) Fees and costs assessed pursuant to this article shall be paid to the city within thirty (30) days after service of a notice of assessment by first-class U.S. mail to the licensee. Service shall be deemed complete upon depositing the notice of assessment in the United States mail, postage prepaid.
- (c) The city shall assess a late fee in an amount set by city council resolution if the licensee fails to pay any assessment in full within the thirty-day period.
- (d) Failure to pay any such assessment within the thirty-day period shall cause payment of the unpaid amount of the assessment plus any late fee to become an automatic condition of the renewal of any license held by the licensee or approval of any application submitted by the licensee.
- (e) The city manager may refer any unpaid fines, fees, and costs for collection by whatever means are available to the city. Any action or other process provided by law may be maintained by the city to recover or collect any amounts, including late fees, interest and administrative costs, owing under this article.

### **3-2105. –Relief from assessment.**

- (a) If the responsible party or licensee is unable to pay the entire assessment within thirty days, the responsible party or licensee may request leave from the hearing officer, for a compliance order or licensing hearing, or the Director, for any assessment pursuant to section 3-2103, to make payments over time. A written request under this section shall be submitted to the secretary before the expiration of the time for payment with an additional time-payment service fee in an amount set by resolution of the city council. No late fee shall be imposed pending the determination of such request.
- (b) A responsible party and/or property owner may object to an assessment imposed pursuant to section 3-2103 by filing a written notice of such objection with the city manager within fifteen (15) days of the date of service of the notice of the assessment. After reviewing the written objection and the response of the city, the city manager may reduce or cancel the assessment if they determine that the amount of the assessment is unreasonable or that extenuating circumstances regarding the ability to pay exist supporting the reduction or cancellation of the assessment. The city manager shall not question the validity of the notice of violation or enforcement order in making the decision. The city manager's decision is final and not appealable.
- (c) At any time before a lien imposed under this article is paid, the city manager may cause any lien imposed under this section to be canceled upon their determination that the lien was imposed in error or in the interests of fairness. The city manager shall not question the validity of the notice of violation, enforcement order, the reasonableness of the assessment, or any extenuating circumstances in making the decision. The city manager's decision is final and not appealable.

### **DIVISION 2. - NOTICE OF VIOLATION**

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(Article repealed and reenacted)

**Sec. 3-2200. - Authority; enforcement.**

- (a) Any person may be issued a notice of violation as provided in this article.
- (b) Notwithstanding any other provision of this Code, a responsible party shall have protest rights only as granted in this article.
- (c) Each day a violation exists or continues shall constitute a separate and distinct violation for which a separate notice of violation may be issued. If the responsible party submits a written protest as provided in this article, any additional notice of violation issued for the same violation before the protest hearing takes place shall be subject to the protest hearing and the hearing officer's decision.

**Sec. 3-2201. - Issuance.**

- (a) Upon discovering a violation, a peace officer may issue a notice of violation to a responsible party; provided, however, that if a notice of violation is issued to the owner of property for a violation caused by a tenant in lawful possession of the property, the peace officer must notify both the property owner and the tenant.
- (b) The peace officer may require the responsible party to provide evidence of identity and residential or working address.
- (c) For violations not related to snow or ice removal, the peace officer shall establish an appropriate date by which any violation must be corrected based on the nature of the violation, not to exceed twenty-one (21) calendar days, and to extend such time to correct the violation(s) if, in their discretion, additional time is reasonably required to do so, provided, however, that any such extension shall be noted in writing by the peace officer and notice shall be given to the responsible party and property owner, if applicable.
- (d) Notices of violation relating to snow or ice removal shall result in the imposition of penalties unless the notice of violation is dismissed following the filing of protest, notwithstanding correction of the violation.

**Sec. 3-2202. - Contents.**

A notice of violation shall contain the following information:

- (1) The date and location of the violation(s) and the approximate time the violations included in the notice were observed. Where applicable, the notice of violation shall identify the property in violation by address or legal description.
- (2) Each specific Code provision(s) violated and a written description of the facts resulting in each violation, including photographs, if available.
- (3) Except for violations relating to snow or ice removal, a requirement that the responsible party correct the violation(s), the actions required to do so and the date by which the violation(s) must be corrected. The effective date of service shall be considered in determining the date of correction.

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- (4) An explanation of how to protest a notice of violation, including the deadline for submitting the protest and the person to whom a protest must be submitted, and a statement of the potential for liability for certain fees and costs;
- (5) The following or substantially similar statements:
  - a. This notice of violation will be dismissed and no penalty will be imposed if each violation is corrected by the date stated in this notice (not applicable to snow or ice removal).
  - b. Failure to correct the violation (except for snow or ice removal violations) or to protest this notice of violation within the time provided (unless extended) will result in the assessment of penalties for each violation as provided in the Commerce City Revised Municipal Code and you may be responsible for any costs of abatement. Contact the peace officer identified on this notice to request an extension.
  - c. You will receive a notice of assessment of any penalties, fees, and costs before they are due. Any penalties, fees, or costs assessed and not paid within 30 days will be assessed a late fee and will be filed as a lien against your property. The assessment may be collected through your property tax bill or through any other lawful means.
  - d. You may receive additional notices of violation and enhanced penalties if you fail to correct the violation.
- (6) The name and telephone number of the peace officer and the responsible party, if it can be obtained.

### **Sec. 3-2203. - Service of notice of violation.**

- (a) The peace officer shall serve the notice of violation to the responsible party at the site of the violation by personal delivery or, if the responsible party is not located at the site of the violation, by leaving the notice of violation with any adult person residing, if a residence, or working, if a business, at the site. If neither are available, the notice of violation may be served by:
  - (1) Personally serving a copy of the notice of violation on the responsible party at another location;
  - (2) Sending a copy of the notice of violation by first-class mail to the last known address of the responsible party as reflected in the city's or county assessor's records; or
  - (3) Posting a copy of the notice of violation in a conspicuous place at the premises.
- (b) Service shall be deemed complete upon personal delivery, posting, or three (3) days after the date of mailing, as applicable.
- (c) If it is determined that the responsible party is not the owner of the property upon which a violation is alleged to exist, a copy of the notice of violation shall be mailed, on the same date the notice of violation is served on the responsible party, to the

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owner of the property at such person's last known address as reflected in the city's or county assessor's records.

- (d) The failure of any person to receive any notice required under this section shall not affect the validity of any proceedings or assessment under this article.

**Sec. 3-2204. – Default; imposition of penalties and costs without protest; abatement.**

- (a) Failure to submit a protest or correct a violation within the longer of: (1) the time for correction of the violation, as indicated in the notice of violation or as formally extended; or (2) the deadline to file a protest as defined in section 3-2300(b), shall constitute a default.
- (b) In the event of a default, the city shall assess the applicable penalties, fees, and costs for each uncorrected violation according to section 3-2103. No entry of default or other finding by the hearing officer or municipal court shall be required.
- (c) Where authorized by this Code, including the entry of default or issuance of an enforcement order by the hearing officer, the city may, in addition to assessing the applicable penalties, abate the violation(s).

**DIVISION 3. – PROTEST HEARINGS**

**Sec. 3-2300. – Protest.**

- (a) A responsible party may object to a notice of violation by submitting to the city a written protest as provided in this section.
- (b) The protest must be received by the person identified to receive the protest on behalf of the city in the notice of violation by 5:00 p.m. on the later of: (1) twenty-one (21) calendar days from the date of service of the notice of violation; or (2) the date required for correction indicated in the notice of violation or as formally extended. Compliance with these time limits shall be a jurisdictional prerequisite to any protest, and failure to comply with these time limits shall bar such protest.
- (c) The protest shall be in writing and shall contain the following information:
- (1) The specific violations being protested and the specific reason(s) why the protestant believes the notice of violation or any specific violation is objectionable, incorrect or illegal. The failure to comply with this section may result in the hearing officer denying the protest or limiting the protestant's evidence and defenses;
  - (2) The name, address and telephone number of the protestant;
  - (3) If the protestant is to be represented by another person, the name, address and telephone number of such representative; and
  - (4) The signature of the protestant, legal representative or agent.
- (d) The director may require that a written protest be accompanied by a deposit, in an amount determined by the director, against the costs of the protest hearing and the penalties applicable to the alleged violations, if the protestant has previously failed to

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pay an assessment issued under this article or if any alleged violations are successive violations of the same code provision within the preceding twelve (12) months. Payment of the required deposit within five (5) days of demand shall be a jurisdictional prerequisite to any protest brought, and failure to comply with this requirement shall bar such protest.

- (e) If a protest is properly and timely submitted, and any applicable deposit paid, the city shall neither take action to abate the violation(s) identified in the protest nor impose any penalty for such violation(s) until:
  - (1) After a protest hearing in which the protestant has been found liable for the violation, the protestant has failed to correct the violation within the time ordered by the hearing officer; or
  - (2) The protestant has failed to appear at the protest hearing and the hearing officer issues an entry of default or enforcement order authorizing the abatement.
- (f) The filing of a protest shall not have any effect on any violation not properly protested, and shall not limit the city from issuing notices of violation for the same, similar, or any other violations. The filing of a protest by one responsible party shall not permit the untimely filing of a protest by any other responsible party.

**Sec. 3-2301. – Initial protest review.**

Within five (5) days of the city's receipt of a protest but before a protest hearing is scheduled, the director or their designee shall conduct an initial review of the protest, the notice of violation, and any other relevant material and may, in their discretion:

- (a) Direct the secretary to forward the protest to the hearing officer and, if appropriate pursuant to section 3-2300(d), require a deposit against the costs of the protest hearing and the penalties applicable to the alleged violations, as provided in section 3-2103;
- (b) Suspend the notice of violation for no more than three (3) months where the responsible party has filed for necessary permits that are both required to achieve compliance and actively pending before the city, state, or other governmental agency; or
- (c) Dismiss the notice of violation or any part of the notice of violation without prejudice.

**Sec. 3-2302. – Protest hearing – scheduling and notice.**

- (a) Following earlier of a referral to the hearing officer pursuant to section 3-2301(a) or five (5) days of the city's receipt of a protest, unless the notice of violation is dismissed or suspended pursuant to section 3-2301(b) or (c), the secretary shall forward the protest to the hearing officer with a statement of the secretary's belief as to whether the protest was filed timely. The hearing officer shall make a jurisdictional determination before scheduling any hearing and shall dismiss any protest that the hearing officer determines was not filed timely and award the costs of the hearing officer's review against the protestant.



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- (b) The secretary schedule a protest hearing in consultation with the hearing officer, the peace officer, the city attorney, and the protestant. Unless the hearing officer, at their sole discretion, allows an extension of time, the protest hearing shall be scheduled, but need not occur, within twenty-one (21) calendar days of the city's receipt of the protest.
- (c) At least seven (7) days prior to the date of the protest hearing, the city shall provide written notice to the protestant of the date, time and location of the protest hearing. Notice shall be given personally or by first-class mail. The protestant may waive the requirement of notice. The failure of any person to receive any notice required under this section shall not affect the validity of any proceedings taken under this article.

### **Sec. 3-2303. – Abatement proceeding.**

- (a) If no protest is submitted regarding a violation, the city may, in its discretion, request that the hearing officer conduct an abatement proceeding for the limited purposes of authorizing the abatement of such violation and obtaining an award of costs of abatement in addition to other penalties or costs imposed as a matter of law.
- (b) At least seven (7) days prior to the date of the abatement proceeding, the city shall provide written notice to each responsible party identified by the city of the city's request and the date, time and location of the abatement proceeding. Notice shall be given personally or by first-class mail. A responsible party may waive the requirement of notice. The failure of any person to receive any notice required under this section shall not affect the validity of any proceedings taken under this article.
- (c) Abatement proceedings shall be limited to determining the authority of the city to abate a violation and costs of abatement. Any responsible party may present argument and evidence regarding the reasonableness and legality of the abatement, but shall not be permitted to challenge the underlying violation or any penalties imposed.

### **Sec. 3-2304. – Protest hearing or abatement proceeding procedure.**

- (a) Protest hearings and abatement proceeding, while quasi-judicial in nature, are intended to be informal. With the exception of qualifying expert witnesses, formal rules of evidence and discovery shall not apply. There shall be no right to a trial by jury.
- (b) The parties to a protest hearing shall be each protestant and the city. The parties to an enforcement hearing shall be the city and each responsible party identified by the city. Parties may be represented by legal counsel, may call and question witnesses and shall have the opportunity to present evidence and cross-examine witnesses.
- (c) The city shall bear the burden to establish by a preponderance of the evidence the existence of each violation and any administrative costs sought.
- (d) The hearing officer, at the request of the city, may limit the protestant's presentation of evidence or argument that is not identified in the protest as required by section 3-2300(c).
- (e) All testimony in proceedings before the hearing officer shall be given under oath.

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(Article repealed and reenacted)

- (f) With the exception of qualifying expert witnesses, the conduct of protest hearings or abatement proceedings and the admission of evidence shall generally be as set forth herein, without regard to whether such strictly conform to common law or statutory rules of procedure or evidence or other technical rules. The admissibility of evidence shall be encouraged, and the hearing officer shall consider all evidence of probative value. The hearing officer may call upon his or her own experience, technical competence and specialized knowledge in the evaluation of evidence presented.
- (g) Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications shall be submitted to the hearing officer in advance of the protest hearing or abatement proceeding.
- (h) For good cause shown, as determined by the hearing officer, a protest hearing or abatement proceeding may be continued to a date certain.
- (i) Protest hearings and abatement proceedings shall be recorded by electronic means and transcripts of such recordings shall be made upon request at the expense of the requesting party.
- (j) Whenever it appears that a protest is not filed within the time permitted or that the protestant for some other reason lacks jurisdiction or standing, the protest may be dismissed by the hearing officer.

### **Sec. 3-2305. - Failure to attend or participate in protest hearing.**

Provided that notice of the protest hearing has been properly made, the failure of the protestant to appear at or participate in the protest hearing shall, in the hearing officer's sole discretion, constitute a default, and judgment may be entered against such protestant.

### **Sec. 3-2306. – Enforcement order; appeal.**

- (a) Within fourteen (14) days of the conclusion of a protest hearing, or upon presentation of a settlement or the failure of the protestant or responsible party to appear at the protest hearing, the hearing officer shall enter an enforcement order as follows:
  - (1) If the hearing officer determines that the city has not established the existence of any violations identified in the notice of violation as of the date of the violation that still exists as of the date of correction, the hearing officer shall vacate the notice of violation and any subsequent notices of violation for the same violations issued before the hearing. The hearing officer's decision shall not vacate any prior notices of violation that were not protested and shall not limit the city from issuing future notices of violation regarding the same violation, responsible party, or property. Any fees, fines, or costs deposited in connection with the protest shall be refunded.
  - (2) If that the city has established the existence of one (1) or more violations identified in the notice of violation as of the date of the violation that still exists as of the date of correction, the hearing officer shall give judgment in favor of the city and against each responsible party and shall issue an enforcement order containing the following:

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- a. Written findings of fact and conclusions of law supporting the finding of liability;
  - b. A provision imposing penalties and costs as provided by this article; and
  - c. If applicable, a requirement that the responsible party remedy or abate the violation(s) within a specified period of time and, if the responsible party fails to do so, authorizing the city, without a court or hearing officer order, to take reasonable steps to abate the violation(s) as long as the same may be accomplished without entering any building upon the property.
- (b) Within fourteen (14) days of the conclusion of an abatement proceeding, the hearing officer shall enter an enforcement order as follows:
- (1) If the hearing officer determines that the city established the reasonableness of and lawful basis for the abatement of a violation identified in the notice of violation as of the date of the violation that still exists as of the date of correction, the hearing officer shall grant the city's request and issue an enforcement order containing the items in subsection (a)(2), above, excluding penalties previously imposed due to default.
  - (2) If the hearing officer determines that the city has not established the reasonableness of and lawful basis for the abatement of a violation identified in the notice of violation as of the date of the violation, the hearing officer shall deny the city's request.
  - (3) The hearing officer's decision shall not address or affect the notice of violation or any assessment resulting from the notice of violation and shall not limit the city from issuing future notices of violation regarding the same violation, responsible party, or property.
- (c) Any enforcement order issued under subsections (a)(2) or (b)(1), above, may include an award of administrative costs if the hearing officer determines that the city has established the costs by a preponderance of the evidence.
- (d) The enforcement order shall be mailed to each responsible party identified by the city by first class to the address of the responsible party as reflected in the city's records. The failure of any person to receive the enforcement order under this section shall not affect the validity of any proceedings or assessment under this article.
- (e) The enforcement order shall, upon mailing to each responsible party identified by the city, constitute a final action unless appealed directly to the District Court of Adams County, Colorado, for judicial review of such decision pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. An appeal of the enforcement order may be taken by the applicant, the licensee or by the city. Failure to timely appeal constitutes a waiver of any right any party may otherwise have to contest the enforcement order.

**Sec. 3-2307. - Failure to comply with enforcement order.**

It is unlawful for a responsible party who has been served with a copy of the enforcement order to fail to comply with the enforcement order. Any responsible party who fails to comply with an enforcement order is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by confinement in jail or by both such

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fine and imprisonment as specified in chapter 1 of this Code. Prosecution for failure to comply with an enforcement order as provided herein shall not commence until the time to appeal such order has lapsed.

**DIVISION 4 – LICENSING HEARINGS**

**Sec. 3-2400. – Notice of appeal; deadline and required contents.**

- (a) A written notice of appeal of a licensing decision pursuant to chapter 9 of this Code shall be filed with the secretary by 5:00 p.m. on the later of thirty (30) days of the date of mailing of licensing agent's decision. Compliance with these time limits shall be a jurisdictional prerequisite to any appeal, and failure to comply with these time limits shall bar such appeal.
- (b) The written notice of appeal shall contain a summary of the ground upon which the licensee relies for the appeal and an assertion of all factual and legal bases for the appeal. No evidence or argument will be permitted if not contained in the notice of appeal.
- (c) Upon the city's motion, the hearing officer may require that the licensee submit a deposit against the costs of the appeal hearing, if the licensee has previously failed to pay an assessment issued under this article. Payment of the required deposit within five (5) days of demand shall be a jurisdictional prerequisite to any appeal brought, and failure to comply with this requirement shall bar such appeal.
- (d) The secretary shall forward the notice of appeal to the hearing officer with a statement of the secretary's belief as to whether the notice of appeal was filed timely. The hearing officer shall make a jurisdictional determination before scheduling any hearing and shall dismiss any notice of appeal that the hearing officer determines was not filed timely.

**Sec. 3-2401. – Licensing hearing – scheduling and notice.**

- (a) The secretary schedule a licensing hearing in consultation with the hearing officer, the city attorney, and the licensee. Unless the hearing officer, at their sole discretion, allows an extension of time, an appeal hearing shall be scheduled, but need not occur, within twenty (20) calendar days the filing of the notice of appeal.
- (b) At least seven (7) days prior to the date of the hearing, the city shall provide written notice to the licensee of the date, time and location of the hearing. Notice shall be given personally or by first-class mail. The licensee may waive the requirement of notice. The failure of any person to receive any notice required under this section shall not affect the validity of any proceedings taken under this article.

**Sec. 3-2402. – Licensing hearing – burden of proof and scope of review.**

- (a) For appeal hearings other than appeals of denials of renewals, the city shall have the burden of proving by a preponderance of the evidence that the licensing agent did not exceed their jurisdiction or abuse their discretion in the decision appealed. The hearing officer's determination shall be limited to whether the licensing agent exceeded their jurisdiction or abused their discretion in the decision appealed.

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- (b) For hearings regarding suspension, revocation, or the denial of a renewal, the city shall have the burden of proving the grounds asserted by the city in support of suspension, revocation, or denial by a preponderance of the evidence.

**Sec. 3-2403. – Licensing hearing – procedure.**

- (a) Licensing hearings, while quasi-judicial in nature, are intended to be informal. With the exception of qualifying expert witnesses, formal rules of evidence and discovery shall not apply. There shall be no right to a trial by jury.
- (b) The parties to a licensing hearing shall be the licensee and the city. Parties may be represented by legal counsel, may call and question witnesses and shall have the opportunity to present evidence and cross-examine witnesses.
- (c) For appeal hearings, the hearing officer shall consider the record, including all materials submitted with the application and all materials relied on or considered by the licensing agent. No additional evidence may be presented.
- (d) In an appeal hearing, the hearing officer, at the request of the city, may limit the licensee's presentation of evidence or argument that is not identified in the notice of appeal as required by section 3-2400(b).
- (e) All testimony in proceedings before the hearing officer shall be given under oath.
- (f) With the exception of qualifying expert witnesses, the conduct of hearings and the admission of evidence shall generally be as set forth herein without regard to whether such strictly conform to common law or statutory rules of procedure or evidence or other technical rules. The admissibility of evidence shall be encouraged, and the hearing officer shall consider all evidence of probative value. The hearing officer may call upon his or her own experience, technical competence and specialized knowledge in the evaluation of evidence presented.
- (g) Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications shall be submitted to the hearing officer in advance of the protest hearing or abatement proceeding.
- (h) For good cause shown, as determined by the hearing officer, a hearing may be continued to a date certain.
- (i) Hearings shall be recorded by electronic means and transcripts of such recordings shall be made upon request at the expense of the requesting party.
- (j) Whenever it appears that an appeal is not filed within the time permitted or that a party for some other reason lacks jurisdiction or standing, the case may be dismissed by hearing officer.

**Sec. 3-2306. – Licensing hearing – written decision.**

- (a) Within fourteen (14) days of the conclusion of the hearing, or upon presentation of a settlement or the failure of the licensee to appear at the hearing, the hearing officer shall enter a written order as follows:

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- (1) For appeal hearings, written conclusions of law as to whether the city has established determine whether the city has established that it did not exceed its jurisdiction or abuse its discretion in denying an application or suspending or revoking a license.
  - (2) For hearings regarding suspension, revocation, or the denial of a renewal, written findings of fact and conclusions of law as to whether the violation occurred and a determination as to whether to suspend or revoke the license or impose other penalties; and
  - (3) Where appropriate, a provision imposing any penalties or conditions on the licensee.
- (b) Any written order in favor of the city may include an award of administrative costs to the city if the hearing officer determines that the city has established such costs by a preponderance of the evidence.
- (c) The written order shall be mailed to or served on the licensee at the address on the license. The failure of any person to receive the written order required under this section shall not affect the validity of any proceedings taken under this article.
- (d) The order shall, upon mailing to the licensee, constitute a final action unless appealed directly to the District Court of Adams County, Colorado, for judicial review of such decision pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. An appeal of the order may be taken by the applicant, the licensee or by the city. Failure to timely appeal constitutes a waiver of any right any party may otherwise have to contest the order.