

**LOCAL LIQUOR LICENSING AUTHORITY
CITY OF COMMERCE CITY, COLORADO
RULES OF PROCEDURE**

RULE 1. PURPOSE AND APPLICABILITY

These Rules of Procedure (“Rules”) are adopted by the Authority to provide guidelines for the processing of matters coming before the Authority. In addition to any other rules or laws that may be applicable, these Rules shall govern all proceedings before the Authority. If any Rule herein is in conflict with the Colorado Beer and Liquor Code, the Regulations, or the CCMC, the Colorado Beer and Liquor Code, Regulations, or CCMC shall control.

RULE 2. DEFINITIONS

Applicant shall mean person(s) who submit an application for a license or permit under these rules.

Authority shall mean the local licensing authority of the City of Commerce City (“City”).

Colorado Beer and Liquor Code or *Liquor Code* shall refer collectively to Title 44 Articles 3-5 of the Colorado Revised Statutes, as amended.

CCMC shall mean the Commerce City Revised Municipal Code, as amended.

License shall mean the Authority’s grant to a Licensee to sell, dispense, or serve malt, vinous, or spirituous liquors or fermented malt beverages as evidenced by a City issued license. When used herein, the term “License” shall mean and include permits, unless the specific context requires otherwise.

Licensee shall mean person(s) licensed by the Authority to sell, dispense, or serve malt, vinous, or spirituous liquors and fermented malt beverages.

Licensed Premises shall mean the premises specified in an application for a License approved by the Authority that is owned or is in possession of the Licensee within which such Licensee is authorized to sell, dispense, or serve malt, vinous, or spirituous liquors or fermented malt beverages.

Parties in Interest shall have the same meaning as in C.R.S. § 44-3-311(5)(b), and include the City.

Regulations shall refer to 1 C.C.R. 203-2 as adopted by the State of Colorado.

Secretary shall mean the City Clerk of the City of Commerce City or designee.

State shall mean the State of Colorado.

All other words and phrases used in these Rules shall have the meanings ascribed to them in the Colorado Beer and Liquor Code, the Regulations, and the CCMC.

RULE 3. MEETINGS OF THE AUTHORITY

Rule 3.1 General

Except when no business is pending before the Authority, the Authority shall convene on the third Wednesday of the month at 1:00 p.m. in Room 2108 of the Civic Center at 7887 E. 60th Ave., Commerce City, Colorado, or an alternate site or time specified by the Authority in the public notice posted for that meeting, for the purpose of performing its duties and functions. The Authority may hold special meetings when necessary.

Rule 3.2 Notice of Hearing Dates

In addition to the notice required by CCMC 8-1203(d) with respect to new applications and these Rules, the Secretary shall notify an Applicant in writing of the referral of any administrative application to the Authority pursuant to CCMC 8-1206 (if applicable), the scheduling of any show cause hearing (if applicable), and the date of the meeting at which the Authority will consider an application or conduct a hearing. Motions to show cause need not be served on a Licensee.

Rule 3.3 Request for Accommodation

The Applicant/Licensee shall provide an interpreter for any of its witnesses who are unable to speak or understand English. The City will provide reasonable accommodations for individuals who are hearing or voice impaired.

Rule 3.4 Representation

Any party may appear in person or be represented by counsel, except that the Applicant or Licensee, as the case may be, shall personally appear as required by these Rules or order of the Authority. Representation by a third party other than counsel shall be authorized in writing by the Applicant or legal counsel and filed with the Secretary at least twenty-four (24) hours prior to a meeting.

RULE 4. HEARINGS

Rule 4.1 General

Hearings before the Authority shall be conducted pursuant to Chapter 8, Article I of the CCMC, the Colorado Beer and Liquor Code, the Regulations, and these Rules. The Authority shall have full authority to control the proceedings, to admit or exclude testimony and evidence, and to rule upon all motions and objections. The Authority shall not be bound by strict rules of evidence, provided that the right of cross-examination shall be

preserved. Irrelevant, repetitive and cumulative testimony and evidence will be excluded. Motions may be written. Objections shall be stated orally for the record. All testimony shall be given under oath. All exhibits or other documentary evidence to be admitted shall be marked.

Rule 4.2 Subpoenas; Violations and Penalties

The Authority shall have the power to administer oaths and issue subpoenas, to require the presence of persons and the production of documents, data compilations or other evidence at any hearing before the Authority. It shall be a violation of the CCMC for any person to fail to comply with any subpoena or order to produce documents, data compilations or other evidence issued by the Authority. In addition to the penalties provided for in the CCMC, upon failure of any witness to comply with a subpoena or order to produce documents, data compilations, or other evidence issued by the Authority, the City Attorney may, at the request of the Authority, petition any judge of any court of competent jurisdiction to enter its order compelling the witness to attend and testify or produce the requested documents or other data compilations or other evidence under penalty of contempt in case of willful failure to comply with such order of court.

Rule 4.3 Burden

For new licenses, transfer of ownership, change of location, modification of premises, change in corporate structure or change in manager applications, and referred administrative applications, including for renewal, the applicant has the burden of persuading the Authority that the application or request should be granted. For show cause hearings involving a potential penalty, the City has the burden of proof to show, by a preponderance of the evidence, that the License should be suspended, revoked or other penalty should be imposed.

Rule 4.4 Order of Proceedings

The following shall be the order of proceedings, provided that the Authority may change the order as necessary, and the Authority may question any witness at any time:

1. Opening of the public hearing.
2. Preliminary matters, if any.
3. Opening statement by the Applicant/Licensee. For show cause hearings, the Applicant/Licensee will proceed after the City.
4. Opening statement by the City.
5. Presentation of the Applicant/Licensee's evidence and witnesses. Before excusing the Applicant/Licensee's witnesses, cross-examination shall be permitted by the Authority, then the City and then any Party in Interest (except for show cause hearings,

except for good cause shown). For show cause hearings, the Applicant/Licensee will proceed after the City.

6. Presentation of City's evidence and witnesses. Before excusing the City's witnesses, cross-examination shall be permitted by the Authority, then the Applicant/Licensee, and then any Party in Interest (except for show cause hearings, except for good cause shown).

7. Presentation of evidence and witnesses by any Party in Interest. Before excusing witnesses, cross-examination of Parties in Interest and their witnesses shall be permitted by the Applicant/Licensee and then the City. Except for good cause shown, Parties in Interest will not be permitted to present evidence or witnesses in show cause hearings.

8. Applicant/Licensee's rebuttal evidence, if any.

9. City's rebuttal evidence, if any.

10. Applicant/Licensee's initial closing statement. For show cause hearings, the Applicant will proceed after the City.

11. City's closing statement.

12. Closing of the hearing, subject to re-opening by the Authority with any necessary limits on evidence to be presented.

Rule 4.5 Record

The record shall consist of the Secretary's files regarding the License and application (if any), and any exhibits marked for identification and accepted into the record by the Authority. All exhibits must be identified before being offered for admission into the record of the proceedings. The Authority will rule on the admissibility of the exhibits. The Authority may exclude irrelevant, incompetent or unduly cumulative evidence.

Rule 4.6 Continuances

The Applicant or the City may request, by written motion, that the Authority continue any hearing (unless a hearing must be held within a certain timeframe as required by law). The Secretary may grant a request to continue any hearing if such request is made before publication and posting of notice of the public hearing; neither the City nor the Licensee has been previously granted a continuance in the matter under consideration; and the City and the Licensee both agree to the continuance. Once notice has been given, the matter may be continued only by the Authority upon a showing of good cause. The Authority may, in its discretion, grant or deny a request for a continuance or it may grant the continuance subject to the payment of costs or other expenses caused by the request.

Rule 4.7 Decision

At the closure of the hearing, the Authority will make its decision or will continue the matter for a written decision within thirty (30) days from the conclusion of the public hearing, or not later than the next regular meeting of the Authority, whichever time period is longer. The Secretary shall personally serve or send the Authority's decision to the Applicant/Licensee at the address on the application or License via first class United States mail. All decisions of the Authority are final, subject only to appeal pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Rule 4.8 Motions and Written Submissions

The Applicant/Licensee, the City, and any Party in Interest may submit written motions to the Authority through the Secretary. All motions and other written submissions shall be served by mail or e-mail, if the party has consented to e-mail service, on other known parties or their attorneys.

RULE 5. APPLICATIONS AND FEES

1. Applications for licenses or permits to sell malt, vinous, or spirituous liquors shall be made under oath and submitted to the Secretary on forms provided, including the State application, local application, and individual history forms, if applicable. Forms are available from the City Clerk's Office and Colorado Department of Revenue. Except for plans and specifications, all information shall be typewritten or printed in blue or black ink. **Applications must be complete in all material details and include all required documentation, including petitions, at least fifteen (15) days prior to the meeting at which the application is to be considered.** The Authority may waive certain deadlines for good cause. Incomplete applications will not be considered. All applications will be available for inspection during normal business hours, except as prohibited under the Colorado Open Records Act or other applicable law.

2. State application and license or permit fees, payable to the State of Colorado Department of Revenue, and local application and license or permit fees, payable to the City, shall be submitted to the Secretary at the time of application. If the License application is approved, occupation fees pursuant to Section 8-1307 shall be paid at the time of the issuance or renewal of the License.

3. Upon the withdrawal of any application for which fees have been paid under these rules, the Secretary shall refund all license or permit fees paid. Application and occupation fees are non-refundable.

RULE 6. APPLICATIONS

Rule 6.1 Neighborhood Boundaries

The relevant neighborhood boundaries are set as a one-half mile radius around the proposed Licensed Premises. The Secretary shall notify the Applicant of such

boundaries, and those boundaries shall be deemed accepted unless a written objection is filed by the applicant within five (5) days of receiving notice. If an objection is filed by the Applicant, the Secretary shall set the matter for a public hearing before the Authority at the next regularly scheduled meeting. At the conclusion of the hearing, during which any Party in Interest shall have the right to be heard, the Authority shall establish the boundaries of the relevant neighborhood by either approving or modifying the boundaries set by the Secretary.

Rule 6.2 Petitions

Petitions may be circulated by the Applicant or Parties in Interest opposing the issuance of the License on forms acceptable to the Authority, including an affidavit of circulation. Each person who signs a petition shall sign his or her name, address, age or otherwise indicate that he or she is at least twenty-one (21) years of age and the date. No person may sign more than one petition. Petitions should be filed ten (10) days prior to the public hearing. Applicants are encouraged to use a professional petitioning company.

Rule 6.3 Preliminary Investigation

The Authority, through the Secretary, shall gather evidence for the preliminary investigation as required by State law. The Authority shall, at least five (5) days prior to the date of the public hearing, make known in writing its findings to the Applicant, the City, and, upon request, other Parties in Interest regarding the following matters, by way of illustration and not limitation:

1. Whether within two (2) years preceding the date of the receipt of the application a licensing authority has denied an application at the same location for the reason that the reasonable requirements of the neighborhood were satisfied by the existing outlets;
2. The Applicant is or will be entitled to possession of the premises for which application is made;
3. That the sale of liquor as contemplated by the application at the premises sought to be licensed is not in violation of the zoning, fire, building, or other applicable ordinances, regulations, or rules of the City of Commerce City, or any other applicable laws, regulations, or rules of the State;
4. The number and type of liquor outlets located in or near the neighborhood under consideration; and
5. The status of the background investigation concerning the Applicant.

Rule 6.4 Attendance

Unless excused by the Authority, the following persons shall be in attendance at the public hearing on an application:

1. If the Applicant is an individual, that individual.
2. If the Applicant is a partnership, any managing or general partner or his/her authorized designee.
3. If the Applicant is a corporation, the president of the corporation, an officer or director or such other corporate representative as the president may designate in writing.
4. If the Applicant is a limited liability company, a managing officer or his/her authorized designee.
5. If the class of license requires a manager, or if the business will be managed by someone other than the owner, the manager may appear in place of the owner or the owner's representative who is required to appear in subsections (1)-(4) above; or
6. Any other person the Authority may require as it deems necessary.

If any person listed above fails to attend as required, the Authority may decline to consider the matter and continue the matter to the next regularly scheduled meeting.

Rule 6.5 Evidence

A Party in Interest or any other party authorized to participate in the hearing must inform the Authority of their intended participation at the start of the public hearing. Any party may cross-examine witnesses and introduce the following types of evidence in the order identified in Rule 4.4.

1. Evidence concerning whether the Applicant is qualified to hold the type of license applied for, including without limitation: other facilities operated by the Applicant; training and experience of the Applicant; familiarity with state and local laws; procedures and policies regarding enforcement of liquor laws; and reputation and particular history of applicant regarding liquor laws.
2. Evidence concerning the reasonable requirements of the neighborhood and whether existing outlets are adequate, including without limitation: number of existing outlets and proximity; testimony from adults residing in the relevant neighborhood; testimony from applicant or applicant's officers; and testimony from the person who circulated the petitions.
3. Evidence concerning the desires of adult residents for existing outlets, including without limitation: testimony from adults residing in the relevant neighborhood; testimony from a manager or business owner in the relevant neighborhood; petitions submitted by the Applicant or petition entity; and testimony from Applicants.
4. Evidence concerning the nature of the establishment and location; compliance with applicable City codes or ordinances; and any financial interests in the establishment.

RULE 7. NON-RENEWALS, SUSPENSION AND REVOCATIONS

Rule 7.1 General

Any violation of the Colorado Beer and Liquor Code, the Regulations, or the CCMC concerning the sale or service of liquor or the operation of an establishment which sells or serves liquor, or of any condition of a License, in any manner may constitute cause for non-renewal, suspension or revocation of the License. If it comes to the attention of the Authority that there is probable cause to believe that a Licensee has violated any law, regulation, rule, local ordinance, or condition of a License, the Authority shall issue and cause to be served upon such Licensee a Notice of Hearing and Order to Show Cause why the License should not be suspended or revoked or other penalty imposed. Following a properly-noticed public hearing at which the Licensee has been afforded an opportunity to be heard, the Authority may suspend, deny renewal of, or revoke any license issued by the Authority or impose any other penalty allowed by law.

Rule 7.2 Notice

Suspension and revocation proceedings shall be commenced by the Authority by issuing and causing to be served upon the Licensee by first-class mail to the address contained in the License, an Order to Show Cause and Notice of Hearing ("Notice"). The Notice shall command the Licensee to appear and show cause why its License should not be suspended or revoked as it appeared to the Authority that there was probable cause to believe that the Licensee or any of the agents, servants or employees violated the Colorado Beer and Liquor Code. The Notice shall include the grounds for suspension, revocation, or other penalty.

Rule 7.3 Decision

If the Authority determines that the Licensee has not violated any law, rule or regulation, the Authority will dismiss the charges against the Licensee. If the Authority determines that the Licensee has violated a law, rule or regulation, the Authority may suspend, revoke, refuse to renew the License, or impose another appropriate penalty. Orders of suspension shall indicate the effective date of suspension. For suspensions of 14 days or less, the effective date shall be at least 10 business days after announcement of the suspension unless the Authority makes findings which indicate the need for an earlier effective date.

Rule 7.4 Dispositions

1. All proposed dispositions shall be in the form of joint stipulations. If possible, proposed dispositions shall be submitted to the Authority by the City forty-eight (48) hours before the scheduled public hearing date.

2. The Authority shall, at or before the time of the scheduled hearing, consider the proposed disposition. If the Authority rejects the proposed disposition, the Authority shall identify the reasons for such rejection, which may include without limitation the

seriousness of the violation, aggravating or mitigating circumstances, the history of the subject establishment, corrective actions taken, likelihood of reoccurrence, and any other relevant matters impacting the public health, safety and welfare.

3. If the Authority significantly changes the proposed disposition, either the City or the Licensee may object, and in such case, the hearing shall be continued to the next available meeting of the Authority, unless both parties agree to proceed immediately.

4. If the Authority rejects a proposed disposition, and the issues are rescheduled for hearing on the merits, and an amended proposed disposition is submitted, the City and the Licensee must nevertheless be prepared to proceed on the merits of the case at the rescheduled hearing. If the Authority rejects a proposed disposition, neither the City nor the Licensee shall suffer any detrimental presumption or inference as a result of such rejection.

Rule 7.5 Fine in Lieu of Suspension

A Licensee may petition the Authority to pay a fine-in-lieu of a suspension either orally at the show cause hearing or by submitting a written petition to the Secretary at least five (5) days before the effective date of the suspension. No late filings will be accepted. The Licensee shall provide the Authority all information and documentation that the Licensee would like the Authority to consider when acting on the petition, including without limitation information indicating the Licensee's eligibility under the Liquor Code and a calculation of the proposed fine with sufficient financial documentation so as to permit the Authority to substantiate the amount of the proposed fine. Upon the acceptance a petition, the suspension of the License shall be temporarily stayed until such time as the Authority acts upon the petition. The petition shall be presented to the Authority at the next available regular meeting of the Authority following the filing of the petition. If the Authority denies the petition, the suspension shall be reinstated and the Authority shall indicate the effective date of the suspension. Any granted petition shall be deemed to be conditioned upon the payment of the fine in lieu within ten (10) days.

Rule 7.6 Summary Suspension

If the Authority has probable cause to believe a Licensee is guilty of a deliberate and willful violation of any applicable law or regulation or that the public health, safety, or welfare imperatively requires emergency action, the Authority may temporarily or summarily suspend the License for a period not to exceed fifteen (15) days pending a hearing on the suspension. Any finding by the Authority that a summary suspension pending hearing is appropriate must be documented by specific written findings regarding probable cause to believe that a willful violation or immediate threat to the public health, safety or welfare has occurred. Any final suspension or revocation determined at the show cause hearing must also be based on such findings and must be made and entered in the record and incorporated into any suspension or revocation order. Summary suspensions are not eligible for the payment of a fine in lieu.

RULE 8. TRANSCRIPTS

Any person seeking a transcript of proceedings concerning an application or any other matter before the Authority shall pay the City the cost of preparing the transcript of the proceeding. A deposit of \$100.00 may be required to be posted with the Secretary prior to preparation, said deposit will be applied to the actual cost to prepare the transcript. The Authority will prepare, or have prepared, an original and one copy of the transcript. The original shall remain with the Authority. The copy shall be provided to the party making the request for the transcript once the entire cost of preparing the transcript has been paid. Additional copies may be requested and shall be paid for by the requestor.

RULE 9. AMENDMENTS

These Rules may be amended by the Authority at any meeting.

THESE RULES ARE HEREBY ADOPTED AND EFFECTIVE THIS _____ DAY OF _____, 2019.

LOCAL LICENSING AUTHORITY
CITY OF COMMERCE CITY, COLORADO

By: _____
Teresa Ablao, Hearing Officer