

# **UNDERSTANDING THE LIQUOR LICENSING PROCESS**

## ***A BROCHURE FOR CITIZENS***

Because the holding of any type of liquor license grants legal privileges and rights as well as imposing considerable responsibilities, the proceedings governing the granting and revocation of such licenses can appear to be complex and not easily understood by citizens. This brochure is intended to assist citizens in participating more effectively in the liquor licensing process.

### **Applying for the License**

Any person, partnership, or corporation desiring a license to sell or distribute alcoholic beverages for commercial purposes, whether beer, wine, or spirituous drinks, must first obtain a license to do so from both the State of Colorado and from the City of Aurora. The process begins with the license applicant obtaining State and City forms from the City of Aurora's Licensing Department.

The forms require background information from the applicant such that the City, through its Licensing, Police, Building, Code, and Fire personnel, can make an assessment as to whether the applicant is eligible to hold the responsibility and privilege of being licensed by the City and the State of Colorado. Among the information the application requires is the applicant's criminal history, if any, their financial backing, and their other connections to the liquor industry including all other licenses held or relinquished. Additionally the applicant must supply detailed floor plans of the business so that the City can evaluate the size of the business, the number of potential patrons, and the impact on area traffic and parking.

The applicant must then attest to the truthfulness of the application, pay application and licensing fees, and officially submit the application for review by the City and State. When the submission is officially received by the City a new stage in the process is reached, one in which citizens may have substantial input if they so desire.

### **Posting of Notice**

Now that the application has been received and the City investigation of the applicant is underway the existence of the application is announced publicly. According to City and State laws the existence of the application, and the fact that there will be a public hearing on the matter, must be made known to the public through three avenues of communication. First, a notice sign must be

***conspicuously*** posted at the physical location of the premises seeking a license ***in a place plainly visible to the public***. The posted notice provides details on the type of license sought, the date, time and location of the hearing wherein the application will be ruled upon by the Local Licensing Authority, as well as contact information where interested parties can acquire more information on the application. Next, the same information needs to be published in the newspaper of record, currently the Aurora Sentinel, providing the same information. Finally, the City provides a written notice to the Applicant that they must notify all registered neighborhood organizations within the relevant neighborhood of the hearing date, time, and location, so that they may be heard if they wish.

### **Documenting Needs and Desires/Applicant**

Before ruling on any application for a license the Local Licensing Authority must consider the following factors:

- The reasonable requirements of the neighborhood for that particular class of license
- The desires of the adult inhabitants of the neighborhood as evidenced by petitions, remonstrances, or otherwise
- The number, type (class), and availability of other outlets in or near the neighborhood.

It is the applicant's burden to initially establish the needs and desires of the neighborhood. To accomplish this task the applicant typically contacts the residents of the neighborhood and petitions or surveys them as to their opinion on whether the neighborhood might benefit from the proposed establishment. Applicants typically will make a sampling survey of some, though rarely all, of the residents in the relevant neighborhood. Applicants typically present the results to the Local Licensing Authority not only as raw numbers but also in whatever interpretive light will cast the application in the most favorable terms. In short they advocate for the license being granted.

### **Documenting Needs and Desires/Residents of the Neighborhood**

Residents or business owners within the relevant neighborhood are invited to be heard in the process. They may attend the hearing, and after the initial presentation by the applicant they may respond to the applicant's assertions, or they may present contrary evidence in any form so long as the evidence is not unduly cumulative in the opinion of the Local Licensing Authority. Given this, residents or business owners are allowed to write personal letters expressing thoughts or concerns addressed to the Local Licensing Authority. (15151 E. Alameda Parkway, Suite 1100 Aurora, CO. 80012) They are welcomed to counter petition within the neighborhood, and of course are invited to the hearing to participate personally by presenting testimony and to present their letters, petitions, or opinions. In short they may advocate for or against the granting of the license depending on their views.

Persons wishing to participate and to offer their concerns or evidence to the Local Licensing Authority do need to have *standing* (meaning right to be heard) before the Local Licensing Authority will hear their testimony or review their letters, petitions, surveys, or remonstrances. The Local Licensing Authority has a rule that persons or businesses within 2000 feet of a proposed location shall be considered to have such *standing*, as will all registered neighborhood groups with at least a portion of their membership within the area<sup>1</sup>. Persons residing further than the 2000-foot area do not have automatic *standing*, but they may ask to make arguments or presentations. Whether such presentations will be heard is within the sole discretion of the Local Licensing Authority. Often the Local Licensing Authority will hear evidence from such persons if they can argue that while outside of the presumptively relevant area they are part of a naturally integrated neighborhood that includes the proposed licensed site. Factors to be considered are natural boundaries formed by major roadways or physical points such as streams, fields, parks or greenbelts.

### **The Application Hearing**

The Local Licensing Authority Chairman will call the hearing to order. If Protestants (what the authority calls the interested parties wishing to oppose the license) have previously contacted the Licensing Staff, the Chairperson will inquire as to whether any are present to be heard. If Protestants are present, the Chairperson will read the formal hearing rules so that all present will understand the procedure. The hearing clerk then reads into the record formal matters of the application. Next the Applicant proceeds to try to establish their case for the neighborhood needing and desiring such an establishment. They do so by presenting their petitions and statements after having been placed under oath. The Local Licensing Authority may allow a single representative of the Protestants to cross-examine the applicant's witnesses, but this is a matter of courtesy, not of right.

After the Applicant has finished, the Protestants can make their showing together or individually. They will be placed under oath before their testimony is received. They are subject to questioning by the Local Licensing Authority members as well as by the Applicant.

The Local Licensing Authority will then render a decision. Parties dissatisfied with the decision will have 30 days in which to file an appeal with the District Court. Parties wishing to appeal should contact the Licensing staff to produce a transcript of the hearing. This transcript is essential for the appeal and takes time to prepare so the contact needs to be immediate. Parties appealing need to be prepared to pay for the cost of producing the transcript.

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<sup>1</sup> The actual relevant neighborhood is defined in a somewhat more complex fashion in Section 6-71 of the City Code. The complete formula is a 2000 foot radius from the boundaries of the establishment, squared off at the nearest streets and including both sides of the boundary streets.

## Appeal Standards

The following are commonly stated principles guiding judicial review of the Local Licensing Authority's decision.

- Local Licensing Authorities are vested with wide discretion
- All reasonable doubts are resolved in favor of the decision standing
- The decision will not be disturbed absent a clear abuse of the discretion vested in the Local Licensing Authority

THE CITY COUNCIL CANNOT AND DOES NOT EXERCISE ANY AUTHORITY TO INFLUENCE DECISIONS OF THE LOCAL LICENSING AUTHORITY INCLUDING THE CONSIDERATION OF APPEALS OF DECISIONS WHICH GO DIRECTLY TO DISTRICT COURT.

## Frequently Asked Questions

Question - Do I have to speak with petitioners who come to my door or sign the petitions regarding liquor license applications?

Answer – No. Petitioners have no right to your cooperation. You may participate or not as you see fit.

Question – Why does the petitioner want me to explain my negative response?

Answer – The petitioner works for the license Applicant. While they are professional and truthful they are not impartial. They are advocates in a potentially adversarial process. By law some negative responses receive no consideration. If you have already responded negatively they have nothing to lose in further inquiries that may make the negative response less damaging to the Applicant, their client.

Question – What negative responses are given the most weight and the least weight by the Local Licensing Authority?

Answer – Colorado case law disqualifies responses based upon a general abhorrence to alcohol, and are more inclined to give weight to arguments concentrating on an existing overabundance of outlets or that address the good moral character of the Applicant. Arguments about traffic dangers, increased congestion, danger to pedestrians, noise, litter, and changing the character of the neighborhood and its traditional uses are, by direction of state law, not to be considered by the Local Licensing Authority in rendering its decision.

Question – Is it true that an application will be denied if there is an “*undue concentration*” of such establishments within a neighborhood?

Answer – The Liquor Code prohibits an undue concentration of only two types of licenses, tavern licenses and retail liquor store licenses. As to all other forms of license the Liquor Code is silent on the issue of undue concentration.

Question – What criteria establishes an *undue concentration*?

Answer – If the concentration of taverns or retail liquor stores could require additional law enforcement resources assigned to the neighborhood.

Question – How can a neighborhood establish proof of an *undue concentration* of taverns or retail liquor stores?

Answer – The proof can be established through one or more of the following avenues. Protestants can submit statistical data showing more such licenses per capita in their neighborhood than in the city as a whole. Protestants can submit evidence showing the distance between the proposed outlet and all other similar outlets in the neighborhood.

Question - Who are the members of the Local Licensing Authority and how can I be appointed?

Answer - They are citizens who have volunteered their time to their community to consider these matters. They are your representative voice in these matters and are appointed by City Council for three-year terms. Openings arise regularly and anyone wishing to be appointed should contact their Councilperson to discuss their desire to be appointed.

Question - Why is the applicant allowed to cross-examine the Protestants? Isn't this a departure from the format of other public hearings conducted within the City?

Answer – Allowing for cross-examination of witnesses is a common component essential to providing fundamental due process. The Local Licensing Authority is squarely within its discretion in doing so.

Question – Where or who can I call for interpretation of the Liquor Code?

Answer – One can call the City Attorney's Office at 303-739-7935 and ask to speak with the Liquor Code Prosecutor. One can also obtain further information from the Liquor Enforcement Division of the Colorado Department of Revenue whose website can be found at [http://www.revenue.state.co.us/liquor\\_dir/home.asp](http://www.revenue.state.co.us/liquor_dir/home.asp).

This brochure is a good faith effort to briefly summarize a broad set of laws, regulations, and procedures. Persons seeking additional information may want to thoroughly review the above-referenced website before consultation with the Liquor Code Prosecutor or with a private attorney.