

TIPS FOR OPPOSING A LICENSE APPLICATION BEFORE THE DEPARTMENT OF EXCISE AND LICENSE

IMPORTANT NOTES:

- DEL is in the process of revising its rules. Be sure to check the new rules, which might differ from what is outlined below.
- My experience is based on one medical marijuana hearing. Some of what is outlined below might be different for other types of licenses.

INITIAL ACTIONS:

- Designate a coordinator or point person.
- Request an evening hearing if desired (petition available from DEL, requires 10 signatures but prudent to get a few extras).
- Get petitions from DEL.
- Request business file from DEL. Find out the DEL clerk assigned to the application, advise that you are an RNO or “party in interest” and would like a copy of the file.
- If other business records might be relevant, submit a *CORA request* (requires payment for copying).
 - CORA is the Colorado Open Records Act.
 - Other records that might be relevant will depend on your facts. If the applicant has other licenses or businesses, records regarding those (history of complaints, for example) could be relevant. Business records could come from DEL, other city departments, or the State of Colorado.
- Educate yourself, read the rules, talk to others who have gone through the process. The City Attorney’s Office will also answer questions about the process.

REASONS DEL MIGHT DENY A LICENSE:

- DEL will consider:
 - The reasonable needs of the neighborhood.
 - The desires of the adult inhabitants of the neighborhood.
 - Whether “good cause” exists to deny the license.
- Needs: the neighborhood’s need for another marijuana or liquor sales location. Individuals who don’t drink alcohol should not be selected to testify about needs. (Marijuana is a little different.)
- Desires: broader than just needs. Can be based on anything EXCEPT a general abhorrence towards marijuana or liquor.
- Good cause:
 - Granting the license would have the effect of restraining competition.
 - Granting the license would create an “undue concentration” of the business type.
 - The location to be licensed has previously been operated in a manner that adversely affected the health, safety and welfare of the neighborhood.
 - Evidence exists (not mere speculation) that issuing the license would adversely impact the health, safety and welfare of the neighborhood.
 - Requirements for the license are not met:
 - The license is prohibited in the requested location.
 - Applicant does not have proof of premises.
 - No corresponding state license.

PETITIONS:

- Door-to-Door
 - Get organized (assign blocks, keep track of what's been covered). Note that the area of interest can be expanded upon request by the RNO or an interested party.
 - Provide detailed *instructions to petitioners* in writing and orally. Make sure instructions are understood.
 - Develop a list of best practices for petitioners and share it.
 - Have a short script.
 - Leave a *flier* if not home – cannot put fliers in mailbox.
 - Don't argue with people who don't agree, thank them for their time and move on.
 - If signer lives in multi-unit, address must include unit number (make sure it's provided).
 - Renters can sign – does not need to be homeowner, just “resident” at the address.
 - Owners and managers of businesses can sign.
 - Ask people to write legibly, especially addresses. Make sure they've checked the over 21 box.
 - Boundary streets on the area of interest might include only one side of the street. This should change in the revised rules, but if there is any question ask DEL to confirm.
- Don't just go door to door. Find people who will sign and go to them.
 - Use RNO or other email lists to let people know about issue.
 - Use social media to let people know about issue (NextDoor, private Facebook groups). Note that this might alert people who will support the application.
 - Network with schools, PTAs, child care centers, etc. – ask them to share information with their email lists as well.
- When sending emails, posting on social media or making fliers—be mindful of tone. Don't be inflammatory. Accurate factual information is best and should be persuasive. (False statements could be considered libel or defamation.)
- Submitting petitions:
 - Bringing petitions to the hearing is allowed for DAYTIME hearings IF THE PETITIONER WILL BE PRESENT TO TESTIFY. If petitioner cannot attend the hearing, and for EVENING hearings, petitions must be notarized and submitted in advance. Check rules to know how far in advance.
 - Do not collect any more signatures after petition is notarized—if someone wants to sign after you've notarized, use a new petition.
 - Find a notary who supports the cause and have a notarizing party.
 - Be sure petition packet is complete—requires warning page, signature page, affidavit and map.
 - Make extra copies of petitions. If submitting in advance, have DEL date stamp the extra copy for you.

***OBJECTIONS* TO APPLICANT'S PETITIONS/SIGNATURES**

- The applicant might be using paid petitioners. Look at every line for possible objections.
- Reasons to object:
 - Address is outside of designated area.

- Signed a petition in favor more than once.
- Address does not exist (use google maps and then confirm).
- Incomplete legal address (address is a multi-unit but no unit number provided).
- Signed a petition in opposition first (use Excel or something similar to track addresses and cross-check). NOTE: If an individual changes her mind after signing and wants to support the other side, she must appear at the hearing can appear at the hearing and ask to have her name removed.
- Address is illegible.
- Address is incomplete (e.g., no number so cannot tell if within area of interest).
- Didn't check over 21 box.
- Reserve the right to add objections—to extent the applicant objects on any ground you don't identify, the objection should apply equally to applicant's signatures.

EXHIBITS

- Exhibits are documents that you will use at the hearing to help make your case. Exhibits must be “admitted into evidence” through a witness at the hearing. More detail on admitting exhibits is below—basically you need a witness who can explain what the document is, based on personal knowledge.
- Letters (emails) of opposition sent to DEL. Even though sent to DEL, letters are not automatically part of the hearing record.
 - If possible, have the person who wrote the letter/email come to hearing to “authenticate” the document.
 - Second choice—make sure one of your planned witnesses has a copy of the letter/email and has talked with the author.
 - Who to ask to write letters:
 - School principals, PTA, etc. within area of interest.
 - Child care or drug treatment centers within area of interest.
 - Business managers/owners within area of interest.
 - Nearby homeowners.
 - RNO.
 - Nearby RNOs.
 - City Councilperson (Ask constituents to call/email the City Councilperson so that she or he has a good sense of community opposition; can be any constituent, not limited to those in area of interest).
- Other exhibits:
 - Could be any other documents that might help your case or present a visual (will depend on issues).
 - Business documents (might already be in DEL file but admit anyway; Secretary of State business information; real estate records; etc.).
 - Newspaper articles.
 - Maps (e.g., map showing nearby marijuana outlets, schools, child care, etc.).
 - Photographs (e.g., showing poor maintenance of property).
 - Crime records.

- If you prepare an *Exhibit List* to submit in advance of the hearing, reserve right to admit non-listed exhibits in rebuttal, as well as any documents used during a witness's testimony.

SELECTING WITNESSES TO TESTIFY

- Opponents are ordinarily limited to three witnesses who must be a resident of the area of interest or the owner or manager of a business in the area of interest.
- In addition to the three witnesses, an RNO representative may also testify, and in marijuana hearings the City Councilperson.
- Think about issues that you'd like to prove—who has personal knowledge about them?
 - Good cause?
 - Needs?
 - Desires?
- Who can paint a picture of your neighborhood?
 - Long-time residents can talk about history and character of the neighborhood.
 - Newer residents can talk about what drew them to neighborhood and how the granting the license would change that.
- Have witnesses who can provide different perspectives on the issue—try to avoid repetition. Example: business owner and a parent; very close resident and someone farther away, etc.
- Witnesses should address impact on neighborhood (such as noise, violence, crime, marijuana or alcohol exposure to kids, loitering, parking)
- Witnesses should be able to present well: calm; concise and sticks to the point; okay to have some passion but not too emotional, angry or reactive.

OTHER PREPARATION FOR THE HEARING

- Find out your hearing officer. Ask other RNOs for any information about their style. Read some decisions if you can.
- Consider a *prehearing brief* – starts to paint the picture of your case.
- Observe a hearing if you haven't yet already (or observe another one). Remember contested hearings are best.
- Decide the order of witnesses (who will testify first, etc.). Go over planned testimony with witness (but tell them don't memorize).
- Get people from within the area of interest to attend the hearing—they can testify in a group.
 - Email lists (use all available networks, ask people to share)
 - Fliers
 - Social media
 - Make sure people know that if they live in the area of interest, their voice will be heard just by showing up.
 - Have opponents wear buttons, leis, colored t-shirts, etc. Creates a visual depiction of the opposition.
 - Make sure people know date/time, where to go, parking options, suggest carpools, etc. Arrive early to get through security screening.
 - Send a couple of reminders in days leading up to the hearing.

AT THE HEARING (but remember that most of this is really about preparing in advance)

- Decide who will “present” the opposition case. This person will examine your witnesses and (maybe) cross-examine the applicant’s witnesses.
- Applicant’s case:
 - Applicant will likely present three witnesses, plus applicant himself/herself, and possibly others.
 - You will have the opportunity to cross-examine any of the applicant witnesses. Cross-examination is not required.
 - Keep it short.
 - Don’t ask a question if you might not like the answer.
- Opposition case:
 - Examine the selected opposition witnesses. This is not the type of hearing where the witness can prepare a statement and then just read it. You need to elicit their testimony through questions. [Exception is City Councilperson who might be allowed to just speak.]
 - Use an *examination outline* but it’s not a script—listen to the witness answers and adjust where appropriate.
 - Ask open ended questions for the most part.
 - Admit your exhibits through the witnesses. Make sure the witness has personal knowledge about the exhibit (in advance of hearing) and understands that you plan to ask about it.

SAMPLE SCRIPT:

Q: “I’m showing you what is marked exhibit _____. Are you familiar with this document?”

A: Yes.

Q: What is it?

A: [Witness should briefly describe the document in a way that shows their personal knowledge.] I wrote that email and sent it to DEL. Or, I received that email and printed it out.

Q: Is this exhibit a true and correct copy of that email to the best of your knowledge?

A: Yes.

To hearing officer: I request that exhibit ____ be admitted.

 - Applicant’s attorney might ask additional questions or object. Listen to the objection and respond as best you can. If you’re not a lawyer, it’s okay to say, “I’m not a lawyer and don’t understand the objection.”
 - If the hearing officer admits the exhibit, you can continue to ask questions about it—have the witness explain why it matters.
 - If the hearing officer does not admit the exhibit, object to the ruling (if asked for the basis of your objection, try to explain or just state that you think the ruling is incorrect). Don’t ask further questions about the exhibit or rely on it.
 - Your three main witnesses will testify in detail regarding needs, desires and/or good cause. Plan to admit your exhibits through these witnesses. Prepare these witnesses to be cross-examined by applicant.
 - You might be allowed additional witnesses to briefly authenticate documents (those letters and emails to DEL). Don’t ask these witnesses additional questions unless the hearing officer says it is okay to do so.
- “En Masse” Testimony
 - You can request en masse testimony be taken first (should be both sides)

- How en masse works:
 - People sign in on a sheet (with their address) indicating they are either in favor of or opposed to the license.
 - Opposition representative should go through the list to confirm, of those who signed, who is in the area of interest. Have those who live in the area of interest (and who oppose) to stand.
 - Ask if there is anyone else lives in the area of interest but whose name was not called. If so, get the person’s name and address and ask hearing officer if it can be added to the sign-in sheet.
 - Take a count (either use the sign-in sheet or count the number of people standing). Note the count for the record.
 - Ask the hearing officer to swear in the witnesses.
 - Ask a few simple questions while people are standing.
 - Do you think there is a need for a [marijuana center, liquor store, etc.] at this location? If so, raise your hand [nobody should raise their hand]. Please note for the record that no hands are raised.
 - Do you have a desire for this [marijuana center, etc.]? If so, raise your hand. Please note for the record that no hands are raised.
 - Do you think granting this license will have a negative impact on the neighborhood? If so, raise your hand [all hands should be raised]. Please note for the record that of those standing, all have raised their hand.
 - Applicant’s attorney might ask questions as well.

- Applicant will also have en masse testimony—works the same for them.
 - Make sure applicant’s witnesses are not standing if they reside outside the area of interest.
 - Make sure applicant has only one person as the “manager” of the business itself.
 - You can cross-examine these witnesses en masse.
 - Do you work for applicant? If so, raise your hand. [If any hands are raised, note for the record how many.]
 - Are you a family member of applicant? If so, raise your hand.
 - Do you have a business or other association with applicant?
 - Do you have a financial interest in any way in the marijuana industry?

AFTER THE HEARING

- Request the audio recording of the hearing from DEL.
- When you receive HO’s recommended decision, act promptly.
- Objections due in 10 CALENDAR days
- If recommended decision is to deny the license, applicant will likely object—you can respond

More questions? I’ll do my best to help answer them:

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