



THE VOICE OF COLORADO'S CITIES AND TOWNS

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To: Rep. Crisanta Duran
CC: Sen. Pat Steadman
From: Kevin Bommer, Deputy Director
Date: February 10, 2014
Subject: Public involvement in liquor licensing

Recently you requested information as to how local citizens, either individually or collectively through organizations like neighborhood associations, may participate in the local liquor licensing process. It is worth mentioning as a reminder that, but for some licenses that are issued only by the state liquor licensing authority, all liquor licenses must receive approval and licensing by both the local liquor licensing authority and the state liquor licensing authority.

By statute, the local liquor licensing authority is the governing body of a municipality, county, or city and county; unless that authority has been delegated by the governing body. In the case of Denver, the Department of Excise and Licenses is the local licensing authority. Other municipalities, generally in more populated communities, use citizen authorities, while some use other variations such as a municipal judge or an individual third party.

It is important to remember that the manner in which the statutes are established would seem to presume that anyone is eligible to receive a liquor license unless the state or local licensing authority identifies one of the many enumerated factors would give grounds for denial. It is also equally important to keep in mind that all actions of an authority are both civil and quasi-judicial, subject to judicial review.

CML has an extensive publication for our members on the local liquor licensing process. It is used mainly by municipal clerks, who are generally the most involved in the process. The publication – Liquor & Beer: Licensing and Practice – was last updated in 2006, and is scheduled for an update this fall. However, the attached language from the publication, with citations, is still accurate and will appear substantially similar in the 2014 edition of the publication.

I have attached below the sections pertaining to public involvement in new licensure, as well as renewal. As noted in the text, public hearings are not required for renewals, but active involvement by citizens and citizen associations often causes public review of renewals.

Please do not hesitate to contact me with additional questions.

Scheduling the public hearing

The statutes provide that upon “receipt of an application” for a new license, the local authority must schedule a public hearing upon the application not less than thirty days from the date of the application.¹ Earlier in this Chapter it was suggested that local authorities may exercise some reasonable control over the “receipt” or “date of application.”² This appears to be the practice of some municipalities, and §12-47-313(1) contains language indicating that local authorities may have the power to control the date of the “receipt” of the application: “No application ... shall be *received* or acted upon...” (Emphasis supplied).

Public notice of the hearing

Public notice of the hearing must be posted and published *by the local licensing authority* not less than ten days prior to the date of the hearing.³ Posting notice of the hearing is done by placing a sign in a conspicuous place on the premises for which the application was made *and* by publication in a newspaper of general circulation in the county in which the premises is located.⁴ The sign must be conspicuous and plainly visible to the general public.⁵ If, however, the building is not in existence at the time of application, public notice must be posted *by the applicant* at the premises upon which the building is to be constructed.⁶ Once again, the notice must be posted in such a manner that it is conspicuous and plainly visible to the general public.⁷

The sign itself must be of “suitable material” not less than 22 inches wide and 26 inches high.⁸ It must be composed of letters not less than one inch in height, stating the type of license applied for, the date of application, the date of the hearing, the name and address of the applicant, and such other information as may be required to apprise the public fully of the nature of the application.⁹ See *infra* Appendix A for sample public notices.

If the applicant is a partnership, the sign must contain the names and addresses of all partners; if the applicant is a corporation, association, or other organization, the sign must contain the names and addresses of the president, vice president, secretary, and manager or other managing officers.¹⁰

The local authority’s investigation

The information provided by the applicant should be investigated as thoroughly as possible. While nothing in state statute or regulation precludes a municipality from requesting additional information from an applicant, all the background information pertinent to the issuance of the license is generally contained within the license application forms prescribed by the state licensing authority.¹¹

The only exception to a local authority’s ability to request supplemental background information is in the case of an applicant that is already on the state authority’s “master file”

¹ § 12-47-311(1).

² See *supra*, Chap. Two - Issuing New Licenses: Processing the application and preparing for a public hearing: Receipt of the application.

³ *Id.*

⁴ *Id.* The publication must contain the same information as is required for inclusion on the sign. See § 12-47-311(2); 12-47-311(3). Also, the local licensing authority may publish additional notices so long as the statutory requirement of one publication is met. *Board of County Comm’rs of Fremont County v. Salarino*, 138 Colo. 66, 72-73, 329 P.2d 629, 632-33 (1958).

⁵ § 12-47-311(4).

⁶ *Id.*

⁷ *Id.*

⁸ § 12-47-311(2).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Except in the case of applicants with an approved “master file” on file with the state liquor enforcement division. In this case, the local authority must accept the proof from the applicant as to its master file status in lieu of a local background check.

Excerpted from *Liquor & Beer: Licensing and Practice*, 2006, Colorado Municipal League

list. An applicant seeking licenses for five or more locations may file one form with the state licensing authority, which then approves or denies the application for inclusion on the master file list in the same manner as if considering a single license application.¹² Upon approval, a letter is issued to the applicant, and “[n]o local licensing authority shall require applicants with an approved master file to file additional background investigation forms or fingerprints.” However, a local licensing authority still has the ability to conduct its own investigation and also may require verification “of any of the information provided by the applicant, or from denying the application of the applicant pursuant to the provisions set forth in section 12-47-307.”¹³

The investigating officials should verify any required maps of the neighborhood as well as any information submitted about the neighborhood’s general character and population. The local licensing authority may wish to have an independent survey made of the relevant neighborhood to determine if the information provided by the applicant regarding the desires of the inhabitants is accurate.

Finally, the investigating officials should verify that the plans and specifications of the building proposed for license are a true representation of the facilities, and that the premises complies with applicable zoning, building, health, fire, and any other local regulations. In case of doubt, the municipal attorney should also examine the documents submitted as proof of the right to possession of the premises for use as a liquor outlet.

When investigating the qualifications of the applicant, the local licensing authority is allowed access to criminal history record information furnished by a federal, state, or other governmental criminal justice agency, subject to any restrictions imposed by the agency.¹⁴ If, however, the local licensing authority takes into consideration an applicant’s criminal history record, it must also consider any information provided by the applicant regarding that record, including character references, educational achievements, and evidence of rehabilitation.¹⁵

As will be apparent from the above, the clerk or investigating officer likely will need assistance in the investigation. The other administrative departments and officials of the municipality should lend their aid. For example, the building inspector could inspect the premises to ensure compliance with the plans and specifications for the building, and the planning staff could provide assistance in verifying the maps, population figures, and information on the general character of the neighborhood.

To assist with the investigation and ensure that all procedures have been followed, several municipalities have developed checklists.

Notice of the findings of the investigation

The local licensing authority must notify the applicant and other interested parties in writing of the findings from its investigation. This notice must be given not less than five days prior to the date of the hearing.¹⁶

¹² § 12-47-304(b); Liquor reg. § 47-307

¹³ *Id.*

¹⁴ § 12-47-307(3) (a).

¹⁵ *Id.*

¹⁶ § 12-47-312(1).

Procedural aspects of the public hearing

Conduct of the hearing

The Liquor Code provides that:

Any licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the licensing authority is authorized to conduct.¹⁷

The application hearing is a quasi-judicial proceeding,¹⁸ and the local licensing authority must allow any party in interest to present evidence and to cross-examine witnesses.¹⁹ A “party in interest” is defined as the applicant, an adult resident of the neighborhood under consideration, the owner or manager of a business located in the neighborhood under consideration, or the principal or representative of any school located within 500 feet of the premises for which the license is under consideration.²⁰ While only “parties in interest” *must* be allowed to present evidence and cross-examine witnesses, testimony by others *may* be allowed when such testimony would aid the local authority in considering the application.²¹

Note that a representative of an organized neighborhood group will be a “party-in-interest” for purposes of presenting evidence provided that (1) the representative is actually a member of the group, (2) the representative resides within the boundaries of the neighborhood group’s geographic area, and (3) the boundaries of the group’s geographic area encompass part or all of the neighborhood under consideration.²² Importantly, however, this representative may not cross-examine witnesses or seek judicial review of the licensing authority’s decisions.²³

The local licensing authority may, in its discretion, further restrict the right of a “party in interest” to present evidence and cross-examine witnesses for the purpose of preventing repetitive or cumulative evidence or examination.²⁴ The local authority may not, however, arbitrarily restrict the right to present evidence or cross-examine witnesses.²⁵

According to the Colorado Sunshine Act, the meetings of any municipal boards, commissions, committees, or authorities where any public business is discussed or where formal action may be taken must be open to the public at all times.²⁶ If the requirements for open meetings are not satisfied, then any action taken will not be valid.²⁷ While the Sunshine Law does allow for executive sessions under certain circumstances,²⁸ it remains an open

¹⁷ § 12-47-601(1).

¹⁸ *Two G's, Inc. v. Kalbin*, 666 P.2d 129, 133 (Colo. 1983).

¹⁹ § 12-47-311(5) (a).

²⁰ § 12-47-311(5) (b). However, maintaining standing as a “party in interest” for the purposes of the public hearing does not mean that the person will also be found to have standing for the purposes of a later judicial challenge to the actions of the licensing authority. *Kornfeld v. Perl Mack Liquors*, 193 Colo. 442, 444, 567 P.2d 383, 385 (1977).

²¹ *Southland Corp. v. City of Westminster*, 746 P.2d 1353, 1356 (Colo. App. 1987).

²² § 12-47-311(5) (d).

²³ *Id.*

²⁴ § 12-47-311(5) (c).

²⁵ *Mobell v. Meyer*, 172 Colo. 12, 16–17, 469 P.2d 414, 416 (1970).

²⁶ See § 24-6-402(2) (b).

²⁷ § 24-6-402(8).

²⁸ § 24-6-402(4). For more information on Colorado’s Sunshine Law and related matters, see the CML publication OPEN MEETINGS, OPEN RECORDS: COLORADO’S SUNSHINE LAWS AND MUNICIPAL GOVERNMENT (2005).

Excerpted from *Liquor & Beer: Licensing and Practice*, 2006, Colorado Municipal League

question whether or not it is proper for a local licensing authority to enter into executive session to deliberate matters arising under the Liquor Code. Because courts interpret open meetings laws in favor of protecting the public,²⁹ a local authority should obtain legal advice and give careful consideration to any proposal to remove official business from the view of the general public.

The local authority also has power beyond the statutory directives to determine its own rules to govern the conduct of the hearing. It may adopt and follow rules of procedure followed by state agencies in quasi-judicial hearings or by the municipality itself if the municipality has such rules. If the municipality has not adopted such rules, the local authority may establish its own.

Finally, it is important to remember that a liquor license is a property right.³⁰ As such, it is essential that liquor license hearings be conducted as a quasi-judicial proceeding and in a manner that assures all interested parties a fair and reasonable opportunity to present views and information, and protects the applicant's procedural due process rights.³¹ To ensure this fairness, those municipal officials who will conduct the hearing should ensure that they do not form or express any preconceived opinions as to the merits of the application prior to the hearing.³²

Record of the hearing

The Colorado Supreme Court has held that a court reviewing a local licensing authority's decision is limited to a review of the record of the proceedings before the authority.³³ The court has also stated that, where no record of a hearing exists, a judicial determination of whether the authority's action was arbitrary and capricious cannot be made, and the reviewing court should remand the case to the authority for a *de novo* hearing which allows for the taking and recording of evidence and the making of specific findings of fact.³⁴ Consequently, while the parties to the action for judicial review might be allowed to stipulate to a record of the proceedings before the local licensing authority, the best course is to make a good record of the hearing.

Verbatim recording of the hearing provides the best record because it allows the reviewing court to examine the entire proceeding to determine the reasons for the local authority's decision. Producing a "verbatim recording" is usually the function of a qualified court reporter. The cost of a reporter may be assessed against the applicant's application fee as an "actual and necessary expense" incurred in the investigation of the applicant.³⁵ Alternatively, some local authorities have installed electronic recording equipment for use in application hearings. While this option may be expensive, it may pay for itself after a few hearings and prove more economical in the long run than a court reporter. Regardless of the method of recording used, the recording need not be transcribed unless a party seeking judicial review orders a transcript.

If any person wishes to appeal the licensing authority's decision, he or she must pay the cost of any transcript preparation.³⁶ However, when a party seeks judicial review pursuant to

²⁹ See, e.g., *Bagby v. School Dist. No. 1, Denver*, 186 Colo. 428, 434, 528 P.2d 1299, 1302 (1974).

³⁰ *Fueston v. City of Colorado Springs*, 713 P.2d 1323, 1326 (Colo. App. 1985).

³¹ *Costiphx Enters. v. City of Lakewood*, 728 P.2d 358, 361 (Colo. App. 1986).

³² *Booth v. Town of Silver Plume*, 28 Colo. App. 470, 472, 474 P.2d 227, 228-29 (1970).

³³ *Hicks v. Capra*, 160 Colo. 248, 251-52, 416 P.2d 362, 364 (1966); *Cronin v. Ward*, 144 Colo. 192, 195, 355 P.2d 655, 657 (1960).

³⁴ *Sheeley v. Board of County Comm'rs of Costilla County*, 137 Colo. 350, 353, 325 P.2d 275, 277 (1958); *Board of County Comm'rs of Fremont County v. Salaridino*, 136 Colo. 421, 423-24, 318 P.2d 596, 597-98 (1957).

³⁵ See *supra* Chap. Two: Issuing New Licenses: Processing the application and preparing for a public hearing: Application fees and license fees.

³⁶ § 12-47-802.

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Rule 106 of the Colorado Rules of Civil Procedure (C.R.C.P.), if the defendant licensing authority requests that portions of the transcript not included in the judicial order be placed before the court, and the court then determines that those requested portions are “unessential to a complete understanding of the controversy,” then the costs of preparation for those portions are instead chargeable to the licensing authority and not the party seeking judicial review.³⁷

The substantive inquiry of the hearing

Locations that may not be licensed

Generally speaking, no new license applications for any type of liquor establishment may be received or acted upon if the establishment is within 500 feet of any public or parochial school or the principal campus of any college, university, or seminary.³⁸ Where this distance limitation is applicable, the Liquor Code specifically requires that the local licensing authority make an express “finding of fact” as to whether the distance requirement has been met.³⁹

Applications for a license cannot be approved if in the previous two years (1) the same class of license was denied for the same location or within 500 feet of the previous application location, and (2) the license was denied because of a finding that “the reasonable requirements of the neighborhood and desires of the adult inhabitants were satisfied by existing outlets.”⁴⁰ Similarly, but more strictly, no 3.2% beer license applications may be heard if, in the previous (one) year an application for the same was denied in the same location for these same reasons.⁴¹ Other mandatory prohibitions on hearing “reapplications” apply when the premises is located in an area where the sale of liquor is not permitted under applicable zoning ordinances;⁴² or when the applicant cannot prove that he or she is entitled to possession of the premises for which the application is made.⁴³

In addition, a local licensing authority (or the state on state-owned land) may deny the issuance of a license to a tavern or liquor store when it determines that the presence of the establishment would create or add to an “undue concentration” of the same class of license and possibly increase the need for law enforcement resources in that area.⁴⁴ In determining whether there would be an “undue concentration,” the licensing authority may consider (but is not limited to) the following four factors:

- The number of licenses per capita in the neighborhood to be served as compared with the number of similar licenses per capita in the overall city or county area;

³⁷ Compare § 12-47-802 with COLO. R. CIV. P. 106(a) (4) (IV).

³⁸ § 12-47-313(d) (I). This will be true unless the local licensing authority has waived this restriction. See § 12-47-313(1) (d) (III). For more information on the “500-foot” requirement, see *supra* Chap. Two: Issuing New Licenses: Processing the application and preparing for a public hearing: Restrictions on receiving applications.

³⁹ § 12-47-313(1) (d) (IV).

⁴⁰ § 12-47-313(1) (a) (I) There is a specific exemption for gaming cities and towns. § 12-47-313(1) (a) (II).

⁴¹ § 12-47-313(1) (a) (III). Note that neither the 500-foot rule nor the exception for gaming towns applies in these cases.

⁴² § 12-47-313(1) (c).

⁴³ § 12-47-313(1) (b).

⁴⁴ § 12-47-313(2).

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- The distances between the applicant premises and the premises of other holders of the same class of license within the area;
- Published data concerning the concentration of tavern or retail liquor store licenses and its effect on the need for law enforcement resources; and
- Testimony by law enforcement officials charged with enforcing state or local laws in the area in which the applicant premises are located.⁴⁵

Determining the "reasonable requirements of the neighborhood"

Before approving or denying an application for a new license, the local authority must consider, among other factors:

[T]he reasonable requirements of the neighborhood for the type of license for which application has been made, the desires of the adult inhabitants, [and] the number, type, and availability of alcohol beverage outlets located in or near the neighborhood under consideration...except that the reasonable requirements of the neighborhood shall not be considered in the issuance of a club liquor license.⁴⁶

Another statute requires the local authority to consider:

[T]he reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that are or may be placed upon the neighborhood by the local licensing authority.⁴⁷

Determining the boundaries of the "neighborhood"

Key to these considerations, and one of the more difficult problems confronting the local licensing authority, is the method for determining the boundaries of the "neighborhood" to be served by the proposed outlet. No statutory definition of the word "neighborhood" exists, and no statutory guidelines explain how to determine neighborhood boundaries.⁴⁸ However, in several cases decided over the years, the Colorado courts have tried to fill this void.

In general, the courts have recognized that the geographic extent of the "neighborhood" will vary from case to case, depending upon individual facts and circumstances.⁴⁹ Thus the local licensing authority has considerable discretion in determining neighborhood

⁴⁵ Liquor Reg. § 47-301. Pursuant to this regulation, the number of tavern and retail liquor store licenses within a given area shall be published by the state licensing authority, the population shall be the estimate published by the most recent United States decennial or special census (for state census tract and census division data) or the most recent estimates published by the Department of Local Affairs (for county and municipal data), and the term "neighborhood" shall be the same as used in § 12-47-312(2)(a).

⁴⁶ § 12-47-312(2) (a).

⁴⁷ § 12-47-301(2) (a).

⁴⁸ In describing the term "neighborhood," § 12-47-103(9) (d) adds the modifying term "immediate" [i.e. "immediate neighborhood in which the establishment is located"], but beyond this there is nothing in the C.R.S. to offer any guidance.

⁴⁹ See generally, e.g., *Board of County Comm'rs of Boulder County v. Johnson*, 170 Colo. 259, 460 P.2d 770 (1969); *Campbell v. City Council of Montrose*, 150 Colo. 471, 374 P.2d 348 (1962).

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boundaries, and its determination will not be overturned by the courts unless it is shown to have acted arbitrarily or capriciously or to have abused its discretion.⁵⁰ In smaller communities the entire municipality⁵¹ or even the entire municipality and its surrounding suburban area⁵² has, at times, been permissibly determined to be a single “neighborhood.” Designated neighborhoods have also been upheld even when they cross municipal boundary lines.⁵³

The courts have, on occasion, used a distance radius as a convenient rule of thumb for the neighborhood.⁵⁴ However, courts require that the determination of a neighborhood be based not merely on linear footage but take into account relevant factors such as the nature of the area in which the proposed outlet is to be located (i.e. rural, residential, shopping center),⁵⁵ as well as traffic flow,⁵⁶ access roads,⁵⁷ and “geography, terrain, and barriers, both God-made and man-made.”⁵⁸ Finally, there are *some* outside limits to what a court will accept as a single “neighborhood,” and if it is described *too* expansively it may be struck down.⁵⁹

If the record is complete and reveals that the local licensing authority has considered the evidence and based its determination of neighborhood boundaries on these types of factors, a court will likely uphold the local authority’s decision on appeal.⁶⁰ It should be noted that in order to challenge the authority’s description of the neighborhood in court, the applicant or those opposing the application should have objected to the local authority’s designation of the neighborhood at the licensing hearing and have made their objections part of the record. The authority’s designation of neighborhood boundaries will almost surely survive a court hearing if it is only challenged for the first time during judicial review of the licensing authority’s decision.⁶¹

In reviewing a license application, the local authority should establish the neighborhood boundaries as soon as possible, since many other elements of the application and review process depend on what the board has determined the relevant “neighborhood” to be. Where a local authority could reasonably select more than one area as the relevant neighborhood, an early determination is essential to guide interested parties in the presentation of opinions and information. The local authority may wish to hear substantial evidence at the hearing on the question of the proper boundaries. In small communities where the entire community may be considered “the neighborhood,” or where the relevant neighborhood is otherwise obvious, this early determination should cause few problems.

⁵⁰ See *Johnson*, 170 Colo. at 261–62, 460 P.2d at 771; *Campbell*, 150 Colo. at 477, 374 P.2d at 351. See also *Potter v. McClearn*, 171 Colo. 334, 337, 467 P.2d 54, 56 (1970); *Lassak v. City Council of Arvada*, 161 Colo. 525, 527, 423 P.2d 574, 575 (1967); *Hicks v. Capra*, 160 Colo. 248, 250, 416 P.2d 362, 364 (1966).

⁵¹ See generally *Norris*, 41 Colo. App. at 233, 585 P.2d at 926–27.

⁵² *Campbell*, 150 Colo. at 476–77, 374 P.2d at 350–51.

⁵³ See generally *Board of County Comm’rs of Larimer County v. Bickel*, 155 Colo. 465, 467, 395 P.2d 208, 209 (1964); *Brentwood Liquors v. Schooley*, 147 Colo. 324, 325, 363 P.2d 670, 670 (1961).

⁵⁴ A “distance radius” is some predetermined radius—such as six blocks, ½ mile, five miles (etc.)—that is used to construct a circle on a map around the proposed outlet. See generally, e.g., *AWR Corp. v. Board of County Comm’rs of Morgan County*, 154 Colo. 511, 391 P.2d 675 (1964); *Heinz v. Bauer*, 150 Colo. 589, 591, 375 P.2d 520, 521 (1962).

⁵⁵ *Lassak*, 161 Colo. at 526–27, 423 P.2d at 575; *Hicks*, 160 Colo. at 251, 416 P.2d at 364.

⁵⁶ *Lassak*, 161 Colo. at 526–27, 423 P.2d at 575.

⁵⁷ *Board of County Comm’rs of Fremont County v. Salardino*, 138 Colo. 66, 72–73, 329 P.2d 629, 632 (1957).

⁵⁸ *Hicks*, 160 Colo. at 251, 416 P.2d at 364.

⁵⁹ See, e.g., *Bolton v. Board of County Comm’rs of Delta County*, 164 Colo. 112, 114, 432 P.2d 761, 762 (1967) (reversing a county licensing authority’s finding that the “neighborhood” for an application could be defined as the entire county).

⁶⁰ See generally *infra* Chap. Two - Issuing New Licenses: Judicial review of the local licensing authority’s decision (explaining the process of judicial review generally, and on the importance of keeping a complete record).

⁶¹ See *Board of County Comm’rs of Adams County v. Thompson*, 167 Colo. 402, 405, 448 P.2d 639, 640 (1969); *Hicks*, 160 Colo. at 251, 416 P.2d at 364.

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In order to expedite the process, some local authorities in urban areas make “preliminary rulings” on the boundaries of the neighborhood, which will apply to the hearing *unless* the applicant or some other interested party presents sufficient evidence that a different definition with different boundaries should be established. If the boundaries are changed during the course of the hearing and the change affects the hearing significantly, the authority may continue the hearing to a specified date to allow the interested parties to obtain and present more appropriate, relevant information and arguments.

Determining the “needs” of the neighborhood

Initially, the license applicant has the burden of making a *prima facie* showing that the reasonable requirements of the neighborhood establish a need for issuance of the particular license.⁶² Evidence that there is no liquor outlet of a similar classification within a radius of several miles and that there is substantial support for issuance of the license may be dispositive of the issue for the local authority, and a finding that the requirements of the neighborhood are already met under such conditions may be found to be arbitrary as a matter of law.⁶³ Additionally, once the applicant has presented a *prima facie* case that the reasonable requirements for the neighborhood are not being met, the mere existence of other outlets nearby may be an inadequate basis upon which to deny a license.⁶⁴ The key question, according to the Colorado Supreme Court in *Canjar v. Huerta*, is whether “the needs of the neighborhood with respect to the *type of beverage authorized to be sold* are being met by existing licenses.”⁶⁵ Under this test, when determining the needs of the neighborhood for a beer and wine license application, the licensing authority may consider the existence of all beer and wine licenses, hotel and restaurant licenses, vintner’s restaurant licenses and tavern licenses located in the defined neighborhood, since all may sell beer and wine for consumption on the premises.⁶⁶

The corollary to this rule is that if there *are* a number of licensed outlets in the area, then the applicant has the burden of showing that they are somehow inadequate to serve the needs of the neighborhood.⁶⁷ Petitions signed for or against the application by residents of the affected neighborhood also present some evidence of the requirements of the neighborhood,⁶⁸ although the sheer number of persons signing will not be determinative of the issue.⁶⁹

Other types of evidence showing the needs of the neighborhood might include (for instance) neighborhood population and traffic counts on nearby streets,⁷⁰ as well as convenience of access, hours of operation, frequency of customer requests, and numbers of similar outlets in the neighborhood.⁷¹ Survey data may also be submitted in support of an

⁶² *Nat'l Convenience Stores v. Englewood*, 192 Colo. 109, 110, 556 P.2d 476, 477 (1976); *Tavella v. Eppinger*, 152 Colo. 506, 507–08, 383 P.2d 314, 315 (Colo. 1963); *Jennings v. Hoskinson*, 152 Colo. 276, 278, 382 P.2d 807, 809 (1963); *Board of County Comm'rs of Adams County v. Nat'l Tea Co.*, 149 Colo. 80, 85, 367 P.2d 909, 911 (1962).

⁶³ *See, e.g., Hartman*, 191 Colo. 196, 198, 551 P.2d 201, 201 (1976) (citations omitted); *Anderson v. Spencer*, 162 Colo. 328, 335, 426 P.2d 970, 974 (1967).

⁶⁴ *Southland*, 746 P.2d at 1355, citing *Nat'l Convenience Stores*, 192 Colo. at 111, 556 P.2d at 477 (“The mere existence of other outlets in the neighborhood, although a factor to be considered by the licensing authority, is not in itself a sufficient ground for denying a license.”).

⁶⁵ *Canjar v. Huerta*, 193 Colo. 388, 390, 566 P.2d 1071, 1073 (1977) (emphasis added).

⁶⁶ *Id.*

⁶⁷ *See, e.g., Tavella*, 152 Colo. at 508, 383 P.2d at 315; *Jennings*, 152 Colo. at 278, 382 P.2d at 809.

⁶⁸ *Nat'l Tea*, 149 Colo. at 85, 367 P.2d at 911; *Brass Monkey*, 870 P.2d at 641.

⁶⁹ *See Vigil v. Burress*, 157 Colo. 507, 510, 404 P.2d 147, 148 (1965) (explaining that “the number of persons signing for or against a license is not wholly determinative of either the reasonable requirements or the desires of the neighborhood.”).

⁷⁰ *See Nat'l Convenience Stores*, 192 Colo. at 111–12, 556 P.2d at 477.

⁷¹ *See generally id.*; *Southland*, 746 P.2d at 1354.

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application. The licensing authority, however, must view any statistical data submitted in a consistent manner; it cannot both accept and reject the methodology used or find the data both significant and insignificant because of the results produced.⁷² For example, a licensing authority cannot base a denial of a license on the views of a vocal minority which are opposed to the license, while ignoring the majority of respondents who favor it.⁷³

Number, type, and availability of liquor outlets located in or near the neighborhood

This criterion is closely related to the “requirements of the neighborhood” standard, since the availability or lack of similar liquor outlets in the area is some evidence of the needs of the neighborhood. The lack of any other licensed establishment in the area to be served by the proposed outlet obviously provides strong support in a *prima facie* showing of need for the license.

A fermented malt beverage “package” outlet is not considered a “similar liquor outlet” to one which will sell fermented malt beverages by the drink.⁷⁴ Also, the number and location of liquor outlets is not controlling when deciding whether a fermented malt beverage license should be granted.⁷⁵ It also seems logical to assume that the existence of, for example, restaurant licenses within the designated neighborhood of an applicant’s proposed retail liquor store would not be entitled to the same weight as would the existence of other retail liquor store licenses in the neighborhood.

In any event, the record of the hearing on any new license application should clearly reflect the fact that the local authority considered the existence or lack of liquor outlets located in or near the defined neighborhood, the weight attached to the existence of the outlets, and the reasons for assigning such weight.⁷⁶ The Colorado Court of Appeals has ruled that existence of other liquor outlets, by themselves, is a legally insufficient basis for denying an application.⁷⁷ However, a record containing such information enhances the likelihood that the local authority’s decisions will be upheld upon review.

Consideration of the “number, type, and availability” of other liquor outlets has been a longstanding feature of the Liquor Code. However, in 1997 the General Assembly amended the code to specifically provide that a retail liquor store or tavern license could be denied if it would result in an “undue concentration” of such licenses in a particular area.⁷⁸ The degree to which this new provision actually affords licensing authorities additional discretion to deny license applications has not yet been specifically addressed by the courts.

Considerations regarding “undue concentration”

Where a licensee applies for a second hotel and restaurant or vintner’s restaurant license the local authority must consider the effects on local competition, and must deny the application if approval would have the effect of restraining competition.⁷⁹ Furthermore, for

⁷² *Brass Monkey*, 870 P.2d at 641 (finding the denial of an application arbitrary and capricious where the council relied on twenty-six percent surveyed opposition, but found the corresponding seventy-four percent favorable opinion from the same survey insignificant due to the small survey sample size).

⁷³ *Id.*

⁷⁴ *Kerr v. Board of County Comm’rs*, 170 Colo. 227, 231, 460 P.2d 235, 237 (1969); *National Tea*, 149 Colo. at 84–95, 367 P.2d at 911.

⁷⁵ *See Hirsch v. Board of Trustees*, 150 Colo. 50, 51, 370 P.2d 760, 761 (1962).

⁷⁶ *Brass Monkey*, 870 P.2d at 641.

⁷⁷ *Id.*

⁷⁸ § 12-47-301(2) (b); Liquor Reg. § 47-301.

⁷⁹ *Id.*

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retail liquor store and tavern licenses only, the local licensing authority may consider whether the license “would result in or add to an undue concentration of the same class of license and, as a result, require the use of additional law enforcement resources,” and may deny a license on that basis.⁸⁰ In defining “undue concentration,” the local board may consider (1) the ratio of license type to population statewide as compared to the neighborhood, (2) the ratio of license type to population in the municipality or county as a whole as compared to the census tract or census division in question, and (3) the distance between the applicant’s premises and other premises holding the same license.⁸¹ The local authority may also consider any published data concerning the concentration of licenses and its effect on the need for local law enforcement, and testimony by law enforcement officials with the responsibility for the area in which the applicant premises are located.⁸²

Because the statutory language does not lend itself to precise definition, and because the Liquor Code contains no explanation of many of the above quoted phrases, court rulings must be examined to understand better the meaning of these statutory standards.⁸³

Determining the “desires” of the adult inhabitants of the neighborhood

As with the “needs of the neighborhood” test, the applicant has the burden of making a *prima facie* showing that “the desires of the adult inhabitants” dictate the issuance of the license.⁸⁴ Although a showing that a majority of the people in a locality are favorable to the issuance of the license is not required,⁸⁵ and the fact that more signatures on a petition favor issuance of the license than oppose it is not dispositive,⁸⁶ courts have looked to these factors as evidence that supports issuance.⁸⁷

Importantly, testimony or arguments against the issuance of a license which are rooted solely in a person or group’s basic abhorrence to alcoholic beverages in general are deemed to be irrelevant.⁸⁸ This is also true for testimony which is based on entirely speculative concerns or which comes from people who are not parties in interest to the matter.⁸⁹

Courts generally affirm the decision of the local authority where the evidence equally supports both denial and approval of a license.⁹⁰ However, where the only relevant evidence presented to rebut the applicant’s *prima facie* showing is wholly speculative, the court may overturn a local authority’s decision to deny an application.⁹¹

Considering “all other reasonable restrictions that are or may be placed on the neighborhood”

It is unclear what is meant by the local authority’s power to consider “all other reasonable restrictions that are or may be placed upon the neighborhood by the local

⁸⁰ *Id.*

⁸¹ Liquor Reg. §§ 47-301(A) (1)–47-301(A) (3).

⁸² Liquor Reg. §§ 47-301(A) (4); 47-301(A) (5).

⁸³ Because the cases decided under the Colorado Beer Code in this area are based on the same considerations as those decided under the Liquor Code, both types of cases are included in the following discussion.

⁸⁴ §§ 12-47-301(2) (a); 12-47-312(2) (a); *Nat’l Convenience Stores*, 192 Colo. at 110, 556 P.2d at 177; *Nat’l Tea*, 149 Colo. at 84, 367 P.2d at 911.

⁸⁵ *KBT Corp. v. Walker*, 148 Colo. 274, 276, 365 P.2d 685, 686 (1961).

⁸⁶ See *Vigil*, 157 Colo. at 510, 404 P.2d at 148 (explaining that “the number of persons signing for or against a license is not wholly determinative of either the reasonable requirements or the desires of the neighborhood.”).

⁸⁷ See *Nat’l Tea*, 149 Colo. at 85, 367 P.2d at 911.

⁸⁸ *Nat’l Convenience Stores*, 192 Colo. at 111, 556 P.2d at 477; *Ladd v. Board of County Comm’rs of Larimer County*, 146 Colo. 366, 372–73, 361 P.2d 627, 631 (1961).

⁸⁹ *Nat’l Convenience Stores*, 192 Colo. at 111, 556 P.2d at 477.

⁹⁰ *Thompson*, 167 Colo. at 405, 448 P.2d at 640–41; *U-Tote-M of Colo. v. Greenwood Village*, 39 Colo. App. 28, 33, 563 P.2d 373, 376 (1977).

⁹¹ See *Southland*, 746 P.2d at 1356.

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licensing authority.”⁹² No substantial judicial interpretation of this phrase appears to exist, although in one case the Supreme Court suggested that the “reasonable restrictions” would include zoning restrictions placed on the neighborhood.⁹³

The decision of the authority

Procedure for approving or denying the application

As has been stated, a public hearing must be held no sooner than thirty days after a completed application has been received.⁹⁴ Posting of the meeting must be at least ten days before hand,⁹⁵ and no less than five days before the local authority must “make known its findings based on its investigation in writing to the applicant and other interested parties.”⁹⁶ After the public hearing occurs, the local licensing authority has thirty days to make a decision.⁹⁷ Every decision must be in writing and must state the reasons for the decision.⁹⁸ A copy of the decision must also be sent by certified mail to the applicant at the address listed on his or her application.⁹⁹

Because the local authority has a full thirty days to reach a decision after the hearing, it has time to fully consider all the evidence produced and to formulate a sound decision in writing that will withstand the rigors of judicial review. It must be noted, however, that the authority may not allow or consider any matters presented to them *after* the public hearing is closed. After the authority’s deliberation (and within the thirty-day period following the conclusion of the public hearing), one of the members of the authority should offer a motion to deny or approve the application, stating the exact reasons for denial or approval, and after discussion the members of the authority should then vote. The decision and the reasons for it will then be made part of the record, and the record will reflect that the local authority made its decision in light of the evidence produced at the hearing.

It is also important to note that under appropriate circumstances the local licensing authority may decide to hold a *second* hearing on an application prior to making a final decision.¹⁰⁰ In the case of *U-Tote-M of Colorado, Inc. v. City of Greenwood Village*, the local licensing authority held a public hearing on an application, took evidence, closed the hearing, and tabled the matter for later action.¹⁰¹ Seven days later, a petition signed by persons opposed to the application and requesting that the hearing be reopened was presented to the licensing authority.¹⁰² The authority decided to hold a second public hearing, notified the applicant of its decision, and posted and published the required notice of hearing.¹⁰³ After the second hearing, the license application was denied.¹⁰⁴

Upon review, the Court of Appeals concluded that the licensing authority’s action was not final until it made its findings and denied the application.¹⁰⁵ Until the authority’s decision is final a hearing may be continued or another hearing may be held upon

⁹² § 12-47-301(2) (a).

⁹³ *Gettman v. Board of County Comm’rs*, 122 Colo. 185, 189, 221 P.2d 363, 365 (1950).

⁹⁴ § 12-47-311(1).

⁹⁵ *Id.*

⁹⁶ § 12-47-312(1).

⁹⁷ § 12-47-312(3).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *See, e.g., U-Tote-M*, 39 Colo. App. at 32, 563 P.2d at 376.

¹⁰¹ *Id.* at 30, 374.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 32-33, 376.

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reconsideration.¹⁰⁶ The Court also found that the statutory thirty-day period for issuing a written decision was properly measured from the date of the second hearing rather than the date of the first hearing.¹⁰⁷

Upon approval of the application, the local authority must also notify the state licensing authority of its approval.¹⁰⁸ An applicant's state application for a new retail license must contain a report of the local licensing authority which shows its opinion concerning the reasonable requirements of the neighborhood, the desires of the adult inhabitants, and the character of the applicant.¹⁰⁹ The application to the state also must be accompanied by the whole amount of the state license fee plus eighty-five percent of the local license fee.¹¹⁰

Issuing the local license

Only after the local licensing authority has approved the application and the state licensing authority has issued a license covering the whole period for which the local license is requested may the local authority issue the local license to the applicant.¹¹¹

Before the local authority issues the local license, however, it must determine that the required annual license fees have been paid.¹¹² In addition, before issuing a local license, the local authority must determine that the building where the licensee will operate is ready for occupancy with such furniture, fixtures, and equipment in place as necessary to comply with the Beer & Liquor Codes, and that the applicant has complied with the architect's drawing, the plot plan, and a detailed sketch for the interior of the building.¹¹³

Content and effect of the license

The license must specify the date of issuance, the term of the license, the name of the licensee, the premises or optional premises licensed, the optional premises for a hotel and restaurant license, and the liquors which may be sold at the licensed premises.¹¹⁴

A separate license must be issued for each specific business or business entity and each geographical location.¹¹⁵ However, a resort complex with common ownership, a hotel and restaurant licensee with optional premises, an optional premises licensee for premises located on an outdoor sports and recreational facility, and a wine festival at which more than one licensee participates pursuant to a wine festival permit are each considered a single business and location.¹¹⁶

All liquor licenses are valid for a period of one year from the date of issuance unless they are revoked or suspended.¹¹⁷

¹⁰⁶ *Id.* For a general discussion of the authority of administrative bodies acting in a quasi-judicial capacity to reconsider a decision, see *Moschetti v. City of Boulder*, 40 Colo. App. 156, 574 P.2d 874 (1977).

¹⁰⁷ § 12-47-312(3).

¹⁰⁸ § 12-47-312(5). The state will then "investigate and either approve or disapprove such application." *Id.*

¹⁰⁹ Liquor Reg. § 47-310(A).

¹¹⁰ *Id.*; see *supra* Chap. Two - Issuing New Licenses: Processing the application and preparing for a public hearing: Application fees and license fees.

¹¹¹ § 12-47-301(4) (b).

¹¹² § 12-47-307(1) (a) (I).

¹¹³ § 12-47-312(4).

¹¹⁴ § 12-47-301(4) (a).

¹¹⁵ § 12-47-301(3) (a).

¹¹⁶ *Id.*

¹¹⁷ § 12-47-301(1).

Judicial review of the local licensing authority's decision

Who can seek judicial review?

If the local licensing authority denies an application, clearly the applicant may seek judicial review of that decision. If, on the other hand, the licensing authority approves an application, the only party who has the authority to challenge that decision is an individual resident who resides in the affected “neighborhood.”

The question of “standing” for business competitors to challenge a licensing decision originally arose in *Kornfeld v. Perl Mack Liquors*.¹¹⁸ In *Kornfeld*, the Colorado Supreme Court ruled that a neighborhood liquor store owner who had appeared at the public hearing to oppose the application for a license was not a proper defendant in a district court action to review denial of the application, nor did the liquor store owner have standing as a business competitor to appeal from the district court's decision.¹¹⁹ The court stated, “[e]conomic injury from lawful competition does not confer standing to question the legality of a competitor's operations.”¹²⁰ Relying upon the Supreme Court's decision in *Kornfeld*, the Court of Appeals concluded in *Woda v. City of Colorado Springs* that the competitor of a license applicant, whose business was located directly across the street from the applicant's proposed location, lacked standing to initiate a court review of the licensing authority's decision to approve the application.¹²¹

Then, in *Brass Monkey, Inc. v. Louisville City Council*, the Supreme Court clarified that, while a business competitor, by that fact alone, may lack standing to obtain judicial review of a licensing authority's approval of an application, the competitor *does* have standing to obtain review if he or she is *also a resident* of the “neighborhood.”¹²² This is because residents of the neighborhood, by the fact of their residency alone, have a strong interest in ensuring that the liquor licensing procedure is properly administered.¹²³ Finally, although courts have consistently ruled that neighborhood *residents* have an interest in the judicial review of local licensing proceedings, a representative of an organized neighborhood *group* is *not* entitled to seek judicial review of the licensing authority's decision.¹²⁴

To summarize, while the applicant may seek judicial review of his or her denial by the licensing authority, the only party who may challenge the decision of the local licensing authority's *approval* of the license is an individual resident of the affected neighborhood. Neither a nonresident business competitor of the applicant (even though her or his business is located within the affected neighborhood) nor the representative of an organized group of neighborhood residents may seek judicial review of an application's approval.

Timing of judicial review

If the local licensing authority denies the application, judicial review must be sought within thirty days of the denial.¹²⁵ However, if the local authority approves the application, review may not be sought until after the state licensing authority's decision on the application,¹²⁶ and then review must be sought within thirty days.¹²⁷ Should the party

¹¹⁸ *Kornfeld v. Perl Mack Liquors*, 193 Colo. 442, 567 P.2d 383 (1977).

¹¹⁹ *Id.* at 444, 385.

¹²⁰ *Id.*

¹²¹ *Woda v. City of Colorado Springs*, 40 Colo. App. 173, 174–75, 570 P.2d 1318, 1319 (1977).

¹²² *Brass Monkey*, 870 P.2d at 639 (citing *Norris*, 41 Colo. App. 231, 585 P.2d 925.)

¹²³ *Norris*, 41 Colo. App. at 233, 585 P.2d at 927.

¹²⁴ § 12-47-311(5) (d).

¹²⁵ § 12-47-802.

¹²⁶ *See id.*

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seeking review want a transcript of the hearing or should the court order that one be made, the party seeking review must pay the costs of its preparation.¹²⁸ Failure to commence and perfect an action for judicial review within the thirty-day time period may be considered a jurisdictional defect requiring dismissal of the action.¹²⁹

The process of judicial review

Actions to obtain judicial review of a liquor licensing authority's decision must be filed pursuant to C.R.C.P. Rule 106(a) (4),¹³⁰ which provides in part:

Where any governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law: (I) Review shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.

Under this rule, a basic question in judicial review of a licensing authority's decision is whether the authority exceeded its jurisdiction or abused its discretion. In making this determination, the court reviews only the record of the hearing.¹³¹

However, if the challenge implicates the *facial constitutionality* of a municipal ordinance, review may be obtained only by a declaratory judgment action via C.R.C.P. 57.¹³² Additionally, “[p]arties may ... elect to combine a request for declaratory relief pursuant to Colo. R. Civ. P. 57 with a request for judicial review of quasi-judicial governmental conduct pursuant to Colo. R. Civ. P. 106 (a) (4).”¹³³

The following are commonly stated principles guiding judicial review under Colo. R. Civ. P. 106 of a licensing authority's decision:

- (1) Licensing authorities are vested with wide discretion;
- (2) All reasonable doubts are to be resolved in favor of the licensing authority's decision; and
- (3) The decision of the licensing authority will not be disturbed by the courts unless it appears that the authority abused its discretion.¹³⁴

Even under application of these principles, however, courts still occasionally overrule decisions of local licensing authorities.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *City & County of Denver v. District Court*, 189 Colo. 342, 343-44, 540 P.2d 1088, 1089 (1975); *U-Tote-M*, 39 Colo. App. at 31-32, 563 P.2d at 375.

¹³⁰ See generally *Kornfeld*, 193 Colo. at 442, 567 P.2d at 383; *Norris*, 41 Colo. App. at 231, 585 P.2d at 925; *U-Tote-M*, 39 Colo. App. at 28, 563 P.2d at 373.

¹³¹ COLO. R. CIV. P. 106(a) (4) (I).

¹³² COLO. R. CIV. P. 57; see also, e.g., *Liquor & Beer Licensing Advisory Bd. v. Cinco, Inc.*, 771 P.2d 482, 487 (Colo. 1989); *Two G's, Inc. v. Kalbin*, 666 P.2d 129, 134 (Colo. 1983).

¹³³ *Id.* (citing *Two G's*, 666 P.2d at 133-34).

¹³⁴ See, e.g., *Kerr v. Board of County Comm'rs*, 170 Colo. 227, 230, 460 P.2d 235, 237 (1969) (citing *Salardino*, 138 Colo. at 66, 329 P.2d at 629).

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While the reasons given for upholding or overruling a licensing authority's decision have varied in the past from case to case, C.R.C.P. 106 (a) (4) indicates that the court's decision with regard to whether the authority has exceeded its jurisdiction or abused its discretion turns only on whether there is competent evidence in the record to support the authority's decision.¹³⁵ If the record discloses competent evidence to support the licensing authority's decision, then the courts will likely uphold that decision.¹³⁶ On the other hand, a lack of any competent evidence in the record to support the authority's decision will probably constitute an abuse of discretion and result in a reversal by the courts.¹³⁷

Sometimes courts state the standard of review as follows: where the evidence is such that reasonable minds might differ as to whether an application should be granted or denied, the licensing authority's decision will be affirmed by the courts.¹³⁸ It is important to realize that, again, this standard presupposes that the record discloses competent evidence to sufficiently support the licensing authority's decision.

In sum, the importance of the record obtained at the public hearing cannot be overstated, as the reviewing court is limited on review to an examination of this record. Therefore, regardless of how much information the local authority has in making its decision, if the information and evidence necessary to support the authority's decision are not revealed in the hearing record, a reviewing court likely will be unable to uphold the authority's decision.¹³⁹ Because of this, the local authority must ensure that the evidence and information upon which it bases its decision appear in the record. It is also helpful if the authority's reasoning in support of its decision appears in the record as well, and if the reasoning reflects that the authority based its decision on all relevant evidence and factors and a proper weighing thereof. This type of detailed record greatly diminishes the probability of reversal on appeal.

Of some interest, perhaps, is the following language from the Colorado Supreme Court's opinion in *Quedens v. J.S. Dillon & Sons Stores*:

No doubt there are those who think that to meet the needs of a neighborhood and the desires of the inhabitants for exhilarating beverages, there must be an outlet on every street corner; others may feel that a single outlet on the planet Mars would be sufficient. Between these two extremes there is a vast middle ground in which the licensing authority may in its sound discretion grant or deny a license without being properly or lawfully charged with arbitrary, capricious or unreasonable acts or conduct. *From the record before us* we conclude that the trustees were well within their discretionary powers in denying the license.¹⁴⁰

¹³⁵ *See id.*

¹³⁶ *See, e.g., Canjar*, 193 Colo. at 391, 566 P.2d at 1073; *Jennings v. Hoskinson*, 152 Colo. 276, 277, 382 P.2d 807, 808 (1963).

¹³⁷ *See, e.g., Brass Monkey*, 870 P.2d at 641; *Nat'l Convenience Stores*, 192 Colo. at 111, 556 P.2d at 478; *Southland*, 746 P.2d at 1356.

¹³⁸ *See, e.g., Hicks*, 160 Colo. at 250, 416 P.2d at 364.

¹³⁹ *See generally Geer v. Stathopulos*, 135 Colo. 146, 309 P.2d 606 (1957).

¹⁴⁰ *Quedens v. J.S. Dillon & Sons Stores*, 146 Colo. 161, 164, 360 P.2d 984, 986 (1961) (emphasis added).

Renewals

Licensees who wish to renew their licenses must submit an application to the local authority at least forty-five days prior to the date of its expiration, though the local authority may waive this forty-five day time requirement for "good cause."¹⁴¹ A filing with the local licensing authority is deemed to be a filing with the state, and the expiration date of the license will be extended until the state completes its portion of the processing of the license renewal.¹⁴² The application for renewal must be accompanied by an application fee in an amount determined by the local licensing authority to cover actual and necessary expenses of the renewal, but not to exceed \$100.¹⁴³

The local authority *may* hold a hearing on any ordinary application or renewal¹⁴⁴ but *must* hold a hearing (with notice) for the renewal of any license which has been transferred to a financial institution through foreclosure or deed in lieu of foreclosure of a licensed premises.¹⁴⁵ In either case, whenever the local authority holds a renewal hearing it must post a notice of hearing in a conspicuous place on the licensed premises for a period of ten days and supply the applicant with notice at least ten days prior to the hearing.¹⁴⁶

The Liquor Code provides that the licensing authority may refuse to renew any license "for good cause, subject to judicial review."¹⁴⁷ In 1994, the Colorado Court of Appeals held in *Squire Restaurant & Lounge v. City and County of Denver* that for the licensing renewal scheme to pass constitutional muster, licensing authorities must provide standards for determining whether there is "good cause" for refusing to renew an existing license.¹⁴⁸ The *Squire* court found that without any implementing regulations, the "good cause" standard by itself did not provide ordinary people with sufficient notice and understanding of what types of conduct and conditions would cause the authority to refuse to renew a license.¹⁴⁹ The court also held that it would be improper to impute standards that may be applicable to the original issuance of a new license to the renewal process (e.g., an analysis of "the reasonable requirements of the neighborhood").¹⁵⁰

As a direct result of the *Squire Restaurant* case, the General Assembly in 1996 added a definition of good cause to the Liquor Code.¹⁵¹ The statute defines "good cause" in the context of renewals to mean:

¹⁴¹ § 12-47-302(1). They must also submit an application to the state no less than 30 days prior to the date of expiration, and the state must notify the licensee of the impending expiration of a license no less than 90 days prior to its expiration by first class mail at the business' last-known address. *Id.*

¹⁴² *Id.*

¹⁴³ § 12-47-505(4) (a) (III). Note, however, that an expired license renewal fee may be any amount not to exceed \$500.

¹⁴⁴ Compare § 12-47-302(1) with § 12-47-311(1).

¹⁴⁵ § 12-47-308(4) (b).

¹⁴⁶ § 12-47-302(1).

¹⁴⁷ *Id.*

¹⁴⁸ *Squire Restaurant & Lounge v. City and County of Denver*, 890 P.2d 164, 165 (Colo. App. 1994).

¹⁴⁹ *Id.* at 171.

¹⁵⁰ *Id.* at 170.

¹⁵¹ § 12-47-103(9).

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(a) The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this article or any rules and regulations promulgated pursuant to this article;

(b) The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceedings;

. . .

(d) Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the establishment is located, which evidence must include a continuing pattern of fights, violent activity, or disorderly conduct... "[D]isorderly conduct" has the meaning as provided for in Section 18-9-106, C.R.S.¹⁵²

Although the statutes do not require a hearing on most renewal applications, the Supreme Court has held that an existing liquor license is a property right (albeit a limited one) that is entitled to due process protection.¹⁵³ The minimum requirements of due process protection for a liquor license will include the requirements of notice and an opportunity to be heard, and the Colorado Court of Appeals has held that "[n]otice must be of such nature as reasonably to convey [specific] information which will allow the licensee a reasonable opportunity to prepare for the hearing."¹⁵⁴ The local authority may provide both the hearing and notice of the decision in the same manner as for original licensing procedures.

Other technical rules related to the renewal of licenses including the following:

- If a licensed premises lies within 500 feet of any public or parochial school or the principal campus of any college, university, or seminary, and the original license was lawfully issued, the distance restrictions cannot affect the *renewal* of that license.¹⁵⁵
- The local authority may not renew any liquor license until the applicant produces a license issued and granted by the state licensing authority covering the whole period for which the license renewal is requested.¹⁵⁶
- The licensee may amend the application prior to or at a renewal hearing in order to correct or add required information.¹⁵⁷ The application and any

¹⁵² § 12-47-103(9). Section 18-9-106(1) defines "disorderly conduct" broadly to include offensive utterances, gestures, displays or threats; unreasonable noise in a public place; fighting; discharging a firearm; or displaying a deadly weapon.

¹⁵³ *Mr. Lucky's, Inc. v. Dolan*, 197 Colo. 195, 197, 591 P.2d 1021, 1022 (1979); see also *Price Haskel, Inc. v. Denver Dept. of Excise & Licenses*, 694 P.2d 364, 366 (Colo. App. 1984); *Fueston v. City of Colorado Springs*, 713 P.2d 1323, 1326 (Colo. 1985).

¹⁵⁴ *Price Haskel*, 694 P.2d at 366.

¹⁵⁵ § 12-47-313(1) (d) (I).

¹⁵⁶ § 12-47-301(4).

¹⁵⁷ See, e.g., *Mr. Lucky's, Inc. v. City of Glendale*, 42 Colo. App. 322, 323, 596 P.2d 1218, 1219 (1979).

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amendments to the application must be verified by oath or affirmation by those persons prescribed by the state licensing authority.¹⁵⁸

Late renewal application for lapsed license

In the event that a license granted by the local licensing authority lapses prior to any renewal action, the licensee may submit a late renewal application and thereby remain in operation while the renewal is pending.¹⁵⁹ The licensee must submit the late renewal application no later than ninety days after the license has expired, and must pay a non-refundable late-renewal fee of \$500 to the local licensing authority.¹⁶⁰ If the licensee fails to act within the ninety day time frame, the license is deemed expired and the licensee must cease operations and apply for a brand new license.¹⁶¹

¹⁵⁸ § 12-47-309(2); *Mr. Lucky's*, 42 Colo. App. at 323, 596 P.2d at 1219 (holding that an affidavit submitted at the hearing will be sufficient verification); *Spero v. Town of Federal Heights*, 35 Colo. App. 64, 67-68, 529 P.2d 327, 329 (1974) (finding unsworn testimony to be insufficient for purposes of statute).

¹⁵⁹ § 12-47-302(2) (a).

¹⁶⁰ *Id.*

¹⁶¹ § 12-47-302(2) (b).