

## EXHIBIT A (for Resolution\_\_-17)

# LIQUOR AND BEER RULES AND REGULATIONS FOR THE CITY OF COLORADO SPRINGS

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# LIQUOR AND BEER RULES AND REGULATIONS FOR THE CITY OF COLORADO SPRINGS

## **Rule 1.00 Applicability of Rules**

In addition to any other rules or laws which may be applicable, these rules shall govern all alcohol beverage<sup>1</sup> applications of any kind whatsoever which have been filed with the City Clerk after 12:01 a.m., November 26, 1997, and all suspension/revocation or license renewals proceedings commenced after November 25, 1997, before the Liquor and Beer Licensing Board (Board).

## **Rule 2.00 Liquor Licensing Authority; General Provisions**

### **2.01 Board, City Clerk**

The Liquor and Beer Licensing Authority for the City of Colorado Springs shall be the Liquor and Beer Licensing Board (Board), except as otherwise provided by ordinance, and shall be known as the Local Licensing Authority. The City Clerk shall act as the Local Licensing Authority or as agent of the Authority pursuant to the City Code and the requirements of these Rules, as applicable.

### **2.02 Jurisdiction of Authority**

The Board shall have jurisdiction on all alcohol beverage license applications, change of location and modifications, alterations or expansion of the licensed premises, renewal hearings, suspension and/or revocation hearings, and any other applications permitted by state law or local ordinance. The City Clerk shall have jurisdiction to set the agenda for regular meetings of the Board and to act as the Local Licensing Authority or as agent of the Authority pursuant to the City Code and the requirements of these Rules, as applicable.

### **2.03 Conduct of Hearings**

The Board shall have the authority to conduct public hearings upon any alcohol beverage license applications, changes of location and modifications, alterations or expansion of the licensed premises, renewals and any other applications permitted by state law or local ordinance. The Board shall have the authority to conduct public hearings on suspensions or revocations of alcohol beverage licenses, including hearings to temporarily or summarily suspend an alcohol beverage license. The Board may appoint a special hearing officer or committee to make a record of facts and a recommended resolution, as provided in Rule 19.02A.

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<sup>1</sup>"Alcohol beverage" means fermented malt beverage or malt, vinous, or spirituous liquors; except that "alcohol beverage" shall not include confectionery containing alcohol within the limits prescribed by Section 25-5-410 (1)(i)(II), C.R.S. (C.R.S. §12-47-103(2))

#### **2.04 Final Agency Action**

The decision of the Board shall constitute final agency action of the Board for all purposes under the applicable State statutes, rules and regulations. Any appeal of the decision of the Board shall be to the district courts of Colorado in accord with the Colorado Rules of Civil Procedure as now existing or hereafter amended. Failure to appeal the decision of the Board shall be deemed to be a waiver of the right of appeal.

#### **2.05 Clerk to Assist Board**

The City Clerk shall assist the Board by receiving all applications, conducting investigations, coordinating with other City departments as required, issuing subpoenas to require the presence of persons and/or the production of papers, books, and records and scheduling public hearings.

#### **2.06 Board Committees**

There shall be no standing committees of the Board. The Chair may from time to time create temporary committees of one or more members for special duties, examinations, investigation and inquiries of interest to the Board. The Chair shall appoint all committee members and a committee chair from among the members. No member shall serve on more than two committees simultaneously or as a chair of more than one committee. Any committees created under this Rule shall be required to provide a final report to the Board and shall be deemed to be disbanded upon the acceptance of such report by the Board. The final report may be in either oral or written form. No committee shall have the power to commit the Board to the endorsement of any plan, program or request without the approval of the Board. The Chair and Vice-Chair of the Board automatically become ex-officio members of all committees created under this Rule.

### **Rule 3.00 Election of Chair and Vice-Chair**

At the first meeting in July, a Chair and Vice-Chair shall be elected. A majority vote of the entire Board (four (4) members) shall be required for the election of the Chair and the election of the Vice-Chair. In the event there are more than two candidates for an office and no individual receives a majority vote, the candidates receiving the least number of votes in each ballot shall withdraw until one candidate receives a majority.

### **Rule 4.00 Regular Meetings**

#### **4.01 Times, Dates; Adjournment and Reconvention**

A. The regular meetings of the Board shall be held on the first and third Fridays of each month at 9:00 a.m. in the Council Chambers of the City Administration Building, or after timely notice, at such time and place as the Chair designates.

B. Any regular meeting may be adjourned and reconvened at a time and place determined by a majority of the members present.

#### **4.02 Special Meetings**

Special meetings of the Board may be held in Council Chambers or any other place suitable for the conduct of public business within Colorado Springs, Colorado. At the call of the Chairperson or any member of the Board, a special meeting may be held at any time and place by unanimous consent of all the members of the Board, or by the presence and participation of all members of the Board at such meeting. Notice of special meetings, unless there is a consent by presence and participation, shall be oral or written. Written notice shall be sent not less than five (5) days before any such meeting. The notice, written or oral, shall include the purposes of the special meeting. If oral notice is given, it must be received not less than four (4) days before any special meeting and no written notice will be sent to the member(s) receiving oral notice. No special meeting shall be held on any matter affecting a license application without compliance with all applicable statutory notice provisions.

#### **4.03 Work Sessions**

The Chair may from time to time call work sessions for the purpose of receiving information, hearing presentations and discussing information. No official or formal action may be taken at such meetings other than to give direction to the efforts of the City Clerk's staff.

#### **4.04 Quorum**

A majority of the Board shall constitute a quorum for the transaction of business. Whenever a quorum is not present at a regular or special meeting, no action may be taken except to adjourn the meeting to another time. Whenever a quorum is present but lost due to the recusal of one or more Board members, no action may be taken on that particular agenda item, subject to the rules set forth in "Parliamentary Law for Nonprofit Organizations;" the matter shall be continued to the next available regularly scheduled Board meeting. The Board may then resume business on all other agenda items so long as quorum is reestablished. All decisions shall be by a majority vote of the members present.

#### **4.05 Public Meetings**

All meetings shall be open to the public except such meetings to discuss legal and personnel matters. No formal actions may be taken at a closed meeting.

#### **4.06 Requests for Postponement**

A. If an applicant requests postponement of an agenda item prior to the time when the agenda is published for the meeting, the City Clerk shall have the discretion to continue the item to the next regular meeting.

B. If an applicant requests postponement after the agenda is published or at the meeting, the Board shall consider the request and take such action as it deems fit. If an opponent requests postponement of an agenda item at the meeting or at any time preceding the meeting, the Board shall consider the request at the meeting and shall take such action as it deems fit.

#### **4.07 Chair and Vice-Chair**

A. In the case of absence of both the Chair and Vice-Chair, the members of the Board, so long as a quorum is present, shall elect by a majority vote of those present a temporary Chair to act until the Chair or Vice-Chair appears.

B. Vacancy in the office of the Chair shall be filled automatically by the Vice-Chair, and a new Vice-Chair shall be elected at the next regular meeting of the Board. A vacancy in the office of the Vice-Chair shall be filled at the next regular meeting of the Board. The Chair or Vice-Chair so elected shall serve until the next annual meeting.

#### **4.08 Appeals from the Decision of the Chair**

The Chair shall preside at all regular and special meetings of the Board and shall preserve decorum and decide all questions of order, subject to appeal to the Board. In case of an appeal from a ruling of the Chair, the question shall be: "Shall the decision of the Chair stand as the decision of the Board?" If a member violates these Rules of Procedure, the Chair shall call such member to order, in which case the member shall be silent, unless permitted to explain.

#### **4.09 Order of Business**

The order of business at regular Board meetings shall be:

A. Call to Order: The Chair shall call the Board to order and open the meeting by stating the type of meeting: regular, special or other type. The members present and absent shall be recorded by the staff. The names of those members absent shall be announced. The Chair shall state whether a quorum is present. The public shall be advised of the procedures to be followed during the meeting.

B. Minutes: The minutes of any preceding meeting shall be submitted for approval and shall be approved by a majority vote of those present pending any corrections by members of the Board, staff or others.

C. Communications:

1. The City Clerk shall announce any items on the agenda, which have been postponed pursuant to Rule 4.06A and the date to which the item has been postponed. The staff shall indicate any items for which a postponement has been requested pursuant to Rule 4.06B. The Board shall act on these requests for postponement either at the time of communication by the City Clerk or when the item is regularly scheduled to appear on the agenda. The City Clerk or City Attorney may ask for postponement of any item at any time to provide time for additional review or information. The Board shall immediately after such communication determine whether the item should be postponed to a definite time.

2. The City Clerk shall communicate to the Board any items that have been withdrawn and such withdrawal shall constitute removal of the item and no City license or application fees shall be refunded. If a withdrawn item is to be heard again it must be processed as a new item, including payment of fees. The City Clerk shall communicate any other reasons

- why an agenda item is not to be heard by the Board and the Board will take such action, as it deems fit.
- D. Neighborhood Boundary Objections
  - E. Change of Location
  - F. Modification of the Premises
  - G. New Application Hearings
  - H. New Business
  - I. Suspension / Revocation Hearings
  - J. Renewal or Appeal Hearings
  - K. Discussion Items
  - L. Adjourn

#### **4.10 Quasi-Judicial Actions**

When the Board sits as a quasi-judicial body and is required to make findings of fact and act upon evidence presented to them, no member shall receive or solicit comments from any person regarding an agenda item prior to the public hearing at which the item is discussed. The City Clerk may present to the Board at an open work session information on any item scheduled for public hearing.

#### **4.11 Parliamentary Procedure**

Parliamentary procedure for motions, special motions and unanimous consent shall be in accordance with Rules 18, 19 and 20 of the Legislative Procedures and Rules of Council. In the absence of a rule to govern a point of procedure, "Parliamentary Law for Nonprofit Organizations" shall govern the Board's actions.

### **Rule 5.00 Applications, Forms, Fees and Hearings**

#### **5.01 Applications**

A. All applications for new alcohol beverage licenses shall be made under oath on forms provided by the City and State.

B. All applications for alcohol beverage licenses, including new, renewal, change of location, change of corporate structure, or transfer of ownership, as well as expansion, alteration or modification of the premises, and all liquor permits authorized by Colorado Revised Statutes, title 12, articles 46, 47 and 48 shall be filed with the City Clerk of the City of Colorado Springs.

#### **5.02 Forms and Fees**

The following shall be filed:

A. A state license application form, which shall be filled out and completed in all material details. Incomplete application forms shall be rejected.

B. The local licensing authority application form, as provided by the City, which shall be filled out and completed in all material details. Incomplete application forms shall be rejected.

C. An application fee payable by either cash, credit card, check or money order to the City of Colorado Springs shall be collected to cover the costs of the preliminary investigation made by the City, administrative checks, publication and posting costs, and other necessary and incidental expenses. The amount of the application fee may vary according to the nature of the application as follows:

1) New Liquor or Fermented Malt Beverage License Application Fee:	\$1000.00
2) Transfer of Ownership:	\$ 750.00
3) Change of Ownership Structure for corporate and limited liability company:	\$ 100.00
	per person
4) Change of Location Application Fee:	\$ 750.00
5) Manager Registration fee Application Fee:	\$ 75.00
6) License Renewal Application Fee:	\$ 100.00
7) Late Renewal Application Fee:	\$ 500.00
8) Temporary Permit:	\$ 100.00
9) Art Gallery Application Fee (New and Renewal):	\$ 100.00
10) Promotional Association Application Fee:	\$ 700.00
11) Promotional Association Re-Certification Application Fee:	\$ 250.00
12) Common Consumption Area Modification Application Fee:	\$ 500.00
13) Attach License to Common Consumption Area Application Fee (each):	\$ 100.00
14) Remove License from Common Consumption Area Application Fee:	\$ 25.00

D. A license fee in addition to the application fee shall be paid to the City by cash, check or money order. This fee is in addition to the City application fee. The license fee payable to the City is as follows:

1) Retail Liquor Store License:	\$ 22.50
2) Liquor Licensed Drugstore License:	\$ 22.50
3) Beer and Wine License:	\$ 48.75
4) Hotel and Restaurant License:	\$ 75.00
5) Hotel and Restaurant License with Optional Premise:	\$ 75.00
6) Tavern License:	\$ 75.00
7) Club License:	\$ 41.25
8) Arts License:	\$ 41.25
9) Racetrack License:	\$ 75.00
10) Brew Pub License:	\$ 75.00
11) Distillery Pub License:	\$ 75.00
12) Vintner's Restaurant License:	\$ 75.00
13) Optional Premise License:	\$ 75.00
14) Resort-Complex-Related Facility:	\$15.00
15) 3.2% Beer (on/off premises) License:	\$ 3.75
16) Special Events Permit:	\$100.00
	per day

17) Special Events Poster Fee:	\$ 12.50
18) Bed and Breakfast Permit:	\$ 3.75
19) Tastings Permit:	\$100.00
20) Tastings Server Permit;	
Initial Permit:	\$ 50.00
Additional Permit:	\$ 25.00
Transfer Permit:	\$ 15.00
21) Art Gallery Permit:	\$ 3.75
22) CBI Background Check Fee:	\$ 38.50
23) Lodging and Entertainment License:	\$ 75.00
24) Campus-Complex-Related Facility:	\$ 15.00

**(NOTE:** The above amounts are the amounts to be included in cash, credit card, checks, or money orders payable to the City. The City license fee is actually eighty-five percent (85%) greater, but that amount is to be included in the check to the State for ultimate payment to the State Old Age Pension Fund.)

E. An application fee payable to the Colorado Department of Revenue shall be filed in the form of a check or money order. The amount shall be as provided by C.R.S. § 12-47-501, as amended.

F. The license fee payable to the Colorado Department of Revenue shall be filed in the form of a check or money order. The amount shall be as provided by C.R.S. § 12-47-501, as amended, plus eighty-five percent (85%) of the City license fee as provided by C.R.S. § 12-47-502 and C.R.S. § 12-47-505, as amended. This fee is in addition to the state application fee.

## **Rule 6.00 New Licenses -- Hearing Dates; Notice**

### **6.01 Boundaries**

Upon receipt of a completed application, the City Clerk shall establish the neighborhood boundaries for the application. The boundaries shall include an area of not less than a one-half (1/2) mile radius around the proposed establishment. If an applicant objects to the boundaries as established by the City Clerk, the item will be placed on the agenda for consideration at the next available regularly scheduled Board meeting.

### **6.02 Hearing Date**

The City Clerk shall set a hearing date for the application not sooner than thirty (30) days after the receipt of the completed application, subject to limitations set forth by law, in which evidence and testimony with respect to the reasonable requirements of the neighborhood, the desires of the inhabitants of the neighborhood, the character of the applicant, and other evidence pursuant to Rules 9.08 and 9.09 will be presented. Such hearing may be recessed from time to time, not to exceed thirty (30) days, upon the request of any party in interest or upon motion of the Board.



### **6.03 Notice**

When the City Clerk has set the date for the application hearing, notice shall be given of the time and place of the hearing in the following manner:

A. Posting a sign and publishing public notice not less than ten (10) days prior to the date of the application hearing on the application. Said sign shall remain continuously posted on the applicable premises until the date of the posted hearing. If said sign is removed, under any circumstances, prior to the posted hearing date, then it shall be the obligation of the applicant to notify the City Clerk of said removal within twenty-four (24) hours (Saturdays, Sundays and holidays excluded). Failure on the part of the applicant to provide such notice shall constitute grounds for the institution of appropriate disciplinary actions against said application as provided for in these Rules of Procedure.

B. If the application hearing date is regularly continued at a public hearing, republication and reposting shall not be required. The information required for the posting and publication of notice shall be supplied by the applicant at the time of filing the application. The size of the sign and information contained on it shall be in compliance with C.R.S. § 12-47-311, as amended.

### **Rule 7.00 Preliminary Investigation; Findings**

A. The City Clerk shall gather evidence for the preliminary investigation required by State law. The City Clerk shall make known these findings in writing to the Board at least five (5) days prior to the date of the hearing, as well as to the applicant and, upon request, to other interested parties as they are defined by State law. The investigation by the City Clerk on behalf of the Board shall be with regard to the following matters:

1. Whether within two (2) years next preceding the date of the receipt of the application a licensing authority has denied an application at the same location or within five hundred (500) feet of such location for the reason that the reasonable requirements of the neighborhood were satisfied by the existing outlets.

2. Whether it satisfactorily appears that the applicant is or will be entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises, or by ownership.

3. Whether the sale of liquor or beer as contemplated by the application at the premises sought to be licensed is in compliance with the zoning, fire, building and other applicable laws of the City of Colorado Springs.

4. Whether the building containing the licensed premises is located more than five hundred feet (500') from any public or parochial school or

the principal campus of any college, university or seminary, pursuant to C.R.S. § 12-47-313, as amended.

5. The number and type of outlets of a similar nature to the applicant's within the boundaries established by the City Clerk.

6. A report of all pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed. This report shall specify any direct or indirect financial interests (including notes, mortgages, leases, etc.) in other licenses. This report shall include reports from appropriate law enforcement agencies of the applicant's previous criminal record, if any, and shall include all partners, principals or stockholders of a private corporation and all partners, principals or stockholders holding ten percent (10%) or more of the outstanding and issued stock of a public corporation subject to the Security and Exchange Act of 1934, as amended.

7. Such other matters as the Board may direct.

## **Rule 8.00 New Licenses -- Petitions: Filing; Reports; Written Statements Prior to Application Hearings**

### **8.01 Petitions**

A. Petitions may be circulated by the applicant, firm or corporation retained by the applicant, or any parties in interest<sup>2</sup> opposing the issuance of the license. The petition format must be approved by the Board prior to entry into evidence at the hearing. A pre-approved format is available through the City Clerk's Office. The Board may approve and consider as evidence other petition formats upon good cause shown. The Board may, on its own motion, continue the hearing to hear testimony from the person(s) who circulated the petition prior to approving or disapproving any submitted petition. Petitions must be circulated within the neighborhood boundary as established by the City Clerk. Petitions circulated outside such neighborhood boundary shall not be considered by the Board. Each person signing a petition may sign only his or her own name and shall print his or her address and the date he or she signed the. No person shall sign more than one petition. A person is qualified to sign such petition when a person shall have attained the legal age necessary to consume that beverage which the proposed licensee will be selling.

B. No petitions will be considered unless there is designated alongside each signature on the petition whether the person signing resides, or owns or

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<sup>2</sup> "parties or party in interest" means any of the following: (1) the applicant; (2) an adult resident of the neighborhood under consideration; (3) the owner or manager of a business located in the neighborhood under consideration; or (4) the principal or representative of any school located within five hundred (500) feet of the premises for which the license is sought.

manages a business within the neighborhood boundary as established by the City Clerk.

C. If petitions are otherwise properly submitted pursuant to these rules, each and every signature and accompanying address must be clearly legible in order to be entered into the record and considered by the Board. Any member of the Board may move at any time prior to the conclusion of the applicable public hearing to strike and disregard illegible signatures or signatures accompanied by illegible addresses. The Chairperson will rule on said motion. If another member of the Board indicates opposition to the motion, there shall be a vote on the motion and a majority of the members of the Board present shall prevail.

### **8.02 Filing Reports, Written Statements**

The City Clerk's report, investigation and survey as herein required and all other petitions, remonstrances, surveys, or statements in writing offered by the proponents, opponents or others interested in any application for a licensed outlet, shall be filed in the office of the City Clerk by twelve o'clock noon of the Tuesday preceding the day on which the hearing upon the application shall be held before the Board. All notices of such hearing before the Board shall contain a statement that said petitions, remonstrances and other reports or statements in writing shall be filed by twelve o'clock noon of the Tuesday preceding the hearing. Failure to comply with either time requirement for filing may be excused by the Board upon good cause shown, and without prejudice to the applicant, licensee, protestant, or the City, as the case may be.

## **Rule 9.00 Public Hearings**

### **9.01 In General**

All hearings before the Board shall be public and shall be conducted in accordance with these rules, and so as to ascertain facts affecting the substantial rights of the parties to the proceedings.

### **9.02 Evidence; Objections**

Evidence and requirements of proof shall conform, to the extent practicable, with those in civil non-jury cases in the district courts. Evidence not admissible under such rules will be admitted if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Incompetent and unduly repetitious evidence may be excluded. Documentary evidence may be received in the form of a copy, but, upon request, a party shall be given the opportunity to compare the copy with the original. The Board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. The Board may take notice of general, technical, or scientific facts within its knowledge, but only if the fact so noticed is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact noticed.

### **9.03 Witnesses**

All testimony shall be sworn. The Chair or Chair's designee shall have the power to administer oaths. The Chair shall have the power to issue subpoenas, to compel testimony or present documents, records or any other tangible evidence. Questions concerning the materiality, relevancy or competency of witnesses to testify on behalf of or in opposition to the issuance of the license will be determined as said questions arise.

### **9.04 Exhibits to Board**

Any applicant or person testifying before the Board may offer exhibits or demonstrative evidence to the Board for its consideration. The Board shall have the discretion to accept or reject the offer and to weigh the exhibit or demonstrative evidence as it deems appropriate. All exhibits shall be submitted to the City Clerk by twelve o'clock noon of the Tuesday preceding the hearing.

### **9.05 Burden of Proof**

A. At the application hearing, the applicant shall have the burden to establish that the applicant is qualified to hold a license, has sufficient financial sources, that the reasonable requirements of the neighborhood are not being met by existing liquor or beer outlets and that the neighborhood needs and desires the applicant's particular outlet.

B. In all other hearings before the Board, the applicant shall have the burden to establish that they have met all the requirements of the state law and local ordinance governing the particular application.

### **9.06 Representation; Applicant's Presence**

A. Applicants and other interested parties as defined by State law may appear in person or be represented by counsel, except that individual applicants or licensees, as the case may be, shall personally appear before the Board on all matters relating to their application or license. Entity applicants or licensees (as opposed to individual or husband and wife applicants or licensees), as the case may be, shall appear before the Board by one or more designated and authorized representatives of the entity on all matters relating to the entity's application or license. Such representative(s) need not hold an ownership or financial interest in the entity, but must be employed in a managerial capacity for the applicant and at the premises to be licensed.

B. When a public hearing on an agenda item is opened and the applicant or the applicant's representative is not present, the Board shall follow one of the alternatives listed below:

1. Consider the item; or
2. Withdraw the item; or
3. Postpone the item until the end of the agenda where the applicant or the applicant's representative shall be required to show cause for the missed attendance. The item shall not be considered on its merits at the show cause hearing. If the applicant or his representative is not present at the show cause hearing, the show cause hearing shall automatically be

set over to the next regular monthly meeting of the Board. In the event the Board postpones the item for a show cause hearing, the Board shall make findings of fact as to the evidence presented at the show cause hearing and shall schedule the item for a future meeting if the Board finds good cause for the applicant's failure to attend the public hearing on the item or consider the application withdrawn if the Board finds that there is not good cause for the applicant's failure to attend the public hearing on the item.

### **9.07 Limiting Presentations**

The Chair may establish reasonable time limits for presentations, which shall apply to both the proponents and opponents of an item. The Chair may request representatives to speak for an entire group or portions of a group, but shall not require such representation against the wishes of the group involved. Whenever necessary, the Chair shall direct that remarks be germane to the item. Further, the Board has the right to limit the presentation of evidence tending to be repetitious, irrelevant, speculative or conjectural.

### **9.08 Application Hearings**

A. In accord with Rule 6.02, a hearing will be set to a date certain to allow the applicant to prepare evidence to meet its burden to establish the following:

1. Qualifications of the applicant regarding applicant's character, reputation, citizenship and other matters relating to the personal qualifications of the applicant or any other person whose personal qualifications are relevant pursuant to State law. (For new licenses)
2. The applicant's financial sources for the acquisition and outfitting of the establishment sought to be licensed and as shown by the plans and specifications. (For new licenses and change of location)
3. The number, type and availability of similar liquor outlets located within the established neighborhood. (For new licenses and change of location)
4. The reasonable requirements of the neighborhood for the type of license for which application has been made. More specifically, the desires of the adult inhabitants (residents, tenants, store owners and managers) of the neighborhood for an additional outlet; and the need\_of the neighborhood for the proposed outlet in view of the desires of the adult inhabitants and the ability of existing outlets of a similar type in or near the outlet to meet the needs of the adult inhabitants.
5. Competent<sup>3</sup> Evidence Required: Only competent evidence shall be considered by the Board. Petitions, witness testimony, and other documentation shall be based on parties in interest within the defined

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<sup>3</sup> "Competent evidence" means sufficient evidentiary support from the totality of the record which proves an issue of fact. Competent evidence includes evidence which possesses probative value commonly accepted by reasonable minds. Incompetent evidence is evidence which lacks reasonable evidentiary support to prove an issue.

neighborhood boundary area. Objections, remonstrances, or other protests to the application shall be based on competent petitions, witness testimony, and other documentation related to parties in interest within the defined neighborhood boundary area. All evidence proving or disproving (i) the reasonable requirements of the neighborhood and (ii) the desires of the adult inhabitants for an application shall include a portion of the parties in interest population sufficient enough for the Board to reasonably conclude it is more likely than not that each required element has or has not been demonstrated.

6. If the applicant is a holder of a hotel and restaurant license, and the pending application is for a second or additional hotel and restaurant license for the same licensee, the Board shall consider the effect, if any, on competition of the granting or disapproving of additional licenses to such licensee, and no application for a second or additional hotel and restaurant license that would have the effect of restraining competition shall be approved.

B. Subject to the Board's right to limit the presentation of evidence tending to be repetitious, irrelevant, speculative or conjectural, any interested party may introduce evidence with regard to the following matters:

1. Reasonable requirements of the neighborhood and the number and type of similar existing outlets.
2. Any other pertinent matters affecting the qualifications and finances of the applicant to conduct the type of business proposed.
3. Any other evidence which would indicate that the building or location proposed for the operation of the license is not suited for the intended purpose.
4. Any other evidence relevant to the needs and desires of the neighborhood.

#### **9.09 Optional Premises License**

Applicants for an optional premises license or a hotel and restaurant license with optional premises must also present evidence to establish:

- A. The nature of the proposed facility as constituting an outdoor sports and recreational facility;
- B. The applicant's need for an optional premises license, including whether the size of the outdoor sports and recreational facility and the proposed locations of the optional premises within the outdoor sports and recreation facility justify the issuance of an optional premises license; and
- C. The applicant's control over each area designated as an optional premise.

D. The availability of sandwiches and light snacks during the service of alcohol beverages on the optional premise.

### **9.10 Interpreters**

Any person having business before the Colorado Springs Liquor and Beer Licensing Board may utilize a qualified interpreter when necessary to participate in the proceeding subject to the following:

A. Every person acting as an interpreter shall be administered an oath or affirmation that such person will make a true translation; and

B. Every person acting as an interpreter shall be required to be qualified as an interpreter and accepted by the Board. A person may be qualified by virtue of their knowledge, skill, experience, training, or education.

C. In determining whether an individual is qualified to act as an interpreter in any proceeding before the Board, the Board may consider, but is not limited to:

1. Whether the proposed interpreter is a certified Federal Court interpreter;

2. Any special training or education received by the proposed interpreter in providing interpretation and/or translation;

3. The proposed interpreter's means of knowledge regarding the languages translated from and translated to;

4. Number of times that the individual has performed interpretation/translation services and the type of proceedings where these services were rendered; and

5. The relationship of the proposed interpreter to the individual who will be using the interpreter's service in so much as any bias, or other motive would preclude the proposed interpreter's ability to provide a true, literal and complete bilateral translation of the entire proceeding.

### **Rule 10.00 Decision**

At the conclusion of the presentation of all the evidence the Board may render its decision or may take the matter under advisement. If taken under advisement, the Board shall make a decision in writing within fifteen (15) days after the close of the hearing. A copy of the decision shall be sent by certified mail to the applicant.

#### **10.01 In General**

A. In formulating a decision the Board shall consider all the facts and evidence adduced as a result of the investigation and hearing, and after making

findings of fact, shall apply these facts to the legal requirements which are applicable to the particular matter before it.

B. When the decision is made, the motion shall contain such findings of facts and conclusions of law as are relevant and necessary to support the decision. The motion shall be made orally or in writing. The City Attorney may be requested to prepare a written motion for subsequent presentation and consideration by the Board.

#### **10.02 Consequence of Inactivity**

A. Where an approved license is for a facility which has not been constructed and placed in operation within two (2) years of approval of the application, or construction has not commenced within one (1) year of such approval, the license, in the discretion of the Board, may be revoked, or denied upon application for renewal.

B. Where a licensed location has been inactive for more than one (1) year the license, in the discretion of the Board, may be revoked or denied renewal.

### **Rule 11.00 Appeals from Decisions of the Board**

#### **11.01 In General**

Appeals of decisions of the Board shall be to the district court in accord with the Colorado Rules of Civil Procedure as now existing or hereafter amended.

#### **11.02 Standing**

An applicant, any interested party or an organized neighborhood group as defined in C.R.S. § 12-47-311(5)(d), as amended, who is dissatisfied with the decision of the Board may appeal to the district court in accord with these rules and the Colorado Rules of Civil Procedure as now existing or hereafter amended, pursuant to City Code §§ 9-2-205 and 9-2-304.

### **Rule 12.00 Issuance of License**

A. Although the license may be approved by both Local and State Licensing Authorities, no license shall be issued by the City Clerk until all contingencies are met and the building in which the business is to be conducted is ready for occupancy, with any necessary furniture, fixtures, and equipment in place, and then only after the City Clerk's inspection of the premises has been made to determine that the applicant has complied with the drawings, plans and specifications submitted with the application.

B. All licenses shall be issued in accordance with the laws of the State of Colorado and the City of Colorado Springs and after the applicable requirements have been met for posting and publication of notice, the preliminary investigation, and public hearing before the Board, and approval by the State Licensing



Authority. In no event shall any approved license be issued until it is satisfactorily established that:

1. The applicant, or any stockholder or partner, if any change since initial approval, meets the personal qualifications for holding a liquor license and have been approved with respect to their character; and
2. The applicant remains or will be entitled to possession of the licensed premises under a lease, rental agreement, or other arrangement for possession of the premises, or by virtue of ownership, and that the use of the premises at the proposed location does not violate the zoning laws or any other laws of the City of Colorado Springs or the State of Colorado.

### **Rule 13.00 Management Registration Requirement**

Every licensee holding an alcohol beverage license shall manage such licensed premises himself or employ a separate and distinct manager on the premises and shall report the name of such manager to the City Clerk. Such licensee shall report any change in managers to the City Clerk within thirty (30) days after such change. It is unlawful for the licensee to fail to report the name of or any change in managers as required by this Rule 13.00. Such failure to report shall be grounds for suspension or revocation of the license.

### **Rule 14.00 License Renewal**

#### **14.01 Forms; Time**

A. All applications for renewal of alcohol beverage licenses shall be on forms provided by the State Licensing Authority, and must be submitted in duplicate to the City Clerk, no later than forty-five (45) days prior to the license expiration date, together with the required license and renewal application fees, in the form of cash, credit card, check or money order.

B. If an application for renewal is filed less than forty-five (45) days prior to the license expiration date, and no other objections have been filed with the City Clerk as set forth in Rule 14.03, then the City Clerk shall process the application as provided in Rule 14.02. If objections are filed, then the provisions of Rule 14.03 shall apply. No application for renewal of a license shall be accepted after the date of expiration except as hereinafter provided in Subsection C below.

C. Notwithstanding the provisions of Subsection B of this section, a licensee whose license has been expired for not more than ninety (90) days may file a late renewal application upon the payment of a nonrefundable late application fee of five hundred dollars (\$500.00) to the City of Colorado Springs. A licensee who files a late renewal application and pays the requisite fee may continue to operate until both the Board and the State Licensing Authority have taken final action to approve or deny such licensee's late renewal application. No late renewal application shall be accepted more than ninety (90) days after the expiration of a licensee's permanent annual license. Any licensee whose

permanent annual license has been expired for more than ninety (90) days must apply for a new license and shall not sell or possess for sale any alcohol beverage until all required licenses have been obtained.

#### **14.02 Renewal Procedure**

Upon receiving a properly completed renewal application, the City Clerk shall assemble the applicant's file, which shall contain all of the various City departments' records regarding the applicant or the premises dating back for a period of at least one (1) year. Unless there is evidence to the contrary, whether contained in the applicant's file or otherwise, it will be presumed that the occupied premises comply with the provisions of the statutes and applicable regulations, that the character of the applicant continues to be satisfactory, and that such license, if granted, continues to meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants. If these presumptions apply, the application shall then be approved by the City Clerk and forwarded to the State Department of Revenue, Liquor Enforcement Division.

#### **14.03 Renewal Hearing; Notice; Stipulation**

A. Whenever objections to the renewal of a license have been raised by an interested party, organized neighborhood group or the City prior to the renewal of the license, the City Clerk shall have the discretion to set the matter for a renewal hearing. A public hearing on the renewal application shall be held not less than ten (10) days from the date of receipt of the notification of objection by the licensee. A notice of hearing shall be conspicuously posted on the licensed premises for a period of no less than ten (10) days prior to the renewal hearing. If such objection is made less than ten (10) days from the expiration of the license, the City Clerk shall set the renewal hearing for the next available date which provides the licensee with ten (10) days' notice and proper posting of the premises. The licensee shall be permitted to sell and possess any alcohol beverage pending the renewal hearing. The renewal hearing shall be conducted by the Liquor Board or Hearing Officer in accordance with Rule 20.

B. Objections to renewal of a license must be for good cause. "Good cause" is defined by C.R.S. § 12-47-103(9). Evidence of good cause to deny a renewal includes, but may not be limited to the following:

1. Pursuant to C.R.S. § 12-47-109(9)(a), the local licensing authority may consider evidence that the licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Colorado Liquor Code or any rules and regulations promulgated pursuant thereto;
2. Pursuant to C.R.S. § 12-47-103(9)(b), the local licensing authority may consider evidence that 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 proceeding; or
3. Pursuant to C.R.S. § 12-47-103(9)(d), the local licensing

authority may consider 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” as defined by C.R.S. § 18-9-106.

#### **14.04 Renewal Pending Change in Corporate Structure**

In the event that an application for change of corporate structure is pending at the same time that an application for a renewal is pending, then the change of corporate structure, as applicable, must be determined prior to the license being renewed. If the application for renewal is otherwise in compliance with State law and this Rule 14, and the application for change of corporate structure cannot be heard prior to the expiration of the license, the license renewal hearing may be continued by the City Clerk after the expiration of the license pending determination of the change of corporate structure issues. Upon the completion of those determinations, the renewal application shall be acted upon by the City Clerk or the Board, as applicable. If such renewal hearing is held after the expiration of the license, and the filing of the renewal application is timely, pursuant to the requirements of Rule 14.01B and 14.02, then the licensee may continue to operate pending final determination of the change of corporate structure issues prior to the renewal hearing being held.

#### **14.05 Renewal Pending Transfer of Ownership**

In the event that an application for a transfer of ownership of a license is pending at the same time that an application for a renewal is pending, both applications shall be processed simultaneously. If the renewal of the license occurs prior to the transfer of the license, then the licensee may continue to operate pending final determination of the application for transfer of ownership. If the transfer of ownership occurs prior to the renewal of the license in the name of the original licensee, then the date of approval of the transfer of ownership shall be the renewal date for the license and the renewal application shall be moot.

### **Rule 15.00 Change of Location**

A. Before the location of a license is changed, the licensee shall submit an application on forms provided by the State Licensing Authority in triplicate to the City Clerk for such change, accompanied by the appropriate application fee.

B. All applications for a change in the location shall be filed with the City Clerk and shall be subject to Rule 5 through Rule 12, inclusive, of these Rules of Procedure, except that the character of the applicant shall not be considered.

C. The Board shall not authorize a change of location of such license before thirty (30) days from the date the application has been filed. The hearing approving or denying the application shall be held not less than ten (10) days after notice has been given.

### **Rule 16.00 Transfer of Ownership**

A. The City Clerk acts as the Local Licensing Authority on all applications for transfers of ownership and changes of ownership structure.

B. All applicants for issuance of a license by reason of transfer of ownership of the business or by possession of the licensed premises shall file an application on forms provided by the State Licensing Authority and by the City with the City Clerk. The application form shall provide the information required by Rule 5.01A and shall be accompanied by the appropriate fee.

C. The City Clerk shall conduct an investigation into the character of the applicant, including when applicable, the applicant's partners or major shareholders. When determining whether a transfer of ownership should be granted, the City Clerk shall consider only the applicant's possession of the premises, and the requirements of C.R.S. § 12-47-307, which includes but is not limited to the character of the applicant.

D. All reports required by this Rule 16.00 shall be made on forms supplied by the State Department of Revenue, Liquor Enforcement Division.

E. The City Clerk, upon receipt of any required reports, shall place such reports in the licensee's file.

#### **16.01 Change in Corporate Structure**

A. Any transfer of the capital stock, and any change in officers or directors of any corporation holding a license under the provisions of the Colorado Liquor Code and which is not subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended, shall be reported to the City Clerk within thirty (30) days after such transfer or change.

B. Corporate licensees subject to the Securities and Exchange Act of 1934, as amended, shall submit the names and addresses of all persons owning ten percent (10%) or more of the outstanding or issued capital stock, not more than thirty (30) days after such ownership occurs; and shall submit to the City Clerk the names and addresses of all corporate officers within thirty (30) days after their appointments.

#### **16.02 Transfer by Operation of Law**

In General. Applicants for the issuance of a license by reason of a transfer of possession by operation of law, i.e., bankruptcy, receivership, foreclosure, eviction, etc., shall file an application for transfer of the license pursuant to Rule 16.00. In addition to the requirements of C.R.S. § 12-47-307, the application shall include evidence that possession of the licensed premises has been legally restored to the owner of the licensed premises and that thereafter possession of the licensed premises was legally transferred to the applicant if the applicant is a party other than the owner of the licensed premises. Such evidence shall consist of a certified court order, a certified transcript of judgment, a certified copy of the public trustee's deed or other similar certified official document establishing title to or a possessory interest in the licensed premises, or an affidavit of abandonment of the licensed premises from the

applicant or agent thereof indicating the time and circumstances of the abandonment.

### **Rule 17.00 Temporary Permit**

A. The City Clerk is authorized to issue a temporary permit to a transferee of a liquor license which shall authorize the transferee to continue selling alcohol beverages as permitted under the license during the period in which an application to transfer the ownership of the license is pending.

B. A temporary permit shall authorize the transferee to operate the licensed premises under the terms and conditions of the license of the transferor subject to compliance with all of the following conditions:

1. The premises where such alcohol beverages are sold shall have been previously licensed by the State and Local Licensing Authority and the license is valid at the time the application for transfer of ownership is filed with the City Clerk.

2. The applicant has filed with the City Clerk a properly completed application for the transfer of the license.

3. The application for a temporary permit shall be filed no later than thirty (30) days after the filing of the application for transfer of ownership and shall be accompanied by a One Hundred dollar (\$100.00) temporary permit fee in the form of a cash, check or money order.

C. The temporary permit shall be granted by the City Clerk if it is determined that all of the conditions of this Rule have been satisfied. If granted, the temporary permit shall be issued within five (5) working days after the receipt of the completed application. The temporary permit issued in accordance with this Rule shall be valid until such time as the application to transfer ownership of the license to the applicant is granted or denied or for one hundred twenty (120) days, whichever occurs first. If the application to transfer the license has not been granted or denied within the one hundred twenty (120) day period and the transferee demonstrates good cause, the City Clerk may, in its discretion, extend the validity of said permit for an additional period not to exceed sixty (60) days.

D. A temporary permit may also be issued by the City Clerk, subject to the requirements of this Rule, in the event of a transfer of possession of a licensed premises by (1) operation of law; (2) a petition in bankruptcy pursuant to federal bankruptcy law; (3) the appointment of a receiver; (4) foreclosure action by a secured party; or (5) a court order dispossessing the prior licensee of all rights of possession pursuant to Article 40 of Title 13, C.R.S.

E. A temporary permit issued in accordance with this Rule may be canceled, revoked or suspended, subject to the requirements of Rule 20, if the City Clerk determines that there is probable cause to believe that the transferee has

violated any provision of this Rule or has violated any rule or regulation adopted by the State Licensing Authority or the Board or has failed to truthfully disclose those matters required pursuant to the application forms required by the Department of Revenue and the City Clerk's Office.

F. A temporary permit may be summarily suspended subject to the requirements of Rule 20.

G. There shall be no substitute for the requirement of obtaining a temporary permit for purposes of this Rule 17.00. This includes, but is not limited to, management agreements, management contracts, or other arrangements intended to be used in lieu of a temporary permit.

### **Rule 18.00 Special Event Permits**

A. The City Clerk acts as the Local Licensing Authority on applications for special events permits pursuant to City of Colorado Springs Code § 2.5.104.

B. All applications for any type of special event permit shall be made on forms provided by the City, and shall be filed in the office of the City Clerk not less than thirty (30) days prior to the date of the special event.

### **Rule 19.00 Entertainment Districts, Promotional Associations, and Common Consumption Areas**

General Compliance: All Entertainment Districts, Promotional Associations, and Common Consumption Areas, shall operate in accordance with the Colorado Liquor Code, C.R.S. §12-47-101, *et seq.*, as amended; all rules or regulations promulgated by the Colorado Department of Revenue, Liquor Enforcement Division; the City Liquor Code, §2.5.101, *et seq.*, as amended; and all conditions and/or restrictions City Council may place upon the Entertainment Districts via Resolution.

#### **19.01 Certification of a Promotional Association and Authorization of a Common Consumption Area**

The City Clerk, as the local licensing authority, pursuant to City Code § 2.5.206 (B), shall (i) certify and decertify Promotional Associations operating a Common Consumption Area; (ii) designate the location, size, security, and hours of operation of Common Consumption Areas; (iii) authorize the attachment of licensed premises to a Common Consumption Area as provided in this section; and (iv) condition and/or restrict a Promotional Association and/or a Common Consumption Area as approved by City Council Resolution forming the Entertainment District or as the Clerk deems necessary to promote the health, safety, and welfare of the public which may be reasonably affected by the Entertainment District. The City Clerk's discretion to condition or restrict a Promotional Association and/or a Common Consumption Area shall relate to safety matters, sanitation issues, parking and traffic matters, noise issues, and potential nuisance issues.

#### **19.02 Application to Certify Promotional Associations and Authorize Attachment of a Licensed Premises to a Promotional Association's Common Consumption Area**

Applications for certification of a Promotional Association to operate a Common Consumption Area shall be filed by an association as defined in C.R.S. 12-47-103(7.5)(c). Applications for the initial certification of a Promotional Association to operate a Common Consumption Area, and the attachment of Licensed Premises to such Common Consumption Area, shall be filed with the City Clerk on the application forms provided by the City Clerk's Office. The City Clerk shall reject any materially incomplete application. A complete application shall include:

A. A copy of the association's operating agreement(s), bylaws, articles of incorporation, and a list of the association's directors and officers. The directors must include a member from each licensed premises, and must have at least two (2) licensed premises, which will be attached to a Common Consumption Area. The directors may include a member from an existing neighborhood organization or authority within the proposed boundary of the Common Consumption Area.

B. A detailed map providing the following:

1. The boundaries and size of the proposed Common Consumption Area. No Common Consumption Area boundary shall extend beyond the boundaries of an authorized Entertainment District. All physical barriers used to close the Common Consumption Area to motor vehicle traffic, each pedestrian access point, each entrance and exit point, and all posted Consumption Club Area signs shall not extend beyond the defined boundaries of the defined Common Consumption Area.

2. A list and the location of all licensed premises which will be attached to the Promotional Association's Common Consumption Area; and a list and the location of all adjacent licensed premises to the Common Consumption Area which will not be attached to the Common consumption Area.

C. In the case where a Common Consumption Area requires the use of the City's public right of way or closure of any street, alleyway, or parking lot, the proposed Promotional Association, in addition to the certification process promulgated herein, shall follow the special event application and permitting process under City Code §§ 4.3.101 and 3.2.402. The proposed Promotional Association shall not receive a certification by the Licensing Authority until it first completes the special events process. All coordination and costs associated with the special event process shall be the responsibility and obligation of the proposed Promotional Association, including, but not limited to, the special event application fee, costs of barricades, clean-up costs, and any required security and/or (off-duty) CSPD personnel.

D. A designation of the Common Consumption Area's proposed days and hours of operation.

E. A description of the security plan, approved by the Chief of Police or his/her designee, for operation of the Common Consumption Area. The security

plan shall include: (i) the security personnel's training. Any security personnel who may check patrons' identification within a Common Consumption Area shall be trained with a server and seller training program under Colorado Revised Statutes subsection 12-47-909(1)(a); (ii) a detailed security plan, including the approximate location of security personnel within the Common Consumption Area during operating hours; and (iii) the location and type(s) of the barricades necessary for blocking traffic and protecting patrons of the Common Consumption Area.

F. Documentation demonstrating all employees serving alcohol from a licensed premises attached to the Common Consumption Area successfully completed a server and seller training program under C.R.S. § 12-47-909(1)(a).

G. A list of all violations of the Colorado Liquor Code § 12-47-101, et seq., by any licensed premises desiring attachment to the Common Consumption Area.

H. An insurance certificate of general liability and liquor liability insurance acceptable to the City and naming the City and the local licensing authority as additional insureds with a minimum per occurrence policy limit of one million dollars (\$ 1,000,000.00) with an aggregate of two million dollars (\$ 2,000,000.00) or additional policy limit as deemed reasonably appropriate by the City's Risk Manager.

I. A petition, sufficient witness testimony, and/or other documentation demonstrating (i) the reasonable requirements of the neighborhood and (ii) the desires of the adult inhabitants support a Common Consumption Area.

J. A signed statement that the Common Consumption Area and all licensed establishments attached thereto will be operated in compliance with the Liquor and Beer Rules and Regulations for the City of Colorado Springs, applicable provisions of the City Liquor Code, and the Colorado Liquor Code.

### **19.03 Certification, Modification and Attachment**

A. Competent Evidence Required: No Promotional Association shall be certified to operate a Common Consumption Area unless the applicant presents evidence demonstrating (i) the reasonable requirements of the neighborhood and (ii) the desires of the adult inhabitants support a Common Consumption Area. Only competent evidence shall be considered by the City Clerk. Petitions, witness testimony, and other documentation shall be considered only if provided by Parties in Interest residing within a one-half mile geographical boundary, set by the City Clerk, surrounding the Common Consumption Area. Objections, remonstrances, or other protests to authorizing a Common Consumption Area shall be based on competent petitions, witness testimony, and other documentation submitted by Parties in Interest within a one-half mile geographical boundary surrounding the Common Consumption Area. All evidence regarding (i) the reasonable requirements of the neighborhood and (ii) the desires of the adult inhabitants, shall include a portion of the population, made up of the Parties in Interest, sufficient enough for the City Clerk to



reasonably conclude it is more likely than not that each required element has or has not been demonstrated.

B. Public Notice Comment Period Process:

1. Ten (10) Day Public Comment Period. There shall be a ten (10) day public comment period prior to the certification of a Promotional Association; authorization to attach a licensed premises to a Common Consumption Area; and any material or substantial modification to the operation of the Promotional Association or Common Consumption Area. Public comment(s) or submission of documentation shall only be submitted in written form. The City Clerk shall not consider any written comments or other documentation from any person unless such person is a Party in Interest who resides within the one-half mile geographical boundary, surrounding the Common Consumption Area, as set by the City Clerk.

2. Public Notice. The City Clerk shall require the Promotional Association to post no less than four (4) public notice posters, provided by the City Clerk, in conspicuous locations on the proposed boundary line of the Common Consumption Area as directed by the City Clerk. The City Clerk shall also require the same public notice poster be visibly and conspicuously posted on each liquor license premises proposed to be attached to the Promotional Association's Common Consumption Area. The public notice posters shall contain the following information:

[Promotional Association name] has requested authorization of an Entertainment District, Common Consumption Area. The Common Consumption Area will be located within the boundaries as generally depicted on the map affixed hereto.

[map placement here]

Written public comments, from Parties in Interest, regarding support or objections to the City Clerk certifying the Promotional Association and/or authorizing the Common Consumption Area should be directed to the City Clerk's Office by U.S. Mail, postage prepaid, at 30 South Nevada Avenue, Suite 101, Colorado Springs, Colorado 80903; email at [cityclerk@springsgov.com](mailto:cityclerk@springsgov.com); fax at 719-385-5114; or hand delivery at 30 South Nevada Avenue, Suite 101, Colorado Springs, Colorado 80903, no later than 5:00 pm on [enter date].

In addition to posting the public notice posters, the City Clerk may post the same information contained on the public notice poster on the City Clerk's official webpage. The City Clerk's decision to grant or deny the certification shall be posted on the City Clerk's webpage.

3. Appeals. Appellate issues shall be based only on abuse of discretion and/or arbitrary and capricious action. Only a Party in Interest may submit an appeal of the City Clerk's decision. A Party in Interest desiring to appeal the City Clerk's decision shall, within ten (10) days from the date that the City Clerk posts his/her decision on the City Clerk's webpage, submit to the City Clerk a written notice of appeal stating clearly and in detail the basis therefor. Any issue not clearly raised for appellate review shall be waived. Upon a showing of good cause, the City Clerk may grant a reasonable extension of time to file an appeal. A public hearing on the appealed issue(s) shall be held not less than ten (10) days from the date that the City Clerk receives the notice of appeal from the appellant. A hearing officer may be hired to hear the appeal or the matter may be submitted to the City's Liquor Board. The hearing officer or Liquor Board shall only consider evidence in the record. New evidence shall not be considered. The decision of the hearing officer or Liquor Board shall be final agency action.

C. Refusal to Certify and Decertification: The City Clerk, at any time, may refuse to certify, or may decertify, a Promotional Association to operate a Common Consumption Area if one or more of the following occurs:

1. The Promotional Association fails to timely submit the required annual report pursuant to C.R.S. § 12-47-301(11)(c)(II)(C) and subsection 19.04 below;

2. The Promotional Association fails to have at least two (2) Licensed Premises attached to the common consumption area;

3. The Promotional Association fails to maintain a properly endorsed general liability or liquor liability insurance policy;

4. The Common Consumption Area is not compatible with the reasonable requirements of the neighborhood or the desires of the adult inhabitants or becomes incompatible with the reasonable requirements of the neighborhood or the desires of the adult inhabitants; or

5. A Promotional Association or licensed premises attached to the Common Consumption Area violates the provisions of C.R.S. § 12-47-909, as amended.

D. Refusal to Authorize Attachment and Deauthorization of a Licensed Premises: The City Clerk, at any time, may refuse to authorize, or may deauthorize, the attachment of a licensed premises to a Common Consumption Area if one or more of the following occurs:

1. The licensed premises is not fully within the boundary of the Common Consumption Area.

2. The Licensed Premises fails to obtain or retain authority to attach to the common consumption area from the certified Promotional Association;

3. The Licensed Premises fails to operate in compliance with the Colorado Liquor Code, C.R.S. § 12-47-101, *et seq.*, as amended, or creates a safety risk to the adjacent neighborhoods; or

4. The Licensed Premises violates C.R.S. § 12-47-909, as amended.

#### **19.04 Annual Report and Recertification**

A. Beginning the year after certification, each Promotional Association shall submit an annual report, to include all information required by C.R.S. 12-47-301(11)(c)(II)(C), as amended, and a written request for re-certification, together with the required fee, to the City Clerk on or before January 31. The request for re-certification shall also include a written detailed report regarding material or substantial changes, if any, to the operation of the Promotional Association or Common Consumption Area. No application for renewal of a license shall be accepted after the date of expiration except as hereinafter provided in Subsection B below.

B. Notwithstanding the provisions of Subsection A of this section, a Promotional Association whose certification has been expired for not more than thirty (30) days may file a late re-certification application upon the payment of a nonrefundable late application fee of five hundred dollars (\$500.00) to the City of Colorado Springs. A Promotional Association who files a late re-certification application and pays the requisite fees may continue to operate the associated Common Consumption Area until the City Clerk has taken final action to approve or deny the Promotional Association's late re-certification application. No late re-certification application shall be accepted more than thirty (30) days after the expiration of a Promotional Association's annual certification. Any Promotional Association whose certification has been expired for more than thirty (30) days must apply for a new certification and shall not operate the associated Common Consumption Area until a new application to certify the Promotional Association and authorize attachment(s) of licensed premises has been approved and the required certification has been issued.

C. Upon receiving a properly completed re-certification application, the City Clerk shall assemble the applicant's file, which shall contain all of the various City departments' records regarding the Promotional Association and the operation of the Common Consumption Area dating back for a period of at least one (1) year. The City Clerk's decision to grant or deny the re-certification shall be posted on the City Clerk's webpage. Appeal of the City Clerk's decision, whether to grant or deny a renewal application, shall follow the process and standards provided in Subsection 19.03 (B)(3).

#### **19.05 Operational Requirements of Promotional Associations and Common Consumption Area**

In addition to the requirements of C.R.S. § 12-47-909, the following provisions are required:

A. The size of the Common Consumption Area shall not be modified except with the approval of the City Clerk.

B. The Promotional Association shall provide adequate security in terms of personnel, physical barriers, training and similar means, to ensure compliance with the Colorado Liquor Code and to prevent a public safety risk to the neighborhood.

C. The Promotional Association shall post signs at the entrances and exits of the Common Consumption Area and at each liquor licensed premises attached to the Common Consumption Area notifying customers of the hours of operation and restrictions associated with the Common Consumption Area.

D. The Promotional Association shall ensure that each licensee attached to the Common Consumption Area identify ID verified patrons with a unique Promotional Association wristband before the patron enters an approved outdoor Common Consumption Area requiring the placement of temporary vehicular or pedestrian barriers.

E. No person shall leave the Common Consumption Area with an unconsumed alcohol beverage, and may only return with an alcohol beverage into the originating licensed premises from which the alcohol beverage was purchased.

F. All serving personnel and security personnel charged with the duty to check identifications must complete a responsible vendor liquor training program approved by the State Liquor Enforcement Division prior to staffing the Common Consumption Area.

### **19.06 Inspection and Investigation**

The operations of Promotional Associations and the Common Consumption Areas are subject to the same inspection provisions of C.R.S. § 12-47-701 and Regulation 47-700, and certifications of Promotional Associations, re-certifications, and authorizations to attach licensed premises to Common Consumption Areas, shall be treated similarly to licensed premises for purposes of the inspection provisions. For purposes of this section, violations of the foregoing requirements shall be treated like liquor license violations for purposes of decertification and deauthorization.

### **19.07 Violations**

Noncompliance with any provision of these rules governing Promotional Associations and Common Consumption Areas shall be cause for suspension or revocation of the attached licensed premises, and/or decertification of the Promotional Association, and may be subject to other enforcement provisions as set forth in State and City Liquor Code and Rules. Decertification of a Promotional Association or deauthorization of an attached licensed premises to a Common Consumption Area shall follow the same due process and procedures subject to any liquor license or licensee, as set forth in Rule 20.00, *et.seq.*

## **Rule 20.00 Suspension, Revocation, Fine in Lieu of Suspension**

### **20.01 Notice**

A. Upon commencement of suspension and revocation proceedings, the City Clerk shall set a time and place for the hearing of the matter.

B. The City Clerk shall give the licensee no less than ten (10) days advance notice of the time, place and nature of the hearing, the authority and jurisdiction under which it is to be held, the violations asserted and/or the good cause

generally asserted as the grounds. Such notice shall be served personally and by mailing the same in writing to the licensee at the address contained in such license or permit, except that the time for Notice of Hearings on license renewal applications shall be governed by Rule 14.03. Notwithstanding the above notice requirements, the Board may summarily suspend the license without notice pursuant to State law.

C. In the discretion of the City, suspension and revocation proceedings may include violations occurring during the immediate preceding licensing period as well as the current licensing period.

### **20.02 Hearing**

A. The Board shall conduct the hearing; or a hearing officer may preside over a hearing before the Board; or a hearing officer(s) may hold a separate hearing without the Board's presence. The hearing officer(s) will be appointed by the Board. The hearing officer(s) may be a Board member, a municipal judge, or a special committee of the Board.

B. The Chairperson of the Board or the hearing officer(s) and their designee(s) shall have the power to administer oaths, issue subpoenas, and, when necessary, grant continuances.

C. In any such proceedings, the City Attorney may act on behalf of the City during the hearing.

D. All hearings before the Board or the hearing officer(s) shall be recorded. Summary suspension hearings shall be similarly recorded.

### **20.03 Decision**

A. Whether the hearing is before a hearing officer or the Board, the hearing officer or Board shall make a decision in writing within fifteen (15) days after the close of the hearing. If the matter is taken under advisement, the Board or hearing officer may retire to a deliberation room and shall consider only the testimony and evidence presented at the hearing in making their decision. A copy of this decision shall be mailed to or served upon the licensee.

B. In the event of revocation, suspension or cessation of business, no portion of the license fee or occupation tax shall be refunded.

### **20.04 Fine in Lieu of Suspension**

The Board may consider payment of a fine in lieu of suspension in accord with the optional procedures set forth in C.R.S. § 12-47-601(3) to (6), as now existing or amended.

### **20.05 Summary Suspensions**

A. The Board may summarily suspend a license, including temporary permits, without notice pursuant to state law:

1. Where the Board has reasonable grounds to believe and finds that a licensee is guilty of a deliberate and willful violation of any applicable law or regulation; or
  2. Where the Board has reasonable grounds to believe **and finds** that the protection of public health, safety or welfare imperatively requires emergency action.
- B. Upon the summary suspension of a license, the Board shall render an order incorporating such findings.
- C. The summary suspension of a license without notice pending any prosecution, investigation, or public hearing shall be for a period not to exceed fifteen (15) days, during which time the Board shall institute suspension or revocation proceedings.
- D. In the event of the summary suspension of a license, no portion of the license fee or occupation tax shall be refunded.

#### **Rule 21.00 Modification, Alteration or Expansion of Licensed Premises**

- A. The licensee shall make no physical change, alteration or modification of the premises which materially or substantially alters the premises or the usage of the premises from the plans and specifications submitted at the time of obtaining the license, or as defined herein, without prior written consent of the City Clerk or the Board as set forth in this Rule. For purposes of this Rule, physical changes, alterations or modifications of the premises, or in the usage of the premises requiring prior written consent, shall include, but not be limited to, the following:
1. Any increase or decrease in the total size or capacity of the premises.
  2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other means of public ingress and/or egress, when such common entryway, doorway or passage permits access to the premises from or between public streets or thoroughfares, adjacent or abutting buildings, rooms or premises.
  3. Any substantial or material enlargement of a bar, or relocation of a bar, or addition of a separate bar.
  4. Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure that existed in the plan on file with the latest prior application. The foregoing shall not apply to painting and redecorating of premises; the installation or replacement of fixtures or equipment, plumbing, refrigeration, air conditioning or heating fixtures and equipment; the lowering of ceilings; the installation and replacement of floor coverings; the replacement of furniture and equipment, and other similar changes.

B. The City Clerk will make a decision with respect to any proposed change, alteration or modification of the interior premises which does not significantly or materially alter the usage of the premises. The Board will make a decision with respect to any proposed change, alteration or modification of the exterior premises, expansion of the premises, or any internal change, alteration or modification, which significantly or materially alters the usage of the premises.

C. In making its decision with respect to any proposed change, alteration, expansion or modification the City Clerk or Board must consider whether the premises, as changed, altered, expanded or modified, will meet all of the pertinent requirements of the Colorado Liquor Code and the regulations promulgated thereunder. The factors to be taken into account include, by way of illustration but not of limitation, the following:

1. The reasonable requirements of the neighborhood and the desires of the inhabitants. More specifically, the desires of the inhabitants (residents, tenants, store owners and managers) of the neighborhood for any proposed change, alteration, expansion or modification; and the need of the neighborhood for the proposed change, alteration, expansion or modification in view of the desires of the inhabitants and the ability of existing establishments of a similar type in or near the establishment to meet the needs of the inhabitants.

2. The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement.

3. Compliance with the applicable zoning laws of the municipality, city and county, or county.

4. Compliance with the distance prohibition with regard to any public or parochial school or the principal campus of any college, university, or seminary.

5. The legislative declaration that the Colorado Liquor Code is an exercise of the police powers of this state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.

D. If the City Clerk denies permission to change, alter or modify the licensed premises, the City Clerk shall then set the matter for public hearing before the Board on its next available agenda. Notice shall be given to the applicant at least ten (10) days prior to the hearing. The Board will consider the factors outlined in Rule 21C.

E. If the Board denies permission to change, alter, expand or modify the premises, pursuant to Subsection (B) or (D) of this Rule, notice shall be given in writing which shall state the grounds upon which the application was denied.

**Rule 22.00 Right of Inspection; Failure to Comply**

A. The owner, licensee or operator of any establishment licensed by the Authority shall, upon request of the City Clerk or the City Clerk's authorized agent, furnish to the City within thirty (30) days satisfactory evidence to demonstrate whether the establishment is operating as a hotel and restaurant license, tavern license, or beer and wine outlet, as said terms are defined by State law. Such evidence shall consist of accounting records for a period of time to be specified by the City Clerk, showing separately the gross receipts from the sales of food items and intoxicating liquors. It shall be unlawful for any owner, licensee or operator of any licensed establishment to refuse to comply with the request of the City Clerk as herein required and failure or refusal to do so shall be grounds for revocation of the license.

B. The licensed or permitted premises, including any places of storage where alcohol beverages are stored or dispensed, shall be subject to inspection by the State or Local Licensing Authorities and their investigators, or peace officers, during all business hours and all other times of apparent activity, for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by licensees, access shall only be required during business hours. Where any part of the licensed premises consists of a locked area, upon demand to the licensee, such area shall be made available for inspection without delay; and upon request by authorized representatives of the licensing authority or peace officers, such licensee shall open said area for inspection.

**Rule 23.00 Effective Date**

The effective date of these rules shall be November 25, 1997 and shall apply to all matters now pending before the Board which meet the time requirements set forth in Rule 1, or which are subsequently filed with the City. Any amendments to these rules shall be effective upon approval and shall apply to all matters now pending or subsequently filed with the City.