



## Legislation Text

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**File #:** 17-1362, **Version:** 3

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Ordinance No. 17-114 amending Article 5 (Alcohol Beverages) of Chapter 2 (Business Licensing, Liquor Regulation and Taxation) of the Code of the City of Colorado Springs 2001, as amended, pertaining to Hearing Officers.

**Presenter:**

Sarah B. Johnson, City Clerk

**Summary:**

Presentation to discuss proposed ordinance and resolution substituting Hearing Officers as the Local Licensing Authority for existing Liquor and Beer Licensing Board hearings and decisions.

**Previous Council Action:**

City Council last amended the City's Liquor Code in 2017, and passed Ordinance 17-75 to enact Entertainment Districts, and Ordinance 17-76 for minor housekeeping issues.

**Background:**

C.R.S. § 12-46 (Colorado Beer Code), §12-47 (Colorado Liquor Code), and §12-48 (Colorado Special Event Liquor Code), along with 1 C.C.R. 203-2 (Colorado Liquor Rules) govern Liquor and Beer licensing in the State of Colorado, with dual licensing authority responsibilities provided to the "Local Licensing Authority." City Code §2.5.101, *et. seq.* (City Liquor Code) and the associated Liquor and Beer Licensing Rules and Regulations for the City of Colorado Springs govern the City's licensing and enforcement of liquor laws, and are supplementary to the State Code and Rules, where the "Local Licensing Authority" (LLA) is essentially split between administrative functions granted to the City Clerk, and quasi-judicial functions where public hearings are required that are granted to the Liquor and Beer Licensing Board (Liquor Board).

State Liquor Code and Rules require a public hearing of liquor license applications only when the particular application type requires proof that the needs and desires of the neighborhood are not currently being met. In general terms, this is for new liquor or beer applications, changes of location of existing liquor or beer licenses to a new location, or modification of the premises of an existing liquor or beer license that would affect or change the basic character of the premises or the expansion of the physical structure. Currently, these public hearings are held before the Liquor Board, sitting as the LLA for those quasi-judicial hearings. In essence, the required application public hearings are limited to elements regarding needs and desires of the defined neighborhood. All other qualifications are inflexible in nature as either the applicant qualifies or does not qualify based on possession of the premises, background, zoning, etc. The Liquor Board also hears disciplinary matters for potential suspension or revocation of licenses, again sitting in a quasi-judicial capacity as the LLA.

The City's Liquor Board is comprised of seven (7) volunteer citizens, who are essentially required to learn and understand sometimes complex liquor law, and apply that knowledge to the decision at hand on a legal basis. Many times, vacancies on the Board are difficult to fill, in part, due to this specialized knowledge. As a result, over the course of several years many Liquor Board members have been either liquor licensees, or work in the industry, who then recuse themselves from hearing particular items where a conflict or appearance of a conflict may occur. In the event a Board member that is a licensee also has an item to be heard by the Board, the entire Board may not be able to hear the item and a Hearing Officer is appointed for that item. With the typical busy schedules of the volunteer citizen board members, achieving a quorum for meetings can be challenging, and postponing an entire docket of hearings due to a lack of quorum obviously suffers a detrimental impact upon the applicant/licensee.

The current proposal is for a Municipal Judge to act in the capacity of a Hearing Officer on the quasi-judicial hearings currently heard by the Liquor Board. This proposed Ordinance and the companion Resolution to amend the Liquor and Beer Rules and Regulations for the City of Colorado Springs essentially amends the Code and Rules to replace the term "Local Licensing Authority" for the existing term "Liquor and Beer Licensing Board" or "Liquor Board." The required public process and input would not change, and the appeal process to District Court would not change, but rather just the body hearing the quasi-judicial item would change; a Hearing Officer instead of the Liquor Board. Effective dates for both the proposed ordinance and resolution would be February 1, 2018 as presented.

In addition to the quorum and potential conflict issues addressed above, on rare occasions the board could stray into decision making based upon factors not contained in the law or rules. While this was uncommon, use of a hearing officer with experience as a municipal judge may tend to keep this from happening.

The City of Colorado Springs has been using Hearing Officer provisions for all General Business License issues since at least 2001, and has been using Hearings Officers for Medical Marijuana (MMJ) license issues since inception in 2011. This proposed change is also consistent with the existing State process for review and decision of Liquor and MMJ license applications and disciplinary issues.

Recent research of other Colorado local jurisdictions indicates that at least seventeen (17) municipalities in Colorado have transitioned to the use of a Hearing Officer, with the most common response reflecting efficiency and consistency in decisions as a result of those changes.

This item supports the City's strategic goal relating to excelling at City services, by streamlining the process for quasi-judicial hearings, and providing consistent decision making processes.

**Financial Implications:**

While there may be some increase in cost to pay a Hearing Officer, much of that cost would be offset by the reduction in staff time and expense for Liquor Board meeting preparation, training sessions, broadcast related expenses, and legal counsel time. In addition, this change is a business friendly initiative that could significantly decrease the legal expenses to applicants and licensees to conduct business with the City, meeting the objectives of the Mayor's and City Council's strategic plan.

**Board/Commission Recommendation:**

Through various work and training sessions, the Liquor Board has explored the concept of Hearing Officers replacing the Liquor Board. The current membership of the Liquor Board has indicated unanimous full support of this change, with the most common comment being "it makes sense."

**Stakeholder Process:**

Notifications and requests for comment were sent out to liquor industry groups, neighborhood groups, as well as licensee representative groups and attorneys, with no negative responses.

**Alternatives:**

Set item for first reading at November 28, 2017 City Council Meeting

Remand item for further changes or discussion.

**Proposed Motion:**

Approve an Ordinance amending Article 5 (Alcohol Beverages) of Chapter 2 (Business Licensing, Liquor Regulation and Taxation) of the Code of the City of Colorado Springs 2001, as amended, pertaining to Hearing Officers

Amend the City's Liquor Code to substitute Hearing Officers as the Local Licensing Authority for existing Liquor and Beer Licensing Board hearings and decisions with an effective date of February 1, 2018.