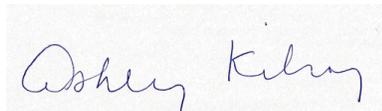


**CITY AND COUNTY OF DENVER
DEPARTMENT OF EXCISE AND LICENSES**

MEMORANDUM

TO: All parties in interest for Excise and Licenses hearings
FROM: Ashley Kilroy, Executive Director, Excise and Licenses



DATE: April 15, 2021
RE: Modifications to the Department's Hearing Policies and Procedures affecting the Common Consumption Area license and making certain temporary Hearing Policies and Procedures permanent

INTRODUCTION

The Department's Hearing Policies and Procedures shall be modified as described below. The modifications serve to add necessary provisions for common consumption area licenses, as well as provisions that make certain temporary provisions permanent.

The provisions addressing common consumption areas are intended to supplement Chapter 6, Article II of the Denver Revised Municipal Code, regarding Entertainment Districts and Common Consumption Areas. These provisions were drafted with input from the Liquor Common Consumption Work Group, convened in early 2020 and comprised of a diverse roster of stakeholders. Find out more about Entertainment Districts and Common Consumption Areas on the Department's [website](#).

Other provisions addressing virtual hearings have been utilized by the Department during the COVID-19 pandemic to allow for the facilitation of electronic and remote participation in Department hearings and increased flexibility for parties in interest who may wish to testify. These provisions were first announced in a Department Memorandum dated May 1, 2020. This Memorandum effectively rescinds the May 1, 2020 Memorandum.

Questions about the Hearing Policies and Procedures may be sent to licenses@denvergov.org.

MODIFICATIONS

New language is shown below using a double underscore and omitted language is shown below using a ~~strikethrough~~.

1. In section **1.2 Definitions**, the following language shall be modified:

The following definitions of terms shall apply, unless the context requires otherwise:

“Applicant” means a natural person ~~or entity~~ who ~~that~~ has applied for a business or individual license with the Department, or any transaction relating thereto.

“Certified Promotional Association” means a promotional association that has been authorized by the director.

“Common Consumption Area License” means an area as defined in C.R.S. § 44-3-103(11), as amended, where persons over the age of twenty-one (21) may consume alcohol beverages outside of a liquor licensed premises.

“Entertainment District Designation” shall have the same meaning as in C.R.S. § 44-3-103(15).

“Licensee” means a natural person or entity ~~who~~ that currently holds a business or individual license with the Department.

“Party in Interest” means a person who is afforded certain legal rights at a licensing hearing. The specific rights afforded to a Party in Interest varies depending on the type of license for which the Applicant is applying. The table below indicates with an “X” which persons are considered a Party in Interest for each license type, and the legend below the table indicates which rights are afforded to a particular Party in Interest.

Party Type	License Type			
	Marijuana	Liquor	Cabaret	<u>CCA</u>
Applicant	X	X	X	<u>X</u>
RNOs	X	X**	X**	<u>X</u>
City Council	X	X***	X***	<u>X***</u>
DPD Commander			X	
School Principal		X		<u>X</u>
Business Owner/Manager	X*	X*	X*	<u>X*</u>
Resident	X*	X*	X*	<u>X*</u>

X with no asterisk - The Party in Interest may testify, present evidence, and cross-examine witnesses.

X - The Party in Interest must live or work within the Designated Area and may testify, present evidence, and cross-examine witnesses. In addition, the individual must be at*

least 21 years of age, or for medical marijuana hearings, must be at least 18 years of age AND be registered as a medical marijuana patient with the State.

*X** - The Party in Interest may testify and present evidence, but may not cross-examine witnesses or seek judicial review of the Department's Final Decision.*

*X*** - The Party in Interest may testify and present evidence, but may not cross-examine witnesses, nor is their testimony afforded any weight.*

“Promotional Association” shall have the same meaning as in C.R.S. § 44-3-103(39), as amended.

2. In section **1.6.2 Use of Cameras at Hearing**, the following subsection shall be added:

1.6.2.4 Use of Cameras to Facilitate Remote Hearings - The Director or Hearing Officer, in their discretion, may allow for the use of cameras to record, stream, or otherwise enable remote participation at any licensing hearing or proceeding initiated by the Department.

3. In section **1.6.3 General Pre-Hearing Procedures**, the following subsection shall be added:

1.6.3.1.1 Remote Participation Authorized – Unless otherwise ordered by the Director or Hearing Officer, remote participation in licensing hearings or proceedings is permitted.

4. In section **1.6.3 General Pre-Hearing Procedures**, the following language shall be modified:

1.6.3.8 Request for Interpreter Services – Any Applicant, Licensee, Party in Interest, or City Attorney may request a foreign language interpreter for any hearing. Such requests must be made in writing per the guidelines outlined in sections 1.6.1.2 and 1.6.1.3 no later than ~~ten~~ (40) five (5) days before the scheduled hearing date. Requests must include the name of the person who requires interpreter services, the address that qualifies the person as a Party in Interest (if applicable), the Business File Number, the language for which an interpreter is needed, and whether the Recommended and Final Decisions need to be translated.

5. In section **1.6.3 General Pre-Hearing Procedures**, the following language shall be modified:

1.6.3.9.1 Grounds for Continuance - Hearing dates may be revised or continued at the discretion of the Director or Hearing Officer upon a showing of good cause or for purposes of accommodating opposition to an Application. For purposes of this section 1.6.3.9 circumstances that might indicate “good cause” include, but are not limited to, occurrences outside of the requesting party’s control, or an unanticipated change in the status of the case,

or a significant revision or amendment to the application. For purposes of this section 1.6.3.9 circumstances that might indicate “opposition” include, but are not limited to, opposition to virtual or remote testimony or participation or opposition to an Application by a Party in Interest.

6. In section **1.6.4 General Hearing Procedures**, the following language shall be modified:

1.6.4.5 Exhibits – All parties shall provide at least four (4) identical copies of each exhibit that they intend to introduce as evidence at the hearing for the Hearing Officer, City Attorney, and all other known Parties in Interest. All parties shall be responsible for making copies of their own exhibits. This requirement is waived for remote hearings and proceedings.

7. In section **1.6.5 General Post-Hearing Procedures**, the following language shall be modified:

1.6.5.7 Conditions - At the Director’s discretion, the Director may place additional conditions on the license as a result of evidence or testimony introduced at the hearing or as a result of the Department’s investigation or general policies. Conditions may be placed on a license to ensure that the licensee will operate lawfully or to incorporate the specific and enforceable provisions of a good neighbor agreement. The Department will print license conditions on the face of the license. If conditions are attached to a license, the conditions will remain on the license in the event of any transfer of the license to new ownership unless specifically removed by the Department or Director.

8. In section **2.1.1 Designated Area**, the following language shall be modified:

2.1.1.3 Modification of the Designated Area – Upon Request – Any Party in Interest may request, in writing per the guidelines outlined in sections 1.6.1.2 and 1.6.1.3 that the Director modify an established Designated Area. The request must explain the reason(s) for the request and must be filed no later than ~~ten (10)~~ five (5) days after the date that notice posting commences. The decision to grant or deny such a request shall be within the sole discretion of the Director.

9. In section **2.1.4 Notification to Other Parties**, the following language shall be modified:

When scheduling a hearing, the Department will ~~also~~ send a Notice Packet to the following:

- (i) Any RNOs whose boundaries overlap any portion of the Designated Area;
- (ii) Relevant City Council Members;

- (iii) For Cabarets Licenses only, the Denver Police Department's designated representative; and
- (iv) For Liquor Licenses and Common Consumption Area Licenses only, the Denver Public School's designated representative.

10. In section **12.1.6 Posting Signs and Notices**, the following language shall be modified:

2.1.6.1 Posting Sign Location - Posting signs must be placed in a conspicuous place on the licensed premises or proposed licensed premises which is clearly visible to the public. For Common Consumption Area Applications and Licenses, a posting sign must be placed in a conspicuous place at each participating business.

2.1.6.2 Posting Sign Requirements

(v) The sign must inform the public that ~~petitions~~ requests for evening hearings must be ~~filed fifteen (15)~~ submitted in writing at least five (5) days before the scheduled hearing date.

11. In section **2.2.2 Requesting an Evening Hearing**, the following language shall be modified:

Requests for evening hearings may be made only by Applicants, Licensees, or Parties in Interest. Such requests must:

- (i) Be submitted at least ~~fifteen (15)~~ five (5) days prior to the scheduled hearing date or rescheduled hearing date; and
- (ii) Be made in writing per the guidelines outlined in sections 1.6.1.2 and 1.6.1.3 using a form provided by the Department; and
- (iii) Contain at least ~~fifteen (15)~~ five (5) valid signatures of Parties in Interest, along with each individual's address and phone number.

12. In section **3.4.1 Posting Requirements**, the following language shall be modified:

The Applicant must post notice of the public hearing at the proposed location for a minimum of ~~twenty (20)~~ ten (10) days or as otherwise provided in the Application Letter and/or Order.

13. In section **3.5.1 Presentation of Evidence and Testimony**, the following language shall be modified:

3.5.1.1 Qualified to Testify – Testimony and evidence for or against the Application may be considered from the following witnesses:

- (i) The Applicant;
- (ii) Neighborhood Witnesses;
 - (a) The Applicant must present at least one Neighborhood Witness (other than the Applicant) to provide testimony establishing the need and desire of the neighborhood for the license to issue. If authorized by the Department, Neighborhood Witness(es) may participate remotely through the use of a pre-filed

affidavit, telephonic testimony, or virtual appearance facilitated by the Department.

14. In section **4.4.1 Posting Requirements**, the following language shall be modified:

The Applicant must post notice of the public hearing at the proposed location for a minimum of ~~twenty (20)~~ ten (10) days or as otherwise provided in the Application Letter and/or Order.

15. In section **4.5.1 Presentation of Evidence and Testimony**, the following language shall be modified:

4.5.1.1 Qualified to Testify – Testimony and evidence for or against the Application may be considered from the following witnesses:

- (i) The Applicant;
- (ii) Neighborhood Witnesses;

(a) The Applicant must present at least one Neighborhood Witness (other than the Applicant) to provide testimony establishing the need and desire of the neighborhood for the license to issue. If authorized by the Department, Neighborhood Witness(es) may participate remotely through the use of a pre-filed affidavit, telephonic testimony, or virtual appearance facilitated by the Department.

16. In section **7.4.1 Posting Requirements**, the following language shall be modified:

The Applicant must post notice of the public hearing at the proposed location for a minimum of ~~twenty (20)~~ ten (10) days or as otherwise provided in the Application Letter and/or Order.

17. In section **7.5.1 Presentation of Evidence and Testimony**, the following language shall be modified:

7.5.1.1 Qualified to Testify – Testimony and evidence for or against the Application may be considered from the following witnesses:

- (i) The Applicant;
- (ii) Neighborhood Witnesses;

(a) The Applicant must present at least one Neighborhood Witness (other than the Applicant) to provide testimony establishing the need and desire of the neighborhood for the license to issue. If authorized by the Department, Neighborhood Witness(es) may participate remotely through the use of a pre-filed affidavit, telephonic testimony, or virtual appearance facilitated by the Department.

18. In section **9.5.1 Presentation of Evidence and Testimony**, the following language shall be modified:

9.5.1.1 Qualified to Testify – Testimony and evidence for or against the Application may be considered from the following witnesses:

- (i) The Applicant;
- (ii) Neighborhood Witnesses;

(a) The Applicant must present at least one Neighborhood Witness (other than the Applicant) to provide testimony establishing the need and desire of the neighborhood for the license to issue. If authorized by the Department, Neighborhood Witness(es) may participate remotely through the use of a pre-filed affidavit, telephonic testimony, or virtual appearance facilitated by the Department.

19. In section **10.5.1 Presentation of Evidence and Testimony**, the following language shall be modified:

10.5.1.1 Qualified to Testify – Testimony and evidence for or against the Application may be considered from the following witnesses:

- (i) The Applicant;
- (ii) Neighborhood Witnesses;

(a) The Applicant must present at least one Neighborhood Witness (other than the Applicant) to provide testimony establishing the need and desire of the neighborhood for the license to issue. If authorized by the Department, Neighborhood Witness(es) may participate remotely through the use of a pre-filed affidavit, telephonic testimony, or virtual appearance facilitated by the Department.

20. In section **13.5.1 Presentation of Evidence and Testimony**, the following language shall be modified:

13.5.1.1 Qualified to Testify – Testimony and evidence for or against the Application may be considered from the following witnesses:

- (i) The Applicant;
- (ii) Neighborhood Witnesses;

(a) The Applicant must present at least one Neighborhood Witness (other than the Applicant) to provide testimony establishing the need and desire of the neighborhood for the license to issue. If authorized by the Department, Neighborhood Witness(es) may participate remotely through the use of a pre-filed affidavit, telephonic testimony, or virtual appearance facilitated by the Department.

21. In section **14.2.2 Notice of Posting and Publication**, the following language shall be modified:

The Applicant must post notice of the public hearing at the proposed location for a minimum of ~~twenty (20)~~ ten (10) days or as otherwise provided in the Application Letter and/or Order.

22. In section **14.3.3 Presentation of Evidence and Testimony**, the following language shall be modified:

14.3.3.1 Qualified to Testify – Testimony and evidence for or against the Application may be considered from the following witnesses:

(i) The Applicant;

(ii) Neighborhood Witnesses;

(a) The Applicant must present at least one Neighborhood Witness (other than the Applicant) to provide testimony establishing the need and desire of the neighborhood for the license to issue. If authorized by the Department, Neighborhood Witness(es) may participate remotely through the use of a pre-filed affidavit, telephonic testimony, or virtual appearance facilitated by the Department.

23. After **ARTICLE XXI – DISCIPLINARY PROCEEDINGS, ALL LICENSES**, the following language shall be added:

ARTICLE XXII – HEARINGS FOR NEW COMMON CONSUMPTION AREA LICENSES

Section 22.1 Applicability

The provisions contained in Article I (General Provisions) and Article II (Procedures Applicable Only to Needs & Desires Hearings), shall apply to all hearings for new Common Consumption Area Licenses conducted by the Department. The following provisions of this Article XXII apply in addition to those provisions outlined in Article I and Article II.

Section 22.2 Public Hearing Requirement

A public hearing shall be required for certification of a promotional association and for issuance of a common consumption area license.

Section 22.3 Combined Hearings

The hearings for the certification of a promotional association and the common consumption area license shall be combined into one hearing. The Applicant shall have the burden for establishing the qualifications for each license.

Section 22.4 Pre-Hearing Procedures

22.4.1 Setting of the Hearing

20.4.1.1 Scheduling - The director shall schedule a public hearing upon the application not less than sixty (60) days from the date of the application.

22.4.2 Posting Requirements

20.4.2.1 Notice Posting – Required - The Licensee must post notice of the public hearing for a minimum of thirty (30) days prior to such hearing unless otherwise provided in the Application Letter/Order.

22.5. Hearing Procedures

22.5.1 Presentation of Evidence and Testimony

22.5.1.1 Qualified to Testify - Testimony and evidence for or against the Application may be considered from the following witnesses:

- (i) The Applicant;
- (ii) Neighborhood Witnesses:
 - a. The Applicant must present at least one Neighborhood Witness (other than the Applicant) to provide testimony establishing the need and desire of the neighborhood for the license to issue. If authorized by the Department, Neighborhood Witness(es) may participate remotely through the use of a pre-filed affidavit, telephonic testimony, or virtual appearance facilitated by the Department.
 - b. A maximum of three (3) Neighborhood Witnesses may testify at length in favor of the Application and three (3) may testify at length against the Application. This number does not include “en masse” (as a group) testimony.
 - c. The Hearing Officer may allow testimony at length from additional Neighborhood Witnesses if the Hearing Officer finds that the witness’s interests are not adequately represented by one of the three (3) Neighborhood Witnesses, and if the testimony will not be cumulative or repetitive.
 - d. Other Neighborhood Witnesses who attend the hearing may testify en masse either for or against the issuance of the license. En masse testimony shall be limited to a determination of whether the witnesses qualify as Parties in Interest and whether the witnesses support or oppose the issuance of the license. En masse witnesses may not be cross-examined, except as to their qualifications to

testify. At the Hearing Officer's discretion, the Hearing Officer may take en masse testimony at any time during of the hearing.

(iii) City Council Member:

- a. Any member of City Council, whose area of representation includes any part of the Designated Area, shall be allowed to testify in his or her official capacity regarding his or her position on the Application and/or to convey the position of his/her constituents.
- b. Testimony given by members of City Council will have no evidentiary value. However, if a member of City Council resides within the Designated Area, he or she may testify en masse or at length as one of the three (3) witnesses allotted to either side.

(iv) Authorized RNO Representatives:

- a. Any RNO may submit testimony regarding its position on the Application and/or to convey the position of its members. Only one representative of each RNO may testify regarding the position taken by the organization on the Application.
- b. If an RNO representative resides within the Designated Area, he or she may also testify en masse or at length as one of the three (3) witnesses allotted to either side.

(v) A principal or representative of any school

- a. The principal or representative of a school located within five hundred (500) feet of the premises shall be allowed to testify in his or her official capacity regarding his or her position on the application and/or to convey the qualifications of the school. A principal or representative may cross-examine any witness.
- b. If a principal or representative of any school resides within the Designated Area, he or she may also testify en masse or at length as one of the three (3) witnesses allotted to either side.

(vi) Expert Witnesses.

- a. A witness intending to give expert opinion testimony must first be qualified by the Hearing Officer as an expert at the hearing.
- b. At least five (5) days prior to the hearing, parties shall file a list of any witnesses they intend to call as an expert witness. The list should include the expert's name, the expert's field of expertise, curriculum vitae, and any reports created by the expert or document used to support the expert's opinions.

22.5.1.2 Qualified to Cross-Examine – The City Attorney, the Applicant, and any Party in Interest as defined in Article I may cross-examine witnesses.

22.5.2 Standards for Certification

The Director may refuse to certify a promotional association upon a showing by preponderance of the evidence that the promotional association:

- (i) Does not have a board of directors;
- (ii) Does not have at least one director from each licensed premises attached to the common consumption area on the board of directors;
- (iii) Has not agreed to submit annual reports by January 31 of each year to the local licensing authority showing a detailed map of the boundaries of the common consumption area, the common consumption area's hours of operation, a list of attached licensed premises, a list of the directors and officers of the promotional association, security arrangements within the common consumption area, and any violation of this article 3 committed by an attached licensed premises;
- (iv) Failed to submit the report required by C.R.S. 44-3-301(11)(c)(II)(C) by January 31 of each year;
- (v) Failed to establish that the licensed premises and common consumption area can be operated without violating applicable laws or creating a safety risk to the neighborhood;
- (vi) Failed to have at least two licensed premises attached to the common consumption area; or
- (vii) Failed to obtain or maintain a properly endorsed general liability and liquor liability insurance policy that meets the standard laid out in rule.

22.5.3 Standards for Issuance

In deciding whether to issue a Common Consumption Area License, the Department shall consider evidence and testimony presented on each of the following:

- (i) Good Cause. Under the D.R.M.C., the Director has the authority to refuse to issue any common consumption area for good cause, subject to judicial review. "Good cause" means:
 - a. The applicant or licensee 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, or this article II or any rules and regulations promulgated pursuant to thereto.
 - b. The applicant or licensee has failed to comply with any special terms or conditions that were placed on its license.
 - c. The applicant has not established the reasonable requirements of the neighborhood or the desires of its adult inhabitants by a preponderance of the evidence.
 - d. Evidence that the issuance of the license will adversely impact the health, welfare or public safety of the neighborhood in which the common consumption area is proposed to be located.
- (ii) Needs and Desires. The Department will consider whether the use is compatible with the reasonable requirements of the neighborhood or the desires of the adult inhabitants, as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that the Department has placed or may place upon the license.

- (iii) Additional Considerations:
- a. The applicant or licensee fails to establish and maintain evidence of community support.
 - b. The information and evidence available to and considered by the director fails to reasonably establish that the proposed procedures for security and admission control will prevent the consumption of alcohol beverages by underage persons.
 - c. The proposed common consumption area does not have adequate physical barriers to close the area to motor vehicle traffic and limit pedestrian access;
 - d. The promotional association board is not composed of at least one (1) director from each liquor licensed premises attached to the common consumption area.
 - e. The proposed premise of the common consumption area is not a single, contiguous area.
 - f. The proposed common consumption area overlaps with another common consumption area or any other liquor licensed premises, except the premises may overlap with a special event license operating in compliance with all state and local laws.
 - g. The promotional association fails to establish, by a preponderance of the evidence, any of the qualifications for the license at a public hearing pursuant to section 6-14.
 - h. The application fails to comply with all state and local laws, and any rules and regulations adopted pursuant thereto.

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ARTICLE XXIII – HEARINGS FOR RENEWAL OF COMMON CONSUMPTION AREA LICENSES

Section 23.1 Applicability

The provisions contained in Article I (General Provisions) shall apply to all Common Consumption Area License renewals conducted by the Department. However, Article II (Procedures Applicable Only to Needs & Desires Hearings) only applies to hearings for Common Consumption Area License renewals upon proper notice to the Applicant. The following provisions of this Article XXIII apply in addition to those provisions outlined in Article I.

Section 23.2 Public Hearing Requirement

Public hearings for Common Consumption Area License renewals are not automatic. The Director may hold a hearing upon an Application for renewal of any Common Consumption Area License at the Director’s discretion or upon relevant and substantial complaints. Complaints must be submitted in writing per the guidelines outlined in section 1.6.1.3.

Section 23.3 Combined Hearings

In the event that a hearing is scheduled for a Common Consumption Area License renewal where a Promotional Association is also subject to decertification, the hearings for the common consumption area license and decertification may be combined into one hearing at the Director’s discretion.

Section 23.4 Pre-Hearing Procedures

23.4.1 Setting of the Hearing

20.4.1.1 Scheduling - The director will issue an Order if a hearing is required and will notify the Licensee of the hearing at least ten (10) days before the hearing.

23.4.2 Posting Requirements

20.4.2.1 Notice Posting – Required - The Licensee must post notice of the public hearing for ten (10) days or as otherwise provided in the Order. Public notice shall be given by the conspicuous posting of a sign at each participating business within and attached to the common consumption area.

23.5 Hearing Procedures

23.5.1 Introduction of Evidence at Hearings

23.5.1.1 Permissible Evidence - Presentation of evidence at the hearing will be limited to allegations concerning standards for non-renewal.

23.5.1.2 Order of Presentation – Parties will first present evidence in support of the Order for Renewal Hearing. The Licensee will then have an opportunity to introduce evidence against the allegations contained in the Order. This order of presentation may be modified by the Hearing Officer at his or her discretion.

23.5.2 Presentation of Evidence and Testimony

23.5.2.1 Qualified to Testify - Testimony and evidence for or against the Application may be considered from the following witnesses:

- (vii) The Licensee;
- (viii) Neighborhood Witnesses:
 - a. The Applicant must present at least one Neighborhood Witness (other than the Applicant) to provide testimony establishing the need and desire of the neighborhood for the license to issue. If authorized by the Department, Neighborhood Witness(es) may participate remotely through the use of a pre-filed affidavit, telephonic testimony, or virtual appearance facilitated by the Department.
 - b. A maximum of three (3) Neighborhood Witnesses may testify at length in favor of the Application and three (3) may testify at length against the Application. This number does not include “en masse” (as a group) testimony.
 - c. The Hearing Officer may allow testimony at length from additional Neighborhood Witnesses if the Hearing Officer finds that the witness’s interests are not adequately represented by one of the three (3) Neighborhood Witnesses, and if the testimony will not be cumulative or repetitive.
 - d. Other Neighborhood Witnesses who attend the hearing may testify en masse either for or against the issuance of the license. En masse testimony shall be limited to a determination of whether the witnesses qualify as Parties in Interest and whether the witnesses support or oppose the issuance of the license. En masse witnesses may not be cross-examined, except as to their qualifications to testify. At the Hearing Officer’s discretion, the Hearing Officer may take en masse testimony at any time during of the hearing.
- (ix) City Council Member;

- a. Any member of City Council, whose area of representation includes any part of the Designated Area, shall be allowed to testify in his or her official capacity regarding his or her position on the Application and/or to convey the position of his/her constituents.
- b. Testimony given by members of City Council will have no evidentiary value. However, if a member of City Council resides within the Designated Area, he or she may testify en masse or at length as one of the three (3) witnesses allotted to either side.
- (x) Authorized RNO Representatives:
 - a. Any RNO may submit testimony regarding its position on the Application and/or to convey the position of its members. Only one representative of each RNO may testify regarding the position taken by the organization on the Application.
 - b. If an RNO representative resides within the Designated Area, he or she may also testify en masse or at length as one of the three (3) witnesses allotted to either side.
- (xi) A principal or representative of any school
 - a. The principal or representative of a school located within five hundred (500) feet of the premises shall be allowed to testify in his or her official capacity regarding his or her position on the application and/or to convey the qualifications of the school. A principal or representative may cross-examine any witness.
 - b. If a principal or representative of any school resides within the Designated Area, he or she may also testify en masse or at length as one of the three (3) witnesses allotted to either side.
- (xii) Expert Witnesses.
 - a. A witness intending to give expert opinion testimony must first be qualified by the Hearing Officer as an expert at the hearing.
 - b. At least five (5) days prior to the hearing, parties shall file a list of any witnesses they intend to call as an expert witness. The list should include the expert's name, the expert's field of expertise, curriculum vitae, and any reports created by the expert or document used to support the expert's opinions.

23.5.2.2 Qualified to Cross-Examine – The City Attorney, the Applicant, and any Party in Interest as defined in Article I may cross-examine witnesses.

23.5.3 Standards for Non-Recertification

The Director may refuse to recertify a promotional association upon a showing by preponderance of the evidence that the promotional association:

- (i) Does not have a board of directors;

- (ii) Does not have at least one director from each licensed premises attached to the common consumption area on the board of directors;
- (iii) Has not agreed to submit annual reports by January 31 of each year to the local licensing authority showing a detailed map of the boundaries of the common consumption area, the common consumption area's hours of operation, a list of attached licensed premises, a list of the directors and officers of the promotional association, security arrangements within the common consumption area, and any violation of this article 3 committed by an attached licensed premises;
- (iv) Has failed to submit the report required by C.R.S. 44-3-301(11)(c)(II)(C) by January 31 of each year;
- (v) Has failed to establish that the licensed premises and common consumption area can be operated without violating applicable laws or creating a safety risk to the neighborhood;
- (vi) Has failed to have at least two licensed premises attached to the common consumption area; or
- (vii) Has failed to obtain or maintain a properly endorsed general liability and liquor liability insurance policy that meets the standard laid out in rule.

23.5.4 Standards for Denial of Renewal

In deciding whether to deny the renewal of a Common Consumption Area License, the Department shall consider evidence and testimony presented on each of the following:

- (iv) Good Cause. Under the D.R.M.C., the Director has the authority to refuse to issue any common consumption area for good cause, subject to judicial review. "Good cause" means:
 - a. The applicant or licensee 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, or this article II or any rules and regulations promulgated pursuant to thereto.
 - b. The applicant or licensee has failed to comply with any special terms or conditions that were placed on its license.
 - c. The applicant has not established the reasonable requirements of the neighborhood or the desires of its adult inhabitants by a preponderance of the evidence.
 - d. Evidence that the issuance of the license will adversely impact the health, welfare or public safety of the neighborhood in which the common consumption area is proposed to be located.
- (v) Needs and Desires. The Department will consider whether the use is compatible with the reasonable requirements of the neighborhood or the desires of the adult inhabitants, as evidenced by petitions,

remonstrances, or otherwise, and all other reasonable restrictions that the Department has placed or may place upon the license.

(vi) Additional Considerations:

- a. The applicant or licensee fails to establish and maintain evidence of community support.
- b. The information and evidence available to and considered by the director fails to reasonably establish that the proposed procedures for security and admission control will prevent the consumption of alcohol beverages by underage persons.
- c. The proposed common consumption area does not have adequate physical barriers to close the area to motor vehicle traffic and limit pedestrian access;
- d. The promotional association board is not composed of at least one (1) director from each liquor licensed premises attached to the common consumption area.
- e. The proposed premise of the common consumption area is not a single, contiguous area.
- f. The proposed common consumption area overlaps with another common consumption area or any other liquor licensed premises, except the premises may overlap with a special event license operating in compliance with all state and local laws.
- g. The promotional association fails to establish, by a preponderance of the evidence, any of the qualifications for the license at a public hearing pursuant to section 6-14.
- h. The application fails to comply with all state and local laws, and any rules and regulations adopted pursuant thereto.

23.5.5 Failure to appear

Failure to appear at a scheduled hearing may result in the hearing proceeding on the scheduled date. Testimony and evidence may be taken regarding the allegations, and the license may be denied a renewal without further notice.

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ARTICLE XXIV - HEARINGS FOR CHANGE, ALTERATION, OR MODIFICATION OF COMMON CONSUMPTION AREA PREMISES OR USAGE

Section 24.1 Applicability

The provisions contained in Article I (General Provisions) and Article II (Procedures Applicable Only to Needs & Desires Hearings) shall apply to all hearings for a change, alteration, or modification of the licensed premises or usage of a common consumption area license conducted by the Department. The following provisions of Article XXIV apply in addition to those provisions outlined in Article I and Article II.

Section 24.2 Public Hearing Requirement

24.2.1 Prior Approval Required

A Licensee must seek and obtain approval from the Department and the State Liquor Enforcement Division prior to any material or substantial modification of a licensed common consumption area. No licensed common consumption area shall be expanded, enlarged, or modified without the written approval of the Director.

24.2.2 Material or Substantial Modification – Determination

The Director will determine whether a modification is material or substantial. Modifications that are considered “material and substantial” include, but are not limited to:

- (i) Any increase in the total size or capacity of the common consumption area;
- (ii) The sealing off, creation of, or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway, or passage alters or changes the area in which alcohol beverages will be consumed in the common consumption area;
- (iii) The addition or deletion of a patio or outdoor area; or
- (iv) Any significant change in the common consumption area that would affect the basic character of the premises or the physical structure detailed in the latest approved plans and specifications on file with the Department, including changes that would require additional permits or approvals by other city agencies, as well changes that would substantially affect the implementation of the site and security plan, the health and sanitation plan, or the transportation plan for the common consumption area.

24.2.3 Material or Substantial Modification – Hearing Required

A public hearing shall be required if the Director determines the proposed modification is material and substantial.

Section 24.3 Pre-Hearing Procedures

24.3.1 Posting Requirements

Applicant must post notice of the public hearing at the proposed location for a minimum of thirty (30) days or as otherwise provided in the Order. Public notice shall be given by the conspicuous posting of a sign at each participating business within and attached to the common consumption area.

Section 24.4 Hearing Procedures

24.4.1 Presentation of Evidence and Testimony

24.4.1.1 Qualified to Testify - Testimony and evidence for or against the Application may be considered from the following witnesses:

- (i) The Applicant;
- (ii) Neighborhood Witnesses;
 - a. The Applicant must present at least one Neighborhood Witness (other than the Applicant) to provide testimony establishing the need and desire of the neighborhood for the license to issue.
 - b. A maximum of three (3) Neighborhood Witnesses may testify at length in favor of the Application and three (3) may testify at length against the Application. This number does not include “en masse” (as a group) testimony. If authorized by the Department, Neighborhood Witness(es) may participate remotely through the use of a pre-filed affidavit, telephonic testimony, or virtual appearance facilitated by the Department.
 - c. The Hearing Officer may allow testimony at length from additional Neighborhood Witnesses if the Hearing Officer finds that the witness’s interests are not adequately represented by one of the three (3) Neighborhood Witnesses, and if the testimony will not be cumulative or repetitive.
 - d. Other Neighborhood Witnesses who attend the hearing may testify en masse either for or against the issuance of the license. En masse testimony shall be limited to a determination of

whether the witnesses qualify as Parties in Interest and whether the witnesses support or oppose the issuance of the license. En masse witnesses may not be cross-examined, except as to their qualifications to testify. At the Hearing Officer's discretion, the Hearing Officer may take en masse testimony at any time during of the hearing.

(iii) City Council Member;

- a. Any member of City Council, whose area of representation includes any part of the Designated Area, shall be allowed to testify in his or her official capacity regarding his or her position on the Application and/or to convey the position of his/her constituents.
- b. Testimony given by members of City Council will have no evidentiary value. However, if a member of City Council resides within the Designated Area, he or she may testify en masse or at length as one of the three (3) witnesses allotted to either side.

(iv) Authorized RNO Representatives;

- a. Any RNO may submit testimony regarding its position on the Application and/or to convey the position of its members. Only one representative of each RNO may testify regarding the position taken by the organization on the Application.
- b. If an RNO representative resides within the Designated Area, he or she may also testify en masse or at length as one of the three (3) witnesses allotted to either side.

(v) A principal or representative of any school

- a. The principal or representative of a school located within five hundred (500) feet of the premises shall be allowed to testify in his or her official capacity regarding his or her position on the Application and/or to convey the qualifications of the school. A principal or representative may cross-examine any witness.
- b. If a principal or representative of any school resides within the Designated Area, he or she may also testify en masse or at length as one of the three (3) witnesses allotted to either side.

(vi) Expert Witnesses.

- a. A witness intending to give expert opinion testimony must first be qualified by the Hearing Officer as an expert at the hearing.
- b. At least five (5) days prior to the hearing, parties shall file a list of any witnesses they intend to call as an expert witness. The list should include the expert's name, the expert's field of expertise, curriculum vitae, and any reports created by the expert or document used to support the expert's opinions.

24.4.1.2 Qualified to Cross-Examine – The City Attorney, the Applicant, and any Party in Interest as defined in Article I may cross-examine witnesses.

24.4.2 Standards for Approval

In deciding whether to grant approval for the modification, the Department shall consider evidence and testimony presented on each of the following:

In deciding whether to issue a Common Consumption Area License, the Department shall consider evidence and testimony presented on each of the following:

- (i) Good Cause. Under the D.R.M.C., the Director has the authority to refuse to issue any common consumption area for good cause, subject to judicial review. “Good cause” means:
 - a. The applicant or licensee 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, or this article II or any rules and regulations promulgated pursuant to thereto.
 - b. The applicant or licensee has failed to comply with any special terms or conditions that were placed on its license.
 - c. The applicant has not established the reasonable requirements of the neighborhood or the desires of its adult inhabitants by a preponderance of the evidence.
 - d. Evidence that the issuance of the license will adversely impact the health, welfare or public safety of the neighborhood in which the common consumption area is proposed to be located.
- (ii) Needs and Desires. The Department will consider whether the use is compatible with the reasonable requirements of the neighborhood or the desires of the adult inhabitants, as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that the Department has placed or may place upon the license.
- (iii) Additional Considerations:
 - a. The applicant or licensee fails to establish and maintain evidence of community support.
 - b. The information and evidence available to and considered by the director fails to reasonably establish that the proposed procedures for security and admission control will prevent the consumption of alcohol beverages by underage persons.
 - c. The proposed common consumption area does not have adequate physical barriers to close the area to motor vehicle traffic and limit pedestrian access;
 - d. The promotional association board is not composed of at least one (1) director from each liquor licensed premises attached to the common consumption area.
 - e. The proposed premise of the common consumption area is not a single, contiguous area.

- f. The proposed common consumption area overlaps with another common consumption area or any other liquor licensed premises, except the premises may overlap with a special event license operating in compliance with all state and local laws.
- g. The promotional association fails to establish, by a preponderance of the evidence, any of the qualifications for the license at a public hearing pursuant to section 6-14.
- h. The application fails to comply with all state and local laws, and any rules and regulations adopted pursuant thereto.