

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

MEMORANDUM

TO: All parties in interest for Excise and Licenses hearings
FROM: Molly Duplechian, Executive Director, Excise and Licenses



DATE: February 18, 2022

RE: Modifications to the Department's Hearing Policies and Procedures as applicable to Marijuana Store Licenses, Marijuana Hospitality Licenses, and Marijuana Hospitality and Sales Licenses

INTRODUCTION

The Department's Hearing Policies and Procedures shall be modified as described below. The modifications serve to update language related to medical and retail marijuana store licenses, as well as add necessary provisions for new marijuana hospitality licenses and marijuana hospitality and sales licenses. Finally, the modifications reflect the repeal of cannabis consumption establishment licenses, which are no longer issued by the Department.

These provisions are intended to supplement Chapter 6, Article V of the Denver Revised Municipal Code, also referred to as the Denver Marijuana Code. In April 2021, the Denver Marijuana Code was revised to include new license types, repeal outdated license types, create a Social Equity Program, and conform with changes to the Colorado Marijuana Code. More information about the 2021 update to the Denver Marijuana Code, new marijuana licenses, and application requirements can be found on the Department's [website](#).

In addition, provisions addressing virtual hearings have been utilized by the Department since the onset of 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.

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 ~~strike through~~. Language adopted in previous Department memos to allow for virtual participation is shown below using **green text**.

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

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

~~“Cannabis Consumption Establishment License” means an annual license issued by the Director to an individual(s) or entity allowing for the consumption of marijuana in a Designated Consumption Area located inside of or adjacent to a licensed premise or other business.~~

~~“Cannabis Consumption Special Event License” means a license issued by the Director to an individual(s) or entity allowing for the consumption of marijuana in a Designated Consumption Area temporarily located: (i) on or adjacent to a licensed premise or other business, or (ii) not located on or adjacent to a licensed premise or other business.~~

“Marijuana License” means a license granted to an individual or entity to sell, cultivate, deliver, process, manufacture, test, transport, store, perform research with, or allow the consumption of medical or retail marijuana, pursuant to Chapter 6, Article V ~~or Chapter 24, Article XII~~ of the Code.

2. In **ARTICLE XIV - HEARINGS FOR NEW MARIJUANA STORE AND CENTER LICENSES**, the following language shall be modified:

ARTICLE XIV - HEARINGS FOR NEW MEDICAL AND RETAIL MARIJUANA STORE AND CENTER LICENSES, RETAIL HOSPITALITY LICENSES, AND RETAIL HOSPITALITY AND SALES LICENSES

Section 14.1 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 Medical and Retail Marijuana Store and Center Licenses, Retail Hospitality Licenses, and Retail Hospitality and Sales Licenses conducted by the Department. The following provisions of Article XIV apply in addition to those provisions outlined in Article I and Article II. These Hearing Policies and Procedures do not apply to Hospitality Licenses with a mobile licensed premises.

Section 14.2 Pre-Hearing Procedures

14.2.1 Setting of Hearing

All complete applications for new Medical and Retail Marijuana Store or Center Licenses, Retail Hospitality Licenses, and Retail Hospitality and Sales Licenses shall be scheduled for a public hearing not less than (30) days from the date of the application, with notice to be provided to all RNOs within the Designated Area.

14.2.2 Notice of Posting and Publication

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 Order.

Section 14.3 Hearing Procedures

14.3.1 Burden of Proof

The Applicant shall have the burden of proving by a preponderance of the evidence that the factors identified in 14.3.2 have been established ~~need and desire~~ for the Medical and/or Retail Marijuana Store and/or Center License, the Retail Hospitality License, or the Retail Hospitality and Sales License in the Designated Neighborhood.

14.3.2 Standards for Issuance

In deciding whether to issue a Medical or Retail Marijuana Store or Center License, a Retail Hospitality License, or a Retail Hospitality and Sales License, the ~~Department~~ hearing officer and/or Director shall consider evidence and testimony presented on ~~each~~ any of the following factors:

- (i) The number and availability of licenses of the same type in or near the neighborhood;
 - (ii) Whether or not the issuance of the license would create a neighborhood of undue concentration;
 - (iii) The reasonable requirements of the neighborhood and the desires of the adult inhabitants therein as evidenced by petitions, remonstrances, or otherwise;
 - (iv) Whether or not the issuance of a license to the applicant would not comply with any applicable state or local law, including, but not limited to, the Colorado Marijuana Code, this article V, and any rules and regulations adopted pursuant thereto;
 - (v) Whether or not a second or additional license to the same applicant would have the effect of restraining competition;
 - (vi) Whether or not the applicant has previously operated a licensed premises in a manner that adversely affects the public health, welfare, or the safety of the immediate neighborhood in which the business is located;
 - (vii) Whether or not the applicant has failed to comply with any terms or conditions that were placed on a license or permit pursuant to an order of the director or state licensing authority in the past;
 - (viii) Whether or not the applicant provides a valid lease, rental agreement, or other documented arrangement for possession showing that the applicant or licensee is entitled to possession of the premises identified in the application;
 - (ix) Whether or not the applicant's criminal character or criminal record poses a threat to the regulation or control of marijuana, subject to the provisions of C.R.S. § 44-10-307, as amended. In doing so, the director may incorporate any findings as to residency, moral character, and criminal character or history, including marijuana convictions, previously made by the state licensing authority.
- (i) ~~Good Cause. Under the Denver Marijuana Code, the Director has the authority to refuse to issue any medical or retail marijuana store license for good cause, subject to judicial review. "Good cause" means:~~
- a. ~~The Applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Colorado Medical or Retail Marijuana~~

~~Code or any rule and regulations promulgated pursuant thereto, or the Denver Medical or Retail Marijuana Code or any rules and regulations promulgated pursuant thereto.~~

- ~~b. With respect to a second or additional medical or retail marijuana business license proposed by the same Applicant, the Director shall consider the effect on competition of the granting or disapproving of additional licenses to such Licensee, and no application for a second or additional license that would have the effect of restraining competition shall be approved.~~
 - ~~c. For applications to license any medical or retail marijuana business in the same location where any medical or retail marijuana business is or has previously been licensed, evidence that the licensed premises have been previously operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the establishment is located.~~
 - ~~d. Evidence that the issuance of the license will adversely impact the health, welfare or public safety of the neighborhood in which the medical or retail marijuana business is proposed to be located.~~
- ~~(ii) Needs and Desires. The Department will consider the reasonable requirements of the neighborhood, 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 number and availability of other medical marijuana centers or retail marijuana stores in or near the Designated Area.~~
 - ~~b. Whether the issuance of such license would result in or add to an undue concentration of medical marijuana centers or retail marijuana stores and, as a result, require the use of additional law enforcement resources.~~

14.3.3 Presentation of Evidence and Testimony

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.**
 - b. A maximum of three (3) Neighborhood Witnesses may testify at length in favor or in opposition of the application. This number does not include “en masse” (as a group) testimony.
 - c. Other Parties in Interest 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 they qualify as a Party in Interest and whether they 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.
- (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) 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.

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

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3. In **ARTICLE XV - HEARINGS FOR CHANGES OF LOCATION OF MEDICAL MARIJUANA CENTER OR RETAIL MARIJUANA STORE**, the following language shall be modified:

ARTICLE XV - HEARINGS FOR CHANGES OF LOCATION OF MEDICAL MARIJUANA CENTER OR RETAIL MARIJUANA STORE LICENSES, RETAIL HOSPITALITY LICENSES, AND RETAIL HOSPITALITY AND SALES LICENSES

Section 15.1 Applicability

The hearing procedures for the change of location of a Retail or Medical Marijuana Center or Store License, a Retail Hospitality License, or a Retail Hospitality and Sales License are the same as those for a New Medical or Retail Marijuana Center or Store License, Retail Hospitality License, or Retail Hospitality and Sales License. The provisions in Article I (General Provisions), Article II (Procedures Applicable Only to Needs & Desires Hearings), and in Article XIV (New Medical or Retail Marijuana Center or Store Licenses, Retail Hospitality Licenses, and Retail Hospitality and Sales Licenses) shall apply to all hearings for a change of location of a Medical or Retail Marijuana Center or Store License, Retail Hospitality License, or Retail Hospitality and Sales License ~~change of location~~ conducted by the Department. These Hearing Policies and Procedures do not apply to Hospitality Licenses with a mobile licensed premises.

Section 15.2 Combined Hearings

An applicant may apply to change the location of its co-located ~~medical and retail marijuana store~~ licenses to the extent allowed by the Colorado Marijuana Code and the Denver Marijuana Code. The hearings for the change of location applications may be combined into one hearing at the Director's discretion. The applicant shall have the burden for establishing the qualifications for each change of location.

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4. The following articles shall be repealed in their entirety:
 - a. **ARTICLE XVII - HEARINGS FOR NEW CANNABIS CONSUMPTION ESTABLISHMENT LICENSES**
 - b. **ARTICLE XVIII - HEARINGS FOR RENEWAL OF CANNABIS CONSUMPTION ESTABLISHMENT LICENSE**
 - c. **ARTICLE XIX - HEARINGS FOR SPECIAL EVENT CANNABIS CONSUMPTION LICENSE**