

Colorado Liquor and Beer Licensing

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Know thy . . . local licensing authority.

Socrates (paraphrased)

From the time when Wyatt Earp sauntered over to the Longbranch, to the hatchet days of Carry Nation, to the enactment and repeal of the Eighteenth Amendment of the United States Constitution, the regulation of alcoholic beverages has been an interesting part of our country's social and legal fabric.

There are fourteen basic classes of alcoholic liquor licenses ("malt, vinous or spirituous"), including manufacturer's, wholesaler's and importer's licenses,¹ and five classes of fermented malt beverage licenses ("3.2 beer," *i.e.*, containing not more than 3-2/10 percent of alcohol by weight), including manufacturer's and wholesaler's,² that are granted pursuant to statute.

The Colorado Liquor Code and the Colorado Beer Code³ respectively require eight of the liquor licenses and three of the "3.2" licenses to be acted on by local licensing authorities⁴ (considering the reasonable requirements of "the neighborhood" and the desires of its inhabitants) concurrently with the state licensing authority⁵ in order to grant such licenses.

Since the private practitioner deals almost exclusively with licenses requiring preliminary "approval of the application" by local licensing authorities, the scope of this article is limited to these eleven classes of licenses.⁶ The fermented malt beverage (3.2) licenses are separate and distinct from liquor licenses,⁷ but general factors which the local licensing authorities must consider are the same.⁸

The Forum, Or What is the Local Licensing Authority?

The local licensing authority is the governing body of a municipality, the board of county commissioners (in the unincorporated part of a county) or any authority designated by a municipal or county charter, ordinance or resolution.⁹

In localities where there is not a large volume of licensing business, *i.e.*, applications, transfers, suspensions, etc., the local licensing authority usually consists of the entire city council or board of county commissioners. These licensing authorities are sometimes concerned with constituency input and possibly tend to see petition signatures and witnesses as votes.

Busier city councils and commissions have gone to a liquor licensing authority

where individuals are appointed to sit as the licensing authority, much the same as a planning or zoning board. The City of Boulder presently has a three-member board chaired by a councilperson. The City of Lakewood has a five-member board with each member coming from a particular ward and, in turn, each of the five members has appointed an alternate. In the City and County of Denver, the Director of Excise and Licenses is the licensing authority pursuant to the city charter¹⁰ and has appointed a hearings officer to conduct license hearings and make recommended decisions.

What are the Rules?

Counsel for parties in license hearings should look to the Colorado Liquor and Beer Code as the primary source of governing principles. In addition, many substantive regulations, some of which affect consideration of license applications, have been adopted by the "state licensing authority," which is the Executive Director of the Colorado Department of Revenue. It is advisable for counsel to obtain pamphlet copies of the regulations, which have been collated with the applicable statutes and are available from the Department of Revenue, Liquor Enforcement Division. The regulations may also be found in the Code of Colorado Regulations.

Other important sources of authority are the numerous pronouncements of the Colorado appellate courts, "not all of which are easy of reconciliation"¹¹ in the words of Colorado Supreme Court Justice Hall. Even though the authors find no Colorado Supreme Court decision which expressly overrules a prior decision by that Court involving the liquor and beer statutes, it should be cautioned that some of the cases annotated in Colorado Revised Statutes 1973 have been invalidated by legislative enactment¹² and fine lines of distinction have been drawn in some cases.

Since license hearings are administrative proceedings, the rules of evidence and procedure are not as strict as in a criminal case¹³ or other civil actions.¹⁴ Local licensing authorities are permitted a great deal of discretion¹⁵ and, although many licensing officials are not legally trained, those with legal training may be expected to be more strict regarding the admission of evidence and testimony. The wide discretion of licensing authorities has been questioned, but it can be argued that it is no different than variations in rulings by different trial courts.

The doctrines of *res judicata* and *stare decisis* generally do not apply in administrative license hearings as concerning prior decisions of the particular agency;¹⁶ nor does the Colorado State Administrative Procedure Act govern local licensing authorities.¹⁷

Preliminary Discussion with Client

Counsel will want to discuss with a client/applicant the type of license he or she wants and whether the statutory requirements permit the activities that the applicant desires.

Considerations should include the required distance from schools;¹⁸ whether the client has legal ownership or possession of the premises;¹⁹ necessity for plans and specifications of the proposed licensed premises;²⁰ business structure; age of the applicant;²¹ reputation of the applicant and any shareholders;²² the type and amount of food, if any, anticipated to be served; whether there will be a separate manager; enforcement policies regarding minors;²³ the time periods involved for posting, publication and hearings; a review of the neighborhood concept; whether the applicant desires to use the services of a professional petition circulator; the number of presently existing outlets in the area; and the availability of competent witnesses. Multiple ownership of fermented malt beverage ("3.2" beer) licenses is permitted; however, the

same person or legal entity may hold only one liquor license, with the exception of hotel and restaurant licenses where multiple ownership is allowed (*see* Appendix).

Generally, "off-premises" fermented malt beverage ("3.2") license applications are protested more frequently than any other type of beer or liquor license, followed by liquor store applications and establishments that have some form of entertainment. When members of homeowner and neighborhood associations appear, they more frequently than not protest the granting of licenses.

Filing the Application

Counsel, of course, will need to obtain all necessary forms from the licensing authority for preparing and filing the application. In doing so, counsel should inquire of the local licensing clerk for a checklist of required documents and a copy of any local rules and procedures if such has been promulgated. Much of the information required will be given on standardized forms which are used both by local and state licensing authorities, but additional information may be required on forms of local agencies such as the police department.

Counsel should also determine the following: (1) probable public hearing date and any other required appearance dates,

e.g., pre-hearing conferences; and (2) date the application is deemed formally received, *i.e.*, upon physical receipt or at a later time.

A public hearing is required which shall not be less than thirty (30) days from the date of the application.²⁴ In addition, at the discretion of the local licensing authority, there may be one or more hearings prior to the final public hearing. For example, Fort Collins has two preliminary hearings before the final public hearing. At these preliminary hearings, the application is accepted and the neighborhood boundaries are set. After the statutorily prescribed public hearing, a fourth hearing is held to give findings of fact. If a client is making application with the City of Boulder, the clerk will accept the application and date it the day it is handed to him, and the public hearing date will also be set at that time. In the City of Aurora, the licensing clerk, after conducting background searches, will respond with a letter of acceptance setting forth a public hearing date. In Aurora, frequently the final public hearing currently runs from sixty to ninety days after the application has been submitted.

Posting and Publication

Pursuant to both the beer and liquor statutes, the local licensing authority is

required to cause a sign to be posted on the proposed site location giving notice of the public hearing not less than ten (10) days prior to such hearing.²⁵ Some licensing authorities will require the posting to begin several weeks prior to the final hearing and other authorities will require the posting to begin only on the tenth day before the final hearing.

The sign for posting is to meet certain specifications, including a minimum size of not less than 22" wide and 26" high, with letters of at least 1" in height. If a proposed license site does not have an existing structure, the required sign can present a logistical problem. The applicant in this case should make arrangements for a large piece of plywood to be mounted on a sturdy post on which the sign can be affixed and the sign should be covered with acetate to weather the posting period.

In the City of Arvada, the City Clerk's Office will prepare the sign of notice for the public hearing, but will require the applicant to pick up the sign, post it (filing an affidavit of posting), check the sign daily, and submit a posting log of the daily verifications. The City and County of Denver will require the applicant to prepare a specially worded sign not less than 35" wide and 39" high which will be checked daily on site by inspectors of the Denver Department of Excise and Licenses. Some licensing authorities will undertake the initial sign-posting for all applications, but will not do follow-up checks nor require the applicant to do so.

The required newspaper publication, which also must be not less than ten (10) days prior to the public hearing,²⁶ is automatically arranged for by nearly all licensing authorities. In addition to posting and publication, some licensing authorities automatically notify neighborhood associations and local homeowners associations of license applications.²⁷ If opposition is indicated, counsel may want to consider contacting such organi-

zations to determine the concerns of the members of the association.

Where is the "Neighborhood"?

One of the most significant factors in license applications is the area determined by the local licensing authority as the "neighborhood,"²⁸ sometimes referred to as the "designated area,"²⁹ which will be affected by the granting or denial of the license.

Many licensing authorities exercise their discretion to make a determination of the "neighborhood" without calling for a public hearing. The local licensing authority, knowing the area it represents and the problems confronting it, is better able to consider what should constitute the "neighborhood" than the Supreme Court.³⁰

The geographic area of the "neighborhood" will vary from case to case.³¹ In the City and County of Denver, the designated "neighborhood" will frequently extend about six blocks out in each direction from the proposed outlet site and will approximate a diamond or rectangular shape. In the concentrated central business district, the neighborhood may be somewhat smaller.³² The "neighborhoods" determined by local licensing authorities will vary considerably in formation, including circular, triangular and lineal shapes. A "neighborhood" can never include an entire county,³³ but may include an entire city.³⁴ (Presumably not a city and county when the boundary lines are contiguous.) A licensing authority, in order to determine whether the reasonable requirements of a neighborhood are being met, should consider existing outlets a "figurative stone's throw away" even though they are in a different jurisdiction.³⁵

In making application in Boulder County, and in the cities of Boulder, Longmont and Arvada, the licensing authority puts the burden on the applicant to

propose a "neighborhood." In the City of Lakewood, after receipt of the application, the City's planning office will make a recommendation to the licensing authority as to what should constitute the "neighborhood." This recommendation is presented to the applicant and voted on by the licensing authority at a preliminary hearing when the application is formally accepted and the required public hearing date set. The City of Fort Collins presently determines "neighborhoods" for fermented malt beverage applications on a different basis than for liquor license applications.³⁶

Since neighborhoods are most frequently defined using streets as boundaries, it should be determined if the center of the streets constitute the boundary lines or if both sides of the streets are within the neighborhood. This distinction in a highly developed business or residential area could dramatically affect the number of businesses, residents and existing outlets in the "neighborhood."

Petitions

Petitions are specified by the Liquor and Beer Codes as something for licensing authorities to consider in deciding whether or not to grant a license.³⁷ Although the sheer number of signatures on petitions for or against a liquor or fermented malt beverage license is not controlling in determining whether a license should be granted,³⁸ petitions are given significant consideration by most licensing authorities.

Counsel should inquire regarding the local authority requirements for petitions.

Form

Some licensing authorities will require that the applicant (and any protestants) circulate petitions on standardized forms prepared by the authority.³⁹ These standardized forms will sometimes contain a map of the designated neighborhood

which indicates existing licensed outlets. Signatures of residents will sometimes be required to be segregated from signatures of owners and managers of businesses, and some authorities will require that signators on all petitions be over the age of twenty-one.

When Petition Circulation

May Commence

Some authorities, such as Aurora, will require completion of posting before circulation commences. The City and County of Denver does not permit petitioning until the second day after the first day of posting. There is no statutory requirement that petition circulators be residents of the neighborhood.

Time to Present Petitions

Some authorities will require that petitions be submitted to the authority for verification of signatures and addresses prior to the required public hearing. For example, Aurora required that petitions be submitted three working days prior to the public hearing and Arapahoe County, the day before the public hearing. Colorado Springs requires all petitions to be turned in by noon on the Wednesday prior to the hearing, which is generally a Friday morning. Many authorities will allow or require the petitions to be presented at the time of the public hearing.

Manner of Presentation

Some authorities, including Arvada, the City and County of Denver, and Jefferson County, will require all petition circulators to be present at the public hearing to identify petitions and be available for questioning. Some authorities will allow petition survey results to be presented through a supervising representative.

Surveys by Licensing Authorities

Some licensing authorities, including the cities of Broomfield, Colorado

Springs, Lakewood, Thornton, Westminster and Wheatridge, conduct independent surveys concerning attitudes in the neighborhood about individual beer and liquor license applications. Not all of these surveys give details about the particular type of license applied for nor specifically address themselves to the needs of the neighborhood. Sometimes these surveys are done by mail and, consequently, people with strong opinions are more likely to be those responding.

Effect of Existing Licenses

An applicant obviously will stand a better chance to have a liquor or beer license approved if there are no existing licensed outlets in the neighborhood. Assuming other statutory requirements are met, it may be held to be arbitrary to deny

a license when no other outlets are in the area and presumably the reasonable requirements of the neighborhood are not being met.⁴⁰

The fact that a particular *type of liquor license* is not presently in existence in a neighborhood does not require the issuance of such a license, if the needs of the neighborhood with respect to the *type of beverage* authorized to be sold by the license requested are being met by existing licenses. For example, in one case where there were no existing "beer and wine" licenses in the neighborhood, the Colorado Supreme Court ruled that it was proper for a licensing authority to deny a "beer and wine" (liquor) license because there were other liquor outlets, including some "hotel and restaurant licenses."⁴¹ However, there is some authority that a licensing authority cannot

base a denial of a fermented malt beverage (beer) license in a neighborhood where none exists solely because there are existing liquor license outlets in that neighborhood.⁴²

The Public Hearing

It is the duty of the applicant to present a *prima facie* case before the licensing authority. After the case is presented, those opposing the granting of the license have an opportunity to show cause why the license should not be granted.⁴³ The licensing authority must make a determination of *both* (1) the reasonable requirements of a neighborhood and (2) the desires of its inhabitants,⁴⁴ as evidenced by petitions, remonstrances or otherwise.⁴⁵

Counsel may want to consider use of audio-visual aids, as some of the local licensing authority public hearing rooms, such as Arapahoe County, the cities of Arvada, Boulder, Longmont and Lakewood, are equipped with slide projectors and display equipment. These facilities can be used to explain architecture, cuisine and general quality of the facility proposed to be licensed.

The expression "reasonable requirements of a neighborhood" has been paraphrased in some court decisions to "needs of a neighborhood"⁴⁶ and questions to witnesses before some licensing authorities may be addressed to the "needs of the neighborhood," rather than reciting the more cumbersome statutory language. However, neither the needs of the applicant nor the desires of the patrons (unless otherwise qualified) are relevant considerations.⁴⁷

The local licensing authority, in its discretion, may limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.⁴⁸ Some licensing authorities will not allow questions to be asked of anyone until all direct testimony has been taken. Other authorities will

allow cross-examination at the time testimony is being given by anyone who can be identified as a party in interest. Some licensing authorities will encourage the selection of a spokesperson to represent various parties in interest who are present. Other licensing authorities will permit parties in interest to be sworn *en masse* and their testimony taken *en masse* through appropriate qualifying questions.

Frequent Mistakes

Frequent mistakes made by applicants and protestants include the following:

1. Presenting the testimony of a witness as an "inhabitant" even though he or she lives outside the determined neighborhood (addresses should be double-checked).⁴⁹

2. Presenting the testimony of a "teetotaler" (having an abhorrence to alcoholic beverages in any form). This is not a qualified witness to testify as to "need" for a license, since such a witness presumably would never perceive a need in the neighborhood.⁵⁰ A tactful qualifying question of such a witness might be, "Do you have occasion to consume alcoholic beverages?"

3. Attempting to qualify a witness as the manager of a business who in reality holds a lesser position. Considerations involved are whether the person is the sole owner or manager, has the power to hire and fire and set salaries or is an active or passive manager (*e.g.*, absentee owners of apartments in the designated neighborhood may not be regarded as parties in interest).

The Decision

The Liquor Code requires that the local licensing authority render a written decision stating the reasons for granting or denying the license within thirty (30) days after the public hearing.⁵¹ Some authorities, including the cities of Boulder and Lakewood, may approve or deny an

application immediately after presentation of evidence at the public hearing. Other licensing authorities will take the matter under advisement and apprise the parties of their decision some time after the public hearing. Some local licensing authorities will require proof of compliance with local building, health and fire regulations before approving an application. Approval from the State Department of Health is sometimes necessary when the proposed outlet involves food service.

Assuming that the application is approved by the local licensing authority, such local licensing authority does not grant the license at that time. The findings and other documentation must be submitted to the State Department of Revenue, Liquor Enforcement Division, in order to receive the state license. This generally requires the applicant to prepare duplicate copies of all supporting documents submitted to the local licensing authority so that the local authority may retain the originals.

As a practical matter, after the local licensing authority "approves an application," the state licensing authority will nearly always issue the applicant a state license without a hearing.⁵² The state licensing authority will essentially rely on the findings of the local licensing authority relating to the reasonable requirements of the neighborhood and the desires of its inhabitants.⁵³

In order to avoid the delay of the postal service and inter-office mail delivery, counsel for the applicant may want to consider hand-carrying copies of the findings, approval of the application by the local licensing authority and any other required documentation directly to the state licensing authority if the local licensing authority will permit such procedure. The present turn-around time from the time the state licensing authority receives the necessary documentation until the state license is issued is running

from three to fourteen days.

After the state license is granted, the applicant then must go back to the local licensing authority to have the local license issued.

What If You Lose?

Although a comprehensive review of license appeals is beyond the scope of this article, suffice it to say that only a very small percentage of licensing authority decisions are ever overturned by the district or appellate courts.⁵⁴

There are some rather curious, if not confusing, recent decisions on who has standing to appeal the decision of a local licensing authority. An applicant may clearly seek judicial review of a decision denying his or her application. However, even though a *business competitor* in the neighborhood is a proper "party in interest" at the public hearing on a license application, that business competitor has no standing to appeal the local licensing authority's decision to approve an application,⁵⁵ unless the owner of the business is also a *resident* of the neighborhood.⁵⁶

A party applying for a court review of a local licensing authority's decision denying a license must do so within thirty (30) days after the date of the final decision.⁵⁷ That party is required to pay the cost of preparing a transcript of the proceedings before the licensing authority.⁵⁸ If the local licensing authority approves an application, a review cannot be applied for until after the state licensing authority makes a final decision.⁵⁹

An action requesting court review of a licensing authority's decision is generally filed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.⁶⁰ If there is no record of the administrative hearing, there can be no judicial determination on whether the licensing authority's action was arbitrary and capricious and the reviewing court will remand the case in order to have a hearing, take and record evidence, and make specific find-

ings of fact.⁶¹

Local licensing authorities are vested with a wide discretion in determining whether or not there is a need for the issuance of a particular license.⁶² Neither the Colorado Supreme Court nor other appellate courts may substitute their judgment for that of the local licensing authority when there is *any* evidence in the record in support of the conclusion of the local licensing authority.⁶³

NOTES

1. C.R.S. 1973, § 12-47-112 (classes) [all citations to Colorado statutes refer to those in 1978 Replacement Vol. 5, C.R.S. 1973, unless otherwise indicated]; the limited winery license, C.R.S. 1973, § 12-47-112(a.1), was established in 1977 and will be repealed as of Jan. 1, 1983; *see also*, C.R.S. 1973, § 12-47-103 (alcoholic liquors defined).

2. C.R.S. 1973, §§ 12-46-109 and 12-46-117 (beer).

3. The "Colorado Liquor Code" (Art. 47, Title 12, C.R.S. 1973) and the "Colorado Beer Code" (Art. 46, Title 12, C.R.S. 1973) both enacted in 1976, recodified "The Liquor Code of 1935" and the "fermented malt beverage" laws, which were primarily enacted in 1935. Many of the provisions of the 1976 acts are substantially the same as the 1935 acts.

4. C.R.S. 1973, § 12-46-117 (beer); C.R.S. 1973, §§ 12-47-135 to -137 (liquor).

5. C.R.S. 1973, §§ 12-46-106(9), 12-46-108(2) and Reg. 46-106.1 (beer); C.R.S. 1973, §§ 12-47-137(5) and 12-47-107(4) (liquor). *Moschetti v. Liquor License Auth. of City of Boulder*, 176 Colo. 281, 490 P.2d 299 (1971), holding that the state authority must approve action of local authority before there can be issuance or transfer of a liquor license.

6. Nor does this article cover "special events permits," which allow certain charitable, religious, and social organizations to serve beer and liquor by the drink, not exceeding ten days in one calendar year. *See* Art. 48, Title 12, C.R.S. 1973.

7. C.R.S. 1973, § 12-46-106(3), "Fermented malt beverages" have never been

classified as "intoxicating," in contrast to alcoholic liquors which have been recognized as "intoxicating." *See, Gettman v. Commissioners*, 122 Colo. 185, 221 P.2d 363 (1950), and Art. XXII, Colorado Constitution. In 1945 the Colorado General Assembly amended the fermented malt beverage laws by omitting a provision wherein fermented malt beverages were specifically declared to be "nonintoxicating," but failed to classify fermented malt beverages as "intoxicating" (S.L. 1945, Ch. 154, Sec. 2).

8. C.R.S. 1973, § 12-46-108 and Reg. 46-106.1 (beer); C.R.S. 1973, §§ 12-47-106(2) and 12-47-137(2) (liquor).

9. C.R.S. 1973, §§ 12-46-103(4) and 12-47-103(9).

10. Sec. A9.8, Part II, Charter of the City and County of Denver; authority affirmed in *MacArthur v. Presto*, 122 Colo. 202, 221 P.2d 934 (1950) and *Reed v. Blakley*, 115 Colo. 559, 176 P.2d 681 (1946).

11. *Commissioners v. Salardino*, 138 Colo. 66, 70; 329 P.2d 629, 631 (1958), quote from Justice Hall.

12. *E.g.*, *Harvey v. Schooley*, 152 Colo. 384, 382 P.2d 189 (1963), where the present statute § 12-47-138(1)(a) was amended (S.L. 1963, Ch. 170) so the two-year (liquor) and one-year (beer) time periods for reapplication after denial can no longer be avoided by a mere change in the business character of the applicant; and "party in interest" found in present § 12-47-136(5)(b) (liquor) was first fully defined by S.L. 1967, p. 565, thereby putting the precedential value of earlier decisions involving "parties in interest" into question. *See, e.g.*, *Cloverleaf v. Commissioners*, 136 Colo. 441, 319 P.2d 487 (1957), involving "patrons" of a racetrack.

13. *Jones v. Civil Serv. Comm.*, 176 Colo. 25, 489 P.2d 320 (1971); *Campbell v. Colorado*, 176 Colo. 202, 491 P.2d 1385 (1971); and *Johnson v. City Council for City of Glendale, Colo. App.*, 595 P.2d 701 (1979).

14. Rules 101 and 1101, Colorado Rules of Evidence, exempting administrative hearings.

15. C.R.S. 1973, §§ 12-46-117(4)(c) (beer) and 12-47-136(5)(c) (liquor); and *see, e.g.*, *U-Tote-M of Colo. v. City of Greenwood Village, Colo. App.* 563 P.2d 373 (1977).

16. *Commissioners v. Salardino*, *supra* note 11 (liquor license); *B & M Service v. Public Util.*, 163 Colo. 228, 429 P.2d 293 (1967); but consistency is desirable, *Anderson v. Spencer*, 162 Colo. 328, 426 P.2d 970 (1967).
17. *Chroma Corporation v. County of Adams*, 36 Colo.App. 345, 543 P.2d 83 (1975) and *Continental Liquor Co. v. Kalbin*, Colo.App., ___ P.2d ___ (No. 79CA0396, decided 12/13/79); *but cf.* *Mr. Lucky's, Inc. v. Dolan*, 591 P.2d 1021 (1979), involving suspension by Colorado Department of Revenue; and C.R.S. 1973, § 12-47-108.
18. C.R.S. 1973, §§ 12-47-111(2) and 12-47-138(1)(d) and regulations 47-111.1 and 47-138.1 relating to alcoholic beverages; *see also* *MacArthur v. Sierota*, 122 Colo. 115, 221 P.2d 346 (1950), recognizing discretionary power of licensing authority to consider proximity of school in fermented malt beverage applications even though the legislature has never mandated a minimum distance from schools.
19. C.R.S. 1973, § 12-46-103(3) and (7) (beer) and C.R.S. 1973, §§ 12-47-103(7) and (15) and 12-47-138(1) (liquor).
20. C.R.S. 1973, § 12-46-117(2) (beer); C.R.S. 1973, §§ 12-47-135(4) and 12-47-137(4) (Liquor Code). Note the different requirements for plans for existing and nonexisting buildings and *see* *Spero v. Bd. of Trustees*, 35 Colo. App. 64, 529 P.2d 327 (1974), holding that failure to file specified plans was fatal to application. *See also*, *Department of Rev. v. Rosenthal*, ___ Colo. ___, 594 P.2d 580 (1978), liquor license suspended for serving on unlicensed portion of premises.
21. *See*, *Advisory Colorado Attorney General Opinion*, November 17, 1978, *MacFarlane to Berson*, holding that an applicant must be 21 years of age to qualify for an alcoholic beverage license but only 18 years of age to hold a fermented malt beverage license, though neither specified by statute.
22. C.R.S. 1973, § 12-46-108, and Reg. 46-108.1 (beer); C.R.S. 1973, § 12-47-111, (liquor).
23. *See, e.g.*, Reg. 46-105.10 (beer) and 47-128.3 (liquor), setting forth what may be accepted as valid age identification. *See also*, *Romero v. Liquor and Beer Licensing Board of City of Pueblo*, C.C.A. 540 P.2d 1152 (1975), not selected for official publication, but court upheld authority of state to adopt such regulation.
24. C.R.S. 1973, § 12-46-117(3) (beer); C.R.S. 1973, § 12-47-136 (liquor).
25. C.R.S. 1973, § 12-46-117(3) and Reg. 46-117.1 (beer); C.R.S. 1973, § 12-47-136 (liquor).
26. § 12-46-117(3) and Reg. 46-117.1 (beer), § 12-47-136(1) and (3) (liquor).
27. *See, e.g.*, § 131.3-5 Revised Municipal Code of the City and County of Denver, regarding notification of registered neighborhood organizations.
28. C.R.S. 1973, §§ 12-46-108 and 12-46-117(4) (beer) and 12-47-106(2), 12-47-136(5) and 12-47-137 (liquor), all referring to the "neighborhood." In *Cloverleaf v. Comm'rs*, *supra* note 12, the Supreme Court defined "neighborhood" as follows: "It appears to us that its common usage signifies nearness as opposed to remoteness, *viz.* in the immediate vicinity. It connotes a congeries of local interests arising from a problem confined to a particular area as distinguished from matters in which every citizen in the state has a common concern."
29. *Capra v. Feld*, 160 Colo. 387, 417 P.2d 506 (1966) and *National Convenience Stores, Inc. v. Canjar*, Colo. App., 538 P.2d 900 (1975, not selected for pub.)—both cases refer to "the designated area."
30. *Campbell v. City Council*, 150 Colo. 471, 374 P.2d 348 (1962).
31. *County Comm. v. Johnson*, 170 Colo. 259, 460 P.2d 770 (1969).
32. *See, e.g.*, *Brentwood Liquors v. Schooley*, 147 Colo. 324, 363 P.2d 670 (1961), affirming a determination by the Denver licensing authority of a six square-block area as the "neighborhood."
33. *Bolton v. County Comm.*, 164 Colo. 112, 432 P.2d 761 (1967), involving Delta County.
34. *Norris v. Grimsley*, Colo. App. 585 P.2d 925 (1978), involving Rocky Ford (1970 pop., 4,859). *But cf.*, *Colorado Springs v. Graham*, 143 Colo. 97, 352 P.2d 273 (1960), where the Supreme Court struck down a resolution which limited on-premises liquor licenses to one for each 1,800 residents and off-premises liquor licenses to one for each 2,600 residents.

35. *Brentwood Liquors v. Schooley*, *supra*, note 32, affirming that licensing authority could consider the existence of three-package liquor outlets within three blocks of the additional proposed package outlet, even though they were in another county and jurisdiction; *see also*, *Commissioners v. Bickel*, 155 Colo. 465, 395 P.2d 208 (1964).

36. *See*, *Kelly v. Fort Collins*, 163 Colo. 520, 431 P.2d 785 (1967) and *Gettman v. Comm'rs*, *supra*, note 7, upholding power of local licensing authority to "regulate" hours for serving 3.2 beer when not inconsistent with statute; *but cf.* *Big Top v. Schooley*, 149 Colo. 116, 368 P.2d 201 (1962), holding city council had no power to "legislate" in the area of 3.2 beer by prohibiting issuance of more than one license to licensee. *See also* *Sierota v. Scott*, 143 Colo. 248, 352 P.2d 671 (1960).

37. C.R.S. 1973, §§ 12-46-108(2) (beer) and 12-47-106(2) and 12-47-128(5)(g)(II) (liquor), regarding petitions.

38. *Goehring v. Board of County Comm'rs of Co. of Larimer*, 172 Colo. 1, 469 P.2d 137 (1970), liquor store license; *U-Tote-M of Colo. v. City of Greenwood Village*, Colo. App. 563 P.2d 373 (1977), 3.2 beer license.

39. Although no particular form is mandated by the liquor or beer codes, some authorities follow a general format set out in the election laws. *See*, *Banks, Colorado Law of Cities and Counties* (3rd ed.), sec. 25.5, for general discussion on petitions. *But see also*, *Anderson v. Spencer*, *supra*, note 16, holding that liquor petitions are not required to be notarized.

40. *See, e.g.*, *Buddy and Lloyd's v. Aurora*, 139 Colo. 152, 337 P.2d 389 (1959), where there was no outlet in the entire city for dispensing of 3.2 beer it was held to be arbitrary to deny 3.2 license; *KBT Corp. v. Walker*, 148 Colo. 274, 365 P.2d 685 (1961), no liquor license in 35-mile radius of city; and *Farmer v. City Council*, 153 Colo. 306, 385 P.2d 596 (1963), no liquor license of type sought within 50 miles.

41. *Canjar v. Huerta*, 193 Colo. 388, 566 P.2d 1071 (1977).

42. *Hirsch v. Board of Trustees*, 150 Colo. 50, 370 P.2d 760 (1962), holding that existing liquor licensed outlets cannot be a controlling factor in whether or not a 3.2 beer

license should be granted. *But cf.* earlier decision of *MacArthur v. Sierota*, 122 Colo. 115, 221 P.2d 346 (1950).

43. *Board of County Comm'rs of Fremont County v. Doris Salardino*, 136 Colo. 421, 425, 318 P.2d 596 (1957).

44. C.R.S. 1973, §§ 12-46-108(2) (beer) and 12-47-106(2) (liquor); *Canjar v. Huerta*, *supra*, note 41; *Board of County Commissioners v. Johnson*, 170 Colo. 259, 460 P.2d 770 (1969).

45. *Gem Co., v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959).

46. *E.g.*, *Canjar v. Huerta*, *supra*, note 41.

47. *Id.*; *Board of County Comm'rs. v. Bova*, 153 Colo. 230, 385 P.2d 590 (1963).

48. C.R.S. 1973, §§ 12-46-117(4) (beer) and 12-47-136(5) (liquor), regarding limitation on evidence and cross-examination. However, not permitting any cross-examination is an abuse of discretion. *Mobell v. Meyer*, 172 Colo. 12, 469 P.2d 414 (1970).

49. Persons in cities of less than forty thousand (*see* C.R.S. 1973, § 2-4-401(10), defining "population") who reside in a neighborhood less than six months each year are not qualified to testify in liquor license hearings as to need and desire [C.R.S. 1973, § 12-47-103(5.5)]. *But cf.* *National Conven. Stores v. City of Englewood*, 192 Colo. 109, 556 P.2d 476 (1976), where a traffic count was introduced into evidence.

50. *Ladd v. Board of County Comm'rs.*, 146 Colo. 366, 361 P.2d 627 (1961), *but cf.*, *Van DeVegt v. Board of County Comm'rs.*, 98 Colo. 161, 55 P.2d 703 (1936), where court said "regardless of their reasons, the desires of the inhabitants are to be considered."

51. C.R.S. 1973, § 12-47-137(3) (liquor). The Beer Code does not contain a comparable time limit on when a decision must be made, nor does it require that the applicant be sent a copy of the decision by certified mail.

52. State licensing authority is not required to conduct a hearing—*Potter v. Anderson*, 155 Colo. 25, 392 P.2d 650 (1964) and *Berry v. Richardson*, 160 Colo. 538, 418 P.2d 523 (1966)—unless the state (liquor) license is refused on certain grounds (C.R.S. 1973, § 12-47-108).

53. *Potter v. Anderson*, *supra*, note 52,

holding that the state licensing authority (then the Secretary of State) can use the investigative reports and hearing record of the local licensing authority.

54. *See* Van DeVegt v. Board of County Commissioners, *supra*, note 50, as to what constitutes arbitrary or capricious exercise of discretion by a licensing authority.

55. Kornfeld v. Perl Mack Liquors, 193 Colo. 442, 567 P.2d 383 (1977), and Woda v. Colorado Springs, 40 Colo. App. 173, 570 P.2d 1318 (1977).

56. Norris v. Grimsley, Colo. App. 585 P.2d 925 (1978).

57. C.R.S. 1973, §§ 12-46-118 (beer) and 12-47-141 (liquor); and *see* U-Tote-M of Colo. v. City of Greenwood Village, *supra*, note 15, regarding when a decision by a

licensing authority is final.

58. C.R.S. 1973, §§ 12-46-118 (beer) and 12-47-141 (liquor).

59. Moschetti v. Liquor Lic. Auth. of City of Boulder, 176 Colo. 281, 490 P.2d 299 (1971), involving an application to transfer a liquor license.

60. *See, e.g.*, Kornfeld v. Perl Mack Liquors, Inc., *supra*, note 55.

61. Sheeley v. Commissioners, 137 Colo. 350, 325 P.2d 275 (1958).

62. *See, e.g.*, Gem Co. v. Geer, *supra*, note 45, and MacArthur v. Presto, *supra*, note 10, holding that whether or not a license is issued depends on the judgment of the licensing authority and not the judgment of the citizens.

63. Canjar v. Huerta, *supra*, note 41.

APPENDIX

COLORADO LIQUOR AND FERMENTED MALT BEVERAGE LICENSE REQUIREMENTS

FERMENTED MALT BEVERAGES (J. & Beer)	Can be sold only to persons over age 18	No statutory restriction on proximity to schools	ALCOHOLIC BEVERAGES AND LIQUORS Can be sold only to persons over twenty-one	Unless preexisting outlet, cannot be within 500 feet of public or parochial school, or principal campus of any college, university or seminary (can be within 250 ft. if city of less than 1,000 population)	Licenses Required To Be Acted Upon By Local Licensing Authority Concurrently With State Licensing Authority	Required Statutory Considerations (In Addition To Posting, Publication, and Public Hearing)	Special Requirements and Exceptions
					1. Hotel & Restaurant	1. Reasonable requirements ("needs") of neighborhood. 2. Desires of inhabitants of neighborhood.	1. If same licenses has more than one "H&R" must consider effect on competition. 2. At least 25% of gross must be from meals. 3. If hotel must have 50 rooms or more and restaurant. 4. Separate manager must be registered with state and local authority. Sec. 12-47-119, C.R.S. 1973.
					2. Tavern	Same as above.	Must serve sandwiches and light snacks
					3. Beer & Wine	Same as above.	Must be hotel or restaurant
					4. Race Track	Same as above.	1. Must serve food. 2. Licensed pari-mutuel.
					5. Retail ("package") Liquor Store	Same as above.	Can sell only nonfood items related to the consumption of liquors
					6. Liquor-Licensed ("package") Drugstore	Same as above.	Must have pharmacy or drug dealer's license. Sec. 12-47-125, C.R.S. 1973
					7. Club	Desires of inhabitants (Reasonable requirements of neighborhood not to be considered, sec. 12-47-137(2) (a), C.R.S. 1973)	1. Must be non-profit and incorporated at least 3 years. 2. Can serve members and guests only and must be on premises.
					8. Arts	1. Reasonable requirements ("needs") of neighborhood. 2. Desires of inhabitants of neighborhood.	1. Must be non-profit arts organization. 2. Sale only by the drink for on premises consumption. 3. No advertising concerning sale.
					1. Off Premises Consumption ("package")	1. Reasonable requirements ("needs") of neighborhood 2. Desires of inhabitants of neighborhood	1. Multiple ownership of 3.2 licenses permitted. 2. No food service required in 3.2 outlet.
					2. On Premises Consumption ("by the drink")	Same as above.	See Above.
					3. Consumption on and off premises	Same as above.	See Above.
(Note: Of necessity this chart contains only general requirements and exceptions and continuing reference should be made to the statutes, regulations, and applicable case law.)							