

**City of Westminster
Special Permit and License Board
Reference Manual 2017**

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CHAPTER 1. - BOARDS AND COMMISSIONS—GENERAL PROVISIONS

2-1-1. - Appointment of Members; Terms.

- (A) To be eligible for appointment to a board or commission, a person shall have been a resident of the City for at least one year immediately prior to the date of appointment and shall be a registered elector of the city on that date and throughout the appointee's tenure in office.
- (B) No person appointed to a board or commission shall hold any other City of Westminster office, either appointive or elective during his term of service on the board or commission.
- (C) Each regular member and alternate member shall be appointed by majority vote of City Council for a term of two years, unless a longer or shorter term is required to satisfy the provisions of Subsection 2-1-1(E) below. Each member may serve up to four consecutive terms, after which time the member shall be required to take no less than a one-term break in service before becoming eligible for membership on that board again. All terms shall expire on December 31, unless City Council has failed to appoint or reappoint a member, in which case the member's term shall be extended until council action. Any vacancy that occurs prior to the end of a term shall be filled by the City Council within 45 days after such vacancy occurs, and the appointee shall complete the term of the member or alternate member whose term became vacant.
- (D) Each member and alternate member shall serve without compensation.
- (E) Terms shall be staggered as follows:
 - (1) For five-member boards or commissions, three members shall have terms that expire on even-numbered years and two members shall have terms that expire on odd-numbered years.
 - (2) For seven-member boards or commissions, four members shall have terms that expire on even-numbered years and three members shall have terms that expire on odd-numbered years.
 - (3) For eight-member boards or commissions, four members shall have terms that expire on even-numbered years and four members shall have terms that expire on odd-numbered years.
 - (4) For 13-member boards or commissions, seven members shall have terms that expire on even-numbered years and six members shall have terms that expire on odd-numbered years.
 - (5) Alternates shall have terms that expire on odd-numbered years.

This subsection shall not apply to the election commission.

- (F) Member emeritus: The City Council hereby creates the office of member emeritus of the various boards and commissions. City Council shall designate a member of a board or commission a member emeritus at such times and for such service as council deems

appropriate. A member emeritus is welcome to continue attendance at a board or commission meeting, and the chairperson and members of the board or commission may request the opinion or information of the member emeritus during the portion of the board or commission meeting when members of the public customarily speak. The member emeritus will not be a voting member, or an alternate member, of the board or commission.

- (G) Any personally identifying information, other than name and address, provided by a candidate for a board or commission, pursuant to charter Subsection 5.1(d) or in connection with an application for office, will be deemed as having been received in confidence and not subject to disclosure under the Colorado Open Records Act, except as may be required by an order of district court. Any such personally identifying information contained in a report, required to be maintained pursuant to charter Subsection 5.1(d), shall be redacted by the City Clerk prior to disclosure of the remainder of the report.

(2068 2402 3102 3272 3372 3633 3729; [Ord. No. 3888, § 1, 6-26-2017](#))

2-1-2. - Chairperson and Vice-Chairperson of Board or Commission.

Biennially, at its first regular meeting of an odd-numbered calendar year, each board or commission shall elect one of its members to be chairperson and one of its members to be Vice-Chairperson, each for a term of two years. In the event either position becomes vacant before the end of the term, the board or commission shall elect a regular member to serve as Acting Chairperson or Vice-Chairperson until the end of the term. No member shall be eligible for election as Chairperson or Vice-Chairperson unless that member has previously served at least one year as a member of the board or commission; provided, however, that if no member is so eligible, the board or commission shall elect the member it deems best qualified. This Section shall not apply to the election commission.

(2068 2402)

2-1-3. - Role of Alternates.

The alternate members of the board or commission shall endeavor to follow the same rules of conduct as regular members. The alternate members of the board or commission shall attend the meetings of the board or commission and shall have all of the rights and powers of the regular members; except that, the alternate member shall not vote or otherwise participate in a matter before the board or commission, unless fewer than all regular members are in attendance at the meeting. If the alternate member attends a meeting in a voting capacity, and the public hearing on a matter is continued, the alternate member shall vote on the matter, unless the regular member whose place was taken by the alternate listens to the tape of the prior public hearing, reviews the exhibits, and has become familiar with the matter before the board or commission. If a different regular member is absent at the hearing to which the public meeting has been continued, the alternate may vote on the matter in the absent member's place. The alternate may not vote on a matter in which the public hearing has been continued, unless the alternate has listened to the tape of the prior public hearing, reviews the exhibits, and has become familiar with the matter before the board or commission.

(2068 2402)

2-1-4. - Vacancies of Office.

The office of any member of any board or commission shall be declared vacant by the City Council:

- (A) For any reason specified by statute or by City Charter as creating a vacancy in office.
- (B) If the officer shall be found guilty by a competent tribunal of any act constituting misconduct in office under the provisions of the City Charter.
- (C) If such officer shall miss four consecutive regular meetings of such board or commission, or 25 percent of such meetings in any fiscal year of the city, unless such absences shall be excused by such board or commission at the time of each absence.
- (D) If the officer is removed from office by the City Council in accordance with the provisions of Section 2-1-5.

(2068)

2-1-5. - Removal of Members.

Members of any board or commission may be removed from office for any reason specified by statute for removal of city officers or for any act declared by the City Charter to constitute misconduct in office or to create a vacancy. Alternate members may be removed from office without cause.

(2068)

2-1-6. - Conduct of Meetings.

- (A) The boards and commissions of the City shall conduct closed executive sessions pursuant to the standards adopted in Subsections 1-11-3(C), (D), (E), and (F) of this Code, and only for the purposes stated therein. No final action may be taken in a closed executive session.
- (B) Unless otherwise provided for in this Code, notice to the public of the meetings of boards and commissions shall be given as may be required by the individual by-laws adopted by each board or commission.
- (C) Any board or commission that conducts a public hearing shall record such hearing stenographically or electronically. The board or commission may choose stenographic or electronic recording at its sole discretion. A written transcription of the record shall be made upon the request of any person and payment in advance of the estimated cost of production of the transcript. The action of a board or commission shall not be invalidated by any mechanical or other malfunction in the recording process.
- (D) No member of a board or commission shall vote on any question in which he has a conflict of interest, other than the common public interest. On all other questions put to vote, each

member who is present shall vote either "yes" or "no," unless excused by the unanimous consent of the remaining members present. Application to be excused from voting must be made before the vote is called by the presiding officer. The member shall briefly state the reason for his request to be excused and the decision thereon shall be made without debate.

(2068 2734 3599)

2-1-7. - Legal Advisor.

Any board or commission may, upon request, be represented by the City Attorney's office.

(2068)

2-1-8. - Attendance.

(A) *Definition:* For the purposes of City Charter Section 5.3 concerning vacancies in board and commission offices, whether an absence is "excused" or "unexcused" shall be determined as follows:

Excused absence shall mean an absence in instances of family emergency, work-related commitments, medical necessity or vacation outside of the Denver metropolitan area involving the board/commission member.

Unexcused absence shall mean an absence when no prior notification is provided to the chairperson or staff liaison. An absence can also be deemed unexcused when notification is provided to the chairperson or staff liaison, but the reason for absence does not meet the requirements of an excused absence. An absence is unexcused when it is not related to the instances of family emergency, work-related commitments, medical necessity or vacation outside of the Denver metropolitan area involving the board or commission member.

(B) In order for an absence from a meeting to be termed "excused," the member shall provide notification to the chairperson or staff liaison, by telephone or in written form, at least 24 hours in advance of any regular or special meeting. Such notification may be excused by the chairperson only in extenuating circumstances, which shall be considered on a case-by-case basis. The member will be required to provide a reason for the requested absence, which will be reviewed by the chairperson and declared at the meeting as an excused or unexcused absence by the chairperson. Upon motion by any unaffected member of the board or commission at the same or next following meeting, the decision of the chairperson as to whether the absence is excused or unexcused may be reviewed and either sustained or overturned by a vote of the entire board or commission. A record of this decision shall be made in the minutes of the meeting.

(2772)

CHAPTER 5. - SPECIAL PERMIT AND LICENSE BOARD

2-5-1. - Creation.

There is hereby created a special permit and license board, hereinafter referred to as "the board," consisting of seven regular members and one alternate member.

(908 1741 2068)

2-5-2. - Powers and Duties.

The special permit and license board, acting as the local licensing authority pursuant to Title V of this Code, shall conduct public hearings, approve or deny applications for licenses, renew or deny renewal of licenses, suspend or revoke licenses, hear appeals of adverse actions taken against city-issued licenses, and carry out all other functions authorized by Title V of this Code and Colorado beer, liquor and special event codes. All decisions of the board are final, subject only to appeal to a court of competent jurisdiction.

(1741 2037 2068 2229 2251 2769 2984 3398 3497 3578)

2-5-3. - Bylaws.

The board shall make and adopt by resolution its own bylaws, in conformity with applicable statutes and ordinances. Bylaws shall be reviewed annually for necessary updating.

(908 2068 2229 2769)

2-5-4. - Acting Chairperson; Quorum; Procedure.

In the absence of the elected Chairperson, the Vice-Chairperson shall assume the duties of the Chairperson for that respective meeting. A quorum shall consist of four members, and a decision of a majority of the members present shall control. Any absent member may join in a pending decision of the board subject to Section 2-1-3, W.M.C. All public hearings shall, at a minimum, be recorded electronically, or, as deemed necessary by the Chairperson, may be stenographically recorded by a court reporter engaged by the City and paid out of fees paid by the applicant.

(908 1741 2068 2229 2769)

2-5-5. - Meetings.

The board shall meet at least twice a month, unless there is no business to conduct. Each member of the board shall be required to vote on each item before the board, unless a conflict of interest has been determined to exist. A member of the board may vote on items where they were absent if the hearing is continued, provided they have reviewed the electronic recording of the

previous testimony prior to the continuation of the hearing. If the recording is not reviewed, then this affected member is to be excused from voting on the matter, due to having not heard the entire testimony presentation.

Members may be excused from voting on previous meetings' minutes if they were absent from that respective meeting. Being excused from voting must be recognized by the Chairperson and duly noted in the minutes of the present meeting.

(908 2068 2769)

CHAPTER 1. - PROCEDURES

5-1-1. - Legislative Intent and Application of Title.

(A) City Council finds that:

- (1) Licenses issued pursuant to this Title should be granted and held subject to compliance with the terms and conditions imposed by this Title and any other applicable laws;
- (2) The granting and retention of any such license shall be deemed a privilege, and not a right;
- (3) No license shall be issued or held contrary to the public health, safety, and welfare interests of the City and its citizens;
- (4) It is in the public interest to provide for the denial, cancellation, suspension, and revocation of licenses issued pursuant to this Title in order to protect the health, safety, and welfare of the City and its citizens;
- (5) This Title is enacted pursuant to the City's home-rule authority granted by Article XX, Section 6, of the Colorado Constitution; and
- (6) The intent of the City Council in enacting this Title is to protect and promote the health, safety, and welfare interests of the City and its citizens through the licensing and regulation of those activities and businesses determined to pose a significant risk of harm to said interests if unlicensed and unregulated.

(B) The rules of procedure set forth in this Chapter are intended to provide a uniform, consistent, and expeditious method for conducting quasi-judicial hearings held pursuant to this Title and to afford persons due process of law. The special permit and license board may supplement the provisions of this Chapter by adopting further rules of procedure not inconsistent herewith. The rules of procedure set forth in this Chapter apply whenever a hearing is required by any provision of this Title, unless another procedure is specifically required by written agreement, state statute, or other provisions of this Code.

(1956 3570)

5-1-2. - Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Adverse action shall mean the suspension or revocation of an existing license authorized by this Title or the initial denial of an application for a license authorized by this Title.

Cancellation shall mean the City's administrative action of invalidating an issued license for the limited reasons set forth in this Section, which action is not considered to be an adverse action.

Interested person shall mean any person having a legally protected interest under law that is subject to potential injury in fact due to proposed final action pursuant to this Title, or any person

defined as "interested" by law, or any person having a right of appeal pursuant to law or this Title. "Interested person" also includes any employee or official charged with the responsibility to issue and enforce the provisions of this Title.

Revocation shall mean the City's action to recall, withdraw or rescind an existing license according to the process afforded by this Title, and it excludes the administrative act of cancellation.

(1956 3563 3570)

5-1-3. - Adverse Actions.

- (A) An adverse action may be initiated by any of the following persons or entities:
 - (1) Any department head of the City;
 - (2) Any employee or official charged with the responsibility to issue and enforce the provisions of this Title.
- (B) An adverse action shall be initiated by filing with the City Manager or the City Manager's designee a written request that the adverse action be taken, which shall include the facts and grounds of the proposed adverse action.
- (C) An adverse action may also be taken by the City Manager on his or her own volition.

(3570)

5-1-4. - Notice of Adverse Action.

- (A) An applicant shall be notified of a denial and a licensee shall be notified of a suspension or revocation of a license and of the grounds for the proposed adverse action in writing.
- (B) The notice of the proposed adverse action shall include:
 - (1) The grounds for proposed adverse action.
 - (2) A statement that the applicant or licensee, as applicable, may request a hearing before the special permit and license board by filing a request for the same not later than 30 days following the date of service of the notice of the proposed adverse action.
 - (3) A statement that the proposed adverse action described in the notice will be stayed during the 30 days in which a hearing may be requested or until a hearing has been held and a decision rendered, whichever is later; provided, however, that a finding of immediate undue risk as permitted in Subsection 5-1-5(c), W.M.C., may result in no stay.
- (C) The notice of proposed adverse action may be served on the applicant or licensee, as applicable, by:
 - (1) Personal service by hand delivery, in which case service shall be deemed complete on the date such service occurs; or
 - (2) By mailing a copy of the notice of proposed adverse action by first-class mail to the last known address of the applicant or licensee, as applicable, or to the street address of the

licensed premises, in which case service shall be deemed complete on the date of mailing. The holder of any license issued pursuant to this Title shall notify the City Clerk of any change of the holder's address for purposes of notification and service pursuant to this Chapter.

(1956 3570)

5-1-5. - Appeals.

- (A) The applicant or licensee may appeal the notice of proposed adverse action by filing with the City Clerk in writing a request for a hearing before the special permit and license board within 30 days after the applicant or licensee is notified of the proposed adverse action. The request for hearing shall specify any reasons the requesting party believes the proposed adverse action was not justified. A hearing, when requested, shall be scheduled and held within a reasonable time, and reasonable notice of the hearing shall be given to the licensee or applicant.
- (B) For any applicant or licensee who fails to appeal a proposed adverse action by failing to timely file a request for a hearing in the manner provided for in this Section, the proposed adverse action shall immediately take effect, and the applicant or licensee shall thereafter be barred from appealing the adverse action before the special permit and license board. Further, the failure to file a timely appeal of a proposed adverse action pursuant to this Section shall be deemed a failure to exhaust administrative remedies and a bar to judicial review.
- (C) Any adverse action pursuant to this Title shall be automatically stayed upon the filing of a timely appeal pursuant to this Section; provided, however, upon a determination in writing by the city manager that a stay of the adverse action pending the appeal would pose an immediate undue risk to the public health, safety, or welfare, the adverse action shall not be stayed and the licensee shall cease operations pursuant to the license until the appeal is finally resolved. Notice of any such determination shall be given in a manner specified in Subsection 5-1-4(c), W.M.C., above.
- (D) In computing any period of time prescribed by this Section, Saturdays, Sundays, and legal holidays shall be counted as any other day.
- (E) Upon completion of a hearing, the special permit and license board shall issue a decision within a reasonable time and according to Subsections 5-1-10(J) and (K), W.M.C.

(3570)

5-1-6. - License Denial.

- (A) Unless otherwise limited by state law, a license application may be denied by the City Manager or the City Manager's designee based on the following grounds:
 - (1) All applicable provisions of the City Code and state law have not been met;
 - (2) The required fees have not been paid;
 - (3) The application is incomplete or contains false, misleading or fraudulent statements;

- (4) Character of the applicant, based on his/her criminal history, to the extent such character and criminal history is within five years of the date of application and is relevant to the license requested by the applicant;
- (5) Nonconformance of the business, premises, building or land use with this Code;
- (6) Demand of the business for excessive City services;
- (7) Discharge, intent or proposal to discharge wastes to the sanitary sewerage system that will exceed any of the limits set forth in Title VIII, Chapter 10 of this Code;
- (8) Prior or ongoing violations of law in connection with the business;
- (9) Previous revocation or suspension of a similar license held by the applicant;
- (10) Any reason that would justify cancellation, suspension or revocation of a license; or
- (11) Any ground provided by ordinance or statute.

(1959 3570)

5-1-7. - License Cancellation.

- (A) Unless otherwise limited by state law, a license may be administratively cancelled by the City Manager or the City Manager's designee on the following limited grounds:
- (1) The license was issued in error;
 - (2) Upon written request of the licensee;
 - (3) Upon a determination by the City, confirmed by a site visit to the business address, that the licensee has permanently ceased operation; or
 - (4) Upon grounds provided by ordinance or statute.

(1959 3570)

5-1-8. - License Suspension.

- (A) Unless otherwise limited by state law, a license may be suspended on the following grounds:
- (1) Upon any grounds that would authorize revocation of a license, except grounds that make revocation mandatory;
 - (2) When any activity conducted pursuant to such license violates an ordinance or statute;
 - (3) Upon grounds of repeated violations of this Code by the licensee; or
 - (4) Upon grounds provided by ordinance or statute.

(1959 3570)

5-1-9. - License Revocation.

- (A) Unless otherwise limited by state law, a license may be revoked on the following grounds:

- (1) Fraud or misrepresentation or false statements in the application for the license;
- (2) Failure to make timely payment of any fees, charges or penalties imposed pursuant to this Title;
- (3) Fraud or misrepresentation in the course of conducting the business;
- (4) Conducting the business contrary to the conditions of the license;
- (5) Conducting the business in such a manner as to create a public nuisance as defined by ordinance or by statute or in a manner as to constitute a danger to the public health, safety or welfare;
- (6) Conviction of any violation of federal, state or municipal law related to the operation of the licensed business;
- (7) Repeated violations of one or more City ordinances at the licensee's place of business by the licensee or patrons of the business;
- (8) Commission of an act or grounds that would have justified denial of the original application for a license;
- (9) The conduct of the licensee's business consistently creates excessive need for City services and causes the City to expend public funds beyond normal requirements to protect the public health, welfare and safety;
- (10) The business is of such a nature, or is operated in such a manner, that it is frequented by individuals (a) who consistently disrupt the normal and reasonable peace and tranquility of the neighborhood, or (b) who by intimidation, threat, harassment or other hostile conduct seriously disrupt any other business in the immediate neighborhood of the licensee, thereby causing such business unreasonable economic loss;
- (11) The licensee fails to keep and maintain permanent records that, in accordance with accepted accounting practices as determined by the City Finance Director, are necessary for establishing the licensee's tax liability;
- (12) Any violation of Title IV, W.M.C., concerning taxes; or
- (13) Upon any grounds provided by ordinance or statute.

(1959 3570)

5-1-10. - Hearing Procedures.

- (A) This Section shall apply to any hearing conducted pursuant to this Title.
- (B) Any interested person who wishes to be heard at a hearing pursuant to this Title may appear personally or be represented by legal counsel at the hearing.
- (C) The hearing shall be conducted by the special permit and license board. In the case of an appeal of an adverse action, the hearing shall be de novo, and the proponent of the adverse action shall have the burden to show, by a preponderance of evidence, that the grounds for the adverse action existed at the time the adverse action was taken. The adverse action may be

defended by the City Manager, or the department head, employee, or official who initiated the adverse action, who may be represented by the City Attorney.

- (D) The special permit and license board may:
- (1) Establish by rule a fee for a hearing;
 - (2) Waive or refund hearing fees upon a showing of undue hardship;
 - (3) Administer oaths and affirmations;
 - (4) Issue subpoenas requiring the presence of persons and the production of documents reasonably necessary to the determination of any issue relevant to the hearing. The Chairperson shall sign and issue any such subpoenas. Subpoenas shall be enforced as provided in Section 1-22-5, W.M.C.;
 - (5) Rule upon offers of proof;
 - (6) Compel testimony;
 - (7) Receive evidence;
 - (8) Determine all relevant issues of material fact and whether the proposed adverse action comports with the requirements of the applicable laws;
 - (9) Dispose of motions relating to the discovery and production of relevant documents and things for inspection, copying, or photographing;
 - (10) Regulate the course of the hearing, including setting reasonable time limits on testimony or argument and restricting duplicative or irrelevant evidence or testimony;
 - (11) Set the time and place for continued hearings;
 - (12) Fix the time for filing of briefs and other documents;
 - (13) Direct the parties to appear and confer to consider simplification of issues, admissions of facts or documents to avoid unnecessary proof, and limitation of the number of witnesses;
 - (14) Issue appropriate orders that control the subsequent course of the proceeding;
 - (15) Dispose of motions and procedural matters;
 - (16) Control the decorum and conduct of the proceeding, including the reprimanding and exclusion from the hearing of any person engaging in improper or indecorous conduct; and
 - (17) Issue general or specific regulations in furtherance of its powers enumerated in this Section and take any other action authorized by ordinance or by rule consistent with law.
- (E) All testimony shall be taken under oath or by affirmation.
- (F) It shall be unlawful for any person to fail to comply with the orders of the special permit and license board, including the failure to obey any subpoena issued pursuant to this Section.
- (G) The proceedings of the hearing shall be recorded through tape recording, stenographic, or other verbatim reproduction, and copies of the transcriptions of the proceedings shall be

available, upon payment of the reasonable costs thereof, to the parties to the hearing or any interested person.

- (H) At the hearing, each side may present evidence, documentary evidence, and rebuttal evidence, and conduct such cross-examination as the board may reasonably determine necessary for a full and true disclosure of the facts. The board may receive all or part of the evidence in written form, if the interests of the parties will not be substantially prejudiced and if the hearing will be expedited thereby. The board may receive and consider evidence not admissible under the civil rules of evidence if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The board may exclude incompetent and unduly repetitious evidence, and may receive documentary evidence in the form of a copy or excerpt if the copy is deemed reliable.
- (I) No ex parte material or representation of any kind or any other communication outside the hearing shall be considered by the board, unless it is fully disclosed on the hearing record and an opportunity is given for comment thereon at the hearing.
- (J) The board may affirm, reverse, or modify, with or without conditions, any adverse action. The board shall issue, within a reasonable time, a final, written decision with findings of fact and conclusions of law, setting forth the grounds of the decision, based on the evidence presented at the hearing. The board shall serve the decision on each party to the hearing by mailing it first-class mail to the last address furnished to the City Clerk pursuant to Section 5-1-4, W.M.C., by the party. The decision shall be deemed final and effective as to such party on the date mailed.
- (K) The board's final decision shall be subject to judicial review pursuant to Colorado Rule of Civil Procedure 106(a)(4). No ground may be presented for judicial review unless it was first presented to the special permit and license board prior to the decision thereof.

(1959 2275 3570)

5-1-11. - Penalty; Nuisance Declared.

- (A) It is unlawful for any person to violate any of the provisions of this Title. Except as otherwise provided in this Title, any person found guilty of violating any of the provisions of this Title shall, upon conviction thereof, be punished by a fine pursuant to Section 1-8-1, W.M.C. Each day that a violation of any of the provisions of this Title continues to exist shall be deemed a separate and distinct violation.
- (B) The conduct of any activity or business in violation of this Title is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the abatement of nuisance provided for in Chapter 4 of Title VIII of this Code.

(3570)

CHAPTER 14. - FERMENTED MALT BEVERAGE AND ALCOHOLIC BEVERAGE LICENSE AND SPECIAL EVENTS PERMIT

5-14-1. - Definitions.

Those terms that are defined in the Colorado Beer Code and the Colorado Liquor Code, Sections 12-46-101, et seq., and 12-47-101, et seq., C.R.S., shall have the same meaning when used in this Chapter, unless the context otherwise requires.

(1959)

5-14-2. - Creation of Local Licensing Authority.

A Local Licensing Authority is hereby created. The Local Licensing Authority shall be the special permit and license board as established in Section 2-5-1, W.M.C. The terms "licensing authority," "authority," or "board," as used in this Chapter, shall mean the body hereby created as the Local Licensing Authority, and such terms shall be interchangeable. The authority shall have and is vested with all powers and authority possible to have pursuant to Articles 46, 47 and 48 of Title 12, C.R.S.

(2037)

5-14-3. - License Required; State Statutes.

- (A) It shall be unlawful for any person to sell fermented malt beverages or alcoholic beverages within the City of Westminster without first obtaining a license pursuant to this Chapter.
- (B) The Colorado General Assembly has declared that the licensing and regulation of the sale of fermented malt beverages and alcoholic beverages is a matter of statewide concern. All licensing requirements and regulations specified in Articles 46, 47 and 48 of Title 12, C.R.S., shall be enforced in the local licensing process and shall control in the event that inconsistent requirements are set forth in this Chapter.

(1959)

5-14-4. - License Applications.

- (A) The following licenses and permits may be issued by the licensing authority in accordance with the provisions of the Colorado Beer Code and the Colorado Liquor Code:
 - (1) *Fermented Malt Beverage Licenses:*
 - (a) Sales for consumption off the premises of the licensee;
 - (b) Sales for consumption on the premises of the licensee;
 - (c) Sales for consumption both on and off the premises of the licensee.

(2) *Malt, Vinous and Spirituous Liquor Licenses:*

- (a) Retail liquor store;
- (b) Liquor-licensed drugstore;
- (c) Beer and wine;
- (d) Hotel and restaurant;
- (e) Tavern;
- (f) Brew pub;
- (g) Club;
- (h) Arts;
- (i) Racetrack;
- (j) Optional premises;
- (k) Optional premises permit for a hotel and restaurant license;
- (l) Vintner's restaurant;
- (m) Distillery pub; and
- (n) Lodging and Entertainment.

(3) *Other Licenses and Permits:*

- (a) Bed and breakfast permit;
- (b) Art gallery permit;
- (c) Special event permit;
- (d) Transfer of ownership; and
- (e) Consent to changing, altering or modifying any licensed premises.

(4) *Administrative Approvals.* The City Clerk is authorized to administratively approve the following applications in accordance with the provisions of the Colorado Beer Code and the Colorado Liquor Code:

- (a) Temporary permit pending the approval of applications for transfers of ownership;
- (b) Transfer of ownership, unless the City Clerk determines in the clerk's discretion that there is probable cause to believe that grounds exist for denying the transfer under Section 12-47-303, C.R.S., as the same may from time to time be amended or recodified;
- (c) Waiver, for good cause, of the time requirement for the filing of an application for renewal of an existing license;
- (d) Renewal of an existing license, unless the City Clerk determines in her reasonable discretion that there is probable cause to believe that grounds exist for denying the application for renewal under Section 12-47-307, C.R.S., as the same may from time to time be amended or recodified; and

- (e) Consent to changing, altering or modifying any licensed premises, unless the City Clerk determines in the clerk's discretion that the premises, as changed, altered or modified, will not meet all of the pertinent requirements of the Colorado Liquor or Beer Codes and the regulations promulgated thereunder, including, but not limited to, those requirements set forth in C.C.R. 203-2, Regulation 47-302, as the same may from time to time be amended or recodified.
- (B) The applicant shall submit a verified application to the City Clerk on forms provided by the City Clerk. The application shall include complete plans and specifications for the interior of the premises to be licensed, a copy of the lease or other evidence of the applicant's right to possession of the premises, information concerning the zoning of the location of the premises, the fees required by this Chapter, and any other information that is required by state statute. Applications shall not be considered complete until all required information has been received by the City Clerk.
- (C) The City Clerk shall schedule the application for a public hearing before the Licensing Authority not less than 30 days from the date of the application. Notice of such hearing shall be sent (electronically or via regular mail) to the applicant by the City Clerk not less than 15 days before the hearing date. Notice of such public hearing shall also be given by publication in a newspaper of general circulation in the community once, not less than ten days prior to the hearing date, and by posting a notice of hearing upon the premises for at least ten days prior to the hearing. Publication and posting shall be done by the City Clerk.
- (D) The City Clerk shall propose the boundaries of the neighborhood in writing to the licensing authority with a copy to the applicant. If a majority of the authority or the applicant disputes the proposed neighborhood boundaries, the issue shall be considered by the board at a public meeting. A dispute of the boundaries by the applicant must be filed within ten days of the letter notifying the applicant of the boundaries established.
- (E) Prior to the hearing, the City or its designee shall circulate petitions to determine the reasonable requirements of the neighborhood and the desires of the inhabitants regarding the application for a license. The petition form shall be approved by the City.
- (F) At least five days prior to the date of the public hearing, the City Clerk shall send the results of the petitioning and investigation of the application to the applicant and make them available to other interested parties.
- (G)
 - (1) Following the conclusion of the public hearing, the authority shall render its decision no later than 30 days thereafter; however, the authority may continue the hearing from time to time as may be required to gather necessary facts and evidence and to permit witnesses to testify. The City Clerk shall send a written copy of the finding and decision of the authority to the applicant at the address shown on the application and to any other party in interest upon request within 30 days of the decision.
 - (2) All decisions of the licensing authority are final, subject only to appeal to a court of competent jurisdiction.
- (H) In determining whether to grant or deny the license, the authority shall consider all factors allowed pursuant to state statutes, including the following:
 - (1) For licenses to sell fermented malt beverages:

- (a) Whether the applicant, if a corporation, is incorporated pursuant to the laws of the State of Colorado or duly qualified to do business in the State of Colorado;
 - (b) The character and reputation of the applicant; and
 - (c) The reasonable requirements of the neighborhood and the desires of the adult inhabitants, as evidenced by petitions, remonstrances or otherwise.
- (2) For licenses to sell alcoholic beverages:
- (a) The reasonable requirements of the neighborhood, and the desires of the neighborhood, and the desires of the adult inhabitants, as evidenced by petitions, remonstrances or otherwise, except that the requirements of the neighborhood shall not be considered for a club license;
 - (b) With respect to a second or additional hotel and restaurant license for the same licensee, the effect on competition of the granting or disapproving of additional licenses to such licensee.
 - (c) For a liquor licensed drug store, retail liquor store, and for all licenses allowing for on-premise consumption, who will manage the premises; and
 - (d) The character of the applicant and his eligibility to hold a license.

(1611 1959 2037 2502 3325 3483; [Ord. No. 3848, §§ 1—3, 9-26-2016](#))

5-14-5. - Fees.

- (A) Each application for a license or transfer of a license shall be accompanied by the following application fees:
- (1) For a new license, \$1,000.00.
 - (2) For a transfer of location or ownership, \$750.00.
 - (3) For renewal of a license, \$100.00.
 - (4) For a manager registration, \$75.00.
 - (5) For a late renewal application fee where the license has expired, \$500.00.
 - (6) For a temporary permit to continue selling pending a transfer of the permanent license, \$100.00.
 - (7) Change of corporate structure or transfer of stock, \$100.00 per person investigated by the City of Westminster.
 - (8) Special events permit, \$100.00.
 - (9) Art gallery permit, \$103.75.
- (B) The local license fees prescribed by Sections 12-46-107 and 12-47-505, C.R.S., as amended, shall be paid to the City annually in advance by the licensee. Such fees shall not be rebated or discounted on a proportionate basis for any license in existence or issued for less than a year. These fees shall be in addition to any license fees required to be paid directly to the state.

5-14-6. - Renewal.

- (A) All licenses issued pursuant to this Chapter shall be valid for a period of one year from the date of issuance, unless revoked or suspended. All licenses granted pursuant to this Chapter are separate and distinct.
- (B) An application for renewal of an existing license shall be filed with the City Clerk no later than 45 days prior to the date of expiration. The application shall be on forms supplied by the State of Colorado and shall be accompanied by the fee required by this Chapter. The City Clerk shall review the application and any citizen complaints and investigative reports from the police department or other agencies. If the application is complete, all applicable fees are paid, and the investigation shows no substantial violations, the City Clerk shall approve the renewal. The licensing authority shall issue a regulation defining those violations that are substantial violations, or if the City Clerk determines in the clerk's sole discretion that grounds exist for a possible non-renewal, the matter shall be referred to the licensing authority. The authority shall consider the matter at a public meeting and may renew the license or schedule the matter for a public hearing. If a public hearing is scheduled, publication, posting and notice requirements shall be the same as for a hearing on an original application.
- (C) The licensing authority may, for good cause, waive the time requirements set forth in this Section. Temporary licenses are available pursuant to the provisions of state law and may be issued by the City Clerk.
- (D) A license may be refused renewal for any reason provided by state law.

(1959 2037)

5-14-7. - License Denial, Suspension or Revocation.

- (A) A license may be denied, suspended for up to six months, or revoked for any reason provided by state law, which shall include any violation by the licensee or by any of its agents, servants, or employees of the provisions of applicable state law or this Code, or of any of the terms, conditions, or provisions of its license. Conviction of a violation shall be grounds for, but shall not be required prior to, any such action against a licensee. Such action may be taken by the licensing authority on its own motion or pursuant to the receipt of a complaint.
- (B) A license shall be denied, suspended or revoked only after investigation and notice to the licensee, and after a public hearing has been held. Publication, posting and notice requirements shall be the same as for a hearing on an original application. Notice to the licensee shall be given by mailing the same in writing by registered mail, return receipt requested, to the licensee at the address contained in the license.
- (C) Any license may be temporarily suspended without notice pending any prosecution, investigation, or public hearing. A summary suspension may be imposed for a period not exceeding 15 days.
- (D) Whenever any license is suspended or revoked, no part of the fee paid for the license shall be returned or refunded to the holder of such license.

- (E) An applicant may appeal a denial or a licensee may appeal a suspension or revocation of a license to a court of competent jurisdiction.
- (F) If the authority suspends a retail license, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having its license suspended for all or part of the suspension period. The authority may grant the petition if the criteria and conditions of Section 12-47-601(3)(a), C.R.S., are met.

(1959 2037 2229 3325)

5-14-8. - Transfers.

(A) *Change in Corporate Structure or Transfer of Stock:*

- (1) Corporate licensees subject to the Securities and Exchange Act of 1934, as amended, shall submit the names and addresses of all persons owning ten percent or more of the outstanding or issued capital stock, not more than ten days after such ownership occurs, and shall submit the names and address of all corporate officers and directors within ten days after their appointment, accompanied by the fee established in Section 5-14-5, W.M.C.
- (2) Any transfer of the capital stock, and any change in officers or directors of the corporation, of any corporation that is not subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended, shall be reported to the city clerk prior to such transfer or change, accompanied by the fee established in Section 5-14-5, W.M.C. After sufficient investigation by the police department, the City Clerk may approve the transfer or change or, in the clerk's sole discretion, refer the matter to the licensing authority. The authority shall consider the matter at a public meeting and may approve the transfer or change or may schedule a public hearing.
- (3) At the hearing, all interested parties may appear and be heard; provided, however, that the licensing authority shall consider only the character of the transferee and whether the transferee complies with all requirements of the code and state statutes.

(B) *Transfer of Ownership:*

- (1) Prior to any transfer of ownership, an application shall be submitted to the City Clerk, accompanied by the fee required in Section 5-14-5, W.M.C. After sufficient investigation by the police department, the City Clerk may approve the transfer or, in the clerk's sole discretion, refer the matter to the licensing authority. The authority shall consider the matter at a public meeting and may approve the transfer or may schedule a public hearing. If a public hearing is scheduled, publication, posting and notice requirements shall be the same as are required for a hearing on an original application.
- (2) At the hearing, all interested parties may appear and be heard; provided, however, that the licensing authority shall consider only the character of the new owner and whether the new owner complies with all requirements of the code and state statutes.
- (3) This subsection shall apply to all licensees, whether ownership is by an individual, partnership, corporation or other legal entity, except that changes of ownership of stock in a corporation shall be governed by subsection (A) above.

(C) *Transfer of Location:* A licensee wishing to transfer the location of its business shall file with the City Clerk a written request for the transfer on forms provided by the City, accompanied by the fee established in Section 5-14-5, W.M.C. After sufficient investigation by the police department and other city agencies, the City Clerk may approve the transfer or, in the clerk's sole discretion, refer the matter to the licensing authority. The authority shall consider the matter at a public meeting and may approve the transfer or may schedule a public hearing. If a public hearing is scheduled, publication, posting and notice requirements shall be the same as are required for a hearing on an original application. The licensing authority shall consider the reasonable requirements of the neighborhood and the desires of the inhabitants with respect to the new location. Petitioning shall be at the discretion of the licensing authority.

(D) *Manager's Registration:*

(1) Hotel and restaurant, lodging and entertainment, and tavern licensees employing a manager shall report the name of such manager to the City Clerk, accompanied by the fee established in Section 5-14-5, W.M.C. Any such licensee who wishes to change the manager shall request that such change be approved prior to the manager assuming his duties. After sufficient investigation by the Police Department, the City Clerk may approve the change or, in the Clerk's sole discretion, refer the matter to the Licensing Authority. The Authority shall consider the matter at a public meeting and may approve the change or may schedule a public hearing. If a public hearing is scheduled, publication, posting and notice requirements shall be the same as are required for a hearing on an original application.

(2) At the hearing, all interested parties may appear and be heard provided; however, that the licensing authority shall consider only the character of the new manager and whether the new manager complies with all requirements of the code and state statutes.

(1959 2037 2229; [Ord. No. 3848, § 4, 9-26-2016](#))

5-14-9. - Changing, Altering or Modifying Licensed Premises.

(A) After issuance of a license, the licensee shall make no physical change, alteration or modification of the licensed premises that materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications submitted at the time of obtaining the original license without the prior written consent of the licensing authority.

(B) The following procedure shall be utilized to obtain consent for a change, alteration or modification of the licensed premises:

(1) The licensee shall submit an application for authorization to change, alter or modify licensed premises to the City Clerk on forms supplied by the City Clerk, accompanied by the fee established in Section 5-14-5, C.R.S. The application shall include documentation showing the proposed changes to the drawings and specifications and a description of how the proposed changes will alter the licensed premises or the usage of the licensed premises.

- (2) If, after investigation, the City Clerk determines that the change, alteration or modification is not substantial or will not substantially change the nature of the licensee's business, the City Clerk may approve the proposed change, or, in the clerk's sole discretion, refer the matter to the licensing authority. The authority shall consider the matter at a public meeting and may approve the change or may schedule a public hearing. If a public hearing is scheduled, posting, publication, and notice requirements shall be the same as are required for a hearing on an original application. Criteria for approval shall be as for an original application. Petitioning shall be at the discretion of the licensing authority.

(1959 2037)

5-14-10. - Special Event Permit.

(A) *Definition:* A special event permit is a special license that authorizes a qualified organization or political candidate to sell, by the drink only, malt beverages or malt, spirituous or vinous liquors. A qualified organization is an organization that has been incorporated under the laws of this state for purposes of social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain; a regularly chartered branch, lodge or chapter of a national organization or society organized for such purposes that is not for profit; a regularly established religious or philanthropic institution; or a municipality owning arts facilities at which productions or performances of an artistic nature are presented.

(B) *Application Procedure:*

- (1) At least 30 days prior to the event, the applicant shall file a verified application for a special event permit with the City Clerk on forms provided by the City Clerk. The application shall include a fee in the amount specified in Section 5-14-5, W.M.C.
- (2) Upon receipt of the completed application, the City Clerk shall review the application according to the standards established below. The City Clerk shall also post the property, giving notice of the application and providing information for filing a protest, including the deadline for filing the protest. The property shall be posted at least ten days prior to any further action by the City Clerk.
- (3) Any protest shall be filed with the City Clerk in writing no later than the date established in the notice.
- (4) If no protest is received and the City Clerk's review finds no disqualifying factors, the City Clerk shall issue the permit.
- (5) If a protest has been filed, or disqualifying factors have been identified, or at the discretion of the City Clerk, a public hearing before the board shall be scheduled. Notice of the public hearing shall be posted on the property no less than ten days prior to the hearing. The City Clerk shall notify the applicant and any person who has filed a protest.
- (6) Upon approval of the application and within ten days after issuing the permit, the City Clerk shall submit the approved application to the state licensing authority in the form required by state law.

- (7) The licensing authority may require an applicant to post a performance bond to assure compliance with the provisions of this Code or state statute.

(C) *Standards for Approval by City Clerk:*

- (1) The applicant has, for a period of three years, conducted a substantially similar event with no violations of the Liquor Code or Beer Code; or the event has been sponsored by the City with no such violations in the previous three years; and
- (2) Any investigation by the police department reveals no evidence of substantial problems with crowd control, assaults or fighting or similar misconduct, or any other history of problems associated with the event.
- (3) If the application does not meet the above standards, the application shall be scheduled for decision by the board.

(D) *Grounds for Issuance:*

- (1) A special event permit may be issued only upon a satisfactory showing by an organization or a qualified political candidate that:
 - (a) Existing licensed facilities are inadequate for the purposes of serving members or guests of the organization or political candidate, and that additional facilities are necessary by reason of the nature of the special event being scheduled; or
 - (b) The organization or political candidate is temporarily occupying premises other than the regular premises of such organization or candidate during such special events as civic celebrations or county fairs, and that members of the general public will be served during such special events.
- (2) The City Clerk and the licensing authority shall also consider the eligibility of the applicant and whether the issuance would be injurious to the public welfare by reason of the nature of the special event, its location within the community, or the failure of the applicant in a past special event to conduct such event in compliance with applicable laws and regulations.

(1959 2037 2570 3609)

5-14-11. - Optional Premises Licenses and Permits.

- (A) An annually renewable optional premises license for the sale or service of alcoholic beverages may be issued by the local licensing authority for one or more optional premises within an outdoor sports and recreational facility that charges a fee for the use of such facility.
 - (1) An application for an optional premises license shall be accompanied by the fees required by this Title.
 - (2) An optional premises license shall allow the licensee to sell and serve alcoholic beverages by the drink only to customers for consumption on the optional premises and for storage of alcohol beverages in a secure area on or off the optional premises for future use on the optional premises.

- (3) An optional premises license application shall be reviewed and approved or denied according to Section 5-14-4, W.M.C., herein, and all other provisions of this Title shall apply.
- (B) An annually renewable optional premises permit for a hotel and restaurant license may be issued by the local licensing authority for an outdoor sports and recreational facility that charges a fee for the use of such facility, if such facility is part of an existing or a new hotel and restaurant license, and the optional premises is on or adjacent to the hotel and restaurant premises. Any optional premise permit shall allow the licensee to sell or serve alcoholic beverages only on the optional premises specified in the permit.
- (1) An application for an optional premises permit for a hotel and restaurant license shall be made by the applicant for a hotel and restaurant license or by the hotel and restaurant licensee.
- (2) Meals shall be served whenever and wherever alcoholic beverages are sold, served or consumed between the hours of 8 a.m. and 11 p.m. weekdays, and 8 a.m. and 8 p.m. Sundays and Christmas. No alcoholic beverages may be sold, served or consumed outside the designated areas.
- (3) An application for a new hotel and restaurant license with optional premises permit shall be processed in the same manner as any other hotel and restaurant license application. If an application to permit an optional premise is filed in connection with an existing hotel and restaurant license, the application shall be processed in the same manner as an application to modify or expand licensed premises. No local fee shall be required in connection with an application for an optional premises permit for an existing hotel and restaurant license.
- (4) In addition to or in lieu of any enforcement actions the authority takes against the hotel and restaurant license for violations of this Code or the Colorado Liquor Code and regulations adopted pursuant to such codes, the authority may decline to renew the optional premises permit for good cause shown, subject to judicial review. In addition, the authority may suspend or revoke the optional premises permit in accordance with the procedures specified in Colorado Liquor Code Regulation 47-110.1, as the same may be amended from time to time, and upon consideration of the criteria specified in this Title.
- (5) Nothing contained in this Section shall preclude the local licensing authority, in its discretion, from denying an application for an optional premises permit or imposing conditions, restrictions or limitations on any optional premises permit, in order to serve the public health, safety and welfare. Any such conditions may be imposed when the permit is initially issued or should any specific event or use of the optional premises so warrant.
- (C) Unless otherwise permitted by law, it shall be unlawful for any person to sell or dispense alcoholic beverages at an outdoor sports and recreational facility without having first obtained a valid optional premises license or optional premises permit or in violation of any provision, restriction or limitation of such a license or permit.
- (D) Definitions: The following terms shall be defined as provided below. Terms not defined in this subsection (D) shall be defined consistent with state law.

Ancillary facility shall mean a permanent, temporary or moveable structure or vehicle located on optional premises and used to dispense alcoholic beverages.

Athletic field shall mean a prepared surface outdoors for use while playing or participating in an organized sport.

Outdoor sports and recreational facility shall mean a facility that consists of an athletic field, golf course, tennis court, or some combination thereof.

- (E) No one licensee or permittee shall have more than five optional premises within an outdoor sports and recreational facility. No optional premise may include a parking lot.
- (F) Application for an optional premises license or an optional premises permit as part of a hotel and restaurant license shall be made to the City Clerk, upon forms to be furnished by the City Clerk for that purpose, which forms shall require the following information in addition to any information required by the state licensing authority and this Title:
 - (1) A detailed diagram of the outdoor sports and recreational facility indicating:
 - (a) The location of the outdoor sports and recreational facility;
 - (b) The location of all proposed optional premises;
 - (c) The proposed locations of the ancillary facilities that are proposed to be used for the sale or service of alcoholic beverages;
 - (d) The seating, if any;
 - (e) Restroom facilities, if any;
 - (f) Restrictions, if any, to access to the optional premises; and
 - (g) Location of secured area or areas for use in storing malt, vinous and spirituous liquors for future use on the optional premises.
 - (2) A written statement setting forth what will be done to secure the optional premises and storage area or areas and the reason the licensing authority should grant the license or permit; and
 - (3) Such other information as reasonably may be required to satisfy the local licensing authority that control of the optional premises will be assured, and that the health, safety and welfare of the neighborhood and outdoor sports and recreational facility users will not be adversely affected should the license or permit be issued.
- (G) If the applicant does not own the proposed optional premises, it shall submit to the City Clerk a written statement by the owner of the premises approving the application sought.
- (H) The applicant shall provide the City Clerk with evidence that the state licensing authority has approved the location proposed to be optional premises, as required by the Colorado Liquor Code.
- (I) It shall be unlawful for any alcoholic beverages to be served on a licensed or permitted optional premises without the licensee or permittee having first provided written notice to the City Clerk and the state licensing authority no less than 48 hours prior to such service of alcoholic beverages. Such notice shall contain specific days and hours on which the optional premises are to be used for the sale or service of alcoholic beverages. Nothing contained in

this Section shall preclude written notice, submitted within the time limits set out above, from specifying that an optional premise may be utilized for a continuous or extended period of time. However, should any special or unusual event be anticipated to occur during any extended period of time, no less than 48 hours written notice should be given to the City's Chief of Police, or his designee, who shall have the authority, on behalf of the local licensing authority, to impose any conditions reasonably related towards serving the public health, safety and welfare. The licensee or permittee may file more than one notice during a calendar year.

(1959 3609 3679)

5-14-12. - Penalty.

It shall be unlawful for any person to violate a provision of this Chapter. A violation of this Chapter shall be a criminal offense. Violators shall be subject to the penalties provided by Section 1-8-1, W.M.C., including imprisonment, and may also be subject to civil remedies provided by Chapter 4 of Title VIII of this Code. A separate offense shall be deemed committed upon each day such person is in violation of this Chapter.

(1959 2000 2037)

5-14-13. - Distance Requirement Eliminated.

The distance restriction imposed by Section 12-47-313(1)(d), C.R.S., for the classes of licenses authorized pursuant to Section 12-47-401, C.R.S., is hereby eliminated.

(2229 2395 3325 3427)

5-14-14. - Reserved.

(Repealed by Ordinance 3427.)

5-14-15. - Liquor Tastings.

- (A) *Authorization:* Licensed retail liquor stores and liquor-licensed drugstores are hereby authorized to conduct tastings in compliance with Section 12-47-301, C.R.S., as "tastings," as defined therein.
- (B) *Application; Fee:* An applicant for a tasting permit must complete an application on a form to be provided by the City Clerk and accompany the application with a \$50.00 fee.
- (C) *Violation:* It shall be unlawful for any person to conduct a tasting without a tasting permit issued by the City or to conduct such tasting in any manner not in compliance with the rules and regulations in Section 12-47-301, C.R.S., or this Section. Failure to comply with said sections shall be considered a violation of the Colorado Beer and Liquor Codes and may be sanctioned as any other violation of the Codes.

- (D) *Term; Renewal:* Tasting permits shall be valid for one year and shall be issued concurrent with the renewal of the retail liquor store license. Renewal shall be administratively accomplished by the City Clerk, provided that a renewal fee of \$50.00 is paid and the permittee has no violations of Section 12-47-301, C.R.S., in which case the renewal application shall be considered by the Special Permit and License Board.
- (E) The permittee shall provide the City Clerk with a schedule of dates and times the tastings will be conducted. Such notice shall be at least 72 hours prior to the tasting.

(3147)

5-14-16. - Removal of Vinous Liquor from Licensed Premises.

- (A) Notwithstanding any provision of this Chapter to the contrary, a licensee described in subsection (B) of this Section may permit a customer of the licensee to reseal and remove from the licensed premises one opened container of partially consumed vinous liquor purchased on the premises, so long as the originally sealed container did not contain more than 750 milliliters of vinous liquor.
- (B) The provisions of this Section shall apply to a licensee:
 - (1) That is duly licensed as a manufacturer's licensee under Section 12-47-402, C.R.S., a limited winery licensee under Section 12-47-403, C.R.S., a beer and wine licensee, a hotel and restaurant licensee, a tavern licensee, a brew pub licensee, a vintner's restaurant licensee, a club licensee, or distillery pub licensee under Section 5-14-4, W.M.C.; and
 - (2) That has meals, as defined in Section 12-47-103(20), C.R.S., available for consumption on the licensed premises.

(3325; [Ord. No. 3848, § 5, 9-26-2016](#))

CHAPTER 15. - MASSAGE PARLORS

5-15-1. - Legislative Declaration.

The City Council hereby declares that the operation of massage parlors in this City affects the public health, safety, and welfare and that City regulation of such operation is in the public interest.

(1959)

5-15-2. - Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the following meanings, unless the content clearly indicates otherwise:

License shall mean a grant of a licensee to operate a massage parlor.

Licensed premises shall mean the premises specified in an approved application for a license under this Chapter that are owned or in the possession of the licensee and within which such licensee is authorized to carry on the practice of massage.

Location shall mean a specific parcel of land that may be identified by an address or by other descriptive means.

Massage therapy shall mean a method of treating the body for remedial or hygienic purposes by a massage therapist, including, but not limited to, rubbing, stroking, kneading, or tapping with the hand or an instrument or both.

Massage parlor shall mean a parlor providing massage, but it does not include training rooms of public and private schools accredited by the state board of education or approved by the division charged with the responsibility of approving private occupational schools, training rooms of recognized professional or amateur athletic teams, and licensed health care facilities. A facility that is operated for the purpose of massage therapy performed by a massage therapist is not a massage parlor.

Massage therapist shall mean an individual registered by the State of Colorado to engage in the practice of massage therapy pursuant to Title 12, Article 35.5, C.R.S.

Other massage services shall mean any services that are offered or performed for compensation, and that are advertised or represented as massage or that involve the touching of the body with the purpose of inducing any type of pleasurable or erotic experience by a person who is not licensed pursuant to this Chapter as a massage therapist.

Party in interest shall mean the applicant, a resident of the neighborhood under consideration, or the owner or manager of a business located in the neighborhood under consideration.

Person shall mean a natural person, partnership, association, company, corporation, organization, or managing agent, servant, officer, or employee of any of them.

Premises shall mean a distinct and definite location that may include a building, a part of a building, a room, or any other definite area contiguous to the building, part of a building or room.

(1938 1959 2189 3443 3563)

5-15-3. - License Required; State Statutes.

- (A) It shall be unlawful for any person to operate a massage parlor within the City of Westminster without first obtaining a license therefor pursuant to this Chapter.
- (B) The Colorado General Assembly has declared that the licensing and regulation of massage parlors is a matter of statewide concern. All licensing requirements and regulations specified in Article 48.5 of Title 12, C.R.S., shall be complied with in the local licensing process and shall control, in the event that inconsistent requirements are set forth in this Chapter.
- (C) The following classes of persons and establishments are exempt from this Chapter:
 - (1) Physicians, osteopaths, physical therapists, chiropractors licensed to practice in this state.
 - (2) Registered nurses and licensed practical nurses who are licensed to practice in this state while performing massage therapy services in their usual nursing duties.
 - (3) Barbers and cosmetologists duly licensed under the laws of this state in the course of practice of their usual and ordinary licensed profession, as defined by state statute.
 - (4) Massage therapy practiced at the athletic department of any accredited school, college, university or seminary or in connection with the conduct of professional athletics.
 - (5) Hospitals, clinics, nursing and convalescent homes and other similar institutions where massage therapy may be used and that are dedicated to medical or nursing practices licensed under state statutes.
 - (6) Massage therapy practiced in an institution of learning established for such instruction under Article 59, Title 12, C.R.S.

(1959 2189 3443)

5-15-4. - License Application.

- (A) The applicant for a license to operate a massage parlor shall submit a verified application to the City Clerk on forms provided by the City Clerk. The application to operate a massage parlor shall include complete plans and specifications for the interior of the premises to be licensed, a copy of the lease or other evidence of the applicant's right to possession of the premises, information regarding the zoning of the location of the premises, and any other information that is required by state statute.
- (B) The application for a license to operate a massage parlor shall be reviewed by the City Manager, who, within ten days after receipt of the application and after such additional

investigation as he may deem necessary, shall schedule a public hearing before the special permit and license board not less than 30 days from the date of the application.

- (C) Notice of a hearing on an application for a license to operate a massage parlor shall be mailed to the applicant by the City Clerk not less than ten days before the hearing date. Notice of such public hearing shall also be given by publication in a newspaper of general circulation in the community once, not less than ten days prior to the hearing date, and by posting a notice of hearing upon the premises for at least ten days prior to the hearing. Publication and posting shall be done by the City Clerk.
 - (1) Notice given by posting shall be placed so as to be conspicuous and plainly visible to the general public and shall include a sign of suitable material, not less than 22 inches wide and 26 inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners, and, if the applicant is a corporation, association, or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary, and manager or other managing officers.
 - (2) Notice given by publication shall contain the same information as that required for signs.
- (D) The City Clerk shall propose the boundaries of the neighborhood in writing to the special permit and license board with a copy to the applicant. If a majority of the board or the applicant disputes the proposed neighborhood boundaries, the issue shall be considered by the board at a public hearing. A dispute of the boundaries by the applicant must be filed within ten days of the letter notifying the applicant of the boundaries established.
- (E) Prior to the public hearing, the City or its designee shall circulate petitions to determine the reasonable requirements of the neighborhood and the desires of the inhabitants regarding the application for a license. The petition form shall be approved by the City.
- (F) At least five days prior to the date of the public hearing, the City Clerk shall send the petition and investigation results to the applicant and make them available to other interested parties.
- (G) After such public hearing, the special permit and license board shall make findings of fact and a recommendation to the City Council, with or without conditions, that may either grant or deny the license consistent with the findings and recommendation of the Special Permit and License Board, or may schedule the matter for further hearing before the City Council. If such further hearing is held, the City Council may grant or deny the license notwithstanding the recommendation of the Special Permit and License Board. A copy of the decision of the City Council, its findings of facts and conclusions, shall be sent to the applicant by certified mail to the address shown on the application within 30 days after the date of the public hearing.
- (H) In determining whether to grant or deny the license, the Special Permit and License Board or the City Council shall consider all factors allowed pursuant to state statutes, including the following:

- (1) The number, type, and availability of other massage parlors located near or in the neighborhood;
 - (2) The character of the applicant or its officers or directors, including information provided by a background check and inspection of the premises made by the police department;
 - (3) The applicant's prior experience, qualifications and fitness to operate such a business;
 - (4) The reasonable requirements of the neighborhood and the desires of the inhabitants, including any petitions or remonstrances evidencing such requirements and desires;
 - (5) Pedestrian safety;
 - (6) Traffic volume and adequacy of parking and access;
 - (7) Essential character of the neighborhood and the applicant's effect on the peace of the neighborhood;
 - (8) Compliance of the structure with all applicable zoning and building regulations;
 - (9) Police activity in comparable businesses; and
 - (10) Architectural compatibility with the character of the neighborhood.
- (I) Any party in interest shall be allowed to present evidence and cross-examine witnesses at the public hearing.

(1959 2189 3443)

5-15-5. - Fees.

- (A) All original applications to operate a massage parlor shall be accompanied by a nonrefundable fee of \$350.00 to defray the cost of reviewing and evaluating the application. The applicant shall also reimburse the City for the actual cost of petitioning.
- (B) The nonrefundable fee for renewal of a license to operate a massage parlor shall be \$150.00, payable at the time of filing the application for renewal.

(1959 2189 3443)

5-15-6. - Renewal.

All licenses issued pursuant to this Chapter shall expire December 31st of the year for which issued, unless cancelled, suspended or revoked, and shall be renewed annually upon application for renewal and payment of the required fees, unless renewal is denied as provided below.

(1959 2189 2754)

5-15-7. - License Denial, Suspension, or Revocation.

- (A) A license may be denied, cancelled, denied renewal, suspended or revoked for any violation of the provisions of this Chapter, for any reason set forth in Chapter 1 of this Title, or on the grounds that the health, safety or welfare of the community may be endangered by the continued operation of the licensee, or any of the following:
 - (1) The issuance would be detrimental to the public health, safety, or welfare, due to the character, reputation, or moral integrity of the applicant;
 - (2) The character of the applicant or licensee, or its officers, directors, or partners is such that a violation of this Chapter would be likely to result if a license were granted;
 - (3) The licensed premises have been inactive for at least three months;
 - (4) Violation by the licensee or by any of its agents, servants, or employees of state law or of this Code; or
 - (5) For any cause specified by law.
- (B) A license may be cancelled, denied renewal, suspended or revoked after the licensee has been given notice and hearing. The notice shall set forth the reasons for the proposed action, in writing, and shall be given by personal delivery to the applicant or mailed to the address contained in the license, postage prepaid, or as provided in Chapter 1 of this Title. Said notice shall be given no less than ten days prior to a hearing to be scheduled before the Special Permit and License Board.
- (C) A license may be summarily suspended for no more than 30 days by the City Manager when required for the immediate protection of the public health, safety and welfare. A hearing shall be scheduled as soon as may be reasonably possible.
- (D) The special permit and license board shall conduct an appeal of the denial of a new license or a hearing pursuant to the procedures established for hearings in Chapter 1 of this Title. The special permit and license board shall deliver its decision in writing within 30 days.
- (E) Decisions of the Special Permit and License Board are final, subject only to appeal to a court of competent jurisdiction.

(1959 2574)

5-15-8. - Change of Location; Transfer of Business or Stock.

- (A) No change of location for licensed premises shall be allowed.
- (B) Transfer of business or stock:
 - (1) Within 30 days after the transfer of ownership ten percent or more of a partnership interest or of the capital stock of the corporation, the new owner of the stock or business shall file with the City Clerk a written report of the transfer on forms provided by the City Clerk. The report shall be accompanied by an investigation fee of \$250.00.
 - (2) Upon receipt of the report of transfer, the City Clerk shall report the transfer to the City Manager, after sufficient investigation by the Police Department, and the City Manager may approve the transfer or, in his sole discretion, refer the matter to the special permit

and license board for a public hearing regarding the transfer, at which parties in interest may be heard.

- (3) The Special Permit and License Board shall hold the hearing after proper notice is given. Publication, posting and notice requirements shall be the same as are required for a hearing on an original application.
- (4) At the hearing, all interested parties may appear and be heard; provided, however, that the board shall consider only the character of the proposed new owner or owners and whether the new owner or owners comply with all requirements of the Code and state statutes.

(1959 2574)

5-15-9. - Identity Cards.

Every licensee or agent or employee of the licensee shall, prior to commencing work in or upon the licensed premises, apply for and obtain an identity card from the Westminster Police Department, and shall carry the card at all times while in or upon the licensed premises. The nonrefundable application fee for a card shall be \$5.00. The Police Department shall do a background check on the applicant prior to issuance of the card. The card shall be in the form required by the City.

(1959 2189)

5-15-10. - Prohibited Acts.

(A) It shall be unlawful for any person:

- (1) To operate a massage parlor without holding a validly issued license;
- (2) To work in or upon the licensed premises of a massage parlor without obtaining and carrying a valid identity card pursuant to Section 5-15-9, W.M.C.;
- (3) To render massage therapy services for compensation without valid registration pursuant to Title 12, Article 35.5, C.R.S.;
- (4) To perform other massage services within the City;
- (5) To obtain the services provided in a massage parlor by misrepresentation of age or by any other method in any place where massage is practiced when such person is under 18 years of age, unless such person is accompanied by his parent or has a physician's prescription for massage services;
- (6) To allow the sale, giving, or procuring of any massage services to any person under the age of 18 years, unless such person is accompanied by his parent or has a physician's prescription for massage services;
- (7) To permit any person under the age of 18 years to be employed as an employee in a massage parlor. If any person who, in fact, is not 18 years of age exhibits a fraudulent

proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this Chapter, unless the person employing such person knew or should have known that the proof of age was fraudulent.

- (8) To fail to display at all times in a prominent place on the licensed premises a printed card with a minimum height of 14 inches and a width of 11 inches with each letter a minimum of one-half inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE IS ACCOMPANIED BY HIS PARENT OR HAS A PHYSICIAN'S PRESCRIPTION FOR MASSAGE SERVICES.

IT IS ILLEGAL FOR ANY PERSON TO ALLOW A PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE IS ACCOMPANIED BY HIS PARENT OR HAS A PHYSICIAN'S PRESCRIPTION FOR MASSAGE SERVICES. FINES OR IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS UNDER ARTICLE 48.5 OF TITLE 12, COLORADO REVISED STATUTES.

- (9) To possess, consume or dispense, or to allow the possession, consumption or dispensation of alcoholic beverages, drugs or narcotics upon the premises. This subparagraph shall not apply to the use of drugs or narcotics that have been prescribed by a licensed physician.

(1959 2189 3443)

5-15-11. - Penalty.

- (A) It shall be unlawful for any person to violate a provision of this Chapter. A violation of this Chapter shall be a criminal offense. violators shall be subject to the penalties provided by Section 1-8-1, W.M.C., including imprisonment, and may also be subject to civil remedies provided by Chapter 4 of Title VIII of this Code. A separate offense shall be deemed committed upon each day such person is in violation of this Chapter.
- (B) In addition to any other penalties, the court trying such offense may decree that any license issued under the provisions of this Chapter be suspended or revoked and may decree that no such license shall thereafter be issued to any such person for a period not to exceed five years.
- (C) The penalties provided in this Section shall not be affected by the penalties provided in any other provision of state or local law, but shall be construed to be in addition to any other penalties.

(1959 2000 3443)

CITY OF WESTMINSTER
SPECIAL PERMIT AND LICENSE BOARD
BYLAWS

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PART I
AUTHORITY AND COMPOSITION OF THE BOARD

1. APPLICABILITY OF BYLAWS:

1.1 In addition to the Charter and Ordinances of the City of Westminster and the Colorado Beer and Liquor Codes and other applicable laws, these Bylaws shall govern all proceedings before the Special Permit and License Board of the City of Westminster. If there is any conflict between these Bylaws and the above-cited laws, the laws shall prevail. These Bylaws replace and supersede any previously adopted bylaws or rules of procedure for the Special Permit and License Board.

1.2 These Bylaws shall apply to all applications or other matters received on or after the date of adoption.

1.3 These Bylaws shall be reviewed by the Board periodically. The Board may amend the Bylaws when it determines such amendment is necessary.

2. OFFICERS:

2.1 Officers of the Board shall consist of a Chairperson, Vice Chairperson, and Secretary. At its first regular meeting of an odd-numbered calendar year, the Board shall elect one of its members to be chairperson and one of its members to be vice-chairperson, for a two-year term. In the event that either position becomes vacant before the end of the term, the Board shall elect a regular member to serve as chairperson or vice-chairperson until the end of the term. No member shall be eligible for election as chairperson or vice-chairperson unless that member has previously served at least one year as a member of the Board; provided, however, that if no member is so eligible, the Board shall elect the member it deems best qualified. Elections shall be by secret ballot, conducted by the City Clerk. The City Clerk shall serve as Secretary.

2.2 The Chairperson shall preside at all meetings, and shall rule on all points of order or procedure, and on the admissibility of evidence. The Vice Chairperson shall assume the duties of the Chairperson in the Chairperson's absence. The Secretary shall conduct all official correspondence, keep the minutes of proceedings, publish all notices required by ordinance or statute, and keep the files on each case which comes before the Board.

3. MEETINGS:

3.1 Regular meetings shall be held on the first and third Wednesday of each month, unless there is no business to transact.

3.2 Special meetings may be called by the Chairperson or by a majority vote at a regular meeting, or by a poll of all members with the majority assenting. All members shall be notified of a special meeting at least twenty-four hours prior to the meeting.

3.3 Meetings shall be held at 7:00 p.m. in the City Council Chambers, unless otherwise established by the Board.

4. **QUORUM:** A quorum shall consist of four members. All motions, decisions, and other actions of the Board shall be by majority vote of those present. If the vote is a tie, the action is defeated.
5. **PUBLIC NOTICE:** Notice of all public hearings and other actions shall be given as required by City ordinance and state statute. The City Clerk shall publish such notices.
6. **CONTINUED MEETINGS OR PUBLIC HEARINGS:** The Board may continue any matter to a later date upon motion of any member and majority vote thereon. If the matter is continued to a date certain after consideration of the item has begun, no further public notice need be given. If the matter is continued prior to Board consideration and public notice is required, the notice shall be re-published.
7. **CONTINUING A PUBLIC HEARING:** A continuance of a public hearing requested by the applicant or licensee prior to the scheduled date of the hearing may be granted by the Chairperson upon good cause shown. If the request for a continuance is made at the hearing, the Board shall grant or deny the request by majority vote.
8. **NATURE OF PUBLIC HEARINGS:** All hearings before the Board may be less formal than judicial proceedings and should be conducted so as to serve the best interests of the public. The Board must conduct the hearing in accordance with the requirements set out in the Charter and ordinances of the City of Westminster
9. **DUTIES OF THE BOARD:** The Board is responsible for the issuance, renewal, revocation, and suspension of licenses issued pursuant to the Colorado Beer and Liquor Codes. In addition, if appealed by an applicant or licensee, the Board is responsible to review adverse actions that have been proposed against most other types of City-issued licenses. Part II of these Bylaws applies to the Board's duties related to licenses issued pursuant to the Colorado Beer and Liquor Codes. Part III of these Bylaws applies to the Board's duties related to appeals of proposed adverse actions against other types of City-issued licenses.

PART II BOARD'S DUTIES RELATED TO LIQUOR LICENSES

10. **LIQUOR LICENSE ISSUANCE:**The Board must conduct a public hearing to determine whether the applicant has shown that the application meets the criteria of city ordinances, state statutes, and other applicable law so that a license should be issued.
11. **ROLE OF THE BOARD:** The Board's responsibility at a hearing is to act as a fact-finder and to reach a decision regarding the approval or denial of the application or regarding the upholding or reversing of a proposed adverse action. The Board is responsible for conducting the hearing.
12. **PARTIES IN INTEREST:**
 - 12.1 There are several parties in interest in a public hearing regarding a liquor license:

“Interested parties” are the applicant, those persons who are adult residents in the neighborhood, owners or managers of businesses located in the neighborhood, the principal or representative of a school located within five-hundred feet of the premises, and, for purposes of presenting

evidence only, a representative of an organized neighborhood group which encompasses part or all of the neighborhood, all as defined by state law.

12.2 In addition, testimony and evidence may be presented by the City Clerk, a representative of the petitioning company hired by the City, a representative of the police department and other departments as appropriate to the application or proceeding.

13. THE RIGHTS OF PARTIES IN INTEREST: A party in interest has the right to appear and be heard, either in person or by counsel. Neither the Board nor the City has the responsibility to appoint or pay for counsel for the participants. If a party in interest does not appear after receiving proper notice, the party has waived his/her right to appear and the Board may proceed with the hearing without the presence of the party.

14. PREHEARING PROCEDURES:

14.1 Prehearing procedures required or permissive:

(a) The procedures in this section 14 are required only where both the City and the applicant or licensee will be represented by an attorney, or if the City opposes the application.

(b) An applicant or licensee not represented by an attorney may request to participate in and be bound by these procedures. The request shall be made in writing to the City Attorney no later than thirty (30) days before the initial date scheduled for the hearing. Upon making the request, the procedures in this section shall be binding upon both the City and the applicant or licensee.

14.2 APPLICATION HEARINGS: The procedures of this subsection 14.2 apply only if the City opposes an application for a license or permit:

(a) No later than forty-five (45) days before the initial date scheduled for the hearing on the application, the City Attorney shall mail the applicant a written notice of the City's intention to oppose the license or permit and shall confirm that the licensee has a copy of or access to this section 14.

(b) If the applicant will be represented by an attorney at the hearing, the City Attorney and applicant's attorney shall, no later than twenty (20) days before the initial date scheduled for the hearing:

(i) Exchange written lists of the name, address, and telephone number of each witness the attorney intends to call at the hearing and a brief statement of the subject matter about which the witness will testify. The disclosure of any expert witness shall also include a brief statement of the expert's opinion and the expert's qualifications.

(ii) Exchange copies of exhibits each intends to present at the hearing. Oversize or other exhibits which cannot be copied easily need only be made available for inspection.

(iii) Attempt to stipulate to admissibility of exhibits and matters of fact, and agree to an estimate of the time needed for the hearing.

(c) If an attorney wishes to present additional witnesses or exhibits as a result of the disclosures by the other attorney, then no later than ten (10) days before the initial date scheduled for the

hearing, the attorney shall so advise the other attorney and provide a supplemental witness list and copies of any additional exhibits.

(d) At or before the scheduled hearing, the City Attorney shall provide the Chairperson with a list of all exhibits, witnesses, stipulations, and time estimate.

(e) Any witness or exhibit not disclosed as set forth above may be excluded from evidence; however, the Chairperson may allow witnesses or exhibits if the need for them was not reasonably foreseeable at the time the disclosures were due; and the Chairperson may alter the time limits for good cause.

14.3 SHOW CAUSE HEARINGS: The procedures of this subsection 14.3 apply only to a hearing held in response to a show cause order:

(a) No later than forty-five (45) days before the initial date scheduled for a show cause hearing, the City Attorney shall confirm the licensee has a copy of or access to section 14.

(b) If the licensee will be represented by an attorney at the hearing, the City Attorney and the licensee's attorney shall comply with and be bound by sections 14.1 and 14.2 above.

15. CONDUCTING THE HEARING: It is the responsibility of the Chairperson to ensure that the hearing proceeds smoothly. The Chairperson's powers shall include, but not be limited to:

(a) Taking action necessary to maintain order;

(b) Ruling on motions and procedural and evidentiary questions arising before or during the hearing;

(c) Calling recesses, adjourning the hearing, or granting continuances;

(d) Prescribing and enforcing general rules of conduct and decorum;

(e) Setting time limits on testimony, presentation of evidence, or questions.

16. STANDARDS OF CONDUCT: To ensure a fair but efficient hearing, the Chairperson must enforce proper conduct on the part of persons present. The Chairperson shall recognize the person who is entitled to speak, and refuse to allow any person to speak until that person has been recognized. In case of disturbance, the Chairperson may ask the offending person to be quiet or to leave the hearing. If necessary, after appropriate warning, the Chairperson may rule that a person has forfeited the right to participate in the hearing. The Chairperson may order a person removed from the room.

17. CONDUCT OF BOARD MEMBERS: Board Members should plan to attend all of the sessions necessary to conclude a hearing on a particular case. Board Members may examine witnesses and ask questions of counsel. Board Members should avoid any impression of prejudice against or favoritism toward any party, attorney, or witness, especially in questioning a witness.

18. RECESS: The Chairperson may, at any time, call a recess in order to discuss with the Board's counsel any questions of law or procedure arising during the course of the proceedings.

19. PROCEEDINGS SHALL BE PUBLIC: All hearings shall be open to the public and the Board's decision shall be public information.

20. RECORDING: Meetings of the Board shall be electronically recorded. Public hearings shall be recorded electronically or by a certified court reporter, as the City Clerk deems necessary.

21. ORDER OF PROCEEDINGS:

21.1 The Chairperson shall announce the application or other matter to be considered, and briefly explain the procedure to be followed.

21.2 The City Clerk shall present the Clerk's report, summarizing the application, the documents accompanying it, and the result of the Clerk's investigation. The Clerk's file shall be offered into evidence.

21.3 The Chairperson shall then ask the parties in interest to identify themselves and their counsel, when present. All parties in interest shall then be allowed to state for the record any objections they have to the proceedings.

21.4 All exhibits that have been stipulated to by the parties and all other exhibits, including petitions, received by the Board prior to the hearing should be marked and made a part of the record. Petitions may be presented by the City, the applicant or other interested parties. Signatures on petitions must be accompanied by the address of the person signing. Such petitions shall be considered as evidence, but the total numbers for or against shall not be the sole criteria in reaching a decision.

21.5 The person presenting the evidence for the applicant may make an opening statement summarizing what the evidence will show, and why the application should be approved.

21.6 The applicant shall present testimony or other evidence, including witnesses in support of the application. In liquor license matters, the applicant or the supporting witnesses may be cross-examined by an interested party. Interested parties wishing to cross-examine are encouraged to appoint a spokesperson to conduct the cross-examination to avoid repetition and to expedite the hearing.

21.7 Interested parties other than those called by the applicant shall present their testimony or other evidence in support of the application. In liquor license matters, these interested parties may be cross-examined by an interested party. Interested parties wishing to cross-examine are encouraged to appoint a spokesperson to conduct the cross-examination to avoid repetition and to expedite the hearing.

21.8 Interested parties in opposition to the application shall present their testimony or other evidence. These interested parties may be cross-examined by the applicant.

21.9 The applicant may present testimony or evidence to rebut the testimony or evidence of interested parties in opposition. Cross-examination shall be as above.

21.10 Members of the Board may ask questions of any witness.

22. OATHS AND AFFIRMATIONS: As a general rule, all testimony should be given under oath. When an oath or affirmation is required, its purpose is to impress on the witness the seriousness of the occasion in order to assure that his/her testimony will be truthful. If the witness objects to "swearing" or "taking an oath," the word "affirm" may be substituted. If the testimony of the witness is interrupted by a recess, it is not necessary to administer the oath again when the hearing reconvenes. The witness may, however, be reminded that he/she is still under oath.

23. EVIDENCE:

23.1 The purpose of evidence is to provide the facts necessary to reach a decision in a case. The Board is not bound by the strict rules of evidence which govern court proceedings, except that the evidence admitted must be of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

23.2 A Board Member must consider evidence presented at the hearing, and may consider only such evidence. A Board Member may not consider information obtained outside the hearing. A Board Member is entitled to draw inferences from the evidence and to assign to the evidence the weight he/she believes appropriate.

24. FORMS OF EVIDENCE: Evidence includes testimony, documents, reports, technical and scientific facts, and items such as physical illustration of a fact before the Board.

25. ADMISSIBILITY:

25.1 The Board may admit some hearsay evidence, even though this would not be admitted in a court.

25.2 An interested party should inform the Chairperson if he/she objects to the admission of any evidence. If the Chairperson sustains the objection, the evidence shall be immediately withdrawn from consideration. If not, the proceeding shall continue with the evidence admitted. If a document is offered but not admitted into evidence, it shall remain a part of the record, but the Board shall not consider it in reaching a decision.

25.3 The Members of the Board may utilize their experience and general knowledge of the community in the evaluation of evidence presented.

26. EXCLUSION OF EVIDENCE: Evidence that is irrelevant, immaterial, or unduly repetitious may be excluded.

27. OBJECTIONS:

27.1 An interested party may object to evidence being offered by another party.

27.2 Upon making an objection, the party shall state the basis for the objection, with a very short statement in support of the objection. The opposing party shall be allowed to make a short reply to the argument.

27.3 The Chairperson shall note the objection for the record, consult with the Board's attorney if necessary, and rule whether the evidence is admissible or not.

28. EXHIBITS: The Chairperson shall see that all documentary and physical evidence is marked for identification and that a list is kept that describes the exhibits and their identification. The list shall note whether the exhibit was admitted as evidence. The original shall be given to the Chairperson, unless the Chairperson allows a copy to be substituted. Copies shall generally be allowed in evidence in lieu of original documents unless a party challenges the copy's authenticity.

29. THE BOARD'S DECISION:

29.1 At the conclusion of the testimony of the applicant and all interested parties, the Chairperson shall declare the public testimony portion of the hearing closed. No further evidence shall be presented or considered by the Board, unless the hearing is reopened after all parties are notified and given an opportunity to be heard. Hearings will be reopened only in unusual circumstances and only if required by justice and fundamental fairness.

29.2 The Board shall consider and discuss the evidence. The Board may decide the matter and announce its decision at the hearing, or, in its discretion, take the matter under advisement for a reasonable time. If the matter is continued, the decision shall be scheduled for a date certain and the Board shall reach its decision at that time.

29.3 The Board shall issue its decision with its reasons for the decision, including its findings of fact. The Board may, in its discretion, request the Board's attorney to draft a written statement for its consideration.

29.4 If a member of the Board is absent from the hearing and the matter is continued for a later decision, the member may participate in the decision after reviewing the application and documentary evidence and listening to the recorded testimony.

30. BURDEN OF PROOF: The burden of proof shall be on the applicant to show that the application meets the criteria of City ordinances, state statute, and other applicable law.

31. TRANSCRIPT ON APPEAL: Any person seeking review of the Board's decision may request a transcript of the proceeding before the Board. The transcript shall be prepared after the person seeking the transcript deposits the estimated cost thereof with the City Clerk, with the final cost due at delivery of the transcript. The cost will be the actual cost of preparation at the rates charged by the certified court reporter.

32. ORDERS TO SHOW CAUSE: Upon complaint or upon the Board's motion, the Board shall determine whether a public hearing is required to consider whether evidence exists of violations of City ordinance or state statute which, if proven, would result in the sanctions of suspension, revocation, or non-renewal. If the Board determines that a public hearing is required, the Board shall schedule such a hearing, request that the City Attorney draft a show cause order, and authorize the Chairperson to sign the order.

32.1 Public hearings for possible suspension, revocation, or non-renewal of a license shall be conducted according to the rules stated above for public hearings. Notice requirements and time requirements shall be as stated in City ordinance or state statute.

32.2 If, prior to the public hearing, the licensee and the prosecuting attorney reach agreement as to the alleged violations and appropriate penalty, they may jointly present such stipulation to the Board at, or prior to, the public hearing. The Board is not obligated to accept such stipulation.

The Board may, in its discretion, accept the stipulation, or reject the stipulation and conduct the public hearing. The Board may designate portions of a stipulation to be acceptable and request the parties to reconsider their agreement and submit a further stipulation, but neither the Board nor the parties are obligated to do so if the original stipulation is rejected. If a stipulation is rejected and the parties decide not to submit a new stipulation, the Board shall grant a continuance of the hearing.

33. SUBSTANTIAL VIOLATIONS:

33.1 Pursuant to Section 5-14-6(B). W.M.C., the following are designated "substantial violations." Where such violations are alleged, the City Clerk shall not renew a license, but shall instead report the matter to the Board for its consideration before renewal.

- (a) Sale of alcoholic beverages to a visibly intoxicated person.
- (b) Sale of alcoholic beverages to a minor where it is the second offense within one year, or where a pattern of conduct by the licensee exists such as numerous sales to minors in one incident.
- (c) Gambling violations.
- (d) After-hours sales or consumption where it is the second offense within one year.
- (e) Failure to conduct the premises in a decent, orderly and respectable manner, where it is the second offense within one year, or where a pattern of conduct by the licensee exists such as fighting or disturbances on the premises or adjacent parking areas and failure to make reasonable efforts to prevent such offenses.
- (f) Repeated failure to report disturbances.
- (g) Failure to conduct the premises in a decent, orderly and respectable manner where the conduct involves the use, distribution, or sale of illegal substances.
- (h) Failure to regulate the attire and conduct of employees and patrons to prevent violation of Reg. 47-105.1 B, C, or D, or to participate or encourage such attire and conduct.
- (i) Unlawful financial interest.
- (j) Any other violations which, in the judgment of the City Clerk, should be referred to the Board for its consideration.

33.2. The following are not considered substantial violations, and the City Clerk may renew the license if all other requirements of City ordinance and state statute are met. However, the Clerk, in the Clerk's discretion, may refer any of the following to the Board and not renew the license until the Board has considered the matter.

- (a) Contaminated liquor.
- (b) Signs not properly posted.
- (c) Business license not timely renewed.

- (d) Disturbances in adjacent parking areas if there is no pattern of repeated failure to report or cooperate in investigations of disturbances.
- (e) Failure to timely report or apply for approval of change of manager, change of corporate officers or corporate structure, modification of premises, and change of trade name.
- (f) Any alleged violation which is not listed in this Section 32 shall be referred to the Board.

PART III
BOARD'S DUTIES RELATED TO OTHER TYPES OF LICENSES

34. REVIEW OF ADVERSE ACTION: Upon request from an applicant or licensee, the Board must conduct a public hearing to determine whether grounds exists for an adverse action proposed by the City against an applicant or licensee. Hearings to review a proposed adverse action may concern any type of City-issued license other than a liquor license. Adverse actions against liquor licenses proceed under Part II of these Bylaws. The Board is responsible for conducting the hearing. Except where noted in this Part III, procedures described in Part II of these Bylaws apply to hearings conducted and decisions issued by the Board when reviewing possible adverse actions.

35. HEARING FEE: As permitted by Westminster Municipal Code, Section 5-1-10(D), the Board has set a hearing fee of three hundred fifty dollars (\$350), which fee shall be paid at the time the applicant or licensee submits its request for an appeal hearing.

36. INTERESTED PARTIES: The definition of "interested parties" in section 12 does not apply outside the context of liquor licenses; rather, the only interested parties are the applicant or licensee and the City.

37. BURDEN OF PROOF: Section 30 does not apply to hearings conducted by the Board when reviewing possible adverse actions. For an adverse action to be upheld, the City must show by a preponderance of the evidence that the grounds for the adverse action existed at the time the adverse action was taken.

38. ORDER OF PROCEEDINGS: Section 21 does not apply to hearings conducted by the Board when reviewing possible adverse actions. Rather, the order of proceedings shall be as follows:

38.1 The Chairperson shall announce the proposed adverse action to be reviewed and briefly explain the procedure to be followed.

38.2 The Chairperson shall ask the parties in interest to identify themselves and their counsel, when present. The applicant or licensee shall be allowed to state for the record any objections they have to the proceedings.

38.3 City staff shall present the City's case, including evidence and testimony. All exhibits that have been stipulated to by the parties and all other exhibits received by the Board prior to the hearing should be marked and made a part of the record. The applicant or licensee may cross-examine City witnesses.

38.4 The applicant or licensee may present evidence or testimony. The City may cross-examine witnesses presented by the applicant or licensee.

38.5 The City may present testimony or evidence to rebut the testimony or evidence of the applicant or licensee. Cross-examination shall be as above.

38.6 Members of the Board may ask questions of any witness.

ADOPTED by the Westminster Special Permit and License Board at its regular meeting, this 23rd day of July, 1997.

ADOPTED, as REVISED, by the Westminster Special Permit and License Board at its regular meeting, this 20th day of April, 2011, with an effective date of May 9, 2011.

ADOPTED, as REVISED, by the Westminster Special Permit and License Board at its regular meeting, this 7th day of January, 2015, with the an effective date of January 8, 2015.

**CITY OF WESTMINSTER
SPECIAL PERMIT AND LICENSE BOARD
PENALTY/STIPULATION GUIDELINES
FOR VIOLATIONS OF THE BEER AND LIQUOR CODES**

The following guidelines are intended to be used by the Westminster Police Department and the City Attorney's Office when bringing potential violations to the Board for disciplinary action and for reference in stipulations entered into with a Licensee for a specific penalty for a violation of the Beer or Liquor Codes.

These are guidelines only. The Board retains its full discretion to impose other discipline, including informal reprimands, after considering the circumstances of individual cases. The Police Department and the City Attorney's Office retain full discretion to evaluate a case and shall consider mitigating and aggravating circumstances when recommending sanctions and/or deciding whether to bring it to the Board. For first and subsequent violations of any type, it is appropriate to require Licensees to provide current certification or training by a state-approved responsible vendor program for all servers or sellers.

These guidelines do not create any rights to a specific course of action or a specific penalty for any Licensee alleged to have violated the Beer or Liquor Codes.

TYPES OF VIOLATIONS:

A. SALES TO MINORS OR VISIBLY INTOXICATED PERSONS:

1. **Mitigation/Aggravation to be considered regarding severity of the penalty imposed may include:**
 - Action taken by the licensee to prevent violation, i.e., qualified training of servers pursuant to section 12-47-1001 C.R.S.
 - Licensee's past history of success or failure with compliance checks during the past five years.
 - Corrective action taken by the licensee.
 - Prior violations during the past five years/prior corrective action and its effectiveness.
 - Willfulness or deliberateness of the violation.
 - Likelihood of recurrence of the violation.
 - Factors which might make the situation unique, such as prior notification of checks for compliance or the dress or appearance of the underage purchaser.
 - Licensee or manager is the violator or has directed an employee or other individual to violate the law.

2. **First Offense:** Written warning to fifteen day suspension. Accepting a fine in lieu of up to fourteen days of actual suspension is at the

discretion of the licensing authority, as is holding a portion of the suspension time in abeyance for a period of time.

3. **Second Offense (within five years):** Five to thirty day suspension. If no fine was paid or suspension served at the time of the first offense, it would be within the discretion of the licensing authority to accept a fine in lieu of actual days of suspension and/or to hold a portion of the suspension time in abeyance for a period of time.
4. **Third Offense (within five years):** Twenty to forty-five day suspension.
5. **Fourth Offense (within five years):** Forty-five day suspension to revocation.

B. FAILURE TO REPORT DISTURBANCE OR UNDERAGE EMPLOYEE SELLING OR SERVING:

1. **First Offense:** Three to fourteen day suspension. Any days not served under the suspension shall be held in abeyance for a period of two years. Any closure shall be served on a Friday or Saturday except in cases of an establishment licensed to serve 3.2% beer at retail, at least one day shall be served on a Sunday.
2. **Second Offense:** Seven to fifteen day suspension. Minimum of 2 days closure shall be served under any suspension. Any closure must include a Friday or Saturday, except that in the case of an establishment licensed to sell 3.2% beer at retail, any closure of service must include a Sunday. Any days not served shall be held in abeyance for a period of two years. The period of time between the first offense and any succeeding offense may be considered in determining the penalty. A second or succeeding offense need not be the same type of violation as the first offense.
3. **Third Offense:** Case-by-case basis. May include but not be limited to revocation.

C. ALL OTHER VIOLATIONS:

As types and natures of violations can vary greatly, it is difficult to determine specific penalty guidelines except on a case-by-case basis. An analysis of each violation not outlined above will be prepared jointly by the Police Department and the City Attorney's Office. After review and consideration of items, which may include but not be limited to previous violations, severity and type of violation, and circumstances in aggravation or mitigation of the violation, a proposed penalty or stipulation may be presented to the Special Permit and License Board.

**City of Westminster
Special Permit and License Board
Reference Manual 2017**

EXECUTIVE SESSION INSTRUCTIONS

Protocol for entering into an executive session:

1. A request for an executive session is made to the Chair.
2. The Chair will confirm with the Board's legal advisor that the topic is one that qualifies for executive session discussion.
3. A motion is made to enter an executive session:

Example: "I move to enter into an executive session for the purpose of receiving legal advice* pursuant to W.M.C. 1-11-3(C) (8)."

4. Motion must be approved by 2/3 of the members present.
5. Discussion in the executive session is limited to the topic announced and voted on in the public meeting.

* While there are other reasons for going into an executive session (and they can be found at 1-11-3(C)), most are not relevant to the activities of this Board. Accordingly, if you want to hold an executive session for any reason other than receiving legal advice, please consult the Board's legal advisor.