



**TOWN OF AVON, COLORADO**  
**AVON LIQUOR LICENSING AUTHORITY MEETING FOR TUESDAY, DECEMBER 11, 2012**  
**MEETING BEGINS AT 5 PM**  
**AVON TOWN HALL, ONE LAKE STREET**

	<b>PRESIDING OFFICIALS</b>
<b>CHAIRMAN</b>	<b>RICH CARROLL</b>
<b>VICE CHAIRMAN</b>	<b>TODD GOULDING</b>
<b>BOARD MEMBERS</b>	<b>DAVE DANTAS, CHRIS EVANS, JENNIE FANCHER</b>
	<b>ALBERT "BUZ" REYNOLDS, JR., JAKE WOLF</b>

<b><u>TOWN STAFF</u></b>		
<b>TOWN ATTORNEY: ERIC HEIL</b>	<b>TOWN MANAGER: VIRGINIA EGGER</b>	<b>TOWN CLERK: PATTY MCKENNY</b>

ALL LIQUOR BOARD MEETINGS ARE OPEN TO THE PUBLIC EXCEPT EXECUTIVE SESSIONS  
 COMMENTS FROM THE PUBLIC ARE WELCOME DURING PUBLIC HEARINGS  
 PLEASE VIEW AVON'S WEBSITE, [HTTP://WWW.AVON.ORG](http://www.avon.org), FOR MEETING AGENDAS AND MEETING MATERIALS  
 AGENDAS ARE POSTED AT AVON TOWN HALL AND RECREATION CENTER, ALPINE BANK, AND AVON LIBRARY

- 1. CALL TO ORDER AND ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**
- 4. SHOW CAUSE HEARING ON LIQUOR LICENSE VIOLATION**
  - a. Stipulated Findings of Fact, Conclusions and Sanctions Order  
 Avon Police Incident Case Report No. 2012-000748 dated September 20, 2012  
 Establishment Name: China Garden, Inc. d/b/a China Garden  
 Address: 100 W. Beaver Creek Place  
 Manager: Sharon Mou  
 Type: Hotel and Restaurant Liquor License  
**Proposed Action:** Resolution No. 12-04, Series of 2012, Resolution Making the Determination that China Garden, Inc. d/b/a China Garden has violated a Law, Rule or Regulation with Respect to the Operation of its Licensed Premises; and Ordering a Warning, Suspension or Payment in Lieu of Suspension per the Stipulated Findings of Fact, Conclusions and Sanctions Order  
*(Eric Heil, Town Attorney) Show Cause Hearing to Review Findings of Fact, Conclusions and Sanctions Order for Avon Police Department Case No. 2012-000748*
- 5. ADJOURNMENT**

## Memo

**To:** Avon Local Liquor Licensing Authority  
**Thru:** Eric Heil, Town Attorney  
**From:** Patty McKenny, Assistant Town Manager (Management Services)  
**Date:** December 6, 2012  
**Re:** Liquor Board Agenda –China Garden Show Cause Hearing

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### Summary:

The Town Council serving as the Avon Liquor Licensing Authority set a show cause hearing for the violation which occurred at China Garden at the November 27<sup>th</sup> meeting. Please note that this hearing was continued at that meeting to December 11<sup>th</sup> per a request from the licensees' attorney Rob Sperberg. The general information on this matter related to China Garden Inc., d/b/a China Garden is as follows.

A. Violation reported in the Avon Police Incident Case Report No. 2012-000748 dated September 20, 2012

Address: 100 W. Beaver Creek Blvd.  
Manager: Sharon Mou  
Type: Hotel and Restaurant Liquor License

### Background:

The Avon Liquor Authority was provided with a police report (Exhibit A) on October 23, 2012 related to the following incident which occurred on September 14, 2012 at the China Garden Restaurant:

**Case No. 2012-000748**

Offender: Harley Ruben EK M

Charges: Colorado Liquor Code §12.47.901(5)(c), sale of fermented malt beverage to a person under the age of 21 years and Avon Municipal Code §9.12.070, sale of alcohol to minors

At October 23<sup>rd</sup> meeting the Avon Liquor Licensing Authority adopted the following Resolution No. 12-01 as follows which sets forth the matter to a hearing in front of the liquor licensing authority:

- A Resolution Finding Probable Cause To Believe That China Garden Inc., d/b/a China Garden Has Violated A Law, Rule Or Regulation With Respect To The Operation Of Its Licensed Premises; Setting A Hearing With Respect Thereto; And Directing The Issuance And Service Of A Notice Of Hearing And Order To Show Cause As To Why The Hotel and Restaurant Liquor License Of Such Licensee Should Not Be Suspended Or Revoked.

As noted above the hearing was continued to December 11<sup>th</sup> since the licensee was out of the country. The Authority will now consider the evidence on this matter.

### Discussion:

Please find attached Resolution No. 12-04 which if approved takes action on the final sanctions the Liquor Authority decides upon and the proposed sanctions are included in Exhibit A which is the "Stipulation of Findings of Fact, Conclusions and Sanctions Order" drafted by the Town Attorney's Office.

Resolution No. 12-047, Series of 2012, Resolution making the Determination that China Garden Inc. d/b/a/ China Garden has violated a law, rule or regulation with respect to the operation of its licensed premises; and ordering a warning, suspension or payment in lieu of suspension per the stipulated findings of fact, conclusions and sanctions order

The licensee and representing attorney will be provided the documents and be present at the meeting. . The Liquor Authority will consider the drafted stipulation and consider what type of action will be imposed on the licensee in light of this violation. Also attached is ***“Chapter 3 on License Suspension, Revocation, and Fines from the Colorado Municipal Leagues’ Liquor & Beer Licensing and Practices Booklet”*** that can frame this hearing environment.

**Exhibits:**

- A. Avon Police Department Incident/Investigation Report Case No. 2012-000748
- B. Memo from Town Attorney
- C. Resolution No. 12-04 & Exhibit A (Proposed Stipulated Findings of Fact, Conclusions and Sanctions Order)
- D. Revised Notice of Hearing
- E. Colorado Municipal League’s “Liquor & Beer Licensing & Practice Chapter 3”

# Incident/Investigation Report EXHIBIT A

Agency: APD

Case Number: 2012-000748

Date: 09/20/2012 12:36:13

## Incident Information

Date/Time Reported 09/14/2012 19:35	Date/Time Found 09/14/2012 19:35	Date/Time Found 09/14/2012 19:35	Officer (590) MULLET, BRYAN D
Incident Location 100 W Beaver Creek Blvd, Avon, CO 81620			

## Charges

<b>1</b>	Charge Type State	Description ALCOHOL UNLAWFUL ACTS TO SELL SERVE GIVE ALCOHOL TO	Statute 12-47-901...	UCR 90G	<input type="checkbox"/> Att <input checked="" type="checkbox"/> Com
Alcohol, Drugs or Computers Used <input checked="" type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Computers		Location Type RESTAURANT	Premises Entered	Forced Entry <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Weapons 1. None 2. 3.
Entry	Exit	Criminal Activity			
Bias Motivation		Bias Target	Bias Circumstances		Hate Group

## Victims

<b>1</b>	Type SOCIETY/ PUBLIC	Injuries None	Residency Status		Ethnicity
Name (Last, First, M) SOCIETY			Race U	Sex U	DOB
Address					Home Phone
Employer Name/Address					Business Phone
Victim of Crimes 1					

# Incident/Investigation Report

Agency: APD

Case Number: 2012-000748

Date: 09/20/2012 12:36:13

## Offenders

Seq. # <b>1</b>	Type INDIVIDUAL	Name (Last, First, M) EK M, HARLEY RUBEN						
AKA			Race W	Sex M	DOB	Age 31	Height 5'03"	Weight 170 lbs
Address 100 W'							Home Phone	
Employer Name/Address CHINA GARDEN 100 W BEAVER CREEK BLVD AVON, CO							Business Phone (970) 949-4986	
Scars, Marks, Tattoos or other distinguishing features								
Physical Characteristics								

### Suspect Details

## Other Persons Involved

Name Code Involved, Other	Seq. # <b>1</b>	Name (Last, First, M) CHINA GARDEN	Race	Sex
Address 100 W. BEAVER CREEK BLVD, AVON, CO 81620			Home Phone (970) 944-986	
Employer Name/Address			Business Phone (970) 949-4986	

# Incident/Investigation Report

Agency: APD

Case Number: 2012-000748

Date: 09/20/2012 12:36:13

## Notes/Narrative

CASE #: 2012-000748  
OFFICER: Bryan Mullet  
REPORT DATE: 09/14/12  
OFFENDER(S): Ek M, Harley Ruben  
VICTIM(S): Society

### SYNOPSIS:

This case involves an employee at China Garden who sold alcohol to a person under 21 years of age in Avon Colorado.

### NARRATIVE / INVESTIGATION:

On September 14, 2012, Confidential Informant 1202 (hereafter referred to as CI). Who is between the age of 18 and 20.5 worked with the Avon Police Dept. as part of liquor compliance checks.

The CI was searched and given currency for the purchase of alcohol. After which an operations briefing was held with all involved Officers. The CI was instructed not to lie or attempt to influence anyone into the sale of alcohol.

At 1930 hours the CI along with Detective Sergeant Ken Dammen, who was working in an undercover capacity entered China Garden located at The Avon Center at 100 W. Beaver Creek Blvd. The CI ordered a bottle of Budweiser and was served the alcoholic beverage by Harley Ruben EK M, t

Avon Officer Yvonne Ramirez and I were working the compliance checks as uniformed officers. Det. Sgt. Dammen requested we respond to China Garden.

When Officer Ramirez and I arrived at China Garden, Det. Sgt. Dammen informed us that Mr. Ek M. who was working as a server in China Garden, served a bottle of Budweiser to the CI. Det. Sgt. Dammen showed me the bottle of beer that was served to the CI. See Det. Sgt. Dammen's report for his information regarding this case.

Summons # 25656 was issued to Mr. Ek M for selling an alcoholic beverage to a person under 21 years of age.

### IS OFFENDER A LEGAL RESIDENT IN THE US?:

Yes.

### FOREIGN NATIONAL ARREST ADVISEMENT FAXED TO ICE AND COPY ATTACHED TO CASE FILE:

N/A.

### PHOTOS TAKEN:

Yes, by Det. Sgt. Dammen.

### FINGERPRINTED Y/N:

No.

### ATTACHMENTS:

None.

### VICTIM RESOURCE / RIGHTS BOOKLET:

N/A.

### CASE STATUS / DISPOSITION:

Closed / Summons issued.

# Incident/Investigation Report

Agency: APD

Case Number: 2012-000748

Date: 09/20/2012 12:36:13



# MEMORANDUM

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**TO:** Avon Liquor Authority Board  
**CC:** Virginia Egger, Town Manager  
**THRU:** Eric Heil, Town Attorney  
**FROM:** Meredith Van Horn, Assistant Town Attorney  
**RE:** China Garden Liquor License Violation  
**DATE:** December 5, 2012

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**Summary:** On September 14, 2012 during a compliance check a China Garden ("Licensee") employee served an underage confidential informant a bottle of beer in violation of C.R.S. §12-47-901(5)(c), concerning the sale of fermented malt beverage to a person under the age of 21 years, and Avon Municipal Code §9.12.070, sale of alcohol to minors. The Licensee has agreed to the Stipulated Findings of Fact, Conclusions and Sanctions Order which is attached to this memorandum.

A warning has been issued due to the facts and circumstances of this violation. Pursuant to the Liquor Code Regulation 47-604 the Avon Liquor Authority Board may issue warnings during for first time violations found during a compliance check using a person under twenty-one to purchase alcoholic beverages from the Licensee. In 2011, a warning was issued to the Avondale restaurant for a similar violation where an underage informant was served during a compliance check.

*Thanks, Meredith*



# EXHIBIT C

**PROCEEDINGS OF THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO  
ACTING AS THE LOCAL LICENSING AUTHORITY  
COUNTY OF EAGLE AND STATE OF COLORADO**

**RESOLUTION NO. 12-04  
SERIES OF 2012**

**IN THE MATTER OF THE HOTEL AND RESTAURANT LIQUOR LICENSE  
FOR CHINA GARDEN, INC. D/B/A CHINA GARDEN FOR THE LICENSED PREMISES  
LOCATED AT 100 W. BEAVER CREEK BLVD., AVON, COLORADO**

**A RESOLUTION MAKING THE DETERMINATION THAT CHINA GARDEN, INC D/B/A CHINA GARDEN HAS VIOLATED A LAW, RULE OR REGULATION WITH RESPECT TO THE OPERATION OF ITS LICENSED PREMISES; AND ORDERING A WARNING, SUSPENSION OR PAYMENT IN LIEU OF SUSPENSION PER THE STIPULATED FINDINGS OF FACT, CONCLUSIONS AND SANCTIONS ORDER**

WHEREAS, the Town Council of the Town of Avon, acting as the local licensing authority ("Liquor Licensing Authority"), has received a complaint from the Avon Police Department alleging that there was a violation of C.R.S §12-47-901(5)(c), concerning the sale of fermented malt beverage to a person under the age of 21 years and Avon Municipal Code §9.12.070, sale of alcohol to minors.

WHEREAS, Licensee appeared by Sharon Mou, Manager, and admitted the violation;

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO, ACTING AS THE LOCAL LIQUOR LICENSING AUTHORITY, AS FOLLOWS:**

Section 1. The Liquor Licensing Authority finds and determines the following: The Licensee, China Garden, admits a violation of §12-47-901(5)(c), C.R.S., concerning the sale of fermented malt beverage to a person under the age of 21 and §9.12.070, sale of alcohol to minors, Avon Municipal Code; and stipulates that the facts alleged in the Show Cause Order did occur on September 14, 2012 as they pertain to the sale of alcohol to a minor. The undersigned agree to the factual basis as outlined in the Stipulation:

Section 2. As the penalty for the violation, the Avon Local Liquor Licensing Authority imposes a penalty permitted under Regulation 47-604 and described in "Exhibit A" in the form of a Stipulated Findings of Fact, Conclusions and Sanctions Order" to the Licensee China Garden, details of the suspension are outlined in attached Exhibit A.

Section 3. This Resolution shall be effective immediately upon adoption.

**RESOLUTION APPROVED AND ADOPTED THIS 11TH DAY OF DECEMBER 2012.**

**TOWN OF AVON LIQUOR LICENSING  
AUTHORITY**

By \_\_\_\_\_  
Rich Carroll, Chairman

**ATTEST:**

\_\_\_\_\_  
Patty McKenny, Town Clerk

# TOWN OF AVON LIQUOR LICENSING AUTHORITY

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## STIPULATED FINDINGS OF FACT, CONCLUSIONS AND SANCTIONS ORDER

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**In the Matter of the Hotel and  
Restaurant Liquor License of  
China Garden, Inc. d/b/a China Garden for the  
Licensed Premises Located at  
100 W. Beaver Creek Blvd.,  
Avon, Colorado**

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This matter comes before the Town of Avon Local Liquor Licensing Authority ("Liquor Authority") upon the Authority's Notice of Hearing and Order to Show Cause, dated October 23, 2012, copies of which were mailed to the representative-of-record for China Garden, Inc. ("Licensee") by certified mail, return receipt requested.

### **I. INTRODUCTION**

Section 12-47-601, C.R.S. and 1 C.C.R. 203-2, Regulation 47-600 empower the Liquor Authority to conduct a hearing whenever a written complaint is made charging a licensee or its agents, servants or employees, of a violation of any laws or rules or regulations adopted by the State Licensing Authority. After investigation and public hearing, at which the licensee shall be afforded an opportunity to be heard, if a finding is made that a violation has occurred, the Liquor Authority is authorized to consider whether to suspend or revoke a liquor or beer license.

On October 23, 2012 the Liquor Authority set this matter for a preliminary hearing and a show cause hearing to be held on November 27, 2012 and on November 16, 2012 the Licensee requested a continuation of the preliminary hearing until December 11, 2012. At the preliminary hearing, the following persons were present:

For the Town of Avon: Police Chief Robert Ticer.

For the Licensee: Rob Sperberg

### **II. FINDINGS AND CONCLUSIONS**

1. The Licensee operates that business generally known as China Garden within the Town of Avon, Colorado and sells alcoholic beverages at such business pursuant to Town of Avon and State of Colorado liquor licenses.

2. Factual basis: The Licensee admits a violation of C.R.S. §12-47-901(5)(c), concerning the sale of fermented malt beverage to a person under the age of 21 years and Avon Municipal

Code §9.12.070, sale of alcohol to minors, and stipulates that the underlying facts as alleged in the Notice of Hearing and Order to Show Cause occurred as it pertains to the sale of alcohol to a minor on September 20, 2012. The undersigned agree to the following factual basis for the Stipulation:

- a. On September 14, 2012 at approximately 7:30 pm during a “compliance check” a minor acting as a confidential informant ordered and was served a bottle of beer at the China Garden restaurant. China Garden employee Harley Ruben Ek M was issued a summons for selling alcohol to a minor.
- 3. Pursuant to C.R.S. §12-47-901(5)(c), it is illegal to sell fermented malt beverages to a person under the age of 21 years.
- 4. Pursuant to Avon Municipal Code §9.12.070 it is unlawful to sell fermented malt beverages to any person under the age of 21.
- 5. In mitigation, this is the first violation of the Licensee.

**III. ORDER FOR SANCTIONS**

Relying upon the stipulations as set forth above, the Liquor Authority orders as follows:

- 1. A warning is hereby issued to the Licensee.

**Approved by Town Attorney in accordance with authority set forth in Avon Municipal Code Section 5.08.060**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Eric J. Heil, Town Attorney

**APPROVED BY AVON LIQUOR AUTHORITY on December 11, 2012.**

BY: \_\_\_\_\_ ATTEST: \_\_\_\_\_  
Rich Carroll, Patty McKenny, Secretary  
Liquor Authority Chair

**THE LICENSEE HEREBY AGREES TO THE STIPULATED FINDINGS OF FACT, CONCLUSIONS AND ORDER FOR SANCTIONS SET FORTH HEREIN:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Robert Sperberg,  
Authorized Representative for Licensee

**EXHIBIT D**

**PROCEEDINGS OF THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO,  
ACTING AS THE LOCAL LICENSING AUTHORITY,  
COUNTY OF EAGLE AND STATE OF COLORADO**

IN THE MATTER OF THE HOTEL AND RESTAURANT )  
LIQUOR LICENSE OF CHINA GARDEN, INC. D/B/A ) **NOTICE OF HEARING; AND**  
CHINA GARDEN FOR THE LICENSED PREMISES ) **ORDER TO SHOW CAUSE**  
LOCATED AT 100 W. BEAVER CREEK BLVD., AVON, )  
COLORADO )

**TO: China Garden, Inc. d/b/a China Garden**  
**LOCAL ADDRESS: 100 W. BEAVER CREEK BLVD, AVON, CO 81620**  
**MAILING ADDRESS: PO BOX 2023, AVON, CO 81620**

**WHEREAS**, on September 14, 2012, the Town of Avon Liquor Licensing Authority determined that there is probable cause to believe that the Licensee named above has violated the following laws:

- ✓ Avon Municipal Code 9.12.070, sale of alcohol to minors
- ✓ CRS 12-47-901(5)(c), sale of fermented malt beverage to a person under the age of 21 years

**NOW, THEREFORE**, You, China Garden, Inc., d/b/a China Garden, the Licensee, are hereby ordered to appear before the Town of Avon Liquor Licensing Authority on December 11, 2012 at 5 PM, at the Avon Town Hall, One Lake Street, Avon, Colorado 81620, to show cause, if any you have, why your Hotel and Restaurant Liquor License for the above described licensed premises should not be suspended or revoked for having violated CRS 12-47-901(5)(c) more specifically alleged below. Your failure to appear may result in the suspension or revocation of your liquor license without further notice.

**YOU ARE FURTHER NOTIFIED** that the purpose of the show cause hearing is to determine whether you have violated the rules, regulations and laws which govern your operation of the Licensed Premises, as follows:

It is alleged by the Notice of Liquor Violation from the Avon Police Department that on August 26, 2011, the Licensee or Licensee's employees or agents permitted activity to occur on or about the Licensed Premises in violation of

- ✓ Avon Municipal Code 9.12.070, sale of alcohol to minors
- ✓ CRS 12-47-901(5)(c), sale of fermented malt beverage to a person under the age of 21 years

The hearing in this matter shall be conducted pursuant to Section 12-47-601, C.R.S., and Regulation 47-600 promulgated by the Colorado Department of Revenue, Liquor Enforcement Division. You may be represented by an attorney if you so desire.

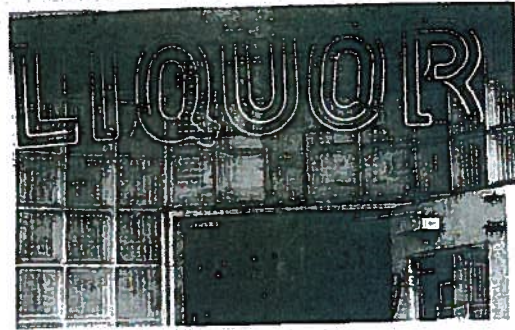
A copy of the Resolution of the Liquor Licensing Authority finding probable cause to believe that you have committed a violation of the above described regulation of the Colorado Department of Revenue, Liquor Enforcement Division, is served with this Order.

**GIVEN BY ORDER OF THE TOWN OF AVON LIQUOR LICENSING AUTHORITY.**

Dated: 12/16/12

**TOWN OF AVON LIQUOR LICENSING  
AUTHORITY**

Debbie Hoppe  
Debbie Hoppe, Deputy Town Clerk



# Liquor & Beer

## Licensing and Practice





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# Chapter 3:

## License Suspension, Revocation, and Fines

### Suspensions and revocations

#### *Suspension and revocation procedure*

The local licensing authority may suspend or revoke a liquor license whenever a licensee (or the agent, servant, or employee of a licensee) violates any provision of the Liquor Code, violates any rule or regulation authorized pursuant to the Liquor Code, or violates any term, condition, or provision of the license issued by the local authority.<sup>1</sup> When doing so, the local authority may act on its own motion or a complaint.<sup>2</sup> Before suspending or revoking a license, however, the local authority must investigate and hold a public hearing at which the licensee is afforded an opportunity to be heard (see below).<sup>3</sup> Any license may be summarily suspended by the issuing licensing authority *without notice*, pending a prosecution, investigation or public hearing, "for a temporary period of not more than fifteen days."<sup>4</sup>

Whenever a written complaint is filed with a local authority charging a licensee with violation of any law, rule, or regulation adopted by the state licensing authority, the local authority must determine by investigation or otherwise the probable truth of the charges.<sup>5</sup> If there is probable cause to believe that the violation has occurred, the local authority must issue and cause notice to be served by written mailing to the licensee at the address contained in the license.<sup>6</sup> The service must contain a notice of hearing and an order to show cause why the license should not be suspended or revoked.<sup>7</sup> Finally, the notice must describe the charges with such "reasonable certainty" that the defending licensee will be able to prepare a defense.<sup>8</sup>

For the hearing, the local authority may administer oaths and issue subpoenas to require the presence of persons and the production of necessary papers, books, and records.<sup>9</sup> The licensing authority may also obtain warrants for search and/or seizure of any licensed premise or property, or a suspected illegal alcoholic beverage operation, upon sufficient evidence provided to any county or district court judge.<sup>10</sup> The statutes authorize, under such a warrant, the seizure of any property related to the illegal operation, including, but not limited to, alcoholic beverages, any containers used for alcohol, furniture, automobiles and other means of transport for the illegal beverages, and other related implements.<sup>11</sup>

The local authority must hold the hearing at a place and time designated in the notice, or on such other day as may be set for good cause shown.<sup>12</sup> At the hearing, evidence supporting the charges must be given first, and then the liquor licensee or his counsel may cross-examine

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<sup>1</sup> § 12-47-601(1).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> § 12-47-601(2) (emphasis added). "Where a licensing authority has reasonable grounds to believe and finds that a licensee has been guilty of a deliberate and willful violation of any applicable law or regulation or that the public health, safety or welfare imperatively requires emergency action and incorporates such findings in its order, it may be temporarily or summarily suspend [sic.] the license pending proceedings for suspension or revocation which shall be promptly instituted and determined." Liquor Reg. § 47-602(A).

<sup>5</sup> Liquor Reg. § 47-600(A).

<sup>6</sup> § 12-47-601(2)

<sup>7</sup> Liquor Reg. § 47-600(B).

<sup>8</sup> *Chroma Corp. v. County of Adams*, 36 Colo. App. 345, 349, 543 P.2d 83, 86 (1975).

<sup>9</sup> § 12-47-601(1).

<sup>10</sup> §§ 12-47-904-12-47-907.

<sup>11</sup> § 12-47-906; *but see Walker v. City of Denver*, 720 P.2d 619 (Colo. App. 1986) (holding that any search made under this provision must be limited in duration to the time necessary to accomplish the state action, that the seizure of property may only occur after a licensee's conviction on some alcohol-related violation, that such seizure must not be undertaken in such a way as to permanently damage property, and that if such damage is unavoidable then the objects must not be seized).

<sup>12</sup> Liquor Reg. § 47-600(C).

the witnesses presenting such evidence.<sup>13</sup> The licensee, in person or by counsel, may then offer evidence and statements in his defense, and by way of explanation and mitigation of the charges.<sup>14</sup> If the licensee is found to have committed the violation charged, or any other violation, evidence and statements in aggravation of the offense must also be permitted.<sup>15</sup>

If the evidence presented at the hearing does not support the charges stated in the notice and order served upon the licensee but establishes the guilt of the licensee of a violation of *some other law, rule, or regulation*, the licensee may, again, give evidence and statements in his defense and by way of explanation and mitigation of the charges if prepared to do so at that time.<sup>16</sup> If the evidence required for his defense is not available at that time but can be obtained by the licensee, the licensee must state the substance of the evidence, and upon his or her request the hearing may be recessed for not more than 10 days.<sup>17</sup> The hearing must then continue under the same procedure as though no recess had occurred.<sup>18</sup>

If, at the end of the hearing, the local authority decides no violation occurred, it must dismiss the charges.<sup>19</sup> If, however, the local authority *does* find that a violation has occurred, it may suspend or revoke the license.<sup>20</sup> A "violation" upon which the local authority may base a suspension, revocation, or any other statutory liability may be either (1) a conviction for a violation of some law, rule or procedure, or (2) a conviction based upon the entry of a plea of *nolo contendere* to a charge of violation of the code.<sup>21</sup>

### ***Sales to minors and false I.D.'s***

In Colorado, the sale of alcohol to an underage person *cannot* constitute grounds for the revocation or suspension of a license issued under the Liquor Code if the underage person exhibited a fraudulent proof of age.<sup>22</sup> However, the licensee, the licensee's employee, or any peace or police officer may detain and question the person presenting the proof of age that he or she believes to be fraudulent so long as he or she has reasonable grounds for doing so, and may not thereby be held civilly or criminally liable for false imprisonment, unlawful detention, slander, malicious prosecution, or false arrest.<sup>23</sup> By law, the licensee or licensee's employee, if possible, must confiscate the proof of age if having reasonable cause to believe it to be fraudulent and turn it over to a local law enforcement agency within 72 hours.<sup>24</sup> However, a failure to confiscate or turn the proof of age over to a local law enforcement agency does not constitute a criminal offense.<sup>25</sup>

Finally, all licensees must display a printed card at least fourteen inches by 11 inches with letters at least one-half inch in height, giving notice of the age restriction (as well as other restrictions) and the licensee's right to confiscate a fraudulent I.D. and his duty to turn it over to the state or local authorities.<sup>26</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Liquor Reg. § 47-600(C).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Liquor Reg. § 47-600(E).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* See also *People v. Goodwin*, 197 Colo. 47, 49-50, 593 P.2d 326, 328 (1976) (expressly disapproving language to the contrary in *Bruce v. Leo*, 129 Colo. 129, 267 P.2d 1014 (1954)).

<sup>22</sup> § 12-47-901(5) (a) (1). The statute begs the question of whether any purported "proof of age," no matter how patently fraudulent or far-fetched, may serve to insulate the licensee from any responsibility for serving an underage person. Some guidance as to what may or may not be deemed adequate "proof of age" may be provided by Liquor Reg. § 47-912, which lists the acceptable forms of I.D.'s for the purposes of the Liquor Code, and which explains that

[i]t shall be an affirmative defense to any administrative action brought against a licensee for alleged sale to a minor if the minor presented fraudulent identification of the type established above and the licensee possessed an identification book issued within the past three years which contained a sample of the kind of identification presented for compliance purposes.

Liquor Reg. § 47-912. The regulation also provides that the burden of proof is on the licensee to establish by a preponderance of the evidence that the minor presented fraudulent identification. *Id.*

<sup>23</sup> § 12-47-901(5) (a) (II) (B).

<sup>24</sup> § 12-47-901(5) (a) (II) (A).

<sup>25</sup> *Id.*

<sup>26</sup> See § 12-47-901(5) (h) (providing the required wording for this card).

### ***Sales to minors as part of a compliance check***

The state and many local licensing authorities conduct underage compliance checks of licensees in which a minor under the supervision and direction of law enforcement attempts to purchase alcohol. If the minor is allowed to purchase the alcohol, the local licensing authority may consider a suspension or revocation of the license as with any other sale to minor violation.

In response to industry complaints that local licensing authorities determining penalties for licensee selling to minors in underage compliance checks were applying different penalties for the same violations, the 1998 General Assembly authorized the Division of Liquor Enforcement to promulgate regulations addressing the "range of penalties... which shall include aggravating and mitigating factors to be considered when persons under 21 years of age are utilized to investigate sales of alcohol beverages by liquor licensees to underage persons."<sup>27</sup>

A set of model guidelines for underage compliance checks was developed with agreement from government and industry participants, but the state licensing authority did not require their application at the local level.<sup>28</sup> Most municipalities have adopted the model guidelines or follow their recommended ranges. The guidelines outline recommended penalties based on the amount of previous infractions, list several mitigating factors that licensing authorities are encouraged to consider, and detail the recommended methodology for conducting a fair compliance check.<sup>29</sup>

Finally, the General Assembly passed the "Responsible Alcohol Beverage Vendor Act" in 2004. A "responsible alcohol beverage vendor" is defined as a vendor that complies with the server and seller training program established by the director of the liquor enforcement division of the department of revenue.<sup>30</sup> When penalizing a licensee whose employees have served a minor during an underage compliance check, the act requires licensing authorities to consider the responsible vendor training as a mitigating factor.<sup>31</sup>

### ***Other grounds for suspension and revocation***

Other statutory provisions setting forth violations which may result in suspensions or revocations have withstood legal challenges. The prohibition against serving "visibly intoxicated persons"<sup>32</sup> was found not unconstitutionally vague by the Colorado Court of Appeals.<sup>33</sup> The Court further found that as long as the liquor authority provides to the licensee the names of the persons involved, the dates of the alleged violations, and the specific acts which constitute the alleged violations, the licensee will have been provided sufficient notice of the violations.<sup>34</sup> An allegation that the drinks contained alcohol was sufficient; the type, i.e. rum, vodka, gin, did not have to be proven to make a finding against the licensee.<sup>35</sup> Additionally, the Colorado Supreme Court has held constitutional and not void for vagueness the prohibition on allowing or permitting staff and employees to solicit alcoholic drinks or "any other thing of value" from patrons.<sup>36</sup>

Finally, the local authority may, in its discretion, revoke a license if it determines that the licensed location has been inactive without good cause for at least one year, or in the case of a retail license approved for a facility not yet constructed, a license may be revoked when (1) the facility has not been constructed and placed in operation within two years of approval of the license application, or (2) construction of the facility has not commenced within one year of approval.<sup>37</sup>

A complete recitation of all the various grounds for suspension, revocation, or other disciplinary action against the licensee is beyond the scope of this publication. However, local

<sup>27</sup> § 12-47-202(2) (a) (I) (E).

<sup>28</sup> The model guidelines are available from the Division of Liquor Enforcement

<sup>29</sup> Liquor Reg. § 47-604.

<sup>30</sup> § 12-47-1002

<sup>31</sup> § 12-47-601 (9)

<sup>32</sup> § 12-47-901(1) (a); Liquor Reg. § 47-900(A).

<sup>33</sup> *Costiphx Enters. v. City of Lakewood*, 728 P.2d 358, 362 (Colo. App. 1986).

<sup>34</sup> *Id.* at 361.

<sup>35</sup> *Id.*

<sup>36</sup> § 12-47-901(5) (I); Liquor Reg. § 47-920; *People v. Becker*, 759 P.2d 26, 31 (Colo. 1988). The court also specifically found that "any other thing of value" could include non-alcoholic drinks.

<sup>37</sup> § 12-47-306.



licensing authorities would be well advised to familiarize themselves with some of the more important laws and regulations that govern the operation of liquor establishments, including the statute cataloguing all "unlawful acts" generally,<sup>38</sup> the statute prohibiting financial assistance to licensees,<sup>39</sup> regulations proscribing the "conduct of [the] establishment,"<sup>40</sup> sanitary regulations for licensed premises,<sup>41</sup> and regulatory restrictions on gambling in licensed premises.<sup>42</sup>

### ***What happens after a license is suspended?***

If the local authority suspends a license, it may order the holder of the suspended license to post two notices in conspicuous places, one on the exterior and one on the interior of the premises for the duration of the suspension.<sup>43</sup> If so ordered, the posted notices must measure two feet in length, fourteen inches in width, and read as follows:

NOTICE OF SUSPENSION  
ALCOHOLIC BEVERAGES LICENSES ISSUED  
FOR THESE PREMISES HAVE BEEN  
SUSPENDED BY ORDER OF THE  
LOCAL LICENSING AUTHORITY  
FOR VIOLATION OF THE  
COLORADO LIQUOR/BEER CODE<sup>44</sup>

As stated above, the issuing licensing authority can suspend a license temporarily, without notice, for up to fifteen days pending any prosecution, investigation, or public hearing.<sup>45</sup> With notice, the suspension may last up to six months.<sup>46</sup> No part of the licensing fees already paid may be returned to the licensee upon suspension or revocation of the license.<sup>47</sup>

The Colorado Supreme Court, in reviewing a licensing authority's revocation of a license, has held that where the record of the hearing discloses ample evidence of violations of law, there exist no grounds for reversal of the decision to revoke a liquor license.<sup>48</sup> Thus, as with application hearings, the local authority should record the revocation hearing to ensure adequate judicial review of the authority's decision and enhance the likelihood of a court upholding the authority's decision.

The Supreme Court also has held that a liquor license "is a type of property right, but it is still a relatively restricted one, and it is subject to those regulations under which it was issued."<sup>49</sup> Consequently, this property right requires due process of law before it may be taken away, and a local authority contemplating suspension or revocation of a license should proceed only with the advice of the municipal attorney.

Finally, in *Two G's, Inc. v. Kalbin*, the Supreme Court held that a license suspension proceeding is not reviewable under either the Administrative Procedure Act<sup>50</sup> or the Liquor Code's judicial review provisions<sup>51</sup> if the violation(s) are purely a violation(s) of a municipal ordinance.<sup>52</sup> In such a case, review will only be available under C.R.C.P. 106(a) (4) or C.R.C.P. 57. By contrast, when an act violates a provision of the state Liquor or Beer Code itself, the

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<sup>38</sup> § 12-47-901.

<sup>39</sup> § 12-47-308.

<sup>40</sup> Liquor Reg. § 47-900.

<sup>41</sup> Liquor Reg. § 47-902.

<sup>42</sup> Liquor Reg. § 47-922.

<sup>43</sup> Liquor Reg. § 47-600(F).

<sup>44</sup> *Id.*

<sup>45</sup> § 12-47-601(2).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Popiel v. Schooley*, 147 Colo. 76, 77, 362 P.2d 863, 864 (1961).

<sup>49</sup> *New Safari Lounge v. Colorado Springs*, 193 Colo. 428, 432-33, 567 P.2d 372, 375 (1977); see also *Costiphx Enters.*, 728 P.2d at 361-62; *Fueston v. City of Colorado Springs*, 713 P.2d 1323, 1326 (Colo. App. 1985).

<sup>50</sup> §§ 24-4-101-24-4-108.

<sup>51</sup> § 12-47-802.

<sup>52</sup> *Two G's, Inc. v. Kaliban*, 666 P.2d 129, 132 (Colo. 1983).

Code's provisions for judicial review will *supersede* the provisions of the Administrative Procedure Act.<sup>53</sup>

## Optional fines

Whenever the local liquor licensing authority decides to impose a suspension of fourteen days or less, the retail license holder may petition the authority to impose a fine in lieu of the suspension for all or part of the suspension period.<sup>54</sup> However, this petition and its granting may only occur if the local governing body has previously adopted a resolution or ordinance to allow for this alternative.<sup>55</sup> To qualify for a fine in lieu of a suspension, a review of the licensee's financial records must enable a reasonably accurate determination of their anticipated loss.<sup>56</sup> Also, the licensee must not have had its license suspended or revoked, or paid a fine in lieu of such actions, within the prior two years,<sup>57</sup> and the licensing authority must be able to determine that allowing a fine to be paid will not endanger the public and that it will constitute an adequate punishment.<sup>58</sup> If the local authority is satisfied that the statutory conditions for accepting the petition are met and agrees to grant it, the fine imposed must be equivalent to twenty percent of the licensee's expected loss of gross income from sales of alcohol beverages during the time of the proposed suspension but not less than \$200 nor more than \$5,000.<sup>59</sup>

Licensees must pay all fines in cash or by certified or cashier's check.<sup>60</sup> Once the local authority determines that a fine may be substituted for suspension, and the licensee pays the fine, the local authority may issue a permanent stay of the suspension order.<sup>61</sup>

The statutes authorize the licensing authority to issue temporary stays of the suspension order to make all investigations required for determining the legality of imposing a fine in lieu of the suspension action.<sup>62</sup> The local authority must credit fines paid under this section to its general fund.<sup>63</sup>

## Summary suspensions

As mentioned above, the local authority may also temporarily suspend a license without notice pending prosecution, investigation, or public hearing.<sup>64</sup> Where a licensing authority reasonably believes that the licensee is guilty of a deliberate and willful violation of any applicable law or regulation, or that the preservation of the public health, safety, or welfare imperatively requires emergency action, and incorporates such findings in its order, the authority may temporarily or summarily suspend the license pending proceedings for suspension or revocation.<sup>65</sup> These proceedings must be promptly instituted and determined,<sup>66</sup> and the summary suspension may not exceed fifteen days.<sup>67</sup>

The facial validity of the statute authorizing summary suspensions has been upheld by the Colorado Supreme Court in *New Safari Lounge v. Colorado Springs*.<sup>68</sup> In that case, the Court ruled that the statute provides sufficient standards to guide the licensing authority since it must be read in the context of its legislative purpose: the protection of the social welfare and health, peace, and morals of the people.<sup>69</sup> The Court also rejected the argument that

<sup>53</sup> *Id.*; *Chroma v. Campbell*, 619 P.2d 74, 76-77 (Colo. App. 1980).

<sup>54</sup> § 12-47-601(3) (a). Before such petition the authority's decision must have become final, either by failure of the licensee to appeal or exhaustion of all judicial review.

<sup>55</sup> § 12-47-601(7).

<sup>56</sup> § 12-47-601(3) (a) (III).

<sup>57</sup> § 12-47-601(3) (a) (III).

<sup>58</sup> § 12-47-601(3) (a) (I).

<sup>59</sup> § 12-47-601(3) (b).

<sup>60</sup> § 12-47-601(3) (C).

<sup>61</sup> § 12-47-601(4).

<sup>62</sup> § 12-47-601(5).

<sup>63</sup> § 12-47-601(4).

<sup>64</sup> § 12-47-601(2).

<sup>65</sup> Liquor Reg. § 47-602(A).

<sup>66</sup> *Id.*

<sup>67</sup> § 12-47-601(2); Liquor Reg. § 47-602(B).

<sup>68</sup> *New Safari Lounge*, 193 Colo. at 432-33, 567 P.2d at 375.

<sup>69</sup> *Id.* at 433-34, 376.

suspension without a prior hearing violates the due process clauses of the United States and Colorado constitutions.<sup>70</sup>

In *New Safari Lounge* the licensing authority had suspended the license and scheduled a hearing on the alleged violations to be held nine days after the suspension.<sup>71</sup> Significantly, the licensing authority found and included in its order that the alleged violations constituted an immediate hazard to the public health, safety, and welfare of the municipality.<sup>72</sup> While the licensee protested the element of the notice which informed him that the hearing officer could change the date of the hearing at the licensee's request, the Court ruled that there was no violation of due process, despite the licensee's valid property right in his license:

Due process is required before *the final deprivation* of a property interest. In the instant case, however, the summary temporary suspension was not *a final deprivation* of the appellee's property interest but, rather, a holding action, pending an early scheduled hearing and final disposition. ... Accordingly, we hold that [the statute] is constitutional on its face when a hearing is provided *as soon as possible* within the fifteen-day limitation set out in the statute.<sup>73</sup>

Because of the legal aspects of the licensee's limited property interest in his or her liquor license and the complications of due process rights afforded by the state and federal constitutions, a local authority contemplating a summary suspension should proceed only with advice of the municipal attorney.

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<sup>70</sup> *Id.* at 434-35, 377.

<sup>71</sup> *Id.* at 431, 374.

<sup>72</sup> *Id.* at 433-34, 376.

<sup>73</sup> *Id.* at 434-45, 377 (emphases added, citations omitted).