

Prima Facie Case

27. The Licensee provided ample evidence of the needs and desires of the neighborhood for the grant of the Modification. I find particularly compelling the testimony provided by those living in close proximity to the licensed premises.

28. The opposition presented no evidence to refute the Licensee's evidence of needs and desires. Rather, the opposition's objections were focused on the wish to attach conditions to ensure that the patio would not have an undue and adverse effect on the residential neighbors of the licensed premises.

29. The Licensee's own witnesses seemed to acknowledge that it would not be unreasonable to place some limitations on the operation of the patio for the sake of the neighbors living near the restaurant. The Licensee evidently agrees, in that he has agreed to having specified conditions attach to the license, should the Modification be granted.

IT IS RECOMMENDED THAT the request for a modification to add a rooftop patio for a hotel & restaurant license for the premises known and designated as 2600 East 12 Avenue, Denver, Colorado be approved with the following conditions attached to the modified license:

- A. Licensee shall construct the proposed patio in a way to ensure compliance with the restrictions on lighting and noise outlined below.**
- B. There will be no direct light pointing outward from the patio.**
- C. Customer access to the patio will be from the front door located on 12th Avenue, from which patrons will proceed to the rear of the building to the staircase leading upstairs.**
- D. Service hours for the patio will be no later than:**
 - 1. 10 p.m. from Sunday through Thursdays; and**
 - 2. 11 p.m. on Fridays and Saturdays**

At the above times, all music as well as all food and beverage service shall cease. Notwithstanding the above, patrons shall be permitted to remain on the patio to consume food and beverages already served before these times for up to one-half (½) hour after the above-stated hours.
- E. The Licensee will comply with City and County of Denver noise ordinances as defined by the City and County of Denver.**
 - 1. In order to ensure such compliance, any resident within 100 yards of the premises may retain a qualified sound engineer to take readings of the noise levels.**
 - 2. Prior to hiring a qualified sound engineer, the resident, directly or through a representative (e.g., attorney or neighborhood**

organization) may give notice to the Licensee that the resident believes the noise from the patio is too loud. If the Licensee does not take effective action to reduce the noise level and the readings taken by the qualified sound engineer show the noise level to exceed the level allowed by the City and County of Denver noise ordinances, the Licensee shall reimburse the resident for the cost of the qualified sound engineer.

- F. The Licensee shall close the patio for a period of two (2) consecutive weeks during the period of June 1 through August 31 (the "Busy Period") if within any period of twelve (12) months the Licensee commits three (3) breaches of the terms of this stipulation regarding the control of noise levels from the patio (paragraphs A and E, above) without cure after having received reasonable notice. The Licensee shall ensure that the patio is closed within 30 days of notice of the third, uncured violation. Should any portion of those 30 days fall outside the Busy Period, the suspension shall carry over to the first available days of the Busy Period in the next calendar year.
- G. If any provision of this stipulation is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of the stipulation shall remain in full force and effect.
- H. Subject to these provisions being attached to the license, CPN supports the requested Modification.

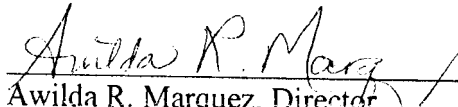
RECOMMENDED this 12th day of September, 2008.



Ann H. Cisneros
Hearing Officer

After reviewing the evidence as summarized above and after consulting with the hearing officer, the foregoing **RECOMMENDED DECISION** for the approval of the request for a modification to add a rooftop patio for a hotel & restaurant license for the premises known and designated as 2600 East 12 Avenue, Denver, Colorado, **IS HEREBY ACCEPTED**, and I hereby direct that the license will issue, **subject to the provisions set forth in paragraphs A through G of the Recommendation**, and pending approval of the premises by the Building, Health, Fire and Excise and Licenses Departments, and after issuance of the State license.

ISSUED this 12th day of September, 2008


Awilda R. Marquez, Director
Department of Excise and Licenses

CERTIFICATE OF MAILING

The undersigned states and certifies that on this 15th day of September, 2008, one true copy of the foregoing Recommended Decision was deposited in the mails of the U.S. Postal Service, first-class postage prepaid, addressed to the following:

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The undersigned further states and certifies that on this 15th day of September, 2008, a true copy of the foregoing Recommended Decision was sent via e-mail to

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