

**OFFICE OF THE DIRECTOR OF EXCISE AND LICENSES
DENVER, COLORADO**

ADMINISTRATIVE RULEMAKING

**RULES AND REGULATIONS PERTAINING TO THE DISTANCE
RESTRICTION BETWEEN HOTEL AND RESTAURANT LIQUOR
LICENSES AND SCHOOLS**

On Thursday, July 26th, 2012, a public hearing was held at the Department of Excise and Licenses on a proposed rule concerning the distance restriction between hotel and restaurant liquor licenses and schools. Notice of the hearing was published and posted, and distributed to Denver's Registered Neighborhood Organizations and other stakeholders.

As a brief background, the Department was approached by various citizens and community groups about changing the "500 Foot Rule" in the City of Denver. Under Colorado state law, retail liquor licenses may not be issued within 500 feet of a school. The local licensing authority cannot permit waivers or case-by-case exceptions to the distance restrictions. The law provides, however, that the local authority may eliminate this distance restriction for an entire class of license, or may eliminate one or more type of schools or campuses from its applicability. For example, Denver previously eliminated the applicability of the 500 foot restriction to university campuses.

The proposed rule will eliminate the 500 foot distance restriction for Hotel & Restaurant liquor licenses only. Hotel and Restaurant licenses are issued only to "bona fide restaurants," and these establishments, *inter alia*, must maintain a certain percentage of gross income from the sale of meals. This license differs from a liquor store license, which is for the sale of alcohol for off-premises consumption, and from a tavern license, which is for a "bar" that does not have strict food service requirements. The proposed rule will not affect the current distance restrictions around liquor stores, taverns, or any other class of liquor license.

In the months leading to the public hearing, many Denver residents, neighborhood groups and stakeholders provided their comments and input. At the July 26th hearing, several people testified regarding the rule. Although the overwhelming majority of the pre-hearing input and much of the live testimony was in support of the rule, legitimate concerns were raised by passionate and caring people opposed to the proposal. The primary concern was that an applicant may be granted a Hotel & Restaurant license, within the proposed rule, but that it may end up acting more like a tavern, outside the proposed rule.

After carefully considering all of the comments, input and testimony, before, during and after the hearing, and pros for Denver, the balance thereof heavily favors adoption of the rule. **Therefore, the rule is hereby adopted.** To address legitimate concerns, the Department will also consider the creation of informal special protocols for Hotel and Restaurant liquor license applicants within 500 feet of a school.

Informal Special Protocols for H&R Applicants w/in 500 Feet of a School

With this rule change, Hotel & Restaurant liquor license applicants in Denver will not be barred from applying for a location within 500 feet of a school. Because the Department recognizes that there are important considerations for liquor licensed restaurants near schools, however, we are simultaneously embracing the following informal special protocols for Hotel and Restaurant applicants and new and renewing licensees within 500 feet of a school:

- 1 - When applying to renew its annual license, licensee shall file an affidavit of compliance with the Hotel & Restaurant license requirements under the state liquor code, C.R.S. Section 12-47-411.
- 2 - No cabaret licenses shall be issued without agreement from any school within 500 feet.
- 3 - The Department of Excise and Licenses shall prioritize and apply special scrutiny to any complaints or violations related to licensees within 500 feet of a school.

Finally, the "needs and desires" of the neighborhood are a vital part of all public hearings on new liquor license applications, and will be carefully considered for each Hotel & Restaurant license application within 500 feet of a school.

By:


Tom Downey, Director
Department of Excise and Licenses

Date:

August 30, 2012

CITY & COUNTY OF DENVER
Department of Excise and Licenses

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Approved for Legality:

DOUGLAS J. FRIEDNASH
Attorney for the City and County
Of Denver


Douglas J. Friednash

City Attorney

Date: 8/24/12

Approved and Adopted:

TOM DOWNEY
Director, Department of Excise
and Licenses


Tom Downey

Director

Date: 8/15/12

Adopted pursuant to Section 2.7.4 of the Charter of the City and County of Denver,
and Article VI, Chapter 2 of the Denver Revised Municipal Code, and C.R.S.
Section 12-47-313(1)(d)(III).

Notice of public rulemaking hearing published in The Daily Journal, June 22, 2012.

CITY & COUNTY OF DENVER
Department of Excise and Licenses, July, 2012

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- 1. The distance restriction established by C.R.S. Section 12-47-313(1)(d) shall be eliminated with respect to hotel and restaurant licenses only, pursuant to C.R.S. 12-47-313(1)(d)(III). Hotel and restaurant liquor licenses may issue within five hundred feet of any public, parochial, or nonpublic school or the principal campus of any college, university, or seminary.**



CITY AND COUNTY OF DENVER

DEPARTMENT OF EXCISE AND LICENSES

OFFICE OF DIRECTOR
201 West Colfax Avenue, Dept. 206
Denver, Colorado 80202

AFFIDAVIT OF COMPLIANCE WITH HOTEL AND RESTAURANT LIQUOR LICENSE REQUIREMENTS

I, _____, lawfully authorized representative of the hotel and restaurant liquor licensee _____ ("Licensee"), doing business as _____, hereby swear or affirm that:

1. Licensee is applying for annual renewal of its hotel and restaurant liquor license, and its licensed premises is located within five hundred (500) feet of a school.
2. Since the date of filing of the last annual renewal application, Licensee has complied with the requirements of C.R.S. Section 12-47-411 pertaining to hotel and restaurant liquor licenses.
3. Specifically, Licensee has complied with C.R.S. Section 12-47-411(1)(a), which states: "Restaurants shall sell alcohol beverages as provided in this section only to customers of the restaurant and only if meals are actually and regularly served and provide not less than twenty-five percent of the gross income from sales of food and drink of the business of the licensed premises."
4. Licensee will continue to comply with C.R.S. Section 12-47-411 and all other applicable laws and regulations pertaining to hotel and restaurant liquor licenses.

Authorized Signature

Title

Date