

RESOLUTION

A RESOLUTION APPROVING THE MARIJUANA LICENSING AUTHORITY AND HEARING OFFICER RULES OF PROCEDURE.

WHEREAS, the City has adopted a new Article X, Chapter 42, of the City Code pertaining to Marijuana Licensing provisions for Marijuana Establishments; and

WHEREAS, the new Marijuana Licensing scheme creates a Marijuana Licensing Authority that will hold a public hearing to determine whether Marijuana Establishments should be granted a license and will appoint a Hearing Officer to preside over hearings on change of location, transfer of ownership, modification of the licensed premises, change of corporate structure of the licensee, license renewals that are not approved administratively and complaints alleging violations or unlawful acts; and

WHEREAS, the attached Marijuana Licensing Authority and Hearing Officer Rules of Procedure ("Rules of Procedure") establishes the procedure that is to be followed by both the Authority and the Hearing Officer for conduct of all hearings held under the Marijuana Licensing provisions; and

WHEREAS, these Rules of Procedure were patterned after the Rules of Procedure that have been successfully used by the City's Local Liquor Licensing Authority; and

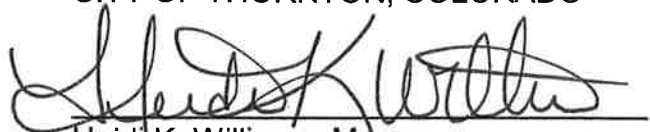
WHEREAS, it is necessary to adopt these Rules of Procedure to provide for an efficient and fair process for conducting all hearings.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. That the Marijuana Licensing Authority and Hearing Officer Rules of Procedure, as attached hereto and incorporated herein by this reference and are hereby approved.
2. This resolution shall take effect on passage.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on August 24, 2016.

CITY OF THORNTON, COLORADO


Heidi K. Williams, Mayor

ATTEST:


Nancy A. Vincent, City Clerk

MARIJUANA LICENSING AUTHORITY & HEARING OFFICER RULES OF PROCEDURE

RULE I – APPLICABILITY OF RULES

In addition to any other rules or laws which may be applicable, these Rules of Procedure (Rules) shall govern all proceedings before the Marijuana Licensing Authority (Authority) of the City of Thornton, and the Marijuana Hearing Officer (Hearing Officer). The Authority may waive or modify any procedural or non-substantive rule set forth herein by a majority vote of all members of the Authority.

RULE II – PUBLIC HEARING PROCEDURES FOR NEW LICENSES

A. Chairperson, Vice Chairperson, and Duties of Members

1. *Chairperson.* The seated mayor shall act as the Chairperson and have full authority to control the proceedings, to admit or exclude testimony or other offers of evidence and to rule upon all motions and objections. A majority of the Authority members present may overrule the Chairperson on any such ruling. The Chairperson shall have the responsibility to ensure that all meetings are conducted in an open and fair manner.
2. *Vice Chairperson.* The seated mayor pro tem shall act as the Vice Chairperson. In the absence of the Chairperson, the Vice Chairperson shall preside.
3. *Absence/Tardiness.* A member of the Authority who is absent during any portion of the public hearing may not vote or participate in deliberations and discussions at the public hearing.

B. Hearings – Generally

1. *Decorum during hearing.* The Chairperson shall preserve decorum during a hearing. The Chairperson shall have the right to eject, after reasonable warning, any person disrupting a hearing. No signs or placards will be displayed by an applicant or the audience during a hearing. Loud sounds such as cheering, applause, or booing shall be limited by the Chairperson. Video or audio recording of a hearing by persons other than the City is at the discretion of the Chairperson and in no event shall any recording interfere or impede a meeting.
2. *Scheduling of hearings.* Public hearings shall be scheduled to occur either on a regularly scheduled meeting of the City Council, or at a special meeting of the City Council pursuant to Section 4.11 of the Charter.
3. *Notice.* Notice for public hearings shall be pursuant to 42-716(d)(1) of the City Code.
4. *Exhibits.* All exhibits or other documentary evidence to be admitted, including the Community Engagement Plan, shall be submitted to the City Clerk and pre-marked no

later than seven days prior to the hearing. These exhibits shall be introduced as in Civil Cases. If the applicant desires to distribute copies of the exhibits to the Authority at the hearing, the applicant shall provide a sufficient number of copies.

4. *Rules of Evidence.* The Authority shall not be bound by strict rules of evidence prevailing in courts of law or equity; however the right of cross-examination shall be preserved. Irrelevant, repetitive, and cumulative testimony and evidence should be excluded when possible. Motions may be written, but, shall be read into or summarized for the record. Objections shall be stated orally for the record. All testimony shall be given under oath. In all public hearings under this Rule I, the applicant has the burden of persuading the Authority that the application should be granted.

C. Hearing Procedures

1. *Sign-up sheets.* The City Clerk will prepare the hearing room and provide public hearing sign-up sheets to be placed in the back of the Council Chambers prior to the meeting for the benefit of those persons wishing to speak on the matter set for hearing.

2. *Recording.* The hearing shall be recorded. Any person requesting a transcript of such record shall reimburse the City for the cost to prepare the record.

3. *Presentation of Evidence—Burden of Proof.* In a hearing concerning an application for a new marijuana store license, the applicant shall have the burden of proving, by preponderance of the evidence, that the Community Engagement Plan meets the requirements of section 42-716(d)(2) of the City Code and is consistent with the applicant's application and supplemental materials.

4. *Presentation of Evidence—Order of Presentation.* The following order for the presentation of evidence shall apply to all hearings:

- a. Call the public hearing to order
- b. Opening remarks/introduction of the matter by the Chairperson
- c. Opening statement by the applicant or applicant's attorney
- d. Opening statement by the City Attorney
- e. Applicant's presentation of evidence and witnesses. Prior to excusing applicant's witnesses, cross-examination shall be permitted in the following order:
 - i. City Attorney
 - ii. Authority members
- f. City's presentation of evidence and witnesses, if any. Prior to excusing any of the City's witnesses, cross-examination shall be permitted in the following order:
 - i. Applicant/Applicant's attorney
 - ii. Authority members
- g. Public comment, if any
- h. Applicant's rebuttal evidence, if any

- i. City's rebuttal evidence, if any
- j. Applicant's closing statement
- k. City's closing statement, if any
- l. Close the public hearing
- m. Deliberation and call for motion and second
- n. Chairperson opens motion/second for discussion
- o. Vote on motion

5. *Reopening of Public Hearing.* Whenever a public hearing has been opened and continued to another date or where it has been closed and the Authority wishes to take additional evidence prior to a final decision, the Chairperson may reopen the public hearing for purposes of taking such additional evidence. The Chairperson may limit the scope of such evidence to be taken. Whenever a public hearing is reopened and additional evidence is taken, all such additional evidence shall be incorporated into the original public hearing.

6. *Evidence for Public Hearing.* Evidence at a public hearing for a new license may include, but is not limited to:

- a. Qualification of the applicant. Evidence concerning whether the applicant is qualified to hold the license, which may include:
 - i. Other facilities operated by the applicant
 - ii. Training and experience of the applicant
 - iii. History regarding operation of other marijuana establishments and the operation's engagement with the community
- b. Community Engagement Plan. The applicant shall present its Community Engagement Plan and any testimony and evidence relevant to establish how the proposed business will not adversely impact the health, welfare, or public safety of the neighborhood in which the proposed business will be located.
- c. Proof of compliance with posting requirements. The applicant shall present proof of compliance with Public Notice requirement in Section 42-716(d) of the Thornton City Code.

D. Continuances. The City Clerk may grant an applicant's or the City's request to continue a matter set for hearing to a following regular or special meeting if such request is made prior to the time that publication and posting of notice of hearing on the matter is to be made. Once a matter has been scheduled for public hearing and public notice thereof has been given, the matter may be continued only by the Authority upon a showing of good cause. The Authority may, in its discretion, grant or deny a request for a continuance.

E. Parties. Unless excused by the Authority, the following persons shall be in attendance at the Public Hearing on the application:

- 1. If the applicant is an individual, that individual; or
- 2. If the applicant is a partnership, any managing or general partner or authorized designee; or

3. If the applicant is a corporation, the president of the corporation, an officer or director, or such other corporate representative as the president may designate in writing; or
4. If the applicant is a limited liability company, a managing officer or authorized designee.

F. Approval or Denial. Not less than 30 days following the Public Hearing the Authority shall either approve, approve with conditions, or deny the license application in writing as provided in Section 42-716(d)(5) of the Thornton City Code.

G. Findings. Any findings, which shall mean findings of fact, conclusions of law and order, may be prepared by the City Attorney's Office and shall be available for execution by the Chairperson within 15 days of the public hearing. Written findings of fact shall be mailed by certified mail to the applicant within 30 days after the hearing.

H. Appeals. All decisions of the Authority are final, subject only to appeals pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

RULE III – HEARING PROCEDURES FOR LICENSE RENEWALS, TRANSFERS OF OWNERSHIP, CHANGE OF CORPORATE STRUCTURE, CHANGE OF LOCATION, AND MODIFICATION OF PREMISES

A. Hearing Officer. Hearings for license renewals not approved administratively, transfers of ownership, change of corporate structure, change of location, and modification of premises will be heard by the Hearing Officer.

B. Hearings – Generally

1. *Decorum during hearing.* The Hearing Officer shall preserve decorum during a hearing. The Hearing Officer shall have the right to eject, after reasonable warning, any person disrupting a hearing. No signs or placards will be displayed by a licensee or the audience during a hearing. Loud sounds such as cheering, applause, or booing shall be limited by the Hearing Officer. Video or audio recording of a hearing by persons other than the City is at the discretion of the Hearing Officer and in no event shall any recording interfere or impede a meeting.

2. *Scheduling of hearings.* Hearings shall be scheduled by the City Clerk within 60 days of administrative denial of a license renewal or within 60 days of receipt of an application for transfer of ownership, change of corporate structure, change of location, or modification of premises.

3. *Exhibits.* All exhibits or other documentary evidence to be admitted shall be submitted to the City Clerk and pre-marked no later than seven days prior to the hearing. These exhibits shall be introduced as in Civil Cases. If the licensee desires to distribute copies of the exhibits to the Hearing Officer at the hearing, the licensee shall provide a sufficient number of copies.

4. *Rules of Evidence.* The Hearing Officer shall not be bound by strict rules of evidence prevailing in courts of law or equity; however the right of cross-examination shall be preserved. Irrelevant, repetitive, and cumulative testimony and evidence should be excluded when possible. Motions may be written, but, shall be read into or summarized for the record. Objections shall be stated orally for the record. All testimony shall be given under oath. In all public hearings under this Rule III, the licensee has the burden of persuading the Hearing Officer that the application should be granted.

C. Hearing Procedures

1. *Recording.* The hearing shall be recorded. Any person requesting a transcript of such record shall reimburse the City for the cost to prepare the record.

2. *2.Presentation of Evidence – Burden of Proof.* *In a hearing concerning an application for renewal, transfer of ownership, change in corporate structure, or modification of premises, the licensee shall have the burden of proving, by preponderance of the evidence, that the licensee is and would continue to be in compliance with all City and state laws and regulations pertaining to the application and operation of the marijuana establishment.*

3. *Presentation of Evidence – Order of Presentation.* The following order for the presentation of evidence shall apply to all hearings:

- a. Call the hearing to order
- b. Opening remarks by the Hearing Officer
- c. Opening statement by the licensee or licensee's attorney
- d. Opening statement by the City Attorney
- e. Presentation of licensee's evidence and witnesses. Prior to excusing the licensee's witnesses, cross-examination shall be permitted.
- f. Presentation of the City's evidence and witnesses. Prior to excusing any of the City's witnesses, cross-examination shall be permitted.
- g. Licensee's rebuttal evidence, if any
- h. City's rebuttal evidence, if any
- i. Licensee's closing statement
- j. City's closing statement
- k. Licensee's reply closing statement
- l. Close the hearing

4. *Evidence for hearing.* Evidence at a hearing may include, but is not limited to:

- a. Evidence concerning whether the licensee is qualified to hold the license, including evidence of compliance with all relevant statutory and regulatory requirements.
- b. Compliance with the Community Engagement Plan
- c. Compliance with all city and state operational rules and regulations

- d. Plans or specifications for modification of premises, and proof that any modifications would result in the licensee continuing to be in compliance with all City and state operational rules and regulations.

D. Continuances. Requests for continuances shall be made, when practicable, in writing, prior to the scheduled hearing. Requests for continuances shall not be granted on the day of the hearing absent a showing of good cause. The Hearing Officer shall have the sole discretion to grant or deny a request to continue.

E. Parties. Unless excused by the Hearing Officer, the following persons shall be in attendance at the hearing on the application:

1. If the applicant is an individual, that individual; or
2. If the applicant is a partnership, any managing or general partner or authorized designee; or
3. If the applicant is a corporation, the president of the corporation, an officer or director, or such other corporate representative as the president may designate in writing; or
4. If the applicant is a limited liability company, a managing officer or authorized designee.

F. Approval or Denial. Not less than 30 days following the hearing the Hearing Officer shall either approve, approve with conditions, or deny the license application in writing. Any such approval or denial shall include any findings, which shall mean findings of fact and conclusions of law and order, which the Hearing Officer relied on to make the determination to approve, approve with conditions, or deny the application. Written findings of fact shall be mailed by certified mail to the license within 30 days after the hearing.

Appeals. All decisions of the Hearing Officer are final, subject only to appeals pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

RULE IV – HEARING PROCEDURES FOR SUSPENSIONS, REVOCATIONS, AND IMPOSITION OF CIVIL PENALTIES

A. Hearing Officer. A hearing upon the filing of a complaint seeking the imposition of a civil penalty or suspension or revocation of a license will be heard by the Hearing Officer.

B. Initiation of Proceedings. If there is probable cause to believe that a licensee has violated or permitted a violation of state and/or local law, rules and regulations, or any of the terms, conditions, or provisions of the license, the City Attorney may file with the Hearing Officer a written complaint setting forth the circumstances of the violation, and a request that the Hearing Officer set a show cause hearing. If the Hearing Officer determines that the complaint establishes probable cause to believe that a violation exists, the Hearing Officer shall issue an Order to Show Cause and Notice of Hearing (“Notice”), which shall command the licensee to appear and show cause as to why a civil penalty should not be imposed, or the license should not be suspended or revoked. The Notice shall notify or inform the licensee of the charges or

alleged grounds for the violation and the imposition of a civil penalty, suspension, or revocation, and will be prepared for the Hearing Officer by the City Attorney or designee.

C. Settlements and Dispositions. All proposed settlements and dispositions of matters scheduled for hearing shall be in the form of a joint stipulation and shall be submitted in writing to the offices of the City Clerk and City Attorney at least ten days prior to the scheduled hearing date. The Hearing Officer has the discretion to consider a proposed disposition prior to the hearing.

1. The scheduled hearing shall be automatically vacated if:
 - a. The proposed settlement or disposition is properly and timely made in writing in accordance with Section C; and
 - b. The proposed settlement is approved as to legal form by the City Attorney's office; and
 - c. No prior proposed settlements or dispositions on the same matter have been previously submitted to the Hearing Officer for consideration
2. The City Clerk shall provide the Hearing Officer with a copy of the written notice of proposed settlement or disposition.
3. Consideration of proposed disposition by the Hearing Officer; continuance of hearing upon rejection.
 - a. Upon timely filing of the notice of the proposed disposition as provided in Section C above, the Hearing Officer shall, at the time of the scheduled hearing consider the proposed stipulations and recommendations. The Hearing Officer may however, upon good cause shown, consider dispositions presented either orally or in writing without regard to the provisions of Section C above. Upon a finding that the public interest is not served by the proffered disposition, or if the Hearing Officer significantly changes the proposed settlement order and during the Hearing Officer's consideration of such, either party has an objection to such changes, the hearing on the merits shall be continued and rescheduled within 30 days. The continued hearing shall be at least ten days after the original scheduled hearing date, unless both parties are prepared and agree to proceed immediately after rejection of the proposed disposition.
 - b. In the event of rejection of the proposed disposition, the Hearing Officer shall identify the reasons for such rejection, which may include, without limitation, seriousness of the violations, aggravating or mitigating circumstances, the history of the subject establishment, corrective actions taken, likelihood of reoccurrence, and any other relevant matters impacting the public health, safety, and welfare.
4. Subsequent proposed dispositions. In the event that the Hearing Officer, in the exercise

of his or her discretion, should reject the proposed disposition of a matter, and the issues are rescheduled for hearing on the merits as set forth in Section 3(a), and the parties submit an amended notice of proposed disposition, the parties should nevertheless be fully prepared to proceed on the merits of the case at the rescheduled hearing in the event the amended proposal for disposition is also rejected by the Hearing Officer as herein contemplated.

5. Effect of rejection of proposed disposition – no prejudice. In the event that the Hearing Officer should reject any proposed disposition pursuant to the provisions of these Rules, neither the City nor the licensee shall suffer any prejudice or detriment as a result of such rejection. The legal standards and burden of proof applicable to the proceedings shall be as if the proposal had not been presented, and a licensee shall suffer no detrimental presumption or inference as a result of such rejection upon hearing the merits.

6. Factual stipulations. Nothing in these Rules shall be deemed or construed to preclude or limit either party before or during a hearing from offering to stipulate as to the existence of any fact.

D. Continuances. All requests for continuance of a scheduled hearing where the Hearing Officer will be considering whether a license may be suspended or revoked shall be submitted in writing to the offices of the City Clerk and the City Attorney, or if the City is requesting the continuance, to the City Clerk and the business address of the applicant/licensee or their legal counsel at least ten days prior to the scheduled public hearing date.

1. A continuance of the public hearing shall be granted by the City Clerk to a new hearing date within 30 days if:

- a. The written request is properly and timely submitted to the City Clerk's office in accordance with Section D; and
- b. Both parties or their representatives agree to the continuance; and
- c. Neither party has been previously granted a continuance in the matter under consideration.

2. If the request for continuance is not made and granted in accordance with Subsection D(1), both parties or their representative shall appear before the Authority at the scheduled public hearing time ready to proceed with their case.

3. Upon a showing of substantial hardship or other good cause by the requesting party, the Hearing Officer may grant continuances upon such terms and conditions as it deems just and proper.

E. Hearings – Generally

1. *Decorum during hearing.* The Hearing Officer shall preserve decorum during a hearing. The Hearing Officer shall have the right to eject, after reasonable warning, any person disrupting a hearing. No signs or placards will be displayed by a licensee or the

audience during a hearing. Loud sounds such as cheering, applause, or booing shall be limited by the Hearing Officer. Video or audio recording of a hearing by persons other than the City is at the discretion of the Hearing Officer and in no event shall any recording interfere or impede a meeting.

2. *Scheduling of hearings.* Hearings shall be held at the place, date, and time designated by the Hearing Officer as stated in the Order to Show Cause and Notice of Hearing.

3. *Rules of Evidence.* The Hearing Officer shall not be bound by strict rules of evidence prevailing in courts of law or equity; however the right of cross-examination shall be preserved. Irrelevant, repetitive and cumulative testimony and evidence should be excluded when possible. Motions may be written, but, shall be read into or summarized for the record. Objections shall be stated orally for the record. All testimony shall be given under oath.

F. Hearing Procedures

1. *Recording.* The hearing shall be recorded. Any person requesting a transcript of such record shall reimburse the City for the cost to prepare the record.

2. *Presentation of Evidence—Burden of Proof.* In a hearing initiated pursuant to this Rule IV, the City shall have the burden of proving, by preponderance of the evidence, the occurrence of the violation or unlawful act forming the basis of the complaint.

3. *Presentation of Evidence—Order of Presentation*

- a. Call the hearing to order
- b. Opening remarks by the Hearing Officer
- c. Opening statement by the City Attorney
- d. Opening statement by the licensee or licensee's attorney
- e. Presentation of City's evidence and witnesses. Prior to excusing any of the City's witnesses, cross-examination shall be permitted.
- f. Presentation of licensee's evidence and witnesses. Prior to excusing any of the licensee's witnesses, cross-examination shall be permitted.
- g. City's rebuttal evidence
- h. Licensee's rebuttal evidence
- i. City's closing statement
- j. Licensee's closing statement
- k. City's reply closing statement
- l. Close the hearing

4. *Evidence for Public Hearing.* Evidence at the hearing may include, but is not limited to:

- a. Evidence from individual witnesses who were present when the alleged events/violations occurred;

- b. Evidence from experts including health or other county or state officials concerning events surrounding the violation;
- c. Evidence from City employees and officials, including but not limited to Code Enforcement officers, Finance officers, and Building officials; and
- d. Evidence from the Police Department

G. Hearing Determination

- 1. In the event the licensee is found not to have violated any law, rule or regulation, the charges against him will be dismissed.
- 2. In the event the licensee is found to have violated some law, rule or regulation, the license shall be suspended, revoked or a civil penalty imposed in accordance with the Marijuana Establishment Violations and Sentencing Guidelines.

H. Order. The Hearing Officer shall issue a written order setting forth the findings of fact and conclusions of law the Hearing Officer made in reaching its determination to dismiss charges, impose a civil penalty, or suspend or revoke the license. The Order shall be provided to the City Clerk no later than 30 days following the hearing. The City Clerk shall mail the licensee the Hearing Officer's Order by first-class mail to the address contained in the license within 3 business days following receipt of the Order from the Hearing Officer.

I. Fees. In the event of revocation, or suspension, no portion of the license fee shall be refunded.

J. Date of Suspension. Orders of suspension shall indicate the effective date of suspension. For suspensions of 14 days or less, the effective date shall be at least ten business days after announcement of the suspension unless the Hearing Officer makes findings, which indicate the need for an earlier effective date.

K. Date of Revocation. An Order for revocation of a license shall be effective immediately upon issuance by the Hearing Officer.

L. Fine in Lieu. A licensee wishing to petition the Hearing Officer to pay a fine in lieu of suspension must submit a written petition to the City Clerk's Office in accordance with Section 42-735(k) of the Thornton City Code.

M. Civil Penalties. Upon receipt of an Order for the payment of a civil penalty, the licensee shall remit full payment in the form of cash, money order, or certified check or cashier's check made payable to the City no more than ten days after issuance of such order, unless otherwise agreed to in writing by the City Clerk.

N. Appeals. All decisions of the Hearing Officer are final, subject only to appeals pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.