

# Marijuana Hearings

# Which Marijuana Business Applications Must Have A Public Hearing?

- New Retail Marijuana Stores
- New Medical Marijuana Centers
- Transfer of Location for Retail Marijuana Stores
- Transfers of Location for Medical Marijuana Centers
- Protested Renewals of Retail Grows in certain Zone Districts\*
- Protested Renewals of Medical Grows in certain Zone Districts\*



# New And Transferring Marijuana Hearings

- The licensing authority holds a public hearing to consider
  - The reasonable needs of the neighborhood;
  - The desires of the adult inhabitants of the neighborhood; and
  - Whether “Good Cause” exists to deny the license

# Parties In Interest

- “Parties in Interest” have the right to present evidence and cross examine witnesses at hearings
- For marijuana applications Parties in Interest include
  - The Applicant
  - Adult residents within the Designated Area
  - Owner and managers of businesses within the designated area
  - Authorized representatives of RNOs that encompasses any part of the Designated Area
  - Members of City Council elected from a district which encompasses any part of the Designated Area (including council people at large)

# Public Hearing - Protested Renewals

- A Party in Interest may protest the renewal of a grow license by petitioning the department with at least 10 valid signatures of neighborhood residents and business owners/managers gathered within 90 days of the renewal date.
- The renewal of a grow license will be denied if it can be proved that, more likely than not,:
  - The grow has frustrated the implementation of the city's comprehensive plan and any applicable adopted neighborhood plan;
  - The grow has negatively affected nearby properties or the neighborhood in general (excessive noise, odors, vehicular traffic etc.)
  - The grow has caused an increase in crime rates in the neighborhood
  - The continued existence of the grow will negatively impact the health safety and welfare of the neighborhood
  - The grow license should not have been granted in the first place ((DRMC 6-214(3)(a-e) and 24-510(3)(a-e)))

# Public Hearing - Needs And Desires

- Needs of the Neighborhood
  - Refers to the neighborhood's need for an additional marijuana sales location
- Desires of the Neighborhood
  - Broader in scope than needs
  - A person's desire for or against the license can be based on anything except a general abhorrence towards marijuana (Saying "I just don't like marijuana" doesn't qualify)
- The "needs and desires" of the neighborhood may be evidenced by petitions, remonstrances, testimony, or otherwise

# Examples Of Testimony Against Needs And Desires

- Needs
  - There is already one or more marijuana establishments meeting the needs of the neighborhood
  - More people testify that they don't need another marijuana establishment than do, and vice versa (most effective)
- Desires
  - More petitions against the license than for the license, and vice versa (most effective)
  - The granting of this license would have a negative impact on health safety and welfare because \_\_\_\_\_ (can be combined with good cause)

# Good Cause

- “Good Cause” exists to deny the issuance of a marijuana license when
  - Applicant has failed to comply with state or local law
  - Granting the license would have the effect of “restraining competition”
  - Granting the license would create an “undue concentration” of said business type
  - The location to be licensed had previously been operated in a manner that adversely affected the health safety and welfare of the neighborhood
  - Evidence exists that the issuance of the license would adversely impact the health, welfare, or public safety of the neighborhood (Not Speculative)



# Examples Of “Good Cause” To Deny A License

- The proposed location is within 1000 feet of a school, child care facility, or alcohol/drug treatment facility (as the crow flies)
- The applicant does not have “proof of premises”
- There is no corresponding state license or it has been surrendered for prior disciplinary issues (can examine the dept file, or make an open records req. to the MED)
- There are already 20 other stores/centers within the neighborhood
- Applicant transferring marijuana establishment (or currently operated medical center) has had repeated incidents of criminal activity or violations
  - Damage to vehicles, public urination, littering, public consumption

# How Is The Neighborhood Determined?

- The Designated Area is the Department's designation on a map of an area around the proposed location representing the "Neighborhood"
- If proposed location is in downtown Denver
  - 9 square blocks (rectangular pattern)
  - Includes the Central Business District and Lower Downtown (LoDo)
- If proposed location is in any other area
  - 100 square blocks (rectangular pattern)
- The Designated Area may be modified at the request of a "Party in Interest"



# Hearing Date And Location

- After the Department receives and reviews an Application, the Department emails a Hearing Packet stating the purpose, date, time, place, and filing deadlines of the hearing to
  - RNOs with boundaries that overlap the Designated Area
  - Denver Police Department - Division Chief of Patrol
  - Relevant City Council Members
- The hearing date will be after all notice, posting, and publication requirements are met and are set by the Department
- Unless ordered otherwise by the Department hearings take place at 201 West Colfax Avenue, Dept. 206, Denver, Colorado, 80202



# What Can A Party In Interest Do Before The Hearing?

- Before a hearing Parties in Interest may submit
  - A Prehearing brief - filed 14 days prior to hearing
  - Response(s) to Pre-hearing Briefs - filed 7 days prior to hearing
  - Petitions in Support or Opposition - filed 14 days prior to hearing
  - Objections to Petitions - filed 7 days prior to hearing
  - Exhibits and Exhibit lists (including GNAs) - filed 7 days prior
  - Requests for Evening Hearing - filed 15 days prior
    - Submitted on forms provided by the department
    - Contain 15 valid signatures and addresses from Parties in Interest over 21
  - Requests to Modify the Designated Area - no filing deadline
  - Requests for Continuance - no filing deadline

# Prehearing Brief And Response

- Prehearing briefs and responses are documents submitted by a Party in Interest which outline the issues in the case prior to conducting the hearing
- Prehearing briefs and Responses typically include (in order)
  - A request of the action being sought if any (Ex. Requesting the application be denied because the location is prohibited)
  - An introduction/overview of the basic argument
  - Background of what has occurred
  - Arguments (the reasoning why your side is right and the other side is not)
  - Exhibits (ex. GIS map showing the location of the proposed premises)

# Petitions

- Petitions are collected on forms provided by the department and may be obtained at the Department of Excise and Licenses
- **YOU MUST FOLLOW THE RULES AND PROCEDURES FROM THE DEPARTMENT.**
  - **Make those signatures count!**
- You will receive an instruction form from the Department:

## CIRCULATING PETITIONS

**EACH PETITION SUBMITTED MUST CONSIST OF:  
(1) THE PETITION WARNING PAGE;  
(2) SIGNATURE PAGES, and  
(3) A MAP OF THE DESIGNATED AREA.**

**FAILURE TO ABIDE BY THESE INSTRUCTIONS  
WILL RESULT IN A PETITION BEING DETERMINED INVALID  
and the PETITION WILL NOT BE ACCEPTED**

**Petitions may be circulated as follows:**

- a) On forms to be prepared by the applicant(s) or protester(s) in conformity with a sample packet provided by the Department of Excise and Licenses.**
- b) All petition packets include the petition warning page, signature page, and a copy of the designated area map.**
- c) Petitions may be circulated only in the neighborhood as designated on the map attached to the petition.**
- d) Circulation of a petition may begin the second day following the first day of posting of the public notice on the proposed licensed premises in order to give all interested persons equal opportunity to begin circulating petitions. Petitions circulated prior to this time will not be accepted.**
- e) All signatures must be affixed to the petitions in the presence of the circulator of the petition.**
- f) Persons signing petitions should:**

# Petition packets

- All petition packets must include:
  - The affidavit of petition circulator
  - The petition warning page
  - The signature page
  - A copy of the designated area map.



**AFFIDAVIT OF PETITION CIRCULATOR**

I, \_\_\_\_\_, who resides  
at \_\_\_\_\_

**Hereby state that I was the circulator of the petition attached hereto and further assert that I personally witnessed the placing of each signature on the attached petition and that each signature is the signature of the person whose name it purports to be. Additionally, every individual who signed the attached petition represented himself or herself to be over the age of 21 years and is either a resident or the owner or manager of a business in the neighborhood designated as the immediately affected area by the Department of Excise and Licenses. Lastly, every signatory of the attached petition read or had read to them the petition in its entirety, understands the nature of the petition and thereby freely and voluntarily signed such petition without the employment of any promises, threats, force or inducements.**

\_\_\_\_\_  
**Circulator**

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
**Notary of the Public**

**My commission expires:** \_\_\_\_\_

# Collecting signatures

- Petition circulation may begin the second day following the first day of posting of the public notice on the proposed premises.
- Signatures must be done in presence of circulator
- For each person that signs:
  - Sign only their name and put their own address and date the signature
  - Must be 21 or over
  - Must NOT sign any other petition
- **REMEMBER:** Persons signing must be residents of the designated neighborhood or own or manage a business therein.

## WARNING

You are subject to subpoena to testify before the Director of Excise and Licenses concerning this petition and, therefore,

### **DO NOT SIGN THIS PETITION UNLESS**

1. You are at least twenty-one (21) years of age, AND
2. You are a resident of the area designated by the Director of Excise and Licenses, OR
3. You are the owner or manager of a business within the area designated by the Director of Excise and Licenses; AND
4. You have not signed another petition concerning the same application; AND
5. You sign YOUR OWN NAME ONLY. (For example, a husband cannot sign for his wife), AND
6. You have read, or had read to you, the petition in its entirety and understand its meaning.

### **PETITION IN SUPPORT OF THE ISSUANCE OF**

**A** Choose an item. LICENSE

**AT** **[Address of Business]**, City & County of Denver, State of Colorado

We, the undersigned, being at least twenty-one (21) years of age, and living (or doing business) within an area prescribed by the Director of Excise and Licenses in the neighborhood of **[Address of Business]**, County of Denver, State of Colorado, are in favor of and do support the request of petitioner, **[Entity Name] doing business as [Trade Name]** for the issuance of a Choose an item. **License on the premises at this location: [Address of Business]**, Denver, State of Colorado, and freely and voluntarily sign the following petition in Opposition to the issuance of the license.

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**THE HEARING BEFORE THE DIRECTOR OF EXCISE AND LICENSES IS ON THE** Choose an item. **DAY OF** Choose an item. **2016 AT** Choose an item., **AT 201 WEST COLFAX AVENUE, DEPT 206, DENVER, COLORADO.**

**\*\* Petitions supporting or opposing any application must be filed with the Department of Excise and Licenses five (5) calendar days before the date of the hearing or your petition circulator must testify at the hearing.**

PETITION IN OPPOSITION TO THE ISSUANCE OF A MEDICAL MARIJUANA CENTER LICENSE FOR THE PREMISES AT THIS LOCATION: [REDACTED] DENVER, COLORADO.

	NAME	HOME OR BUSINESS ADDRESS (IN THE DESIGNATED AREA)	OVER 21		DATE
			Yes	No	
1	Ken	[REDACTED]	X		7-12-2016
2	Jac	[REDACTED]	X		7/12/16
3	Jerry	[REDACTED]	X		7/12/16
4	Spencer	[REDACTED]	✓		7-12-16
5	AMISSA	[REDACTED]	X		7/12/16
6	Dobson	[REDACTED]	X		7/12/16
7	DiV	[REDACTED]	X		7/12/16
8	Megan	[REDACTED]	X		7/12/16
9	LISA	[REDACTED]	X		7/12/16
10	Malcolm	[REDACTED]	X		7/12/16
11	JULIE	[REDACTED]	X		7/13/2016
12	JULIE	[REDACTED]	X		7/13/2016
13	Christina	[REDACTED]	X		7/13/2016
14	Shack	[REDACTED]	X		7/13/2016
15	Cyprus	[REDACTED]	X		7/20/2016
16	JAMES	[REDACTED]	X		7/20/2016
17	David	[REDACTED]	X		7/21/2016
18	ANNA	[REDACTED]	X		7/20/2016
19	Kristen	[REDACTED]	X		7/20/16
20	Glenn	[REDACTED]	X		7/20/16
21	[REDACTED]	[REDACTED]	X		7/26/16
22	Jane	[REDACTED]	X		7/26/16
23	Kelly	[REDACTED]	X		07/26/16
24	Eric	[REDACTED]	X		7/26/16
25	[REDACTED]	[REDACTED]	X		7/26/16
26	[REDACTED]	[REDACTED]	X		7/26/16
27	ANNIE	[REDACTED]	X		7/26/16



# Turning petitions in

- File a complete packet with the Department five days prior to the hearing.
- The affidavit of the circulator **MUST** be signed and notarized after the circulation of the petition.
- File one copy. You may keep an extra date-stamped copy for yourself.
- There is the potential for subpoena for petition circulator and petition signers.

# Objections to petitions

- Objections to petitions should include
  - A brief statement objecting to certain petition signatures
  - A detailed description of the petitions signatures being objected to and the reason for objection

2) The same individual signed a petition in favor more than once (8 signatures disqualified).

- Page 10, line 11 (588 S. Grant/illegible)—also signed at page 10, line 12
- Page 13, line 9 (57 N Pearl/Coburn)—also signed at page 42, line 5
- Page 18, line 1 (555 S. Logan/Bullock)—also signed at page 55, line 1
- Page 22, line 9 (954 E. Bayaud/Rapschutz)—also signed at page 36, line 9
- Page 22, line 21 (609 E. Alameda/Hoong)—also signed at page 36, line 4
- Page 22, line 22 (609 E. Alameda/Hoong)—also signed at page 36, line 5
- Page 23, line 1 (954 E. Bayaud/Alford)—also signed at page 36, line 10
- Page 23, line 7 (175 S. Corona/Sherwood)—also signed at page 36, line 8

3) The individual signed a petition in opposition to the license being issued prior to having signed a petition in favor (6 signatures disqualified).

- Page 18, line 2 (613 S. Logan/White)—see page 59, line 20
- Page 22, line 15 (447 S. Grant/Robinson)—see page 60, line 13
- Page 41, line 3 (68 S. Grant/Peugeot)—see page 61, line 1
- Page 55, line 21 (50 N. Sherman/Caraghan)—see page 62, line 4
- Page 56, line 4 (131 S. Corona/Atefi)—see page 63, line 14
- Page 56, line 3 (185 S. Corona/Denton)—see page 63, line 8

# Exhibits and Exhibit Lists

- Exhibits are documents which are used as evidence in the hearing
  - Opposition exhibits must be marked in numerical sequence with the Pre-identifier of O (ie. O-1, O-2, etc.)
  - Bring **4 copies of each exhibit and exhibit list** to the hearing (there are **NO copy machines** available at the hearing)
  - A Scheduling Order may require all known Parties in Interest to meet ahead of the hearing to review the exhibits and stipulate which exhibits will be entered prior to the hearing
- An Exhibit List is a listing of the marked exhibits and what they are



# Requesting Continuances, Evening Hearings, And Modify

- Requests for Continuances

- A Party in Interest may request a continuance prior to a hearing
  - Must make the request in writing
  - If granted a new hearing packet with updated dates shall be issued

- Requests for Evening Hearing

- Must be filed 15 days before hearing date
- Must be in writing
- Must contain 10 signatures and addresses of local residents/business managers over 21

- Requests to Modify the Designated Area

- Must be in writing
- Must state the reason(s) for the request

# City Attorney

- Represents the City of Denver
- Neither supports nor opposes an application
- Ensures that the record for the hearing is complete (does Applicant comply with all applicable laws)
- Acts as point person for procedural questions by parties in interest prior to hearing

# Hearing Officer

- Is an attorney
- Controls the conduct and procedures at the hearing
- Limits the presentation of evidence and cross-examination, so as to prevent irrelevant, repetitive, or cumulative evidence
- Overrules or sustains objections
- Writes a Recommended Decision after the hearing recommending approval or denial the license
- The Hearing Officer understands RNOs and neighborhood witnesses are not attorneys

# Presenting Evidence

- Although the Colorado rules of evidence apply at public hearings the rules are relaxed and the hearing officer will primarily look to see if the evidence is irrelevant, repetitive, or cumulative. You will have to provide some foundation for most exhibits
- Witnesses will be placed under oath
- Facts presented must have a basis in personal knowledge
- Truthfulness and accuracy are paramount (guessing is discouraged)
- Statements made outside the hearing (Hearsay) may be accepted into evidence if there are guarantees of trustworthiness

# Preparing For A Marijuana Hearing - Tips

- Request to review the file
- Send a list of any procedural questions to the City Attorney
- Collect petition signatures - make sure to comply with the instructions regarding collection of signatures
  - Reside within the designated area, 2 days after posting, over the age of 21, no promises made, parties didn't sign another petition, written legibly (!)
- Prior to the hearing make notes outlining the important points you want to make
- Prepare a pre-hearing brief (helps organize arguments)
- Confirm with the city that all pre-filed materials have been received (exhibits, petitions etc.)
- Consider the points you think the other side is likely to make
- Bring extra copies of exhibits
- Practice

# At The Hearing

- The Applicant will present first
  - MUST present at least one Party in Interest witness to testify regarding the needs and desires of the neighborhood (Applicant may request the Director waive this requirement)
  - May present up to 3 Party in Interest witnesses
  - May present exhibits
  - Opposition may then cross examine Applicant witnesses
- Opposition presents next
  - May present a maximum of 3 Party in Interest witnesses in opposition of the Application (maximum of 3 for each side) - choose witnesses with personal experience, not speculative or general abhorance for the MJ business
  - An RNO rep or a City council rep do not count towards the 3 witness maximum
  - May present testimony “En Masse”
  - May present exhibits
  - Applicant may then cross examine Opposition witnesses

# *En Masse* Testimony

- *En Masse* testimony occurs when there are numerous parties in interest present to oppose or support a license
- Limited witness testimony
  - Must be over the age of 21
  - Does witness live or manage a business in the neighborhood
  - Is the witness in support or opposition to the license
- Limited cross examination of *En Masse* witnesses



# Good Neighbor Agreements (GNAs)

- A GNA is a contract between neighborhood resident(s) and an applicant to address the concerns of the neighborhood
- A GNA submitted to the Department will be placed in the applicant's permanent file
- If agreed to BY THE APPLICANT, some conditions in a GNA may be incorporated in the license provided the conditions are legal and enforceable
- The department will not incorporate the entire GNA on the face of the license





# Additional GNA Considerations

- Consider how the GNA will be enforced
  - The Department WILL NOT enforce GNA conditions which do not appear on the face of the license
  - Binding mediation and arbitration provision for disputes
- There are examples and templates of GNAs in the GNA library
- Split out the GNA conditions that appear on the license in the GNA agreement

# Example of a GNA for a MJ Needs and Desires

NOW, THEREFORE, for good and valuable consideration, the parties hereby agree to the following expectations:

MOONLIGHT  
DINER agrees it will not oppose the granting of the License and will not encourage other parties to oppose the granting of the License.

NRDA agrees it will abide by all laws and regulations pertaining to the sale of marijuana on the Premises, and further agrees to abide by all City of Denver ordinances and laws of the State of Colorado.

In addition, NRDA agrees it will act in a manner not inconsistent with or adverse to the quiet and peaceful enjoyment of business premises and will abide by the following:

1. No lighting shall shine directly onto MOONLIGHT DINER business property.
2. NRDA will provide a telephone number where a manager can be reached during operating hours and after hours.
3. NRDA will meet with representatives of MOONLIGHT DINER in a timely manner to discuss issues that may arise, notwithstanding a rapid response to urgent needs.
4. NRDA will post signs internally that clarify the laws around the purchase and consumption of marijuana. NRDA will post external signs that notify patients that loitering inside or outside of the Premises is prohibited. Further, NRDA will verbally counsel patients about the laws and provide

# Continuing A Hearing

- If a hearing is likely to last more than 3-4 hours the City Attorney or a Party in Interest may request the hearing be continued to another day
- Ultimate authority to grant or deny any continuance rests with the Director or Hearing Officer
- If hearing is continued then a new scheduling order will be sent out with the date and time of the continued hearing



# Night Hearings

- This is still a legal proceeding, is not an open mic or town hall
- Generally occur at the same location as the day hearings
- Generally takes place from 6:00 - 10:00 PM
- *En masse* testimony likely to go first if requested
- More likely to be heavily attended
  - Parking issues
  - Available space at the hearing

# Tips For The Hearing

- Don't rush
- Make a brief outline of the points you want to make
- Ask questions when appropriate
- Take notes during the hearing
- Have your notes organized and close by
- Don't read from a prepared statement
- Write down questions you would like to ask the other witnesses
- Keep calm and stay focused



# What Happens Post-hearing?

- The Hearing officer makes a recommended decision to the Director and sends a copy via email/mail to the following:
  - Applicant or Licensee (if not represented)
  - Anyone who requested a copy of the Recommended Decision at the hearing
- Objections to the Recommended Decision - Any Party in Interest may file written objections to the Recommended Decision within 10 calendar days of the issuance of that decision
- Response to Objections - Any Party in Interest may file a written response to the Objections within 5 days of filing the Objections
- A Final decision approving or denying the application is issued to all individuals who received the Recommended Decision

# Tips for after a hearing

- Read the recommended decision carefully and note
  - What arguments did the hearing officer consider persuasive
  - Were any of the GNA provisions recommended to be put on the license
- File objections to the recommended decision if you disagree with the decision
- Respond to any objections to the recommended decision if you agree with the decision
- You cannot bring up evidence which wasn't presented at the hearing

# Communication With The Department

- Questions concerning the procedures or logistics of a hearing should be sent to the City Attorney's Office
  - [CAOexciseandlicense@denvergov.org](mailto:CAOexciseandlicense@denvergov.org)
  - (720) 913-8020
- Requests to see the file and requests for hearing forms may be made to
  - [EXLapplications@denvergov.org](mailto:EXLapplications@denvergov.org) or
  - [EXLRecordsmanagement@denvergov.org](mailto:EXLRecordsmanagement@denvergov.org)



Questions?