

ALCOHOLIC BEVERAGES

Chapter 53

ALCOHOLIC BEVERAGES

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[HISTORY: Adopted by the Mayor and Town Council of the Town of Frisco 11-07-89 as Ord. No. 89-28.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Nuisances — See Ch. 124.

Offenses — See Ch. 127.

Zoning — See Ch. 180.

§ 53-1. **Applicability.**

In addition to any other rules or laws which may be applicable, these rules shall govern all proceedings before the liquor licensing authority of the Town of Frisco.

§ 53-2. Licensing Authority; Assistant. [Repealed and replaced in its entirety 09-26-06, Ord. 06-30]

¹Editor's Note: This ordinance also repealed former Ch. 53, Alcoholic Beverages, adopted 6-26-1978 as Res. No 78-11, as amended.

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- A. The liquor and beer licensing authority for the Town of Frisco shall be the Town Council ("Council"). As such, the Town Council shall be known as the "liquor licensing authority" or, in this Chapter, as the "authority."
- B. The Town Clerk shall assist the authority by receiving all applications; coordinating with other town officers and departments when relevant; scheduling required public hearings; and exercising her discretion in forwarding applications for renewals, transfer of ownership, change of manager of a licensee; temporary permits; and special event licenses.
- C. As set forth below, the Town Clerk is hereby vested with authority to administratively review and approve applications for liquor license renewals; transfer of ownership; change of manager of a licensee; temporary permits; and special event licenses.
 1. Renewals. In accordance with the provisions of Section 53-12 below, the Town Clerk is authorized to administratively review and approve an application for the renewal of any previously approved liquor license where, after reasonable investigation by the Town Clerk and consultation by the Town Clerk with other appropriate administrative and law enforcement personnel, all of the following circumstances are found to exist:
 - a. The applicant has timely and properly submitted a complete license renewal application and tendered all required fees in accordance with this Chapter and the provisions of Title 12 C.R.S;
 - b. The applicant's license is in good standing with the Town and the State, and no violation of law has occurred during the previous year;
 - c. To the knowledge of the Town Clerk, there is no pending or proposed criminal or legal investigation or charges against the applicant or the licensed premises; and
 - d. There is no other information known by the Town Clerk that would cause the Town Clerk, in her reasonable belief, to believe that some violation of applicable law has occurred or that the license should not be renewed
 2. Transfer of ownership. In accordance with the provisions of Section 53-14 below, the Town Clerk is authorized to administratively review and approve an application for the transfer of ownership of any previously approved liquor license where, after reasonable investigation by the Town Clerk and consultation by the Town Clerk with other appropriate administrative and law enforcement personnel, all of the following circumstances are found to exist:

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- a. The applicant has timely and properly submitted a complete application for transfer of ownership and tendered all required fees in accordance with this Chapter and the provisions of Title 12 C.R.S; and
 - b. The applicant satisfies the eligibility criteria set forth in Section 12-47-307, C.R.S.
3. Change of manager of a licensee. The Town Clerk is authorized to administratively review and approve an application for the change of manager for a licensed establishment where, after reasonable investigation by the Town Clerk and consultation by the Town Clerk with other appropriate administrative and law enforcement personnel, all of the following circumstances are found to exist:
- a. The applicant has timely and properly submitted a complete application for change of manager and tendered all required fees in accordance with this Chapter and the provisions of Title 12 C.R.S. and the new manager has presented himself to the Police Department for photographing, fingerprinting and background investigation, and
 - b. There is no information known by the Town Clerk that could support denial of the application for change in manager under applicable law.
4. Temporary permits. In accordance with the provisions of Section 53-14.E below, the Town Clerk is authorized to administratively review and approve an application for a temporary permit where, after reasonable investigation by the Town Clerk and consultation by the Town Clerk with other appropriate administrative and law enforcement personnel, all of the following circumstances are found to exist:
- a. The applicant has timely and properly submitted a complete application for a temporary permit and tendered all required fees in accordance with this Chapter and the provisions of Section 12-47-303, C.R.S.;
 - b. There is pending an application for the transfer of the liquor license corresponding to the application for a temporary permit;
 - c. The premises subject to the proposed temporary permit is currently subject to a valid liquor license; and
 - d. There is no information known by the Town Clerk that could support denial of the application for change in manager under applicable law.
5. Special event licenses. The Town Clerk is authorized to administratively review and approve an application for a special event license where, after reasonable investigation by the Town Clerk and consultation by the Town

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Clerk with other appropriate administrative and law enforcement personnel, all of the following circumstances are found to exist:

- a. The applicant has timely and properly submitted a complete application for a special event license and tendered all required fees in accordance with this Chapter and the provisions of Title 12, Article 48, C.R.S.;
 - b. Notice of the Town's receipt of an application for a special events permit and the ability to protest the issuance of the permit has been posted on the property subject to the proposed special event permit not less than ten (10) days prior to the date of approval of the permit and no protest to the issuance of such permit has been filed on or before such date of approval; and
 - c. There is no information known by the Town Clerk that could support denial of the application for the special event permit pursuant to the provisions of Section 12-48-106, C.R.S.
- D. Notwithstanding any authority delegated to the Town Clerk for the administrative approval of applications under this Section, the Town Clerk may, at her discretion, refer any licensing decision authorized to her under this Section to the authority if, in the Town Clerk's opinion, the matter should be presented to the authority. In the event the Town Clerk cannot or will not approve a transfer or renewal of a license, or the issuance of a special event license or temporary permit, or the approval of a change in manager of a licensee, then the Town Clerk shall refer the application to the authority for consideration in accordance with applicable law. Written notice of the time and place of such consideration shall be mailed to the applicant by regular mail at least ten (10) days in advance thereof and shall contain such facts or reasons relied upon by the Town Clerk in declining to issue the license or permit or approval. Notice of the proceedings shall also be timely published and posted on the subject premises in accordance with the requirements set forth in Section 12-47-311, C.R.S., and timely provided to any person who may have filed a protest against the issuance of the license with the Town Clerk. Additionally, any license or permit applicant, or any party in interest (as defined in Section 12-47-311, C.R.S.), who is dissatisfied with a decision of the Town Clerk under this Section may appeal same to the authority by filing a written protest with the Town Clerk not more than ten (10) days after the date of the decision appealed from. The Town Clerk shall promptly set the appeal for hearing before the authority in accordance with the notice and hearing procedures described above.
- E. The Town Clerk shall not approve an application for the renewal or transfer of a license where the Police Department has timely submitted written objections to the Town Clerk concerning such action. Whenever such an objection is received, the Town Clerk shall set the application for hearing before the authority in accordance with the procedures set forth in Subsection D above.

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- F. The Town Clerk, for good cause, may waive the forty-five-day time requirement for filing a license renewal application.
- G. The Town Clerk shall regularly report to the authority in a timely manner all licensing actions taken by the Town Clerk under the provisions of this Section.

§ 53-3. Filing of Applications; Fees. [Amended 10-05-93, Ord. 93-09; 06-07-94 Ord. 94-04; 08-19-97, Ord. 97-14; 04-03-01, Ord. 01-04; 07-27-04, Ord. 04-12; 08-28-07, Ord. 07-13; 07-14-09, Ord. 09-12]

- A. All applications for liquor and malt beverage licenses, including new, renewal or any licensing changes, shall be filed with the Clerk.
- B. The following shall be filed:
 - 1. A state license application form (DR-8404), which shall be filled out and completed in all material details. Incomplete application forms shall be rejected.
 - 2. All other applicable State Department of Revenue forms pertinent to the type of license requested shall be filled out and completed in all material detail. Incomplete application forms shall be rejected.
 - 3. An application fee paid to the town. The application fee shall be collected to cover the costs of the preliminary investigation made by the town, administrative checks, publication and posting costs and other necessary and incidental expenses. For each application made to the Authority pursuant to the provisions of Article 46, Article 47 or Article 48 of Title 12 of the Colorado Revised Statutes, as amended from time to time, there shall be paid to the Town an application fee in the amount set forth in the Fees Schedule adopted by the Colorado Department of Revenue Liquor Enforcement Division, as amended from time to time. An up-to-date copy of said Fees Schedule shall be maintained by the Town Clerk and available for inspection in the office of the Town Clerk during regular business hours of the Town's administrative offices.
 - 4. Pursuant to Section 12-47-505, C.R.S., as amended from time to time, an annual license fee shall be paid to the town. This fee is in addition to the application fee and shall be in the amount set forth in the Fees Schedule adopted by the Colorado Department of Revenue Liquor Enforcement Division, as amended from time to time. For each tastings permit issued by the Authority pursuant to Section 53-18 of this Chapter, there shall be paid to the Town a fee equal to Ten Dollars (\$10.00) for each day during which a tasting is authorized by the permit, which fees shall be paid in full prior to the Authority's delivery of the permit to the applicant.

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5. A license fee payable to the State Department of Revenue shall be filed with the application. The amount shall be as established from time to time by the Colorado Department of Revenue Liquor Enforcement Division.

§ 53-4. Application Forms.

All applications for new licenses shall be made on forms provided by the State of Colorado Department of Revenue. In addition, the authority may require the following information:

- A. A description of the kind of business and the nature of the proposed establishment.
- B. The boundaries of the neighborhood intended to be served.
- C. The name and address of the person managing or in charge of the establishment after the license has been issued, a copy of the management agreement, if any, and the names of other liquor or beer establishments managed by that person.
- D. The date of issuance in Colorado of any other (previous or existing) liquor license to the applicant or, if a partnership or corporation, to its members and/or to the manager. Where hotel restaurant licenses belonging to nationally recognized hotel/restaurant chains are issued, only Summit County licenses need be listed.
- E. The date when any other previous fermented malt beverage licenses or liquor licenses in Colorado were either suspended, revoked or previously denied.
- F. Evidence showing that the proposed location will not violate any of the Town of Frisco's zoning laws as prohibited by C.R.S. 12-47-138(c).
- G. Evidence showing all financial assistance to the applicant for the proposed outlet, for example, but not limited to, copies of documents governing contract for purchase, promissory notes, shares of stock, mortgages, leases, insurance binders, recorded and unrecorded security interests and assignments of any of the above.

§ 53-5. Setting of Hearing Date.

Upon receipt of a complete application, the Clerk shall notify the liquor licensing authority at its next meeting of the filing of the application and set a hearing date not sooner than thirty (30) days after the receipt of the application. This procedure shall apply to hearings concerning applications for new licenses, applications for change of location and any other requests for which the Town Clerk determines a public hearing is necessary.

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§ 53-6. Notice of Hearing.

When the Clerk has set the date for the hearing, notice shall be given of the time and place of the hearing in the following manner:

- A. Posting a sign and publishing public notice not less than ten (10) days prior to the date of the hearing on the application.
- B. The information required for the posting and publication of notice shall be supplied by the applicant at the time of filing the application.
- C. The size of the sign and information contained on it shall be in compliance with state statute, C.R.S. 12-47-136.

§ 53-7. Investigation.

The Town Clerk shall gather the evidence for the preliminary investigation as required by state law and as more particularly itemized below. At least five (5) days prior to the date of the public hearing the Town Clerk shall make known its findings, in writing, to the authority, as well as to the applicant, and, upon request, to other interested parties as they are defined by state law. The investigation by the Town Clerk on behalf of the authority shall be with regard to the following matters:

- A. Whether within two (2) years next preceding the date of the receipt of the application a licensing authority has denied an application at the same location for the reason that the reasonable requirements of the neighborhood and the desire of the inhabitants were satisfied by the existing outlets.
- B. That it satisfactorily appears that the applicant is or will be entitled to possession of the premises for which the application is made under a lease, rental agreement or other arrangement for possession of the premises or by virtue of ownership thereof.
- C. That the sale of liquor or beer as contemplated by the application at the premises sought to be licensed is not in violation of the zoning, fire, building and other applicable laws of the Town of Frisco.
- D. That the building wherein the license is sought to be exercised is located more than two hundred fifty (250) feet from any public or parochial school or the principal campus of any college, university or seminary. For the purposes of measuring the distance between the building wherein the license is sought to be exercised and said public or parochial school or the principal campus of any college, university or seminary, a measurement shall be made from the nearest property line of the land used for the above school purposes to the nearest portion of the building in which liquor is to be sold, using a route of direct pedestrian access.

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- E. The number and type of outlets of a nature similar to the applicant's within one (1) mile in any direction of the proposed location.
- F. A report of all pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed. This report shall specify any financial interests, including notes, mortgages, leases, etc., in other licenses. This report shall include reports from appropriate criminal justice agencies of the applicant's criminal history record, if any, and shall include all partners, principals or stockholders holding over ten percent (10%) of the outstanding and issued stock.
- G. Such other matters as the liquor licensing authority shall direct.
- H. Not less than five (5) days prior to the date of hearing upon the application, a copy of the Town Clerk's written report containing findings into the matters investigated above, shall be mailed by certified mail with return receipt requested to the applicant. The original may be filed as a public record in the Clerk's office.

§ 53-8. Petitions; Filing of Reports.

The report and investigation as herein required and all other petitions, remonstrance, surveys or statements in writing offered by the proponents, opponents or others interested in any application for a licensed outlet shall be filed in the office of the Clerk prior to the day on which the hearing upon the application shall be held before the authority.

§ 53-9. Public Hearing. [Amended 10-05-93, Ord. 93-09]

- A. On the date scheduled, a public hearing shall be held on the application. Such hearing may be recessed from time to time, not to exceed thirty (30) days, upon the request of any party in interest, as defined by the State Liquor Code, or upon motion of the authority.
- B. All hearings before the authority shall be public and shall be conducted in accordance with these rules and so as to ascertain facts affecting the substantial rights of the parties to the proceedings. Requirements of proof shall be similar to, to the extent practicable, those in civil non-jury cases in the district courts. This means modified rules of evidence and the right to cross-examine is applicable.
- C. Applicants or other interested parties, such as residents of the neighborhood under consideration or the owner or manager of a business located in the neighborhood under consideration, may appear in person or be represented by counsel.

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- D. Subject to the authority's right to limit the presentation of evidence tending to be repetitious, irrelevant, speculative or conjectural, any interested party, as defined by the State Liquor Code, may introduce evidence with regard to the following matters:
1. Reasonable requirements of the neighborhood and the number and type of existing outlets.
 2. Any other pertinent matters affecting the qualifications of the applicant for the conduct and the type of business proposed.
 3. Any other evidence which would indicate that the building or location proposed for the operation of the license is not suited for the intended purpose.
 4. All testimony shall be sworn. The Clerk shall have the power to administer oaths and issue subpoenas on behalf of the authority.

§ 53-10. Decision.

- A. At the conclusion of the presentation of all the evidence, the authority shall enter its decision or may take the application under advisement for a maximum of thirty (30) days, during which time it shall consider all of the evidence.
- B. Motion. When the decision is made, the motion may be made orally or in writing. The Town Attorney may be requested to prepare a written motion for subsequent presentation. The motion should contain such findings of facts and conclusions of law as are relevant and necessary to support the decision and should address:
1. The neighborhood under consideration.
 2. The desires of the inhabitants.
 3. The qualifications of the applicant.
 4. The needs of the neighborhood for the outlet.
- C. Vote. Upon making of the motion and the reasons therefore, a vote shall be taken with the above, including the ayes and nays, and entered into the minutes of the authority.
- D. The decision of the authority shall be sent to the state licensing authority, along with a copy of the application and such other supplementary materials as may be required by the state licensing authority or requested by the parties.

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- E. A written copy of any denial with the reason therefore, shall be sent by certified mail, return receipt requested, to the applicant at the address shown on the application and to any other party in interest upon request.
- F. Although the license may be approved by both local and state licensing authorities, no license shall be issued by the Clerk until the building in which the business is to be conducted is ready for occupancy, with such furniture, fixtures and equipment in place as is necessary, and then only after inspection of the premises has been made by the Town Building Official to determine that the applicant has complied with the drawings and plans and specifications submitted upon the application.
- G. Where an approved license is for a facility which has not been constructed and placed in operation within two (2) years of approval of the application or construction has not commenced within one (1) year of such approval, the license may be revoked or denied upon application for renewal.

§ 53-11. Issuance of Licenses.

- A. All licenses applied for shall be issued in accordance with the laws of the State of Colorado and the Town of Frisco and shall not be issued until it has been established that:
- B. Upon issuance of a license from the state, a local license shall be granted to the applicant with the warning that should the personal qualifications of anyone listed as a holder of that license be found to be unfavorable, both state and local licenses shall be rescinded and no refund given.
- C. The applicant retains or will be entitled to possession of the premises for which the application is made under the lease or by virtue of ownership thereof and that the use of the premises at the proposed location does not violate the zoning laws or any laws of the Town of Frisco or the State of Colorado.
- D. After approval of an application by the authority and after the building in which the license is sought to be exercised has been made ready for occupancy with such furniture, fixtures and equipment as is necessary to comply with the provisions of these rules and the laws of the State of Colorado, an inspection of the premises has been made to determine that the applicant has complied in every material detail with the plans and specifications submitted at the time of the filing of the application.

§ 53-12. License Renewals. [Amended 09-26-06, Ord. 06-30]

- A. All applications for renewal of liquor licenses shall be on forms provided by the state licensing authority and must be submitted in duplicate to the Town Clerk no later than forty-five (45) prior to the license expiration date, together with the required license fees.

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- B. Upon receiving the renewal application, the Town Clerk shall assemble the file of the applicant, which file shall contain all of the various town departments' records regarding the applicant and the premises dating back for a period of at least one (1) year. Unless there is evidence to the contrary, whether contained in the applicant's file or otherwise, it will be presumed that the occupied premises comply with the provisions of the applicable statutes and regulations, that the character of the applicant continues to be satisfactory and that such license, if granted, continues to meet the reasonable requirements of the neighborhood and the desires of the inhabitants. If these presumptions apply, the application may be administratively approved by the Town Clerk pursuant to Section 53-2 above, or. If not so approved, shall be presented to the authority for public hearing.
- C. If there is evidence that the presumptions given in Subsection B above do not apply, the Clerk shall immediately notify the licensee(s), in writing, of the objections to approving the renewal applications and that a public hearing will be held not less than ten (10) nor more than thirty (30) days after the date of such notice to determine if there is cause to deny said renewal application. The hearing shall be only after notice of the hearing has been conspicuously posted on the premises for a period of ten (10) days. Said hearing shall be conducted in the same manner as provided for hearings on revocation or suspension of the type of license involved.

§ 53-13. Change of Location of License. [Amended 10-05-93, Ord. 93-09; 04-03-01, Ord. 01-04]

- A. Before the location of a license is changed, the licensee shall submit an application on forms provided by the state licensing authority, in duplicate, to the Clerk for such change. An application fee of five hundred dollars (\$500.00) shall accompany the application.
- B. All applications for a change in the location of a licensee shall be filed with the Clerk and shall be subject to applicable sections of this chapter, except that the character of the applicant shall not be considered.
- C. The authority shall not transfer such license in less than thirty (30) days after the application has been made and then only after no less than ten (10) days' notice of the hearing has been given.

§ 53-14. Change in Ownership. [Amended 09-03-91, Ord. 91-18; 10-05-93, Ord. 93-09; 04-03-01, Ord. 01-04; 09-26-06, Ord. 06-30]

- A. All applicants for the issuance of a license by reason of transfer of ownership of the business or of possession of the licensed premises shall file an application on forms provided by the state licensing authority (DR-8404). Such application shall be accompanied by the appropriate application fee payable to the State of

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Colorado and local licensing authority, as well as a fee payable to the Town of Frisco in the amount of five hundred dollars (\$500.00) for the transfer.

- B. The Police Department shall conduct an investigation of the character of the applicant, including, when applicable, the partners or major shareholders.
- C. If, in the discretion of the Town Clerk, no hearing is necessary, the Town Clerk may administratively approve the application pursuant to Section 53-2 above or, if not so approved, shall be presented to the authority for public hearing.
- D. If the Clerk should determine that a hearing is appropriate, then the authority shall hold a public hearing. Public notice shall be conspicuously posted on the licensed premises for a period of ten (10) days. Notice shall be given the applicant at least ten (10) days prior to the hearing. The authority shall consider only the character of the applicant, and the applicant shall not be required to submit information except as it concerns his character and ability to conduct the business concerned according to law.
- E. The Town of Frisco shall issue a temporary permit to a transferee pursuant to C.R.S. 12-47-303. Said permit shall authorize a transferee to continue sales during the period in which an application to transfer the ownership of the license is pending. The applicant(s) for the permit must comply with all of the requirements set forth in the appropriate statutes cited above. The cost of this temporary permit shall be one hundred dollars (\$100).

§ 53-15. Suspension and Revocation of License. [Amended 10-05-93, Ord. 93-09]

- A. Upon commencement of suspension and revocation proceedings, the authority shall set a time and place for the hearing of the matter. Summary suspension shall be solely heard and decided by the authority.
- B. The Clerk shall give the licensee timely notice of the time, place and nature thereof, the authority and jurisdiction under which the hearing is to be held, the violations asserted and/or the good cause generally asserted as the grounds. Such notice shall be served personally or by mailing by first-class mail to the last address furnished to the town by the licensee at least forty-eight (48) hours prior to the hearing.
- C. The authority shall conduct the hearing, or a hearing officer(s) appointed by the authority may hold a separate hearing before himself without the authority's presence. The hearing officer(s) may be a Council member or Municipal Judge or a special committee of the authority to conduct such hearing.
- D. The Clerk of the hearing officer(s) shall have the power to administer oaths, issue subpoenas and, when necessary, grant continuances.

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- E. In all such proceedings, the Police Department shall conduct the investigation, and the town authority shall act on behalf of the town during the hearing. The authority may appoint special counsel to conduct the investigation and/or act on behalf of the town.
- F. All hearings before the authority or the hearing officer(s), if any, shall be recorded stenographically or by an electronic recording device.
- G. If the evidentiary hearing is before a hearing officer(s), a summary of the evidence shall be prepared, and the hearing officer(s) shall make recommendation, in writing, to the authority within five (5) days after the close of the hearing. A copy of this summary and recommendation shall be transmitted to the licensee. At the next regular Council meeting following the receipt of such summary and recommendation, the authority shall consider the same. In its discretion, the authority may reject the hearing officer's recommendation or may refer the matter back for further proceedings or may adopt the recommendation, with or without modification, or may order a new hearing, either before the original hearing body or person or before the entire authority or a committee or member thereof.
- H. In the event of revocation, suspension or cessation of business, no portion of the license or application fee shall be refunded.

§ 53-16. Review of Decision; Preparation of Transcript.

Any person seeking review of the authority's decision regarding an application or any other matter shall apply to the District Court for review within thirty (30) days after the date of the decision and shall pay to the Town of Frisco the cost of preparing a transcript of the proceedings before the town whenever such transcript is demanded by the person seeking the review or furnished by the Town of Frisco pursuant to an order of court. For this purpose, the cost of preparing the transcript, other than that portion pertaining to testimony, shall be the sum of twenty-five dollars (\$25.). Regarding the cost of preparing a transcript of testimony before the liquor licensing authority, the same shall be charged at rates ordinarily charged by certified shorthand reports.

§ 53-17. Evidence of Operation; Refusal to Comply.

The owner, licensee or operator of any establishment licensed by the authority shall, upon request of the Clerk or her authorized agent, furnish to the town, within thirty (30) days, satisfactory evidence to demonstrate whether the establishment is operating as a hotel and restaurant license, tavern license or beer and wine outlet, as said terms are defined by state law. Such evidence shall consist of accounting records for a period of time to be specified by the Clerk, showing separately the gross receipts from the sales of food items and intoxicating liquors. It shall be unlawful for any owner, licensee or operator of any licensed establishment to

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refuse to comply with the request of the Clerk as herein required, and failure or refusal to do so shall be grounds for revocation of the license.

§ 53-18. Alcohol Beverage Tastings. [Added 07-27-04, Ord. 04-12; Amended 03-28-06, Ord. 06-15; 09-26-06, Ord. 06-30; 07-14-09, Ord. 09-12]

- A. Subject to the limitations of this section, alcohol beverage tastings are permitted within the Town. For the purposes of this section "tastings" means the sampling of malt, vinous, or spirituous liquors that may occur on the premises of a retail liquor store licensee or liquor-licensed drugstore licensee by adult patrons of the licensee pursuant to the provisions of this section and Section 12-47-301 (10), C.R.S.
- B. A retail liquor store or liquor-licensed drugstore licensee who wishes to conduct tastings may submit an application for that purpose to the Liquor Licensing Authority. The applicant for a tastings permit shall state on the application the days and times that tastings will occur. The Liquor Licensing Authority may reject the application if the applicant fails to establish that he or she is able to conduct tastings without violating the provisions of this Section, Section 12-47-301 (10), C.R.S., or creating a public safety risk to the neighborhood. The Liquor Licensing Authority hereby delegates to the Town Clerk the authority to administratively review and approve an application for a tastings permit or renewal of a previously approved tasting permit where, after reasonable investigation by the Town Clerk and consultation by the Town Clerk with other appropriate administrative and law enforcement personnel, all of the following circumstances are found to exist:
1. The applicant has timely and properly submitted a complete application for a tastings permit or renewal thereof and has tendered all required fees in accordance with this Chapter;
 2. The applicant's liquor license is in good standing with the Town and the State, and no violation of law has occurred during the previous year;
 3. To the knowledge of the Town Clerk, there is no pending or proposed criminal or legal investigation or charges against the applicant or the licensed premises; and
 4. There is no other information known by the Town Clerk that would cause the Town Clerk, in his or her reasonable belief, to believe that some violation of applicable law has occurred or that the applicant will be unable to conduct tastings without violating the provisions of this Section, Section 12-47-310(10), C.R.S., or creating a public safety risk to the neighborhood.

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Notwithstanding any authority delegated to the Town Clerk for the administrative approval of applications under this Section, the Town Clerk may, at his or her discretion, refer any licensing decision authorized to her under this Section to the Authority if, in the Town Clerk's opinion, the matter should be presented to the Authority. In the event the Town Clerk cannot or will not approve an application made pursuant to this Section, then the Town Clerk shall refer the application to the Authority for consideration in accordance with applicable law. Written notice of the time and place of such consideration shall be mailed to the applicant by regular mail at least ten (10) days in advance thereof and shall contain such facts or reasons relied upon by the Town Clerk in declining to issue the permit. Notice of the proceedings shall also be timely published and posted on the subject premises in accordance with the requirements set forth in Section 12-47-301, C.R.S., and timely provided to any person who may have filed a protest against the issuance of the permit with the Town Clerk. Additionally, any permit applicant, or any party in interest (as defined in Section 12-47-301, C.R.S.), who is dissatisfied with a decision of the Town Clerk under this Section may appeal same to the Authority by filing a written protest with the Town Clerk not more than ten (10) days after the date of the decision appealed from. The Town Clerk shall promptly set the appeal for hearing before the authority in accordance with the notice and hearing procedures described above.

- C. Tastings shall be subject to the following limitations:
1. Tastings may occur on no more than four of the six days from a Monday to the following Saturday, not to exceed one hundred four days per year.
 2. Tastings shall not exceed a total of four hours in duration per day, which hours need not be consecutive.
 3. Tastings shall be conducted only by a person who has completed a server training program that meets the standards established by the Liquor Enforcement Division, Colorado Department of Revenue and who is either a retail liquor store licensee or a liquor-licensed drugstore licensee, or an employee of a licensee and only on a licensee's licensed premise.
 4. The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brew pub, or winery at a cost that is not less than the laid-in cost of such alcohol.
 5. Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcohol beverages, and in no case earlier than 11:00 a.m. or later than 7:00 p.m.
 6. No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the

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manufacturer's products being sampled at a tasting. The licensee shall bear the financial and all other responsibility for a tasting.

7. A violation of a limitation specified in this subsection by a retail liquor store or liquor-licensed drugstore licensee, whether by his or her employees, agents, or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee who is conducting the tasting.
 8. A retail liquor store or liquor-licensed drugstore licensee conducting a tasting shall be subject to the same revocation, suspension, and enforcement provisions as otherwise apply to the licensee.
- D. While a retail liquor store or liquor-licensed drugstore is conducting a tasting within its premise, the following requirements shall be met:
1. The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.
 2. The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the samples immediately following the completions of the tasting.
 3. The licensee shall not serve a person who is under twenty-one years of age or who is visibly intoxicated.
 4. The licensee shall not serve more than four individual samples to a patron during a tasting and shall have food available to its patrons during a tasting.
 5. The size of an individual alcohol sample shall not exceed one ounce of malt or vinous liquor or one-half of one ounce of spirituous liquor.
 6. Alcohol samples shall be in open containers and shall be provided to a patron free of charge.
 7. A violation of a limitation specified in this subsection by a retail liquor store or liquor-licensed drugstore licensee, whether by his or her employees, agents, or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee who is conducting the tasting.

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§ 53-19. Penalty Guidelines for the Town of Frisco Local Licensing Authority. [Added 07-12-05, Ord. 05-19]

I. Purpose

The purpose of these penalty guidelines is to provide the Town of Frisco Local Licensing Authority (“LLA”) non-binding guidance in imposing penalties against licensees for liquor violations occurring within the Town of Frisco (“Town”). The guidelines are to be used in treating all licensees as equally and consistently as possible when imposing sanctions for violations of the Colorado Liquor and Beer codes and/or the Town of Frisco Alcoholic Beverages Code and/or regulations subject to the unique facts of each case. The actual penalty imposed against a licensee for a violation may vary from the guidelines depending upon the unique circumstances of each case.

II. Authority

The power and authority given to the local liquor licensing authority to suspend or revoke a license if found in Section 12-47-601 C.R.S.

III. Scope

The sentencing guidelines will be used by the LLA in all circumstances where there is a violation of the State Liquor and Beer Code or the Town of Frisco Alcoholic Beverages Code and/or regulations, either when there has been a finding by the LLA that a violation occurred or when a proposed stipulation concerning a violation is to be considered.

IV. Sales to Minors/Visibly Intoxicated Persons

Alcohol related offenses, especially sales to minors and to visibly intoxicated persons, directly impact the health, safety and welfare of the community. Consequently, for convictions or offenses related to alcohol sales to minors and/or alcohol sales to visibly intoxicated persons, the authority will impose active day(s) of suspension for disciplinary purposes and day(s) held in abeyance to ensure future compliance.

V. Compliance Check Penalties

The local liquor licensing authority may consider the penalty recommendations reflected in Colorado Department of Revenue Regulation 47-601 (Liquor Code) for violations detected during a compliance check using a person under twenty-one years of age to purchase alcohol beverages from the licensee. As with any sentencing, the Authority must consider mitigating and aggravating factors.

VI. Fine-in-Lieu

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Any licensee found in violation of the Colorado Liquor Code or Beer Code, or the Town of Frisco Alcoholic Beverages Code and/or regulations, may request in accordance with the provisions of C.R.S. 12-47-601, when an active suspension is imposed of fourteen (14) days or less, a fine-in-lieu of such suspension. Any request for a fine-in-lieu requires that the licensee pay a \$250.00 administration fee. Approval of such a request is discretionary by the LLA. The sentencing guidelines take into consideration the possibility of a fine-in-lieu of suspended days.

VII. Training

Because alcohol beverage server training promotes responsible alcohol beverage service, and compliance with alcohol related laws, any sentence imposed by the LLA should consider a requirement for such training. Any alcohol beverage server training course imposed, as a part of a sentence, shall meet the Server Training Curriculum Standards as recommended by the Colorado Department of Revenue, Liquor Enforcement Division. If a license has its own in-house server training, such training must meet the aforementioned curriculum standards.

VIII. Sentencing Guidelines for All Offenses

A. Factors

Factors to be considered in all cases by the LLA when imposing a penalty or accepting a stipulation regarding a penalty, are as follows:

1. A fine-in-lieu of all or a portion of the days suspended may be considered depending on application of other factors and state law restrictions;
2. The type of license held by the licensee;
3. The length of time the owners and/or officers have been operating the licensed premises and any past violations;
4. The type of violation;
5. Any other factors brought to the LLA's attention that may be either a mitigating or an aggravating factor; an institutionalized alcohol beverage server training program will be considered a mitigating factor and a lack thereof will be considered an aggravating factor; and
6. That suspended days may be held in abeyance for one year, on conditions imposed by the LLA, beginning on the date the LLA accepts a proposed stipulation.
 - a. Suspended days, except in extraordinary circumstances, are to be served consecutively.

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- b. The actual days to be suspended cannot be recognized national or regional holidays, nor are they to be days not regularly open.

B. First offense and subsequent offenses occurring within one year of a first offense

1. First offense

Sentencing range: mandatory server training for all individuals involved with alcohol service and written warning.

2. Second offense within twelve months of a first offense

Sentencing range: a three (3) to sixteen (16) consecutive day active suspension with the availability of a fine in lieu for any or all of the suspended days, all or part of which fine in lieu may be held in abeyance for one year as determined by the LLA

3. Third offense within one year of a first offense

Sentencing range: any day(s) or fine(s) held in abeyance from a second offense will be automatically imposed (if applicable); seven (7) to twenty-one (21) consecutive day active suspension with no availability of a fine in lieu for the suspended days and which may include additional days held in abeyance for one year during which the licensee cannot be charged with any Colorado Liquor/Beer Code violation from which a conviction, guilty finding, or stipulation results.

4. Fourth offense within one year of a first offense

Sentencing range: any days held in abeyance from a second or third offense will be automatically imposed (if applicable); thirty (30) consecutive day active suspension to a revocation, depending on the circumstances with no availability of a fine in lieu for the suspended days and may include additional days held in abeyance for one year during which the licensee cannot be charged with any Colorado Liquor/Beer Code violation from which a conviction, guilty finding or stipulation results.

5. Fifth offense or more within one year of a first offense

Sentencing range: Sentencing for any violation that is a fifth offense or more within one year of a first offense, is to be decided on a case by case basis and may include but not be limited to suspension or revocation.

C. A subsequent offense occurring within two years from a first offense

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1. A second offense

Sentencing range: one (1) to fourteen (14) day suspension with the availability of a fine in lieu for any or all of the suspended days all or part of which fine in lieu may be held in abeyance for one year as determined by the LLA

2. A third offense

Sentencing range: any days held in abeyance from the prior offense will be imposed (if applicable); five (5) to twenty (20) day consecutive day active suspension with the availability of a fine in lieu for any or all of the suspended days, all or part of which fine in lieu may be held in abeyance for one year as determined by the LLA

3. A fourth offense

Sentencing range: any days held in abeyance from a prior offense will be imposed (if applicable); eight (8) to thirty (30) day active suspension to a revocation, depending on the circumstances with no availability of a fine in lieu for the suspended days and may include additional days held in abeyance for one year during which the licensee cannot be charged with any Colorado Liquor/Beer Code violation from which a conviction, guilty finding or stipulation results.

E. A fifth offense or more occurring more than two years from a prior offense

Sentencing for any violation that is a fifth offense or more is to be decided on a case by case basis and may include, but not be limited to suspension, revocation and fines.

- IX.** The LLA may consider any extraordinary or extenuating circumstances which are raised, either by the licensee or the City, concerning adherence to the guidelines, or concerning a sentence outside the scope of the guidelines.