

BEFORE THE LIQUOR AND MARIJUANA LICENSING AUTHORITY
OF THE TOWN OF BRECKENRIDGE

RESOLUTION NO. 2

SERIES 2016

A RESOLUTION ADOPTING PENALTY GUIDELINES FOR USE IN CONNECTION WITH
THE IMPOSITION OF DISCIPLINARY ACTION AGAINST LIQUOR LICENSEES

WHEREAS, Section 2-5-10 of the Breckenridge Town Code authorizes the Town of Breckenridge Liquor and Marijuana Licensing Authority to adopt rules and regulations governing its operation; and

WHEREAS, the Liquor and Marijuana Licensing Authority desires to adopt “Penalty Guidelines” for use in connection with the imposition of disciplinary action against liquor licensees who violate certain provisions of the Colorado Liquor Code (Article 47 of Title 12, C.R.S.), the Colorado Beer Code (Article 46 of Title 12, C.R.S.), or the rules promulgated by the Liquor Enforcement Division of the Department of Revenue of the State of Colorado (1 C.C.R. 203-2).

NOW, THEREFORE, BE IT RESOLVED BY THE LIQUOR AND MARIJUANA LICENSING AUTHORITY OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. In imposing disciplinary action against liquor licensees who are found to have violated the following provisions of the Colorado Liquor Code, the Colorado Beer Code, or the rules promulgated by the Liquor Enforcement Division of the Department of Revenue of the State of Colorado, the Liquor and Marijuana Licensing Authority shall follow the following Guidelines.

The disciplinary action described in the column of the Guidelines entitled “Presumptive Penalty” may be increased or decreased by the Liquor and Marijuana Licensing Authority based upon its consideration of the applicable aggravating and mitigating circumstances found to exist with respect to such violation, if any. There is no assurance given that the Presumptive Penalty will be imposed in any particular case.

PENALTY GUIDELINES

I. OFFENSE: SALE TO MINOR

	Presumptive Penalty	Fine Okay?
First offense – 1 count	Suspension of license for up to 15 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period. ¹	Yes
Second offense within 1 year	No penalty guideline. To be determined at hearing.	If allowed ²

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: 1st offense wherein the patron has been a regular and the licensee was shown prior identification and/or management was not involved. Employees have been through some server/seller training. Note: A license may not be suspended or revoked if the purchase was made using a false identification. See 12-47-901(5)(a)(I) C.R.S.

¹ Days of a suspension period which are “held in abeyance” may be required to be served if the licensee commits a subsequent violation at the licensed premises of the laws governing the operation of liquor licensed establishments during the time period fixed by the Liquor and Marijuana Licensing Authority.

² “If allowed” as used in these Guidelines indicates that the Liquor and Marijuana Licensing Authority may, in its discretion, allow payment of a fine in lieu of suspension if allowed by §12-47-601(3), C.R.S., and Chapter 4 of Title 4 of the Breckenridge Town Code.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Minor/s enter store in high school letter jackets for local school. No identification presented or checked and/or management involved.

**Note: See Reg 47-604 as listed after this penalty schedule, for recommendations for violations detected by Law Enforcement Personnel with the use of a minor*

II. OFFENSE: SALE TO VISIBLY INTOXICATED PERSON

	Presumptive Penalty	Fine Okay?
First offense – 1 count	Suspension of license for up to 15 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period.	Yes
Second offense within 1 year	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: 1st offense where the patron was not in proximity of management or management was not involved and employees have been through some server/seller training.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Management participated in or endorsed sale after visible signs of intoxication were displayed; over service resulted in patron being hospitalized or receiving medical treatment as a result of intoxication; no evidence of server/seller training.

III. OFFENSE: SALE AFTER HOURS

	Presumptive Penalty	Fine Okay?
First offense – 1 count	Suspension of license up to 7 days.	Yes
Second offense	Suspension of license for up to 30 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period.	If allowed

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: 1st offense occurring in close proximity to lawful business hours, i.e., 2:05 AM; management was not involved and/or no sale was made to the patron (patron hid possession of product). Single, isolated offense; employees have been through some server/seller training.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Management participated in or endorsed sale after the lawful hours; violation occurred well after the lawful hours, i.e., 3:00 AM; there were multiple offenses; employees have no server/seller training.

IV. OFFENSE: FAILURE TO MEET 25% FOOD REQUIREMENT (HOTEL AND RESTAURANT LICENSES ONLY)

	Presumptive Penalty	Fine Okay?
First offense	Written warning-30 days to correct	N/A
Second offense	Suspension of license for 15 days; 5 days to be served & 10 days held in abeyance + 30 days to correct violation.	Yes

Subsequent offense	No penalty guideline. To be determined at hearing.	If allowed
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General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: An audit reveals evidence of consistent meal service and sales reflect that Licensee is close to the requirement. No prior violations; Licensee has not been licensed for an extended period of time. Licensee is close to percentage requirement, but acquires meals from external sources.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Audit reveals no evidence of meal service. Licensee doesn't have meals advertised-no menu located; Licensee provides only snacks and sandwiches; multiple violations present; no food service license.

V. OFFENSE: PURCHASE OF LIQUOR FROM OTHER THAN WHOLESALER

	Presumptive Penalty	Fine Okay?
First offense – 1 count	Suspension of license up to 3 days	Yes
Second offense	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: 1st offense occurring in rural area; amount purchased barely exceeds maximum amount authorized.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Licensee seldom/never has purchased from a wholesaler; greatly exceeded amount authorized; off premises licensee purchasing from another retail licensee.

**VI. OFFENSE: PERMITTING ILLEGAL GAMBLING
(FOOTBALL POOLS, ATTENDANCE POOLS, SHAKE A DAY, ETC.)**

	Presumptive Penalty	Fine Okay?
First offense	Written warning	N/A
Second offense	Suspension of license for up to 13 days; 1 day to be served & 3 days held in abeyance for each 4 days of the suspension period.	Yes
Second offense	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: Compliance related violations, football pools, attendance pools, shake a day and similar games usually involving small amounts of moneys; Licensee terminates use of the games and recognizes them as gambling.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Bookmaking, repeated violations, video gaming devices or repeated failure to allow access to machines, etc. Violations of this type should normally receive 15 & 30 (or Hearing) for a first offense since they may involve organized crime or other criminal activity.

VII. OFFENSE: CONDUCT OF ESTABLISHMENT

	Presumptive Penalty	Fine Okay?
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First offense	Suspension of license for up to 30 days; 1 days to be served & 2 days held in abeyance for each 3 days of the suspension period.	Yes
Second offense	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: 1st offense involving termination of the employee and server/seller training for staff; management not directly involved or not in a position to have observed/be aware of activity.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Multiple offenses, long term investigation disclosing a pattern of violations and/or other criminal activity; lack of seller/server training; management involved or aware of activity

VIII. OFFENSE: FAILURE TO MAINTAIN BOOKS AND RECORDS

	Presumptive Penalty	Fine Okay?
First offense	Warning or suspension of license up to 5 days	N/A
Second offense	Suspension of license for up to 15 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period..	Yes

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: Issue is disclosed through routine compliance inspection and absent hidden ownership allegations (small business owner who is a sloppy record keeper); no intent to deceive, etc.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Uncovered through investigation of complaint alleging hidden ownership. Records supporting allegation are missing, etc.

IX. OFFENSE: VIOLATIONS ON INSPECTION ISSUES DETECTED WITHIN THE PREVIOUS YEAR

	Presumptive Penalty	Fine Okay?
Each offense	Suspension of license for up to 3 days; 1 day to be served & 2 days held in abeyance.	Yes

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: Employee signed for warning and management was not directly involved in violation.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Management directly involved or directed employee to violate or not conform to request. Multiple offenses in a short time frame.

X. OFFENSE: FAILURE TO REGISTER OR REPORT MANAGER, CORPORATE OR FINANCIAL CHANGES

	Presumptive Penalty	Fine Okay?
First offense	Written warning	N/A
Second offense	Suspension of license for up to 14 days; 1 day to be served & 3 days held in abeyance for each 4 days of the suspension period.	Yes
Third offense	Suspension of license for 30 days; 10 days to be served & 20 days held in abeyance.	If allowed

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: Violations detected through routine inspection; violations resulting from recent statutory changes, i.e., tavern managers, etc.; minor financial changes requiring reports which do not involve new persons.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Changes requiring a transfer of ownership resulting in hidden ownership or create unlawful financial interest/ownership between multiple classes of licenses; Person involved has an extensive record that has not been disclosed (intent).

XI. OFFENSE: UNDERAGE PERSON SELLING OR SERVING

	Presumptive Penalty	Fine Okay?
First offense	Suspension of license for up to 7 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period.	Yes
Second offense	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: Licensee requires employees to attend seller/server training and violator/employee has attended said training. Licensee not directly involved with violation. First offense involved failure to supervise a person between 18-21 years of age, i.e., licensee left restaurant and walked across the street to go to the bank and returned during action.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Lack of seller/server training or management involvement with violation. Other conditions as listed in sale to minor offenses above.

XII. OFFENSE: HIDDEN OWNERSHIP–UNLAWFUL FINANCIAL INTEREST

	Period of Suspension	Fine Okay?
Each offense	30 days to transfer interest, or proceed to hearing.	N/A

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: Change of entity involving same owners, i.e., husband and wife incorporated. License must be transferred to the new entity within 30 days and Temporary Permit must be issued if new entity is to continue to exercise the license. Issue Notice of Proposed Denial on new entity resulting in suspension with fine on 3 days. (3 day suspension) Fine OK.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: True hidden ownership involving transfer of business assets to an unrelated 3rd party; ownership creates prohibited financial interest; business continues to operate without a Temporary Permit. Show Cause should be issued for current Licensee. N.O.P.D. should be issued for new owner. If severe aggravation exists (Licensee fails to respond to allegations and take responsibility for business or new owner fails to comply and seek its own license/temporary permit, etc.), recommend revocation of current license and denial of new owners license. Recommend a finding that continued violations would occur if a state license is issued (12-47-305(1)).

**XIII. OFFENSE: COMPLIANCE CHECK VIOLATION
(Reg. 47-604)**

This Regulation was created specifically to create a fair and equitable recommendation for the imposition of penalties when using underage persons to determine compliance. When the Liquor and Marijuana Licensing Authority finds that a licensee has sold alcohol beverages to a minor and that said violation was investigated or detected by using a person under twenty-one years of age to purchase alcohol beverages from the licensee, the Liquor and Marijuana Licensing Authority shall consider the following penalties to be imposed for the violation:

	Presumptive Penalty	Fine Okay?
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First offense	A written warning up to a 15 day suspension. As an inducement for licensees to provide training for servers, because server training has proven to be an aid in the reduction of violations, where there are no aggravating circumstances, a licensee who has provided training to its staff members shall be issued only a warning on first violation.	Accepting a fine in lieu of up to 14 days of actual suspension is at the discretion of the Liquor and Marijuana Licensing Authority, as is holding a portion of the suspension time in abeyance for a period of time.
Second offense (within 1 year)	Suspension of license for between 5 and 30 days.	If no fine was paid or suspension served at the time of the first offense, it would be within the discretion of the Liquor and Marijuana Licensing Authority to accept a fine in lieu of actual days of suspension and/or to hold a portion of the suspension time in abeyance for a period of time.
Third offense (within 1 year)	Suspension of license for 20 to 45 days.	No
Fourth offense (within 1 year)	Suspension of license for 45 days, or revocation of license	No

General Mitigation: See Section 2 of this resolution.

General Aggravation: See Section 2 of this resolution.

Specific Mitigation and Aggravation Related to This Particular Offense:

1. Action taken by the licensee to prevent violations., i.e., training of servers.
2. Licensee’s past history of success of failure with compliance checks.
3. Corrective action(s) taken by the licensee.
4. Prior violations/prior corrective action(s) and its effectiveness.
5. Willfulness or deliberateness of the violation.
6. Likelihood of recurrence of the violation.
7. Factors which might make the situation unique, such as:
 - a. Prior notification letter to the licensee that a compliance check would be forthcoming.
 - b. The dress or appearance of the underage operative, i.e., the operative was wearing a high school letter jacket.
8. Licensee or manager is the violator or has directed an employee or other individual to violate the law.

XIV. OFFENSE: LICENSEE’S EMPLOYEES NOT TO BE VISIBLY INTOXICATED

	Presumptive Penalty	Fine Okay?
First offense – 1 count	Suspension of license for up to 15 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period.	Yes
Second offense within 1 year	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: Offending employee been through some server/seller training; offending employee disciplined appropriately by licensee; offending employee received appropriate counseling/therapy/treatment for alcohol problem; licensee’s policies specifically prohibit employee being intoxicated while working at the licensed premises.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Offending employee was licensee, a bartender or manager; licensee’s policies do not specifically prohibit employee being intoxicated while working at the licensed premises.

XV. OFFENSE: REMOVAL OF ALCOHOL FROM LICENSED PREMISES³

	Presumptive Penalty	Fine Okay?
first offense – 1 count	Suspension of license for up to 15 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period.	Yes
Second offense within 1 year	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this resolution.

Specific Mitigation Related to This Particular Offense: Patron “snuck” the alcoholic beverage out of the licensed premises under circumstances that made it difficult for the licensee to discover the act; at the time of the offense the licensee had an adequate number of staff on duty whose duties included trying to prevent the illegal removal of alcohol from the licensed premises; after the illegal act was discovered licensee took appropriate action to try to avoid a similar act occurring in the future; after the illegal act was discovered licensee took appropriate disciplinary action against the employee who failed to discover/prevent the illegal removal.

General Aggravation: See Section 2 of this resolution.

Specific Aggravation Related to This Particular Offense: Licensee was indifferent to potential of a patron removing an alcoholic beverage from the licensed premises, as evidenced by a lack of staff at the exists, insufficient training of employees, etc.; licensee had received prior warnings from Police Department that alcoholic beverages had been unlawfully removed from the licensed premises.

Section 2. When considering the imposition of a disciplinary action against a licensee the Liquor and Marijuana Licensing Authority shall consider both: (i) the “general” mitigating and aggravating factors set forth below, which apply to all violations, and (ii) any “specific” mitigating and aggravating factors which are applicable only to that specific violation. The specific mitigating and aggravating factors are described in Section 1 of this resolution.

³ Includes Regulation 47-918 of the regulations promulgated by the Colorado Department of Revenue, Liquor Enforcement Division (Removal of Alcohol Beverages From Premises), and Section 6-3F-9 of the Breckenridge Town Code (Illegal Removal of Alcoholic Beverages From Licensed Premises).

The “general” mitigating and aggravating factors which shall be considered by the Liquor and Marijuana Licensing Authority in all cases are as follows:

1. the seriousness of the violation;
2. corrective action, if any;
3. prior violations and offenses at the licensed premises and the effectiveness of prior corrective action;
4. prior violations and offenses by the licensee or the licensee’s employees;
5. whether the violation is part of a repeated course of conduct or a single event;
6. the likelihood of recurrence;
7. all circumstances surrounding a violation;
8. whether the violation was willful;
9. the length of time a license has been held by the licensee;
10. previous sanctions imposed against the licensee, if any; and
11. other factors making the situation with respect to the licensee or the licensed premises unique.

Section 3. To the extent a particular liquor violation is not covered by these Guidelines, the Liquor and Marijuana Licensing Authority shall retain all discretion with respect to the imposition of disciplinary action allowed by applicable law.

Section 4. All resolutions of the Town of Breckenridge Liquor License Authority inconsistent with this resolution are repealed.

Section 5. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED THIS 19TH DAY OF APRIL, 2016.

TOWN OF BRECKENRIDGE LIQUOR AND
MARIJUANA LICENSING AUTHORITY

By: _____
Chair

ATTEST:

Secretary