

**City of Chicago
Business Affairs and Consumer Protection
And
The Local Liquor Control Commission**

**MAYOR'S LICENSE DISCIPLINE
COMMISSION
RULES OF PROCEDURE**

Effective November 1, 2014



**City of Chicago
Mayor Rahm Emanuel**

**Department of Business Affairs and Consumer Protection
Maria Guerra Lapacek, Commissioner**

**Local Liquor Control Commission
Gregory Steadman, Commissioner**

The Department of Business Affairs and Consumer Protection and the Local Liquor Control Commission adopts the rules promulgated hereunder. This Resolution and the Rules adopted hereby supersede and replace for all purposes all prior resolutions and rules adopted by the Department of Business Affairs and Consumer Protection and the Local Liquor Control Commission.

MAYOR'S LICENSE DISCIPLINE COMMISSION

RULES OF PROCEDURE

AUTHORITY AND USAGES

By the authority vested in the Commissioner of Business Affairs and Consumer Protection and the Local Liquor Control Commission pursuant to the general provisions of Chapter 2-25 and the specific provisions of Chapter 4-4 and 4-60 of the Municipal Code of the City of Chicago regarding regulation of business licenses,

I, **MARIA GUERRA LAPACEK**, Commissioner of Business Affairs and Consumer Protection of the City of Chicago, and **GREGORY STEADMAN**, Commissioner of the Local Liquor Control Commission, issue the following Mayor's License Discipline Commission Rules.

By Order of the Commissioner:



Maria Guerra Lapacek,
Commissioner

October 15, 2014

By Order of the Local Liquor Control Commissioner



Gregory Steadman,
Local Liquor Control Commissioner

October 15, 2014

RULES OF PROCEDURE
FOR CONTESTED HEARINGS BEFORE THE MAYOR'S LICENSE DISCIPLINE
COMMISSION OF THE DEPARTMENT OF BUSINESS AFFAIRS AND
CONSUMER PROTECTION, AND THE LOCAL LIQUOR CONTROL
COMMISSION

1. SCOPE.

These rules of procedure apply to all contested matters heard before Hearing Officers in the Mayor's License Discipline Commission of the Department of Business Affairs and Consumer Protection and the Local Liquor Control Commission ("the Department"). This includes, but is not necessarily limited to, liquor license disciplinary proceedings, non-liquor license disciplinary proceedings, denial of non-liquor license applications under Section 4-4-060 of the Municipal Code of Chicago, and license rescission proceedings. For the purpose of these rules only, the term "Licensee" shall refer to the holder of or applicant for any City of Chicago ("city") license under Title IV of the Municipal Code of Chicago. These rules of procedure shall be subject to change or amendment by the Commissioner of the Department.

Nothing in these Rules shall act to override, restrict or relax the procedural requirements and/or provisions of the applicable provisions of the ordinances of the Municipal Code of Chicago. In the event of a conflict between provisions of these Rules and provisions of the Municipal Code of Chicago, the Municipal Code of Chicago shall take precedence.

2. STATEMENT OF PURPOSE.

The purpose of these Rules is to provide for the swift, efficient, and fair resolution of contested cases, to allow all parties a full and fair opportunity to be heard, and to minimize the expense to all parties. The policy of the Department and the purpose of these Rules is to decide cases on their merit, without undue technicality or delay.

3. HEARING OFFICERS.

- a) Hearing Officers shall be appointed by the Commissioner of the Department and shall be an attorney admitted to the practice of law in the State of Illinois.
- b) Hearing Officers shall have all powers necessary to conduct fair and impartial hearings including, but not limited to, the power to:

- 1) administer oaths and affirmations;
- 2) hear testimony;
- 3) exclude witnesses;
- 4) rule upon motions, objections, and the admissibility of evidence;
- 5) preserve and authenticate the record of the hearing and all exhibits and evidence introduced at hearing;
- 6) regulate the course of the hearing in accordance with these rules;
- 7) issue a written recommendation to the Commissioner of the Department or the Local Liquor Control Commissioner which includes findings of fact and conclusions of law.
- 8) at the request of any party or on the Hearing Officer's own motion, subpoena the attendance of relevant witnesses and the production of relevant books, records, or other information.
 - i. A Hearing Officer may issue a subpoena only if he or she determines that the testimony of the witnesses or the documents or items sought by the subpoena are necessary to present evidence that is:
 1. relevant to the case; and
 2. relates to a contested issue in the case.
 - ii. A subpoena issued under this rule shall identify:
 - (i) the person to whom it is directed;
 - (ii) the documents or other items sought by the subpoena, if any;
 - (iii) the date for the appearance of the witnesses and the production of the documents or other items described in the subpoena;
 - (iv) the time for the appearance of the witnesses and the production of the documents or other items described in the subpoena; and
 - (v) the place for the appearance of the witnesses and the production of the documents or other items described in the subpoena.
 - iii. In no event shall the date identified for the appearance of the witnesses or the production of the documents or other items be less than seven days after service of the subpoena.
 - iv. Within seven business days of being served with a subpoena issued in accordance with this chapter, the recipient of the subpoena may move to quash the order authorizing the issuance of the subpoena.

4. COMMENCEMENT OF CASES.

A case involving a Licensee is commenced by the filing and service of a Notice of Hearing. The Notice of Hearing shall be filed by the Law Department of the City of Chicago (hereinafter "the Law Department") in the office of the Department at City Hall, 121 North LaSalle, Room 805, Chicago, Illinois 60602. Service on the Licensee shall be by personal service or by ordinary U.S. mail directed to the licensed premises or to the Licensee's last known home address. In cases where the Licensee is a partnership, service may be had by ordinary mail directed to the licensed premises, or to the last known home address of any general partner. In cases where the Licensee is a corporation, service may be made by ordinary mail directed to the licensed premises, or to the address of the corporation or its registered agent. In cases where the Licensee is a Limited Liability Corporation, (L.L.C.) service may be made by ordinary mail directed to the licensed premises, or to the address of the L.L.C. or its registered agent.

An attorney's certification that service was made shall be prima facie evidence that service was in fact made.

5. SERVICE OF DOCUMENTS.

All papers filed with the Department shall be served on all other parties. Service may be made by hand delivery or by ordinary mail, or by facsimile transmission followed by mailing or delivery of a copy of the document. Service on the Law Department shall be made on the Assistant Corporation Counsel in charge of the case either in person or by ordinary U.S. mail at the Assistant Corporation Counsel's office at 30 North LaSalle Street, Room 700, Chicago, Illinois 60602. If an attorney has filed an appearance for a Licensee, service shall be made on the attorney in person or mailed to the address set forth on the appearance form.

All papers filed with the Department shall bear proof of service. An attorney's certification that service was made shall be prima facie evidence that service was in fact made.

6. APPEARANCES.

All Licensees may be represented by counsel. Only attorneys licensed to practice in Illinois shall be permitted to appear as counsel. Licensee business entities, with the exclusion of sole proprietorships, must be represented by legal counsel, and cannot appear through any officer, director, shareholder, member or partner, unless such individual is a licensed attorney. Counsel must file an appearance with the Department on a form

provided by the Department. Motions to withdraw an appearance shall follow the procedure set out in Illinois Supreme Court Rule 13(c).

7. CONTINUANCES.

Litigants in this forum have no absolute right to continuance. Hearing Officers may grant continuance only upon proper motion and a showing of good cause, subject to conditions listed in this section.

a) Proper Motion

- 1) A continuance will only be granted pursuant to a motion:
 - i. filed in writing prior to or on the date of the hearing;
 - ii. made over the telephone to the Hearing Officer on the date of the hearing if there is an emergency;
 - iii. made orally before the Hearing Officer based upon the unexpected absence of a necessary witness.
- 2) All motions shall set forth grounds for good cause and be supported by evidence which tends to prove the grounds alleged.
- 3) If an emergency telephone continuance is granted, the movant shall file a retroactive written motion reiterating the grounds provided during the emergency telephone motion on the hearing date immediately following the emergency telephone motion. Failure to comply with this section shall be considered evidence that the movant is not exercising due diligence or is intentionally delaying the final hearing of the case without good cause.

b) Good Cause

In deciding whether the movant has demonstrated good cause, the Hearing Officer shall apply the following criteria:

- 1) good cause for an emergency continuance is limited to unforeseen conditions outside the control of the movant, including the sudden death or severe illness of an immediate family member or movant's counsel;
- 2) the recent discovery of new evidence or an unforeseen delay in the procurement of material evidence may be considered good cause, subject to the restrictions set forth in Illinois Supreme Court Rules 231(a)-(b);
- 3) the fact that a litigant is unprepared shall not be considered good cause;
- 4) the fact that a Licensee is making payments on a debt to the City shall not be considered good cause;

- 5) the fact that the Licensee is awaiting the completion of an administrative task by the City, such as building inspections or application processing, shall not be considered good cause;
- 6) the inability to obtain timely transportation to the hearing shall not be considered good cause, except upon a showing of indigence;
- 7) two or more consecutive emergency continuance motions may be considered evidence that the movant is not exercising due diligence or is intentionally delaying the final hearing of the case without good cause.

8. PRE-HEARING SETTLEMENT CONFERENCES.

A Licensee, through its representative or legal counsel, may request a pre-hearing settlement conference. The decision to issue a pre-hearing settlement offer is at the discretion of the Commissioner of the Department. The Licensee has the right to reject any settlement offer and elect to contest the matter in a formal hearing before a Hearing Officer.

9. DISCOVERY.

Discovery is the disclosure of facts and information about the case prior to the hearing. The Licensee has the right to be informed of the charges against which it is expected to defend. This requirement is ordinarily satisfied by the contents of the Notice of Hearing. Motions for discovery must be filed in writing at least ten days prior to the scheduled hearing date. Discovery is limited to the following items: any and all police reports (including inventories, laboratory reports, witness statements or summaries) within the Law Department's custody and control which pertain directly to the charges in the Notice of Hearing; and any written orders of disposition by the Department relating to the Licensee and within the custody and control of the Law Department. The parties must also provide each other with copies of all documents that will be used at the hearing, a list of any exhibits and the names of witnesses and a summary of their testimony. This exchange should ordinarily take place no later than five days before the scheduled hearing date.

10. CONDUCT OF HEARING.

a) Order of Proof

The first matter of business in any hearing is the admission into evidence of a letter of appointment authorizing the Hearing Officer to hear the case, and the admission into evidence of the Notice of Hearing. The Notice of Hearing shall be admitted solely as a charging document, and not as proof of any of the allegations made therein. The Law Department may present witnesses and exhibits. The Licensee has the right to cross-

examine all Law Department witnesses. At the conclusion of the Department's case-in-chief, the Licensee shall have the opportunity to present witnesses and exhibits, and the Law Department shall have the right to cross-examine those witnesses. At the close of the Licensee's case, the Law Department may present witnesses and exhibits in rebuttal. This order of proof may be altered by the Hearing Officer for any reason, including permitting witnesses not present, to testify at a later date.

b) Evidence

Rulings on the admission and exclusion of evidence are within the discretion of the Hearing Officer. The rules of evidence and privilege as applied in civil cases in the circuit courts of the State of Illinois shall be followed. However, evidence not admissible under such rules of evidence may be admitted if it is a type commonly relied upon by prudent persons in the conduct of their affairs. If the applicable provision of the Municipal Code pertaining to the charges in the Notice of Hearing authorizes consideration of police reports, then those reports shall be admissible. The purpose of rulings on evidence shall be to promote the finding of truth and to seek the greatest accuracy in the determination of facts. A Licensee's prior history shall be admitted at or after the close of Department's case-in-chief for purposes of aggravation or mitigation, but will only be considered for those purposes if one or more of the charges in the Notice of Hearing are sustained. Facts underlying prior orders of disposition may not be relitigated.

11. MOTIONS.

Motions may be presented in writing or orally, subject to the continuance motion provisions in section 7. Written motions shall be filed with the Department and served on all other parties. All motions not ruled on before a final decision or decided within the final decision itself are considered denied as moot. The Hearing Officer may rule on procedural motions and emergency motions. Such motions may be ruled upon when made. Dispositive motions, such as motion to dismiss, will not be ruled upon when made, but will be considered by the Hearing Officer in preparation of the proposed findings submitted to the Commissioner of the Department.

12. DECISION.

At the close of all the evidence, the Hearing Officer shall take the matter under advisement. The Hearing Officer shall submit proposed findings of fact to the Commissioner of the Department. Decisions shall be mailed or delivered promptly by the Commissioner to all parties. The Licensee shall be sent a copy of the decision by ordinary

U.S. mail even if notification of the decision is made by some other means. Service of the decision shall be deemed complete on the date the decision is placed in the mail. The certificate of mailing shall be prima facie evidence that service of the decision was made. Decisions of the Department are final. No petitions for rehearing, other than motions to set aside default orders, are permitted. Appeals to the License Appeal Commission of the City of Chicago or the Circuit Court of Cook County, in cases where such appeal is permitted by law, shall be in accord with applicable laws, ordinances, and rules.

13. DEFAULT.

- a) If at the time set for a hearing the Licensee fails to appear, the Hearing Officer shall find the Licensee in default and proceed with the hearing and accept evidence relevant to the charges contained in the Notice of Hearing and conclude with a finding and recommendation to the Commissioner of the Department.

14. MOTION TO SET ASIDE DEFAULT.

- a) A Licensee who is found to be in default may petition the Commissioner of the Department to set aside the order and to set a new hearing date.
- b) Petitions to set aside an order of default must be in writing and filed with the Department within 21 days after the issuance of the order of default.
- c) If a petition has been properly filed, a set-aside hearing shall be scheduled and held before a Hearing Officer. The Hearing Officer shall make a finding as to whether the petitioner's failure to appear at the hearing was for good cause. The Hearing Officer shall make a recommendation as to the merit of the petition to the Commissioner of the Department by the close of the business day on which the set-aside hearing is held.
- d) The default revocation order shall remain in effect throughout the motion to set aside proceedings unless the motion is granted.
- e) If the Commissioner of the Department decides to grant the petition and sets aside a default order, a Hearing Officer shall proceed with a hearing on the underlying matter as soon as practical.

15. CAMERAS AND OTHER NON-AUTHORIZED AUDIO/VISUAL RECORDING OR BROADCASTING DEVICES.

The recording, photographing, broadcasting or televising of proceedings is prohibited other than for the purpose of creating the official record of the proceedings.

16. EFFECTIVE DATE.

These Rules shall apply to all matters for which a Notice of Hearing is filed in the office of the Department on or after November 1, 2014.