

Liquor Violation Sentencing Guidelines for Compliance and Non-Compliance Check Violations

(Town Board Approved - April 8, 2014)

The purpose of these sentencing guidelines is to provide philosophical, non-binding guidance concerning negotiating stipulated agreements with licensees for liquor violations occurring within the Town of Estes Park. The actual penalty imposed is at the discretion of the Local Licensing Authority, and may vary under the guidelines depending upon the circumstances of each case and any mitigating factors.

Definitions:

“Level 1” means violations including, but not limited to Procurement of Liquor from a Prohibited Source; Failure to Meet Food Requirement; Failure to Report Change of Manager, Trade Name, Entity Structure, or Modification of Premises.

“Level 2” means violations including, but not limited to Gambling; or Refusal to Allow Inspection.

“Level 3” means violations pertaining to Regulation 47-900 Conduct of Establishment; or Unlawful Ownership.

“Local Licensing Authority (Authority)” means the Town of Estes Park Board of Trustees sitting in its capacity as the Local Licensing Authority. If the Board chooses to appoint a separate Authority, this section would apply directly to that Authority.

“Licensee” means the person or entity holding an alcohol beverage license of any class, or the person or entity holding an alcohol beverage permit of any type.

“Town” means the Town of Estes Park, Colorado.

Investigation of Cause for Suspension and Revocation of Licenses

An investigation may be commenced upon motion of the Authority, request of the Police Department, or upon the Town Clerk’s own initiative. If the investigation shows reasonable suspicion to believe that grounds for suspension or revocation exist, Show Cause Hearing proceedings may be initiated.

Pre-Hearing Negotiated Stipulation

For liquor law violations, the Town Clerk, in conjunction with the Chief of Police and/or the Town Attorney, is authorized to conduct a pre-hearing negotiation meeting. After considering results of the initial investigation and considering any mitigating or aggravating factors, the Town Clerk may offer a stipulated agreement to the licensee. An offer of stipulation is intended to be a lesser penalty than the Local Licensing Authority would reasonably be expected to impose after a hearing. A stipulated agreement is not required to be offered, and both the Town Clerk and Chief of Police reserve the right, at their discretion, to move directly to a Show Cause Hearing. If the licensee agrees to a stipulation agreement, the agreement will be presented to the Local Licensing Authority for final action. If a stipulated agreement includes days of suspension, the time shall be served consecutively and immediately upon approval of the stipulated agreement.

The range of the Town Clerk’s discretion is specified in this section and includes providing the owner of the establishment with the option of participating in the

Restorative Justice process in lieu of fulfilling the terms and conditions of the stipulation agreement. Additionally, the employee involved in the violation may choose the Restorative Justice option over facing criminal charges in district court. When the Restorative Justice option is chosen the case will be referred to the Estes Valley Restorative Justice Partnership (EVRJP).

Penalty Guidelines

Penalties for violation of any provisions of this Chapter, the Colorado Liquor Code, Colorado Beer Code, or Colorado Special Events Code shall be as provided in the guidelines below. Nothing in the following guidelines is meant to restrict the Local Licensing Authority from issuing a lesser penalty, a higher penalty, or additional penalties as allowed by this Code or state law, up to and including suspension or revocation of a liquor license.

For any offense involving Sale to a Minor or Service of a Visibly Intoxicated Person, the Authority requires, as a condition of holding any days of suspension in abeyance, that the licensee present timely proof of approved alcohol server training of each employee of the establishment who sells or serves alcohol or malt beverages.

When the penalty is a result of a violation that occurred during a compliance check, the guidelines in the Code of Regulations, 1 C.C.R. 203-2, Regulation 47-604 shall apply. The penalties described below reflect this Regulation, and may also be applied to a similar violation that occurs outside of a compliance check.

GUIDELINES FOR SALE AND SERVICE ALCOHOL VIOLATIONS

Violation(s): Sale to a Minor Sale To Visibly Intoxicated Person Sale or Service by Underage Employee	Penalty Range	Payment of fine permitted	Negotiated Stipulation Range	Additional Requirements
First offense	Written warning up to 15 day suspension	Yes	0 to 15 days served with 15 to 0 days held in abeyance for one year	If the employee making the sale has completed a state-approved server training, a written warning is recommended in compliance with Regulation 47-604(A)(2). Adopt recommended practices.
Second offense within one year	Up to 30 day suspension or RJ Option	Yes, if fine was not paid or suspension served for first offense and if there are no other offenses within the past two years (12-47-601(3)(a)(III))	10 to 20 days served with 20 to 10 days held in abeyance for up to 18 months	Any time held in abeyance from a prior penalty must be served. May not pay fine in lieu of this portion of the suspension.

Third offense within one year	Up to 45 days suspension, RJ Option, or revocation	No	30 to 45 days served	Time held in abeyance not allowed. Time held in abeyance from prior offense(s) must be served. May not pay a fine in lieu of suspension.
Second offense within two years	Up to 21 day suspension or RJ option	Yes, if fine was not previously paid	14 to 21 days served with 7 to 0 days held in abeyance for one year.	If a second offense occurs within one (1) year of the first offense, any days held in abeyance from the first offense will be imposed in addition to separate sanctions for the second offense. May not pay a fine in lieu of suspension.
Third Offense within two or three years	Up to 30 days suspension, RJ Option, or revocation	No	20 to 30 days served with 10 to 0 days held in abeyance for one year	If a third offense occurs within one year of an earlier offense, any days held in abeyance from the earlier offense(s) will be imposed in addition to separate sanctions for the third offense. May not pay a fine in lieu of suspension.

* **Recommended Practices**

1. **Create and maintain a written sales policy** – establishments should have a written policy identifying steps that staff must take for every transaction.
2. **Train staff and management on the alcohol sales policy** – all staff should be fully trained before being permitted to sell alcohol.
3. **Provide tools for employees** – provide appropriate tools (i.e. as ID Checking Guides, electronic ID scanners, programmable cash registers) to help staff sell responsibly.
4. **Monitor staff conduct** – monitor staff performance as a quality control strategy.
5. **Keep records** – in order to demonstrate company practices, document training, compliance checks, disciplinary actions; keep an unusual occurrence log; and appoint a high-level employee to oversee compliance with laws and company policy.

When considering mitigating and aggravating factors, the Authority and/or Town Clerk, Chief of Police, and Town Attorney shall consider:

- Action taken by the licensee to prevent violations, i.e. server training.
- Licensee's past history of success or failure with compliance checks.
- Any corrective action taken by the licensee.
- Any corrective action taken for prior violations and the effectiveness of the corrective action.
- Willfulness or deliberateness of the violation.
- Likelihood of recurrence of the violation.
- Factors which might make the situation unique, such as:
 - Prior notification that the compliance check would be forthcoming.
 - The dress or appearance of the underage operative, i.e. the operative was wearing a high school letter jacket.
 - Licensee or Registered Manager is the violator or directed an employee or other individual to violate the law.

GUIDELINES FOR LEVEL 1 – LEVEL 3 ADMINISTRATIVE VIOLATIONS

Level 1 Violation	Penalty Range	Payment of fine permitted	Negotiated Stipulation Range	Additional Requirements
First offense	Written warning up to 10 days suspension	Yes	3 to 7 days served plus 7 to 3 days held in abeyance for one year	
Second offense within one year	15 days suspension	Yes, if fine was not paid or suspension served for first offense	5 to 10 days served with 10 to 5 days held in abeyance for one year	Any time held in abeyance from a prior penalty must be served. May not pay fine in lieu of this portion of the suspension.

Level 2 Violation	Penalty Range	Payment of fine permitted	Negotiated Stipulation Range	Additional Requirements
First offense	Written warning up to 20 day suspension (Aggravated: 25 day suspension)	Yes	7 days served with 13 held in abeyance for one year (Aggravated: 8 days served with 17 days held in abeyance)	
Second offense within one year	Hearing is set for revocation of license			

Level 3 Violation	Penalty Range	Payment of fine permitted	Negotiated Stipulation Range	Additional Requirements
First offense	30 days suspension (If first offense is serious enough a hearing is set for revocation of license)	No	10 days served with 20 days held in abeyance for one year	
Second offense within one year	Hearing is set for revocation of license			

Consideration of Payment of Fine in Lieu of Suspension

The Local Licensing Authority agrees to accept and adopt the optional procedures described in C. R. S. §12-47-601(3) through (6). This shall apply to any licensee who violates or whose employees violate any terms of this Chapter or of Title 12, Articles 46, 47, and 48, or the rules and regulations related thereto.

A fine in lieu of suspension may be considered for suspensions of fourteen days or less. In considering the licensee's petition to pay a fine in lieu of suspension, the Authority shall use the criteria set forth in C. R. S. §12-47-601(3)(a)(I) through (III), which provide that a fine in lieu of suspension may be considered when the authority is satisfied that the following conditions obtain:

- (I) That the public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;
- (II) That the books and records of the licensee are kept in such a manner that the loss of sales of alcohol beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; and
- (III) That the licensee has not had his or her license or permit suspended or revoked, nor had any suspension stayed by payment of a fine, during the two years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license or permit.

The fine shall be determined in accordance with C. R. S. §12-47-601(3) (b) and (c), which provide as follows:

(I) The fine accepted shall be the equivalent to twenty percent of the licensee's estimated gross revenues from sales of alcohol beverages during the period of the proposed suspension; except that the fine shall be not less than two hundred dollars nor more than five thousand dollars.

(II) Payment of any fine pursuant to the provisions of this subsection shall be in the form of cash or in the form of a certified check or cashier's check made payable to the licensing authority i.e. Town of Estes Park.

The Town Clerk is authorized to recommend payment of a fine in lieu of suspension that meets the criteria set forth as part of a stipulated agreement.

Consideration of Restorative Justice in Lieu of Suspension

For each liquor license violation case referred to the Estes Valley Restorative Justice Partnership, a process of identifying and repairing harm would be followed. The EVRJP process allows for consequences to match the specific details and circumstances of each case as opposed to the same penalty being imposed for all incidences. It also allows the community a voice by inviting community members to be a part of the process.

When the Restorative Justice option is chosen, the owner of the establishment and/or the employee involved in the violation would be contacted by EVRJP staff to both learn about the Restorative Justice process and to review the facts of the case. Facilitators and community members would be selected to participate in a Community Group Conference Circle in order to develop a unique contract to be fulfilled by the offender(s) in lieu of a suspension and/or fine as agreed upon in the stipulation agreement. The

contract would run for a defined period of time, generally three to six months, and contain up to five contract items that must be completed. These items will be specific, measureable, achievable, relevant, and timely. The contract will be monitored by EVRJP staff for completion within the amount of time specified. If the offender(s) fail to complete the contract, or a second offense has occurred, the owner of the establishment would be obligated to pay the fine and/or serve the suspension defined by the stipulation agreement. The employee involved in the violation would be referred back to court, as he/she would be facing criminal charges.