



Corey Y. Hoffmann  
Kendra L. Carberry  
Jefferson H. Parker  
M. Patrick Wilson

Of Counsel  
J. Matthew Mire  
Hilary M. Graham  
Kathryn M. Sellars

**Denver Office**  
511 16<sup>th</sup> Street, Suite 610  
Denver, CO 80202-4260  
(303) 825-6444

**Vail Office**  
P.O. Box 2616  
Vail, CO 81658  
(970) 390-4941

Daniel P. Harvey  
Ruthanne H. Goff  
Evin B. King  
Alexandra N. Slaten  
Katie J. Vera

**TOWN OF ERIE**  
**MEMORANDUM**

**TO: MAYOR AND BOARD OF TRUSTEES  
MALCOM FLEMING, TOWN ADMINISTRATOR**

**FROM: KENDRA L. CARBERRY, TOWN ATTORNEY *WC*  
EVIN B. KING, ESQ.**

**DATE: NOVEMBER 6, 2020**

**RE: 2020 LIQUOR LEGISLATION**

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Several bills relating to the regulation of alcoholic beverages were enacted this past legislative session, including Senate Bill 20-032 ("SB 20-032"); Senate Bill 20-086 ("SB 20-086"); Senate Bill 20-110 ("SB 20-110"); Senate Bill 20-213 ("SB 20-213"). This memorandum provides an overview of each bill. Additionally, where applicable, this memorandum includes related changes made to the Colorado Liquor Rules. Finally, this memorandum explains whether any changes to the Municipal Code are required.

**SB 20-032 – Age to Sell Alcohol in Liquor-Licensed Drugstores**

Previously, employees of liquor-licensed drugstores between 18 and 21 years of age were prohibited from selling or having any contact with malt, vinous, or spirituous liquors. Now, under SB 20-032, these employees can handle and sell alcohol. However, these employees are still prohibited from delivering alcohol.

**SB 20-086 – Notification of Liquor License Expiration and Renewal Fees**

Under preexisting law, the Executive Director of the Department of Revenue (the "Department") notified licensees via first-class mail of license expiration dates. SB 20-086 permits the Department to now use any method reasonably likely to notify licensees of the

expiration date. C.R.S. § 44-3-302. The Colorado Liquor Rules provides that notification can happen via email or mail at least 90 days before the expiration of the existing license. 1 CCR 203-2 § 47-303(B).

Additionally, SB 20-086 permits the state to charge for processing applications for the renewal of licenses and permits. C.R.S. § 44-3-501(3)(a)(XVIII). The Department has set this fee at \$50.00. 1 CCR 203-2 § 47-506.

### **SB 20-110 – Fines for Violations**

Previously, state and local licensing authorities could only impose a fine for liquor violations if the licensee requested a fine in lieu of revocation or suspension. Now, under SB 20-110, the Town as the local licensing authority can impose a fine without suspension or revocation. C.R.S. § 44-3-601(1)(a). Such fines must be between \$500.00 and \$100,000.00. C.R.S. § 44-3-601(1)(c).

Licensees still have the option of requesting a fine in lieu of suspension or revocation, but the amount of those fines has been increased to an amount between \$500.00 - \$100,000.00 from the previous authorized range of \$200.00 - \$5,000.00. C.R.S. § 44-3-601(3)(b).

Fines owed to local licensing authorities must be paid in the form of cash, certified check, or cashier's check made payable to the authority. C.R.S. § 44-3-601(3.5).

### ***Department Guidance***

The Department has proposed rules to serve as guidance for local licensing authorities in implementing these new fines, including categories of violations; methods of calculating fines; and aggravating and mitigating factors.

### **Categories of Violations**

The Department has established four categories of violations, ranking from least to most severe. 1 CCR 203-2 § 47-603. Fines are lowest for Level One violations and highest for Level Four violations. *Id.* Fines in lieu of suspension or revocation are equivalent to 20% of the licensee's estimated gross revenues for the number of days of suspension, with the number of days being the lowest for Level One violations and the highest for Level Four violations. *Id.* The following chart explains the Department's guidance:

<b>Category</b>	<b>Examples of Violations</b>	<b>Fine Limit</b>	<b># days for fine in lieu of suspension/revocation</b>
<b>One</b>	Compliance check failures; failure to report changes; mandatory posting violations; minor recordkeeping	<b>First violation:</b> \$5,000.00	7 days

	violations; and minor advertising violations	<b>Subsequent:</b> \$15,000.00	
<b>Two</b>	Marketing and minor trade practice violations; sales to minors not part of compliance checks (first violation or does not result in substantial bodily injury); sales to intoxicated persons (first violation or does not result in substantial bodily injury); sale of non-permitted items; operating with an expired licensed; and allowing unauthorized removal of alcohol off licensed premises	\$25,000.00	14 days
<b>Three</b>	Substantial delivery or shipping violations; exercising the privilege of a licensee other than which the licensee holds; permitting another to exercise the rights of a license they hold; allowing substantial gambling activities; employee age violations; and hours of operation violations	\$75,000.00	At least 21 days
<b>Four</b>	Violations that directly affect the health, safety, and welfare of the public at large including: sales to minors (2 <sup>nd</sup> offenses or result in substantial bodily injury); sales to intoxicated persons (2 <sup>nd</sup> offenses or result in substantial bodily injury); substantial conduct of establishment violations; or permitting the consumption of marijuana or marijuana products on the licensed premises	\$100,00.00	At least 28 days

The above chart is for guidance only, and local licensing authorities retain discretion in assessing penalties within the boundaries of the law.

**Aggravating and Mitigating Factors**

The Department has also created a list of aggravating and mitigating factors that local licensing authorities may take into consideration when imposing a fine or other penalty. These aggravating and mitigating factors may result in the movement of a violation to a lower or higher category on a case-by-case basis. These factors may include without limitation:

***Mitigating Factors***

- The licensee and/or its employees maintain responsible vendor training certification;
- The licensee has a substantial history of compliance with liquor laws and rules;
- The violation is a first violation;
- The violation was self-reported;
- The extent to which the licensee took prompt and effective self-initiated action to correct the violation and to prevent future violations of the same type from occurring;
- The violation did not demonstrably result in harm, only the potential of harm;
- The violation was negligent, not willful;
- The violation is not part of a pattern or practice of violations;
- The implicated licensee did not encourage others to participate in the same or similar violations;
- The violation did not result in serious bodily injury or death;
- The owner or management personnel was not involved in the violation, and/or did not direct their employees to violate the law; or
- The licensee did not substantially benefit, monetarily or otherwise, from committing the violation.

***Aggravating Factors***

- The licensee and/or its employees do not maintain responsible vendor certification when certification is required by statute regulation;
- The licensee has a substantial history of non-compliance with liquor laws and rules;
- The violation is a second, or subsequent offense;
- The violation was discovered, and later substantiated through investigation, as a result of a complaint, or multiple complaints;
- The violation demonstrably resulted in harm, not just the potential for harm;
- The violation was willful, not negligent;
- The violation is part of a pattern or practice of violations;
- The implicated licensee encouraged others to participate in the same, or similar violations;
- The violation resulted in serious bodily injury or death;
- The owner or management personnel engaged in the violation and/or directed an employee to violate the law; or
- The licensee substantially benefitted, monetarily or otherwise, from committing the violation.

### **SB 20-213 – Alcohol Take Out and Delivery**

During the pandemic, Governor Polis relaxed regulations relating to the takeout and delivery of alcohol. In SB 20-213, the General Assembly created a permit system that will allow the takeout and delivery of alcohol until July 1, 2021. However, the permit system is only in effect when the State of Colorado is *not* under a declaration of emergency. C.R.S. § 44-3-911(2)(a).

Assuming the current declaration of emergency is lifted, the following types of licenses may apply for a takeout and delivery permit: beer and wine, hotel and restaurant, tavern, brew pub, club, vintner's restaurant, distillery pub, lodging and entertainment, fermented malt beverage on or off premise retailers, and manufacturers and wholesalers with an approved sales room. Local licensing authorities may create their own permit system, provided that the fee for local permits does not exceed the state fee. C.R.S. § 4-3-911(4)(c).

Licenses with takeout and delivery permits may only sell for takeout or delivery alcohol to customers who are 21 years or older, in approved sealed containers, and in limited quantities. C.R.S. § 43-3-911(2)(b). Deliveries may only be made by employees of the licensee who are at least 21 years of age who have completed the seller training program. C.R.S. § 44-3-911(3).

SB 20-213 expires on July 1, 2021.

### **Code Changes**

Chapter 8 of Title 4 of the Municipal Code gives the Municipal Judge, acting as the Liquor Licensing Authority (the "Authority") broad discretion in imposing fines and penalties for liquor violations; however, SB 20-110 does require that the Authority increase the fine amount for fines in lieu of suspension to \$500.00 - \$100,000.00 in Section 4-8-14(B)(2)(a). Therefore, the Town must, via ordinance, change the fine amount in that Section.

The Town may also wish to consider amending the Municipal Code further to allow for fines for individual violations (rather than only in lieu of suspension/revocation) and to create a permitting program for licensees for takeout and delivery of alcohol. However, these changes are optional.

Section 4-8-14 of the Municipal Code only allows for fines to be imposed if the license has been suspended or revoked. SB 20-110 gives the option for the Authority to simply impose a fine without suspension or revocation. If the Authority wishes to pursue this option, the Municipal Code should be amended to allow for such fines.

The Town may also want to create a permitting program under SB 20-213 for the takeout and delivery of alcohol. However, while the Governor's declaration of emergency is in effect, the permitting system is not in effect. The Town may therefore want to wait for this declaration to expire before taking action.

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At your direction, our office can draft the necessary Code revision amending Section 4-8-14(B)(2)(a) to increase the fine in lieu amount, and can also include any of the optional changes to the Code described above.

### **Conclusion**

The General Assembly made several changes to the regulation of alcohol this past legislative session, including the ability of underage liquor-licensed drugstore employees to sell alcohol, the notification of licensees of license expiration dates, imposes fines for penalties, and allowing for takeout and delivery of alcohol. The Town must amend the Code to increase the minimum and maximum penalties for fines in lieu of suspension or revocation. The Town may also amend the Code to allow for fines without suspension or revocation and to create a permitting program for the takeout and delivery. We await your direction.