



City of Independence

Review of the Liquor and Business Licensing Administrative Hearing and Appeals Process

City of Independence, Missouri

Report to the Mayor and City Council

By: City Management Analyst

July 25, 2018

Report No. 17-02

City of Independence

City Council Office



July 25, 2018

Honorable Mayor and Member of the City Council:

This report was assigned to me by the Audit and Finance Committee and was initiated pursuant to Chapter 1, Article 43 of the City Code of Ordinances. This report outlines the administrative and appeals hearing process for both liquor and business licensing and makes several recommendations for improvements.

An administrative hearing, in the context of municipal government, is any quasi-judicial hearing before the agency where the goal is to apply a standard or rule to an individual, business, or other application. The decisions of a quasi-judicial body require findings of facts consistent with the law or ordinance that support the decision. The decision of the license officer should be rendered in writing to the applicant or license holder. Decisions of the hearing officer are legally enforceable under laws of the jurisdiction; however they can be challenged in a court. Additionally, city code stipulates that the City Council shall hear the appeals of both liquor and business licensees. This report examines both the hearings and appeals process for consistency and compares findings to those of other charter communities in Missouri.

The liquor and business license officer reviewed this report, to provide feedback related to the findings. The draft report was also reviewed by the City Manager and City Counselor, and responses from both are appended. The Audit and Finance Committee has approved the final report and directed the Management Analyst to forward the final document to the full City Council. The cooperation of all those who provided assistance and feedback is greatly appreciated.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jordan Ellena".

Jordan Ellena
City Management Analyst

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Introduction

Objectives

This review of the city's administrative hearing and appeals process for liquor and business licensing was conducted under the authority of Section 2.11 of the Charter of Independence, Missouri, which establishes the position of City Management Analyst and Article 43 of Chapter 1 of the City Code outlining the primary duties.

This audit provides findings or conclusions based on an evaluation of sufficient evidence against best practices. Audits, like this, are intended to provide the City Council and staff with an objective analysis of programs, policies, and procedures. Policymakers and managers rely on this information to inform decision making, ensure the organization is publicly accountable, improve performance, and reduce costs.

This report is designed to:

- Evaluate the current administrative and appeals hearing process for liquor and business licensing.
- Compare Independence's process for appeals to other Missouri municipalities.

Scope and Methodology

This review looks at the city's current process for hearing administrative appeals from business and liquor licensing as well as the administrative hearing processes that precede them to identify any weaknesses in the process. Business and liquor licenses were chosen because administrative appeals are heard directly by the City Council. The findings of this report are compared with other charter cities in Missouri in an attempt to identify where Independence might diverge from peer communities. Audit methods included:

- Collection and review of peer city codes pertaining to administrative hearings and their accompanying appeals process.
- Interview with the city's license officer.
- Reviewing information related to best practices in managing licenses.

This performance audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that each audit is planned and performed to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. The evidence uncovered during this audit provides a reasonable basis for the findings and conclusions based on the objectives. No information was omitted from this report because it was deemed privileged or confidential.

Background

An administrative hearing, in the context of municipal government, is any quasi-judicial hearing before the agency where the goal is to apply a standard or rule to an individual, business, or other application. The decisions of a quasi-judicial body require findings of facts consistent with the law or ordinance that support the decision. The decision should be rendered in writing by the hearing officer to the applicant

or license holder. Decisions of the hearing officer or body are legally enforceable under laws of the jurisdiction; however they can be challenged in a court. Some examples of administrative hearings in a municipal setting include: nuisance code enforcement hearings, disciplinary hearings, and license revocation or suspension hearings.

Quasi-judicial hearings are different from legislative proceedings. Legislative actions formulate rules to be applied to all future cases. Legislative actions include, but are not limited to, adoption and amendments to municipal codes, zoning codes, and personnel rules. Where legislative actions establish public policy and rules applicable to groups of property or people, administrative hearings affect individual properties or parties. Again these hearings involve the application of established standards and rules to individual facts to take specific actions consistent with existing law or ordinances.

Before the decision of an administrative hearing officer can be challenged in court there is often an internal appeals process for individuals or parties who feel aggrieved by the decision of the hearing officer. As you will see later in the report the process for such an appeal can take many forms but a basic structure exists. That structure allows for an impartial decision making body or individual, without bias in the case, to hear arguments as to why the original decision was in error. The decision in the administrative appeal is also rendered in writing to individual or party appealing it. This audit specifically looks at the administrative hearing and appeals process for business and liquor licenses as the appeals process for both require the City Council to hear appeals of decisions of the license officer related to suspension or revocation of those licenses.

Evaluation Criteria

A review of pertinent literature and case studies related to administrative hearings and appeals has revealed a set of expectations, if not legal requirements, for such processes. Below is the list of criteria noted that help inform the evaluation of the city's current process.

Notice

Adequate notice is an essential element of due process. Notice is necessary to give the party a chance to defend charges before penalties are imposed.

Right to be heard

A person facing possible loss of a license has a right to defend themselves and present their side of the dispute to the hearing officer making the decision. The ability to bring evidence and to respond to evidence presented against them is also important.

Fair hearing

An administrative hearing should be conducted in such a way to ensure the decision maker, is free from bias for or against the party. This should be the case for both the administrative hearing and any subsequent appeal.

Findings

Administrative Hearing Process

City code allows for the license officers to revoke or suspend a liquor or business license for a number of code violations. The process to revoke or suspend a license as outlined in city code calls for an administrative hearing held by the license officer. This hearing allows for the licensee to hear the violations cited against them and for them to respond. Following the hearing the license officer must notify the licensee of their decision and/or action being taken (revocation, suspension or no action). The minimum notification requirements for administrative hearings for business and liquor licenses are spelled out in the pertinent chapters and sections of city code; business licenses in section 5.01.017 and liquor licenses in section 2.06.002. While these code sections lay out a similar process to each other, the sections are not identical.

The process outlined in section 2.06.002 for the suspension or revocation of a liquor license calls for at least 10 day written notice before the time and date of the hearing. Notice shall set forth the reasons for the hearing and commanding the licensee to appear and show cause as to why the license should not be suspended or revoked. The notice is to be hand delivered to the establishment or sent via first class mail to the managing officer and business owner. Notices sent via mail are presumed received 3 days after being mailed. Within 10 days of the hearing the license officer is to render a final decision to the licensee in writing. When a license is ultimately suspended or revoked written notice is to be given that identifies the specific violations.

The process in section 5.01.017 for the suspension or revocation of a business license is less specific on the amount of notice required before an administrative hearing is held (i.e. it does not specify at all) but requirements around mailed notices and notification following the decision to revoke or suspend are the same. First class mail is presumed received three days after mailing to the last address on file for the business licensee. The license officer may also choose to deliver the order in person and is effective immediately. Because section 5.01.017 does not lay out requirements for notice before an administrative hearing, staff is relying on the *Administrative Hearing Procedures for Revocation or Suspension of Business and other Occupation Licenses* document (Appendix A).

Administrative Hearing Procedures

As mentioned above, the specific sections of city code which pertain to the administrative hearing process are similar is post hearing notification of decisions to the licensees however one is specific on notification before a hearing while the other is not. The existence of an administrative procedure attempts to bring consistency to the both processes. This is both good for the licensees who are assured their cases are being dealt with in a consistent and fair manner across the board but the consistency also helps the license officer manage an efficient system for administrative hearings.

As part of this audit these administrative procedures were examined. Two specific items were identified warrant adjustments to the written procedures. The first relates to the amount of time required for written notice before the date set for an administrative hearing. The procedures document cites section 5.01.07.B as requiring at least five days' notice before an administrative hearing on a business license.

My reading of the indicated section does not find such a requirement in that section or any other section of this chapter. Staff indicated that they generally give two full weeks or 14 days' notice for all administrative hearings. **The Management Analyst's recommendation is to remove the reference to the 5 days in section 5.01.07.B and to treat both with at least 10 days' notice moving forward.** If staff's internal policy is to send notice by mail two weeks before the hearing date this would align well with code requirements and make administration simpler.

Another area of potential need to update these procedures relate to the days and timing of administrative hearings. The procedures require the license officer to set aside Tuesday and Thursday mornings for administrative hearings. During our interview, the license officer mentioned that this requirement does not offer flexibility for him to schedule hearings. Timing and scheduling of conference rooms in the department can be tight. The original intent was to provide consistency for licensee and staff alike, however due to the current volume of hearings and the flexibility needed to accommodate other administrative hearings held in the department, this provision has become a hindrance. **At the license officer's suggestion, the Management Analyst concurs that these procedures be updated to remove a reference to days of the week or times for future administrative hearings.** This change would allow the license officer to schedule hearings with more flexibility and provide better customer service to those licensees required to appear.

Administrative Appeals Process

Any licensee, applicant, or permittee who feels aggrieved by the decision of the liquor license officer to suspend or revoke a permit or license has the right to appeal. City code Section 2.11.001 states that an aggrieved party must file a written appeal with the City Clerk, within five (5) days of notice of the original decision by the license officer. The written appeal shall include a copy of the order or decision and state that the decision was wrongly held by the liquor license officer. At that time the City Council is to fix a time and place of the appeal hearing and notice is sent by the City Clerk to the appellant and the license officer. The license officer is entitled to appear in the defense of his or her decision. The findings of the City Council shall be final and the findings shall be served to the appellant within five (5) days.

City code section 5.01.018 lays out the appeals process for business and occupations licensees who have had a license suspended or revoked. They are substantially the same as a liquor license appeal with a few specifics. A written appeal must also be filed within five (5) days of the receipt of the license officer's decision to deny, suspend, or revoke a business license. The requirements of the actual appeals document are the same as they must provide to the City Clerk a copy of the original decision and a notice that the decision was made in error. Council sets a date and time for the appeals hearing and notifies the appellant and the license officer. The City Council may increase or decrease the suspension period or other penalties levied by the License Officer. Following the Council's decision the City Clerk provides the appellant with a written notice of the City Council's decision via first class mail. Again this is the final decision in the administrative appeals process.

As mentioned above, there are a few specific differences in the two appeals processes as described in city code. They mainly have to do with the business license appeals process being a bit more detailed in

city code. Specifically, city code section 5.01.018 lays out a few aspects of the process before the City Council. One, their purpose is to determine whether the license officer correctly applied the provisions of the pertinent chapter of the code. Two, that the burden is on the appellant to overcome a presumption that the license officer correctly applied the provisions of the city code. Three, the license officer presents the case to the City Council and that the appellant either in person or through counsel can present evidence in support of their case. Four, the City Council has the opportunity to ask questions of all parties represented. It is the opinion of the Management Analyst that there is nothing that would prevent the City Council from utilizing these four grounding principles during appeals of liquor license decisions as well.

The City Council has historically set appeal hearings following a regularly scheduled council meeting. Those meetings prevent calling numerous special sessions and are generally resolved in a short period of time. However, these appeals happen so infrequently that City Council members tend to forget the process between hearings and often get confused about the process and what differences, if any, exist between a liquor appeals and business license appeals hearing. **The Management Analyst recommends that the City Council adopt additions to their Council Rules of Procedure to specifically outline a set of procedures for all appeals hearings. The four steps outlined in section 5.01.018 of business licensing chapter should be the basis for the defined procedure.**

Appeals Process Compared to other Municipalities

A review of the city codes of peer communities in Missouri revealed that administrative hearings across the board are handled in much the same way. For that reason this report will not expound on a comparison of them. However, there are differences in the way municipalities deal with administrative appeals. There are two main ways that others deal with them. The first is a direct appeal to the city's chief administrator or their designee. In most cases this takes the form of the city manager/administrator appointing an appeals officer either permanently or on a case-by-case basis to hear administrative appeals. This could be a permanent position, a department director, or other senior administrator. The other main form of appeals process in other charter communities is an appeals board. Usually composed of three individuals, the appeals board is tasked with hearing all relevant appeals and making a final determination. This type of board more is common when dealing with liquor licenses and usually include three staff members or two staff members and one member appointed by the City Council. Table 1 below gives a brief description of the findings from peer cities in Missouri.

Table 1. City code provisions related to administrative appeals hearings	
Blue Springs	City Administrator appoints hearing officer for all appeals
Cape Girardeau	Liquor License Review Board hears appeals
	Department director holds hearing at request of license officer or licensee
Columbia	Liquor License Review Board hears appeals
	Department director holds hearing at request of license officer or licensee
Lee's Summit	City Council hears cases pertaining to liquor licenses Director of Liquor Control recommends action prior
Springfield	City Manager or designee hears all appeals

St. Joseph	Appeal made to pertinent department director
Source: review of pertinent city code chapters related to business or liquor licensing	

This review directly reveals that Independence is fairly unique with our appeals process involving City Council. It is probably most common in smaller jurisdictions where the number of appeals tend to be small. The difference in approach can be attributed to a philosophical view about whether the administrative appeals process is better served by professional staff or by the collective wisdom of the governing body of the municipality. Neither system is inherently better than the other. Both are acceptable ways to handle appeals as long as the individual's due process rights are maintained. The city's current system of administrative hearings and administrative appeals meets the criteria discussed above.

Based on recent trends, the current appeals system appears adequate to accommodate the number and complexity of administrative appeals. Tables 2 below, shows the number of administrative hearings and appeals for both business and liquor licensing during the previous year. City Council is able to provide a satisfactory level of review and have been able to address appeals in a timely manner. **Should the number of appeals dramatically increase in the future, the City Council may wish to explore implementing a different process. At this time it is not necessary to amend city code or otherwise change the administrative hearing or appeals process.** However, City Council has expressed some concern with the process of the actual appeals hearing. A formal process that prescribes the hearing step by step would address those concerns. Having a clear set of procedures for holding these appeals hearings would give the Council and appellants more confidence in the process.

	Administrative Hearings	Licenses Suspension	Licenses Revoked	Administrative Appeals
Business Licensing	8	1	1	1
Liquor Licensing	49 (39 employee permits*)	11	0	1
* Employee permit hearings held in combination with hearing for liquor license holder)				

Recommendations

1. In the *Administrative Hearing Procedures* document, under City Code Requirements, remove the reference to the 5 days in section 5.01.07.B and give both business and liquor licenses at least 10 days' notice moving forward.
2. In the *Administrative Hearing Procedures* document remove references to days of the week or times for future administrative hearings. Allowing the license officer to schedule hearings at his or her discretion moving forward.

3. City Council should adopt additions to their *Council Rules of Procedure* to specifically outline a format or script for appeals hearings. The new council procedures should outline the following:
 - The purpose of the appeal is to determine whether the license officer correctly applied the provisions of the pertinent chapter of city code.
 - The burden is on the appellant to overcome a presumption that the license officer correctly applied the provisions of the city code.
 - A script by which the license officer presents the case to the City Council and that the appellant either in person or through counsel can present evidence in support of their case.
 - That City Council has the opportunity to ask questions of all parties represent.
4. If the number of administrative appeals dramatically increases in the future, City Council should consider code changes that would send appeals to the City Manager or their designee. At this time I **do not** recommend making changes to City Code.

Appendix A: Administrative Hearing Procedures for Revocation or Suspension of Business and Other Occupation Licenses

City of Independence, Missouri Administrative Hearing Procedures for Revocation or Suspension of Business and Other Occupation Licenses

Effective: February 1, 2014

Authority

As authorized by the City Code (Section 2.06.001 – 003 Alcoholic Beverages and Section 5.01.017 Business and Occupation Licenses) the License Officer has the authority to revoke, suspend or deny a licenses. These Sections of the Code establish the minimum procedures the License Officer must follow in considering the suspension, revocation, or denial of liquor and business licenses. The License Officer has the authority to develop processes for handling administrative hearings that are not in conflict with the Code.

Purpose

The purpose of this administrative procedure is to provide the hearing procedures for the revocation, suspension or denial of a licensed business or a business renewing their liquor or business license. The purpose of these administrative procedures is to ensure fundamental procedural due process protection to the individual or business entity holding a liquor or business license.

City Code Requirements

Section 2.06.002.B requires the City mail written notice to the licensee at least ten (10) days prior to the date set for the Administrative Hearing regarding the revocation or suspension of a liquor license. Section 5.01.07.B requires the City mail written notice to the licensee at least five (5) days prior to the date set for the Administrative Hearing regarding the revocation or suspension of a business license. The written notice of the Administrative Hearing may also be hand delivered to the managing officer for the licensed business.

The written hearing notice for the revocation or suspension of license will include the specific reasons for the possible suspension or revocation of the license and the time and place of the Administrative Hearing.

Administrative Requirements

A department (Police, Community Development, Health, Fire, etc.) will provide preliminary notification to the License Officer of any illegal activities or City Code violations the City representative has observed at a licensed business. This preliminary information will include the name of the business, business address, type of violation observed and date and time of the alleged violation.

Upon receiving the preliminary information from the department, the License Officer or designee will make a record of this information. The License Officer will formally request the department director provide the following information regarding the alleged violation:

- o Copy of the incident report which shall include the date, time and location of the violation, the name(s) and date(s) of birth of the person(s) committing the alleged violation, and the names of witnesses, if any;
- o Copy of the field test results of any suspicious product;
- o Name(s) of the personnel conducting the field test of any suspicious product;

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Other Occupation Licenses
Effective: February 1, 2014

- c. Name(s) of the any individual that will serve as witnesses for the department during an Administrative Hearing;
- c. A written summary of events leading up to the alleged illegal activity and including a reference to the specific Code Section this alleged illegal activity violates; and,
- c. Any additional information which would be relevant to the Administrative Hearing process.

Upon receipt and review of this information the License Officer will determine if the complaint or violation and evidence is sufficient enough to justify conducting an Administrative Hearing for suspension or revocation of the license. If an Administrative Hearing is warranted the License Officer or designee will prepare written notice of the Administrative Hearing and deliver to the licensee as prescribed by the Code and to the department director.

The License Officer will set aside time on Tuesday and Thursday mornings for Administrative Hearings regarding the revocation or suspension of business licenses and other license violations.

It is the responsibility of the department seeking the hearing to consult with the Law Department about any questions they may have about the process.

The licensee can have legal representation at the Administrative Hearing.

The License Officer will conduct the Administrative Hearing. The process will be as follows:

- c. Department will present their evidence against the licensee;
- c. Licensee will present evidence after staff concludes their case;
- c. Rebuttal will be allowed by department and licensee;
- c. License Officer may ask questions of either department or licensee;
- c. License Officer will allow department and then the licensee to make a closing statement; and,
- c. License Officer will close the administrative hearing.

Following the Administrative Hearing the License Officer will evaluate the evidence and information presented during the Administrative Hearing to determine if the business license should be suspended or revoked.

License Officer will issue a written ruling on the case within ten (10) business days after the date of the Administrative Hearing.

The written ruling will include instructions regarding the appeal process of the License Officer's decision to suspend or revoke a business license.

Appendix B: City Counselor's Response

City of Independence

MEMORANDUM

Law Department

DATE: June 12, 2018

TO: Jordan Ellena, Management Analyst

FROM: Dayla Bishop Schwartz, City Counselor *DBS*

SUBJECT: **Report No. 17-02**
Review of the Liquor and Business Licensing
Administrative Hearing and Appeals Process



I have reviewed the draft report for Report No. 17-02, Review of the Liquor and Business Licensing Administrative Hearing and Appeals Process. I am of the opinion that there is nothing contained within the draft report that would expose the City to a lawsuit. Furthermore, it is my opinion that the draft report would not qualify for an executive session discussion before either the Council Audit and Finance Committee or the City Council.

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Appendix C: City Manager's Response

City of Independence

MEMORANDUM

City Manager's Office

DATE: June 26, 2018

TO: Jordan Ellena, Management Analyst

FROM: Zachary Walker, City Manager

SUBJECT: Audit of Code Enforcement Cases



Thank you for the opportunity to review your audit of the city's administrative hearing and appeals process for liquor and business licensing. The *Independence for All* Strategic Plan challenges staff to improve customer service and communication. The Regulated Industries Division of the Community Development Department is leading in this effort. By consolidating disjointed staff and services under a single umbrella in the Community Development Department, we are able to respond more efficiently to business customer needs.

Thank you for identifying customer service improvements that can be made in the administrative hearing process. Staff concurs with your recommendation to ensure that both business and liquor license hearings receive at least 10 days' notice moving forward. This will be easier for staff to administer on a consistent basis and will provide our customers with ample time to prepare for the hearing process.

I am particularly supportive of your second recommendation to remove references in the Code to the days of the week or times for future administrative hearings. This will give staff more flexibility to schedule hearings at times that best accommodate the applicant and other staff priorities. This is a simple measure to enhance customer service.

Thank you for your research that indicates Independence is dissimilar from many of its peers that assign appeal hearings to staff or citizen boards. Consistent with your fourth recommendation, we will continue to monitor the volume of appeals to determine if an alternative approach is needed in the future.

Again, thank you for your thoughtful audit and for the opportunity to review your findings and recommendations.