

City of Providence
Board of Licenses
Providence City Hall
Providence, Rhode Island 02903
LICENSING RULES

OPERATIONS AND PROCEDURE

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Section 1 Authority

These operational and procedural rules are promulgated by the Board of Licenses of the City of Providence pursuant to Rhode Island General Law § 3-5-20, *et seq.* All statutory reference herein shall be Rhode Island General Laws.

Section 2 Purpose

These procedures (hereinafter “Rules”) are adopted for the purpose of assisting in carrying out the functions, powers and duties assigned to the Board of Licenses of the City of Providence (hereinafter the “Board”), whether in effect prior to or subsequent to the adoption of these Rules.

These Rules shall govern the conduct of adjudicatory proceedings commenced before the Board after their effective date. These Rules shall be liberally construed to further the fair, prompt and orderly administration and determination of adjudicatory proceedings in conjunction with the Department of Business Regulation rules of Procedure for Administrative hearings. to the extent that any part of these Rules are inconsistent with applicable law or the terms of any other rule promulgated by the Board prior to the promulgation of these Rules, the applicable law and/or the terms of such other rule shall be deemed to apply.

Section 3 Severability Provisions

If any provision of these Rules or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of these Rules which can be given effect without the invalid or unconstitutional provision or application, and to this end the provision of these Rules are severable.

Section 4 Definitions

When used in these Rules, the following words, except as otherwise required by the context, shall have the following meaning:

- (A) “**Show Cause Hearing**” means an adjudicatory proceeding affording the opportunity for a Licensee to appear before the Board and show cause why its license should not be revoked, suspended, or why any other sanction should not be otherwise imposed for violating one or more terms or conditions of its license.
- (B) “**Board**” means the Board of Licenses of the City of Providence.
- (C) “**Board Counsel**” means the legal representative of the Board.
- (D) “**City Solicitor**” means the duly appointed attorney for the City pursuant to Section 603 of the Providence Home rule charter of 1980 or his/her representative.
- (E) “**Chairperson**” means the Chairperson of the Board.
- (F) “**Commissioner**” means a member of the Board other than the Chairperson.
- (G) “**License Administrator**” means the individual(s) authorized by law or duly designated by the Board to manage the Office of the Board, direct licensing staff in their day-to-day duties, ensure that license application procedures maintain compliance with applicable laws, maintain a record of license violations, facilitate prehearing conferences and report sanction recommendations from conferences to the Board in connection therewith, and perform any other duty which may from time to time be delegated to the License Administrator by the Board.
- (H) “**License**” means a document issued by the Board (sometimes referred to as a license, permit, certificate, approval, registration, and/or charter) granting permission required by law in order to engage in certain enumerated activities.
- (I) “**Licensee**” means any holder of a License.
- (J) “**Party**” or “**Parties**” means each Person named or admitted as a Party, or properly seeking and entitled as of right to be admitted as a Party in connection with an

adjudicatory proceeding, including but not limited to the Licensee, or made a Party by operation of law in connection with a license application.

(K) “**Person**” means any individual, partnership, corporation, limited liability company, association, governmental subdivision, public or private organization or any other entity however formed.

(L) “**Police**” means the Providence Police Department or any internal department, branch, unit, officer, or agent thereof including but not limited to the License Enforcement Unit.

(M) “**Reasonable Cause**” means there exists a set of facts of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs which would induce a reasonably intelligent and prudent person to believe that a violation(s) of law, rule, or regulation has occurred.

(N) “**Notice of Violation**” means the notice delivered to a Licensee notifying said Licensee of the Board’s receipt and acceptance of a Notification of Violation by the Police, a description of the violations alleged, and the date on which the Licensee is to appear for the Show Cause Hearing. If prehearing conference is permitted by the Board, the proposed date for the prehearing conference shall also be included in the Notice.

(O) “**Regular Business Hours**” means the regular business hours of the Board of 8:30 a.m. to 4:30 p.m. Monday through Friday (or any seasonal hours officially established) except for holidays observed by the City of Providence and State of Rhode Island.

Section 5 Effective Date.

These Rules shall become effective immediately upon adoption and promulgation by the Board. Subsequent to the initial adoption and promulgation, the Board will schedule an annual review for discussion and/or modification of these the Operations and Procedures set forth herein. Said discussion and review will be scheduled annually on the earliest practicable date subsequent to the first meeting following qualification of a member of the board appointed in accordance with Section 1102 (a) of the Providence City Charter.

Section 6 Rules Governing Operation and Procedure

RULE 1 NOTIFICATION OF VIOLATION AND BOARD INVESTIGATION.

1.1 Notification of Violation.

The Police shall provide the Board and the Office of City Solicitor with notification of the violation of the terms or conditions of any license. After review by the office of the City Solicitor and submission to the Board, the Board shall make an initial determination as to whether or not the notification of violation is within the Board’s jurisdiction and

whether or not the notification of violation establishes Reasonable Cause. If the Board determines that the notification of violation fails to establish Reasonable Cause, the Board shall take no action on the notification of violation. If the Board determines that the notification of violation establishes Reasonable Cause, the Board shall cause a Show Cause Hearing to be scheduled and shall cause the Licensee to be notified thereof.

1.2 Third-Party Complaints.

A complaint may be made by any Person against any Licensee or any Person who is required to be licensed but is not licensed. The License Administrator shall make an initial written determination as to whether or not the complaint is within the Board's jurisdiction, and is to be submitted to the Board ten (10) days after complaint. If jurisdiction exists, the Board shall conduct whatever investigation it deems appropriate, including forwarding a copy of the complaint to Police for further investigation. Upon completion, the Police shall report to the Board, and the Board shall take one of the following actions:

- (1) If the Board determines that the complaint fails to establish Reasonable Cause, the Board shall take no action on the complaint; or
- (2) If the Board determines that the complaint establishes Reasonable Cause, the Board shall cause a Show Cause Hearing to be scheduled and shall cause the Licensee to be notified thereof or shall take such other action as it deems appropriate under applicable law and these Rules.

1.3 Board Investigations.

The Board on its own authority may initiate an investigation and take action (i) against a Licensee, (ii) against an applicant for a License or for renewal of a License, (iii) against any Person who is required to be licensed but is not licensed, and (iv) against any Person who is subject to the regulatory authority of the Board. All such actions shall be upon such terms and conditions as are permitted under applicable law and these Rules.

RULE 2 ADJUDICATORY ACTION.

2.1 Show Cause Hearing.

The Show Cause Hearing shall follow an adversarial procedure whereby the City shall present evidence to the Board of the Licensee's violation of law or one or more terms or conditions of its license and the Licensee shall be given an opportunity to present evidence in support of its defense(s) to the allegations. The Board shall also receive into evidence from the Police, and from any officer, department or agency of the city as to matters within the officer's or agency's jurisdiction, any information the alleged violation. The Board may, sua sponte, make inquiry of the Licensee concerning any violation which has been presented to the Board or concerning any other matter or violation which the Board, in its discretion, considers to be relevant to the proceeding before it. Once all evidence has been entered into the record and all Parties have rested, the Board will review and deliberate upon the evidence and render a decision within ten (10) business days from the close of the hearing. Nothing herein contained shall be construed so as to prevent the Board from making an immediate determination or decision at the close of the hearing.

2.2 Pre-hearing Conferences.

The Board may schedule a prehearing conference prior to a Show Cause Hearing. The prehearing conference shall afford the Licensee an opportunity to meet informally with the City Solicitor, or his or her designee and/or a representative from the Providence Police as well as any other pertinent individuals as determined by the Board, through its chairperson, in order to address the violation. Upon reviewing the facts and circumstances surrounding the violation and the Licensee's violation history, and after consultation with the Police and License Administrator, and in consideration of the Board's policy of Progressive Discipline, the City Solicitor shall determine and recommend a sanction which may be conceded to by the Licensee in lieu of appearing at a Show Cause Hearing, subject to the Board's approval and acceptance thereof.

2.2.1 If the Licensee admits to the violation and concedes to the recommended sanction, the License Administrator shall recommend the sanction to the Board at its next regularly scheduled meeting following the prehearing conference. The Board may accept or reject the recommended sanction. If the Board accepts the recommended sanction, the Licensee's admission to the violation shall be entered on the record and the sanction shall be imposed with no further show Cause Hearing required. If the Board rejects the recommended sanction, the Board shall require the Licensee to appear and the Show Cause Hearing to proceed.

2.2.2 If the Licensee does not admit to the violation and concede to the recommended sanction, and at the conclusion of the Show Cause Hearing the Board determines that the Licensee did violate one or more terms or conditions of its license, the Board may impose any sanction or sanctions as it deems fit.

2.2.3 The Licensee may refuse to participate in a prehearing conference and opt to proceed directly to a Show Cause hearing upon notifying the License Administrator not less than one (1) business day prior to the scheduled prehearing conference.

2.2.4 The scheduling of prehearing conferences is at the Board's discretion. The Board may order the Licensee to appear at a Show Cause Hearing without first permitting a prehearing conference.

2.2.5 If the Licensee is offered an opportunity to resolve the matter at a prehearing conference in lieu of a Show Cause Hearing and the Licensee, or the Licensee's duly authorized representative is unable to attend the conference, and the License Administrator is notified of this inability to attend in advance, the prehearing conference shall be continued to another date not more than five (5) business days from the date of the initial conference. No prehearing conference shall be continued more than one (1) time for the Licensee's inability to attend. The Licensee's inability to appear at a continued prehearing conference, or the Licensee's failure to appear at a prehearing conference without prior notice being given to the License Administrator, shall result in immediate advancement to a Show Cause Hearing.

2.2.6 At any Show Cause Hearing set forth herein, the Party(ies) (i.e. the Police and the Licensee) may agree to stipulate to any or all of true facts alleged which have given rise to the Show Cause pre-hearing. The parties may agree as to any pertinent facts, violations or penalties prior to any hearing subject to review and acceptance by the Board.

RULE 3 REPRESENTATION.

The Board shall notify the Licensee that the Licensee may retain legal counsel admitted in the State of Rhode Island. Said notification shall be set forth in the Board's Notice of Violation to the Licensee.

3.1 Individuals, and partners of partnerships, may appear pro se if they choose, however, corporations may not appear pro se.

3.2 If a Party is not appearing pro se he, she, or it must be represented by a member in good standing of the Bar of the State of Rhode Island or by out of state attorneys admitted pro hoc vice by the Superior Court or by the appropriate court unless exempted pursuant to R.I. Gen. Laws § 11-27-11. All attorneys must conform to all standards of legal ethics required of practitioners before the courts of the State of Rhode Island.

RULE 4 FILING OF PLEADINGS AND OTHER DOCUMENTS.

4.1 Title.

All pleadings and other documents filed with the Board in any Show Cause Hearing shall, whenever possible, state the title of the proceeding and the name of the Person on whose behalf the filing is made. A decision may be rendered by the board as to any action upon said agreement or stipulation, the City Solicitor shall present a brief statement of pertinent facts on which sanctions are appropriate.

4.2 Form and Size.

All pleadings and other documents filed with the board, except those documents which are kept in a smaller or larger format during the ordinary course of business, are to be submitted on 8 1/2 by 11 inch paper.

4.3 Electronic Filing.

At the discretion of the Board, filings may be made by telecopier, facsimile, or by electronic mail or any other manner or means approved by the Board. If filings are made electronically, the filing party shall also file a hard copy of any such electronic filing. All documents must include, if applicable, the Rhode Island Bar number, address, telephone number, facsimile number and e-mail address of each attorney and pro se litigant. All papers shall be filed during Regular Business Hours. The board's date stamp shall be presumptive of the actual date of filing.

4.4 Signature.

The original copy of each document shall be signed and dated by the party on whose behalf the pleading is made or by the party's authorized representative. This signature shall constitute a certification that the individual has read the document, knows the contents thereof and to the best of his/her knowledge believes that such statements are true, that it is not interposed for delay and that if the document has been signed by an authorized representative, he/she has full power and authority to do so.

4.5 Construction.

All documents shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of the parties involved may be disregarded.

RULE 5 SERVICE.

A copy of all documents filed in any proceeding governed by these Rules shall be served upon all other parties.

5.1 Manner of Service.

Unless otherwise ordered or authorized by the Board, service under these Rules shall be made upon a Party or upon the Party's attorney, if an appearance has been entered, by first class mail postage prepaid, certified mail or hand delivery to his or her place of business, home address or other address supplied by the Party. Service upon persons who have not yet made an appearance shall be at the last address on file with the Board for any licensee. For non-licensees, service shall be at the last known address which the Board reasonably believes will result in actual delivery to the non-licensee. Service by mail is complete upon mailing.

5.2 Certificate of Service.

There shall accompany and be included in the original of each paper filed with the Board a certificate of service showing service on all parties.

5.3 Date of Certificate to Govern.

In addition to the provisions of Rule 6 *et seq.* of these Rules, the time for response to all papers shall commence as of the date of the certificate of service. However, if service is made by mail, then one (1) day shall be added to the prescribed period.

RULE 6 TIME.

6.1 Computation.

Unless otherwise specifically provided by law, computation of any time period referred to in these Rules shall begin with the first day following the act which initiates the running of the time period (including Saturday, Sunday and legal holidays). The last day of the time period so computed is to be included unless it is a Saturday, Sunday or legal holiday or any other day on which the Board is closed, in which case the period shall run until the end of Regular Business Hours of the next following business day.

6.2 Extensions of Time.

It shall be within the discretion of the Board, for good cause shown, to extend any time limit. All requests for extensions of time shall be made by written motion filed with the Board before the expiration of the applicable time period unless waived by the Board.

6.3 Continuances.

Except as otherwise provided by law, the Board may, at any time, with or without request, continue or adjourn a prehearing conference or a hearing. If a Party requests a continuance, the Board may direct the party to seek the assent of the other Party(ies) prior to deciding whether to grant such request. If the Board grants a continuance at the request of a Party(ies), the Board may direct the Party(ies) requesting the continuance to immediately notify all other parties of record and if deemed necessary to prepare an order. If such an order is made, the continuance will only be effective when the notification to all other parties of record has been made.

RULE 7 MOTIONS.

Any Party may request that the Board enter any order or action not inconsistent with law, rules promulgated by the Department of Business Regulation, or these Rules. The types of motions made shall be those which are permissible under these Rules and the Rhode Island Superior Court Rules of Civil Procedure (“Super. R. Civ. P.”). (Ref. 10.1 for ruling.)

7.1 Presentation/Objections to Motions.

Motions may be made in writing at any time before or after the commencement of a prehearing conference or Show Cause Hearing, and/or they may be made orally during a Show Cause Hearing. Each motion shall set forth and/or state the grounds for the desired order or action and state whether oral argument is requested. Within ten (10) days after a written motion is filed with the Board and served on the opposing Party(ies), a Party opposing said motion must file a written objection to the granting of the motion, and shall, if desired, request oral argument. All written motions and objections shall be accompanied by a written memorandum specifying the legal and factual basis for the Party’s position.

7.2 Action on Motion.

The Board shall, if it determines oral argument on the motion is warranted, give notice of the time and place for such argument. The Board may rule on a motion without argument if the motion involves a matter as to which the presentation of testimony or oral argument would not advance the Board’s understanding of the issues involved or if disposition without argument would best serve the public interest. The Board may act on a motion when all Parties have responded thereto, or the deadline for response has passed, whichever comes first.

RULE 8 DISCOVERY.

The Board favors prompt and complete disclosure and exchange of information and encourages informal arrangements among the Parties for this exchange. It is the Board’s

policy to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes.

8.1 Procedure.

Any Party, by written request served upon all other Parties, may request the other Party to produce for inspection, copying or photocopying document, object or tangible things which are relevant to the subject matter of the hearing. Written requests for discovery submitted to the Board shall be considered requests made pursuant to the Access to Public Records Act and shall be fulfilled in accordance with the procedure set forth therein.

8.2 Hearing Delay.

No hearing shall be continued to permit the completion of discovery unless due diligence is shown.

8.3 Discovery Schedule.

At the discretion of the Board, the discovery schedule shall be set at the prehearing conference or by agreement of the Parties prior to the Show Cause Hearing. The Board may amend such discovery schedule at the request of a Party or on its own volition.

8.4 Written Discovery.

Written discovery as set forth in Super. R. Civ. P. 26, *et seq.* is allowed but may be limited by the Board.

8.5 Types of Discovery.

Any other types of discovery as set forth in Super. R. Civ. P. 26, *et seq.* may be allowed in the discretion of the Board.

8.6 Discovery Disputes.

Objections to discovery requests shall be made pursuant to Super. R. Civ. P. 26, *et seq.* If there is a dispute between the Parties relating to a Party's failure to respond to discovery, the Party requesting the discovery shall comply with Super. R. Civ. P. 37(a)(2) prior to filing a Motion to Compel Discovery with the Board.

8.7 A Party is not required to file discovery responses with the Board unless otherwise ordered by the Board.

8.8 Subpoenas.

Requests for discovery in any proceeding before the Board to a Party shall be in the form of a subpoena or subpoena duces tecum pursuant to the Board's subpoena authority as set forth in Providence Home Rule Charter § 1102. The Board may require the attendance and testimony of witnesses and compel the production and examination of papers, books,

accounts, documents, records, certificates and other evidence that may be necessary or proper for the determination and decision of any question before the Board. Except as may be otherwise provided by law, in cases where a subpoena or subpoena duces tecum is not honored, the Board may direct the party requesting said subpoena to make said application to the State of Rhode Island Superior Court or an order to show cause why the party who failed to honor the subpoena shall not be held in contempt and for such further relief as may be appropriate.

Where the Board elects to direct a party to initiate contempt proceedings with the Court, the Board shall stay the adjudicatory proceeding pending before it and may suspend all licenses held by the licensed Party until such time as the person who failed to honor the subpoena honors the subpoena or is found to be in contempt by the Court and ordered to honor the subpoena or the subpoena is quashed, whichever occurs first. The Board may, sua sponte, or on motion of any of the Parties or witnesses, issue such protective orders, grant such motions to quash and grant other motions as justice or fairness may require.

RULE 9 EVIDENCE.

9.1 Rules of Evidence.

Irrelevant, immaterial or unduly repetitious evidence shall be excluded in all proceedings wherein evidence is taken. While the rules of evidence as applied in civil cases in the Superior courts of this state shall be followed to the extent practicable, the Board shall not be bound by the technical evidentiary rules. Evidence not otherwise admissible may be admitted, unless expressly precluded by statute, when necessary to ascertain facts not reasonably susceptible of proof under the rules, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply. Objections to evidentiary offers may be made and shall be noted in the record.

9.2 Exhibits, Copies.

In all cases wherein evidence is taken, exhibits may be introduced in the form of copies or excerpts, if the original is not readily available. Upon request, a Party shall be given an opportunity to compare the copy with the original.

9.3 Administrative Notice.

In all proceedings wherein evidence is taken, notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge; but Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any report or data required by law or regulation to be filed with the Board, and they shall be afforded an opportunity to contest the material so noticed. The Chairperson's and Commissioners' experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. The burden is on the Party requesting the Board's notice to produce the documents or other matter for the Board's review. In all proceedings, the Board may take administrative notice of its records as to the violation listing of the license.

9.4 Municipal Employees, Agents and Consultants.

The Board may employ the use of employees, agents and consultants of the City of Providence to assist it in the evaluation of any evidence introduced at the hearing. In the Board's discretion, it may allow the presence of these persons at the hearing.

9.5 Oath.

All testimony shall be under oath or by affirmation.

9.6 Testimony.

A Show Cause Hearing or other adjudicatory proceeding before the Board is an administrative hearing. Notwithstanding whether or not the Person is a Party to the proceeding, no Person called to appear before the Board, or compelled by subpoena to do so, may refuse to appear and provide testimony in response to examination by the Board, Police, or any Party. At the discretion of the Board, an adverse inference may be drawn by an assertion by a witness or a Party of his/her Fifth Amendment rights under the U.S. Constitution.

9.6.1 Witness Sequestration.

Witnesses may not be sequestered from adjudicatory proceedings unless so ordered by the Board.

RULE 10 CONDUCT OF HEARINGS.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. All Parties, witnesses and other Persons at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any courtroom. Where such decorum is not observed, the Board may take appropriate action including ejection or adjournment, if necessary.

10.1 Duties of Chairperson.

The Chairperson shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters and either administer oaths to all witnesses or ask the stenographer to do so. The Chair, in his or her discretion, may direct any question of procedure or law to board counsel to assist in evidentiary and legal matters which may arise during the course of proceedings.

10.2 Order of Proceedings.

Except as otherwise required by law, it shall be the usual practice that the Board or the Police or the complainant shall open. Where evidence is peculiarly within the knowledge of one Party, or in cases in which Notifications of Violation have been consolidated or where there are multiple Parties, the Chairperson may, in his/her discretion, direct who shall open and shall further designate the order of presentation.

10.3 Rights of Parties.

Parties shall have the right to present evidence, cross-examine witnesses, object, and make motions and present arguments.

RULE 11 RECORD OF PROCEEDINGS.

All Board of Licenses hearings shall have a full and accurate record of the proceedings, whether by stenographic means or recording. All records of the proceedings shall be accessible to the public either through the Office of the Board of Licenses or online immediately following the conclusion of a hearing. Additionally, a complete, accurate, and up-to-date record of the history of a licensee's violations, fines, penalties, and decisions before the Board of Licenses and Department of Business Regulation shall be available to the Board of Licenses and the public prior to any hearing or meeting in which said licensee appears on the agenda.

The Board shall be provided with the original of the stenographic record and Board counsel, upon request, shall be provided with a copy at no cost. Any Party may on his, her or its own initiative order a stenographic record made of the proceedings. The requesting Party shall incur all costs associated therewith.

11.1 If a Party chooses to appeal a final Board decision to the Department of Business Regulation, in connection with liquor licensing pursuant to R.I. Gen. Laws § 3-7-21, *et seq.*, or if a Party chooses to challenge a final Board decision by writ of certiorari to the Supreme Court of the State of Rhode Island, and the Department of Business Regulation or Supreme Court requires a transcript of the hearing, where the hearing was recorded by stenographic record, said Party shall be responsible for ordering the stenographic record made of the proceedings at his, her, its expense, and where the hearing was recorded by audio or video record, said Party shall be responsible for having the transcript prepared by an independent person or company at his, her or its expense within twenty (20) days of filing the appeal or request for writ.

RULE 12 PUBLIC HEARINGS.

Except as required by law, all hearings are to be open to the public. In general, any Person who is not a Party to a proceeding may, in the discretion of the Chairperson, be permitted to make oral or submit written statements on any issues relevant to the proceeding, limited within discretion.

RULE 13 CLOSE OF PROCEEDINGS.

At the conclusion of the evidence, the Chairperson may, in his/her discretion, permit the Parties and, in the case of Show Cause Hearings, the Police, to argue orally and/or to submit written briefs. The record in the proceeding shall close after oral argument, the deadline for the filing of the briefs or upon such date as may be set by the Chairperson. No evidence shall be admitted thereafter, unless otherwise ordered by the Board.

RULE 14 WAIVER OF HEARING.

In any proceeding, if the Parties agree to waive the hearing, the Board may dispose of the matter upon the pleadings and other submittals of the Parties.

RULE 15 DISPOSITIONS.

Unless otherwise precluded by law, disposition may be made of any Show Cause Hearing or other adjudicatory proceeding at any time by stipulation, consent agreement, consent settlement, consent order, default or dismissal by the board.

15.1 Consent Agreements and Consent Orders.

The board may enter into a consent agreement with a Party(ies) at any time. A consent agreement is valid if approved by order of the Board and signed by the Chairperson or his/her duly designated agent. Both consent agreements and consent orders are considered public records pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*

RULE 16 PENALTIES.

In determining the appropriate penalty to impose on a Party found to be in violation of a statute(s), ordinance(s), rule(s) or regulation(s), the Board shall look to its past precedence as well as the past precedence of the courts, and, in matters concerning liquor licensing, of the Department of Business Regulation for guidance and may consider any mitigating or aggravating circumstances. The Board embraces a policy of progressive discipline generally. However, this policy in no way restricts the Board from imposing more or less stringent or even the maximum penalties permissible by law for any violation at any time. The Board retains complete discretion in determining appropriate penalties and while it is guided by past precedence and a policy of progressive discipline, penalties imposed in the Party's prior disciplinary history, or the disciplinary history of other holders of the same license as the Party, are in no way predictive or determinative of future penalties.

16.1 Mitigating circumstances may include, but shall not be limited to the following:

- The Party's licensing history, i.e. the absence of prior disciplinary actions;
- The Party's cooperation with Police and the Board; and
- The Party's willingness to give a full, trustworthy, honest explanation of the matter at issue.

16.2 Aggravating circumstances may include, but shall not be limited to, the following:

- The Party's prior disciplinary history;
- The Party's lack of cooperation and/or candor with Police and the Board;
- The seriousness of the violation;

Whether the Party's act(s) undermines the regulatory scheme at issue;
Whether there has been harm to the public or a threat to public health, safety or welfare; and
Whether the Party's act(s) demonstrates dishonesty, untrustworthiness, incompetency, or disregard for the law or public health, safety or welfare.

16.3 The finding of mitigating factors will not necessarily lead to a reduction in the penalty imposed if the circumstances of the violations found by the Board are such that they do not warrant a reduction in penalty.

16.4 Renewal of licenses after effective date.

Any license issued by this board which has not been renewed by the license holder for a period of twelve (12) months following the expiration date of the license under the applicable statutory or municipal law associated with said license, shall be subject to nonrenewal. In the event of nonrenewal, the applicant may file a new application for the license at issue subject to any new license requirements.

RULE 17 DECISIONS.

All decisions rendered and orders issued by the Board in open forum at the conclusion of a hearing shall be provided to the Parties in writing within three (3) business days thereof. The decision and order shall be delivered to the Parties with a notice indicating the right to take an appeal of the decision and order to the Department of Business Regulation, in matters concerning liquor licensing pursuant to R.I. Gen. Laws § 3-7-21, or the right to challenge the decision and order by request for writ of certiorari to the Supreme Court of the State of Rhode Island in matters concerning all other licensing within the jurisdiction of the board.

RULE 18 PUBLICATION OF LICENSE SUSPENSIONS AND REVOCATIONS.

Any final decision and order of the Board which results in the imposition of a sanction of suspension or revocation of a License, may be published as many times and in whatever manner as the Chairperson, in his/her sole discretion, deems necessary to adequately inform the public of the action taken. The intent to publish a sanction shall be contained in the final decision, final order, consent agreement, or consent order. The License Administrator may require the Licensee to bear the cost of the publication.

RULE 19 RECONSIDERATION.

At any time after the issuance of a final order of the Board, any Party may, for good cause shown, by motion petition the Board to reconsider the final order. The petitioner shall file his/her motion within twenty (20) days of the issuance of the final order and shall set forth the grounds upon which he/she relies. The Board may grant the motion for reconsideration within its discretion and shall order such relief as it deems appropriate under the circumstances.

19.1 The Board shall not entertain a motion for reconsideration filed more than 20 days after entry of the final decision, unless the Chairperson finds good cause to entertain said motion.

19.2 Notwithstanding the provisions of this Rule, the Board may, within its own discretion, on its own motion, reconsider the final order and affirm, reverse, amend, modify, or supplement the order or order such other relief as it deems appropriate under the circumstances.

RULE 20 JUDICIAL REVIEW.

Except in connection with matters concerning liquor licensing, any Party aggrieved by a final written order of the Board may file a request for writ of certiorari with the Supreme Court of the State of Rhode Island. In the absence of a timely request for writ, the order or decision of the Board shall become final and no further administrative challenge may be taken.

20.1 Liquor Licensing Exception.

Notwithstanding any other provisions of this Rule, any Party aggrieved by a final written order of the Board in connection with a liquor license may file an appeal with the Department of Business Regulation pursuant to R.I. Gen. Laws § 3-7-21. In the absence of a timely appeal, the order or decision of the Board shall become final and no further administrative appeal may be taken.

RULE 21 DEFAULT.

If any Party to a proceeding fails to answer a complaint, plead, appear at a prehearing conference or Show Cause Hearing or other adjudicatory proceeding or otherwise fails to prosecute or defend an action as provided by these Rules, the Board may enter a default judgment against the defaulting Party, take such action based on the pleadings and/or other evidence submitted by the non-defaulting Party as the Board deems appropriate in its sole discretion or take such other action as the Board deems appropriate in its sole discretion. Challenge to such an order shall be made as a motion for reconsideration per Rule 19 above.

RULE 22 DISQUALIFICATION; RECUSAL; INCAPACITY OF CHAIRPERSON AND/OR COMMISSIONER(S).

22.1 Disqualification.

Any Party may make a motion to the Board requesting that it disqualify or remove the Chairperson or one or more Commissioner(s) from the proceeding. The motion shall be accompanied by an affidavit setting forth the reasons for the disqualification. In the

event that the motion to disqualify is granted, the remaining members of the Board shall adjudicate the matter.

22.2 Incapacity or Recusal.

When a member of the Board becomes incapacitated or unavailable to complete a hearing and/or render a decision, or when a member of the Board recuses him/herself from the hearing due to a perceived conflict of interest, the hearing shall be conducted and/or the decision shall be rendered by the remaining members of the Board so long as said remaining members are of a sufficient number to reach a quorum. If any Party objects to the completion of the proceeding absent the incapacitated Board member, that Party must prove prejudice by presentation of argument and evidence to the remaining Board members. If the remaining Board members find that the objecting Party will be prejudiced, the remaining Board members will issue an order making such findings and will hear the matter de novo.

22.3 Changes or removal of chair or other officers of board.

- a. In accordance with the provisions of the City of Providence Home Rule Charter, a chairperson shall be chosen at the first meeting following qualification of the member appointed for that year. In the event of a vacancy in the office of chairperson or secretary, the board shall fill the vacancy for the balance of the term. Said election is in the ordinary course of business and shall be chosen by a simple majority vote.
- b. Notwithstanding the foregoing, in the event that a member or members of the board seek to change or remove the chair or any officers of the board as a result of a vote of no confidence or otherwise, a motion may be made by said member or members which shall set forth the reasons for said change in officers and upon second by another member, a vote to appoint a successor officer shall be held. A majority vote by four (4) members of the board is required to change or replace the existing chair or officer.
- c. No chairperson or officer may be removed pursuant to subsection b hereof prior to completion of six (6) months service as chairperson.

RULE 23 MISCELLANEOUS

23.1 Intervention.

Any Person claiming a right to intervene or an interest of such a nature that intervention is necessary or appropriate to the administration of the law, rule or regulation under which the proceeding is brought may seek to intervene in any proceeding. Intervention may be initiated by filing a motion to intervene with the Board. The motion shall set out clearly and concisely the facts from which the nature of the movant's alleged right of interest can be determined, the grounds for the proposed intervention and the position of the movant in the proceeding.

23.2 Consolidation.

The Chairperson may, in his/her discretion, consolidate or combine two (2) or more matters for purposes of hearing or other proceedings, when he/she finds that sufficient common issues of fact or law or both are involved or that administrative efficiency is best served by such consolidation.

23.3 Plural.

Words in the singular number include the plural, and vice-versa, except where the context otherwise requires or where a contrary result appears from necessary implication.

23.4 Board Counsel.

The City Solicitor of the City of Providence and/or his designee shall facilitate the Board's investigation in connection with Show Cause Hearings and prosecute the cases on behalf of the Police. The City Solicitor shall also represent the Board before the Department of Business Regulation and in all litigation to which the Board may be a party. The Board, in conjunction with the City Solicitor, may appoint outside counsel as legal advisor, to hold office at the pleasure of the Board, for the purpose of advising the Board upon all questions involving its official actions and business. Said legal advisor may also appear before the Department of Business Regulation and in litigation in which the Board is a party. In all such instances, said legal advisor shall be subordinate to the City Solicitor of the City of Providence and in all litigation to which the Board may be a party, said legal advisor shall be under the direction of the City Solicitor.

23.5 Statutes, Ordinances, and Charter Provisions.

If any statute, ordinance, or provision of the Home Rule Charter of the City of Providence has different requirements than those contained these Rules, the statute, ordinance or charter provision shall be controlling.

23.6 Public Documents.

The board reserves the right to publish in any form any public document.

23.7 Decorum and Professional Conduct

All parties, attorneys, witnesses, and other persons at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any courtroom. Where such decorum is not observed, the Board Chair may take appropriate action, including ejection or adjournment, if necessary.

23.8 Rules of Evidence

Irrelevant, immaterial or unduly repetitious evidence shall be excluded in all proceedings wherein evidence is taken. While the rules of evidence as applied in civil cases in the Superior Courts of this state shall be followed to the extent practicable, the Hearing Officer shall not be bound by the technical evidentiary rules. Evidence not otherwise admissible may be admitted, unless precluded by statute, when necessary to ascertain facts not reasonably susceptible of proof under the rules, if it is of a type

commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply. Objections to evidentiary offers may be made and shall be noted in the record. The chairperson or presiding commissioner may request an evidentiary or legal ruling from board counsel at any time during the course of a proceeding.

RULE 24 CONSENT ORDERS.

At any time after the issuance of the Notice of Violation and prior to the close of the record of a Board hearing, the Parties may attempt to dispose of the matter by entering into a consent order as provided in Rule 15.1 of these Rules.

24.1 Minimum Requirements.

Every consent order shall contain, at a minimum, an admission of all jurisdictional facts and express waivers of further procedural steps before the Board, including the right to appeal or otherwise challenge the Board's action.

24.2 Action on Consent Order.

Upon receiving a proposed consent order, the Board may accept and adopt the consent order as the full and final disposition of the matter or reject the consent order. In the event that the Board rejects the consent order, the matter shall continue through the administrative hearing process. Nothing herein shall prevent the Parties from subsequently entering into and presenting to the Board a new consent order for consideration.

RULE 25 ADMINISTRATIVE HEARING SETTLEMENTS.

The Parties may enter into a settlement at any time prior to the close of the record of an administrative hearing. The Parties shall put the settlement on the record. If the Parties settle the matter, the Parties shall present the Board with a stipulation of settlement asking that the settlement be accepted and adopted by the board as the full and final disposition of the matter. Settlements shall adhere to the same minimum requirements as pertain to consent orders pursuant to Rule 24.1 of these Rules.

RULE 26 REQUIREMENTS OF COMMISSIONERS

25.1 Required Training of Board Members and Staff

1. New members of the board. Any new member of the Board of Licenses shall be required to receive professional certified training on all relevant State statutes, City ordinances, and relevant rules and regulations, as well as ethics training and training on the Board of Licenses' Operations and Procedures Manual prior to their first meeting as a member of the board.
2. Mandatory annual training. All members of the Board of Licenses and all paid staff of the Office of the Board of Licenses shall be required to receive annual training in ethics and all relevant policies, procedures, laws, and ordinances.

25.2 It shall be the duty of the Chair of the Board of Licenses to submit an annual report to the Mayor and the City Council no later than January 31st of each calendar year. The annual report shall include, but shall not be limited to:

1. A breakdown of all licenses applications, approvals, transfers, and revocations from the past calendar year.
2. A breakdown of all complaints, violations, fines, and penalties issued in the past calendar year by licensee.
3. A breakdown of all appeals of Board of Licenses decisions, including outcomes.
4. All agendas from Board of Licenses meetings and hearings from the past calendar year.
5. A breakdown of any changes made to the Board of Licenses' Operations and Procedures Manual, with explanations, during the last calendar year.
6. An accounting of all fees and fines collected in the past calendar year, including any outstanding or unpaid fees and fines.
7. Any suggested changes to State statutes or City ordinances the members of the Board feel would improve the operations of the Board of Licenses or the Office of the Board of Licenses.

RULE 27 PUBLIC INFORMATION.

Access to public records shall be governed in accordance with R.I. Gen. Laws § 38-2-1 *et seq.*

RULE 28 OPEN MEETINGS.

All meetings by the Board shall be subject to and governed in accordance with R.I. Gen. Laws § 42-46-1, *et seq.*

RULE 29 LIQUOR LICENSE REMONSTRANCE PROCESS

Any and all applications for licenses subject to the provisions of R.I.G.L. §3-7-19 shall include the following:

Two 200' radius plans drawn to a scale of 1"= 50' from all corners of the lot or lots in question.

Show all lot numbers, owners' names, street numbers and buildings (if any) on each lot within the radius, present use (example: parking lot, vacant lot, gas station, number of families, etc.) zone boundaries (including overlay districts), tax assessor's plat boundaries and indicate new construction and additions.

If the 200' radius line intersects any lot(s) such lot(s) must be included fully within the radius.

Two (2) copies of a list containing the following information, consistent with the latest data available in the office of the Providence Tax Assessor:

- a. Each plat and lot number that appears within the 200 foot radius plan

b. The corresponding names and MAILING addresses, including zip codes, of all property owners of each plat and lot number listed.

c. Two (2) sets of mailing labels with names and full mailing addresses of each property owner within the 200 foot radius

All said plans should be properly drawn with a designated scale contained therein and stamped or certified by the preparer who should be a licensed architect, surveyor, draftsman or like individual.

(All plans should be signed by the author and must contain the author's full name, address and telephone number.)

RULE 30 BX APPLICATION PROCESS

In accordance with R.I.G.L. §3-7-7(a)(4), a holder of a B License may file application to open for business at twelve o'clock (12:00) p.m. and on Fridays and Saturdays and the night before legal state holidays may close at two o'clock (2:00) a.m. Said application will be permitted only by a licensee (or principal owner of a licensee) that has held the aforesaid B license within the City of Providence for a period of twelve (12) months prior to the date of application. Further, in addition to the advertising requirement contained in R.I.G.L. §3-7-7, any such application shall be subject to the notice requirements and procedure set forth in in Rule 29 herein.

APPENDIX

A. ISSUES FOR EXAMINATION BY THE BOARD FOR NEW APPLICANTS RELATED TO FITNESS OF THE LICENSEE

1. What prior experience do you have in the service of alcoholic beverages?
 - a. When was the applicant employed or operating similar business to the current application?
 - b. How long as server or operator?
 - c. Name and location of any businesses or employment?
2. Certifications or training in service of alcoholic beverages?
 - a. When and where received?
 - b. Provide written documentation.
3. If applying as a corporation what is the type of business entity?
 - a. For corporation, who are the shareholders?
 - b. For limited liability companies, who are members?
 - i. Names and addresses.
 - c. For partnerships, who are all partners?
 - i. Names and addresses.
4. Is the enterprise being run by a manager(s) or employee(s)?
 - a. Name and address of manager
 - b. Experience of manager?
 - c. Hours of work at establishment?
 - d. Is there a management agreement? If so, it should be provided.

- e. Amount of time owners will spend at establishment on a daily basis?
5. Are you familiar with the business plan submitted?
 - a. What are the projected hours of operation?
 - b. General character of business?
 - c. If required, type of security to be used?
 6. Any discussions with neighborhood residents or businesses?
 - a. When did they take place?
 - b. What was the substance/result of the meetings?
 7. (With regard to transfers) Are you aware of the violation history associated with this license?
 - a. Do you acknowledge that there are prior penalties which were imposed on this license?
 - b. Are you aware of those prior penalties?
 - c. Do you acknowledge that in the event of a new violation, you will may receive a more stringent penalty in accordance with progressive discipline?