

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2018-15

INTRODUCED BY:

Mayor Alan Webber

Councilor Signe I. Lindell

AN ORDINANCE

AMENDING CHAPTER 4 SFCC 1987 TO DESIGNATE A HEARING OFFICER TO CONDUCT PUBLIC HEARINGS RELATED TO LIQUOR LICENSE APPLICATIONS AND WAIVERS OF DISTANCE REQUIREMENTS FROM CHURCHES OR SCHOOLS, WHEN APPLICABLE, FOR LIQUOR LICENSE APPLICATIONS, SPECIAL DISPENSER PERMITS AND PUBLIC CELEBRATION PERMITS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Subsection 4-4.3 SFCC 1987 (being Ord, #1968-6, § 3, as amended) is repealed and a new Subsection 4-4.3 is ordained to read:

4-4.3 [NEW MATERIAL] Issuance or transfer of liquor licenses.

A. Duties of city clerk. Upon receipt of a letter of preliminary approval or conditional preliminary approval of the issuance or transfer of a liquor license by the director of the New Mexico alcohol and gaming division (hereinafter "AGD") the city clerk shall:

(1) Set the tentative public hearing date and if necessary, request a waiver or

1 extension from AGD, if the city is unable to meet either the 45-day public
2 hearing date requirement or the 30-day publication date requirement.

3 (2) Notify city staff, including, geographic information system mapping (GIS),
4 code enforcement, fire department and traffic engineering of the request for
5 a city liquor license, for preparation of reports related to litter, noise and
6 traffic, and ensure that applicant is in compliance with city fire and land use
7 codes. GIS staff will provide a map indicating whether the proposed licensed
8 premise is within 300 feet of a church or school. This information shall be
9 provided to the hearing officer.

10 (3) Notify a hearing officer, designated by the governing body in accordance
11 with Paragraph B., below, of the receipt of the letter of preliminary approval
12 or conditional preliminary approval for a liquor license issuance or transfer.
13 The city clerk shall also notify the hearing officer of any related request for a
14 waiver of the 300-foot location restriction between the proposed licensed
15 premise and any church or school (hereinafter "waiver").

16 (4) Notify a hearing officer, the hearing officer shall advise the city clerk, within
17 two business days, if they can serve. If the hearing officer is unable to serve,
18 the city clerk shall notify another hearing officer until a hearing officer has
19 agreed to conduct the hearing.

20 (5) Prepare the legal notice of the public hearing in the manner provided by the
21 New Mexico Liquor Control Act (hereinafter "Liquor Control Act"). The
22 applicant shall pay the cost of the publication.

23 **B. Designation of hearing officer.**

24 (1) As authorized by Section 60-6B-4(E) NMSA 1978, the governing body may
25 designate, from a list provided by the city manager, two or more hearing

1 officers to conduct public hearings.

2 (2) For purposes of this section, a hearing officer shall be a licensed member of
3 the New Mexico Bar. The city manager shall advertise for the position of
4 hearing officer. The term of a hearing officer shall be four years.

5 (3) The city clerk shall keep the list of hearing officers designated by the
6 governing body.

7 C. **Duties of hearing officer.** The hearing officer shall within 45 days of receipt by the
8 city of the AGD letter of preliminary approval or conditional preliminary approval of
9 a liquor license issuance or transfer, hold a public hearing regarding the applicant's
10 request.

11 D. **Waivers.** The hearing officer may recommend to the governing body that it grant or
12 deny a waiver pursuant to Section 60-6B-10 NMSA 1978.

13 E. **Procedure at public hearing.**

14 (1) The applicant may be represented by an attorney at the public hearing.

15 (2) Rules of evidence shall not be followed. The hearing officer may consider
16 evidence, oral or written, which may be presented if such evidence is
17 relevant.

18 (3) The grounds for approval or denial are set forth in the Liquor Control Act.

19 (4) Prior to allowing for oral testimony, the hearing officer shall swear in every
20 person who will provide testimony.

21 F. **Recommendation of hearing officer.** The hearing officer shall, no later than the
22 seventh calendar day following any hearing, forward to the city clerk their
23 recommendation of approval or denial, which shall be supported by findings and
24 conclusions, together with a record, which shall be made of such hearing as provided
25 by law. The city manager may, upon email request from the hearing officer, and a

1 showing of good cause and determination that the request can still be voted on by the
2 governing body in a timely manner, send an email to the hearing officer granting
3 additional time to provide such recommendation. The city clerk, upon receipt of the
4 recommendation, shall place it on the next governing body consent calendar agenda.

5 **G. Duties of governing body.** The governing body, within 30 days after the public
6 hearing before the hearing officer, shall consider, at a public meeting of the
7 governing body, the recommendations of the hearing officer, which shall be on the
8 consent calendar.

9 (1) If the item is not removed from the consent calendar, the governing body's
10 vote to approve the consent calendar shall constitute its concurrence with the
11 hearing officer's recommendation. The city clerk shall notify AGD, on a
12 form prescribed by AGD, of the governing body's decision, no later than 30
13 days after the public hearing before the hearing officer.

14 (2) Any member of the governing body may remove the hearing officer's
15 recommendation from the consent calendar for discussion. The governing
16 body shall not take additional evidence or testimony and shall only conduct
17 deliberations of the request based on the record provided. The governing
18 body shall then vote on the request.

19 (a) If the governing body votes to approve the request, the city clerk
20 shall notify AGD, on a form prescribed by AGD, of the governing
21 body's decision, no later than 30 days after the public hearing before
22 the hearing officer.

23 (b) If the governing body votes to disapprove the request, it shall set
24 forth the reasons for the disapproval as required under the Liquor
25 Control Act. The city clerk shall send to AGD, no later than 30 days

1 after the public hearing before the hearing officer, a copy of the
2 record of the public hearing, the minutes of the governing body
3 meeting and the notice of disapproval on a form prescribed by AGD.

4 (3) If the governing body remands the request back to the hearing officer beyond
5 the time required in the Liquor Control Act, or does not reach a decision
6 within 30 days after the public hearing before the hearing officer, the
7 governing body is aware that AGD, pursuant to the Liquor Control Act, may
8 approve the request prior to the governing body's final decision on the
9 matter.

10 **H. Appeal.** Any person aggrieved by the decision of the governing body may appeal in
11 the manner provided by law.

12 **Section 2. Section 4-4.5 SFCC 1987 (being Ord. #1968-6, as amended) is amended**

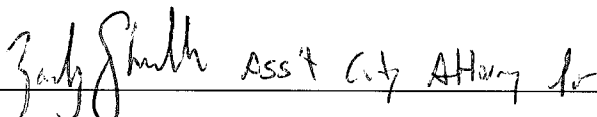
13 **to read:**

14 **4-4.5 Special dispenser[s] and public celebration permits.**

15 A. Any person granted a special permit under the provisions of Section 60-6A-12
16 NMSA 1978 for use within the city, shall pay in advance a fee of twenty-five dollars
17 (\$25.00) per day for each day [~~or fraction thereof~~] that the permittee is to dispense
18 liquor.

19 B. If the location of the event is within 300 feet of a church a school, then a designated
20 hearing officer shall conduct a public hearing, for a waiver, pursuant to the applicable
21 provisions of Subsection 4-4.3 SFCC 1987.

22 APPROVED AS TO FORM:

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GENO ZAMORA, INTERIM CITY ATTORNEY

Legislation/Bills 2018/Liquor Hearing Officer