

COLORADO TITLE SETTING BOARD

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE  
FOR INITIATIVE 2021-2022 #135

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**MOTION FOR REHEARING**

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On behalf of Steve Ward and Levi Mendyk, registered electors in the State of Colorado, the undersigned counsel, hereby submits this Motion for Rehearing of the Title Board’s April 20, 2022, decision because the measure violates the single subject and clear title requirement.

On April 20, 2022, the Board set the following ballot title:

An amendment to the Colorado Revised Statutes concerning the local licensing authority approval process for licensing alcohol beverage sales at retail, and, in connection therewith, requiring license changes, which either expand the types of alcohol beverages that may be sold at retail or revise the class of license, to meet the needs and desires of the inhabitants of the neighborhood as determined in a public hearing and meet minimum distance requirements from schools, churches, and other licensed retail sellers of alcohol beverages; and, for renewal of a license for retail sale of alcohol beverages for off-premises consumption, requiring a public hearing and findings that the renewal will serve the public interest and is warranted by the license holder’s operating history.

Opponents assert that the titles as set violate clear title as they do not describe the central features of the measure including:

1. The measure revokes existing local authority to issue an expanded liquor license or premises modification without a public hearing.

The title as set by the Board notes in two places that a public hearing is required. However, the revocation of local control and the prohibition against handling an expanded license or a renewal as an administrative matter represents a significant change in existing law which would surprise voters if it is not specifically called out in the title.

Under current law in Colorado, a local authority may process a routine renewal, licensee change, or even premises modification without a public hearing. The new requirement to hold a public hearing for every license renewal creates a significant administrative burden for local governments and must be noted in the ballot title. The following language may correct this issue: “revoking local authority to renew a license for retail sale of alcohol beverages for off-premises consumption as an administrative matter; and requiring a public hearing and findings that the renewal will serve the public interest and is warranted by the license holder’s operating history.”

2. The measure increases current distancing requirements for all establishments that sell any kind of alcohol beverages at retail.

Section (1) of the initiative includes premises modification for licensees that sell alcohol at retail. This would include any outlet that sells alcohol to consumers and is inclusive of a number of licensees such as hotel and restaurant licensees, taverns, liquor stores, grocery stores that sell beer, and convenience stores that sell beer under the current licensing scheme.

Under current law, a restaurant adding outdoor seating, expanding into an adjacent property, or otherwise modifying its premises must apply and be approved for a premises modification. The same requirement applies to a grocery store adding beer coolers or a retail liquor store that expands its footprint.

The proposed initiative sets a new distance requirement of 1,500 feet (over ¼ mile) from any school, daycare, church, or any other premises licensed for the sale of alcohol in sealed containers for off-premises consumption. This change is a central feature of the initiative and – arguably – its entire purpose. The Title Board noted that the measure requires applicants to “meet minimum distance requirements,” but failed to note that the measure expands the distance in many cases from 500 feet to 1,500 feet and that the new distancing requirement includes churches and daycare centers which are not included in the current law.

In order to ensure that the public is fully informed on the effects of the proposed initiative, the Board must specifically call out the distancing requirement. Barring the including of 1,500 feet, the Board could consider the much more easily grasped “over one quarter mile.” The Board must also note the expansion of the distance to include daycare centers and churches which are not included in the current licensing regulations. The following suggestion may be helpful: “expanding minimum distance requirements to 1,500 feet and adding churches, daycare centers, and all other licensed retail sellers of alcohol to the list of locations to which the minimum distance requirement applies;”

3. The proposed initiative revokes local authority to allow the expansion of existing licenses.

Current law grants local authority to allow conversion in some cases (see 44-3-414(9)(b), C.R.S.), even when distancing requirements are not met. The proposed initiative revokes that local authority and sets a universal distance from any retail outlet selling alcohol to another. Under the proposed measure, a tavern licensee desiring to convert into a restaurant license must meet the 1,500 feet distancing requirement from any other outlet that sells alcohol.

The revocation of local control to allow a grandfathered business to convert into a different class of license is a central feature of the initiative and must be noted by ballot title as such.

Respectfully submitted this 27<sup>th</sup> day of April, 2022.

*s/Suzanne Taheri*

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