

<p><b>COLORADO SUPREME COURT</b>  2 East 14th Avenue,  Denver, Colorado 80203</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Original Proceeding  Colo. Rev. Stat. § 1-40-107(2)  Appeal from the Ballot Title Board</p>	
<p><b>Petitioners:</b>  Steven Ward and Levi Mendyk</p> <p>v.</p> <p><b>Respondents/Proponents:</b>  Omar Malik and Christopher Fine, Proponents</p> <p>and</p> <p><b>Title Board:</b>  Theresa Conley, Julie Pelegrin, David Powell</p>	
<p><b>Attorney for Petitioners:</b>  Suzanne Taheri (#23411)  MAVEN LAW GROUP  6501 E. Belleview Avenue, Suite 375  Englewood, Colorado 80111  Phone: 303.263.0844  Email: staheri@mavenlawgroup.com</p>	<p>Case No.:</p>
<p><b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE  SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022  #135 (“Local Approval Requirement for Expanded Liquor License”)</b></p>	

Steven Ward and Levi Mendyk (“Petitioners”), opponents of Proposed Initiative 2021-2022 #135 (the “Proposed Initiative”), through their undersigned counsel, respectfully petition this Court pursuant to § 1-40-107(2), C.R.S., to review the actions of the Ballot Title Setting Board (“Title Board”) with respect to its decision to set the title, ballot title, and submission clause.

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative #135**

Omar Malik and Christopher Fine (hereafter “Proponents”) proposed Initiative 2021-2022 #135 (the “Proposed Initiative”). Proponents submitted their Proposed Initiative to the Title Board for the setting of a title and submission clause pursuant to § 1-40-106, C.R.S.

The Title Board held a hearing on April 20, 2022, where it determined that the Proposed Initiative contained a single subject as required by Colo. Const. art. V, §1(5.5) and § 1-40-106.5, C.R.S., and set a title. On April 27, 2022, Petitioners filed a Motion for Rehearing stating that the tiles were misleading and did not accurately describe the measure. Title Board held a rehearing on April 28, 2020, at which time it granted Petitioners’ Motion to Rehearing only to the extent the Board made changes to the title.

## **B. Jurisdiction**

Petitioners are timely requesting a review of the actions of the Title Board by the Supreme Court pursuant to § 1-40-107(2), C.R.S.

As required by § 1-40-107(2), C.R.S., attached to this Petition for Review are certified copies of the final copy of the Proposed Initiative as submitted to the Title Board, the determination by the Title Board at its initial hearing on the Proposed Initiative, the initial fiscal abstract for the Proposed Initiative prepared by the Director of Research of the Legislative Council of the General Assembly the abstract, the Motion for Rehearing; and the determination by the Title Board to deny the Motion for Rehearing.

## **GROUND FOR REVIEW**

Petitioners respectfully submit that the Title Board erred in its determination with respect to the clear title requirements in Colo. Const. art. V, §1(5.5), and §1-40-106.5, C.R.S. The title does not adequately describe the changes to the local licensing authority public hearing process; the title does not describe the new distance requirements as they apply to the classes of liquor licenses.

## **PRAYER FOR RELIEF**

Petitioners respectfully request that, after consideration of the parties' briefs,

this Court reverse the determination of the Title Board and direct the Title Board to correct the title to address the deficiencies outlined in Petitioner's briefs.

Dated: May 5, 2022

Respectfully submitted,

*s/Suzanne Taheri*

Suzanne Taheri #23411

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*Attorney for Petitioners*

## CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2022, I electronically filed a true and correct copy of this **Petition** with the Clerk of Court via the Colorado Courts E-Filing System which will send notification of such filing upon counsel of record:

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*s/Suzanne Taheri*



# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2021-2022 #135 'Local Approval Requirement for Expanded Liquor License'".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 3<sup>rd</sup> day of May, 2022.

*Jena Griswold*

SECRETARY OF STATE



*Be it Enacted by the People of the State of Colorado:*

**SECTION 1:** In the Colorado Revised Statutes, **add** section 44-3-314 as follows:

**44-3-314. LOCAL APPROVAL REQUIRED FOR EXPANDED LIQUOR LICENSE.**

(1) NOTWITHSTANDING ANY STATE LAW TO THE CONTRARY, NO LICENSE CONVERSION, MODIFICATION, OR OTHER LICENSING CHANGE THAT REVISES THE CLASS UNDER WHICH AN EXISTING LICENSEE OPERATES OR EXPANDS THE TYPE OR TYPES OF ALCOHOL BEVERAGE THAT MAY BE SOLD AT RETAIL BY AN EXISTING LICENSEE SHALL BE EFFECTIVE OR ALLOW SALE OF SUCH ADDITIONAL TYPES OF ALCOHOL BEVERAGE TYPES UNLESS THE LOCAL LICENSING AUTHORITY EXPRESSLY FINDS:

(A) SUCH APPROVAL WILL MEET THE NEEDS AND DESIRES OF THE INHABITANTS OF THE NEIGHBORHOOD, BASED ON COMPETENT EVIDENCE IN THE RECORD AFTER A PUBLIC HEARING; AND

(B) THE LICENSED PREMISES, AFTER SUCH CONVERSION, MODIFICATION, OR OTHER LICENSING CHANGE, WOULD COMPLY WITH THE FOLLOWING DISTANCE REQUIREMENTS, WHICHEVER IS GREATER:

(I) THE MINIMUM DISTANCE SPECIFIED BY LAW THAT APPLIED TO THE PREVIOUS CLASS OF LICENSE AT THE TIME SUCH LICENSE WAS APPROVED; AND

(II) ONE THOUSAND FIVE HUNDRED FEET FROM ANY PUBLIC OR PRIVATE ELEMENTARY, MIDDLE OR SECONDARY SCHOOL, DAYCARE CENTER, CHURCH, OR PREMISES LICENSED FOR THE SALE OF ALCOHOL BEVERAGES IN SEALED CONTAINERS FOR CONSUMPTION OFF THE PREMISES.

(2) NO LICENSE SHALL BE RENEWED TO CONTINUE AUTHORIZATION FOR SALES AT A LICENSED PREMISES OF ANY ALCOHOL BEVERAGES IN SEALED CONTAINERS FOR OFF-PREMISES CONSUMPTION AS AN ADMINISTRATIVE MATTER WITHOUT PUBLIC HEARING.

(3) TO RENEW A LICENSE AUTHORIZING THE HOLDER TO SELL ALCOHOL BEVERAGES IN SEALED CONTAINERS FOR OFF-PREMISES CONSUMPTION, THE LOCAL LICENSING AUTHORITY MUST EXPRESSLY FIND THAT SUCH RENEWAL WILL SERVE THE PUBLIC INTEREST AND IS WARRANTED IN LIGHT OF THE LICENSEE'S OPERATING HISTORY AS A LICENSE HOLDER FOR THE RETAIL SALE OF ALCOHOL BEVERAGES.

(4) THIS SECTION IS EFFECTIVE ONLY IF APPROVED BY THE PEOPLE AT THE NOVEMBER, 2022 GENERAL ELECTION.

## **Ballot Title Setting Board**

### **Proposed Initiative 2021-2022 #135<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado Revised Statutes concerning local licensing requirements for approval of licenses for retail sale of alcohol beverages, and, in connection therewith, requiring a local licensing authority to hold a public hearing to consider a license conversion, modification, or other change that expands the types of alcohol beverages that may be sold at retail or revises the class of retail license and to determine whether the conversion, modification, or other change would meet the needs and desires of the inhabitants of the neighborhood and meet new minimum distance requirements from schools, daycare centers, 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 the local licensing authority to hold a public hearing and find that the renewal will serve the public interest and is warranted by the license holder's operating history.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado Revised Statutes concerning local licensing requirements for approval of licenses for retail sale of alcohol beverages, and, in connection therewith, requiring a local licensing authority to hold a public hearing to consider a license conversion, modification, or other change that expands the types of alcohol beverages that may be sold at retail or revises the class of retail license and to determine whether the conversion, modification, or other change would meet the needs and desires of the inhabitants of the neighborhood and meet new minimum distance requirements from schools, daycare centers, 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 the local licensing authority to hold a public hearing and find that the renewal will serve the public interest and is warranted by the license holder's operating history?

*Hearing April 20, 2022:*

*Single subject approved; staff draft amended; titles set.*

*Board members: Theresa Conley, Julie Pelegrin, Eric Meyer*

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<sup>1</sup> Unofficially captioned “**Local Approval Requirement for Expanded Liquor License**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



*Hearing adjourned 8:15 P.M.*

*Rehearing April 28, 2022:*

*Motion for Rehearing granted only to the extent that the Board made changes to the titles.*

*Board members: Theresa Conley, Julie Pelegrin, David Powell*

*Hearing adjourned: 8:40 P.M.*

## **Ballot Title Setting Board**

### **Proposed Initiative 2021-2022 #135<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

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.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be 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?

*Hearing April 20, 2022:*

*Single subject approved; staff draft amended; titles set.*

*Board members: Theresa Conley, Julie Pelegrin, Eric Meyer*

*Hearing adjourned 8:15 P.M.*

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<sup>1</sup> Unofficially captioned “**Local Approval Requirement for Expanded Liquor License**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

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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Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Initiative 135

## Fiscal Summary

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<b>Date:</b>	April 19, 2022	<b>Fiscal Analyst:</b>	Clare Pramuk (303-866-2677)
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### LCS TITLE: LOCAL APPROVAL REQUIREMENT FOR EXPANDED LIQUOR LICENSE

#### Fiscal Summary of Initiative 135

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at [www.colorado.gov/bluebook](http://www.colorado.gov/bluebook). This fiscal summary identifies the following impact.

**State revenue and expenditures.** Initiative 135 is not expected to affect the revenue or expenditures of any state agency. If the new requirements result in nonrenewal of liquor licenses, fee revenue will be reduced.

**Local government impact.** Initiative 135 will increase workload for local licensing authorities to comply with the new requirements, including holding hearings for renewal of certain liquor licenses. If the new requirements result in nonrenewal of liquor licenses, fee revenue to local licensing authorities will be reduced.

**Economic impacts.** Depending on local licensing decisions, Initiative 135 may change the number and type of liquor licensed locations, and certain products and services offered. While the measure may potentially shift income and employment opportunities across different retailers, the overall volume of alcohol sales is not expected to change significantly and the overall economic impact of the measure is assumed to be minimal.