

## Legislation Details (With Text)

**File #:** LA# 16-001 **Name:**

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**Title:** Hearing on renewal application for Pho Real LLC, d/b/a Pho Real, 2399 West Main Street, Littleton, Colorado

**Sponsors:** Licensing Commission

**Indexes:**

**Code sections:**

**Attachments:** 1. EX A - Renewal Application, 2. EX B - Pre-Renewal Hearing Letter, 3. EX C - Notice of Pre-Renewal Findings, 4. EX D - Proof of Posting of Premises

Date	Ver.	Action By	Action	Result
2/10/2016	1	Licensing Commission	approved	Pass

Agenda Date: 02/10/2016

Subject:

Hearing on renewal application for Pho Real LLC, d/b/a Pho Real, 2399 West Main Street, Littleton, Colorado

Presented By: Colleen L. Norton, Deputy City Clerk

### INTRODUCTION/HISTORY AND FACTS:

On January 13, 2016, the Licensing Authority scheduled Pho Real LLC, d/b/a Pho Real, 2399 West Main Street, for a hearing to consider whether to renew its Hotel & Restaurant liquor license.

Notice of the hearing was posted on the licensed premises on January 26, 2016, and notice of the hearing was provided to the licensee on January 14, 2016 (see attached proof of posting and notification letter).

Concerns with the licensee's renewal application include:

- On the renewal application (question 3), the applicant indicated that the applicant, agent, owner, manager, partner or lender had been convicted of a crime since the date of filing of the last annual application. The detailed explanation provided was of a felony drug conviction concerning possession/manufacturing of an illegal substance with intent to distribute.
- The Colorado Bureau of Investigation report indicates that that applicant was charged with three drug felonies, two of which were dismissed by the DA, but the disposition on the third charge was guilty. These offenses occurred on January 8, 2015, less than two months after the application was approved in November 2014. On February 11, 2015, Mr. Nguyen was also charged with Failure to Appear. Staff would ask the Authority to review the video minutes (link here: [November 2014 video minutes <http://littleton.ompnetwork.org/shows/licensing-authority-11122014?iframe\\_mode=true>](http://littleton.ompnetwork.org/shows/licensing-authority-11122014?iframe_mode=true)) for the discussion and sworn testimony during the application hearing regarding applicant's criminal

background and the concerns raised by the Authority.

### **LEGAL AUTHORITY:**

Pursuant to C.R.S. § 12-47-302(1), the local licensing authority may cause a hearing on the application for renewal to be held and may refuse to renew the license for “good cause” as provided in C.R.S. § 12-47-103(9).

“Good Cause”, for the purposes of refusing or denying a license renewal or initial license issuance, means:

- (a) The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this article or any rules and regulations promulgated pursuant to this article;
- (b) The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceeding;
- (c) In the case of a new license, the applicant has not established the reasonable requirements of the neighborhood or the desires of its adult inhabitants as provided in section 12-47-301(2); or
- (d) Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the establishment is located, which evidence must include a continuing pattern of fights, violent activity, or disorderly conduct. For purposes of this paragraph (d), "disorderly conduct" has the meaning as provided for in section 18-9-106, C.R.S.

Colo. Rev. Stat. 12-47-307 (Persons prohibited as licensees) provides that “no license shall be issued to or held by:... (II) Any person who is not of good moral character;... (IV) Any partnership, association, or company, any of whose officers, or any of whose members holding ten percent or more interest therein, are not of good moral character;... (VI) Any person unless such person's character, record, and reputation are satisfactory to the respective licensing authority...”

With respect to the question on the renewal application (question 3), concerning whether the applicant, agent, owner, manager, partner or lender had been convicted of a crime since the date of filing of the last annual application, Regulation 47-310(E)(2) provides that when a licensing authority is required to make a determination as to the character, record and reputation of existing licensees, the authority may consider whether “the applicant or licensee has a criminal history of crimes of moral turpitude. By way of example, crimes of moral turpitude shall include but not be limited to, murder, burglary, robbery, arson, kidnapping, sexual assault, illegal drugs or narcotics convictions.”

### **CONCLUSIONS AND RECOMMENDATIONS:**

Littleton City Code 3-2-14 provides that, in cases where a renewal hearing is held, the Licensing Authority shall consider the following factors in mitigation or aggravation:

- (A) Seriousness of the violation(s) (affront to the public);
- (B) Corrective action(s) taken (if any);
- (C) Prior violations and offenses at the licensed premises and effectiveness of prior corrective action;
- (D) Prior violations and offenses by this licensee or his employees;
- (E) Violation as a repeated course of conduct or as a single event;
- (F) Likelihood of recurrence;
- (G) All circumstances surrounding a violation;
- (H) Willfulness of the violation(s);
- (I) Hardship on this licensee for the sanction imposed;
- (J) Length of time a license has been held by this licensee;

- (K) Previous sanctions imposed against this licensee; and
- (L) Other factors making the situation with respect to the licensee or premises unique.

Staff recommends that the Authority investigate the applicant's response to question 3 on the renewal application to determine whether the criminal conviction involves a crime of moral turpitude.

**SUGGESTED MOTION:**

I move that the renewal application for Pho Real LLC, d/b/a Pho Real, 2399 West Main Street, BE DENIED. The foregoing is based on the following findings of fact: (1) notice of the hearing was posted on the licensed premises for a period of ten days and notice of the hearing was provided to the licensee at least ten days prior to the hearing; and (2) good cause exists for refusing to renew the license because the licensee has violated, does not meet, or has failed to comply with the terms, conditions, or provisions of the Colorado liquor code and Littleton City Code (including Chapters 2 and 9 of Title 3). Specifically, the licensee's character, record, and reputation are unsatisfactory under C.R.S. § 12-407-307(1)(a) because the licensee has been convicted of a felony drug charge, constituting a crime of moral turpitude.

OR

I move that the renewal application for Pho Real LLC, d/b/a Pho Real, 2399 West Main Street, BE APPROVED (*SUBJECT TO THE FOLLOWING CONDITIONS*): *[if any conditions to be imposed, include here]*

The foregoing is based on the finding of fact that notice of the hearing was posted on the licensed premises for a period of ten days and notice of the hearing was provided to the licensee at least ten days prior to the hearing.