

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

[R05-429]

PREAMBLE

- 1. Sections Affected**
R19-1-102
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 4-112(A)(2)
Implementing statute: A.R.S. § 4-201(I)
- 3. The effective date of the rules:**
January 9, 2006
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 4851, December 3, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 4843, December 3, 2004
Notice of Oral Proceeding on Proposed Rulemaking: 11 A.A.R. 819, February 18, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Kerri Morey
Address: 800 W. Washington St., 5th Floor
Phoenix, AZ 85007
Telephone: (602) 542-9789
Fax: (602) 542-5707
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**
This rule provides criteria for the Department and local governing authorities to consider when determining whether the community will be served by the issuance or transfer of a liquor license at a particular location. A twelfth criterion is being added to consider the proximity to a licensed child care facility as defined in A.R.S. § 36-881.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. A summary of the economic, small business, and consumer impact:**
This rule does not place a direct economic burden on the regulated industry or affected community. It specifies factors that may be considered when determining whether to grant or deny a liquor license at a new location. The rule imposes a minimal economic impact on the agency in the rewriting of the rule. The rule imposes a minimal economic impact on local governing authorities that choose to consider the new factor when making a recommendation on a liquor license. Liquor license applicants may choose to consider the proximity of licensed child care facilities in addi-

Notices of Final Rulemaking

tion to the current eleven factors when surveying potential locations for their business. If an application is denied based on location, then the applicant must find another location for their business, and the Department is prohibited from accepting other applications at that location for 12 months. Denials based on location could occur as a result of any of the 12 factors in this rule.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None

11. A summary of the comments made regarding the rule and the agency response to them:

Comments regarding the rule include issues with the rule proceeding, and that the rule is unnecessary, illogical, contrary to legislative intent and will have an economic impact on licensees and licensed child care facilities.

The rule proceedings were conducted according to statute, but issues were raised with regard to whether the Department of Liquor Licenses and Control or the State Liquor Board should be pursuing the rulemaking. As outlined in the authorizing and implementing statutes for this rule, the legislative intent is for the Department and the Board to adopt rules to carry out the provisions of A.R.S. Title 4. Additionally, by law the Department provides the Board with supplies and personnel (A.R.S. § 4-112, subsection B, paragraph 4). Because the Board does not have a dedicated staff person to prepare rules, the Board has historically used Department personnel and supplies for rulemaking. In response to concerns raised by the public, the State Liquor Board reviewed the rule at its July 7, 2005, hearing and moved that the Board support the rule and directed the Department to continue forward with the rule.

The rule is necessary in order to provide additional guidance when determining whether to grant or deny a liquor license at a new location. The rule was criticized as illogical because it regulates the issuance or location transfer of a liquor license to an unlicensed location but does not regulate the location of a licensed child care facility. The Department is required to regulate establishments that serve liquor and does not have the authority to regulate child care facilities.

As explained in the economic impact statement, there are minimal direct costs associated with this rulemaking. All other comments received support the rule and its protection of children, families and communities.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

ARTICLE 1. STATE LIQUOR BOARD

Section

R19-1-102. Granting a License for a Certain Location

ARTICLE 1. STATE LIQUOR BOARD

R19-1-102. Granting a License for a Certain Location

Local governing authorities and the Department may consider the following criteria in determining whether public convenience requires and that the best interest of the community will be substantially served by the issuance or transfer of a liquor license at a particular unlicensed location:

1. Petitions and testimony from persons in favor of or opposed to the issuance of a license who reside in, own or lease property in close proximity.
2. The number and series of licenses in close proximity.
3. Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies.
4. The residential and commercial population of the community and its likelihood of increasing, decreasing or remaining static.

Notices of Final Rulemaking

5. Residential and commercial population density in close proximity.
6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers.
7. Effect on vehicular traffic in close proximity.
8. The compatibility of the proposed business with other activity in close proximity.
9. The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.
10. The history for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant has received a detailed report(s) of such activity as least 20 days before the hearing by the Board.
11. Comparison of the hours of operation of the proposed premises to the existing businesses in close proximity.
12. Proximity to licensed childcare facilities as defined by A.R.S. § 36-881.