

**DEPARTMENT OF EXCISE AND LICENSES
DENVER, COLORADO**

ORDER TO SHOW CAUSE

**IN THE MATTER OF BUSINESS LICENSES HELD BY NO. 38 TENANT LLC, DOING
BUSINESS AS NUMBER 38, AT 3560 CHESTNUT PL, DENVER, COLORADO**

**DANCE CABARET LICENSE # 2020-BFN-0001567
HOTEL & RESTAURANT LIQUOR LICENSE # 2020-BFN-0001567**

NO. 38 TENANT LLC, doing business as NUMBER 38, (the “Respondent”) is hereby ordered to appear at the Denver Department of Excise and Licenses (the “Department”), located at 201 West Colfax Avenue, Dept. 206, Denver, Colorado, on **October 14, 2022 at 9:00 a.m.** and SHOW CAUSE why its Dance Cabaret and Hotel & Restaurant Liquor Licenses at 3560 Chestnut Pl, Denver, Colorado, should not be suspended or revoked for alleged violations of law or regulations.

ALLEGED VIOLATIONS

As a result of the investigation completed by the Department of Excise and Licenses on September 6, 2022, and the attached complaint, the Department has sufficient grounds to believe that the Respondent, through its managers, employees, or agents has violated the following state or local laws or regulations:

D.R.M.C. § 32-16. – Compliance with conditions of license.

- (a) It shall be unlawful for any licensee to fail to comply with all conditions printed or attached to the license issued.

LICENSE VIOLATIONS

Due to the above allegations, the Department is seeking disciplinary action on your license pursuant to D.R.M.C. § 32-22 and/or C.R.S. § 44-3-601.

CORPORATION MUST APPEAR WITH AN ATTORNEY

Subject to certain exceptions, a corporation or limited liability company must appear before an administrative agency through an attorney. Proceedings commenced or advocated and pleadings filed by a corporation or limited liability company without an attorney will be not be accepted, EXCEPT that a closely held corporate entity (3 or fewer shareholders) may be represented by an officer of such closely held entity if the officer provides a corporate resolution form (attached

hereto) authorizing the officer to appear on behalf of the entity in all matters before the Department.

DISCOVERY REQUESTS

Copies of the reports regarding this show cause, as well as photos, floorplans, and applications will be available from the Department by submitting a request via email at EXLRecordsManagement@denvergov.org.

CONTINUANCES

All requests to continue the hearing must be made in writing and emailed to the Department at CAOExciseandLicense@denvergov.org, and must copy the Assistant City Attorney below. Any Order granting or denying a continuance shall be within the sole discretion of the Director.

STIPULATION WITH ASSISTANT CITY ATTORNEY

In order to resolve this matter without a hearing, your attorney or legally authorized corporate representative may contact Assistant City Attorney Blake McCracken at Blake.McCracken@denvergov.org or (720) 913-1901 prior to the hearing to reach a stipulated agreement. Any stipulation reached with the Assistant City Attorney should be completed at least twenty-four (24) hours prior to the show cause hearing date. Stipulations may be rejected by the Department for failure to comply with the procedures above.

VIRTUAL HEARING

In light of the COVID-19 (Coronavirus) pandemic, the continued spread of the virus throughout communities in Colorado, and public health orders regarding mitigating the spread of the virus, all in-person hearings are being rescheduled to virtual hearings. Parties are encouraged to pre-mark and submit exhibits electronically prior to the hearing as provided for in the Department Policies and Procedures Governing Public Hearings.

This Show Cause hearing shall be scheduled for **October 14, 2022 at 9:00 a.m.**, via virtual hearing. You can access the virtual hearing via telephone by calling **+1720-388-6219** code: **279 405 813#** or via video conference using this link: **<https://tinyurl.com/y2vn2erz>**

If the Respondent does not have access to a computer or telephone, needs assistance from an interpreter, or requires closed-captioning assistance, they must notify the Department in writing at the following address: Department of Excise and Licenses, 201 W. Colfax Avenue, Dept. 206, Denver, CO, 80202, at least seven (7) days prior to the hearing. If possible, notification may also be provided verbally by telephone at (720) 913-1311 or by emailing EXLApplications@denvergov.org.

FAILURE TO APPEAR AT HEARING

If you fail to appear for the hearing, the hearing may proceed on the scheduled date. Testimony and evidence may be taken regarding the allegations, and your license may be suspended, fined, or revoked without further notice.

LICENSE TRANSFER AND RENEWAL

The Department will not accept any application to transfer the ownership of this license during the pendency of the show cause. Any licensee attempting to submit any application with the Department regarding this license shall notify the Department of pending disciplinary action on this license. Any licensee attempting to transfer ownership shall notify the potential purchaser of all liabilities associated with this license and shall notify the transferee that she may be responsible for the actions of the previous owner, and subject to discipline based upon the same.

The Department will accept a complete renewal application along with the requisite fees, however no license shall issue until this matter is resolved. The Department's renewal investigation shall be consolidated with the Show Cause proceeding. The Respondent must notify the Department that its license is under disciplinary action upon a request for renewal.

Ordered this 15th day of September _____ 2022.



Molly Duplechian, Executive Director
Department of Excise and Licenses

CERTIFICATE OF DELIVERY

The undersigned hereby certifies and states that one true and complete copy of the above Order was sent via email and certified prepaid mail postage on this __15th __ day of __September_____ 2022, to the following:

Number 38
3560 Chestnut Pl
Denver, CO 80216

Spencer Fronk (Manager / Co-Owner)
5449 S. Jasmine St
Greenwood Village, CO 80111
Spencer.Fronk@numberthirtyeight.com

Andrew Palmquist (Manager / Co-Owner)
6182 Xavier St
Arvada, CO 80003
Andrew.Palmquist@numberthirtyeight.com

Brad Arguello (Manager / Co-Owner)
2511 Locust St
Denver, CO 80207

Det. Paul Streate, Denver Police Department, Paul.Streate@denvergov.org

Det. Tom Sanchez, Denver Police Department, Tom.Sanchez@denvergov.org



Dept. of Excise and Licenses

RESOLUTION

Recitals:

1. _____ is a closely held corporation within the context of Section 13-1-127, C.R.S., since it is a privately held corporation with no more than three (3) shareholders.
2. _____ is the duly elected _____, (Office) of the corporation.
3. The following signatories to this resolution are shareholders of the corporation holding the specified percentage of stock ownership:

Shareholder	Stock Ownership Percentage (%)

4. The corporation is a Colorado corporation in good standing which is in compliance with the requirements imposed on corporations by law.
5. The amount at issue does not exceed Fifteen thousand dollars (\$15,000.00), exclusive of costs, interest or statutory penalties.
6. The corporation holds/has applied for a _____ License.

It is therefore RESOLVED that _____ is authorized to appear on behalf of the corporation before the Denver Department of Excise & Licenses at the hearing scheduled on _____ and represents the corporation at the hearing.

Shareholder Signatures

Subscribed and sworn to before me this _____ day of _____ 20____.

SEAL

NOTARY PUBLIC

My commission expires _____

**DEPARTMENT OF EXCISE AND LICENSES
DENVER, COLORADO**

COMPLAINT

**IN THE MATTER OF BUSINESS LICENSES HELD BY NO. 38 TENANT LLC, DOING
BUSINESS AS NUMBER 38, AT 3560 CHESTNUT PL, DENVER, COLORADO**

**DANCE CABARET LICENSE # 2020-BFN-0001567
HOTEL & RESTAURANT LIQUOR LICENSE # 2020-BFN-0001567**

Blake McCracken, Assistant City Attorney, respectfully notifies the Denver Department of Excise and Licenses (“Department”) of the City’s request to pursue disciplinary action against the Dance Cabaret and the Hotel & Restaurant Liquor Licenses held by NO. 38 TENANT LLC, doing business as NUMBER 38, at 3560 Chestnut Pl., Denver, Colorado. The City states as follows:

I. Legal Authority to Show Cause

D.R.M.C. § 32-22(a)(3) states that the Department may hold a show-cause hearing if: “The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any of the conditions required for the license as specified in this Code or rules and regulations adopted pursuant thereto.”

D.R.M.C. § 32-22(a)(5) states that the Department may hold a show-cause hearing if: “The licensee, or any of the agents, servants or employees of the licensee, have violated any ordinance of the city or state or federal law or have permitted such a violation by any other person.”

C.R.S. § 44-3-601(1)(a) grants local licensing authorities the power to show cause alcohol licenses which it issues: “[T]he state or any local licensing authority has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to fine a licensee or to suspend or revoke, in whole or in part, any license or permit issued by such authority for any violation by the licensee or by any of the agents, servants, or employees of the licensee of this article 3; any rules authorized by this article 3; or any of the terms, conditions, or provisions of the license or permit issued by such authority. . . .”

D.R.M.C. § 6-61(a) states that “In addition to the grounds shown in chapter 32 of this Code for revocation or suspension of a license, the director may revoke or suspend a cabaret license if he finds that: (1) The nature of the licensed premises or of the business conducted therein encourages a disturbance of the peace; or (2) The conduct of persons in or about the licensed premises is such as to annoy or disturb the peace of the residents in the vicinity, or of the passersby on any public sidewalk, street, highway or any other public right-of-way.”

D.R.M.C. § 32-30(a) states that “For the purposes of suspending or revoking any license or permit, the licensee or permittee shall be deemed to have permitted an act or condition if a reasonable licensee or permittee would have been aware of the act or condition and taken action to stop the act or eliminate the condition.”

D.R.M.C. § 32-30(b) states that “Any act or omission committed by any employee, agent, or independent contractor that occurs in the course of his or her employment, agency, or contract with the licensee shall be imputed to the licensee or permittee for purposes of imposing any suspension, revocation or other sanction on the licensee or permittee.”

II. Factual Background

Reports filed by Denver Excise and License Inspectors Robert Darrow and Kelli Abrams indicate that, since the renewal of Respondent’s Dance Cabaret and Hotel Restaurant & Liquor licenses on May 5, 2022, Respondent has committed no less than fourteen (14) violations of the conditions of said license. Specifically, condition #4 of the license, which provides that, “The Licensee may provide acoustic music outdoors; however, amplified music and music with drums shall only be played indoors. When playing amplified music and music with drums, exterior doors and windows must be closed.” The violations were observed and reported by various residents of the area on the following dates:

- May 8, 2022
- May 11, 2022
- May 12, 2022
- May 14, 2022
- June 9, 2022
- June 11, 2022
- June 16, 2022
- June 24, 2022
- June 25, 2022
- June 27, 2022
- June 30, 2022
- July 2, 2022
- July 21, 2022
- August 20, 2022

Furthermore, it should be noted that on June 3, 2022, Respondent and their counsel met with staff from the Department as well as the City Attorney’s Office to discuss permissible conduct. At this meeting, Respondent was specifically told they were not permitted to amplify music over their outdoor sound system in any fashion. Nevertheless, nine (9) of the alleged violations occurred after this meeting.

III. Alleged Violations

Respondent is alleged to have committed fourteen (14) violations of D.R.M.C. § 32-16(a) which states “If shall be unlawful for any licensee to fail to comply with all conditions printed or attached to the license issued.” Specifically, Respondent violated this ordinance by failing to comply with condition #4 on their license on the fourteen dates listed above.

IV. Conclusion

Respondent holds licenses issued by the Department and is alleged to have violated D.R.M.C. § 32-16(a). Therefore, pursuant to D.R.M.C. §§ 32-22(a)(3), 32-22(a)(5), and 6-61(a), the City requests that the Department issue, and cause to be served upon Respondent, an Order to Show Cause why the Respondent’s Dance Cabaret License should not be suspended or revoked.

Respectfully submitted this 8th day of September, 2022.

Respectfully,

**/s/ Blake McCracken*

Blake McCracken, Reg. No. 55110

Assistant City Attorney

201 West Colfax Avenue, Department 1207

Denver, Colorado 80202

Phone: (720) 913-1901

Fax: (720) 913-8010

Email: Blake.McCracken@denvergov.org



City and County of Denver
 Dept. of Excise and Licenses
 201 W. Colfax Ave. #206
 Denver, CO 80202

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Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage \$ _____

To \$ _____

By \$ _____

City \$ _____

PS Form 3811, April 2013 PSN 7530-02-000-9047 See Reverse for Instructions

NUMBER 38
 3560 CHESTNUT PL
 DENVER CO 80216

2020-BFN-0001567

Postmark Here

ON

- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NUMBER 38
 3560 CHESTNUT PL
 DENVER CO 80216

2020-BFN-0001567

9590 9402 7116 1251 1284 03

2. Article Number (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type

Adult Signature Adult Signature Restricted Delivery Priority Mail Express®

Certified Mail® Certified Mail Restricted Delivery Registered Mail™

Collect on Delivery Collect on Delivery Restricted Delivery Signature Confirmation™

Insured Mail Insured Mail Restricted Delivery Signature Confirmation Restricted Delivery

per \$500

Domestic Return Receipt



RETURN SERVICE REQUESTED

City and County of Denver
Dept. of Excise and Licenses
201 W. Colfax Ave. #20
Denver, CO 80202

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7021 2720 0003 0916 5564
7021 2720 0003 0916 5564

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Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage

Postmark
Here

SPENCER FRONK
5449 S JASMINE ST
GREENWOOD VILLAGE CO 80111

2020-BFN-0001567

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SPENCER FRONK
5449 S JASMINE ST
GREENWOOD VILLAGE CO 80111
2020-BFN-0001567

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Registered Mail™
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Signature Confirmation™
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Restricted Delivery
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Restricted Delivery
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> Registered Mail
<input type="checkbox"/> Insured Mail Restricted Delivery	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™
<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Restricted Delivery

Article Addressed to:
SPENCER FRONK
5449 S JASMINE ST
GREENWOOD VILLAGE CO 80111
2020-BFN-0001567

9590 9402 7116 1251 1283 97

2. Article Number (Transfer from service label)
7021 2720 0003 0916 5564

Domestic Return Receipt



RETURN SERVICE REQUESTED
City and County of Denver
 Dept. of Excise and Lic.
 201 W. Colfax Ave. #201
 Denver, CO 80202

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Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$
Total	\$
Sent	
Street	
City	

ANDREW PALMQUIST
 6182 XAVIER ST
 ARVADA CO 80003
 2020-BFN-0001567

Postmark
 Here

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

ANDREW PALMQUIST
 6182 XAVIER ST
 ARVADA CO 80003
 2020-BFN-0001567

ON

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

1. Article Addressed to:
 ■ Print your name and address on the reverse so that we can return the card to you.
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

ANDREW PALMQUIST
 6182 XAVIER ST
 ARVADA CO 80003
 2020-BFN-0001567



9590 9402 7116 1251 1283 80

2. Article Number (Transfer from service label)

7021 2720 0003 0916 5571

3. Service Type

<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail™
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Registered Mail Restricted Delivery (over \$500)

Domestic Return Receipt

PS Form 3811, July 2020 PSN 7530-02-000-9053



RETURN SERVICE REQUESTED
 City and County of Denver
 Dept. of Excise and Licenses
 201 W. Colfax Ave. #206
 Denver, CO 80202

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7021 2720 0003 0916 5588
 7021 2720 0003 0916 5588

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OFFICIAL USE

Certified Mail Fee \$
 Extra Services & Fees (check box, add fee as appropriate)
 Return Receipt (hardcopy) \$
 Return Receipt (electronic) \$
 Certified Mail Restricted Delivery \$
 Adult Signature Required \$
 Adult Signature Restricted Delivery \$

Postage \$
 Total \$
 Sent \$
 Street
 City,
 State

BRAD ARGUELLO
 2511 LOCUST ST
 DENVER CO 80207
 2020-BFN-0001567

Postmark
 Here

so that we can return the card to you.
 Attach this card to the back of the mailpiece,
 or on the front if space permits.

1. Article Addressed to:

BRAD ARGUELLO
 2511 LOCUST ST
 DENVER CO 80207
 2020-BFN-0001567



9590 9402 7116 1251 1283 73

2. Article Number (Transfer from service label)

7021 2720 0003 0916 5588

PS Form 3811, July 2020 PSN 7530-02-000-9053

BRAD ARGUELLO
 2511 LOCUST ST
 DENVER CO 80207
 2020-BFN-0001567

SECTION

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Adult Signature
 Adult Signature Restricted Delivery
 Certified Mail®
 Certified Mail Restricted Delivery
 Collect on Delivery
 Collect on Delivery Restricted Delivery
 Registered Mail™
 Registered Mail Restricted Delivery
 Signature Confirmation™
 Signature Confirmation Restricted Delivery
 Priority Mail Express®

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