

 <p>BRITISH COLUMBIA COMMUNITY SAFETY UNIT</p>	<b>Reconsideration Process Policy</b>	
	Last Updated:  August 11, 2021	Issuing Authority: <b>Director, CSU</b>

### 1.01 Introduction

Under section 95 of the *Cannabis Control and Licensing Act* (CCLA), a person may apply to the Director of the Community Safety Unit (CSU) for a reconsideration of a monetary penalty imposed under a Compliance Order issued pursuant to section 94(7) of the CCLA. A Compliance Order means an order of the Director imposing a monetary penalty, other than an order based on a signed waiver referred to in section 94(5) of the CCLA. A reconsideration application will only be accepted if specific requirements have been met.

In accordance with section 95(7) of the CCLA, the acceptance of an Application for Reconsideration of a Compliance Order by the CSU does not result in a stay of the Compliance Order and does not prevent steps from being taken to collect the monetary penalty.

Reconsiderations are reviews on the record. Generally, reconsideration hearings are held by written submission. Oral hearings may be conducted under certain circumstances if a person applies for an oral hearing and the Director determines an oral hearing is appropriate in the circumstances of the particular case.

The Director will conduct the reconsideration hearing and may confirm, vary or rescind the Compliance Order.

### 1.02 Authority

Pursuant to section 97 of the CCLA, the Director may make rules respecting the practices and procedures to be followed in the conduct of hearings under Part 6, Division 2 of the CCLA. Pursuant to section 23(3) of the *Interpretation Act*, when the

CCLA empowers the Director to do something, the Deputy Director has the same powers, which includes the authority to conduct hearings and make decisions in the reconsideration process. The Director also has the authority under section 8 of the CCLA to delegate one or more of their powers and duties under the CCLA.

### **1.03 Deemed Receipt**

A document given or served by the CSU on a person is deemed to be received, according to the appropriate method of delivery, under section 41 of the *Cannabis Licensing Regulation*:

- (a) if the document is left with an individual, on the day it is left,
- (b) if the document is sent by ordinary mail, registered mail or courier, on the fifth day after it is mailed or received by the courier,
- (c) if the document is left in a mailbox or mail slot, on the third day after it is left,
- (d) if the document is attached to a door or other conspicuous place, on the third day after it is attached,
- (e) if the document is sent by email, on the third day after it is sent, and
- (f) if the document is transmitted to a fax number, on the third day after it is transmitted.

For the purpose of deadlines under this policy, if the CSU gives or serves a document multiple times, whether by different methods of delivery or the same method of delivery, the document is deemed to have been received on the first deemed receipt date.

### **1.04 Grounds for Reconsideration**

Pursuant to section 95(3) and (4) of the CCLA and section 30 of the *Cannabis Control Regulation* (CCR), a reconsideration is a review on the record and may only be based on one or more of the following grounds:

- new evidence, if the Director is satisfied that the new evidence:
  - is substantial and material to the reconsideration, and
  - did not exist when the Compliance Order was made, or did exist at that time but was not discovered and could not, through the exercise of reasonable diligence, have been discovered;
- a failure to observe the rules of procedural fairness; or
- an error of law other than an error of law respecting a constitutional question within the meaning of the *Administrative Tribunals Act*

### **1.05 Application for Reconsideration and Deadline**

Under section 95(5) of the CCLA, the Director must not accept an Application for Reconsideration unless the following requirements are met:

- (a) the application is submitted in the form and manner satisfactory to the Director;
- (b) the application identifies one or more grounds for reconsideration as outlined in section 1.04 above on which the application is based;
- (c) the application includes a submission setting out the applicant's argument with respect to the grounds for reconsideration identified under paragraph (b); and
- (d) the application meets the deadline outlined below.

The Director will only accept applications for reconsideration submitted on the CSU's Application for Reconsideration form.

In accordance with section 95(5)(d) of the CCLA, the deadline for submitting a completed Application for Reconsideration form to the CSU is 30 days after the date the Compliance Order was received. The Compliance Order is deemed to have been received in accordance with section 1.03 of this policy. The application must also include the \$500 fee discussed in section 1.06 of this policy.

Pursuant to section 95(6) of the CCLA, the Director may extend the 30-day deadline if special circumstances existed that prevented the applicant from meeting the deadline and an injustice would result if no extension were granted. These special circumstances and the injustice that would result should be clearly demonstrated in writing by the applicant on the Application for Reconsideration form. The Director will assess the request for an extension and make a decision as to whether to grant the extension or not. The Director will notify the applicant of their decision. If the Director determines that an extension should not be granted, the Director will provide written reasons.

If the CSU receives an incomplete Application for Reconsideration form, the CSU will contact the applicant to request that the form be completed as required. The CSU will give the applicant a new deadline for submitting the form. If the completed Application for Reconsideration form is not returned to the CSU by the applicable deadline, the reconsideration application will be deemed abandoned.

The Director will review the Application for Reconsideration form and supporting information in order to determine whether the grounds for reconsideration have been met, as set out in section 1.05 of this policy. The Director will make a decision on whether to accept the application or not and the applicant will be provided with written notice of the decision. If accepted, the CSU will also provide notice to the applicant of the date that the reconsideration hearing is scheduled to begin. Pursuant to s. 95(5)(c), the Application for Reconsideration must include a submission, and all submissions and evidence that the applicant wants the Director to consider should be included in the application. The Director may accept or request evidence and submissions after the date the application was submitted on a case-by-case basis.

If the Application for Reconsideration is not accepted, the Director will provide reasons.

### **1.06 Application Fee**

Pursuant to section 31 of the CCR, the fee for an Application for Reconsideration is \$500. The reconsideration application fee of \$500.00 must be received by the CSU with the application.

The CSU will not accept the applicant's Application for Reconsideration if the application fee is not received with the application. The application fee can be paid by credit card, certified cheque, or money order. Credit card payments can be paid through an Express Pay link on the CSU website. If payment is made by credit card, you must provide proof of payment by emailing [CSU@gov.bc.ca](mailto:CSU@gov.bc.ca) the payment confirmation page you receive with the transaction ID number.

Payment made by certified cheque or money order is payable to the Minister of Finance, sent c/o Community Safety Unit, to the address set out in section 1.09 of this policy.

The reconsideration application fee of \$500.00 is refundable only if the Compliance Order is rescinded by a Reconsideration Order.

### **1.07 Authorization of Representative**

If the applicant would like to be represented during the reconsideration hearing process or allow for the disclosure of their personal information to a third party, the applicant must sign and submit a properly executed Authorization of Representative form to the

CSU if the applicant has not already done so. If the applicant is an organization (e.g. a corporation, partnership, or society), the organization must submit an Authorization of Representative form to the CSU if it has not already done so.

If the Authorization of Representative form is incomplete or not properly executed by the applicant, the CSU will contact the applicant and request the necessary information and the correctly executed Authorization of Representative form. The Authorization of Representative form is available on the CSU website and may be emailed, faxed, or mailed to an applicant on request.

The Authorization of Representative form allows the CSU to communicate directly with, and to provide the decision regarding whether the application has been accepted, and the reconsideration hearing decision directly to, the representative. Wherever "the applicant" is mentioned in this policy, it should be read as "the representative" where the applicant has properly executed an Authorization of Representative form.

### **1.08 Applications that Involve Similar Questions**

If two or more applications for reconsideration before the Director involve the same, similar or related questions, the Director may do one or more of the following:

- (a) Combine the applications or any part of them,
- (b) Decide the applications, or any part of the applications, at the same time,
- (c) Decide the applications one after the other,
- (d) Stay one or more of the applications until after the determination of another one of them, or
- (e) Stay any one or more issues arising in any of the applications until after the determination of another issue.

Where the Director has stayed one or more applications under (d) or one or more issues in applications under (e), if the Director makes a decision that resolves an issue in an application that proceeds, the Director may treat that decision as determinative of the issue in the remaining applications.

The Director will notify an applicant if they decide to take any of the steps described in this section and will set out how the other procedures will be modified accordingly.

### **1.09 CSU Address for Delivery**

Documents must be sent by email to [csu@gov.bc.ca](mailto:csu@gov.bc.ca), by fax to 604-591-5611, or mailed to:

Community Safety Unit  
PO Box 9060  
Stn Main  
Surrey BC V3T 0N4

### **1.10 Decision Maker for Reconsideration Hearing**

The person conducting the reconsideration hearing will generally not be the same person that issued the Compliance Order.

### **1.11 Oral Hearings**

Upon request of the applicant, oral hearings may be granted where the Director determines it is necessary to ensure the applicant would not be prejudiced, including where:

- a) the applicant's mental or physical disability prevents them from making written submissions;
- b) there is a serious issue of credibility, the resolution of which is integral to the decision to be made and which cannot be adequately completed by written review; or
- c) the legal or factual issues are sufficiently complex that oral submissions would be beneficial.

An applicant may apply for an oral hearing by submitting an Application for an Oral Hearing form. The Application must be complete and provide submissions and supporting evidence (as required) for why an oral hearing should be granted. The Application for an Oral Hearing form must be submitted with the Application for Reconsideration form.

The Director will review the Application for an Oral Hearing and make a decision as to whether to grant the Application for an Oral Hearing or not. The Director will notify the applicant of their decision. If the Director determines that an oral hearing will not be granted, the Director will notify the applicant in writing with reasons.

## **1.12 Reconsideration Hearing**

Pursuant to section 95(3) of the CCLA, the reconsideration hearing is a review on the record. In other words, the Director will review the submissions, evidence, correspondence between the parties, and decision from the original hearing, as well as the new submissions and evidence, if any, provided in the reconsideration process.

### **a) Written Review**

Generally, the reconsideration hearing is conducted by written submission. The applicant will be notified in writing of the date that the Director's review is scheduled to begin. After the Director's review (on the record, as outlined above), the Director will provide a written decision with reasons to the applicant along with the Reconsideration Order.

### **b) Oral Hearing**

If the Director determines that an oral hearing is warranted, an oral hearing will be scheduled. The oral hearing will be conducted by teleconference and will generally be scheduled for not longer than one hour in length. The Director may require additional written submissions and evidence in advance of the oral hearing on a case-by-case basis.

The applicant will be notified of the date and time of the oral hearing. If there are exceptional circumstances that prevent an applicant from attending the scheduled oral hearing, the applicant may submit a request in writing for a rescheduled oral hearing. The request must be submitted 48 hours in advance of the scheduled hearing and contain reasons for why the applicant cannot be available at the date and time of the scheduled oral hearing. The Director will determine if the request is accepted and will notify the applicant of their decision.

The applicant will have 15 minutes from the time scheduled for the start of the hearing to attend. If the applicant does not attend the oral hearing, the Director will proceed with the hearing in the applicant's absence.

After the oral hearing, the Director may allow for supplementary written submissions and evidence on a case-by-case basis. The Director will provide a written decision with reasons to the applicant along with the Reconsideration Order.

### **1.13 Reconsideration Order**

The Reconsideration Order may confirm, vary, or rescind the Compliance Order that is subject of the reconsideration. A Compliance Order that is confirmed or varied is replaced with the Reconsideration Order. Under section 95(11) of the CCLA, the Reconsideration Order must:

- (a) be served on the applicant;
- (b) set out the reasons for making the order; and
- (c) when the order confirms or varies the monetary penalty, set out the amount of the penalty and the date by which the penalty must be paid.

Pursuant to section 95(12) of the CCLA, the monetary penalty on the Reconsideration Order must be paid within 30 calendar days after the date on which the person receives the Reconsideration Order, unless the Director has specified a longer period in the Reconsideration Order. The Reconsideration Order is deemed to have been received in accordance with section 1.03 of this policy.

### **1.14 Penalty Rescinded or Reduced**

Section 95 of the CCLA provides that:

- if the requirement to pay the monetary penalty under the Compliance Order is rescinded by a Reconsideration Order and the monetary penalty has been paid, the penalty must be refunded to the applicant from the consolidated revenue fund; and,
- if the amount of a monetary penalty imposed under a Compliance Order is reduced by a Reconsideration Order and the monetary penalty has been paid, the amount of the reduction must be refunded to the applicant from the consolidated revenue fund.

If either scenario is applicable, CSU will process a request for a refund and mail a cheque to the applicant.

### **1.15 Judicial Review**

Pursuant to section 126 of the CCLA, an application for judicial review of a decision of the Director must be commenced within 30 days after the date that the applicant received written notice of the Director's decision. The decision is deemed to be received in accordance with section 1.03 of this policy.