

**COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS
CITY HALL - 107 N. NEVADA AVE.
MARCH 10, 2010 – 1:00 P.M.**

The Liquor and Beer Licensing Board met in special called session.

There were present: Chairman Stephens, Ms. Abrams, Mr. Clauss, Mr. Kouba, Ms. Lloyd, Mr. Nemeth and Mr. Wright. Also present, Board Legal Advisor Marc Smith.

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Mr. Smith advised the Board relating to the proceedings of a Summary Suspension .

1. **Request for summary suspension of the Tavern Liquor License issued to Syn, Inc., dba Syn Night Club, 217 East Pikes Peak Avenue.**

City Prosecuting Attorney Anthony Moore entered his appearance on behalf of the City and stated as a result of a large disturbance that occurred on March 7, 2010, the City is requesting Summary Suspension of the license.

Attorney Damon Cassens entered his appearance on behalf of the licensee and stated he objects to the City Attorney prosecuting this matter on ethical grounds due to the dual roles of the City Attorney's Office.

Mr. Moore stated this is an emergency situation requiring emergency action and is not a Show Cause hearing but a request for Summary Suspension; that the situation at Syn is a concern of public health, safety and welfare; that this type of hearing can be done without notice as it is an emergency action and the City brought this forward immediately to request the Board suspend the license pending a hearing next week. He stated it is alleged pursuant to Liquor Code Regulation 47-900(A) that the licensee failed to conduct the premises in an orderly manner; that Mr. Cassens spoke regarding the lack of notice, however, the regulations and statutes specify a license can be summarily suspended without notice; that due process would require ultimately that a hearing occurred; that the licensee's opportunity to be heard is at the end of the hearing; that due to the fact that this is an expedited manner, the hearing should be limited to the evidence today.

Mr. Cassens stated it is true the City did not have to provide notice to him, but it is odd that notice was provided to the media.

Deputy City Attorney Wynetta Massey stated notice with regard to a request for summary suspension is a matter for the Prosecution Division; that the Municipal Division is responsible to ensure only that a public meeting notice be posted.

In response to questions from Mr. Moore:

Sergeant Joshua Benner was sworn and stated he is a member of the Police Department's COMMIT team; that much of the team's resources is dedicated to the establishment on Friday and Saturday evenings at the direction of his Commander. He stated they are responsible for

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identifying any type of gang activity at the premises and keeping the peace; that on March 7, 2010 at approximately 1:45 a.m., he observed a disturbance outside of the club, and it appeared the source of disturbance was inside of the club; that staff and patrons were coming out of the establishment with physical injuries; that a large number of people were congregating outside the club and a verbal altercation began; that he and other officers approached some of the people in the disturbance and another fight broke out; that other patrol units were dispatched and approximately 22 units arrived at the establishment. He stated once they got into the establishment, medical personnel were able to enter the club; that OC fogger spray was deployed to disperse the crowd; that a victim was laying on the floor of the establishment in a pool of blood; that four to six staff members were injured; that they were unable to make arrests because there was not a lot of information at the time the incident happened; that the incident was chaotic and police officers were unable to do their job to protect the citizens and render aid.

In response to questions from the Board, Sgt. Benner stated it appeared 200 to 300 persons were at the premises; that the COMMIT team has been present at the club on Friday and Saturday evenings since November, 2009.

In response to questions from Mr. Moore:

Jessica Kundert was sworn and stated she is a member of the COMMIT team; that she is familiar with visible signs associated with gang members and has observed gang members entering the Syn Night Club; that on March 6 and 7, 2010, she arrived shortly after the disturbance began; that based on the large number of people leaving the club, police officers were prevented from making entry into the club due to concerns for officer safety; that she spoke with two security staff of the establishment who indicated a large fight had broken out, but they were uncertain what caused the fight.

In response to questions from Mr. Moore:

Officer David Mork was sworn and stated he is a member of the COMMIT team; that he recognized and observed several known gang members at the establishment on that evening; that an OC fogger spray was deployed to disperse the crowd.

In response to questions from Mr. Moore:

Officer Brett McCulloch was sworn and stated he is a member of the COMMIT team; that when he went inside the premises on March 7, 2010, he spoke with a security staff member who said there were two rival rap groups in the club, and there had been gang talk all night.

In response to questions from Mr. Moore:

Detective Jeff True was sworn and stated he is responsible for liquor enforcement; that he has been in the club several times in the past couple years and observed a gang presence through the identification of clothing, speech, and hand signals; that he has never observed patrons with gang affiliation being turned away at the establishment, but has observed other establishments prohibit gang affiliated patrons.

Mr. Moore stated the City requests the Board take administrative notice that Syn Night Club is currently under an Order of the Board to have no violations from its past hearing in March,

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2009 and there are 60 days held in abeyance from that Order. He stated emergency action is necessary in light of the events that occurred March 6 and 7, 2010; that the Board has been presented with sufficient evidence to summarily suspend the license; that the Board is being asked to find that reasonable grounds exist to believe that the public health, safety and welfare demand the emergency action of a summary suspension; that evidence presented today shows a violation of Liquor Code Regulation 47-900(A), Conduct of Establishment occurred; that testimony indicated there was a regular gang presence in the nightclub and a reasonable licensee or agent should have gathered that a potentially explosive situation was developing; that the situation erupted into a large disturbance on March 7, 2010; that the licensee was on notice that this could happen based on prior occurrences in the area and the prevalence of gang presence; that the licensee failed to conduct the premises in a decent, orderly and respectable manner and permitted acts of disorderly conduct in violation of CRS 18-9-106; that the nature of the situation is a threat to public health, safety and welfare; that the licensee or its agents allowed or permitted gang affiliates to enter or remain on the premises; that a large disturbance occurred within the establishment and then moved outside; that the COMMIT team was assigned to the premises primarily on peak business hours to watch for gang crimes for the past few months detracting from enforcement elsewhere; that police officers were called to this location to assist with the disturbance removing them from their duties in the City. He stated the Board can request its Legal Advisor to prepare an Order of Findings and requested the a summary suspension for a 15 day period or until the date of the Show Cause hearing be issued.

Mr. Cassens stated the City is focusing its efforts on “permitted” which he defines as letting it go on and allowing it to happen; that the testimony has been abundantly clear that the club has done what it can to stop rowdiness from occurring inside the club; that employees of the club were injured trying to stop the disturbance, which is not permitting an act to occur, but trying to stop an act from occurring. He stated this is not the only club within the City having fights and disturbances, yet this is the only club before the Board; that it is alleged that everyone is allowed in the premises, however, the Police Department has information of suspected gang members and there is no indication the information was shared with the club staff or owners; that there is a bit of slippery slope, as closing the club will only cause the problems to shift elsewhere; that given there is a Show Cause hearing within the next 10 days, there is no imminent danger or harm and the evidence the City has presented is not at a level where the licensee should have income or property rights denied.

Mr. Moore stated the property right is limited as it is a revocable license subject to the City and State Codes and regulations under which it was initially issued; that the licensee permitted the situation to develop which then resulted in a full blown disturbance; that constructive knowledge is one way in which the licensee can be deemed to have permitted a particular act and constructive knowledge can be determined when a reasonable, prudent licensee or person can observe it. He stated the Board is asked today to determine whether there are reasonable grounds that the public health, safety and welfare may be affected; that this is an unusual level of violence in contrast to other establishments; that until the Show Cause hearing, it is a necessity for the public health, safety and welfare to determine the license should be summarily suspended.

Mr. Kouba stated he is concerned for the health, safety and welfare of the citizens of Colorado Springs and patrons of the establishment because this many police officers having to come to the site significantly reduced the public safety.

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Mr. Wright agreed with Mr. Kouba.

Mr. Clauss stated he does not believe the licensee controlled its establishment; that because of the statements made by security to the officers, they knew who was in the building and the potential risks associated with that.

Mr. Nemeth stated statements were made that it was the Police Department's responsibility to clean up or change the establishment, but it is the establishment's responsibility to control its own situation; that if the Police Department has to be called in then it is out of control; that it is a violation to lose control of your establishment and he supports summary suspension.

Ms. Lloyd stated the licensee should protect its establishment and the patrons of the establishment; that if patrons are thought to cause a disturbance, they should not be permitted inside; that it appears the licensee is permitting a climate of an unsafe environment for the patrons; that she supports a summary suspension based on the licensee's blatant disregard for the safety of the patrons and general safety and welfare of the community.

Ms. Abrams stated she feels a commitment to the citizens of the public to protect their health, safety and welfare and emergency action is warranted in this case.

Motion by Kouba that in accordance with Rule 20.0 of the Liquor and Beer Licensing Board Rules, and pursuant to State and City laws and regulations, the license should be summarily suspended; that there are grounds that the protection of the public health, safety and welfare imperatively requires emergency action necessitating the summary suspension of this license; that the suspension is a proper exercise of police powers of the City to ensure protection of the public health, safety and welfare of the people of the City of Colorado Springs; that the alleged violations of the proceeding constitute an immediate hazard and emergency action is necessary; that the Board Legal Advisor is directed to draft Findings and Conclusions consistent with the motion should it pass. The motion was seconded by Mr. Wright. The motion unanimously carried.

Motion by Kouba, that in accordance with the Findings and Conclusions supporting summary suspension, the licensee is required to immediately cease and desist all privileges of the establishment effective immediately until a suspension and revocation hearing takes place no later than 15 days from today; that a suspension/revocation hearing regarding the alleged violations shall take place before the Liquor and Beer Licensing Board on Friday, March 19, 2010 at 9:00 a.m. The motion was seconded by Mr. Wright. The motion unanimously carried.

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At 2:25 p.m., motion by Nemeth, second by Kouba, that the Board adjourn.

**Cindy N. Conway, CMC
Deputy City Clerk**