COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS
CITY HALL - 107 N. NEVADA AVE.
JULY 16, 2010 – 9:00 A.M.

The Liquor and Beer Licensing Board met in regular session.

There were present: Mr. Clauss, Ms. Abrams, Mr. Kouba. Ms. Lloyd, Mr. Nemeth and Mr. Wright. Absent, Chairman Stephens. In the absence of Chairman Stephens, Vice Chairman Nemeth presided. Also present, Acting Board Legal Advisor Wynetta Massey.

COMMUNICATIONS

1. There was no action taken on this item.

MINUTES

2. **Approval of the Minutes of the Board Meeting of June 18, 2010.**

Motion by Clauss, second by Abrams, that the Minutes of the Board meeting of June 18, 2010 be approved as written. The motion unanimously carried. Absent, Chairman Stephens.

NEW BUSINESS

3. **Election of Chair and Vice Chair of the Liquor and Beer Licensing Board.**

Motion by Kouba, second by Clauss, that Charles Stephens be elected Chair and Mike Nemeth be elected Vice Chair of the Liquor and Beer Licensing Board. The motion unanimously carried. Absent, Chairman Stephens.

CONSENT CALENDAR

4. The City Clerk's Office reports that Temporary Permits were issued for the following applications:

A-1. OTB Acquisition LLC
dba On The Border Mexican Grill & Cantina
7695 North Academy Boulevard

A-2. OTB Acquisition LLC
dba On The Border Mexican Grill & Cantina
2190 Southgate Road

A-3. OTB Acquisition LLC
dba On The Border Mexican Grill & Cantina
5832 Barnes Road

Motion by Lloyd, second by Kouba, that the Consent Calendar be approved. The motion unanimously carried. Absent, Chairman Stephens.

TRANSFER APPLICATION

5. **Application of Latin Fusion LLC dba Latin Fusion to transfer the Hotel and Restaurant Liquor License currently issued to Stevie B's LLC dba Stevie B's, 675 South Circle Drive.**

Attorney Gary Dailey entered his appearance on behalf of the applicant.

Fernando Ortiz, Sr. was sworn and stated the lease term is to December, 2012; that he is the sole member of the corporation; that he was previously employed by the Broadmoor Hotel for 10 years as the Food Service Supervisor; that he has operated with a Temporary Permit since April, 2010.

In response to a question from Mr. Wright, Mr. Ortiz stated his son, Fernando Ortiz, Jr., is the Manager, but he has no financial interest.

Motion by Kouba, second by Clauss, that the application of Latin Fusion LLC dba Latin Fusion to transfer the Hotel and Restaurant Liquor License currently issued to Stevie B's LLC dba Stevie B's, 675 South Circle Drive, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Chairman Stephens.

MODIFICATION OF THE PREMISES

6. **Application of Western Entertainment, Inc., dba Sodo to Modify the Premises where liquor is served at 527 South Tejon Street.**

Attorney Gary Dailey entered his appearance on behalf of the licensee.

Susan Duffy Schwall, Liquor Licensing Professionals, was sworn and stated her company conducted the petition survey which resulted in 82 favoring, 23 opposing, and 4 no opinion signatures.

John Gowing, Vice President, was sworn and stated this establishment has been in operation for four years; that the request is for a rooftop patio of approximately 1950 square feet; that two interior accesses will be provided to the rooftop with a 50 inch rail in the front and 6 foot in the back. He stated the bar staff is TIPS certified.

In response to a request from the Board, 13 persons stood in opposition to the proposed modification.

Rich Guy, property owner of 508-528 South Tejon; Teresa Florek, owner of Travel Inn Hotel, 512 South Tejon Street; Dan Miller, General Manager of Travel Inn Hotel, 512 South Tejon Street; Patricia Thompson, representative of Bank of Broadmoor, 501 South Tejon Street; Nolan Schriner, property owner of 508 South Tejon Street; Les Gruen, representative of Downtown Partnership, 6 South Tejon Street; Chuck Murphy, property owner of 622 and 811 South Tejon Street; Simon Penner, property owner of 517-523 South Tejon Street; Sam Cameron, property owner of 421 South Tejon Street; Anthony Gonzana, Coffee Exchange, 526 South Tejon Street; Sue Ecker, property owner of 602 South Tejon Street; Gary Feffer, Boys Club Manager/Member, 602 South Nevada Avenue; Cindy ____, representative of

McDivitt Law Firm, 19 East Cimarron; and Johnny Nolan, owner of Southside Johnny's, 528 South Tejon Street; spoke in opposition to the proposed modification citing the following concerns: violence on street after tavern closing hours; noise disrupts guests, businesses and residents of neighborhood; fights; trash in parking lots; vandalism of ATM's, drop boxes, and kiosks; broken windows; previous shooting on property from SODO clientele, adverse affect on neighborhood and businesses; multiple calls for service; has attempted to speak with licensee to no avail;

Sharon Briggs, 102 South Moreno and owner of building where SODO's is located spoke in support of the proposed modification, stating the licensee has been a good tenant.

Mr. Dailey stated the petition survey was favorable, and the owner has the right to use the business property.

Following discussion by the Board, it was moved by Clauss, seconded by Lloyd, that the application of Western Entertainment, Inc., dba Sodo to Modify the Premises where liquor is served at 527 South Tejon Street, be approved as it appears all criteria has been met.

Ayes: Clauss, Lloyd, Kouba
Noes: Abrams, Nemeth, Wright
Absent: Stephens

Vice Chairman Nemeth declared the motion failed on a tie vote.

APPLICATION HEARINGS

7. **Application of BJ's Restaurants, Inc. dba BJ's Restaurant & Brewhouse, for a Hotel and Restaurant Liquor License at 5150 North Nevada Avenue.**

Attorney Brian Proffitt entered his appearance on behalf of the applicant.

Carol Johnson, Equire Petitioning Services, was sworn and stated her company conducted a petition survey which resulted in 114 favoring, 5 opposing, and 2 no opinion signatures.

Joe Krebsbach was sworn and stated he has 12 years experience in the food and beverage industry and five years with this corporation; that all employees will be required to attend formal alcohol beverage training.

Motion by Kouba, second by Clauss, that the application of BJ's Restaurants, Inc. dba BJ's Restaurant & Brewhouse, for a Hotel and Restaurant Liquor License at 5150 North Nevada Avenue, be approved, as it appears all criteria has been met. The motion unanimously carried. Absent, Chairman Stephens.

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8. **Application of Rudy's Texas Bar-B-Q, LLC dba Rudy's "Country Store" & Bar-B-Q, for a 3.2% Beer On/Off Premises License at 315 South 31st Street.**

Attorney Brian Proffit entered his appearance on behalf of the applicant.

Carol Johnson, Equire Petitioning Services, was sworn and stated her company conducted a petition survey which resulted in 132 favoring, 8 opposing, and 2 no opinion signatures.

Glen Lott was sworn and stated he has been employed by the company for seven years; that this store opened June 2, 2010 and is the first one in Colorado; that there are approximately 90 employees; that the concept is food service with a gas station and convenience store; that all employees will be trained in the sale of alcohol beverages.

Motion by Clauss, second by Lloyd, that the application of Rudy's Texas Bar-B-Q, LLC dba Rudy's "Country Store" & Bar-B-Q, for a 3.2% Beer On/Off Premises License at 315 South 31st Street, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Chairman Stephens.

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9. **Application of E & C Enterprises, Inc. dba Rudy's Little Hideaway, for a Hotel and Restaurant Liquor License at 945 South 8th Street.**

Attorney Vince Linden entered his appearance on behalf of the applicant.

Rodolfo and Rebecca Escobedo were sworn.

Ms. Escobedo stated the restaurant serves breakfast and lunch daily with dinner served four nights per week; that $25,000 is being invested in the business; that all employees that will be serving alcohol have attended formal alcohol training.

Susan Duffy Schwall, Liquor Licensing Professionals, stated her company conducted the petition survey which resulted in 144 favoring, 3 opposing, and 0 no opinion signatures.

Mike Bonicelli was sworn and stated he is the landlord of the premises and is in support of the application.

Motion by Kouba, second by Clauss, that the application of E & C Enterprises, Inc. dba Rudy's Little Hideaway, for a Hotel and Restaurant Liquor License at 945 South 8th Street, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Chairman Stephens.

SUSPENSION/REVOCATION HEARINGS

Item Nos. 10 and 11 were taken out of order.

11. **Suspension/Revocation Hearing concerning the Hotel & Restaurant Liquor License issued to Las Palmitas 2 LLC dba Las Palmitas, 6805 Corporate Drive #110.**

City Prosecuting Attorney Kyle Sauer entered his appearance on behalf of the City.

Attorney John Sabo entered his appearance on behalf of the licensee.

Mr. Sauer stated a Stipulation has been reached in this matter; that the City requests Count 6 be withdrawn, and the licensee has admitted to the remaining Counts of violation. He stated

the proposed Stipulation provides the licensee will transfer the license in 60 days to a qualified applicant.

Mr. Kouba stated if the allegations are founded, he is not sure the licensee should receive financial profit by selling the business when it has this number and type of violations, rather than revoking the license.

Mr. Sabo stated the business has already been sold to another party.

The Board expressed concern in the license being transferred stating the licensee owner should not receive compensation for allegations and admission of guilt.

Upon further discussion, motion by Wright, second by Lloyd, that the Board accept the proposed Stipulation and Agreement.

Ayes: Clauss, Lloyd, Nemeth, Wright
Noes: Abrams, Kouba
Absent: Stephens

Vice Chairman Nemeth declared the motion carried.

Motion by Wright, second by Lloyd, that the Board adopt the Findings and Conclusions providing the license be transferred within 60 days to a qualified applicant.

Ayes: Clauss, Lloyd, Nemeth, Wright
Noes: Abrams, Kouba
Absent: Stephens

Vice Chairman Nemeth declared the motion carried.

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10. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to St. Claire Investments, Inc., dba Redstone, 414 West Fillmore Street.**

City Prosecuting Attorney Kyle Sauer entered his appearance on behalf of the City.

There was no one present to represent the licensee.

In response to a question from Mr. Sauer, Deputy City Clerk Cindy Conway was sworn and stated she attempted personal service to the licensee on July 2, 2010 as well as mailing the Show Cause Order via certified mail and first class.

In response to questions from Mr. Sauer:

Police Officer Mike Palmer was sworn and stated he was called to the establishment on March 8, 2010, relating to a disturbance; that he contacted two women in the parking lot and then went to the establishment door; that the establishment was closed but 8 to 12 persons were inside talking; that when he knocked on the door, the people inside turned around but then turned their back on him; that he then shined a flashlight, but the people continued to turn their

backs. He stated later in the day, he spoke with Heather, a bartender at the establishment and she said she was aware the Police Department had been there earlier and were refused entrance.

Detective Jeff True was sworn and stated on April 7, 2010, an informant under the age of 21 years was taken into the establishment and was able to purchase an alcohol beverage.

Exhibit No. 1, a photo copy of the underage informant, was submitted.

Exhibit No. 2, a copy of a compliance audit, was submitted.

Det. True stated when he served Andy Devlin for underage sale, Mr. Devlin told him he had invested $100,000 in the business, but preferred not to be listed on the paperwork. He stated the following day, he met with Dean Portnova, owner of record, and brought Mr. Devlin's statements to his attention; that when Mr. Devlin joined the conversation, he denied ever making the statement regarding his investment in the business and became agitated.

In response to a question from Ms. Abrams, Detective True stated it is his opinion that Mr. Portnova did not actively operate the establishment.

In response to questions from Mr. Sauer:

Liquor Enforcement Officer Russ Elliott was sworn and stated he accompanied the underage confidential informant into the establishment on April 7, 2010; that Mr. Devlin approached the informant and asked what he wanted, and then served a beer to the informant and walked off; that when Detective True came inside the establishment, Mr. Devlin made the comment that the informant had drank some of the beer, and he told him that wasn't true; that Mr. Devlin became irate and made the comment that he had just lost $100,000; that when he inquired if Mr. Devlin's name was on the license he replied no. He stated the following day, he went to the establishment with Detective True and served an Order to Produce books and records to Mr. Portnova who indicated Mr. Devlin was running the business; that Mr. Portnova also indicated that Mr. Devlin had modified the premises without his approval; that he said he did not actively manage the business; that he did not receive all the documents requested by the Order.

Exhibit No. 3, an Order to Produce, issued by the Colorado Department of Revenue, was submitted.

Exhibit Nos. 4 through 13, various documents submitted to the State following Order to Produce issued by the Colorado Department of Revenue, was submitted.

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Mr. Kouba and Ms. Lloyd were excused.

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Ms. Conway identified Exhibit Nos. 14 through 16, a transfer application, a renewal application and a Show Cause Order, which were submitted.

Mr. Sauer stated the City requests the Board find the licensee guilty of the following counts: Count 1, failure to permit peace officers to access or inspect the licensee premises, as testified to by Officer Palmer; Count 2 service of an alcohol beverage to an underage person, as testified to by Detective True and Officer Elliott; Count 3, permitting another person to exercise the privileges of a license, as testified to by Detective True and Officer Elliott; Count 4 failure to report a change of financial interest in the license, as testified to by Detective True and Officer Elliott; and Count 5 failure to produce all books and records requested by the State Licensing Authority, as testified to by Officer Elliott.

Motion by Clauss, second by Wright, that the licensee be found guilty of Counts 1 through 5 of the Order to Show Cause. The motion unanimously carried. Absent, Chairman Stephens, Mr. Kouba and Ms. Lloyd.

Mr. Sauer stated the City requests revocation of the Tavern Liquor License issued to St. Claire Investments, Inc., dba Redstone, 414 West Fillmore Street.

Motion by Clauss, second by Abrams, that the Tavern Liquor License issued to St. Claire Investments, Inc., dba Redstone, 414 West Fillmore Street, be revoked. The motion unanimously carried. Absent, Chairman Stephens, Mr. Kouba and Ms. Lloyd.

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At 2:20 p.m., motion by Wright, second by Clauss, that the Board adjourn.

Cindy N. Conway, CMC
Deputy City Clerk