

**COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS
CITY HALL - 107 N. NEVADA AVE.
AUGUST 13, 2010 – 9:00 A.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 Kenny Hodges.

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1. **Suspension/Revocation hearing concerning the Hotel and Restaurant Liquor License issued to Mayra Garcia dba Club Shots, 3958 North Academy Boulevard #112.**

Alex Garcia presented a copy of a Power of Attorney to the Board authorizing Erick Romero to act as a proxy and represent the licensee, Mayra Garcia in this matter.

Motion by Clauss, second by Kouba, that the hearing go forward today and that the Power of Attorney be accepted permitting Mr. Romero to act on behalf of Ms. Garcia in this matter. The motion unanimously carried.

Carina King, was sworn as interpreter for Erick Romero.

Erick Romero was sworn and through the interpreter stated Mayra Garcia is out of the country until August 24, 2010 and requests this matter be continued until that date.

In response to a question from Chairman Stephens, Board Legal Advisor Kenny Hodges stated granting a continuance today would in effect lift the current summary suspension which requires a Show Cause hearing be held within 15 days of a summary suspension.

In response to a question from Mr. Kouba, Mr. Hodges stated if the Board were to postpone this matter, it could not issue another summary suspension for these same charges.

City Prosecuting Attorney Kyle Sauer entered his appearance on behalf of the City and read the Show Cause allegations stating that individuals other than the owner have been operating the business without proper authorization; that there is no manager registered other than the owner; that no food was available on the premises; that the licensee failed to conduct the premises in a decent, orderly and respectable manner and permitted rowdiness or other disturbances or activities offensive to the average citizen; that marijuana consumption occurred on the premises; that on May 27, 2010 and July 29, 2010 disturbances occurred.

Mr. Romero through the interpreter requested the Board take into account the past history of the business operation; that there have been no previous violations.

In response to questions by Mr. Sauer:

Police Officer Rebecca Smith was sworn and stated she spoke to Francisco Quiroz who identified himself as manager and the owner's son, Alex Garcia; that she spoke to them regarding a concert scheduled to be held May 26, 2010 and provided various options to assist them with maintaining an orderly establishment to include instituting a dress code and hiring

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security officers to assist with crowd control, and Mr. Quiroz stated they intended to have approximately 10 security staff and would have more if necessary; that she was in the parking lot of the establishment on May 26, 2010 to watch for any disturbance and was at the establishment again July 9, 2010. She stated she has observed people flashing known gang colors; that there have been several calls for service to the establishment.

In response to questions from Mr. Sauer:

Detective Jeff True was sworn and stated he was at the establishment on May 26, 2010 due to knowledge that a rap concert was scheduled; that there were approximately 20 high top tables on the east and west side and a dance floor in the center of the establishment. He stated the premises were not consistent with a hotel and restaurant liquor license; that there were no menus or food available when he asked the waitress; that there appeared to be approximately six to eight security personnel; that the atmosphere of the establishment was more of a nightclub than a restaurant; that the place was noisy and people appeared to be wearing known gang color apparel; that he observed people smoking marijuana; that security and waitstaff did not stop any of the behavior. He stated because he was in an undercover capacity, no enforcement was pursued at the time. He stated Mr. Quinoz identified himself as manager; that he has reviewed the liquor license file and verified that Mayra Garcia is the owner and registered manager.

In response to questions from Mr. Sauer:

Police Officer Dan Mork was sworn and stated on May 26, 2010, he was on patrol at the establishment due to concerns of crowds at the rap concert; that he was also at the establishment July 9, 2010 when another concert was held; that he watched several people going in and out of the establishment and spoke with a man named Wade who identified himself as head of security.

In response to questions from Mr. Sauer:

Alcohol Tobacco and Firearms Supervisor Rob McCloy was sworn and stated he was at the establishment on July 29, 2010 and observed 30 to 40 individuals, after leaving the establishment, stand and bounce on top of vehicles. He stated hand signals were being displayed and blue bandannas were being waved. He stated he observed several fights begin and when the Police Department arrived people jumped in their vehicles and began to disperse; that the first fight he observed was approximately 60 to 70 feet from the establishment door.

In response to questions from Mr. Sauer:

State Liquor Enforcement Investigator Brian Osterhouse was sworn and stated on July 13, 2010, he issued a Subpoena to Produce Books and Records to Erick Romero who identified himself as Manager; that the Subpoena was issued due to concerns that the establishment may not be meeting the hotel and restaurant liquor license requirements; that while he was at the establishment, he inspected the refrigerators and freezers, but they did not contain any food which is in violation of the Liquor Code; that to date, no records have been provided by the licensee. He stated he was contacted by Ricardo Huerto who identified himself as the accountant for the licensee and requested an extension to provide the records until August 24, 2010 when the owner returned to the country.

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In response to questions from Mr. Sauer:

Deputy City Clerk Cindy Conway was sworn and identified the ownership of the license; history and name changes of the licensee.

In response to questions from Mr. Sauer:

Police Officer Jason Laurance was sworn and stated he was dispatched to the establishment on July 29, 2010 with Officer Reynolds due to a large disturbance; that upon arriving, he observed approximately 100 people involved in a disturbance in front of the establishment.

In response to questions from Mr. Sauer:

Police Officer Scott Hayden was sworn and stated he was dispatched to the establishment on July 29, 2010 due to a large disturbance; that he observed at least 200 persons and a large majority of them were fighting in front of the establishment; that several other police units arrived to assist; that the police officers tried to stay in a group for safety; that there were people wearing shirts indicating security and they were shining flashlights in the face of people; that a fogger was put in place to disperse the crowd.

In response to questions from Mr. Sauer:

Police Officer Melissa Reynolds was sworn and stated she was at the establishment at approximately 12:30 a.m., on July 29, 2010 after being called to service for two women fighting; that she observed several women fighting and one woman was arrested; that employees of the establishment requested police stay to assist with crowd control, but they explained they could not. She stated an employee of the establishment, Wade, indicated there were six security staff and approximately 500 patrons; that she left the establishment at approximately 1:15 a.m., and was called back to the establishment at about 1:15 a.m. due to a large disturbance; that several other police units were also dispatched to the establishment.

In response to a question from Mr. Kouba, Mr. Romero stated he was at the establishment on May 26, 2010, May 27, 2010 and July 9, 2010.

Mr. Romero stated on May 26, 2010, a fight occurred as the result of a dispute with the concert promoters and one of the employees of Club Shots who was telling others he was manager; that after that, Wade began working and told him to break off the concert contracts; that he believes the concert promoters were upset about the breaking of the contract and encouraged gang clientele to frequent the establishment; that food is available on the premises; that his sister, Mayra Garcia, has the documents requested by the Colorado Department of Revenue, but is unable to provide them since she is out of the country. He stated he thought the Police Department was available to assist with crowd control if necessary.

In response to a question from Mr. Kouba, Mr. Romero replied Mr. Quiroz was employed at the club on behalf of Stevie B's.

In response to a question from Mr. Clauss, Mr. Romero stated there are normally two security staff, but more are employed during concerts.

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In response to a question from Ms. Lloyd, Mr. Romero stated the restaurant is operated from 4:30 p.m. to 8:30 p.m.; that after 8:30 p.m., only snacks are available.

In response to questions from Mr. Sauer:

Detective True stated he has been to the establishment at least six times and the establishment has never been open between the hours of 4:30 p.m. and 8:30 p.m.; that signs on the building reference the operating hours of 9:00 p.m. to 2:00 a.m., that various advertisements also indicate the establishment opens at 9:00 p.m.

Mr. Sauer stated the licensee is operating as a club not a restaurant; that Mayra Garcia is listed as sole owner and manager of the establishment according to official files, but the licensee's son has admitted he is the manager of the establishment; that a Power of Attorney was never submitted to the City Clerk's Office identifying Erick Romero as her proxy; that the licensee failed to change the manager of the licensed premises in violation of CRS 12-47-301(8); that the licensee failed to serve meals on the licensed premises in violation of CRS 12-47-411(1)(a); that on May 27, 2010, the licensee failed to conduct the licensed premises in a decent, orderly and respective manner and permitted rowdiness or other disturbances or activity offensive to the senses of the average citizen in violation of Colorado Code of Regulations 1 CCR 203-2, Regulation 47-900(A), entitled Conduct of Establishment in that the licensee, its agents or employees knowingly permitted public consumption of marijuana to occur on the licensed premises in violation of CRS 18-18-406(3)(a)(I); that on July 29, 2010, the licensee failed to conduct the licensed premises in a decent, orderly and respective manner and permitted acts of disorderly conduct in violation of CRS 18-9-106, or permitted rowdiness or other disturbances or activity offensive to the senses of the average citizen in violation of Colorado Code of Regulations 1 CCR 203-2, Regulation 47-900(A), entitled Conduct of Establishment.

Mr. Romero stated these type of violations will not occur again; that there have been no previous violations at the establishment; that training will be taken to learn how to deal with patrons.

Mr. Kouba stated he believes the licensee is guilty of Counts 1 through 4.

Mr. Nemeth stated the licensee is responsible for following the laws; that food service was inconsistent to a restaurant license and it was testified to that the establishment is not open until 9:00 p.m.; that the licensee lost control of the establishment.

Chairman Stephens stated relating to Count 1, the licensee permitted several people to represent themselves as manager of the business without submitting the appropriate paperwork; that relating to Count 2, the licensee indicated it was open as a restaurant, but also testified the business is only open Fridays and Saturdays beginning at 9:00 p.m.; that relating to Count 3, marijuana was being consumed on the premises; that relating to Count 4, a disturbance occurred requiring the assistance of multiple police units and an officer was injured. He stated a business operating as a restaurant, does not typically have these problems.

Mr. Wright stated he concurs with the other board member comments that the licensee did not operate the premises in an orderly manner.

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Ms. Abrams stated relating to Count 1, the licensee is guilty of not submitting written notice to the licensing authority of manager's registration; that relating to Count 2, the licensee is guilty of not actually or regularly serving meals; that relating to Count 3, the licensee is guilty of permitting marijuana to be consumed; that relating to Count 4, she has concerns about conducting the licensed premises in a decent, orderly manner, but is weighing the parking lot disturbance, as it is not part of the licensed premises, and feels only the inside premises should be considered.

Ms. Lloyd stated it is clear that violations have occurred by Counts 1 through 4; that she is concerned that no records are being maintained; that the business does not appear to be operating as a restaurant; that it is a privilege to have a license and she does not believe the licensee has taken the responsibility seriously; that the licensee abused law enforcement due to its irresponsibility; that the business is not being operated in accordance with the liquor laws and regulations.

Motion by Kouba, second by Clauss, that the licensee is guilty of Counts 1 through 4 of the Show Cause Order. The motion unanimously carried.

Mr. Sauer stated the licensee has demonstrated a lack of ability to operate the business in accordance with law and the City requests revocation of the license.

Mr. Wright stated he supports the City's recommendation of revocation.

Ms. Abrams stated she feels revocation is extreme but agrees the licensee is guilty of the violations.

Mr. Kouba stated he supports revocation of the license; that the nature of charges present real and present danger to the community; that when police officers are having to deal with one disturbance, they are being taken away from their responsibility to work within the entire City.

Mr. Nemeth stated the control of the business was given up by the owner who is responsible for the operation; that a licensee is required to operate within the law.

Chairman Stephens stated he supports revocation.

Motion by Kouba, second by Wright, that the Hotel and Restaurant liquor license of Mayra Garcia dba Club Shots, 3958 North Academy Boulevard, #112, be revoked. The motion unanimously carried.

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At 1:05 p.m., motion by Kouba, second by Nemeth, that the Board adjourn.

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