

**COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS – CITY HALL
107 NORTH NEVADA AVENUE
JANUARY 4, 2013 – 9:00 A.M.**

The Liquor and Beer Licensing Board met in regular session.

There were present: Chairman Stephens, Mr. Clauss, Ms. Frias, Mr. Gorman, Ms. Holmes, and Mr. Nemeth. Members Absent: Mr. Davis. Also present: Board Legal Advisor Kyle Sauer.

COMMUNICATIONS

1. License Enforcement Officer Lee McRae stated that items 5, 10, and 11 are requesting to be called out of order.

MINUTES

2. Motion by Clauss, second by Frias, that the Minutes of the Board meeting of December 7, 2012 be approved as written. The motion unanimously carried. Absent, Mr. Davis.

CONSENT CALENDAR

3. The City Clerk's Office reports that boundaries were set and Temporary Permits were issued for the following applications:

A-1. Trinity Brewing Company dba Trintinty Brewing Company, 1466 Garden of the Gods Road:

North:	South side of Pinon Glen Circle extended
South:	North side of Chesham Circle extended
East:	West side of Holland Park Boulevard extended
West:	East side of Reserve Point extended

A-2. Triple Nickel Tavern, LLC dba Triple Nickel Tavern, LLC, 26 South Wahsatch Avenue:

North:	South side of E St Vrain Street extended
South:	North side of E Moreno Avenue extended
East:	West side of Arcadia Place extended
West:	East side of N Sierra Madre extended

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A-3. 7-Eleven, Inc. dba 7-Eleven Store 35338, 330 South Academy Boulevard:

North: South side of Regis Street extended
South: North side of Wentworth Drive extended
East: West side of Murray Boulevard extended
West: East side of Chelton Road extended

A-4. Sportz Skillz, LLC dba Sportz Skillz Gold & Tennis Center, 2456 Montebello Square Drive:

North: South side of Avalanche Heights extended
South: North side of Diablo Valley Court extended
East: West side of El Capitan Drive extended
West: East side of Mansfield Court extended

B-1. Hoosier Daddy, Inc. & 7-Eleven, Inc.
dba 7-Eleven Store 35610A
7692 Barnes Road

B-2. SFB Ventures, Inc. & 7-Eleven, Inc.
dba 7-Eleven Store 35600A
7718 E. Woodman Road

Motion by Frias, second by Nemeth, that the Consent Calendar be approved as written. The motion unanimously carried. Absent, Mr. Davis.

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5. **Request by Rocky Mountain Restaurant Group, Inc. dba Sonterra Innovative Southwest Grill to Modify the Premises of the Hotel and Restaurant Liquor License at 28 South Tejon Street, #B.**

Attorney Kent Freudenberg entered his appearance on behalf of the applicant and requested a continuance of this matter to the Liquor Board meeting of January 18, 2013.

Motion by Nemeth, second by Frias, that the item be postponed to the Liquor Board meeting of January 18, 2013. The motion unanimously carried. Absent, Mr. Davis.

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10. **Suspension/Revocation Hearing concerning the 3.2% Beer Off Premises License issued to DC Wallace, Inc., and 7-Eleven, Inc., dba 7-Eleven Store #32747B, 6025 Constitution Avenue.**

City Prosecuting Attorney Anthony Moore entered his appearance on behalf of the City.

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David Wallace, Co-Licensee and Franchisee, and Allen Young, Field Representative for Co-Licensee requested a continuance of this matter to the Liquor Board meeting of January 18, 2013.

Motion by Clauss, second by Frias, that the item be postponed to the Liquor Board meeting of January 18, 2013. The motion unanimously carried. Absent, Mr. Davis.

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11. **Suspension/Revocation Hearing concerning the Retail Liquor Store License issued to Cheyenne Trail Liquors, LLC dba Cheyenne Trail Liquors, 1703 South 8th Street.**

City Prosecuting Attorney Anthony Moore entered his appearance on behalf of the City.

Vince Linden entered his appearance on behalf of the licensee, and stated that the licensee admits to the violation as outlined in the Show Cause Order.

Motion by Clauss, second by Nemeth, that the Board accept the admission of violation for selling to a minor on December 7, 2012. The motion unanimously carried. Absent, Mr. Davis.

Mr. Linden stated that this is the 5th violation since 2009; that he requests that the Board allow the licensee to sell the business and transfer the license to a third party, and that the Board suspend the license for the maximum 180 days allowed, with revocation of the license if a qualified transfer is not accepted by that time; that the violations were all as results of sting operations; that systems were in place to require ID, however they were overridden by the employees; that the licensee understands and agrees that they may not be allowed to continue in business; that the licensee be given the opportunity to sell and transfer the business.

Mr. Moore stated that the City would not object to the proposal with the conditions that the licensee transfer the license to an unrelated applicant, that any financing of the new applicant not be held by the current licensee, and that as the current licensee also owns the property under a related entity, any future lease be at fair market value and not based on a percentage of profits.

Mr. Moore introduced a written definition of relative, marked as City Exhibit 1.

Dan Butler was sworn and stated that he is the manager and husband of the 100% owner of the business; that he was a co-owner and they have been in operation for 19 years; That there is currently approximately \$293,000 worth in fully paid for inventory; that he owns and has a mortgage on the building through a separate entity; that the POS system requires verification and the violations were willful by employees that were subsequently terminated; that he understands the consequences of those actions.

Mr. Linden introduced Licensee Exhibit A, Cheyenne Trail Liquors Sales Methods and Training, dated February 1, 2012.

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Patricia Butler was sworn and stated that she is the 100% owner of the business and that she acknowledges responsibility for the actions of the employees.

Ernie Ferguson was sworn and spoke on behalf of the good moral character of Dan and Patricia Butler.

Herbert Goldstein was sworn and stated that he has known the Butlers for several years; that he believes them to be of good character; that even though he is 81 years old, he has been carded at the store; that he feels the Butlers are victims of circumstances beyond their control.

Mr. Linden indicated that there are several more witnesses willing to testify on behalf of the licensee; that for whatever reason, the licensee has been unable to keep their employees from serving to minors, and recognizes that they should not be able to continue to operate, but should be allowed to sell the business and transfer the license to a new entity; that if the proposal is accepted, it would serve the purpose of the code and enforcement policies.

In response to questions from the Board, Mr. Linden confirmed that under his proposal, if the business is not sold and a new qualified applicant receive a temporary permit to transfer the license within the 180 days, the license would be revoked; that this licensee can no longer operate the business; that if a new qualified applicant is found and permitted within the 180 days, the suspension would cease.

Mr. Nemeth, Mr. Clauss, Chairman Stephens, and Mr. Gorman spoke in favor of the proposed penalty.

Motion by Clauss, second by Frias, that the Retail Liquor Store License issued to Cheyenne Trail Liquors, LLC dba Cheyenne Trail Liquors, 1703 South 8th Street, be suspended for 180 active days; that the Board allow a transfer of the license to a qualified applicant not related to the licensee; that said transfer applicant will be free and clear of any remaining active suspension days imposed against the current licensee; that said transfer applicant will be independently financed and not hold any promissory note or loan payable to the current licensee; that said transfer applicant's lease be based on fair market value and not profits from the business; and that should a qualified transfer application not be accepted prior to 180 days, the license will be revoked. The motion unanimously carried. Absent, Mr. Davis.

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TRANSFER APPLICATION

4. **Application of Claire's Pub & Grill, LLC dba Claire's Pub & Grill to transfer the Tavern Liquor License currently issued to Drake Hill Bar & Grill, 3840 North Nevada Avenue.**

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

Claire Bonfield-Kostura was sworn and stated that she is the 100% owner, sole member of the LLC, and manager of the business; that she has a lease for 5 years with option to renew for

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the 3250 square foot premises; that she has invested \$25,000 of which said funds were derived from \$10,000 in personal savings and a \$15,000 loan from the previous owner; that she purchased the business and assets from the prior licensee; that the four employees and herself have been or will be trained in alcohol service; that she has no criminal history and can operate the business according to law; that the premises includes a 33 foot by 9 foot patio; that security cameras and windows give a clear view of the patio and the entire premises.

In response to questions from the Board, Ms. Bonfield-Kostura stated that the hours are 10am to 2am, with juke box for musical entertainment; that the patio in front of the building is fenced; that the furniture and fixtures are included in the purchase price of \$25,000; that some purchases and fees since starting the business have required an additional \$25,000 investment, and that the application will be amended to reflect this additional investment.

Motion by Holmes, second by Nemeth, that the application of Claire's Pub & Grill, LLC dba Claire's Pub & Grill to transfer the Tavern Liquor License currently issued to Drake Hill Bar & Grill, 3840 North Nevada Avenue, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Davis.

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MODIFICATION OF THE PREMISES

5. **Request by Rocky Mountain Restaurant Group, Inc. dba Sonterra Innovative Southwest Grill to Modify the Premises of the Hotel and Restaurant Liquor License at 28 South Tejon Street, #B.**

See Action taken earlier in the meeting.

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APPLICATION HEARINGS

6. **Application of Firehouse BBQ & Sports Bar II, Inc. dba Firehouse BBQ & Sports Bar for a Hotel and Restaurant Liquor License at 6995 Lexington Street.**

Julie Johnson-Hoss was sworn and stated that she is the 100% owner and president of the business; that she also has an accounting and bookkeeping business; that she has a lease for 5 years for the 5097 square foot premises; that she is familiar with the Liquor Code; that she is investing \$23,000 of which said funds were derived from a loan from a relative.

Cheryl Botos was sworn and stated that she conducted the petition survey which resulted in 38 favoring, 0 opposing, and 0 no opinion signatures.

In response to questions from the Board, Ms. Johnson-Hoss stated that the landlord financed the build-out and is included in the lease; that the 31 foot by 54 foot patio would be for smoking and for now, no alcohol will be allowed on the patio; that there is a camera viewing the area; that the patio has a iron fence; that she was the accountant for the former Firehouse BBQ; that the anticipated 12 employees will have formal alcohol training.

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Motion by Clauss, second by Frias, that the application of Firehouse BBQ & Sports Bar II, Inc. dba Firehouse BBQ & Sports Bar for a Hotel and Restaurant Liquor License at 6995 Lexington Street, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Davis.

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7. **Application of Amanda's of Colorado Springs, LLC dba Amanda's Fonda for a Hotel and Restaurant Liquor License at 8050 North Academy Boulevard.**

Vince Linden entered his appearance on behalf of the applicant.

Thomas Reinhard was sworn and stated that he is a member and manager of the LLC; that he is 10% owner along with 80% ownership of his business partner, Rick Holland; that there are two other employees with less that 10% ownership interest; that there is a 10 year lease for the 4900 square foot premises which is also owned by a related entity; that neither he nor Mr. Holland, has any criminal convictions nor have they ever had a liquor code violation; that he and Mr. Holland also have ownership interests in other restaurants and casinos, including another Amanda's Fonda restaurant; that the capital contributions of approximately \$800,000 are derived from Mr. Holland's existing cash funds.

Kenneth Stewart, was sworn and stated that he is currently the manager at the existing location in El Paso County and will transfer his management to this new location when it opens; that the anticipated 50 employees will receive formal alcohol training prior to opening; that the 63 foot by 21 foot patio has a 4 foot high cinderblock retaining wall; that an amended diagram has been submitted to include a walkway to the side of the building for additional access the patio area.

Sue Duffy Schwall, Liquor Licensing Professionals, was sworn and stated her company conducted the petition survey which resulted in 137 favoring, 3 opposing, and 5 no opinion signatures.

In response to questions from the Board, Mr. Reinhard stated that the stucco wall surrounding the patio is four feet tall, and the wall around the walkway is six feet tall, that the area is covered by surveillance cameras and has only emergency exits.

Motion by Clauss, second by Frias, that the application of Amanda's of Colorado Springs, LLC dba Amanda's Fonda for a Hotel and Restaurant Liquor License at 8050 North Academy Boulevard, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Davis.

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8. **Application of Malkit Singh, Inc. dba LK Liquors for a Retail Liquor Store License at 3850 South Academy Boulevard, #120.**

Vince Linden entered his appearance on behalf of the applicant.

Milkit Singh was sworn and stated that he is the 100% owner, president, and manager of the business; that the lease for the 3360 square foot premises is valid for 5 years; that he has no criminal history; that he has invested \$75,000 of which said funds were derived from personal savings, and used for inventory; that the furniture and fixtures are included in the lease; that he is currently employed by Shell where he is the operating manager; that he has had no liquor code violations; that he has prior liquor store ownership experience in California; that he and the store employees have received formal alcohol training; that he will have 100% ID compliance.

Sue Duffy Schwall, Liquor Licensing Professionals, was sworn and stated her company conducted the petition survey which resulted in 153 favoring, 16 opposing, and 6 no opinion signatures.

In response to questions from the Board, Mr. Singh stated that the \$75,000 is for initial inventory stocking and will expand the inventory with credit; that the POS system requires an ID entry.

Motion by Clauss, second by Frias, that the application of Malkit Singh, Inc. dba LK Liquors for a Retail Liquor Store License at 3850 South Academy Boulevard, #120, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Davis.

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9. **Application of Davis Three, Inc. dba The Old School Bakery for a Hotel and Restaurant Liquor License at 1604 South Cascade Avenue.**

Attorney Michael Obernesser entered his appearance on behalf of the applicant.

Joseph Coleman was sworn and stated that he is the 100% owner and president; that he also owns other liquor licensed establishments in Colorado Springs; that he has no criminal history; that a prior violation in Boulder resulted in termination of the employee; that he is investing \$3.29 million of which said funds were derived from personal savings in the amount of \$180,000, and \$3.11 million loan from Ivywild School, Inc., a related entity, with a 20 year lease for the 9149 square foot premises.

Sue Duffy Schwall, Liquor Licensing Professionals, was sworn and stated her company conducted the petition survey which resulted in 164 favoring, 14 opposing, and 3 no opinion signatures.

In response to questions from the Board, Mr. Coleman stated that the bakery for his other licenses will be located in this premises; that a small bar area will be included, along with general food outlets; that the gymnasium area will also host community events; that the

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basement area will include areas for wine service for art classes; that he has zero tolerance for sales to minor and all employees will receive formal alcohol training; that the 25 foot by 40 foot patio is enclosed, with appropriate signage.

Motion by Clauss, second by Frias, that the application of Davis Three, Inc. dba The Old School Bakery for a Hotel and Restaurant Liquor License at 1604 South Cascade Avenue, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Davis.

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SUSPENSION/REVOICATION HEARING

10. **Suspension/Revocation Hearing concerning the 3.2% Beer Off Premises License issued to DC Wallace, Inc., and 7-Eleven, Inc., dba 7-Eleven Store #32747B, 6025 Constitution Avenue.**

See action taken earlier in the meeting.

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11. **Suspension/Revocation Hearing concerning the Retail Liquor Store License issued to Cheyenne Trail Liquors, LLC dba Cheyenne Trail Liquors, 1703 South 8th Street.**

See action taken earlier in the meeting.

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At 11:35 A.M., there being no further business, the

BOARD ADJOURNED

Lee McRae
License Enforcement Officer