COLORADO SPRINGS, COLORADO COUNCIL CHAMBERS – CITY HALL 107 NORTH NEVADA AVENUE DECEMBER 20, 2013 – 9:00 A.M.

The Liquor and Beer Licensing Board met in regular session.

There were present: Chairman Stephens, Mr. Clauss, Mr. Davis, Mr. Gorman, Ms. Holmes, and Mr. Nemeth. Members Absent: Ms. Frias. Also present: Board Legal Advisors Wynetta Massey and Lindsay Rose.

COMMUNICATIONS

1. There was no action taken on this item.

MINUTES

2. Motion by Holmes, second by Gorman, that the Minutes of the Board meeting of December 6, 2013 be approved as written. The motion unanimously carried. Absent: Frias.

CONSENT CALENDAR

- 3. The City Clerk's Office reports that boundaries were set for the following applications:
 - A. CSC Tavern, LLC dba CSC Tavern, 525 Juanita 6502 S. Academy Boulevard:

North: South side of Galley Road extended
South: North side of Garland Terrace extended
East: West side of Stanford Street extended
West: East side of Anderson Road extended

Motion by Gorman, second by Nemeth, that the Consent Calendar be approved. The motion unanimously carried. Absent: Frias.

CHANGE OF LOCATION

4. Application of Yi Enterprises, Inc. dba Austin Bluffs Plaza Liquor, for a Change of Location of its existing Retail Liquor Store License from 4150 Austin Bluffs Parkway to 4331 N. Academy Boulevard.

This item was postponed from the Liquor Board meeting of December 6, 2013, Item No. 7.

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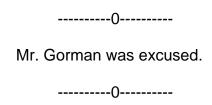
Attorney Frederick Wise entered his appearance on behalf of the applicant.

Chang Ho Yi was sworn and stated that he is the 100% owner and president of the corporation; that he and his wife have owned and operated this store at the existing location for more than 20 years; that the store is relocating about a block away in the same neighborhood; that he has a 10 year lease for the 3000 square foot premises; that he is investing approximately \$60,000 for the move, of which said funds were derived from existing company accounts; and that a petition left in the store for the current customer base to sign indicated those customers are in favor of the move and will shop at the new location.

Sue Duffy Schwall of Liquor Licensing Professionals was sworn and stated the company conducted the petition survey which resulted in 79 favoring, 4 opposing, and 4 no opinion signatures.

In response to questions from the Board, Mr. Wise stated that the petition left at the counter was for customer base survey and marketing purposes only; that it reflects more than 200 signatures all in favor of the change of location; that it is not being introduced as evidence of needs and desires of the neighborhood, as many of the customers who signed are from out of the neighborhood boundary area; and that the professional survey conducted by Liquor Licensing Professionals is the tendered proof of the needs and desires requirement.

Motion by Clauss, second by Nemeth, that the application of Yi Enterprises, Inc. dba Austin Bluffs Plaza Liquor, for a Change of Location of its existing Retail Liquor Store License from 4150 Austin Bluffs Parkway to 4331 N. Academy Boulevard, be approved as it appears all criteria has been met. The motion unanimously carried. Absent: Frias.



SUSPENSION/REVOCATION HEARING

5. <u>Suspension/Revocation Hearing concerning the Hotel and Restaurant Liquor License</u> issued to Yankee Cajun, LLC dba Nawlins Bar B Q, 3317 Cinema Point.

City Prosecuting Attorney Michael Curran entered his appearance on behalf of the City and stated that the City and the Licensee have reached a stipulated agreement regarding the Show Cause order that was issued to the licensee on December 4, 2013.

Mr. Edward Edwards, representing the licensee Yankee Cajun, LLC, stated that he would request a continuance of this matter in order to finalize an agreement with a potential purchaser of the business and to remain open through the holiday season.

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Mr. Curran stated that the city would object to any continuance; that the licensee has had ample time to secure legal assistance and prepare for the hearing; that there is a signed stipulated agreement whereby a continuance would be in violation of that agreement, and therefore the stipulation would be withdrawn by the City; that continuing the matter would allow an unlawful business to continue operating; and that the City is prepared to proceed to a full hearing today, should the stipulation be withdrawn or denied.

Mr. Clauss stated that if the stipulation is withdrawn and goes to a full hearing, a continuance for the licensee to obtain legal assistance may be entertained, however he would not support such a motion as the licensee has signed the stipulation and has had opportunity to get legal assistance.

Mr. Davis stated that the requested continuance is based solely on staying in business over the holidays, and not on the basis of seeking an attorney, and he would not support a continuance.

Chairman Stephens stated that he agrees that the request to stay in business is not a valid cause for continuance; that the Show Cause order stated explicitly that the licensee is entitled to have an attorney represent the licensee at the hearing; that the request is not in the nature of wanting time to seek legal representation; and that he would not support a continuance.

Mr. Nemeth stated that Mr. Edwards is alleged to be a person prohibited from holding and operating a liquor licensed establishment; that if that allegation is proven or stipulated to, the licensee should not be allowed to continue in operation and therefore the item should not be continued; and that the licensee could stay in business as a restaurant without a liquor license and could therefore stay in operation without a liquor license and retain employees through the holidays and until the business is sold.

Motion by Clauss, second by Nemeth, to deny the request by the licensee for a continuance. The motion unanimously carried. Absent: Frias, Gorman.

Mr. Edwards stated that his signing the stipulated agreement was a free and voluntary decision, and agrees with the stipulation as opposed to going to hearing.

Mr. Curran submitted the signed stipulated agreement reflecting an admission of violations as outlined in the Order to Show Cause for the licensee allowing another to exercise the rights and privileges of the liquor license, the failure to report a change in ownership and management, and that the licensee was owned by a person prohibited from holding a liquor license; that the agreement contemplates a 180 day suspension, with all 180 days active, with a condition that if the license is not successfully transferred to a qualified applicant not related to Mr. Edwards within that 180 days, the license would be revoked. Mr. Curran submitted a proposed Findings Conclusion and Order that mirrors the stipulated violations and penalty, and requested that Board accept the Stipulation and Admission of Violation and adopt the Findings Conclusion and Order as the written findings and order of the Board.

In response to questions from the Board, Mr. Curran stated that the licensee in this case is a Limited Liability Company (LLC), and that the current owner of that LLC as registered with

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the Colorado Secretary of State and through recorded purchase agreement is Mr. Edwards; that the liquor license is separately held by the LLC which could also have other business interests; that Mr. Edwards as owner of the business entity, therefore, has the authorization to enter into this agreement; that in fact this action today is a result of that unlawful ownership change; that the prior owners of the LLC have released any claim or ownership interest; and that with this stipulated agreement, any new qualified transfer applicant would not be eligible for a temporary permit, as the agreement specifies that the suspension will remain in place until any transfer is actually approved prior to the end of the 180 day suspension.

Chairman Stephens stated that under the circumstances of the admission and with consideration to prior Liquor Board actions, this agreement appears to be moderate and fair.

Motion by Clauss, second by Nemeth, that the Board accept the Stipulation and Admission of Violation as written. The motion unanimously carried. Absent: Frias, Gorman.

Motion by Davis, second by Nemeth that the written Findings Conclusion and Order be adopted by the Board, ordering one hundred and eighty (180) days suspension, with all 180 days active commencing on December 20, 2013 at 9:43 A.M., with a condition that if the license is not successfully transferred to a qualified applicant not related to Mr. Edwards within that 180 days, the license would be revoked, and that Edward Edwards be deemed a person prohibited from holding a liquor license. The motion unanimously carried. Absent: Frias, Gorman.

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At 9:47 A.M., there being no further business, the

BOARD ADJOURNED

Lee McRae License Enforcement Officer Office of the City Clerk