

**COLORADO SPRINGS, COLORADO  
COUNCIL CHAMBERS  
CITY HALL – 107 N. NEVADA AVENUE  
MARCH 20, 2009 – 9:00 A.M.**

The Board met in regular session.

There were present Chairman Turner, Ms. Abrams, Mr. Clauss, Mr. Kouba, Mr. Nemeth, Ms. Tarrant, and Mr. Wright. Also present, Board Legal Advisor Scott Patlin.

**MINUTES**

1. **Approval of the Minutes of the Board meeting of March 6, 2009.**

Motion by Tarrant, second by Wright, that the Minutes of the Board meeting of March 6, 2009, be approved as written. The motion unanimously carried.

**COMMUNICATIONS**

2. There was no action taken on this item.

**CONSENT CALENDAR**

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

- A-1. Application of NY Pizza, LLC dba Borriello Brothers NY Pizza, 5490 Powers Center Point #100:

North: South side of Heathrow Drive extended  
South: North side of Meadow Ridge Drive extended  
East: West side of Laredo Ridge Drive extended  
West: East side of Bluestem Lane extended

- A-2. Application of the Sunflower, Ltd., dba the Moonflower, 287 East Fountain Boulevard:

North: South side of Parkside Drive extended  
South: North side of Sorrento Drive extended  
East: West side of Franklin Drive extended  
West: East side of Glen Avenue extended

- A-3. Application of KSB, Inc., dba Kimball's Cinemas, 113 East Pikes Peak Avenue:

North: South side of East Saint Vrain Street extended  
South: North side of Michigan Avenue extended

## LIQUOR AND BEER LICENSING BOARD – MARCH 20, 2009

East: West side of North El Paso Street extended  
West: East side of El Encanto Drive extended

A-4. Application of Keum W, LLC dba Happy Landing Bar and Grill:

North: South side of Landmark Lane extended  
South: North side of Nina Court extended  
East: West side of Mountain Air Circle extended  
West: East side of Hunting Meadows Circle extended

B-1. Sabers, Anthors and Valkryies, LLC  
dba Meadow Muffins  
2432 West Colorado Avenue

B-2. Cheyenne Hotels, LLC  
dba Colorado Springs Airport Homewood Suites  
2875 Zeppelin Road

B-3. Shi Jung Yi  
dba Miyake  
3609 Austin Bluffs Parkway #16 and #17

B-4. Kohnami Sushi Restaurant, LLC  
dba Kohnami Sushi Restaurant  
7673 North Union Boulevard

### TRANSFER HEARINGS

4. **Application of Narayana Enterprise, Inc., and 7-Eleven Store 22684A, to transfer the 3.2% Retail Beer License, Off Premises Consumption Only, currently issued to 7-Eleven, Inc, dba 7-Eleven Store #22794, 1428 West Colorado Avenue.**

Attorney Alan Dill entered his appearance on behalf of the applicant and stated the corporation has a franchise agreement with 7-Eleven

Bindu Nair was sworn and stated her husband and she will operate the store; that she has attended formal alcohol training through 7-Eleven; that \$127,900 is being invested in the business of which said funds were derived from personal savings.

Motion by Tarrant, second by Wright, that the application of Narayana Enterprise, Inc., and 7-Eleven Store 22684A, to transfer the 3.2% Retail Beer License, Off Premises Consumption Only, currently issued to 7-Eleven, Inc, dba 7-Eleven Store #22794, 1428 West Colorado Avenue, be approved as it appears all criteria has been met. The motion unanimously carried.

LIQUOR AND BEER LICENSING BOARD – MARCH 20, 2009

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5. **Application of DCI Colorado Springs #1, Inc., dba Texas T-Bone, 2070 South Academy Boulevard to transfer the Hotel and Restaurant Liquor License currently issued to Miway, LP, dba Texas T-Bone, 2070 South Academy Boulevard.**

Dave Primmons, DCI President, was sworn and stated he has owned 30 steakhouses in the past and currently owns restaurants in Iowa and Nebraska; that he previously operated this restaurant 15 years ago and sold the business four years ago, however, the owner went bankrupt so he took over the restaurant and is reapplying for the license; that he is the sole owner and has invested \$50,000 in the business which was derived from personal funds; that the restaurant is approximately 6400 square feet and it is anticipated that alcohol sales will be less than 10%; that all employees receive in-house training.

Motion by Kouba, second by Wright, that the application of DCI Colorado Springs #1, Inc., dba Texas T-Bone, 2070 South Academy Boulevard to transfer the Hotel and Restaurant Liquor License currently issued to Miway, LP, dba Texas T-Bone, 2070 South Academy Boulevard, be approved, as it appears all criteria has been met. The motion unanimously carried.

**APPLICATION HEARING**

6. **Application of Blazin Wings, Inc., dba Buffalo Wild Wings Grill and Bar, for a Hotel and Restaurant Liquor License at 2905 Geyser Drive.**

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

Kelly Pietrs was sworn and stated her company conducted the petition survey which resulted in 148 favoring, 6 opposing, and 2 no opinion signatures.

License Enforcement Officer Milan Foster stated following an audit, 46 signature lines were incomplete resulting in 102 valid signatures.

Kandi Simmons, Corporate Regional Manager, was sworn and stated she has worked in the restaurant industry since 1991 and has been the Regional Manager for this corporation for 14 months; that she is responsible for five locations in Denver, one in Colorado Springs and 1 in Pueblo; that this is currently an empty site, however, the restaurant is anticipated to open in October or November, 2009; that the sports bar restaurant chain began in 1982 and there are currently 571 restaurants; that the kitchen is open during all business hours; that the corporation was charged with a violation in 2006 in Fort Collins, Colorado; that the establishment is approximately 5700 square feet and seats 306 persons; that a patio area will be surrounded by a three foot fence, cameras and door alarms. She stated \$2.2 Million is being invested in the business which was derived from corporate funds; that all employees will be trained in-house.

Motion by Wright, second by Tarrant, that the application of Blazin Wings, Inc., dba Buffalo Wild Wings Grill and Bar, for a Hotel and Restaurant Liquor License at 2905

## LIQUOR AND BEER LICENSING BOARD – MARCH 20, 2009

Geyser Drive, be approved as it appears all criteria has been met. The motion unanimously carried.

### SUSPENSION/REVOICATION HEARING

7. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to 13 Pure, Inc., dba 13 Pure, 217 East Pikes Peak Avenue.**

City Prosecuting Attorney Michelle Keller entered her appearance on behalf of the City and stated the Board will be presented with a video that was taken from Girls Gone Wild; that the City will prove 10 counts of Conduct of Establishment violations in violation of CRS 2.5.709(A)(3) and Regulation 47-900(E). She stated nine counts relate to exposure of the breasts and one count relates to caressing or fondling of the breasts.

Attorney Damon Cassens entered his appearance on behalf of the licensee. He cited the case of 2554 vs. City of Colorado Springs stating it places a higher standard by what the City is allowing live entertainment allows by Statute; that the detectives never asked the girls whether they were employees of Girls Gone Wild, 13 Pure or customers of the establishment.

In response to questions from Ms. Keller:

Sergeant Richard Duvall was sworn and stated he has been a Police Officer for 18 years and is currently assigned to Liquor Enforcement; that on August 13, 2008, he and other police officers went to 13 Pure at about 10:00 p.m. to ensure compliance with the Liquor Code; that they were aware Girls Gone Wild would be at the establishment; that he witnessed several instances of nudity on that evening; that he observed a cameraman approaching women and ask them to expose themselves; that the next day, August 14, 2008, a search warrant was requested and a video film was recovered at Mile High Saloon which has association with 13 Pure; that two camera crews were at the establishments both nights.

Exhibit 2, a video tape of Girls Gone Wild was presented.

Exhibit 3, a schematic plan of the establishment was presented.

Exhibit 4, a photograph of a girl exposing her breasts was presented.

In response to questions from Ms. Keller:

Detective Jeff True was sworn and stated he has been a Police Officer for 8 years; that he was at 13 Pure on the evening of August 13, 2008 where he observed a girl expose her breasts; that he took a picture of the girl on his camera phone.

Upon review of the security camera recording, he identified himself, the girl and a security employee at the establishment.

## LIQUOR AND BEER LICENSING BOARD – MARCH 20, 2009

Exhibit 9, a picture from Detective True's cell phone of the exposed girl was submitted.

Exhibit 10, a picture of a girl's hands indicating an "x" to show she was under 21 years of age was submitted.

### **The Board recessed for lunch from 12:30 p.m. to 1:30 p.m.**

In response to questions from Mr. Cassens:

Michael Laughlin was sworn and stated he arrived at the establishment on August 13, 2008 at approximately 8:00 p.m.; that he has no prior violations at the establishment; that Scott Coleman of his establishment contracted with Girls Gone Wild to attract business; that on that evening he met with his department heads to review security concerns and he conveyed that if any type of "flashing" went on, they were to put the parties outside the establishment; that he met with Girls Gone Wild staff and informed them that they were not to film any "flashing" of girls inside the establishment, but to take them outside; that he stayed at the establishment that evening alternating between outside and inside; that he did not view any flashing or nudity; that no employees or customers approached him with any concerns of nudity.

Exhibit A, a picture of the establishment was submitted.

Exhibits B, C, D, E, F, G, and H were submitted which presented various angles and views of the establishment and location where the Detectives, staff, security officers, and the girl in question to identify that the line of sight by the detectives may have been obstructed.

In response to questions from Mr. Cassens:

Mr. Laughlin stated he reviewed the tapes and listened to the testimony and does not believe there was any evidence that any of the alleged acts occurred with the staff's knowledge. He stated the doorman and one of the floor managers were terminated as he did not believe they were attentive enough to the establishment. He stated the capacity of the establishment is approximately 777 and on August 13, 2009, the cumulative total was approximately 850 to 870 people. He stated on the evening in question, the establishment was very busy and he would anticipate it was at capacity. He stated minors are permitted only in separate areas from customers 21 and over.

In response to questions from Ms. Keller, Mr. Laughlin stated his head employees were directed to prohibit any nudity in the bar; that Exhibits A and B were not taken on the night of the incident; that both he and the staff of Girls Gone Wild were responsible for ensuring there was no nudity.

In response to questions from Mr. Kouba, Mr. Laughlin stated approximately 20 staff and eight to 10 security personnel were working on August 13, 2009; that staff and security circulates through the establishment.

## LIQUOR AND BEER LICENSING BOARD – MARCH 20, 2009

In response to questions from Mr. Clauss, Mr. Laughlin stated he was not told by anyone that people were flashing.

In response to questions from Mr. Wright, Mr. Laughlin stated when Girls Gone Wild were in the establishment, he thought they were taking pictures for filler in the video.

In response to questions from Mr. Turner, Mr. Laughlin stated the downstairs area was not open on that evening.

In response to a question from Mr. Nemeth, Mr. Laughlin stated the total occupancy of 777 includes both the upstairs and downstairs; that he is uncertain what the upstairs capacity is separately. He stated two security personnel and two doormen were outside at the door of the establishment.

In response to questions from Mr. Nemeth, Mr. Laughlin stated after reviewing the video tape, he does not believe any of the staff was in a position to see the incidents occur and he does not feel he is responsible for any incidents he was not aware of.

In response to questions from Mr. Cassens:

Jacob Johnson was sworn and stated he is head doorman at 13 Pure; that on August 13, 2009, he arrived at the establishment approximately 7:00 p.m.; that upon his arrival he met with Michael Mullen and Stephen Black. He reviewed the rules with them telling them no forms of nudity was permitted and they should watch over the Girls Gone Wild crew to ensure there was no enticement of girls; that following that discussion, he went outside, met with the video crew and spoke with them regarding what would not be permitted; that he was never informed of any nudity occurring or the staff not stopping any potential violations; that the crew was filming throughout the establishment.

Mr. Kouba stated the establishment was very aware of what could happen since it was discussed at least a couple of times in the evening, and inquired why no one from the establishment was watching, and Mr. Johnson stated they had their own security and indicated they did not need anyone from the establishment.

In response to questions from Mr. Nemeth, Mr. Johnson responded he worked outside the majority of the night and never heard anyone encouraging the girls to “take it off”.

In response to questions from Mr. Cassens:

Lonnie Hall, Knight Investigations, was sworn and stated his company was responsible for security at the establishment; that he arrived at 10:00 p.m.; that he did not observe any nudity on that evening; that he was patrolling outside the club during the evening.

In response to questions from Ms. Keller:

Mr. Hall stated he does not recall being told anything different from the “business as usual” directions; that he was not told anything specific to watch for with Girls Gone Wild

## LIQUOR AND BEER LICENSING BOARD – MARCH 20, 2009

at the establishment. He stated he observed on occasion, girls going across the street with the cameraman to a Girls Gone Wild bus.

In response to questions from Mr. Cassens:

Nate Scherer was sworn and stated he is Manager of the establishment; that on August 13, 2008, he was a deejay at the establishment; that he arrived on that evening at approximately 9:00 that evening; that he did not observe any nudity; that he can see over the room from the booth if it is not too crowded; that since August, 2008, a large number of staff has been replaced.

In response to questions from Ms. Keller:

Mr. Scherer stated he was in the deejay booth on the evening in question; that he stayed in the booth all evening except for a break to go outside and get something to drink.

In response to a question from Mr. Nemeth, Mr. Scherer stated there was probably 20 to 30 people in the area where he was.

In response to a question from Ms. Tarrant, Mr. Scherer stated many of the employees were terminated for theft and insubordination.

In response to questions from Mr. Cassens:

Roman Chavez was sworn and stated he is a doorman at the establishment and was working on the evening of August 13, 2008; that he arrived at the establishment at approximately 8:45 p.m. and began his shift at 9:00 p.m.; that Mr. Johnson directed him to watch and ensure there was no nudity; that the video crew arrived at approximately 10:45 p.m.; that he did not follow the crew around as they were filming; that he was never informed of nudity in the establishment.

In response to questions from Mr. Wright, Mr. Chavez stated he did not observe any type of violations at the establishment; that he he was unaware of any police officers in the building.

In response to questions from Mr. Nemeth, Mr. Chavez stated no drinks are permitted in the underage area; that the establishment was crowded, but one could still navigate through the establishment.

Ms. Keller stated the conduct the Board has heard today is illegal and against the Liquor Code and the Board watched at least 10 counts of violations; that there are two possibilities, the licensee knew what was going on or he had no idea what was going on and either way, he did not follow through with his duty as a licensee; that even Mr. Laughlin's presence at the establishment did not stop the activities; that the employees also indicated they did not observe any violations and were informed prior to opening that evening, that it was business as usual; that Mr. Laughlin does not get to claim that the

## LIQUOR AND BEER LICENSING BOARD – MARCH 20, 2009

club was so crowded that he couldn't keep track of it; that Mr. Laughlin stated the girls videotaped were patrons of the establishment and did not indicate they were employees.

Mr. Cassens stated it is clear that Mr. Laughlin did not know what happened; that he met with both the employees and the Girls Gone Wild crew; that no employees of 13 Pure indicated they saw what was going on; that there is one video clip by an employee that shows him trying to see what is going on, but there is no other evidence that the establishment allowed the behavior. He stated if they are employees brought in under City Code Section 2.7.508 it is permitted and that is lawful activity; that other than that CCR 47-900(E) is the only relevant section and nothing in that ordinance says they violated any section of the City or State Codes; that the flashing occurred in no more than 20 seconds of 20 minutes. He stated many changes in personnel and procedures have been made since August 13.

Mr. Patlin stated CCR 47-900(B)(2) and (B)(3) appear to be the most applicable citations.

Ms. Abrams stated she is concerned about the holder of a liquor license pleading ignorance; that when applicants apply for a liquor license, they are asked if they have the ability to conduct the business according to law and she is not convinced that the licensee conducted business according to law.

Mr. Turner stated Mr. Laughlin admitted he made a mistake by contracting with Girls Gone Wild, but what happened is not excused by an apology; that it is the responsibility of the licensee to ensure nothing happens at the establishment and steps should have been taken to make sure it did not occur.

Ms. Tarrant stated the testimony does not reflect the acts did not happen, but that the owner was unaware it happened.

Mr. Kouba stated if the Board accepts the fact that the incidents occurred there are two plausible things occurred, one that the licensee saw it and did not do anything to stop it and the other is no one saw anything and if that is the case then the owner/agent of the licensee failed to maintain control of the establishment.

Mr. Nemeth stated he concurs with Mr. Kouba; that it does not appear that the licensee controlled the premises; that customers were chanting to encouragement for the girls to take it off and that too didn't stop any of the behavior; that while the licensee has indicated changes have been made to ensure no future violations, a bad choice was made.

Mr. Patlin stated City Code Section 2.5.708 is almost identical to CCR 47-900 where it defines what acts may not be allowed on the premises.

Motion by Kouba, second by Tarrant, that following review of the statutes and regulations and examination of the evidence, the Board find the licensee guilty of Counts 1 through 10. The motion unanimously carried.

## LIQUOR AND BEER LICENSING BOARD – MARCH 20, 2009

Ms. Keller stated she would request 30 days active suspension if the Board determines the licensee should be able to manage the establishment lawfully now; that if the Board does not feel the licensee can run the business in accordance with the law, it should move for revocation of the licensee.

Mr. Cassens stated the licensee takes responsibility that the violations occurred and should not have, but would request the Board note that there have been no violations at the establishment since it was opened by the licensee in December, 2007; that the majority of employees who worked at the time of the violations have been terminated; that Mr. Laughlin has not been before the Board in the past on any other violations; that they accept a penalty is to be paid, but request the Board make it reasonable to the consideration of possibly three days active suspension.

Mr. Turner stated he supports revocation of the license.

Mr. Nemeth stated he believes the licensee made a poor choice and would not support revocation; that he would support four weeks suspension, one week active and three weeks held in abeyance for one year pending future violations.

Mr. Kouba stated in spite of some of the testimony, the actions the club has taken since the violation occurred speak to more of what the Board expects of the licensee; that the changes in the establishment since the new ownership seems to be more positive, and he would support five weeks suspension, one week active and four weeks to be held in abeyance.

Ms. Abrams stated she is shocked by what she saw; that the licensee had only owned the business for eight months before he had a violation.

Mr. Clauss stated the licensee has the responsibility for the employees and the establishment; that he would not agree to a one week active suspension but at least two weeks active with four weeks held in abeyance.

Mr. Nemeth stated he believes two weeks active suspension is too severe for this type of infraction.

Ms. Tarrant stated a suspension of the liquor license would not prohibit the business from remaining open to serve food and allow music.

Ms. Tarrant stated she would support 10 days active suspension as long as it spanned two weekends.

Mr. Wright stated he would support 14 days active suspension; that it is a stiff penalty, but fair.

Mr. Turner stated while his instinct is to push for revocation, he would support giving the licensee a second chance; that he would not support less than two weeks active suspension.

**LIQUOR AND BEER LICENSING BOARD – MARCH 20, 2009**

Mr. Nemeth stated one week active suspension is adequate; that the time held in abeyance is leverage.

Ms. Abrams stated part of the penalty is the humility of the establishment to have to close the business without notification to the patrons. She would recommend starting a suspension today.

Ms. Cassens requested active suspension begin Thursday, March 26, 2009 at Midnight so that the employees can be notified.

Motion by Kouba, second by Abrams, that the Tavern Liquor License issued to 13 Pure, Inc., dba 13 Pure, 217 East Pikes Peak Avenue, be suspended 70 days, 10 days active and 60 days to be held in abeyance for a period of one year pending future violations; that suspension shall begin at 6:00 p.m., today, March 20, 2009 and end at 6:00 p.m., March 30, 2009. The motion unanimously carried.

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At 4:30 p.m., motion by Clauss, second by Nemeth, that the Board adjourn.

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