

**COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS
CITY HALL – 107 N. NEVADA AVENUE
NOVEMBER 4, 2011 – 9:00 A.M.**

The Liquor and Beer Licensing Board met in regular session.

There were present: Chairman Stephens, Mr. Bursell, Mr. Clauss, Ms. Frias, Mr. Kouba, Ms. Lloyd and Mr. Nemeth. Also present, Board Legal Advisor Kenny Hodges

COMMUNICATIONS

1. There were none.

MINUTES

2. Mr. Kouba requested page four, Item No. 7, South Nevada Liquor, of the October 7, 2011 Board minutes be amended to reflect the three days active suspension as Noon, October 7, 2011 to Noon, October 10, 2011; that the dates are incorrectly listed as Noon, October 7, 2011 to Noon, October 11, 2011.

Motion by Kouba, second by Bursell, that the Minutes of the Board meeting of October 7, 2011 be approved as written and corrected.

Motion by Kouba, second by Bursell, that the Minutes of the Board meeting of October 21, 2011 be approved as written.

CONSENT CALENDAR

3. The City Clerk's Office reported that boundaries were set for the following application:
A-1. BLC – Village at Skyline, LLC, dba Village at Skyline, 2365 Patriot Heights:

North: South side of Baltimore Circle extended
South: North side of Electra Drive extended
East: West side of 21st Street extended
West: East side of 26th Street extended

Motion by Lloyd, second by Frias, that the Consent Calendar be approved. The motion unanimously carried.

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Chairman Stephens was excused.
In the absence of Chairman Stephens, Vice-Chairman Nemeth presided.

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TRANSFER APPLICATIONS

4. **Application of Calvin Management, Inc. dba Uncle Guido's, to transfer the Hotel and Restaurant Liquor License currently issued to 1ST D.C. Ltd. dba Uncle Guido's, 811 Cheyenne Meadows Road.**

Colleen Calvin, was sworn and stated she is sole owner and member; that she has invested \$90,241.08 of which said funds were derived from a retirement account in the amount of \$89,241.08 and personal savings in the amount of \$1,000. She stated the lease term is two years; that the establishment is 2291 square feet with a seating capacity of 107; that the patio area is 16' x 36'. She stated she and the employees have attended formal alcohol training.

Motion by Kouba, second by Lloyd, that the application of Calvin Management, Inc. dba Uncle Guido's, to transfer the Hotel and Restaurant Liquor License currently issued to 1ST D.C. Ltd. dba Uncle Guido's, 811 Cheyenne Meadows Road, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Chairman Stephens.

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Chairman Stephens returned.

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5. **Application of Jemm, LLC, dba Yukon Tavern, to transfer the Hotel and Restaurant Liquor License currently issued to Double C Holdings Inc. dba Yukon Tavern, 525 South Circle Drive.**

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

Eddie Leon, sole owner and member of the corporation, was sworn and stated he is investing \$30,000 in the business of which said funds were derived from personal savings; that the lease term is six years; that the establishment is 4853 square feet and seats 85 persons. He stated there is a 10' x 20' patio area; that he and the employees have attended formal alcohol training. He stated when he first began operating the business under a Temporary Permit, he received a violation for not posting the licenses and for having a bottle of alcohol smaller than the 750 ml required pursuant to state law.

Motion by Clauss, second by Frias, that the application of Jemm, LLC, dba Yukon Tavern, to transfer the Hotel and Restaurant Liquor License currently issued to Double C Holdings Inc. dba Yukon Tavern, 525 South Circle Drive, be approved as it appears all criteria has been met. The motion unanimously carried.

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6. **Application of Lind and Cunningham, LLC, dba Stadium Bar & Grill, to transfer the Hotel and Restaurant Liquor License currently issued to Alrimi Inc., dba The Indigo Bar & Grill, 6120 Barnes Road.**

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Lawrence Lind and Todd Cunningham, co-owners were sworn.

Mr. Lind stated he has no criminal history; that the lease term is 10 years; that \$100,000 is being invested in the business of which said funds were derived from the personal savings of Mr. Cunningham and himself in the amount of \$50,000 each.

Mr. Cunningham stated he has been in the restaurant industry approximately 14 years; that he is knowledgeable of the Liquor Code; that all employees will attend formal alcohol training; that he will manage the establishment; that the establishment is 4724 square feet and seats 168 persons; that there are two patio areas.

Motion by Bursell, second by Frias, that the application of Lind and Cunningham, LLC dba Stadium Bar & Grill, to transfer the Hotel and Restaurant Liquor License currently issued to Alrimi, Inc., dba The Indigo Bar & Grill, 6120 Barnes Road, be approved as it appears all criteria has been met. The motion unanimously carried.

APPLICATION HEARING

7. **Application of El Rey Liquor, LLC, dba El Rey Liquor LLC, for a Retail Liquor Store License at 3746 East Pikes Peak Avenue.**

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

Mina Anderson was sworn as interpreter for the applicant.

Reynaldo Arzate was sworn and stated through the interpreter he is sole owner of the business; that he is investing \$80,000 in the business of which said funds were derived from a promissory note in the amount of \$70,000 and \$10,000 from personal savings and line of credit. He stated the lease term is seven years and the store is approximately 1300 square feet; that while he has no previous experience in the sale of alcohol, he has attended formal training and is familiar with the Liquor Code. He stated the premises was previously operated as Guzman's Liquor store which license was revoked; that he purchased the alcohol from that store during an auction, but understands that alcohol may not be sold at this store; that he has no association with the prior owner.

Oscar Ornelas was sworn and stated he is landlord of the premises and owns the business adjacent to the store; that he has known Mr. Arzate for several years and believes he is of good moral character.

Susan Duffy Schwall, Liquor Licensing Professionals, was sworn and stated her company conducted the petition survey which resulted in 138 favoring, 12 opposing, and 4 no opinion signatures.

Motion by Clauss, second by Frias, that the application of El Rey Liquor, LLC dba El Rey Liquor LLC, for a Retail Liquor Store License at 3746 East Pikes Peak Avenue, be approved as it appears all criteria has been met. The motion unanimously carried.

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SUSPENSION/REVOCAION HEARINGS

8. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Redd Horse LLC, dba Redd Horse, 2030 South Academy Boulevard.**

City Prosecuting Attorney Jamie Smith entered her appearance on behalf of the City and stated a Stipulation has been reached in this matter; that the licensee admits guilt to sale of alcohol to a minor confidential informant on June 4, 2011. She stated the Stipulation provides five days suspension of which all five days will be held in abeyance for a period of one year pending future violations. She stated a warning letter was sent to the licensee and returned as a denial of the violation.

Adelaide Isaac, licensee, was sworn and stated she agrees to the proposed Stipulation.

Motion by Kouba, second by Nemeth, that the Stipulation and Admission of Violation be accepted. The motion unanimously carried.

Motion by Kouba, second by Nemeth, that the Findings and Conclusions be adopted providing five days suspension of which all five days will be held in abeyance for one year pending future violations. The motion unanimously carried.

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9. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Western Entertainment, Inc. dba SODO, 527 South Tejon Street.**

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

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

Mr. Sauer stated there were originally two counts, one for removal of alcohol from the licensed premises and one for conduct of establishment, false information which is being withdrawn. He stated the charge before the Board today is that the licensee permitted removal of an alcohol beverage from the premises in contravention of CRS 12-47-412(1) and CCR 203-2, Regulation 47-918; that on June 11, 2011, two male patrons were observed leaving the establishment and one carried a bottle beer outside past two employees.

Mr. Linden stated today's case is not about a patron leaving the establishment, but about "permitting" the removal of alcohol. He stated the Board today, will determine if the patron was "permitted" to leave the premises.

In response to questions from Mr. Sauer:

Police Officer Jason Newton was sworn and stated he was assigned to downtown enforcement on June 11, 2011. He described on a diagram where he was located when he observed a man carrying a Michelob Ultra beer bottle outside the establishment; that when the employees did not approach the man, he made contact with him; that the man stated he was not from Colorado, and was unaware he could not leave the establishment with the beer. He stated

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when he spoke with staff, he was told they did not sell that brand of beer, so he called the establishment and spoke to another staff member who told him they did sale that brand. He stated when he took the bottle of beer from the man he also was given the receipt from the purchase of the beer indicating the beer was purchased approximately one-half hour earlier.

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Chairman Stephens was excused.
In the absence of Chairman Stephens, Vice-Chairman Nemeth presided.

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In response to questions from the Board:

Officer Newton stated several people were waiting outside the door of the premises on that evening; that staff appears to consistently monitor the door; that he did not immediately approach the man to allow staff an opportunity to take the alcohol from the man.

In response to questions from Mr. Linden:

John Gowing, corporate member, was sworn and stated he was at the establishment on June 11, 2011. He identified on a diagram, submitted as Exhibit 1, where staff members are normally stationed at the establishment; that there are cameras both inside and outside the premises. He described various photos of the establishment, sidewalk and patio area, which were submitted as Exhibits 1 - 13. He answered questions relating to security measures practiced by the establishment and stated they always cooperate with the Police Department; that he does not recall staff notifying him about a patron leaving the establishment with alcohol; that the security camera recording is erased after about 30-45 days, so he was unable to view it because he did not receive the Show Cause until October 12, 2011.

In response to questions from Mr. Sauer:

Mr. Gowing stated he was working near the front door on the night in question; that he is able to view customers entering and exiting the establishment; that there are normally three staff members monitoring the door on the weekends; that on June 11, 2011, Tim Evans who is responsible for security, left the front door to speak to the officers, leaving himself and another staff member near the entrance.

In response to a question from Mr. Linden, Mr. Gowing stated all servers are required to attend formal alcohol training.

In response to question from Mr. Clauss, Mr. Gowing stated the seating capacity is 388; that there is typically 10 staff working on the weekend, three at the front door, one at the back door and the remainder throughout the establishment.

In response to a question from Mr. Bursell, Mr. Gowing stated Mr. Evans always checks in with the Police Officers if they stop at the establishment; that there were approximately 100 persons outside the establishment that evening waiting to enter.

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In response to a question from Ms. Lloyd, Mr. Gowing stated on occasion, patrons attempt to bring alcohol into the premises. He stated his staff works with the Police Department in an effort to keep each other informed of any situations or concerns.

In response to a question from Mr. Linden, Mr. Gowing stated he regularly attends meetings with the Police Department and other downtown taverns, and tries to foster a cooperative relationship with them.

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Ms. Frias was excused.

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In response to questions from Mr. Linden:

Tim Evans was sworn and stated part of his job is to oversee security at the establishment; that on the evening of June 11, 2011, he walked down the sidewalk to speak with the Police Officers when they observed a patron with a beer; that the Police Officers took the bottle of beer, handed it to him, and he poured it out. He stated he originally told the Police Officers they did not carry that brand of beer which he later retracted.

In response to questions from Mr. Sauer:

Mr. Evans stated if he had observed the patron leaving the establishment with a beer, he would have stopped him and taken the beer away; that there are normally two employees at the door on the weekends.

In response to questions from the Board, Officer Newton stated after writing the incident report, he forwarded it to VNI; that he did not issue a citation to the licensee.

Mr. Sauer stated the licensee was charged with a violation of Colorado Liquor Regulation 47-918 relating to removal of alcohol beverages from the premises; that the licensee indicated two staff members were at the door, however both were distracted with other responsibilities. He stated Officer Newton said he gave an opportunity for the staff to correct the action prior to him approaching the patron; that while the licensee did not have "actual knowledge", it had "constructive knowledge" which means that one practicing reasonable diligence or reasonable care should have known. He stated if employees are distracted by other responsibilities and do not notice a patron who walks past them with a beer, they are not exercising reasonable care; that Mr. Evans indicated one of his duties was to watch the door, however, he left his post and did not exercise reasonable care by not informing his co-workers he was leaving the front door; that the licensee had constructive knowledge through himself and the employees.

Mr. Linden stated the dispute is not to the violation but to the applicability of the law; that there is no evidence that the licensee "permitted" the activity; that the licensee was not aware of, involved or permitted the act to occur; that failure to prevent without acquiesce is not "permitted".

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Mr. Sauer stated a licensee has significant responsibilities, and the license they have been granted is a privilege; that the Board's decision should be based on whether the licensee was exercising reasonable care and diligence in order to determine whether the licensee committed a violation.

Mr. Bursell stated he does not find the charge supported; that the staff member in charge of the door was momentarily distracted and had the officer not been present, the removal of alcohol may not have occurred; that it does not appear the employees permitted the act, but appears they acted reasonably with due diligence.

Mr. Kouba stated he disagrees; that a licensee is responsible to know and enforce the liquor laws at their establishment; that it appears there was constructive knowledge, as a licensee is responsible for being aware and watching to ensure the laws are not broken; that if acquiesce was accepted as an argument, there would be a number of unenforceable liquor laws; that while he would not support much of a penalty, it appears the violation occurred.

Mr. Clauss stated if the licensee is found guilty of the violation, he thinks the penalty should be minimal.

Mr. Kouba stated the environment was such that the infraction was allowed to happen through constructive knowledge; that if the Board determines a violation occurred then the penalty phase can be weighed, but they are separate issues.

Mr. Nemeth stated "permitting" is "knowingly allowing", and it appears the licensee did not have knowledge it happened; that permitted is a vague word, and while the violation may have occurred, it was not permitted.

Board Legal Advisor Hodges stated "constructive knowledge" is whether the licensee should have known through reasonable diligence.

Motion by Bursell, second by Clauss that the licensee is not guilty of the removal of an alcohol beverage from the premises, as listed on the Show Cause.

Ayes: Bursell, Clauss, Lloyd, Nemeth
Noes: Kouba
Absent: Frias, Stephens

Vice Chairman Nemeth declared the motion carried.

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At 2:40 p.m., the Board adjourned.



Cindy Conway, CMC
Interim City Clerk