

**COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS – CITY HALL
107 NORTH NEVADA AVENUE
DECEMBER 7, 2012 – 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, and Mr. Nemeth. Members Absent: Mr. Davis. Also present: Board Legal Advisor Kyle Sauer.

COMMUNICATIONS

1. There was no action taken on this item.

MINUTES

2. Motion by Clauss, second by Frias, that the Minutes of the Board meeting of November 16, 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. Tony's Place, LLC dba Tony's, 326 North Tejon Street:

North: South side of Cache La Poudre Street extended
South: North side of Cucharras Street extended
East: West side of El Paso Street extended
West: East side of Walnut Street extended

A-2. Gardner-Lanza, Inc. dba Tee's Sports Bar & Grill, 2593 Airport Road:

North: South side of Pikes Peak Avenue extended
South: North side of Fountain Boulevard extended
East: West side of Brentwood Drive extended
West: East side of Stewart Place extended

A-3. Amanda's of Colorado Springs, LLC dba Amanda's Fonda, 8050 North Academy Boulevard:

North: South side of Research Parkway extended
South: North side of Fuller Road extended
East: West side of Grashio Drive extended
West: East side of Interstate 25 extended

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- B-1. Claire's Pub & Grill, LLC
dba Claire's Pub & Grill
3840 North Nevada Avenue
- B-2. Savannah's Bar & Grill, LLC
dba Savannah's Bar & Grill
2510 East Bijou Street

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

TRANSFER APPLICATION

- 4. **Application of Nidan, Inc. dba Mighty Culture Sports Bar & Grill, to transfer the Hotel and Restaurant Liquor License currently issued to Florentino Hernandez Mateo dba Tino's Place Restaurant & Bar, 2351-2361 Platte Place.**

Daniel Osafo Harrison was sworn and stated that he is the 100% owner and President of the business; that the lease term is for three years; that he is investing \$38,000 of which said funds were derived from personal savings.

In response to questions from the Board, Mr. Harrison stated that the 2808 square foot premise seats approximately 70 seats; that the lease is also for a future expansion and modification; that the current patio is 8' foot by 17', but is not currently fenced; that the patio will not be used until a fence is built; that the future modification will include an addition to the patio, an additional unit, and the basement; that he and all the current employees will receive formal alcohol training.

Motion by Kouba, second by Frias, that the application of Nidan, Inc. dba Mighty Culture Sports Bar & Grill, to transfer the Hotel and Restaurant Liquor License currently issued to Florentino Hernandez Mateo dba Tino's Place Restaurant & Bar, 2351-2361 Platte Place, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Davis.

APPLICATION HEARINGS

- 5. **Application of Kum & Go, LC dba Kum & Go #672 for a 3.2% Beer Off Premises License at 3025 Hancock Expressway.**

Carol Johnson, Esquire Petitioning, was sworn and stated her company conducted the petition survey which resulted in 164 favoring, 8 opposing, and 4 no opinion signatures.

Kelly Wisbrock, District Supervisor, was sworn and stated she has been employed by the company 14 years and acting supervisor for the last five years; that she has attended formal

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training multiple times, and has also attended training conducted by the Colorado Department of Revenue; that all 20 employees will be required to attend corporate in-house training; that the company owns all the properties and buildings and leases the 4928 square foot premises to the related applicant entity; that the company owns 440 stores in 10 states, including 45 operations in Colorado; that approximately \$3.5 Million is being invested in this store, of which said funds were derived from corporate funds. She stated each location will have a registered manager responsible for all inventory of the store; and that the registers are programmed to require information be entered from identification cards before a beer sale can be transacted.

Motion by Clauss, second by Frias, that the application of Kum & Go, LC dba Kum & Go #672 for a 3.2% Beer Off Premises License at 3025 Hancock Expressway, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Davis.

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Mr. Clauss was excused.

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6. **Application of Young Lee Beverages, LLC dba Liquor at Pine Creek for a Retail Liquor Store License at 9420 Briar Village Point, Suite D-140.**

Attorney Kent Freudenberg entered his appearance on behalf of the applicant.

Sue Duffy Schwall, Liquor Licensing Professionals, was sworn and stated her company conducted the petition survey which resulted in 128 favoring, 23 opposing, and 8 no opinion signatures; that there are no similar businesses in the neighborhood boundary area.

Young Lee was sworn and stated that he is the 100% owner and manager of the business; that he has a 10 year lease for the 3500 square foot premises; that he has invested \$100,000 all of which said funds were derived from personal savings; that he is familiar with the Liquor Code and has received formal alcohol training for himself and the all employees.

Motion by Bursell, second by Frias, that the application of Young Lee Beverages, LLC dba Liquor at Pine Creek for a Retail Liquor Store License at 9420 Briar Village Point, Suite D-140, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Davis.

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Mr. Clauss returned.

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SUSPENSION/REVOCACTION HEARING

7. **Suspension/Revocation Hearing concerning the Retail Liquor Store License issued to Empire Liquors, Inc. dba Empire Liquors, 3381 North Academy Boulevard.**

City Prosecuting Attorney Jamie Smith entered her appearance on behalf of the City, and stated that there is a stipulated agreement in this matter, with an admission of the violation and proposed 110 days of active suspension in accordance with recommended penalties as set forth in Colorado Code of Regulations; that the 110 days held in abeyance from the March 3, 2012 suspension action would be imposed; that with the three prior documented violations and previous Board action, the City and the licensee have agreed that this penalty along with a proposed revocation upon any further violation within one year is reasonable and an appropriate action for the Board to take.

Attorney Damon Cassens entered his appearance on behalf of the licensee and stated that the agreement as outlined by Ms. Smith is correct.

Mr. Kouba stated that he believes the proposed penalty should include new active time as well as imposing of the 110 days currently held in abeyance, and could not support the stipulation as written.

Mr. Cassens stated that the licensee is well aware of the seriousness of the violations and with the suspension falling during the peak sales holiday season, the proposed penalty would have significant impact on the business; that the employee that sold to the minors in the previous violations had been terminated; that the employee that sold to the minor in this violation is present and is family friend; that the licensee is evaluating the possibility of getting out of the business, but will also install an ID scanner.

Chairman Stephens stated that given the history of violations, he is more open to revocation than suspension of the license.

Mr. Bursell stated that the recommended penalties outlined in the Colorado Code of Regulations are not mandatory.

In response to questions from the Board, Ms. Smith stated that a fine in lieu of suspension is not applicable in this case, as there were previous violations; that as there is an agreement tendered there were no witnesses subpoenaed and should the Board reject the stipulated agreement, the City is not prepared to proceed today with a show cause hearing; that the City would be ready at the next Board meeting date of December 21, 2012.

Mr. Cassens stated that the licensee also is not ready to proceed today, but would be by the next meeting date.

Joseph Sarai stated that he is the son of the owner of the business; that they restructured the management after the previous violations; that the employment of those employees that sold to the minors has been terminated; that they intend to purchase and install a 100% compliance scanner to prohibit any sales without valid ID.

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Mr. Clauss stated that he would not support the agreement and to move forward with a full hearing.

Chairman Stephens stated that given the discussion and revocation held in abeyance, he would support the adoption of the stipulated agreement.

Mr. Nemeth stated that he would support the agreement; that 110 days suspension over the holidays along with a revocation on future violation is appropriate.

In response to questions from the Board, Mr. Cassens stated that should another violation occur within one year, the revocation of the license would mean a total loss of the business, including inventory; that he has discussed the option of selling or transferring the business with the licensee.

Motion by Nemeth, Second by Bursell, that the Stipulation and Agreement be accepted and the Findings and Conclusion be adopted, providing for 110 days active suspension from the previous abeyance; that the suspension shall begin at Noon, December 7, 2012 and continue for 110 consecutive days; that the Licensee agrees to stipulate to Revocation of the liquor license should another violation occur within one year from this date.

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

Chairman Stephens declared the motion carried.

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At 10:28 A.M., there being no further business, the

BOARD ADJOURNED

Lee McRae
License Enforcement Officer