

**COLORADO SPRINGS, COLORADO  
COUNCIL CHAMBERS – CITY HALL  
107 NORTH NEVADA AVENUE  
APRIL 19, 2013 – 9:00 A.M.**

The Liquor and Beer Licensing Board met in regular session.

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

**COMMUNICATIONS**

1. There was no action taken on this item.

**MINUTES**

2. Motion by Holmes, second by Clauss, that the Minutes of the Board meeting of April 5, 2013 be approved as written. The motion unanimously carried. Absent: Frias, Gorman, Nemeth.

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**TRANSFER APPLICATION**

3. **Application of Livin' The Dream, LLC dba Bricks Sports Bar & Grill to transfer the Tavern Liquor License currently issued to K&G Enterprises, Inc. dba Studebaker's Bar & Grill, 1840 N. Academy Boulevard.**

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

Kevin Howard was sworn and stated that he is the 100% owner/member of the LLC; that he has a 5 year lease for the 5400 square foot premises; that he has invested \$80,000, of which said funds were derived from a personal loan from his father's company; that four of the six employees were retained from the prior licensee, and that he and all employees have received certified training; that the licensed premises is being transferred as is for now, and will be requesting the addition of a patio at a future date; that the premises are monitored by a camera surveillance system; and that an ID checking system is utilized.

In response to questions from the Board, Mr. Howard stated that there will be live entertainment; and that there will not be door security, however all staff will monitor the premises and ID customers.

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Motion by Holmes, second by Clauss, that the application of Livin' The Dream, LLC dba Bricks Sports Bar & Grill to transfer the Tavern Liquor License currently issued to K&G Enterprises, Inc. dba Studebaker's Bar & Grill, 1840 N. Academy Boulevard, be approved as it appears all criteria has been met. The motion unanimously carried. Absent: Frias, Gorman, Nemeth.

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**MODIFICATION OF THE PREMISES**

4. **Request by Phantom Canyon Brewing Company dba Phantom Canyon Brewing Company to Modify the Premises of the Brew Pub Liquor License at 2 East Pikes Peak Avenue.**

Lee Driscoll was sworn and stated that he is the Chairman and CEO of the parent company of the applicant, Breckenridge-Wynkoop, LLC; that the business is constructing an addition to the building to expand the brewery, add seating for the restaurant where the brewery currently exists, and to add an outdoor patio area on the second floor above the new brewery area.

Larry Lucero, Liquor Licensing Professionals, was sworn and stated the company conducted the petition survey which resulted in 68 favoring, 0 opposing, and 1 no opinion signatures.

Charles Murphy was sworn and stated that he is a business owner in the neighborhood, and spoke in favor of the modification request; that he is also the contractor for the expansion and the premises as outlined in Exhibits 1 and 2 has passed zoning and regional building department requirements.

Anthony Leahy was sworn and stated that he owns a business in the defined neighborhood and spoke in favor of the application.

David Anderson was sworn and stated that he is a business owner in the defined neighborhood and spoke in favor of the application.

Mr. Driscoll stated that possession of the building and the additional 1380 square foot patio addition is by a current lease valid through 2018 with the parent company as landlord and owner of the premises; that the project will cost approximately \$1 million, of which said funds are derived from existing corporate accounts and lines of credit; that the patio on the second floor will be surrounded by a fenced railing; that all employees have received certified training for alcohol beverage service; and that live music will only be allowed on the patio during special events.

Michelle Palmquist was sworn and stated that the survey did include opinions of the downtown residents.

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Motion by Clauss, second by Davis, that the Request by Phantom Canyon Brewing Company dba Phantom Canyon Brewing Company to Modify the Premises of the Brew Pub Liquor License at 2 East Pikes Peak Avenue, be approved as it appears all criteria has been met. The motion unanimously carried. Absent: Frias, Gorman, Nemeth.

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**NEW APPLICATION HEARINGS**

5. **Application of Kum & Go, LC dba Kum & Go #673 for a 3.2% Beer Off Premises License at 620 East Fillmore Street.**

Carol Johnson, Esquire Petitioning, was sworn and stated her company conducted the petition survey which resulted in 142 favoring, 14 opposing, and 7 no opinion signatures.

Kelly Wisbrock, District Supervisor, was sworn and stated that she has been employed by the company 14 years and acting as supervisor for the last five years; that she has attended formal training multiple times, and has also attended training conducted by the Colorado Department of Revenue; that all employees will be required to attend training; that the company owns the properties and buildings; that there are currently 46 operations in Colorado holding beer licenses; that approximately \$4 Million is being invested in this store, of which said funds were derived from existing corporate accounts; that 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 Holmes, second by Clauss, that the Application of Kum & Go, LC dba Kum & Go #673 for a 3.2% Beer Off Premises License at 620 East Fillmore Street, be approved as it appears all criteria has been met. The motion unanimously carried. Absent: Frias, Gorman, Nemeth.

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6. **Application of Elivate Art Gallery & Event Center, LLC dba Elivate Art Gallery & Event Center for an Art Gallery Permit at 2308 E. Platte Avenue.**

Telesforo Barrara, Jr. was sworn and stated that he is the 100% owner and member of the applicant LLC; that he understands the required complimentary service of alcohol; that the premises diagram is essentially the same as the former Wagon Wheel night club; that he wants to serve those complimentary alcohol beverages 15 days a year for art showings; that he will collaborate with artists and amend the requested dates and times as necessary with the required notice; that the presence of pool and poker tables, a dance floor, and being an event center will make his business unique; that he has updated the business Facebook page to include art prices and description from a night club to an art gallery and coffee

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lounge; that he has invoices to show art purchases and has approximately 60 pieces of art available for sale; that he is waiting to contact more artists until he receives a liquor permit; that he will act as a DJ for the events; that he would also use the facility for recording studio and event center when he is not in operation as an art gallery; that he desires to rent out the facility for other organizations on days that he has not requested the permit use; that he has a one year lease for the 4800 square foot premises; that he has attended certified training in the past; and that he will have someone to check IDs at the door and at the bar, and have employees on the floor to monitor the consumption of alcohol.

In response to questions from the Board, Mr. Barrera stated that he is in the process of obtaining a food service license and intends to serve meals in the future; that the art will be displayed in various set ups as the art event requires as the booths can be moved; that his revised first service date would be in early June; that he has no previous experience in the art gallery business; that he currently has a written agreement with one artist for commission sales; that operating as an art gallery is one of many desired purposes for the business; that he would limit the service to two mixed drinks or three malt beverage to each attendee; that he applied for an Art Gallery Permit instead of a full liquor license as a trial period to see if he wanted to pursue a full liquor license; that all of the furniture and dancer pole can be removed for art events; that he feels the service of alcohol under this permit would be a primary attractant for future art display and sales; and that he currently has no employees, but two individuals will be assisting on a volunteer basis.

City Prosecuting Attorney Brian Stewart entered his appearance on behalf of the City, and stated that the City has filed a written objection to this application and issuance of the permit.

In response to questions from Mr. Stewart, Mr. Barrera stated that he has not advertised the Art Gallery and Event Center other than word of mouth or social media; that he has updated the Facebook pages to list Art Gallery and Coffee House from the previous descriptions of a night club; that he does not recall posting a twitter feed advertising a "bring your own beverage" to an event at the premises.

Mr. Stewart requested admittance of City exhibits 1 and 2 showing Facebook and Twitter account activities.

License Enforcement Officer Lee McRae was sworn and stated that he is familiar with the Art Gallery Permit; that the permit is available for businesses whose primary purpose is that of an art gallery, and who desire to serve complimentary alcohol beverages for a maximum of 15 days per year; that he had several conversations with Mr. Barrera regarding the types of permits for various businesses; that he had to reject the permit application a couple of times due to being incomplete; that he informed Mr. Barrera that this type of permit was not to be used for a front to avoid the expense and public process of a typical liquor license; that when he instructed Mr. Barrera that there could be no charge for the alcohol, Mr. Barrera asked how he was to make money; that the application was brought to the Board in order for due process for the applicant and make record of findings should the application be denied and appealed to District Court; that this business model appears to be more applicable to a different type of liquor license, and does not appear to meet the required criteria for an Art Gallery Permit; and that during the investigation, he had observed the Facebook Page on

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several occasions which appeared to promote and advertise the business multiple purposes and not primarily as an Art Gallery.

In response to questions from the Board, Mr. McRae stated that this is the first permit application of this type that the City has ever received; that it is different than a permanent Arts License to serve and sell liquor; that the permitted 4 hours per days could extend past midnight for a single day, but no later than 2:00 A.M.; that the notice of objection was served on the applicant on the 9<sup>th</sup> of April, 2013.

Mr. Stewart asked that the board take administrative notice of the objection of the application.

VNI Detective Nicholas Bayne was sworn and stated that he conducted a background and application investigation, and found comments on social media that the then described night club was applying for a liquor license and would be back in business soon, as well as advertising a "byob" event at the premises; that he conducted an inspection and saw pool table, poker table, dance pole and other amusements more typical of a tavern or bar; that Mr. Barrera stated to him that he was waiting for his license before he opened for business and that in the meantime he was allowing private events to use the space; and that the premises did not have the look or the feel of an Art Gallery, nor was the business open or in operation as an Art Gallery.

Mr. Barrera entered his objection to the admission of City Exhibit 2 and Chairman Stephens overruled the objection.

Mr. Barrera stated that the cover charge discussion was a misunderstanding, and that he is aware he cannot charge any cover charge; that his experience in the alcohol service industry gives him the knowledge to provide complimentary beverages at a very low cost; that he has no previous experience in the display of sale of art, but was an art student; and that his proposed hours of operation would be amended based on the actual event requirements.

Mr. Clauss stated that while he understands the desire for an innovative business model, he feels that, based on the amount of evidence contradicting the primary use as an Art Gallery, this business does not meet the requirements of an Art Gallery Permit, but could be better suited with an alternate license type to meet the desired model.

Mr. Davis stated he feels the applicant has not established that this business has a primary use as an Art Gallery.

Ms. Holmes stated that this business model does not appear to be in compliance with the requirements for this type of permit, but that this business model could certainly work with other license types.

Chairman Stephens stated that it appears the premises is not intended primarily as an Art Gallery as required, but only for the 15 requested days, and that the rest of the year would be used for many other purposes.

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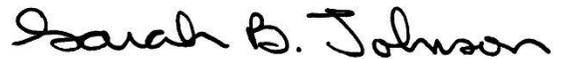
Motion by Davis, second by Clauss, that the Application of Elivate Art Gallery & Event Center, LLC dba Elivate Art Gallery & Event Center for an Art Gallery Permit at 2308 E. Platte Avenue, be denied, as the applicant has failed to demonstrate that the primary purpose of the establishment is to exhibit and offer for sale works of fine art or precious or semiprecious metals or stones.

Chairman Stephens declared the motion unanimously carried and the application is denied.  
Absent: Frias, Gorman, Nemeth.

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At 11:12 A.M., there being no further business, the

BOARD ADJOURNED



Sarah B. Johnson  
City Clerk