



City of Colorado Springs

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

Meeting Minutes - Final Liquor and Beer Licensing Board

Friday, November 21, 2014

9:00 AM

City Council Chambers

1. Call to Order

Chairman Kouba called the meeting to order at 9:02 A.M., opened the meeting as a regular session, and stated that a quorum was present with Board Members Davis and Gorman being absent.

Present 5 - Mark Clauss, Dianne Holmes, Gregory Howard, Randall Kouba, and Charles J. Stephens

Absent 2 - Logan Davis, and Joseph Gorman

2. Minutes

- 2.A. [M2014-11-07](#) Approval of the Minutes of the Liquor Board meeting of November 7, 2014.

Attachments: [2014-11-07 Liquor Board Meeting Minutes](#)

Motion by Howard, seconded by Stephens, that the Minutes of the Liquor Board meeting of November 7, 2014 be approved as written. The motion passed by a vote of:

Yes: 5 - Clauss, Holmes, Howard, Kouba, and Stephens

Absent: 2 - Davis, and Gorman

3. Communications

There was no action on this item.

4. Neighborhood Boundary Consent Calendar

- 4.A. [B-28636](#) 2 South, LTD d/b/a 2 South, for a new Hotel and Restaurant Liquor License at 2 S. 25th Street.

Attachments: [B-28636 - 2 South - Liquor Survey Boundary](#)

Approval of the Neighborhood Boundary Consent Calendar

Motion by Stephens, seconded by Holmes, that all matters on the Consent Calendar be approved. The motion passed by a vote of:

Yes: 5 - Clauss, Holmes, Howard, Kouba, and Stephens

Absent: 2 - Davis, and Gorman

5. Transfer Application Hearings

- 5.A. [T-722240](#) Application of MDD Bassi, Inc. d/b/a United Wine and Liquor to transfer the Retail Liquor Store License currently issued to United Wine and Liquor, LLC d/b/a United Wine and Liquor at 5752 N. Academy Boulevard.

Attachments: [T-722240 - United Wine and Liquor](#)

Attorney Vince Linden entered his appearance on behalf of the applicant, and requested a postponement of this item to the Liquor Board meeting of December 5, 2014, in order to secure a foreign language interpreter.

Motion by Clauss, seconded by Holmes, that this item be postponed the the Liquor Board meeting of December 5, 2014. The motion passed by a vote of:

Yes: 5 - Clauss, Holmes, Howard, Kouba, and Stephens

Absent: 2 - Davis, and Gorman

6. Modification of the Premises

- 6.A. [M-721440](#) Application of Sage Eleven Portfolio, LLC d/b/a Hyatt House Colorado Springs to modify the premises of the Tavern Liquor License at 5805 Delmonico Drive.

Attachments: [M-721440 - Hyatt House Colorado Springs](#)

Nick Kelley was sworn and stated that he is the General Manager of this location. Mr. Kelley requested postponement to the Liquor Board meeting of December 5, 2014, in order to gather the needs and desires of the neighborhood for this Modification of Premises.

Motion by Clauss, seconded by Stephens, that this item be postponed to the Liquor Board meeting of December 5, 2014. The motion passed by a vote of:

Yes: 5 - Clauss, Holmes, Howard, Kouba, and Stephens

Absent: 2 - Davis, and Gorman

7. New Application Hearings

- 7.A. [N-28557](#) Application of Tusca Enterprises, LLC d/b/a Duca's Neapolitan Pizza for a new Beer and Wine License at 236 E. Cheyenne Mountain Boulevard.

Attachments: [N-28557 - Duca's Neapolitan Pizza](#)

Anthony Duca was sworn and stated that he is the 50% owner of the business. Mr. Duca testified to the elements required for a new Beer and Wine license, and answered questions from the Board

Michelle Long was sworn and stated that she conducted a survey petition of the defined neighborhood, which was very limited due to another company

already having previously surveyed the neighborhood, and resulted in one favoring, no opposing, and one no opinion signature.

The City Clerk's Office presented its audit of the survey petition which resulted in no variance to the signatures submitted.

Motion by Stephens, seconded by Clauss, that the application of Tusca Enterprises, LLC d/b/a Duca's Neapolitan Pizza for a new Beer and Wine License at 236 E. Cheyenne Mountain Boulevard be approved, as it appears all criteria have been met. The motion passed by a vote of:

Yes: 4 - Clauss, Holmes, Howard, and Stephens

No: 1 - Kouba

Absent: 2 - Davis, and Gorman

- 7.B.** [N-28565](#) Application of American Spirit Liquor, LLC d/b/a American Spirit Liquor for a new Retail Liquor Store License at 3842 N. Nevada Avenue.

Attachments: [N-28565 - American Spirit Liquor](#)

Robert Wilson was sworn and stated that he is the 100% owner and manager of the business. Mr. Wilson testified to the elements required for a new Retail Liquor Store License, and answered questions from the Board. Mr. Wilson stated that he conducted a survey petition of the defined neighborhood which resulted in 138 favoring, 4 opposing, and 29 no opinion signatures.

The City Clerk's Office presented its audit of the survey petition which resulted in the deletion of 4 incomplete or illegible signatures.

Motion by Clauss, seconded by Howard, that the application of American Spirit Liquor, LLC d/b/a American Spirit Liquor for a new Retail Liquor Store License at 3842 N. Nevada Avenue be approved, as it appears all criteria have been met. The motion passed by a vote of:

Yes: 5 - Clauss, Holmes, Howard, Kouba, and Stephens

Absent: 2 - Davis, and Gorman

8. Suspension/Revocation Hearings

- 8.A.** [S-719975](#) Suspension/Revocation hearing regarding the Retail Liquor Store License issued to Jumar, Inc. d/b/a Peak Liquor at 6455 Source Center Point.

Attachments: [S-719975 - Peak Liquor Show Cause Order](#)

Chief Prosecuting Attorney Michael Curran entered his appearance on behalf of the City.

Vince Linden entered his appearance on behalf of the licensee. Mr. Linden stated that the licensee is prepared to admit the violation and proceed with

argument for any penalty.

Chairman Kouba read the allegations into the record.

Mr. Linden stated that the licensee did receive the Order to Show Cause, and that the licensee admits the violation did occur.

Motion by Clauss, seconded by Stephens, that the Board accept the Admission of Guilt for violation of Sale to Minor on October 1, 2014. The motion passed by a vote of:

Yes: 5 - Clauss, Holmes, Howard, Kouba, and Stephens

Absent: 2 - Davis, and Gorman

Mr. Curran displayed a video of the transaction of the sale to minor, listed as City Exhibit 1, and presented a timeline of prior violations for sales to minor.

Mr. Curran stated that this is the third violation of sales to minor within 18 months for this licensee, and the City requests that this liquor license be suspended for 60 days for this new violation; that 30 days be held in abeyance for one year; that 30 days be served actively immediately; and that the prior 12 days held in abeyance from the previous suspension be ordered, resulting in a total of 42 days of active suspension.

Julie Whitmoyer and Marc Whitmoyer, 91% and 9% owners of the licensee, Jumar, Inc., were sworn. Mr. and Ms. Whitmoyer testified to their respective work history and background, and Ms. Whitmoyer detailed the personal events leading up to the most recent violation.

Mr. Whitmoyer testified to the security efforts, policies, and procedures of the operation, and he and Ms. Whitmoyer detailed the training and changes made after the two previous violations.

Mr. Linden presented photos of the interior and exterior of the licensed premises, listed as Licensee Exhibits A through F. Ms. Whitmoyer explained the traffic flow and sales procedures, and testified that she agreed to be removed from the management of the liquor store.

Mr. Whitmoyer testified to the equipment upgrades and policy changes to be made as a result of these violations.

Mr. Linden detailed the economic and operational effects of a 30 to 42 day suspension on the business, and requested the Board take those effects and the upcoming holiday period into account in making their decision. Mr. Linden stated that the penalty should be consistent with prior Board actions of similar circumstances. Mr. Linden requested a 12 to 20 day active suspension period.

Mr. and Ms. Whitmoyer answered questions from the Board on the operations and policies of the business, and presented internal secret shopper compliance documents, listed as Licensee Exhibit G.

All exhibits were entered into evidence.

Mr. Curran recapped the City's position and that all aggravating and mitigating circumstances should be used in making the penalty determination.

Motion by Stephens, seconded by Clauss, that the Retail Liquor Store License issued to Jumar, Inc. d/b/a Peak Liquor be suspended for 72 total days, including 12 days previously held in abeyance, with 21 days actively served, and the remaining 51 days held in abeyance for one year. Active days to begin effective Friday, November 21, 2014 at 1:00 P.M. and continue for 21 consecutive days through Friday, December 12, 2014 at 1:00 P.M. The motion passed by a vote of:

Yes: 5 - Clauss, Holmes, Howard, Kouba, and Stephens

Absent: 2 - Davis, and Gorman

9. Adjourn.

At 11:47 A.M., there being no further business, the Board Adjourned.

Lee McRae, License Enforcement Officer.