

BEFORE THE LOCAL LIQUOR AND BEER LICENSING AUTHORITY, CITY OF COLORADO SPRINGS, STATE OF COLORADO Address: 30 South Nevada Avenue, Suite 101 Colorado Springs, CO 80903 Telephone: (719) 385-5901 Fax Number: (719) 385-5114 Email: cityclerk@coloradosprings.gov	CITY CLERK'S OFFICE 2023 MAR 20 P 2: 08 ▲ CLERK USE ONLY ▲
IN THE MATTER OF: APPLICATION FOR RENEWAL OF HOTEL and RESTAURANT LIQUOR LICENSE SUBMITTED BY: BABILONIA, LLC d/b/a PARADISE NIGHTCLUB & RESTAURANT 2501 E. Platte Avenue Colorado Springs, CO 80909 LICENSEE	License No.: 851468
ATTORNEY FOR THE CITY OF COLORADO SPRINGS Shantel Withrow, Colo. Reg. No. 46227 Division Chief – Prosecution 224 E. Kiowa Street, Suite 410 Colorado Springs, CO 80903 Telephone: 719-385-5925	
ATTORNEY FOR THE LICENSEE Will Cook, Colo. Reg. No. 31357 115 E. Costilla Street Colorado Springs, CO 80903 Telephone: 719-477-1285	
<p style="text-align: center;">RECORD OF DECISION: FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER</p>	

Pursuant to a Notice of Objections and Order for Renewal Hearing dated January 6, 2023, and a Notice of Postponed Hearing dated January 20, 2023, and an Order for Continuance dated February 2, 2023, and a Notice of Postponed Hearing dated February 3, 2023, all incorporated herein by reference, a hearing was held in this matter on March 3, 2023, at the Colorado Springs Municipal Court, 224 E. Kiowa Street, Division 2, Colorado Springs, Colorado, 80903.

Hearing Matthew D. Ramirez ("Hearing Officer") presided over the hearing conducted pursuant to C.R.S. §44-3-601 and §2.5.601 of the Code of the City of Colorado Springs, 2001 as amended ("City Code"), and Rules 14.03 and 20.00 of the Liquor and Beer Rules and Regulations for the City of Colorado Springs ("Local Rules").

APPEARANCES:

For the City of Colorado Springs ("City"):

Shantel Withrow, Colo. Reg. No. 46227, Division Chief – Prosecution

For Babilonia, LLC d/b/a Paradise Nightclub & Restaurant ("Licensee"):

Will Cook, Colo. Reg. No. 31357

For Historic Knob Hill objecting to the renewal of the license ("Objecting Party"):

Daniel B. Miller, Colo. Reg. No. 49421

WITNESSES FOR THE CITY:

Lee McRae, License Enforcement Officer, City of Colorado Springs

WITNESSES FOR THE LICENSEE:

Yuliet Romero Garcia, owner of Licensee

Dennis Ugarte, Interpreter

Sergeant Jeff Edmonds, Colorado Springs Police Department

WITNESSES FOR THE OBJECTING PARTY:

Craig Bridgeman, neighboring property owner

David Donelson, Councilmember

Monika May, neighboring property owner

Jacques Sears, neighboring property owner

EVIDENCE:

The Hearing Officer took administrative notice of the Administrative Record for Babilonia, LLC and the Hotel and Restaurant Liquor License #851468.

The City, The Licensee, and the Objecting Party presented the sworn testimony of the witnesses identified above. The following Exhibits were identified, offered, and admitted into evidence at the hearing¹:

On behalf of the Objecting Party:

Exhibit #10	2022-05-13 -- Stunna 4 Vegas Babilonia Ad for Event on May 27
Exhibit #17	2022-08-07 -- Facebook, Ride Out Advertisement
Exhibit #2	Premise Call History for 2501 E Platte Ave
Exhibit #3	Summary of Premise History for 2501 E Platte Ave
Exhibit #22	2022-01-17 -- CSPD Case Report
Exhibit #14	Dave Donelson Photos of Shell Casings
Exhibit #1	Google Map View of 2501 E Platte Ave
Exhibit #4	2022-01-23 -- KKTV Media Article
Exhibit #5	2022-02-12 -- KKTV Media Article
Exhibit #6	2022-05-28 -- KKTV Media Article
Exhibit #11	2022-05-27 -- Monika May Photo of Car with Blood in Driveway
Exhibit #18	2022-06-02 -- Monika May Photo of Babilonia with Gas Station
Exhibit #7	2022-06-04 -- Gazette Media Article
Exhibit #12	2022-06-04 -- Monika May Photos of Car Window Damage
Exhibit #13	2022-06-11 -- Jacques Sears Photos of Bullet Holes at Babilonia

On behalf of the Licensee: None

FINDINGS OF FACT:

Evidence was presented at the hearing by the Licensee and the Objecting Party. The Hearing Officer has examined the evidence properly admitted – testimonial and otherwise – and has weighed the credibility, sufficiency and probative effect thereof. Hearing Officer has observed the demeanor of the witnesses while testifying.

With respect to the evidence of the witnesses, the Hearing Officer has assessed any untoward bias, motive or prejudice which may be actuating a witness' testimony in such a fashion and to such an extent as to render that testimony or parts thereof less worthy of belief.

¹ In order of admittance. Exhibit #4 was admitted over the Licensee's objection, and all other referenced exhibits were admitted without objection.

The Hearing Officer is mindful of the burden and standard of proof that is applicable in Liquor License renewal hearing proceedings.

Therefore, Hearing Officer by a preponderance of the evidence:

1. Babilonia, LLC d/b/a Paradise Nightclub & Restaurant ("Licensee") is the holder of City Hotel and Restaurant Liquor License #851468 (hereinafter the "License") at all times relevant to this proceeding.
2. Paradise timely filed for a renewal of the License, and Objecting Party filed its objection to the License in a timely manner with the City Clerk's office.
3. Beginning in 2021 and continuing through September of 2022, Licensee operated as a nightclub and restaurant, having events such as but not limited to concerts and live music event.
4. During this period, there have been multiple incidents of vandalism, shootings, damage to property and other crimes outside of the Licensee's property, affecting the Objecting Party as well as the general citizens of the City of Colorado Springs. This Officer notes, however, that the incidents describe above were not inside of the Licensee's establishment and the Licensee has not had any disciplinary action against the liquor license as a result of these complaints.
5. The Colorado Springs Police Department have responded to calls for service in the past with respect to the incidents having occurred at or around the Licensee's property, and multiple have been reported in the media. In some cases, the Licensee's property and surrounding properties have been damaged by bullet holes.
6. Objecting Party and its members have also been subject to late night noise, sounds of loud cars and/or motorcycles, gunshots and damage to vehicles parked outside. Colorado Springs Police have been notified of these particular disturbances.
7. On or around October 2022, Licensee rebranded as "Paradise Lounge" and has attempted to change its marketing strategy to try and do its part to avoid these issues. Licensee no longer holds events such as "DJ nights" or "hip-hop" night – rather, it intends to operate as an event center for certain parties, weddings and other events which Licensee believes will be more friendly to the Objecting Party and other residents of the surrounding neighborhood.
8. Licensee has met with representatives of the Colorado Springs Police Department, namely, Sergeant Jeff Edmonds, to devise a plan to accomplish this. In coordination with Sergeant Edmonds, Licensee has installed additional lights and security cameras to assist in making this a safer, friendlier environment.

9. Since Licensee has started this process of working with the Colorado Springs Police Department directly and subsequent rebranding , no incidents – criminal nor civil – have taken place. Specifically, no show cause orders have been requested by any party.
10. As a result of the rebrand and the additional modifications, Licensee's revenue from its operation has been dramatically reduced, but Licensee wishes to continue to run its establishment in the current method to avoid the issues which plagued it, the Objecting Party, and the general citizenry in the past.

CONCLUSIONS OF LAW:

11. The Hearing Officer's factual findings concern only evidence that is dispositive of the issues involved: the Hearing Officer has not addressed every piece of evidence that might lead to a conflicting conclusion and has rejected evidence contrary to the above findings as unpersuasive. *Magnetic Engineering, Inc. v. ICAO*, 5 P.3d 385 (Colo.App. 2000)....
12. The Hearing in this matter is commenced pursuant to Notice of Objections and Order for Renewal Hearing dated January 6, 2023, C.R.S. §44-3-101 *et. seq.* ("Colorado Liquor Code"), pertinent Rules and Regulations promulgated thereto, the Code of the City of Colorado Springs, 2001 as amended ("City Code") §2.5.101 *et. seq.*, and the Liquor and Beer Rules and Regulations for the City of Colorado Springs ("Local Rules").
13. The Local Licensing Authority has the authority to grant or deny renewal of a City issued Liquor License, and has the authority to suspend or revoke a City issued Liquor License based on a violation of State Statutes, City Code, and/or State or Local Rules and Regulations. *C.R.S. §§44-3-301, 44-3-302, and 44-3-601, and City Code §§ 2.5.104 and 2.5.503.*
14. The Objecting Party bears the burden of proof that the renewal of the license should not be granted based on the evidence presented and in the record before the Local Licensing Authority by a preponderance of the evidence. The preponderance standard required the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Dept. of Revenue*, 717 P.2d (Colo. App, 1985). While the quantum of evidence that constitutes a preponderance cannot be reduced to a simple formula, a party has met this burden of proof when the evidence, on a whole and however slightly, tips in favor of that party.
15. The Licensee is the holder of City Hotel and Restaurant Liquor License #851468 and is subject to the City Code, Colorado Liquor Code, and Rules and Regulations promulgated thereto.
16. All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of

acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness. *Colo. Const. Art. II, Sec. 3*. Private property shall not be taken or damaged, for public or private use, without just compensation. *Colo. Const. Art. II, Sec. 15*. A business is a property right entitling its owner to protection against government action the effect of which would be to deprive the owner of his property without due process of law. *City and County of Denver v. Thrailkill*, 125 Colo. 488, 244 P.1074 (1952).

17. In this case, the Objecting Party timely filed an objection to the renewal of the License, arguing that "good cause" existed for the Hearing Officer to deny the Licensee's request to have the License renewed. "Good cause" can be defined as:

"Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the establishment is located, which evidence must include a continuing pattern of fights, violent activity, or disorderly conduct."

C.R.S. Sec. 44-3-103(19)(d) (2022) (*emphasis added*).

18. The Hearing Officer does not take this decision lightly. Denying the License would likely impair, damage or significantly impair the Licensee's property and business. The right to the use and possession and the income of real property are incidents of the ownership of that property. *McDonald v. McDonald*, 150 Colo. 492, 374 P.2d 690 (1962).
19. The Hearing Officer, in determining whether a continuing pattern currently exists, heavily relied on the statements and testimony of Sergeant Edmonds in this hearing. The Sergeant appeared credible and honest, and specifically testified under oath that since the Licensee rebranded its business and installed the new lights and cameras, reports of crime have "plummeted" at this location.
20. The burden is on the Objecting Party to show that good cause exists for the Hearing Officer to deny renewal of the License, and in doing so, Objecting Party argues that a continuing pattern of fights, violent activity or disorderly conduct exists at the premises.
21. The Hearing Officer is not convinced the Licensee operates the licensed premises in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood, including the Objecting Party. The Licensee has met with and continues to work with the Colorado Springs Police Department, including Sergeant Edmonds, to essentially "clean up" its business. Licensee has rebranded its business model to attract different clientele and be a good neighbor. In doing so, Licensee's revenues have declined dramatically. The Hearing Officer recognizes and commends the Licensee's efforts.

22. Furthermore, the Hearing Officer concludes the Objecting Party failed to present evidence showing a "continuing pattern" of fights, violent activity or disorderly conduct. While it is clear in the record that such a consistent pattern of events were documented and even reported from early to mid 2022, no such events – no reports, no complaints, no incidents, no enforcement actions – have taken place since the Licensee's rebrand took place in October 2022. If there ever were such a "continuous pattern" in 2022, it was essentially broken in October. Thus, the Objecting Party has not convinced the Hearing Officer that good cause exists to deny the renewal application.

23. As the Objecting Party has not met its burden of proof, the License will be renewed.

ORDER:

NOW THEREFORE, based on the Licensee's application for renewal of its License, and considering the objections raised by the Objecting party, and consistent with the City Code of the City of Colorado Springs as set forth above, and in consideration of the foregoing circumstances **IT IS HEREBY ORDERED** that the City Hotel and Restaurant Liquor License #851468 held by Babilonia, LLC d/b/a Paradise Nightclub & Restaurant is hereby renewed, and the local approval of the renewal shall be forwarded to the State Liquor Enforcement Division for action..

IT IS FURTHER ORDERED that a copy of this ORDER shall be served upon the above mentioned Applicant.

DONE THIS this 20th day of March, 2023.



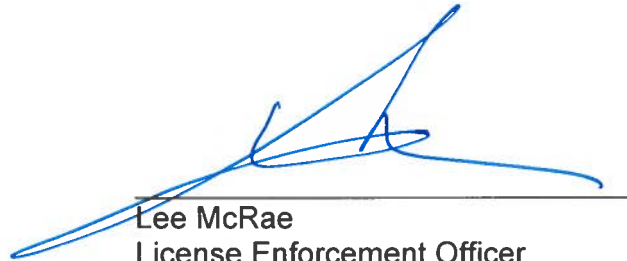
Matthew D. Ramirez
Hearing Officer
City of Colorado Springs

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true copy of the foregoing **RECORD OF DECISION: FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** by United States mail, first class postage paid, this 20th day of March, 2023 to the following addresses of record:

BABILONIA, LLC
d/b/a PARADISE NIGHTCLUB & RESTAURANT
2501 E. Platte Avenue
Colorado Springs, CO 80909

CC: tiropnc@gmail.com
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dmiller@dulaneymillerlaw.com



Lee McRae
License Enforcement Officer
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