

<p><b>BEFORE THE LOCAL LIQUOR AND BEER LICENSING AUTHORITY, CITY OF COLORADO SPRINGS, STATE OF COLORADO</b></p> <p>Address: 30 South Nevada Avenue, Suite 101 Telephone: (719) 385-5901 Fax Number: (719) 385-5114 Email: cityclerk@springsgov.com</p>	<p><b>CITY CLERK'S OFFICE</b></p> <p>2019 NOV -1 A 10: 20</p>
<p><b>IN THE MATTER OF:</b></p> <p><b>NYRCAN, INC. d/b/a</b> <b>D &amp; S LIQUORS</b> 2555 Delta Drive Colorado Springs, CO 80910 <b>LICENSEE</b></p>	<p><b>▲ CLERK USE ONLY ▲</b></p>
<p>Michael Curran, Division Chief - Prosecution P.O. Box 1575, Mail Code 1540 224 East Kiowa Street, Suite 410 Colorado Springs, CO 80903 Telephone: (719) 385-5925 Fax number: (719) 385-6438 Atty. Reg. # 28590</p>	<p>License No: 720015</p>
<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</b></p>	

This matter came on for hearing November 01, 2019, Hearing Officer Kristen Hoffecker presiding. NYRCAN, Inc. d/b/a D & S Liquors 2555 Delta Drive, Colorado Springs, CO 80910 ("Licensee") was present with counsel and the City of Colorado Springs was represented by the City Attorney's Office.

Licensee after being fully advised of the rights that would be waived, and after being given the opportunity to further consultation with counsel, admitted violating provisions of the Colorado Liquor Code, with said violations set out in full in the written Stipulation and Admission of Violation. The Colorado Springs Local Licensing Authority ("LLA"), having received the Stipulation of the parties, and having received testimony and arguments of the parties, makes the following Findings of Fact, Conclusion and Order:

### **FINDINGS OF FACT**

The LLA accepts the admission of Licensee, and finds the same to be knowing and voluntary. Based upon this admission, as well as the evidence and arguments presented, the LLA finds that:

- I. On September 6, 2019 the Local Licensing Authority approved Licensee's application for a change of location. The decision of the Local Licensing Authority was conveyed to the State Licensing Authority. Licensee unlawfully began operations at the new premises prior to the State Licensing Authority

approving the change of location application in contravention of C.R.S. §44-3-301(9)(a)(I)(A) entitled "Licensing in general" and 1 CCR 203-2 Regulation 47-312 "Change of Location".

- II. On September 25, 2019 an inspection of the new premises located at 2555 Delta Drive was conducted. Licensee was actively and unlawfully engaged in the sale of alcohol beverages in contravention of C.R.S. §44-3-301(9)(a)(I)(A) entitled "Licensing in general" and C.R.S. §44-3-901(1)(g) entitled "Unlawful acts." Pursuant to C.R.S. 44-3-312(4) entitled "Results of Investigation – decision of authorities" a local license may only be issued after an inspection of the premises has been made by the Local Licensing Authority. Licensee's local licenses had not yet been issued as the requisite inspection had not yet occurred

## CONCLUSION OF LAW AND ORDER

- III. Based on the advisement of rights given to Licensee, and Licensee's written waiver of those rights, the LLA concludes that Licensee's admission is knowingly and voluntarily made.
- IV. Pursuant to C.R.S. §44-3-601, the LLA, as the local licensing authority for the City of Colorado Springs has the authority to suspend or revoke any license issued by it for any violation of the Colorado Liquor and Beer Code by the licensee or by any of the agents, servants or employees of such licensee.
- V. For its violations of the Colorado Liquor Code as set forth in Paragraph I and II above the following penalty is imposed. The suspension set forth herein is separate and apart from any investigation and/or enforcement action undertaken by the State of Colorado Department of Revenue ("State"), with regard to this matter.
- a. Licensee's Retail Liquor Store License shall be suspended for a period of <sup>eight</sup>~~seven~~ (8) days, **five** (5) of said days to be held in abeyance for a period of **one** (1) year from the date of the adoption of the Stipulation by the LLA, on the following conditions:
- i. That Licensee commit no further violations of any of the following:
1. Any violation of Chapter 2, Article 5 of the Code of the City of Colorado Springs, 2001 as amended, or of Title 44, Articles 3 and 4 of the Colorado Revised Statutes, as amended;
  2. Any violation of any local rules adopted by the LLA or of any rules or regulations promulgated pursuant to Title 44, Articles 3 and 4 of the Colorado Revised Statutes, as amended.
- b. If during the period of **one** (1) year from the date of approval of this Stipulation by the LLA Licensee is in violation of or fails to comply with any

of the terms of this Stipulation or if the Licensee is in violation of any provision of the Colorado Liquor Code, as determined by either the LLA or the State, then the LLA may, in addition to any other penalty imposed as the result of any other violation of the Colorado Liquor Code, order Licensee to serve any or all days of the suspension presently held in abeyance pursuant to this Stipulation.

- c. For Licensee's violation contained in paragraph I and II above the license shall be actively suspended for **three (3)** days, commencing on November 3 2019 and ending on Nov, 5 2019. During such active suspension, Licensee shall post the notices described in Regulation 47-600(F) upon the licensed premises.

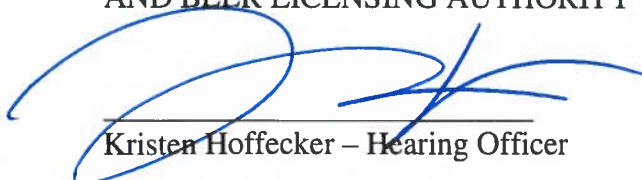
VI. The **five (5)** days previously held in abeyance pursuant to the ORDER of the LLA dated the 16<sup>th</sup> day of August, 2019 (attached to the Stipulation as exhibit 2) are re-imposed. Licensee is allowed to pay a fine in lieu of active suspension for these 5 days. Sales records documenting daily sales for the preceding 3 months must be submitted no later than the close of business Monday November 4, 2019 to the City Clerk's Office. The City Clerk's Office shall calculate the average daily sales amount and issue the amount due. Payment must be made within 30 days of issuance of the amount due.

- a. Pursuant to C.R.S. §44-3-601(3)(A) the LLA specifically finds:
- i. that the public welfare and morals would not be impaired by permitting the licensee to operate during the period of this 5 days suspension and that the payment of the fine will achieve the desired disciplinary purpose;
  - ii. The books and records of the licensee are kept in such a manner that the loss of sales of alcohol beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy;
  - iii. The fine shall be the equivalent to twenty percent of licensee's estimate gross revenues from sales of alcohol beverages during the period of the proposed suspension;

VII. Payment of the fine shall be in the form of cash or in the form of a certified check or cashier's check made payable to the City of Colorado Springs.

**IT IS SO ORDERED** this 1<sup>st</sup> day of November, 2019.

CITY OF COLORADO SPRINGS LOCAL LIQUOR  
AND BEER LICENSING AUTHORITY



Kristen Hoffecker – Hearing Officer

<p><b>BEFORE THE LOCAL LIQUOR AND BEER LICENSING AUTHORITY, CITY OF COLORADO SPRINGS, STATE OF COLORADO</b></p> <p>Address: 30 South Nevada Avenue, Suite 101          Telephone: (719) 385-5901          Fax Number: (719) 385-5114          Email: cityclerk@springsgov.com</p>	<p><b>CITY CLERK'S OFFICE</b></p> <p>2019 NOV -1 A 10: 20</p>
<p><b>IN THE MATTER OF:</b></p> <p>NYRCAN, INC. d/b/a  <b>D &amp; S LIQUORS</b>          2555 Delta Drive          Colorado Springs, CO 80910  <b>LICENSEE</b></p>	<p>▲ <b>CLERK USE ONLY</b> ▲</p>
<p>Michael Curran, Division Chief - Prosecution          P.O. Box 1575, Mail Code 1540          224 East Kiowa Street, Suite 410          Colorado Springs, CO 80903          Telephone: (719) 385-5925          Fax number: (719) 385-6438          Atty. Reg. # 28590</p>	<p>License No: 720015</p>
<p><b>STIPULATION AND ADMISSION OF VIOLATIONS</b></p>	

This Stipulation by and between the City of Colorado Springs ("City") and NYRCAN, Inc. d/b/a D & S Liquors 2555 Delta Drive, Colorado Springs, CO 80910 ("Licensee"), is offered for the purposes of stipulating to a disposition of the alleged violations described in the Order to Show Cause and Notice of Hearing, issued to Licensee on or about October 11, 2019, which is attached hereto as Exhibit "1", and incorporated herein by reference.

The City and Licensee, for the limited purpose of resolving this matter before the Colorado Springs Local Licensing Authority (the "LLA"), hereby stipulate, submit and agree as follows:

- I. On September 6, 2019 the Local Licensing Authority approved Licensee's application for a change of location. The decision of the Local Licensing Authority was conveyed to the State Licensing Authority. Licensee unlawfully began operations at the new premises prior to the State Licensing Authority approving the change of location application in contravention of C.R.S. §44-3-301(9)(a)(I)(A) entitled "Licensing in general" and 1 CCR 203-2 Regulation 47-312 "Change of Location".
- II. On September 25, 2019 an inspection of the new premises located at 2555 Delta Drive was conducted. Licensee was actively and unlawfully engaged in the sale of alcohol beverages in contravention of C.R.S. §44-3-301(9)(a)(I)(A) entitled "Licensing in general" and C.R.S. §44-3-901(1)(g) entitled "Unlawful acts."

Pursuant to C.R.S. 44-3-312(4) entitled “Results of Investigation – decision of authorities” a local license may only be issued after an inspection of the premises has been made by the Local Licensing Authority. Licensee’s local licenses had not yet been issued as the requisite inspection had not yet occurred.

III. As a result of the voluntary admission in paragraphs I and II above, Licensee waives the following rights:

- a. The right to a hearing before the LLA for the purpose of determining whether Licensee committed the alleged violation.
- b. The right to confront witnesses presented by the City to establish the said violation and the right to have issued subpoenas requiring the presence of persons or the production of papers, books and records necessary for the determination of all issues to be presented to the LLA.

III. Licensee represents and states the following:

- a. The admission to the alleged violation is made voluntarily and the admission is not the result of any undue influence or coercion on the part of anyone;
- b. Licensee has had the opportunity to fully consider the consequences of this Stipulation and has had the opportunity to seek legal counsel;
- c. Licensee understands that the LLA will not be bound by any representations made to the Licensee by anyone concerning the penalty to be imposed unless those representations are made a part of this written Stipulation;
- d. Licensee understands that, by admitting the alleged violation, the LLA will consider the said factual basis to support the occurrence of the alleged violation does in fact exist and Licensee hereby waives the necessity of establishing any additional facts to support a finding of violation for the charge.

IV. Licensee agrees to the penalty as set forth below as the penalty for its violations of the Colorado Liquor Code as set forth in Paragraph I and II of the Stipulation. The suspension set forth herein is separate and apart from any investigation and/or enforcement action undertaken by the State of Colorado Department of Revenue (“State”), with regard to this matter.


- a. Licensee agrees that its Retail Liquor Store License shall be suspended for a period of ~~seven (7)~~ <sup>five (5)</sup> days, ~~five (5)~~ of said days to be held in abeyance for a period of ~~one (1)~~ year from the date of the adoption of the Stipulation by the LLA, on the following conditions:
  - i. That Licensee commit no further violations of any of the following:


1. Any violation of Chapter 2, Article 5 of the Code of the City of Colorado Springs, 2001 as amended, or of Title 44, Articles 3 and 4 of the Colorado Revised Statutes, as amended;
  2. Any violation of any local rules adopted by the LLA or of any rules or regulations promulgated pursuant to Title 44, Articles 3 and 4 of the Colorado Revised Statutes, as amended.
- b. If during the period of **one (1)** year from the date of approval of this Stipulation by the LLA Licensee is in violation of or fails to comply with any of the terms of this Stipulation or if the Licensee is in violation of any provision of the Colorado Liquor Code, as determined by either the LLA or the State, then the LLA may, in addition to any other penalty imposed as the result of any other violation of the Colorado Liquor Code, order Licensee to serve any or all days of the suspension presently held in abeyance pursuant to this Stipulation.
  - c. For Licensee's violation contained in paragraph I and II above the license shall be actively suspended for **three (3)** days, with the exact dates of the active suspension as determined by the LLA. During such active suspension, Licensee shall post the notices described in Regulation 47-600(F) upon the licensed premises.
- IV. The **five (5)** days previously held in abeyance pursuant to the ORDER of the LLA dated the 16<sup>th</sup> day of August, 2019 (attached hereto as exhibit 2) are re-imposed. Licensee is allowed to pay a fine in lieu of active suspension for these 5 days. Sales records documenting daily sales for the preceding 3 months must be submitted no later than the close of business Monday November 4, 2019 to the City Clerk's Office. The City Clerk's Office shall calculate the average daily sales amount and issue the amount due. Payment must be made within 30 days of issuance of the amount due.
- V. In the event that the LLA chooses not to accept the provisions of this Stipulation, Licensee shall be permitted to withdraw its admission to the charge and proceed to hearing on all issues concerning the alleged violation. If Licensee withdraws its admission, this Stipulation shall not be used as evidence or taken into account by the LLA in the hearing on the alleged violation or in any subsequent proceeding concerning the alleged violation.
- VI. This Stipulation shall not be effective unless and until approved by the LLA.

Dated this 15<sup>th</sup> day of November 2019.

NYRCAN, INC. d/b/a  
**D & S LIQUORS**

FOR THE CITY ATTORNEY

  
By: NAK AN

  
By: Erika Kaiser, Reg. No. 13555  
Attorney for Licensee

  
By: Michael Curran



BEFORE THE LOCAL LIQUOR AND BEER LICENSING  
AUTHORITY, CITY OF COLORADO SPRINGS, STATE  
OF COLORADO

Address: 30 South Nevada Avenue, Suite 101  
Telephone: (719) 385-5901  
Fax Number: (719) 385-5114  
Email: cityclerk@springsgov.com

CITY CLERK'S OFFICE

2019 OCT 11 P 12:40

IN THE MATTER OF:

NYRCAN, INC. d/b/a  
**D & S LIQUORS**  
2555 Delta Drive  
Colorado Springs, CO 80910  
**LICENSEE**

▲ CLERK USE ONLY ▲

Michael Curran, Division Chief - Prosecution  
P.O. Box 1575, Mail Code 1540  
224 East Kiowa Street, Suite 410  
Colorado Springs, CO 80903  
Telephone: (719) 385-5925  
Fax number: (719) 385-6438  
Atty. Reg. # 28590

License No: 720015

**ORDER TO SHOW CAUSE AND NOTICE OF HEARING**

**WHEREAS**, it has been made to appear to the Local Licensing Authority, City of Colorado Springs, State of Colorado that NYRCAN, Inc. d/b/a D & S Liquors 2555 Delta Drive, Colorado Springs, CO 80910 ("Licensee") has violated the statutes and/or the rules and regulations of the State of Colorado, or City of Colorado Springs governing its Retail Liquor Store License in the following particulars:

- I. On September 6, 2019 the Local Licensing Authority approved Licensee's application for a change of location. The decision of the Local Licensing Authority was conveyed to the State Licensing Authority. Licensee unlawfully began operations at the new premises prior to the State Licensing Authority approving the change of location application in contravention of C.R.S. §44-3-301(9)(a)(I)(A) entitled "Licensing in general" and 1 CCR 203-2 Regulation 47-312 "Change of Location".
- II. On September 25, 2019 an inspection of the new premises located at 2555 Delta Drive was conducted. Licensee was actively and unlawfully engaged in the sale of alcohol beverages in contravention of C.R.S. §44-3-301(9)(a)(I)(A) entitled "Licensing in general" and C.R.S. §44-3-901(1)(g) entitled "Unlawful acts." Pursuant to C.R.S. 44-3-312(4) entitled "Results of Investigation – decision of authorities" a local license may only be issued after an inspection of the premises has been made by the Local Licensing Authority. Licensee's local licenses had not yet



been issued as the requisite inspection had not yet occurred.

**NOW THEREFORE**, you are hereby **ORDERED** to appear before the Local Licensing Authority, City of Colorado Springs, State of Colorado on Friday November 01, 2019 at 9:00 A.M. at the Municipal Court Building, in Division 2, 224 East Kiowa Street, Colorado Springs, CO 80903, or at such other time and place as the Local Licensing Authority may direct to **SHOW CAUSE** why your Retail Liquor Store License should not be suspended or revoked as by law provided. Said hearing is 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 governed by the Liquor and Beer Rules and Regulations for the City of Colorado Springs ("Local Rules").

You are entitled to have an attorney represent you at the hearing. If you should retain an attorney, you should do so well in advance of the hearing.

You are entitled to utilize the services of a qualified foreign language interpreter pursuant to Rule 9.10 of the Local Rules. Any interpreter must meet the requirements of that rule, and any relationship to you may disqualify a proposed interpreter. You will be responsible for securing and paying the costs associated with foreign language interpretation services and you should do so well in advance of the hearing. A foreign language interpreter will not be provided for you. If you are unable to locate a qualified foreign language interpreter, you should contact the City Clerk's Office well in advance of the hearing to obtain a list of qualified interpreter services.

If you are hearing impaired and require the services of a sign interpreter, you should notify the City Clerk's office in advance of the hearing and one will be provided for you free of cost.

A postponement of the hearing will not be granted except for good cause shown. **If you should fail to appear at the scheduled time and place for the hearing, or appear despite an inability to present evidence in the absence of a qualified interpreter or counsel, testimony may be taken in reference to the allegations, upon which evidence your Retail Liquor Store License may be suspended or revoked.**

If you have any questions concerning these proceedings, you should contact Michael Curran, Division Chief - Prosecution at (719) 385-5925.

**IT IS FURTHER ORDERED** that a copy of this Order and Notice shall be served upon the above-mentioned Licensee.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of my office this 11

day of October 2019.

  
Sarah Johnson  
City Clerk



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**CERTIFICATE OF SERVICE**

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I, Lee McRae, hereby certify that I have served the foregoing **ORDER TO SHOW CAUSE AND NOTICE OF HEARING** on this 11<sup>th</sup> day of October, 2019 by personally delivering to:

Name: NAK AN  
Address: 2555 Delta Drive

**AND**

I hereby certify that I have mailed a true copy of the foregoing **ORDER TO SHOW CAUSE AND NOTICE OF HEARING** by United States mail, first class postage paid, this 11<sup>th</sup> day of October, 2019 to the following mailing address of record:

NYRCAN, INC. d/b/a  
**D & S LIQUORS**  
2555 Delta Drive  
Colorado Springs, CO 80910



Lee McRae  
License Enforcement Officer  
City Clerk's Office  
30 S. Nevada Avenue  
Colorado Springs, CO 80903

<b>BEFORE THE LOCAL LIQUOR AND BEER LICENSING AUTHORITY, CITY OF COLORADO SPRINGS, STATE OF COLORADO</b> Address: 30 South Nevada Avenue, Suite 101 Telephone: (719) 385-5901 Fax Number: (719) 385-5114 Email: cityclerk@springsgov.com	<b>CITY CLERK'S OFFICE</b>  2019 AUG 16 A 10:33
<b>IN THE MATTER OF:</b>  NYRCAN, INC. d/b/a <b>D &amp; S LIQUORS</b> 2535 Delta Drive Colorado Springs, CO 80910 <b>LICENSEE</b>	<b>▲ CLERK USE ONLY ▲</b>
	License No: 720015
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</b>	

This matter came on for hearing June 21, 2019, Hearing Officer Matthew D. Ramirez presiding. NYRCAN, Inc. d/b/a D & S Liquors 2535 Delta Drive, Colorado Springs, CO 80910 ("Licensee") was present with counsel and the City of Colorado Springs was represented by the City Attorney's Office.

Licensee after being fully advised of the rights that would be waived, and after being given the opportunity to further consultation with counsel, admitted violating provisions of the Colorado Liquor Code, with said violation set out in full in the written Stipulation and Admission of Violation. The Colorado Springs Local Licensing Authority ("LLA"), having received the Stipulation of the parties, and having received testimony and arguments of the parties, makes the following Findings of Fact, Conclusion and Order:

#### **FINDINGS OF FACT**

The LLA accepts the admission of Licensee, and finds the same to be knowing and voluntary. Based upon this admission, as well as the evidence and arguments presented, the LLA finds that:

- I. On July 18, 2019 the Licensee, and/or its managers, employees or agents, did sell, serve, give away, dispose of, exchange, or deliver or permit the sale, serving, giving, or procuring of an alcohol beverage to or for a person under the age of twenty-one (21) years, a Confidential Informant, on the licensed premises in violation of C.R.S. §44-3-901(1)(b)(I) entitled "Unlawful Acts-exceptions".

**CONCLUSION OF LAW AND ORDER**

- II. Based on the advisement of rights given to Licensee, and Licensee's written waiver of those rights, the LLA concludes that Licensee's admission is knowingly and voluntarily made.
- III. Pursuant to C.R.S. §44-3-601, the LLA, as the local licensing authority for the City of Colorado Springs has the authority to suspend or revoke any license issued by it for any violation of the Colorado Liquor and Beer Code by the licensee or by any of the agents, servants or employees of such licensee.
- IV. Licensee agrees that its Retail Liquor Store License shall be suspended for a period of **five (5) days**, **five (5)** of said days to be held in abeyance for a period of **one (1) year** from the date of the adoption of the Stipulation by the LLA, on the following conditions:
  - a. That Licensee commit no further violations of any of the following:
    - i. Any violation of Chapter 2 of the Code of the City of Colorado Springs, 2001 as amended, or of Title 44, Articles 3 and 4 of the Colorado Revised Statutes, as amended;
    - ii. Any violation of any local rules adopted by the LLA or of any rules or regulations promulgated pursuant to Title 44, Articles 3 and 4 of the Colorado Revised Statutes, as amended.
  - b. If during the period of one (1) year from the date of this ORDER Licensee is in violation of or fails to comply with any of the terms of this ORDER or if Licensee is in violation of any provision of the Colorado Liquor Code, as determined by either the LLA or the State, then the LLA may, in addition to any other penalty imposed as the result of any other violation of Colorado Liquor Code, order Licensee to serve any or all days of the suspension presently held in abeyance pursuant to this ORDER.

**IT IS SO ORDERED** this 16<sup>th</sup> day of August, 2019.

CITY OF COLORADO SPRINGS LOCAL LIQUOR  
AND BEER LICENSING AUTHORITY



Matthew D. Rameriz – Hearing Officer