

PUEBLO LIQUOR & BEER LICENSING BOARD
MINUTES -- REGULAR MEETING
CITY HALL -- COUNCIL CHAMBERS
AUGUST 17, 2011 – 6:00 P.M.

The Pueblo Liquor & Beer Licensing Board convened the Regular Meeting of August 17, 2011 at 6:00 p.m., with Chairwoman Doris Harrison presiding.

ROLL CALL

Present: Board Members Don DiFatta, Mike Ferris, Doris Harrison, Charles Pullaro, Jr. and Tom Rose. Also Present—Assistant City Attorney Bob Jagger and Deputy City Clerk Lori Bravo-Neff.

APPROVAL OF MINUTES

Mr. Rose, seconded by Mr. DiFatta, moved to approve the minutes of the Regular Meeting of August 3rd, 2011. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

AMENDMENTS TO CONSENT AGENDA

Mr. Rose, seconded by Mr. Ferris, moved to remove the application for a Special Events Permit for The HARP Foundation and continue the matter to September 7, 2011. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

CONSENT AGENDA

- 1 HOTEL & RESTAURANT LIQUOR LICENSE APPLICATIONS-TOTAL OF 5 APPLICATIONS**
Chipotle Mexican Grill, Inc. d/b/a Chipotle Mexican Grill, 3230 N. Elizabeth Street
Texas Roadhouse Holdings, LLC d/b/a Texas Roadhouse, 4707 Dillon Drive
Momo Japanese Restaurant, Inc. d/b/a Sushi Garden, 3915 Ivywood Lane
Big Daddy's Sunset Bowl, Inc. d/b/a Big Daddy's Sunset Bowl, 1227 S. Prairie Avenue
Blazin' Wings, Inc. d/b/a Buffalo Wild Wings Grill & Bar, 5821 N. Elizabeth Street
- 2 TAVERN LIQUOR LICENSE APPLICATIONS-RENEWALS-TOTAL OF 2 APPLICATIONS**
Reggie W. Mauro d/b/a Red's Alibi Lounge, 1107 S. Prairie Avenue
Zaragoza Hall, Inc. d/b/a Zaragoza Hall, 1339 E. Routt Avenue
- 3 3.2% BEER LICENSE APPLICATIONS- RENEWALS-CONSUMPTION OFF PREMISES-TOTAL OF 2 APPLICATIONS**
Suncor Energy Sales, Inc. d/b/a Shell, 1812 US Highway 50 West
Suncor Energy Sales, Inc. d/b/a Shell, 1201 Bonforte Boulevard
- 4 RETAIL LIQUOR STORE LIQUOR LICENSE APPLICATIONS-RENEWALS-TOTAL OF 3 APPLICATIONS**
Tito Flames, Inc. d/b/a Flame Liquors, 2225 Lake Avenue
Friendly Young, Inc. d/b/a One-Stop Liquor, 2600 E. 8th Street
In Family Enterprise, LLC d/b/a Pueblo Discount Liquor Store, 1616 W. Pueblo Boulevard
- 5 CABARET LICENSE RENEWAL-R&R BLUES LIMITED D/B/A THE DOWNBEAT, 1335 E. EVANS AVENUE**
- 6 PERMIT APPLICATION AND REPORT OF CHANGES-MANAGER'S REGISTRATION-HOTEL & RESTAURANT LIQUOR LICENSE- HT PUEBLO PROPERTIES, LLC D/B/A RAMADA PUEBLO, 4703 N. FREEWAY (NEW MANAGER: CURRENT SOLE OWNER MICHAEL HU REPLACES LAUREL WRIGHT)**

CONSENT AGENDA (CONTINUED)

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- 7 REMOVED FROM AGENDA
- 8 SPECIAL EVENTS PERMIT APPLICATION-BEER, WINE & SPIRITUOUS LIQUOR LICENSE –GREATER PUEBLO CHAMBER FOUNDATION, 302 N. SANTA FE AVENUE. EVENT MANAGER: ROD SLYHOFF (EVENT TO BE HELD AUGUST 27, 2011. ADDRESS OF EVENT: 3733 N. PUEBLO BOULEVARD – (PUEBLO MOTOR SPORTS COMPLEX)
- 9 TEMPORARY PERMIT APPLICATION: TRANSFER OF OWNERSHIP APPLICATION— TAVERN LIQUOR LICENSE–QMT, LLC D/B/A THE GROVE TAVERN, 901 E. C STREET (CURRENTLY LICENSED TO GROVE TAVERN, LLC D/B/A GROVE TAVERN, LICENSE EXPIRES FEBRUARY 8, 2012)
- 10 TEMPORARY PERMIT APPLICATION: TRANSFER OF OWNERSHIP APPLICATION— TAVERN LIQUOR LICENSE–IRON HORSE BAR & GRILL, INC. D/B/A IRON HORSE BAR & GRILL, INC., 717 N. MAIN STREET (CURRENTLY LICENSED TO ARCADIA DANCE HALL INC. D/B/A ARCADIA DANCE HALL & ANCHOR LOUNGE, LICENSE EXPIRED AUGUST 7, 2011)

VOTE ON CONSENT AGENDA ITEMS:

Mr. Rose, seconded by Mr. DiFatta, moved to approve the Consent Agenda as read into the record. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

REGULAR AGENDA

- 11 NEIGHBORHOOD SURVEY: NEW CABARET LICENSE– CHRISTOPHER RODRIGUEZ D/B/A SHARKY’S BAR, 1549 E. EVANS AVENUE

Neighborhood Surveyor Don Vest, 516 Lincoln was sworn in and presented to the Board the demographics and map of the defined neighborhood for issuance of a new cabaret license for premises known as *Sharky’s Bar*.

Mr. Ferris seconded by Mr. Rose, moved to accept the survey and set the hearing for September 7, 2011. Roll Call: Ayes—DiFatta, Ferris, Harrison, Rose and Scaplo. Motion carried unanimously.

- 12 HEARING: TRANSFER OF OWNERSHIP APPLICATION—RETAIL LIQUOR STORE LIQUOR LICENSE–J&J LIQUOR, LLC D/B/A J&J LIQUOR, 4315 THATCHER AVENUE (CURRENTLY LICENSED TO PH LIQUOR INC. D/B/A PH LIQUOR, LICENSE EXPIRES NOVEMBER 22, 2011) CONTINUED FROM JULY 20, 2011 AT THE REQUEST OF THE APPLICANT

Mr. Pullaro, seconded by Mr. Rose, moved to continue this hearing to September 7, 2011 at the request of the applicant. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

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- 13 HEARING: NEW HOTEL & RESTAURANT LIQUOR LICENSE– DONNA MARIE HART D/B/A ALL SEASONS CATERING EVENT CENTER, 112 W. 2ND STREET (CONTINUED FROM JULY 20, 2011 AT THE REQUEST OF THE APPLICANT)**

Mr. DiFatta, seconded by Mr. Rose, moved to continue this hearing to September 21, 2011 at the request of the applicant. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

- 14 HEARING: NEW CABARET LICENSE– DONNA MARIE HART D/B/A ALL SEASONS CATERING EVENT CENTER, 112 W. 2ND STREET (CONTINUED FROM JULY 20, 2011 AT THE REQUEST OF THE APPLICANT)**

Mr. DiFatta, seconded by Mr. Rose, moved to continue this hearing to September 21, 2011 at the request of the applicant. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

- 15 HEARING RE: ALLEGED LIQUOR CODE VIOLATION-TAVERN LIQUOR LICENSE- OSWALDO GUTIERREZ MONTOYA D/B/A PLANET 86, 215-223 E. NORTHERN AVENUE**

Note: Licensee Oswaldo Gutierrez Montoya was not present. Mr. Gutierrez Montoya had given written permission to Victor Navarro and/or Eduardo Navarro to represent him in his absence.

Victor Navarro, 1617 W. Northern Avenue and Eduardo Navarro, 1503 Lake Avenue were sworn in.

Ms. Sikes objected to the Navarro's being present on behalf of the licensee since this license is held by an individual and not a corporation. Mr. Jagger stated it may be premature to object to their presence until we hear their statements. Mr. Jagger also explained that Mr. Rose would be abstaining from participating in the discussion regarding the motion or voting on the matter due to the fact that one of the brothers is a student of Mr. Rose, and Mr. Rose had referred them to the City Clerk's Office with regard to this issue.

Ms. Sikes distributed an Exhibit packet to the Board and also provided a copy to the licensee's representatives. She then questioned Victor Navarro. Mr. Navarro explained that *King Taco* is a family-run business and is held in sole proprietorship by his father Enrique Navarro at 223 E. Northern Avenue, Pueblo, CO. Mr. Navarro explained prior to 2007, his family owned and operated a liquor-licensed establishment in the name of *Navarro Enterprises d/b/a Planet 86*. Ms. Sikes asked Mr. Navarro to refer to *Exhibit 1* which was a copy of the 2007 lease agreement entered into between Navarro Enterprises and Oswaldo Gutierrez Montoya. Mr. Navarro acknowledged that this was in fact a copy of that lease agreement. The term of the lease was for 15-months and Mr. Navarro acknowledged that the lease was never renewed and Planet 86 closed in 2009. Mr. Navarro stated King Taco is housed in the same building as Planet 86. Ms. Sikes asked Mr. Navarro to refer to *Exhibit 2* which is a copy of the drawing of the licensed premises. Mr. Navarro described what the drawing contained. Mr. Navarro further explained his family always intended to operate the restaurant (King Taco) and at the recommendation of their attorney, the

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liquor license was transferred to Mr. Gutierrez Montoya so that in the event of any altercations or involvement with the police, they would not be effected. Mr. Navarro further explained that the initial plan was that Mr. Gutierrez Montoya would hold the liquor license for 4 or 5 years. Ms. Sikes asked Mr. Navarro to again refer to *Exhibit 1*-paragraph 2 which in part states if the lessee (Gutierrez Montoya) should default under the terms and conditions of the lease, that the lessor (Navarro Enterprises) would be appointed as attorney in fact to apply to the City & State to transfer the liquor license back to them or their designee. Mr. Navarro acknowledged that this was correct. Ms. Sikes asked Mr. Navarro why the liquor license wasn't transferred back to them when Mr. Gutierrez Montoya defaulted on the lease. Mr. Navarro stated they continued to try to work with Mr. Gutierrez Montoya but at the same time, King Taco's business had also gotten slow and they did not have the necessary funds to apply for the transfer. He went on to state that they did not believe they had done anything wrong, they continued to pay the taxes and all the while, were still trying to help Mr. Gutierrez Montoya get back on his feet so that he could pay them back. Mr. Navarro stated each time they renewed the liquor license, the Sales Tax Division never told them anything until this last renewal period. He stated business is starting to pick up again and they are saving some money so that they can apply for the transfer. Ms. Sikes referred Mr. Navarro to *Exhibit 4* which was the renewal application for 2011-2012. She pointed out that Mr. Gutierrez Montoya was still representing himself as Planet 86 and that for two years he renewed the liquor license and during this 2-year time King Taco was the one entity actually selling alcohol. Ms. Sikes also noted that during this time, Mr. Gutierrez Montoya no longer had possession of the premises and had not paid rent for at least 2 years. Mr. Navarro stated that Mr. Gutierrez Montoya was never forced to renew the liquor license and he had done so willingly.

Ms. Sikes then questioned Eduardo Navarro. Mr. Navarro stated he had heard the testimony his brother had given and had nothing to add. He generally agreed they knew they needed to transfer the liquor license back to Navarro Enterprises but were waiting for the funds to do so. Neither Ms. Sikes nor the Board had additional questions for the Navarro's.

Ms. Sikes next called for Deputy City Clerk Lori Bravo-Neff to give testimony.

Deputy City Clerk Lori Bravo-Neff, 200 S. Main Street was sworn in and answered questions from Ms. Sikes. Ms. Bravo-Neff explained this matter was first brought to her attention after receiving a call from the City of Pueblo Sales Tax Division informing her that they would not be providing the "sign-off" on the liquor license renewal application indicating that the licensee was current on his sales tax and in good standing to conduct business. Ms. Bravo-Neff stated when Mr. Gutierrez Montoya and Victor Navarro arrived at the City Clerk's Office, they explained to her what had transpired at the Sales Tax Office and she had explained to them that without the sign-off from Sales Tax, the renewal application could not be processed. Ms. Bravo-Neff stated in further discussion with Mr. Gutierrez Montoya he explained he wanted to "reopen" and when pressed further about what he meant by that and had he been closed, he made statements which clearly indicated that King Taco had been using his liquor license. Ms. Bravo-Neff acknowledged *Exhibit 6* was the memo she had drafted to the Board to bring this matter to their attention. No further questions from Ms. Sikes.

Board Member Ferris asked Ms. Bravo-Neff if the license holder of Planet 86 had ever terminated their liquor license and she stated they had not and explained that when Mr. Gutierrez Montoya closed his Sales Tax and Business license account, Planet 86 no was no longer a viable business. Chairwoman Harrison asked Ms. Bravo-Neff if the reason she also brought this matter to the Board's attention was because this was an inactive business, Ms. Bravo-Neff acknowledged that in

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past practice she was aware of the Board's concerns about liquor licenses being renewed if they were not being used. Mr. Navarro stated he had no questions for Ms. Bravo-Neff. There were no further questions from the Board or Ms. Sikes.

Ms. Sikes asked that Exhibits 1, 2, 4 and 6 be entered into the record. The Board took Administrative Notice of Exhibits 3 (Transfer of Ownership Application – Applicant: Oswaldo Gutierrez Montoya) and Exhibit 7 (shows history information on Navarro Enterprises as the liquor license holder prior to 2007 obtained from the City Clerk's Office) (No mention of Exhibit 5).

Mr. Navarro was given an opportunity to present his testimony. He stated the entire building is the liquor-licensed establishment and they have never tried to hide anything from the City. He stated the entire time they were selling alcohol; they never had any liquor violations and had paid all their taxes. Mr. Navarro expressed concern as to why now the Sales Tax Division took issue with them. He stated they would not do anything to jeopardize their family business and all they are asking for is a chance to get the license in their name.

The Board asked Ms. Bravo-Neff if it was known for sure that Planet 86 was definitely closed. Ms. Bravo-Neff stated based on a written comment from Sales Tax on the liquor license renewal application, which states, "Planet 86 no longer in business per taxpayer. No sales tax remittance for over 2 years. – Valerie C. Palumbo" who is the Sales Tax Audit Manager, that Planet 86 is closed.

Chairwoman Harrison stated the Board would take administrative notice of the liquor license renewal application submitted for Planet 86.

Ms. Sikes read from C.R.S. 12-47-301(3)(a) which in part states that each license issued is separate and distinct and that it is unlawful for any person to exercise the privileges granted under the license, other than that which the person holds, or for any licensee to allow any other person to exercise those privileges. Ms. Sikes explained that that is exactly what we have in this situation explaining Mr. Gutierrez Montoya has allowed King Taco to use the privileges he was granted and that King Taco is using the privileges granted to Mr. Gutierrez Montoya. Ms. Sikes also referred to C.R.S. 12-47-301(3)(b) which in part states that a licensee shall possess and maintain possession of the premises for which the license is issued by ownership, lease or other arrangement. She stated based on the evidence and testimony, the acknowledgment that the liquor license needed to be transferred, the loss of possession of the premises and that there has been misrepresentation to the City on Mr. Gutierrez Montoya's part that he was still operating Planet 86, the City would request, at the Board's discretion, that the application of renewal of the tavern liquor and cabaret licenses be denied.

Ms. Harrison entertained a motion.

Mr. Ferris, seconded by Mr. DiFatta, moved there is good cause not to renew this tavern liquor license.

The Board held a brief discussion and with all comments heard, cast their votes.

Roll Call: Ayes—DiFatta, Ferris, Harrison and Pullaro. Motion carried 4-0 with Mr. Rose abstaining.

REGULAR AGENDA (CONTINUED)

Mr. Jagger read the proposed Findings and Order into the record for the Board's consideration.

Mr. Ferris, seconded by Mr. DiFatta, moved to accept the Findings and Order as read. Roll Call: Ayes—DiFatta, Ferris, Harrison and Pullaro. Motion carried 4-0 with Mr. Rose abstaining.

16 TAVERN LIQUOR LICENSE APPLICATION-RENEWAL- OSWALDO GUTIERREZ MONTOYA D/B/A PLANET 86, 215-223 E. NORTHERN AVENUE

Mr. Jagger explained for purposes of the agenda, this item was disposed of by the action taken in Item #15.

17 CABARET LICENSE APPLICATION-RENEWAL- OSWALDO GUTIERREZ MONTOYA D/B/A PLANET 86, 215-223 E. NORTHERN AVENUE

Mr. Jagger explained as a matter of law, if you do not have a liquor license, you cannot hold a cabaret license and based upon this law, the renewal application must be denied.

Chairwoman Harrison stated the Board would take administrative notice of Item #15.

Mr. Ferris, seconded by Mr. DiFatta, moved to deny the renewal of the cabaret license for Planet 86. Roll Call: Ayes—DiFatta, Ferris, Harrison and Pullaro. Motion carried 4-0 with Mr. Rose abstaining.

ADJOURN – With no further business to conduct, the meeting was adjourned at 7:20 p.m.

Respectfully submitted,


Lori Bravo-Neff, Deputy City Clerk
City Clerk's Office